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Office of Disciplinary Counsel
Board on Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW, Building A, Suite 117
Washington, DC 20001

Re: Complaint of Attorney Misconduct

To Whom It May Concern:

I wish to file a professional misconduct complaint against Beth A. Wilkinson of Wilkinson, Walsh + Eskovitz LLP, 1900 M Street NW, Suite 800, Washington DC 20036. Her telephone number is 202-847-4000. I have enclosed a letter from from four Congressional committee chairmen to U.S. Attorney General Loretta Lynch, and I incorporate that letter by reference. According to the letter, Ms. Wilkinson played a key role in destroying evidence that was subject to various Congressional subpoenas. Furthermore, the evidence was directly relevant to various Freedom of Information Act requests and related litigation that was pending in the U.S. District Court for the District of Columbia.¹

The D.C. Rules of Professional Conduct, as well as various federal criminal statutes, prohibit lawyers from destroying evidence:

A lawyer shall not “[o]bstruct another party’s access to evidence or alter, destroy, or conceal evidence, or counsel or assist another person to do so, if the lawyer reasonably should know that the evidence is or may be the subject of discovery or subpoena in any pending or imminent proceeding. Unless prohibited by law, a lawyer may receive physical evidence of any kind from the client or from another person. If the evidence received by the lawyer belongs to anyone other than the client, the lawyer shall make a good-faith effort to preserve it and to return it to the owner, subject to Rule 1.6.”

D.C. Rule of Professional Conduct 3.4(a); *see also* 18 U.S. Code §§ 1505 and 1519. Rule 3.9 explicitly indicates that Rule 3.4(a) applies to legislative proceedings, therefore its

¹ *See, e.g.*, Case Nos. 1:15-cv-00684, 1:15-cv-00687, 1:15-cv-00689, 1:15-cv-00690, 1:15-cv-00692, 1:15-cv-00688, and 1:15-cv-00691, all of which are entitled *Judicial Watch, Inc. v. U.S. Department of State*, and Case No. 1:16-cv-00048, *Citizens United, Inc. v. U.S. Department of State*. You may wish to contact the attorneys representing Judicial Watch, Inc. and Citizens United, Inc. for more information about the relevance of the evidence that was destroyed. Paul Orfanedes is the director of litigation for Judicial Watch, and he may be reached at (888) 593-8442. Michael Boos is the general counsel for Citizens United, and he may be reached at (202) 547-5420.

prohibitions would apply to both the Congressional subpoenas as well as the FOIA litigation.

In addition to Rule 3.4(a), Ms. Wilkinson may have also violated Rule 8.4(b) by committing “a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.” In particular, she may have perpetrated multiple felonies by destroying evidence pertinent to a Congressional investigation as well as the FOIA litigation. *See* 18 U.S. Code §§ 1505 and 1519. Finally, Ms. Wilkinson violated Rule 8.4(c) by engaging “in conduct involving dishonesty, fraud, deceit, or misrepresentation” and Rule 8.4(d) by engaging “in conduct that seriously interferes with the administration of justice.”

I file this complaint with some reservation. On the one hand, I am impressed by the fact that Ms. Wilkinson could convince the FBI to do something that she knew she could not legally do on her own, *i.e.*, destroy evidence for the benefit of her clients. On the other hand, the fact that she convinced the FBI director and the Attorney General to do her dirty work is not exactly something to be proud of. *See* Rule 8.4(a)(a lawyer shall not “[v]iolate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another” (emphasis added)).²

The FBI director and the Attorney General never had authority to destroy evidence that was independently being sought by separate and co-equal branches of government, and Ms. Wilkinson would have known that. As noted above, four Congressional committees were seeking the evidence, as were the litigants in the U.S. District Court for the District of Columbia. The veneer of officiality – *i.e.*, the fact that the FBI destroyed the evidence rather than Ms. Wilkinson or her clients – does not change the fact that evidence was destroyed illegally.

Please contact me if you need additional information. I declare under penalty of perjury that the contents of this letter are true and correct to the best of my knowledge, as witnessed by my signature below. Thank you for your attention to these matters.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: Mr. Paul Orfanedes
Mr. Michael Boos

² I have filed professional misconduct complaints against FBI Director James Comey and Attorney General Loretta Lynch with the state disciplinary authority of New York, where they are both admitted to practice.