

**DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH**

***Petition Allowed by the Illinois Supreme Court  
and Imposing Discipline on Consent***

*Allowed September 12, 2014*

**IN THE SUPREME COURT OF ILLINOIS**

In the Matter of:

**CHARLES R. GARNATI,**

Supreme Court No. M.R. 26733

Attorney-Respondent,

Commission No. 2013PR00124

No. 3122627.

**PETITION TO IMPOSE DISCIPLINE ON CONSENT  
PURSUANT TO SUPREME COURT RULE 762(b)**

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Denise Church, with the consent of Respondent, Charles R. Garnati, and the approval of a panel of the Hearing Board, pursuant to Supreme Court Rule 762(b), petitions this Court to enter an order censuring Respondent. In support, the Administrator states:

**I. SUMMARY OF PETITION.**

1. Respondent is 61 years of age and has been the elected State's Attorney of Williamson County since 1984. His misconduct consists of making racially-based statements about a purported anti-police bias in the black community in the course of prosecuting a murder case, ultimately leading to the defendant's conviction in that case being reversed and remanded for a new trial because those statements denied the accused a fair trial. A more detailed description of his misconduct is set forth in Section II, below.

2. Respondent was licensed in 1978. He has not been disciplined previously, and he is remorseful for his misconduct. Additional factors in mitigation and aggravation are set forth in Section II, below.

3. The recommended sanction of a censure is consistent with discipline imposed by this Court in *In re Current*, M.R. 22811, 2008PR00034 (January 20, 2009), *In re Garza*, M.R.

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4206, 86 CH 21 (April 3, 1987), and *In re Weber*, M.R. 25400, 2007 PR 00061 (September 17, 2012) and is warranted by the particular circumstances of this case.

4. Respondent's affidavit is attached as Exhibit One. At the time this petition was prepared, complaint number 2013PR00124 was pending against Respondent before the Hearing Board, and the Hearing Board panel assigned to consider that matter has approved the submission of this matter to the Court as an agreed

matter pursuant to Rule 762(b)(1)(b). A copy of the Hearing Board's order authorizing the submission of this matter to the Court is attached as Exhibit Two. A copy of the transcript of the Hearing Board proceedings is attached as Exhibit Three.

## II. FACTUAL BASIS FOR RECOMMENDATION.

### A. Respondent's opening and closing arguments in the trial of Marcus Marshall.

5. In July 2011, Respondent prosecuted Marcus Marshall for murder in Williamson County, Illinois. Both the defendant and the victim LaQuinn Hudson were black, but none of the jurors empanelled in the case were black. During Respondent's opening statement, he made the following statements:

"And you will see, ladies and gentlemen, that there are some, not all-there are many good people in the black community, but basically you will see that there are a few in the black community who refuse to cooperate with the police even when a murder happens right under their nose, and those people have a habit of intimidating, harassing, sometimes threatening anybody who they think is cooperating with the police. That's what makes this case so difficult, ladies and gentlemen."

6. Two of the State's witnesses, Jodie Lacy and Crystal Blye, were black. Both Lacy and Blye had previously given a letter to Marshall's lawyer retracting earlier statements that implicated Marshall. During his closing argument, Respondent attempted to deal with the witnesses' attempted retraction of their original statements by stating:

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"But I think what is most crucial in deciding this case, in deciding the credibility of Jodie Lacy and Crystal Blye, and in deciding most of the other issues in this case, is to understand the culture of the black community here in Marion.

"Please, you have to keep in the back of your mind how many people in that community feel about law enforcement. You have to understand and keep in mind how they react to the police and to the prosecutors. Sometimes for people like us, that's hard to understand. People were brought up to believe that the police were their friends; that when something happens, when we are in trouble, that the police are our friends. And that's where we go to get help from is the police when bad things happen.

"But in the black community here in Marion, it's just the opposite. Most-for whatever reasons, most of these people were raised to believe that the police and prosecutors are the enemy; that for some reason, we are always out to get them. In their mindset, the biggest sin that you could-that you can commit is to be a snitch in the community. The biggest sin that you could commit is to ever cooperate with the police on anything. It's a sin to even cooperate when one of your own people gets brutally gunned down and is left to bleed to death.

"And I am not saying that the whole black community is like that, ladies and gentlemen. There are some very good law[-]abiding citizens in that community here in Marion. But the evidence has shown that again, for whatever reasons, there is an intense dislike and even hatred for the police. And this group of people who feel that way make it extremely hard on the people who are law-abiding and want to do what is right and who are willing to come forward and give information that they have when a crime has been committed . . .

