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IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARTER PAGE, an individual, Plaintiff-Below, Appellant, v. OATH INC., a corporation, Defendant-Below, Appellee.	No.: 69, 2021 Appeal from the Superior Court of the State of Delaware in C.A. No. S20C-07-030 CAK

ANSWERING BRIEF OF *AMICUS CURIAE* IN SUPPORT OF AFFIRMANCE OF THE SUPERIOR COURT'S MEMORANDUM OPINION AND ORDER DATED JANUARY 11, 2021

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IDENTITY OF AMICUS, INTEREST, AND AUTHORITY TO FILE

By Order dated May 6, 2021, the Court appointed the undersigned member of the Delaware Bar, Matthew F. Boyer, as *amicus curiae* to file an answering brief in opposition to the opening brief of counsel for plaintiff-below appellant.[1]

[1] Trans. I.D. 66578815.

NATURE AND STAGE OF THE PROCEEDINGS

The Nature and Stage of the Proceedings as set forth in Appellant's Amended Opening Brief is generally accurate, with two exceptions. First, while on January 6, 2021, Delaware counsel for L. Lin Wood, Jr., Esquire ("Wood") filed a Response to the Rule to Show Cause issued on December 18, 2021,[2] Wood did not respond "by affidavit."[3] Second, while Wood apparently attempted to file a motion for reargument on January 19, 2021, without Delaware counsel, such motion does not appear on the docket.[4] This is because he did not comply with the requirements set forth in Superior Court Rules of Civil Procedure 90.1(d) and 79.1(h).[5]

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[2] Appellant's Opening Appendix, at A9-68. References herein to the (Amended) Opening Brief are designated "OB at [page number]"; references to the Appendix to Appellant's Opening Brief are designated "A[page number]"; and references to the Appendix to Answering Brief of *Amicus Curiae* in Support of Affirmance are designated "AC[page number]."

[3] *Cf.* OB at 1.

[4] *See* OB at 2; A3-4.

[5] *See* A77.

SUMMARY OF ARGUMENT

1. Denied. Wood contends that the Superior Court abused its discretion in revoking his admission *pro hac vice* under Superior Court Civil Rule 90.1 ("Rule 90.1") because (i) the revocation was based on conduct unrelated to this case, (ii) courts in the jurisdictions where the conduct occurred had not ruled that he had violated the applicable rules of professional conduct, and (iii) Wood's conduct in this case did not violate the Delaware Lawyers' Rules of Professional Conduct ("DLRPC") or prejudice the fairness of the proceedings.[6] While each of these factual assertions is true, none of them suggests that the trial court misapplied Rule 90.1 or abused its discretion in revoking Wood's admission *pro hac vice*. The trial court applied Rule 90.1 as written and properly exercised its discretion in concluding that Wood's continued admission would be "inappropriate and inadvisable" based on his conduct in federal litigation in Georgia and Wisconsin contesting the 2020 presidential election, as addressed in the trial court's Memorandum Opinion and Order dated January 11, 2021 ("January 11 Order").[7] Wood's appeal should be denied and the January 11 Order affirmed.

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6 OB at 3.

7 A69-76.

STATEMENT OF FACTS

A. The Rule to Show Cause

On December 18, 2020, the court issued *sua sponte* a Rule to Show Cause "why the permission to practice in this case issued to L. Lin Wood, Jr., Esquire should not be revoked."[8] The Rule to Show Cause specifically identified numerous concerns regarding Wood's conduct in litigation in Georgia and Wisconsin following the initial granting of his admission *pro hac vice* by order dated August 18, 2021.[9] Both the Georgia and Wisconsin cases sought expedited injunctive relief related to the general election on November 3, 2020.

The Rule to Show Cause first addressed a decision issued by the U.S. District Court for the Northern District of Georgia in *Wood v. Rattensperger* on November 20, 2020.[10] Wood had challenged the constitutionality of the Georgia election process and filed a motion seeking a temporary restraining order enjoining certification of the United States general election results. In considering two factors relevant to the motion, *i.e.*, the balancing of the equities and the public interest, the *Wood* court found that "the threatened injury to Defendants as state officials and the

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8 A5.

9 A5-8.

10 501 F. Supp. 3d 1310 (N.D. Ga. Nov. 20, 2021), *aff'd,* 981 F.3d 1307 (11th Cir. 2020), *cert*. *denied*, 141 S. Ct. 1379 (2021).

public at large far outweigh any minimal burden on Wood."[11] As such, the court concluded that, "[v]iewed in comparison to the lack of any demonstrable harm to Wood, this Court finds no basis in fact or law to grant him the relief he seeks."[12] Quoting this language, the Rule to Show Cause reflected the court's concern that Wood's filing of a case without basis in fact or law may violate DLRPC 3.1, which states that a lawyer "shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so . . . ."[13]

The Rule to Show Cause also reflected concern that Wood had "filed or caused to be filed" an affidavit in the Georgia litigation containing "materially false information."[14] Specifically, the affidavit "misidentif[ied] the counties as to which claimed fraudulent voting information occurred."[15] The Rule to Show Cause raised the issue of whether the filing of this false affidavit (had it occurred in Delaware) would violate certain provisions of the DLRPC.[16]

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11 501 F. Supp. 3d at 1331.

12 *Id.*

13 A7. The Rule to Show Cause clarified that it was raising concerns related to conduct "which, had it occurred in Delaware, would violate" the DLRPC. A5.

14 A7.

15 *Id*.

16 A5, A7 (Page 1 of the Rule to Show Cause appears as A5; page 2 appears as A7; and page 3 appears as A6). The Rule to Show Cause cited DLRPC 1.1 (Competence); 3.1 (Meritorious Claims and Contentions); 3.3 (Candor to the Tribunal); 4.1(a) (Truthfulness in Statements/False statement of Material Fact), and alluded to DLRPC 8.4(c) (Dishonesty and Deceit). A7.

The Rule to Show Cause also cited a decision issued by the U.S. District Court for the Eastern District of Wisconsin in *Feehan v. Wisconsin Elections Commission*, on December 9, 2020.[17] In that case Wood appeared as "one of the counsel of record."[18] The Rule to Show Cause raised numerous concerns related to the pleadings filed therein, including those addressed by the Wisconsin court in an order dated December 2, 2020.[19] Specifically, the Rule to Show Case states that it appeared that: (1) "[t]he suit was filed on behalf of a person who had not authorized it"[20]; (2) "[t]he Complaint and related papers had multiple deficiencies"[21]; and (3) in

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17 A6. The December 9 decision is reported at 506 F. Supp. 3d 596 (E.D. Wis. Dec. 9, 2020), *app. dismissed*, 2020 WL 9936901 (7th Cir. Dec. 21, 2020).

