## APPENDIX TABLE OF CONTENTS

## APPENDIX A

## SUPREME COURT OF LOUISIANA

**No. 2023-B-00066**

**IN RE: HENRY L. KLEIN**

**ORDER**

Treating respondent's "Request to Take Judicial Notice and Enforce the Supremacy Clause of the Constitution" as a petition for rehearing of this court's May 18, 2023 judgment,

IT IS ORDERED that the petition be and hereby is denied. This court's judgment of May 18, 2023 is final and definitive. *See* La. Code Civ. P. art. 2167.

NEW ORLEANS, LOUISIANA, this 12th day of October, 2023.

FOR THE COURT:

/s/
JUSTICE, SUPREME COURT OF LOUISIANA

## APPENDIX B

## SUPREME COURT OF LOUISIANA

**No. 2023-B-00066**

**IN RE: HENRY L. KLEIN**

**ORDER**

Considering the respondent's motion to stay this court's rehearing action pending a timely application for relief to the United States Supreme Court,

IT IS ORDERED that respondent's motion is DENIED.

New Orleans, Louisiana, this 30th day of June, 2023.

/s/
JUSTICE, SUPREME COURT OF LOUISIANA

## APPENDIX C

## ORIGINAL

## LOUISIANA ATTORNEY DISCIPLINARY BOARD

## IN RE: HENRY L. KLEIN

## DOCKET NO. 21-DB-003

## ORDER

[DATE STAMP]
FILED by: /s/
Docket# Filed-On
**21-DB-003 11/28/2022**

After considering the following motions and documents submitted by Respondent Henry L. Klein: Motion For Post-Argument Submission, Questions to The Members of the Adjudicative Board, Ventriloquist Objection, Supplemental Submission;

IT IS ORDERED that the above identified Motions in this matter are hereby denied.

Shreveport, Louisiana, this 22nd day of November, 2022.

LOUISIANA ATTORNEY
DISCIPLINARY BOARD
ADJUDICATIVE COMMITTEE

Panel "B"

Brian D. Landry
R. Alan Breithaupt
M. Todd Richard

By: Brian Landry
BRIAN LANDRY
Chair, Panel "B"

## APPENDIX D

*HENRY L. KLEIN*
*844 BARONNE STREET*
*NEW ORLEANS, LOUISIANA 70113*

*CURRICULUM VITAE*

Born April 26, 1944, Bogota, Colombia to Henry C. Klein (Cologne, Germany) and Leticia Velandia deKlein (Bogota, Colombia); Elementary Education, Escuela Cardinal Pacelli (Pope Pius XII), 1951; U.S. Citizenship, 1956; Married Julie S. Klein, May 4, 1987, American Cathedral, Paris, France; Graduate of Jesuit High School, New Orleans, 1962; University of New Orleans, 1965; Tulane University School of Law, 1968; Admitted to Practice by Louisiana Supreme Court August 28, 1968. Biographed in Who's Who in American Law, 1979; Martindale-Hubbell rating AV 5.0/5.0; Guest Speaker, American Bar Association, Fidelity and Surety Section, Waldorf-Astoria, New York, *passim;* Member, Federal Bar Association; Louisiana State Bar Association; SOLACE program supporting lawyers needing "... comfort and consolation in a time of distress and sadness ..."; Past Member, New Orleans Opera Association Executive Committee; Parliamentarian, New Orleans Opera Association; Committee on Placido Domingo Post-Katrina Gala, March 1, 2006; October 12, 2012 Committee Honoring Placido Domingo by naming the "Placido Domingo Stage" at the Mahalia Jackson Theater for the Performing Arts. Languages: English, Spanish, French and Italian.

## *LIFE-ALTERING EXPERIENCES:*

April 9, 1948, streets of Bogota, Colombia: the assassination of Jorge Eliecer Gaitan; vivid witness to the beginning of "La Violencia", a ten-year civil war triggered by the murders of over 3,000 people in downtown Bogota on April 9, 1948.

August 26, 1978, St. Peter's Square, Vatican City: live witness with several hundred thousand others to the two-word announcement of the election of Pope John-Paul 1st : "... HABEMUS PAPAM ..."

