IN THE STATE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

ADA MELINA CASTAN CRUZ Plaintiff, v. DE'AARIS M. NELLOMS and PEACHTREE TRUCK LEASING COMPANY, LLC Defendants.	CIVIL ACTION FILE NO.: 2024CV04386

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO WITHDRAW OR AMEND ADMISSIONS AND MOTION FOR SANCTIONS

COME NOW Defendants, by and through their undersigned counsel, and hereby file their Response in Opposition to Plaintiff's Motion to Withdraw or Amend Admission and additionally ask the Court to issue sanctions against Plaintiff and her counsel pursuant to OCGA § 9-15-14 and the Court's contempt power, showing as follows:

SUMMARY OF ARGUMENT

As the Court is well aware, Plaintiff's filings throughout this litigation have contained citations which appear to be fictitious, possibly "hallucinations" made up by generative-artificial intelligence ("AI"), or have nothing to do with the proposition for which Plaintiff purports to cite them.[1] Plaintiff's Motion to Withdraw or Amend Admissions only contains two case citations, however neither of them stand for the proposition for which Plaintiff cited them. Therefore,

[1] The Court of Appeals has recently dealt with this issue and defined AI hallucination as "a phenomenon wherein a large language model (LLM)—often a generative AI chatbot or computer vision tool — perceives patterns or objects that are nonexistent or imperceptible to human observers, creating outputs that are nonsensical or altogether inaccurate." *Shahid v. Esaam*, No. A25A0196, 2025 WL 1792657, at *1 (Ga. Ct. App. June 30, 2025) citing *Harris v. Adams*, 757 F.Supp.3d 111, 119 n.3 (D. Mass. 2024) (citing *What Are AI Hallucinations?*, IBM, https://www.ibm.com/think/topics/ai-hallucinations (last visited August 25, 2025)).

Defendants seek sanctions under OCGA § 9-15-14 and the Court's contempt power including reimbursement of their reasonable attorneys' fees and costs in defending this action and dismissal of the case with prejudice.

Even if the Court were to evaluate Plaintiff's Motion solely on the merits, Plaintiff has failed to satisfy her burden of proof. Once an admission has been made for purposes of OCGA § 9-11-36, the matter is "conclusively established unless the court, on motion, permits withdrawal or amendment of the admission." A trial court has the discretion to permit withdrawal of the admissions if the two-prong test of OCGA § 9–11–36(b) is satisfied: (1) that withdrawal of the admissions will subserve or advance the presentation of the merits of the action and (2) that there is no satisfactory showing that withdrawal will prejudice the party who obtained the admissions. The party seeking to withdraw the admissions (i.e. Plaintiff) has the burden of establishing the first prong by showing that "the admitted request either can be refuted by admissible evidence having a modicum of credibility or is incredible on its face, and the denial is not offered solely for purposes of delay." *Intersouth Properties v. Contractor Exchange,* 199 Ga.App. 726, 728(1), 405 S.E.2d 764 (1991); *see Ledford v. Darter,* 260 Ga.App. 585, 588(1), 580 S.E.2d 317 (2003) (to withdraw admissions, movant must show that the proffered denial could be proved by admissible evidence). Failure to present admissible, credible evidence contradicting the admitted matters justifies the denial of the motion to withdraw. *Id*. Here, **Plaintiff has not presented any evidence whatsoever**, let alone any admissible and credible evidence, contradicting the admitted matters. Therefore, she has failed to carry her burden of proof, and her Motion must be denied.

PROCEDURAL BACKGROUND

Defendants served written discovery, including Requests for Admission under OCGA § 9-

11-36, on Plaintiff on April 14, 2025.[2] Under OCGA § 9-11-36, Plaintiff's responses were due within 30 days. When Plaintiff failed to provide responses to any of Defendants' written discovery, counsel for Defendants sent Plaintiff's counsel a good faith conferral communication on June 30, 2025 pursuant to USCR 6.4(B). *See* email from Luke Kennedy, attached as Exhibit "A."[3] When no response was received, Defendants filed a Motion for Summary Judgment on July 24, 2025. **Within an hour and a half** of the Court's statutory electronic service email serving Defendants' Motion for Summary Judgment, Plaintiff filed both a Response in Opposition as well as a Motion to Withdraw or Amend Admissions.

ARGUMENT AND CITATION OF AUTHORITY

A. Defendants are entitled to sanctions under OCGA § 9-15-14.

a. Plaintiff's cited cases in her Motion do not stand for the propositions for which she cited them.

As the Court is well aware, Plaintiff's filings throughout this litigation have been replete with apparent AI hallucinations or have nothing to do with the proposition for which Plaintiff purports to cite them (another well-known, highly publicized issue with genAI drafted materials). Plaintiff cited two cases in her Motion to Withdraw or Amend Admissions, neither of which stand for the propositions for which Plaintiff purported to cite them.

The first, *Porter v. Urban Residential Dev. Corp.*, 294 Ga. App. 828 (2008), was cited for the principle that "[i]f the admissions are not withdrawn, Plaintiff's claims could be unfairly

[2] Plaintiff's Motion states Defendants' discovery was served on May 27, 2025. While the discovery was originally served on April 14, 2025 (*see* Defendants' Rule 5.2 Certificate of Service filed that day), the Court later issued an Order on May 27, 2025 which stated, in part, that "The six-month period should start on and from the date of this Order." Out of an abundance of caution, Defendants waited 30 days from May 27 to begin conferral. However, this is a moot issue as Plaintiff's responses were late when calculated from either date of service.

[3] To the extent necessary, undersigned counsel hereby certifies his good faith conferral efforts.

extinguished based on a procedural technicality rather than a substantive evaluation of the evidence." *See* Plaintiff's Motion at pp. 1-2. However, *Porter* does not stand for that proposition at all. In fact, in *Porter* the Court of Appeals affirmed the trial court's denial of a motion to withdraw admissions and grant of summary judgment similar to what Defendants are asking the Court to do here. The second case, *Flanders v. Hill Aircraft & Leasing Corp*., 137 Ga. App. 286 (1976), Plaintiff cites for the proposition that "[n]o trial date has been set, and discovery is ongoing. Defendants retain the ability to fully explore Plaintiff's claims through written discovery and deposition." *See* Plaintiff's Motion at p. 2. Again, *Flanders* does not stand for this proposition and never uses the words "written", "discovery", "deposition", or "trial date." Rather, its holding is that a defaulting party is deemed to have admitted all allegations against it, and the trial court erred by allowing it to challenge liability at trial and present defenses which went to the right of recovery. *Id*. It could only argue damages. *Id*.

b. Plaintiff's other filings in this case contain similarly misrepresented, or completely hallucinated, case citations.

If this were the first time Plaintiff had misrepresented the holdings in her cited cases it would perhaps not constitute sanctionable conduct. But, these are far from the only instances of inaccurate or hallucinated citations before the Court. Undersigned counsel has reviewed every citation provided by Plaintiff in her briefing in this case, and provides the Court with the following itemization of Plaintiff's misrepresented, groundless, or altogether fake case citations:

Filing (reverse chronological order)	Case	Proposition cited for by Plaintiff	Actual holding
Plaintiff's Response in Opposition to Defendants' MSJ	*Flanders v. Hill Aircraft & Leasing Corp*., 137 Ga. App. 286 (1976)	Defendants will not suffer any prejudice, as no trial date has been set and discovery remains ongoing.	A defaulting party admitted all allegations against it and the trial court erred by allowing it to challenge liability

			and present defenses which went to the right of recover. It could only argue damages. The words "prejudice", "trial date", and "discovery" do not appear.
	Arnold v. Neal, 315 Ga. App. 158 (2012)	Defendants must produce affirmative evidence showing the absence of a genuine issue of material fact.	This citation goes to a case called *State v. Brown*. There is a case with the name *Arnold v. Neal* found at 320 Ga. App. 289, 738 S.E.2d 707 (2013). However, that case upheld the trial court's grant of summary judgment on a motion to enforce settlement and its only reference to "evidence" was the well-known proposition that on a summary judgment motion the evidence is to be viewed in the light most favorable to the non-movant.
Plaintiff's Brief in Opposition to Defendant Peachtree Truck Leasing's Motion to Open Default	*Kaplan v. Banks*, 259 Ga. App. 562 (2003)	Georgia law is clear that insurer mishandling is not sufficient. Plaintiff also provided the pin cite "insurer's failure to notify defense counsel did not constitute excusable neglect."	**There is no Georgia case called *Kaplan v. Banks*. Further, 259 Ga. App. 562 goes to a case called *Hightower v. Cervantes* which analyzes the timeliness of an appeal and has nothing to do with insurers handling complaints/claims. This is almost**

			certainly a hallucination.
	Rowland v. Tsay, 213 Ga. App. 679 (1994)	Georgia law is clear that insurer mishandling is not sufficient. Plaintiff also provided the pin cite "inaction by insurer or agent is not a valid ground to open default."	While this is a real case, the holding is that the trial court did not abuse its discretion in allowing the defendant to withdraw admissions where defendant produced evidence negating the admissions. Further, it held that the occupant of a trailer assumed the risk of injury by walking over a known defective floor board. This case does not mention the words "inaction", "insurer", "agent" or "default."
	Collier v. State Farm Ins. Co., 248 Ga. App. 264 (2001)	The filing of the Affidavit of Service on February 26, 2025 did not reset the clock. Plaintiff also provides the pin cite "service date controls, not date of affidavit filing."	248 Ga. App. 264 goes to a case called *Hawkins v. Wilbanks* which analyzed service by publication and was overturned by *Ragan v. Mallow*, 319 Ga. App. 443, 744 S.E.2d 337 (2012). There is a case called *Collier v. State Farm Mut. Auto. Ins. Co.*, 249 Ga. App. 865, 549 S.E.2d 810 (2001), however it pertains to insurance contract interpretation and has nothing to do with an answer deadline. Plaintiff's citation directly contradicts

			clear Georgia statutory law to the contrary. OCGA § 9-11-4(h).
	Summerville v. Innovative Images, LLC, 349 Ga. App. 592 (2019)	Opening default would delay proceedings, require unnecessary substitution, and prejudice Plaintiff who properly pursued judgment against a named, served defendant. Plaintiff provided the pin cite "prejudice and litigation delay justify denial of motion to open default."	This case was overturned by *Bowen v. Savoy*, 308 Ga. 204 (2020) which was explicitly pointed out by Defendants in their Motion.
Plaintiff's Response in Opposition to Defendant Nelloms' Objection to Default Judgment and Damages Hearing	*Cox v. Webb,* 273 Ga. App. 542, 543, 615 S.E.2d 564 (2005)	It is well-settled that a co-defendant lacks standing to contest a default entered against another party. Plaintiff also provides the pin cite "A party cannot complain of error that does not affect him and that is not prejudicial to his rights."	**There is no Georgia case called *Cox v. Webb*. Further, 273 Ga. App. 542 goes to a case called *Sate v. Bass* which concerned an appeal of criminal battery charges and sufficiency of evidence rulings. This is almost certainly a hallucination.**

As of the time of this filing, Plaintiff has not withdrawn or amended any of the above-referenced briefs despite being on notice that her briefs contain fake citations. It cannot be argued that presenting fake or misrepresented case citations to the Court "lacks substantial justification" as defined by OCGA § 9-15-14, not to mention falls well below an attorney's duty of candor to

the tribunal and opposing counsel.[4] Ga. R. Prof. Cond. 3.3, 3.4. At the recent August 20, 2025 hearing on Defendant Peachtree Truck Leasing's Motion to Open Default, Plaintiff's counsel was presented with these issues and offered a chance to provide an explanation for the false citations. However, he did not deny that the briefs were drafted by a genAI program and was unable to provide any explanation whatsoever.

This is not the only issue Defendants have had throughout the course of this litigation. As discussed herein, Plaintiff failed to timely respond to written discovery despite Defendants' conferral efforts. Only *after* the recent hearing where Mr. Gillespie's fake citations were discussed with the Court did Plaintiff provide her interrogatory responses – **98 days overdue** and containing improper objections which have been waived. Further, **Plaintiff has not provided any response to Defendants' Requests for Production of Documents nor produced any documents whatsoever in support of her claims which are now more than 100 days overdue**. Plaintiff's failure to respond to Defendants' Requests for Admission resulted in Defendants filing their Motion for Summary Judgment which remains pending.