18 A6-7.

19 The December 2 order is attached hereto at AC7.

20 The unauthorized filing on behalf of an alleged co-plaintiff was not denied by Wood in this case and was reflected in later pleadings in the Wisconsin case. *See* Defendant Governor Evers's Brief in Support of His Petition for Attorneys' Fees and Sanctions (AC30). Wood's opposition to the defendant's motion for sanctions (AC60) does not deny that the complaint "named a co-plaintiff who reportedly had never consented to participating in this lawsuit" (AC32).

21 The deficiencies were first identified in the Wisconsin court's order dated December 2, 2020, which was discussed in the court's December 9, 2020 order. A6. The specific deficiencies identified in the December 2 order (and cited in the Rule to Show Cause) are as follows: (i) filings had been forwarded to defense counsel "at the following address" with no addresses listed (AC7-8); (ii) documents were allegedly filed under seal, but were not (AC8); (iii) while requesting a temporary restraining order, the complaint was not verified or supported by an appropriate affidavit, as required by court rules (AC8); (iv) the complaint contained no certification of efforts to notify the adverse parties, as required by court rules (AC8); (v) a motion for declaratory judgment was apparently filed in draft form (AC8); (vi) the papers asked for injunctive remedies but did not ask for a hearing (AC9); and

a response to defendant's motion to dismiss, a citation to a decision on a point of law "critical to the case," was found by the Wisconsin court "to be fictitious."[22] The Rule to Show Cause noted that the foregoing conduct would appear to violate the DLRPC, specifically Rules 1.1, 3.1, 3.3, 4.1(a), and 8.4(c).

In sum, the Rule to Show Cause advised Wood and his Delaware counsel that the conduct cited therein "gives the Court concerns as to the appropriateness of continuing the order granting Mr. Wood authorization to appear in this Court *pro hac vice.*"[23] The court gave both Wood and his Delaware counsel (as well as the defendant) until January 6, 2021 to respond to the Rule to Show Cause in writing, and indicated that counsel also would have an additional opportunity to address the Rule to Show Cause at a hearing on January13, 2021.[24]

B. The Response to the Rule to Show Cause

On January 6, 2021, Wood, through Delaware counsel, filed an eight-page Response to Rule to Show Cause (the "Response").[25] Therein, Wood stated that: (i) he was an attorney in good standing in the State of Georgia, including the federal

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(vii) while the pleadings requested an "expedited" injunction, nothing therein indicated whether the plaintiffs were asking the court "to act more quickly than normal or why (AC9). *See also* A6.

22 A6.

23 A8.

24 *Id*.

25 A9-16.

courts therein; and (ii) he had neither violated the DLRPC nor been cited for any performance deficiency, Rule 11 violation, or other violation of applicable rules, in this matter.[26] While contending that his conduct in Georgia (and presumably in Wisconsin) was "not properly before the Court," he addressed briefly the concerns raised in the Rule to Show Cause.[27] He then argued that the trial court had no jurisdiction to enforce the rules of professional conduct absent conduct that prejudicially disrupts the proceedings before it, and that it should not revoke his admission *pro hac vice* based on conduct in other jurisdictions.[28] In support of these contentions, Wood relied in part on the Declaration of Charles Slanina, who opined that "it would likely be determined to be inappropriate for a Delaware trial judge to impose attorney discipline . . . for conduct which did not occur during or otherwise affecting a proceeding before the trial court."[29]

With regard to the Georgia litigation, Wood claimed (incorrectly) that the court misapprehended that he was the plaintiff, not counsel, therein.[30] He also contended that the Georgia court determined only that there was an "insufficient basis to support the requested injunctive relief" and "did not criticize the merits of

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26 A10.

27 A11-12.

28 A12-13.

29 A68.

30 A11.

the underlying complaint."[31] He acknowledged that the expert affidavit filed on his behalf therein contained an error but asserted that the affidavit was filed by his counsel without any intent to mislead the court.[32]

With regard to the Wisconsin litigation, Wood contended that he was not the attorney of record but only "Counsel to be Noticed."[33] He also stated he had never formally appeared during the eight-day period between the filing of complaint on December 1, 2020 and the order dismissing the case on December 9, 2020.[34] Beyond these general disclaimers, however, Wood provided no specific support for his current contention that the trial court erred by focusing on "factors, many of which were not directly attributable to Wood."[35]

While Wood now contends that "it is unclear what, if any involvement he had in drafting the initial pleadings" in the Wisconsin case,[36] he surely knew of his own

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31 *Id*.

32 A11-12.

33 A12.

34 *Id*. The docket in the Wisconsin litigation shows that two Wisconsin attorneys, Daniel J. Eastman and Michael D. Dean, were designated as "*LEAD ATTORNEY*" and "*ATTORNEY TO BE NOTICED*," while Wood, along with six other non-Wisconsin attorneys, were designated as "*ATTORNEY TO BE NOTICED*." A49-50. Sidney Powell, whom Wood contended was the "attorney of record," is listed as an "*ATTORNEY TO BE NOTICED*" along with Wood. A12, A50.

35 OB at 5-6.

36 OB at 6.

involvement. Yet, in his Response, he did not provide an affidavit or other evidence as to why he should not be held responsible for the numerous deficiencies and errors that the trial court invited him to address. Instead, Wood offered to withdraw his appearance as counsel admitted *pro hac vice*.[37]

C. The Memorandum Opinion and Order Revoking Wood's Admission *Pro Hac Vice*

On January 11, 2021, the trial court issued a Memorandum Opinion and Order revoking its prior order granting Wood's admission *pro hac vice* in this case (the "January 11 Order" or "Order"). In so ruling, the court stressed that admission *pro hac vice* "is a privilege and not a right," and that it is the court's continuing obligation to "ensure the appropriate level of integrity and competence."[38]

The court noted in its Order that the Response (i) "focused primarily upon the fact that none of the conduct that [the trial judge] questioned occurred" in the court,[39] and (ii) argued that, "absent conduct that prejudicially disrupts the proceedings, trial judges have no independent jurisdiction to enforce the Rules of Professional Conduct."[40] The court did not dispute either the fact that the conduct in question occurred elsewhere, or the proposition regarding the court's limited jurisdiction to

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37 A14.