## *FEDERAL & STATE PRACTICE & PRO HAC VICE APPEARANCES:*

United States District Court, Eastern District of Louisiana, 1969

United States Court of Appeals 5**th** Circuit, 1971

United States District Court, Western District of Louisiana, 1973

United States Supreme Court, 1974

United States District Court, Northern District of Illinois, 1975

United States Court of Appeals, 7**th** Circuit, 1977

United States District Court, Western District of New York, 1977

United States Court of Appeals, 2nd Circuit, 1978

United States District Court, Middle District of Louisiana, 1978

United States District Court, Southern District of Alabama, 1982

United States District Court, Eastern District of Kentucky, 1983

United States District Court, Eastern District of Pennsylvania, 1983

United States District Court, Southern District of Mississippi, 1990

United States Court of Federal Claims, Washington D.C., 1993

United States Bankruptcy Court, Southern District of Texas, 1993

United States District Court, Southern District of New York, 1995

United States Court of Appeals, Federal Circuit, 1996

United States District Court, Southern District of Texas, 1996

United States District Court, Northern District of Alabama, 1998

United States Bankruptcy Court, Eastern District of Louisiana, 2005

United States District Court, Northern District of Ohio, 2006

United States District Court, Eastern District of Missouri, 2008

United States District Court, Middle District of Florida, 2012

United States District Court for the District of Columbia, 2012

United States District Court, Northern District of Texas, 2012

United States Tax Court, 2013

United States District Court, Eastern District of Texas, 2014

United States District Court, Southern District of Florida, 2014

United States Court of Appeals for the D.C. Circuit, 2014

United States District Court, Northern District of Georgia, 2015

United States Judicial Panel on Multi-District Litigation, *passim*

United States District Court for the District of New Mexico, 2018

United States District Court for the Middle District of Florida, 2018

United States District Court for the Northern District of Oklahoma, 2019

Fayette County District Court, Commonwealth of Kentucky, 1983

Philadelphia County District Court, Pennsylvania, 1983

Chancery Court, Commonwealth of Delaware, 1983

Circuit Court, Baldwin County, Alabama, 2013

Circuit Court, Leake County, Mississippi, 2013

Circuit Court, Collin County, Texas, 2014

Superior Court, Fulton County, Georgia, 2015

Acadia Parish District Court, State of Louisiana

Ascension Parish District Court, State of Louisiana

Caddo Parish District Court, State of Louisiana

Cameron Parish District Court, State of Louisiana

East Baton Rouge Parish District Court, State of

Louisiana

Franklin Parish District Court, State of Louisiana

Jefferson Parish District Court, State of Louisiana

Lafayette Parish District Court, State of Louisiana

Lafourche Parish District Court, State of Louisiana

Livingston Parish District Court, State of Louisiana

Orleans Parish District Court, State of Louisiana

Plaquemines Parish District Court District Court, State of Louisiana

St. Bernard Parish District Court District Court, State of Louisiana

St. Charles Parish District Court, State of Louisiana

St. James Parish District Court, State of Louisiana

St. John the Baptist Parish District Court, State of Louisiana

St. Tammany Parish District Court, State of Louisiana

Tangipahoa Parish District Court, State of Louisiana

Terrebonne Parish District Court, State of Louisiana

Washington Parish District Court, State of Louisiana

West Baton Rouge Parish, District Court, State of Louisiana

***APPEARENCES BEFORE REGULATORY BODIES:***

United States Department of Homeland Security

United States Department of Housing & Urban Development

United States Securities and Exchange Commission

Federal Deposit Insurance Corporation

Federal Trade Commission

National Association of Securities Dealers

Louisiana State Department of Justice

Louisiana State Insurance Commission

Louisiana State Office of Financial Institutions

Louisiana State Riverboat Gaming Commission

***CONTRIBUTIONS TO DOCTRINAL LAW:***

***OLIGOPOLISTIC INTERDEPENDENCE (ANTI-TRUST LAW)***
Golf City v. Wilson Sporting Goods, 555 F.2d 426 (5th Cir. 1977)
Morrie Mages Sports v. Spalding, 571 F.2d 587 (7th

Cir. 1978)
Fairmont Fair v. Wilson Sporting Goods, 607 F.2d 955 (5th Cir.1979)
Kadair v. SONY, 694 F.2d 1017 (5th Cir. 1983)

***BANGOR-PUNTA DOCTRINE (MERGER & ACQUISITION LAW)***
Schlesinger v. Corporate Realty, U.S.D.C. E.D. La. (1993)
Schlesinger v. Herzog, 2 F.3d 135 (5th Cir. 1993)

***PICK-BARTHE DOCTRINE (COMMERCIAL PIRATING LAW)***
Potter v. Deloitte, Haskins & Sells, Fayette County, Kentucky
Lang v. McGlinchey, U. S. District Court, Eastern District of Louisiana

**FORCED SELLER DOCTRINE (SECURITIES LAW)**
Alley v. Miramon 614 F.2d 1372 (5th Cir. 1980)
Schlesinger v. Herzog, 2 F.3d 135, (5th Cir. 1993)

***DOMINATION (SURETY & FIDELITY LAW)***
Lambert v. Maryland Casualty Co., 418 So.2d 553 (La. 1982)

***NOERR-PENNINGTON DOCTRINE (CONSTITUTIONAL LAW)***
Astoria Entertainment v. Edwards, 159 F.Supp.2d 303 (2001)
Astoria Entertainment v. DeBartolo 12 So.3d 956 (La. 2009)

***EX TURPI CAUSA (CORRUPT PRACTICES LAW)***
*CD International Enterprises v. Rockwell Capital, in process*
*Securities and Exchange Commission v. Blackburn, in process*
*Treaty Energy v. SEC, in process*

***CURRENT LITIGATION CONTRIBUTING TO DOCTRINAL LAW:***

*[1] Klein v. ALTA. Henry L. Klein, pro se and on behalf of all others similarly situated v. The American Land Title Association, Fidelity National Financial Group, First American Title Insurance Company, Stewart Title Guaranty Company and Old Republic Title Insurance Company, in re:*

***MCCARRAN FERGUSON IMMUNITY TO THE TITLE INSURANCE INDUSTRY.***

*[2] Klein v. Lewis Title. Henry L. Klein, the Succession of Frederick P. Heisler and Levy Gardens Partners 2007 LP v. Lewis Title Company, Inc. and Liskow & Lewis, in re:*

***MCCARRAN FERGUSON IMMUNITY TO THE TITLE INSURANCE INDUSTRY.***

*[3] Klein v. Mnuchin, Secretary of the Treasury. Henry L. Klein, individually and on behalf of others similarly situated and Levy Gardens Partners 2007 LP v. Steven Terner Mnuchin, as the Secretary of the Department of the Treasury and as the director of the Federal*

*Insurance Office established re:*

***THE 2010 DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.***

*[4] Klein v. Kean Miller, LLP. In re Girod LoanCo, LLC v. Heisler, pending in Louisiana Supreme Court on Vulture Funding regarding the collapse of First NBC Bank in New Orleans in re:*

***THE ENFORCEMENT OF ABA FORMAL OPINION 491 REGARDING VULTURE FUNDING AND MONEY-LAUNDERING IN THE CAYMAN ISLANDS***

## APPENDIX E

## IN THE SUPREME COURT
## OF THE STATE OF LOUISIANA

## DOCKET NO. 2023-B-0066

## * IN RE: HENRY L. KLEIN *

[DATE STAMP]
DELIVERED BY HAND
SUPREME COURT
OF LOUISIANA
2023 MAY -1 AM 10:48
/s/
CLERK OF COURT

## SUPPLEMENT REGARDING SCOTUS RULING

On April 14, 2023, the United States Supreme Court decided *Axon Enterprise v. FTC* and *SEC v. Cochran,* 598 U.S. 2023, Exhibit A, dealing with the combination of "...prosecutorial and adjudicatory functions in a single agency..." In the case at bar, ODC combined the roles of (i) complainant, (ii) investigator, (iii) prosecutor, (iv) likely-scrivener, (v) adjudicator and (vi) sentence-proposer in one person, Deputy Paul E. Pendley.

[1] In *Axon,* Justice KAGAN introduced the issue thus:

"In each of these two cases, the

> respondent in an administrative enforcement action challenges the constitutional authority of the agency to proceed. Both respondents claim that the agencies' administrative law judges (ALJs) are insufficiently accountable to the President, in violation of separation-of-powers principles. **And one respondent attacks as well the combination of prosecutorial and adjudicatory functions in a single agency. The challenges are fundamental, even existential. They maintain in essence that the agencies, as currently structured, are unconstitutional in much of their work."**

[2] Because this is a court of first judicial resort in attorney disciplinary cases, it is essentially the district court, reviewing agency actions by ODC *de novo.*

> "The question presented is whether district courts have jurisdiction to hear those suits-and so to resolve the parties' constitutional challenges to the Commissions' structure. **The answer is yes.** The ordinary statutory review scheme does not preclude a district court from entertaining these extraordinary claims." *Id,* at 2.

[3] In *Cochran,* a third point was made about

meaningful judicial review, raising the issue of "...being subjected to an unconstitutional process .. ." which would, *a fortiori,* be "...meaningless..." *Id,* at 11. The manifest collusion by ODC with Girod for the purpose of silencing Henry Klein makes a *Chambers v. NASCO* independent investigation imperative. *Axon/Cochran* say what Rule XIX requires at Section 2(A), but in unconstitutionally-grave terms. Justice KAGAN's opinion raises the need to restructure ODC as *Clark/McKay* advocate.