Consequently, Defendants request reimbursement of their reasonable attorneys' fees and costs pursuant to OCGA § 9-15-14 for the entirety of this litigation to date. *See* Affidavit of Luke Kennedy, Exhibit D. Because this conduct came from Plaintiff's counsel, not Plaintiff herself, Defendants request that the fee award be imposed against Plaintiff's counsel, Mr. Tristan Gillespie, personally and against The Felicetti Law Firm, LLC, jointly and severally.

B. The Court should use its contempt power to dismiss Plaintiff's case as a sanction for

[4] At this point, Defendants must point out that Plaintiff's counsel who filed the briefs with hallucinated or false citations analyzed herein, Mr. Tristan Gillespie, has been suspended from practicing law in Maryland in part for his lack of candor to the tribunal and opposing counsel which were "widespread, serious, and longstanding." *See* Exhibit B, key filings from *In re Tristan Gillespie*, U.S. District Court, District of Maryland (Baltimore), CAFN 1:21-MC-00014. He has reciprocally been suspended from practicing in 13 other jurisdictions. *See* Exhibit C.

contempt.

As the Court correctly noted in the parties' recent hearing, it has the power to find Plaintiff and/or her counsel in contempt of court because filing false briefs directly with the Court constitutes contumacious conduct and direct contempt. OCGA § 15-1-4(a)(1). The Court gave Mr. Gillespie a chance to respond to the allegations that he had filed briefs which contained false, or misrepresented, case citations. He did not deny the allegations, nor did he provide any explanation whatsoever for his behavior. It goes without saying that our judicial system cannot function if this sort of improper conduct is permitted. Therefore, **Defendants request that the Court dismiss this case with prejudice as a sanction for Plaintiff's counsel's contemptuous conduct**.

"The procedures that a trial court must follow to hold a person in contempt depend upon whether the acts alleged to constitute the contempt are committed in the court's presence (direct contempt) or are committed out of the court's presence (indirect contempt)." (Citation omitted.) *Ramirez v. State*, 279 Ga. 13, 14 (2), 608 S.E.2d 645 (2005). If the contempt is direct, a trial court may, after affording the person charged with contempt an opportunity to speak, announce punishment summarily and without further notice or hearing. *Id*. This summary adjudication is authorized

> [W]here contumacious conduct threatens a court's immediate ability to conduct its proceedings, such as where a witness refuses to testify, or a party disrupts the court. Direct contempts in the presence of the court traditionally have been subject to summary adjudication, to maintain order in the courtroom and the integrity of the trial process in the face of an actual obstruction of justice.

(Citations and punctuation omitted.) *Id*. See also *Dowdy v. Palmour*, 251 Ga. 135, 141-42 (2) (b), 304 S.E.2d 52 (1983) ("During trial, a trial judge has the power, when necessary to maintain order in the courtroom, to declare conduct committed in his presence and observed by him to be contemptuous, and, after affording the contemnor an opportunity to speak in his or her own behalf,

to announce punishment summarily and without further notice or hearing."); *see also In Int. of K. J.*, 340 Ga. App. 468, 470, 798 S.E.2d 9, 12 (2017) (accord).

C. **Plaintiff has failed to carry her burden to show any evidence that contradicts her admissions, so her Motion must be denied**.

It is well established that once an admission has been made for purposes of OCGA § 9-11-36, the matter is "conclusively established unless the court, on motion, permits withdrawal or amendment of the admission." OCGA § 9-11-36 (b). A trial court has the discretion to permit withdrawal of the admissions if the two-prong test of OCGA § 9–11–36(b) is satisfied. *Brankovic v. Snyder,* 259 Ga.App. 579, 580, 578 S.E.2d 203 (2003); *see Fox Run Properties v. Murray,* 288 Ga.App. 568, 569(1), 654 S.E.2d 676 (2007) (court's decision on motion to withdraw subject to abuse of discretion standard of review). Those two prongs are: (1) that withdrawal of the admissions will subserve or advance the presentation of the merits of the action and (2) that there is no satisfactory showing that withdrawal will prejudice the party who obtained the admissions. *Brankovic,* 259 Ga.App. at 580, 578 S.E.2d 203. The party seeking to withdraw the admissions has the burden of establishing the first prong by showing that "the admitted request either can be refuted by admissible evidence having a modicum of credibility or is incredible on its face, and the denial is not offered solely for purposes of delay." *Intersouth Properties v. Contractor Exchange,* 199 Ga.App. 726, 728(1), 405 S.E.2d 764 (1991); *see also Ledford v. Darter,* 260 Ga.App. 585, 588(1), 580 S.E.2d 317 (2003) (to withdraw admissions, movant must show that the proffered denial could be proved by admissible evidence). Failure to present admissible, credible evidence contradicting the admitted matters justifies the denial of the motion to withdraw. *Id*.; *see Intersouth Properties,* 199 Ga.App. at 728(1), 405 S.E.2d 764.

This first requirement:

…is not perfunctorily satisfied ... and the desire to have a trial, standing alone, is

> not sufficient to satisfy the test. If the burden of proof on the subject matter of the request for admission is on the requestor, the movant is required to show the admitted request either can be refuted by admissible evidence having a modicum of credibility or is incredible on its face, and the denial is not offered solely for the purposes of delay.

(Citations and punctuation omitted.) *Turner,* 280 Ga. App. at 257 (1), 633 S.E.2d 641 (*quoting Intersouth Properties v. Contractor Exchange,* 199 Ga.App. 726, 727(1), 405 S.E.2d 764 (1991)). This statutory provision vests the trial court with broad discretion to permit withdrawal of the admission, and the trial court's ruling on this issue will only be reversed upon a showing of abuse of discretion. *Id*.

In the present case, **Plaintiff has failed to present any evidence whatsoever to contradict her admissions**. Her Motion consists only of legal argument and her lawyer's excuses that her failure to respond to Defendants' Requests for Admission was due to "the recent deportation of his paralegal" and a language barrier with his client. *See* Motion at p. 1. It goes without saying that neither of these excuses constitutes admissible, credible evidence that contradicts Plaintiff's admissions. *See Intersouth Properties,* 199 Ga.App. at 728(1), 405 S.E.2d 764. Even if Plaintiff had presented some evidence, the Court would have discretion to evaluate the sufficiency and credibility of that evidence. *See JCG Farms of Alabama, LLC v. Morgan*, 348 Ga. App. 629, 631–33, 824 S.E.2d 87, 89–90 (2019) (affirming trial court's grant of summary judgment based on inconsistency and insufficiency of evidence); *see also Fulton County v. SOCO Contracting Co., Inc.,* 343 Ga. App. 889, 897 (2) (a), 808 S.E.2d 891 (2017) (trial court did not abuse its discretion to deny motion to withdraw admissions when affidavit directly contradicted responses to various interrogatories); s*ee also Rebel Auction Co., Inc. v. Citizens Bank*, 343 Ga. App. 81, 85 (1), 805 S.E.2d 913 (2017) (trial court did not abuse its discretion in denying defendant's motion to withdraw admissions when the only evidence upon which the defendant relied was a self-serving

affidavit of its chief operating officer which directly contradicted its admissions in earlier pleadings and discovery); *see also Fox Run Properties, LLC v. Murray*, 288 Ga. App. 568, 571 (1), 654 S.E.2d 676 (2007) (trial court was authorized to conclude that affidavit in support of motion to withdraw admissions lacked credibility because it was contradicted and was inconsistent with the affiant's prior responses to interrogatories and other statements); *see also Crowther v. Estate of Crowther*, 258 Ga. App. 498, 500-501 (1), 574 S.E.2d 607 (2002) (putative widow submitted an affidavit that she had never been married, but the trial court did not abuse its discretion in concluding that her assertions did not have a modicum of credibility in light of contradictory evidence); compare *Johnson v. City Wide Cab*, 205 Ga. App. 502, 502-503 (1), 422 S.E.2d 912 (1992) (grant of withdrawal proper when admissions were contradicted by sworn, credible evidence tending to undermine critical element of plaintiff's claim).

Further, at no point did Plaintiff's counsel communicate these circumstances to Defendants or seek an extension of time to respond to the Requests for Admission. He could have easily provided this explanation to undersigned counsel in response to the USCR 6.4B conferral communication. Depending on how "recent" Plaintiff's counsel's paralegal's deportation occurred in relation to the July 24 filing, it is very possible that the paralegal had not been deported within the 30 days after Defendants' Requests for Admission were served on April 14. Even if Plaintiff's counsel had lost the assistance and bilingual abilities of his paralegal, it was his responsibility to ensure that Plaintiff timely responded, not his paralegal's. There is a plethora of real time translation technology available including numerous free options such as Google Translate that Plaintiff could have utilized. Regardless, the fact is Plaintiff did nothing to alert the Court or undersigned counsel to these circumstances until *after* Defendants filed their Motion for Summary Judgment. The Court should view Plaintiff's excuses with heavy skepticism given the additional

factors discussed herein. However, the crucial fact remains that Plaintiff has presented **no evidence whatsoever** to contradict her admissions. Therefore, the Court must deny her Motion to Withdraw or Amend Admissions.

CONCLUSION

As discussed herein, Plaintiff's false and improper case citations contained in written submissions to the Court constitute sanctionable conduct. Defendants request they be reimbursed their reasonable costs and fees for this litigation under OCGA § 9-15-14, and that the Court exercise its power to dismiss this case with prejudice for Plaintiff's counsel's contemptuous conduct. Additionally, Plaintiff has failed to carry her burden to show this Court any evidence whatsoever that contradicts her admissions. Consequently, Plaintiff's Motion must be denied. Once Plaintiff's Motion is denied, Defendants are entitled to have the Court grant their Motion for Summary Judgment as a matter of law.

Respectfully submitted this 25th day of August 2025.

MCMICKLE, KUREY & BRANCH, LLP

/s/ Luke R. Kennedy
ZACH M. MATTHEWS
Georgia Bar No. 211231
LUKE R. KENNEDY
Georgia Bar No. 750299
Attorneys for Defendants

217 Roswell Street, Suite 200
Alpharetta, GA 30009
Telephone: (678) 824-7800
Facsimile: (678) 824-7801
zmatthews@mkblawfirm.com
lkennedy@mkblawfirm.com

CERTIFICATE OF SERVICE

This is to certify that on this date I have electronically filed the foregoing **DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO WITHDRAW OR AMEND ADMISSIONS AND MOTION FOR SANCTIONS** with the Clerk of the Court using the *Odyssey* e-Filing system, which will automatically send a notification attaching same thereon to all counsel of record as follows:

Tristan Gillespie
The Felicetti Law Firm, LLC
3295 Exchange River Drive, Suite 125
Peachtree Corners, GA 30092
gillespie.tristan@gmail.com
Attorney for Plaintiff

This 25th day of August 2025.

MCMICKLE, KUREY & BRANCH, LLP

/s/ Luke R. Kennedy
LUKE R. KENNEDY
For the Firm

EXHIBIT A

From: Luke Kennedy
Sent: Monday, June 30, 2025 10:57 AM
To: Tristan Gillespie
Cc: Rachel Figueroa
Subject: RE: 17423 - Ada Melina Castan Cruz v. De'aaris Nelloms, et al - 2024CV04386

Tristan, I have not received any discovery responses or documents from you in response to our written discovery served on 5/27. Said responses are now overdue. Please provide Plaintiff's responses and document production by the end of the week. This is my good faith attempt to confer regarding a discovery dispute pursuant to USCR 6.4(B), and if complete production is not made I will be forced to file a Motion to Compel and seek my costs and fees for same.

Thanks,

Luke R. Kennedy
Partner

McMickle, Kurey & Branch, LLP | 217 Roswell Street, Suite 200 | Alpharetta, GA 30009
Phone: (678) 824-7800 | Direct: (678) 824-7817 | Fax: (678) 824-7801 | Email: lkennedy@mkblawfirm.com

From: Tristan Gillespie <gillespie.tristan@gmail.com>
Sent: Tuesday, May 27, 2025 10:12 PM
To: Luke Kennedy <lkennedy@mkblawfirm.com>
Cc: Rachel Figueroa <rfigueroa@mkblawfirm.com>
Subject: Re: Ada Melina Castan Cruz v. De'aaris Nelloms, et al - 2024CV04386

Thank you for your email. I appreciate your willingness to treat my May 27, 2025, email as formal service of Plaintiff's discovery requests, and I will calendar responses to be due within 30 days.

