

**STATE OF MAINE**

Supreme Judicial Court

Docket No. BAR-13-10

**BOARD OF OVERSEERS OF THE  
BAR**

Plaintiff

**JUDGMENT  
M. Bar R. 7.2(b)**

vs.

**MARY N. KELLETT, ESQ.**  
of Ellsworth, Maine  
Me. Bar #007576

Defendant

This disciplinary matter was initiated with the Court by the Board of Overseers of the Bar through the filing of an information dated April 24, 2013, pursuant to Maine Bar Rule 7.2(b)(1). Mary N. Kellett's Answer was submitted on May 20, 2013.

After appropriate notice, the Court conducted a disciplinary proceeding on July 15, 2013. The Board of Overseers of the Bar was represented by Bar Counsel J. Scott Davis, and Kellett appeared with her attorneys, Assistant Attorneys General Ronald W. Lupton and William R. Fisher. The Board's complainant, Vladek Filler, was also in attendance. He explained to the Court how ADA

Kellett's actions had affected him and presented his response to the parties' proposed sanction Order.

In this proceeding, the parties' counsel had conferred and submitted an agreed-upon detailed proposed Order for the Court's review and action. That proposed stipulated Order set forth the factual background and misconduct by Kellett. After reviewing the proposed Order, and after hearing from Filler, from Kellett, and from counsel, the Court issues the following Order:

### **FINDINGS**

1. In April of 2007, Vladek Filler was arrested and charged with one count of Class A gross sexual assault against his wife, Ligia Filler (Ligia). That crime was alleged to have occurred on April 6, 2007.
2. On August 7, 2007, Vladek Filler was indicted by a Hancock County Grand Jury for five counts of Gross Sexual Assault (Class A) and two counts of Assault (Class D), all alleged to have been committed by him against Ligia. Filler pleaded "not guilty" to all of the charges at his arraignment later in August.
3. Defendant, Mary N. Kellett, Esq. of Ellsworth, County of Hancock, Maine, prosecuted the State's case against Filler. She is now and was at all times relevant hereto, an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules.

4. Kellett was admitted to the Maine bar in October 1992 and is an experienced criminal prosecutor, having for more than 10 years served as an Assistant District Attorney (ADA) for Prosecutorial District VII, which covers Hancock and Washington Counties in Maine.
5. Attorney Daniel Pileggi represented Filler on those criminal matters.

**A. PRE-TRIAL MATTERS**

6. ADA Kellett's office provided Attorney Pileggi with the initial discovery materials on or about August 7, 2007. The standard discovery form(s) used by Prosecutorial District VII in that matter included the following form language:

[ ] Original/Color Photos available for your inspection upon request through this office.

[ ] Video/ Audio Tapes/CD/DVD available for your viewing/listening upon request through this office.

\*\*\*PLEASE NOTIFY THE LAW ENFORCEMENT AGENCY IF YOU WOULD LIKE TO OBTAIN YOUR OWN COPY OF ANY ORIGINAL/COLOR PHOTOS, VIDEO/AUDIOTAPES/CDS/DVDS AT YOUR EXPENSE. \*\*\*

7. On September 6, 2007, Attorney Pileggi made a detailed and explicit request for supplemental discovery pursuant to M.R. Crim. P. 16(a)(b) in a letter to ADA Kellett, including *inter alia* a specific demand for:

Ligia Filler's statement to the Ellsworth Police Department regarding interaction between Mr. Filler and Ellsworth American Editor Steven

Fay. The interview and written statement apparently were provided to Ellsworth Police on or about April 11, 2007.

