

21-5965  
Case No. \_\_\_\_\_

**ORIGINAL**

**IN THE  
SUPREME COURT OF THE UNITED STATES**

FILED

SEP 29 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

In re Jennifer L. Kammerer,

*Petitioner.*

After denial of a Petition for Writ of Mandate on  
December 20, 2020, by the  
Supreme Court of California, *En Banc*.

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**PETITION FOR A WRIT OF MANDAMUS  
WITH APPENDICES**

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## QUESTIONS PRESENTED

1. DOES IT VIOLATE THE AMERICANS WITH DISABILITIES ACT, TO PUNISH AN INDIVIDUAL FOR BEING MENTALLY ILL, BY SUMMARILY REVOKING THEIR PROFESSIONAL LICENSE AND DENY THEM THE ABILITY TO PARTICIPATE IN A PROGRAM SPECIFICALLY DESIGNED FOR PROFESSIONALS WHO ARE FACING DISCIPLINE DUE TO A MENTAL ILLNESS; WHICH, WOULD HAVE ALLOWED THEM TO MAINTAIN THEIR LICENSE WHILE THEY REHABILITATE, WHEN THE LICENSING AGENCY KNEW THE MENTAL ILLNESS CAUSED THE ACTIONS WARRANTING DISCIPLINE?
2. IS DISPARATE PUNISHMENT FOR ETHICAL VIOLATIONS, WHERE GENDER AND MENTAL ILLNESS ARE INVOLVED, A FORM OF DISCRIMINATION THAT VIOLATES ONE'S RIGHT TO EQUAL PROTECTION UNDER THE AMERICANS WITH DISABILITIES ACT?
3. WOULD REQUIRING A PROFESSIONAL TO RE-TAKE A LICENSING EXAM TO HAVE THEIR LICENSE REINSTATED, WHEN THEIR LICENSE WAS IMPROPERLY TAKEN DUE TO ACTIONS CAUSED BY A DISABILITY, WHERE THE PROFESSIONAL WAS FOUND TO HAVE COMPETENTLY PERFORMED THEIR PROFESSIONAL TASKS AT ALL TIMES AND HAS SINCE REHABILITATED FROM THE MENTAL ILLNESS, VIOLATE THE AMERICANS WITH DISABILITIES ACT?

## PARTIES TO THE PROCEEDING

*Petitioner:*

JENNIFER L. KAMMERER, an individual licensed to practice law in 1999; state bar number 204888.

*Respondents:*

California State Bar, Office of Chief Trial Counsel.

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Petitioner hereby certifies she is not aware of any entity or person that rules 8.208 and 8.488 of the California Rules of Court require to be listed in this Certificate.

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## OPINION BELOW

The opinion of the Supreme Court of California, *En Banc*, was issued on December 30, 2020, denying MS. KAMMERER'S Petition for Writ of Mandate, in case S264858. The original Petition for Extraordinary Relief in this matter, was mailed May 19, 2021, and received by this Court on May 28, 2021.

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## STATEMENT OF JURISDICTION

The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1651(a)<sup>1</sup>.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Unequal Treatment or Uneven Consequence provisions of Title I of the Americans With Disabilities Act, Disparate Impact, 29 C.F.R. § 1630.5, the ADA also prohibits discrimination based on **disparate impact**. **Disparate impact** discrimination occurs when an employer uses

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<sup>1</sup> On May 19, 2021, MS. KAMMERER mailed her Petition for an "Extraordinary Writ", (within 150 days, per *Guidance Concerning Clerk's Office Operations*, April 17, 2020); On May 28, 2021, this Court received MS. KAMMERER'S Petition and requested corrections. MS. KAMMERER resubmitted her Petition. On August 5, 2021, her Petition was returned with a request to specify the "extraordinary" relief sought. The Petition was resubmitted on September 22, 2021, clarifying the relief sought. On September 30, 2021, this Court specified the petition for *mandamus* and *certiorari*, must be submitted as two separate filings. This Petition follows.

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employment tests, standards, or other selection criteria that intentionally or unintentionally exclude qualified individuals with a **disability** in a **disproportionate** manner.

This case also involves anti-discrimination provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2. 42 U.S.C. § 2000e-2(a): It shall be an unlawful employment practice for an employer – (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin, or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Last, this case involves the anti-discrimination provision contained in Title II, public services portion of the Americans With Disabilities Act of 1990, 104 Stat. 337, 42 U.S.C. §12132, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." Section 12131(1)(A), (B), "...public entity includes 'any state or local government,' and 'any department, agency [or] special purpose district.'" The same section defines a "qualified individual with a disability" as, "...an individual with a disability who, with or without reasonable modifications to rules, policies, or

practices... meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” (§12131[2].)

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### **MS. KAMMERER'S PETITION FOR A WRIT OF MANDAMUS MUST BE GRANTED**

JENNIFER L. KAMMERER, petitioner, (hereinafter, “MS. KAMMERER”), seeks a writ of *mandamus* to vacate the order of summary disbarment by the California Supreme Court, reinstating her license to practice law; wherein, the California Supreme Court adopted the State Bar of California’s recommendation of summary disbarment of MS. KAMMERER, despite knowing her actions, resulting in discipline, were caused by a mental illness, caused by criminal actions of another; and denying her the ability to participate in a program specifically designed by the State Bar of California<sup>2</sup>, to *prevent punishing* attorneys who suffer from *mental illness or addiction*, by providing an opportunity for rehabilitation, while preserving their license.

Specifically, the California State Bar created the Lawyer’s Assistance Program<sup>3</sup>. In order to qualify for the Program, the State Bar created a specialized Committee, including mental health specialists, to evaluate whether: 1. a “nexus” exists between the attorney’s actions resulting in discipline and the mental illness

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<sup>2</sup> With the increased understanding of mental illness and addiction, over the years, many states now have similar programs for professionals suffering from said diagnosis’.

<sup>3</sup> The Lawyer’s Assistance Program is also referred to as, “Program” or “LAP”, interchangeably.

or addiction; and 2. the attorney presents with rehabilitative qualities. (App. "D".)

The Committee interviews the attorney, reviews the facts surrounding the disciplinary charges and the attorney's record of discipline, if any.

If, after the Committee conducts its investigation, it determines a "nexus" exists and the attorney has rehabilitative qualities, the attorney may participate in the "monitored" Lawyer's Assistance Program; wherein, they have to submit monthly and quarterly reports, prepared by mental health experts, evidencing they are adhering to an agreed upon rehabilitation plan; tailored to the individual's situation; however, all plans include mandatory attendance at weekly meetings, monitored by the State Bar.

If, on the other hand, the Committee determines there is insufficient evidence of a "nexus" between the actions resulting in discipline and the diagnosed mental illness or addiction, the attorney may attend the Program without requirements. Accordingly, only the attorneys who are in the "monitored" Program, have the opportunity for successful completion, ("graduation"), of the Program. An attorney "graduates" from the Program, only after the State Bar finds they have achieved the agreed-upon rehabilitation goals<sup>4</sup>.