38 A72.

39 A71-72.

40 A72.

enforce the DLRPC. However, the court found that these contentions "misse[d] the point" because they "ignore[d] the clear language of Rule 90.1."[41]

Quoting Rule 90.1, the court pointed out that applicable standard required it to determine "if the continued admission would be inappropriate or inadvisable."[42] While the court agreed that it would be outside its authority to make a finding as to whether Wood violated the rules of professional conduct of Delaware or another State,[43] the court had no intention of doing so.[44] The court stressed that, while violations of the rules of professional conduct were "for other entities to judge based on an appropriate record," its role was "much more limited."[45] Under Rule 90.1, the

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41 *Id*. Wood mistakenly contends that the court's Order "ignored" the Declaration of Charles Slanina. OB at 6. In fact, the Order specifically addressed the Slanina Declaration, finding it "unhelpful" regarding the specific issue before it, *i.e.*, whether under Rule 90.1 it would be inappropriate or inadvisable to continue Wood's *pro hac vice* status. A72. The court also agreed with the Slanina Declaration insofar as it stated that it is "the province of authorities other than the Superior Court to make determinations respecting ethical violations." OB at 6; *see* A73 ("I have no intention to . . . make any findings[ ] as to whether or not Mr. Wood violated other States' Rules of Professional Conduct. I agree that is outside my authority. It is the province of the Delaware Office of Disciplinary Counsel, and ultimately the Delaware Supreme Court, or their counterparts in other jurisdictions, to make a factual determination as to whether Mr. Wood violated the Rules of Professional Conduct.").

42 A72.

43 A73.

44 *Id*.

45 A72-73.

court's role is to "ensure that those practicing before [it] are of sufficient character, and conduct themselves with sufficient civility and truthfulness."[46]

Turning to the specific concerns raised in the Rule to Show Cause, the court found unavailing Wood's contentions regarding his status as a party in the Georgia litigation and the errors in the affidavit filed therein.[47] Whether acting on his own or for clients, Wood had an obligation to file only cases that have a good faith basis in fact or law.[48] The finding of the Georgia court indicated instead that the Georgia litigation was "textbook frivolous litigation."[49] Similarly, the court did not find persuasive Wood's contention regarding the erroneous expert affidavit. The court stated that affidavits "must be reviewed in detail to ensure accuracy before filing" and that Wood's failure to conduct such a review was "either mendacious or incompetent."[50] The Order also rejected Wood's contentions relating to the Wisconsin proceeding, finding that the deficiencies therein went far beyond the "proof reading errors" that Wood acknowledged.[51]

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46 A73.

47 A74.

48 *Id*.

49 *Id*.

50 *Id*.

51 A74-75. The Trial Court also rejected Wood's contention that he was only "Counsel for Notice," finding that as he was one of the counsel of record, he was "fully responsible for the filing." A75 (footnote 1).

In all, the court found that "the conduct of Wood, albeit not in my jurisdiction, exhibited a toxic stew of mendacity, prevarication, and surprising incompetence."[52] The conduct reflected in the decisions of the courts in Georgia and Wisconsin satisfied the court that "it would be inappropriate and inadvisable to continue Wood's permission to practice before this Court."[53] While the court did not specifically address Wood's offer to withdraw in lieu of revocation, the Order recognized that other courts had accepted such offers while referring matters to disciplinary counsel, or raising that possibility, which the court stopped short of doing here.[54]

Finally, in its Memorandum Opinion and Order granting plaintiff's motion to dismiss, dated February 11, 2021 (the "February 11 Order"), the trial court noted that Wood had attempted to file a motion to reargue the January 11 Order, but had failed to comply with the court's rules in doing so.[55]

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52 A75.

53 *Id*.

54 A73. The court also noted certain additional conduct attributed to Wood since the filing of the Rule but made no finding with regard to it. On the contrary, the court stated that such conduct "does not form any part of the basis for [its] ruling," and reaffirmed its limited role. A76. With regard to its decision to issue the Order prior to the January 13 hearing, the court noted that Rule 90.1 requires "either a hearing on the issue or other meaningful opportunity to respond," and that Wood was afforded the latter. A76 (footnote 2).

55 A77 (footnote 1).

ARGUMENT

I. The Court Correctly Applied Rule 90.1 and Properly Exercised Its Discretion in Determining That Wood's Continued *Pro Hac Vice* Admission Would Be Inappropriate and Inadvisable.

A. The Question Presented

The question presented is whether the Superior Court abused its discretion in revoking the admission *pro hac vice* of an out-of-state attorney under Rule 90.1 in light of the concerns set forth in the court's Rule to Show Cause regarding the attorney's conduct in two litigations in other jurisdictions, after giving the attorney a meaningful opportunity to respond in writing to the court's concerns, and after concluding that continued admission *pro hac vice* would be inappropriate and inadvisable.[56]

[56] To the extent Wood seeks to raise a constitutional issue by referring to "procedural due process measures" (OB at 8), Wood did not raise that issue in the court below and so cannot raise it here for the first time. Supr. Ct. R. 8.

B. The Standard and Scope of Review

The Court reviews questions of law *de novo* and therefore independently determines what Rule 90.1 requires.[57] The trial court's exercise of discretion in determining whether to grant or revoke the *pro hac vice* admission of out-of-state counsel is reviewed for abuse of discretion. [58] Wood does not contest that the abuse of discretion standard applies to the revocation of his admission *pro hac vice*.[59]

In applying the abuse of discretion standard of review, the Court does not substitute its "own notions of what is right for those of the trial judge, if his [or her] judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness."[60] When the trial court "has not exceeded the bounds of reason in view of the circumstances and has not so ignored recognized rules of law or practice so as to produce injustice, its legal discretion has not been abused."[61] "The question is not whether we agree with the court below, but rather if we believe 'that the judicial

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57 *See Crumplar v. Superior Ct. ex rel. New Castle Cnty.*, 56 A.3d 1000, 1005 (Del. 2012).

58 *Vrem v. Pitts*, 2012 WL 1622644, at *2 (Del. May 7, 2012). *Vrem* involved an analogous appeal of a decision to revoke multiple admissions *pro hac vice* after learning of the attorneys' firm's extensive activities in Delaware. Therein, the Court noted that "Rule 90.1(a) provides that the decision whether to admit an out-of-state attorney *pro hac vice* lies within the discretion of the Superior Court" and applied the abuse of discretion standard of review.

59 OB at 8-9.

60 *In re Asbestos Litig.*, 228 A.3d 676, 681 (Del. 2020).

