ATTORNEY GRIEVANCE COMMISSION OF MARYLAND, et al.,	
Petitioners,	**IN THE COURT OF APPEALS OF MARYLAND**
vs.	**September Term, 2017**
TY CLEVENGER	
Respondent	

MOTION FOR RECUSAL

NOW COMES Ty Clevenger, the Respondent, moving the judges of this Court, namely The Honorable Mary Ellen Barbera, The Honorable Clayton Greene, Jr., The Honorable Sally D. Adkins, The Honorable Robert N. McDonald, The Honorable Shirley M. Watts, The Honorable Michele D. Hotten, and The Honorable Joseph M. Getty, to recuse themselves from the case listed above. In support of his motion, the Respondent submits the following:

Introduction

Earlier this year, Bar Counsel sought authority to reject an attorney misconduct complaint on the basis of the "particular political or ideological persuasion" of the complainant. The proposed amendments to Maryland Rule 19-711 appear to have been targeted directly at the Respondent, but at the very least they were targeted at complainants (like the Respondent) whose viewpoints or activism Bar Counsel does not like. Either way, Bar Counsel engaged in blatant viewpoint discrimination in violation of the First Amendment to the U.S. Constitution. Making matters worse, the Court ratified that viewpoint discrimination by adopting the requested rule change, even after Bar Counsel's discriminatory intent was revealed to the members of the Court in writing. The Respondent wishes to challenge the constitutionality of Rule 19-711, but at

present he must do so before judges who adopted the rule despite its publicly-stated purpose of discriminating against perceived political activists like him, and perhaps him personally. Furthermore, the rule change was proposed and adopted without notice to the Respondent, and now Bar Counsel asks the Court to apply the amended rule retroactively to moot the Respondent's claims. If the rule change was targeted at the Respondent, as it now appears, then the Petitioners communicated ex parte with the Court for the purpose of mooting the Respondent's claims. Given the Court's endorsement of viewpoint discrimination against the Respondent (or people like him) and given Bar Counsel's ex parte communications, the Court's impartiality might reasonably be questioned if its current judges were to decide this matter.

Background

On December 20, 2012, the Respondent filed a petition for mandamus in the Circuit Court of Anne Arundel against the Petitioners, *i.e.*, the Attorney Grievance Commission of Maryland and Office of Bar Counsel. *See* PETITION FOR MANDAMUS, *Ty Clevenger v. Attorney Grievance Commission, et al.*, Case No. C-02-CV-16-003620, Circuit Court of Anne Arundel County (Exhibit A). The Respondent alleged that the Petitioners flouted the rules of this Court in order to cover up criminal misconduct by three politically-influential attorneys, namely David Kendall, Cheryl Mills, and Heather Samuelson. *Id*. The attorneys represented former Presidential candidate Hillary Clinton, and publicly-available evidence indicates that they intentionally and illegally destroyed thousands of items of evidence. *Id*. On May 25, 2017, the Petitioners filed a motion to dismiss the underlying case, asserting many of the same arguments that they now assert in their Petition for Certiorari to this Court. *See* MOTION TO DISMISS PETITION FOR MANDAMUS (Exhibit B). Around the same time that the motion to dismiss was filed, Bar Counsel

lobbied this Court to change Maryland Rule 19-711, and it appears that they did so surreptitiously in order to change the outcome of this case, *i.e.*, to retroactively justify their dismissal of the grievances that the Respondent filed against Mr. Kendall, Ms. Mills, and Ms. Samuelson.

According to a June 7, 2017 report, Bar Counsel asked the Court's Standing Committee on Rules of Practice and Procedure to change Rule 19-711 to its current form:

> At the request of Bar Counsel, several amendments to Rule 19-711 are proposed... [Under the revised rule,] Bar Counsel may also decline a complaint from an individual who has no personal knowledge of the subject matter of a complaint but seeks to be designated as a complainant by filing a complaint based on publicly available information, often with some political motivation or agenda. Bar Counsel would like to have the authority to decline these complaints and not be required to provide these individuals with confidential responses from attorneys, who may be the subject of media reports, when the complainant appears to be driven by a particular political or ideological persuasion or a desire for self-publicity or both.

SUPPLEMENT TO 193RD REPORT, Standing Committee on Rules of Practice and Procedure, Maryland Court of Appeals, p. 57 (http://mdcourts.gov/rules/reports/193rdsupplement.pdf). That report was transmitted to this Court and Bar Counsel's request was granted. Curiously, the foregoing excerpt is reminiscent of an argument that Bar Counsel had made six weeks earlier in the May 25, 2017 motion to dismiss that she filed in the underlying case, namely that granting relief to the Respondent "would subject the AGC [*i.e.*, Attorney Grievance Commission] to the risk of becoming a political tool and would squander scarce resources would subject the AGC to the risk of becoming a political tool and would squander scarce resources." *See* MOTION TO DISMISS PETITION FOR MANDAMUS (Exhibit 2) at 6.[1] In other words, it appears that the rule change was targeted at the Respondent. After quietly persuading this Court to change the rule –

1 In reality, the Attorney Grievance Commission was already a political tool, which is precisely why the Respondent had to seek relief from the circuit court in the first place.

without any notice to the Respondent whatsoever – Bar Counsel is now seeking retroactive application of the rule. As set forth below, that creates an incurable conflict of interest for the members of this Court.

Legal Standard

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S. Ct. 1610, 1613, 64 L. Ed. 2d 182 (1980) A judge must recuse where "a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned." *Jefferson-El v. State*, 330 Md. 99, 109, 622 A.2d 737, 742 (1993), quoting *In re Turney*, 311 Md. 246, 253, 533 A.2d 916, 923 (1987).

