CASE NO. 20-7110

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In Re: Larry Klayman

Attorney Discipline Proceeding

MOTION FOR RECONSIDERATION AND PETITION FOR REHEARING BY THE PANEL

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Dated: April 2, 2021

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MEMORANDUM OF LAW

Respondent Larry Klayman ("Mr. Klayman") hereby petitions for rehearing by the panel, pursuant to Federal Rule of Appellate Procedure 40, as the March 29, 2021 opinion written by the Honorable David S. Tatel ("Judge Tatel") contains material errors that also evidence undue hostility and animus toward Mr. Klayman. This hostility and animus can be easily discerned not just from the written opinion, but even more so from the audio recording of the oral argument, which is in this honorable Court's possession. It was as if Judge Tatel, for whatever reason, politically, ideologically based or otherwise, had Mr. Klayman personally in his crosshairs to give the founder of Judicial Watch and Freedom Watch his comeuppance, as Mr. Klayman at Judicial Watch and now at Freedom Watch had notably sued President Bill Clinton and other leftist Democrats in the past in his public interest capacity as a conservative advocate. To the contrary, Mr. Klayman was respectful at all times and even congratulated Judge Tatel on his new senior status at the outset. The material errors in Judge Tatel's opinion must be corrected forthwith, as set forth below, as they evidence a manifest bias and injustice, particularly since he referred the matter to Committee on Admissions and Grievances for consideration of even more reciprocal discipline than the 90 days suspension Mr. Klayman had already served before in the District of Columbia courts. Judge Tatel's opinion adds an additional 90 days going forward, and then

effectively directs the Committee on Admissions and Grievances to impose even more reciprocal discipline. If these highly prejudicial material errors are not corrected by the three judge panel, Mr. Klayman reserves the right to move for rehearing en banc in the interests of justice pursuant to Federal Rule of Appellate Procedure 35.

STATEMENT OF THE CASE

On June 11, 2020 the District of Columbia Court of Appeals ("DCCA") issued a 90-day suspension order in 18-BG-100 based on a case that was not initiated by District of Columbia Bar Disciplinary Counsel ("ODC") until eight years after the relevant events had transpired. Importantly, in the DCCA order, the DCCA found that Mr. Klayman had not acted dishonestly or testified falsely:

> The Board found that Disciplinary Counsel failed to prove by clear and convincing evidence that Mr. Klayman gave false testimony. The Board observed that the Hearing Committee had relied almost entirely on Mr. Dugan's testimony that he did not endorse Mr. Klayman's appearance in the Benson matter. The Board reasoned, however, that the forcefulness of Mr. Dugan's testimony was undercut by his repeated inability to recall the substance of key conversations that took place between him and Mr. Klayman eight years earlier. In addition, the Board cited prior, "apparently inconsistent" statements that Mr. Dugan had made about the matter (e.g., Mr. Dugan's apparent statement to Judicial Watch's counsel, referred to in Judicial Watch's memorandum in support of its motion to disqualify, that there was "no ethical issue arising from" Mr. Klayman's representation of Ms. Benson). App. 010.

There were a litany of other issues with the DCCA order, including grossly insufficient proof of misconduct, much less clear and convincing evidence which is

the legal standard, and due process issues, which are discussed in detail below, but Mr. Klayman was ultimately still suspended for a period of 90-days.

Tellingly, the Ninth Circuit, who issued a similar show cause order like this honorable Court, declined to impose reciprocal discipline. App. 080.

In any event, during the pendency of this proceeding, Mr. Klayman was reinstated by the District of Columbia Bar. App. 081. At a minimum, this effectively moots out reciprocal discipline as Mr. Klayman has already served a *de facto* 90-day suspension before this Court.

As important, as shown below, reciprocal discipline is unwarranted under the test provided by the Supreme Court.

ARGUMENT

I. JUDGE TATEL'S OPINION CONTAINS MATERIAL ERRORS THAT MANIFEST HOSTILITY AND BIAS TOWARDS MR. KLAYMAN

There are numerous errors in Judge Tatel's opinion of March 29, 2021 that must be corrected.

