IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 18-98009

IN RE:

ASHTON R. O'DWYER, JR.

Respondent

RESPONDENT'S COURT AUTHORIZED (BY JUDGE COSTA) POST-HEARING WRITTEN SUBMISSION AND INCORPORATED REPORT ON RESPONDENT'S REVIEW OF WHAT WAS REPRESENTED TO HIM AS THE LOUISIANA SUPREME COURT RECORD

ASHTON R. O'DWYER, JR.
Respondent
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RESPONDENT'S COURT AUTHORIZED (BY JUDGE COSTA)
POST-HEARING WRITTEN SUBMISSION
AND
INCORPORATED REPORT ON RESPONDENT'S REVIEW OF
WHAT WAS REPRESENTED TO HIM AS THE LOUISIANA SUPREME COURT RECORD

MAY IT PLEASE THE COURT:

Respondent, Ashton R. O'Dwyer, Jr., appearing in propria persona, offers, introduces and files into evidence as "AROD EXHIBIT NO. 26," the "Rules of Disciplinary Enforcement" that were in effect in the United States District Court for the Eastern District of Louisiana on April 2, 2008, when Judge Berrigan signed her disciplinary Complaint (really Duval's Complaint) against Respondent. The transmittal email of Eastern District Chief Deputy Clerk Carol Michel to Respondent of November 30, 2018 is also part of AROD EXHIBIT NO. 26.

AROD has averred that Lemelle and the other Judges of the Eastern District Court should have proceeded in the federal disciplinary case pursuant to former Disciplinary Rule III(B), which was mandatory, rather than on a "summary basis" pursuant to Rule III(C), which AROD avers (and averred then) was inapplicable. See AROD EXHIBIT NO. 2 in these proceedings, and his "Exhibit 6(A)" in the State proceedings, namely AROD's "Complaint for Declaratory Judgment and/or for Prospective Injunctive Relief' in Civil Action No. 08-3170 on the Eastern District Docket, filed on May 5, 2008, copy attached.

At oral argument, AROD suggested to the Panel that it had the power to write a judicial opinion that

addressed the PUBLIC CORRUPTION and judicial and professional misconduct, which he exposed - matters that were not previously addressed in any substantial way by the corrupt Federal and State judicial and legal systems at any level. AROD also suggested to the Panel that the Public had a right to know about this CORRUPTION, which has been "kept under wraps" for more than ten (10) years, intentionally and willfully so.

AROD further suggested to the Panel that it had the power to "take the bull by the horns," and to do what Lemelle and the Eastern District Bench failed to do in April 2008, namely invoke former Eastern District Rule III(B) of the former Rules of Disciplinary Enforcement (AROD EXHIBIT NO. 26) and appoint an investigator or investigators to investigate the case properly, thoroughly and in an unbiased and unprejudicial fashion, with anyone so appointed (be they "the United States Attorney, his/her assistants, and/or any other member or members of the bar") being "as pure as the driven snow," and being UNAFFILIATED with and being UNCONNECTED to the Eastern District of Louisiana or with the Louisiana Plaintiffs' Bar.

Recall that AROD also suggested to the Panel that, because the Public has the right to know about the CORRUPTION which he exposed, then "clear and concise" instructions should be given to the investigator(s) in order to afford AROD what was denied to him in 2008, and to ensure that there was no repeat of a Kangaroo-Court, rubber-stamp-type "cover up." With that done, AROD expressed hope that, with one or more proper, unbiased and unprejudiced investigators, and with a proper, thorough and fully transparent investigation and report pursuant to former disciplinary Rule III(B), AROD would be deemed credible, and the PUBLIC CORRUPTION that he

exposed would no longer be allowed to flourish within the jurisdiction of the Fifth Circuit.

The Panel should be made aware of the fact that the former Eastern District Rules of Disciplinary Enforcement have been completely revised from how they existed in 2008. I aver that the "new" Rules, which even changed the numbering system, from Roman to Arabic numerals, are now even more weighed AGAINST the accused than the former disciplinary Rules. For instance, the "new" Rules speak in terms of "limited investigation," and appointment of a 12- person standing "YES MAN" Committee to serve as both investigator and prosecutor, and which I aver serve the purposes of the likes of Lemelle and others who wish to "cover-up" judicial and professional misconduct by Court "insiders."

"INCORPORATED REPORT BY RESPONDENT OF HIS REVIEW OF WHAT WAS REPRESENTED TO HIM AS THE LOUISIANA SUPREME COURT RECORD, FILED UNDER PENALTY OF PERJURY"

Ashton R. O'Dwyer, Jr., Respondent, declares under penalty of perjury pursuant to the provisions of 28 United States Code, Section 1746, the following:

Judge Costa granted me leave to review the contents of "the record" in my State disciplinary proceedings, which was transmitted to the U.S. Court of Appeals for the Fifth Circuit by the Louisiana Supreme Court.

I availed myself of that opportunity on Wednesday morning, November 28, 2018.

What I discovered upon reviewing "the record" caused me to conclude that it will be IMPOSSIBLE for

the Panel in Fifth Circuit Case No. 18-98009 to discharge its "Selling versus Radford duty," as enunciated by Judge Wisdom in the 1974 case of *"In re Wilkes,"* 494 F.2d 472 (5th Cir. 1974), on the basis of "the record" sent to the Fifth Circuit by the Louisiana Supreme Court. In Wilkes, Judge Wisdom stated, clearly and unequivocally, as follows:

> "Federal Courts must 'determine for ourselves the right to continue to be a member of... [the federal] Bar' after giving 'intrinsic consideration' of the underlying record to verify whether 'one or all of the following conditions ... appear:'"

then enumerating the Selling versus Radford exceptions to the imposition of reciprocal discipline. 494 F. 2d at p. 476.

The following is what I determined from my own review of "the record" from the Louisiana Supreme Court:

(1) NONE of my Exhibits in the State disciplinary proceedings (Docket No. 10-PDB-006 before the Louisiana Attorney Disciplinary Board; Case No. 16 B 1848 before the Louisiana Supreme Court), namely 57 Exhibits in number, which were entered into evidence in connection with the Kangaroo-Court "hearing" that I was afforded on November 4, 2014, are included in "the record." In other words, my Exhibits are all "MISSING IN ACTION." This is a most significant omission, because my Exhibits in the State disciplinary proceedings were critical to my case and my Defenses to the Formal Charges. See "Respondent Ashton O'Dwyer's List of Exhibits," which is AROD EXHIBIT NO. 19 in these proceedings, and my numerous

references to many of my Exhibits in the State proceedings in my written submissions to this Court and during oral argument on December 4, 2018. My List of Exhibits, AROD EXHIBIT NO. 19, groups my Exhibits in the State proceedings into various Defense categories, and describes each Exhibit and its relevance to my Defenses to the Formal Charges. Without my Exhibits from the State proceedings being contained in "the record," there is a gaping hole in my Defense.

(2) I have in my possession a complete copy of each of my Exhibits from the State proceedings. I can deliver those Exhibits to the Clerk of the Fifth Circuit for the Panel's "*In re Wilkes intrinsic review*" in the event that the Fifth Circuit is unable to obtain the Exhibits from the Louisianan Supreme Court, which I aver is a very distinct possibility. I await instructions from the Panel in this regard.

(3) What was represented to me as "the record" is NOT the original record, but a Xerox copy, which presents some problems, described infra.

(4) Just as I suspected, "the record" DOES NOT include any transcript of the oral argument hearing before the Louisiana Supreme Court on January 24, 2017. This omission is an important one, because "O'Dwyer Exhibits A and B" entered in evidence during the hearing, WITHOUT OBJECTION, were signature pages contrasting my signature with my cousins' signature, clearly showing that "Exhibit DCAH No. 54" was signed by my lawyer and cousin, Joseph W.P. Hecker, now deceased, but a practicing lawyer at the time, and NOT by me! The two Exhibits, which were identified and introduced in evidence before the Louisiana Supreme Court. "O'Dwyer Exhibits A and B" are not contained in "the record," either: Another glaring OMISSION.

(5) Although the "paper record" documents within "the record," consisting of both paper filings and "hard copies" of electronic filings, which were sent to the Louisiana Attorney Disciplinary Board, to the Hearing Committee Chair, to the Board Panel Chair, and to Disciplinary Counsel Ad Hoc in the State proceedings, during the course of the case, are chronologically arranged in eleven (11) separate black cardboard binders, it is virtually IMPOSSIBLE for anyone who is unfamiliar with the case to decipher and understand. None of the individual documents, some of which contain multiple voluminous Exhibits, is TABBED. Although the each document is, purportedly, "identified" in a paper "Index" at the beginning of Volume 1 of the black binders, the so-called "Index" is "bare-boned," describing documents by (for example) "Letter," "Correspondence" and "E-mail," etc., without giving the precise title of each document or by whom it was submitted.

(6) Yet another disconcerting feature of the 11 volume paper record is the fact that the Court Reporter transcripts of Motion Hearings, Telephone Conferences, and Hearings are contained in boxes SEPARATE from the paper case record in 11 bound volumes. The transcripts that I looked at were not arranged in chronological order. This entire situation was disruptive of continuity during my review of "the record."

(7) The paper record should have a meaningful, usable Index, containing the date of filing of each document and a detailed description of each document and of the Exhibits appended thereto. Even the "title" of documents, such as: "Respondent's Ashton O'Dwyer's Motion to Dismiss All 'Formal Charges' on Grounds of Criminal Sociopathic Behavior, Abuse of Power, Prosecutorial Misconduct, [and] Obstruction of Justice

by Catherine D. Kimball, Charles B. Plattsmier, Jr., and Other Corrupt Members of the Louisiana Attorney Disciplinary System" and "October 8, 2014 Pre-Trial Submissions by AROD," would make more sense than "Pleading" and Email," which make no sense whatsoever. And each document and Exhibit should be tabbed for ease of reference. The Court Reporter transcripts should also be included in the same "paper record" volumes, arranged in chronological order, duly dated, adequately described and tabbed.

(8) To reiterate, "the record" is incomplete because my Exhibits (57 in number) are MISSING and not included in "the record." Additionally, "the record" is difficult, if not impossible, to decipher by someone who lacks familiarity with the development of the case during the past ten (10) years, UNLESS ONE HAS SEVERAL DAYS TO COMPETENTLY REVIEW "THE RECORD" by sitting down, and breaking down boxes, binders, transcripts and documents, and placing them in proper order, and then READING them.

(9) As an aside, "the record" contained at least two (2) copies of the Exhibits of Disciplinary Counsel Ad Hoc; mine were nowhere to be found.

(10) Based on what I observed on the state of "the record" received from the Louisiana Supreme Court at the Fifth Circuit on November 28, 2018, I have NO CONFIDENCE that the Louisiana Supreme Court did anything other than "RUBBER STAMP" the Kangaroo-Court decisions of Hearing Committee 23 and Board Panel "C" in my case, without any serious or substantial consideration of my Defenses to the Formal Charges, to which my Exhibits in the State proceedings - the "missing" Exhibits - were critical: Yet "another" Selling versus Radford denial of due process in the State proceedings and exception to "reciprocal discipline."

(11) AND, I would not believe ANYTHING that ANY representatives of the TOTALLY CORRUPT Louisiana Attorney Disciplinary System, which is presided over by the "bought and paid for" Louisiana Supreme Court, might have to say about "the record," without being subjected to cross-examination, under oath, and even then "accepting" such testimony only if accompanied by a TON of salt.

(12) Lastly, following oral argument on December 4, 2018, I met briefly with Deputy Clerk Butler in order to confirm that all 25 (now 26) of my Exhibits in these proceedings were available for the Panel to review. Deputy Clerk Butler assured me that she possessed a complete set of my Exhibits in these proceedings. Nevertheless, if each Panel Member requires his own complete set (I will get the money for copying from "somewhere") for Staff review, I am "ready, willing and able" to deliver additional copies of my Exhibits for each Panel Member. I await instructions in this regard.

Declared to be true and correct under penalty of perjury pursuant to the provisions of 28 United States Code, Section 1746, this 6th day of December, 2018.

_____

ASHTON R. O'DWYER, JR.
Decarant

Respectfully submitted,

_____

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United States Court of Appeals, Fifth Circuit.
IN RE: Ashton Robert O'DWYER, Jr. Petitioner

No. 18-98009

Filed May 31, 2019

Before COSTA, WILLETT, and DUNCAN, Circuit Judges.

Opinion

PER CURIAM:*

This is a reciprocal discipline proceeding against Ashton O'Dwyer. In 2017, the Supreme Court of Louisiana permanently disbarred O'Dwyer. *In re O'Dwyer*, 221 So. 3d 1 (La. 2017). Under the federal rule governing attorney discipline in the court of appeals, "[a] member of the court's bar is subject to suspension or disbarment by the court if the member has been suspended or disbarred from practice in any other court." FED. R. APP. P. 46(b)(1)(A). So after the Louisiana disbarment, our court ordered O'Dwyer to show cause why he should not be removed from the list of attorneys admitted to practice in this court. O'Dwyer responded with voluminous submissions and requested oral argument, which the panel heard in December.

O'Dwyer seeks to relitigate his underlying discipline in the United States District Court for the Eastern District of Louisiana that led to his state disbarment. 221 So. 3d at 19 (concluding that O'Dwyer engaged in a "panoply of serious professional violations" based on his conduct in New Orleans federal court). But our task in considering reciprocal discipline is much more limited. We do not review as an original matter the allegations that resulted in disbarment. Instead, we must give effect in our court to the state disbarment unless "an intrinsic consideration" of the state court record reveals that:

> 1. The state procedure, from want of notice or opportunity to be heard, was wanting due process.
> 2. [T]hat there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not, consistently with our duty, accept as final the conclusion on that subject, or
> 3. [T]hat some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles or right and justice, we were constrained so to do.

Selling v. Radford, 243 U.S. 46, 51, 37 S.Ct. 377, 61 L.Ed. 585 (1917); *see also In re Jones*, 275 F. App'x. 330, 331 (5th Cir. 2008) (applying the *Selling* factors). It is O'Dwyer's burden to establish one of these situations that would prevent us from following the decision of

Louisiana's highest court. *Id.* (citing *In re Calvo*, 88 F.3d 962, 966 (11th Cir. 1996)).

We can readily dispose of the first basis for nonreciprocity. The state court disciplinary proceeding provided O'Dwyer with fulsome process. For three years, the hearing committee considered numerous "pre-hearing and evidentiary issues" O'Dwyer raised. *O'Dwyer*, 221 So. 3d at 10. At the eventual hearing, O'Dwyer "introduced volumes of documentary evidence," called a witness (the testimony of other witnesses was admitted by stipulation), and testified on his own behalf. *Id.* The state disbarment proceeding afforded O'Dwyer the process he was due.

That leaves the other two grounds for not recognizing a state court disbarment. They consider the merits, but only through a quite deferential lens. *See Selling*, 243 U.S. at 51, 37 S.Ct. 377. Having considered the record of the state proceeding, O'Dwyer's numerous responses to the show cause order, and his oral argument, we conclude that the disbarment findings do not suffer from the substantial infirmities needed for us to decline to follow the same course the state court took. The attacks O'Dwyer levels against the state court findings at most argue for a different interpretation of his conduct in New Orleans federal court; he cannot show that the contrary view of the Supreme Court of Louisiana—and the federal district court for that matter—lacked evidence. To take just one example of serious misconduct, there was strong support for the finding that O'Dwyer engaged in the unauthorized practice of law following his suspension from the Eastern District of Louisiana. A motion was filed in an O'Dwyer case under the signature of O'Dwyer's cousin who was a lawyer. What evidence supported the conclusion that O'Dwyer wrote the brief and forged his cousin's

signature so it could be filed? One of the most powerful types: a confession. O'Dwyer admitted in response to an inquiry from state disciplinary counsel that he had signed his cousin's name to the filing. 221 So. 3d at 8. The egregiousness of this conduct, occurring while O'Dwyer was already subject to court discipline, speaks for itself. And nothing in the stacks of paper submitted in this matter undermines the state court's conclusion that O'Dwyer engaged in this unauthorized practice.[1]

IT IS ORDERED that Ashton O'Dwyer be removed from the roll of attorneys admitted to practice as a member of the bar of this court.

Footnotes

*Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

1After oral argument, O'Dwyer filed a motion seeking access to the docket sheet for this matter. Per the typical practice for attorney discipline matters, this court does not maintain a "docket sheet." So his motion is DENIED. But to address O'Dwyer's concern, each member of the panel has electronic access to every filing he has made in this case (there have been more than 80 since the Chief Judge assigned the matter to this panel in September 2018).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 18-98009

IN RE:

ASHTON R. O'DWYER, JR.

Respondent

RESPONDENT'S MOTION TO RE-OPEN CASE AND TO SET ASIDE THE PANEL'S MAY 31, 2019 PER CURIAM OPINION[1] IN ITS ENTIRETY, DUE TO A PANEL MEMBER'S FAILURE TO DISCLOSE CONFLICTS OF INTERESTS

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[1] And any other decisions or orders in this case in which Judge Duncan or his Staff may have participated, directly or indirectly.

