

No. \_\_\_\_\_

COURT OF APPEALS  
OF THE DISTRICT OF COLUMBIA

*Ty Clevenger,*  
Petitioner

v.

*Wallace E. Shipp, Jr., Disciplinary Counsel of the District of Columbia, and  
the District of Columbia Board on Professional Responsibility,*  
Respondents

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PETITION FOR WRIT OF MANDAMUS

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Ty Clevenger  
21 Bennett Avenue #62  
New York, New York 10033  
(979) 985-5289  
(979) 530-9523 (fax)  
[tyclevenger@yahoo.com](mailto:tyclevenger@yahoo.com)

PETITIONER PRO SE

## **RELIEF REQUESTED**

1. The Petitioner seeks an order compelling the Office of Disciplinary Counsel and the Board on Professional Responsibility to investigate an attorney misconduct complaint filed by the Petitioner.

## **PARTIES**

2. Ty Clevenger, the Petitioner, is a member of the State Bar of Texas. He may be served with process at 21 Bennett Avenue #62, New York, New York 10033.

3. Wallace E. Shipp , Jr., a Respondent, is the Disciplinary Counsel for the District of Columbia. He may be served with process at 515 5th Street NW, Building A, Suite 117, Washington, DC 20001.

4. The District of Columbia Board on Professional Responsibility is an arm of this Court. It may be served with process at 430 E Street NW, Suite 138, Washington, DC 20001.

5. David E. Kendall is a real party in interest. He may be served at Williams & Connolly LLP, 725 12th Street NW, Washington DC 20005-3901.

6. Cheryl D. Mills is a real party in interest. She may be served with process at 5404 Wisconsin Avenue, Suite 1150, Chevy Chase MD 20815.

7. Heather Faye Samuelson is a real party in interest. She may be served with process at 2125 14th Street NW, Apt. 320, Washington, DC 20009.

## **ISSUES PRESENTED**

8. Are the Office of Disciplinary Counsel (“ODC”) and the Board on Professional Responsibility (“BPR”) obligated by law to investigate facially meritorious complaints of attorney misconduct? If not, did ODC and BPR abuse their discretion in this instance by refusing to investigate?

## **FACTS**

9. On or about August 31, 2016, the Petitioner filed an attorney misconduct complaint against David E. Kendall, Cheryl D. Mills, and Heather Faye Samuelson based on their actions while representing former U.S. Secretary of State Hillary Rodham Clinton, specifically the destruction of evidence sought by Congress and various litigants. A true and correct copy of that complaint is attached as Exhibit 2 and incorporated herein by reference.

10. On or about September 7, 2016, the Petitioner filed a supplement to the complaint against Mr. Kendall, Ms. Mills, and Ms. Samuelson. A true and correct copy of that complaint is attached as Exhibit 3 and incorporated herein by reference.

11. On or about September 9, 2016, the Petitioner filed another supplement to the complaint against Mr. Kendall, Ms. Mills, and Ms. Samuelson. A true and correct copy of that complaint is attached as Exhibit 4 and incorporated herein by reference.

12. On or about October 28, 2016, the Petitioner received a letter dated October 14, 2016 from Elizabeth Herman, Deputy Disciplinary Counsel, who wrote on behalf of ODC. Ms. Herman informed the Petitioner that her office would not investigate the misconduct complaints because the Federal Bureau of Investigation and U.S. Department of Justice had investigated the allegations against Mr. Kendall, Ms. Mills, and Ms. Samuelson and had decided against filing criminal charges. A true and correct copy of that letter is attached as Exhibit 5 and incorporated herein by reference.

13. On or about October 31, 2016, the Respondent wrote to Ms. Herman's supervisor, Mr. Shipp, explaining that D.C. Bar Rule XI(6)(a)(2) imposes a duty to "investigate all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction of this Court which may come to the attention of Disciplinary Counsel or the Board from any source whatsoever, where the apparent facts, if true, may warrant discipline." The Respondent informed Mr. Shipp that he intended to seek mandamus relief from this Court if ODC did not comply with the law. A true and correct copy of the Respondent's October 31, 2016 letter is attached as Exhibit 6 and incorporated herein by reference. Thus far, ODC has not responded to the letter.

14. Also on October 31, 2016, the Petitioner sent a letter to the BPR along with a copy of the foregoing letter to Mr. Shipp. The letter to BPR explained that



D.C. Bar Rule XI(4)(e) imposed a separate duty on BPR to “consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effect the purposes of this rule.” A true and correct copy of the Respondent's October 31, 2016 letter is attached as Exhibit 7 and incorporated herein by reference. Thus far, BPR has not responded to the letter.

