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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

*Shirley A. Johnson Legal*  
Clerk

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No. 30354

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IN THE MATTER OF THE DISCIPLINE OF  
JASON R. RAVNSBORG  
AS AN ATTORNEY AT LAW

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ORIGINAL PROCEEDING

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**DISCIPLINARY BOARD'S BRIEF**

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## **PRELIMINARY STATEMENT**

This brief is submitted by the State Bar of South Dakota Disciplinary Board (“Board”) pursuant the Court’s Order for Briefing and Setting Hearing in this matter and is intended to set forth the views of the Board on Judge Zell’s findings of fact, conclusions of law and decision.

In this brief, references to the record before the Board shall be designated as Exhibit followed by the number of the exhibit before the Board. The Board hearing transcript shall be referred to as BT followed by the page number. The exhibits from the Referee Hearing shall be designated as Ref. Exhibit followed by the exhibit number. The hearing transcript before Referee Zell will be referred to as HT followed by the page number. The recommendation by Referee Zell will be referred to as Ref. Rec. followed by the page number.

### **BOARD RESPONSE TO JUDGE ZELL**

This matter came before the Board for hearing on March 30, 2023, in Aberdeen, South Dakota. A referee hearing before Judge Zell was held in Sioux Falls on November 13, 2023. The facts are well known and will not be reiterated in this brief. With respect to Judge Zell’s findings and recommendation, the Board would point to a few items of note that were perhaps not sufficiently emphasized in the Board’s presentation to Judge Zell and/or where the Board respectfully has a differing view than Judge Zell.

#### **A. RAVNSBORG’S TESTIMONY**

First, the demeanor and presentation by Ravensborg before Judge Zell was substantially different than what was displayed before the Board. This is difficult to glean from the transcripts but was apparent to those who observed both. Before the

Board, Ravensborg was defensive and dismissive of the Board's role. Ravensborg also spent a large amount of time before the Board introducing himself and the presentation appeared to be one focused on self-promotion as opposed to giving pertinent information to the Board about his background. (BT at 19-35). Ravensborg's attitude toward the proceedings was evidenced in his initial response to the Board wherein he stated that he really did not know what he was to address in response to the complaint. (See Exhibit 3).

By way of specific example, before the Board Ravensborg responded to a question about his review of the Rules of Professional Conduct and specifically Rule 8.4. Ravensborg told the Board he had only briefly reviewed the Rule prior to the hearing. (BT at 44). He also indicated that he never thought about the Rules of Professional Conduct throughout the ordeal which ultimately led to his impeachment. (BT at 44). The Board found this troubling.

Further, when questioned about his propensity to introduce himself by identifying himself by his position as Attorney General when stopped by law enforcement, he defensively responded that he had never been elected and "didn't get a course on etiquette about when you are supposed to say you are the Attorney General and when you are not. It is just who I was at the time, it was more of an identifier, not that I was trying to gain favor for it, it's just this is who I am, because again, my name does suck. Sorry dad." (BT at 86-87). Before Judge Zell, Ravensborg was more evasive when asked about the Board struggling to understand why he would refer to himself as the Attorney General if it were not to gain an advantage. Ravensborg's comment to that was if that was in reference to his 911 call, "I was seeking to get help to - - I just had an accident. You're calling to get assistance. I have had a lifetime of people not being able to say my name.

And the first thing they do is, ‘Well, can you spell that for me?’ Well, I didn’t want to take the time to spell it.” (HT at 59). The Board felt strongly, and Judge Zell concurred that there is no reason to introduce oneself as the Attorney General when stopped by law enforcement if it is not to seek favorable treatment. The actual stops and context provide a different perspective. (Ref. Exhibit B)<sup>1</sup>. If the Board and Referee Zell found as much, imagine the view of the public. Whether it was

- getting out of a speeding ticket;
- driving the Sheriff’s personal vehicle home on the night of the accident;
- inquiring about cell phone data etc. from employees within his office; or
- ultimately facing relatively minor traffic offenses,

Ravnsborg’s conduct left a black eye on the legal system.

