

KIRK A. MacGREGOR
(Public Reprimand)

On August 15, 2019, a Hearing Committee of the Professional Conduct Board of the Idaho State Bar issued a Public Reprimand to Grangeville lawyer Kirk A. MacGregor.

The Hearing Committee's Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding in which Mr. MacGregor admitted that he violated Idaho Rule of Professional Conduct 3.8(d) [Special Responsibilities of a Prosecutor].

This disciplinary action related to Mr. MacGregor's prosecution of a first-degree murder case. The defendants, ML and his brother BL, were each charged with two counts of first-degree murder in 1983. After the 1984 trials, ML was convicted of first degree murder and sentenced to death. However, in late 2007, ML's conviction was vacated by the Ninth Circuit on ineffective assistance grounds. BL's death sentence was overturned by the U.S. Supreme Court and BL was subsequently sentenced to life with parole. The Ninth Circuit's Order provided that Idaho County had 120 days to retry ML or release him. Thus, Idaho County had a compressed schedule to retry the 23-year-old case. ML's case was set for retrial in February 2008.

In 2007, Mr. MacGregor arranged for BL to be transferred to the Idaho County Jail to await ML's trial. Mr. MacGregor facilitated and was on the line during a telephone call between BL and another brother JL, and then emailed BL's fiancée that JL was going to try to convince BL to testify against ML. Mr. MacGregor did not disclose those circumstances to ML's defense counsel.

In 2007, Mr. MacGregor also facilitated BL's possession of a cell phone while BL was in the Idaho County Jail and instructed a detective to monitor BL's use of that cell phone. BL made

calls from that cell phone. Mr. MacGregor did not disclose those cell phone privileges to ML's defense counsel.

In 2007, a detective overheard a witness, LT, who was in jail with ML, tell LT's girlfriend that ML had confessed to the murders. Mr. MacGregor and a deputy prosecutor then met with the prosecutor who was prosecuting LT, informed him that LT was a witness in ML's case, they were concerned for LT's safety, and asked the prosecutor to consider allowing LT to be released from custody on his rider program and placed on probation. After testifying, LT was released and placed on probation. However, when LT testified at ML's trial about any inducements to testify, he failed to mention Mr. MacGregor's request of LT's prosecutor. When Mr. MacGregor and his deputy prosecutor had the opportunity to ask questions to correct LT's testimony, they did not do so. Mr. MacGregor did not disclose to ML's defense counsel that he had requested of LT's prosecutor that LT be released from custody on his rider program and placed on probation.

ML was convicted in 2008 and, after unsuccessful motions for new trial and post-conviction proceedings from 2009-2013, appealed his conviction. In July 2017, the Idaho Supreme Court (in a 3-2 decision) vacated ML's conviction and remanded the case for retrial. The Court found that ML was entitled to a new trial based on the United States Supreme Court opinions in *Brady v. Maryland* (1963) and *Napue v. Illinois* (1959), and the nondisclosure by the prosecutors to ML's defense counsel of the issues discussed above.

In the disciplinary case, the Hearing Committee found that Mr. MacGregor's non-disclosures violated I.R.P.C. 3.8(d)'s requirements that a prosecutor timely disclose to the defense all evidence or information known to the prosecutor that tends to negate the guilt of the

accused or mitigate the offense, and in connection with sentencing, disclose to the court all unprivileged mitigating information. However, following a hearing, the Hearing Committee also found that Mr. MacGregor's disclosure of some of the *Brady* evidence and failure to disclose other *Brady* evidence was negligent, and not knowing or intentional nondisclosure, and that consistent with the relevant ABA Standard for Imposing Lawyer Sanctions, reprimand was an appropriate sanction.

In the disciplinary case, the parties and the Hearing Committee also acknowledged a number of mitigating factors, including the over 10-year length of time between the professional misconduct and the Idaho Supreme Court's 2017 opinion addressing the *Brady* violations; the Ninth Circuit's compressed schedule for trial; Mr. MacGregor's reputation and 30-year tenure as an attorney, including 15 years as the elected Idaho County prosecutor; and Mr. MacGregor's cooperation in the disciplinary proceedings. The public reprimand does not limit Mr. MacGregor's eligibility to practice law.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.