61 *Id.*

mind in view of the relevant rules of law and upon due consideration of the facts of the case could reasonably have reached the conclusion of which complaint is made.'"[62]

62 *Id.*

C. The Merits of the Argument

The trial court's January 11 Order should be affirmed because the trial court complied with Rule 90.1 and properly exercised its discretion in determining that Wood's continued admission *pro hac vice* would be inappropriate and inadvisable under the circumstances. Wood's primary contention on appeal is that the court was required to apply, and effectively incorporate into Rule 90.1, case law that governs issues that arise in different contexts, in which a trial court purports to enforce the DLRPC (principally, *In re: Infotechnology, Inc.*[63]) or seeks to impose sanctions under Rule 11 (principally, *Crumplar v. Superior Court ex rel. New Castle County*[64]). Wood's contention fails because Rule 90.1 governs the unique issues that arise in the context of granting, and considering whether to continue, the admission *pro hac vice* of an out-of-state attorney. Wood's remaining contention, that the court abused its discretion in concluding his continued admission *pro hac vice* would be inappropriate and inadvisable in light of his conduct in the Georgia and Wisconsin litigations, is also without merit for the reasons discussed below.

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63 582 A.2d 215 (Del. 1990).

64 56 A.3d 1000 (Del. 2012).

1. The Trial Court Properly Applied Rule 90.1 in Addressing Whether Wood's Admission *Pro Hac Vice* Should Be Continued.

Rule 90.1 grants the trial court broad discretion to determine whether attorneys who are not members of the Delaware Bar should be permitted to appear, and to continue to participate, in a proceeding before the court. This discretion includes consideration of an attorney's conduct in other jurisdictions, whether before or after admission *pro hac vice*. Here, the trial court complied with Rule 90.1 by identifying its concerns with Wood's conduct in its December 18 Rule to Show Cause, by offering him a meaningful opportunity to respond, and by properly exercising its discretion in determining that his continued admission *pro hac vice* would be inappropriate and inadvisable under the circumstances.

The text of Rule 90.1, as adopted on March 1, 1987, provided that attorneys who are not members of the Delaware Bar may be admitted *pro hac vice* in the discretion of the court; however, no provision was made at that time for the revocation of an admission *pro hac vice*.[65] In 1992, the Court amended Rule 90.1 to fill that gap. Subpart (d), regarding withdrawal of attorneys admitted *pro hac vice*, was re-designated as subpart (e), and the following provision was added to subpart (e) to address revocation of a *pro hac vice* admission:

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[65] *See* Super. Ct. Civ. R. 90.1 (1987 Interim Supplement). The original version of the rule is included in the appendix to this brief at AC1-3.

> The Court may revoke a pro hac vice admission sua sponte or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice to be inappropriate or inadvisable.[66]

This provision remains the same today. Thus, under Rule 90.1(e), the court may revoke an admission *pro hac vice sua sponte* if it (1) provides the attorney "a hearing or other meaningful opportunity to respond," and then (2) determines within its discretion that the continued admission is "inappropriate or inadvisable."

Rule 90.1 does not require a hearing, as its directive to grant a "hearing *or other meaningful opportunity* to respond" makes clear. Rule 90.1(e) also does not require that the court find a violation of the DLRPC, or determine that conduct at issue threatens the fairness of the proceeding before it. Rather, the Rule authorizes the court to determine whether an admission *pro hac vice*, having been granted in the court's discretion as a privilege,[67] should be "continued" in the court's discretion,

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[66] *See* Super. Ct. Civ. R. 90.1 (1992 Supplement). The 1992 amendment rule is included in the appendix to this brief at AC4.

[67] *See, e.g.*, *Manning v. Vellardita*, 2012 WL 1072233, at *3 (Del. Ch. Mar. 28, 2012) ("[T]he appointment of an attorney admitted to the bar of a sister state to the Delaware bar *pro hac vice* is a privilege. Such admissions are typically granted as a matter of course, on the assumption that the prospective admittee has represented himself openly and honestly before the Court. Thus, to maintain the value to this Court of extending the privilege of *pro hac vice* admission to attorneys from other jurisdictions, it is necessary that those attorneys accorded this privilege are held to a high level of conduct including, importantly, candor with the Court.").

or whether continued admission would be "inappropriate or inadvisable" in light of information that comes to the court's attention following the initial admission.

The "inappropriate or inadvisable" standard is notably broad, as befits a decision entrusted to the court's discretion.[68] These terms give the court wide latitude to consider and determine the appropriateness and advisability of continuing (or not) the admission *pro hac vice* of out-of-state attorneys who have not been subject to the Court's application process for admission to the Delaware Bar. The trial court's delegated discretion under Rule 90.1(e) to consider the appropriateness and advisability of continued admission *pro hac vice* parallels its discretion under Rule 90.1(a), governing the initial admission *pro hac vice*.[69]

Rule 90.1 requires the court to consider a broad array of information in connection with a motion for admission *pro hac vice*, including the applicant attorney's conduct in other jurisdictions. Attorneys seeking such admission must

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[68] Continued admission is "inappropriate" if it would be "unsuitable." https://www.merriam-webster.com/dictionary/inappropriate. It is "inadvisable" if it would be "not wise or prudent. https://www.merriam-webster.com/dictionary/inadvisable. *See Wiggins v. State*, 227 A.3d 1062, 1077 (Del. 2020) ("Under well-settled case law, Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined [in a statute]," as they can "serve as helpful guides in determining the plain or commonly accepted meaning of a word.").

[69] Rule 90.1(a) states that out-of-state attorneys "may be admitted *pro hac vice* in the discretion of the Court." *See also* Rule 90.1(g) (noting that, in "exercising its discretion in ruling on a motion for admission *pro hac vice*," the court considers the nature and extent of the attorney's conduct in Delaware).

identify all states or other jurisdictions in which they have at any time been admitted generally, and they must certify whether they have "been disbarred or suspended or [are] the subject of pending disciplinary proceedings in any jurisdiction where [they have] been admitted generally, pro hac vice, or in any other way."[70] In addition, Delaware counsel must "certify that the Delaware attorney finds the applicant to be a reputable and competent attorney and is in a position to recommend the applicant's admission."[71] Thus, while an-out-of-state attorney is not subject to the full examination conducted by the Board of Bar Examiners, Rule 90.1(e) authorizes the trial court to perform an analogous function in assessing whether such an attorney should be admitted *pro hac vice*, and whether such admission should continue, in light of a range of factors that include the attorney's conduct in other jurisdictions.

Insofar as Wood is contending that the trial court must put on blinders as to an attorney's conduct in other jurisdictions following an initial admission *pro hac* vice, such a contention runs contrary to the purpose of Rule 90.1. Why would the court be required to consider conduct in other jurisdictions prior to admission *pro hac vice* but barred from considering such conduct afterwards? Why would it be required to ignore that attorney's subsequent disbarment by another jurisdiction?