8. ADA Kellett did not provide the requested statement to the defense at any time in September of 2007.
9. In a letter dated October 5, 2007, Attorney Pileggi reminded ADA Kellett of his earlier requests of September 6th, and renewed those discovery requests.
10. The October 5, 2007 letter reiterating a discovery request also included an additional specific request for:

police reports from Washington County Deputy Sheriff Travis Willey and Lieutenant Denbow relating to an incident with Ligia Fuller on April 24, 2007. The incident is directly related to her allegations against Mr. Filler.
11. On October 12, 2007, after ADA Kellett had again not provided the requested discovery, Attorney Pileggi filed a detailed Motion for Discovery with the court.<sup>1</sup>
12. At no time did ADA Kellett file an objection to the discovery motion with the court.
13. Despite two written requests and the filing of a formal discovery motion, and without filing an objection to the motion, ADA Kellett still did not provide Attorney Pileggi with any materials from the Ellsworth Police Department relating to the April 11, 2007 incident.

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<sup>1</sup> For reasons that are not clear, that motion was not acted upon by the court for nearly eight months.

14. On October 24, 2007, however, ADA Kellett did provide Attorney Pileggi with a five-page report from Washington County Deputy Sheriff Travis Willey concerning his involvement with Ligia Filler on April 24, 2007.<sup>2</sup> ADA Kellett's office had received the report five months earlier, on May 29, 2007.
15. Although Deputy Willey's report included a "CAD Event Detail Page," indicating that Ligia Filler had called 911 "several times, claiming rape by her husband," ADA Kellett did not include a 911 audiotape with the report when she provided it to Attorney Pileggi in October 2007.
16. On October 31, 2007, Attorney Pileggi wrote to ADA Kellett acknowledging that he had received the report concerning Ligia's April 24, 2007 interaction with the Washington County Sheriff's Department. He then specifically requested the "tape or log of the 911 call, along with whatever photographs, audio or videotapes were created at the time." In that letter, he specifically reminded ADA Kellett, "Deputy Willey's report references those items."
17. On November 2, 2007 ADA Kellett called Attorney Pileggi's office and told a staff person there that if Attorney Pileggi wished to obtain the requested

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<sup>2</sup> On the same date, ADA Kellett also provided Attorney Pileggi with a forensic synopsis from the Maine State Police Computer Crimes Unit dated September 28, 2007, that had been requested in Attorney Pileggi's September 6 letter.

photos and recordings he could contact the law enforcement agencies that had them in their possession. This contact was memorialized in a note she made in the margin of Attorney Pileggi's October 31, 2007 letter.

18. Filler's trial was originally scheduled to be heard in June of 2008.
19. In May of 2008, Attorney Pileggi issued several subpoenas *duces tecum* to various law enforcement and public officials. Among those was a subpoena served on Ellsworth Police Officer Chad Wilmot on May 15, 2008.
20. That subpoena required Officer Wilmot to appear at the Hancock County Superior Court on June 9, 2008 in the matter of *State of Maine v. Vladek Filler* and to bring:

1. Any and all reports, photographs, recorded interviews, or other investigative materials related to an April 11 or 12, 2007 dispute involving Vladek Filler and Stephen Ray of *The Ellsworth American*. The request includes, but is not limited to, records of the Ellsworth Police Department interviews with Ligia Filler.

2. Any and all Ellsworth Police Department investigative records made between April 2007 and May 15, 2008 relating to conduct by Ligia Filler.

21. On May 16, 2008, Officer Wilmot informed ADA Kellett that he was going to provide the subpoenaed materials to Attorney Pileggi before the scheduled trial date of June 9, 2008.
22. At that time, without reviewing the materials Officer Wilmot had prepared for Attorney Pileggi to ascertain what was contained within the reports, or

whether there was any exculpatory material included with the reports, ADA Kellett told Officer Wilmot not to provide those materials to Attorney Pileggi before the court hearing date. She issued that instruction because she did not agree that the report of Officer Wilmot should be provided and because there was a discovery motion pending before the court concerning the production of the materials relating to the Ellsworth American incident.