Next, Ravnsborg insists throughout that the complaint, the recommendation, and the disciplinary process were politically motivated. Despite assurances from the Board that politics played no part in their assessment of the situation, Ravnsborg persisted in his belief. He felt the entire process from impeachment to discipline was politically motivated to which caused him to push back. He felt there was a need to prosecute someone with money which never happened (BT at 74); and that the complainant filed the disciplinary complaint to further her career. (HT at 57). Ravnsborg even went so far as to suggest that the complainant violated Board rules by not submitting a response to his initial reply to the Board. (HT at 57-58).

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<sup>1</sup> At the request of Judge Zell, the video and audio recordings of traffic stops and the 911 call were submitted post-hearing and it is not clear if the thumb drive containing the recordings was marked admitted as Exhibit B.

Judge Zell also disagreed with the Board's view that Ravensborg was not truthful when he gave statements to investigators. (Ref. Exhibit A). Many others, including the interviewers who testified before the South Dakota Senate, felt the same as the Board. Ravensborg could have exercised his right to refuse to be interviewed but chose not to do so. In agreeing to be interviewed, Ravensborg clearly had a duty to be truthful and the Board found that he fell short of that obligation. Although Ravensborg argued the inconsistencies were mistaken memory or his recollection of the accident, the Board found the statements lacked openness and candor and, in this case, was conduct which impugned the integrity of the legal profession as a whole.

Finally, the Board was also concerned about Ravensborg's seeming lack of regard for the victim and his family. While he publicly stated he tried to reach out to Mr. Boever's family, he acknowledged to the Board that this didn't happen, primarily due to his advisors telling him not to do so. (BT at 61-62). Nonetheless, Ravensborg's conduct appeared to the Board to be motivated by political self-preservation and self-interest. Even after the civil, criminal, and political decisions had been finalized, Ravensborg's response to the Board was that the accident changed "my life." (BT at 79, 84). The Board concluded that comments such as this displayed an attitude lacking remorse and sincerity. Their view is different than Judge Zell which was likely influenced by Ravensborg's different demeanor before Judge Zell.

**B. RULES OF PROFESSIONAL CONDUCT CAN BE VIOLATED BY ATTORNEYS ACTING IN THEIR PERSONAL CAPACITY AND IF THE CONDUCT IS CRIMINAL, NO CONVICTION IS NECESSARY TO SUBJECT THE LAWYER TO DISCIPLINE.**

Judge Zell also emphasized that the conduct complained of, whether it be the accident, the interviews, the impeachment, or the criminal proceedings, was “personal” and not related to Ravensborg’s conduct as an attorney. (Ref. Rec. at 9, 11). The Board feels strongly that this is a misinterpretation of the disciplinary authority of the Supreme Court.

SDCL §16-19-36 requires all criminal acts committed by attorneys, except minor traffic offenses not involving drugs or alcohol, be reported to the Board. SDCL §16-19-36. SDCL §16-19-37 further allows for immediate suspension of lawyers by the Court if the lawyer is convicted of a serious crime. SDCL §16-19-37. Serious crime is defined as one which “involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime.” Id. Involvement in a crime while acting as an attorney is but one of many reasons that a lawyer can be suspended for the conviction of a crime. Many of these crimes are not related to a lawyer’s conduct acting in their role as an attorney.

Fortunately, South Dakota does not have a lengthy history and precedent on how criminal acts interplay with attorney discipline and specifically whether conduct needs to be related to the lawyer acting in their professional capacity to be a violation of the Rules of Professional Conduct. Other jurisdictions have addressed this issue and make it clear that is the attorney’s conduct, and not the crime with which they were convicted that is relevant. In fact, no conviction is necessary.