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[70] Rule 90.1(b)(7). Thus, if Wood's admission had not been revoked, he would have been required to amend his certification to identify any pending disciplinary proceeding. *See* DLRPC 3.3(a)

[71] Rule 90.1(h).

Why would it be barred from considering serious misconduct in another jurisdiction that has not yet resulted in a sanction? Wood offers no explanation.

Here, the court properly applied Rule 90.1, as written, by giving Wood specific notice of its concerns, by affording him a meaningful opportunity to be heard on them, and by exercising its discretion to revoke upon finding that continued admission would be inappropriate or inadvisable. The approach was consistent with the court's precedent applying Rule 90.1 and its analog, Rule 63(e) of the Superior Court Rules of Criminal Procedure ("Criminal Rule 63(e)"). For example, in *State v. Grossberg*, then-President Judge Ridgely relied on Criminal Rule 63(e) in holding that the admission *pro hac vice* of a New York attorney "should be revoked as inappropriate and inadvisable" after that attorney violated a court order governing pre-trial publicity.[72] Similarly, in *State v. Mumford*, the court revoked the admission *pro hac vice* of a Maryland attorney who failed to take steps to stop his client's hostile and profane behavior at a deposition, finding the "continued admission of" such attorney to be "inappropriate and inadvisable."[73]

In *LendUS LLC v. Goede*, the Court of Chancery found the conduct of an attorney admitted *pro hac vice* at a deposition in the case sufficiently egregious to warrant a finding that "continued admission *pro hac vice* to be both inappropriate

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72 705 A.2d 608, 613 (Del. Super. Ct. 1997).

73 731 A.2d 831, 835-36 (Del. Super. Ct. 1999).

and inadvisable."[74] However, in light of the "potential for abuse" where disqualification motions are brought by opposing counsel, the court stated that the party seeking disqualification "must show, by clear and convincing evidence, that the behavior of the attorney in question 'is so extreme that it calls into question the fairness or efficiency of the administration of justice.'"[75] In lieu of revoking the attorney's admission *pro hac vice*, the *LendUS* court chose to award the moving party attorney's fees in connection with the motion for sanctions, to grant the attorney's motion to withdraw, and to refer the matter to the Office of Disciplinary Counsel.[76]

Wood's primary challenge to the trial court's Order is grounded on his contention that Rule 90.1 required the trial court to apply the same clear and convincing standard and fairness of the proceeding scope of review that the *LendUS* court applied in addressing a motion to revoke by an opposing party. That standard

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[74] 2018 WL 6498674, at *8-9 (Del. Ch. Dec. 10, 2018) (quoting Court of Chancery Rule 170(e), which tracks Rule 90.1).

[75] *Id.* (citing *Manning v. Vellardita*, 2012 WL 1072233, at *2 (Del. Ch. Mar. 28, 2012) (quoting *Dunlap v. State Farm Fire & Cas. Co. Disqualification of Counsel*, 2008 WL 2415043, at *1 (Del. May 6, 2008)). This standard is ultimately derived from the Court's decision in *In re: Infotechnology, Inc.*, 582 A.2d 215 (Del. 1990), discussed below.

[76] *Id.* at *9-10. The court also briefly discussed allegations regarding the attorney's conduct in Ohio and Florida, finding the record insufficiently developed to warrant a sanction but referring the matters to disciplinary authorities in those jurisdictions. *Id.* at *10.

and scope of review is ultimately drawn from this Court's seminal decision in *In re: Infotechnology, Inc.*, which defined the limited circumstances in which trial courts have jurisdiction to consider and rule on alleged violations of the DLRPC in the context of a motion to disqualify.[77] Specifically, Wood contends that the court was required to limit the scope of its review to whether his continued participation would threaten the fairness of the proceeding before it, and should have applied a clear and convincing standard of review.[78] This contention is without merit for the reasons discussed below.

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[77] 582 A.2d at 221.

[78] OB at 10 ("Where a party to litigation seeks the sanction of revocation of an out-of-state attorney's *pro hac vice* privileges, the moving party must demonstrate by clear and convincing evidence that the out-of-state attorney's behavior is sufficiently egregious to 'call into question the fairness or efficiency of the administration of justice.'"); OB at 22 (same); OB at 31 (same); OB at 32 ("The Superior Court made no finding by clear and convincing evidence that Wood's continued representation would prejudicially impact the fairness of the proceedings before it.").

2. *Infotechnology* Does Not Limit the Trial Court's Discretion under Rule 90.1 to Determine Whether Continued Admission *Pro Hac Vice* Is Inappropriate or Inadvisable in Light of Conduct in Other Jurisdictions.

For two reasons, the Court should reject Wood's contention that, in applying Rule 90.1, the trial court was required to (i) limit the scope of its review to conduct that prejudiced the proceeding before the court (and therefore be barred from considering Wood's conduct in other jurisdictions) and (ii) apply a "clear and convincing" standard of proof.

First, neither requirement appears in Rule 90.1, and both requirements conflict with its spirit if not its letter. As noted above, given that the court is required to consider an attorney's conduct in other jurisdictions in granting admission *pro hac vice* under Rule 90.1(a), the court may also consider such conduct in determining under Rule 90.1(e) whether such admission should continue. As to the proposed clear and convincing standard, Rule 90.1 repeatedly refers to the trial court's authority to exercise its discretion and sets forth an "inappropriate or inadvisable" standard, without suggesting the "clear and convincing" burden urged by Wood. In 1990, *Infotechnology* imposed on non-client litigants the burden to demonstrate by clear and convincing evidence how the conduct at issue would prejudice the fairness of the proceedings due to the "potential abuses of the [DLRPC] in litigation.[79] Had

[79] 582 A.2d at 221.

the Court intended to impose a "clear and convincing" burden of proof in the context of a determination as to whether admission *pro hac vice* should be granted, or should be discontinued as inappropriate or inadvisable, presumably it would have done so through the 1992 amendment to Rule 90.1.

Second, *Infotechnology* and Rule 90.1 address different concerns. *Infotechnology* limits the trial court's authority to enforce the DLRPC to circumstances in which misconduct "taints the fairness of judicial proceedings."[80] *Infotechnology* holds that:

> While we recognize and confirm a trial court's power to ensure the orderly and fair administration of justice in matters before it, including the conduct of counsel, the [DLRPC] may not be applied in extra-disciplinary proceedings solely to vindicate the legal profession's concerns in such affairs. Unless the challenged conduct prejudices the fairness of the proceedings, such that it adversely affects the fair and efficient administration of justice, only this Court has the power and responsibility to govern the Bar, and in pursuance of that authority to enforce the Rules for disciplinary purposes.[81]

Thus, *Infotechnology* sought to clarify that this Court alone has power to govern the Bar and to enforce the DLRPC for disciplinary purposes.[82]

Rule 90.1, by contrast, addresses the trial court's authority to act as a gatekeeper regarding out-of-state attorneys who wish to appear in Delaware

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80 *See id*.