Argument

An objective reading of the above quote from the June 7, 2017 report leaves no doubt that the furtive amendments to Rule 19-711 were designed to permit Bar Counsel to discriminate against members of the public based on their viewpoint or "motivation" for submitting a complaint – regardless of whether the complaint has merit. That sort of viewpoint discrimination plainly violates the First Amendment, namely its guarantee of free expression and the right to petition the government for redress of grievances. *See, e.g., Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218, 2223, 192 L.Ed. 2d 236 (2015) ("Government discrimination among viewpoints is a 'more blatant' and 'egregious form of content discrimination…") (citing *Rosenberger v. Rector and Visitors of the U. Va.*, 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed. 2d 700 (1995)); *Ridley v. Massachusetts Bay Transp. Auth.*, 390 F.3d 65, 82 (1st Cir. 2004) ("The bedrock principle of viewpoint neutrality demands that the state not suppress speech where the real rationale for the

restriction is disagreement with the underlying ideology or perspective that the speech expresses."). The judges of this Court were constructively aware and perhaps actually aware of Bar Counsel's unlawful intentions, because the June 7, 2017 report plainly expressed her intent to discriminate based on her assumptions about the "particular political or ideological persuasion" or activism of a given complainant. SUPPLEMENT TO 193RD REPORT at 57. By ratifying Bar Counsel's stated intent to discriminate against the Respondent or people like him, the judges of the Court have created a reasonable inference that they are biased against the Respondent or people like him.

That problem is compounded because the Respondent intends to challenge the constitutionality of Rule 19-711 both facially and as applied. *See Gaudiya Vaishnava Soc. v. City of Monterey*, 7 F. Supp. 2d 1034, 1041–42 (N.D. Cal. 1998)(discussing facial challenge versus as-applied challenge to city ordinance). By challenging Rule 19-711 as applied, the Respondent will be challenging the discriminatory practices of Bar Counsel as described above. *Id*. And since the Court ratified Bar Counsel's stated intention to discriminate against the Respondent or people like him, the individual judges would necessarily be required to adjudicate whether *they* discriminated against the Respondent while they were acting in an administrative / quasi-legislative capacity. In other words, the Court's adoption of the amended rule creates an appearance of bias, but the Respondent's as-applied challenge will implicitly force the individual judges to adjudicate whether they adopted that bias while they were acting in a non-judicial capacity.

Furthermore, even though the Court adopted the rule change in a non-judicial capacity, the Petitioners have forced an incurable conflict of interest on its judges by petitioning the Court

to change Rule 19-711 without notice to the Respondent and then asking the Court to apply it retroactively. "The essence of procedural due process is notice and an opportunity to be heard." *Simer v. Rios*, 661 F.2d 655, 679 (7th Cir. 1981), citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313-14, 70 S.Ct. 652, 656-57, 94 L.Ed. 865 (1950). The Respondent had no input on the rule change, even though the rule change apparently was designed to moot this case. If the Respondent had known that Bar Counsel was trying to preemptively fix the outcome of this case via an administrative rule change, he would have appeared and argued against it vigorously. Since he was not given notice, however, Bar Counsel was able to communicate ex parte with the Court on matters that affect the outcome of the case.

Finally, the Respondent would direct the Court's attention to published articles regarding the changes to Rule 19-711. Two newspapers considered the otherwise-obscure rule change to be newsworthy, and that's because there is an appearance of impropriety. *See* Stephen Dinan, "Hillary Clinton's lawyers defended by state of Maryland amid ethics probe," *The Washington Times*, October 16, 2017 (http://www.washingtontimes.com/news/2017/oct/16/maryland-defend-hillary-clinton-lawyers-cheryl-mil/)(Exhibit C) and Chase Cook, "Maryland Attorney General's Office appeals judge's order to investigate Clinton lawyers," *Capital Gazette*, October 24, 2017 (http://www.capitalgazette.com/news/government/ac-cn-clinton-lawyers-1025-story.html) (Exhibit D). Even if the members of the Court were duped into violating the Respondent's due process rights by Bar Counsel, as it now appears, any attempt to adjudicate the propriety of their own actions would create a conflict of interest and further appearances of impropriety. In other words, if the judges of this Court attempt to adjudicate this case, "a reasonable member of the

public knowing all the circumstances would be led to the conclusion that the judge[s'] impartiality might reasonably be questioned." *Jefferson-El*, 330 Md. at 109.

Conclusion

The Respondent's motions should be granted, and The Honorable Mary Ellen Barbera, The Honorable Clayton Greene, Jr., The Honorable Sally D. Adkins, The Honorable Robert N. McDonald, The Honorable Shirley M. Watts, The Honorable Michele D. Hotten, and The Honorable Joseph M. Getty should be recused from this case.

Respectfully submitted,

Ty Clevenger, Petitioner *Pro Se*
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CERTIFICATE OF SERVICE

I certify that a copy of this document was electronically served on Asst. Attorney General Alexis Rhode (arohde@oag.state.md.us) and Asst. Attorney General Michele McDonald (mmcdonald@oag.state.md.us), counsel for the Respondents, on November 4, 2017.

Ty Clevenger

Exhibit A

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. _____

PETITION FOR WRIT OF MANDAMUS

NOW COMES the Petitioner, Ty Clevenger, petitioning the Court for a writ of mandamus as set forth below:

Parties

1. Ty Clevenger is a member of the State Bar of Texas who resides at 21 Bennett Avenue #62, New York, New York 10033.

2. The Attorney Grievance Commission of Maryland (hereinafter "Commission") is a subdivision of the State of Maryland. It may be served with process at 200 Harry S. Truman Parkway, Suite 300, Annapolis, Maryland 21401. The Office of Bar Counsel (hereinafter "OBC") is an office within the Commission.