### ARGUMENT

15. The Petitioner incorporates all of the arguments set forth in his October 31, 2016 letters to the ODC (Exhibit 6) and BPR (Exhibit 7). According to D.C. Bar Rule XI(6)(a)(2), the ODC has “the power and *duty*” (emphasis added) to “investigate all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction of this Court which may come to the attention of Disciplinary Counsel or the Board from any source whatsoever, where the apparent facts, if true, may warrant discipline.” The plain language of the rule does not grant ODC the discretion to ignore a facially valid complaint, *i.e.*, the “duty” is ministerial, and it is not waived simply because the FBI did not recommend *criminal* charges based on the same facts.<sup>1</sup>

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<sup>1</sup> As explained in the Petitioner's October 31, 2016 letter to ODC, the elements and burden of proof vary substantially between a criminal charge and a charge of professional misconduct.

16. Similarly, the duty imposed on BPR is ministerial. According to D.C. Bar Rule XI(4)(e), BPR has the “power and *duty*” (emphasis added) to “consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effect the purposes of this rule.” Even if ODC or BPR had the discretion to ignore a facially meritorious complaint, they would abuse that discretion by ignoring the complaint against Mr. Kendall, Ms. Mills, and Ms. Samuelson. The Petitioner's complaint cites substantial evidence that all three committed felony crimes against the administration of justice, including the willful destruction of evidence. If ODC and BPR are unwilling to take action against something so serious, then they cannot claim with a straight face that they are protecting the integrity of the bar.

17. “Mandamus is an extraordinary remedy used to enforce, as a matter of right, a public officer's performance of his or her public duties where no exercise of discretion on the officer's part is involved.” *D.C. v. Fitzgerald*, 953 A.2d 288, 297 (D.C. 2008), *opinion amended on denial of reh'g*, 964 A.2d 1281 (D.C. 2009), citing *People ex rel. Waller v. McKoski*, 195 Ill. 2d 393, 748 N.E.2d 175, 177-78 (2001). Furthermore, this Court may grant mandamus relief where an officer abuses his or her discretion.

[W]hile the action of an officer clothed with a discretion is not reviewable, if exercised upon matters left to his discretion, yet his judgment as to the

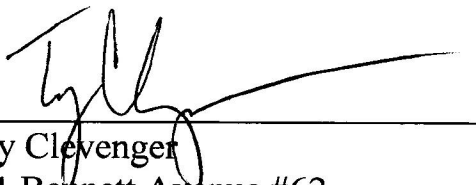
extent of his discretion under the law, and the matters on which it may be exercised, are reviewable on mandamus; and where a discretion is abused, and made to work injustice, it may be controlled by mandamus.

*U.S. ex rel. Thomson v. Custis*, 35 App. D.C. 247, 253 (D.C. Cir. 1910). Under either standard, the Petitioner is entitled to mandamus relief.

### CONCLUSION

18. The Court should grant the Petitioner's request, ordering the Respondents to fully comply with their duties to investigate the misconduct of Mr. Kendall, Ms. Sims, and Ms. Samuelson.

Respectfully submitted,



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Ty Clevenger  
21 Bennett Avenue #62  
New York, New York 10033  
(979) 985-5289  
(979) 530-9523 (fax)  
[tyclevenger@yahoo.com](mailto:tyclevenger@yahoo.com)

PETITIONER PRO SE

## CERTIFICATE OF SERVICE

I certify that copies of this Petition for Writ of Mandamus and its exhibits were sent to the individuals below via first-class mail on 11/23/16:

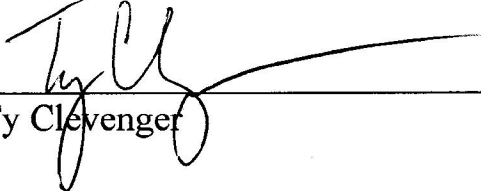
Wallace E. Shipp, Jr., Disciplinary Counsel  
515 5th Street NW, Building A, Suite 117  
Washington, DC 20001

The District of Columbia Board on Professional Responsibility  
430 E Street NW, Suite 138  
Washington, DC 20001

David E. Kendall  
Williams & Connolly LLP  
725 12th Street NW  
Washington DC 20005-3901

Cheryl D. Mills  
5404 Wisconsin Avenue, Suite 1150  
Chevy Chase MD 20815

Heather Faye Samuelson  
2125 14th Street NW, Apt. 320  
Washington, DC 20009

  
\_\_\_\_\_  
Ty Clevenger

# Exhibit 1

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

*Ty Clevenger,*

Petitioner,

vs.