23. Following that instruction from ADA Kellett, Officer Wilmot did not provide Attorney Pileggi with any documents concerning the April 11, 2007, incident.
24. Filler's case was subsequently removed from the June 9, 2008, trial list. As a result, Officer Wilmot was released from Attorney Pileggi's subpoena, and Attorney Pileggi did not receive the complete set of requested reports or written statements from Officer Wilmot.
25. In May or June 2008, ADA Kellett spoke to Deputy Willey of the WCSO and requested that he provide her office with the recordings associated with the April 24, 2007, incident.
26. On June 3, 2008, the court (*Anderson, J.*) held a hearing on Filler's motion for discovery. During the hearing, ADA Kellett informed the court that it was the position of her office that Officer Wilmot's report was subject to the provisions of 16 M.R.S. § 614 as a confidential criminal investigative

document, and that “the court would need to make a decision before we release that information . . . .”

27. On June 3, 2008, after hearing argument of counsel and conducting an *in camera* inspection of the portion of Officer Wilmot’s police report that had been provided to the court by ADA Kellett, the court (*Anderson, J.*) ruled: “I’m going to grant the request and order that it be turned over.” The court then issued a handwritten order concerning the motion for discovery. That order specifically required the State to provide all “reports concerning #1 and #3” to Attorney Pileggi “including any audio or videotapes that may exist.” Item “#3” stated as follows:

3. Ellsworth Police Department investigative reports: The reports include interviews with defendant and the alleged victim, and relating to an altercation between the defendant and a representative of a local newspaper. Upon information and belief, Ms. Filler made numerous statements bearing upon Mr. Filler's physical limitations, and his lack of capacity to commit the acts for which he is charged in this action.

28. In response to the court’s discovery order, ADA Kellett provided Attorney Pileggi only with the same three-page narrative from the report of Officer Wilmot concerning the Ellsworth Police Department's investigation of the April 11, 2007, incident that the court had reviewed *in camera*. In addition to that three-page report by the officer, the investigative reports contained a hand-written statement by Ligia and statements from others involved in the



incident on April 11, 2007. All of those statements were “scanned” into the report.<sup>3</sup> Although the scanned statements should have been turned over pursuant to the court’s order, ADA Kellett did not obtain or review those documents and never provided them to Attorney Pileggi.

29. The June 3, 2008, court order granting the discovery motion also specifically ordered the State to provide Attorney Pileggi with item #1, which stated as follows:

1. Washington County Sheriff’s incident reports dated April 24, 2007. Deputy Sheriff Travis Willey and Lieutenant Denbow interviewed the alleged victim, Ligia Filler after intervening for a “crisis evaluation,” in which Ms. Filler chanted about “cutting up” the defendant while laughing and crying hysterically, swearing and kicking a door. It was reported that Ms. Filler made various statements about the facts giving rise to the charges in this matter.

30. At the motion hearing, ADA Kellett assured the court and Attorney Pileggi that “we have requested [the recording associated with the April 24, 2007, events] and it’s in the process of being produced.”

31. On July 16, 2008, Attorney Pileggi wrote ADA Kellett another letter, reminding her that he was still “awaiting copies of audio and visual recordings referenced in the Washington County Sheriff’s Department’s reports, and addressed by Justice Anderson’s recent order.”

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<sup>3</sup> There were no recordings, either 911 or investigative, associated with the April 11, 2007, incident.

32. On August 1, 2008, ADA Kellett requested that someone from her office (Victim Witness Advocate Ken Mitchell) contact Deputy Willey to ask about the existence of the materials ordered by the court nearly two months earlier. She also requested that Detective Stephan McFarland contact Deputy Willey in an effort to get materials including recordings from the WCSO. McFarland was a detective in the District Attorney's office who had been investigating the Filler case.
33. On August 25, 2008, Deputy Willey provided to the District Attorney's office an audio CD of his April 24, 2007 interview with Ligia Filler, but did not include the videotape of that interview, nor any of the Washington County 911 recordings.
34. As of September 3, 2008, despite his repeated requests, Attorney Pileggi had still not received the Washington County recording ordered by the court three months earlier. On that date, he emailed ADA Kellett advising her that he would seek a "contempt finding" or "discovery sanctions" unless she could find a way to provide him with the recordings ordered by the court. He acknowledged in his communication that Kellett's office had "sought compliance from the sheriff's office . . ." and noted "the officers' failure to supply tapes/cds."

