

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

MOTION TO COMPEL and REQUEST FOR HEARING

NOW COMES Ty Clevenger, the Petitioner, moving the Court to compel the Respondents to produce documents and further moving the Court to hold an evidentiary hearing:

Background

At a hearing on September 11, 2017 and in a written order dated September 22, 2017, the Court directed the Attorney Grievance Commission of Maryland (“AGCM”) to investigate the Petitioner’s misconduct complaint against attorneys David Kendall, Cheryl Mills, and Heather Samuelson. In past practice, the Office of Bar Counsel (“OBC”) sent letters to attorneys who were under investigation, *see* Administrative and Procedural Guidelines of the Maryland Attorney Grievance Commission Rule 4.14 (“Ordinarily, the Respondent shall be provided with correspondence from the Complainant which alleges misconduct on the part of the Respondent”). As best as the Petitioner can recall, those letters directed the respondent attorneys to (1) respond in writing to the complainant’s allegations and (2) provide a copy to the OBC and

the complainant.¹ On October 5, 2017, the Petitioner sent the following email message to

Respondents' Counsel:

Normally, the AGCM sends a letter to the attorney respondent asking him/her to respond to the grievance and to provide a copy of the response to the complainant. Would you mind asking your client if that will be done in this case? Thanks.

October 5, 2017 Email from Ty Clevenger to Alexis Rhode (Exhibit 2). The following day, Respondent's Counsel wrote in an email that she would forward the question to her client. See October 6, 2017 Email from Alexis Rhode to Ty Clevenger (Exhibit 3).

On October 10, 2017, the Petitioner asked Respondent's Counsel if she had received a response from her client. See October 10, 2017 Email from Ty Clevenger to Alexis Rhode (Exhibit 4). Respondent's Counsel did not respond to the email. The Petitioner followed up again with a voicemail on the morning of October 12, 2017, and then an email on the afternoon of October 12, 2017:

I gather the commission is not planning to share the responses with me per usual practice, so I am planning to file a motion to compel on Monday. I realize you will have to oppose, but please confirm for conference purposes. Thank you.

October 12, 2017 email from Ty Clevenger to Alexis Rhode (Exhibit 5). As of today's date, the Petitioner has not received a response.

Argument

In light of the foregoing facts, the Petitioner can surmise only two possibilities: (1) the AGCM and OBC are conducting a sham investigation and do not intend to request written responses from Mr. Kendall, Ms. Mills, or Ms. Samuelson, or (2) the AGCM and/or OBC have

¹ The Petitioner previously filed misconduct complaints against three other Maryland attorneys, and the Petitioner still has copies of the responses that were copied to him by the respondent attorneys. The Petitioner declares under penalty of perjury that this statement is true and correct, as witnessed by his signature below. The Petitioner further declares that he will file those letters or bring them to an evidentiary hearing if so directed by the Court.

requested written responses to the Petitioner's complaint, but they do not intend to share those written responses with the Petitioner. In either case, the Respondents would not be complying with this Court's September 22, 2017 order in good faith. Furthermore, the Respondents would be violating the Petitioner's First and Fourteenth Amendment Rights.

The Petitioner “petitioned for redress of grievances” per the First Amendment when he filed suit asking this Court to order the Respondents to follow the law. *See Garcia v. Montgomery Cty., Maryland*, 145 F. Supp. 3d 492, 514 (D. Md. 2015). Furthermore, the Petitioner exercised his free-speech rights when he publicly criticized the Respondents for trying to whitewash the criminal misconduct of three politically prominent lawyers, *i.e.*, Mr. Kendall, Ms. Mills, and Ms. Samuelson. *See, e.g.*, Debra Cassens Weiss, “Maryland judge orders ethics investigation of Hillary Clinton lawyers over deleted emails,” *American Bar Association Journal*, September 12, 2017, http://www.abajournal.com/news/article/maryland_judge_orders_ethics_investigation_of_hillary_clinton_lawyers_over/, citing Stephen Dinan, “Judge orders Maryland bar to investigate lawyers who helped Clinton delete emails,” *The Washington Times*, September 11, 2017, <http://www.washingtontimes.com/news/2017/sep/11/judge-order-clinton-lawyers-face-bar-investigation/> and Chase Cook, “Anne Arundel judge orders investigation into three of Hillary Clinton's attorneys,” *Baltimore Sun*, September 11, 2017, <http://www.baltimoresun.com/news/maryland/anne-arundel/ac-cn-clinton-emails-20170912-story.html>. In response, the Respondents engaged in First Amendment retaliation by denying the Petitioner the same rights as other complainants, *i.e.*, by refusing to conduct a legitimate investigation or by denying the Petitioner access to the written responses of Mr. Kendall, Ms. Mills, and Ms. Samuelson. *See, generally, Garcia*, 145 F. Supp. 3d at 514. Likewise, the Respondents have treated the Petitioner

differently from other similarly-situated complainants, thus denying him the equal protection of the laws guaranteed by the Fourteenth Amendment. *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001) (“To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination”).