3. David E. Kendall is a member of the State Bar of Maryland and a real party in interest. He may be served with process at Williams & Connolly LLP, 725 12th Street NW, Washington DC 20005-3901.

4. Cheryl D. Mills is a member of the State Bar of Maryland and a real party in interest. She may be served with process at 5404 Wisconsin Avenue, Suite 1150, Chevy Chase, Maryland 20815.

5. Heather Samuelson is a member of the State Bar of Maryland and a real party in interest. She may be served with process at 2125 14th Street NW, Apt. 320, Washington, DC 20009.

Facts

6. On or about September 1, 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.

7. 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.

8. Shortly after September 27, 2016, the Petitioner received a letter from Raymond A. Hein, Deputy Bar Counsel, who wrote on behalf of OBC. Mr. Hein informed the Petitioner that his office would not investigate the misconduct complaints because "you have no personal knowledge of the allegations presented in your correspondence, nor are you a personally aggrieved client or party possessing material information that would assist this office in reviewing such allegations." A true and correct copy of that letter is attached as Exhibit 4 and incorporated herein by reference.

9. On or about October 17, 2016, the Respondent wrote to Mr. Hein, explaining that Maryland law permits anyone to file a misconduct complaint (regardless of whether they have personal knowledge or are personally aggrieved), and Maryland law further obligates the OBC to investigate. The Respondent further informed Mr. Hein that he intended to seek mandamus relief if the OBC did not act on the complaint. A true and correct copy of the Respondent's October 17, 2016 letter is attached as Exhibit 5 and incorporated herein by reference.

10. On or about October 24, 2016, the Petitioner received a letter from Mr. Hein indicating that the OBC would not reconsider its decision to dismiss the Petitioner's complaint. Mr. Hein further indicated that the would respond to any petition for mandamus that the Respondent filed. A true and correct copy of the October 24, 2016 letter is attached as Exhibit 6 and incorporated herein by reference.

Argument

11. As set forth in the Petitioner's October 17, 2016 letter (Exhibit 5), the OBC had no discretion to dismiss the Petitioner's complaint on grounds other than the merits. Maryland Rule 19-711(a) expressly permits *any* person to file a bar grievance, not just personally aggrieved clients or parties, or individuals with "personal knowledge of the allegations." According to Maryland Rule 19-711(b)(1), "Bar Counsel *shall* make an appropriate investigation of every complaint that is not facially frivolous or unfounded." (emphasis added). Furthermore:

> If Bar Counsel concludes that the complaint is either without merit or does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, Bar Counsel shall dismiss the complaint and notify the complainant of the dismissal. Otherwise, subject to subsection (b)(3) of this Rule, Bar Counsel *shall* (A) open a file on the complaint, (B) acknowledge receipt of the complaint and explain in writing to the complainant the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether reasonable grounds exist to believe the allegations of the complaint.

Maryland Rule 19-711(b)(2)(emphasis added). Nothing in the statute permits the OBC to dismiss a facially-valid complaint by hinting that maybe – just maybe – the OBC is going to investigate the respondent attorneys on its own initiative. The latter practice is unlawful, and it creates the appearance of a double standard, *i.e.*, it appears that the OBC protects politically-powerful lawyers like Mr. Kendall, Ms. Sims, and Ms. Samuelson from the embarrassment of a publicly-acknowledged investigation.

12. The Maryland Court of Appeals has repeatedly held that mandamus relief is appropriate where public officials refuse to follow the law:

> This Court has stated that judicial review is properly sought through a writ of mandamus "where there [is] no statutory provision for hearing or review and where public officials [are] alleged to have abused the discretionary powers reposed in them." *State Department of Health v. Walker*, 238 Md. 512, 522–23, 209 A.2d 555, 561 (1965) (emphasis added). *See also State Department of Assessments and Taxation v. Clark*, 281 Md. 385, 399, 380 A.2d 28, 36–37 (1977); *Gould, supra*, 273 Md. at 502, 331 A.2d at 65; *State Insurance Commissioner v. National Bureau of Casualty Underwriters*, 248 Md. 292, 300, 236 A.2d 282, 286 (1967); *Heaps v. Cobb*, 185 Md. 372, 380, 45 A.2d 73, 76 (1945). Thus, prior to granting a writ of mandamus to review discretionary acts, there must be both a lack of an available procedure for obtaining review and an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable.

Goodwich v. Nolan, 343 Md. 130, 146, 680 A.2d 1040, 1048 (1996).

> It is well established that common law mandamus is "an extraordinary remedy" that "is generally used to compel inferior tribunals, public officials or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which the party applying for the writ has a clear legal right. The writ ordinarily does not lie where the action to be reviewed is discretionary or depends on personal judgment." *Goodwich v. Nolan,* 343 Md. 130, 145, 680 A.2d 1040 (1996) (internal quotations and citations omitted); *see also Talbot County v. Miles Point Property, LLC,* 415 Md. 372, 396–97, 2 A.3d 344 (2010).26 In other words, the duty of the public official must be "purely ministerial" or the official's obligation to act must be "clear and unequivocal." *Brack v. Wells,* 184 Md. 86, 89–90, 40 A.2d 319 (1944); *see also Harvey v. Marshall,* 389 Md. 243, 276 n. 18, 884 A.2d 1171 (2005) ("the substance of a petition for mandamus involves two complementary requirements: 1) a clear right on the part of the petitioner to the relief requested, and 2) a

> clear duty on the part of the administrative agency to perform the particular duty implicated."). In the past, this Court has indicated that, in rare cases, a court may review a discretionary act of a public official when there is "both a lack of an available procedure for obtaining review and an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable." *Goodwich,* 343 Md. at 146, 680 A.2d 1040; *see also Brack,* 184 Md. at 90–91, 40 A.2d 319 (mandamus not available if there is an adequate legal remedy).