35. On September 3, 2008, ADA Kellett informed Attorney Pileggi that she had received an audio CD from Deputy Willey, and she provided him with a copy on September 8, 2008. She also informed him that the video version could not be copied, and that “it doesn't really show anything.” She advised Attorney Pileggi that he could make arrangements to view the video at the WCSO because she believed it could not be copied. On September 15, 2008, Attorney Pileggi emailed a member of his staff to make the arrangements with Deputy Willey to watch the video.<sup>4</sup>
36. There was no 911 “log” associated with the calls referenced in the Washington County Sheriff’s Office (WCSO) report of the April 24, 2007, incident. The “CAD Event Detail Page” that had been supplied to Attorney Pileggi on October 24, 2007, was the only log regarding those calls created by law enforcement.
37. There was, however, a recording of the 911 calls associated with that incident. ADA Kellett never provided that recording to Attorney Pileggi

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<sup>4</sup> At Filler’s second trial, Deputy Willey testified that his cruiser was equipped with a “prehistoric or an ancient VHS video cruiser cam that records just to the front.” He further testified that “any video . . . ended up being recycled because the video was pointed up the road away from the incident. So there was audio only on the video.” The deputy used a digital recorder to create an audio recording of the events of April 24, 2007.

because ADA Kellett's office never obtained those materials from the Washington County Sheriff's Office.

## **B. TRIAL EVENTS**

### **References to custodial dispute between Filler and his wife**

38. Filler's first trial began in January of 2009. His primary defense to the criminal charges was his assertion that the complaining witness, his wife Ligia, had fabricated the allegations in order to gain an advantage in a dispute regarding the custody of their children.
39. Filler's defense theory was supported by the fact that Ligia had instituted a divorce proceeding and had sought protective orders on behalf of herself and her children soon after she made her allegations of Filler's sexual assault(s).
40. At all times relevant, ADA Kellett was aware of the Fillers' civil court proceedings, and of Filler's theory of criminal defense.
41. Because Ligia was the State's sole witness claiming any direct information about Filler's alleged criminal conduct, her credibility was a key issue in the trial.
42. During the trial, the court (*Cuddy, J.*) sustained ADA Kellett's objection to Attorney Pileggi's attempts to cross-examine Ligia about her various steps in court to gain custody of the Fillers' two minor sons. As a result of the trial court's ruling on ADA Kellett's objection, Attorney Pileggi was not

allowed to introduce evidence of the lawsuits to impeach Ligia's credibility or to suggest to the jury that she had fabricated the sexual assault allegations against Filler to gain advantage in a parental rights dispute.

43. After having successfully objected to the admission of any evidence concerning the Fillers' divorce or custody proceedings, ADA Kellett made improper and prejudicial comments in her rebuttal closing argument to the jury. At various stages of her rebuttal closing argument to the jury she said:

I would ask you where the evidence is to back up his (Attorney Pileggi's) statement that he stated in both his opening and his closing that this is a marriage that was ending, this is a child custody, this was a first step in a child custody fight. Where is one piece of evidence about that?

The suggestion that Ligia Filler has made this all up just for the purpose of getting ahead in the child custody, where is the evidence of that?

Custody dispute? Where is that?

44. Attorney Pileggi immediately moved for a mistrial at the conclusion of ADA Kellett's rebuttal argument. The trial court denied the motion.

#### **Other misstatements during trial**

45. Filler elected to not testify, and the trial court's jury instructions specifically directed the jury to draw no inferences at all about that decision.
46. During her initial closing argument, ADA Kellett told the jury that, "there has been no evidence presented to you as the jury that would suggest that a

sexual act hadn't occurred on those dates.” Attorney Pileggi moved for a mistrial at the conclusion of ADA Kellett’s closing argument, explaining that she had shifted the burden of proof to the defense. The trial court denied the motion for mistrial.

