

E-FILED CNMI SUPERIOR COURT

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Case Number: 23-0243-CV

IN THE SUPERIOR COURT FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF SHELLI LATRICE NEAL,

Respondent.

CIVIL CASE NO. 23-0243

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ORDER DISMISSING THE
DISCIPLINARY COMPLAINT AS THE
CNMI BAR ASSOCIATION
DISCIPLINARY COMMITTEE ARE
NOT DULY ELECTED MEMBERS,
THEREFORE THE DISCIPLINARY
COMMITTEE MEMBERS LACK
AUTHORITY TO INVESTIGATE OR
ACT ON DISCIPLINARY
COMPLAINTS

I. INTRODUCTION

This matter came before the Court on December 23, 2024¹, in Courtroom 220, on Respondent Shelli Neal's Motion to Dismiss. Respondent Shelli Latrice Neal ("Neal" or "Respondent") was present and represented by Attorney Michael Dotts ("Dotts"). The Prosecuting Counsel Jose Mafnas ("Prosecuting Counsel" or "Mafnas") was also present. After considering the filings, declarations, stipulations, admitted exhibits, and arguments of counsels, the Court hereby issues this Order.

¹ The December 23, 2024 motion hearing simultaneously heard both disciplinary cases *In the Matter of Shelli Latrice Neal*, CV 23-0243 and *In the Matter of Robert Harrison Myers, Jr*, CV 24-0161 as both disciplinary cases raised the same issues, and both Neal and Myers were represented by Attorney Dotts.

II. BACKGROUND AND STIPULATED FACTS

- Neal represented Henry Liang ("Liang"). On December 6, 2022, Liang filed a
 complaint against Neal with the CNMI Bar Association Disciplinary Committee
 ("Disciplinary Committee"). (See Respondent's Exhibit A²).
- Attorney Timothy Bellas ("Bellas") was a member of the Disciplinary Committee.
 Bellas was assigned to investigate Liang's complaint. (See Respondent's Collective Exhibit B1-B2).
- On July 25, 2023, Bellas sent Neal an email with an attached letter dated July 20, 2023. The letter required Neal to respond by August 4, 2023. (See Respondent's Collective Exhibit C1-C2).
- 4. On August 4, 2023, Neal read the email from Bellas. Neal requested more time to respond. (See Respondent's Collective Exhibit C1-C2).
- 5. On August 5, 2023, Bellas granted Neal an extension of 20 days to respond. (See Respondent's Collective Exhibit C1-C2).
- 6. Bellas did not receive a response by August 25, 2023 or any time after that. On October 17, 2023, Neal requested another extension from Bellas. Bellas informed Neal that the matter had already been referred for prosecution. (See Respondent's Collective Exhibit C1-C2).
- 7. At the time when the Disciplinary Committee made its decision to refer the complaint for prosecution, the members of the Disciplinary Committee were Steven Pixley, Catherine Cachero, Vina Seelam, Bruce Mailman, and Timothy Bellas (the "Disciplinary Committee Members"). (See Respondent's Collective Exhibit B1-B2 Letterhead).

² This exhibit is also submitted as prosecuting counsels' Exhibit P

- 8. When the Disciplinary Committee Members were elected to the Disciplinary Committee, there were 166 active members of the Northern Marianas Bar Association ("CNMI Bar Association") in 2022, and 154 active members of the CNMI Bar Association in 2023. (See Respondent's Exhibit D).
- 9. The following is a summary of the election results of the Disciplinary Committee Members: Name, Date Elected, Length of Term, Number of Affirmative Votes Received, and Type of Election.
 - a. Steven Pixley. Elected on February 24, 2022. 2-year term. Received 13 affirmative votes. General Election.
 - b. Catherine Cachero. Elected on February 24, 2022. 2-year term. Received 13 affirmative votes. General Election
 - c. Vina Seelam. Elected on February 23, 2023. 2-year term. Received 17 affirmative votes. General Election
 - d. Timothy Bellas. Elected on February 23, 2023. 2-year term. Received 17 affirmative votes. General Election
 - e. Bruce Mailman. Elected on February 23, 2023. 2-year term. Received 17 affirmative votes. General Election (See Respondent's Exhibit E1-E5).
- 10. The CNMI Bar Association did not record whether those voting were active members or temporary members.
- 11. Fewer than one-half of the total active members of the CNMI Bar Association voted for the above Disciplinary Committee Members in those elections, as most of the active members of the CNMI Bar Association did not cast ballots. However, the Disciplinary Committee Members were elected by the majority of the votes cast. (See Respondent's Exhibit E1-E5).