Falls Rd. Cmty. Ass'n, Inc. v. Baltimore County, 437 Md. 115, 139–40, 85 A.3d 185, 199–200 (2014). As set forth above in Paragraph 13, the OBC has a statutory duty to investigate complaints that are facially meritorious. Since the duty is ministerial, the OBC should be ordered to comply with subsections A through D of Maryland Rule 19-711(b)(2).

RELIEF REQUESTED

13. The Petitioner requests that the Court issue a writ of mandamus directing the OBC to comply with Maryland Rule 19-711(b), particularly subsections (2)A through (2)D.

Respectfully submitted,

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Exhibit 1

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

TY CLEVENGER, Petitioner, vs. ATTORNEY GRIEVANCE COMMISSION OF MARYLAND, Respondent	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 Attorney Grievance Commission of Maryland against David E. Kendall, Cheryl D. Mills, and Heather Faye Samuelson on or about September 1, 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 September 27, 2016 letter that I received from Raymond A. Hein.

4. Exhibit 5 is a true and correct copy of a letter that I sent to Mr. Hein on or about October 17, 2016.

5. Exhibit 6 is a true and correct copy of a letter that I received from Mr. Hein on or about October 24, 2016.

THE DECLARANT SAYS NOTHING FURTHER.

November 23, 2013

Ty Clevenger

Exhibit 2

TY CLEVENGER
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tyclevenger@yahoo.com
Texas Bar No. 24034380

September 1, 2016

Maryland Attorney Grievance Commission
200 Harry S. Truman Parkway, Suite 300
Annapolis, Maryland 21401

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.thompsontimeline.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 (THOMPSON August 30, 2016). 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 Maryland Attorneys' Rules of Professional Conduct, as well as various federal criminal statutes, prohibit lawyers from destroying evidence:

> A lawyer shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. An attorney shall not counsel or assist another person to do any such act."

Maryland Attorneys' Rule of Professional Conduct 19-303.4(a). Rule 19-303.9 explicitly indicates that Rule 19-303.4(a) applies to legislative proceedings, therefore it appears that the respondent attorneys violated Rule 19-303.4(a).

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 had "potential evidentiary value." 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). 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, generally, Attorney Grievance Com'n of Maryland v. Frost,* 437 Md. 245, 85 A.3d 264 (2014); *see also 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 19-308.3 by failing to report one another's misconduct to the appropriate disciplinary authorities. They may have also violated Rule 19-308.4(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 19-308.4(c) by engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation."

I have enclosed 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., and I incorporate that letter 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 the rule stating that an attorney shall not knowingly "fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client." Rule 19-303.3(a)(2), as incorporated by Rule 19-303.9.

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 Fraidin v. Weitzman,* 93 Md. App. 168, 231, 611 A.2d 1046, 1077 (1992). They should also be questioned about why they did not disclose Mrs. Clinton's false testimony to Congress.

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.

Respectfully,

Ty Clevenger

Exhibit 3

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September 7, 2016

Maryland Attorney Grievance Commission
200 Harry S. Truman Parkway, Suite 300
Annapolis, Maryland 21401

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 those grievances. 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) 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 Maryland Rule of Professional Conduct 1.11(a)(2). 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,

Ty Clevenger

Exhibit 4

ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND
OFFICE OF BAR COUNSEL
200 HARRY S. TRUMAN PARKWAY
SUITE 300
ANNAPOLIS, MARYLAND 21401-7479
(410) 514-7051

BAR COUNSEL
GLENN M. GROSSMAN

DEPUTY BAR COUNSEL
RAYMOND A. HEIN

SENIOR ASSISTANT BAR COUNSEL
DOLORES O. RIDGELL
LYDIA E. LAWLESS

ASSISTANT BAR COUNSEL
AMY S. PAULICK
C. SHEA MCSPADEN
EBTEHAJ KALANTAR
JENNIFER L. THOMPSON
AMANDA A. MCCARTHY
SHARA HENDLER

STAFF ATTORNEY
KELSEY L. BROWN
JESSICA M. BOLTZ

LEAD INVESTIGATOR
MARC O. FIEDLER

OFFICE MANAGER
DEBRA L. ZACHRY

September 27, 2016

PRIVATE AND CONFIDENTIAL

Ty Clevenger
21 Bennett Avenue # 62
New York, NY 10033

Re: David E. Kendall, Esquire
Cheryl D. Mills, Esquire
Heather Faye Samuelson, Esquire

Dear Mr. Clevenger:

I acknowledge receipt of your letters dated September 1, 2016 and September 7, 2016 regarding the above named attorneys. It appears that you have no personal knowledge of the allegations presented in your correspondence, nor are you a personally aggrieved client or party possessing material information that would assist this office in reviewing such allegations. Under these circumstances, we decline to conduct an investigation of the named attorneys with you designated as the complainant.

The Maryland Rules grant Bar Counsel authority to open a complaint on Bar Counsel's own initiative. Pursuant to Maryland Rule 19-707(b), the records of an investigation by Bar Counsel, including the existence and content of any complaint or response, are confidential. In accordance with that rule, we are unable to provide you with additional information.

Thank you for taking the time to write to this office. We appreciate your referral of information concerning members of the Maryland Bar.