Request for Relief

The Petitioner asks the Court to convene an evidentiary hearing to determine whether the Respondents are (1) defying the Court's September 22, 2017 Order, and/or (2) violating the constitutional rights of the Petitioner. The Petitioner further asks the Court to compel the following four officials to appear as witnesses: (1) Linda H. Lamone, Chair of the AGCM; (2) Marianne J. Lee, Executive Director of the AGCM; (3) Lydia E. Lawless, Bar Counsel; and (4) Raymond A. Hein, Deputy Bar Counsel. Ms. Lamone and Ms. Lee have held their respective positions at all times relevant to this case. Ms. Lawless is the current bar counsel, while Mr. Hein was the acting bar counsel at times relevant to this case. He signed the September 27, 2016 letter rejecting the Petitioner's misconduct complaint. *See* Exhibit 4 to Petition for Writ of Mandamus. If the Court determines that the Respondents are defying its September 22, 2017 order or violating the constitutional rights of the Petitioner, the Petitioner urges the Court to grant equitable relief. In particular, the Respondents should be directed to compel Mr. Kendall, Ms. Mills, and Ms. Samuelson to respond in writing to the Petitioner's misconduct complaint, further directing that such written responses should be shared with the Petitioner per normal practice. Finally, the Petitioner requests permission to amend his petition to reflect the fact that the Respondents are violating his First and Fourteenth Amendment rights.

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 Rhode, counsel for the Respondents, at arohde@oag.state.md.us on October 16, 2017.



Ty Clevenger

Exhibit 1

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

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vs.

**ATTORNEY GRIEVANCE
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Respondents

Case No. C-02-CV-16-003620

DECLARATION OF TY CLEVINGER

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 on this 16th day of October, 2017:

- (1) I am the Petitioner in the case identified above.
- (2) Exhibit 2 is a true and correct copy of an October 5, 2017 Email from Ty Clevenger to Alexis Rhode.
- (3) Exhibit 3 is a true and correct copy of an October 6, 2017 Email from Alexis Rhode to Ty Clevenger.
- (4) Exhibit 4 is a true and correct copy of an October 10, 2017 Email from Ty Clevenger to Alexis Rhode. Ms. Rhode has not responded.
- (5) Exhibit 5 is a true and correct copy of an October 12, 2017 Email from Ty Clevenger to Alexis Rhode. Ms. Rhode has not responded.

THE DECLARANT SAYS NOTHING FURTHER.

Respectfully submitted,



Exhibit 2

Subject: Clevenger v. AGMC, Case No. C-02-CV-16-003620 (Anne Arundel Circuit Court)

From: Ty Clevenger (tyclevenger@yahoo.com)

To: arohde@oag.state.md.us;

Date: Thursday, October 5, 2017 11:25 AM

Alexis,

Normally, the AGCM sends a letter to the attorney respondent asking him/her to respond to the grievance and to provide a copy of the response to the complainant. Would you mind asking your client if that will be done in this case? Thanks.

Ty

Exhibit 3

Subject: RE: Clevenger v. AGMC, Case No. C-02-CV-16-003620 (Anne Arundel Circuit Court)

From: Rohde, Alexis (arohde@oag.state.md.us)

To: tycclevenger@yahoo.com;

Date: Friday, October 6, 2017 9:23 AM

Hi Ty,

I will forward this to my client.

Thanks,

Alexis

Alexis B. Rohde

Assistant Attorney General

Office of the Attorney General

200 St. Paul Place, 20th Floor

Baltimore, MD 21202

410-576-7293

arohde@oag.state.md.us

From: Ty Clevenger [mailto:tycclevenger@yahoo.com]
Sent: Thursday, October 5, 2017 11:25 AM
To: Rohde, Alexis <arohde@oag.state.md.us>
Subject: Clevenger v. AGMC, Case No. C-02-CV-16-003620 (Anne Arundel Circuit Court)

Alexis,

Normally, the AGCM sends a letter to the attorney respondent asking him/her to respond to the grievance and to provide a copy of the response to the complainant. Would you mind asking your client if that will be done in this case? Thanks.

Ty

Exhibit 4

Subject: Re: Clevenger v. AGMC, Case No. C-02-CV-16-003620 (Anne Arundel Circuit Court)

From: Ty Clevenger (tyclevenger@yahoo.com)

To: arohde@oag.state.md.us;

Date: Tuesday, October 10, 2017 1:53 PM

Any response from your client?

From: "Rohde, Alexis" <arohde@oag.state.md.us>
To: Ty Clevenger <tyclevenger@yahoo.com>
Sent: Friday, October 6, 2017 9:23 AM
Subject: RE: Clevenger v. AGMC, Case No. C-02-CV-16-003620 (Anne Arundel Circuit Court)

Hi Ty,

I will forward this to my client.

Thanks,
Alexis

Alexis B. Rohde
Assistant Attorney General
Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, MD 21202
410-576-7293
arohde@oag.state.md.us

From: Ty Clevenger [mailto:tyclevenger@yahoo.com]
Sent: Thursday, October 5, 2017 11:25 AM
To: Rohde, Alexis <arohde@oag.state.md.us>
Subject: Clevenger v. AGMC, Case No. C-02-CV-16-003620 (Anne Arundel Circuit Court)

Alexis,

Normally, the AGCM sends a letter to the attorney respondent asking him/her to respond to the grievance and to provide a copy of the response to the complainant. Would you mind asking your client if that will be done in this case? Thanks.

Ty

Exhibit 5

Subject: Clevenger v. AGCM

From: Ty Clevenger (tyclevenger@yahoo.com)

To: arohde@oag.state.md.us;

Date: Thursday, October 12, 2017 3:54 PM

Alexis,

I gather the commission is not planning to share the responses with me per usual practice, so I am planning to file a motion to compel on Monday. I realize you will have to oppose, but please confirm for conference purposes. Thank you.

Ty