- 12. The parties stipulated to the admission of the following exhibits and to waive objections as to authenticity and hearsay so as no witness needed to be called to provide a foundation for their admission.
 - a. Respondent's Exhibit A. Liang Letter to CNMI Bar Association.³
 - b. Respondent's Collective Exhibit B1-B2. Bellas Investigation Letter.
 - c. Respondent's Collective Exhibit C1-C2. Email Chain Between Bellas and Neal.
 - d. Respondent's Exhibit D. Deputy Clerk Email Regarding Number of Active CNMI Bar Members.
 - e. Respondent's Exhibit E1-E5. CNMI Bar Election Ballots and Results 2022 –
 2023.
- 13. The facts as stipulated to above are supported by the Exhibits identified above and Attorney Sean Frink's deposition given under the Rule 30(b)(6) representative of the CNMI Bar Association. However, Attorney Frink's deposition testimony is limited to the CNMI Bar Association's election results and not the acts of the Disciplinary Committee and/or Disciplinary Committee Member Bellas in Bellas' role as the appointed investigator. Counsels agreed not to dispute such facts.

III.FINDINGS OF FACT

All five Disciplinary Committee Members were elected by less than 20 affirmative votes by the members of the CNMI Bar Association. In 2022, there were 166 CNMI Bar Association members, and in 2023, there were 154 CNMI Bar Association members. The CNMI Bar Association did not record whether voting members were active members or temporary members.

³ This exhibit is also submitted as prosecuting counsels' Exhibit P

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- 2. On December 6, 2022, Neal's former client, Henry Liang submitted a complaint to the CNMI Bar Association.
- Liang's complaint states that Neal collected money on Liang's behalf but has not delivered that money to Liang nor given Liang an accounting of what was received despite Liang's repeated attempts to collect.
- 4. On July 25, 2023, Neal received notice via email of Liang's complaint against her and was given an opportunity to respond.
- Neal did not respond, despite being given an extension to response to the Liang's complaint.
- 6. Also, Neal did not remedy the accounting with her former client Liang after being notified of the complaint.
- On November 17, 2023, Prosecuting Counsel Mafnas filed the complaint for disciplinary action against Neal.
- 8. The complaint for disciplinary action alleges that Neal did not represent her client Liang with due diligence and failed to provide an accounting of the money received on Liang's behalf.
- 9. On December 20, 2023, Neal filed an answer.
- 10. On January 16, 2024, a status conference hearing was held.
- 11. On February 28, 2024, Prosecuting Counsel and Neal filed a stipulation regarding how to proceed with discovery.
- 12. On September 17, 2024, a status conference hearing was held. To avoid further delays, the Court set a deadline for the Parties to file motions, if any, on or before November 22, 2024.
- 13. On November 8, 2024, pursuant to Article IV, Section 9 of the NMI Constitution, the Chief Justice Alexandro C. Castro, upon request by the CNMI Bar Association's

Disciplinary Committee submitted to the Northern Marianas Commonwealth Legislature proposed rule changes to the NMI Rules of Attorney Discipline and Procedure. Among the proposed rule changes is one proposing to clarify that the committee members are elected by a majority of the votes cast rather than a majority of the CNMI Bar Association members.

- 14. On November 22, 2024, Neal filed a Rule 12(b)(1) Motion to Dismiss for lack of subject matter jurisdiction.
 - a. Neal argues that the Disciplinary Committee Members that recommended prosecution for disciplinary action against Neal were not properly elected, and the Court lacks subject matter jurisdiction to hear the case. Neal also argues that if the Disciplinary Committee Members are not properly elected, then the Disciplinary Committee lacks quorum to refer the disciplinary case against Neal by submitting the recommendation for prosecution to the Chief Justice of the CNMI Supreme Court. Also, Neal construes the disciplinary proceedings as quasi-criminal, and argues that any ambiguities in the disciplinary rules should be interpreted in the interest of Neal.
- 15. On December 6, 2024, Prosecuting Counsel Mafnas filed his opposition to Neal's Motion to Dismiss.
 - a. Prosecuting Counsel Mafnas argues that NMI Rules of Civil Procedure do not apply to attorney discipline and thusly the Court cannot consider Neal's Rule 12(b)(1) Motion to Dismiss. Mafnas argues that this is because the NMI Rules of Attorney Discipline and Procedure prescribed the only procedure that the Court must follow when presiding over attorney discipline.