Very truly yours,

Raymond A. Hein

Raymond A. Hein
Deputy Bar Counsel

RAH

Exhibit 5

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 17, 2016

Mr. Raymond A. Hein, Deputy Bar Counsel
Maryland Attorney Grievance Commission
200 Harry S. Truman Parkway, Suite 300
Annapolis, Maryland 21401

Re: David Kendall, Cheryl Mills, and Heather Samuelson

Mr. Hein:

I write in response to your September 27, 2016 letter regarding attorneys David Kendall, Cheryl Mills, and Heather Samuelson. In that letter, you wrote that as follows:

> It appears that you have no knowledge of the allegations presented in your correspondence, nor are you a personally aggrieved client or party possessing material information that would assist this office in reviewing such allegations. Under these circumstances, we decline to conduct an investigation of the named attorneys with you designated as the complainant.

In the following paragraph, you imply that the commission is perhaps investigating on its own initiative, but you do not confirm that one way or another.

Your response to my grievances does not comply with Maryland law. Maryland Rule 19-711(a) permits *any* person to file a bar grievance. According to the following subsection, "Bar Counsel *shall* make an appropriate investigation of every complaint that is not facially frivolous or unfounded." Maryland Rule 19-711(b)(1)(emphasis added).

> If Bar Counsel concludes that the complaint is either without merit or does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, Bar Counsel shall dismiss the complaint and notify the complainant of the dismissal. Otherwise, subject to subsection (b)(3) of this Rule, Bar Counsel shall (A) open a file on the complaint, (B) acknowledge receipt of the complaint and explain in writing to the complainant the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether reasonable grounds exist to believe the allegations of the complaint.

Maryland Rule 19-711(b)(2). Nothing in the statute permits your office to dismiss my complaint for reasons unrelated to the merits. And that is true even if your office intends to file its own grievance.

Of course, neither I nor the public have any guarantee that your office is actually going to file the grievance. Even if it does, that special handling creates an appearance of impropriety. Namely, it appears that the commission is showing political favoritism toward the respondent attorneys because of their relationship to Presidential candidate Hillary Clinton, keeping the entire matter secret in order to save them and Mrs. Clinton from embarrassment.

Since the requirements of Rule 19-711 are mandatory, I believe I have grounds for seeking mandamus relief from the Maryland Court of Appeals. Please let me know not later than October 24, 2016 via email (tyclevenger@yahoo.com) or fax (979-530-9523) whether your office intends to comply with the law. If I do not receive a response by then, I will likely proceed with a request for mandamus relief.

Thank you for your attention to these matters.

Respectfully,

Ty Clevenger

Exhibit 6

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND
OFFICE OF BAR COUNSEL

200 HARRY S. TRUMAN PARKWAY
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ANNAPOLIS, MARYLAND 21401-7479
(410) 514-7051

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AMANDA A. MCCARTHY
SHARA HENDLER

STAFF ATTORNEY
KELSEY L. BROWN
JESSICA M. BOLTZ

LEAD INVESTIGATOR
MARC O. FIEDLER

OFFICE MANAGER
SUSAN TOWNSHEND

October 24, 2016

PRIVATE AND CONFIDENTAL

Ty Clevenger
21 Bennett Avenue, #62
New York, NY 10033

RE: David E. Kendall, Esquire
Cheryl D. Mills, Esquire
Heather F. Samuelson, Esquire

Dear Mr. Clevenger:

I acknowledge receipt of your letter dated October 17, 2016. We are unable to address whether or not Bar Counsel is investigating any of the attorneys named in your correspondence. Should you elect to seek mandamus relief in the Court of Appeals of Maryland, we will file a response with the Court stating our position regarding this matter.

Very truly yours,

Raymond A. Hein

Raymond A. Hein
Deputy Bar Counsel

RAH/dag

Exhibit B

TY CLEVENGER,	*	IN THE
Petitioner,	*	CIRCUIT COURT
v.	*	FOR
THE ATTORNEY GRIEVANCE COMMISSION, et al	*	ANNE ARUNDEL COUNTY
Respondents.	*	
	*	Case No.: C-02-CV-16-003620

* * * * * * * * * * * *

MOTION TO DISMISS WRIT OF MANDAMUS

Respondent, the Attorney Grievance Commission and Office of Bar Counsel, through undersigned counsel, requests that this Court deny the Petition for Writ of Mandamus filed by Ty Clevenger. The Petition asks this Court to issue the extraordinary prerogative writ of mandamus to compel the Respondents to "comply with Maryland Rule 19-711(b), particularly subsections (2)(A) through (2)(D)." Petition at 5, ¶13. This Court should deny or dismiss Mr. Clevenger's Petition because the Circuit Court for Anne Arundel County does not have the authority to supply the relief requested, the Office of Bar Counsel is not an entity capable of being sued and further, Mr. Clevenger does not have a clear legal right to the relief he seeks.

FACTUAL BACKGROUND

On September 1, 2016, Mr. Clevenger wrote a letter to the Attorney Grievance Commission (the "AGC") filing a misconduct complaint against former Secretary of State, Hillary Rodham Clinton's attorneys, David E. Kendall, Cheryl D. Mills, and Heather Faye Samuelson. Petition, Ex. 2. The complaint involves the controversy over Mrs. Clinton's

work-related emails that were stored on her private email server. *Id.* The factual basis for Mr. Clevenger's complaint appears to have been collected from various publically available sources. *Id.* On September 7, 2016, Mr. Clevenger mailed a second letter to the AGC supplementing his complaint. Petition, Ex. 3. On September 27, 2016, Deputy Bar Counsel, Raymond A. Hein, sent a letter to Mr. Clevenger explaining that the AGC "decline[s] to conduct an investigation of the named attorneys with you designated as the complainant." Petition, Ex. 4.

