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**Statement of Misconduct by Attorney Jocelyn Benson**

To the Attorney Grievance Commission:

I write to express concerns regarding the professional conduct of Michigan State Bar Member, Jocelyn Benson (Bar ID #69342). Last week, US Court of Appeals for the 6<sup>th</sup> Circuit Judge McKeague explained in his Opinion (Attached as Exhibit A) that Benson has attempted to “influence the upcoming presidential election by manipulating state election procedures.” Benson, an attorney employed as Secretary of State, has engaged in conduct that directly violates the Michigan Rules of Professional Conduct, as well as Michigan state law. For the reasons set forth below, I respectfully request that Michigan State Bar conduct an investigation into Jocelyn Benson’ behavior, which I believe violates multiple of her ethical obligations as a member of the State Bar of Michigan. Lawyers have a profound ethical obligation to uphold justice and serve the public with integrity, particularly when they are functioning in dual roles as both legal practitioners and public officials. Any violation of these professional rules, especially by someone in a position of public trust, is a matter of grave concern that undermines the credibility of the legal profession and erodes public confidence in our institutions.

I believe that Benson’s behavior undermines faith in the core democratic institution of elections, but most pertinent for this Attorney Grievance Commission, it also violates multiple rules of professional conduct.

**I. Benson violated Rule 3.3 on Candor to the Tribunal**

Rule 3.3 of Michigan Rules of Professional Conduct states that “a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”<sup>1</sup> The rule goes on to state that legal arguments based on knowingly false representations of law constitute dishonesty towards the tribunal. Benson violated Rule 3.3 by presenting legal arguments grounded in knowingly false representations of the law, which constitutes a clear act of dishonesty towards the tribunal. Specifically, Benson represented to multiple courts in pleadings and through her staff at oral arguments, that there could be no changes to ballots in Michigan after the September 6<sup>th</sup> statutory deadline; but she then proceeded *on her own volition* to change the content of the

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<sup>1</sup> MRPC 3.3.

Michigan ballots (adding Robert K. Kennedy Jr. as a Presidential candidate) after the deadline she had represented as immovable.

Under Michigan Law, the Secretary of State, at least 60 days preceding any regular state or district primary election, shall send to the county clerk of each county a notice in writing of such election, specifying which candidates are to be nominated or elected.<sup>2</sup> Robert F. Kennedy was nominated on April 17, 2024 for candidate for President of the United States, allowing him to appear on such notice. Subsequently, On August 23<sup>rd</sup>, Kennedy suspended his presidential campaign and delivered a notice of withdrawal to the Michigan Bureau of Elections, an entity under the Michigan Secretary of State's office. However, the Bureau of Elections rejected Kennedy's withdrawal notice under Mich. Comp. Laws. §168.686a(2). Kennedy, believing that the statute contains no express restriction on the ability for a candidate to withdraw from the election, filed suit to force Benson to remove him from the ballot.<sup>3</sup>

During litigation<sup>4</sup>, Secretary Benson's statutory responsibility to issue the "call of the election" became due. The deadline for her responsibility was well-known by the Courts. In fact, Secretary Benson referenced this deadline in her Michigan Court of Claims brief, her District Court for the Eastern District of Michigan brief, her United States Court of Appeals for the Sixth Circuit brief and in her Michigan Court of Appeals brief, all certifying September 6<sup>th</sup> as this year's deadline in compliance with Mich. Comp. Laws. § 168.648.<sup>5</sup> On September 6<sup>th</sup>, Secretary Benson issued the call of the election and specified which candidates should appear on the ballot; Kennedy was not listed as a candidate for President. Shortly after this submission, the Michigan Supreme Court dismissed Kennedy's earlier request for relief with regards to the Bureau of Elections' rejection of his candidacy withdrawal. The dismissal did not include any demand for the Secretary to take action with regards to the ballot, but rather held that Kennedy had not satisfied the requirements for mandamus relief.<sup>6</sup> On the same day (September 9<sup>th</sup>), Secretary Benson sent an "updated candidate listing" including Kennedy's name to the county clerk, three days after the statutory deadline. There is no statute, rule, or court order that permitted her to add a candidate to the ballot after the statutory deadline, and she was either dishonest in her pleadings when she said September 6<sup>th</sup> was the deadline, or in her actions, when she ignored the statutory deadline.

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<sup>2</sup> Mich. Comp. Laws § 168.648 (1954).

<sup>3</sup> Mich. Comp. Laws § 168.686a(2).

<sup>4</sup> *Kennedy v. Sec'y of State*, 10 N.W. 3d 632 (Mich. 2024).

<sup>5</sup> Brief of Defendant at 12, *Barnes & Holliday v. Benson*, No 24-000115 (Mich. Ct. Cl. Aug. 22, 2024) (Attached as Exhibit B); Brief of Appellant at 11, *Michigan Democratic Party v. Benson*, (Mich. Ct. App. Aug. 26, 2024) (Exhibit C); Defendant-Appellant's Motion for Expedited Consideration at 4, *Michigan Democratic Party v. Benson*, (Mich. Ct. App. Aug. 26, 2024) (Attached as Exhibit D); Brief of Appellee at 8, *Kennedy v. Benson*, No-24-1799 (6<sup>th</sup> Cir. Sept. 25, 2024) (Attached as Exhibit E); Brief of Defendant at 5, *Kennedy v. Benson*, No. 24-cv-12375 (E.D. Mich. Sept. 12, 2024) (Attached as Exhibit F).