First, Judge Tatel writes that, "Even if due process concerns extend beyond the exception's plain language, Mr. Klayman has failed to show any prejudice." This is false. Mr. Klayman has been subjected to enormous prejudice. He has had to endure an extremely elongated proceeding, where the Hearing Committee initially found that Mr. Klayman had lied under oath about being represented by

Mr. Dugan. This was the product of the enormous delay in these proceedings, where Mr. Dugan simply could not remember what had occurred. Ultimately, Mr. Klayman was able to provide a convincing rationale and documentation that he had been acting under the advice of counsel, but this was not before Mr. Klayman was forced to incur a huge amount of time and money, albeit in his own time and expense, and through his defense counsel, to correct this erroneous finding by the Hearing Committee caused by the delay.

Mr. Klayman was also significantly prejudiced by Judicial Watch being allowed *ex parte* and in secret - since it was not disclosed to Mr. Klayman for many years - to present pages and pages of irrelevant "evidence," pertaining to his divorce proceeding that fabricated allegations by his ex-wife that he had sexually abused his child, for which he was cleared of any wrongdoing by the Department of Children's Services and the District Attorney in Cleveland, Ohio, where his son resided with his deceitful estranged mother, Mr. Klayman's former wife, who bore false witness. This completely extraneous and irrelevant documentation, which was somehow allowed into the proceeding, clearly significantly prejudiced Mr. Klayman before Bar Disciplinary Counsel who commenced this proceeding, the Hearing Committee and thereafter.

Second, it was disingenuous for Judge Tatel to state that Mr. Klayman did not present anything on this own behalf at the oral argument on this matter. Not

only was the record before them, the audio recording of the oral argument shows that Judge Tatel demonstrated palpable hostility towards Mr. Klayman and simply angrily backed him into a corner without giving him a chance to argue on his own behalf for the entirety of the brief 10 minutes that he was allotted.

Third, Judge Tatel's assertion that "Mr. Klayman acknowledges that he represented Cobas, Benson, and Paul in the same or substantially similar matters on which he advised Judicial Watch without seeking Judicial Watch's consent" is untrue. Mr. Klayman did strongly contest this, and as evidence, provided a written opinion and testimony from the late Ronald Rotunda, then one of the preeminent legal ethics experts in America. Like Mr. Klayman, Professor Rotunda was a conservative and supporter or President Donald Trump, one of the few in legal academia. At the hearing, Mr. Klayman perceived some condescension from Judge Tatel concerning Professor Rotunda, who politically and ideologically was a far cry from Judge Tatel.

Fourth, Judge Tatel takes strong issue with the fact that Mr. Klayman did not immediately notify the Court of his suspension. As Mr. Klayman explained before, he in good faith, reasonably believed that his pending Petition for Rehearing En Banc in the District of Columbia Court of Appeals had stayed the suspension. This only makes sense – Mr. Klayman should be afforded the right to exhaust all potential remedies before a final order is issued. Even in this Court, no

mandate generally issues until a Petition for Rehearing En Banc is finally decided. Mr. Klayman was not being deceptive or coy. He was simply exhausting his remedies under the rules of the DCCA and in good faith believed that he would be given an opportunity to exhaust his legal rights.

Fifth, Judge Tatel's assertion that Mr. Klayman was flouting the rules by protecting the interests of his clients Rick Lovelien and Steven Stewart is not the case. Mr. Klayman believed that he was administratively filing final briefs with the Court within the 30-day grace period afforded by the DCCA. He thus made an inadvertent error when he ran just two days over. In any event, this was just an administrative task – the matter had been substantively briefed prior to Mr. Klayman's suspension, and only final briefs with appendix cites were filed. This was done simply because the Court ordered it, and because Mr. Lovelien, who had terminal cancer, and Mr. Stewart who is a truck driver, had no other counsel or other means to assist them at the time.[1]

[1] Mr. Klayman reasonably believed at the time that the DCCA June 11, 2020 Order of Suspension did not automatically apply to federal courts, including this one, based on the fact that each federal court would make an independent determination as to whether to impose reciprocal discipline. Thus, given that no final order had been issued by this Court at the time, Mr. Klayman reasonably believed that he was able to file the final briefs on behalf of Mr. Lovelien and Mr. Stewart – an administrative task – in order to ensure that their rights were protected. Nonetheless, Mr. Klayman still withdrew from each of the cases before this Court before any final reciprocal discipline order was issued in an abundance of caution.