In re Frahm, involved an attorney who argued that since his criminal conduct was unrelated to the practice of law, discipline was not appropriate. In re Frahm, 241 P.3d 1010 (Kan. 2010). The Kansas Supreme Court, however, cited several examples wherein they had found that “the legal profession by its very nature demands compliance with the laws governing the behavior of citizens.” Id. at 1015. It further noted that misconduct need not violate a duty to a client as a part of the lawyer’s practice of law. Id. at 1016. The Kansas Court’s discussion and analysis below is instructive to refute the notion that attorney discipline must be related to the conduct while acting in the lawyer’s professional capacity. Id. at 1015 (citing In re Robertson, 256 Kan. 505, 507, 886 P.2d 806 (1994)). In In re Laskowski, this court noted that the respondent was convicted of felony DUI. In re Laskowski, 282 Kan. 710, 147 P.3d 135 (2006). “Although not a breach of a professional duty to a client, it violated his primary duty to the court and the bar, and it erodes the public confidence in the judicial system.” Id. at 713-14. In In re Hoare, the court considered discipline of an attorney who drove while intoxicated on the wrong side of a highway and caused a fatal accident. In re Hoare, 155 F.3d 937 (8th Cir. 1998). The court concluded:

“Such conduct, when committed by an officer of the court, constitutes a failure to maintain personal integrity, reflects upon one’s fitness to practice law, and brings the bench and the bar into disrepute. [Citations omitted.] Offending conduct need not involve direct questions of honesty or trustworthiness, nor have an immediate relation to the daily business conducted by an attorney, in order to warrant substantial discipline. [Citations omitted.]”

Id. at 940.

In re Frahm, 241 P.3d 1010, 1016 (Kan. 2010).

The Frahm Court further noted that it is the conduct that warrants discipline, not the technicality of the conviction. In re Frahm, 241 P.3d at 1016.

The Nebraska Supreme Court has repeatedly stated that an attorney may be subjected to discipline for “conduct outside the practice of law or the representation of clients, and for which no criminal prosecution has been instituted or conviction had...” State ex rel. Counsel for Discipline v. Janousek, 674 N.W.2d 464, 267 Neb. 328 (Neb. 2004) (citing State ex rel. Nebraska Bar Association v. Bremers, 264 N.W.2d 194, 200 Neb. 481 (Neb. 1978)). It was with this standard in mind that the Board undertook its duty of assessing Ravensborg’s conduct as it relates to discipline. Judge Zell’s findings, conclusions and recommendation suggest that Ravensborg should not be subject to discipline under Rules 8.4(b) and 8.4(d) since his acts were not related to the practice of law. The Board respectfully disagrees.

Judge Zell concluded that the accident and post-accident conduct was not related to Ravensborg acting in his professional capacity and thus, did not rise to the level of a violation of Rule 8.4 (b) or (d) and as such discipline was not warranted. The Board suggests that the record clearly shows that Ravensborg’s conduct reflects adversely on his fitness as a lawyer in other respects in violation of Rule 8.4(b). SDCL §16-18-A (citing Rule 8.4(b)). Furthermore, the Board found Ravensborg’s conduct to be prejudicial to the administration of justice in violation of Rule 8.4(d). SDCL §16-18-A (citing Rule 8.4(d)). When combined with the conduct of improperly attempting to influence which both Judge Zell and the Board agree violated Rule 8.4(e), the Board felt compelled to recommend discipline to the Supreme Court. SDCL §16-18-A (citing Rule 8.4(e)).

**C. THE PURPOSES OF DISCIPLINE ARE SERVED BY A SUSPENSION OF  
RAVNSBORG**

The purposes of discipline are the final area the Board felt Judge Zell erred when he shifted his focus away from the purposes of discipline and looked at this as yet another “punishment” for Ravensborg who had suffered consequences, criminally, civilly and politically. The other consequences for Ravensborg were not of concern to the Board but appeared to influence Judge Zell’s recommendation. The Board made it clear at its March hearing that it deemed its duty to consider discipline when the lawyer’s conduct was such that the profession, the Bar and the legal system as a whole was impugned. This was addressed specifically by Board members Jana Miner and Roy Wise. (BT at 43-45, 62-63). Yet, Ravensborg could not acknowledge that his conduct and not politics was the main reason he was before the Board. Judge Zell did not address this, and the Board felt strongly that Ravensborg’s lack of awareness of how his conduct impacted the legal profession was in and of itself indicative of Ravensborg’s overall erroneous perception that he was somehow a victim.

