No. 22-_____

In The

Supreme Court of the United States

IN THE MATTER OF LARRY E. KLAYMAN

Petitioner

On Petition For A Writ Of Mandamus
To The District Of Columbia Court Of Appeals

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

1. Did the District of Columbia Court of Appeals ("DCCA") err by "temporarily suspending" ("Mr. Klayman") from the practice of law pending the outcome of *In re Klayman*, 20-BG-583 (D.C.C.A.) (the "Sataki Matter") for twenty (20) months and then on September 15, 2022, further formally suspending Mr. Klayman for eighteen (18) months with a reinstatement provision, and therefore failing to grant Mr. Klayman "time served" after a twenty (20) months unconstitutional "temporary suspension" while the proceeding was pending?

Thus, the question presented is whether a writ of mandamus should issue directing the DCCA to reduce Mr. Klayman's suspension to "time served" during the temporary suspension period.

PARTIES TO THE PROCEEDING

Petitioner Larry Klayman

Mr. Klayman is an attorney and a former federal prosecutor of the U.S. Department of Justice. Mr. Klayman is also the founder, and former chairman and general counsel of non-profit Judicial Watch and founder, chairman, and current general counsel of non-profit Freedom Watch.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Mr. Klayman states that no parties are corporations.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to *In re Klayman*, 20-BG-583 (D.C.C.A.).

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OPINIONS AND ORDERS ENTERED

On September 15, 2022 the DCCA entered an order suspending Mr. Klayman from the practice of law in the District of Columbia for eighteen (18) months with a reinstatement provision (the "Suspension Order"). App. 1.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651.

RELEVANT LEGAL PROVISIONS

28 U.S.C. § 1651(a): "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

RULE 20.1 STATEMENT

There exists truly exceptional circumstances that mandate the issuance of the writ sought by Mr. Klayman in this matter, and Mr. Klayman has been left with no adequate remedy at law from any other Court. "The writ of mandamus is the appropriate remedy to enforce the performance of some duty enjoined by law,

where there is no other adequate remedy." *Bd. of Comm'rs v. Aspinwall*, 65 U.S. 376, 383 (1861).

The District of Columbia attorney discipline apparatus has erroneously and without the requisite "clear and convincing evidence," suspended Mr. Klayman, a conservative activist attorney and the founder of both Judicial Watch and Freedom Watch, from the practice of law, unjustly damaging his legal practice, his colleagues and his family's well-being.

This is not just happening to Mr. Klayman, but to numerous other prominent conservative attorneys under a very partisan District of Columbia Bar Disciplinary Counsel, as set forth in detail herein. Further evidencing this disparate treatment is the District of Columbia attorney discipline apparatus' treatment of Kevin Clinesmith ("Mr. Clinesmith") a Justice Department anti-Trump Democrat lawyer who pled guilty to a felony of falsifying an FBI affidavit which gave rise to the Russian collusion investigation of President Donald Trump but who "got off" with barely a slap on the wrist with no reinstatement requirement. Therefore, this Court needs to step in and intervene, as an attorney's political and other beliefs should not be the basis for disciplinary action, one way or the other. *In Matter of Kevin E. Clinesmith*, 21-BG-018 (D.C. App.).

In sum, acting on the basis of political ideology is not the proper function of the District of Columbia Office of Bar Disciplinary Counsel ("ODC") or the District of Columbia Board on Professional Responsibility ("Board") and swift action *must* be taken by this High

Court so that the District of Columbia attorney disciplinary apparatus performs its functions in a neutral unbiased fashion. In this regard, action from this Court is the only possible avenue of relief available to Mr. Klayman, as the DCCA, without a proper and full review of the record, furthered the injustice as set forth herein.

STATEMENT OF THE CASE

On September 15, 2022, the three-judge panel of the DCCA (hereafter "the Panel") who presided over this case since October of 2020, issued an order suspending Mr. Klayman for another 18 months, with a reinstatement requirement, despite the uncontroverted fact that Mr. Klayman had already been temporarily suspended, without due process, for 20 months. **Combining the two suspension periods, this would make a grand total of Mr. Klayman being suspended for 38 months, in addition to a reinstatement requirement that could last years to adjudicate.** The problem with this is clear. Where the DCCA has ordered an eighteen (18) month suspension, they did not take into account the twenty (20) month temporary suspension that preceded the issuance of their Suspension Order – which would result in a final suspension of thirty-eight (38) months, or more than double the eighteen (18) months that they ordered.

And, with regard to Mr. Klayman not filing a Rule 14(g) affidavit, as referenced by the DCCA in the

Suspension Order, Mr. Klayman made it clear that not only was he challenging the temporary suspension order, but also that it was his position that no such affidavit was required for a "temporary suspension," because he had in good faith interpreted the rules as not requiring one for an attorney who has been temporarily suspended. District of Columbia Bar Rule XI, Section 9(g)(4) states that:

> suspension under this subsection shall take effect as provided in subsection 14(f), and an attorney suspended under this subsection shall comply with the requirements of section 14 of this rule.