*Wallace E. Shipp, Jr., Disciplinary Counsel  
of the District of Columbia, and  
the District of Columbia Board on  
Professional Responsibility,*

Respondents

Case No. \_\_\_\_\_

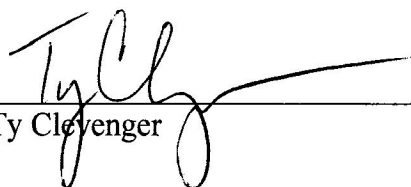
DECLARATION OF TY CLEVENGER

My name is Ty Clevenger, I am greater than 18 years of age and competent to testify, and I do testify as follows under penalty of perjury and as witnessed by my signature below:

1. Exhibit 2 is a true and correct copy of an attorney misconduct complaint that I filed with the Office of Disciplinary Counsel against David E. Kendall, Cheryl D. Mills, and Heather Faye Samuelson on or about August 31, 2016.
2. Exhibit 3 is a true and correct copy of a supplement to the foregoing complaint that was filed on or about September 7, 2016.
3. Exhibit 4 is a true and correct copy of a supplement to the foregoing complaint that was filed on or about September 9, 2016.
4. Exhibit 5 is a true and correct copy of an October 14, 2016 letter that I received from Deputy Disciplinary Counsel Elizabeth Herman on or about October 28, 2016.
5. Exhibit 6 is a true and correct copy of a letter that I sent to Disciplinary Counsel Walter E. Shipp, Jr. on or about October 31, 2016. I have not received a response.
6. Exhibit 7 is a true and correct copy of a letter that I sent to the Board on Professional Responsibility. I have not received a response.

THE DECLARANT SAYS NOTHING FURTHER.

November 23, 2013

  
\_\_\_\_\_  
Ty Clevenger

## Exhibit 2

TY CLEVENGER  
21 Bennett Avenue #62  
New York, New York 10033

telephone: 979.985.5289  
facsimile: 979.530.9523

*tyclevenger@yahoo.com*  
Texas Bar No. 24034380

August 31, 2016

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 misconduct complaints against three attorneys for destroying evidence in an apparent attempt to impede various Congressional and Executive Branch investigations. The three attorneys and their addresses are as follows:

David E. Kendall  
Williams & Connolly LLP  
725 12th Street NW  
Washington DC 20005-3901

Cheryl D. Mills  
5404 Wisconsin Avenue, Suite 1150  
Chevy Chase MD 20815

Heather Faye Samuelson  
2125 14th Street NW, Apt. 320  
Washington, DC 20009

All three attorneys represented former Secretary of State Hillary Rodham Clinton and were responsible for deleting thousands of emails that had been stored on a secret email server that Mrs. Clinton used in lieu of a government email account. Given the widespread media coverage of the subject, I suspect you are well aware of the factual background surrounding Mrs. Clinton's private email system. Nonetheless, I incorporate by reference the materials found at <http://www.thompsonstimeline.com>, and I will cite those materials periodically with the notation "THOMPSON" and the date that they appear on the timeline.

Not later than July of 2014, the U.S. Department of State began asking Mrs. Clinton to turn over work-related emails that had been stored on her private server (THOMPSON July 2014). Around July 23, 2014, the company hosting Mrs. Clinton's server communicated with Ms. Mills about sending her the emails from the server (THOMPSON July 23, 2014). In August, State Department officials met with Mrs.



Clinton's lawyers (presumably including Mr. Kendall, Ms. Mills, and/or Ms. Samuelson) in an attempt to obtain the records from Mrs. Clinton's server (THOMPSON August 2014). On October 28, 2014, the State Department formally asked Mrs. Clinton to turn over the emails (THOMPSON October 28, 2014). Shortly thereafter, Mrs. Clinton asked Mr. Kendall and Ms. Mills to review the emails in order to determine which emails should be produced to the State Department (THOMPSON Shortly After October 28, 2014). Ms. Mills later testified that she and Mr. Kendall oversaw the review process, but most of the work was done by Ms. Samuelson (THOMPSON September 3, 2015). Ms. Mills is primarily a political operative for Mrs. Clinton, and Ms. Mills testified that Ms. Samuelson had no experience in classifying or preserving federal records. *Id.*

On December 2, 2014, the chairman of the Select Committee on Benghazi of the U.S. House of Representatives sent a letter to Mr. Kendall requesting all emails from Mrs. Clinton's private account that were related to Benghazi. *See* Report of the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, Part IV, p. 18, n. 62 (<https://benghazi.house.gov/reports>). At that point, there is no question that Mr. Kendall knew that at least some of the emails were evidence. Nonetheless, he and Ms. Mills and Ms. Samuelson began deleting Mrs. Clinton's emails some time in the following two months (THOMPSON Shortly after January 5, 2015). In a July 5, 2016 public statement, FBI Director James Comey indicated that his agents recovered some of the deleted emails, further stating that "several thousand" of the deleted emails were work-related. *See* July 5, 2016 Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System (<https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>).

