IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY, MARYLAND

TY CLEVENGER, **Petitioner,** **vs.** **ATTORNEY GRIEVANCE COMMISSION OF MARYLAND and OFFICE OF BAR COUNSEL,** **Respondents**	**Case No. C-02-CV-16-003620**

RESPONSE IN OPPOSITION TO MOTION TO SEAL

NOW COMES Ty Clevenger, the Petitioner, responding in opposition to the Respondents' MOTION TO SEAL:

Argument

The Respondents' MOTION TO SEAL misrepresents the plain words of Maryland Rule 19-707, particularly subsection (b). According to the Respondents, "Complaints of attorney misconduct are confidential and 'may not be disclosed by Bar Counsel, the staff and investigators of the Office of Bar Counsel, any member of the Commission, the staff of the Commission, the Peer Review Committee, *any attorney involved in the proceeding, or, in any civil action or proceeding, by the complainant or an attorney or the complainant*.'" Motion to Seal, 1 ¶2, partially quoting Maryland Rule 19-707(b)(emphasis added by Respondents). In reality, the rule says nothing about "[c]omplaints of attorney misconduct," but instead it states that "the records and proceedings *listed in this section* and the contents of those records and proceedings" shall be

kept confidential. Rule 19-707(b) (emphasis added). When one reads the entire section, it is evident that the rule says nothing about "complaints of attorney misconduct." *Id*.

The Respondents' reliance on Rule 19-707(b)(A) is equally misplaced. That rule indeed prohibits the release of "the records of an investigation by Bar Counsel, including the existence and content of any complaint or response...," but as shown in the PETITION FOR MANDAMUS and his RESPONSE IN OPPOSITION TO MOTION TO DISMISS WRIT OF MANDAMUS (both of which are incorporated herein by reference), this case exists precisely because *there has been no investigation*. Nothing else in Rule 19-707(b) is remotely applicable.

The Respondents whitewashed criminal misconduct in order to protect prominent attorneys, and now they want seal this case to in order protect themselves from embarrassment. That rationale cannot overcome the principle of openness in court proceedings:

> Although a presumption of openness [in court proceedings] exists, a trial court may limit that right "when an important countervailing interest is shown." *Publicker Industries, Inc. v. Cohen*, 733 F.2d at 1071. The party seeking closure bears the burden of establishing the need to restrict the public's access. *Journal Newspapers v. State*, 54 Md.App. 98, 110, 456 A.2d 963, aff'd sub nom, *Buzbee v. Journal Newspapers*, 297 Md. 68, 465 A.2d 426 (1983). Since the right of public access is firmly imbedded in the First Amendment, "it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *Globe Newspapers Co. v. Superior Court*, 457 U.S. 596 at 607, 102 S.Ct. 2613 at 2620; *Rushford v. The New Yorker Magazine, supra*.

State v. Cottman Transmission Sys., Inc., 75 Md. App. 647, 656–57, 542 A.2d 859, 863 (1988). The Respondents cannot demonstrate a "compelling governmental interest," but the public has a legitimate interest in knowing whether the Respondents are playing favorites.

Conclusion

The Respondents have demonstrated no basis for sealing this case, and their motion should be denied.

Respectfully submitted,

Ty Clevenger, Petitioner *Pro Se*
P.O. Box 20753
Brooklyn, New York 11202
(979) 985-5289
(979) 530-9523 (fax)
tyclevenger@yahoo.com

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on Asst. Attorney General Alexis Rodhe, counsel for the Respondents, at arohde@oag.state.md.us on June 9, 2017.

Ty Clevenger