

No. 22A703

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**In the Supreme Court of the United States**

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MAUDE LAROCHE-ST. FLEUR

Applicant,

v.

BOARD OF BAR OVERSEERS OF THE SUPREME JUDICIAL COURT OF  
MASSACHUSETTS, et al.,

Respondent / Complainants.

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EMERGENCY APPLICATION FOR STAY OF JUDGMENT  
PENDING THE FILING AND DISPOSITION OF A PETITION  
FOR A WRIT OF CERTIORARI

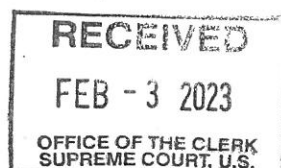
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On Application for Stay of Judgment Pending Petition for  
Writ Of Certiorari to the Supreme Judicial Court of Massachusetts

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To the Honorable Ketanji Brown Jackson  
Associate Justice of the Supreme Court of the United States  
and Justice for the Supreme Judicial Court of Massachusetts

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## **PARTIES OT THE PROCEEDINGS AND RELATED PROCEEDINGS**

Applicant, Maude Laroche-St. Fleur, was Appellant in the court below; Respondent in the Board of Bar Overseers Proceedings; Appellant in the State Appellate Courts in 2017 and 2019; Plaintiff in the Suffolk Probate and Family Court since 2014; and Plaintiff and Appellant in the federal courts below.

Respondents include the Board of Bar Overseers of the Supreme Judicial Court of Massachusetts in its capacity of performing its duties.

Respondents also include Rodney S. Dowell, in his official capacity as Bar Counsel of the Board of Bar Overseers of the Supreme Judicial Court of Massachusetts.

Respondents also include Robert M. Daniszewski, in his official capacity as Assistant Bar Counsel of the Board of Bar Overseers of the Supreme Judicial Court of Massachusetts.

Finally, Respondents include Joseph S. Berman, in his official capacity as General Counsel of the Board of Bar Overseers of the Supreme Judicial Court of Massachusetts.

All Respondents were Appellees and Complainants in the court below.

The proceedings below are:

1. In the Matter of Maude Laroche-St. Fleur, 490 Mass. 1020 (2022).

Opinion Affirming Suspension of Applicant's Law License, Entered Oct. 27, 2022

2. In the Matter of Maude Laroche-St. Fleur, BD-2022-012. Order of the Single Justice Suspending Applicant's Law License for 18 months, Entered March 25, 2022

3. Bar Counsel v. Maude Laroche-St. Fleur, No. C1-16-0004 (Board of Bar Overseers of the Supreme Judicial Court of Massachusetts, 2016)

4. Laroche-St. Fleur, Maude v. St. Fleur, Sr., James, No. 14D1029DR (Suffolk Probate and Family Court, Mass. 2014))

5. M.L.-S.F. v. J.S.F., No. 2016-P-1108 (Mass. App. Ct., 2016)

6. Maude Laroche-St. Fleur v. James St. Fleur, Sr., No. FAR-2547 (Mass, 2017). Denial of Application for Further Appellate Review, Entered Sept. 14, 2017

7. M.L.-S.F. v. J.S.F., No. 2018-P-1151, (Mass. App. Ct. 2019)

8. Maude Laroche-St. Fleur v. James St. Fleur, Case No. 18-P-1088, (Mass App. Ct. 2019)

9. M.L.-S.F. v. J.S.F., No. FAR-26963, (Mass. 2019). Denial of Application for Further Appellate Review, Entered Sept. 13, 2019

10. M.L.-S.F. v. J.S.F., No. FAR-26964, (Mass. 2019). Denial of Application for Further Appellate Review, Re-entered Sept. 13, 2019

Related Proceedings are:

1. SF v. Budd, No. 21-cv-10078-DJC (D. Mass. 2021)

2. M.L.-S.F. v. Kimberly S. Budd, et al., No. 21-1685 (1st Cir. 2022)

Proceedings in this Court are:

1. M.L. - S.F. v. Kimberly S. Budd., et al., No. 22M54. Denial of Applicant's Motion to Direct the Clerk to File Petition for a Writ of Certiorari Out of Time (One Day Late), Entered January 9, 2023

2. Maude Laroche-St. Fleur v. Board of Bar Overseers of the Supreme Judicial Court of Massachusetts, No. 22A640. Grant of Applicant's Motion for Extension of Time to File Petition for a Writ of Certiorari until February 24, 2023

There are no other proceedings in State or federal trial or appellate courts or this Court directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

## CORPORATE DISCLOSURE STATEMENT

As required by this Court's Rule 29.6, Applicant hereby states that she is an individual and as such has no parent entities and does not issue stock.

Dated: January 28, 2023

Respectfully submitted,



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**TO THE HONORABLE KETANJI BROWN JACKSON, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND JUSTICE FOR THE SUPREME JUDICIAL COURT OF MASSACHUSETTS:**

Applicant respectfully seeks a stay of the judgment of the Supreme Judicial Court of Massachusetts in this case, pending the filing and disposition of a petition for a writ of certiorari. Applicant's motion asking the court below to stay its judgment was denied without a hearing on December 29, 2022. See Application Appendix ("\_\_a") at 2a, Entry #31. *Infra.* at 184.

### **INTRODUCTION**

This case raises profoundly troubling issues in violation of Applicant's fundamental, inalienable rights to life, liberty, and property under the Constitution of the United States. This matter is based entirely upon the record in Applicant's underlying divorce case. The Board of Bar Overseers ("the BBO") availed itself of 31 exhibits to prosecute Applicant. Appendix Volume I ("App. Vol. 1, \_\_") at 12, ¶5. But, Applicant was allowed to present only 2 exhibits from the record in her defense. *Infra* at 169, Lines 12-22.

Yet, Assistant Bar Counsel said "... all of the evidence before the committee particularly in the exhibits ... establishes very clearly that all of the charges in the Petition for Discipline are well substantiated." *Infra.* at 176, Lines 1-11. Then, Assistant Bar Counsel proceeded to attacking Applicant's character mercilessly. See *Infra.* at 182, Lines 6-16; *Infra* at 188-189; *Infra* at 191-194.

The Single Justice adopted the BBO's recommendation and suspended Applicant's law license for 18 months. See 15a, ¶23. *Infra* at 18a-28a. The full

court below affirmed the order of its Single Justice. See 4a-12a. But the court below has an unmet challenge. That is, to give Applicant the findings of fact and the conclusions of law it relied upon in suspending Applicant's law license. See 15a-17a, Entries 41-42, 50, 58-59.

Interestingly, on February 24, 2022, the Single Justice and Assistant Bar Counsel subtly poked a hole in the findings of fact of the hearing committee. App. Vol. 1 at 41, Lines 12-25. Finding 13 of the Hearing Reports is at *Infra* 202; *Infra* 233. Four documents would complete this task: (1) Appendix M at 98a; (2) Appendix N at 103a; (2) Appendix Volume 1 of 2; an (4) Appendix Volume 2 of 2.

On January 19, 2023, a hearing was held on Bar Counsel's motion for an order to have Applicant arrested. See 17a, Entry #60. The transcript of this hearing should show that the Single Justice kept referring to "Section 14," "the Commissioner," "Guardian *Ad Litem*," "Disability," "Inactive Status" ... The Single Justice essentially said Applicant lacks the mental acuity to understand what is going on in this case. He made it clear that he was considering taking steps under his judicial authority and pursuant to SJC Rule 4:01, §§ 13 and 14 to do away with Applicant. See the rule at Application Addendum ("ADD") at 6-8.

This case creates a constitutional crisis of national significance. This Court should intervene and send a strong message nationally that States cannot interfere with the superior power of the national constitution. The issuance of a stay is warranted, pending the filing of Applicant's petition for a writ of certiorari and its disposition by this Court.