<sup>6</sup> Indeed, the Michigan Supreme Court could not have ordered Benson to place Kennedy on the ballot because the 60 day deadline established in MCL § 168.648 had already passed. And Benson's own arguments before two state courts and two federal courts were that she *could not* issue a call of the election after September 6.

In addition to dishonestly ignoring the law in her resubmittal after the statutory deadline, Secretary Benson misrepresented the Supreme Court's decision claiming that altering the ballot after the statutory deadline was "merely compliance with the Supreme Court's decision." As mentioned above, this is factually incorrect.

Benson's reference to the Supreme Court's decision as the basis for her violation of MCL § 168.648's deadline is a false representation of the Court's holding and order. Additionally, Benson's brief to the Court of Appeals certifying the September 6<sup>th</sup> statutory deadline is materially contradictory to her subsequent resubmittal three days after that deadline. Benson's actions are contrary to law, revealing false representations that call into question Benson's candor and integrity, in violation of Michigan Rule of Professional Conduct 3.3. A lawyer's words and conduct should match. Benson's, however, do not. At worst she lied to four different courts and violated the law, or at best she simply lied to four different courts. Either way, she has violated her duty of candor to a tribunal.

## **II. Benson violated Rule 8.4 on Misconduct**

Rule 8.4 of Michigan Rules of Professional Conduct states that "[i]t is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, [or] misrepresentation . . . where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer."<sup>7</sup> MRPC 8.4 also provides that "it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice."<sup>8</sup> The rule goes on to say that lawyers holding public office assume legal responsibilities going beyond those of other citizens and that a lawyer's abuse of public office can suggest an inability to fulfill the professional roles of an attorney. Benson violated Rule 8.4 by manipulating state laws and Court orders to advance her personal objectives, thereby abusing her position as a public official.

As put forth above, Benson's conduct rises to false misrepresentation of law. However, in her official capacity as Secretary of State, Benson's framing of state laws for the purpose of furthering her goal is deceitful in nature. Benson's decision to put a candidate back on a ballot, after his name was removed, after the ballots were certified, and after the statutory deadline lapsed, is an abuse of authority as Secretary of State resulting in a manipulation of state election procedures and calling into question her political priorities. Such conduct is not only dishonest, but it also undermines the integrity of the administration of justice in light of her role as Secretary of State. Judge McKeague, in review of this matter in the Michigan Court of Appeals, said that he "can only hope that the weight of one state election official's thumb does not tip the scale of a national election."<sup>9</sup>

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<sup>7</sup> MRPC 8.4

<sup>8</sup> MRPC 8.4.

<sup>9</sup> *Kennedy v. Benson*, No. 24-1799, 2024 WL 4327046 (6<sup>th</sup> Cir. Sept. 27, 2024) (J. McKeague dissenting).

### **III. Other Violations**

Benson's conduct is also in violation of state common law. Under Michigan Law, "misconduct in office" includes corrupt behavior by a public officer in the exercise of the duties of his office or while acting under color of his office.<sup>10</sup> A charge of misconduct in office is sustainable when it sets forth (1) malfeasance, committing a wrongful act, or (2) misfeasance, performing a lawful act in a wrongful manner, or (3) nonfeasance, failing to do an act required by the duties of the office.<sup>11</sup> Violating a state statute to put a candidate back on the ballot, all while citing a Court opinion that gives no basis for said conduct, may rise to the level of all three: malfeasance, misfeasance and nonfeasance. Even the state district court acknowledged that Benson "may have exceeded the bounds of her office."<sup>12</sup> In any case, Benson is in direct violation of Michigan's "misconduct in office" law because she used her position to intentionally alter the ballot of a presidential election.

Our concerns are encapsulated in Judge McKeague's recent opinion where he explains that Benson has attempted to "influence the upcoming presidential election by manipulating state election procedures." Judge McKeague goes on to explain that "Secretary Benson's actions...serve no purpose other than to sow needless confusion in a presidential election..." The result of Benson's improper behavior, as explained by Judge McKeague, is to "inevitably cause confusion, and it will undermine faith in this core democratic institution."

Manipulating state election procedures in an attempt to influence the upcoming presidential election is a serious charge, especially coming from an esteemed federal judge on the US Court of Appeals for the 6<sup>th</sup> Circuit. I am deeply concerned that Jocelyn Benson has abused her power to advance her own agenda and, in doing so, has violated Michigan laws and the Michigan Rules of Professional Conduct. Such conduct should not be countenanced by the Michigan State Bar.

Sincerely,



Ruth A. Johnson

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<sup>10</sup> *People v. Coutu*, 589 N.W. 2d 458, 459 Mich. 348 (1999).

<sup>11</sup> *People v. Milton*, 668 N.W. 2d 387, 257 Mich. App. 467 (2003).

<sup>12</sup> Order, R.14 at PageID 309.