16. On December 18, 2024, the Senate of the Northern Marianas Commonwealth Legislature unanimously rejected the November 8, 2024 submitted proposed rule changes to the NMI Rules of Attorney Discipline and Procedure.⁴

IV. LEGAL STANDARD

Article IV, Section 9 of the Commonwealth Constitution confers to the Chief Justice of the Judiciary the power to propose rules concerning civil and criminal procedure, admission and governance of the CNMI Bar Association, and other matters of judicial administration. A proposed rule becomes "effective sixty (60) days after submission unless disapproved by a majority of the members of either house of the legislature." NMI Const. art. IV, § 9(a). The power to regulate the practice of law is also recognized as an inherent power of the Court.

The procedures for disciplinary actions against attorneys are provided in the NMI Rules of Attorney Discipline and Procedure. Under the NMI Rules of Attorney Discipline and Procedure, a disciplinary committee is formed by five members from the CNMI Bar Association. Rule 7(a)(2) states that the disciplinary committee members "must [b]e elected by a majority vote of active members of the Bar Association." NMI R. ATT'Y DIS. & P.

Under the CNMI Bar Association Bylaws Article II, Section 8, there are three types of membership: (A) an active member is "a person who is admitted to the Association and who is actively engaged in the practice of law, whether in private, government, or public service practice, in the CNMI;" (B) a temporary member is "a person who is actively engaged in the practice of law in the CNMI in government or public service and who is admitted to the Association on a limited admission pursuant to 1 CMC § 3603;" and (C) an inactive member "is a person who is admitted to the Association and who is not actively engaged in the

⁴ This official communication from the Senate and the November 8, 2024 letter from the Chief Justice proposing amendments to the NMI Rules of Attorney Discipline and Procedure were provided to the parties and was discussed at the December 23, 2024 hearing.

practice of law, whether in private, government, or public service practice, in the CNMI." *Id.* The Bylaws also state that the majority of members voting shall constitute action of the members. *Id.* Art. II, § 10.

When an allegation against an attorney is filed with the Disciplinary Committee, it has the power to appoint an investigator, and, after receiving a report from the investigator, recommend appointing prosecuting counsel by submitting the recommendation to the Chief Justice of the CNMI Supreme Court. NMI R. ATT'Y DIS. & P. 10(a), (c). If the Disciplinary Committee recommends appointing a prosecuting counsel, the Chief Justice must appoint a prosecuting counsel. NMI R. ATT'Y DIS. & P. 10(c)(1)(B). The prosecuting counsel then must file a complaint within 60 days of appointment. NMI R. ATT'Y DIS. & P. 12(b)(3). The complaint must be served in a manner consistent with the NMI Rules of Civil Procedure. NMI R. ATT'Y DIS. & P. 13(b)(1).

V. DISCUSSION

Prosecuting Counsel Mafnas argues that the NMI Rules of Civil Procedure do not apply to attorney discipline cases and thusly the Court cannot consider Neal's Rule 12(b)(1) Motion to Dismiss. Prosecuting Counsel Mafnas argues that this is because the NMI Rules of Attorney Discipline and Procedure is the only procedural authority that the Court must follow when presiding over attorney discipline cases.

Neal argues that if the Disciplinary Committee is not properly elected, the Disciplinary Committee lacks quorum to refer the disciplinary case against Neal to the Chief Justice of the CNMI Supreme Court., and the Court does not have subject matter jurisdiction to hear the matter. Also, Neal construes the disciplinary proceedings as quasi-criminal, and argues that any ambiguities in the disciplinary rules should be interpreted in the interest of Neal.

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A. The Courts of the Commonwealth have jurisdiction and authority over attorney disciplinary matters.