According to Mr. Comey, the respondent lawyers did not individually review each of the approximately 60,000 emails on Mrs. Clinton's server before deleting nearly half of them. *Id.* He said the respondent lawyers used search terms and only looked at headers.

It is highly likely their search terms missed some work-related e-mails, and that we later found them, for example, in the mailboxes of other officials or in the slack space of a server. It is also likely that there are other work-related e-mails that they did not produce to State and that we did not find elsewhere, and that are now gone because they deleted all e-mails they did not return to State, and the lawyers cleaned their devices in such a way as to preclude complete forensic recovery. We have conducted interviews and done technical examination to attempt to understand how that sorting was done by her attorneys. Although we do not have complete visibility because we are not able to fully reconstruct the electronic record of that sorting, we believe our investigation has been sufficient to give us reasonable confidence there was no intentional misconduct in connection with that sorting effort.

*Id.* Mr. Comey's last assertion is dubious, and the matter requires further investigation. For starters, Mr. Kendall is a senior attorney at Williams & Connolly, LLP, and Ms. Mills formerly worked as a litigator at Hogan & Hartson, now Hogan Lovells, LLP. Both are

large national law firms that routinely handle document productions totaling hundreds of thousands and even millions of pages. Any first-year associate at such a firm knows that each document must be reviewed individually. Relatedly, no self-respecting trial judge would accept the excuse that attorneys destroyed evidence because they didn't read the evidence before destroying it.

Furthermore, we now have documentary evidence that the search was not conducted in good faith. On August 30, 2016, the State Department revealed that 30 of the deleted emails related to Benghazi. This begs a question: did the purported email search include terms like "Benghazi," and do the recovered emails include obvious words like "Benghazi." Recall that the chairman of the Select Committee on Benghazi had requested all such emails in a December 2, 2015 letter to Mr. Kendall, shortly before Mr. Kendall and his colleagues deleted the emails. In other words, the respondent attorneys deleted emails that they knew were subject to the Congressional investigation, which means they destroyed or attempted to destroy evidence. It is also worth noting that the respondent attorneys used a special software program designed to insure that forensic investigators could not recover the emails. If the deleted emails were only personal communications about yoga and wedding plans, as Mrs. Clinton claimed, then her attorneys would not have gone to such extraordinary lengths to prevent them from being recovered.

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). Rule 3.9 explicitly indicates that Rule 3.4(a) applies to legislative proceedings. The respondent attorneys therefore violated Rule 3.4(a) in at least two ways: (1) they failed to turn over evidence that belonged to the State Department, and (2) they destroyed the evidence being sought by the Congressional committee. Furthermore, the rule prohibits destruction of evidence "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."

Not surprisingly, the FBI, the State Department, and the Office of the Inspector General for the Intelligence Community began investigating Ms. Clinton's email arrangement shortly after it was revealed. Thus any lawyer in the position of the respondent attorneys should have known that the emails would be evidence in the "imminent proceeding[s]" that followed. Moreover, some of the deleted emails apparently pertained to a "pay-for-play" scheme wherein Mrs. Clinton gave greater access and preferential treatment to individuals and organizations that donated large sums

of money to the foundations associated with her family. *See, e.g., "Many donors to Clinton Foundation met with her at State," Associated Press, August 24, 2016* ([https://www.yahoo.com/news/many-donors-clinton-foundation-met-her-state-183315225-election.html?soc\\_src=mail&soc\\_trk=ma](https://www.yahoo.com/news/many-donors-clinton-foundation-met-her-state-183315225-election.html?soc_src=mail&soc_trk=ma)). That corrupt arrangement is reportedly under investigation by the FBI, as one would expect. *See "Joint FBI-US Attorney Probe of Clinton Foundation is underway," Daily Caller, August 11, 2016* (<http://dailycaller.com/2016/08/11/exclusive-joint-fbi-us-attorney-probe-of-clinton-foundation-is-underway>). Once again, the respondent attorneys should have known that the deleted emails would be evidence in such an investigation.