## TWO REMEDIAL ARROWS

This Court has the separation-of-powers duty and the *sui generis* authority to enforce Louisiana's Door-Closing Statute, La. R.S. 12:1354(A) by rendering a declaratory judgment making Girod's juridical acts in derogation or a law promulgated to protect the public interest void, *ab initio*[1].

In addition, ABA FORMAL OPINION 491 is untested in any court of law. In its role as the guardian of the legal profession, the conduct of Kean-Miller in aiding and abetting Girod to purchase toxic paper for the specific purpose of vulture-funding compels this Court's declaration that ABA491 "...carries the force of substantive law..."

---

[1] See, Robert M. Denicola, A Proposed Minimum Threshold Analysis for the Imposition of State Door-Closing Statutes, 51 Fordham L. Rev. 1360 (1983). Available at: https://ir.lawnet.fordham.edu/flr/vol5 l/iss6/8

On December 23, 2022, Regina Heisler died, reduced to Social Security by Girod's predatory litigation tactics, which include the matter *sub Judice.* Her bankruptcy case continues to be used to enrich Girod. Allowing the two remedial arrows fly, *Wilton v. Seven Falls,* will allow Respondent to tackle the task or repairing the damage.

Justice KAGAN's opinion is now controlling.

Very Respectfully Submitted,

/s/
Henry L. Klein, *pro se*
201 St. Charles Avenue, Suite 2501
New Orleans, LA 70170
504-439-0488
henryklein44@,gmail.com

**SUPREME COURT OF THE UNITED STATES**

Nos. 21-86 and 21-1239

AXON ENTERPRISE, INC., PETITIONER

21-86 v.

FEDERAL TRADE COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION, ET AL.,
PETITIONERS

21-1239 v.

MICHELLE COCHRAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 14, 2023]

JUSTICE KAGAN delivered the opinion of the Court.

In each of these two cases, the respondent in an administrative enforcement action challenges the constitutional authority of the agency to proceed. Both respondents claim that the agencies' administrative law judges (ALJs) are insufficiently accountable to the President, in violation of separation-of-powers principles. And one respondent attacks as well the combination of prosecutorial and adjudicatory functions in a single agency. The challenges are fundamental, even existential. They maintain in essence that the agencies, as currently structured, are unconstitutional in much of their work.

## APPENDIX F

## EXHIBIT B TO VERIFIED NOTICE OF SIGNIFICANT FILING IN *GIROD LOANCO v. HENRY KLEIN*

[DATE STAMP]
E-FILED
MAY 05 2023
SUPREME COURT
OF LOUISIANA
2023 MAY -8 PM 9:20
/s/
CLERK OF COURT

07/01/19 Eric and Jill: My client is entitled to know what the payoff is for all of the notes you claim. [1] It is improper for Girod to tell me to figure it out. [2] Ever since your client purchased the Heisler notes, I have been asking what Girod paid so the Heislers could exercise their rights of litigious redemption. [3] I once again ask you: what did Girod or Capital Crossing pay? [4] I once again ask you: what did Howell Place or HP South pay on that note so I can consider appropriate pleadings.

09/04/19: Henry - Make me a proposal that includes a surrender of Girod 's collateral plus payment of $250K in exchange for a release of Girod 's deficiency claims against Heisler and its claims against you, and a conveyance of all Levy Gardens rights. I do not have authority to make a proposal, but if you make one like that to me, I will encourage Girod to respond.

09/30/19: Henry - I am responding to your offer to purchase the Levy Gardens note for $250,000. Your offer as proposed is rejected. In the alternative, as a confidential settlement proposal, if you and your clients will consent to the pending foreclosures in the 24th JDC going through without further litigation, and will cease all litigation activity, then Girod will consider accepting a discounted payoff on the Levy Gardens note (rather than a note sale) at $250,000. Please advise if you would like to pursue that option.

10/30/19: Eric: I want an accounting from Sterling. Why are you objecting? I also would like to see the Sterling/Girod LoanCo agreement. Please advise.

10/30/19: Girod REO: Eric, I can't find this entity anywhere. Please advise where and when it was formed. Thank you.

11/11/19: David: Did you call me a "f--ing thief" because Eric Lockridge aid was tile one who got all the money Girod claims Regina Heisler borrowed? That is the only reason you could have said that to me. Am I right?

11/11/19: David: After all of these years, I can't understand why you called me a "f-ing fucking thief"' several times. There has to be a reason. Can you tell me? Henry

01/21/20: We expect the total deficiency to be over $2MM after the sale of Baronne and application of the Schwab proceeds. The Heislers [and you] should expect Girod to pursue a deficiency claim if they continue

fighting.

01/27/20: Please vacate 844 Baronne, and let me know when you are out.

**02/10/20: Eric: How do you justify taking everything this lady owns? And doing it with the right to seek deficiencies? And then sending the money to strangers? In the Caymans? How do you sleep at night? What happened to your oath'? The practice of law has reached the lowest of levels with your actions. Shame on you.** [Emphasis added by Petitioner.]

02/10/20: Henry - She borrowed a lot of money. She gave a lot of it to you for Levy Gardens and whatever else. She didn't pay it back. I sleep great. I didn't take her money.

02/21/20: I will not have any documents for you to pick up until after you move out of 844 Baronne.

02/26/20: Henry- Girod has no objection to your taking whatever books belong to you. Your law office and your wife's business and any other businesses you or she from that address should be gone already. No one is putting you on the street. You have had ample opportunity to find a new address.

02/27/20: I will agree to provide you with a paper copy once you move out of 844 Baronne.

03/11/20: Eric: The motion for an accounting was set for sometime in late April. It won't take but a few

minutes to provide the information. Will you do that willingly?

04/29/20: Who is getting the Victory Checks? Is the money going to the Cayman Islands?

## APPENDIX G

## IN THE SUPREME COURT OF THE STATE OF LOUISIANA

DOCKET NO. 2023-8-0066

* IN RE: HENRY L. KLEIN *

[DATE STAMP]
DELIVERED BY HAND
SUPREME COURT
OF LOUISIANA
[ILLEGIBLE]
/s/
CLERK OF COURT

REQUEST TO TAKE JUDICIAL NOTICE AND ENFORCE THE SUPREMACY CLAUSE OF THE CONSTITUTION

Pursuant to the *sui generis* aspects of Rule XIX, Respondent Henry Klein requests ".... that this Court take Judicial Notice of legal proceedings in the United States Supreme court and enforce the Supremacy Clause of the Constitution for the following reasons:

**1. United States Supreme Court Docket 23-261.** Pending in the United States Supreme Court is Respondent's Petition for Certiorari, challenging Girod LoanCo.'s use of the disciplinary process to advance its litigation goals, as well as ODC's allowing its process to silence Respondent for the benefit of

Girod, a non-client adversary.