However, District of Columbia Bar Rule XI, Section 14(g) states:

> Within ten days after the effective date of an order of disbarment or suspension, the disbarred or suspended attorney shall file with the Court and the Board an affidavit: (1) Demonstrating with particularity, and with supporting proof, that the attorney has fully complied with the provisions of the order and with this rule; (2) Listing all other state and federal jurisdictions and administrative agencies to which the attorney is admitted to practice; and (3) Certifying that a copy of the affidavit has been served on Disciplinary Counsel.

Notably absent under Rule XI, Section 14(g) is any clear mention of attorneys who have been temporarily suspended, thereby, at a minimum creating an

ambiguity as to whether the provision under Section 9(g)(4) or Section 14(g) controls. In any event, Mr. Klayman did not practice law in the District of Columbia during the temporary suspension period, and even provided the DCCA with an affidavit to that effect, stating:

> I have not practiced law in the District of Columbia since the January 7, 2021 order of this Court issuing a temporary suspension.[1]

Thus, the DCCA should not have put form over substance in this regard.

Furthermore, in stark contrast, Mr. Clinesmith – the former senior FBI lawyer who dishonestly falsified a surveillance document in the Trump-Russia investigation and who pled guilty to felony charges – was completely ignored by ODC, and only temporarily suspended for five months after he pled guilty, and only after ODC's "blind eye" was uncovered and subjected to negative publicity. Clinesmith also did not submit any affidavit under Rule 14(g) for five (5) months after he was suspended. Despite this, not only did the D.C. attorney disciplinary apparatus fast-track his case, but the DCCA also let Clinesmith off with "time served" in just seven (7) months. And importantly, the Court imposed no reinstatement provision on Clinesmith, despite him being a convicted felon. App. 124.

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[1] Mr. Klayman can provide the Court with a copy of this affidavit if it wishes to see it.

When the Court puts the treatment of Mr. Klayman and other conservative attorneys against the treatment of Mr. Clinesmith side-by-side, it is clear that something has gone egregiously wrong. There is no possible way that two individuals can receive such disparate treatment from the same disciplinary apparatus.

Thus, the Court must, at a minimum, respectfully order the DCCA to find that Mr. Klayman receive "time served" from his temporary suspension period, which was even longer than the eighteen (18) month formal suspension period if it does not summarily find the entire Suspension Order without merit and overturn it in its entirety. Just "time served" would still equate to even harsher punishment than Mr. Clinesmith faced for committing a felony, whereas on the other hand, Mr. Klayman was not found to have even acted dishonestly at all.

REASONS FOR GRANTING THE WRIT

The Court must intervene here in order to correct a manifest injustice that has been committed through the District of Columbia attorney discipline process. Mr. Klayman's suspension is arbitrary and capricious, and must be reversed in full, or at a minimum, the DCCA must be ordered to give Mr. Klayman "time served," via his twenty (20) month "temporary suspension," the same treatment received by Mr. Clinesmith.

I. The DCCA's Suspension Order Will Cause Grave and Manifest Injustice And Must Be Reduced to "Time Served"

As set forth above, the DCCA effectively and improperly summarily adopted, without itself apparently deeply delving into the record, the fatally flawed Report from the Board.

In its Suspension Order, the DCCA wrote, "[w]e accept the Board's conclusion that Mr. Klayman violated the Rules of Professional Conduct, and we adopt the Board's recommended sanction," "[w]e 'accept the findings of fact made by the Board unless they are unsupported by substantial evidence of record,'" "[o]ur cases do not appear to make clear whether our review on this issue is deferential or de novo . . . We need not decide the issue, because we agree with the Board's conclusion," and "[w]e conclude that the Hearing Committee and the Board acted reasonably by choosing to largely credit E.S.'s testimony over that of Mr. Klayman." App. 17. This ignored the well-established precedent that under Board Rule 11.5, charges against Mr. Klayman must be proved by "clear and convincing" evidence. *In re Vohra*, 68 A.3d 766, 784 (D.C. 2013).

Even more, the Suspension Order is also factually and legally deficient, and does not contain ***one record cite*** to even attempt to justify its findings. This shows that there was no bona fide review of the record. The Suspension Order is wholly conclusory, which is the by-product of the DCCA improperly failing to give

credence to Mr. Klayman's facts, witnesses, and unrefuted testimony.

Given this manifest injustice set forth above, it is crucial for Mr. Klayman to provide some real-world context and a highly likely explanation as to how and why the D.C. attorney disciplinary apparatus likely has acted in this manner. It is indisputable that our society has become more and more politically and ideologically polarized and people more and more dogmatic in their beliefs. Either you are a friend or a foe. There is no longer a middle ground. This regrettably seeped into the disciplinary proceeding at issue.

At the hearing committee level, Mr. Klayman was faced with an Ad Hoc Hearing Committee ("AHHC") which included an avowed proud communist and ideological foe of Mr. Klayman, Michael Tigar ("Tigar"). For instance, Bob Woodward wrote in his book about the Supreme Court, titled *The Brethren*, that Tigar in his early career had been fired, at the urging of FBI Director J. Edgar Hoover, from his High Court clerkship by Justice William Brennan for his subversive communist ties. App. 108. Then, Tigar's latest recently published book, *Mythologies of State and Monopoly Power*, a Marxist rant against capitalist law, is testament to his time with Fidel and the Castro brothers. This book received endorsements from Angela J. Davis, an infamous communist from Berkeley and Bernardine Dohrn, also a communist and on top of that a convicted domestic terrorist who was on the FBI's Ten Most Wanted List, among others of Tigar's ideological radical leftist ilk.

