ATTORNEY GRIEVANCE COMMISSION OF MARYLAND, et al.,	**IN THE COURT OF APPEALS OF MARYLAND**
Petitioners,	
vs.	**September Term, 2017**
TY CLEVENGER	**Case No. COA-PET-0338-2017**
Respondent	

REPLY IN SUPPORT OF TO MOTION TO RECUSE

NOW COMES Ty Clevenger, the Respondent, replying in support of his MOTION TO RECUSE as follows:

As expected, the Petitioners' OPPOSITION TO MOTION TO RECUSE ignores the issues raised by the Plaintiff, then erects and attacks straw man arguments. Nobody ever suggested that this Court should be restrained from interpreting the rules that it adopts in a quasi-legislative capacity. Instead, the Plaintiff flagged some highly unusual circumstances in the adoption of amendments to Rule 19-711, which the Petitioners then sought to apply *retroactively* to this case. As noted in the MOTION TO RECUSE, published media have found the circumstances bizarre enough to report about something that otherwise would not be newsworthy. That alone suggests an appearance of impropriety.

The Petitioners also ignore the biggest "elephant in the room," namely the following excerpt that was included in the MOTION TO RECUSE:

> 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) (emphasis added). The Petitioners ignore the italicized portion above, which is by far the most salient. As explained in the MOTION TO RECUSE, it is a textbook example of viewpoint discrimination, and it is not merely misguided but unethical and illegal. *See* RESPONSE IN OPPOSITION TO PETITION FOR CERTIORARI AND RESPONDENT'S COUNTER-PETITION FOR EQUITABLE RELIEF ("COUNTER-PETITION")(incorporated herein by reference). Worse, the Court was constructively (if not actually) aware of it, and the Court ratified it.

As the Court can see from the COUNTER-PETITION and the RESPONSE IN OPPOSITION TO MOTION FOR IMMEDIATE STAY PENDING FURTHER REVIEW (also incorporated herein by reference), the Petitioners tend to omit critical information when it serves their purposes. Where is the sworn declaration of Bar Counsel or Acting Bar Counsel that the amendments to Rule 19-711 were not targeted at the Respondent? That issue is acutely relevant to whether Bar Counsel was trying to "fix" the outcome of this case by communicating ex parte (via administrative channels) with the Court. The Petitioners suggest it is "clear" that other instances prompted the rule change, *see* OPPOSITION TO MOTION TO RECUSE at 8, but it is anything but clear, and that's because the Petitioners provide no rebuttal evidence. The Respondent would direct the Court's attention to the Petitioners' MOTION FOR IMMEDIATE STAY PENDING FURTHER REVIEW. The Petitioners sought a stay partly because the Respondent requested an evidentiary hearing in the trial court. The Respondent was trying to determine, among other things, whether the Petitioners were

discriminating against him personally. Obviously, the Petitioners do not want to answer that question, or else they would have provided this Court with a sworn declaration that the rule change was prompted by other cases or at least *some* additional cases besides the Respondent's (for that matter, nothing prevents them from submitting such a declaration now).[1]

The Respondent agrees with the Petitioners that there is nothing nefarious about Bar Counsel proposing a rule change and this Court adopting it. If that was all that happened, then the Respondent would not have filed his MOTION TO RECUSE. But of course, that was not all that happened. The Petitioners surreptitiously sought a rule change that appears to have been targeted at a pending case, *i.e.*, this one, then they asked the Court to apply the rule retroactively. While the Respondent has no reason to believe that the Court was aware that the Petitioners were communicating ex parte about a pending matter, it nonetheless appears that such an ex parte communication occurred. Furthermore, the Court ratified the Petitioner's discriminatory animus against the Respondent or people like him, namely any complainant who "appears to be driven by a particular political or ideological persuasion..." For that reason, the judges of the Court should recuse themselves in favor of judges who took no part in the rule change or any potential ex parte communications. Alternatively, this Court should direct the trial court to conduct an evidentiary hearing regarding whether the rule change was targeted at the Respondent. That, in

1 This is similar to a tactic employed by the Petitioners in the trial court, *e.g.*, when the Petitioners implied that *maybe* they had already been investigating attorneys David Kendall, Cheryl Mills, and Heather Sameulson on their own initiative. *See, e.g.,* September 27, 2017 Letter from Raymond Hein to Ty Clevenger, attached to COUNTER-PETITION as Appendix 2, Exhibit 4. When asked pointblank by the trial court whether Mr. Kendall, et al. were being investigated, the Petitioners refused to answer. *See* November 7, 2017 Declaration of Ty Clevenger, attached to COUNTER-PETITION as Appendix 1. After petitioning this Court (and when it finally served their purposes), the Petitioners finally acknowledged that no investigation had ever occurred. *See* MOTION FOR IMMEDIATE STAY PENDING FURTHER REVIEW. Plainly stated, the Petitioners should not be afforded the benefit of the doubt.

turn, should answer the question of whether the Petitioners were deliberately communicating with this Court ex parte.

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 copies of this corrected document and its appendices were 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 14, 2017.

Ty Clevenger