In the case at bar, *mandamus* relief is warranted, because MS. KAMMERER, (here, representing all professionals who suffer from a mental illness or addiction and are unconstitutionally denied the ability to maintain their professional license, when faced with discipline-related issues, while they rehabilitate), was interviewed

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<sup>4</sup> MS. KAMMERER "graduated" from the State Bar's Lawyer's Assistance Program on April 5, 2021. (App. "P".)

by the State Bar's Lawyer's Assistance Committee, twice, (2012 & 2014); and twice, qualified for the program; yet, despite qualifying for the "monitored" Program, MS. KAMMERER was summarily disbarred. This action by the California State Bar and adopted by the California Supreme Court, results in the "punishment" of an individual for having a mental illness and violates Title I and II, of the American's With Disabilities Act.

In addition, since the majority of domestic violence victims are women and the mental illness in the case at bar, resulted directly from ongoing domestic violence, the decision to summarily disbar MS. KAMMERER, also violates the anti-discrimination provisions of Title VII of the Civil Rights Act of 1964. Accordingly, it is imperative this Writ of Mandate be granted.

#### STATEMENT OF FACTS<sup>5</sup>

On December 8, 1999, MS. KAMMERER was admitted to practice law in California. For fourteen, (14), years, MS. KAMMERER practiced law; eventually, starting her own estate planning practice in 2002. MS. KAMMERER's work product as an attorney, was never at issue, during her 14 years of practice. (App. "K".) During her legal career, MS. KAMMERER belonged to Rotary, the San Diego County Bar Association and the Lawyer's Club of San Diego. She donated time and money to different organizations in her community, including: the Junior Sailing Program, Leukemia and Lymphoma Society, serving meals to the homeless at St.

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<sup>5</sup> Facts not found on the California State Bar website, can be found in the accompanying 4 Volumes of Appendices, -- (referred to as, "App."), with page numbers where needed for clarification.

Vincent de Paul, the San Diego Humane Society and the Monarch School for homeless youth.

Prosecutors Allow MS. KAMMERER And Her Children, To Be Victimized For Seven, (7), Consecutive Years; Refusing To File Charges Against Their Abuser.

In 2007, after her husband<sup>6</sup> was unable to control his abusive behavior in the presence of their two young children, (App. "U", pp. 2-8, 14, 23-26) and often refused to take medications necessary for his severe depression and bi-polar disorder, (App. "U", p. 11, 34-38), MS. KAMMERER filed for divorce<sup>7</sup>. From 2007 until 2014, when MS. KAMMERER'S Abuser ultimately hanged himself, (App. "O"), she spent the majority of her time and her children's time, obtaining restraining orders, (App. "R" – *13 Restraining Orders*<sup>8</sup>); calling police in attempts to enforce restraining orders, (App. "Q" – *20 Police Reports*); meeting with Family Court Services and attending restraining order hearings, documenting Abuser's dangerousness and inability to control his anger, (App. "U", pp.1-5, 14, 23-26, 31-38) ; and, after seven, (7), years of police refusing to arrest Abuser<sup>9</sup> and prosecutors refusing to bring charges against Abuser, (App. "J" – 7 letters from prosecutors<sup>10</sup>, acknowledging MS. KAMMERER was a victim of domestic violence), MS. KAMMERER and her children had to develop survival strategies: hiding in the closets of their home if Abuser showed-

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<sup>6</sup> Interchangeably called, “the boys’ father”, “ex-husband”, “Kurt” and “Abuser”.

<sup>7</sup> Abuser was fired from his job at the Regional Energy Office, in 2003, due to his uncontrollable anger and refusal to complete an anger management class. (App. "U", p. 1 & 34.)

<sup>8</sup> Some Restraining Order hearings are only referenced in the Register of Actions – only pages referencing restraining order issues and actual restraining orders, are in App. "R".

<sup>9</sup> MS. KAMMERER opined police would not arrest Abuser, because he was a Commander in the Navy. When they responded to her 911, calls, (sometimes Abuser was still violating her restraining orders when they arrived), they often seemed impressed with Abuser’s rank and refused to arrest him.

<sup>10</sup> Letters from 2007-2011. Letters from 2012 & 2013, are lost. However, MS. KAMMERER had a permanent restraining order in 2013, (App. "R", p.13); yet, prosecutors still failed to bring charges against Abuser.

up, while waiting for police to arrive; driving past their home to see if Abuser's car was outside, before entering; and hiding at friend's homes and women's shelters, when Abuser's threats escalated.

Needless to say, during these times, MS. KAMMERER was prevented from going to her office, meeting with clients or marketing her law practice, (App. "R", pp. 14-15); and, certainly was unable to earn a living<sup>11</sup>. Eventually, MS. KAMMERER lost her office, her law clerk and any new business. (App. "R", p. 15, ¶10.) As the years went on, Abuser's threats became more volatile. In fact, after so many years of prosecutors and police, seemingly condoning Abuser's behavior by refusing to enforce the law, (App. "R", p. 15, ¶¶13 &16), Abuser seemed to adopt the belief his "reign of terror" on MS. KAMMERER, (and incidentally, his own children), was warranted, "...you deserve what I am giving you."<sup>12</sup> (App. "Z", p.3.)

Years Of Terror From Abuser, Causes MS. KAMMERER To Develop Clinical Depression, Post Traumatic Stress Disorder, ("PTSD") And Dissociation.

Ultimately, MS. KAMMERER was diagnosed with clinical depression (App. "U", p.13, ¶2), and post-traumatic stress disorder, (App. "S", p.2, ¶4), as a result of the years of trauma, she and her children were forced to endure. (App. "S", p.1, ¶3, p.2, ¶4.) MS. KAMMERER'S resulting mental illnesses were a foreseeable result of her inability to convince prosecutors to bring charges against her Abuser, (App. "S",

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<sup>11</sup> Documentation of the amount of time Abuser's threats and "reign of terror" took away from MS. KAMMERER'S ability to earn a living, is evidenced in the forty-five, (45), page Register of Actions and her nine, (9), volume family court file, in the San Diego Superior Court, (App. "R", pp. 2, 8-13); as well as, the Declaration of Jennifer Segura, MS. KAMMERER'S law clerk at the time. (App. "R", pp. 14-15).

<sup>12</sup> The email references an incident at the San Diego Yacht Club, where MS. KAMMERER came to pick-up the children and Abuser began pushing her around in front of hundreds of guests, during a 4<sup>th</sup> of July event. The Club decided to ban Abuser from the Club, indefinitely. (App. "Z", pp. 1-2.) Abuser wanted MS. KAMMERER to ask the Club Directors to allow Abuser to start coming to the Club again; she refused.

p.2, ¶4 and App. "J"); refusal of police to arrest Abuser after numerous violations of her restraining orders, (App. "Q"); and failure to convince the family court her Abuser was a danger to their children, forcing MS. KAMMERER to share custody with a mentally unstable and dangerous man. (Apps. "R"; "S", p.1, ¶3; "U" & "V".)