## DECISIONS BELOW

The Massachusetts Supreme Judicial Court's Opinion affirming the Order of the Single Justice that suspends Applicant's law license for 18 months is included in the Appendix of this Application. See 4a—12a. The Judgment was issued on November 30, 2022. See 29a. On December 29, 2022, the Massachusetts Supreme Judicial Court denied Applicant's motion to stay its Judgment. See 140a—183a; *Id* at 184a.

## BACKGROUND

### A. **Massachusetts Supreme Judicial Court Rule 4:01: Bar Discipline**

Pursuant to Massachusetts Supreme Judicial Court Rule 4:01, the court has exclusive jurisdiction over matters involving attorney disciplinary proceedings. The court appoints the Board of Bar Overseers (“BBO”) to handle complaints made against attorneys. The BBO, in turn, appoints a Bar Counsel with the approval of the Massachusetts Supreme Judicial Court. See ADD at 1. The Bar Counsel considers and investigates complaints made against attorneys. Not all complaints end with prosecution. ADD at 2.

Some matters can be cured through remedial measures, such as informal conference, or diversion to an alternative educational, remedial, or rehabilitative program. See SJC Rule 4:01, § 8(1)(b). See ADD at 3. A petition for discipline, which is the charging document, should be issued only when formal disciplinary proceedings are warranted. *Id* at § 8(3). See AD at 4.

When the Bar Counsel commences disciplinary proceedings with the filing of a petition for discipline, the BBO appoints a hearing committee to conduct hearings on the alleged charges made against the attorney. This committee may make such recommendations as “dismissal of the matter, admonition, public reprimand, suspension, or disbarment.” SJC Rule 4:01, § 6. See ADD at 2. Alternatively, the BBO may appoint a hearing officer who is a lawyer to resolve the matter, should the BBO determine that the matter can be resolved through “a speedy and just disposition of the matter.” SJC Rule 4:01, at § 5(3)(d). See ADD at 1-2.

Pursuant to SJC Rule 4:01, § 7(1), the Bar Counsel has the discretion not to pursue a complaint that he or she “determines to be frivolous, to fall outside of the [BBO’s] jurisdiction, or to involve conduct that does not warrant further action.” See ADD at 2-3.

**B. The Board of Bar Overseers of the Supreme Judicial Court of Massachusetts Proceedings Versus Applicant’s Underlying Divorce Record**

This matter stems from Applicant’s underlying divorce case. The BBO inherits the record in the divorce proceedings, did not have to, and did not engage in any discovery. On January 22, 2016, the BBO sent an initial letter to Applicant, but kept this matter in deferment pending appeals. Appendix Volume I (“App. Vol. 1”) at 17-29. On June 25, 2020, Bar Counsel filed a Petition for Discipline against Applicant. *Infra.* 85, Entry #1. *Id.* at 89-96. Bar Counsel levels three charges against Applicant.

**Count I:** Among other things, Bar Counsel alleges that Appellant (1) made a false entry in the mortgage field of her financial statements, and (2) her “financial statements were materially inaccurate in *several respects*.” *Id.* at 89-90.

**Hearing Reports on This Entry.** The Hearing Committee issued a hearing report on August 2, 2021. Referring to the entry in the mortgage field, this report reads: “We credit that the respondent in fact has this generalized concern.” App. Vol. 1 at 219, ¶79(c). The BBO amended this report on August 30, 2021. *Id.* at 225. And on October 21, 2021, the BBO issued an amended Hearing Report with the same position on this entry in the mortgage field. *Infra.* at 249, ¶178(a).

**Explanation for this Entry.** See Exhibit P under Appendix Volume 2, at 119-139 and *Id.* at 136, “Explanation for Entry on Financial Statement.” These pages are submitted to this Court under seal.

**Alleged Inaccuracies of Financial Statements.** The BBO’s allegation that Applicant’s “financial statements were materially inaccurate in several respects” has remained a conclusory statement. Stated another way, the BBO has not produced the evidence in the record to that effect.

**Count II.** Bar Counsel charges Applicant for being held in contempt in her divorce case. App. Vol. 1 at 90-92.

**Seven Contempt Judgments and a Capias.** In 2015, the divorce judge held Applicant in contempt three times. Appendix Volume II (“App. Vol. 2”) at



89-93. On December 3, 2015, the judge issued a *capias* for Applicant's arrest. *Supra.* at 36-37. In 2018, the judge issued three contempt judgments against Applicant. *Infra.* at 94-97. And on January 9, 2020, the judge issued a seventh contempt judgment against Applicant. *Id.* at 98-99.

**Three Contempt Judgments in 2015.** Among other things, payment is due at the time of property division. *Id.* at 91, ¶4. *Id.* at 93. The judgment of divorce for property division is dated December 30, 2015, and was entered on January 6, 2016. See App. Vol. 2 at 28-29. *Supra* at 15, Entry #106.

**Three Contempt Judgments in 2018.** The Massachusetts Supreme Judicial Court denied further appellate review on September 14, 2017. *Infra.* at 159. From September 14, 2017 to December 21, 2017, Applicant engaged the other side, through emails and via his attorney, and attempted to reach a negotiated settlement. *Id.* at 160-176. One offer to transfer the Deed to his name was turned down. *Id.* at 162-166. Then, he turned down a second offer to buy him out. *Id.* at 167-176.

In February 2018 and in March 2018, the judge issued a total of three contempt judgments against Applicant for not selling her home. *Supra* at 94-97. The judge appointed a partition commissioner to sell Applicant's home at auction.

**Hearing in December 2019.** On December 17, 2019, the judge gave the partition commissioner the authority to seize Applicant's home and evict her therefrom. The judge said: "[Y]ou have the discretion to execute the plan as you

see fit...” The judge added: [Y]ou can take whatever course you deem appropriate.” See 41a at Lines 14-20.

***Motion to Reverse Conveyance of Home.*** On December 20, 2019, Applicant filed a motion asking the Probate and Family Court Judge to reverse his order conveying Applicant’s home to an appointed partition commissioner. See 44a-46a. This motion, along with page 181 of Appendix Volume 2 (Sealed Page), offers a glance of what Applicant was up against.

***Contempt Judgment in 2020.*** On January 9, 2020, the judge issued a seventh contempt judgment against Applicant. This time, the judge gave the partition commissioner the authority to seize Applicant’s home and sell it at auction. *Id.* at 98-99.

***Motion for Issue Preclusion.*** Bar Counsel’s motion for issue preclusion on three of the seven contempt judgments was entered on November 13, 2020. See App. Vol. 1 at 86, #32. This motion is dated November 13, 2020. *Id.* at 97-100. Applicant vehemently opposed this motion. *Id.* at 101-110. *Id.* at 111-132. And *Id.* at 133-134.

***Count III.*** Bar Counsel charges Applicant with filing a *frivolous* Rule 60 motion, among other things.

***The BBO Availed Itself of 31 Exhibits From the Record.*** The BBO held a hearing on March 23 and March 24, 2021. The BBO availed itself of 31 exhibits from the underlying divorce record. See App. Vol. 1 at 12, ¶15.

***Applicant Was Allowed to Present Only Two Exhibits.*** On January 14, 2021, Applicant submitted Exhibits A—VV from the underlying divorce record to the BBO. See App. Vol. 1 at 121. See also *Infra.* at 159, Lines 10-16. The BBO allowed Applicant to present only two of these exhibits: No. 32 and No. 33. *Id.* at 169, Lines 12-22.

Notably, the BBO allowed itself to admit into evidence excerpts from the November 5 and November 6, 2015 trial transcripts. See 58a, at #12 and #13. Applicant offered excerpts from the same trial transcripts. App. Vol. 1, at 171, Lines 8-20. See also *Id.* at 172, Lines 10-23. The BBO did not allow those statements to come in. *Supra.* at 169, Lines 12-22.