His proud thank you letters from Fidel and a photo with his equally communist revolutionary brother Raul is contained in App. 108. It did not matter to the AHHC that Mr. Klayman presented seven (7) material witnesses that conclusively refuted every single one of ODC's manufactured arguments and that ODC only had one (1) material witness – Ms. Sataki – who was impeached repeatedly as set forth below. Not coincidentally, Tigar was one of a number of law professors, who filed an ethics complaint against Trump White House Counselor Kellyanne Conway. App. 115.

Then, at the Board level, presiding over this matter was its Chairman Matthew Kaiser, who was associated with the leftist legal publication "Above the Law," and wrote complementary columns extolling the virtues of an "honest" Hillary Clinton, but trashing Donald Trump, who Mr. Klayman had supported.[2] This unsurprisingly resulted in a fatally flawed and skewed Report from the Board which gave absolutely no credence to any of Mr. Klayman's witnesses, legal arguments, or even uncontroverted facts. Then, at the D.C. Court of Appeals, as set forth above, the judges simply adopted the Board's Report with little to no consideration of Mr. Klayman's witnesses, legal arguments and uncontroverted facts.

Supporting Mr. Klayman's contention that this entire disciplinary proceeding has been politically and

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[2] https://abovethelaw.com/2016/08/hillary-clinton-truthfulness-and-bias-in-white-collar-cases/; https://abovethelaw.com/2016/07/trump-and-tyranny/.

ideologically tainted and not facts or legally based, is that during the Trump years in particular, ethics complaints were filed by the likes of Tigar, accepted and initiated against Kellyanne Conway,[3] William Barr[4], Senators Ted Cruz[5] and Josh Hawley[6], Professor John Eastman[7], and Rudy Giuliani[8] to name just a few. To the contrary, when a complaint was filed against fellow leftist Democrat lawyer David Kendall of Williams & Connolly over his admitted involvement in the destruction of Hillary Clinton's 33,000 emails, ODC summarily and quietly buried it.

Later, and recently, ODC's Bar Disciplinary Counsel Hamilton Fox personally went after other Trump affiliated Republican legal counsel, such as Jeff Clark, App. 214 and Rudy Giuliani.[9]

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[3] https://www.washingtonpost.com/politics/law-professors-file-misconduct-complaint-against-kellyanne-conway/2017/02/23/442b02c8-f9e3-11e6-bf01-d47f8cf9b643_story.html.

[4] https://thehill.com/regulation/court-battles/508489-more-than-two-dozen-dc-bar-members-urge-disciplinary-probe-of-ag.

[5] https://www.texasstandard.org/stories/lawyers-law-students-officially-file-grievances-seeking-to-disbar-senator-ted-cruz/.

[6] https://thehill.com/homenews/state-watch/534783-attorneys-urge-missouri-supreme-court-to-probe-hawleys-actions.

[7] https://www.reuters.com/legal/ex-top-justice-dept-officials-testimony-sought-ethics-hearing-trump-ally-clark-2022-10-06/.

[8] https://www.law.com/newyorklawjournal/2021/03/03/nyc-bar-details-complaints-calling-for-full-attorney-discipline-investigation-of-giuliani/#:~:text=Under%20the%20New%20York%20state,censured%20or%20receive%20no%20punishment.

[9] https://www.politico.com/news/2022/12/05/giuliani-d-c-bar-ethics-hearing-00072218.

It is extremely telling that when ODC made the choice to resurrect Ms. Sataki's Complaint in 2017, Mr. Klayman was involved in several high-profile cases that ran counter to ODC's political inclinations. For instance, Mr. Klayman had filed a RICO Complaint against Hillary Clinton, Bill Clinton, and the Clinton Foundation in the U.S. District Court for the Southern District of Florida in 2015. *Klayman v. Clinton et al*, 9:15-cv-80388 (S.D. Fl.). Mr. Klayman was also representing clients in lawsuits against President Obama, Black Lives Matter and its leaders, Louis Farrakhan, and Al Sharpton over their roles in inciting violence against law enforcement officers, resulting in the Micah Johnson, a Farrakhan disciple, mass shooting that left five police officers dead. *Klayman v. Obama et al*, 3:16-cv-2010 (N.D. Tx.); *Zamarripa v. Farrakhan et al*, 3:16-cv-3109 (N.D. Tx.). Mr. Klayman also was representing Kiara Robles in the U.S. District Court for the Northern District of California in a lawsuit against ANTIFA, after Ms. Robles had been violently attacked and assaulted at a Milo Yiannopoulos event by ANTIFA. *Robles v. ANTIFA et al*, 17-cv-4864 (N.D. CA.). Lastly, Mr. Klayman had been retained by Cliven Bundy to represent him after he was indicted following a standoff with Obama and Sen. Harry Reid appointed federal law enforcement officials at his ranch in Nevada in 2014. It is no coincidence that ODC chose to resurrect Ms. Sataki's abandoned Complaint at this time, as this was a calculated effort to try to silence Mr. Klayman's conservative public interest advocacy and litigation.