Even after she presented the court with the discharge report from Abuser's 5-day, (120 hour), hold at the Veteran's Administration Psychiatric Ward for "suicidal ideations"<sup>13</sup>, (App. "V"), and four, (4), Family Court Services Reports, where supervisors warned the court of Abuser's inability to control his anger, (App. "U", pp. 2-8, 23-26); one Supervisor even advised the court that Abuser's visitation should be supervised, "in an abundance of caution", (App. "U", pp. 4, 6 & 8), nothing was done to adequately protect MS. KAMMERER or her children<sup>14</sup>, for 7 years.

Eventually, after so many years of failed attempts to protect her children and herself, (App. "R", p.14, ¶8, p.15, ¶¶9, 15-16), having lost almost all income from her law practice, (App. "R", p.14, ¶¶7 & 8; p.15, ¶¶10 & 11), MS. KAMMERER mentally dissociated from reality<sup>15</sup>, (App. "S", p.2, ¶4, p.3, ¶1), and began taking completely uncharacteristic and desperate actions, in order to survive<sup>16</sup>. (App. "S", p.2, ¶5.)

#### MS. KAMMERER'S Ability To Focus On Her Law Practice And Earn A Living, Is Almost Impossible.

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<sup>13</sup> Abuser was actually hospitalized three, (3), times for attempted suicide. However, MS. KAMMERER was only able to obtain the discharge report from one hospitalization, because it happened during a custody hearing.

<sup>14</sup> When the domestic violence started, the boys were two, (2), and three, (3), years old.

<sup>15</sup> The mind's involuntary survival mechanism, in response to extreme durations of trauma. Black, Donald W. (2014) (coauthors: Grant, Jon E.). DSM-5 Guidebook: The Essential Companion to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. American Psychiatric Pub. ISBN 9781585624652.

<sup>16</sup> MS. KAMMERER lost her home and her condominium, during the 7-years of trauma, due to her inability to go to work or meet with clients, without her Abuser showing-up and creating a scene. Police never arrested him and prosecutors, acknowledged they knew she was a "victim of crime"; yet, refused to bring charges against Abuser.

On July 1, 2011, after years of trauma, MS. KAMMERER'S license to practice law was suspended, because she was unable to pay her bar dues. Her Abuser had also appeared in court without her knowledge and obtained a judgment for child support against her, based on false income information. MS. KAMMERER was barely able to get out of bed, due to her depression; let alone, earn money from an almost non-existent law practice. (App. "R", p.15, ¶10.) She did meet with past clients who contacted her, to request amendments to estate plans she prepared years prior, (when her license WAS active), despite being suspended at the time; hoping to eventually earn enough money to buy food and pay her bar dues.

MS. KAMMERER Sends An Email To Her Contacts, To Review Their Estate Plan.

During this time, MS. KAMMERER, desperate to put food on the table, pay rent and obviously not thinking straight, sent an email to past estate planning clients and other attorneys in her contact list<sup>17</sup>. In the email, she reminded people of the importance of keeping their estate plans up to date and if they needed to make changes, to contact an estate planning attorney. Another estate planning attorney, who once shared office space with MS. KAMMERER, received the email and forwarded it to the State Bar. (As a result, MS. KAMMERER and the State Bar, agreed to a 30-day suspension: starting 11/28/2013 and ending 12/28/2013<sup>18</sup>.)

Arrest, 2012.

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<sup>17</sup> State Bar Case No.12-0-16591. All discipline-related matters involved *financial struggles*, not malpractice.

<sup>18</sup> All facts related to this matter are on the State Bar website.

On October 22, 2012, after more than six, (6), years of being forced to endure Abuser's reign of terror, while prosecutors stood by and did nothing, (App. "J"), and while a permanent restraining order was still in place against her Abuser, (App. "R", p.13 – *entry on 3/13/2012, documents a 1-year restraining order, ending 3/13/2013*), MS. KAMMERER was arrested and charged with practicing law with a suspended license<sup>19</sup>. The trauma of years of domestic violence had completely destroyed her reasoning, judgment and interpretation of reality. (App. "S", p.1, ¶4; p.2, ¶¶4 & 5.) MS. KAMMERER was also charged with using the identifying information of a deceased, past client in a failed attempt to get a credit card, in a completely uncharacteristic and desperate attempt to buy food and gas, at one of the lowest points of her depression, PTSD and while operating under complete dissociation; and burglary – when she crossed the threshold of a past client's home, upon their invitation, to amend an estate plan she had prepared years prior, when her license was active<sup>20</sup>. MS. KAMMERER posted bail the same day.

On December 26, 2012, MS. KAMMERER's license was active again<sup>21</sup>, after she was able to borrow money to pay her past due bar dues, pay for and submit MCLEs and have the Order for child support dismissed, (all documented on the

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<sup>19</sup> The arrest record is voluminous, so it is not part of the Appendices. However, MS. KAMMERER will provide the documents, should the Court request same. The guilty plea is attached as App. "N", regarding actual charges.

<sup>20</sup> The charge of burglary was ONLY possible, because prosecutors charged Practicing Law With a Suspended License, ("PLWSL" - when MS. KAMMERER was unable to pay her bar dues), as a "felony" rather than a "misdemeanor". Since PLWSL is a "wobbler", it was within the prosecutor's discretion on how to file the charge. Filing the charge as a "felony", created the "felonious intent", necessary for a "burglary". If the prosecutor chose to charge PLWSL as a misdemeanor, a "burglary" would have been impossible.

<sup>21</sup> On July 2, 2013, MS. KAMMERER, still struggling financially and psychologically, had her license suspended again, after the fee waiver she filed with the State Bar was denied and she was unable to pay her bar dues. On July 8, 2013, (six days later), MS. KAMMERER was able to borrow money from a friend, pay her bar dues and her license was again reinstated.

State Bar website), after proving her Abuser obtained the support order after presenting false financial documentation.

In 2013, one of MS. KAMMERER'S clients, (Kenneth), was arrested by the Arizona Attorney General and charged with an alleged "Ponzi" scheme. (App. "AA", p. 1.) MS. KAMMERER'S defense attorney advised her the prosecutor believed she had something to do with the Ponzi scheme; (which, took place when MS. KAMMERER was in grade school, high school and college). MS. KAMMERER assured her attorney, she did not know her client during the time of the alleged events. Apparently, prosecutors wanted to look through Kenneth's file, (which, was in MS. KAMMERER'S possession), for evidence. Of course, MS. KAMMERER was not going to give her client file to anyone and there was no legal reason to do so.