While Mr. Comey might argue that the respondent attorneys lacked any criminal intent to destroy evidence, and he may or may not be right, that does not exonerate them for purposes of professional discipline. Attorneys may be disciplined for conduct that is merely reckless, *see, e.g., In re Wilkins*, 649 A.2d 557 (D.C. 1994) and *Matter of Shorter*, 570 A.2d 760, 768 (D.C. 1990), and the deletion of the Benghazi emails was reckless at the very least.

In addition to Rule 3.4(a), the respondent attorneys violated Rule 8.3 by failing to report one another's misconduct to the appropriate disciplinary authorities. They 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, the respondent attorneys may have perpetrated multiple felonies by destroying evidence pertinent to a Congressional investigation as well as various impending Executive Branch investigations. *See* 18 U.S. Code §§ 1505 and 1519. Finally, the respondent attorneys violated Rule 8.4(c) by engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation."

Mr. Kendall, Ms. Mills, and Ms. Samuelson should be directed to produce all records, documents, and communications in their possession related to the destruction of emails from Mrs. Clinton's server, including their communications with one another and with Mrs. Clinton. Under the crime-fraud exception, those communications would not be subject to the protections of attorney-client privilege. *See In re Public Defender Service*, 831 A.2d 890 (D.C. 2003).

Finally, I should note that Mr. Kendall was the chairman of the Committee on Grievances for the U.S. District Court for the District of Columbia at the very time the emails were being destroyed, thus his misconduct is particularly inexcusable. I declare under penalty of perjury that the foregoing factual statements are true and correct to the best of my knowledge, as witnessed by my signature below.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a stylized, flowing script.

Ty Clevenger

## Exhibit 3

TY CLEVENGER  
21 Bennett Avenue #62  
New York, New York 10033

telephone: 979.985.5289  
facsimile: 979.530.9523

*tyclevenger@yahoo.com*  
*Texas Bar No. 24034380*

September 7, 2016

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:

In a letter dated August 31, 2016, I filed bar grievances against the following three attorneys:

David E. Kendall  
Williams & Connolly LLP  
725 12th Street NW  
Washington DC 20005-3901

Cheryl D. Mills  
5404 Wisconsin Avenue, Suite 1150  
Chevy Chase MD 20815

Heather Faye Samuelson  
2125 14th Street NW, Apt. 320  
Washington, DC 20009

I wish to update that grievance. I incorporate by reference the September 6, 2016 letter from Congressman Jason Chaffetz, chairman of the House Government Oversight Committee, to Channing Phillips, United States Attorney for the District of Columbia, wherein Congressman Chaffetz sought a criminal investigation for obstruction of justice. The letter can be found at <https://oversight.house.gov/wp-content/uploads/2016/09/US-Attorney-for-District-of-Columbia-Letter.pdf>.

With respect to Ms. Mills in particular, I would direct your attention to a May 14, 2016 column by former federal prosecutor Andrew McCarthy as well as a September 2, 2016 column written by Mr. McCarthy. Both columns were published on the *National Review* website ([www.nationalreview.com](http://www.nationalreview.com)) and they can be found at <http://tinyurl.com/jlvma8s> and <http://tinyurl.com/jbfmhl2> respectively. I incorporate them both by reference.

For the reasons set forth in Mr. McCarthy's columns, it appears that Ms. Mills violated D.C. Rule of Professional Conduct 1.11(a) insofar as she represented Mrs. Clinton in matters the same as or substantially similar to "a matter in which the lawyer participated personally and substantially as a public officer or employee." Ms. Mills was personally involved with Mrs. Clinton's secret email system while working for the State Department, but she subsequently represented Mrs. Clinton in the FBI and Congressional investigations into that email system. Ms. Samuelson also worked for Mrs. Clinton at the State Department from 2009 to 2013, and she subsequently represented Mrs. Clinton in matters related to Mrs. Clinton's work at the State Department.

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

## Exhibit 4

TY CLEVENGER  
21 Bennett Avenue #62  
New York, New York 10033

telephone: 979.985.5289  
facsimile: 979.530.9523

*tyclevenger@yahoo.com*  
*Texas Bar No. 24034380*

September 9, 2016

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:

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5404 Wisconsin Avenue, Suite 1150  
Chevy Chase MD 20815

Heather Faye Samuelson  
2125 14th Street NW, Apt. 320  
Washington, DC 20009

I updated those grievances in a letter dated September 7, 2016, and I wish to update those grievances once again.