To clarify, I will file the OCGA § 9-11-5.2 certificate of service accordingly. If the Court's Order is construed to start the discovery period as of its date, then I acknowledge that responses would not have been due prior to today, and I will adjust the timeline accordingly.

Please let me know if you need anything further.

Best regards,

Tristan

Tristan W. Gillespie, Esq.

600 Blakenham Ct.

Johns Creek, GA 30022

Tel: 404.276.7277

gillespie.tristan@gmail.com

On Tue, May 27, 2025 at 10:54 AM Luke Kennedy <lkennedy@mkblawfirm.com> wrote:

> Tristan, considering that you have never even served my client with the Complaint I'm sure we can agree that these discovery requests were never served on him either. Additionally, is there a reason that the 5.2 certificate was never filed with the Court as required? And why the date on the signature block is May 20, 2025? Do you have any proof that these requests were actually served on, and received by, my client? Finally, per the Court's Order that was entered today, "The six-month period should start on and from the date of this Order." (Order at p. 1).
>
> So, no responses are owed at this time, and your 6.4 letter is premature. However, I am willing to construe your sending these requests to me today as your service of the requests, so we will respond in 30 days as allowed under the Georgia Civil Practice Act.
>
> Thanks,
>
> 
>
> **Luke R. Kennedy**
>
> Partner
>
> McMickle, Kurey & Branch, LLP | 217 Roswell Street, Suite 200 | Alpharetta, GA 30009
>
> Phone: (678) 824-7800 | Direct: (678) 824-7817 | Fax: (678) 824-7801 | Email: lkennedy@mkblawfirm.com
>
>

From: Tristan Gillespie <gillespie.tristan@gmail.com>
Sent: Tuesday, May 27, 2025 10:29 AM
To: Luke Kennedy <lkennedy@mkblawfirm.com>
Cc: Rachel Figueroa <rfigueroa@mkblawfirm.com>
Subject: Re: Ada Melina Castan Cruz v. De'aaris Nelloms, et al - 2024CV04386

Hi Luke-

Please see the attached discovery requests which were sent to your client on 8/7/2024. Please also see the attached 6.4b letter.

Thanks,

Tristan

Tristan W. Gillespie, Esq.

600 Blakenham Ct.

Johns Creek, GA 30022

Tel: 404.276.7277

gillespie.tristan@gmail.com

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In re:	*	
	*	
TRISTAN W. GILLESPIE,	*	Case No. 21-mc-14
	*	(DISCIPLINARY)
Respondent.	*	
	*	
	***	

REPORT AND RECOMMENDATION

Pending before this three-judge Panel of this Court's Disciplinary and Admissions Committee (the "Panel")[1] is attorney Tristan W. Gillespie's alleged breach of the applicable Rules of Professional Conduct[2] in more than 600 cases filed on behalf of two clients with disabilities. In these cases, Gillespie has sued defendant hotels for failing to provide sufficient information through on-line reservation systems regarding room and hotel accommodations for patrons with disabilities, in violation of Title III of the Americans with Disabilities Act ("ADA"). Gillespie's conduct before this Court and others has prompted this investigation into whether Gillespie has violated the Rules of Professional Conduct concerning candor to the tribunal, the duty to keep his clients reasonably informed, and candor during settlement negotiations. After a full investigation and an evidentiary hearing, the Panel recommends that Gillespie be suspended for six months from the Bar of this Court, with the right thereafter to petition for reinstatement.

To place this disciplinary matter in proper context, we first summarize the nature of the ADA cases that Gillespie has pursued in this Court and elsewhere. Next, we review the investigative history of this disciplinary matter. Third, we summarize the additional evidence

[1] The Panel is comprised of the Hon. Paula Xinis (Chair), the Hon. Deborah L. Boardman, and the Hon. Ajmel A. Quereshi.

[2] Members of this Bar are expected to follow the Maryland Attorneys' Rules of Professional Conduct ("MARPC").

gathered during the evidentiary hearing in which Gillespie testified at length. Fourth, we review the professional conduct rules that Gillespie, in our view, has clearly violated. Last, we set forth our rationale for the recommended discipline.

I. ADA Tester Cases

Title III of the ADA prohibits discrimination "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation[.]" 42 U.S.C. § 12182(a). Implementing regulations require that a hotel "[i]dentify and describe accessible features in the hotels and guest rooms offered through its reservations system in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs[.]" 28 C.F.R. § 36.302(e)(1)(ii). When a hotel provides inadequate information, private individuals may file suit to secure compliance under the ADA. 42 U.S.C. § 12188(a). Of particular relevance here, a plaintiff cannot recover money damages for a statutory violation; only reasonable attorneys' fees and litigation costs are available. 42 U.S.C. § 12205. Although some states permit money damages by statute on a finding of a Title III violation, Maryland is not one of them.

A handful of plaintiffs, styling themselves as "testers," have relied on Title III to bring a spate of lawsuits. The tester plaintiffs investigate violations of the requirement to identify and describe accessibility features by reviewing the on-line reservation information for small hotels throughout the country. Gillespie, in conjunction with Thomas B. Bacon and Thomas Bacon, P.A. ("the Firm"), has filed over 600 tester lawsuits, principally on behalf of plaintiffs Deborah Laufer and Saim Sarwar. *See Laufer v. Arpan LLC*, No. 20-14846, 2023 WL 2910529, at *2 (11th Cir. Apr. 12, 2023) (Newsom, J., concurring in denying reh'g en banc) ("Laufer and two

other plaintiffs—all conspicuously represented by the same lawyers—have filed more than 1000 website-related ADA suits against hotels during the last few years."). Each action begins with a near identical complaint and follows the same process. ECF No. 6 at 16. Of the more than 600 cases filed, many have settled under terms that include the hotel paying Gillespie's fees and costs. If the hotel does not defend the matter, Gillespie seeks default judgment, which includes petitioning courts to award attorneys' fees and costs. No tester case, to this Panel's knowledge, has ever gone to trial.

II. Investigative History

A. Referral of Gillespie for Disciplinary Inquiry

Gillespie became a member of our Bar on May 1, 2020, apparently for the sole purpose of pursing ADA tester cases. He filed 23 such suits in short succession. Once the Court recognized that the cases were copies of one another, different only in the parties and dates of website review, the cases were reassigned to the Honorable Stephanie A. Gallagher. Two such matters resulted in substantial litigation before Judge Gallagher. *See Laufer v. Naranda Hotels, LLC*, No. SAG-20-2136 (D. Md. filed Aug. 17, 2020); *see also Laufer v. Ft. Meade Hospitality, LLC*, No. SAG-20-1974 (D. Md. filed July 3, 2020).

In *Naranda Hotels*, the defendant hotel urged dismissal of the case on jurisdictional grounds, contending that Plaintiff Laufer lacked standing to pursue the claim because she failed to allege any plausible injury-in-fact. Motion to Dismiss, *Laufer v. Naranda Hotels, LLC,* No. SAG-20-2136 (D. Md. Sept. 29, 2020), ECF No. 13. The Court granted Laufer an evidentiary hearing to establish injury-in-fact by demonstrating that she intended to travel to the defendant hotel. At the hearing, Gillespie called Laufer as a witness to establish her intent to travel.

In connection with the motion, Judge Gallagher reviewed scores of other out-of-district

cases Gillespie had filed on Laufer's behalf, principally to ascertain whether Laufer had made similar representations under oath of a present intent to travel to the areas of the other defendant hotels. Judge Gallagher took note that, in those cases, Laufer, through Gillespie, had filed affidavits in which she swore that "as soon" as the Covid pandemic subsided, she intended to travel throughout the states in which she has filed her tester lawsuits, "including places as far afield as Colorado, Illinois, Texas, and Wisconsin." *Laufer v. Naranda Hotels, LLC*, No. 20-2136, 2020 WL 7384726, at *8 (D. Md. Dec. 16, 2020). Ultimately, Judge Gallagher found that:

> In total, Plaintiff has filed at least 557 suits in sixteen different states, plus the District of Columbia. When her standing to sue has been challenged, she has used virtually identical language in each case to describe her travel plans, changing only the locations she plans to visit to correspond with the location of the defendant hotel. Inherent in Plaintiff's use of cookie-cutter sworn statements across the country is a core underlying inconsistency: it is impossible for her to actually travel to all of these places "as soon as" the pandemic ends. Even if one takes a charitable view of the fluid itineraries in her filings and testimony and assumes that she will travel to a number of northeastern states as well as Maryland, such a tour cannot in good faith be deemed to include states like Colorado, Texas, Wisconsin, and Illinois. The existence of the plethora of contradictory representations renders her testimony about her planned Maryland trip highly dubious. . . . This Court reaches the inescapable conclusion that Plaintiff's purported future plans to visit Maryland cannot be credited, and thus—even if such plans had been otherwise sufficient to support her standing to sue as of the summer of 2020—no standing exists here.

Id. at *8-9.

From this, Judge Gallagher concluded that Laufer's "inability to obtain information" on accommodation availability alone is insufficient to satisfy the injury-in-fact prong of standing. *Id.* at *4.[3] Judge Gallagher's survey of the Laufer cases also exposed Gillespie's questionable

[3] Laufer appealed Judge Gallagher's ruling, arguing in part that the District Court erred in concluding as a matter of law that Laufer lacked standing based solely on the alleged informational injury. Notice of Appeal, *Laufer v. Naranda Hotels, LLC*, No. SAG-20-2136 (D. Md. Dec. 16, 2020), ECF No. 28. The Fourth Circuit vacated this Court's decision, concluding that Laufer's alleged injury was sufficient to establish standing. *See generally Laufer v. Naranda Hotels, LLC*, 60 F.4th 156 (4th Cir. 2023). In doing so, the Fourth Circuit created an even 3-3 circuit split as to whether Laufer's "informational or stigmatic injury" confers Article III standing. *Id.* at 174. The Supreme Court has granted certiorari to resolve this circuit split. *Acheson Hotels, LLC v. Laufer*, No. 22-429, 2023 WL 2634524 (Mem), at *1 (U.S. Mar. 27, 2023). Gillespie is not involved in the Supreme Court matter, and

practices as Laufer's attorney. As Judge Gallagher explained in her referral to this Court's Disciplinary and Admissions Committee (the "Committee" or "D & A Committee"), Laufer alone had filed more than 600 cases across the country and Sarwar near 200, all through the Firm, and hundreds with Gillespie as counsel of record. The cases uniformly were brought against small hotels and follow the same pattern—at the time of suit, the defendant received a demand for corrective action and payment of $10,000 in attorneys' fees to settle the case. Given that the complaints across all cases are boilerplate with few changes apart from dates and defendants, it appeared highly improbable that Gillespie actually could have accrued $10,000 in reasonable attorneys' fees and costs when each demand was made.

Also noteworthy to Judge Gallagher was that many hotels never responded to the complaints, which permitted Gillespie to seek default judgment and petition for attorneys' fees. A cursory review of submitted fee petitions revealed that Gillespie likely inflated the hours spent on any given matter. Despite Gillespie's use of boilerplate complaints in every case—to include the same typos and misspellings—he billed anywhere from two to four hours just to "draft" each pleading. Additionally, for some petitions, Gillespie had attached his resume, which reflected that he worked contemporaneously as an Assistant District Attorney for Fulton County, Georgia. In other petitions, however, Gillespie omitted this employment from his resume. In those petitions where the employment was omitted, Gillespie advocated for the requested fee because he must "forego other business clients" to pursue "these less desirable" ADA tester cases. ECF No. 6-1 at 3.

Accordingly, Judge Gallagher referred Gillespie to the D & A Committee for further inquiry as to whether Gillespie had: (1) suborned perjury in sponsoring Laufer's testimony; (2)

Laufer's success on appeal has no bearing on the issues underlying this disciplinary matter.

failed to cite pertinent District of Maryland cases dismissing Laufer's lawsuits for lack of standing; (3) filed lawsuits with the sole objective of extracting outsized attorneys' fees as part of settlements with the hotels; and (4) misrepresented to federal courts in fee petitions the number of hours actually worked, his current employment, and other matters relevant to the determination as to whether the requested attorneys' fees were warranted.

After careful consideration of the referral, and based on Committee recommendation, the full Bench appointed Attorney Evan Shea, Esq. from Venable LLP (the "Investigator") to investigate the allegations. The investigation lasted several months and was exhaustive. The discussion below summarizes the investigation and its findings.