Shockingly, the BBO said in its closing argument that “all the evidence before the committee, particularly in the exhibits ... establishes very clearly that all of the charges in the Petition for Discipline are well substantiated.” *Infra.* at 176, Lines 1-11.

### **C. Merits Issues Have Been Ongoing for Well Over Eight Years**

The other side, through his attorney, lulled Applicant into inaction and inattention under the pretext that he agreed to exclude certain information and documents from the divorce record. He agreed to amend his first pretrial memorandum. App. Vol. 2 at 24-25, ¶1 and ¶1. See also *Supra* at 11, Entries #13 and #16. Then, among other things, he subpoenaed the statements of three business bank accounts that were closed since 2013, withheld them, and kept Applicant in the dark. He mixed and entangled them with active statements.

Then, he blindsided Applicant with those entangled statements. App. Vol. 2, at 267-269. He said “there’s six more bank accounts that you didn’t tell us about?” *Id.* at 270, Lines 7-8. He said Applicant had undisclosed assets. *Id.* at 277, Lines 16-24.

**Finding of fact #25.** This finding states in salient part that “[Applicant] has bank accounts in her name or her business names of unknown value.” *Supra* at 47. On December 17, 2019, the trial judge asked four questions regarding undisclosed bank accounts. See 37a at Lines 19-21; *Id.* at 38a, Lines 1-3.

**Finding #13 of the BBO.** The BBO’s August 2, 2021 Hearing Report and its October 21, 2021 Amended Hearing Report refer to Applicant’s undisclosed assets and unlisted bank accounts. App. Vol. 1 at 202 ¶13 and *Id.* at 233 ¶13. Those bank statements are under Trial Exhibits #8 and #9. Those statements show with crystal clarity that the accounts ending in 6726, 6739, and 2979 were closed since 2013. See App. Vol. 2 at 100-108; *Id.* at 109-110; *Id.* at 111-113.

For more clarity, the closing letters for those three accounts are under App. Vol. 1, at 30-32. The Single Justice and Assistant Bar Counsel subtly acknowledged the existence of those bank statements in open court on February 24, 2022. See App. Vol. 1 at 41, Lines 12-25. In the history of this case, this is the first time this ever occurred.

**The Merits Issues Originated in the Trial Court.** The trial judge’s findings of fact are dated December 30, 2015. App. Vol. 2, at 44-56. On February 9, 2016, the judge allowed Applicant to supplement the record with

documents that were not presented at trial in November 2015. See App. Vol. 2 at 116. Those additional documents fill in critical blanks.

In addition, certain trial exhibits in Appendix Volume 2 of 2 - in particular exhibits #2, which leads Exhibit P; exhibit #13 under Exhibit NN; and exhibits #8 and #9 under Exhibit J - were not considered when the judge made his findings of fact. But the trial judge denied Applicant's motion to amend his findings fact. *Id.* at 115. Those factual findings have remained unamended. The judge did not make supplemental findings of fact in light of the additional documents in the record. App. Vol. 2 at 211, Lines 24-25. *Id.* at 212, Line 1. The SJC denied further appellate review in 2017 and in 2019. See App. Vol. 2 at 159. *Id.* at 220.

The underlying divorce case has remained unresolved on the merits to the present. Four documents submitted with this Application would captivate the attention of a curious reader. They are:

(1) Appendix M at 98a-102a; (2) Appendix N at 103a-139a; (3) Appendix Volume 1 of 2; and (4) Appendix Volume 2 of 2.

**D. The Order of the Single Justice of the Massachusetts Supreme Judicial Court**

The Single Justice of the Massachusetts Supreme Judicial Court adopted the recommendation of the Board of Bar Overseers. He suspended Applicant's law license for 18 months. See 18a-28a. This order was entered on March 25, 2022. See App. 15a, Entry #23. On April 5, 2022, the Single Justice denied Applicant's motion to stay his Order without a hearing. *Id.* at 15a, Entry #32. The

Memorandum of Decision consists mainly of conclusory statements. On September 9, 2022, Applicant filed a request for the findings of fact and conclusions of law the Single Justice relied upon in suspending Applicant's law license for 18 months. Applicant simultaneously filed her Declaration in support of this request. Applicant resubmitted the same request on October 4, 2022, and on December 22, 2022. Her request has remained unanswered to date. See 15a, Entries #41 and #42; *Id.* at 16a, Entry #50; *Id.* at 17a, Entries #58 and #59.

The BBO filed a motion seeking an Order for Applicant to show cause why she should not be arrested for non-compliance with the terms of the suspension of her law license. Applicant ceased practicing law pending a decision by this Court. A hearing was held on January 19, 2023. The transcript of this hearing should show that the Single Justice kept referring to "Section 14," "the Commissioner," "Guardian *Ad Litem*," "Disability," "Inactive Status..." At some point, the Single Justice asked Applicant directly if she would consent to the appointment of a commissioner and a guardian *ad litem*. Applicant answered with an emphatic and resounding "No." Applicant asked why she was asked this question. The Single Justice essentially said that Applicant lacks the mental acuity to comprehend what is going on in this case.

Subsequently, Applicant read Supreme Judicial Court Rule 4:01 to prepare for this Application. Then, Applicant came upon Sections 13 and 14, which deal directly with "commissioner," "disability," "inactive status..." See

ADD at 6-8. This is more than an insult. This is a low blow, not to Applicant, but to the administration of justice and to the justice system as a whole.

Sadly, this is not new to Applicant. In its October 21, 2021 Amended Hearing Report, the BBO makes it look like Applicant has a mental disability and cites exhibit 33. See App. Vol. 1 at 250, ¶178(c)(iv). Exhibit 33 is two August 14, 2014 email exchanges between Applicant and Opposing Counsel in the underlying divorce case. *infra.* at 169, Lines 12-22. See also *Supra* at 166, Lines 13-17. And App. Vol. 2, at 24-25. Applicant does not have a mental disability, and has never been diagnosed with a mental disability.

This seems to be more of a case where the BBO has a personal vendetta against Applicant, and wants to destroy her at any costs. But worst of all, it is as if the Supreme Judicial Court of Massachusetts is unable to extricate itself from this melee. Perplexingly, this matter rests on Applicant's underlying divorce case. The BBO has been protecting the other side overtly and repeatedly assailing Applicant with ruthlessness.

**E. The Opinion of the Massachusetts Supreme Judicial Court Affirming the Order of Its Single Justice**

On June 30, 2022, Applicant submitted her Preliminary Memorandum pursuant to SJC Rule 2:23. See 2a, Entry #7. On July 6, 2022, Applicant submitted a filing demanding that the BBO file a Responsive Memorandum under SJC Rule 2:23. The court denied this request on August 5, 2022. See 2a, Entry #13. On October 27, 2022, the court affirmed - without a hearing and

without a responsive memorandum - the Order of the Single Justice suspending Applicant's law license for 18 months. See 2a, Entry #30. Applicant was expecting an answer to her request for findings of fact and concussions of law. Rather, the opinion of the full court maintains the *status quo*. Its "Sufficiency of the Evidence" provision consists of 10 and a half lines of conclusory statements. See 9a. However, the "Sanction" section occupies about three pages of the Opinion. See 9a-12a.

The true narrative of the case is excluded from the Massachusetts Supreme Judicial Court's opinion. And so is the case in the Single Justice's Order, and the terms of Suspension. However, such Opinion, Order, and terms of suspension, along with Applicant's name and - in certain places, her photo - are all over the internet, in widely circulated legal newspapers and legal blogs (185a-193a), posted by the BBO under <https://bbopublic.blob.core.windows.net>.