REASONS FOR DENYING THE WRIT

I. THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS UNABLE TO PROVIDE THE RELIEF MR. CLEVENGER SEEKS.

It is well-settled that the Court of Appeals "has original and complete jurisdiction over all attorney disciplinary matters arising from the conduct of a member of the Maryland State Bar." *Attorney Grievance Commission v. Pak*, 400 Md. 567, 599-600 (2007), *cert. denied*, 552 U.S. 1099 (2008) (citing *Attorney Grievance Commission v. Reinhardt*, 391 Md. 209, 202 (2006)(same)). *Attorney Grievance Comm'n of Maryland v. Fader*, 431 Md. 395, 426–27 (2013)(same.) *See also In re Kimmer*, 392 Md. 251, 269 (2006) ("[I]t has been clear, since 1898, that the Court of Appeals has exclusive jurisdiction over the regulation of, and admission to, the practice of law.") Furthermore, Md. Rules 19-702 and 19-703 provide exclusive authority to the AGC through Bar Counsel, subject to the supervision and approval of the Court of Appeals, to investigate alleged violations of the Maryland Lawyers' Rules of Professional Conduct. Additionally, the Rules authorize the AGC, through its Bar Counsel and Assistant Bar Counsel, to dismiss a complaint of

professional misconduct or incapacity. Rules 19-702(h)(9)(B); 19-703(b)(1). Absent express statutory authority permitting judicial review by a circuit court of an AGC decision, no judicial review lies. Md. Rule 7-200, *et seq*.

The Rules establishing the AGC were promulgated by the Court of Appeals, to assist in its Constitutional authority to make rules of practice. Md. Const. art. IV, § 18. The Rules adopted by the Court of Appeals show that it has exclusive control of the AGC in all matters involving attorney discipline.

Rule 19-702 establishes the AGC: "There is an Attorney Grievance Commission which shall consist of 12 members....") The Court of Appeals may remove a member of the Commission at any time. Rule 19-702(f). Subject to the approval by the Court of Appeals, "the Commission shall appoint an attorney as Bar Counsel." Rule 19-703. There is no rule or other authority which provides any circuit court with the authority to discipline attorneys or control any actions of the AGC[1]. Absent this authority, none exists.

Mr. Clevenger brings this action in the Circuit Court seeking what is functionally judicial review of an AGC action. Under the Rules, the Circuit Court has no authority or jurisdiction to review actions of the AGC or issue orders directing the AGC to act because the Court of Appeals has original and complete jurisdiction in all matters pertaining to attorney discipline. Although the Court of Appeals has delegated certain operational tasks to the AGC, the AGC remains under the exclusive control of the Court of Appeals in

[1] Rule 19-722 which provides that upon the filing of a Petition for Disciplinary or Remedial Action, the Court of Appeals may enter an order designating "a judge of any circuit would to hear the action."

matters of attorney discipline. For these reasons, this Court unable to provide the relief Mr. Clevenger seeks and this action must be dismissed.

II. MR. CLEVENGER HAS NO CLEAR LEGAL RIGHT TO THE RELIEF HE SEEKS.

The purpose of a writ of mandamus is to compel the performance of a non-discretionary duty. *Wilson v. Simms*, 380 Md. 206, 217 (2004). Mandamus is an extraordinary writ used to compel public officials to "perform some ministerial duty imposed upon them which in its nature is imperative and to the performance of which the party applying for the writ has a clear legal right." *Wilson,* 380 Md. at 217-18; *Harvey v. Marshall*, 158 Md.App. 355, 381 (2004). *See also Brack v. Bar Ass'n of Baltimore City*, 185 Md. 468, 474 (1946)("The petition for the writ must show both a clear legal right to the petitioner and also an imperative duty on the part of the defendant and unless these rights and duties are clearly established, there is no ground for the issuance of mandamus."); *Forster v. Hargadon*, 398 Md. 298 (2007). *Forster*, 398 Md. at 307; *See also Phillip Morris v. Angeletti*, 358 Md. 689 (2000). The court exercises its power with respect to mandamus "with caution, treading carefully so as to avoid interfering with legislative prerogative and administrative discretion." *Wilson*, 380 Md. at 223.

As is evident from the Rules, Bar Counsel's duties with the AGC are not ministerial and the role of Bar Counsel demands that he have discretion in all aspects of his investigations of complaints of attorney misconduct.

The goal of attorney discipline is protection of the public, rather than the punishment of the erring attorney. *Attorney Grievance Comm'n of Maryland v. Garcia*, 410 Md. 507,

520–21 (2009), reinstatement granted sub nom. *In re Garcia*, 430 Md. 640 (2013); *Attorney Grievance v. Goff*, 399 Md. 1, 30–31 (2007)(same); *Attorney Grievance v. Mba–Jonas*, 397 Md. 690, 702–03 (2007)(same). The Rules creating and guiding the AGC espouse the objective of protecting the public.

In construing a Rule, the court applies principles of construction similar to those used to construe a statute. *Holmes v. State,* 350 Md. 412, 422 (1998). If the language in the Rule is clear and unambiguous, the analysis ends. *Attorney Grievance Comm'n of Maryland v. Fezell*, 361 Md. 234, 248 (2000). Like a statute, interpretation of the language of the Rule requires that it be read in conjunction with the other subsections of the Rule so that the Rule is harmonized with all of its provisions. *Williams v. State*, 329 Md. 1, 15–16 (1992) (Court must discern "legislative intent from the entire statutory scheme, as opposed to scrutinizing parts of a statute in isolation."). And a statute is to be given a reasonable interpretation, not one that is illogical or incompatible with common sense. *State v. Brantner*, 360 Md. 314, 322 (2000). Statutes on the same subject are to be read together and harmonized to the extent possible, reading them so as to avoid rendering either of them, or "any portion, meaningless, surplusage, superfluous or nugatory." *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 302–03 (2001)(quoting *GEICO v. Ins. Comm'r*, 332 Md. 124, 132 (1993)).