47. Immediately upon starting her rebuttal argument ADA Kellett attempted to ameliorate her error by stating:

There may be one thing that Mr. Pileggi and I, I think, both can agree on, and that is that the State agrees wholeheartedly that that is the law, and I would emphasize that to you: that the defendant has absolutely no duty to testify and the defendant has no duty to call any evidence -- or present any evidence or present witnesses. But what I’m asking you to do is not to impose that burden on him, but just look at what the evidence is that has been presented to you, because it’s the State’s duty to present evidence, and that is what the State has done, and you have that evidence and I’m asking you to consider that evidence.

48. On January 15, 2009, Filler was convicted by the jury of one count of Gross Sexual Assault (Class A) and two counts of Assault (Class D). He was acquitted on the remaining four felony counts.
49. Filler’s attorney filed a motion for a new trial based upon his assertions that actions by ADA Kellett, including but not limited to those noted above, had prevented Filler from receiving a fair trial.

50. On March 2, 2009, the trial court granted Filler a new trial based on its determination that ADA Kellett's rebuttal closing argument had been improper and resulted in an unfair trial.
51. ADA Kellett sought and received approval from the Office of the Attorney General to appeal the trial court's decision to the Maine Supreme Judicial Court.
52. In its September 9, 2010, decision, the Maine Supreme Judicial Court (sitting as the Law Court) ruled that ADA Kellett's statements in her rebuttal closing argument created a high likelihood that Filler was unfairly prejudiced. The Court found that the trial court had correctly concluded that the interests of justice required a new trial, and thereby affirmed the trial court's decision granting Filler a new trial on the three counts that had resulted in guilty verdicts. (*See State v. Filler*, 2010 ME 90, ¶¶ 21-22, 3 A.3d 365).<sup>5</sup>

### **C. POST-TRIAL EVENTS**

53. In June of 2009, months after the conclusion of his jury trial (while his criminal appeal was pending before the Maine Law Court), Filler personally

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<sup>5</sup> After his second trial in May of 2011, Filler was acquitted of the felony sexual assault and one of the misdemeanor assault charges. He was convicted of one misdemeanor assault. That conviction was affirmed on appeal in a Memorandum of Decision dated July 3, 2012.

requested the reports of the April 11, 2007, incident directly from the Ellsworth police Department.

54. In response to that request, Filler received the complete investigative file from Ellsworth Police Chief John DeLeo containing written witness statements, including a potentially exculpatory written statement from Ligia Filler. These are the same records that ADA Kellett failed to provide to Attorney Pileggi at any time before trial despite the court's order of June 3, 2008, and Attorney Pileggi's earlier specific discovery request letter of September 6, 2007.
55. In May of 2009, Filler personally requested the April 24, 2007, 911 recording and other records from the Washington County Regional Communications Center. On May 14, 2009, he was provided with a copy of the 911 recording. That recording had also never been provided by ADA Kellett to Attorney Pileggi.
56. On December 28, 2010, Filler filed a grievance complaint with the Board of Overseers of the Bar against ADA Kellett alleging prosecutorial misconduct in the course of her prosecution of various serious criminal charges against him.
57. On September 11, 2011, a Panel of the Grievance Commission conducted a review of Filler's complaint and Bar Counsel's investigation thereof. As a



result of that review, that Panel found probable cause to believe ADA Kellett had committed misconduct serious enough that public discipline should be issued after hearing, and directed Bar Counsel to file formal disciplinary proceedings against her under M. Bar. R. 7.1(e).