The ABA Standards for Imposing Lawyer Sanctions has an entire section dedicated to lawyers who are public officials. The Annotation to Standard 5.21 suggest that because of their public official status, these lawyers have “a heightened responsibility as guardians of the public trust and must exercise care in maintaining the integrity of the legal process.” ABA Standards Rule 5.21 Annotation (citing In re Swindall, 468 S.E.2d 372, 373 (Ga. 1996); In re Williams, 217 So.3d 1009, 1014 (La. 2016); In re Boylan, 744 A.2d 158, 161 (N.J. 2000); Disciplinary Counsel v. Hoskins, 891 N.E.2d 324,341 (Ohio 2008); Lawyer Disciplinary Board v. Clifton, 780 S.E.2d 628 (W. Va. 2015)).

Although Ravensborg deemed it a misperception that the Attorney General is the chief law officer for the state of South Dakota, it is without doubt that the Attorney

General is indeed the officer charged with representing the State of South Dakota and many of the officers, boards and institutions. (BT at 49). As such, his duty to the public is heightened and his misconduct reflects poorly not only on the profession, but also on the public perception of the legal system. A former Ohio Attorney General, Marc Edward Dann, was suspended for 6 months by the Ohio Supreme Court for financial improprieties while in office that resulted in 2 misdemeanor convictions. Disciplinary Counsel v. Dann, 134 Ohio St. 3d, 68 (2012). The Ohio Court was particularly sensitive to the impact that Dann's conduct had on the public's view of the legal system. Id.

Like the Ohio Supreme Court, the Board was notably concerned about the impact on the legal system and felt compelled to let it be known that the image of the legal system, the profession and the bar association are of great importance. Any damage to that image caused by an attorney who is subject to discipline should be considered. The fact that Ravensborg was a public official was an aggravating factor which influenced the Board's recommendation.

Judge Zell focused his view of the purposes of discipline on language from In re Discipline of Tornow and drew comparisons to Tornow's conduct. In re Discipline of Tornow, 2013 S.D. 61. However, throughout these proceedings, the Board has drawn parallels between Ravensborg's conduct and that of the conduct by William Janklow. In re Discipline of Janklow 2006 S.D. 3, 709 N.W.2d 28. Despite pointing out the similarities between Janklow and Ravensborg, Judge Zell did not rely on pertinent language from Janklow's reinstatement case that the Board found persuasive and applicable. Specifically, in Janklow, this Court did not feel compelled to protect the public from fraudulent or dishonest acts of Janklow in his capacity as a lawyer. They did, however,

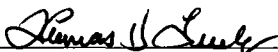
feel that the damage his conduct caused to the integrity of the legal system must be considered when they stated: “Violations of the law by lawyers undermine public trust and confidence in the rule of law. Id. at ¶ 14. This must be a component of our evaluation as we consider the appropriate discipline.” Id.

The Board suggests that a primary purpose of discipline is indeed served with its recommendation of a 26-month suspension. This recommendation is not another form of punishment for Ravensborg who, as Judge Zell noted, has paid his consequences criminally, civilly, and politically. The cumulative effect of Ravensborg’s conduct should not be set aside, but rather serve as a basis for appropriate discipline consistent with the discipline ultimately received by William Janklow.

### **CONCLUSION**

The Board has great respect for Judge Zell and this Court and understands the difficulty of the decision with which it is faced. The Board would respectfully requests that the Supreme Court adopt its recommendation for discipline.