Rule 19-711 provides that "Bar Counsel shall make an appropriate investigation of every complaint that is not facially frivolous or unfounded." Rule 19-711 (b)(1). The plain language of Rule 19-711 provides that Bar Counsel must make a discretionary determination of which complaints are "facially frivolous or unfounded." Bar Counsel

must also make an "appropriate" investigation. The term "appropriate" indicates that Bar Counsel has discretion to determine the type or depth of investigation based on any given complaint. The plain language of the Rule 19-711 shows that the role of Bar Counsel is imbued with discretion: he must determine which complaints are unfounded and must also determine the type of investigation warranted by the particular facts presented. Thus, for these reasons, mandamus may not be had to compel Bar Counsel to investigate a complaint in a specific manner. Thus, here the term "shall" as it appears in Rule 19-711(b), is qualified with discretionary language, thus, the context of the Rule indicates that it is not mandatory. *Carter v. Harris*, 312 Md. 371, 377 (1988).

Stemming from the basic notion that Bar Counsel has discretion to perform his duties based on the facts of any given complaint, the plain language of the Rules must give way to an interpretation that does not do harm to the purpose of the Rules. Mr. Clevenger's interpretation of the Rules would do just this: it would subject the AGC to the risk of becoming a political tool and would squander scarce resources. Mr. Clevenger argues that because Rule 19-711(b) (2)(A) - (2)(D) states that Bar Counsel "shall make an appropriate investigation of every complaint that is not frivolous or unfounded," that Bar Counsel is required to investigate each and every complaint, regardless of the number of complaints received based on the same set of facts. For instance, when misconduct complaints are raised against very public figures, the AGC could receive multiple complaints based on the same or similar sets of facts. Such investigations would squander limited state resources investigating the same individuals based on the same facts. In these cases, Bar Counsel, in order to best serve the public good, must exercise his discretion and

determine the best use of scarce public funds and how best to protect the public.

Furthermore, the confidentiality rules applicable to all AGC complaints greatly restrains Bar Counsel ability to explain his actions. Bar Counsel is not at liberty to disclose whether there are or are not other pending investigations. The rules provide that "the records of any investigation by Bar Counsel, including the existence and content of any complaint or response until Bar Counsel files a petition for disciplinary or remedial action" are confidential. Rule 19-707(A). Given the level confidentiality applicable to all complaints, Bar Counsel must have discretion because if ever questioned or sued for mandamus relief, Bar Counsel and the AGC are not able to mount any sort of case in defense of their own actions. This would mean that the AGC would perpetually be subject to legal action – without defense – any time a complainant was unhappy with an action of the AGC. This cannot be the meaning of Rule 19-711.

Rule 19-711 should be not construed to force Bar Counsel to investigate and keep potentially hundreds of complainants informed when duplicative complaints are filed. Bar Counsel must have the discretion to decline to investigate certain complaints in order to further the public good. If Bar Counsel did not have such discretion, he could be subject to legal action in which the confidentiality of Bar Counsel's activities would keep Bar Counsel and the AGC from being able to explain or defend their actions. This would not serve to protect the public and this cannot be the law.

In this case, Mr. Clevenger did not possess any personal information related to the complaints he made about Hillary Clinton's attorneys. Bar Counsel responded to Mr. Clevenger's complaint stating that because Mr. Clevenger was not personally aggrieved by

the attorneys who are the subject of the complaint and because Mr. Clevenger does not possess material information about the case, Bar Counsel was declining to investigate Mr. Clevenger's complaint "with [Mr. Clevenger] as the complainant." Petition, Ex. 4. This letter does not say that it is declining to investigate Mr. Clevenger's complaint, it states that it will not be investigating the complaint with Mr. Clevenger as complainant. While Bar Counsel is unable to give information about the existence of other complaints, it is quite possible that there have been hundreds of similar complaints filed which seek to use the attorney grievance process to gain information on political figures for political gain.

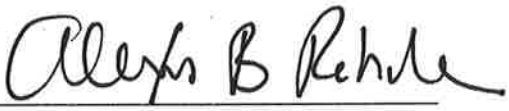
It cannot be that the intent of the Rules that Bar Counsel and the AGC would be forced to investigate every duplicate complaint providing extensive notice to every complainant who has no personal knowledge of an event and then, be subject to a lawsuit which the AGC is unable by rule to defend. The reading of Rule 19-711 advanced by Mr. Clevenger defies common sense. Mr. Clevenger does not a legal right to the relief he seeks: the work of Bar Counsel is not ministerial and cannot be challenged by through this mandamus action.

CONCLUSION

The Petition for Writ of Mandamus should be denied.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland



ALEXIS B. ROHDE
Assistant Attorney General
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Baltimore, Maryland 21202
(410) 576–7293 (telephone)
(410) 576–6393 (facsimile)
arohde@oag.state.md.us

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May 2017, a copy of the foregoing was served by electronic means via the Court's MDEC system on the persons entitled to receive such notice and mailed, via first-class mail, postage prepaid, to the following:

Ty Clevenger
P.O. Box 20753
Brooklyn, NY 11202-0753
Petitioner Pro Se

ALEXIS B. ROHDE
Assistant Attorney General

Exhibit C

Hillary Clinton’s lawyers defended by state of Maryland amid ethics probe

Changes rules to prevent future investigations

Democratic presidential candidate Hillary Clinton, center, accompanied by long time aide Cheryl Mills, right, arrives at Cleveland Burke Lakefront Airport in Cleveland, Sunday, Nov. 6, 2016. FBI Director James Comey tells Congress in a Nov. 6 letter, that a review ... more >

By Stephen Dinan - *The Washington Times - Monday, October 16, 2017*

Maryland officials appear to have begun to circle the wagons in defending Hillary Clinton’s lawyers, according to the lawyer trying to get them punished by the state bar.