**2. Providing the Justices with the Petition at SCOTUS Docket 23-261.** Respondent provides the seven individual Justices with copies of the Cert Petition to independently decide if this Court is bound by the Supremacy Clause and/or if it has erred in the effective disbarment of Respondent, MOOTING the need for the United States Supreme Court to act. For perspective, please consider Respondent's *Curriculum Vitae,* Exhibit A[1]. The Cert Petition will give the Justices a clearer picture than ODC provided, impossible for Respondent to portray in the short period afforded on May 1.

**3. The Supremacy Clause.** Constitutional Article VI, Clause 2 provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

---

[1] By any measure, Respondent has been ruined after a career fighting corruption and defending innocents like Regina Heisler.

Respondent avers that *Axon Enterprise v. FTC* and *SEC v. Michelle Cochran* are the "... supreme Law of the Land ...", as urged in Respondent's Motion to Dismiss, Appendix F to the Cert Petition. Although this Court rejected *Axon/Cochran,* obedience to the Supremacy Clause will vacate the action taken at the behest of ODC without the need for the High Court to enforce the Constitution.

**4. The Constitutional right to think.** In the Cert Petition, p. 27, the following point was made as to Respondent's thoughts about what was happening to Regina Heisler:

> "The birthplace of all expression is the mind. It is the purest of beginnings since the Immaculate Conception. It is the ultimate *raison d'etre:*
>
> *Cogito, Ergo Sum*
>
> '... I think, therefore I am ...' The 1st Amendment has never been in greater danger. God protect us all from the danger of losing the constitutional right to think."

In the case at bar, Respondent's licence has been taken for saying what he thought.

**5. Respondent's Conclusion to the United States Supreme Court.** The following Conclusion to the United States Supreme Court is appropriate here:

> "Yesteryear, telling the truth was deemed a virtue. Louis Brandeis, the 'people's lawyer' was admired, not castigated. Elliot Ness was untouchable. Today, the crooks are untouchable. Regulators don't regulate and the power to investigate ' ... is the power to defame and destroy ...' Weaponization of governmental prowess, *however slight,* gains ferocity in the wrong hands. The threat of sanctions is the most lethal enemy of the 1st Amendment. Petitioner refused to yield to these insidious ways and means to chill his advocacy for Regina Heisler ..."

Most of the criminals in the FNBC bank fraud case have recently been sentenced, confirming what Respondent was telling all the courts without success. The individual Justices are urged to consider what is pending in the High Court and right the wrong that pends - *sua sponte.*

**6. Irreparable harm and collateral damage.** The damage to Respondent is irreparable, *per se, Elrod v. Burns,* 427 U.S. 347, 373 (1976) *(The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury).* Also irreparable is the collateral damage to Respondent's clients throughout the United States, where Respondent is now impaired from litigating against the Department of Agriculture regarding the Supplemental Nutrition Assistance Program ("SNAP"), successor to food stamps, a matter well within the

public interest. Vacating the May 18 order will advance the ends of justice before the United States Supreme Court acts at Docket 23-261[2].

**7. Factual misrepresentations.** Although this pleading is based on issues of law, the Justices are urged to recognize that ODC's representations were not supported by reliable evidence. The testimony by Respondent's adversary was tainted by his "... $15 million axe to grind ..." The record in this case establishes that Girod was a vulture fund which Respondent traced from Montreal to the Cayman Islands as part of a $108,000,000,000 (billion) conglomerate operating as Texas Pacific Group ("TPG"). Respondent worked very hard *without* pay to expose the truth[3]. Regina Heisler had no money because of Girod's ruthless seizures.

**8. Justice KAGAN's narrative in *Axon/Cochran*.** The Petition for Certiorari is incorporated by reference, establishing that this case is controlled by overarching First Amendment

---

[2] ODC's response at Docket 23-261 is due October 18, after which Respondent will have an opportunity to reply. Time and vacatur are of the essence. ODC should never have allowed its process to be used *solely* to assist GIROD, a non-client *adversary*.

[3] As Respondent's CV shows, he was born in Bogota, Colombia and was on the streets the day thousands were murdered in his sight. Respondent's experience is why he loves the United States and its Constitution. At the first hearing with HC-37, Respondent showed a video of the assassination of Jorje Gaitan and the aftermath, a "Life Altering Experience", Exhibit A.

violations and by Justice KAGAN's introduction to *Axon/Cochran* thus:

> "In each of these two cases, the respondent in an administrative enforcement action challenges the constitutional authority of the agency to proceed. Both respondents claim that the agencies' administrative law judges (ALJs) are insufficiently accountable to the President, in violation of separation-of-powers principles. And one respondent attacks as well the combination of prosecutorial and adjudicatory functions in a single agency. The challenges are fundamental, even existential. They maintain in essence that the agencies, as currently structured, are unconstitutional in much of their work."

Respondent seeks *vacatur* on these compelling bases. Time is of the essence.

**9. Conclusion.** Respondent studied the Clark Committee Report and the McKay Commission's findings regarding lawyer-conduct and has presented his views at Docket 23-261. No offense intended, but this Court gave Respondent no deference for the good he tried to bring. Requests for this Court to conduct an independent investigation into Girod's fraud-upon-the-courts were veritably mocked. The conclusions by the Board were *ipse dixits* **not** supported by any specifics in the record. The Justices

are urged to find any specificity to any of the charges. The "Ventriloquist Objection" was no hyperbole. What other people said **and** thought was coming from Paul Pendley's lips. In the PER CURIAM, Appendix D, Appendix E and Appendix F were not discussed at all. Six years of advocacy have turned into a nightmare.

Respondent's life, career and family have been ruined.

Respectfully submitted,

/s/
Henry L. Klein, *pro se*
6244 Marshal Foch Street
New Orleans, LA 70124
henryklein44@gmail.com

## CERTIFICATE OF SERVICE

I certify that this pleading has been served upon Louisiana Office of Disciplinary Counsel c/o Paul E. Pendley by email at ppendley@ladb.org this 9th day of October, 2023.

## APPENDIX H

NO. __

In the Supreme Court of the United States

IN RE: HENRY L. KLEIN, *Applicant*

LOUISIANA OFFICE OF DISCIPLINARY COUNSEL,
*Respondent*

Rule 22 and Rule 23
Application to Circuit Justice Samuel A. ALITO, Jr.
For a Stay Considering the Louisiana Supreme Court's Refusal to Enforce the Constitution's Supremacy Clause

**1. New developments.** Pending before the Court is Cert Petition-23-261, seeking *vacatur* of the Louisiana Supreme Court's order effectively disbarring Applicant for filing "... overly-zealous ..." pleadings on behalf of Regina Heisler[1]. Since the stay-denial at Docket 23A96, new developments require attention.