On December 10, 2013, while MS. KAMMERER'S agreed upon 30-day suspension was active, (from the estate planning email), prosecutors conducted a "stake-out" of the Probate Court<sup>22</sup>, where another one of MS. KAMMERER'S clients had a scheduled hearing<sup>23</sup>. (Apparently, the prosecutor thought MS. KAMMERER would attend the hearing, despite being suspended and they could arrest her. She did not.) In fact, MS. KAMMERER already advised her client, prior to the 30-day suspension that they would need to file a substitution of attorney, if her agreed upon suspension, fell on the day of the hearing. (Since MS. KAMMERER would not

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<sup>22</sup> During MS. KAMMERER'S preliminary hearing in the criminal matter, the prosecutor admitted to the stake-out and that they watched everything take place. No arrest was made.

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<sup>23</sup> The client was Sue, the Executor of the Estate of Mary Kathryn Plein and the daughter of Kenneth, (who had been arrested). Mary Kathryn Plein was Sue's deceased mother and Kenneth's late wife.

know the actual days until the California Supreme Court adopted the State Bar's recommendation and made an Order regarding same, MS. KAMMERER and her client had to "wait and see".) Failure to file the substitution would have been malpractice, because her client would have been unable to address the court.

When MS. KAMMERER realized the 30-day suspension fell on the day of the hearing, she arranged to meet her client at the court, prior to the hearing, and sign the substitution. MS. KAMMERER filed the substitution on the morning of the hearing, her client appeared telephonically, (App. "AA", pp.2-3), and obtained a continuance of the hearing.

On the morning of January 6, 2014, (*one day before Kenneth's arraignment in Arizona, set for January 7, 2014, [App. "AA", p.1]*), MS. KAMMERER was walking her dog, when she was arrested by the same Prosecutor's Investigator from the first case. She was charged with practicing law with a suspended license, for filing the substitution of attorney at the Probate Court, *almost a month prior*<sup>24</sup>.

This Investigator knew from the first arrest, (aside from being with the prosecutor's office for many years), that if he wanted to obtain, or view, any of MS. KAMMERER'S client files, he first needed to establish probable cause, obtain a search warrant and arrange for a Special Master from the State Bar, to be present, in order to protect any privileged communications. (App. "AA", p.4.) Specifically, Penal Code §§1524(c)(1), 1524(c)(3) and 1524(e), "commands" the Investigator "...to accompany the Special Master", who collects the client files, to review prior to

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<sup>24</sup> This case was dismissed by the San Diego Superior Court on July 15, 2021, after the Judge confirmed with prosecutors, they FAILED to bring charges against MS. KAMMERER'S Abuser. (App. "N", p. 5-8.)

handing them over to the prosecutor. In fact, the process can take weeks: the Special Master reviews the file(s); prepares a report, advising the court of any privileged information; a hearing is set; and the judge makes a ruling on which files, if any, can be released to the prosecutor.

Despite knowing the legal process for removing evidence during an arrest, the Investigator did not have a search warrant and did not have a Special Master present. (The lack of a Special Master can be corroborated by the California State Bar.) He simply took Kenneth's client file, illegally<sup>25</sup>.

In Order To Get Her Children To Safety, Days Before Abuser Killed Himself, MS. KAMMERER Accepts A Plea, So She Could Be Released From Custody.

In March of 2014, MS. KAMMERER called her children as she usually did, while still in pre-trial custody. However, this time, her Abuser answered, instead of her children. Since the Family Court never agreed with MS. KAMMERER, that Abuser, (the children's father), was a "danger" to them, he had sole custody while MS. KAMMERER was awaiting trial. Abuser began yelling at MS. KAMMERER in a panicked tone, obviously suffering a severe manic episode, from his diagnosed bipolar disorder and schizophrenia. Abuser ended the phone call by yelling into the phone, "I can't take this anymore!" and hung up.

MS. KAMMERER knew it was just a matter of time before something awful happened and that her children were in grave danger. Panicked, she contacted her Public Defender and begged her to tell the prosecutor, she would plead guilty to

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<sup>25</sup> This second arrest also came after numerous attempts by the Prosecutor, to have MS. KAMMERER accept a plea; which, she repeatedly refused. Her bail was set at half a million dollars, (\$500,000.00), and, as a result, she was forced to remain in custody for 6 weeks, continuing to refuse a plea.

anything they were offering. The only thing MS. KAMMERER insisted on, in return, was to be released the day she entered her plea<sup>26</sup>.

On March 11, 2014, MS. KAMMERER entered a plea of guilty to two counts of practicing law with a suspended license; identity theft and burglary; she was released from custody that day. (App. "N".)

On March 25, 2014, fourteen, (14), days after MS. KAMMERER was released from custody and got her children, Abuser hanged himself in his apartment. (App. "O".) If MS. KAMMERER had not pleaded guilty, her children would have been with Abuser when he killed himself.

#### MS. KAMMERER And Her Children Were Homeless And Living In A Shelter.

Not only did MS. KAMMERER fear what the Prosecutor's Investigator might (illegally) do to her, if she attempted to withdraw her guilty plea, (as obviously NOT voluntary), she and her children had nowhere to live. (Fighting "legal battles" was far from MS. KAMMERER'S mind, at the time.) MS. KAMMERER and her children had no money, no car, and no home. Luckily, she was able to secure a room at St. Vincent de Paul's Joan Krock Center, ("JKC"), for women and children in downtown San Diego<sup>27</sup>. (App. "X" – documentation of their residence at St. Vincent's JKC.) The JKC provided MS. KAMMERER and her children with trauma counseling, a place to stay, medical care and food. MS. KAMMERER and her

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<sup>26</sup> Normally, someone in custody is only released after sentencing; which, occurs weeks after a plea is entered.

<sup>27</sup> The location is considered the "skid row" of San Diego, where MS. KAMMERER and her children had to walk to and from the bus-stop, so the boys could get to school. They were, however, very grateful for a place to live.

children resided at the JKC for six, (6), weeks, until they began receiving Survivor's Benefits from Social Security and were able to rent an apartment and buy food.

#### STATEMENT OF THE CASE

##### The State Bar Files Discipline Charges & Summarily Disbars MS. KAMMERER.

On May 28, 2014, after the time for MS. KAMMERER to appeal the conviction had expired, the file was transferred to the State Bar. MS. KAMMERER'S license was placed on suspension and the State Bar prosecutors filed disciplinary charges, in Case No. 13-C-14553; where, on September 18, 2015, MS. KAMMERER was ultimately and summarily disbarred.

MS. KAMMERER was never given the opportunity of an in-person hearing, to present the effects of her mental illness on her reasoning and thus, the "...root problems that cause an individual attorney's misconduct...", (App. "D", p.1); the years of criminal actions she and her children were forced to endure, ultimately causing her mental illness; or, the opportunity to be considered for the State Bar's Alternative Discipline Program, ("ADP"), despite her qualification for LAP, (twice); a prerequisite for ADP. (App. "D", p.2.)

On December 17, 2014, prior to actual summary disbarment, MS. KAMMERER filed a Response to the State Bar Court's Motion for Summary Disbarment, asserting the significant, mitigation of her diagnosed, mental illnesses and dissociation, negating the ability to form intent. (App. "F".)