58. On October 22 and 23, 2012, a different Panel of the Grievance Commission conducted a disciplinary proceeding open to the public under M. Bar. R. 7.1(e)(2). From that hearing, the Panel specifically found that ADA Kellett had committed violations of several provisions of the then-applicable Maine Code of Professional Responsibility.
59. The Panel further found probable cause for a disciplinary sanction of suspension to be issued and thereby directed Bar Counsel to commence a *de novo* attorney disciplinary action before the Court pursuant to M. Bar R. 7.2(b).
60. At the hearing held on July 15, 2013, ADA Kellett agreed and admitted that her conduct in the Filler criminal prosecution was in violation of the following then applicable Maine Bar Rules: 3.1(a); 3.2(f)(4); 3.6(a); 3.7(e)(1)(i); and 3.7(i)(2).
61. ADA Kellett admitted that, in her closing arguments, she referred to the lack of evidence about Ligia's attempts to best Filler in the context of their disputes over child custody issues, after asking for and receiving an order

from the trial court that prevented Filler from presenting any evidence on those issues. She also admits that she made statements that could have been understood by the jury to suggest that Filler had some burden of disproving the State's case. ADA Kellett acknowledges that her arguments were improper.

62. She also admitted that, despite her obligations as a prosecutor, and despite a court order, she failed to provide required discovery to Filler and his attorney during the seventeen months after the indictment but before trial began.

## **CONCLUSIONS**

Based upon the above findings, as well as the parties' presentations to the Court, the Court makes the following conclusions:

1. ADA Kellett has now acknowledged that she committed multiple errors in the way she handled Filler's trial:

She admits that her rebuttal argument in Filler's first trial unfairly prejudiced the defendant and resulted in the granting of a new trial.

She admits that, to the extent certain statements in her closing argument to the jury might suggest that Filler had any burden of proof, her statements were improper.

In so doing, ADA Kellett admits that she violated the rights of the defendant, and violated the following then-applicable Maine Bar Rules: 3.1(a) (conduct

unworthy of an attorney); 3.2(f)(4) (conduct prejudicial to the administration of justice); 3.6(a) (failure to employ reasonable care and skill and apply best judgment in the performance of professional services); 3.7(e)(1)(i) (failing to employ before the jury such means only as are consistent with the truth); and 3.7(i)(2) (failing to comply with a public prosecutor's duty to make timely disclosure to the defense of exculpatory evidence).

2. ADA Kellett has also admitted that she violated the discovery obligations of a prosecutor under M.R. Crim. P. 16, Bar Rule 3.7(i)(2) and the Superior Court's June 3, 2008, discovery order. ADA Kellett acknowledges that she failed to act with reasonable diligence to provide both automatic and requested discovery in the form of a written statement by the complaining witness, a recording of a 911 call made by the complaining witness, and a recording made at the time of an encounter between the complaining witness and a law enforcement agency. Although ADA Kellett did not intentionally attempt to violate the then-existing Bar Rules or the rights of defendant Filler, she admits that her actions did violate his rights and did constitute violations of then-applicable Maine Bar Rules 3.1(a); 3.2(f)(4); and 3.7(i)(2).
3. ADA Kellett has appeared before this Court and acknowledged her errors in judgment and her failure to comply with her responsibilities as a prosecutor.

She has accepted responsibility for her actions, and expressed her contrition for her misconduct.

4. Bar Counsel has confirmed to the Court that ADA Kellett has no prior disciplinary or other sanction record on file with the Board of Overseers of the Bar.
5. In the three and one-half years since the conclusion of ADA Kellett's involvement with the *Filler* prosecution, both ADA Kellett and her office have taken steps to ensure that such misconduct will not recur. She has attended the Maine Prosecutors Association presentation on the duty of the prosecution to supply exculpatory and impeachment evidence to the defense as set forth in cases such as *Brady v. Maryland* 373 U. S. 83 (1963) and *Giglio v. United States* 405 U. S. 150 (1972). She has re-read Justice Robert Clifford's article on *Identifying and Preventing Improper Prosecutorial Comment in Closing Argument* 51 Me. L. Rev. 241 (1991) and other literature on that topic and has also discussed proper closing argument with other prosecutors and her supervisor. She routinely reads new case law bearing on her duties as a prosecutor including cases analyzing discovery and closing argument issues.
6. ADA Kellett's office has stopped using the discovery form it used at the time of the *Filler* prosecution that directed defense attorneys to request

materials directly from law enforcement agencies when they sought discovery. Office staff have been instructed that in complying with discovery requested by the defense they are to forward the text of the actual request to the appropriate person at the involved law enforcement agency so that the officer knows precisely what has been requested rather than simply making an oral request describing the materials.