I would direct your attention to an August 15, 2016 letter wherein the chairmen of the Judiciary Committee and Government Oversight Committee of the U.S. House of Representatives referred Mrs. Clinton to the U.S. Attorney's Office in Washington, D.C. for investigation and possible prosecution for perjury. The letter can be found at <https://oversight.house.gov/wp-content/uploads/2016/08/2016-08-15-JEC-BG-to-Phillips-USAO-DC-Perjury-Investigation.pdf>, and I incorporate it herein by reference. During Mrs. Clinton's October 22, 2015 Congressional testimony, the respondent attorneys were present and seated behind her. Mrs. Clinton falsely testified that her attorneys had read each and every email before deleting some of them, and the respondent attorneys would have known that her testimony was false, yet they failed to correct that false testimony. The respondent attorneys therefore violated D.C. Rule 3.3(d), which states that a lawyer "who receives information clearly establishing that a fraud has



been perpetrated upon the tribunal shall promptly take reasonable remedial measures, including disclosure to the tribunal to the extent disclosure is permitted by Rule 1.6(d).” See D.C. Rule 3.9 (applying Rule 3.3 to legislative proceedings).

Furthermore, according to the FBI's report on its investigation, the respondent attorneys refused to indicate the search criteria that they used while reviewing Mrs. Clinton's emails, citing attorney-client privilege. See “Clinton Email Investigation,” <https://vault.fbi.gov/hillary-r.-clinton>. That means they refused to say whether they had searched for terms like “Benghazi,” and you will recall from my August 31, 2016 letter that 30 emails about Benghazi apparently were deleted by the respondent attorneys *after* a Congressional committee requested their preservation. In other words, it looks like the respondent attorneys have used (and are still using) attorney-client privilege to hide the crimes and fraudulent activities that they perpetrated in conjunction with their client, namely the destruction of thousands of pages of evidence.

In my September 7, 2016 letter, I incorporated two columns by former federal prosecutor Andrew McCarthy wherein he explained how Ms. Mills improperly asserted attorney-client privilege to impede the FBI investigation. It is now clear that the respondent attorneys are using attorney-client privilege to cover up their roles in various crimes and frauds perpetrated in conjunction with their client, therefore the privilege should be waived under the crime-fraud exception.

Thank you for your attention to these matters.

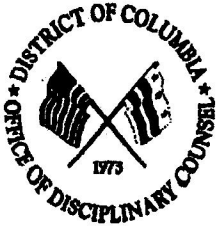
Respectfully,

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

Ty Clevenger

P.S. I am traveling and will not return to New York until October 3, 2016. If you wish to mail something to me between now and then, please send it to my attention at 1095 Meadow Hill Drive, Lavon, Texas 75166. You may also fax correspondence to me at 979-530-9523, or email it to me at [tyclevenger@yahoo.com](mailto:tyclevenger@yahoo.com).

## Exhibit 5



## OFFICE OF DISCIPLINARY COUNSEL

October 14, 2016

Wallace E. Shipp, Jr.  
*Disciplinary Counsel*

Elizabeth A. Herman  
*Deputy Disciplinary Counsel*

Senior Assistant Disciplinary Counsel  
Jennifer Lyman  
Julia L. Porter

Assistant Disciplinary Counsel  
Joseph N. Bowman  
Gayle Marie Brown Driver  
Hamilton P. Fox, III  
Becky Neal  
Dolores Dorsainvil Nicolas  
Sean P. O'Brien  
Joseph C. Perry  
William Ross  
Clinton R. Shaw, Jr.  
H. Clay Smith, III  
Traci M. Tait

Senior Staff Attorney  
Lawrence K. Bloom  
Caroll G. Donayre  
Jelani Lowery

Manager, Forensic Investigations  
Charles M. Anderson

Senior Forensic Investigator  
Kevin E. O'Connell

**CONFIDENTIAL**

Ty Clevenger, Esquire  
1095 Meadow Hill Drive  
Lavon, TX 75166

Re: Kendall/Clevenger 2016-U328  
Mills/Clevenger 2016-U329  
Samuels/Clevenger 2016-U330

Dear Mr. Clevenger:

We have reviewed the disciplinary complaints that you filed against David E. Kendall, Esquire; Cheryl D. Mills, Esquire; and Heather F. Samuelson, Esquire, dated August 31, 2016, and the additional letters dated September 7, 2016, and September 9, 2016. You state that the attorneys represented and/or assisted Hillary R. Clinton, Esquire in "deleting thousands of emails that had been stored on a secret email server." You believe the attorneys did so in an attempt to impede a federal investigation.