Then, as the final proof of this manifest injustice, the Court need not look any further than the completely disparate "selective prosecutorial" treatment afforded by the D.C. attorney discipline apparatus to Mr. Clinesmith in handling *In Matter of Kevin E. Clinesmith*, 21-BG-018 (D.C. App.). App. 124. In that case, Mr. Clinesmith, the former senior FBI lawyer who dishonestly falsified a surveillance document in the Trump-Russia investigation and who pled guilty to felony charges – was completely ignored by ODC, and only temporarily suspended for five months after he pled guilty, and only after ODC's "blind eye" was uncovered and subjected to negative publicity. Clinesmith also did not submit any affidavit under Rule 14(g) for five (5) months after he was suspended. Despite this, not only did the D.C. attorney disciplinary apparatus fast-track his case, DCCA let Clinesmith off with "time served" in just seven (7) months. And importantly, the Court imposed no reinstatement provision on Clinesmith, despite him literally being a convicted felon. App. 124.

Here, not only was Mr. Klayman not found to have acted dishonestly, all of the purported ethical violations found by the DCCA were unsupported by the record, as set forth in detail below. Thus, at a bare minimum, the Court must order the DCCA to afford the same treatment to Mr. Klayman and Mr. Clinesmith – that is, "time served" from the temporary suspension. Again, Mr. Clinesmith is a convicted felon who dishonestly falsified a surveillance documents. If he is given "time served" after just seven (7) months, Mr.

Klayman must be afforded the same treatment after having served a suspension period of twenty (20) months.

II. There Was Also a Significant Deprivation of Due Process

In addition to the clearly unconscionable conduct set forth above rendering an order of allowing Mr. Klayman to have done "time served" the only reasonable outcome, it is important to recognize that this disciplinary proceeding (the "Sataki Matter") involves events that occurred in 2010 – twelve (12) years ago. Even more egregiously, this matter was not even instituted until 2017 – seven (7) years after the Complaint was filed by the Complainant! App. 142. Thus, there was a *minimum* of (7) year delay before this case was even instituted. During those seven (7) years, having had no contact from ODC, Mr. Klayman very reasonably believed that the Sataki Matter had been closed, **particularly given the fact that Ms. Sataki had filed identical Complaints in Pennsylvania and Florida and they were summarily dismissed as being frivolous and meritless**. App. 161. Mr. Klayman therefore had discarded his records pertaining to his representation of Ms. Sataki, as case records need only be kept for five (5) years in the District of Columbia[10] making his defense after the Sataki Matter was resurrected by ODC *sua sponte* subject to extreme

[10] https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-283#footnote11.

prejudice. As just one example among many of this extreme prejudice, one need only look to the attached ethics opinion of Professor Ronald Rotunda, who would have testified in the case, but in the interim years he passed away, prejudicing Mr. Klayman further. App. 94, which is incorporated herein by reference. Another material and crucial witness, Arlene Aviera, Ms. Sataki's psychologist who was aware of all of the details of Mr. Klayman's representation of Ms. Sataki, Mr. Klayman in addition to Ms. Sataki having met and communicated with her on many occasions, contracted terminal cancer during this egregious and time barred delay, as set forth in the attached briefs, and thus could not testify. Dr. Aviera's testimony would have been crucial because she contemporaneously took detailed notes and records concerning Ms. Sataki and her legal proceedings. Mr. Klayman met with both Dr. Aviera and Ms. Sataki on numerous occasions to be of assistance, and Dr. Aviera would have testified that Mr. Klayman had diligently represented Ms. Sataki's interests, but that when things got too personal – i.e., when Ms. Sataki asked Mr. Klayman to buy her a car – that Mr. Klayman had advised Ms. Sataki to get new counsel, which she refused to do. Also of crucial importance is that Dr. Aviera could have testified as to Ms. Sataki's lack of candor, since she had experienced and witnessed it first-hand, and also that Ms. Sataki's mental and other issues were not caused by Mr. Klayman, but by her own doing.

This is exactly why Mr. Klayman on numerous occasions sought discovery from Dr. Aviera and others,

including in his February 15, 2018 Motion to Notice and Have Issued Subpoenas Duces Tecum to Take the Depositions of Elham Sataki and Arlene Aviera. App. 267. In that motion, Mr. Klayman wrote, "[i]t is thus believed that the deposition testimony of . . . Ms. Aviera will disclose crucial exculpatory evidence necessary for Respondent's defense, and reveal that he acted properly at all times and even sought to get Ms. Sataki other counsel."

Tellingly, even this simple request was vehemently opposed by ODC and then denied by the AHHC despite discovery clearly being allowed and an integral part of the attorney discipline process, particularly in a case such as this one where ODC delayed seven years to even file a Specification of Charges, resulting in passage of time causing memories to fade, documents to be discarded and lost, and witnesses to become unavailable. *See* Board on Professional Responsibility Rules, Chapter 3.