Title 1 § 3202 of the Commonwealth Code gives the Court original jurisdiction over all civil and criminal actions. Furthermore, Article IV, Section 9 of the Commonwealth Constitution gives the Chief Justice the power to propose rules controlling admission and governance of the CNMI Bar Association, and other matters of judicial administration. The Superior Court is a general jurisdiction court. See Marianas Ins. Co., Ltd. v. Picente, 2021 N. Mar. I. Trial Order LEXIS 19, *8 ("the Commonwealth Legislature has in certain instances expressly conferred jurisdiction on the Small Claims Court by statute, as it does not enjoy the same broad general jurisdiction of the Superior Court"). The regulation of the practice of law is an inherent power of the Commonwealth Courts. See Atalig v. Commonwealth Superior Ct., 2008 MP 19, ¶ 10 ("Commonwealth courts possess inherent power to regulate the practice of law in proceedings before them regardless of whether redress can also be had through the disciplinary rules.") (quoting Matsunaga v. Matsunaga, 2001 MP 11 ¶ 19). The issue of an improperly elected disciplinary committee, rather than limiting the Court's jurisdiction, creates a question of governance of the practice of law concerning the NMI Rules of Attorney Discipline and Procedure, the CNMI Bar Association, and its bylaws. The authority to regulate the practice of law is reserved for the Court by the CNMI Constitution, case law, and the Court's inherent power. *Id.*

Therefore, the Court has jurisdiction to review all aspects of attorney discipline

1. A Note on the NMI Rules of Attorney Discipline and Procedure and the CNMI Bar Association Bylaws

The procedures for disciplinary actions against attorneys are provided in the NMI Rules of Attorney Discipline and Procedure. Under the NMI Rules of Attorney Discipline and Procedure, a disciplinary committee is formed by five members from the CNMI Bar

Association. Rule 7(a)(2) states that the disciplinary committee members must "[b]e elected by a majority vote of active members of the Bar Association." NMI R. ATT'Y DIS. & P.

Under the CNMI Bar Association Bylaws Article II, Section 10, state that the majority of members voting shall constitute action of the members. *Id.* Art. II, § 10. The Bylaws also define the types of membership for the CNMI Bar Association.

The NMI Rules of Attorney Discipline and Procedure Rule 7(a)(2) has supremacy over the CNMI Bar Association Bylaws Article II, Section 10. First, Rule 7(a)(2) is a Court Rule that has been submitted to the Northern Marianas Commonwealth Legislature and adopted. "If there is expressed or implied constitutional authority for the judiciary to promulgate rules of practice and procedure then this power is regarded as legislative power. The rules issued have the status of statutes enacted by the legislature." *Commonwealth of the N. Mar. I. v. Camacho*, 2002 MP 14, ¶ 14, 6 N. Mar. I. 440, 444 (internal quotations omitted). The Bylaws are applicable only to the CNMI Bar Association. The Bylaws do not trump the Court Rules, and where there is a conflict between the two, the Court Rules have supremacy.

Lastly, Rule 7(a)(2) of the Court Rules is specific to the elections of Disciplinary Committee Members. The Bylaws' Article II, Section 10 generally addresses how the CNMI Bar Association will conduct business by majority vote. This case is about elections of Disciplinary Committee Members. And in this situation, Rule 7(a)(2) of the NMI Rules of Attorney Disciplined and Procedure controls.

B. Active members and temporary members are eligible to vote in Disciplinary Committee elections

The Disciplinary Committee is made up of five members. Disciplinary Committee Members must be active members in good standing with the CNMI Bar Association and be elected by a majority vote of active members of the CNMI Bar Association. Rule 7(a) NMI

R. ATT'Y DISC. & P. The CNMI Bar Association Bylaws define an active member as "a person who is admitted to the Association and who is actively engaged in the practice of law, whether in private, government, or public service practice, in the CNMI." Art. II, § 8(A). Conversely, an inactive member is "a person who is admitted to the Association and who is not actively engaged in the practice of law . . .in the CNMI" Art. II, § 8(C). A temporary member is defined as "a person who is actively engaged in the practice of law in the CNMI in government or public service and who is admitted to the Association on limited admission pursuant to 1 CMC § 3603," NMI Bar Assoc. Bylaws Art. I, § 8(B).