On January 9, 2015, the State Bar Court filed a Motion to Strike MS. KAMMERER'S Response, "...on the ground that respondent's pleading presents only proposed mitigation and is irrelevant to the [summary disbarment] motion." (App. "E" and App. "H", L:4-5.)<sup>28</sup>

On February 4, 2015, the Honorable J. Purcell of the State Bar Review Department found there were compelling reasons in MS. KAMMERER'S case, to negate summary disbarment and the State Bar's Motion to Strike was DENIED. (App. "H".)

On May 6, 2015, in complete contrast to the decision on February 4, 2015, the Review Department opined the "compelling reasons" negating summary disbarment, were instead, the result of a "difficult relationship" and she was summarily disbarred. (App. "I", p.4, ¶2.)

On June 18, 2015, in a Report by the California State Auditor, it was disclosed that the State Bar had been under investigation since 2012, for failing to discipline attorneys appropriately, after it was discovered they settled 1,500, discipline cases, "inadequately", in order to reduce their back-log of 5,000, cases. (App. "L".) When the report was disclosed, there was scathing public response due

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<sup>28</sup> First, the State Bar Court was well aware MS. KAMMERER suffered from a mental illness, causing dissociation; preventing her from forming criminal intent, let alone, specific intent. (App. "F", pp. 13-16.) Second, to avoid the "Draconian" application of summary disbarment, the State Bar's Rules of Procedure, Standards for Attorney Sanctions for Professional Misconduct, allows for leeway: "*In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, *even though the standards are not to be applied in a talismanic fashion, they are to be followed unless a compelling reason justifies not doing so.*" "Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors." (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; emphasis added). The tragic facts in MS. KAMMERER'S case ARE compelling; yet, a "balanced consideration" of her debilitating mental illness and the criminal element which caused it, was NEVER addressed.

to the appearance of a lack of public protection. (App. "L".) MS. KAMMERER'S case happened to be before the State Bar during this time and was added to the list of "disbarments", disclosed to the public, after the Report came out.

On September 30, 2020, MS. KAMMERER filed a Petition for Writ of Mandate, with the Supreme Court of California. (App. "A".)

On December 30, 2020, MS. KAMMERER'S Petition was denied<sup>29</sup>. (App. "B".) This Petition follows.

### **THE COURT'S DISCRETIONARY POWERS ARE NECESSARY**

Due to the exceptional circumstances in the case at bar, including the negative consequences on other professionals suffering from a mental illness, this Court's discretionary powers are necessary to ensure mental illness is not punished but treated appropriately.

### **RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM, FROM ANY OTHER COURT**

Further, because of the structure of the State Bar of California and their authorization to recommend discipline to the California Supreme Court, no other court may grant the relief that MS. KAMMERER seeks.

### **REASONS FOR GRANTING THE PETITION**

For centuries, individuals with disabilities have fought to have equal access and receive equal treatment in society. The ability to earn a living is one such area

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<sup>29</sup> On May 19, 2021, MS. KAMMERER mailed her Petition for an Extraordinary Writ, (within 150 days of California Supreme Court's decision, as allowed under this Honorable Court's COVID rules); On May 28, 2021, this Court returned MS. KAMMERER'S Petition, with a request for corrections. On July 27, 2021, MS. KAMMERER mailed the "corrected" Petition; which, this Court received on August 4, 2021, and returned on August 5, 2021, specifying additional corrections. MS. KAMMERER now files this second, corrected Petition, in compliance with Rule 29.2.

where individuals with disabilities find of utmost importance. Under the Americans With Disabilities Act, (ADA), individuals with physical or *mental conditions*, receive certain protections to ensure they are not discriminated against.

MS. KAMMERER did NOT contribute to the mental illness she suffered after 7-years of domestic violence and the laws in place to protect her, failed miserably. In fact, she tried desperately to be left alone, so she could earn a living and care for her children. However, due to the failure of prosecutors to bring criminal charges against her Abuser, for 7-years, the resulting mental illness she developed, not only prevented her from earning a living, it caused illogical thinking. This combination ultimately resulted in actions, wherein, MS. KAMMERER did things completely out of character in order to provide food and shelter for her children.

Despite knowing MS. KAMMERER was operating under a debilitating mental illness, the State Bar violated the protections of the ADA, when they denied her participation in a program designed for professionals who suffer mental illness and are facing discipline; specifically, the Alternative Discipline Program, [ADP]. The ADP prevents discrimination against, or the punishment of, an individual with a mental illness, by allowing them to keep their license while they rehabilitate.

However, in contrast to other attorneys who presented with mental illness or addiction issues, that resulted in State Bar discipline and allegations of moral turpitude, who WERE included in ADP, MS. KAMMERER was disbarred.

If the protections under the ADA are to be given any meaning, MS. KAMMERER'S Petition must be granted. Further, to condone summary

disbarment under the circumstances of this case, would be to condone the unconstitutional punishment of an individual for having a mental illness.<sup>30</sup>

The questions presented by this case are extraordinarily important, and there is no possibility of further percolation. Whether there is a constitutional right of access to significant legal protections for professionals with qualifying disabilities under the ADA, such as equal participation in programs such as ADP, could determine the fate of all professionals; specifically, females who are statistically more likely to be victims of domestic violence and suffer sexual discrimination, in addition to mental illness<sup>31</sup>.

## I.

DOES IT VIOLATE THE AMERICANS WITH DISABILITIES ACT, TO PUNISH AN INDIVIDUAL FOR BEING MENTALLY ILL, BY SUMMARILY REVOKING THEIR PROFESSIONAL LICENSE AND DENY THEM THE ABILITY TO PARTICIPATE IN A PROGRAM SPECIFICALLY DESIGNED FOR PROFESSIONALS WHO ARE FACING DISCIPLINE DUE TO A MENTAL ILLNESS; WHICH, WOULD HAVE ALLOWED THEM TO MAINTAIN THEIR LICENSE WHILE THEY REHABILITATE, WHEN THE LICENSING AGENCY KNEW THE MENTAL ILLNESS CAUSED THE ACTIONS WARRANTING DISCIPLINE?

An individual falls within the American's With Disabilities, ("ADA"), "protected class", if they are a qualified individual with a disability; which, the statute defines as an individual, "... who, with or without reasonable modifications

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<sup>30</sup> The California Superior Court and State Bar have since adopted evolving standards against punishing people with a mental illness or addiction. [App. "D", p.1, ¶2].)