81 *See id.* at 216-217.

82 *See id.* at 217.

proceedings. With respect to whether the admission *pro hac vice* of an attorney should continue, the question is whether continued appearance would be inappropriate or inadvisable in light of that attorney's conduct. If a court, in applying Rule 90.1, sought to enforce the DLRPC, it would be exceeding its jurisdiction under *Infotechnology* unless the conduct of such attorney called into question the fair or efficient administration of justice in the case before it.[83] But that is not what happened here. On the contrary, the trial court could not have been clearer in stating:

> I have no intention to . . . make any findings [ ] as to whether or not Mr. Wood violated other States' Rules of Professional Conduct. I agree that is outside my authority. It is the province of the Delaware Office of Disciplinary Counsel, and ultimately the Delaware Supreme Court, or their counterparts in other jurisdictions, to make a factual determination as to whether Mr. Wood violated the Rules of Professional Conduct.[84]

Wood's contention that the trial court erred in failing to apply a "clear and convincing" standard of proof[85] is also contrary to the spirit of Rule 90.1, especially with regard to the trial court's ability to consider *sua sponte* whether continued admission is warranted. *Infotechnology* directed that the clear and convincing standard be applied to discourage litigants from using motions to disqualify opposing counsel as procedural weapons.[86] Neither the text nor the purpose of Rule

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83 *Id.* at 221.

84 A73.

85 *See, e.g.*, OB at 22.

86 *See Infotechnology*, 582 A.2d at 221 ("Recognizing the potential abuses of the [DLRPC] in litigation, we conclude that the burden of proof must be on the non-

90.1 suggests that the trial judge must apply that standard either in considering a motion to admit an attorney *pro hac vice* or in considering whether to continue that admission. Wood's argument for restricting the trial court's discretion under Rule 90.1(e) is inconsistent with the broad language of the Rule instructing the court to consider whether continued admission is "inadvisable" or "inappropriate."

As Wood points out, some decisions have applied a "clear and convincing" standard in addressing *pro hac vice* issues. Where this occurs, however, the decisions sometimes apply an *Infotechnology* analysis without reference to Rule 90.1 or its analogs. For example, in *Crowhorn v. Nationwide Mutual Insurance Co.*,[87] involving a motion to revoke the admission *pro hac vice* of a Pennsylvania attorney, the Superior Court did not cite to Rule 90.1. Instead, the court relied solely on *Infotechnology* in requiring "clear and convincing evidence that the behavior of the attorney in question will "affect the fairness of the proceedings" in the case before it.[88] While the *Crowhorn* court would have been required to apply the *Infotechnology* standard if it intended to enforce the DLRPC, such an approach does

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client litigation to prove by clear and convincing evidence (1) the existence of a conflict and (2) to demonstrate how the conflict will prejudice the fairness of the proceeding.").

87 2002 WL 1274052 (Del. Super. Ct. May 6, 2002).

88 *Id.* at *4.

not suggest that the court in this case could not rely on Rule 90.1, particularly where it expressly disavowed any intent to find violations of rules of professional conduct.

Similarly, in a brief letter ruling in *Sequoia v. Presidential Yatch Group LLC v. FE Partners LLC*,[89] the Court of Chancery did not cite or apply the applicable *pro hac vice* rule (Court of Chancery Rule 170(e)) in deciding to defer a motion to revoke opposing counsel's admission *pro hac vice*. Rather, the court briefly stated that its "jurisdiction to police attorney behavior only extends to conduct which may prejudice the 'fair and efficient administration of justice."[90] As such, *Crowhorn* and *Sequoia* do not support Wood's contention that, in order for continued admission to be "inappropriate or inadvisable, the conduct must be prejudicial to the fundamental fairness of the proceeding before the court.[91] Rather, these cases suggest that, while *Infotechnology* is "top of mind," particularly where courts are asked to adjudicate the DLRPC, the rules governing admission *pro hac vice* are less so.

Wood's reliance on this Court's 1990 decision in *National Union Fire Insurance Company of Pittsburgh, Pa. v. Stauffer Chemical Co.*[92] is also misplaced. That decision, concerning misconduct by attorneys admitted *pro hac vice* in the case

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89 2013 WL 3362056, at *1 (Del. Ch. July 5, 2013).

90 *Id.*

91 OB at 31.

92 1990 WL 197859 (Del. Nov. 9, 1990).

before the trial court, held that the trial court had properly exercised its discretion in revoking their admissions.[93] In 1992, the Court effectively codified this delegation of discretion to the trial court via its amendment to Rule 90.1(e), without importing a prohibition against considering conduct in other jurisdictions or requiring application of a clear and convincing standard.[94]

In sum, *Infotechnology* does not conflict with, let alone override, the Court's 1992 amendment of Rule 90.1. *Infotechnology* bars a trial court from enforcing the DLRPC or issuing sanctions for violations thereof unless the conduct in question undermines the fairness of the proceeding before the court. Rule 90.1 does not authorize the trial court to enforce the DLRPC. Rather, Rule 90.1 delegates to the trial court the authority to exercise discretion to determine whether out-of-state attorneys should be admitted to practice *pro hac vice* and, as a corollary thereto, whether such privilege should continue in light of concerns that may render continued admission inappropriate or inadvisable. The restrictions imposed by *Infotechnology* on a trial court's jurisdiction to enforce the DLRPC do not apply where a court is not engaging in such an effort but is exercising its discretion over the admission *pro hac vice* of attorneys under the parameters set forth in Rule 90.1.

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93 *Id.*

94 *See* AC4-6 (Superior Court of Delaware Civil Rule 90.1, as amended in the 1992 Supplement); *compare with* AC1-3 (original version of Superior Court of Delaware Civil Rule 90.1).

3. *Crumplar* Does Not Nullify the Provision in Rule 90.1 Permitting the Trial Court to Provide a Hearing "or Other Meaningful Opportunity to Respond."

Based on this Court's decision in *Crumplar*, construing Rule 11, Wood also mistakenly contends that the trial court improperly failed (i) to grant Wood "an opportunity to present evidence and respond orally," and (ii) to apply an "objective standard" to determine whether the offending conduct warranted revocation.[95] Like his contentions based on *Infotechnology*, Wood's effort to fault the court for failing to incorporate the holdings in *Crumplar* into Rule 90.1 are without merit.