Sixth, it appears that Judge Tatel simply did not want to address or confront what happened to Peter Paul, who was abandoned by Fitton, a non-lawyer and then head of Judicial Watch, and thus would up serving ten years in prison largely as a result, Louise Benson, who was swindled for $15,000 and Sandy Cobas, who was sexually harassed and retaliated against by Judicial Watch officers and personnel. As set forth by Professor Rotunda, Mr. Klayman's representation of these individuals should have been considered under the doctrine of necessity, as set forth more in full below. Indeed, the equities of this serious situation presented to Mr. Klayman is unique and unforeseen in the District of Columbia Rules of Professional Conduct.

II. THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT MADE AN INSTRUCTIVE FINDING THAT RECIPROCAL DISCIPLINE IS UNWARRANTED IN THIS CASE

Similar to the D.C. Circuit, the Ninth Circuit imposed an order to show cause of August 3, 2020 as to why reciprocal discipline was not warranted based on the DCCA's June 11, 2020 suspension order. On December 2, 2020, the Appellate Commissioner of the Ninth Circuit filed an order which stated:

> The court is informed by the Office of Disciplinary Counsel of the District of Columbia Bar that, at the conclusion of his 90-day suspension, respondent Larry E. Klayman was eligible to be readmitted to the bar, and the Office of Disciplinary Counsel did not oppose his reinstatement. In view of that development, this court's August 3, 2020 order to show cause is discharged. App. 080.

Thus, the Ninth Circuit declined to impose reciprocal discipline on Respondent under the same set of circumstances and facts as before this Court. Accordingly, this Court should respectfully follow the Ninth Circuit in finding that no (additional) reciprocal discipline is warranted.

III. RECIPROCAL DISCIPLINE IS UNWARRANTED UNDER CONTROLLING LAW

In deciding whether reciprocal discipline is warranted, courts look at four different factors. These four factors are whether " the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or (2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or (3) the imposition of the same discipline by this Court would result in grave injustice; or (4) the misconduct warrants substantially different discipline. *In re Zdravkovich*, 634 F.3d 574 (2011); *Selling v. Radford*, 243 U.S. 46 (1917).

Each of the factors followed by this Circuit and other circuits, alone, weigh strongly in favor of this Court declining to impose reciprocal discipline. In addition to these three factors, the fact that the District of Columbia Court of Appeals found that Mr. Klayman had not acted dishonestly is also a key fact that this Court must consider as well. App. 010.

Mr. Klayman has been a member of in good standing before this Court for over thirty-two (32) years and has never been disciplined by this Court, or even sanctioned on a particular case, during that time. Importantly, Mr. Klayman's Florida Bar membership, where he has been and remains continuously in good standing, as well as his admission before other federal courts including the U.S. Supreme Court, constitute independent bases for his admission for membership before this honorable Court. Mr. Klayman has been a member continuously in good standing of The Florida Bar since December 7, 1977, almost 43 years ago. App. 079.

A. There Was Insufficient Proof of Misconduct

This factor weighs perhaps the most strongly against any order of reciprocal discipline. During the course of the subject disciplinary proceeding, Mr. Klayman introduced onto the record an exhaustive and compelling opinion from the late renowned legal ethics expert, Professor Ronald Rotunda. ("Professor Rotunda"). App. 014. At the time he wrote the opinion, Professor Rotunda was the Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence at Chapman University, The Dale E. Fowler School of Law, where he was teaching professional responsibility and constitutional law. *Id.* Professor Rotunda also co-authored Problems and Materials on Professional Responsibility (Foundation Press, Westbury, N.Y., 12th ed. 2014), the most widely used legal ethics course

book in the United States. *Id*. Professor Rotunda has also "written numerous articles on legal ethics, as well as several books and articles on Constitutional Law….State and federal courts at every level have cited my treatises and articles over 1000 times. From 1980 to 1987, I was a member of the Multistate Professional Examination Committee of the National Conference of Bar Examiners." App. 014.

It is therefore telling that someone who can only be considered as one of if not the leading legal ethics scholars in the past fifty (50) years found that Mr. Klayman had committed no ethical violation. Specifically, Professor Rotunda, who was not paid for this professional legal ethics opinion but prepared and wrote it out of principle, found, "I have reviewed the facts of the above referenced bar complaint against Larry Klayman. It is my expert opinion that in the present situation Mr. Klayman has not committed any offense that merits discipline. In fact, he, to the best of his ability, simply pursued an obligation that he knew that he owed to Sandra Cobas, Peter Paul, and Louise Benson." App. 014.