The main difference between an active member from an inactive member is whether an attorney is actively engaged in the practice of law in the CNMI. For this reason, the Court determines it is the active practice of law in the CNMI as the most important defining feature of an active member. Under the definitions of the types of membership given in the CNMI Bar Association Bylaws, both active members and temporary members are actively engaged in the practice of law in the CNMI. Active members and temporary members share the same defining feature.

Therefore, active members encompass temporary members, and where voting is limited to active members, temporary members are also eligible to vote. Furthermore, Article II, Section 10 of the CNMI Bar Association Bylaws states "[i]n all matters requiring action of the membership, every active and temporary member in good standing shall be entitled to one vote." Because temporary members are considered active members eligible to vote in CNMI Bar Association elections, the Court does not need to parcel out if the votes cast in the 2022 and 2023 Disciplinary Committee Members' elections were active members or temporary members.

Therefore, the Court finds that both active members and temporary members are eligible to vote in CNMI Bar Association Disciplinary Committee Members' election.⁵

C. The Disciplinary Committee Members were not elected by the majority of members, inclusive of active members and temporary members.

Rule 7(a)(2) of the NMI Rules of Attorney Discipline and Procedure states that Disciplinary Committee Members "must [b]e elected by a majority vote of active members of the Bar Association." Neal argues that because the Disciplinary Committee Members were not elected by a majority, meaning more than half, of the active members of the CNMI Bar Association, the Disciplinary Committee has no authority to act. Prosecuting Counsel Mafnas argues that majority vote means more than half of the members who cast a vote in the Disciplinary Committee elections.

Rule 7(a)(2) states the committee members "must [b]e elected by a majority vote of active members of the Bar Association." NMI R. ATT'Y DIS. & P. (emphasis added). The plain language of Rule 7(a)(2) explicitly uses the term 'must.' In Aquino v. Tinian Cockfighting Bd., the NMI Supreme Court held that "the word 'shall' is unambiguous . . . it means 'must.' The use of the word 'shall' in the statute is mandatory and has the effect of creating a duty, absent any legislative intent to the contrary." Id. 3 N. Mar. I. 284, 292 (1992). Here, the NMI Rules of Attorney Discipline and Procedure uses the words 'must' requiring that the majority vote of active members is mandatory and cannot be altered absent specific legislative intent.

On November 8, 2024, a proposed amendment was submitted to the Northern Marianas Commonwealth Legislature clarifying that "committee members are elected by a majority of election participants instead of all attorneys," Letter from Alexandro C. Castro, Chief

⁵ As the essential issue resolving this controversy turns on the number of votes cast in 2022 and 2023 Disciplinary Committee elections, at this stage the Court need not address the issue if temporary members can run as candidates for a seat on the Disciplinary Committee, as all five members of the Disciplinary Committee were not duly elected by majority of the members eligible to vote.

Justice, N. Mariana Supreme Ct., to Edith E. DeLeon Guerrero, President of the Senate, and Edmund S. Villagomez Speaker of the House, N. Mariana Commonwealth Legislature, (Nov. 8, 2024). Specifically, the proposed amendment sought to change Rule 7(a)(2) of the NMI Rules of Attorney Discipline and Procedure from "must [b]e elected by a majority vote of active members of the Bar Association." to "must be elected by a *majority of votes cast* by active members of the Bar Association," (emphasis added).

On December 18, 2024, the Senate unanimously rejected the proposed amendments. Letter from Dolores S. Bermudes, Senate Clerk, N. Mariana Commonwealth Legislature, to Alexandro C. Castro, Chief Justice, N. Mariana Supreme Ct., (Dec. 18, 2024). The unanimous rejection by the Senate shows legislative intent to keep Rule 7(a)(2) 'elected by a majority vote of active members.' The current (and still unaltered) Rule 7(a)(2) requires a mandatory majority vote of active members.

There is nothing defective or ambiguous about Rule 7(a)(2) requiring Disciplinary Committee Members be elected by a majority of the full number of active members of the CNMI Bar Association. The CNMI Bar Association simply failed to follow Rule 7(a)(2) in conducting the 2022 and 2023 Disciplinary Committee elections.

