

ATTORNEY GRIEVANCE
COMMISSION, *et al.*,
Petitioners,

v.

TY CLEVINGER,
Respondent.

* IN THE
* COURT OF APPEALS
* OF MARYLAND
* September Term, 2017
* Petition Docket No. ____

* * * * *

**MOTION FOR IMMEDIATE STAY PENDING FURTHER REVIEW
TO BE FILED UNDER SEAL**

Pursuant to Maryland Rule 8-303(e), the Attorney Grievance Commission and Bar Counsel (collectively “the Commission”), through undersigned counsel, move for an immediate stay of the September 22, 2017 order of the Circuit Court for Anne Arundel County granting a writ of mandamus directing the Commission to investigate “David E. Kendall, Cheryl D. Mills, and Heather Faye Samuelson,” attorneys for the former Secretary of State, Hillary Rodham Clinton. The circuit court’s order is attached to this motion as Exhibit 1 (hereinafter exhibits to this motion will be designated as “Mot. Stay Ex. __”).

This motion requires this Court’s immediate attention for three reasons: (1) in issuing a writ directing the Commission to investigate three attorneys, the circuit court usurped this Court’s exclusive original jurisdiction over “attorney disciplinary matters arising from the conduct of a member of the Maryland State Bar”; (2) Ty Clevenger, the plaintiff below and respondent in this Court, has moved to compel compliance with the circuit court’s order; and (3) absent a stay from this Court, the Commission will be required to conduct an investigation of three attorneys that is not warranted under the Rules, and

which impermissibly impedes Bar Counsel's discretionary decision to decline to investigate the complaint. Any relief later granted by this Court in consideration of the pending appeal and petition for writ of certiorari would be rendered nugatory as the Commission's limited resources would have already been expended in conducting the investigation.¹

On October 16, 2017, Mr. Clevenger filed a motion seeking to compel compliance with the circuit court's September 22, 2017 order.² Mot. Stay. Ex. 2. In his motion to compel, Mr. Clevenger seeks an order from the circuit court (1) "compelling Mr. Kendall, Ms. Mills, and Ms. Samuelson to respond in writing to [Mr. Clevenger's] misconduct complaint; (2) "directing that such written responses should be shared with [Mr. Clevenger] per normal practice"; and (3) permitting Mr. Clevenger "to amend his petition to reflect the fact that the [Commission and Bar Counsel] are violating his First and Fourteenth Amendment rights." Mot. Stay. Ex. 2, at 4. Because he lacks evidentiary support for his motion to compel, Mr. Clevenger's motion also seeks an evidentiary hearing "to determine whether the [Commission and Bar Counsel] are (1) defying the Court's September 22, 2017 Order, and/or (2) violating the constitutional rights of [Mr. Clevenger]." Mot. Stay. Ex. 2,

¹ The Attorney Grievance Commission's most recent Annual Report, covering July 1, 2015 to June 30, 2016, reflects that in Fiscal Year 2016 the Commission received 1,835 complaints, and conducted 339 investigations. During that time, 98 attorneys were sanctioned. Attorney Grievance Commission of Maryland, Annual Report Fiscal Year 2016 (available at <http://mdcourts.gov/attygrievance/docs/annualreport16.pdf> (last visited Oct. 20, 2017)).

² Mr. Clevenger filed his motion to compel before the expiration of the 30-day period in which to seek appellate review and the filing of petitioners' notice of appeal and petition for writ of certiorari.

at 5. Mr. Clevenger's motion requests the circuit court to compel four Commission officials to appear as witnesses at the requested evidentiary hearing: (1) Linda H. Lamone, Chair of the Commission; (2) Marianne J. Lee, Executive Director of the Commission; (3) Lydia E. Lawless, Bar Counsel; and (4) Raymond A. Hein, Deputy Bar Counsel. Mot. Stay. Ex. 2 at 5.

An immediate stay of the September 22, 2017 order and a stay of the proceedings in the lower court is necessary to prevent ongoing collateral litigation while this Court properly considers and resolves the issues raised in the appeal and petition for writ of certiorari.

The Commission, therefore, respectfully requests that this Court stay the order entered in *Ty Clevenger v. Attorney Grievance Commission* by the Circuit Court for Anne Arundel County on September 22, 2017, and further proceedings in the lower court, pending further order of this Court.

Respectfully submitted,

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