B. Attorney Investigator Inquiry

The Investigator first collected and reviewed publicly docketed documents across the nation in the ADA cases for which Gillespie was attorney of record. Next, the Investigator requested that Gillespie produce (1) all ADA tester complaints and settlement communications for cases filed in this District; (2) documents or communications memorializing client fee agreements; (3) documents or communications related to payments to or from clients in ADA testers cases; (4) documents or communications regarding his efforts to verify his clients' factual averments; (5) documents related to Laufer's claimed intent to travel as articulated before Judge Gallagher; (6) communications reflecting how Gillespie calculated attorneys' fees owed for each ADA matter; and (7) all attorney fee petitions previously filed. ECF No. 6 at 3. The Investigator also interviewed Gillespie on July 22, 2021, Bacon on August 17, 2021, and Siam Sarwar and Deborah Laufer on December 10 and 20, 2021, respectively. *Id.* On February 1, 2022, the Investigator submitted his Report and Recommendation (the "Report") to the Committee.

C. Initial Investigator Report

According to the Report, Gillespie has practiced law since graduating from Rutgers University Law School in 2006. He became a member of the Maryland State Bar in 2015 and of this Bar in May of 2020. In 2018, Gillespie became an Assistant District Attorney in Georgia and, in 2019, he started also working part-time for Thomas B. Bacon at the Firm, representing ADA tester plaintiffs. ECF No. 6 at 7-8. Both employers were aware of the arrangement and approved of it. Gillespie has never met Bacon in person, although Bacon oversees all of Gillespie's work and settlement negotiations through phone calls and email. *Id.* at 8.

For every ADA tester case, Gillespie employs a near identical litigation process. First, the plaintiff searches the web to identify potentially ADA-noncompliant hotels. The plaintiff next forwards that information to the Firm's "investigator," Daniel Pezza. Pezza essentially duplicates the plaintiff's internet research, except he—purportedly charging an hourly rate—bills exactly $650[4] per case for time spent preparing an ADA "expert" report. The "expert" report includes screenshots of hotel websites, which document the purported violations. Pezza attests in every report that he has "reviewed each and every page and picture provided." ECF No. 6-11 at 4. Although Pezza is always characterized as an ADA "expert" in court filings, he has no apparent bona fides, and instead seems to simply review or rehash the plaintiffs' on-line efforts. *Cf. Kennedy v. Sun Coast Motels, Inc.,* No. 8:18-cv-1688-T-30CPT, 2018 WL 6724759, at *2 (M.D. Fla. Dec. 21, 2018) ("there is no explanation as to how Pezza's total fee of $600.00 is reasonable"); *Kennedy v. KSK Invs. LLC*, No. 6:17-cv-640-Orl-37KRS, 2017 WL 6403072, at *4 (M.D. Fla. Nov. 24, 2017), *report and recommendation adopted*, 2017 WL 6387974 (M.D. Fla. Dec. 14, 2017) (rejecting fee request for "claimed expert witness" Pezza); *Parks v. Bre/Sanibel*

[4] Earlier in the tester litigation, Pezza had billed exactly $600 per report for his "hourly" services but has since increased the charged fee by $50.

Inn Owner L.L.C., No. 2:20-cv-188-FtM-38NPM, 2021 WL 71602, at *7 (M.D. Fla. Jan. 8, 2021) (reducing Pezza expense because in three related cases, plaintiff submitted "a boilerplate copy and paste" report); *Kennedy v. Bonom Enterprises, Inc.*, No. 18-cv-62175, 2019 WL 1429513, at *4 (S.D. Fla. Mar. 29, 2019) (denying Pezza expense as unsupported). Pezza forwards his report to Gillespie, who plugs the hotel information into a template complaint, allowing him to generate pleadings at a rapid pace. In one day, Gillespie has filed as many as sixteen ADA tester complaints. ECF No. 6 at 15.[5]

Once the complaint is filed, Gillespie immediately pushes to settle the matter. According to the Report, Bacon and Gillespie rely on early settlements to "offset losses incurred" from those cases that "never yield compensation," and thereby keep the Firm solvent. *Id.* at 17. To maximize the chance of quick resolution, Gillespie (at Bacon's direction) offers the defendant hotel one of three options:

A. Defendant agrees to cure the on-line informational defects within 24 months and pay a flat attorney fee of $10,000 for "past, present and anticipated future costs, expenses, and attorney time[.]" In exchange, Plaintiff releases "all claims or potential claims" against the defendant.
B. Defendant agrees to cure the on-line informational defects within 12 months and pay a flat attorney fee of $6,500 in exchange for a limited release of claims related to the "subject website."
C. Parties enter into a consent decree where the defendant agrees to bring the website into compliance and let the Court determine appropriate attorneys' fees and costs.

[5] *See Laufer v. Krishna Real Estate 4 LLC*, No. 3:20-cv-00745 (W.D. Wis. Aug. 11, 2020); *Laufer v. Ambe Mata LLC*, No. 3:20-cv-00747 (W.D. Wis. Aug. 11, 2020); *Laufer v. Alamac, Inc.*, No. 1:20-cv-02206 (D.D.C. Aug. 11, 2020); *Laufer v. HH Churchill Hotel Associates, L.P.*, No. 1:20-cv-02207 (D.D.C. Aug. 11, 2020); *Laufer v. R B Properties Inc.*, No. 1:20-cv-02208 (D.D.C. Aug. 11, 2020); *Laufer v. Ind. Realty Co.*, No. 2:20-cv-10323 (D.N.J. Aug. 11, 2020); *Laufer v. Capri Little Ferry LLC*, No. 2:20-cv-10324 (D.N.J. Aug. 11, 2020); *Laufer v. 145 Dean Drive LLC*, No. 2:20-cv-10325 (D.N.J. Aug. 11, 2020); *Laufer v. Bhole Shankar, Inc.*, No. 1:20-cv-00114 (S.D. Ga. Aug. 11, 2020); *Laufer v. PSNVR LLC*, No. 3:20-cv-00052 (S.D. Ga. Aug. 11, 2020); *Laufer v. Hasmukh H. Patel*, No. 5:20-cv-00314 (M.D. Ga. Aug. 11, 2020); *Laufer v. Ohm Shiv Ganesh Inc.*, No. 5:20-cv-00102 (S.D. Ga. Aug. 11, 2020); *Laufer v. Tribhuvan Real Estate LP*, No. 2:20-cv-01188 (W.D. Pa. Aug. 11, 2020); *Laufer v. Richbell Carrollton, LLC*, No. 8:20-cv-02325 (D. Md. Aug. 11, 2020); *Laufer v. Vijay Inc.*, No. 2:20-cv-01193 (W.D. Pa. Aug. 11, 2020); *Laufer v. Jay Sai Ganesh LLC*, No. 1:20-cv-03317 (N.D. Ga. Aug. 11, 2020). Gillespie filed certain complaints with the wrong defendant name, prompting a refile to correct the error.

Id. at 18 (paraphrased); *see also* ECF No. 6-8. Most of the time, defendant hotels accept one of the three offers with minimal negotiation.

However, when the matter does not settle and the defendant does not participate in the lawsuit, Gillespie moves for default judgment. In connection with the default motions, Gillespie files a boilerplate fee petition seeking attorneys' fees, expenses, and costs. For these petitions, Gillespie routinely inflates the time expended to prosecute the cases. Even though Gillespie has admitted that drafting any given complaint involves merely "plugging in" the defendant's name and similar information into a template, Gillespie routinely bills "at least 3.9 [hours] of attorney time" for drafting the complaint and related tasks. ECF No. 6 at 19.

This regular exaggeration of time spent is most obvious when considering the sheer number of cases that Gillespie files on any given day. For instance, on the day that Gillespie filed sixteen cases, Gillespie represented in three subsequent fee petitions that he spent 4.9 hours, 4.9 hours, and 3.9 hours drafting the complaints, for a total of 13.7 billable hours. *Id.* at 15, 19-20. That day was also a weekday when Gillespie was working full-time as an Assistant District Attorney. *Id.* at 20. When the Investigator confronted Gillespie about the impossibility of his claimed hours worked, Gillespie remained steadfast that his timekeeping was accurate. *Id.* at 21.

As for settled cases, Gillespie furnished all settlement agreements and timekeeping records for cases he filed in Maryland. Because the ADA does not allow money damages, the monetary aspect of the settlements was limited solely to attorneys' fees and costs. But frequently, the agreed-upon settlement sum was larger, sometimes substantially so, than the actual attorneys' fees and expenses logged by the Firm. In one circumstance, the actual time spent on the case added up to less than half of the settlement amount. *Id.* at 22. In response, Gillespie and Bacon admitted that their "settlement demands represented something more than

just time spent on a case and costs incurred," *id.* at 23, even though Title III prohibits such. *Id.* at 11 (citing *Equal Rts. Ctr. v. Equity Residential*, 798 F. Supp. 2d 707, 728 n.12 (D. Md. 2011)).

D. Report Findings and Recommendations

As to certain areas of inquiry, the Report found no evidence of misconduct.[6] However, the Report described a disturbing pattern of Gillespie having exaggerated and misrepresented work performed or to be performed to opposing counsel during settlement negotiations and to various courts in his fee petition submissions. We focus on those findings.

The Investigator concluded that Gillespie had likely violated Maryland Attorneys' Rule of Professional Conduct 19-304.1, which prohibits counsel "in the course of representing a client" from "making a false statement of material fact or law to a third person," including false statements made during settlement negotiations. *See id.* at 33 (citing *Ausherman v. Bank of Am. Corp.*, 212 F. Supp. 2d 435, 445-452 (D. Md. 2002)). In mitigation, the Investigator noted that Gillespie always couched his fee requests to opposing counsel to include "future" fees. Although Gillespie candidly admitted he had *never* engaged in the post-settlement due diligence that would constitute a "future cost," the Investigator reasoned that the potential of future due diligence "permit[ted] an 'out' from inflated settlement figures." *Id.* at 34. The Investigator also found mitigating that Gillespie follows the lead of Bacon, who is largely responsible for directing the settlement negotiations.

The Investigator also concluded that Gillespie had knowingly made false statements in connection with fee petitions filed in federal courts. The Investigator stressed that the requested attorney hours are "implausibly high," and continued to be even after at least one court in 2018

[6] These included potential subornation of perjury as to Laufer's testimony before Judge Gallagher; the failure to bring contrary authority to Judge Gallagher's attention; whether Gillespie was filing frivolous tester cases; and whether plaintiffs received direct improper payments from the Firm.

found that similar requests by Gillespie's partner, Bacon, were unreasonable. *Id.* at 34-35 (citing Order Granting Plaintiff's Mot. for Default J., *Kennedy v. SATYA GROUP, LLC*, No. 2:17-cv-14393-RLR (S.D. Fla. Jan. 3, 2018) (finding that it was not "reasonable to expend a combined 84 minutes drafting" essentially a boilerplate complaint)). But at the same time, the Investigator noted that courts had routinely accepted that Gillespie's fee petitions reflect at least *some* time spent on the matters. For these reasons, the Investigator recommended that the Committee issue Gillespie a warning to take greater care in his future representations to courts and opposing counsel.

E. D & A Committee Review

After careful review of the Report, the Committee was not prepared to adopt the recommended informal disposition without further inquiry into Gillespie's misrepresentations in settlement practices and fee petitions. Accordingly, the Committee recommended to the full Bench that Gillespie be made to show cause as to why more formal discipline, up to and including disbarment, should not be considered. Also, given the passage of time, the Committee recommended that the Court order Gillespie to produce all fee petitions filed since his interview with the Investigator on July 22, 2021.

The full Bench adopted the Committee's recommendation. On March 10, 2022, Chief Judge James K. Bredar issued an Order notifying Gillespie that the Court had initiated formal disciplinary proceedings against him. ECF No 7. The Order also directed Gillespie to supplement the record with all fee petitions filed from July 22, 2021, "until the matter is concluded." *Id.* Last, the Order directed Gillespie to show cause why he should not receive formal discipline, including suspension or disbarment, based on the Report's findings.

On April 14, 2022, Gillespie responded to the Order. ECF No. 9. Gillespie stated that he

"deeply regrets" the "mistakes" made in his fee petitions, but denied any misrepresentation made in settlement negotiations as to the time and money spent prosecuting the cases. *Id.* at 2. Gillespie also argued that, had the Investigator accounted for "actual expenses" incurred in each case, "the settlement amounts would not have been excessive." *Id.* Gillespie emphasized that "anticipated future time" he could plausibly spend on a case justified the inflated settlement demand, even though he had never once, in the over 600 cases he handled, ever spent any time on a case after it settled. Gillespie also invoked "caselaw" that counseled against court involvement in settlement negotiations, and cited, without elaboration, a supposed "double-standard" in negotiations between plaintiffs and defendants. *Id.* at 6, 8.