Respectfully submitted this 1<sup>st</sup> day of February, 2024

  
\_\_\_\_\_  
Thomas H. Frieberg  
Disciplinary Board Counsel

**CERTIFICATE OF SERVICE**

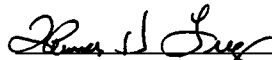
The undersigned hereby certifies that a true and correct copy of the foregoing DISCIPLINARY BOARD'S BRIEF was served by first class mail and email to:

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on 1<sup>st</sup> day of February, 2024.

  
\_\_\_\_\_  
Thomas H. Friberg  
Board Counsel

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

FEB - 1 2024

  
Clerk

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#30354

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**In the Matter of Discipline of JASON R. RAVNSBORG, as an Attorney at Law**

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**RESPONDENT'S BRIEF**

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The Honorable Bradley G. Zell  
Circuit Court Judge—Retired  
Appointed Referee

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## **PRELIMINARY STATEMENT**

In this brief, Attorney Jason Ravensborg is referred to as “Respondent.” The State Bar of South Dakota Disciplinary Board is referred to as the “Board.” Retired Circuit Court Judge Bradley G. Zell is referred to as “Referee.” The South Dakota Rules of Professional Conduct are referred to as the “Rules” or “Rule.” Citations to the Referee Hearing Transcript are abbreviated as “RH,” followed by a page number. Citations to the Referee’s Decision are abbreviated as “RD,” followed by a page number.

## **JURISDICTIONAL STATEMENT**

This Court appointed the Referee to take testimony and make findings and recommendations pursuant to SDCL § 16-19-67(5). After briefing from both sides, the Referee held a hearing on November 13, 2023, in Sioux Falls, Minnehaha County. The Referee issued its Findings of Fact, Conclusions of Law, and Decision on January 5, 2024. Under SDCL § 16-19-22, the Court has jurisdiction over these proceedings.

## **STATEMENT OF THE ISSUES**

- I. WHETHER THE REFEREE PROPERLY CONCLUDED THAT RESPONDENT DID NOT VIOLATE RULES 8.4 (b), (c), and (d).
- II. WHETHER THE REFEREE ERRED IN CONCLUDING THAT RESPONDENT VIOLATED RULE 8.4 (e).

## **STATEMENT OF THE CASE**

Following Respondent’s impeachment from the Office of the Attorney General on June 21, 2022, Alexis Tracy, the former State’s Attorney for Clay County and special senate counsel, filed a complaint with the Board on September 6, 2022. Respondent sent a letter addressed to Jana Miner, a member of the Board and appointed as its investigator, responding to Tracy’s complaint requesting its dismissal. The Board noticed the matter

for hearing on March 31, 2022. After eliciting sworn testimony from Respondent, the sole witness, the Board took the matter under advisement.

On May 19, 2023, the Board issued its Findings of Fact, Conclusions of Law, and Recommendation. Respondent timely filed a denial to the Board's finding of a violation of Rule 8.4 (c) and recommendation for a 26-month suspension. Pursuant to SDCL § 16-19-67(5), the Court referred the matter to the Referee. The parties submitted briefs and exhibits. A hearing before the Referee was held on November 13, 2023. Respondent again provided sworn testimony. After consideration of the entire record from the disciplinary hearing, the parties' written submissions and exhibits, Respondent's testimony, and oral argument of the parties, the Referee issued its Decision on January 5, 2024, finding that Respondent did not violate Rules 8.4 (b), (c), and (d). The Referee did, however, find that Respondent violated Rule 8.4 (e) and recommended public censure.

### **STATEMENT OF THE FACTS**

Respondent graduated high school in 1994 from Cherokee, Iowa. He attended the University of South Dakota (1994-98) graduating with degrees in History and Political Science. He also completed the ROTC program and was commissioned as an officer in the United States Army Reserves. His military career has included deployments to Germany in 2003, Iraq in 2004-05, and Afghanistan in 2009-10. After undergraduate studies, Respondent received a MA Degree in History and attended USD Law School, where he received his J.D. Degree in 2001. Respondent passed the South Dakota bar exam in 2001 and the Iowa bar exam in 2002. He clerked for Judge Timothy Connell of the 5<sup>th</sup> Judicial Circuit located in Luverne, Minnesota. He returned to South Dakota where he was employed in private practice in Yankton, as well as a deputy State's

Attorney in Union County from 2017-18. Respondent was elected Attorney General for the State of South Dakota in 2018.