MAY IT PLEASE THE COURT:

COMES NOW Respondent, Ashton R. O'Dwyer, Jr., appearing in propria persona, and moves the Court to set aside the Panel's May 31, 2019 Per Curiam Opinion[2] in its entirety, and to assemble an unbiased, unprejudiced, and fair and impartial Panel, which is devoid of any taint and conflicts of interests, in order to render decision in this case. Respondent avers that he is entitled to relief that he is seeking by virtue of the discovery of undisclosed conflicts of interests by Panel Member Stuart Kyle Duncan who, for reasons that are known only to Judge Duncan:

1) Failed to disclose to Respondent prior to participating in decisions in this case the fact that between 2008 and 2012, he acted as "Solicitor General of the State of Louisiana," while in the direct employ of the Louisiana Department of Justice and the Attorney General of Louisiana, and in the capacity of "Appellate Chief" of the LDOJ, with all of the duties that those titles entailed, including representing the interests of the State, and State entities and individuals, in Hurricane KATRINA litigation, inter alia.

2) Failed to disclose to Respondent prior to participating in decisions in this case the fact that he represented the State, and State entities and individuals, in a plethora of other cases involving issues inimical to Respondent and his Hurricane KATRINA clients, and involving co-counsel who were

[2] And any other decisions or orders in this case in which Judge Duncan or his Staff may have participated, directly or indirectly.

directly opposed to Respondent and wanted him disbarred.

3) Failed to disclose to Respondent prior to participating in decisions in this case the fact that between 2012 and December 2017, he and/or his private law firm "signed six different professional services contracts with the State of Louisiana worth more than $843,000," and calling for the payment of an hourly billing rate to Judge Duncan of approximately $385.00 per hour.[3]

4) Failed to disqualify himself (i.e., he failed to "self-recuse") from participating as a decision-maker in this case, after realizing that his prior employment by the State of Louisiana, the Louisiana Department of Justice, and the Louisiana Attorney General, and his representation of State interests as a private attorney, coupled with his knowledge of: a) the State's involvement in Respondent's disbarment; b) the State's involvement in the corruption of the "Victims of KATRINA" litigation; and (c) the State's involvement in the events of September 20, 2005, all rendered it impossible for him to render an unbiased and fair and impartial decision in this case.

Respondent avers that the setting aside of the Panel's Per Curiam Opinion of May 31, 2019 by virtue of Judge Duncan's failure to disclose conflicts of interests is

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[3] Lamar White, Jr., The Bayou Brief, December 16, 2017, article entitled: "Kyle Duncan, nominee for U.S. Fifth Circuit."

the result mandated by the decision of the Supreme Court in the case of *Commonwealth Coatings v. Continental Cas.*, 393 U.S. 145 (1968). That decision vacated an arbitral award where one of the arbitrators failed to disclose prior "close business connections" and a "business relationship" with a "repeated customer," who gave the arbitrator "repeated and significant" patronage, but was party to the arbitration. A more detailed discussion of *Commonwealth Coatings* follows, infra.

Respondent further avers that by virtue of the aforesaid conflicts of interests[4] Judge Duncan should have disqualified himself in this case (i.e., he should have "self-recused"), which he also did not do. And by failing to disclose his prior associations and relationships with the State of Louisiana to Respondent, and by failing to disqualify himself, Judge Duncan deprived Respondent of the opportunity to seek Judge Duncan's disqualification and recusal[5] and, therefore, violated the following:

1. Respondent's absolute entitlement to procedural and substantive due process of law and the constitutional right under the U.S. Constitution, and more particularly under the 5th Amendment, to have his case adjudicated by unbiased, unprejudiced and fair and impartial arbiters of the facts and

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[4] The disqualifying associations and relationships, which Judge Duncan should have disclosed, are set forth in greater detail in "Respondent's Declaration Under Penalty of Perjury," filed simultaneously herewith.

[5] There was no reason for Respondent to do so absent knowledge of Judge Duncan's conflicts of interest by virtue of his prior associations and relationships, which Judge Duncan failed to disclose.

the law, without Judge Duncan on the Panel, since he was the exact opposite of that to which Respondent was legally entitled.

2. Canon 2 of the Code of Conduct for United States Judges and the COMMENTARY which follows, which requires respect for and compliance with law so as to promote public confidence in the integrity and impartiality of the judiciary, and which disallows political, financial or other relationships to influence judicial conduct or judgment, and which proscribes impropriety and the appearance of impropriety in all activities.

3. Canon 3 of the Code of Conduct for United States Judges, which requires Judges to perform the duties of office fairly, impartially and diligently, without bias or prejudice, and more particularly Canon 3(C)(1), which also imposes an affirmative duty on Article III Judges to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned," such as this proceeding. Which specific subparts to Canon 3 were violated by Judge Duncan are better known to him than to Respondent, but Respondent avers violation of Canon 3(C)(1)(a) [personal bias]. Respondent avers that it is also quite possible that Judge Duncan violated Canon 3(C)(1)(b), Canon 3(C)(1)(c) [financial interest in the State's solvency, or legal fees earned from his law firm's representation of the State,

or other interest that could be affected substantially by the outcome], Canon 3(C)(1)(d)(i through iii) [party or acted as lawyer or known interest that could be affected substantially by the outcome], Canon 3(C)(1)(e) [governmental employment as counsel or advisor, or expressed an opinion], as well as Canon 3(D) [remittal of disqualification through disclosure]. All such information is known to Judge Duncan, but not to Respondent.

4. 28 U.S.C. §455(b)(1) and (3), due to Judge Duncan's actual personal bias and prejudice in favor of the State or against Respondent, or both, and possibly having knowledge of facts concerning the proceeding or having served in governmental employment as counsel or adviser concerning the proceeding.

5. 28 U.S.C. §455(a), which mirrors Canon 3(C)(1), and which requires disqualification of "[a]ny...judge...of the United States...in any proceeding in which his impartiality might reasonably be questioned," such as this proceeding.

I. THE SUPREME COURT DECISION IN *COMMONWEALTH COATINGS* MANDATES THE SETTING ASIDE OF THE PANEL'S PER CURIAM OPINION DUE TO JUDGE DUNCAN'S FAILURE TO DISCLOSE CONFLICTS OF INTERESTS

Respondent reiterates that the relief which he is seeking, namely the setting aside of the Panel's Per

Curiam Opinion of May 31, 2019, and to assemble an unbiased, unprejudiced, and fair and impartial Panel, which is devoid of any taint and conflicts of interests, in order to render decision in this case, is mandated by the Supreme Court decision in the case of *Commonwealth Coatings v. Continental Cas.*, 393 U.S. 145 (1968) and its progeny, including this Court's decision in the case of *Positive Software Solutions, Inc. v. New Century Mortgage Corporation*, 476 F.3d 278 (5th Cir. 2007).

Here, like the Supreme Court did in *Commonwealth Coatings*, which imposed "the simple requirement that arbitrators disclose to the parties any dealings that might create an impression of possible bias" or risk "vacation of an award," Judge Duncan's failure to disclose to Respondent his prior "direct, extensive and substantial" associations and relationships with the State of Louisiana, and with State entities, cases and individuals, must result in the setting aside of the Panel's Per Curiam Opinion. In the words of Justice Black, "We have no doubt that, if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship,[6] the judgment would be subject to challenge." (Emphasis supplied.) Justice Black went on to say, "We can perceive no way in which the effectiveness of the arbitration process will be hampered by the simple requirement that arbitrators disclose to the parties any dealings that might create an impression of possible bias." The same should be true for Article III Judges in proceedings such as this one where, to again quote Justice Black,

[6] Footnote by Respondent. The term "any such relationship" used by Justice Black meant "the undisclosed business relationship" described in detail by Justice Black.

"elementary requirements of impartiality [are] taken for granted."

Judge Duncan's prior undisclosed associations and relationships with the State, are set forth in great detail[7] in "Respondent's Declaration Under Penalty of Perjury" filed simultaneously herewith, and should be equated with the undisclosed "close business connections" between the *Commonwealth Coatings* arbitrator and a "repeated customer," who showered the arbitrator with "repeated and significant" patronage, but was a party to the arbitration. Even Justice White, in his concurring opinion which has generated no small amount of controversy, clearly stated, "But it is enough for present purposes to hold, as the Court does, that where the arbitrator has a substantial interest in a firm which has done more than trivial business with a party, that fact must be disclosed."

Respondent submits that in no sense can Judge Duncan's prior undisclosed associations and relationships with the State be categorized as "trivial" or "insubstantial." To the contrary, the available evidence shows that they were "direct, extensive and substantial," and that they stood the test of time, commencing in 2008, when Judge Duncan went to work for the State, enduring until ten (10) years later, when Judge Duncan became a Federal Judge in May 2018.

In partial justification for vacating the arbitral awarded in *Commonwealth Coatings*, Justice Black cited "that part of the 33rd Canon of Judicial Ethics" then-in-effect, which provided: "...[A judge] should, however, in pending or prospective litigation before him,

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[7] But Respondent's knowledge is admittedly limited, because Judge Duncan failed to disclose his associations and relationships with the State and concealed them from Respondent.

be careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct." Justice Black then went on to say that, "This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased, but also must avoid even the appearance of bias." And Respondent submits that no matter what ethical "Standards of Behavior" may apply to arbitrators versus Article III Judges, like Judge Duncan, particularly with respect to the standard to be applied to "disclosure," to "disqualification," or to both,[8] *Commonwealth Coatings*

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[8] With respect to the very important distinction between an Article III Judge's duty to *disclose* conflicts of interests, as contrasted with his duty to *disqualify* himself because of them, Judge Weiner's dissent in *Positive Software* (and with apologies to the majority) is both enlightening and instructive:

> "What must be emphasized is that Justice White did *not* 'remark' that the differences between the standards of decorum applicable to judges and those to which arbitrators are held has anything at all to do with the immutable prerequisite that, before the parties sign off on a candidate for arbitrator, they must have received from him an unexpurgated disclosure of absolutely every past or present relationship with the parties and their lawyers. That the potential arbitrator himself might deems one or more of such relationships to be so *de minimis* as not to require its divulgence is irrelevant; such culling of information by a candidate must never be allowed to seep interstitially into the *disclosure* calculus. Justice White's remark that *disqualification* is not automatic for minor business relationships is simply inapposite to the requirement of full *disclosure* of every relationship, large and small."

Stated another way, Judge Weiner believed that although Article

makes clear that Judge Duncan should be held to an equal, or even higher, standard than arbitrators. Justice Black made that clear when he said, "We have no doubt that, if a litigant could show that...a judge in a court of justice had, unknown to the litigant, any such relationship [as the one existing between the party in *Commonwealth Coatings*], the judgment would be subject to challenge." And in his concurring opinion, Justice White said, "The Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III Judges, or indeed of any judges," language which Respondent avers clearly indicates that Justice White believed an Article III Judge like Judge Duncan would be held to a higher standard than the arbitrator, whose arbitral award the *Commonwealth Coatings* Court vacated for non- disclosure.

This same subject (i.e., whether the applicable disclosure standard may be more rigorous for arbitrators versus Article III Judges) was addressed by Judge Reavley in his dissent in *Positive Software Solutions,* where he interpreted Justice White's plain language in his *Commonwealth Coatings concurring opinion as* follows:

> "...even though Justice White 'does not expressly define the standard that should govern arbitrator conduct. His opinion only makes it clear that... arbitrators will be governed by a standard less than the standard governing judges.' Elizabeth A. Murphy, Note, *Standards of Arbitrator*

III Judges are held to a higher standard than arbitrators when the issue of *disqualification* is involved, both arbitrators and Article III Judges are required to *disclose* conflicts of interests, particularly those which may constitute "a significant compromising relationship," as Judge Duncan's did.

> *Impartiality: How Impartial Must They Be?*, 1996 J. DISP. RESOL. 463, 470." (Emphasis added.)

Respondent submits that the Article III Judge involved in this case, like the arbitrator in *Commonwealth Coatings*, should have disclosed to Respondent his "substantial compromising relationship" with the State, and that the setting aside of the Panel's Per Curiam Opinion must result from his failure to meet the standard for disclosure applicable to Article III Judges.

II. JUDGE DUNCAN'S UNDISCLOSED "DIRECT EXTENSIVE AND SUBSTANTIAL" RELATIONSHIPS ARE DISTINGUISHABLE FROM THE *POSITIVE SOFTWARE* RELATIONSHIPS WHICH WERE "TRIVIAL" AND "INSUBSTANTIAL"

Although a majority of the En Banc Fifth Circuit Court in *Positive Software* refused to vacate an arbitral award in that case notwithstanding the non-disclosure by an arbitrator of professional relationships between the arbitrator and counsel for a party, Respondent submits that when the majority opinion is analyzed correctly, *Positive Software* actually supports the setting aside of the Per Curiam Opinion in this case due to Judge Duncan's failure to disclose conflicts of interests.

The *Positive Software* majority "previewed" how they would rule by saying:

> "The resulting standard [as a result of reading Justice White's *Commonwealth Coatings*

> concurring opinion 'holistically'] is that in nondisclosure cases, an award may not be vacated because of a trivial or insubstantial prior relationship between the arbitrator and the parties to the proceeding." (Emphasis added.)

And for all of the controversy that the majority opinion and the dissents have generated, the actual holding of *Positive Software*, which appears at the very end of the opinion, is really quite limited:

> "Neither the FAA nor the Supreme Court, nor predominant case law, nor sound policy countenances vacatur of FAA arbitral awards for nondisclosure by an arbitrator unless it creates a concrete, not speculative impression of bias. Arbitration may have flaws, but this is not one of them. The draconian remedy of vacatur is only warranted upon nondisclosure that involves a significant compromising relationship. This case does not come close to meeting this standard." (Emphasis added.)

In no way did *Positive Software* "overrule" *Commonwealth Coatings*, because it is axiomatic that a Court of Appeals, like the Fifth Circuit, is incapable of overruling a Supreme Court case. Respondent avers that the two cases are distinguishable on the facts, just like the facts surrounding Judge Duncan's undisclosed associations and relationships with the State are

distinguishable from the "trivial or insubstantial" prior relationships in *Positive Software*.[9]

More particularly, the information contained herein, and in "Respondent's Declaration Under Penalty of Perjury" filed simultaneously herewith, demonstrate that Judge Duncan had prior undisclosed associations and relationships with the State of Louisiana, and with State entities, cases and individuals, between 2008 and the time of his assuming the Federal Bench in May 2018,[10] which were "direct, extensive and substantial." And even after leaving the direct employ of the State in 2012, the State was "a regular customer" of Judge Duncan and his law firm. Indeed, the previously cited article in "The Bayou Brief" by Journalist Lamar White reflects that, while Judge Duncan was in private practice, the State was one of his "best" clients, and perhaps his "most financially lucrative" client. Respondent has produced evidence that during the entire time period spanning ten (10) years, from 2008 to May 2018, Judge Duncan's associations and relationships with the State were "repeated and significant" and resulted in "close business connections" and "significant contact and business dealings," giving rise to a "significant compromising relationship that was not "trivial," "insubstantial" or "tangential, limited, and

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[9] Nor did the *Positive Software* majority have the power to strike Justice White's statement in his concurring opinion in *Commonwealth Coatings* that:

> "But it is enough for present purposes to hold, as the Court does, that where the arbitrator has a substantial interest in a firm which has done more than trivial business with a party, that fact must be disclosed."

[10] And possibly continuing since that time, information known only to Judge Duncan.

stale,"[11] thereby distinguishing this case from *Positive Software* and requiring that the Per Curiam Opinion should be set aside due to Judge Duncan's non-disclosure and failure to disqualify (i.e., "self-recuse").

DID ACTUAL BIAS AND PREJUDICE CONTRIBUTE TO JUDGE DUNCAN'S FAILURE TO DISCLOSE HIS CONFLICTS OF INTERESTS TO RESPONDENT?

Respondent simply does not know that which "may be in Judge Duncan's head." The complete depth, breadth and scope of Judge Duncan's associations and relationships with the State of Louisiana, and with State entities, cases and individuals, since 2008 are known to and can be attested to by Judge Duncan better than anyone else. Nevertheless, it is evident that Judge Duncan has, since 2008, dutifully served, as his "Lord and Master," the State of Louisiana, upon whose good graces he was virtually totally dependent for his livelihood until December 2018.

While Respondent concedes that much is still unknown about Judge Duncan's prior associations and relationships with the State, (but the now-known ones are set forth in about 35 separately-numbered paragraphs in "Respondent's Declaration Under Penalty of Perjury" filed simultaneously herewith) it is beyond question that they were "direct, extensive, and substantial," and all of the currently unknown "details" were and are known to Judge Duncan, who concealed them from Respondent and failed to disclose them.

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[11] And possibly continuing since that time, information known only to Judge Duncan.

Judge Duncan knows what cases he handled and/or supervised for the State, the names of those cases, the identities of the parties, and the nature of the issues in those cases. Judge Duncan knows what KATRINA cases he handed or supervised, and the issues litigated, other than the ones identified in Respondent's "Declaration." He knows whether he had ever heard of Respondent prior to this case, and whether he ever discussed Respondent or any of his litigation or disbarment proceedings with colleagues within the Louisiana Department of Justice, the Office of the Attorney General or any other State entity, or with anyone else. Judge Duncan also knows whether he might harbor any bias or prejudice in favor of his former employer and client, the State, or against Respondent, even "unconscious bias." And Judge Duncan knows why he failed to make disclosure in this case, and why he failed to disqualify himself. It even has been said that "the most biased judges [are] the least willing to withdraw." See John Leubsdorf, *Theories of Judging and Judge Disqualification*, 62 N.Y.U.L. Rev. 237, 245 (1987).