<sup>31</sup> On April 5, 2021, the State Bar ITSELF, acknowledged MS. KAMMERER's mental illness; (which, qualified her for LAP in 2014, [App. "Y"]); a prerequisite for ADP), and declared she had successfully rehabilitated. (App. "P".)

to rules, policies, or practices, . . . meets the essential eligibility requirements for the receipt of services or *the participation in programs, (ADP), or activities provided by a public entity.*" (42 U.S.C. § 12131[2] [2000]; emphasis added.) The statute defines disability as "a physical or mental impairment that substantially limits one or more of the major life activities" of the individual in question, "a record of such an impairment," or "being regarded as having such an impairment". (*Id.* § 12102[2].) Title II of the ADA prohibits discrimination by public entities, (here the California State Bar), against qualified individuals, (here, MS. KAMMERER), with disabilities, (42 U.S.C. § 12132 [2000]), and courts agree that it applies to lawyer disciplinary proceedings<sup>32</sup>.

In fact, some lawyer discipline hearings do not engage in an analysis of the ADA. Proof of a disability is sufficient: See, e.g., *In re Hasenbank*, 151 P.3d 1, 6 (Kan. 2007) (lacking reference to ADA where attorney claimed depression and bipolar disorder caused his misconduct); *In re Conduct of Coyner*, 149 P.3d 1118, 1123 (Or. 2006) (lacking reference to ADA where attorney claimed mental disability and alcoholism caused his misconduct); *In re Stoller*, 902 So. 2d 981, 984 (La. 2005) (lacking reference to ADA where attorney claimed Parkinson's Disease and depression contributed to his misconduct).

**A. The California State Bar Found MS. KAMMERER Had a Qualifying Disability; Yet, Denied Her Participation In ADP, Despite Having The Disability As The Direct Result Of**

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<sup>32</sup> See, e.g., State ex rel. *Oklahoma Bar Ass'n v. Busch*, 919 P.2d 1114, 1118 (Okla. 1996) (noting that Title II of the ADA applies to public entities and holding that the ADA applies to the Oklahoma Bar Association, "an arm of this Court"); *Florida Bar v. Clement*, 662 So. 2d 690, 700 (Fla. 1995) (stating that the ADA applies to the Bar).

**Domestic Violence And The System's Failure To Protect Her And Her Children, From The Abuser.**

In the case at bar, there is no question MS. KAMMERER was suffering from clinical depression and PTSD; which, significantly limited her ability to earn a living and prevented her from thinking clearly. Nor was MS. KAMMERER suffering in silence. San Diego prosecutors acknowledging, repeatedly, MS. KAMMERER was a victim of domestic violence, (a serious crime); yet, refused to bring charges against her abuser for 7 years.

When an individual is threatened, the brain will move to the "Alarm" state. *"When this happens, we start to think in more emotional ways as lower systems in the brain begin to dominate our functioning...we often say or do things that we regret.* (Bruce D. Perry, M.D., Ph.D. and Oprah Winfrey, What Happened To You? Conversations on Trauma, Resilience, and Healing, Part 3, Chapter 2, 23:27-23:55, audiobook.)

**"The pervasive misunderstanding of trauma-related behavior has a profound effect on our...justice system."** (*Id.* at 37:40 – 37:48.)

In fact, on July 15, 2021, during MS. KAMMERER's hearing on her Motion for expungement of her criminal record and a reduction of her felony to a misdemeanor, *the Judge's determining factor in granting MS. KAMMERER'S request, was driven by the fact the prosecutor admitted they NEVER brought any charges against MS. KAMMERER'S abuser.*

B. **The American Bar Association, Persuasive Authority For California, Lists Four Factors To Determine If An Attorney's Mental Illness Should Be Considered In Mitigation; None Of Which, Were Evaluated In MS. KAMMERER'S Case; Where, The Failure To Do So, Violated The ADA.**

According to the Standards<sup>33</sup>, mental disability or chemical dependency may be a mitigating circumstance, provided that four factors are met: (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely. Not only did the LAP Committee establish factors (1) and (2), in "qualifying" MS. KAMMERER for the "monitored" LAP program; but, in order to successfully graduate from LAP, factors (3) and (4), must be present.

Regardless, MS. KAMMERER was denied the ability to participate in the State Bar's Alternative Discipline Program, (ADP); which, would have allowed her to keep her license, while she rehabilitated from the mental illness, directly violating 29 U.S.C. §794. Section 504, of the ADA<sup>34</sup>.

**C. The Causal Factor Of MS. KAMMERER'S Mental Illness, Was No Longer In Existence After Abuser Hanged Himself; Wherein, The Mental Illness That Caused The Actions Warranting Discipline, Could Now Be Rehabilitated Through ADP And MS. KAMMERER Could Return To The Practice Of Law Without Any Threat To The Public.**

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<sup>33</sup> STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32 (1992) [hereinafter ABA STANDARDS].

<sup>34</sup> 29 U.S.C. §794. Section 504 in relevant part prohibits discrimination against individuals with disabilities in any program or activity that receives federal financial assistance and was the model for the ADA language; where, nondiscrimination provisions are not limited to entities that receive federal assistance.

Enacted in 1990 and amended in 2008 by P.L. 110-325, the ADA is a civil rights statute that has as its purpose "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." (42 U.S.C. §12102[b][1].) The State Bar knew MS. KAMMERER was genuinely suffering from PTSD and clinical-depression; which, is why they "qualified" her to participate in LAP, twice.

However, when an actual discipline issue presented itself, they denied her participation in ADP, claiming she had "...the specific intent to deceive", (App. "G", p.3, ¶1); which, was simply not possible under her diagnosed mental illness. In *Florida Bar v. Clement*, the attorney claimed that sanctioning him for misappropriating the funds of two clients would violate the ADA, due to his bipolar disorder. (662 So. 2d 690, 692 [Fla. 1995].) The court disagreed, finding, "Although Clement was under psychiatric care for his bipolar disorder when the incidents in this case occurred, Clement also said he could fool his doctor into believing that he was in control during some of the period in question. This suggests that nothing could prevent repetition of the egregious misconduct in this case." (*Id.* at 700.)

In contrast, MS. KAMMERER's fear and resulting mental illness, was evaluated and confirmed by the State Bar's LAP Committee; consisting of mental health experts. MS. KAMMERER was not trying to fool anyone. She was genuinely traumatized; which, any reasonable person would have been under the same circumstances. With her Abuser no longer alive and a regular stream of

income from survivor benefits, there is no possibility of recurrence of the uncharacteristic actions she took to provide for her children, during a horrific time.

**D. MS. KAMMERER's Therapist Declared The Actions Resulting In Discipline, Were The Direct Result Of MS. KAMMERER'S Mental Illness; Which, Was The Direct and Proximate Result Of Prosecutors Allowing Her Abuser to Traumatize Her And Her Children, For 7-Years; The State Bar Agreed, Qualifying Her For The "Monitored" LAP.**

*In re Hasenbank*, 151 P.3d 1, 6 (Kan. 2007); *In re Disciplinary Proceedings Against Jacobson*, 690 N.W.2d 264, 275 (Wis. 2004); *In re Disciplinary Action Against Weyhrich*, 339 N.W.2d 274, 279 (Minn. 1983); see also STATE BAR OF CAL., STANDARDS FOR ATTORNEY SANCTIONS FOR PROF'L MISCONDUCT, Standard 1.2(e)(iv) (2007), mitigation was found where there was evidence of, "... extreme emotional difficulties or physical disabilities suffered by the member at the time of the act of professional misconduct which expert testimony establishes was directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member...". In MS. KAMMERER'S case, there WAS "illegal conduct"; that of her Abuser, which was allowed to continue for 7-years, creating her desperate financial situation & debilitating mental illness.