Professor Rotunda further explained in his expert opinion:

> Mr. Klayman, whose organization, Judicial Watch, was once engaged as attorneys for Paul (it never was engaged for Benson or Cobas), reasonably believed he had an ethical obligation to represent them, and chose to uphold his duty to these clients. District of Columbia Rule of Professional Conduct 1.3 states that, "(a) A lawyer shall represent a client zealously and diligently within the bounds of the law." Further, Rule 1.3(a) (comment 1) provides guidance on this issue and the duties of an attorney. "This duty requires the lawyer to

pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and to take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor."

Recall *Maples v. Thomas*, 132 S.Ct. 912 (2012). In that case, two lawyers working in the firm of Sullivan & Cromwell entered an appearance for a client. These two associates worked pro bono and sought state habeas corpus for a defendant sentenced to death. A local Alabama lawyer moved their admission pro hac vice. Later, the two associates left the firm and their "new employment disabled them from representing" the defendant (one became a prosecutor and one moved abroad). Neither associate sought the trial court's leave to withdraw (which Alabama law required), nor found anyone else to assume the representation. Moreover, no other Sullivan & Cromwell lawyer entered an appearance, moved to substitute counsel, or otherwise notified the court of a need to change the defendant's representation. When Mr. Klayman left Judicial Watch, no other lawyer for Judicial Watch stepped up to the plate, because in fact Judicial Watch had taken actions adverse and harmful to Paul, Benson and Cobas. No lawyer stepped up to the plate in *Maples v. Thomas.*

The issue before the U.S. Supreme Court was whether the defendant showed sufficient "cause" to excuse his procedural default. Justice Ginsburg, for the Court, acknowledged that the usual rule is that even a negligent lawyer-agent binds the defendant. Here, however, the lawyers "abandoned" the client without notice and took actions which in fact harmed them thus severing the lawyer-client relationship and ending the agency relationship. This made the failure to appeal an "extraordinary circumstance" beyond the client's control and excused the procedural default. In the view of Mr. Klayman, he could not abandon the clients.

In applying these principles, it is reasonable and understandable that Mr. Klayman believed that had an ethical obligation, in accordance with perhaps the most important principle of this profession, to zealously and diligently represent his clients. More importantly, comment 7 observes that "[n]eglect of client matters is a serious violation of the obligation of diligence." Note that there is no credible

> claim that he used any confidence of Judicial Watch against Judicial Watch. App. 015.

Professor Rotunda also explained how Mr. Klayman's actions were necessary under the doctrine of necessity under these unusual, unprecedented and unforeseen set of circumstances:

> Faced with the dilemma of either representing Cobra, Paul, and Benson, or allowing them to lose their legal rights, Mr. Klayman sided with the rights of the clients, in accordance with Rule 1.3, and thus, justifiably, chose to represent them. Judicial Watch attempted, and succeeded, at disqualifying Mr. Klayman from the lawsuits because it knew no one else would be able to represent Cobas, Paul, and Benson, and that Judicial Watch would escape liability for the wrongs that they had caused. The trial judge did disqualify Mr. Klayman in representing Paul in a new case after Paul's previous lawyers withdrew representation because he could not pay them, but note that the trial judge did not refer this case to the disciplinary authorities for further discipline. It appears reasonable to believe that the trial judge imposed all the discipline (in the form of a disqualification) that he believed should be imposed. The situation involving these particular clients provided a unique set of circumstances, one that the D.C. Rules of Professional Conduct do not expressly take into account. Given this unprecedented situation, Mr. Klayman, out of necessity, attempted to correct the wrongs caused by Judicial Watch, so that he would not violate D.C. RPC Rule 1.3. **Further establishing Mr. Klayman's ethical intentions is the fact that he represented these aggrieved individuals pro bono and paid court and other costs out of his own pocket simply to protect the rights of Cobas, Paul, and Benson**. App. 016. (emphasis added).

Tellingly, Professor Rotunda's opinion was echoed by the Honorable Royce Lamberth ("Judge Lamberth") of the U.S. District Court for the District of Columbia. In Judge Lamberth's July 16, 2008 memorandum opinion, App. 063, he specifically addressed D.C. Bar Rule 1.9. Crucially, while Judge Lamberth

disqualified Mr. Klayman, he did not find that he had acted unethically. Indeed, Mr. Klayman immediately ceased representation of Cobas, Paul and Benson when he was disqualified, evidencing the fact that he never intended to commit any ethical violations and respects and obeys court orders.