And Respondent avers that Judge Duncan's associations and relationships with the State, and with State entities, cases and individuals, which Respondent has identified herein and in his "Declaration," were not only "direct, extensive and substantial," but they constituted evidence of "a significant compromising relationship" that was not "trivial" or "insubstantial," or "tangential, limited, and stale." To the contrary, Respondent avers that a "significant compromising relationship" existed between Judge Duncan and the State, as a result of the "close business connections" that the Judge had with the State, and more particularly due to their "prior significant contacts and business

dealings," with "repeated and significant" patronage shown by a "regular customer."

Respondent also avers that the fact that Judge Duncan failed to disclose his associations and relationships with the State gave rise to, in reasonable minds, "a concrete, not speculative impression of bias."

Why did Judge Duncan fail to disclose his conflicts of interests with the State to Respondent? Why did he not disqualify himself from participating in these proceedings?

Lest there be any doubt, Respondent is alleging actual bias and prejudice on Judge Duncan's part based on currently available evidence, which includes:

A. The fact that Judge Duncan failed to make proper disclosure to Respondent, and concealed from Respondent his multiple direct, extensive and substantial associations and relationships with the State. In the words of Judge Weiner in his *Positive Software* dissent, "But Shurn's very act of preemptively deciding, solely on his own, that his relationship with counsel for New Century need not be disclosed and then withholding that information conveys an unmistakable appearance of impropriety."

B. The fact that the Panel of which Judge Duncan was a member SEALED the entire record in Respondent's case, a virtually unprecedented action which ran directly contrary to the Fifth Circuit Opinion recently authored by Panel Member Judge Gregg Costa in the case of

BP Exploration & Production Incorporated v. Claimant ID 100246928, 920 F.3d 209 (5th Cir. 2019).[12]

C. The fact that the Panel of which Judge Duncan was a member failed to address, even in cursory fashion, any of Respondent's Affirmative Defenses to his disbarment in the Federal or State disciplinary proceedings. See Respondent's "Motion to Unseal the Record" filed herein on August 30, 2019, a copy of which is attached as Exhibit 1 to his "Declaration Under Penalty of Perjury" filed simultaneously herewith. Respondent's Motion to Unseal the Record was summarily denied.

D. The fact that the Panel of which Judge Duncan was a member "lied on-the-record" in its Per Curiam Opinion, even going so far as to falsely and maliciously suggest that Respondent had committed the crime of forgery, by forging his cousin's signature on a pleading, which was the "linchpin" of the Panel's (and the Louisiana Attorney Disciplinary Board's, as well as the Louisiana Supreme Court's) erroneous conclusion that Respondent had engaged in the unauthorized practice of law while under suspension. See "Exhibit 1" to

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[12] Does the actual bias and prejudice run deeper than just Judge Duncan? Respondent asks rhetorically, "What is the Panel hiding? Who is the Panel protecting? What is the Panel covering up?"

Respondent's "Declaration," namely "Respondent's Motion to Unseal the Record," paragraph nos. 19-23, pages 15-18.

Respondent avers that each of the above and foregoing factors clearly indicate "actual bias" in violation of the Supreme Court's assertion that due process guarantees "an absence of actual bias" on the part of a judge. *In Re Murchinson*, 349 U.S. 133, 136 (1955); *Williams v. Pennsylvania*, 136 S.Ct. 1899, 1905-1906 (2016) and cases cited therein. Indeed, because his Panel improvidently sealed the record, failed to address material issues, and made blatantly false statements, Respondent avers that it is entirely plausible for reasonable minds to conclude that something other than "truth, justice and the American way" was at work in this case.

Respondent further avers that even if a conclusion of actual bias may be "a bridge too far," the likelihood or the appearance of bias rose to an intolerable and unconstitutional level in this case, *Peters v. Kiff*, 407 U.S. 493, 502 (1972) "even if there is no showing of actual bias in the tribunal,...due process is denied by circumstances that create the likelihood or the appearance of bias." See also *Caperton v. V.A.T. Massey Coal Co., Inc.*, U.S. 868 (2009); *Witnrow v. Larkin*, 421 U.S. 35, 47 (1975). Both scenarios would violate Judge Duncan's written representation in his answer to a Senator's question following his Senate Judiciary Committee hearing namely: "I would be required to recuse myself 'in any proceeding in which [my] impartiality might reasonably be questioned'." See

Respondent's "Declaration," paragraph no. 25, as well as Canon 3(C)(1) and 28 U.S. C. §455(a).

And because Judge Duncan's associations and relationships with the State commenced long before he assumed his seat on the Fifth Circuit Bench, his bias and prejudice, actual or likely (but reasonably presumed as "plausible" under the circumstances), was "extra-judicial." *Liteky v. United States*, 510 U.S. 540 (1994).

CONCLUSION

The Supreme Court's decision in *Commonwealth Coatings* mandates that the Panel's Per Curiam Opinion should be set aside because of Judge Duncan's failure to disclose conflicts of interests to Respondent, namely direct, extensive and substantial associations and relationships with the State of Louisiana, which disbarred Respondent and has been Respondent's "nemesis" since Hurricane KATRINA. This Court's decision in *Positive Software* is distinguishable on the facts, but still supports the setting aside of the Per Curiam Opinion since Judge Duncan's undisclosed associations and relationships constituted "a substantial compromising relationship," which even the *Positive Software* majority said should be disclosed. Additionally, Judge Duncan's non-disclosure of those associations and relationships gave rise to, in reasonable minds, "a concrete, not speculative impression of bias." The fact of Judge Duncan's non-disclosure, for whatever reason, requires that the Per Curiam Opinion should now be set aside in accordance with *Commonwealth Coatings*.

s/Ashton R. O'Dwyer, Jr.
ASHTON R. O'DWYER, JR.
Respondent
In propria persona

1116 Monticello Avenue
Jefferson, Louisiana 70121
Telephone Number:(504) 812-9185
arodjrlaw@aol.com

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 18-98009

IN RE:

ASHTON R. O'DWYER, JR.

Respondent

RESPONDENT'S RULE 27(a)(2)(B)
DECLARATION UNDER PENALTY OF
PERJURY PURSUANT TO 28 U.S.C. §1746

ASHTON R. O'DWYER, JR.
Respondent
In propria persona
1116 Monticello Avenue
Jefferson, Louisiana 70121
Telephone Number: (504) 812-9185
arodjrlaw@aol.com

COMES NOW Respondent, Ashton R. O'Dwyer, Jr., who declares, under penalty of perjury pursuant to 28. U.S.C. §1746, that the following factual information[1] is true and correct, to the best of his recollection, knowledge, information and belief:

1. This case commenced with the Chief Judge's receipt of "an order of permanent disbarment" of Respondent from the Louisiana Supreme Court, which is the Judicial Branch of the Government of the State, established by Article V, Section 1 of the Louisiana Constitution of 1974.

2. Although the Louisiana Supreme Court's order of permanent disbarment was dated March 15, 2017, the State disciplinary proceedings against Respondent had commenced eight (8) years earlier, in March 2009, when the Supreme Court summarily suspended Respondent from the practice of law without any notice, much less a hearing of any type.

3. After being summarily suspended from the practice of law in March 2008, the State disciplinary proceedings against Respondent were prosecuted in quasi-criminal proceedings by the Office of Disciplinary Counsel[2] of the Louisiana Attorney Disciplinary Board. However, the procedural steps between Respondent's

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[1] Specifically permitted by Rule 27(a)(2)(B)(ii) of the Federal Rules of Appellate Procedure.

[2] Respondent's "prosecutor" was Mark Dumaine, an Assistant District Attorney with the East Baton Rouge District Attorney's Office, who held the title "Disciplinary Counsel Ad Hoc," allegedly because the Disciplinary Counsel appointed by the Disciplinary Board, but approved by the Supreme Court, had a conflict of interests.

being served with Formal Charges and actual disbarment, all as enumerated in Louisiana Supreme Court Rule XIX, took eight (8) years to complete. Respondent was permanently disbarred by order of the Supreme Court on March 15, 2017.

4. The Louisiana Attorney Disciplinary Board is a "permanent statewide agency to administer the lawyer discipline...system," also being described as "a unitary entity," consisting of "a statewide board," "hearing committees," "disciplinary counsel" and "staff." Louisiana Supreme Court Rule XIX, Sections 2, 3 and 4. Disciplinary Counsel, who is a full-time State employee, is appointed by the Board with the approval of the Supreme Court and has the mandate to "perform all prosecutorial functions." Louisiana Supreme Court Rule XIX, Section 4.

5. Respondent has described his eight (8) year prosecution (actually a "persecution") by the Louisiana Attorney Disciplinary Board and the Office of Disciplinary Counsel (through Disciplinary Counsel Ad Hoc) as a "WAR" which constituted a "Reign of Terror" unleashed against Respondent, which made his life "a living hell."

6. Respondent first learned of Panel Member Stuart Kyle Duncan's former employment by the State of Louisiana in the Department of Justice and the Office of the Attorney General on Thursday, September 10, 2020, and that he immediately transmitted the following email to Judge Duncan at the email address that is identified under his name on the Louisiana State Bar Association website. The email to Judge Duncan, which was transmitted at 12:21 p.m. stated as follows:

To: kyle_duncan@ca5.uscourts.gov

Subject: Judge Duncan's Participation in Fifth Circuit Case No. 18-98009

Dear Sir: I have a few questions:
(1) Why did you not disclose to me your prior position as "Chief, Appellate Division" of the Louisiana Department of Justice and Office of the Louisiana Attorney General?

(2) Why did you not "self-recuse" yourself in my case, due to your conflict of interests and inability to be unbiased, fair and impartial in matters involving me?

Ashton O'Dwyer

No response to the email has been forthcoming from Judge Duncan.

7. Since September 10, 2020, although his resources are severely limited, Respondent has been able to discover some very troubling "direct, extensive and substantial" associations and relationships between Judge Duncan and the State of Louisiana, and with State entities, cases and individuals (see infra), which Judge Duncan failed to disclose to him and, therefore, concealed from him prior to Judge Duncan's participating in decision in this case on May 31, 2019.

8. Although the State of Louisiana is not, technically, a party to this case, Respondent avers that the State, as well as many of its agencies, instrumentalities and political subdivisions, and

individual persons that they employ, have a material interest in the outcome of this case.

9. And Respondent avers that a far greater number of State entities and individuals than the Louisiana Supreme Court, the Louisiana Attorney Disciplinary Board and the Office of Disciplinary Counsel have a material interest in Respondent's disbarment, and his professional and social embarrassment, humiliation and disgrace, so that Respondent remains discredited and marginalized, and so his allegations of PUBLIC CORRUPTION will not be believed. See "Respondent's Rule 27.4 Certificate of Interested Persons and Entities" filed simultaneously herewith, which identifies persons and entities with whom Respondent has been adverse in his post-KATRINA litigation, both as a party and as counsel for parties, about 90% of which has been litigated in the Fifth Circuit. Respondent avers that the said persons and entities should be deemed parties for purposes of his Motion.

10. Notwithstanding the fact that Respondent has very limited resources,[3] and only limited knowledge of Judge Duncan's prior associations and relationships with the State of Louisiana, which Judge Duncan failed to disclose to Respondent, and concealed from him, and which are better known to Judge Duncan than to anyone else, Respondent has been able to discover some

[3] Respondent's resources are quite limited. He subsists on a meager monthly Social Security check which is, and has been, his sole source of income since late 2009. Prior to that, Respondent was suspended from the practice of law by the Louisiana Supreme Court and unable to earn a living. He was able to borrow certain funds prior to qualifying for Social Security Benefits. All sums borrowed were repaid to the lenders in Respondent's bankruptcy proceedings.

information by conducting free internet searches.

11. As a result of these free searches, Respondent determined that, prior to his participating in decisions in this case, Judge Duncan, acted as "Solicitor General of the State of Louisiana," while in the direct employ of the Louisiana Department of Justice and the Attorney General of Louisiana, and in the capacity of "Appellate Chief" of the LDOJ, with all of the duties that those titles entailed, including representing the interests of the State, and State entities and individuals, in Hurricane KATRINA litigation, inter alia.

12. As a result of these free searches, Respondent also determined that, prior to participating in decisions in this case, Judge Duncan represented the State, and State entities and individuals, in a plethora of other cases involving issues inimical to Respondent and his Hurricane KATRINA clients, and which involved co-counsel who were directly opposed to Respondent and wanted him disbarred.

13. As a result of these free searches, Respondent also determined that, prior to participating in decisions in this case, Judge Duncan and/or his private law firm had, between 2012 and December 2017, "signed six different professional services contracts with the State of Louisiana worth a grand total of more than $843,000," and calling for the payment of an hourly billing rate to Judge Duncan of approximately $385.00 per hour.

14. One of the most informative internet sources of information about Judge Duncan and his associations and relationships with the State is Journalist Lamar White, Jr., of The Bayou Brief, and particularly a

December 16, 2017 article by Mr. White entitled: "Kyle Duncan, nominee for U.S. Fifth Circuit." Page 9 of that article provides the following information about Judge Duncan that is not available elsewhere, more particularly:

> "During Jindal's second term, however, Duncan positioned himself as the administration's favorite mercenary lawyer, particularly on cases involving cultural and religious issues. And it has been in that position – as a D.C.-based attorney in private practice, with Louisiana as a client – that he's become more well-known. It's also earned him a fortune, and it still does. Louisiana Attorney General Jeff Landry continues to shower Duncan with lucrative contracts.
>
> In the past three and a half years, Duncan's law firm has signed six different professional services contracts with the State of Louisiana, worth a grand total of more than $843,000. You can almost always make more money *selling to* the government than *working for* the government. Duncan bills the state $385 an hour. In September 2016, Duncan and his wife purchased a home in McLean, Virginia, for $790,000, according to a real estate database published by *The Washington Post*."

Parenthetically, in an abundance of caution, Respondent spoke by telephone with Journalist Lamar White, Jr., who corroborated the accuracy of his reporting in the referenced Bayou Brief article.

15. According to Journalist Lamar White, Jr., Judge

Duncan also had, among his other State titles, the title of "Special Attorney General," and as "Special Counsel" for the State. Respondent avers that he is not "overstating" the situation to aver that so direct, extensive and substantial were Judge Duncan's associations and relationships with the State that he should be categorized as a former "In-House Counsel" for the State, or even "Of Counsel" for the State, in every piece of litigation in which the State, or its agencies, instrumentalities and political subdivisions, and individual department heads, were parties, while Judge Duncan was in the State's direct employ between 2008 and 2012.

16. Respondent refers to Judge Duncan's own words in the "Questionnaire for Judicial Nominees," which Judge Duncan submitted to the U.S. Senate Judiciary Committee in connection with his nomination process and ultimate confirmation for a seat on the U.S. Court of Appeals for the Fifth Circuit. There, Judge Duncan described the general character of his law practice, while representing the State of Louisiana between 2008 and 2012 and thereafter as follows:

> "In 2008, I shifted back to appellate practice when I was appointed the first Appellate Chief of the Louisiana Department of Justice. In that role, I fulfilled the functions of a state solicitor general, advising the Attorney General on general legal matters concerning appeals and taking the lead on briefing and argument of selected appeals. From 2008 to 2012, I handled a variety of civil and criminal constitutional matters, arguing cases in the U.S. Fifth Circuit, the Louisiana Supreme Court, and the Supreme Court of the United

States."

When asked on his "Questionnaire" to describe "your typical clients and the areas at each period of your legal career," Judge Duncan responded as follows:

> "The typical clients I have represented are state government entities and officials; however, I have also represented private persons and entities in litigation. I represented primarily commercial entities during my first year of practice at Vinson & Elkins, before switching to the exclusive representation of Texas, its government entities and officials as an Assistant Solicitor General. I also exclusively represented Louisiana, its government entities and officials during my time as the Appellate Chief in the Louisiana Department of Justice....Since starting my own firm, I have had a mix of government and private clients, but primarily government entities and officials."

17. Respondent avers that while Judge Duncan was directly employed by the State as Appellate Chief in 2008 and 2009, he was responsible, at the very least, for supervising the Appeals of the State and State interests in Respondent's civil rights case, Case No. 08-30052 in this Court. That litigation, which Respondent should have won, hands down, was "tossed in the gutter" by the Fifth Circuit on the basis of "qualified immunity," which should not have applied to State-employed GOONS who trampled on Respondent's clearly established constitutional rights. The proceedings in Respondent's civil rights case, both in the District Court and in the Fifth Circuit, were tainted by judicial misconduct, as

well as by professional misconduct by the lawyers representing the State and State interests, misconduct for which no one has ever been punished. In other words, "the fix" was well and truly "in" in Respondent's civil rights case, the appeal of which was litigated during Judge Duncan's tenure as Appellate Chief of the Louisiana Department of Justice. The Panel Opinion in that case, No. 08-30052 – Reavley, Barksdale and Garza – was dated February 19, 2009; the Opinion on Rehearing was dated March 24, 2009. Judge Duncan's tenure as Appellate Chief of the Louisiana Department of Justice during the pendency of the appeal in Respondent's civil rights case, and that fact alone, should have required Judge Duncan's disqualification and self-recusal in this case, and at the very least full disclosure by Judge Duncan to Respondent.