The events leading to Respondent's impeachment and these proceedings began September 12, 2020. On that day, Respondent travelled in his personal vehicle to Redfield, South Dakota to attend a Lincoln Day Dinner. He attended this political event in his personal capacity as a candidate. Once the event was over, Respondent proceeded back to Pierre, South Dakota, where he resided. As he was passing through Highmore, South Dakota, on State Highway 14, Ravensborg struck an object. He immediately called 911, and the late Sheriff of Hyde County, Mike Volek ("Volek"), responded to the scene. The 911 operator, while speaking with Ravensborg, speculated he may have struck a deer. The two men searched the road ditches and nearby areas but were unable to locate the object he had struck. Volek offered Respondent his personal vehicle to continue his travels home to Pierre, understanding that Respondent would return the following morning with Volek's vehicle. That next morning, Respondent and his Chief of Staff, Tim Bormann ("Bormann"), returned to the scene, which is when it was discovered that the object Respondent had struck was pedestrian Joe Boever ("Boever"). Unfortunately, the strike to Boever was fatal. Once news of the fatal accident became public, the Governor of South Dakota, Kristi Noem, privately requested that Respondent take a leave of absence or resign as the Attorney General, both of which he declined to do.

Due to the perceived conflict of interest between Respondent and the South Dakota Division of Criminal Investigation ("DCI"), the accident investigation was assigned to the North Dakota Bureau of Criminal Investigation (BCI") with assistance from the South Dakota Highway Patrol ("SDHP"). This investigation, which has been

deemed one of the most thoroughly investigated accidents ever in South Dakota, consisted of the following: Respondent voluntarily participating in two lengthy interviews with BCI without an attorney present; Respondent consenting to a blood draw, Respondent voluntarily submitting his two (2) cell phones for forensic examination, and an accident reconstruction. At the conclusion of the investigation, Respondent was charged with three (3) class two misdemeanors. There was no evidence to support charging Respondent with any crime related to obstructing or lying to law enforcement, and similarly, there was no indication Respondent abused his power as the Attorney General. It should be noted, Respondent agreed to submit to a polygraph, but the investigators did not follow through.

In February of 2021, after being formally charged, Respondent expressed his condolences to Boever's family and his appreciation for the legal system. On August 26, 2021, Respondent, through legal counsel Timothy Rensch and his power of attorney, entered no contest pleas to two (2) class two misdemeanors, those being: 1) using a cellphone while driving; and 2) leaving his lane of travel. The cell phone was not in use at the time of the collision. About a month later, Respondent entered into a confidential settlement agreement with Boever's widow without formal litigation ensuing. On the advice of counsel, during the criminal investigation and pendency of the civil suit, Respondent did not make public comments about the case.

South Dakota lawmakers called for a special session to be held on November 9, 2021, where they decided to initiate formal proceedings to impeach Respondent from the Office of the Attorney General. Pursuant to House Resolution 7001, a select committee was established to investigate whether articles of impeachment should issue against

Respondent. In its report released March 28, 2022, a majority of the House Select Committee recommended articles of impeachment not to issue.

This did not end the impeachment inquiry, however, as the matter went before the full House of Representatives (“House”). Respondent wrote the House a letter dated April 11, 2022. In his letter, Respondent again expresses his sympathies for Boever’s family, explaining his lack of public commentary and decision not to resign from office, and he outlined his reasons for respectfully requesting the House to adopt the House Select Committee’s recommendation to not impeach. By a slim margin, the House voted to issue two Articles of Impeachment against Respondent. The South Dakota Senate subsequently conducted a trial on June 21, 2022, in which Respondent was convicted and removed from office. Months following the impeachment, a complaint was filed initiating these disciplinary proceedings, the procedure for which is described above in the Statement of the Case.