**F. The Massachusetts Supreme Judicial Court's Order on Applicant's Motion for a Stay**

Subsequent to the affirmance of the Order of the Single Justice suspending Applicant's law license, Applicant submitted a motion for a stay of the judgment pending the filing and disposition of a petition for a writ of certiorari. See 140a. On December 29, 2022, the Massachusetts Supreme Judicial Court denied this motion. See 2a, Entry #31 and *Id.* at 184a. Applicant submits this application in light of that ruling.



## **REASONS FOR GRANTING THE STAY**

### **I. A Stay is not Available from Any Other Court or Judge**

“An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge.” Sup. Ct. Rule 23.3. Applicant filed a motion seeking a stay of the judgment of the Supreme Judicial Court of Massachusetts. The full court denied this motion on December 29, 2022. See 184a. See also 2a, Entry #31. The Single Justice also denied Applicant’s motion for a stay on April 5, 2022. See 15a, Entry #32. A stay is not available from any other court or judge. Consequently, this Court should grant a stay pending the filing of Applicant’s forthcoming petition for a writ of certiorari, and its disposition by this Court.

### **II. Applicant’s Request for a Stay Meets All the Required Standards**

Pursuant to 28 U.S.C. § 2101(f), this Court may stay “the execution and enforcement “ of a “final judgment or decree of any court ... pending the filing and disposition of a petition for a writ of certiorari. For a Stay to be granted, an Applicant must show:

“(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari;

(2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and

(3) a likelihood that irreparable harm will result from the denial of a stay.”

*Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

In addition, “[i]n close cases, the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.” *Id.* See also *Araneta v. United States*, 478 U.S. 1301, 1303 (1986); *Nken v. Holder*, 556 U.S. 418, 427-429 (2009). Applicant meets each of these requirements.

**III. There is a Reasonable Probability that this Court Will Vote to Grant Applicant’s Petition And Then Reverse the Judgment Below on the Constitutional Issues Raised in This Case**

Because of the Massachusetts Supreme Judicial Court’s clear conflict with this Court’s precedents and the national significance of this case, this Court will likely grant the Petition and reverse the judgment below on three issues. Sup. Ct. R. 10(c). First, Massachusetts Supreme Judicial Court Rule 4:01, §9(3) is overbroad and in contravention with the Due Process Clause and the Equal Protection Clause in profoundly troubling ways. — Second, the merits issues are pervasive and constitute grave violations of the Due Process Clause and the Equal Protection Clause. Third, Applicant is challenging the constitutionality of Massachusetts Supreme Judicial Court Rule 2:23 in her forthcoming petition.

**A. Applicant Is Likely To Prevail On The Merits Of Her Claim That The Massachusetts Supreme Judicial Court Rule 4:01, §9(3) Is Overbroad in Violation Of The Due Process Clause**

*“The Board, members of the Board and its staff, members of hearing committees, special hearing officers, and the bar counsel and members of his or her staff shall be immune from liability for any conduct in the course of their official duties.”* SJC Rule 4:01, § 9(3). See ADD at 5.

The words “*shall*,” “*immune*,” “*liability*,” “*any conduct*,” within this rule evoke sovereignty. These words contradict the language under Section One of the Fourteenth Amendment to the Constitution of the United States: “No State shall deprive its citizens of life, liberty, or property without due process of law. *U.S. Const. Amend. XIV, § 1*. The Board of Bar Overseers is a subsidiary agency of the Supreme Judicial Court of Massachusetts. It is Board of Bar Overseers of the Supreme Judicial Court Massachusetts. The Board of Bar Overseers and its staff inclusively are state actors. The Board of Bar Overseers and its members inclusively “shall not deprive” any citizen of the Commonwealth of Massachusetts “of life, liberty, or property without due process of law.” SJC Rule 4:01, §9(3) impermissibly gives the BBO and its staff the broad authority to act in any way and be totally free from accountability for misconducts. Brazen and egregious misconducts are protected under this rule.

“Procedural due process does not require perfect, error-free governmental decision making.” *Mackey v. Montrym*, 443 US 1, 13 (1979). “It does, however, require affording persons ... a relatively level playing field in a contested case hearing. The state should not be permitted to maintain such an unfair strategic advantage that a pall is cast over the fairness of the proceeding.” *In re Detention of Kortte*, 317 Ill.App.3d 111, 250 (2000). “Thus, due process demands a fair trial before a neutral or unbiased decision maker.” *Bracy v. Gramley*, 520 US 899,

904-905 (1997). “A basic requirement of due process is a fair trial before a fair tribunal, and this principle applies to administrative adjudicators as well as to courts.” *Withrow v. Larkin*, 421 US 35, 46 (1975).

In the present case, the BBO availed itself of 31 exhibits from the record for its March 2021 hearing. See App. Vol. 1 at 12, ¶15. The BBO’s Exhibits List includes statements from the November 2015 trial transcripts. See 58a, #12-#13. The BBO allowed Applicant to present only two exhibits from the record. App. Vol. 1, at 169, Lines 12-22. Stunningly, the BBO prevented Applicant from presenting exonerating statements from the November 2015 trial transcripts. *Infra* at 171, Lines 8-20. The BBO live-streamed this hearing. *Infra* at 185, Lines 13-14. Applicant was not afforded “a relatively level playing field.” The BBO has impermissibly maintained “such an unfair strategic advantage that a pall is cast over the fairness of the proceedings.”

“A license to practice law is “ a constitutionally protected interest.” *Matter of Kenney*, 399 Mass. 431, 436, 504 N.E. 2d 652 (1987). Citing *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). “[An attorney’s] license to practice law is a property interest that cannot be suspended without due process of law.” *Matter of Gargano*, 460 Mass. 1022, 1025 (2011). “In a [suspension] proceeding an attorney is entitled to procedural due process which includes fair notice of the charges and an opportunity for explanation and defense.” *Matter of Gargano*, 460

Mass. 1022, 1025 (2011); Citing *In re Ruffalo*, 390 U.S. 544, 550 (1968). “Two sources of possible bias - prejudgment of the facts or pecuniary interest - are sufficient to disqualify the members of the Board.” *Gibson v. Berryhill*, 411 US 564, 578 (1973). (where the court found that the goal of the members of the Board was to revoke the licenses of all optometrists in the state who were employed by corporations).

Here, the BBO prejudged that Applicant promised to produce a written agreement. As proof, the BBO cites and refers to nonexistent facts in the record. App. Vol. 1 at 220, ¶79(e)(iii) and (v). *Infra* at 250, ¶78(c)(iii) and (v). Exhibit 33 is two emails exchanged with opposing counsel in the underlying divorce case. *Supra* at 169, Lines 12-22. The excerpts of the hearing transcripts cited by the BBO are at 61a-85a. The BBO and its staff are constitutionally disqualified to conduct proceedings against Applicant due to bias.

Notably, the opinion of the court below has been the topic of legal blogs. This opinion has been published in widely circulated newspapers and other media. See 185a-193a. The BBO has posted the order of the Single Justice suspending Applicant’s law license online. See <https://bbopublic.blob.core.windows.net>. This is more than bias. Or, this is bias with teeth, limbs, and armors under the color of vested immunity pursuing to SJC Rule 4:01, §9(3).

**B. Applicant Is Likely To Prevail On the Merits Of Her Claim That The Massachusetts Supreme Judicial Court Rule 4:01, §9(3) Is Overbroad, In Contravention With The Equal Protection Clause**

*“The Board, members of the Board and its staff, members of hearing committees, special hearing officers, and the bar counsel and members of his or her staff shall be immune from liability for any conduct in the course of their official duties.”* SJC Rule 4:01, § 9(3). See ADD at 5.