18. Respondent avers that Judge Duncan identified in his Senate "Questionnaire for Judicial Nominees" the "*In re Katrina Canal Breaches Litigation*" among the ten (10) "most significant litigation matters" which "you personally handled" during his legal career. That massive litigation was presided over by Judge Duval, who Respondent has accused of PUBLIC CORRUPTION, and played prominently in Respondent's disbarment. In the "*In re Katrina Canal Breaches Litigation*," Judge Duncan represented the State and State entities and individuals, all ADVERSE to Respondent and his 2,000 or so Katrina clients. See 645 F.3d 703 (5th Cir. 2011) for one example of Judge Duncan's representation of the State, et al., in that litigation. The *In re Katrina Canal Breaches Litigation* also involved "the Plaintiffs' Lawyer Cabal," which was not only ADVERSE to Respondent, but actively campaigned for his disbarment. See "Watershed

Moment Nos. 2 and 4" in "AROD Exhibit No. 21" in this case. See also Civil Action No. 08-4728 on the Eastern District docket, which is "AROD Exhibit No. 6" in this case.

19. Respondent avers that Judge Duncan's representation of State entities, etc., in *Union Pacific R.R. v. Louisiana Pub. Serv. Comm'n*, 662 F.3d 336 (5th Cir. 2011), appears to have put him at odds with Respondent on an issue that was "front and center" in the KATRINA litigation, namely whether the voluntary invocation of the jurisdiction of the Federal Court by private attorneys representing the State, et al., on August 29, 2007, in four (4) separate civil actions, one of which claimed $400 billion in KATRINA damages for the State from the United States, constituted a WAIVER of the state's immunity from being required to litigate claims against it in Federal Court. Compare *Union Pacific R.R. Co.*, supra, with *Meyers ex rel. Benzing v. Texas*, 410 F.3d 236 (5th Cir. 2005), which held that a State's voluntary removal of a case to Federal Court constituted a waiver of 11th Amendment immunity. In reaching that decision, the Fifth Circuit noted that this "voluntary invocation principle" should apply "generally in all cases," 410 F.3d at p. 249, which appears contrary to Judge Duncan's position in *Union Pacific*. Respondent's 11th Amendment waiver arguments resulted in his being accused of "asserting frivolous claims," and contributed to his disbarment. The "asserting frivolous claims" mantra, which was false, was advocated by Judge Duval and his cronies in "the Plaintiffs' Lawyer Cabal" to attempt to hide their conflict of interests by virtue of representing the State "in secret," while being simultaneously obligated professionally to "the Class."

20. Respondent does not have to be hit across the face with a 2x4 to conclude that Judge Duncan, a former State lawyer, Appeals Chief, Solicitor General, Special Attorney General, and Special Counsel for the State, not to mention "a very well-compensated-lawyer-for-the-State-in- private-practice," would have been more than satisfied that Respondent should remain permanently disbarred and unable to practice law and, therefore, unable to urge that *Benzing* and its progeny should have controlled in the KATRINA litigation on 11th Amendment immunity issues in the KATRINA litigation. A determination that the State had waived 11th Amendment immunity could have had dire financial consequences for the very same "Lord and Master" that Judge Duncan had dutifully served so well for the ten (10) years between going to work for the State in 2008 and assuming the Federal bench in May 2018.

21. Respondent avers that it appears that Judge Duncan was co-counsel for the State, and State entities and individuals, with other State lawyers who were DIRECTLY ADVERSE to Respondent in this case and in other litigation involving Respondent, as well. More particularly, it appears that Judge Duncan was co-counsel with "Hillar C. Moore," the District Attorney for East Baton Rouge Parish, whose office, through one of Mr. Moore's own employee's, Assistant District Attorney "Mark Dumaine," was "Disciplinary Counsel Ad Hoc" in Respondent's State disciplinary proceedings, which spawned this case. Also on the pleadings with Judge Duncan and Mr. Moore was another District Attorney for East Baton Rouge Parish, Dylan C. Alge, yet another colleague of Mr. Dumaine. See *Montgomery v. State of Louisiana*, Case No. 14-280 in the Supreme

Court of the United States in 2015, while Respondent's disciplinary case was still pending and Mr. Moore's Assistant D.A., Mark Dumaine, was fighting Respondent "tooth and nail," and not only "prosecuting" him, but "persecuting" him. Mr. Moore and his minions also refused to investigate, much less prosecute, the civil rights violations and other crimes that were committed against Respondent on September 20, 2005, by multiple State-employed conspirators whose plans were hatched in East Baton Rouge Parish, within Mr. Moore's jurisdiction.

22. Respondent avers that it also appears that Judge Duncan in 2014 (and perhaps at other times) appeared as co-counsel for State interests in *Forum for Equality Louisiana Inc. v. Barfield*, 2014 cv 00327 (E.D. La.) with another State lawyer who worked in the Civil Litigation Division of the Louisiana Department of Justice. That State lawyer was "Phyllis Esther Glazer," who served as counsel for the State interests in Respondent's civil rights litigation, Case No. 08-30052 in this Court, arising out of the events of September 20, 2005. To say that Ms. Glazer had an adversarial relationship with Respondent would be "putting it mildly." Indeed, Ms. Glazer's Supervisor within the Louisiana Department of Justice was "Paul B. Deal" who, referring to Respondent's false imprisonment at Camp Amtrak in September 2005, told Respondent, "You're lucky you didn't have a broomstick shoved up your ass," an obvious reference to the Abner Loumia case. Ms. Glazer and other lawyers for State interests in Respondent's civil rights litigation repeatedly lied on the record and committed "fraud upon the Court," for which no one has been punished.

23. Respondent once again refers to Judge Duncan's

Senate Judiciary Committee "questionnaire," and more particularly part 24, which addressed "Potential Conflicts of Interest." In Judge Duncan's own words he said:

> "If confirmed, I will recuse in any litigation where I have ever played a role. For a period of time, I anticipate recusing in all cases where my current firm, Schaerr Duncan LLP, represents a party I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary." (Emphasis supplied.)

Respondent avers that Judge Duncan's promise to "determine appropriate action with the advice of parties and their counsel including recusal where necessary" meant that he KNEW that "disclosure" of "potential conflicts of interest" would be necessary in some cases. How else could he "determine appropriate action with the advice of parties and their counsel?"

Yet, he made no disclosure in Case No. 18-98009.

24. When asked to explain how he would "resolve" potential conflicts of interest, Judge Duncan stated in his Senate Judiciary Committee "questionnaire" as follows:

> "If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. §455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances."

25. In separate "questionnaires" that were submitted to him, in writing, by Senators following his confirmation hearing, Judge Duncan answered the following questions as follows:

> "10. As both a former solicitor general and in private practice, you have represented the State of Louisiana. Those representations include writing an amicus brief for the state in *Obergefell*; defending Louisiana's same-sex marriage ban before the Fifth Circuit; defending the state's restrictive abortion law in *June Medical Services v. Gee*; and representing the state before the Supreme Court in *Montgomery v. Louisiana*.
>
> a. <u>If confirmed, do you agree there are circumstances under which it may be appropriate to recuse yourself from cases in which the State of Louisiana is a party?</u>
>
> Yes. If confirmed I would follow the Code of Conduct for United States Judges; the Ethics Reform Act of 1989, 28 U.S.C. §455; and all other relevant recusal rules and guidelines. Pursuant to those rules, I would be required to recuse myself "[w]here in private practice [I] served as lawyer in the matter in controversy, or a lawyer with whom [I] previously practiced law served in such association as a lawyer concerning the matter[.]" 28 U.S.C.

§455(b)(2). Furthermore, I would be required to recuse myself "in any proceeding in which [my] impartiality might reasonably be questioned." *Id.* §455(a). As a former lawyer for the State of Louisiana in both government and private practice, I anticipate that there may be cases in which I would be required to recuse myself, and I would do so. (Emphasis added.)

b. Do you commit to following all applicable judicial ethics rules in determining whether to recuse yourself in cases where former clients are parties?

Yes. (Emphasis supplied.)

Note that Judge Duncan committed himself in writing to the Senate to recuse himself "in any proceeding in which [my] impartiality might reasonably be questioned." Why Judge Duncan failed to Disclose his prior associations and relationships with the State to Respondent is unknown. Why he failed to disqualify himself (or "self-recuse") in this case, which is clearly one in which his "impartiality might be questioned," given his prior associations and relationships, is unknown.

26. Another Senator then posed the following to Judge Duncan:

> "You also commit to recusing yourself from all cases where your firm represents a party for a

"period of time."

When you say you'll recuse yourself from cases where your firm "represents a part," does that include amici?

Yes.

How long is this period of time for which you would recuse yourself from cases involving your firm, if you are confirmed?

I have not decided on a specific period of time. If confirmed, I would consult with my colleagues and any other resources available to Fifth Circuit judges about the typical recusal practices for lawyers taking the bench from private practice. In all events, I would faithfully follow the requirements of the Code of Conduct for United States Judges; the Ethics Reform Act of 1989, 28 U.S.C. §455; and any other relevant recusal rules and guidelines." (Emphasis supplied.)

Judge Duncan was confirmed by the Senate in May 2018. Oral argument in this case took place about six (6) months later, on December 4, 2018. The Panel's Per Curiam Opinion, which Respondent now seeks to set aside, was issued on May 31, 2019, which was within one (1) year of Judge Duncan's confirmation. Respondent does not know whether, during that one (1) year period, Judge Duncan's former firm represented the State of Louisiana or any of its agencies, instrumentalities or political subdivisions, or any state officials, but Respondent would like an answer to that question, which only Judge Duncan can answer. And although

Respondent does not know the answer, Judge Duncan can tell us whether, since he became a Federal Judge, he has received any financial benefit from his former firm by virtue of the firm's representation of the State, et al., in cases that remained open and active after he departed the firm. Judge Duncan also can tell us whether, if the State went bankrupt as a result of issues in the KATRINA litigation, he would have suffered any financial ramifications.

27. Respondent avers that if disclosure, as well as disqualification and self-recusal, was not done by Judge Duncan in Respondent's case, then it probably was not done by Judge Duncan in ANY case. Respondent asks rhetorically:

> Has Judge Duncan EVER disclosed to the parties or counsel his prior associations and relationships with the State, in ANY case?
>
> Has he ever disqualified himself or been recused in any case involving the State of Louisiana or any of its agencies, instrumentalities and political subdivisions, or State officials?
>
> If so, what were the circumstances, case names and issues?

28. Respondent reiterates that he simply does not know that which "may be in Judge Duncan's head." The complete depth, breadth and scope of Judge Duncan's associations and relationships with the State of Louisiana, and with State entities, cases and individuals, since 2008 are known to and can be attested only to by Judge Duncan. But Respondent avers that is evident

that Judge Duncan has dutifully served, as his "Lord and Master," the State of Louisiana, upon whose good graces he was virtually totally dependent for his livelihood between 2008 and May 2018.

29. While Respondent concedes that much is still unknown about Judge Duncan's prior associations and relationships with the State, it is beyond question that they were "direct, extensive, and substantial," and all of the currently unknown "details" were and are known to Judge Duncan, who concealed them from Respondent and failed to disclose them. Judge Duncan knows what cases he handled and/or supervised for the State, the names of those cases, the identities of the parties, and the nature of the issues in those cases. Judge Duncan knows what KATRINA cases he handed or supervised, and the issues litigated, other than the ones identified, supra. He knows whether he had ever heard of Respondent prior to this case, and whether he ever discussed Respondent or any of his litigation or disbarment proceedings with colleagues within the Louisiana Department of Justice, the Office of the Attorney General or any other State entity, or with anyone else. Judge Duncan also knows whether he might harbor any bias or prejudice in favor of his former employer and client, the State, or against Respondent, even "unconscious bias," and Judge Duncan knows why he failed to make disclosure in this case, and why he failed to disqualify himself.

30. Respondent also avers that the non-disclosed associations and relationships with the State, and still unknown "details," in addition to those that Respondent identified herein, constituted conflicts of interests, which Judge Duncan should have disclosed.

31. And Respondent avers that Judge Duncan's associations and relationships with the State, and with State entities, cases and individuals, which Respondent has identified herein, were not only "direct, extensive and substantial," but they constituted evidence of "a significant compromising relationship" that was not "trivial" or "insubstantial," or "tangential, limited, and stale." To the contrary, Respondent avers that a "significant compromising relationship" existed between Judge Duncan and the State as a result of the "close business connections" that the Judge had with the State, and more particularly due to their "prior significant contacts and business dealings," with "repeated and significant" patronage shown by a "regular customer."

Respondent also avers that the fact that Judge Duncan failed to disclose his associations and relationships with the State gave rise to, in reasonable minds, "a concrete, not speculative impression of bias."

32. Respondent avers that all Judge Duncan had to do, and what he should have done upon being designated as a member of the Panel to adjudicate this case, was to immediately inform Respondent: "For your information, several years ago I worked as Appeals Chief for the Louisiana Department of Justice and the Louisiana Attorney General for about five (5) years; and before assuming the Federal Bench about a year ago, I routinely represented the interests of the State, my best and most lucrative client in private practice after leaving the State's direct employ." Given Respondent's "history" with the State, and with State entities, cases and individuals, during the past 15 years, particularly with the Louisiana Department of "Injustice," and with the Louisiana Attorney General's Office, this probably

would have informed Respondent of "all he needed to know," and would have resulted in a serious attempt by Respondent to force Judge Duncan's disqualification and recusal (assuming that Judge Duncan did not "self-recuse" himself first), just as Respondent attempted in the KATRINA litigation with respect to Judges Duval and Lemelle, and several times in the State disciplinary proceedings, directed at State entities and individuals who had conflicts of interests, including the Louisiana Supreme Court. See Respondent's Recusal Motions among the 57 Exhibits in the State disciplinary proceedings, which are unfortunately "missing-in-action." See infra.

33. Respondent avers that Judge Duncan had many opportunities to disclose his conflicts of interests to Respondent, none of which he took advantage of. More particularly, Judge Duncan could have made his disclosures after he had familiarized himself with Respondent's written submissions in this case. And even if Judge Duncan had read nothing prior to hearing oral argument on December 4, 2018, he would have been fully informed about Respondent's on-going WAR with his "nemesis," the State, from what he heard during oral argument. Indeed, the courtroom was "full of law clerks" for oral argument, at least some of whom had to be Judge Duncan's clerks. But no disclosure was made to Respondent by Judge Duncan during oral argument or thereafter, although Judge Duncan had ample opportunity to do so. In addition, Respondent was granted leave to file a post-hearing written submission on December 7, 2018,[4] which, inter alia, addressed (1)

[4] And more particularly "Respondent's Court-Authorized (by Judge Costa) Post-Hearing Written Submission" filed herein on December

Respondent's desire for the appointment of "one or more proper, unbiased and unprejudiced investigators, and with a proper, thorough and fully transparent investigation" to properly investigate the PUBLIC CORRUPTION that Respondent had exposed, and (2) the fact that Respondent's 57 Exhibits from the State disciplinary proceedings, which were vital to Respondent's Defenses to his disbarment by the Louisiana Supreme Court, were "missing in action," and were not included in the record which Respondent's Fifth Circuit Panel was duty- bound to give "intrinsic consideration" to. No disclosure by Judge Duncan followed the filing of that pleading by Respondent, either. The Panel issued its Per Curiam Opinion, which Respondent seeks to set aside, on May 31, 2019, with no disclosure by Judge Duncan whatsoever.

34. Respondent is alleging actual bias and prejudice on Judge Duncan's part based on a review of the currently available evidence, which includes:

A. The fact that Judge Duncan failed to make proper disclosure to Respondent, and concealed from Respondent his multiple direct, extensive and substantial associations and relationships with the State that constituted conflicts of interests.

B. The fact that the Panel of which Judge Duncan was a member SEALED the entire record in this case, a virtually

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7, 2018 which, like everything else in this case, remains under SEAL.

unprecedented action which ran directly contrary to the Fifth Circuit Opinion recently authored by Panel Member Judge Gregg Costa in the case of *BP Exploration & Production Incorporated v. Claimant ID 100246928*, 920 F.3d 209 (5th Cir. 2019).

C. The fact that the Panel of which Judge Duncan was a member failed to address, even in cursory fashion, any of Respondent's Affirmative Defenses to his disbarment in the Federal or State disciplinary proceedings. See Respondent's "Motion to Unseal the Record" filed herein on August 30, 2019, a copy of which is attached as Exhibit 1 to this "Declaration." Respondent's Motion to Unseal the Record was summarily denied.

D. The fact that the Panel of which Judge Duncan was a member "lied on-the-record" in its Per Curiam Opinion, even going so far as to falsely and maliciously suggest that Respondent had committed the crime of forgery, by forging his cousin's signature on a pleading, which was the "linchpin" of the Panel's (and the Louisiana Attorney Disciplinary Board's, as well as the Louisiana Supreme Court's) erroneous conclusion that Respondent had engaged in the unauthorized practice of law while under suspension. See "Exhibit 1" to this "Declaration," namely "Respondent's Motion to Unseal the Record," paragraph nos. 19-23, pages 15-18.

35. And Respondent avers that even if the above and foregoing errors and omissions by Judge Duncan (and others) do not support the conclusion of actual bias and prejudice on the part of Judge Duncan, they certainly result in the conclusion that this proceeding is one in which Judge Duncan's "impartiality might reasonably be questioned," with Judge Duncan's failure (a) to disclose his conflicts of interests and (b) disqualify himself violating the Code of Conduct for United States Judges and Federal statutes. Alternatively, Respondent avers that the undisclosed associations and relationships with the State, including those identified herein, gave rise to "an unmistakable appearance of impropriety."