### **STANDARD OF REVIEW**

This Court gives careful consideration to the findings of the Referee because the Referee had the advantage of seeing and hearing the [witness.] *In re Frauenshuh*, 2023 S.D. 18, ¶ 18, 989 N.W.2d 541, 549 (internal quotation omitted). A Referee’s findings will not be disturbed when supported by the evidence. *Id.* However, the Court gives no particular deference to the Referee’s recommended sanction as the final determination for the appropriate discipline of a member of the State Bar rests firmly with the wisdom of this Court. *Id.*

### **DISCIPLINARY GOALS**

The purpose of the attorney disciplinary process is not to punish the attorney. Two of its goals are: 1) the protection of the public from further fraudulent, unethical or incompetent activities involving this attorney; and 2) the preservation of the image and integrity of the attorneys, the bar association and the legal profession as a whole. A third goal is to deter like conduct by other attorneys. The real and vital issue to be determined is whether or not the accused, from the whole evidence as submitted, is a fit and proper person to be permitted to continue in the practice of law.

*In re Discipline of Swier*, 2020 S.D. 7, ¶ 57, 939 N.W.2d 855, 868 (internal citations and quotations omitted).

### ARGUMENT

**I. The Referee properly concluded that Respondent did not violate Rules 8.4 (b), (c), and (d).**

According to the Rules, codified at SDCL § 16-18-A,

It is professional misconduct for a lawyer to:... (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonestly, fraud, deceit or misrepresentation; [or] (d) engage in conduct that is prejudicial to the administration of justice[.]

The Referee concluded that there is no evidence that Respondent engaged in professional misconduct while acting within his capacity as an attorney. To the contrary, the evidence shows that Respondent acted in good moral character exuding "qualities of honesty, candor, trustworthiness, diligence, reliability, observance of fiduciary and financial responsibility, and respect for the rights of others and for the judicial process" as mandated by SDCL § 16-16-2.

Specifically, these qualities were evident when Respondent voluntarily cooperated in the extensive criminal investigation that ensued from the September 12, 2020, incident

before entering no contest pleas to two Class 2 misdemeanors. There were no allegations Respondent lied to law enforcement or otherwise obstructed or improperly influenced this investigation. He took civil responsibility for the wrongful death of Joe Boever by entering into a confidential settlement agreement with Boever's widow shortly after the conclusion of the criminal case. Furthermore, Respondent respected the impeachment process, including the investigation by the House Select Committee and Senate trial.

The Referee found,

Upon a full review of the record as provided, this Referee cannot say with any confidence Ravensborg was dishonest, misleading, uncooperative, disrespectful or otherwise conducting himself in a manner not befitting of an attorney. This was an extremely unfortunate fatal automobile/pedestrian accident. Ravensborg's failure to resign from an elected position, show "sufficient" expressions of sympathy or condolences to the victim's family, acknowledge publicly culpability, etc., are not standards upon which to administer attorney discipline. A review of the videos show Ravensborg remorseful for what happened. He discusses the difficult position he felt he was in trying to reach out to the Boever family.

RD p. 9.

Any claim that Respondent was dishonest, deceitful, misleading, unsympathetic, or disrespectful towards others is merely speculation, guess, conjecture, and based upon the perception of others. Moreover, "[A]ll of this 'perceived' conduct is of Ravensborg the person who happens to be an attorney, and not Ravensborg the practicing attorney." RD p. 9. The public, bar association, and legal profession needs no further protection. Since the evidence supports the Referee's findings, Respondent respectfully requests this Court adopt the Referee's findings and conclusions concerning the alleged violations of Rule 8.4 (b), (c), and (d).