7. ADA Kellett now routinely reviews police officer's case files with the involved officer(s) to ensure that all materials required by the discovery rules are supplied to the defense. She also obtains written confirmation from officers who inform her that certain materials requested do not exist. She has adopted a policy of using written communications with defense counsel to document discussions regarding discovery, especially in those instances when counsel has informed her that certain materials previously requested are no longer sought by the defense. Additionally, she communicates directly with defense counsel to ensure that they have received the materials they requested in discovery and have received those items that the Criminal Rules require be made automatically available.

### **SANCTION**

This case is the first disciplinary proceeding ever filed with the Court by the Overseers of the Bar against a member of Maine's prosecutorial bar that is based

upon the prosecutor's representation of the State. In reviewing the actions of ADA Kellett, the Court has considered the special duty that a prosecutor owes to the bench, to opposing counsel, to criminal defendants, and to the people of Maine. A prosecutor must always act in an effort to do justice rather than simply to convict. That is because prosecutors do not represent individual victims, nor should they work towards any particular outcome other than one that involves the creation of a fair trial process and outcome. Over seventy-five years ago, the United States Supreme Court described a prosecutor as:

the representative . . . of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

*Berger v. United States*, 295 U.S. 78, 88 (1935). The Law Court has endorsed this vision of a prosecutor's role, *see, e.g., State v. Young*, 2000 ME 144, ¶ 6, 755 A.2d 547, 548 ("As we have noted previously, prosecutors are held to a higher standard regarding their conduct during trial because they represent the State . . . and because they have an obligation to ensure that justice is done, as opposed to merely

ensuring that a conviction is secured.”), and it is because ADA Kellett failed to meet this standard that she must be sanctioned.

However, the Court is also mindful that the purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, have demonstrated that they are unable to, or otherwise have failed to, properly discharge their professional duties. *See* M. Bar. R. 2(a). In this proceeding, ADA Kellett has admitted that she did, in fact, violate the Bar Rules in effect at the time of her actions, she has apologized, and she has expressed her remorse for her actions. She has no history of other misconduct, and the Court is satisfied that through these proceedings and through the actions and study she has undertaken since the Filler case, ADA Kellett has a much more robust understanding of the grave obligations and responsibilities attached to the prosecutorial role, and that she is not likely to commit misconduct in the future.

Accordingly, it is hereby ORDERED as follows:

1. MARY N. KELLETT, ESQ. is hereby suspended from the practice of law in the State of Maine for a period of THIRTY DAYS;
2. The actual THIRTY DAY period of suspension is hereby suspended for a period of not less than SIX MONTHS, nor more than ONE YEAR on condition that ADA Kellett completes SIX HOURS of continuing legal

education (CLE). At least one hour of this education must concern prosecutorial ethical or professional responsibility issues, and the remaining hours must concern opening statements, closing arguments, and discovery. All of the hours shall be pre-approved by Bar Counsel. These hours shall be in addition to the annual CLE credit hours required by Maine Bar Rule 12(a)(1). Any cost associated with these additional CLE credit hours must be borne by ADA Kellett alone; and

3. Upon certification to the Court by Bar Counsel that ADA Kellett has completed the additional required CLE, the period of suspension, and underlying suspension from the practice of law, shall terminate without further order of the Court.

Dated: July 16, 2013

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Ellen A. Gorman, Associate Justice  
Maine Supreme Judicial Court