"Now, in our white world, ladies and gentlemen, our automatic reaction in that type of situation, if somebody gives a statement to the police and then later on changes their story, the automatic response would be that that person is not trustful and that there is a problem with their credibility.

"But again, please look at their testimony and what they did and what they didn't do through the eyes of the people who are raised, again, to feel that the police are always against them and that they cannot trust the police."

Defense counsel did not object to Respondent's opening statement or closing argument either at the time of trial or in a posttrial motion.

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7. The jury found Marshall guilty of first-degree murder and the court sentenced Marshall to 85 years' imprisonment. Marshall filed an appeal.

8. On September 13, 2013, the Fifth District Appellate Court reversed Marshall's conviction and remanded the matter for a new trial. *People v. Marshall*, 2013 IL App (5<sup>th</sup>) 110430. In the opinion, the Appellate Court found that the Respondent's "use of race was an egregious and consistent theme throughout the trial," and also found that Marshall had been denied the right to a fair trial as a result of Respondent's statements. 2013 IL App. (5<sup>th</sup>) 110430 at ? 17. The Appellate Court also found that Respondent's statements about purported "facts" about the culture of the black community had no basis in the record. 2013 IL App (5<sup>th</sup>) 110430 at ? 15.

#### B. *Conclusions of Misconduct.*

9. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to provide competent representation to a client, in violation of Rule 1.1(a) of the Illinois Rules of Professional Conduct;
- b. in trial, alluding to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, by asserting personal knowledge of facts in issue, except when testifying as a witness, in violation of Rule 3.4(e) of the Illinois Rules of Professional Conduct; and
- c. conduct which is prejudicial to the administration of justice, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct.

#### C. *Respondent's Background and Additional Factors in Mitigation and Aggravation.*

10. Respondent has not been previously disciplined and has been cooperative in the disciplinary proceedings. He is remorseful for his improper arguments in the *Marshall* case. In addition, at least three attorneys would testify that Respondent's reputation for truthfulness is

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very good, and Respondent has been involved in civic organizations, including being the co-founder and organizer of an annual golf outing to benefit abused and neglected children.

11. In aggravation, Respondent was an experienced prosecutor at the time of his misconduct who should have recognized and avoided such improper tactics in his opening and closing arguments.

### III. RECOMMENDATION AND DISCUSSION OF PRECEDENT.

12. The Administrator respectfully requests that this Court censure Respondent. The proposed sanction is consistent with sanctions that this Court has imposed for similar misconduct. For example, in *In re Current*, M.R. 22811, 2008PR00034 (January 20, 2009), this Court censured an Assistant State's Attorney for making improper comments during his closing arguments in a murder trial. This Court found that the prosecutor's closing argument in the case, considered in its entirety, appeared deliberately designed to forge an "us-versus-them" mentality and foster a situation where jurors might feel compelled to side with the State and its witnesses in order to ensure their own safety. As in this case, the prosecutor's statements in *Current* led to the reversal of the defendant's conviction. In both *Current* and the instant case, the arguments were made by experienced prosecutors. Neither attorney had prior discipline.

13. In *In re Weber*, M.R. 25400, 2007PR00061 (September 17, 2012), the attorney was censured for his arguments in four cases he prosecuted as an Assistant State's Attorney. In one case, *People v. Slabaugh*, 323 Ill. App. 3d 723, 753 N.E.2d 1170 (2<sup>nd</sup> Dist. 2001), the defendant's conviction was reversed for two errors, one of which was Weber's argument, which deprived the defendant of a fair trial. Weber's comments included personal attacks on the witnesses and suggestions that the defense was fabricated, where there was no evidence to suggest such a suggestion. Weber was an experienced prosecutor, had no prior discipline, and

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presented favorable character witnesses. In aggravation, he did not acknowledge that his conduct was improper.

14. In *In re Garza*, M.R. 4206, 86 CH 21 (April 3, 1987), this Court censured an Assistant State's Attorney whose misconduct before the jury in a death penalty hearing had led the Court to vacate the defendant's death sentence. Garza's misconduct included an abusive cross-examination of an expert witness for the defendant and improper argument to the jury, including speculation as to what might occur if the defendant was not sentenced to death. Garza presented favorable character testimony and had no other disciplinary history, factors that are also present in this case, unlike this matter, the respondent in *Garza* had retired from the prosecutor's office by the time of the disciplinary hearing.

WHEREFORE, the Administrator, with the consent of Respondent Charles R. Garnati and the approval of a panel of the Hearing Board, requests that this Court enter an order censuring Respondent.

Respectfully  
submitted,

Jerome  
Larkin,  
Administrator  
Attorney  
Registration  
and  
Disciplinary  
Commission

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By: /s/  
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