One example of requiring the full membership voting is Article II, Section 8 of the CNMI Constitution describing the impeachment process by "the affirmative vote of two-thirds of its members." In a regular legislative session, once a quorum is established to conduct business, a majority is determined by members present and voting. In an impeachment session, the operative parliamentary term is *members*. In parliamentary procedure, affirmative vote of full membership is not the same as affirmative votes cast of members present and voting.

Here, the result is that more than one-half of the CNMI Bar Association must vote affirmatively to elect a candidate to the Disciplinary Committee. In 2022 to garner a

majority of vote of all the active members, a Disciplinary Committee candidate must receive an affirmative vote of 84 or more votes. In 2023 to garner a majority of vote of all active members, a Disciplinary Committee candidate must receive an affirmative vote of 78 or more votes.

There is only one way to vote in the affirmative - that is to vote for that person. There are several ways to **not** vote for a person on the ballot. One way is to vote for someone else. Another way is to submit a ballot without marking a preferred candidate. Another way is to just not cast a ballot, in effect the voter views that none of the candidates on the ballot are deemed worthy of the position.

A simple explanation is necessary to demonstrate the difference between an "overvote" and an "undervote". An **overvote** occurs when a voter casts more votes in a contest than is allowed. This results in a spoiled vote, a ballot which is not counted in the final tally. For example, a voter who votes for two candidates in a contest that permits only one vote has overvoted, and his or her ballot cannot be counted for the election in which the voter overvoted.

An **undervote** occurs when the number of choices selected by a voter in an election is less than the maximum number allowed for that election. An undervote also occurs when no vote is cast for a single-choice election. For example, a voter that is permitted to cast one vote for a presidential candidate and does not select a candidate, or a voter who has only cast two votes in a contest allowing three, has undervoted. Voters have the right to undervote if they choose to do so. Unlike an overvote, a ballot will not be canceled or disqualified as the

⁶ The undersigned judge was the Floor Leader in the Sixteenth Northern Marianas Commonwealth Legislature, House of Representatives. In his capacity as Floor Leader, the undersigned judge was in charge of the Session Agenda of the House of Representatives, and a deep understanding and appreciation of the significance of parliamentary procedures. The undersigned judge was also a member of the American Institute of Parliamentarians and the National Association of Parliamentarians, two prestigious parliamentarian organizations

result of an undervote. An undervote can be intentional (e.g., protest votes, tactical voting, or abstention) or unintentional (e.g., oversight on the voter's part or confusing ballot design).

At the times when the Disciplinary Committee Members were elected, there were 166 active members of the CNMI Bar in 2022, and 154 active members of the CNMI Bar in 2023. (See Respondent's Exhibit D). The following is a summary of the election results: Name; Date Elected, Length of Term, Number of Affirmative Votes Received, and Type of Election

- a. Steven Pixley. Elected on February 24, 2022. 2-year term. Received 13 affirmative votes. General Election.
- b. Catherine Cachero. Elected on February 24, 2022. 2-years term. Received 13
 affirmative votes. General Election
- c. Vina Seelam. Elected on February 23, 2023. 2-years term. Received 17 affirmative votes. General Election
- d. Timothy Bellas. Elected on February 23, 2023. 2-years term. Received 17 affirmative votes. General Election
- e. Bruce Mailman. Elected on February 23, 2023. 2-years term. Received 17 affirmative votes. General Election (See Respondent's Exhibit E1-E5).

Fewer than one-half of the total active membership of the CNMI Bar Association voted for the Disciplinary Committee Members in those elections, most of the active members of the CNMI Bar Association did not cast ballots, creating a majority of undervotes. Undervotes are valid votes, thus basically the vast majority of CNMI Bar Association members voted *against* the candidates on the ballots.

Setting aside bruise egos and hurt pride, the 2022 and 2023 elections of Disciplinary Committee Members was pursuant to Rule 7(a)(2) of the NMI Rules of Attorney Discipline and Procedure and all the candidates were rejected by the voters. V. CONCLUSION A plain reading of the rules shows that none of the members of the Disciplinary Committee were duly elected. As such, the Disciplinary Committee lacks the jurisdiction and authority to investigate or act on any disciplinary matter. THEREFORE, the Respondent Shelli Latrice Neal's Motion to Dismiss the Disciplinary Complaint filed against her is **GRANTED**. **SO ORDERED** this <u>14th</u> day of April, 2025. JOSEPH N. CAMACHO, Associate Judge