Gillespie also provided his fee petitions filed after he had become aware of this investigation. The fee petitions for the post-investigation period reflected no real change in Gillespie's habitual overbilling.

The Committee also learned during this time that in *Sarwar v. Patel Invs., Inc.*, Case No. 5:21-cv-118 (D. Vt. filed Apr. 26, 2021), Gillespie allowed his client, Saim Sarwar, to testify falsely during an evidentiary hearing on whether Sarwar intended to travel to the defendant hotel. Sarwar, who suffers from cerebral palsy, described that he took a four-day excursion to the Vermont area where he was driven by "Daniel Pezza," whom Sarwar described as the guy who "helped [Sarwar] out." When asked specifically whether Pezza was "paid" for his assistance, Sarwar answered no. Gillespie never corrected his client's misrepresentations—that Pezza in fact was the Firm's paid investigator on all ADA matters—which resulted in the court finding that Sarwar made the trip with the able assistance of his "friend," Daniel Pezza. *Sarwar v. Patel Invs., Inc.*, No. 5:21-cv-118, 2022 WL 1422196, at *1, 4 (D. Vt. May 5, 2022).

Consequently, the Committee recommended to the full Bench the appointment of a three-

judge panel to conduct an evidentiary hearing on whether Gillespie has violated the applicable rules of professional conduct and, if so, the appropriate disposition of the disciplinary matter. Accordingly, on June 1, 2022, the Court ordered that on Gillespie appear before a three-judge panel on September 23, 2022, for a formal disciplinary hearing. ECF No. 10.

F. Supplemental Investigator Report

In advance of the hearing, the Investigator submitted to the Committee a Supplemental Investigator Report ("Supplemental Report"). As to the *Patel* matter, the Supplemental Report concluded that Gillespie likely violated Maryland Attorneys' Rule of Professional Conduct 19-303.3(a)(4), which prohibits an attorney from knowingly sponsoring false testimony. The Supplemental Report explained that where a client has provided materially inaccurate testimony, the attorney must direct the client to correct the record, and if the client cannot or will not, the lawyer must "reveal the fraud to the tribunal.'" ECF No. 11 at 3 (quoting *Holden v. Blevins*, 154 Md. App. 1, 5 (2003) (citing *Att'y Grievance Comm'n v. Sperling*, 296 Md. 558, 563 (1983)). Gillespie took no action to correct the record. When asked to explain his inaction, Gillespie stated that Sarwar suffers from cerebral palsy, which caused him to not "process information very well." *Id.* The Investigator rejected this excuse, reasoning that "regardless of Mr. Sarwar's medical condition, Mr. Gillespie had an ethical duty to disclose to the court that Mr. Pezza was paid by Mr. Bacon and/or Thomas B. Bacon, P.A." *Id.* at 4.

The Supplemental Report also confirmed that Gillespie continued to file exaggerated fee petitions in courts throughout the country. ECF Nos. 11 at 4-5 & 11-2 at 2. Gillespie persisted in doing so even after the Investigator questioned him at length about his billing practices, and after Gillespie apologized for the "mistakes" he previously made. Accordingly, the Investigator confirmed that, despite being under investigation, Gillespie had not changed his approach to

these matters at all.

Last, the Report noted that after Gillespie learned that the Court intended to hold an evidentiary hearing on his disciplinary matter, Gillespie decided to cease ADA tester litigation altogether and began dismissing his active tester actions in droves. ECF No. 11 at 5. As of August 2022, a month before the hearing, Gillespie had only a handful of open, active ADA tester cases. ECF No. 11-2 at 2.

III. Evidentiary Hearing

On September 23, 2022, the Panel held the evidentiary hearing. Both the Investigator and Gillespie delivered opening remarks. Gillespie next agreed to answer Panel questions under oath.

The Panel first questioned Gillespie about his fee petitions. Specifically, the Panel pressed Gillespie on the representations made to both courts and opposing counsel in connection with attorneys' fees. Although Gillespie always negotiated a potential attorneys' fees settlement with "future fees" as part of the fee demand, Gillespie confirmed that he has *never* conducted additional work on any case after settlement to ensure the hotel is ADA compliant. Hearing Transcript at 46, *In re Tristan W. Gillespie*, 1:21-mc-00014 (D. Md. Sept. 23, 2022) ("Tr.").

The Panel also reviewed with Gillespie the inflated hours he submitted in scores of fee petitions. Gillespie admitted, under oath, that he falsely represented in several fee petitions that it took him more than two hours to draft the respective complaint. *Id.* at 55 (Question: "To draft the complaints, do you stand by the number two and a half hours?" Answer: "No."). Gillespie also admitted that in several other fee petitions, he did not disclose that he was simultaneously employed as an Assistant District Attorney, nor did he have a "perfect answer" for why he omitted this information. Gillespie also admitted that in the same petitions, he would argue for

his full fee because taking unpopular ADA cases "precludes" him from other employment. Gillespie acknowledged that this omission, combined with his proffered "inability" to secure other work, was both "inaccurate" and misleading. *Id.* at 70-71.

The Panel next turned to Gillespie's habitual practices at three critical points in his representation of Laufer and Sarwar: (1) the terms under which the Firm and Gillespie were hired to pursue the ADA tester cases; (2) the settlement process; and (3) the decision to dismiss an action before resolution. The Panel also questioned Gillespie about the familial relationship between Laufer and Pezza. Each topic merits detailed discussion.

A. Client Retainer Agreements

Although Gillespie had not drafted or participated in executing the retainer agreements with his clients, these agreements referred to Gillespie as the client's counsel, and Gillespie acknowledged that he was familiar with the agreements' terms and conditions. He also recognized that he was obligated to ensure that his clients understood the agreements.[7]

The retainer agreement, entitled "Standard ADA Fee Agreement," governs the hundreds of ADA tester cases, and reads,

> The agreement shall set forth our understanding as to the nature and scope of the legal services we have agreed to render for you, the amount of our fees for these services, the manner in which our fees for these services shall be determined and the terms upon which you will make payment of these fees . . . . This agreement shall apply to all Title III ADA cases you ask me to handle for you.
>
> 1. **Fees for Services**. Although you will be billed for our services on the basis of an hourly rate, this provision is subject to item 4, referencing payment of fees and costs from only the defendant . . . . You understand that it is not possible at this time to determine the total amount of our fees for our services.
>
> 2. **Costs**. We will also charge you for certain costs and expenses, together with applicable taxes, if any, which may include investigative fees, expert witness

[7] Even though Gillespie promotes himself as a "disability rights" lawyer, he was unfamiliar with MARPC 19-301.14, which governs special obligations imposed on attorneys representing clients with disabilities.

> and consultant fees, filing fees, recording costs . . . . The cost will also include fees for an expert ADA Consultant we will need to retain on your behalf. Such expert fees are currently running between $175.00 and $250.00 per hour. This provision is subject to item 4, governing the recovery of costs from only the defendant.

Yet the agreement also states that:

> 4. **Payment of fees and Costs**. The fees and costs in this matter will be sought through an agreement to pay with the Defendant, or by the Defendant, pursuant to a Court Order. We will seek payment of our fees and costs from the Defendant pursuant to the provisions of the Americans with Disabilities Act which provides that, "In an action pursuant to the Act, the Court may allow the prevailing party, reasonable attorneys' fees, including litigation expenses, and costs.

Standard ADA Fee Agreement Between Siam Sarwar and Thomas B. Bacon, Esq. (July 30, 2020) (on file with the Court) ("Fee Agreement").

Accordingly, the Fee Agreement plainly states that the client must pay for attorneys' fees and costs. The Fee Agreement also informs the client that the attorneys will seek reimbursement from defendants in settlement. But nowhere does the Fee Agreement discuss what happens if the case does not settle. Thus, under its plain terms, the agreement binds the plaintiff to pay the expenses. When pressed on this issue, Gillespie explained he had a side arrangement with the client that the Firm would never collect such fees and costs, and in fact, never does.

Adding to this confusion, the Fee Agreement also incorporates by reference a separate "Standard ADA Statement of Clients Rights," which the client also signs. Even though Gillespie represents the clients in ADA cases *where money damages are not available,* the Statement refers in several places to a "contingency fee" arrangement and to how "money recovered in a case" will be disbursed. Statement of Client's Rights Between Saim Sarwar and Thomas B. Bacon, Esq. (July 30, 2020) (on file with the Court) ¶ 1; *see also id.* ¶¶ 2 ("any contingency fee contract must be in writing") & 4 ("before signing any contingency fee Contract with you" and

"If lawyers from different law firms will represent you, at least one lawyer from each law firm must sign the contingency fee Contract.").

When pressed on the inscrutability of these documents, Gillespie responded that he has a "high level of confidence" that clients were not charged for services and that "in fact, our compensation structure is such that we only get paid based on the settlements, and we never turn to the plaintiffs themselves for those payments." Tr. at 84. Gillespie readily agreed that the retainer language is "100 percent confusing" and "terribly written" and "absolutely needs to be changed and revised." *Id.* at 82. While on the stand, Gillespie, after reviewing the agreement, admitted that it was "the first time I truly stared at it with such intent level of detail." *Id.* at 83. Indeed, Gillespie admitted that he never reviewed the agreements with his clients or otherwise did anything to ensure that they understood them. *Id.*

B. Settlement Agreements

The Panel next moved to settlement agreements that Gillespie has secured in hundreds of cases. The terms of the settlement agreements—the same every time—set out the contractual obligations of each party. The agreement begins,

> **WHEREFORE**, in consideration of the promises and mutual covenants and undertakings contained herein and incorporated into this Settlement Agreement, *and other good and valuable consideration, the receipt and sufficiency of which is acknowledged*, the Parties agree to the following terms and conditions as a full and complete settlement of the Lawsuit.

E.g. ECF No. 6-17 at 3 (emphasis added). As for "good and valuable consideration," the agreement memorializes that the plaintiff will dismiss the suit with prejudice and release the defendant hotel from any liability arising under the ADA. In exchange, the defendant hotel agrees to pay a sum certain to cover "all attorney fees, costs and litigation expenses in full consideration of settlement in this case" that would otherwise be borne by the plaintiff. *Id.* at 3-

4.

But despite the plain language of this provision, the clients were never obligated to—or did—pay fees or costs. This fact was never disclosed to the defendant hotels. Thus, the settlement agreement conditioned the plaintiff's dropping the suit on the defendant hotel satisfying a phantom debt.

Making matters worse, Gillespie never reviewed the settlement agreements with his clients. On this issue, the Panel asked Gillespie,

> Q: What did you do to make sure [Sarwar] understood the terms of the agreement?
> A: I have *never gone through any settlement agreement with any plaintiff* and sat down with them and explained in detail the elements of any settlement agreement.
> Q: So nothing? You did nothing?
> A: *Nothing.*

Tr. at 85-86 (emphasis added). Gillespie simply would email the settlement agreement to Pezza, and Pezza would secure the client's signature. *Id.* at 87-88. Gillespie did not know whether Pezza did anything to explain the agreement to the clients, and Gillespie did nothing to confirm that the client even signed the agreement. *Id.* at 88.[8] Gillespie conceded that he "should have made a greater effort to the explain" the agreement's terms. *Id.* at 90.

The Panel next questioned Gillespie about the misrepresentations to the hotels in the agreements that the plaintiffs were carrying a debt to the attorneys when in fact they were not:

> Q: There is a fee agreement with the client that says one thing. There is an understanding that, according to you, you have with the client, and I don't have any reason to doubt it, that the client knows they will never pay a dime to you. And then there is the representation to the defense counsel, which is completely the opposite, okay; that there is outstanding monies, and the signatory to that agreement, the plaintiff, is on the hook for the money. So that is lining up to me as a bait and switch, as, essentially a

[8] This testimony was in response to a question prompted by the Panel's review of a sample settlement agreement, incorporated into the Report, that purportedly was signed by Sarwar but where the signature block had "Deborah Laufer" in typeface as the signatory.

scheme; and when you multiply that by the hundreds of settlements, that becomes very concerning. What is your response to that?