Then, taking advantage of the AHHC's refusal to allow Mr. Klayman *any discovery*, and the fact that their delay had caused Dr. Aviera to be unavailable to testify due to illness, ODC and Ms. Sataki on the eve of the commencement of the hearings in this proceeding, very conveniently "discovered" so-called records from Dr. Aviera that were previously undisclosed and introduced them into the record. The AHHC did not care that these "cherry picked" so called records from Dr. Aviera constituted unsubstantiated hearsay by virtue of her not being available to authenticate them, much less an inaccurate representation of the facts.

Mr. Klayman therefore renewed his request for discovery at the hearing, citing this significant due process violation, yet was still denied by the highly partisan and biased AHHC:

> At this point, for the record, as your Honor may recall, I had requested to be able to depose Dr. Aviera. That would have alleviated this issue, and I was denied. That's why I also needed her file, because this is just selective things that are being produced by Bar Counsel from her file, not the whole file. So this is a highly prejudicial area of testimony for her to be testifying, A, without my having discovery, which I requested early on, and B without Dr. Aviera to testify. App. 176.

Thus, everything introduced by ODC was unsubstantiated, unauthenticated hearsay, as Dr. Aviera could not appear to authenticate the records, and Mr. Klayman had no opportunity to cross examine her either. They simply came into "evidence" improperly.

Even more, Mr. Klayman was not even allowed to take the deposition of Ms. Sataki, despite the seven (7) year delay caused by ODC in even filing the Specification of Charges. Had Mr. Klayman been allowed to depose Ms. Sataki, he would have been able to avoid the severe prejudice that resulted from ODC and Ms. Sataki conspiring to introduce a myriad of alleged records for the first time literally on the eve of the hearing, without giving Mr. Klayman any opportunity to review them, as set forth above. And, he would have been able to uncover fraudulently withheld exculpatory evidence

in the form of a video interview of Ms. Sataki publicizing her case, despite falsely claiming at the hearing that she did not approve of publicity in her case, as set forth in detail below.

Even further compounding this prejudice caused by ODC's delay, the reason for the seven (7) year delay in even instituting the Sataki Matter was because the Complainant, Ms. Sataki had actually abandoned her Complaint and chosen not to proceed further with it. This is shown in a letter from ODC to Ms. Sataki dated July 7, 2011, where ODC sent to Ms. Sataki Mr. Klayman's responses to her allegations and advised her, "[i]f we do not hear from you promptly, we may assume that you are satisfied with the attorney's explanations." App. 163. Despite the lack of response from Ms. Sataki, ODC did not close its case, but instead waited literally years to *sua sponte* resurrect the Sataki Matter, going so far as to use an investigator to literally hunt Ms. Sataki down to coax her to pursue her claims against Mr. Klayman. App. 165.

It is truly troubling that neither the Board nor the D.C. Court of Appeals cared that Ms. Sataki had made the choice to drop her Complaint against Mr. Klayman, and ODC still hired an investigator to hunt her down in 2014 to coax her to move forward with her claims against Mr. Klayman. Still the case was not instituted until three years later in 2017. App. 142.

All this goes to show that reciprocal discipline in the Sataki Matter must, at the outset, be denied due to the doctrines of laches, and in particular due to the

completely unjustified and highly prejudicial nature of the delay. The DCCA has found that attorney disciplinary proceedings are "quasi-criminal in nature." *In re Williams*, 513 A.2d 793, 796 (D.C. 1986). Thus, "[t]he accusatorial quality of attorney discipline proceedings, coupled with their grave consequences, demand the provision of due process safeguards." *Id*. The *Williams* court held that an undue delay that impaired a respondent's defense could result in a due process violation. "A delay coupled with actual prejudice could result in a due process violation, in which case we would be unable to agree with a finding that misconduct had actually been shown." *Id*. at 797.

Furthermore, this proceeding is already time barred in Florida, Texas, and Pennsylvania – all jurisdictions where Mr. Klayman is admitted to practice – as a result of ODC's unconscionable delay. *See Gamez v. State Bar of Tex.*, 765 S.W.2d 827, 833 (Tex. App. 1988); *The Florida Bar v. Walter*, 784 So.2d 1085 (Fla. Sup. Ct. 2001); Fla. Bar Rule 3-7.16(a)(1); Pennsylvania Disciplinary Board Rules and Procedures 85.10 (Stale Matters); *In re Iulo*, 564 Pa. 205, 766 A.2d 335 (2001).

Then, in *In re Ekekwe-Kauffman*, 210 A.3d 775 (D.C. 2019), the DCCA analyzed this fundamental principle even further. In *Ekekwe-Kauffman*, the DCCA was also faced with a seven-year delay, but in that case, the Respondent only made general allegations of prejudice and thus "has not identified the missing witnesses, made a proffer of their anticipated

testimony, or explained her attempts to find them." *Id*. at 786.