Further Declarant sayeth naught at New Orleans, Louisiana, this 16th day of November, 2020.

s/Ashton R. O'Dwyer, Jr.
ASHTON R. O'DWYER, JR.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 18-98009

IN RE:

ASHTON R. O'DWYER, JR.

Respondent

RESPONDENT'S MOTION TO UNSEAL THE RECORD

ASHTON R. O'DWYER, JR.
Respondent
In propria persona
1116 Monticello Avenue
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Telephone Number: (504) 812-9185
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RESPONDENT'S MOTION TO UNSEAL THE RECORD

COMES NOW Respondent, Ashton Robert O'Dwyer, Jr., (hereinafter "AROD"), and moves the Court to unseal the record in the above-styled and numbered cause and for all attendant relief, such as the inclusion of each filed document in the record, properly described with the date and time of filing, and recorded in a Docket Sheet, which is available to the public via Pacer. This Motion is filed upon the grounds that there exists a strong presumption of public access to the Court's records, which has not been rebutted by anyone or by anything in this case. More to the point, the unprecedented sealing of the entire record in this case, at a time unknown, by a person or persons unknown, for reasons unknown, was and is entirely unjustified, and fails to meet the U.S. Supreme Court's "standards for sealing" enumerated in *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978), and in Fifth Circuit authorities. In addition, AROD avers that the unsealing of the record in this case is mandated by the common law and by the First Amendment to the U.S. Constitution, as well as by the applicable jurisprudence, including particularly, but without limitation *BP Exploration & Production, Incorporated versus Claimant ID 100246928*, No. 18-30375 (5th Cir. March 29, 2019) and *United States of America v. Holy Land Foundation for Relief and Development*, 624 F.3d 685 (5th Cir. 2010) and authorities cited therein. Additional grounds for the unsealing of the record, and for all attendant relief, follow.

BACKGROUND INFORMATION

AROD was first informed of the sealing of the record in this case on Monday, February 4, 2019, when he was informed by Case Manager Allison Lopez (in response to AROD's perfectly reasonable, and very simple, request to access the docket sheet in his own case) as follows:

> "I thought I could help, but unfortunately, I can't send you the docket in this case. There is no 'public' version of the docket as this type of matter proceeds under seal. Which also means, it will not be accessible at our public terminal."

See AROD's Motion filed in these proceedings on February 22, 2019, and the email exchange with Case Manager Lopez of February 4, 2019, which was attached to AROD's Motion.

In his Motion Filed on February 22, 2018, AROD repeatedly inquired about who ordered that the case record be placed "under seal" and for what reason(s), all to no avail.[1]

AROD's Motion was not ruled on until AROD received the Panel's three-page Per Curiam Opinion of May 31, 2019 when, without citation to any legal authority, the Per Curiam Panel wrote in a footnote:

> "Per the typical practice for attorney discipline matters, this Court does not maintain a 'docket sheet'. So his Motion is DENIED."

Note that the Panel recited a bold-faced LIE: "Per the typical practice for attorney discipline matters," which

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[1] Because the record in this case is sealed, AROD cannot refer to a "Record Document Number."

the Panel knew to be false, creating the erroneous impression that, together with the "no docket sheet" LIE, the sealing of the entire case record was somehow also "typical" and, therefore, justified.[2]

Indeed, in the three-page Per Curiam Opinion, the Panel cited no law, other than *Selling v. Radford*, 243 U.S. 46 (1917), and its progeny, which the Panel woefully failed to apply correctly and also misapplied. See *infra*.

AROD avers that the applicable law mandates the unsealing of the record.

THE APPLICABLE LAW AND ARGUMENT

AROD only learned that the entire record in this case had been placed "under seal" at a time unknown, by a person or persons unknown, for reasons unknown, during an email exchange with Case Manager Allison Lopez on February 4, 2019. AROD's efforts to identify who ordered that the record be sealed, and why, have all been in vain.

The posture of the sealing of the entire record is "unusual," to say the least. Generally, the sealing of a record, or portions of a record, is requested by one or more parties, who ask a District Court for an order to seal, which must be justified. Such sealing orders may then be reviewed by an Appellate Court pursuant to "an abuse of discretion" standard *Sec. v. Van Waeyenberghe*, 990 F.2d 845 (5th Cir. 1993); *Julie Brown v. Ghislaine Maxwell*, Case No. 18-2868-CV (2d Cir., July 3, 2019),

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[2] In his Motion filed on February 22, 2019, AROD, fully briefed why sealing the record in his case was not supported by any applicable rules.

Record Document No. 213-1, page 11 (and authorities cited therein).

In the case at bar, however, a person or persons unknown[3], for reasons unknown, on a date unknown, sealed the entire record in this case, apparently on a *sua sponte* basis[4]. Notwithstanding the unusual, one might even say "unprecedented," action in this case, AROD avers that the applicable law mandates unsealing the record.

The right of public access to court records, and more particularly to "what goes on" inside the Courtroom, was recently addressed by Panel Member Judge Greg Costa in *BP Exploration & Production, Incorporated v. Claimant ID 100246928*, No. 18-30375 (5th Cir., March 29, 2019), in a case that addressed sealing the Courtroom for oral argument on the claims by the Tampa Bay Buccaneers against BP, arising out of the Deepwater Horizon Oil Spill, as follows:

> "Claimant ID 100246928 – a/k/a the Tampa Bay Buccaneers – asks this court to seal the courtroom where the team will argue its appeal on April 1. It also wants to bar public access to the recording of the argument that this court routinely makes available on its website. The team's motion is DENIED.
>
> Until recently, this court filed *Deepwater Horizon* appeals under seal when they were first docketed. Even under that sealing order, however, the court ultimately unsealed many cases and the

[3] It is not even known if that person was a member of AROD's Panel.
[4] AROD, the only "party," certainly did not ask that the record be sealed.

vast majority of appeals were argued in a public courtroom. Reflecting this determination that most BP cases did not warrant full sealing, an en banc order issued last month vacating the court's prior sealing order. As is the situation for other cases, parties in *Deepwater Horizon* cases must now justify sealing. The default is public assess. After that order issued, the Buccaneers succeeded in keeping the record and briefs sealed based on its concerns that the amount of revenue it receives from the NFL – a focus of this appeal – is proprietary.

But its request to seal the courtroom goes too far – by a longshot. "The right to public access 'serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness. '" *United States v. Holy Land Found, for Relief & Dev.*, 624 F.3d 685, 690 (5th Cir. 2010) (quoting *Littlejohn v. BIC Corp.*, 851 F.2d 673, 682 (3d Cir. 1988)). Public confidence in the courts is the issue: How can the public know that courts are deciding cases fairly and impartially if it doesn't know what is being decided? *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 179 (5th Cir. 2011) (discussing the need for "openness" of court proceedings in the criminal context); *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220, 230 (5th Cir. 2008) (noting same interest for attorney's fee dispute in civil case). Sealing a record undermines that interest, but shutting the courthouse door poses an even greater threat to

public confidence in the justice system. "Open trials assure the public that procedural rights are respected, and that justice is afforded equally. Closed trials breed suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law." *Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 595 (1980) (Brennan, J., concurring).

The team cites three reasons it believes override this strong interest in transparency. None of them comes close to doing so.

It first says that the briefs discuss confidential financial data, which would "likely" come up at oral argument. But that type of proprietary information is present in all these BP cases – a claimant has to submit profit and loss statements to get paid. Yet lawyers have argued these cases in open court multiple times during recent argument weeks without disclosing confidential revenue amounts. The judges have the data at their fingertips, so there is no need for a lawyer to mention the actual numbers.

Next the team contends that keeping the courtroom open would "gratify [BP's] private spite," "promote public scandal," and "harm [the team's] competitive standing." *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (noting these potential interests in judicial secrecy). It recites an aside from BP's brief stating that the public would be "surprised to learn that a professional football team has claimed spill-related losses." Maybe so. But public "surprise" at a football team's seeking money

from an oil-spill settlement is not in the same universe as the types of scandal or spite that warrant closing the courthouse door. *See, e.g., id.* (mentioning these concerns in the context of "the painful and sometimes disgusting details of a divorce case" (quotation omitted)). Cases are heard in courtrooms every day addressing matters so much more sensitive than this dispute – workplace harassment, sex crimes, or child abuse to name just a few. Even in those cases the courtroom typically remains open to the public.

The Buccaneers' final justification is an expectation of secrecy the team says it had throughout the claim process. Under the classwide agreement, settlement program proceedings are confidential. But confidentiality agreements entered into by private parties, even if approved by the district court, do not bind this court. *Baxter Intern., Inc. v. Abbott Labs.*, 297 F.3d 544, 545-46 (7th Cir. 2002) (stating that notwithstanding prior confidentiality agreements, "any claim of secrecy must be reviewed independently in [the appellate] court"). Indeed, the standard letter that is sent to parties in this court states:

> 'Our court has a strong presumption of public access to our court's ci records, and the court scrutinizes any request by a party to seal Qi.... Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the

> matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding.'[5]

And there is a more fundamental reason that a sealing agreement by the parties should not bind a court. It is the *public* that has the right of access, so private litigants should not be able to contract that right away. Most litigants have no incentive to protect the public's right of access. Both sides may want confidentiality. Even when only one party does, the other may be able to extract a concession by agreeing to a sealing request (this type of tradeoff is common in settlement agreements). That is why it is for judges, not litigants, to decide whether the justification for sealing overcomes the right of access.

At the end of the day, because this court has maintained confidential treatment of its financial statements, the Buccaneers' request for sealing the oral argument is based on nothing more than a desire to keep secret that it filed a *Deepwater Horizon* claim. The court will leave it to others to guess why the team is so concerned about public disclosure of its claim when numerous other BP claimants in the appeals inundating our court are

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[5] AROD avers that the entire sentence of this Court's "Standard Letter" reads: "Our Court was a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket," the very things that have been sealed in this case without any justification!

> not. Just three months into this year, at least ten *Deepwater Horizon* decisions naming the claimants have issued. Among them is one from another of Tampa Bay's professional sports franchises, the NHL's Lightning. *See Claimant ID 100248748 v. BP Expl. & Prod., Inc.*, 2019 WL 1306302 (5th Cir. Mar. 20, 2019). The court is unable to discern any reason for keeping secret the oil- spill claim of a football team when the claim of a hockey team (and of course those of numerous other businesses) is a public matter."
>
> As is its right, Claimant ID 100246928 has used the federal courts in its attempt to obtain millions of dollars it believes BP owes because of the oil spill. But it should not able to benefit from this public resource while treating it like a private tribunal when there is no good reason to do so. On Monday, the public will be able to access the courtroom it pays for."

In the case at bar, precisely WHO sealed the entire record, WHY the record was sealed, and WHEN, have not been revealed. And for the same reasons stated by Judge Costa, in the above- quoted *Tampa Bay Buccaneers* case, AROD avers entitlement to unsealing the record in this case, because the public has the right to access precisely what it is that the public has been paying for.

Borrowing again from Judge Costa in the *Tampa Bay Buccaneers* case, and authorities cited therein:

> "Public confidence in the courts is the issue: How can the public know that courts are deciding cases

> fairly and impartially, if it doesn't know what is being decided?
>
> * * * * *
>
> "Sealing a record undermines that interest...
>
> "Open trails assure the public that procedural rights are respected, and that justice is afforded equally. Closed trials breed suspicion of prejudice and arbitrariness, which in turn, spawns disrespect for law." (citation)

The Fifth Circuit has established a "standard for sealing," *i.e.*, that the proponent of sealing must show that sealing services "an overriding interest" that is "essential to preserve higher values [than the presumption of public access] and is narrowly tailored to serve that interest," *United States v. Edwards*, 823 F.23 111, 115 (5th Cir. 1987).

Stated simply, no showing whatsoever has been made by anyone that the 'strong presumption of public access should be overridden, much less any "required showing," or even some other form of "justification" for the sealing of the record.

AROD respectfully submits that the entire record in this case should be unsealed for access by the public, and for all attendant relief, such as the inclusion of each document filed in the record, properly described, with the date and time of filing, and recorded on a Docket Sheet, which is available to the public via Pacer.

THE RECORD SHOULD BE UNSEALED, BECAUSE THE PUBLIC HAS A RIGHT TO KNOW THE FOLLOWING:

1. The public has a right to know about "who" AROD really is. See AROD Exhibit No. 8, which is AROD's curriculum vitae and list of representative trials, etc.

2. The public has a right to know that the Panel, and the "bought and paid for" Louisiana Supreme Court, whose March 15, 2017 Order of permanent disbarment the Panel simply "rubber- stamped," did a "hatchet job" on AROD's character, honesty, and integrity, built up over the course of more than 35 years a practicing admiralty and maritime lawyer with the law firm of Lemle & Kelleher, pre-KATRINA.

3. The public has a right to know that permanent disbarment was an unduly harsh and inappropriate penalty to be imposed against AROD, who the unsealed record will reveal is a "victim" and "whistle-blower," rather than a "rule breaker." Nothing allegedly done by AROD fell within the activities described in Appendix E[6] to Louisiana Supreme Court, Rule XIX, namely the "Guidelines for Disbarment." AROD Exhibit No. 4, pages 3-10. Additionally, AROD already has been "disbarred" for over 10 years, since his summary suspension from the practice of law in Federal Court by the lazy, stupid, and corrupt Ivan L.R. Lemelle in November 2008. See *infra*.

4. The public has a right to know that AROD's life has been made "a living hell" by a bunch of scoundrels who control the TOTALLY CORRUPT Louisiana

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[6] Other than the specious "practicing law without a license" and "unauthorized practice of law" allegation, which AROD will debunk, infra.

Attorney Disciplinary System, who retaliated against AROD and unleashed retribution against him, because AROD exposed their CORRUPTION of the "Victims of KATRINA" litigation, in which the innocent victims failed to recover even a penny in tort damages, all due to the scoundrels' criminal corruption of the litigation.

5. The public has a right to unfettered access to the entire record in this case, consisting of AROD's 26 Exhibits, his emails and "letter briefs" to the Court, and the entire record in the State disciplinary proceedings, including AROD's 57 Exhibits which he introduced in evidence in the State proceedings (but which appear to be "missing in action")[7]. If the public reads nothing else, then the public should read AROD Exhibit Nos. 1 through 7, 19, 20, and 21. See also AROD's emails to Deputy Clerk Butler of 10/10/18 @ 10:09 a.m. and 11/12/18 @ 8:13 p.m. AROD seriously doubts whether any member of the Panel in this case actually READ a single AROD Exhibit or written submission to the Court, which AROD avers are entirely EXCULPATORY.

6. The public has a right to know that, because AROD believes these Exhibits are so important to the public's being fully informed about the PUBLIC CORRUPTION which AROD exposed, both in the "Victims of KATRINA" litigation and in the disciplinary cases brought against AROD in the Federal and State

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[7] The "bought and paid for" Louisiana Supreme Court, which presides over the TOTALLY CORRUPT Louisiana Attorney Disciplinary System, taxed "costs" against AROD, and more particularly $24,915 for Xerox copy charges @ $1.00 per page. AROD avers that he and the public have a right to see what $24,915 cost.

proceedings, AROD is attaching to this Motion his Exhibit Nos. 6, 7, and 21 for ready reference by the public.

7. The public has a right to know why the entire record in this case has been SEALED, without disclosing when the sealing was done, the identify of who[8] ordered the sealing of the record, and without stating any reason(s) for sealing the record. More to the point, the public has an absolute right to know:

Who is the Panel protecting?
What is the Panel hiding?

8. The public has a right to know, *assuming arguendo* if the object of instituting litigation is WINNING, particularly massive litigation like the "Victims of KATRINA" litigation, in which the victims were entirely innocent, then WHY did the KATRINA victims recover exactly ZERO in tort damages in the litigation? The answer will be found in AROD Exhibit Nos. 1 and 21.

9. The public has a right to know the identities of the "legal geniuses"[9] who controlled and managed the Victims of KATRINA" litigation, who were responsible for the innocent victims of KATRINA recovering

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[8] AROD avers that whoever sealed the record is "a black-hearted snake," who did so for an illicit purpose, much like cloaking proceedings during the Spanish Inquisition with "secrecy," which benefitted only the inquisitors.

[9] These guys were real "Clarence Darrows"! Could anyone have "botched" the handling of the "Victims of KATRINA" litigation like these "clowns" botched it?

exactly ZERO in tort damages, all as a result of their CORRUPTION of the litigation.

10. The public has a right to know that the entire Louisiana Attorney Disciplinary System, consisting of the Office of Disciplinary Counsel, Hearing Committees, the Louisiana Disciplinary Board, and the Louisiana Supreme Court, which presides over the whole shebang, is TOTALLY CORRUPT.

11. The public has a right to know that the TOTALLY CORRUPT Louisiana Attorney Disciplinary System, in the persons of former Louisiana Supreme Court Chief Justice Catherine D. Kimball, her Chief Disciplinary Counsel, Charles B. Plattsmier, Jr., who reported to Kimball, and the former Attorney General of the State of Louisiana, Charles C. Foti, Jr., the Chief Law Enforcement Officer of the State, to whom Kimball said on September 11, 2005, "Somebody's got to shut that guy (referring to AROD) up; he's giving us all a bad name.," orchestrated and ordered a criminal gangland-style hit[10] on AROD by GOONS employed by the Louisiana State Police, and thus committed outrageous "prosecutorial misconduct" against AROD.