This rule of the Supreme Judicial Court of Massachusetts gives the BBO plenary power to do as it pleases during proceedings with impunity. With the extreme language within this rule comes a sense of plenary authority that can be a perfect incubator for oppression and abuse. However, as State actors, the Constitution of the United States imposes restraints on the actions and omissions of the BBO during proceedings when complaints against attorneys come to their attention. Consequently, there is a clash between SJC Rule 4:01, §9(3) and Section One of the Fourteenth Amendment to the Federal Constitution.

“No State shall deny to any person within its jurisdiction the equal protection of the laws.” Amend. XIX, § 1. “The Fourteenth Amendment prohibits a State from denying any person within its jurisdiction the equal protection of the laws. *Pulliam v. Allen*, 466 U.S. 522, 541-542 (1984). Equal protection “is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313(1985). The Supreme Court explains that “the purpose of the equal protection clause of the Fourteenth Amendment is to secure *every person*

within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Village of Willowbrook v. Olech*, 528 US 562, 564 (2000); Quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 US 350, 352 (1918).

The case at bar is based entirely upon the record in Applicant's underlying divorce case. The other side, through his attorney, fabricated alternative realities and made false, unsubstantiated allegations in his closing argument. The trial judge treated his alternative realities as facts. This is evidenced in the findings of fact and the judgment of divorce. App. Vol. 2, at 28. *Infra* at 44. On February 9, 2016, the judge allowed Applicant to supplement the record with documents that were not presented at trial. *Infra* at 116. However, the judge denied Applicant's motions to amend his findings of fact and judgment of divorce. *Supra* at 114-115.

***Trial Exhibits #8 and #9.*** One crystal clear example is trial exhibits #8 and #9 regarding Applicant's business bank statements. The other side entangled the statements of 3 already closed accounts with three active statements. Then he claimed falsely that Applicant had six active bank accounts that she did not list on her financial statement. See App. Vol. 2 at 100-113. He false accused Applicant of misappropriating marital funds. *Infra* at 267-271. *Infra* at 277; 280; 281.

***Finding of Fact #25.*** This finding reads in salient part: [Applicant] has bank accounts in her name or her business names of unknown value.” See App. Vol. 2 at 47.

***The Truth.*** The accounts ending in 6726, 6739, and 2979 were closed since June 2013 but with a formal closing date of July 2013. See App. Vol. 1, at 30-32.

***Hearing Reports - Finding of Fact #13.*** This is a very simple concept with basic facts. However, the BBO maintains the *status quo*, and alleges that Applicant did not list bank accounts on her financial statements... See App. Vol. 1 at 89, ¶5 and ¶7. But the BBO has a challenge to overcome. That is, Applicant is still waiting for the evidence in the record substantiating such allegations.

The BBO intentionally and purposefully tried to find fault to seek suspension of Applicant’s law license. The following actions and inactions of the BBO point in that direction. *First*, the BBO has had the entire divorce record in its possession and did not have to conduct any discovery. *Second*, the BBO had the option to appoint a special hearing officer who is also an attorney to assess the record in view of the complaint. *Third*, the BBO has this option when it deems a situation does not require the involvement of a hearing committee and that “a speedy and just disposition would be better accomplished by such appointment.” SJC Rule 4:01, § 5(3)(d). See ADD at 2-3. *Fourth*, a complaint may not be



pursued if Bar Counsel, in his or her discretion, determines that the complaint “is frivolous, falls outside the jurisdiction of the Board, or involves allegations of misconduct that do not warrant further action.” SJC Rule 4:01, § 7(2)(a). See ADD at 3. In his closing argument, Assistant Bar Counsel conceded that the void judgment raised by Applicant is beyond his jurisdiction. App. Vol. 1 at 187, Lines 1-5; Lines 9-17; Lines 18-20. The BBO recognized its jurisdictional limitation. Yet, to make up for this, the BBO went after Applicant’s character with callous indifference. *Infra* at 182. *Infra* at 188-189. *Infra* at 191-194.

Then, the BBO embarked on the mission to exercise the appellate function of the Massachusetts Supreme Judicial Court of Massachusetts with a twist. The BBO reviewed and reshuffled the record. Then the BBO took the following steps: (1) Issuing a petition for discipline; (2) Filing a motion for issue preclusion; (3) conducting a hearing to publicly villainize, denigrate, and humiliate Applicant; ((4) producing such findings of fact and conclusions of law that justify its position; (5) securing a suspension in court; (6) making the order of suspension as widely accessible to the public as possible; and (7) trying to keep Applicant in her place by filing a motion seeking an order to have Applicant arrested. A hearing on this motion was held on January 19, 2023. See 16a, Entry #56. *Id.* at 17a, Entry #60.

“When it appears that an individual is being singled out by the government, the specter of arbitrary classification is fairly raised, and the Equal Protection

Clause requires a ‘rational basis for the difference in treatment.’” *Engquist v. Oregon Dept. of Agriculture*, 128 S.Ct. 2146, 2153 (2008); Citing *Village of Willowbrook v. Olech*, 528 US 562, 564 (2000). The case at bar should have been solely between Applicant, the other side in the underlying divorce case, and his attorney. Rather, the BBO chose to take his side and act as his *de facto* attorney. The unprovoked and repeated attacks and the oppression Applicant has been subjected to are perplexing to say the least. These are a direct violation of Applicant’s guaranteed, inalienable right to equal protection under the Federal Constitution. A right that cannot be abrogated by State rules.

**C. The Merits Issues Are Pervasive And They Leave The Case Unresolved In Violation Of The Due Process Clause And The Equal Protection Clause**

**i. The Entry in the Mortgage Field Of Applicant’s Financial Statement Fall Under An Exception Under The Rules of the Probate And Family Court**

“Each party to a divorce ... shall file with the court and shall deliver to the other party ... a complete and accurate financial statement showing *insofar as possible*, the assets, liabilities...” Mass. Prob. and Fam. Ct. Supp., Rule 401. Applicant made the entry insofar as possible. Applicant disclosed the entry to Opposing Party and to the judge very early in the proceedings. Although disclosure occurred earlier in the proceedings, see App. Vol. 1 at 144, Lines 9-10 and Lines 11-14 (Opposing Counsel’s testimony on March 23, 2021). Trial Exhibit

#2 is the reason for this entry. This exhibit leads Exhibit P in Appendix Volume 2. See pages 119-139. However, Exhibit P is filed under seal. A detailed explanation for the entry is at page 136.

In its closing argument, the BBO said the reason that Applicant gave for making the entry “makes no sense.” ... It’s a complete *non sequitur*... It is simply not a rational concern... It simply defies logic.” App. Vol. 1, at 184, Lines 1-2, 7, 8-9, 23. But, the BBO says in both of its Hearing Reports: “We credit that [Applicant] in fact has this generalized concern.” *Infra* at at 219, ¶ 79(c). *Infra* at 249, ¶78(a). Nonetheless, the BBO file an *Information* with the Supreme Judicial Court of Massachusetts for “*Fraudulent Conduct*.” *Supra* at 9, Entry #1. *Infra*. at 12-14. And on February 24, 2022, the BBO reasserted its position regarding the entry on the financial statement. *Infra* at 37, Lines 19-25. *Id.* at 38, Lines 1-5.

**ii. Applicant Was Not and Is Not in Contempt of the Probate and Family Court’s Orders**

“A civil contempt finding must be supported by clear and convincing evidence of disobedience of a clear and unequivocal command.” *In re Birchall*, 454 Mass. 837, 838 (2009). “In order to find a defendant in civil contempt, there must be a clear and unequivocal command and an equally clear and undoubted disobedience.” *Larson v. Larson*, 28 Mass. App. Ct. 338, 340 (1990). “In addition, the defendant must be found to have the ability to pay at the time the contempt

judgment enters.” *Id* at 340. In the case at bar, the judge issued seven judgments of contempt against Applicant.