A: I never thought that through like that . . . I don't know

. . . .

Q: So you admit it's more than just sloppy recordkeeping and a failure to specify and break down and describe the work, accurately, thoroughly?

A: Yes, I can easily see how this—this bait and switch thing you are describing, I see it. I regret that I didn't think of it.

Tr. at 90-91.

In short, the hearing revealed that Gillespie had done nothing to ensure that his clients understood what they were signing when they retained Gillespie and the Firm. Nor did he do anything to make sure they understood the terms of settlement agreements that extinguished their lawsuits. Last, Gillespie misled the defendant hotels into paying the plaintiff's purported debt to the firm as "valuable consideration" for settlement, even though no such debt existed.

C. Dismissal of Actions

The Panel next turned to the circumstances surrounding Gillespie's dismissal of over 100 ADA tester cases since becoming aware of this investigation. *See id.* at 36 (Gillespie representing that "since my receipt of this expert investigation report, as has been mentioned, we've closed up shop and [the ADA litigation] hasn't continued."). For the lion's share of these cases, dismissal was voluntary and not the product of a settlement. Outcome Analytics by Party, *WestLaw Edge Litigation Analytics*, https://1.next.westlaw.com/analytics (navigate to "Litigation Analytics"; search Attorneys for "Tristan W. Gillespie"; then toggle to "Outcomes"; limit "Case type" to "Civil Rights—ADA"; and filter by date) (showing 127 uncontested dismissals since January 7, 2021). Gillespie simply "dismissed" the matters, which were at all phases of the litigation—including some pending decisions on default judgment motions.[9]

[9] *E.g. Laufer v. AARK Hospitality Holding, LLC*, 1:20-cv-05648 (D.N.J. filed May 7, 2020); *Laufer v. 860 Vestal Empire, LLC, et al.*, No. 22-cv-00098 (N.D.N.Y. filed Feb. 2, 2022); *Sarwar v. Patel*, No. 21-cv-09036 (S.D.N.Y. filed Nov. 2, 2022).

At the hearing, Gillespie conceded that he had dismissed these actions without consulting his clients. Again, the colloquy merits full recitation:

> Q: When you are dismissing all of these cases, what's the client involvement in that?
> A: None whatsoever.
> Q: You just dismiss them?
> A: That's right.
> Q: You don't get their approval?
> A: Correct.
> Q: You don't see a problem with that? It's their case.
> A: You know, they kind of—they have entrusted us to work diligently on their behalf. And you know, in many ways, these cases do need to be dismissed, just in terms of a million things; my time, judicial efficiency. I mean, the cases—you know, even in districts that are slightly unsettled, you know we're just setting ourselves up for like lengthy appeals that, you know, just have a dismal prospect at best. You know, we don't have any existing cases in the Eleventh Circuit, as an example, pending.
> Q: But ultimately, under the ethical rules, it's their decision, right? I mean, there are some things that . . . ultimately, are their choice, whether to start the lawsuit and whether to end the lawsuit.
> A: Fair point.
> . . .
> Q: Yeah, I don't remember exactly where I read it, but I thought that somewhere . . . that the clients are told the clients are the owners of the case, and so the clients, the plaintiff must decide [whether to dismiss the action]. You, your decision, as the attorney, is the decision to withdraw. That's right in your [ADA Fee Agreement].[10] And what you're telling me is that in these cases that you've dismissed, you have violated those two prongs. In other words, you haven't consulted with the plaintiff, and your remedy is not to get out—to get the client out of the case but to withdraw. That hasn't happened either. Am I right about that?
> A: That's correct.

Tr. at 92-94.

Gillespie offered no explanation for extinguishing his clients' lawsuits without first

[10] The full provision in the Fee Agreement reads: "Undersigned clients understand that litigation is extremely expensive, time-consuming, dependent on expert witness testimony, and highly problematical with regard to the chances for success. Clients further understand that these cases take many months to investigate, gather information and evaluate. For these reasons, Clients recognize the right of said law firms to *withdraw from the case and return the file to Clients at said law firm's discretion.*" Fee Agreement ¶ 5 (emphasis added).

seeking their permission or even their input. To this day, it is unclear whether the clients were informed that he had dismissed over 100 cases in advance of his disciplinary hearing.

D. Familial Relationship Between Firm Investigator and Plaintiff Laufer

Last, the Panel inquired about the relationship between Pezza and Plaintiff Laufer. The Panel was aware that Pezza is the former boyfriend of Laufer's daughter and the father of one of Laufer's grandchildren. *See* Transcript at 10-12, 15, 22, 26, 29-30, 36-38, *Laufer v. Fort Meade Hospitality*, LLC, No. 20-cv-1974-SAG (D. Md. Feb. 1, 2021), ECF No. 27. Initially, Gillespie denied knowing of any "personal or familial relationship" between Pezza and any client. Tr. at 44. However, when pressed specifically about the Pezza-Laufer connection, he admitted he had been "aware of that" for well over a year. *Id.* at 79.

Because it is undisputed that ADA plaintiffs are *not* entitled to money damages, the Panel asked whether Gillespie recognized the potential impropriety in paying Pezza, the father of Laufer's grandchild, several hundred thousand dollars for his work in these matters.[11] Gillespie replied that while he had never viewed such payments as "under-the-table," he now recognizes that he "probably should have been more on top of that." *Id.* at 81.

IV. Gillespie's Violation of the Rules of Professional Conduct

This Court requires all barred attorneys to comply with the Maryland Attorneys' Rules of Professional Conduct. Loc. R. 704. Based on this investigation, the Panel finds that Gillespie has violated (1) the duty to keep clients reasonably informed about the scope of the fee agreements and the direction of the litigation (MARPC 19-301.2 & 19-301.4); (2) the duty of candor to the tribunal, both throughout his ADA tester litigation as well as this investigation

[11] A conservative estimate of the Laufer portfolio—600 cases—at a blended rate of $625 per case would have generated $375,000 in income for Mr. Pezza. *See* Tr. at 33.

(MARPC 19-303.3); and (3) the duty of fairness and candor to opposing counsel, with respect to representations made during settlement negotiations (MARPC 19-303.4 and 19-304.1).

The Panel discusses each breach in turn.

A. Duty to Keep Client Reasonably Informed (MARPC 19-301.2 & 19-301.4)

In the attorney-client relationship, the client retains the "ultimate authority to determine the purposes" served by the legal representation within the bounds of the law. *See* Md. Att'y R. Prof. Conduct 19-301.2 cmt. 1. MARPC 19-301.2, therefore, requires that "an attorney shall abide by a client's decisions concerning the objectives of representation." This includes whether to conclude the litigation by settlement or dismissal. *Att'y Grievance Comm'n v. Mitchell*, 445 Md. 241, 253 (2015) (finding that dismissal contrary to client's directions violated MARPC 1.2 and summarizing similar cases involving the rule).

A companion duty under MARPC 19-301.4 requires attorneys keep the client informed "to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." An attorney who does not update a client about the status of her case deprives the client of the ability to choose how the case will proceed. *See Att'y Grievance Comm'n v. Proctor*, 479 Md. 650, 680-83 (2022); *see also Att'y Grievance Comm'n v. Hamilton*, 444 Md. 163, 181-85 (2015).

Gillespie has violated these rules for the duration of his representation of Laufer and Sarwar in hundreds of ADA tester cases. Gillespie admitted that the attorney-client relationship is governed by a near-inscrutable fee agreement that he never reviewed with his clients or even read closely himself. Nor did Gillespie ever explain to the client the meaning of the reference in the "Statement of Rights" to contingency fees—which by law cannot apply to ADA cases because the ADA does not permit monetary damages. Tr. at 82-84.

Adding insult to injury, Gillespie took cover by asserting that the Firm has never collected fees from their ADA clients. *Compare* Fee Agreement ¶¶ 2-4, *with* Tr. at 83-84 ("[T]he plaintiffs, our clients, have never been charged for our services."). This does little to mitigate the harm caused to the clients who have signed agreements that are facially incoherent and inconsistent with the stated billing practices. *Att'y Grievance Comm'n v. Ucheomumu*, 450 Md. 675, 704 (2016) (finding that attorney communicated fee structure to client that was inconsistent with retainer agreement and "that Respondent's failure to clearly communicate his billing structure . . . in an unambiguous manner is a violation of [MARPC 19-30]1.4(b)").

Next, Gillespie did not communicate *at all* with his clients during the settlement process. He admits to having "*never* gone through any settlement agreement with any plaintiff." Tr. at 85 (emphasis added). Instead, Gillespie abdicated that duty to his putative investigator, who procured the client's signature. Thus, Gillespie made no effort to ensure that the clients understood the terms of the settlement agreements that extinguished their right to pursue the litigation. *Cf. Att'y Grievance Comm'n v. Smith*, 443 Md. 351, 371 (2015). He also did not disclose to his clients that the agreement essentially perpetrates a fraud on the defendant hotels by leading them to believe the clients are responsible for the attorney fees and expenses even though they are not. *See infra* Section III.B.

Gillespie also never discussed with either Laufer or Sarwar the decision to dump their cases en masse after this Panel scheduled the disciplinary hearing. *Cf. Att'y Grievance Comm'n v. Pennington*, 387 Md. 565, 572, 592-93 (2005) (finding that attorney who had dismissed case without first notifying her clients had violated MARPC 19-301.4); *see also Att'y Grievance Comm'n v. Shapiro*, 441 Md. 367, 385 (2015); *Sperling*, 432 Md. at 494; *Att'y Grievance Comm'n v. De La Paz*, 418 Md. 534, 554 (2011). It is axiomatic that an attorney files an action

on behalf of a client. The client, therefore, must remain reasonably informed to decide whether his or her suit should continue. Yet Gillespie removed his clients entirely out of that decision-making process.

Further, the timing of Gillespie's wholesale series of case dismissals is not lost on this Panel. Indeed, the same matters that Gillespie touts as a deeply rewarding public service are the ones he unloaded without client consent in an apparent attempt to convince the Panel that we need not worry about his appearances in this Court going forward. Tr. at 29. This transparent elevation of his own self-interest over his clients makes these violations especially troubling.

B. Duty of Candor to Tribunal (MARPC 19-303.3)

As "officers of the court," attorneys maintain a fundamental duty of candor to the tribunal. This principle is codified in MARPC 19-303.3, which prohibits lawyers from knowingly making a false statement of fact or law to a tribunal or failing to correct a previous false statement. Attorneys must always "be fully honest and forthright" with courts. *Att'y Grievance Comm'n v. Dore*, 433 Md. 685, 703 (2013) (quoting *In re Discipline of Wilka*, 2001 S.D. 148 (2001)). Gillespie's violation of this rule is repeated and blatant.

In scores of fee petitions filed across the country, Gillespie has misrepresented the time spent on each matter. *Cf. Att'y Grievance Comm'n v. Berry*, 437 Md. 152, 187 (2014) (finding a MARPC violation where attorney included false statements in fee petitions); *Att'y Grievance Comm'n v. Steinberg*, 395 Md. 337, 369 (2006) (finding that false statements in motion for reconsideration violated MARPC 19-303.3).[12] For example, Gillespie almost always sought

[12] Gillespie has not submitted fee petitions in this District, Tr. at 51, but he has submitted fee petitions in other district courts, *see, e.g.*, *Kennedy v. SATYA GROUP, LLC*, No. 2:17-cv-14393-RLR (S.D. Fla. Jan. 3, 2018). Gillespie does so under the penalty of perjury. *See* ECF No. 6-10 at 30 (affidavit attached to fee petition swearing "my time records are accurate"). The Committee may consider Gillespie's conduct outside of this jurisdiction as relevant to this disciplinary proceeding. *See* D. Md. Loc. R. 703 ("Any attorney practicing before this Court or who has practiced before this Court in any way shall be deemed thereby to have conferred disciplinary jurisdiction upon the Court for any alleged misconduct of that attorney.").

reimbursement for 2.5 to 4 hours of attorney time to draft and file the summons and complaint. *See generally* ECF No. 6-13. The Investigator rightly noted the number to be "implausibly high" when considering that Gillespie filed multiple complaints in any given day while holding down a full-time job as a prosecutor in Georgia. ECF No. 6 at 19-20. Further, given that each complaint is near identical in words and form, it blinks at reality that Gillespie would have spent several hours drafting *each* complaint every time. At the hearing, Gillespie conceded as much. Tr. at 55.