At the heart of Cert Petition 23-261 is *Axon Enterprise v. FTC* and *SEC v. Cochran (Axon/Cochran").* On October 10, Applicant filed a

---

[1] A year-and-a-day is a death sentence for a 79-year-old lawyer who will have to re-apply at 80-years of age. With $15 million at stake, orchestration by ODC/Girod is no illusion.

**Request to Take Judicial Notice and Enforce the Supremacy Clause of the Constitution** with the Louisiana Supreme Court, Exhibit A, arguing that *Axon/Cochran* was the "... Supreme Law of the Land ..." regarding administrative agencies which combine prosecutorial and adjudicatory functions in an enforcement action, as did ODC in the case at bar. To be sure the Louisiana Justices understood the gravity of the issue, all seven Justices were provided a 23-261 Booklet in their individual names, *e.g.*, Exhibit B. On October 12, 2023, the Louisiana Supreme Court DENIED Judicial Notice and REFUSED enforcement of the Supremacy Clause, notwithstanding the Constitutional mandate that "... the Judges in every State shall be bound thereby ...", Exhibit C. In denying, the Louisiana Justices cited Louisiana Civil Procedure Article 2167, despite the fact that lawyer-conduct proceedings "... are neither civil nor criminal but sui generis...", meaning that the process was one of its own kind, **unbridled**.

For *Axon/Cochran* purposes, the Louisiana Justices were ill-positioned to provide any meaningful judicial review, beckoning the dissent in *Elgin v. The Treasury* and Justice Thomas' observation that executive adjudicators "... dressed up as courts ..." could not adjudicate "... core private rights with only deferential judicial review on the back end ..." As to Applicant, his most valuable core right was his licence to practice law awarded by Tulane University in 1968. The executive adjudicators here were two ODC-controlled panels with no Article III credentials. Paying homage to Article VI, Clause 2, seemed "... fundamental, even existential..." as Justice KAGAN

put it in *Axon/ Cochran.* Not so in 2023 Louisiana. The concept is not new, born in *McColloch v. Maryland,* 17 U.S. 316 (1819) and *Gibbons v. Ogden,* 22 U.S. 1 (1824). More recently, in *United States v. Washington,* 596 U.S. __ (2022), this Court held that a state law discriminates if it singles out [federally-protected] citizens for less favorable treatment than would otherwise be the case without the law[2]. Here, the less favorable treatment is the subjecting Applicant " ... to an illegitimate proceeding led by an illegitimate decision maker ...", *Axon/Cochran,* at p. 13. The state law that interferes with the jurisprudential development of the law post *Lucia, Bandimere* and *Carr* is the Louisiana scheme at Supreme Court Rule XIX, which puts executive adjudicators in place to take Applicant's core rights away *without* anyone accounting to anyone other than themselves. The scathing PER CURIAM on May 18, 2023 was an unbridled violation of Federalist 51:

> *In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.*

No disrespect intended, but the Louisiana Supreme Court was out of control at Docket 23-B-0066. Not the least of its infirmities, the PER CURIAM

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[2] The facts and law are distinguishable, but the concept is the same, as argued *infra.*

turned a blind eye to Girod LoanCo., a vulture-fund which purchased over $400 million from the collapse of FNBC Bank and purloined Applicant's client out of $15 million. Docket 23-261 should proceed *without* Applicant being threatened with further sanctions for "... speaking his mind ...". As Applicant put it at p. 27 of the Cert Petition:

> *The birthplace of all expression is the mind. It is THE purest of beginnings since the Immaculate Conception. It is THE ultimate raison d'etre:*
>
> *Cogito, Ergo Sum*
>
> *"... I think, therefore I am ..." The 1st Amendment has never been in greater danger. God protect us all from losing the constitutional right to think.*

A stay should be expeditiously granted.

**2. The danger to *Said v. USA*.** Significantly, Justice KAGAN left open the question as to "... where the constitutional challenges may be heard ..." In *Said,* the trial court did not reach *Bandimere / Lucia / Axon* issues, dismissing on discovery issues. Thus, the 7th Circuit can do what is required and answer Justice KAGAN's question. **Unfortunately, Applicant is presently a suspended lawyer** and ODC is certain to seek further sanctions if Applicant says one word on November 3 to the 7th Circuit appellate panel. In *Wolff v. Selective Service Local Board,* 372 F.2d 817 (2d Cir. 1967), the Court held:

It has been held repeatedly that the mere threat of the imposition of unconstitutional sanctions will cause immediate and irreparable injury to the free exercise of rights as fragile and sensitive to suppression as the freedoms of speech and assembly and the right to vote. *Baggett v. Bullitt,* 377 U.S. 360, 84 S.Ct. 1316, 12 L. Ed. 2d 377 (1964); *NAACP v. Button,* 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); *Smith v. People of State of California,* 361 U.S. 147, 80 S.Ct. 215, 4 L.Ed.2d 205 (1959). **Since it is the mere threat of unconstitutional sanctions which precipitates the injury, the courts must intervene at once to vindicate the threatened liberties.**

The stakes in *Said* are high and national - impacting the nutrition needs of hundreds of thousands of low income families. The SNAP infirmities are the same in every *permanent* disqualification made by AROs less credentialed than the ALJ s in *Axon / Cochran.* At 58 Boston Law Review 658, *Fear, Risk and the First Amendment: Unraveling the Chilling Effect,* Applicant's point is made.

> It has been twenty-six years since the Supreme Court introduced the word "chill" in a first amendment case, and nearly sixteen years since the phrase "chilling effect" made its debut. In that time, the concept of the chilling effect has grown from an emotive argument into a major substantive component of first amendment adjudication.

By any measure, this is a 1st Amendment case.

Applicant should not be afraid to express himself - but he is. The suspension *a qua,* born of a suspect union between ODC and Applicant's bitter litigation rival, Girod LoanCo, should be stayed immediately.

**3. The infirm process in lawyer-regulation.** The case before this Court involves the most important aspect the legal profession faces: the attorney/client relationship. The problem here is that Girod was not Applicant's client and Applicant was not Girod's lawyer. The Louisiana process followed the ABA Model Rules for Lawyer Disciplinary Enforcement, adopted in most states, making this a landmark case.

**4. Disrespect.** The disrespect for this Court's supremacy in the administrative state cannot be overstated. The same for the disrespect for Constitutional Article VI, clause 2. The PER CURIAM is fraught with the Character Assassination of your Applicant *without* support or reason. The statement twice-uttered is astonishing for seven Justices expected to ensure that "... Justice satisfies the appearance of justice ...", *Offutt v. United States,* FRANKFURTER, J., 348 U.S. 11 (1954):

> "It is unfortunate that respondent does not seem to understand that being a zealous advocate does not equate to such repugnant disrespect for the. system we are charged to honor and serve."