Upon review, we decline to open a full investigation of this matter. It appears that your concerns were investigated by the Federal Bureau of Investigation ("FBI"). The FBI and prosecutors declined to file charges against Ms. Clinton, her attorney, or those who allegedly assisted her in deleting the emails. We are satisfied that the misconduct alleged was properly reviewed.

Accordingly, we decline to proceed further and have closed our file. Thank you for bringing your concerns to our attention.

Sincerely,

Elizabeth Herman  
Deputy Disciplinary Counsel

EAH: AW

## Exhibit 6

TY CLEVENGER  
21 Bennett Avenue #62  
New York, New York 10033

telephone: 979.985.5289  
facsimile: 979.530.9523

tyclevenger@yahoo.com  
Texas Bar No. 24034380

October 31, 2016

Mr. Wallace E. Shipp, Jr., Disciplinary Counsel  
Office of Disciplinary Counsel  
515 5th Street NW, Building A, Suite 117  
Washington, DC 20001

Re:	Kendall / Clevenger	2016-U328
	Mills / Clevenger	2016-U329
	Samuelson / Clevenger	2016-U330

Mr. Shipp:

I write in response to Elizabeth Herman's October 14, 2016 letter regarding the cases listed above. I just received the letter on Friday, and I am appalled. In an attempt to justify her refusal to investigate whether David E. Kendall, Cheryll D. Mills and Heather F. Samuelson destroyed evidence related to Hillary Clinton's private email server, Ms. Herman wrote the following:

*It appears that your concerns were investigated by the Federal Bureau of Investigation ("FBI"). The FBI and prosecutors declined to file charges against Ms. Clinton, her attorney, or those who allegedly assisted her in deleting the emails. We are satisfied that the misconduct alleged was properly reviewed.*

Well, forgive me and a couple hundred million of my fellow citizens (plus a majority of the members in both houses of Congress) if we are not "satisfied that the misconduct alleged was properly reviewed." After all, the FBI itself is no longer "satisfied that the misconduct alleged was properly reviewed."

As you are likely aware, the FBI announced on Friday that it was reopening its investigation into Ms. Clinton's emails. See Rosalind S. Helderman, Matt Zapotosky and Sari Horwitz, "Computer seized in Weiner probe prompts FBI to take new steps in Clinton email inquiry," *Washington Post*, October 28, 2016 (<http://tinyurl.com/jb98lg7>). Even before that development, however, Ms. Herman's refusal to investigate was indefensible. I suspect most first-year lawyers could spot the flaws in her legal analysis:

1. The standard of proof for professional misconduct is substantially lower than that for a criminal conviction, *i.e.*, "clear and convincing evidence" versus "proof beyond a reasonable doubt." Thus your office might be able to prove professional misconduct by clear and convincing evidence even if the FBI could not prove guilt beyond a reasonable doubt.

2. The elements of a Espionage Act violation are fundamentally different from the elements of the alleged professional rules violations.
3. The *mens rea* for a criminal act versus a professional rules violation is fundamentally different. FBI Director James Comey indicated that he did not seek criminal charges against Mrs. Clinton and her cronies because there was no proof of intent to violate the Espionage Act (even though the statute itself does not require any intent beyond mere negligence). To prove a violation of the professional rules, however, your office need only prove recklessness.

Furthermore, the FBI's investigation apparently was targeted at violations of the Espionage Act, not obstruction of justice by the respondent attorneys. There is no indication that Mr. Kendall was investigated by the FBI *at all*, for example, even though the FBI's own records implicate Mr. Kendall in the destruction of evidence. Accordingly, it is preposterous for Ms. Herman to suggest that the FBI and the Justice Department somehow cleared Mr. Kendall when they had never investigated him in the first place.

Equally problematic is Ms. Herman's blind confidence in the FBI and Justice Department. Even before the FBI's about face on Friday, I had already provided evidence that the FBI investigation was fundamentally tainted. On October 19, 2016, I emailed Ms. Herman an October 5, 2016 letter from four Congressional committee chairman to U.S. Attorney General Loretta Lynch regarding Ms. Lynch's role and Mr. Comey's role in the destruction of evidence. The letter can be found at <http://tinyurl.com/gtkl2ap>. As indicated in that letter, both Ms. Lynch and Mr. Comey were *personally* involved in the destruction of evidence sought by Congress, specifically the destruction of laptops belonging to Ms. Mills and Ms. Samuelson.