This is the exact opposite of what has happened here. Mr. Klayman identified Professor Rotunda and Dr. Aviera as being unavailable due to the delay (death and illness), and clearly proffered the testimony of both witnesses in the form of a letter from Professor Rotunda, App. 94, and for Dr. Aviera on numerous occasions, including in his February 15, 2018 Motion to Notice and Have Issued Subpoenas Duces Tecum to Take the Depositions of Elham Sataki and Arlene Aviera. App. 167. Once again, in that motion, Mr. Klayman wrote, "[i]t is thus believed that the deposition testimony of . . . Ms. Aviera will disclose crucial exculpatory evidence necessary for Respondent's defense, and reveal that he acted properly at all times and even sought to get Ms. Sataki other counsel." As set forth above, not only was this simple request, along with Mr. Klayman's request to depose Ms. Sataki, denied by the AHHC on several occasions, ODC was able to take advantage of this denial and (1) bury exculpatory evidence and (2) introduce unsubstantiated, unauthenticated hearsay into the record on the eve of the hearing without giving Mr. Klayman any real chance to review them.

Thus, there is no possible way to credibly assert that what occurred here did not significantly prejudice Mr. Klayman's ability to defend himself. It is clear that Mr. Klayman has more than shown both an undue delay, as well as a significant prejudice to his ability to defend himself, and therefore it was an egregious error

for the DCCA to not have dismissed this entire proceeding due to the doctrine of laches.

III. There Was Inadequate Evidence of Any Misconduct

1. There Was No Failure to Abide By Ms. Sataki's Wishes

Chief among the alleged ethical violations manufactured by ODC and "rubber stamped" by the Board and the D.C. Court of Appeals was a purported failure to abide by Ms. Sataki's decisions regarding the use of publicity in her case. As the record conclusively showed, this was absolutely not the case, as Ms. Sataki agreed to the use of publicity at the time – which she even admitted at the Hearing, and then personally participated in publicizing her case at the time and even after the fact.

First and foremost, at the AHHC hearing in this matter, Ms. Sataki herself was forced to admit that she had approved and agreed with the use of publicity:

> Q: **Did you ultimately agree with Mr. Klayman about the publicity?**
>
> A: **I did.** App. 183.

Mr. Klayman also provided testimony from numerous witnesses who showed that Ms. Sataki's belated claim was false, such as Mr. Shamble, Ms. Sataki's union representative who worked closely with Mr. Klayman in his representation of Ms. Sataki. This means that Mr. Shamble was deeply involved in Mr.

Klayman's representation and therefore had contemporaneous personal knowledge. The record indisputably shows that Mr. Shamble, Mr. Klayman, and Ms. Sataki at the time discussed strategy all together and collectively decided that the use of publicity would be beneficial to help Ms. Sataki achieve her desired outcome. And, even more, as the final straw which shows the egregious error by the D.C. Court of Appeals is the undisputed fact that Ms. Sataki personally participated with Mr. Shamble in publicizing her case. App. 53.

Mr. Shamble also testified as to why he believed the use of publicity was a good strategy. He testified that publicity was a helpful tool in dealing with an agency as notoriously difficult and anti-labor as VOA. Specifically, he testified "[w]e've done it. It's something that you can use to pressure managers, if they're intractable, you know, to try to get them to come to some sort of agreement. We have our own website, so we use it, too." App. 53.

Even further buttressing the testimony of Mr. Shamble and Mr. Klayman were numerous other witnesses who had contemporaneous personal knowledge. This included Keya Dash ("Mr. Dash declared under oath that he was present when the use of publicity to coax the BBG into settlement was discussed with Ms. Sataki, and that Ms. Sataki approved of its use."); This also included Joshua Ashley Klayman, Mr. Klayman's sister and herself a distinguished Wall Street lawyer ("Ms. Sataki openly discussed the VOA case with Ms. Klayman many times. [Ms. Joshua Ashley Klayman

testified] "Yes, quite openly. And I met her multiple times. It wasn't that I just met her one time. Yes, she was quite open with what the circumstances of her challenges were. . . . and, she was very, very open, which – I'm not a litigator. I don't really know anything about litigations, but I was surprised that she was so open." App. 196.

Lastly, and as even more clearly conclusive evidence that Ms. Sataki at all times not only approved of publicity, but also that she went out of her way to personally publicize her own case is the fact that Mr. Klayman incredibly learned during the Board briefing process that Ms. Sataki had participated in making a documentary about her case, with intimate personal details about her, against Voice of America ("VOA"), which further undercuts any possible false claim that Ms. Sataki did not agree to publicize her case.[11] The video, which is in Ms. Sataki's native language Farsi, was translated by one of Mr. Klayman's witnesses, Keya Dash, as well as a respected Farsi certified translator who used to work for VOA, Mohammad Moslehi. App. 206.

Unsurprisingly, Ms. Sataki did not disclose this to the AHHC and Mr. Klayman's defense team had to find this themselves during the appellate briefing process. This clearly fraudulent conduct was obviously done in concert with ODC, who must have known about this crucial exculpatory evidence and chose not to disclose it. This clear fraud grossly prejudiced Mr. Klayman

[11] https://www.youtube.com/watch?v=e3g5f61muZ4.

because it was not part of the record at the AHHC hearing or the Board level, and the D.C. Court of Appeals refused a motion to remand this matter back to the Board to open the record to review this video shows its inherent bias on this and other issues – a clear violation of Mr. Klayman's due process and other rights. What would be wrong with trying to get to the truth, that is unless this does not comport with the predetermined narrative?