As to a *Chambers v. NASCO* investigation into why ODC combined with Girod to silence Henry Klein, that request was veritably mocked.

**5. Conclusion.** A stay will cause no harm. The harm to Applicant is irreparable, as is the harm to Applicant's clients nationally. In *Elrod v. Burns,* 427 U.S. 347 (1976), this Court has said that:

> *The Loss of First Amendment Freedoms, for Even Minimal Periods of Time, Unquestionably Constitutes Irreparable Injury.*

Respectfully submitted,

/s/
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New Orleans, La, 70124
(504) 439-0488
henryklein44@gmail.com

*Member of Supreme Court Bar since September 6, 1974*

## CERTIFICATE OF SERVICE AND COMPLIANCE

I certify that this pleading, containing 1303 words using Century Schoolbook-12 font, has been served by email on October 14, 2023 to:

Paul E. Pendley
Deputy Disciplinary Counsel
4000 S. Sherwood Forest Blvd
Baton Rouge, Louisiana 70816

## APPENDIX I

[KEAN | MILLER LLP LETTERHEAD]

December 22, 2023

VIA E-Mail Only

Henry L. Klein
201 St. Charles Ave., Suite 2501
New Orleans, LA 70170
henryklein44@gmail.com

Re: Girod LoanCo, LLC v. Henry L. Klein, No. 2021-5090, Civil District Court for the Parish of Orleans, State of Louisiana File No. 27623.24

Dear Mr. Klein:

As you are aware, I represent Girod LoanCo, LLC ("Girod") in the above-captioned lawsuit. Girod instituted this action on June 15, 2021 seeking to collect on your individual guarantee of amounts owed to Girod by Levy Gardens Partners 2007, LP ("Levy Gardens"). [REDACTED]

**This letter also advises that any future filings, pleadings, or discovery propounded in this action will be provided to the Louisiana Supreme Court in connection with your application for reinstatement.** [emphasis added by Petitioner.]

If you have any questions, please do not hesitate to contact me.

Very truly yours,

KEAN MILLER LLP

/s/

Katilyn M. Hollowell

KMH/
Enclosure
cc: Michael Bagneris (via email only to bagneris@bpajustice.com)

## APPENDIX J

US Law Week
Feb. 7, 2023, 3:00 AM CST

### It's Time for the ABA to Renew Its Role in Attorney Discipline

By Lucian Pera

### Opinion

*Adams and Reese's Lucian Pera and six other legal ethics professionals call on the American Bar Association to launch a generational renewal of the national attorney discipline system. They say the mechanics, structure, reach, and infrastructure of lawyer regulation need revamping for the 21st century.*

I join six other veteran ethics and professional responsibility lawyers from across the nation in calling for the American Bar Association to launch a once-in-a-generation review of the mechanics, structure, reach, and infrastructure of lawyer regulation.

Joining me in this call for reform are Mark Armitage (Michigan Attorney Discipline Board), Lydia Lawless (State of Maryland), Ronald Minkoff (Frankfurt Kurnit Klein & Selz), Sari Montgomery (Robinson, Stewart, Montgomery & Doppke), Wendy Muchman (Northwestern University Pritzker School of Law), and Lynda Shely (The Shely Firm).

We work for law firms, disciplinary agencies, and law schools, and most of us are active in the ABA and organizations of ethics professionals.

We have more than 200 years of collective experience in the field. We make this appeal only in our personal capacities, and do not speak for our firms, employers, the ABA, or other organizations. Still, we believe many in lawyer ethics and regulation share our view.

**Time For a Refresh**

We believe it's time for the ABA to launch a fresh, high-level effort to renew lawyer discipline system in the US.

Of course, many have heard the steady recent drumbeat of discussion around questions of nonlawyer ownership of law firms, fee-sharing with nonlawyers, and licensing of legal para-professionals. Those are important conversations, but that's not what our proposed effort is about.

We seven ethics lawyers propose that this ABA effort not consider any changes to the substantive ethics rules involving nonlawyer ownership or fee-sharing with nonlawyers. There are many other issues that demand attention.

We believe it's time for the ABA to renew its historic role in leadership in lawyer discipline.

## Background

In 1970, the ABA's Clark Committee, headed by former US Supreme Court Justice Tom Clark, found a lawyer discipline system in "a scandalous situation that require[d] the immediate attention of the profession."

Its three-dozen recommendations led to the professionalization of what was previously a mostly volunteer-driven lawyer disciplinary system.

In 1989, the ABA launched the McKay Commission, named in honor of its first chair, former NYU School of Law Dean Robert B. McKay, to once again study the state of American lawyer discipline.

The ABA adopted its report in 1992, creating the blueprint for most of our current lawyer regulatory infrastructure–including alternatives to discipline, client protection funds, trust account overdraft notification, random audits of trust accounts, continued study of mandatory malpractice insurance requirements, lawyer assistance, and law practice management assistance.

That infrastructure has served the profession and the public well, but like the roads and bridges of our cities and states, the rules, procedures, enforcement tools, and jurisdictional boundaries of lawyer regulation need periodic maintenance. We believe this infrastructure of American lawyer discipline is overdue for an update.

Areas to Revamp

Lawful, appropriate practice by lawyers across the borders of US jurisdictions–multi-jurisdictional practice–has increased dramatically. The legal needs of clients-individuals, businesses, and governments-have increasingly become regional, national, and even international.

But multijurisdictional enforcement by disciplinary authorities has not kept pace with multijurisdictional practice. Lawyer regulation needs to be updated to keep up.

Further, the boundaries of law practice and the legal services business have blurred and expanded. Alternative legal service providers sell legal services to clients of law firms and law departments. Lead generators and lawyer-matching services operate all over, some under regulation.

A few jurisdictions authorize other alternative providers such as legal technicians, legal paraprofessionals, social workers, courthouse navigators, and more. How should these providers be regulated? By whom? Or should some continue to be regulated only by regulation of the lawyers who deal with them?

Some of the core procedural tools, created by the ABA years ago and used in most jurisdictions, are long since due for a full review. The ABA Model Rules for Lawyer Disciplinary Enforcement provide jurisdictions a template for lawyer discipline investigations and

proceedings.

They were adopted in 1989, and periodically tweaked, but no full review has been attempted in decades. The same is true for the ABA Standards for Imposing Lawyer Sanctions, the guidelines most jurisdictions as sentencing guidelines for lawyer discipline and last amended 30 years ago.

**Next Steps**

We believe the ABA president should appoint a group of experts, from all relevant constituencies and with relevant experience, to survey the current landscape and the last few decades' experience, as well as innovations abroad, to update our lawyer regulatory infrastructure.

This group needs to preserve the strengths of the current system, which include individual accountability, client-focused rules, and increasing attention to the prevention and redress of misconduct.