Additionally, Judge Lamberth held, "[a] survey of relevant case law in this and other circuits reveals some ambiguity with respect to the standard for disqualification in the face of a violation of Rule 1.9…." Judge Lamberth took "note of Paul's argument that he will suffer prejudice if Mr. Klayman is disqualified." *Id.* at 14. Judge Lamberth emphasized that "[t]he essence of the hardship that Paul asserts will result from disqualification of Mr. Klayman is an inability to obtain alternate counsel for lack of financial resources" and ultimately apologetically found that "[t]he Court is not unsympathetic to this concern." *Id* at 14. Ultimately, it is important and telling that Judge Lamberth specifically addressed Rule 1.9 and chose not the sanction Mr. Klayman or refer the matter to Bar Disciplinary Counsel. App. 076. Judge Lamberth testified on behalf of Mr. Klayman before the District of Columbia Bar's hearing committee: "I…during the court of my career, I have referred a number of matters to Bar Counsel. Sometime I – I think I was overwhelming them with the number of referrals I made." App. 061. Thus, Judge Lamberth, who testified voluntarily before the hearing on Mr. Klayman's behalf without even having to be subpoenaed, did not find that the

issue with Mr. Klayman and Judicial Watch, then run by a non-lawyer, Tom Fitton, which resulted in harm to Mr. Paul by Judicial Watch abandoning Paul's representation in a criminal prosecution where he potentially faced many years in prison, and in fact ultimately was sentenced to ten years, once convicted, rose to the level of a bar referral.

Lastly, it is crucial that the District of Columbia Court of Appeals found that Mr. Klayman had not acted dishonestly or testified untruthfully, and that he had acted under what he believed to be advice of counsel:

> Additionally, Mr. Klayman's testimony was to the effect that the circumstances caused him to believe that Mr. Dugan had given the advice of counsel. We agree with the Board that there was not proof by clear and convincing evidence that Mr. Klayman testified dishonestly as to his belief and recollection. Accordingly, we accept the Board's conclusion rejecting the finding that Mr. Klayman testified falsely. App. 010.

Accordingly, based on the expert legal ethics opinion of Professor Rotunda, as well as the actions of the presiding Judge Lamberth, there was a clear lack of sufficient, that is clear and convincing, evidence of unethical conduct by Mr. Klayman. Board on Professional Responsibility Rule 11.6.

B. There is a Deprivation of Due Process

Professor Rotunda also addressed the significant due process concerns raised by the disciplinary proceeding against Mr. Klayman.

First, the proceedings against Mr. Klayman invoked the doctrine of laches:

> The doctrine of laches bars untimely claims not otherwise barred by the statute of limitations. As held by the District of Columbia Court of Appeals, laches is the principle that "equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant. It was developed to promote diligence and accordingly to prevent the enforcement of stale claims." *Beins v. District of Columbia Bd. of Zoning Adjustment*, 572 A.2d 122, 126 (D.C. 1990). Laches applies to bar a claim when a plaintiff has unreasonably delayed in asserting a claim and there was undue prejudice to the defendant as a result of the delay. Jeanblanc v. Oliver Carr Co., 1995 U.S. App. LEXIS 19995, *9 (D.C. Cir. June 21, 1995). Among the inequities that the doctrine of laches protects against is the loss of or difficulty in resurrecting pertinent evidence.

Here, the bar proceeding was instituted nearly eight (8) years after the alleged ethical infractions occurred. *Id*. at 24. Thus, there was clearly undue prejudice to Mr. Klayman due to the significant amount of time that had passed. When there is such a long delay, there is an ipso facto denial of due process, as during that time, witnesses disappear, memories fade, and documents are lost. Indeed, Mr. Klayman was unable to produce all of the documentary evidence and witnesses in support of his defenses, and documentary evidence in particular had been lost, discarded and destroyed over time, as he genuinely believed that he no longer had any need for them. This was also set forth and explained by Professor Rotunda:

> Given the substantial delay in bringing the present Petition before the Board, Mr. Klayman's ability to defend this case has been detrimentally prejudiced, particularly as recollection and memory fade over the course of approximately seven to eight years and witnesses and the individuals involved may be unavailable in support of Mr. Klayman's defense. In Paul's case, for instance, he is in federal prison in Texas. Ms. Cobas has health problems and Ms. Benson is now an 83-year-old woman. The Bar should not use this unique factual

> situation to discipline Mr. Klayman given the equitable doctrine of laches. Such discipline, if the courts uphold it, can ruin his career. App. 017.