12. The public has a right to know that ever since AROD's abduction, brutalization, torture and false imprisonment on September 20, 2005, within 12 hours of

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[10] The "hit" included AROD's being abducted from his home at five minutes past midnight on September 20, 2005, and his brutalization, torture, and false imprisonment at Camp Amtrak, which left AROD crippled. This brings to mind the famous quotation of Justice Brandeis in *Olmstead v. U.S.*, 227 U.S. 438 (1927), namely: "If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

filing the first "Victims of KATRINA" lawsuit, the TOTALLY CORRUPT Louisiana Attorney Disciplinary System has been on a "mission" to conceal and cover-up the crimes which were committed again AROD, and to discredit and marginalize AROD, so that AROD's allegations of PUBLIC CORRUPTION would not be believed. AROD avers the sealing of the entire record in this case, by persons unknown, is part and parcel of this "cover-up," which now also involves the United States Court of Appeals for the Fifth Circuit.

13. The public has a right to know that it is no coincidence that AROD's abduction, brutalization, torture, and false imprisonment occurred with 12 hours of AROD's filing the first "Victims of KATRINA" lawsuit against the United States of America, (through its agency and instrumentality, the U.S. Army Corps of Engineers) but which also named the State of Louisiana and various state entities as defendants.

14. The public has a right to know that AROD's suing the State and various state entities in his "Victims of KATRINA" lawsuit is significant, because the CORRUPTION of that litigation, which AROD exposed, and for which AROD has been severely "punished," in retaliation and retribution, revolved around the secret representation of the State, and the failure of the plaintiffs' lawyer cabal (which controlled the litigation) to sue the State, in Federal or in State Court.

15. The public has a right to know that the plaintiffs' lawyer cabal (which controlled the litigation) had a glaring conflict of interests, because although they were representing the State in secret, but with the full knowledge of the presiding Judge, they also controlled

the litigation by virtue of serving on Committees[11] in the litigation, which obligated them to "the Class," whose interests played a distant "second fiddle" to the cabal's GREED.

16. The public has a right to know that when AROD exposed this corruption, dual representation, and professional misconduct, due to the cabal's conflict of interests, which also involved the presiding Judge, AROD was "marked for death", figuratively if not literally. AROD avers that his disbarment, coupled with the summary dismissal of all of his litigation, the entering of a wrongful Default Judgment against him, which forced him into bankruptcy, the filing of spurious federal criminal charges against him, and incarcerating him in solitary confinement for 34 days, the loss of AROD's home and all of his worldly possession, were all part of AROD's being "marked for death" by the TOTALLY CORRUPT Louisiana Attorney Disciplinary System.

17. The public has a right to know that the plaintiffs' lawyer cabal, to whom the Judge who presided over the "Victims of KATRINA" litigation[12] handed control and management of the KATRINA litigation, who were all named defendants in Civil Action No. 08-4728 on the Eastern District Docket, which AROD has referred to as "the largest legal malpractice Class Action lawsuit in the annals of American jurisprudence":

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[11] Having been "anointed" to Committees by the presiding Judge, who knew about the dual representation and conflict of interests, but corruptly permitted it to flourish, to the ultimate detriment of the innocent "Victims of KATRINA."

[12] This "crocked-as-a-snake" Federal jurist was "Stanwood R. Duval, Jr.,"

Failed to sue the State of Louisiana in Federal Court or in State Court;

Failed to sue the Louisiana Department of Transportation and Development, which served as the engineering arm of the Board of Commissioners for the Orleans Levee District;

Abandoned all claims against the Sewerage and Water Board of New Orleans;

Abandoned all claims against the Board of Commissioners for the Port of New Orleans by failing to file any opposition to the Board's Motion for Judgment on the Pleadings;

Conspired and schemed so that "the Broussard Flood" litigation was moved from Federal Court to State Court, where the plaintiffs recovered NOTHING, since the presiding Judge (and his son, who had represented Broussard and the Parish for years) was CROOKED and had a glaring conflict of interests;

Entered into a corrupt and fraudulent "settlement" with the Orleans Levee Board, which resulted in some innocent "Victims of KATRINA" receiving checks for as little as $2.50, leaving the Board's non-flood assets completely intact, and without pursuing the State for the Board's malfeasance and mismanagement in many different respects; and

Failed to pursue, and ultimately abandoned, all "Responder" causes of action in the "Victims of KATRINA" litigation.

See: AROD Exhibit Nos. 1, 6, 11, 12, 15, 17, 19, 19, 20 and 21.

18. The public has a right to know that the "bought and paid for" Louisiana Supreme Court, which steadfastly refused to recuse itself, but which should have done so, had ABSOLUTELY NO BUSINESS presiding over and deciding the disciplinary case against AROD. More to the point, AROD avers that the unsealing of the record in this case will reveal that the "bought and paid for" Court was biased and prejudiced against AROD, both (1) by virtue of AROD's allegations of criminal misconduct by the Court's former Chief Justice, Catherine D. Kimball, and others, which have been actively "covered up," and (2) by virtue of having been paid TENS OF THOUSANDS OF DOLLARS in campaign contributions by AROD's political enemies, who AROD named as defendants in Civil Action No. 08-4728 on the New Orleans Federal Court docket. Because of its bias and prejudice against AROD, the "bought and paid for" Louisiana Supreme Court, as will be readily apparent to the public once the record in this case is unsealed, the Court should have been recused in order to comply with Louisiana law, and should have appointed an unbiased and unprejudiced Judge or Judges to decide the case, all as is provided for in Article 5, Section 5(A) of the Louisiana Constitution of 1974. AROD Exhibit Nos. 4, 6, 7, 16, 22, and 23.

19. The public has a right to know that nothing demonstrates the DISHONESTY of the Panel's[13] Per Curiam Opinion of May 31, 2019, like the following passages, from Page 3.

> "Having considered[14] the record of the state proceeding, O'Dwyer's numerous responses to the show case order, and his oral argument, we conclude that the disbarment findings do not suffer from the substantial infirmities needed for us to decline to follow the same course the state court took. The attacks O'Dwyer levels against the state court findings at most argue for a different interpretation of his conduct in New Orleans federal court; he cannot show that the contrary view of the Supreme Court of Louisiana – and the federal district court for that matter – lacked evidence. To take just one example of serious misconduct, there was strong support for the finding that O'Dwyer engaged in the unauthorized practice of law following his suspension from the Eastern District of Louisiana. A motion was filed in an O'Dwyer case under the signature of O'Dwyer's cousin who was a lawyer. What evidence suppo rted the conclusion that O'Dwyer wrote the brief and forged his cousin's signature so it could be filed? One of the most powerful types: a confession. O'Dwyer admitted in response to an inquiry from state disciplinary counsel that he had signed his

[13] Although the Per Curiam Opinion purports to be "the Panel's," AROD avers that it has the STENCH of James Dennis and/or Jerry Smith "all over it."

[14] AROD avers that this statement is a "CYA" LIE.

> cousin's name to the filing. 221 So.3d at 8. The egregiousness of this conduct, occurring while O'Dwyer was already subject to court discipline, speaks for itself. And nothing in the stacks of paper submitted in this matter undermines the state court's conclusion that O'Dwyer engaged in this unauthorized practice." (emphasis supplied.)

The last time AROD "checked," FORGERY WAS A CRIME. If the Panel truly believes that AROD FORGED his cousin's signature on a pleading[15] then just don't order AROD's name to be removed from the roll of attorneys, PROSECUTE HIM CRIMINALLY.

20. The public has a right to know that the only "evidence" that the Panel alleged that it had discovered to answer its own rhetorical question, "What evidence supported the conclusion that O'Dwyer wrote the brief and forged his cousin's signature so it could be filed?," was something that the Panel called "a confession." However, no transcript volume or page number was referenced by the Panel; no exhibit number was referenced.[16] All that is referenced by the Panel is a nebulous citation to the "bought and paid for" Louisiana Supreme Court reported opinion at "221 So.3d at 8,"

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[15] AROD avers that the Panel knew when they wrote it that that conclusion was FALSE, i.e., a BOLD-FACED LIE.

[16] Surely, the Panel could not have been referring to any AROD Exhibit, because ALL of AROD's Exhibits in the State disciplinary proceedings are "missing in action." See AROD's Court Authorized Post-Hearing Written Submission filed herein on Friday, December 7, 2018, which apparently is SEALED, along with the rest of "the record."

which AROD avers does not constitute "evidence" or "proof" of anything at all.

21. The public has a right to know that the issues of (1) who signed the pleading in question; (2) what constitutes "the practice of law" in the State of Louisiana; and (3) the applicable law on the subject, were briefed *ad nauseam* in the case record, which has been SEALED. NONE of what was briefed was even mentioned in the Per Curiam Opinion. See AROD Exhibit Nos. 3 (pages 74-110), 4 (pages 6-10), 5 (pages 15-28), and 25 in this case, as well as Disciplinary Counsel Ad Hoc Exhibit No. 54 in the State proceedings, which clearly and equivocally demonstrate the following:

1) AROD did NOT sign the pleading; his cousin, a practicing attorney, did so, because he was representing AROD in the case in which the pleading was filed, a case in which AROD was the sole party defendant.

2) To the extent that AROD ever suggested that anyone other than his cousin signed the pleading, then AROD was mistaken.

3) The TOTALLY CORRUPT Louisiana Attorney Disciplinary System, which is presided over by the "bought and paid for" Louisiana Supreme Court, applied NO LEGAL STANDARD WHATSOEVER[17] in reaching the erroneous conclusion that AROD engaged in the "unauthorized

[17] And neither did the Panel in this case.

> practice of law," without citation to any provision of Louisiana law on the subject. See Rule 5.5(e)(3) of the Louisiana Rules of Professional Conduct, LSA-R.S. 37, Section 212, Article 863 of the Louisiana Code of Civil Procedure, and Rule 11, Federal Rules of Civil Procedure.[18]

22. The public has a right to know that the Panel's *imprimatur* to the CORRUPT System's conclusion "...that O'Dwyer wrote the brief" is clearly erroneous, something that unsealing the record will make abundantly clear. But even if AROD had personally composed and written EVERY WORD and sentence in the brief, Louisiana law[19] is to the effect that that would have been ENTIRELY PERMISSIBLE and would not have constituted "the unauthorized practice of law," since AROD was the sole party defendant in the litigation in which the pleading was filed, and since the provisions of Louisiana law, which defines "the practice of law" in this State, namely LSA-R.S. 37, Section 212, clearly provide that:

> "B. Nothing in this section prohibits any person from attending to and caring for his own business claims, or demands."

Louisiana law would have allowed AROD to defend himself in a lawsuit in which he was the sole party defendant and this would have included "writing the

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[18] The pleading which AROD allegedly signed, but which AROD DID NOT SIGN – it was signed by his cousin, a lawyer, who represented AROD – was filed in Federal Court.

[19] No provision of which was cited, either by the TOTALLY CORRUPT State System or by the Panel.

brief" had he been so inclined. See also Rule 5.5(e)(3) of the Louisiana Rules of Professional Conduct, Article 863 of the Louisiana Code of Civil Procedure, and Rule 11, Federal Rules of Civil Procedure.

23. The public has a right to know that the above and foregoing DISHONEST statements, conclusions, and determination color everything which the Panel and the CORRUPT State System said about whose signature appears on Disciplinary Counsel Ad Hoc Exhibit No. 54, and that the unsealed record in this case will lead the public to conclude that no Court or System was "eminently qualified to consider and evaluate all evidence before it,"[20] and will leave the public with a clear conviction that the entire 3-page Per Curiam Opinion, like the Louisiana Supreme Court's Order of Disbarment, is "faulty." *In re: Stamps*, 173 Fed. App. 316, 318 (5th Cir. 2006). In other words:

FALSUS IN UNO,

FALSUS IN OMNIBUS!

24. The public has a right to know that, in her letter to AROD of October 5, 2018, Deputy Clerk Saltzman informed AROD that:

> "The sole issue for consideration is whether the United States Court of Appeals for the Fifth Circuit should impose upon you reciprocal

[20] The CORRUPT State System could not even "get straight" a one-page Exhibit, namely Disciplinary Counsel Ad Hoc Exhibit No. 54, which was entered in evidence without objection. But the Panel also "botched" its analysis.

> discipline based on the order of the Supreme Court of Louisiana. See *Selling v. Radford*, 243 U.S. 46 (1917)."

25. The public has a right to know that the Panel failed to perform the requisite step-by-step analysis of the State disciplinary proceedings and State record, as mandated by the U.S. Supreme Court in *Selling v. Radford*, which required "an intrinsic consideration" to determine whether any exception to the imposition of reciprocal discipline existed in AROD's case. The Panel was, therefore, in error when it disciplined AROD by the imposition of reciprocal discipline.

26. The public has a right to know that the Panel abrogated its responsibility to perform intrinsic consideration of the record in the State proceedings, not to mention the contents of the SEALED record in this case. More to the point, AROD avers that the Panel DID NOT EVEN READ, much less give intrinsic consideration to, the record in the State proceedings OR the record(s) submitted to the Court by AROD in this case, which have been SEALED. This is clear from the Panel's statements that AROD "seeks to relitigate," "our task...is much more limited," and "[w]e do not review as an original matter" the underlying allegations, in clear violation of Judge Wisdom's instructions in *In re: Wilkes*, 494 F.2d, 472 (5th Cir. 1974), wherein he unequivocally directed that:

> "Federal courts must 'determine for ourselves the right to continue to be a member of...[the federal] Bar' after giving 'intrinsic consideration' to the underlying record." 494, F.2d at p. 476. (emphasis supplied.)

AROD avers that the mandated "intrinsic consideration" for Federal Courts "to determine for ourselves" DOES NOT MEAN "merely apparent or accidental" consideration, but "deep-rooted," "deep-seated" and "intimate" consideration, which the Panel in this case admittedly failed to do. And how could the Panel do so, with all of AROD's 56 Exhibits in the State proceedings being entirely "missing in action," and the entire record in this case, which "someone" does not want the public to access, being SEALED?

27. The public has a right to know that the Panel in this case completely abrogated its responsibility to perform an intrinsic consideration and "wholly...abdicate[d]...[its]...own functions by treating its judgment as the thing adjudged," and shutting its eyes to justice and fundamental fairness. *Selling v. Radford*, 243 U.S. 46 (1917).

28. The public has a right to know that the Panel erroneously deferred to the findings of the "bought and paid for" Louisiana Supreme Court, which should have been recused and had NO BUSINESS deciding the case against AROD (se infra), saying that the LSC "conclud[ed] that O'Dwyer engaged in a 'panoply of serious professional violations'." However, save for one, stemming from the erroneous determination that AROD signed his cousin's name to a pleading ACTUALLY SIGNED BY AROD'S COUSIN, the Panel deftly avoided identifying ANY of the "panoply of serious professional violations" or how any of them – whatever they were – warranted permanent disbarment for AROD, who has been "disbarred," in effect, since November 2008, for over 10 years already.

29. Rather than enumerating the various steps it should have taken in order to determine whether any of the exceptions to the imposition of "reciprocal discipline" existed, and stating what it did to perform the analysis mandated by the U.S. Supreme Court in *Selling v. Radford*, U.S. (1917), the Panel dismissively disposed of AROD's arguments and evidence in the SEALED record with the following conclusory and unreasoned statements, which also are WRONG:

1) "O'Dwyer seeks to relitigate his underlying discipline in the United States District Court for the Eastern District of Louisiana that led to his State disbarment....But our task in considering reciprocal discipline is much more limited."

2) "The State court disciplinary proceedings provided O'Dwyer with fulsome process."

3) "The State disbarment proceeding afforded O'Dwyer the process he was due."

4) "[W]e conclude that the disbarment findings do not suffer from the substantial infirmities needed for us to decline to follow the same course the State court took."

30. The public has a right to know that, if AROD's case did not present the Panel with any of the exceptions to the imposition of reciprocal discipline enumerated by the U.S. Supreme Court in *Selling v. Radford*, namely:

1) want of due process;

2) unwarranted conclusions not supported by facts; and

3) fundamental unfairness, or other grave and sufficient reasons, or grave injustices,

then no exception to the imposition of reciprocal discipline will ever exist, at any time, in any case.

31. The public has a right to know that all of AROD's post-KATRINA "troubles" commenced when AROD became the subject of a criminal gangland-style "hit" at his St. Charles Avenue home at five minutes past midnight on September 20, 2005. That "hit" involved AROD's abduction from his home by a detail of Louisiana State Police GOONS, and AROD's brutalization, torture, and false imprisonment at Camp Amtrak, where AROD was pepper-sprayed in the face 30 to 40 times and shot in both lower extremities at point-blank range, with a 12-gauge shotgun loaded with bean bag rounds, while AROD's hands were cuffed behind his back, or while AROD was on the other side of a chain-link "dog cage" and separated from his attackers. AROD avers that the psychopaths and sociopaths who did this to him, all employees of the State of Louisiana, as well as the scoundrels who ordered and orchestrated the hit,[21] belong in prison.

32. The public has a right to know that the TOTALLY CORRUPT Louisiana Attorney

[21] These scoundrels include former Louisiana Supreme Court Chief Justice Catherine D. Kimball, her Chief Disciplinary Counsel Charles B. Plattsmier, Jr., and the former Attorney General of the State of Louisiana, the State's Chief Law Enforcement Officer, Charles C. Foti, Jr.