Those experts should include veteran regulatory counsel from jurisdictions big and small, disciplinary defense counsel, academics who study lawyer regulation, client protection fund administrators, IOLTA program representatives, and ultimate regulators such as state supreme court justices.

That's how ABA leadership in ethics and lawyer regulation has worked–and worked successfully–for more than 100 years.

In the history of lawyer regulation in this country, no single organization has done remotely as much as the ABA to advance client and public protection and responsible and sensible regulation. In fact, the success of lawyer regulation in the US owes more to the ABA than any other organization.

It's time for the ABA to step up again and renew our lawyer regulatory system to meet the needs of the next generation.

*This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.*

**Author Information**

*Lucian T. Pera is a partner at Adams and Reese. He served for five years on the ABA Ethics 2000 Commission, which rewrote the ABA Model Rules of Professional Conduct, and led the Tennessee Bar Association committee that successfully proposed new legal ethics rules based on the ABA Model Rules.*

## APPENDIX K

Legal Profession Blog

Monday, February 20, 2023

### A Need For Study And Reform

By Legal Profession Prof

Thanks to Lucian Pera for sending this announcement of a call for a long overdue study of bar discipline processes

It's time for the American Bar Association to launch a fresh, high-level effort to renew the US lawyer discipline system for the 21st century.

There has been a steady drumbeat of discussion recently about US lawyer regulation. Much of the debate has surrounded questions of nonlawyer ownership of law firms, fee-sharing with nonlawyers, and licensing of legal paraprofessionals. These are important discussions, but that's not what we propose.

Instead, as lawyers who have practiced and worked in the lawyer regulatory system for many years-more than 200 years collectively-we believe it is time for the ABA, the traditional convener and leader on lawyer regulation, to launch a once-in-a-generation review of the mechanics, structure, and reach of lawyer regulation. It's time to revisit the infrastructure of lawyer regulation, rather than the substance of ethics

rules.

Some of us hold elected or appointed positions in the ABA. None of us speak in those official positions, for the groups we represent or work with, or for the ABA. We speak only for ourselves in our personal capacities. Still, we believe many in lawyer ethics and regulation share our view.

Like roads and bridges, the rules, procedures, enforcement tools, as well as the jurisdictional boundaries of lawyer regulation, need periodic maintenance. We believe the infrastructure of American lawyer discipline is overdue for an update.

Background: The Clark Committee & McKay Commission

The ABA has used its convening authority more than once for this purpose.

In 1970, the ABA's Special Committee on Evaluation of Disciplinary Enforcement, chaired by former U.S. Supreme Court Justice Tom Clark, which became known as the Clark Committee, spent three years studying lawyer discipline, only to find what it described as "a scandalous situation that require[d] the immediate attention of the profession."

The Committee noted that "the prevailing attitude of lawyers toward disciplinary enforcement range[d] from apathy to outright hostility." Moreover, "public dissatisfaction with the bar and the courts [was] much more intense than [was] generally believed within the

profession."

So much so that, "unless public dissatisfaction with existing disciplinary procedures [was] heeded and concrete action [was] taken to remedy the defects, the public soon [would] insist on taking matters into its own hands."

The Clark Committee identified 36 problems in disciplinary enforcement and proposed solutions. The overall thrust was a call for the professionalization of lawyer disciplinary enforcement. The ABA in the ensuing years led jurisdictions in the effort to bring the Committee's vision to reality. Within five years, half the jurisdictions in the US employed professional disciplinary counsel in their discipline systems, replacing the former disciplinary structure that had been composed purely of lawyer volunteers.

Over the two decades following the 1970 Clark Committee report, the ABA framed out the structure it had envisioned. It enacted model procedural guidelines for lawyer discipline that became the ABA Model Rules for Lawyer Disciplinary Enforcement as well as model sanctions standards that became the ABA Standards for Imposing Lawyer Sanctions.

In 1989, the ABA launched its Commission on Evaluation of Disciplinary Enforcement to study current lawyer discipline and examine the implementation of the Clark Committee's recommendations. In honor of its first chair, former NYU School of Law Dean Robert B. McKay, the group became known as the McKay Commission. Its detailed

recommendations, adopted by the ABA House of Delegates in 1992, carried forward the vision of the Clark Committee.

The McKay Commission confirmed the ABA's–and the profession's–view that judicial regulation of the profession is a paramount value. They surveyed the country's best practices in its recently professionalized lawyer disciplinary systems. Importantly, they expanded the structure of lawyer discipline to include several additional elements, all well known today, including alternatives to discipline, client protection funds, trust account overdraft notification, random audits of trust accounts, continued study of mandatory malpractice insurance requirements, lawyer assistance, and law practice management assistance.

The McKay Commission's recommendations are still relevant and should be updated and improved upon. The Standing Committee on Public Protection in the Provision of Legal Services (formerly known as the Standing Committee on Client Protection) has worked steadily to advocate for model rules designed to prevent lawyer misconduct and client harm and to compensate legal consumers when necessary. Rules designed to prevent the invasion of trust funds through audits and payee or overdraft notifications are examples of useful prophylactic regulation. Some jurisdictions' requirements of written fee agreements in some instances, and assistance in resolution of client-attorney fee disputes are other examples of the expansion of the lawyer regulatory system beyond a purely prosecutorial model. Many of these changes have served the profession, clients, and the public well.

Trends Requiring Regulation

Thirty years on, it's time to update and improve upon this landmark work, in light of current circumstances and the experience of all our jurisdictions.

But today we face more than the need to update the current lawyer regulation system. The last generation has seen at least two major trends that require fresh attention to the infrastructure of lawyer regulation.
Multi-Jurisdictional Practice

First, lawful, appropriate practice by lawyers across the borders of US jurisdictions has increased dramatically. Over the last several decades, the legal needs of clients-individuals, businesses, and governments-have increasingly become regional, national, and even international. Even the most local clients may have regular international suppliers. Domestic relations matters increasingly involve cross-jurisdictional issues that track clients' moves to follow careers and family.

Because as lawyers we serve clients, lawyers' practices and work are increasingly less limited by the boundaries of their state of licensure. Multi-jurisdictional practice, or "MJP," has been authorized in some form in the overwhelming majority of US jurisdictions under versions of ABA Model Rule of Professional Conduct 5.5. An increasing number of lawyers are also licensed in multiple jurisdictions, and the ABA has just begun a new round of study of potential changes that might better reflect these new realities.

With those changes have come challenges for lawyer discipline in confronting lawyer misconduct involving multiple jurisdictions or lawyers misbehaving away from their home jurisdictions. Which rules apply? Which jurisdiction should initiate an investigation? Can clients and lawyers choose those rules? Which regulatory elements – trust account requirements, client protection funds – apply to lawyers practicing in multiple jurisdictions? And who pays for disciplinary investigation and prosecution of multijurisdictional misconduct when a lawyer may not even be admitted to practice in a jurisdiction investigating misconduct inside that jurisdiction? Disciplinary counsel need new approaches, maybe new procedural help, and possibly new structures to confront multijurisdictional misconduct with effective disciplinary enforcement.