This fundamental due process violation was clearly evident in the DCCA's June 11th opinion where it found that Mr. Klayman had not acted dishonestly or testified falsely:

> The Board found that Disciplinary Counsel failed to prove by clear and convincing evidence that Mr. Klayman gave false testimony. The Board observed that the Hearing Committee had relied almost entirely on Mr. Dugan's testimony that he did not endorse Mr. Klayman's appearance in the Benson matter. The Board reasoned, however, that the forcefulness of Mr. Dugan's testimony was undercut by his repeated inability to recall the substance of key conversations that took place between him and Mr. Klayman eight years earlier. In addition, the Board cited prior, "apparently inconsistent" statements that Mr. Dugan had made about the matter (e.g., Mr. Dugan's apparent statement to Judicial Watch's counsel, referred to in Judicial Watch's memorandum in support of its motion to disqualify, that there was "no ethical issue arising from" Mr. Klayman's representation of Ms. Benson). App. 010.

The doctrine of laches is fundamentally ingrained in bar disciplinary proceedings in a plethora of jurisdictions for good reason. In Florida, where Mr. Klayman is also licensed to practice and which formed a basis for his admission to this honorable Court, the doctrine of laches is correctly applied to bar disciplinary cases. *See Florida Bar v. Rubin, 362 So.2d 12* (Fla. Sup. Ct. l 1978); *The Florida Bar v. Walter*, 784 So.2d 1085 (Fla. Sup. Ct. 2001). Other states and jurisdictions have, for good reason, invoked this fundamental doctrine as well. *See In re Grigsby*, 815 N.W.2d 836 (Minn. 2012); *In Matter of Joseph*, 60 V.I. 540, 558- 59

(V.I. Feb. 11, 2014); *Hayes v. Alabama State Bar*; 719 So 2d 787, 791 (Ala. 1998). In fact, Texas applies a four year statute of limitations when it comes to bar disciplinary cases. *See Gamez v. State Bar of Tex*., 765 S.W.2d 827, 833 (Tex. App.—San Antonio 1988, writ denied). Thus, the eight (8) year delay, and twelve (12) year delay leading up to the subject June 11, 2020 order clearly invokes the doctrine of laches and resulted in a fundamental deprivation of Mr. Klayman's due process rights and fundamental unfairness.

Furthermore, the significant delay is not the only due process violation suffered by Mr. Klayman during the course of these proceedings. As found again by Professor Rotunda:

> This Petition also raises issues regarding the application of Mr. Klayman's Fifth Amendment due process rights. Lawyers in attorney discipline cases are entitled to procedural due process. In Ruffalo, the respondent appealed his disbarment after records of his employments were brought up into his disciplinary proceedings at a late stage in the proceedings without giving him the opportunity to respond. In reversing, the U.S. Supreme Court held that the attorney's lack of notice that his full employment record would be used in the proceedings caused a violation of procedural due process that "would never pass muster in any normal civil or criminal litigation." *In the Matter of John Ruffalo, Jr*., 390 U.S. 544, 550 (1968).
>
> In *Kelson*, the Supreme Court of California similarly held that it was a violation of procedural due process for the State Bar of California to amend its charges on the basis of Mr. Kelson's testimony without having given Mr. Kelson notice of the charge and an opportunity to respond. *Kelson v. State Bar*, 17 Cal. 3d. 1, 6 (Cal. 1976). Kelson is directly on point. Judicial Watch submitted boxes full of voluminous documents to the Bar Counsel's office in secret, none of which were

> ever served to Mr. Klayman until the Petition was filed and then served. App. 017.

To put it simply, there is no excuse whatsoever for the delay in the subject disciplinary proceeding, which now is thirteen years old since the date Fitton's complaint was filed. No unbiased court of law, much less any aspect of our system of justice, can or would frankly countenance this.