Disciplinary System summarily dismissed "on the papers," with no adversarial "hearing" whatsoever, and without stating any cogent reasons for doing so, AROD'S complaints of professional misconduct against the conspirators who ordered the criminal gangland-style "hit" against him, and which was executed at five minutes past midnight on September 20, 2005, and which left AROD crippled. AROD Exhibit Nos. 1, 16, and 20.

33. The public has a right to know that the TOTALLY CORRUPT Louisiana Attorney Disciplinary System summarily dismissed "on the papers," with no adversarial "hearing" whatsoever, and without stating any cogent reasons for doing so, AROD's complaints of professional misconduct against the scoundrels who corrupted the "Victims of KATRINA" litigation by virtue of their dual representation of "the Class," and their simultaneous "secret" representation of the State, and their failure to sue the State, either in State or Federal Court (they could not sue their own client), the result being that the innocent Victims of KATRINA recovered exactly ZERO in tort damages, when the United States of America was determined to be immune. AROD Exhibit Nos. 1, 6, 17, 18, 20, and 21.

34. The public has a right to know that the Panel's conclusory statements that AROD "cannot show that the contrary view of the Supreme Court of Louisiana – and the Federal District Court for that matter – lacked evidence" are clearly erroneous and unsupported by and contrary to the record, which AROD avers was not subjected to "an intrinsic consideration" by the Panel, as required by *Selling v. Radford.*

35. The public has a right to know that it is a "cruel irony" that AROD's alleged misconduct, which has gotten him disbarred by TOTALLY CORRUPT legal and judicial systems, does not even come "close" to the criminal judicial and professional misconduct which is contained in the record of this case, which had been sealed by persons unknown, and which is of "hurricane strength" variety, which misconduct remains unpunished, committed by the likes of Catherine D. Kimball, Charles B. Plattsmier, Jr., Charles C. Foti, Jr., Stanwood R. Duval, Jr., Calvin C. Fayard, Jr., Joseph Bruno, Daniel Becnel, Ivan L.R. Lemelle, and many others. AROD Exhibit Nos. 6 and 21.

36. The public has a right to know that the Panel's conclusory statement that "the State disbarment proceeding afforded O'Dwyer the process he was due" is clearly erroneous, constituted an unwarranted conclusion not supported by facts, and is contrary to the contents of the record in the State disciplinary proceedings, which reflect exactly the opposite.

37. The public has a right to know that AROD was denied all procedural and substantive due process of law by the TOTALLY CORRUPT Louisiana Attorney Disciplinary System, which consisted of the Office of Disciplinary Counsel, Hearing Committees, the Disciplinary Board, and the Louisiana Supreme Court, which presided over the entire CESSPOOL.

38. The public has a right to know that the TOTALLY CORRUPT Louisiana Attorney Disciplinary System denied AROD due process of law in proceedings which were fundamentally unfair, because AROD was wrongfully and illegally

prosecuted/persecuted through a so-called "Disciplinary Counsel Ad Hoc," for which there is no provision in Louisiana Law under the circumstances of AROD's case [other than Louisiana Supreme Court Rule XIX, Section 18(J)(1), which is simply not applicable]. Even the degenerate criminal vermin scum, Plattsmier, admitted that a Disciplinary Counsel Ad Hoc had been used in only one case other than AROD's case, being the case involving lawyer Greg Gamble, who Plattsmier said "may have consented to disbarment." O'Dwyer Exhibit No. 11 in the State proceedings, pages 121-122; DCAH Exhibit No. 68, pages 121-122.

39. The public has a right to know that AROD was denied due process of law in proceedings which were fundamentally unfair because so-called "hearings" were held in which AROD's written submissions were not read, and what AROD said in argument and testimony was not listened to, and because rulings were summarily made against AROD with no hearings at all. In other words, the TOTALLY CORRUPT Louisiana Attorney Disciplinary System paid "lip service" to the notion of procedural due process, while denying AROD both procedural and substantive due process, in proceedings that were fundamentally unfair "Kangaroo Court" proceedings, in which "the fix was in" from the "get go."

40. The public has a right to know that AROD was denied due process of law in fundamentally unfair proceedings, because in the eleven (11) years since the filing of a complaint of professional misconduct against AROD on April 2, 2008, neither the corrupt Federal nor the corrupt State Attorney Disciplinary Systems addressed even remotely, even in passing, the criminal conduct that had been directed against AROD on

September 20, 2005, when he was abducted from his home, and brutalized, tortured, and falsely imprisoned at Camp Amtrak, outrageous criminal conduct which remains unpunished to this very day.

41. The public has a right to know AROD was denied due process of law by the TOTALLY CORRUPT Louisiana Attorney Disciplinary System, in proceedings that were fundamentally unfair, because notwithstanding the fact that "the System" had the burden of proof, "the System" ignored that fact, and did not require "the System" to call a single witness who could be cross- examined under oath. This happened while "the System" simultaneously required AROD to prove his defenses beyond all shadow of a doubt, and then denied AROD the tools necessary to do so, ie. "the System" denied AROD any and all opportunity to conduct rigorous discovery.

42. The public has a right to know that AROD was denied due process of law by a TOTALLY CORRUPT Louisiana Attorney Disciplinary System, which should have been recused (but "the System" refused to do so), in proceedings that were fundamentally unfair, and failed to dismiss the Formal Charges against AROD. AROD EXHIBIT NOS. 3, 16, 17, 18, 22, 23, and 24, and AROD's emails to Deputy Clerk Butler of 11/12/18 @ 8:13 p.m. and 10/16/18 @ 9:57 a.m.

43. The public has a right to know that AROD was denied due process of law, in fundamentally unfair proceedings brought by a TOTALLY CORRUPT Louisiana Attorney Disciplinary System, which failed to investigate, much less prosecute, the crimes which have been committed against AROD, and by failing to allow

proper discovery, and for the one witness who was allowed to give a deposition, Plattsmier, precluding questions (or any paper and electronic discovery) about Plattsmier's, Kimball's, and Foti's participation in the events of September 20, 2005.

44. The public has a right to know that AROD was denied due process of law, in proceedings that were fundamentally unfair brought by a TOTALLY CORRUPT Louisiana Attorney Disciplinary System, which failed to impose discipline on the multitude of individuals who committed criminal judicial and professional misconduct against AROD and against AROD's 2000 or so KATRINA clients. AROD Exhibit Nos. 1, 6, 20, and 21.

45. The public has a right to know that AROD was denied due process of law, in fundamentally unfair proceedings brought by a TOTALLY CORRUPT Louisiana Attorney Disciplinary System, which imposed no consequences on Kimball, Plattsmier, and Foti for their criminal acts and judicial and professional misconduct towards AROD. AROD Exhibit Nos. 20 and 24 and AROD email to Deputy Clerk Butler of 11/12/18 @ 8:13 P.M.

46. The public has a right to know that AROD was denied due process of law in fundamentally unfair proceedings in which the corruption of the "Victims of KATRINA" litigation by a bunch of scoundrels was never substantively addressed. AROD Exhibit Nos. 1, 6, 17, 18, and 21.

47. The public has a right to know that AROD was denied due process of law, in fundamentally unfair

proceedings brought by a TOTALLY CORRUPT Louisiana Attorney Disciplinary System, which appointed several *utra vires* "Disciplinary Counsels Ad Hoc" who had multiple conflicts of interests, and then failed to do anything (ie. recusal) about these conflicts prior to the rendering of summary decisions which were adverse to AROD and his clients in related disciplinary cases involving criminal professional misconduct, namely in the following cases:

1. Docket No. 13-PDB-122, dealing with AROD's abduction, brutalization, torture, and false imprisonment.

2. Docket No. 15-PDB-008, dealing with the corruption of the "Victims of KATRINA" litigation.

3. Lying on the record and failing to withdraw false "practicing law without a license" allegations. AROD Exhibit No. 3 (pages 74-110), 4 (pages 6-10), 5 (pages 15-28), and 25.

Each of the above-referenced cases was summarily dismissed by the TOTALLY CORRUPT Louisiana Attorney Disciplinary System without any hearing at all. AROD Exhibit Nos. 1, 6, 16, 17, 18, 20, and 21.

48. The public has a right to know that the Federal Judge whose actions resulted in AROD being suspended, and later disbarred, in Federal Court, namely Ivan L.R. Lemelle, is lazy, stupid, and corrupt, and engaged in outrageous criminal conduct toward

AROD, which constituted an abuse of power and judicial misconduct.

49. The public has a right to know that BUT FOR the filing of a complaint for (alleged) professional misconduct against AROD in Federal Court on April 2, 2008, the Formal Charges in the State proceedings would never had been brought. In other words, the Federal proceedings instituted in April 2008 constituted the poisonous tree from which the fruit of the State proceedings that resulted in AROD's permanent disbarment in March 2017 later sprung. During the pendency of this case, AROD has variously described this as "fruit of the poisonous tree," "old wine in new bottles," "hand-in-glove," and "a BUT FOR analysis."

50. The public has a right to know that the Federal disciplinary proceedings, which were largely handled by the lazy, stupid, and corrupt Lemelle, who should have recused, denied AROD due process of law and were fundamentally unfair. AROD EXHIBIT NO. 2 in these proceedings and attached Exhibits, as well as O'Dwyer Exhibit Nos. 6(A), 6(B), 40, 42, 43, 44, and 45, in the State proceedings.

51. The public has a right to know that the Federal disciplinary proceedings were brought against AROD in retaliation and retribution for AROD's having called Federal Judge Stanwood Duval, his "close personal friend of longstanding," Calvin Fayard, and Plaintiffs' Liaison Counsel in the KATRINA litigation, Joseph Bruno, who was anointed by Duval, and a host of other Duval and Fayard "cronies," CROOKED. AROD Exhibit Nos. 1, 2, 6, 9, 10, 11, 12, 13, 14, and 21.

52. The public has a right to know that AROD was denied due process of law, and that the Federal proceedings against him were fundamentally unfair, because the lazy, stupid, and corrupt Lemelle (indeed, the entire Eastern District Bench) failed to follow the Attorney Disciplinary Rules which were in effect in April 2008, and instead of appointing one or more unbiased and unprejudiced investigators to perform a thorough investigation of the Complaint, which AROD would have then been entitled to traverse, through Rule 16 pre-trial procedures, such as engaging in discovery, and a full-blown trial before the entire Court, Lemelle, who should have recused himself, proceeded on a purely summary basis against AROD, contrary to the applicable Rules. AROD Exhibit No. 2, with attached Exhibits, as well as AROD's Complaint and Supplemental and Amended Complaint in Civil Action No. 08-3170, which are O'Dwyer Exhibit Nos. 6(A) and 6(B) in the State proceedings.

53. The public has a right to know that the lazy, stupid, and corrupt Lemelle denied AROD due process of law, in proceedings that were fundamentally unfair, by failing to disclose to AROD Lemelle's own judicial misconduct, which is documented in the case of *In Re High Sulphur Content Gasoline Procuts Liability Litigation*, 517 F.3d 220 (5th Cir. 2008), as well as Lemelle's various relationships with, and bias and prejudice for, lawyer defendants in Civil Action No. 08-4728 on the Eastern District docket to whom AROD was adverse, including Daniel Becnel and Walter Dumas. AROD Exhibit Nos. 2 (and attached Exhibits) and 6, and the case cited, *supra*.

54. The public has a right to know that AROD was denied due process of law in proceedings that were fundamentally unfair, because the lazy, stupid, and corrupt Lemelle, and his Brother and Sister Judges on the Eastern District Bench, all failed to recuse themselves, thus committing judicial misconduct. AROD Exhibit Nos. 2 and 21 (and attached Exhibits) in these proceedings, and O'Dwyer Exhibit Nos. 6(A), 6(B), 44, and 45 in the State proceedings, and Disciplinary Counsel Ad Hoc Exhibit Nos. 40, 42, 43, and 44 in the State proceedings.

55. The public has a right to know that the lazy, stupid, and corrupt Lemelle denied AROD due process of law in proceedings that were fundamentally unfair, because AROD was not allowed to conduct any Rule 26 discovery to permit AROD to advance his defenses in any meaningful way.

56. The public has a right to know that AROD was denied due process of law in proceedings that were fundamentally unfair, because the lazy, stupid, and corrupt Lemelle failed to implement any Rule 16 pre-trial procedures, instead conducting summary proceedings which, "on the surface," allowed Lemelle to pay lip service to the motion of due process, but which were, in fact, "Kangaroo Court" proceedings in which "the fix was in," with AROD being railroaded. AROD was entitled under the applicable Disciplinary Rules in effect at the time to discovery, pre-trial procedures and trial on the merits before the En Banc Court, all of which was summarily denied AROD by the lazy, stupid, and corrupt Lemelle.

57. The public has a right to know that AROD was denied due process of law in proceedings that were fundamentally unfair because the lazy, stupid, and corrupt Lemelle lied repeatedly on the record by saying, in Orders and Reasons: "Respondent Attorney stated he could not think of a fairer Judge to hear the complaint against him than the undersigned," and then repeating that lie by allowing the then-Chief Judge to say the same thing, in writing, without correcting his prior statements or the Chief Judge's statement, which he knew to be LIES. AROD Exhibit No. 2 (and attached Exhibits) and 21, and O'Dwyer Exhibit Nos. 6(A) and 6(B) in the State proceedings.

58. The public has a right to know that AROD was denied due process of law in proceedings that were fundamentally unfair, when the lazy, stupid, and corrupt Lemelle demonstrated his actual bias and prejudice against AROD by entering an illègal and wrongful Default Judgment against AROD for a sum of money approximating $150,000 to $200,000 after he had already disbarred AROD, which forced AROD to declare bankruptcy, which was Lemelle's nefarious object all along, and which cost AROD his home on St. Charles Avenue, among other things. AROD Exhibit No. 21.

59. The public has a right to know that the matters outlined *supra*, which are fully supported by the contents of the record in this case, which has been sealed, at a time unknown, by a person or persons unknown, for reasons unknown, evidenced:

1) want of due process;

2) unwarranted conclusions not supported by facts; and

3) fundamental unfairness, or other grave and sufficient reasons, or grave injustices;

All constituting good and valid reasons not to impose reciprocal discipline in AROD's case.

60. The public has a right to know that, for all of the many "transgressions"[22] that the TOTALLY CORRUPT Louisiana Attorney Disciplinary System hurled at AROD,[23] it was NEVER EVEN ALLEGED that AROD ever caused harm to any of the 2,000 or so Hurricane KATRINA clients, a fact that was conceded by Disciplinary Counsel Ad Hoc. In his Original Brief filed in the Louisiana Supreme Court on December 15, 2016, in Case No. 2016-B-1848, Disciplinary Counsel Ad Hoc wrote that AROD's statement that "there is no allegation that [he] caused any harm to his almost 2,000 KATRINA clients" was "absolutely correct." See page 8, Part VII of the Original Brief of Disciplinary Counsel Ad Hoc. Of course, the same cannot be said of the scoundrels who corrupted the "Victims of KATRINA" litigation, the result being that the innocent hurricane victims recovered ZERO in tort damages in the litigation.[24] And the scoundrels who were responsible for that fiasco remain unpunished!

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[22] The alleged "panoply of serious professional violations," which the Panel failed to identify.

[23] The TOTALLY CORRUPT System "threw the kitchen sink" at AROD.

[24] Although some as-yet-unidentified victims received checks for as little as $2.50 from the corrupt and fraudulent Levee Board "settlement."

61. The public has a right to know that, at the end of AROD's oral argument presentation to the Panel on December 4, 2018, and in his "Court-Approved Post-Hearing Written Submission" filed herein on December 7, 2018, AROD made the following plea:

> At oral argument, AROD suggested to the Panel that it had the power to write a judicial opinion that addressed the PUBLIC CORRUPTION and judicial and professional misconduct, which he exposed – matters that were not previously addressed in any substantial way by the corrupt Federal and State judicial and legal systems at any level. AROD also suggested to the Panel that the Public had a right to know about this CORRUPTION, which has been "kept under wraps" for more than ten (10) years, intentionally and willfully so.
>
> AROD further suggested to the Panel that it had the power to "take the bull by the horns," and to do what Lemelle and the Eastern District Bench failed to do in April 2008, namely invoke former Eastern District Rule III(B) of the former Rules of Disciplinary Enforcement (AROD EXHIBIT NO. 26) and appoint an investigator or investigators to investigate the case properly, thoroughly and in an unbiased and unprejudicial fashion, with anyone so appointed (be they "the United States Attorney, his/her assistants, and/or any other member or members of the bar") being "as pure as the driven snow," and being UNAFFILIATED with and being UNCONNECTED to the Eastern District of Louisiana or with the Louisiana Plaintiffs' Bar.

> Recall that AROD also suggested to the Panel that, because the Public has the right to know about the CORRUPTION which he exposed, then "clear and concise" instructions should be given to the investigator(s) in order to afford AROD what was denied to him in 2008, and to ensure that there was no repeat of a Kangaroo- Court, rubber-stamp-type "cover up." With that done, AROD expressed hope that, with one or more proper, unbiased and unprejudiced investigators, and with a proper, thorough and fully transparent investigation and report pursuant to former disciplinary Rule III(B), AROD would be deemed credible, and the PUBLIC CORRUPTION that he exposed would no longer be allowed to flourish within the jurisdiction of the Fifth Circuit.

And what did the Panel do in response? The Panel swept under the rug the corruption which AROD exposed, turned its back on him, and rubber-stamped the decision of the "bought and paid for" Louisiana Supreme Court to disbar AROD. And after that, "someone" sealed the entire case record from public view.