Ty Clevenger, who last month won a court order demanding the state’s attorney grievance commission investigate David E. Kendall, Cheryl Mills and Heather Samuelson over accusations of destruction of evidence, says the state is now refusing to divulge the progress of the probe, breaking its usual rules.

Mr. Clevenger also said the state’s top court quietly changed the rules in June to allow the bar to refuse to investigate complaints filed by people who gain their knowledge through public reporting rather than personal knowledge — which would have affected his Clinton lawyer request, had the new rules been in place when he filed his complaint.

“I suppose I should be flattered that Maryland changed the rules just for little old me, but I’m not,” Mr. Clevenger wrote Monday on his blog, LawFlog.com, saying Maryland appears to be trying to protect powerful lawyers from activists like himself.

Mr. Clevenger has been on a mission to seek punishment for Mr. Kendall and the other Clinton lawyers, saying they violated legal profession ethics by helping Mrs. Clinton delete official government record emails kept on her secret account, even as they were being sought in a congressional probe.

Last month Mr. Clevenger went to court in Maryland and won an order forcing the state bar to investigate the lawyers. The bar had tried to dismiss the complaint without investigation, asserting it was frivolous.

On Monday Mr. Clevenger went back to court asking the judge to order the bar investigators to release documents from their probe so far.

He said he's tried to pry loose the documents but hasn't gotten any response, which he said means either the bar counsel isn't really conducting the full probe the judge ordered, or else they are denying him fair access to their progress.

Either way, he said, it amounted to "First Amendment retaliation."

Neither the state Attorney Grievance Commission nor Alexis Rohde, the state lawyer who fought Mr. Clevenger in court last month, responded to messages seeking comment Monday.

Exhibit D

Maryland Attorney General's Office appeals judge's order to investigate Clinton lawyers

Former Secretary of State Hillary Clinton spoke at a fundraiser for the Elijah Cummings Youth Program in Israel. Lawyers working for Clinton have been accused of deleting emails related to the controversial private server she used as secretary of state. (Kenneth K. Lam / Baltimore Sun)

By **Chase Cook**
Staff Writer

OCTOBER 24, 2017, 2:20 PM

Maryland Attorney General's Office lawyers filed a petition Monday asking the Court of Appeals to stay and review a Circuit Court judge's order to investigate lawyers accused of deleting large batches of Hillary Clinton's emails.

The petition asks the court to review the case because of new rule changes to the Maryland Attorney Grievance Commission's authority to decline attorney complaints for new reasons. The commission, which oversees Maryland attorney discipline, changed its rules in June allowing the Office of Bar Counsel to decline investigating a case if the complaint does not have "personal knowledge" of the incident. The attorney general's office is representing the commission.

The petition also asserts the Circuit Court did not have the authority to order an investigation into the complaint against Clinton's lawyers since the Court of Appeals has oversight of the Attorney Grievance Commission and Office of Bar Counsel. In September the court granted an order doing just that.

The man bringing the complaint against the former secretary of state's lawyers, Ty Clevenger, believes the commission changed its rules to retroactively legalize its initial refusal to investigate. Clevenger is a Texas attorney who lives in New York and has a history of challenging lawyers and politicians he believes are corrupt or receiving political protection. Most recently his actions helped with the indictment of Texas Attorney General Ken Paxton on securities fraud.

"It is just a ridiculous attempt to distract from the real issue," Clevenger said. "The bar prosecutor is bending over backwards making excuses and pointing the finger at me like I did something."

The Maryland Attorney Grievance Commission oversees consists of nine attorneys and three non-attorneys appointed by the Court of Appeals for staggered three-year terms. The commission appoints an attorney to serve as bar counsel, which investigates complaints and can recommend actions which the commission may approve or decline. The punishments could include suspension or disbarment.

Representatives of the Attorney Grievance Commission declined to comment on this story. The Maryland Attorney General's Office also declined since it was ongoing litigation.

Clevenger's Sept. 1, 2016, complaint is linked to three Clinton lawyers — David Kendall, Cheryl Mills and Heather Samuelson — who he has accused of deleting emails on the private email server Clinton used during her time as secretary of state. His complaint argued they engaged in misconduct by destroying evidence. The complaint sought to have them disbarred in Maryland. He unsuccessfully filed a similar complaint with the Washington, D.C., bar.

The Capital was unable to reach the three lawyers.

The Office of Bar Counsel declined in September 2016 to investigate this complaint, saying Clevenger didn't have "personal knowledge of the events." Clevenger countered with a lawsuit that "personal knowledge" isn't a prerequisite for filling a complaint.

And on June 7 of this year, a rule change was requested by the Court of Appeals' Standing Committee on Rules of Practice and Procedure. That change requested adding lack of "personal knowledge" as grounds to decline investigating or inquiring about a complaint. Those changes went into effect Aug. 1 after approval by the Court of Appeals.

In the newly filed appeal petition, the Maryland Attorney General's Office acknowledged the rule was changed while the case was being heard in the Circuit Court. The lawyers argued the rule change was procedural so it could be applied retroactively, according to court records.

In the rules committee's supplemental report on the rule changes, a note detailed the reasoning behind adding the personal knowledge language.

"Bar Counsel would like to have the authority to decline these complaints and not be required to provide these individuals with confidential responses from attorneys, who may be the subject of media reports, when the complainant appears to be driven by a particular political or ideological persuasion or a desire for self-publicity or both," according to the rules committee records.

Clevenger pointed to his work pushing back against Republicans in Texas as evidence he wasn't playing politics.

"These jerks are the ones that have been playing politics this whole time," he said. "I am not some one-sided blind party hack."