To an outside observer, it appears that Ms. Lynch and Mr. Comey destroyed evidence to protect others who destroyed evidence, namely Mr. Kendall, Ms. Mills, Ms. Samuelson and, ultimately, Mrs. Clinton. For that reason, I filed bar grievances against Ms. Lynch and Mr. Comey in New York, where they are both admitted to practice. See October 20, 2016 Letter from Ty Clevenger to Grievance Committee of the U.S. District Court, S.D.N.Y. (<http://tinyurl.com/hffys78>). If Ms. Lynch and Mr. Comey were aiding and abetting the suspects they were investigating, as the evidence suggests, then it should come as no surprise that the suspects were exonerated. Either way, the FBI's refusal to recommend charges says nothing about whether the respondent attorneys violated the professional rules.

A more fundamental problem is Ms. Herman's seeming disregard for the rules governing your office, particularly D.C. Bar Rule XI(6)(a)(2). That rule imposes a duty to "investigate all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction of this Court which may come to the attention of Disciplinary Counsel or the Board from any source whatsoever, where the apparent facts, if true, may warrant discipline." As a matter of standard practice, your office requires attorneys to respond in writing to misconduct complaints whenever those complaints state a *prima facie* violation of the professional rules. In this case, however, Ms. Herman bypassed the normal practice and dismissed my complaints out of hand without any genuine investigation. Why?

According to Federal Election Commission records, Ms. Herman made two donations of \$250 each to President Obama's campaign during the 2008 election cycle, and a donation of \$200 and \$250 during the 2012 election cycle. It's a good bet that Ms. Herman will be supporting Mrs. Clinton in the current election cycle, thus it appears that Ms. Herman dismissed my misconduct complaints in order to protect her party's Presidential candidate.

Finally, I noticed the following phrase on the envelope that contained Ms. Herman's October 14, 2016 letter: "Serving the Community, and Upholding the Integrity of the Bar." How ironic. I need not tell you that confidence in our public institutions is declining precipitously, as witnessed by the fact that both Republicans and Democrats have now lost confidence in the FBI and its director. If Ms. Herman is allowed to whitewash the misconduct of Mr. Kendall, Ms. Mills, and Ms. Samuelson, that will inevitably undermine public confidence in your office, and it will add to the growing perception that people with the right political connections can get away with almost anything. Accordingly, I ask that you re-open the cases listed above and assign them to another attorney.

Please let me know by November 7, 2016 whether your office intends to take further action. Since Rule XI imposes mandatory duties on your office, I will likely seek mandamus relief from the Court of Appeals if I do not receive a response by that time. Thank you in advance for your consideration.

Respectfully,

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

Ty Clevenger

cc: District of Columbia Court of Appeals  
District of Columbia Board on Professional Responsibility

## Exhibit 7



TY CLEVENGER  
21 Bennett Avenue #62  
New York, New York 10033

telephone: 979.985.5289  
facsimile: 979.530.9523

tyclevenger@yahoo.com  
Texas Bar No. 24034380

October 31, 2016

Board on Professional Responsibility  
430 E Street NW, Suite 138  
Washington, DC 20001

Members of the Board:

I have enclosed a copy of a letter that I sent to Disciplinary Counsel Wallace E. Shipp, Jr. regarding three cases that were dismissed by his deputy, Elizabeth Herman. For the reasons set forth in that letter, I believe the Office of Disciplinary Counsel ("ODC") is in violation of D.C. Bar Rule XI(6)(a)(2), and I will likely seek mandamus relief if the problem is not corrected.

I provided the ODC with evidence that attorneys David Kendall, Cheryl Mills, and Heather Samuelson destroyed evidence while representing Hillary Clinton, but it seems Ms. Herman is more interested in protecting her party's Presidential candidate. My original August 31, 2016 bar grievance can be found at <http://tinyurl.com/hsm69oh>, the September 7, 2016 update can be found at <http://tinyurl.com/gobvmor>, and the September 9, 2016 update can be found at <http://tinyurl.com/hvtvzf>.

In addition to the duties imposed on ODC, D.C. Bar Rule XI(4)(e) imposes a separate duty on the board to "consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effect the purposes of this rule." I therefore request that you initiate an investigation of Mr. Kendall, Ms. Mills, and Ms. Samuelson, or direct ODC to initiate such an investigation.

Thank you in advance for your consideration.

Respectfully,

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

Ty Clevenger

cc: District of Columbia Court of Appeals  
Mr. Wallace E. Shipp, Jr.