The second, and even more frivolous and troubling alleged violation concerned the fact that the *Bivens* lawsuit filed on behalf of Ms. Sataki named Hillary Clinton as a Defendant – a fact that the D.C. attorney discipline apparatus took great umbrage at. Completely ignored is the fact that Ms. Clinton, then Obama Secretary of State, was the head of the Voice of America's Board of Governors at the time, meaning that she was clearly a properly named Defendant. Even more egregious is the fact that the *Bivens* Complaint also named a conservative personal friend of Mr. Klayman, the conservative Blanquita Collum, who was also a governor, as a Defendant. App. 43. This conclusively shows that Mr. Klayman had no political goal in mind and was simply trying to obtain an optimal result for his client. Unsurprisingly, this fact was completely ignored.

In any event, based on the foregoing, it is more than abundantly clear that the primary and case determinative alleged ethical violation found by the D.C. Court of Appeals was completely unsupported by the

record, much less the standard of clear and convincing evidence.

2. There Was No Conflict of Interest

Another primary "ethical violation" contrived by ODC and then "rubber stamped" was based on Mr. Klayman's "emotional interest" in Ms. Sataki – which was then twisted and contrived by ODC and the Board to be a conflict-of-interest violation.

This was a truly bizarre turn, as "emotional interest" is simply not an ethical violation. If it was a violation, lawyers would be prohibited from representing friends, family members, or even spouses who they care about and love – or basically anyone that is not a complete stranger. It is clear that no such prohibition exists. Attorneys are people who have feelings and emotions. There is no ethical prohibition against this. For example, the Supreme Court of Nevada found that there was no conflict of interest where a child represented his father in divorce proceedings with his mother. "Because several of the Nevada Rules of Professional Conduct permit an attorney to represent a family member . . . and no rule prohibits Mark's conduct in this case, no ethical breach "infects the litigation," . . . which would provide a basis for Marie to bring a motion to disqualify Mark." *Liapis v. Second Judicial Dist. Court*, 128 Nev. 414, 420-21 (2012). If there is no conflict of interest in representing one's father against one's mother, there certainly is not a

conflict of interest in representing a friend that the attorney cared deeply about, as was the case here.

This is particularly true where there was no sexual component to the relationship, as was the case here with Mr. Klayman and Ms. Sataki. And, even if there had been a sexual relationship, which there clearly was not here, bar associations around the country have had the foresight to include provisions allowing such relationships for spouses and significant others. For instance, in Pennsylvania, "[a] lawyer shall not have sexual relations with a client **unless a consensual relationship existed between them when the client-lawyer relationship commenced**." Pa. R. Prof'l Cond. 1.8. Even more, in Florida, sexual relationships with clients are not prohibited unless that relationship "**exploits or adversely affects the interests of the client or the lawyer-client relationship**." Fl. St. Bar Rule 4-8.4. Again, there was not even a sexual relationship between Ms. Sataki and Mr. Klayman, and nor was one alleged in the Specification of Charges, so it is truly the "theatre of the absurd" that this type of ethical violation was found by the DCCA, where the only factual findings were that Mr. Klayman developed a friendship with and deeply cared for Ms. Sataki.

Thus, ODC and the Board had to disingenuously strain to manufacture an ethical violation and settled on an alleged and contrived conflict of interest. However, the record clearly reflects that when Ms. Sataki had become more than self-centered and abusive during the course of Mr. Klayman's representation, even asking Mr. Klayman to buy her a car, App. 62, Mr.

Klayman realized that it was ethical and prudent for him to suggest that she find other counsel, as legal representation became untenable. Indeed, Mr. Klayman realized that both parties needed to move on and that is why Mr. Klayman took Ms. Sataki to Gloria Allred and Tim Shea. App. 65. However, despite this, it was Ms. Sataki who instructed Mr. Klayman to continue representing her. Thus, even if the "emotional interest" at issue could possibly constitute a conflict of interest violation, it is uncontroverted that she would have waived any such violation by asking Mr. Klayman to continue to represent her. This was even admitted by the Board in its Report where it wrote Mr. Klayman "repeatedly communicated his feelings to [Ms. Sataki]" and "she asked him to continue with the representation."

And, when ultimately Ms. Sataki did not, for whatever reason, get the result she wanted, angry and unhinged, she struck back at Mr. Klayman, sending him the below offensive email which mocked and disparaged his religion and falsely accused him of taking bribes.

Exacerbating this already blatant and egregious violation, the D.C. Court of Appeals in an overt effort to tarnish Mr. Klayman, injected the non-existent innuendo of sex where none was ever alleged in the Specification of Charges or testified to by even Ms. Sataki, that "Whether or not his feelings were sexual or romantic in nature, Mr. Klayman had strong feeling for E.S. For example, he wrote that he had fallen in love with (E.S.), would always love her and was feeling real

pain," because she did not share his feelings. App. 18. The last part of this statement is totally false, as Mr. Klayman never wrote that he was feeling real pain "because she did not share his feelings." What the record does show is that Mr. Klayman made it clear to Ms. Sataki that he did not want to be with her and did not want to be her boyfriend, which was contemporaneously recorded in emails. App. 66. There was absolutely no allegation of a sexual component in the Specification of Charges or before the AHHC. This innuendo improperly was inserted for no reason other than to apparently smear Mr. Klayman. And while Ms. Sataki is referred to as E.S., Mr. Klayman's full name is used with this obvious smear.