Gillespie also has misrepresented his employment when petitioning for attorneys' fees. Often in attorney fee motions, Gillespie asks for a higher billable rate because litigating Title III ADA cases supposedly generates "negative publicity" and therefore precludes Gillespie from attracting other work. *See, e.g.*, ECF No. 6-10 at 15-16. But Gillespie did not tell those same courts that he was already working as an Assistant District Attorney. *See* ECF No. 6-4. Clearly, the ADA cases did not preclude him from taking other work—his full-time job as a prosecutor did. *Cf. Att'y Grievance Comm'n v. Sloane*, AG No. 37, Sept. Term, 2021, 2023 WL 2320297, at *159-60 (Md. Mar. 2, 2023) (finding that material omissions violate MARPC 19-303.3).

At the hearing, Gillespie suggested that he omitted this information because it was not relevant to his ADA work, Tr. at 66, or that perhaps he made a "clerical error" in attaching the "wrong resume" to fee petitions. *Id.* at 68. The Panel finds neither explanation satisfactory. If credited, the omission speaks to his sloppiness and inattention to the veracity of representations made to federal courts across the country. At worst, it is another misrepresentation in a long series of misrepresentations that have plagued Gillespie's involvement in this ADA tester litigation.

The Panel also agrees with the Investigator that Gillespie exhibited a lack of candor to the

Court in the *Patel* matter. Gillespie knew that Pezza was Sarwar's paid investigator. Yet he allowed Sarwar to testify in a way that clearly misled the court, so much so that the final opinion referred to Pezza as Sarwar's "friend" and travel companion. Gillespie should have corrected the record, but he did not. Even worse, when confronted about this failure, Gillespie blamed the erroneous testimony on Sarwar's cognitive limitations.

Last, Gillespie's lack of candor during this Investigation constitutes separate grounds for sanction. *See Att'y Grievance Comm'n v. Butler*, 456 Md. 227, 238-39 (2017). As to his inflated fee petitions submitted to courts around the country, Gillespie's shifting explanations defy credulity. Initially, Gillespie insisted to the Investigator that the fee petitions were accurate. ECF No. 6 at 21. He doubled down on that theory in his opening statement to the Panel, where he expressed regret for not explaining why it took well over two hours to draft a largely boilerplate complaint. Tr. at 31. Yet when pressed during questioning, Gillespie readily conceded that the numbers were not accurate. *Id.* at 55 (Question: "To draft the complaints, do you stand by that number two and a half hours?" Answer: "No.").

Indeed, even at the hearing itself, the truth for Gillespie was elusive. Concerned about the propriety of payments made to Pezza, the Panel asked Gillespie a basic question about whether he was aware of a personal relationship between Laufer and the firm investigator. Gillespie initially claimed to be wholly unaware of any such relationship. *Id.* at 44-45. Yet later in his testimony, Gillespie admitted to knowing that Pezza was the father of Laufer's grandchild. *Id.* at 79. Even more disturbing is the ease with which Gillespie provided two flatly inconsistent answers under oath, at a hearing about whether his lack of candor to the tribunal merited formal discipline. For these reasons, the Panel concludes that Gillespie's lack of candor to this tribunal is its own violation of MARPC 19-303.3.

C. Duty of Fairness and Candor to Opposing Counsel (MARPC 19-303.4 & 19-304.1)

MARPC 19-303.4 and 19-304.1 impose on attorneys the duties of fairness and candor when interacting with opposing counsel and other third parties. An attorney's false statements or material omissions during settlement negotiations violates this duty. *See Ausherman*, 212 F. Supp. 2d at 443-44 ("It is just as damaging to the integrity of our adversary system for an attorney knowingly to make a false statement of material fact to an opposing counsel during settlement negotiations, as it is to lie to a lawyer or the judge in court."); *see also Att'y Grievance Comm'n v. Daley*, 476 Md. 283, 299-300 (2021).

The Panel finds that Gillespie has persistently violated these rules in several ways. As already discussed, Gillespie misled defense counsel to believe that plaintiffs had actually incurred attorneys' fees and costs that they had not. The amount negotiated as "good and valuable consideration" to the plaintiff for dropping her suit was *never* to be borne by the plaintiff, yet the settlement agreements plainly state the opposite.

Gillespie's attorney-fee demands also bore no correlation to time actually spent on the case. As to past work, Gillespie's timesheets are unreliable and routinely inflated. While he may not have provided these timesheets to opposing counsel, they nonetheless illustrate Gillespie's tendency to exaggerate his actual work to extract a favorable fee. *See, e.g.*, ECF No. 6-14 at 2 (showing 3.9 hours for research, drafting, and filing on August 11, 2020, the date Gillespie filed at least fifteen other complaints).

Further, of the three settlement options that Gillespie provided to opposing counsel, two accounted for an outsized attorney-fee reimbursement that contemplated his future work. *See* ECF No. 6 at 18; *see also* ECF Nos. 6-8 & 6-12. Gillespie admitted that in the hundreds of cases for which he has been counsel of record, he has *never* performed such future work. Tr. at 46.

This fictional future time conveniently aids the misimpression that Gillespie has worked harder on these cases than he has or will. Gillespie's lack of candor during settlement negotiations violates MARPC 19-303.4 and 19-304.1.

D. Relationship of Laufer and Pezza

Finally, the Panel would be remiss if it did not address the improper alliance between Gillespie's investigator Pezza and client Laufer. Pezza evidently has been paid several hundred thousand dollars as the putative "ADA Expert," who does little-to-nothing for the case. Pezza is also the father of Laufer's granddaughter, who appears to be Laufer's travel companion in the tester litigation. Transcript 10-12, 15, 22, 26, 29-30, 36-38, *Laufer v. Fort Meade Hospitality, LLC*, No. 20-cv-1974-SAG (D. Md. Feb. 1, 2021), ECF No. 27. When confronted about this, Gillespie recognized the apparent "conflict" of paying Laufer's kin when she cannot be paid herself. Because this arrangement "smacks 'of purchasing an interest in the subject matter of the litigation' in which the lawyer is involved," it is highly problematic. *Att'y Grievance Comm'n v. Eisenstein*, 333 Md. 464, 486 (1994) (quoting 2 *ABA/BNA Lawyers' Manual on Professional Conduct*, 51:803 (1991)). Ultimately, however, this information came to the Panel too late in the investigation to draw any firm conclusions. Thus, while the Panel seriously questions whether any such payments to Pezza were for legitimate services rendered, it leaves unanswered whether Laufer improperly received any such funds as compensation for her part in the tester litigation.

V. Recommended Sanction

The chief purpose of attorney discipline is "protection of the public, not the punishment of the erring attorney." *Att'y Grievance Comm'n v. Colton-Bell*, 434 Md. 553, 572 (2013); *see In re Liotti*, 667 F.3d 419, 430-31 (4th Cir. 2011). Sanctions also provide general and specific deterrence aimed at sustaining public confidence in the legal profession. *Att'y Grievance*

Comm'n v. Thomas, 440 Md. 523, 556 (2014). The sanction should be the least extreme possible that will nevertheless achieve the purposes for which it is imposed. *See Byrd v. Hopson*, 108 F. App'x 749, 756-57 (4th Cir. 2004).

For aggravating circumstances, the Panel looks to the suggested factors of the American Bar Association. *Att'y Grievance Comm'n v. Coppock*, 432 Md. 629, 648 (2013); *Att'y Grievance Comm'n v. Bleecker*, 414 Md. 147, 176-77 (2010). The factors include:

> (a) Prior disciplinary offenses;
> (b) Dishonest or selfish motive;
> (c) A pattern of misconduct;
> (d) Multiple offenses;
> (e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
> (f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
> (g) Refusal to acknowledge the wrongful nature of conduct;
> (h) Vulnerability of victim;
> (i) Substantial experience in the practice of law;
> (j) Indifference to making restitution; [and]
> (k) Illegal conduct, including that involving the use of controlled substances.

Coppock, 432 Md. at 648 n.17 (citing Am. Bar Assoc., *Standards for Imposing Lawyer Sanctions*, § 9.22, Compendium of Professional Responsibility Rules and Standards (2012)).

Among the pertinent aggravating factors, most salient here is the sheer volume of cases in which Gillespie disregarded the welfare of his clients. Gillespie violated the rules not once or twice, but hundreds of times. In each case, he never explained the fee agreements or reviewed the settlement agreements with his clients. When he was in hot water with this Court, he reflexively dismissed over 100 active cases without ever consulting his clients. On the whole, Gillespie litigated his cases with his clients as an afterthought. They were largely irrelevant to the process.

Next is the vulnerability of Gillespie's clients, especially Saim Sarwar. Sarwar suffers

from cerebral palsy, which, by Gillespie's own admission, affects Sarwar's cognition. Yet where Gillespie should exercise special care in representing disabled clients such as Sarwar, he has exercised none.

Third, Gillespie's pattern of dishonesty is patent. His cavalier approach to the truth before scores of tribunals warrants a serious response to uphold the integrity of our judicial system. In default judgment motions filed across the country, Gillespie proffered hundreds of hours he did not work, or had no intention of working, to obtain an order for fees that he did not earn. With the same disregard for the truth, Gillespie has extracted countless settlement agreements to be paid attorney fees for similarly fictionalized representations of work performed or to be performed when, according to Gillespie, he never collected or intended to collect from the plaintiffs in the event the matter did not settle.

Fourth, Gillespie persisted in his misrepresentations to this Panel, failing to fully acknowledge the seriousness of his transgressions. To be sure, Gillespie responded to document requests and sat for an interview. But he also persistently denied any wrongdoing, insisted on the accuracy of his fee petitions, doubled down on the nobility of his work, and feigned ignorance about breaching some of the most fundamental duties that a lawyer owes to his clients.

Turning to mitigating factors, they are mixed. Gillespie is an experienced litigator who should and did know better. But he has practiced law for nearly twenty years without any prior discipline. Gillespie further claims to have "closed up shop" as to the ADA tester cases, suggesting the risk of future ethical breaches is low. But he ended his ADA tester case pursuits because the Court raised concerns about his misconduct, not because he was concerned for his ADA clients.

Perhaps the single greatest mitigating factor is that Gillespie appears to have acted largely

at the direction of his boss, Thomas B. Bacon, and that he has since cut ties with Bacon. In this Panel's view, Gillespie joined a pre-existing scheme that raises serious ethical concerns—including repeat clients, a compromised investigator, and a method for extracting unwarranted attorneys' fees from targeted hotels based on a well-worn settlement script.[13] Gillespie was not the driving force behind this operation, and he appears to have extricated himself from Bacon's firm. The proposed sanction, thus, must be serious enough to provide needed encouragement for Gillespie to not rekindle the partnership with Bacon in the future.

In the end, Gillespie's conduct unquestionably merits stiff sanction. The Panel recommends that Gillespie be suspended from the Bar of this Court for a period of six months. Thereafter, Gillespie may petition the Court for reinstatement pursuant to Local Rule 705.4. The recommended sanction serves the twin purposes of protecting future clients and the integrity of the courts. It also takes into consideration that Gillespie's transgressions appear directly tied to his partnership with Bacon, which he has since severed.

We thank the Committee for the opportunity to serve on this important matter.

Dated: 6/30/2023

/S/
Paula Xinis
United States District Judge

/S/
Deborah L. Boardman
United States District Judge

/S/
Ajmel A. Quereshi
United States Magistrate Judge

[13] According to the Report, Bacon has faced disciplinary proceedings in the United States District Court for the Middle District of Florida. ECF No. 6 at 5-6 (citing *In re: ADA Cases*, No. 6:18-mc-14-Orl-31DCI (M.D. Fla. docketed Feb. 20, 2018)). The Florida disciplinary matter resulted in a formal admonishment and 12 months of monitoring for Bacon. *Id.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE:	*	
	*	**CASE NO. 21-mc-014**
Tristan W. Gillespie		**(DISCIPLINARY)**
	*	
Respondent.		
	*	

SUPPLEMENTAL REPORT & RECOMMENDATION

Pending before this Panel of the Court's Disciplinary and Admissions Committee (the "Panel") is the reconsideration this Court's prior six-month suspension for attorney Tristan Gillespie. On July 5, 2023, after nearly two years of investigation and an evidentiary hearing, the Court suspended Gillespie from the practice of law for six months based on three grounds:

(1) failure to adequately communicate with his clients and keep them reasonably informed, in violation of Maryland Attorney Rules of Professional Conduct (MARPC) 19-301.2 and 19-301.4;

(2) failure to act with candor towards this and other tribunals, in violation of MARPC 19-303.3, and;

(3) failure to act with fairness and candor towards opposing counsel during settlement negotiations, in violation of MARPC 19-303.4 and 19-304.1.