**II. The Referee erred in concluding that Respondent violated Rule 8.4 (e).**



Rule 8.4 (e) makes it professional misconduct for a lawyer to “state or imply an ability to influence improperly a government agency or official[.]” In support of its conclusion that Respondent violated Rule 8.4(e), the Referee reviewed video and audio recordings of three separate interactions between Respondent and law enforcement: 1) a traffic stop that occurred in Nebraska in June 2019; 2) a traffic stop that occurred in Iowa in July 2020; and 3) the 911 call Respondent made on September 12, 2020. RD 13. In all three interactions, Respondent stated his title as Attorney General. RD p. 13. While admitting that any favorable treatment Respondent gained from stating his title would be “speculation” and “unclear,” the Referee still concluded that the ongoing pattern would only be to gain favorable treatment in violation of 8.4(e). RD p. 14. Respondent respectfully disagrees with the Referee’s conclusion and respectfully submits such speculation should not form the basis for discipline.

This Court suspended attorney Bert Olson from the practice of law for a period of three years for a violation of Rule 8.4 (e), among others. *In re Discipline of Olson*, 537 N.W.2d 370, 374 (S.D. 1995). In 1992, Olson was elected state’s attorney of Deuel County and assumed that position in January of 1993. *Id.* at 371. While holding this office, Olson was found to have been growing marijuana with a friend. *Id.* On one box of marijuana plants, Olson wrote “immunity granted,” and signed it. *Id.* This act was evidence “that Olson, jokingly or otherwise, attempted to use his office to ‘grant immunity’” in violation of Rule 8.4 (e). *Id.*

There is no speculation or uncertainty about the favorable treatment Olson, as state’s attorney, attempted to gain by writing “immunity granted,” along with his

signature, on a box of marijuana plants. The same certainty, as the Referee agreed, cannot be inferred or implied by Respondent's acts of stating his title to law enforcement.

Respondent explained under oath, and it is otherwise apparent in the videos displaying the traffic stops, the reasons he stated his title. While stopped in Nebraska, Respondent explained the registration on the state-issued vehicle and his purpose for travel with the vehicle outside of South Dakota. RH p. 61. In the Iowa encounter, Respondent answered the officer's question if Respondent was affiliated with law enforcement. And, with respect to the 911 call, Respondent was seeking assistance after the September 2020 accident. RH p. 59. The officers in Nebraska and Iowa did issue Respondent warning citations. However, there is no evidence that Respondent's references to his title had any causal relationship to the independent decisions of the officers to issue a warning.

One of the Referee's main findings in not concluding that Respondent violated Rules 8.4 (b), (c), and (d) is similarly applicable to Rule 8.4 (e)— A finding of misconduct should not rest upon speculation. Respondent remains a fit and proper person to be permitted to continue in the practice of law.

### **CONCLUSION**

Because there is no evidence to support a violation of Rules 8.4 (b), (c), and (d), this Court should adopt the Referee's findings and recommendation. However, this Court should disturb the Referee's conclusion and accompanying findings that Respondent violated Rule 8.4 (e) as the evidence does not support a violation thereof, and thus, no discipline is appropriate. If the Court finds a violation of Rule 8.4 (e), Respondent does not oppose the Referee's conclusion to issue a public reprimand without suspension from the practice of law.

Dated this 1st day of February, 2024.



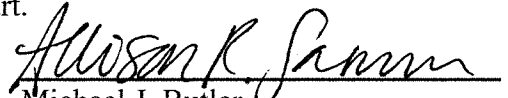
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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Respondent's Brief complies with the Court's Order for Briefing, said brief not exceeding ten pages in length and filed on or before February 1, 2024, to the Clerk of the Supreme Court.

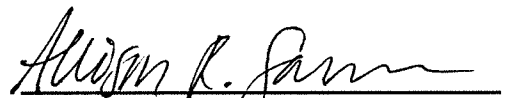


Michael J. Butler  
Allison R. Sanner

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of February, 2024, I have electronically filed the foregoing Respondent's Brief using the Odyssey File & Serve system which will send notification of such filing to the following:

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