3. Mr. Klayman Did Not Reveal Any Client Confidences

As set forth above, notwithstanding that Ms. Sataki was forced to admit that she approved the publicity and participated directly in distributing it, is that she herself went on Iranian television to broadcast the same alleged confidential facts. Thus, it is incomprehensible how Mr. Klayman could possibly have been found to have revealed confidential information.

4. Mr. Klayman Kept Ms. Sataki Informed Every Step of the Way

One of the most nonsensical and bizarre "findings" of the D.C. Court of Appeals is that Mr. Klayman failed to obtain informed consent by filing a motion to

disqualify the Honorable Colleen Kollar-Kotelly during the course of his representation of Ms. Sataki. Not only is a lawyer permitted some discretion in litigation, but the record also clearly reflects that Ms. Sataki was fully informed of this motion and did not object. App. 62.

5. Absence of a Written Fee Agreement

The D.C. Court of Appeals chose to sidestep this issue, probably because a myriad of emails from Mr. Klayman stated that he was representing Ms. Sataki free of charge. App. 64. The issue of the contingency only arose when Ms. Sataki at the end of the representation became more abusive, rejected other counsel to represent her, but wanted to continue with Mr. Klayman as her lawyer. App. 79.

6. There Was No Failure to Cease Representation

The record similarly shows that Mr. Klayman did not fail to cease representation of Ms. Sataki in a timely fashion. Mr. Klayman did not take steps to litigate Ms. Sataki's case further and only acted to preserve Ms. Sataki's appellate rights. And it was good that Mr. Klayman did so, because Ms. Sataki filed a notice of appeal *pro se* only a few months later. And, then years later Ms. Sataki – after she was literally hunted down by ODC for ulterior and improper reasons – then asked ODC to prosecute her sexual harassment claims! App. 177.

Furthermore, letters purportedly terminating Mr. Klayman's representation were admittedly sent to the incorrect addresses, which Mr. Klayman never received from her. App. 64. Mr. Klayman also had a duty to confirm Ms. Sataki's purported "desires" in the August 4, 2010 letter, as it was clearly not written by her before terminating all of Ms. Sataki's rights on appeal, for which he could have been accused of legal malpractice.

7. Ms. Sataki's Lack of Credibility

Unsurprisingly, the fact that Ms. Sataki was repeatedly impeached and repeatedly gave conflicting testimony was given no weight by the D.C. Court of Appeals, which brazenly wrote that "[w]e conclude that the Hearing Committee and the Board acted reasonably by choosing to largely credit E.S.'s testimony over that of Mr. Klayman." This shows that the D.C. Court of Appeals was no longer concerned with facts – a very problematic approach that resulted in a fatally flawed proceeding.

Indeed, the record shows that the entire representation agreement between Ms. Sataki and Mr. Klayman was premised on a "big lie" perpetrated by her – namely that she had been sexually harassed and retaliated against by managers at VOA. The Office of Civil Rights conducted a thorough investigation and found that her allegations of sexual harassment were completely manufactured and false. App. 79. Even more, Ms. Sataki lied about wanting Mr. Klayman to drop her

cases – likely at the direction of ODC so that they could manufacture an ethical violation – when the record is clear that she herself filed a Notice of Appeal and then asked ODC for help in prosecuting her claims of sexual harassment years down the road. App. 177. Ms. Sataki also gave false testimony about not wanting to publicize her cases – again certainly at the direction of ODC so that they could manufacture a claim – and was forced to admit that she approved of publicizing her case, and personally participating in doing so. App. 183. These are just a few of the numerous times that Ms. Sataki was completely and thoroughly impeached, which is set forth in full in Mr. Klayman's briefs and findings of fact based on the record. Given all of this, Mr. Klayman cannot fathom how the D.C. Court of Appeals felt it was proper for the Board and later the D.C. Court of Appeals to ignore the testimony of Mr. Klayman and his seven (7) material unimpeached witnesses in favor of the Complainant, Ms. Sataki, who clearly failed to tell the truth.

CONCLUSION

Based on the foregoing, the DCCA's Suspension Order must be reversed in full, or at a minimum, the DCCA be ordered that Mr. Klayman be given "time served," as anything else would result in a complete manifest injustice. A review of the record will irrefutably show that this is the only correct and proper course of action. To do otherwise, would result in grave

damage to Mr. Klayman's practice of law, his colleagues and the well-being of his family.

This honorable Court is empowered to right this wrong, and Mr. Klayman is confident that it will do so in the interests not just of himself, but all activist lawyers who may face political and ideological discrimination by such weaponized bar disciplinary proceedings regrettably during this very polarized and toxic time in our nation's history.

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Respectfully submitted,

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