Three judgments of contempt were issued against Applicant in 2015: Two on April 17, 2015 and one on December 30, 2015. However, among other things, payment was due at the time of property division. See App. Vol. 2 at 91. *Id.* at 93. The order for property division is dated December 30, 2015. *Supra* at 28-29.

In 2018, the judge issued three additional judgments of contempt against Applicant. *Infra* at 94-97. Applicant offered to transfer the Deed to the other side. He turned down that offer. He also turned down an offer to buy him out. *Infra.* at 160, 162-166. *Infra.* at 167, 169-170, 173-176. The judge appointed a partition commissioner to sell Applicant’s home at auction. *Supra* at 94-97.

On January 9, 2020, the judge held Applicant in contempt a seventh time. The judge gave the appointed partition commissioner the authority to seize Applicant’s home and evict her therefrom. *Id.* at 98-99. The judge relied on this precedent: “To find a person in contempt, he or she must have the present ability to comply with the command. *Larson v. Larson*, 28 Mass. App. Ct. 338, 340 (1990). See *Id.* at 94, ¶ 4. Applicant had to provide for a family member who depended on her for all of their needs, including food and shelter. *Infra* at 181. (Sealed Page). And Applicant would have been driven into poverty under the circumstances. Applicant lacked the present ability to comply with the judge’s

order to sell her home, among other things. Therefore, Applicant was not in contempt of the judge's orders.

**iii. The Judgment of Divorce Lacks Finality And Is Thus Void**

“ A [judgment] is final ... when it terminates the litigation between the parties on the merits of the case, and leaves nothing to be done but to enforce by execution what has been determined.” *St. Louis, I.M. & S. R. Co. v. Southern Express Co.*, 108 U.S. 24, 28 (1983). See also *Catlin v. United States*, 324 U.S. 229, 233 (1945).

**Here Finding of fact #30 reads:** “[Applicant] never listed the BOA accounts ending in 0047, 2635, 1401, and 0251 on any financial statement ... [Applicant] solely controlled these accounts.” See App. Vol. 2 at 47. However, Trial Exhibit #13 - under Exhibit NN - establishes the following:

**Account Ending in 0047.** Applicant co-owned the account ending in 0047 with Opposing Party. But it was in name only, for it was really Applicant's account. App. Vol. 2 at 252-253. Applicant closed this account on May 2, 2014, opened a new account ending in 2872, and transferred the balance to this new account. *Id.* at 257-258.

**Account Ending in 0251.** Applicant was the sole owner of this account. It became an inactive account. She closed it on August 3, 2015. *Id.* at 252, 256, 263-265.

***Account Ending in 1401.*** This account was closed on September 22, 2014. The balance was transferred to an account ending in 1881. The new co-owners are Son and Father. App. Vol. 2 at 252, 259-260.

***Account Ending in 2635.*** This account was closed on September 22, 2014. The balance was transferred to an account ending in 1852. The new co-owners are Son and Father. Id. at 252, 261-262.

Notably, the other side did not list the accounts ending in 1881 and 1852 on his financial statements. See Appendix L at 86a-97a. These pages are filed under seal. This is just one of the many findings of fact that need to be amended. The trial judge made these findings on December 30, 2015. On June 13, 2018, the judge said in open court: "There's not going to be any supplemental findings of fact." App. Vol. 2 at 211, Lines 24-25. *Id.* at 212, Line 1.

"A judgment is void under Rule 60(b)(4) ... if the court has acted in a manner inconsistent with due process of law." *V.T.A. Inc., v. Airco, Inc.*, 597 F.2d 220, 224-225 (10th Cir. 1979). If a judgment is void, it is a nullity from the outset and any 60(b)(4) motion for relief is therefore filed within a reasonable time." *Id.* n. 8. "A void judgment does not create any binding obligation." *Ex parte Rowland*, 104 U.S. 604, 617-618 (1981). Here, Applicant filed a Rule 60 motion on February 12, 2018 at the urging of the trial judge. *Supra* at 191. And *Id.* at 197, Lines 5-9.

“A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show.” *Baltimore Steamship Co. v. Phillips*, 274 U.S. 316, 321 (1927). “The facts are merely the means, and not the end. They do not constitute the cause of action, but they show its existence by making the wrong appear.” *id* at 321. Here, Applicant has been on a quest for a resolution of the case on its merits for well over eight years. Whatever the other did is either acceptable, minimized, or eclipsed. Applicant has been under siege, including her secured rights to due process and equal protection under the law.

#### **IV. Applicant’s Irreparable Harms Would Continue to Accumulate in the Absence of a Stay**

Without a stay, Applicant will continue to suffer irreparable harm. This constitutes good cause to stay the judgment pending the filing and disposition of the petition for a writ of certiorari. *Planned Parenthood of Southern Pennsylvania v. Casey*, 510 U.S. 1309, 1310 (1994). “Irreparable injury ... means an injury that cannot adequately be compensated for either by a later-issued permanent injunction, after a full adjudication on the merits, or by a later-issued damages remedy.” *Rio Grande Community Health Center Inc. v. Rullan*, 397 F.3d 56, 76 (1st Cir. 2005). “It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

First, the Single Justice of the Supreme Judicial Court of Massachusetts held a hearing on January 19, 2023. The BBO is seeking an order to have Applicant arrested. The Single Justice specifically asked Applicant if she would consent to the appointment of a guardian ad litem and a commissioner. Applicant answered with an empathic and resounding “no.” Then, Applicant asked why she was asked this question. The Single Justice’s reply was essentially that Applicant lacks the mental acuity to comprehend what is going on in this case. He put a lot of emphasis on SJC Rule 4:01, §§ 13 and 14. See ADD at 6-8.

The issue is simple. The trial judge made the findings of fact on December 30, 2015. Rather than studying certain exhibits in the record, he relied on the alternative facts fabricated by the other side. On February 9, 2016, he gave Applicant permission to supplement the record with evidence that was not presented at trial. There is overwhelming documentary evidence in the record that undermines numerous findings of fact. The findings of fact are scorchingly damaging to Applicant’s reputation. They are yet to be amended. No further fact finding has been made. See App. Vol. 2 at 211, Lines 24-25. *Id.* at 212, Line 1. However, on February 24, 2022, both the Single Justice and the Assistant Bar Counsel subtly pierced the veil. See App. Vol. 1, at 41, Lines 12-25. This is the first time in the history of the case this has happened. Why the court does not want to go near the evidence in the record? The answer is yet to be revealed.



Second, on March 25, 2022, the Massachusetts Supreme Judicial Court suspended Applicant's law license for 18 months for fraud, deceit, and misrepresentation. See App. Vol. 1 at 66-76. This order is based upon (1) the findings of fact that the trial judge made on December 30, 2015; (2) the BBO's performance at the hearing it held on March 23 and March 24, 2021. The BBO villainized, shamed, and humiliated Applicant with ruthless cruelty. See for instance App. Vol. 1 at 182, Lines 6-16. *Infra* at 188-189. *Infra* at 191-194. Applicant is rendered unemployable because her name and the order of suspension are all over the internet, published in widely circulated newspapers... See 185a-193a. Applicant is a *solo* practitioner. Her goodwill and reputation have been severely harmed.

And third, Applicant's ability to earn a living has been severely hampered due to the countless numbers of unbillable hours she has been spending working on this case to defend herself. Applicant has been deprived of her secured rights to due process and equal protection. These harms are of constitutional dimensions and thus irreparable.

#### **V. The Equities and the Public Interest Overwhelmingly Favor a Stay**

Applicant satisfies the three factors necessary for this Court to grant a stay of the Massachusetts Supreme Judicial Court's judgment. As shown above, the judgment causes serious irreparable harm to Applicant. The harm to the

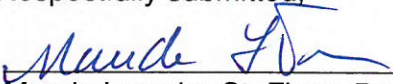
opposing party and weighing the public interest ...“ merge when the government is the opposing party.” *Nken v. Barr*, 556 US 418, 435 (2009). The issuance of a Stay of the judgment is in the public interest because constitutional rights are implicated. Applicant would continue to suffer irreparable harm absent a stay. Accordingly, the equities overwhelmingly favor a stay of the judgment pending the filing and disposition of Applicant’s petition for a writ of certiorari.