Wood's claimed right to "present evidence and respond orally"[96] fails for at least two reasons. First, in *Crumplar*, the Court was called upon to construe language in Rule 11(c) that allows the trial court to impose sanctions only "after notice and a reasonable opportunity to be heard."[97] Rule 90.1, by contrast, is more specific than Rule 11 in stating that the court must afford the attorney "a hearing *or other meaningful opportunity to be heard.*" Unlike Rule 11, Rule 90.1 expressly authorizes the court to offer a meaningful opportunity other than a hearing.

Second, the Court in *Crumplar* held that a "reasonable opportunity" included the ability to present evidence and be heard orally largely because Rule 11 sanctions

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95 OB at 20-21.

96 OB at 21, *see also Crumplar*, 56 A.3d at 1011-12.

97 56 A.3d at 1011.

include elements of a finding of criminal contempt, such as an intent to punish the attorney's past conduct.[98] By contrast, in Rule 90.1, an order that "continued admission" *pro hac vice* would in inappropriate removes a privilege to participate in a proceeding in the future but does not "punish" the attorney through a penalty, a financial sanction, or a finding of violation of the rules of professional conduct.

Recently, in *Hunt v. Court of Chancery*,[99] this Court extended its ruling in *Crumplar* to apply to a trial court's authority to impose monetary sanctions under its inherent power.[100] Because the Texas attorney in *Hunt* was not given advance notice that his opponent's sanctions request would be addressed at an upcoming hearing, was not given an opportunity to be heard at the sanctions hearing, and was not asked about his ability to pay the monetary sanction, the Court reversed the imposition of a fine of nearly $15,000.[101] In addition, the Court held that the insulting email in question did not affect the proceedings before the trial court so as to warrant its finding of a violation of 8.4(d) of the DLRPC.[102]

As with *Infotechnology* and *Crumplar*, *Hunt* does not bear on the trial court's application of Rule 90.1 to *pro hac vice* matters. Just as the trial court here eschewed

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98 *Id.* at 1011.

99 2021 WL 2418984, at *1 (Del. June 10, 2021).

100 *Id.* at *5.

101 *Id.* at *4-5.

102 *Id.* at *6.

any claim to enforce the DLRPC or any other rules of professional conduct, and declined to impose any monetary sanction under Rule 11, so also it declined to impose a sanction under its inherent power. Its only action was to revoke the privilege of continued admission *pro hac vice*, as Rule 90.1 authorized it to do.

Finally, Wood's "objective standard" argument fails because the trial court did in fact apply an objective standard in declining to accept as dispositive Wood's contentions as to his subjective intend. For example, the trial court declined to accept as dispositive Wood's denial of any "intent of the parties, including himself," to mislead the Georgia court by means of an inaccurate expert report.[103] Instead, the court relied on the objective facts of Wood's extensive experience, and his duty to ensure the accuracy of the report before filing, in concluding that his failure to do so was objectively "incompetent" if not subjectively "mendacious."[104] Similarly, with respect the Wisconsin case, the court did not accept Wood's subjective defense that, because he was not "the attorney of record," he was not personally responsible for the errors in the pleadings.[105] The court held that, as one of the counsel listed on the docket, he was fully responsible for the filing of the complaint.[106]

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103 A12.

104 A74.

105 A12.

106 A75.

4. The Court Properly Exercised Its Discretion in Determining That Continuing Wood's Admission *Pro Hac Vice* Would Be Inappropriate and Inadvisable Based on His Conduct in the Georgia and Wisconsin Cases.

Finally, the trial court acted within its discretion by (i) specifically identifying in the Rule to Show Cause the numerous concerns that Wood needed to address; (ii) providing Wood with a meaningful opportunity to respond to the Rule to Show Cause, and (iii) basing its decision "upon conscience and reason, as opposed to capriciousness or arbitrariness."[107]

Proper Notice. In its Rule to Show Cause, the court specifically itemized the findings and deficiencies that Wood needed to address. Wood does not contest that he was fairly put on notice of the conduct in the Georgia and Wisconsin cases that had raised concerns regarding the appropriateness of his continued admission *pro hac vice*.

Meaningful Opportunity to Respond. As discussed above, the court applied the plain language of Rule 90.1(e), which required that Wood be given "a hearing or other meaningful opportunity to respond." While the trial court originally intended to allow both a written submission from Wood and his Delaware counsel and an opportunity to be heard orally, the nature of the Response led the court to reconsider whether a hearing was warranted. As the court noted, the Response "focused

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107 *In re Asbestos Litig.*, 228 A.3d 676, 681 (Del. 2020).

primarily upon the fact that none of the conduct . . . questioned occurred in [the trial court]."[108] Wood relied on a legal argument, supported by a declaration from a legal ethics expert, that the court had no jurisdiction to enforce the DLRPC – a contention with which the court had "no disagreement."[109] This proposition missed the point of the Rule to Show Cause and ignored the clear language of Rule 90.1 that required the court determine whether his continued admission would be inappropriate or inadvisable in light of his conduct and not whether Wood had violated the rules of professional conduct. Because the strategy employed in the Response was "not helpful regarding the issue of the appropriateness and advisability of continuing admission *pro hac vice*,"[110] the court acted within the broad scope of its discretion in concluding that oral argument would not have been fruitful.

In addition, while Wood took issue with a few of the trial court's characterizations of the facts, he did not contest the facts as set forth in the Rule to Show Cause and as found by the courts in Georgia and Wisconsin. Wood chose not to provide a detailed response to the concerns raised by the trial court, and filed no affidavit presenting evidence in this defense. On the contrary, Wood requested that

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108 A72.

109 *Id*.

110 *Id*.

he be permitted to withdraw from the case.[111] Ultimately, the court found that continued admission would be inappropriate regardless of whether Wood's conduct was "mendacious" or merely "incompetent,"[112] so there was no reason to hold a hearing to assess Wood's credibility.

Wood claims that at "no point" was he given a meaningful opportunity to respond.[113] However, he does not explain why the opportunity to respond in writing was not meaningful or what he would have said at a hearing other than what he chose to argue in the Response. Rather, his concern appears to be, not that his opportunity was not meaningful, but that the court allegedly gave his Response "little weight."[114]

Wood also claims that if he had been given an opportunity to respond orally, "the allegations in the January 11 Opinion and Order could have been corrected and put in proper context."[115] This contention ignores the fact that the "allegations" were set forth in the Rule to Show Cause in order for him to correct them or put them in proper context in his Response. It is not enough for Wood to say, on appeal, that "[i]t is unclear what, if any involvement Wood had in drafting the initial pleadings"

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111 A14.