ECF No. 14.

On July 26, 2023, Gillespie appealed the Court's decision. He argued that as to the first and third grounds, he had not received sufficient notice in advance of the disciplinary hearing that he may be subject to sanction for the violations. ECF No. 29-1. On November 14, 2023, the United States Court of Appeals for the Fourth Circuit vacated this Court's order of discipline, concluding that Gillespie had not been sufficiently notified as to the first ground. ECF No. 29-1. The Fourth Circuit also found that Gillespie had received adequate notice of the third ground and left the second ground undisturbed because Gillespie had not appealed the Court's determination. ECF Nos. 29 & 29-1.

On remand, this Panel reconvened to reopen the record as to whether Gillespie had failed to

adequately communicate with his clients and keep them reasonably informed, in violation of MARPC 19-301.2 and 19-301.4. In his supplemental briefing, Gillespie argued that his then law partner, Thomas Bacon, had been solely responsible for all client communications regarding settlement or dismissal. The appointed attorney-investigator, in turn, reinterviewed Gillespie and deposed Bacon.

On March 18, 2024, the Panel held a second evidentiary hearing limited to whether Gillespie violated MARPC 19-301.3 and 19-301.4 by failing to keep his clients reasonably informed about settlement or dismissal of their cases.[1] At the hearing, the attorney-investigator summarized his supplemental investigation and recommended that the Court find that Gillespie had not violated the duty to keep his clients reasonably informed because that duty fell squarely on Bacon. The attorney-investigator also rightly pointed out that Bacon likely breached his duty to keep his clients reasonably informed of settlement terms in that Bacon readily admitted to negotiating settlements without any input from his clients. That said, the attorney-investigator concluded that Bacon, not Gillespie, was the ultimate decisionmaker regarding settlement, and so Gillespie could not be held responsible.

At the second hearing, the Panel asked Gillespie multiple questions, including why he had not offered this explanation at the first hearing. This response, if true, would have been easy to offer. Gillespie, however, declined to testify, invoking his privilege against self-incrimination under the Fifth Amendment to the United States Constitution. As part of this invocation, Gillespie noted that his previous testimony did not "work out really great for [him] the last time."

The Panel views Gillespie's and Bacon's supposed division of labor with suspicion. Of the thousands of cases that Gillespie handled, the record reflects that he indeed had dealings with defense counsel and clients. Given the sheer volume of cases for which Gillespie was responsible, it seems odd that only Bacon would handle client discussions about settlement or dismissal. Further, given that the

[1] Gillespie had initially requested the hearing, but then withdrew his request after the supplemental investigation had been completed. ECF Nos. 30 & 37.

division of labor explanation offered now is so simple, it begs the question why Gillespie could not have testified about this supposed division of labor at the outset. That said, the Panel advises that the Court follow the attorney-investigator recommendation and not hold Gillespie responsible for the errors of his partner.

As to the recommended path forward, it remains true that Gillespie indisputably failed to act with candor towards this and other tribunals, in violation of MARPC 19-303.3; and failed to act with fairness and candor towards opposing counsel during settlement negotiations, in violation of MARPC 19-303.4 and 19-304.1. These violations were widespread, serious, and longstanding. Accordingly, the Panel incorporates its prior factual findings and legal conclusions in all respects as to those violations, and recommends that for those violations, the Court reinstate Gillespie's suspension from the practice of law for a period of four (4) months with the right to petition for reinstatement pursuant to Local Rule 705.4. Gillespie's ability to practice in our Court has already been suspended for slightly more than four months pursuant to the initial, now vacated, order of suspension (July 5, 2023, through November 14, 2023). Thus, the Panel recommends that the final order of suspension be reinstated as modified, that Gillespie's four-month suspension be deemed as served, and that he must petition for reinstatement pursuant to Local Rule 705.4.

Dated: August 7, 2024

_____/s/_____
Paula Xinis, Chair
United States District Judge

_____/s/_____
Deborah L. Boardman
United States District Judge

_____/s/_____
Ajmel A. Quereshi
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE:	*	
	*	**CASE NO. 21-mc-014**
Tristan W. Gillespie		**(DISCIPLINARY)**
	*	
Respondent.		
	*	

ORDER

After extensive investigation and an evidentiary hearing, Respondent Tristan W. Gillespie was suspended from the practice of law before this Court for a period of six (6) months, effective July 5, 2023. ECF No. 14. On July 26, 2023, Respondent appealed this Court's order of discipline to the United States Court of Appeals for the Fourth Circuit. ECF No. 16. On November 14, 2023, the Fourth Circuit vacated this Court's July 5, 2023, order of discipline and remanded the case for further proceedings consistent with its decision. ECF Nos. 29 & 29-1. On March 19, 2024, the Panel held an evidentiary hearing. ECF No. 41. Following the hearing, on August 7, 2024, the Panel issued a supplemental report and recommendation. ECF No. 42. Having considered the Panel's supplemental report and recommendation, and for the reasons stated therein, it is hereby

ORDERED by the United States District Court for the District of Maryland that the Panel's supplemental report and recommendation (ECF No. 42) is adopted and incorporated as the Memorandum Opinion in support of this Order; and it is further

ORDERED that this Court's July 5, 2023, Order of suspension be reinstated as modified by the Memorandum Opinion; and it is further

ORDERED that Tristan W. Gillespie, Esquire, be and hereby is SUSPENDED from the practice of law before this Court for a period of four (4) months, *nunc pro tunc*, from July 5, 2023, which is deemed as served; and it is further

ORDERED that reinstatement is not automatic; Respondent must comply with Local Rule 705.4; and it is further

ORDERED that the Clerk shall enter this Order and the Memorandum Opinion on the public docket, send a certified copy of this Order to Respondent by regular mail, and CLOSE this case. Within fourteen (14) days of this Order, the Clerk shall also give notice of this Order to the bar authorities and jurisdictions where Respondent is admitted to practice, pursuant to Local Rule 705.5(a). The Clerk shall also notify the National Discipline Data Bank of this Order pursuant to

Local Rule 705.5(b).

Date: 8/7/2024

George L. Russell III, Chief Judge
District Court of Maryland

EXHIBIT C

Tristan Gillespie, Esq.

TRISTAN W. GILLESPIE, 600 Blakenham Court, Johns Creek, GA 30022
(404) 276-7277 · gillespie.tristan@gmail.com

June 27, 2025

Clerk's Office Baltimore – Attorney Admissions
United States District Court
District of Maryland
101 W. Lombard Street
Baltimore, MD 21201

Re: Petition for Reinstatement to the Bar of the U.S. District Court for the District of Maryland

Dear Clerk of Court:

Pursuant to Local Rule 705.4, I respectfully submit this Petition for Reinstatement to practice before the United States District Court for the District of Maryland following the completion of my four-month suspension. I state the following in support of my petition:

Background and Suspension

I was admitted to practice before this Court on March 31, 2022. On August 7, 2024, the Court imposed a four-month suspension based on findings that I had made misrepresentations to defendants and to the Court in certain civil actions filed under the Americans with Disabilities Act, 42 U.S.C. §§12181–12189.

I timely appealed the suspension order to the United States Court of Appeals for the Fourth Circuit. On May 20, 2025, the Fourth Circuit issued its opinion and judgment affirming the District Court's order. The Court of Appeals concluded that there was no reversible error in the District Court's findings and disposition.

Completion of Suspension

My suspension period concluded on November 5, 2024. I have fully complied with all terms and conditions imposed by the Court, including cessation of all practice before this Court and providing appropriate notices to clients and counsel. I have not engaged in any unauthorized practice of law during the suspension period.

Demonstrated Rehabilitation and Compliance

During my suspension, I have taken affirmative steps to ensure my professional and ethical rehabilitation, including:

- Remaining current with all continuing legal education requirements, including programs focused on ethics, professional responsibility, and candor toward the tribunal.
- Implementing enhanced internal compliance measures to avoid recurrence of any conduct inconsistent with professional obligations.
- Consulting with experienced ethics counsel regarding the standards of conduct expected in federal litigation.
- Reaffirming my commitment to the highest standards of honesty and professional integrity.

Additional Disciplinary Proceedings

Following the District of Maryland's disciplinary order, reciprocal disciplinary proceedings were initiated in multiple jurisdictions. Specifically:

- By Order entered February 11, 2025, the Supreme Court of the State of New York, Appellate Division, First Department, suspended me from the practice of law in New York for a period of one year, effective March 13, 2025.
- The following courts have imposed reciprocal discipline based on the same underlying conduct:
    - U.S. District Court for the Western District of Pennsylvania
    - U.S. District Court for the Northern District of Ohio
    - U.S. District Court for the Northern District of Georgia
    - U.S. District Court for the Western District of Michigan
    - U.S. District Court for the Eastern District of New York
    - U.S. District Court for the Northern District of New York
    - U.S. Court of Appeals for the Eleventh Circuit
    - U.S. Court of Appeals for the Second Circuit
    - U.S. Court of Appeals for the Seventh Circuit
    - U.S. District Court for the Eastern District of Wisconsin
    - U.S. District Court for the District of Vermont
    - U.S. District Court for the Southern District of Georgia
    - U.S. District Court for the Northern District of New York

Each of these jurisdictions acted under their reciprocal discipline rules without any new, independent findings of misconduct beyond those addressed by the District of Maryland.

Good Standing and Fitness to Practice

I acknowledge that my license is currently suspended in the jurisdictions listed above due to reciprocal discipline arising solely from the Maryland proceedings. I remain in good standing

in other jurisdictions where no reciprocal action has been taken, and I have not been the subject of any additional, unrelated disciplinary proceedings. I am fully prepared to demonstrate my fitness to resume the ethical and competent practice of law before this Court.

Request for Reinstatement

In light of the foregoing, I respectfully request that this Court reinstate me to practice law before the U.S. District Court for the District of Maryland. I am prepared to comply with any additional requirements the Court deems appropriate and to provide further information or documentation as requested.

I appreciate the Court's time and consideration of my petition.

Respectfully submitted,

Tristan Gillespie

EXHIBIT D

IN THE STATE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

ADA MELINA CASTAN CRUZ Plaintiff, v. DE'AARIS M. NELLOMS and PEACHTREE TRUCK LEASING COMPANY, LLC Defendants.	CIVIL ACTION FILE NO.: 2024CV04386

AFFIDAVIT OF LUKE R. KENNEDY

COMES NOW, Luke R. Kennedy and, being duly sworn, deposes and states as follows:

1.

My name is Luke R. Kennedy, and I am above the age of majority and laboring under no disability that would in any way impair my ability to provide this Affidavit based upon my personal knowledge of the facts set forth herein.

2.

I represent all Defendants in the above-listed case.

3.

I have been practicing law since 2018. My billing rate as a partner in McMickle, Kurey, & Branch, LLP for Selective Insurance Company files is $250.00/hour. MKB partner Zach Matthews has also performed work on this file and has been practicing law since 2007. This rate is usual and customary in the trucking defense industry for our experience level. The paralegal billing rate for Selective Insurance Company files is $115.00/hour. This rate is also usual and customary in the trucking defense industry.

4.

I have prepared this affidavit in order to account for the legal fees and expenses incurred by my clients in connection with this litigation in which Plaintiff has filed numerous briefs with the Court containing citations which appear to be fictitious, possibly "hallucinations" made up by generative-artificial intelligence, or have nothing to do with the proposition for which Plaintiff purports to cite them. Defendants have sought sanctions under OCGA § 9-15-14.

5.

From review of my firm's billing entries, which are kept in the ordinary course of business and made at or near the time the work is completed, our firm has spent a total of 126.6 hours on this case since it was referred to us in August 2024. Our total fees incurred to date amount to $24,696.

6.

My clients have also incurred $802.08 in expenses by way of court fees in connection with this lawsuit.

7.

Thus, the total legal fees and costs my clients have incurred to date are: **$25,498.08.**

FURTHER AFFIANT SAYETH NOT.

Luke R. Kennedy

Personally appeared before me

This 25 day of August, 2025.

Notary Public
My commission expires:

SUSAN STACHURA NOTARY PUBLIC FORSYTH COUNTY GEORGIA EXPIRES 8/15/2027