### CONCLUSION

Applicant respectfully asks the Court to stay the Massachusetts Supreme Judicial Court’s judgment pending the filing and disposition of Applicant’s petition for a writ of certiorari.

January 28, 2023

Respectfully submitted,

  
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## **ADDENDUM**

## **Massachusetts Supreme Judicial Court Rule 4:01: Bar Discipline**

### **Section 1. Jurisdiction**

- (1)** Any lawyer or foreign legal consultant admitted to, or engaging in, the practice of law in this Commonwealth shall be subject to this court's exclusive disciplinary jurisdiction and the provisions of this rule as amended from time to time.

### **Section 4. Types of discipline**

Discipline of lawyers may be (a) by disbarment, resignation pursuant to section 15 of this rule, or suspension by this court; (b) by public reprimand by the Board; or (c) by admonition by the bar counsel.

### **Section 5. The Board of Bar Overseers**

- (1)** This court shall appoint a Board of Bar Overseers (Board) to act, as provided in this Chapter Four, with respect to the conduct and discipline of lawyers and in such matters as may be referred to the Board by any court or by any judge or justice.

#### **(3) The Board of Bar Overseers**

**(a)** may consider and investigate the conduct of any lawyer within this court's jurisdiction either on its own motion or upon complaint by any person;

**(b)** shall appoint a chief Bar Counsel (the Bar Counsel) who shall, with the concurrence of the Board, hire such assistants to the Bar Counsel as may be required, all to serve at the pleasure of the court, the appointment of the Bar Counsel to be with the approval of the court; and may employ and compensate such other persons as may be required or appropriate in the performance of the Board's duties;

**(c)** shall appoint one or more hearing committees, each committee to consist of three or more individuals, to perform such functions as may be assigned by the Board with reference to charges of misconduct; provided, however, that each hearing committee shall be chaired by a lawyer and no hearing committee shall consist of more than one non-lawyer;

**(d)** may appoint a special hearing officer, who shall be a lawyer, to hear charges of misconduct when, in view of the anticipated length of the hearing or for other reasons, the Board determines that a speedy and just disposition would be better accomplished by such appointment than by referring the matter to a hearing committee or panel of the Board;

**(e)** may, through its Chair, refer charges to an appropriate hearing committee, to a special hearing officer, or to a hearing panel of the Board;

**(f)** shall review, and may revise, the findings of fact, conclusions of law, and recommendations of hearing committees, special hearing officers, or hearing panels. The Board in its discretion may refer an appeal taken pursuant to section 8(5) of this rule to a panel of its own members for its recommendation;

**(g)** may issue a public reprimand to lawyers for misconduct, and in any case where disbarment or suspension of a lawyer is to be sought or recommended, or where the Bar Counsel or the Respondent-lawyer appeals pursuant to section 8(6) of this rule, shall file an Information with this court;

## **Section 6. Hearing Committees**

### **(3) Hearing committees**

**(a)** shall conduct hearings on formal charges of misconduct upon reference by the Board or its chair, and

**(b)** may recommend that the matter be concluded by dismissal, admonition, public reprimand, suspension, or disbarment.

## **Section 7. The Bar Counsel**

### The Bar Counsel

**(1)** shall investigate all matters involving alleged misconduct by a lawyer coming to his or her attention from any source, except matters involving alleged misconduct by the Bar Counsel, assistant Bar Counsel, or any member of the Board, which shall be forwarded to the Board for investigation and

disposition, provided that Bar Counsel need not entertain any allegation that Bar Counsel in his or her discretion determines to be frivolous, to fall outside the Board's jurisdiction, or to involve conduct that does not warrant further action.

(2) shall dispose of all matters involving alleged misconduct by a lawyer in accordance with this rule and any rules and regulations issued by the Board for his or her guidance which may provide

(a) that Bar Counsel need not pursue or may close a complaint whenever the matter complained of is frivolous, falls outside the jurisdiction of the Board, or involves allegations of misconduct that do not warrant further action,

## **Section 8. Procedure**

(1) Investigation - In accordance with any rules and regulations of the Board, investigations (whether upon complaint or otherwise) shall be conducted by the Bar Counsel, except as otherwise provided by section 7(1) of this rule. Following completion of any investigation, or of a determination pursuant to section 7(1) that an investigation is not warranted, the Bar Counsel shall take further action, which may include, among others,

(a) closing or declining to pursue a complaint and informing the complainant in writing of the reasons for not investigating a complaint or for closing the file and of the complainant's right to request review by a member of the Board;

(b) closing a matter after adjustment, informal conference, or diversion to an alternative educational, remedial, or rehabilitative program;

(c) recommending to the Board that

(i) an admonition of the lawyer be administered;

(ii) formal proceedings be instituted; or

(iii) public discipline be imposed by agreement.

### **(3) Formal Proceedings**

**(a)** As to matters for which formal proceedings have been approved pursuant to section 8(1) of this rule, disciplinary proceedings shall be instituted by the Bar Counsel's filing a petition for discipline with the Board setting forth specific charges of alleged misconduct.

**(d)** The hearing committee, special hearing officer, or panel of the Board shall file promptly with the Board a written report containing its findings of fact, conclusions of law, and recommendations, together with a record of the proceedings before it.

### **(5) Review by the Board**

**(a)** Upon receipt of a hearing committee's, special hearing officer's, or hearing panel's report after formal proceedings, if there is objection by the Respondent-lawyer or by the Bar Counsel to the findings and recommendations, the Board shall set dates for submission of briefs and for any further hearing which the Board in its discretion deems necessary. The Board shall review, and may revise, the findings of fact, conclusions of law and recommendation of the hearing committee, special hearing officer, or hearing panel, paying due respect to the role of the hearing committee, the special hearing officer, or the panel as the sole judge of the credibility of the testimony presented at the hearing.

**(b)** In the event that the Board determines that the proceedings should be dismissed, it shall so notify the Respondent-lawyer.

**(c)** In the event that the Board determines that the proceedings should be concluded by admonition or public reprimand, it shall so notify the Respondent-lawyer.

### **(6) Review by the Supreme Judicial Court**

The Board shall file an Information whenever it shall determine that formal proceedings should be concluded by suspension or disbarment... The subsidiary facts found by the Board and contained in its report filed with the Information shall be upheld if supported by substantial evidence, upon consideration of the record, or such portions as may be cited by the parties.

## **Section 9. Immunity**

- (3) The Board, members of the Board and its staff, members of hearing committees, special hearing officers, and the bar counsel and members of his or her staff shall be immune from liability for any conduct in the course of their official duties.

## **Section 11. Matters involving related pending civil, criminal, or administrative proceedings**

The investigation or prosecution of complaints involving material allegations which are substantially similar to the material allegations of pending criminal, civil, administrative, or bar disciplinary proceedings in this or another jurisdiction shall not be deferred unless the Board or a single member designated by the Chair, in its discretion, or the court, for good cause shown, shall authorize such deferment, as to which either the court or the Board may impose conditions. The acquittal of the Respondent lawyer on criminal charges, or a verdict, judgment, or ruling in the lawyer's favor in civil, administrative, or bar disciplinary proceedings shall not require abatement of a disciplinary investigation predicated upon the same or substantially similar material allegations.