112 A74. *See also* A74-75 (commenting that the complaint in the Wisconsin case "would not survive a law school civil procedure class").

113 OB at 29.

114 *Id*.

115 OB at 32.

in the Wisconsin case.[116] It was Wood's obligation, in response to the Rule to Show Cause, to make clear the extent of his involvement and "show cause" why he should not be held responsible for those pleadings.

No Abuse of Discretion. Finally, the court's conclusion that Wood's continued admission would be "inappropriate and inadvisable" was based "upon conscience and reason, as opposed to capriciousness or arbitrariness."[117] With regard to the court's specific concerns as enumerated in the Rule to Show Cause, Wood offered nothing to show why such concerns did not render his continued admission inappropriate or inadvisable. For example, the court did not misapprehend Wood's involvement in the Georgia case as a litigant, as Wood claimed in his Response.[118] The court did not accept his litigant status as a defense, reasoning that, as an attorney, Wood has "an obligation, whether on his own or for clients, to file only cases which have a good faith basis in fact or law."[119] The *Wood* court's holding that there was "no basis in fact or law" to grant Wood the relief he sought also remained a concern, which Wood did nothing to negate by characterizing

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116 OB at 6; *see also* OB at 24 ("Wood's level of participation in the drafting and filing of the initial pleading in the Wisconsin litigation is unclear . . . .").

117 OB at 29.

118 A11. The Rule to Show Cause identified Wood as the "Plaintiff in the case of *L. Lin Wood Jr. v. Brad Rattensperger, et al*." A7.

119 A74.

the holding as "merely determin[ing] there was an insufficient basis to support to requested injunctive relief."[120] The court also remained justifiably troubled by the erroneous affidavit of an expert witness that was filed in support of Wood's case, despite Wood's denial of any intent to mislead.[121]

Similarly, the trial court acted within the scope of its discretion in rejecting Wood's contention that he was not responsible for the numerous errors in the Wisconsin pleadings. The court's review of the docket showed that he was counsel of record and therefore responsible for filings.[122] The trial court also acted within the scope of its discretion by rejecting Wood's attempt to minimize the many mistakes and deficiencies – including filing a complaint on behalf of someone who did not authorize that action – as "proof reading errors."[123]

In finding Wood's continued admission inappropriate and inadvisable, the January 11 Order properly noted the stark contrast between counsel who practice daily in a civil, ethical way before it, and the conduct that Wood engaged in as reflected in the decisions of the courts in Georgia and Wisconsin.[124] In light of that contrast, the court's conclusion that Wood's continued admission *pro hac vice* would

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120 A11

121 *Id*.

122 A75 (footnote 1).

123 A12; A74.

124 A75.

be inappropriate and inadvisable was well within its discretion. By way of further comparison, in *Mumford* and *LendUS*, Delaware trial courts found that the egregious behavior of an attorney admitted *pro hac vice* at a deposition (and, in *LendUS*, the attorney's lack of candor to the court about it) warranted revocation.[125] Here, Wood's conduct was comparably egregious, even if considered simply incompetent rather than mendacious, as it occurred repeatedly in two high profile litigations of great public import.

Finally, Wood argues that the January 11 Order "has been working considerable hardship" upon him.[126] In support of this contention, he cites a memorandum of law filed in the Eastern District of New York in support of a motion to revoke his admission *pro hac vice*, wherein the movant relied, "among other things," upon the January 11 Order.[127] The "other things" addressed in the memorandum include numerous other instances of misconduct – including his attacks on Chief Justice John Roberts, false and frivolous filings around the country, and false statements to the Eastern District of New York.[128] As just one matter among many, the January 11 Order cannot fairly be blamed for any loss of

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125 *See State v. Mumford*, 731 A.2d 831, 835-36 (Del. Super. Ct. 1999); *LendUS LLC v. Goede*, 2018 WL 6498674, at *9 (Del. Ch. Dec. 10, 2018).

126 OB at 29-30.

127 OB 29-30; A140-143.

128 *See* A136-37, 139-40, 143-48.

reputation.[129] Courts that consider the Order in connection with future motions for admission *pro hac vice* will exercise their own discretion, according to their own court rules and case law standards, as to the weight the Order should be given in relation to other considerations.

[129] Motions to disqualify and motions for sanctions against Wood have been filed in multiple jurisdictions. Two motions for sanctions were filed in *King v. Whitmer*, No. 20-cv-13134 (E.D. Mich. Dec. 22, 2020) (AC11, 23); a motion to disqualify and revoke appearance *pro hac vice* was filed in *La Liberte v. Joy Reid*, No. 18-cv-05398 (E.D.N.Y. Jan. 25, 2021) (AC25); and a motion for attorney fees and sanctions was filed in *Feehan v. Wis. Elections Comm'n*, No. 20-cv-1771 (E.D. Wis. Mar. 31, 2021) (AC27). Most recently, a motion for order to show cause why Wood should not be held in criminal contempt for violating local rules prohibiting recording and broadcasting of judicial proceedings was filed in *King*, 20-cv-13134 (E.D. Mich. Jul. 13, 2021) (AC85).

CONCLUSION

The Superior Court's January 11 Order revoking the admission *pro hac vice* of Wood should be affirmed because the court applied Rule 90.1 as written and properly acted within the scope of its discretion. Wood's contentions on appeal, drawn from case law addressing a trial court's jurisdiction to enforce the DLRPC and to impose monetary sanctions under Rule 11, lack merit because they are inconsistent with the language and purpose of Rule 90.1. Wood's proposal that the court should be barred from considering conduct in other jurisdictions after admission *pro hac vice* is inconsistent with provisions in Rule 90.1 requiring the court to consider such conduct prior to granting admission. Wood's proposal that a "clear and convincing" standard be imposed be is contrary to the existing broad "inappropriate or inadvisable" standard in Rule 90.1(e). Wood's argument for a mandatory opportunity to present evidence and respond orally is contrary to the plain language in Rule 90.1(e) permitting the court to provide a hearing "or other meaningful opportunity to be heard."

Where, as here, the trial court does not attempt to enforce the rules of professional conduct, and does not impose monetary sanctions (either under Rule 11 or its inherent powers), the trial court is entitled to rely on Rule 90.1 to guide its discretion in determining whether an admission *pro hac vice*, once granted, should be continued or revoked. For the reasons set forth above, the trial court properly

applied Rule 90.1(e) and acted within its discretion in revoking Wood's admission *pro hac vice*.

Respectfully submitted,

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