In fact, Dr. Lazar, who was MS. KAMMERER'S treating therapist for a number of years, opined:

*"The impact of the type of stress MS. KAMMERER experienced can be devastating, both emotionally and cognitively. This can compromise a person's ability to function in their normal capacity emotionally, socially, vocationally and even cognitively. Sadly enough her depression and PTSD created enough confusion and*

***desperation that she took actions that were out of character for her and unprecedented.***” (App. “S”, p.2)

***“...These changes have made the ‘perfect storm’ she experienced, and which compromised her thinking and judgment, an aberration that is nearly impossible to reoccur.”<sup>35</sup> (App. “S”, p.3.)***

With this knowledge, combined with the State Bar’s own therapists on the LAP Committee, who were in concurrence with Dr. Lazar’s professional opinion, the “modification” to MS. KAMMERER’S license, under the ADA, (protecting the public, while allowing MS. KAMMERER time to rehabilitate from her mental illness, [the causal factor of her actions]), would have been to allow participation in ADP.

In *State ex rel. Oklahoma Bar Association v. Busch*, court stated it saw “no ‘reasonable accommodation’ which can be made with regard to [r]espondent’s neglect of client matters and deceit in court which would accomplish the purpose of maintaining the integrity of the [b]ar and promoting the public’s confidence in the state’s many attorneys.” (919 P.2d 1114, 1119 [Okla. 1996].) In the case at bar, MS. KAMMERER did not neglect client matters. In fact, as discussed above, the Judge opined during the preliminary hearing that she was “providing top notch service” to her clients. (App. “K”.) Denying MS. KAMMERER the ability to participate in ADP and maintain her law license while she rehabilitated, when her situation more than

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<sup>35</sup> The analysis in *Clement* finds if successful treatment or a restructuring of one’s practice has rendered an attorney unlikely to repeat her misconduct in the future, the attorney is a “qualified individual with a disability” who falls within the ADA’s protection. (*Id.* at 700.)

qualified her for said accommodation, was a clear violation of the ADA; and her summary disbarment was, in effect, punishment for having a mental illness.<sup>36</sup>

## II.

### IS DISPARATE PUNISHMENT FOR ETHICAL VIOLATIONS, WHERE GENDER AND MENTAL ILLNESS ARE INVOLVED, A FORM OF DISCRIMINATION THAT VIOLATES ONE'S RIGHT TO EQUAL PROTECTION UNDER THE AMERICANS WITH DISABILITIES ACT?

"A gender line ... helps to keep women not on a pedestal, but in a cage."<sup>37</sup>

-Ruth Bader Ginsburg

#### A. The Summary Disbarment Of Female Attorneys, With A Diagnosed Mental Illness, Directly Resulting From Years of Unrelenting Domestic Violence and The Failure Of Our System To Stop Their Abusers, Is Sexual Discrimination, Disparately Impacting Women Professionals, Through Inequality In Discipline.

Title VII of the Civil Rights Act of 1964 made it unlawful for an employer to limit, segregate, or classify his employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of "a particular characteristic or characteristics like race or sex" (Grossman, 2010). In 1971, in *Griggs v. Duke Power Co.*, the Supreme Court ruled, employers could not rely on hiring criteria that imposed a

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<sup>36</sup> A "status crime" is a crime based on a person's character or condition, rather than on actually committing a wrongful act. (*Robinson v. California*, 370 U.S. 660 [1962].)

<sup>37</sup> In 1975, in *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975), the late Ruth Bader Ginsburg paraphrased the words of the first woman to serve as a district court judge in arguing why unequal treatment of the sexes was wrong.

demonstrable negative impact on a protected class of workers and yet were not justified by business necessity. (401 U.S. 424.)

The Court concluded that targeting discriminatory consequences — not just discriminatory motives — was part of Congress' purpose in enacting Title VII.

In 1991, in response to several Supreme Court decisions narrowing the scope of liability in cases involving disparate impact or unintentional discrimination, Congress amended Title VII to restore the initially broader scope by adding a provision that expressly prohibits disparate impact.

***(i). Disparate Treatment and Disparate Impact***

The traditional disparate treatment/disparate impact analyses apply when one who is entitled to equal treatment, claims that he experienced unequal treatment or uneven consequence (*Tyler vs. City of Manhattan*, 118 F3d 1400, [10th Cir. 1997]). Disparate treatment and disparate impact claims originated with Title VII of the Civil Rights Act of 1964. Disparate treatment and disparate impact claims are allowed under the ADA because Congress adopted the language of previous civil rights statutes in the drafting of the ADA. (*Disabling Interpretations: The Americans With Disabilities Act In Federal Court*, by Suzan Gluck Mezey, 2005).

***(ii). Elements Of Disparate Impact.***

Disparate impact exists where an employer uses legitimate employment policies and procedures that, despite apparent neutrality, discriminate against a

protected class or group of employees. A Title VII disparate impact claim includes four elements: (a) plaintiff must identify specific practice or policy that caused disparate impact, (summary disbarment); (b) plaintiff must show that employer used the employment practice or policy, (Ms. Kammerer was summarily disbarred); (c) plaintiff must prove that he/she as a member of a protected class, (MS. KAMMERER had a diagnosed mental illness and was a victim of domestic violence), experienced an adverse or disproportionate impact, (ongoing domestic violence resulted in her mental illness, lack of clarity in thinking and ultimately, actions leading to discipline), caused by employment practice, (summary disbarment), or policy (usually through the use of statistics....women are statistically more likely to be the victims of domestic violence); and (d) to rebut a charge of disparate impact, the defendant (employer) must demonstrate that the employment practice or policy in dispute is both job-related and consistent with business necessity, (since the State Bar has a program designed to protect the public, while lawyer's rehabilitate under the watchful eye of the State Bar, summary disbarment was NOT necessary in the case at bar).

Plaintiff may then offer a surrebuttal, by showing an alternative, less discriminatory practice or policy was available, (ADP, LAP, license suspension), and the employer refused to use it, (MS. KAMMERER was denied ADP, despite having the necessary qualifications). For Title VII disparate impact cases under the ADA, plaintiff need only show unintentional discrimination affected her, not an entire group. Here, the State Bar's subjective determination, resulted in disbarment.