## **Section 12A. Lawyer constituting threat of harm to clients**

Upon the filing with this court of a petition by the bar counsel alleging facts showing that a lawyer poses a threat of substantial harm to clients or prospective clients, or that the lawyer's whereabouts are unknown, this court shall enter an order to show cause why the lawyer should not be immediately suspended from the practice of law pending final disposition of any disciplinary proceeding commenced by the bar counsel. The court or a justice, after affording the lawyer opportunity to be heard, may make such order of suspension or restriction as protection of the public may make appropriate. In the interest of justice, the court, upon application of the lawyer, may terminate such suspension at any time after affording the bar counsel an opportunity to be heard.



### **Section 13. Disability inactive status**

#### **(1) Involuntary Commitment, Adjudication of Incompetence, or Transfer to Disability Inactive Status**

Where a lawyer has been judicially declared incompetent or committed to a mental hospital after a judicial hearing, or where a lawyer has been placed by court order under guardianship or conservatorship, or where a lawyer has been transferred to disability inactive status in another jurisdiction, the court, upon proper proof of the fact, shall enter an order transferring the lawyer to disability inactive status. A copy of such order shall be served, in the manner the court may direct, upon the lawyer, his or her guardian or conservator, and the director of the institution to which the lawyer is committed.

#### **(2) Investigation of Incapacity**

The bar counsel shall investigate information that a lawyer's physical or mental condition may adversely affect his or her ability to practice law, except information involving the physical or mental condition of the bar counsel, assistant bar counsel, or any member of the Board, which shall be forwarded to the Board for investigation and disposition. In the event that the lawyer admits that he or she is incapacitated, the court may, upon petition of the bar counsel, enter an order placing the lawyer on disability inactive status, accepting the lawyer's resignation, or temporarily suspending the lawyer from the practice of law. With the approval of the Board chair or a member of the Board designated by the chair, the bar counsel may initiate formal proceedings pursuant to subsection (4) of this section to determine whether the lawyer shall be transferred to disability inactive status.

#### **(3) Inability to Assist in Defense**

If during the course of a disciplinary investigation or proceeding under this rule the respondent lawyer alleges an inability to assist in the defense due to mental or physical incapacity, the court, upon petition by the bar counsel or the respondent lawyer, shall immediately transfer the respondent lawyer to disability inactive status until further order of the court. If the bar counsel contests the respondent lawyer's allegation, then

a determination shall be made concerning the incapacity pursuant to subsection (4) of this section.

**(4) Proceedings to Determine Incapacity**

**(a)** Proceedings to adjudicate contested allegations of disability or incapacity shall be held before a hearing committee, special hearing officer, or a panel of the Board and shall be commenced upon petition by the bar counsel. The proceedings shall be conducted in the same manner as disciplinary hearings and shall be open to the public as provided in section 20.

**(b)** The court, Board, hearing committee, special hearing officer, or hearing panel may require the examination of the respondent lawyer by qualified medical experts designated by them.

**(c)** The court or the Board may appoint a lawyer to represent the respondent lawyer if the lawyer is without adequate representation.

**(d)** The hearing committee, special hearing officer, or panel of the Board shall report promptly to the Board its findings and recommendations, together with a record of the proceedings before it. The lawyer and the bar counsel shall have the rights of appeal provided for in section 8 of this rule. The Board shall file an Information with the clerk of this court for Suffolk County together with its recommendation and the record of the proceedings before it.

**(e)** If, after hearing and upon due consideration of the record including the recommendation of the Board as provided in subsection (6) of section 8 of this rule, the court concludes that the respondent is incapacitated from continuing to practice law, it shall enter an order transferring the respondent to disability inactive status until further order of the court.

**(f)** Disciplinary proceedings shall not be stayed unless the court finds that the respondent lawyer is so incapacitated by reason of mental or physical infirmity that he or she is incapable of assisting in his or her defense as provided in subsection (3) of this section. If the court determines the

respondent lawyer's claim of incapacity to defend to be invalid, the disciplinary investigation or proceedings shall resume, and the court shall immediately temporarily suspend the respondent lawyer from the practice of law pending final disposition of the matter. The court may direct that the expense of the independent examinations be paid by the lawyer.

**(5) Public Notice of Transfer to Disability Inactive Status**

The Board shall cause a notice of transfer to disability inactive status to be published in the same manner as a disciplinary sanction imposed under section 8 of this rule is published.

**Section 14. Appointment of commissioner to protect clients' interests when lawyer disappears or dies, or is placed on disability inactive status**

- (1)** Whenever a lawyer is placed on disability inactive status, or disappears or dies, and no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist, this court, after giving the bar counsel an opportunity to be heard and upon proper proof of the fact, may appoint a lawyer or lawyers as commissioner to make an inventory of the files of the inactive, disappearing, or deceased lawyer and to take appropriate action to protect the interests of clients of the inactive, disappearing, or deceased lawyer, as well as such lawyer's interest.
- (2)** The commissioner so appointed shall not disclose any information contained in any files listed in such inventory without the consent of the client to whom such file relates except as necessary to carry out the order of this court to make such inventory. The commissioner shall be reimbursed for reasonable expenses and may be awarded fair compensation. The commissioner's expenses and fees shall be paid by the lawyer unless otherwise ordered by the court.

**Section 18. Reinstatement**

**(1) Eligibility for Reinstatement -- Short-term suspensions**

- (a)** A lawyer who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of

suspension by filing with the court and serving upon the Bar Counsel an affidavit stating that the lawyer (i) has fully complied with the requirements of the suspension order, (ii) has paid any required fees and costs, and (iii) has repaid the Clients' Security Board any funds awarded on account of the lawyer's misconduct.

**(b)** A lawyer who has been suspended for more than six months but not more than one year pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension by filing with the court and serving upon the Bar Counsel an affidavit stating that the lawyer (i) has fully complied with the requirements of the suspension order, (ii) has taken the Multi-State Professional Responsibility Examination during the period of suspension and received a passing grade as established by the Board of Bar Examiners, (iii) has paid any required fees and costs, and (iv) has repaid the Clients' Security Board any funds awarded on account of the lawyer's misconduct.

**(c)** Reinstatement under this subsection (1) will be effective automatically ten days after the filing of the affidavit unless the Bar Counsel, prior to the expiration of the ten-day period, files a notice of objections with the court. In such instances, the court shall hold a hearing to determine if the filing of a petition for reinstatement and a reinstatement hearing as provided elsewhere in this section 18 shall be required.

**(d)** The right to automatic reinstatement under this subsection (1) shall not apply to any lawyer who fails to file the required affidavit within six months after the original term of suspension has expired. In such a case the lawyer must file a petition for reinstatement under paragraph (2) of this section.

**(2) Eligibility for Reinstatement -- Disbarment, Resignation, and Long-term Suspensions**

**(a)** Except as the court by order may direct, a lawyer who has been disbarred, or whose resignation has been allowed under section 15 of this rule, may not petition for reinstatement until three months prior to the expiration of at least eight years from the effective date of the order of disbarment or allowance of resignation.

**(b)** Except as the court by order may direct, a lawyer who has been suspended for an indefinite period may not petition for reinstatement until the expiration of at least three months prior to five years from the effective date of the order of suspension.

**(c)** Except as the court by order may direct, a lawyer who has been suspended for a specific period of more than one year may not petition for reinstatement until three months prior to the expiration of the period specified in the order of suspension.

### **(3) Employment as Paralegal**

At any time after the expiration of the period of suspension specified in an order of suspension, or after the expiration of four years in a case in which an indefinite suspension has been ordered, or after the expiration of seven years in a case in which disbarment has been ordered or a resignation has been allowed under section 15 of this rule, a lawyer may move for leave to engage in employment as a paralegal. When the term of suspension or disbarment or resignation has been extended pursuant to the provisions of section 17(8) of this rule, the lawyer may not petition to be employed as a paralegal until the expiration of the extended term. The court may allow such motion subject to whatever conditions it deems necessary to protect the public interest, the integrity and standing of the bar, and the administration of justice.