Alternative Legal Service Providers

Second, the boundaries of law practice and the legal services business have blurred and expanded. Over the last thirty years, a whole new class of non-law firm businesses has been created. Sometimes called "alternative legal service providers," or ALSPs, these businesses sell legal services to clients of law firms and law departments. These legal services are provided by temporary or contract lawyers, employed by the company (not by any law firm), and supervised by those law firms or law departments.

Some of these staffing companies are multi-national behemoths, rivaling the biggest Big Law firms. Others provide temporary brief writers to individual lawyers. However they differ, they share one thing: they are not

law firms, and they are selling legal services.

For a generation, they have thrived and grown, by and large serving client needs. They are only regulated today through traditional regulation of the lawyers who work for and deal with them. Is that sufficient? Or should lawyer regulation be broadened, as some have suggested, to more consciously regulate them?

Since the dawn of the internet, lawyer marketing has exploded into digital form, from lead generation to lawyer matching services. Many jurisdictions do nothing at all to separately regulate this activity, relying on the traditional lawyer advertising and solicitation rules. A small, growing number of jurisdictions have each taken their own path to regulate this activity, some requiring registration by these nonlawyer companies, others placing new regulations on lawyers who deal with them, and still others electing to not regulate these services at all. Should lawyer regulation encompass this new terrain more directly?

A few jurisdictions have also authorized other alternative legal service providers such as legal technicians, legal paraprofessionals, social workers, courthouse navigators, and more. Other jurisdictions are considering these options today. No national discussion has yet focused on how the regulation of these authorized providers should relate to the traditional regulation of lawyers.

Those who regulate lawyers and legal services need to survey, consciously, and intentionally, the changing

boundaries of regulation. Should it expand? If so, how? Through new types of regulation of lawyers themselves? By bringing others under some form of regulation? If so, should lawyer regulators take on that challenge, or should there be other or new regulators?

Procedural Changes

Both as a part of periodic maintenance of our lawyer regulation infrastructure, and in the wake of the changes in how and where lawyers practice and who delivers legal services, a number of other subjects also need attention by the best minds on lawyer regulation. Those include a number of issues concerning procedure in disciplinary proceedings, including whether blanket confidentiality rules for investigations best serve the public or profession; who should decide contested proceedings; what burden of proof should apply; and what kind of discovery should be permitted.

The ABA Model Rules for Lawyer Disciplinary Enforcement provide jurisdictions a template for investigations and proceedings governing lawyer discipline. These model rules were adopted in 1989, and periodically tweaked, but no thorough review has been attempted in decades. Increasing cross-border practice, remote practice, and technology changes in the last 20 years require a review of these rules to assess if they are still the most effective and realistic approaches to investigating, adjudicating, and sanctioning lawyer misconduct.

Review of Professional Conduct & Sanctions Rules

While the ABA's core guidance on the substantive rules governing lawyer conduct–the ABA Model Rules of Professional Conduct–now serve as the model for ethics rules in every US jurisdiction, the ABA's model disciplinary enforcement rules are out-of-date, and closely adopted by virtually no US jurisdiction. Ethics regulators deserve better, as do the clients, public, and lawyers they serve. On many particular issues, in fact, individual jurisdictions do better on one aspect or another of the rules or regulation. That success needs to be identified and spread to other jurisdictions.

The same is true for the ABA Standards for Imposing Lawyer Sanctions. These are guidelines most jurisdictions use more or less as sentencing guidelines for lawyer disciplinary proceedings. Their goal is greater fairness and consistency. They set baseline sanctions for specific kinds of disciplinary violations. They identify appropriate aggravating and mitigating factors that should or must be considered in imposing sanctions for violations of the disciplinary rules. Some jurisdictions mandate the use of these standards; some simply use them routinely; and some do not use them at all.

The Standards were last amended 30 years ago. They need to be re-evaluated in light of a generation of substantive rule changes, enforcement experience, and case law.

Related ABA models that also need review include the Model Rules for Lawyers' Funds for Client Protection Funds and the Model Rules for Client Trust Account Records. The model client protection rules were last

updated in 1989 and today struggle to address such issues as which jurisdiction's client protection fund should apply when a lawyer is admitted in more than one jurisdiction and how should funds work together to assure as much client protection as possible for a multi-state admitted lawyer.

The Model Rules for Client Trust Account Records were last amended in 2010. These trust account record rules similarly provide little guidance to lawyers on which rules should apply when a lawyer represents clients in more than one jurisdiction and the lawyer is admitted in more than one jurisdiction.

Next Steps

We submit that the AB A president should appoint a group of experts from all the relevant constituencies to survey the current landscape and experience of the last few decades. This review should include the more than 50 versions of disciplinary enforcement rules currently operating in US jurisdictions, as well as innovations in regulation US jurisdictions might adopt from other countries. This group should examine carefully the full scope and record of other regulatory approaches and should also reinforce the strengths in our current system. We strongly believe that those strengths, which include individual accountability, client-focused rules, and increasing attention to the prevention and redress of misconduct, must be carefully preserved and strengthened.

Those experts need to include veteran regulatory counsel from jurisdictions big and small, disciplinary

defense counsel, academics who study lawyer regulation, client protection fund administrators, IOLTA program representatives, and ultimate regulators such as state supreme court justices. This group should review existing rules and changes in the profession and the legal services market to make recommendations to establish renewed and improved model standards for all jurisdictions. That's how ABA leadership in ethics and lawyer regulation has worked successfully for more than 100 years.

Conclusion

Your authors may each have their own tentative views, and those views are by no means uniform. But we all share the firm conviction that it's time to be conscious and intentional about defining the proper frontiers of legal professional regulation for the 21st Century, as well as about identifying and developing the tools regulators need for the new world.

To be crystal clear, we propose that this effort not consider any changes to the substantive ethics rules involving nonlawyer ownership or fee-sharing with nonlawyers. Those are entirely different debates we do not address here.

In the history of lawyer regulation in this country, no single organization has done remotely as much as the ABA to advance client and public protection and responsible and sensible regulation. In fact, the success of lawyer regulation in the US owes more to the ABA than any other organization.

It's time for the ABA to step up again and renew our lawyer regulatory system to meet the needs of the next generation.

Agreed.

In my view, one of the most pressing issues is the delay between complaint and final resolution. My own jurisdiction - the District of Columbia - is the poster child for inexcusable delay. (Mike Frisch)

https://lawprofessors.typepad.com/legal_profession/2023/02/thanks-to-lucien-pera-for-sending-this-announcement-of-a-call-for-a-long-overdue-study-its-time-for-the-american-bar-associa.html