62. The public has a right to know that the Fifth Circuit and the Eastern District of Louisiana are CESSPOOLS. Former Chief Judge Jones dropped the ball and failed to do anything about the corruption and judicial misconduct which AROD reported to her. The Judicial Council dropped the ball and failed to do anything about it. And the Panel in this case dropped the ball and not only failed to do anything about it, but allowed "someone" to seal the entire record so that it could all be hidden from public view. See AROD's 2009 Complaints of Judicial Misconduct (as supplemented and

amended) against Duval and Lemelle (Judicial Misconduct Complaint Case Nos. 05-09-90128 and 05-09-90129), and AROD's July 14, 2010 Complaint of Judicial Misconduct against Duval.

63. The public has a right to know that, for all of the death, misery, and property damage caused by Hurricane KATRINA, and for all of the criminal misconduct revealed herein, including judicial and professional misconduct, AROD has been the only person "punished."

CONCLUSION

The only reason that anything in AROD's case record should be SEALED should be to preserve the secrecy of Grand Jury Proceedings. Is the empanelment of a Federal Grand Jury the reason why AROD's entire case record has been sealed? AROD can only hope.

s/Ashton R. O'Dwyer, Jr.

ASHTON R. O'DWYER, JR.
Respondent
In propria persona
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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 18-98009

IN RE:

ASHTON R. O'DWYER, JR.

Respondent

RESPONDENT'S RULE 27.4 CERTIFICATE OF INTERESTED PERSONS AND ENTITIES

ASHTON R. O'DWYER, JR.
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The undersigned certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

The State of Louisiana

The Executive Branch of the State of Louisiana

The Judicial Branch of the State of Louisiana

The Louisiana Supreme Court

The Louisiana Attorney Disciplinary Board

The Office of Disciplinary Counsel

Disciplinary Counsel ad hoc Mark Dumaine

The East Baton Rouge District Attorney's Office

The Louisiana Department of Justice

The Office of the Louisiana Attorney General

The Louisiana Department of Public Safety and Corrections, including the Louisiana State Police and the Department of Corrections

State Trooper John Nelson

State Trooper Christopher Ivy

The Louisiana Division of Administration

The Louisiana Office of Risk Management

The U.S. Department of Justice

The Eastern District U.S. Attorney's Office

The Middle District U.S. Attorney's Office

Former Assistant U.S. Attorney Michael Magner

Former Assistant U.S. Attorney Stephen Higginson

Former Assistant U.S. Attorney Brian Marcell

The Federal Bureau of Investigation

All Attorneys and parties in Civil Action No. 05-4182 on the Eastern District Docket

The United States of America

The U.S. Department of Justice

The U.S. Army Corps of Engineers

The Defendants in Ashton O'Dwyer's Civil Rights Litigation, Case No. 08-30052 in this Court

Catherine D. Kimball

Charles B. Plattsmier, Jr.

Charles C. Foti, Jr.

The Law Firm of Lemle & Kellher and its former partners

The Civil Division of Louisiana Department of Justice

Michael Keller

Phylis Glazer

Paul B. Deal

Shelly Dick

Other Attorneys within the Louisiana Department of Justice and the Louisiana Attorney General's Office

Various Louisiana state agencies, instrumentalities and political subdivisions, including the Louisiana Department of Transportation and Development

The Board of Commissioners of the Orleans Levee District,

The Board of Commissioners of the East Jefferson Levee District,

The Board of Commissioners of the St. Bernard Levee District,

The Parish of Jefferson,

The Sewerage & Water Board of New Orleans,

The Board of Commissioners of the Port of New Orleans, and

The Louisiana Governor's Office of Homeland Security and Emergency Management.

Aaron Broussard

Judge Stanwood R. Duval

Judge Ivan L.R. Lemelle

Judge Lance Africk

Judge Sarah Vance

All other Eastern District of Louisiana Judges

Bankruptcy Judge Jerry Brown

Bankruptcy Judge Elizabeth Magner

Joseph Bruno

Calvin Fayard

Daniel Becnel

The named Defendants in Civil Action No. 08-4728 on the Eastern District Docket, which is "AROD Exhibit No. 6" in this case

Virtually the entire Fifth Circuit Bench, but including particularly, Judges James Dennis, Jerry Smith, and Stephen Higginson, as well as the Panel members in this case, Judges Costa, Duncan and Willett

s/Ashton R. O'Dwyer, Jr.
ASHTON R. O'DWYER, JR.
Respondent
In propria persona

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 18-98009

IN RE:

ASHTON R. O'DWYER, JR.

Respondent

CERTIFICATE OF COMPLIANCE

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COMES NOW Respondent, Ashton R. O'Dwyer, Jr., appearing in *propria persona* pursuant to the provisions of Rule 32(g)(1) of the Federal Rules of Appellate Procedure, and certifies that Respondent's Motion for Reconsideration, which was originally tendered to the Clerk of Court for filing electronically on November 25, 2020, complies with the type-volume limit of Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure because the said Motion for Consideration contains 2,363 words.

s/Ashton R. O'Dwye r, J r.
ASHTON R. O'DWYER, JR.
Respondent
In propria persona

11/18/2020
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 18-98009

IN RE: ASHTON R. O'DWYER, JR., Petitioner

Before: Costa, Willett, and Duncan, Circuit Judges.

Per Curiam:

IT IS ORDERED that the Petitioner's motion to reopen the case is DENIED.

IT IS FURTHER ORDERED that the Petitioner's motion to vacate the panel's May 31, 2019, Per Curiam opinion is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 18-98009

IN RE:

ASHTON R. O'DWYER, JR.

Respondent

MOTION FOR RECONSIDERATION

ASHTON R. O'DWYER, JR.
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MAY IT PLEASE THE COURT:

COMES NOW Respondent, Ashton R. O'Dwyer, Jr., appearing in propria persona, pursuant to the Federal Rules of Appellate Procedure, the Fifth Circuit's Internal Operating Procedures, and the Fifth Circuit "Practitioners' Guide" and the Section of the Guide pertaining to "Motions Processing," and particularly to that Section which addresses "Reconsideration," which provides as follows:

> "**Reconsideration.** A reconsideration of action on a motion must be filed within 14 days unless the United States is a party in a civil case, see 5th Cir. R.27.1 Reconsideration requests are limited to 15 pages."

Respondent does hereby move for reconsideration of the 11/18/20 Order of Judges Costa, Willett, and Duncan, copy attached, and for the following additional relief, upon the following grounds, to wit:

1) The subject matter of Respondent's "Motion to Re-Open Case, etc.," Record Document No. 9416267, et seq., underlying the Order for which Respondent now seeks reconsideration, was "undisclosed conflicts of interests" by Panel Member Judge Stuart Kyle Duncan, which Respondent avers disqualified Judge Duncan from participating any further in this case due to obvious conflicts of interests, coupled with Judge Duncan's actual bias and prejudice and his inability to be fair and impartial in matters involving Respondent. The

aforesaid Order does not address Judge Duncan's undisclosed conflicts of interests or the consequences that the U.S. Supreme Court has decided must flow therefrom. See *Commonwealth Coatings v. Continental Cas.*, 393 U.S. 145 (1968). Respondent avers that Judge Duncan must be disqualified and replaced for purposes of this Motion.

2) The remaining Panel Members, Judges Costa and Willett, were also corrupted, tainted and polluted by Judge Duncan's continued participation in this case, and should also be replaced by one or more other judges, who do not have any conflicts of interests, who are not tainted by Judge Duncan's undisclosed conflicts, bias and prejudice, and who should be appointed to decide this Motion for Reconsideration fairly and impartially, in place and instead of Judges Duncan, Costa and Willett. See *Williams v. Pennsylvania*, 136 S.Ct. 1899 (2016).

3) Judge Duncan's participation in rendering decision on Respondent's underlying "Motion to Re-Open Case, etc." was "bad enough." But Judge Costa's and Judge Willett's participation in same, after they had actual knowledge of the Motion's subject matter was, perhaps, even more egregious than Judge Duncan's failure to disclose his conflicts of interest with the State of Louisiana to Respondent in the

first instance. This added "insult to injury," and denied Respondent the due process of law he was guaranteed by the 5th Amendment to the U.S. Constitution. See *In re Murchinson*, 349 U.S. 133 (1955); *Williams v. Pennsylvania*, supra.

4) Respondent put Judges Costa, Duncan and Willett "on notice" of their "interest in the outcome of this case" by specifically naming them in the penultimate identifying entry in "Respondent's Rule 27.4 Certificate of Interested Persons and Entities," filed on 11/17/20, which they chose to ignore for reasons which they have not disclosed to Respondent. Another such Certificate is filed simultaneously herewith. Both Certificates clearly reflect that "These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal." Judges Costa and Willett should be disqualified and replaced.

THE ENTIRE ORIGINAL PANEL SHOULD BE DISQUALIFIED AND THIS MOTION FOR RECONSIDERATION SHOULD BE SUBMITTED TO ONE OR MORE "FAI R AND IM PARTIAL" JURISTS FOR DECISION

On September 10, 2020, Respondent learned that Panel Member Judge Stuart Kyle Duncan had failed to disclose to Respondent, prior to his participating in the issuance of the Panel's Per Curiam Opinion of May 31, 2019, numerous conflicts of interests arising out of his 10-

year "direct, extensive and substantial associations and relationships with the State of Louisiana, and with State entities, cases, and individuals. Accordingly, Respondent filed a "Motion to Re-Open Case, etc., coupled with a detailed "Declaration Under Penalty of Perjury," which enumerated the undisclosed conflicts. Within about 24 hours of Respondent's filing that Motion and Declaration, a Panel consisting of Judges Duncan, Costa and Willett summarily ruled that:

"Before Costa, Willett, and Duncan, *Circuit Judges*.

Per Curiam:

IT IS ORDERED that the Petitioner's motion to reopen the case is DENIED.

IT IS FURTHER ORDERED that Petitioner's motion to vacate the panel's May 31, 2019, Per Curiam opinion is DENIED."

The said Order, copy attached, was unsigned.

Since Respondent's underlying Motion sought relief due to Judge Duncan's non-disclosure of conflicts of interests, and his bias and prejudice, Respondent was considerably more than "just a little surprised" how Judge Duncan could have ethically participated in deciding Respondent's Motion, since he had a "personal stake" in the outcome. The Supreme Court made clear in *In re Murchinson*, 349 U.S. 133 (1955) that:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in

> his own case, and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered." (Emphasis supplied.)

This Rule that "fair tribunal(s)" must follow was recently reinforced by the Supreme Court in *Williams v. Pennsylvania*, 136 S.Ct. 1899 (2016), in which the Court stated:

> "Due process guarantees 'an absence of actual bias' on the part of a judge. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955). Bias is easy to attribute to others and difficult to discern in oneself. To establish an enforceable and workable framework, the Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, 'the average judge in his position' is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'." *Caperton*, 556 U.S., at 881, 129 S.Ct. 2252. Of particular relevance to the instant case, the Court has determined that an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case. See *Murchison*, 349 U.S., at 136-137, 75 S.Ct. 623. This objective risk of bias is reflected in the due process maxim that 'no man can be a judge in his own case and no man is permitted to try cases where he has an interest in

> the outcome.' *Id.*, at 136, 75 S.Ct. 623." (Emphasis supplied.)

Judge Duncan's "personal interest" in the outcome of a Motion requesting relief as a result of his own non-disclosure of conflicts of interest is obvious. Judge Duncan should be disqualified and replaced.

But Judge Duncan did not act in a vacuum; he was joined in his unethical behavior[1] by his Brethren on the Panel, Judges Costa and Willett, who willingly became his "partners in crime," even after having full knowledge of the reasons for Respondent's Motion to Re-Open Case, etc., and of the contents of Respondent's Declaration.

Recalling the proverb: "One bad apple spoils the whole barrel," Respondent avers that Judges Costa and Willett have been corrupted, tainted and polluted by Judge Duncan's unethical behavior and that this Motion for Reconsideration should be referred to one or more jurists who are "pure as the driven snow," uncorrupted, untainted and unpolluted by Judge Duncan and his undisclosed conflicts of interests and his participation in deciding a Motion in which he had a personal interest in the outcome. The case of *Williams v. Pennsylvania,* 136 S.Ct. 1899 (2016), is particularly instructive in this regard. There, the U.S. Supreme Court stated:

> "The Court has little trouble concluding that a due process violation arising from the participation of an interested judge is a defect "not amenable" to harmless-error review,

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[1] Judge Duncan actually added "insult" (his participating in the Motion to Re-Open Case) to "injury" (his failure to disclose conflicts of interests).

regardless of whether the judge's vote was dispositive. *Puckett v. United States*, 556 U.S. 129, 141, 129 S.Ct. 1423, 173 L.Ed.23 266 (2009) (emphasis deleted). The deliberations of an appellate panel, as a general rule, are confidential. As a result, it is neither possible nor productive to inquire whether the jurist in question might have influenced the views of his or her colleagues during the decisionmaking processing. Indeed, one purpose of judicial confidentiality is to assure jurists that they can reexamine old ideas and suggest new ones, while both seeking to persuade and being open to persuasion by their colleagues. As Justice Brennan wrote in his *Lavoie* concurrence,

> 'The description of an opinion as being [for the court] connotes more than merely that the opinion has been joined by a majority of the participating judges. It reflects the fact that these judges have exchanged ideas and arguments in deciding the case. It reflects the collective process of deliberation which shapes the court's perceptions of which issues must be addressed and, more importantly, how they must be addressed. And, while the influence of any single participant in this process can never be measured with precision, experience teaches us that each member's involvement plays a part in shaping the court's ultimate disposition." 475 U.S., at 831, 106 S.Ct. 1580.

> "These considerations illustrate, moreover, that it does not matter whether the disqualified judge's vote was necessary to the disposition of the case. The fact that the interested judge's vote was not dispositive may mean only that the judge was successful in persuading most members of the court to accept his or her position. That outcome does not lessen the unfairness to the affected party. See *id.*, 15 831- 832, 106 S.Ct. 1580 (Blackmun, J., concurring in judgment).
>
> "A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the role of law itself. When the objective risk of actual bias on the part of a judge rises to an unconstitutional level, the failure to recuse cannot be deemed harmless."

Wholly separate from the "influence" that their "bad-apple" Panel Member indubitably had on them, Respondent does not know what Judges Costa and Willett "knew or didn't know," and "when." Respondent does not know precisely when they acquired knowledge of Judge Duncan's undisclosed associations and relationships with the State of Louisiana. Did they have

such knowledge when they were assigned to the Panel in 2018? At some later date?

But what Respondent does know is that Judges Costa and Willett, like Judge Duncan, remained completely silent, even after they had become familiar with the contents of Respondent's Motion to Re-Open Case, etc., and with Respondent's Declaration Under Penalty of Perjury. Their remaining silent while "circling the wagons" around their Brother Judge and summarily ruling against Respondent, in Judge Duncan's "favor," renders them equally as "guilty" of unethical conduct as Judge Duncan.

And as Respondent also averred in his "Motion to Re-Open Case, etc.," and in his "Declaration Under Penalty of Perjury," independent action (as well as inaction) in Respondent's case by Judges Costa and Willett raised serious issues about their own plausible "bias and prejudice," and whether they had the ability to be "fair and impartial," causing Respondent to allege:

> "Respondent avers that each of the above and foregoing factors clearly indicate "actual bias" in violation of the Supreme Court's assertion that due process guarantees "an absence of actual bias" on the part of a judge. *In Re Murchinson*, 349 U.S. 133, 136 (1955); *Williams v. Pennsylvania*, 136 S.Ct. 1899, 1905-1906 (2016) and cases cited therein. Indeed, because his Panel improvidently sealed the record, failed to address material issues, and made blatantly false statements, Respondent avers that it is entirely plausible for reasonable minds to conclude that something other than "truth, justice and the American way" was at work in this case."

This reasonable concern prompted Respondent to pose the following question in his underlying Motion:

> "Does the actual bias and prejudice run deeper than just Judge Duncan? Respondent asks rhetorically, 'What is the Panel hiding? Who is the Panel protecting? What is the Panel covering up?'"

Respondent avers that the only way to now "cure" the likelihood of bias by the other two Judges is for Judges Costa and Willett to disqualify themselves[2] to permit the appointment of one or more unconflicted and untainted jurists to decide this Motion for Reconsideration in a fair and impartial fashion. This fundamental fairness was denied Respondent when Judges Costa, Willett and Duncan participated in deciding the underlying Motion in the first instance. Respondent avers that his guarantee of due process requires no less.

s/Ashton R. O'Dwyer, Jr.

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[2] Jason W. Anderson and Rory D. Cosgrove, "Disqualification and Recusal of Federal Appellate Judges," February 2019 issue of "For the Defense," which states: "The statute [28 U.S.C. §455(a)] is self-executing: a judge must both inquire without a request from the parties and continually evaluate any potential conflict at all stages of the appeal."

12/9/2020

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 18-98009

IN RE:

ASHTON R. O'DWYER, JR., Petitioner

Before: Costa, Willett, and Duncan, Circuit Judges.

Per Curiam:

This panel previously DENIED the Petitioner's motion to reopen the case and to vacate the panel's May 31, 2019, Per Curiam opinion. The panel has considered Petitioner's moiton for reconsideration.

IT IS ORDERED that the motion is DENIED.