**B. Statistics Show Disparate Treatment Of Female Attorneys, Compared To Their Male Counterparts, When It Comes To Discipline; Obviates The Need For A More Critical Evaluation Of Disbarment, Where Domestic Violence Is Involved.**

A sociologist from the University of Pennsylvania, references research done by the American Bar Association, ("ABA"), in addressing disparate treatment of female attorneys, compared to their male counterparts, when it comes to discipline, due to societal expectations that women are more ethical and thus, held to a higher standard, in an interview:

"SHAPIRO<sup>38</sup>: This seems to support the idea that people assume women are more ethical and unethical behavior might be more likely practiced by men.

"VEDANTAM: That's right...So if you think of women as being more ethical and you come across a woman who does something unethical, do you perceive this to be a more serious problem than a man who does the very same thing?

"...

"VEDANTAM: ...The researchers went back to McDonnell's<sup>39</sup> interest in the law. They tracked down disciplinary punishments handed out by the American Bar Association, Ari. They analyzed 500 cases in 33 states where a lawyer was pulled up before the Bar Association.

"... The researchers then analyzed the punishments handed down to lawyers who had committed identical infractions...

"MCDONNELL: Women had a 35 percent chance of being disbarred in any given case, and men had a 17 percent chance. So that suggests that females had a 106 percent higher likelihood of being disbarred than males.

"SHAPIRO: Shankar, this sounds really disheartening - that women are going to be punished more severely for the same offenses as men."  
(National Public Radio, ["NPR"] KPBS, *Women Held To Higher Ethical*

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<sup>38</sup> Arti Shapiro is a host on National Public Radio, ("NPR").

<sup>39</sup> Mary-Hunter McDonnell is a sociologist at the University of Pennsylvania.

*Standard Than Men, Study Shows, June 2, 2016 4:28 PM ET, Heard on All Things Considered, by Shankar Vedantam.)*

Numerous studies have addressed disparate application of discipline toward women:

“Our research documents a new prescriptive stereotype faced by women and helps to explain the persistence of gender disparities in organizations. It highlights punishment severity as a novel mechanism by which institutions may derail women’s careers more than men’s.” (Kennedy, J., McDonnell, M., & Stephens, N. (2016). *Does Gender Raise the Ethical Bar? Exploring the Punishment of Ethical Violations at Work*. Academy of Management Proceedings, <http://dx.doi.org/10.5465/AMBPP.2016.11664abstract>; Emphasis added.)

“...

“In this research, we investigate another form of discrimination against women professionals: how gender bias shapes the allocation of employment-related punishment. Specifically, we ask whether women suffer more severe punishment than men for ethical violations at work. Harsher punishment could be one important but subtle way of subduing women who have achieved inroads into prestigious professions... Harsher punishment for ethical violations may be one important example of covert discrimination.” (*Id.* at p.3.)

Traditionally, women and men face different social expectations, where women are expected to be more caring and ethical. These stereotypes have a prescriptive quality (Burgess & Borgida, 1999; Eagly & Karau, 2002; Heilman, 2001). That is, women are expected to behave in ways consistent with these stereotypes and face negative consequences when their behavior deviates from them.” (*Id.* at p.6; emphasis added.).

Gender discrimination is more visible in the context of discipline, due to the difficulty in ascertaining the level of discipline appropriate in a particular situation,

facilitating oversight with regard to inconsistencies and unequal treatment. “What constitutes an ethical violation is often ambiguous (Wiltermuth & Flynn, 2013)... [b]ecause there is little consensus regarding ethical standards or how violations should be punished, *the context is ripe for gender discrimination, which tends to emerge when decision-makers are afforded substantial discretion under a guise of objectivity* (Castilla, 2008; Castilla & Benard, 2010; Uhlmann & Cohen, 2005). Under these circumstances, **gender may subconsciously influence evaluators’ perceptions, leading to discrepant outcomes that tend to systematically disfavor women.** (Gorman, 2005; Reskin, 2000).” (*Id.* at pp. 7-8, emphasis added.)

Because ethical behavior is more strongly prescribed for women than men, **women are punished more severely than men following an ethical violation at work.** “Severity is subjective, however. To the extent women are held to higher ethical standards than men, observers may perceive women’s ethical violations to be more severe than men’s because the higher standard women are held to...” (*Id.*) The researchers concluded, “...the gender of the individual who commits the ethical violation, rather than other factors, is the causal factor that drives differential punishment severity.” (*Id.* at p.10.). More specifically:

“...**women are more likely to be disbarred than men, controlling for the precise ethical violation committed.** Post-estimation margins analysis of Model 4 with all control variables held to their means indicates that **females have a 106% higher likelihood of being disbarred than males** (at .35 and .17, respectively).” (*Id.* at p.21, emphasis added.)

“Punishment severity may be one mechanism by which women lose professional status more easily than men after achieving it.” (*Id.* at p.22.) The summary disbarment of MS. KAMMERER is a prime example of unconstitutional disparate impact in severity of punishment of women professionals.

### III.

**WOULD REQUIRING A PROFESSIONAL TO RE-TAKE A LICENSING EXAM TO HAVE THEIR LICENSE REINSTATED, WHEN THEIR LICENSE WAS IMPROPERLY TAKEN DUE TO ACTIONS CAUSED BY A DISABILITY, WHERE THE PROFESSIONAL WAS FOUND TO HAVE COMPETENTLY PERFORMED THEIR PROFESSIONAL TASKS AT ALL TIMES AND HAS SINCE REHABILITATED FROM THE MENTAL ILLNESS, VIOLATE THE AMERICANS WITH DISABILITIES ACT?**

In the years since the Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), the goal of the *integration mandate* in title II of the Americans with Disabilities Act – to provide individuals with disabilities opportunities to live their lives like individuals without disabilities – has yet to be fully realized. To comply with the ADA’s *integration mandate*, public entities, (California State Bar), must reasonably modify their policies, procedures, (attorneys who are disbarred, must take and pass the Attorney Bar Exam), or practices when necessary to avoid discrimination<sup>40</sup>. The obligation to make reasonable modifications may be excused only where the public entity demonstrates the requested modifications would “fundamentally alter” its service system.

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<sup>40</sup> 28 C.F.R. § 35.130(b)(7).

Since MS. KAMMERER was granted successful graduation from LAP, has maintained required MCLEs and was found to have provided "top notch" legal services, having never been faced with allegations of malpractice, reinstating MS. KAMMERER'S law license, without having to retake the Bar Exam, would in no way, alter the State Bar's "service system".

#### CONCLUSION

Accordingly, and for all the above reasons, this Honorable Court must grant MS. KAMMERER'S Writ of Mandate, reinstating her law license.

DATED: October 7<sup>th</sup>, 2021

Respectfully submitted,



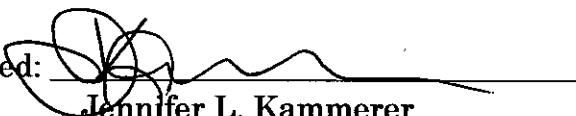
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## VERIFICATION

I am the petitioner in this action. All facts alleged in the above petition are true of my own personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 10-07-2021

Signed:

  
Jennifer L. Kammerer