C. There Would be Grave Injustice From any Reciprocal Discipline

As set forth above, there was a severe lack of proof of unethical conduct in this case, which was coupled with gross due process violations. Under these facts, reciprocal discipline would clearly result in grave injustice. A further factor for this Court to consider is Mr. Klayman's course of work as a public interest attorney. He is primarily a public interest attorney and advocate who often takes cases on pro bono, not for personal financial gain, but to try to make society a better place. App. 078. These cases often turn emotional and become highly-charged whether due to political influences or other outside factors. This is far different from, for example, of run of the mill personal injury or contract cases which are important to the parties involved, but generally do not affect the public at large.

For instance, Mr. Klayman was able to obtain two preliminary injunctions against the National Security Agency ("NSA") for illegally surveilling millions of Americans. *See Klayman v. Obama*, 1:13-cv-00851 (D.D.C); *Klayman v. Obama*, 1:13-cv-00881 (D.D.C). These were the first ever rulings that intelligence agencies

mass surveillance programs were unconstitutional. Previously, Mr. Klayman had sued the Bush administration over its similar illegal mass surveillance. *Tooley v. Bush*, 1:06-cv-306 (D.D.C.) Mr. Klayman also recently represented Cliven Bundy before the U.S. Court of Appeals for the Ninth Circuit, where he is admitted, and obtained a decision affirming the dismissal of the supersedes indictment against Mr. Bundy. *United States of America v. Bundy et al*, 2:16-cr-00046 (D. Nev.) While conservative/libertarian in ideology, Mr. Klayman is nonpartisan and has brought suit against both Republicans and Democrats in this regard, including former President George W. Bush and his Vice President Dick Cheney over their secretive and potentially illegal Cheney Energy Task Force, which case went all the way to the Supreme Court. *See Richard B. Cheney et al v. United States District Court for the District of Columbia et al*, 03-475 (Sup. Ct.).[2] Mr. Klayman has represented Gold Star families whose sons were killed in Afghanistan as well. See e.g., *Strange v. Islamic Republic of Iran*, 1:14-cv-435 (D.D.C). These are just a few recent examples of Mr. Klayman's public interest advocacy, cases and successes over his 43-year career, over 26-years of which are in public interest advocacy.

IV. EVEN IN THE EVENT THAT THE COURT CHOOSES TO IMPOSE A RECIPROCAL 90-DAY SUSPENSION PERIOD, MR. KLAYMAN HAS ALREADY SERVED THIS SUSPENSION, RENDERING THIS PROCEEDING MOOT

[2] https://www.pbs.org/newshour/politics/law-jan-june04-cheney_06-24

Lastly, even in the unlikely event that the Court finds on reconsideration that reciprocal discipline is warranted, Mr. Klayman has already served a 90-day suspension period before this Court. Indeed, at all material times, Mr. Klayman was representing two sets of clients in matters before this Court. *See Luhn v. Scott et al*, 19-7146 (the "Luhn Case") and *Lovelien v. USA et al*, 19-5325 (the "Lovelien Case").

On August 10, 2020, Mr. Klayman filed a motion to withdraw as counsel in the Luhn Case and on August 12, 2020, Mr. Klayman filed a motion to withdraw as counsel in the Lovelien Case. This was done in an abundance of caution because Mr. Klayman was unsure if he was eligible to represent in a federal non-District of Columbia sanctioned court them due to the June 11, 2020 DCCA suspension order.

Mr. Klayman did not file notices of appearances in these cases until after a 90-day suspension period, on December 18, 2020. During the 90 plus day period between August 12, 2020 and December 18, 2020, Mr. Klayman did not represent any clients before the D.C. Circuit, or act as an attorney in any fashion. Thus, Mr. Klayman has already effectively served a 90-day suspension period before this Court.

CONCLUSION

For the foregoing reasons, this honorable Court should decline to impose reciprocal discipline, or in the alternative, at a minimum, find that Mr. Klayman's

suspension has already been served. To do so, the material errors cited above must be corrected and this matter should be impartially administered to with no referral to Committee on Admissions and Grievances for yet more reciprocal discipline that is more than suggested by Judge Tatel. This is clearly way over the top and overly punitive, and much more manifestly unjust.

Dated: April 2, 2021

Respectfully Submitted,

/s/ Larry Klayman_____

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CERTIFICATE OF COMPLIANCE

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Dated: April 2, 2021 /s/ Larry Klayman_____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served through the court's ECF system to all counsel of record or parties listed below on April 2, 2021

/s/ Larry Klayman_____