THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER NINE

Corrected:
September 20, 2023
Filed:
September 11, 2023

In the Matter of:	:	
	:	
LARRY E. KLAYMAN	:	
	:	
Respondent.	:	Board Docket No. 18-BD-070
	:	Disc. Docket No. 2017-D051
A Disciplinary Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 334581)	:	

REPORT AND RECOMMENDATION OF
HEARING COMMITTEE NUMBER NINE

Respondent Larry Klayman is charged with disciplinary rule violations, arising from his unsuccessful application to be admitted *pro hac vice* to a federal district court in Nevada so that he could represent Cliven Bundy, a defendant in a criminal case. Disciplinary Counsel contends that Respondent violated D.C. Rules of Professional Conduct ("Rules" or "D.C. Rules") 3.1, 3.3(a), 8.1(a), 8.1(b), 8.4(a), 8.4(c), and 8.4(d) by knowingly making false statements to courts, asserting frivolous claims, and engaging in conduct that seriously interfered with the administration of justice. Disciplinary Counsel contends that Respondent committed all of the charged violations and recommends as a sanction for his misconduct that he be suspended for at least one year and that he prove his fitness to practice law before reinstatement. Respondent contends that Disciplinary Counsel

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* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

has not established that he committed any violation of the Rules by clear and convincing evidence.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven, by clear and convincing evidence, that Respondent violated Rules 3.1, 3.3(a), 8.1(a), 8.1(b), 8.4(a), 8.4(c), and 8.4(d).[1] To the extent that Respondent's misconduct occurred in connection with matters pending before the Ninth Circuit and the Supreme Court, we also find that he engaged in conduct unbecoming a member of the Bar. We recommend that Respondent be suspended for one year and that he be required to prove fitness prior to reinstatement.

I. FINDINGS OF FACT

The following findings of fact are based on the testimony and documents admitted at the hearing, and these findings of facts are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005).

Respondent's Employment History

1. Respondent became a member of the Florida Bar in December 1977 and worked as an associate in a Florida firm practicing civil litigation. Tr. 173-74, 388-89.

[1] During the sanctions phase of the hearing, Disciplinary Counsel offered DX 128 through 131 into evidence. Respondent offered RX 20, 29 through 41, and 43 through 49 into evidence. (Respondent offered page 1172 only of RX 30 into evidence.) With the exception of RX 48, which was excluded during the hearing, each of the foregoing exhibits are admitted into evidence.

2. At the end of 1979, Respondent accepted a position at the Department of Justice ("DOJ") in the Consumer Affairs Section of the Antitrust Division. Tr. 174-77, 390. While working there, Respondent became a member of the D.C. Bar on December 22, 1980. DX 1; Tr. 175-76.

3. During his approximately two years at the Antitrust Division, Respondent worked for several months on the trial team in the AT&T civil divesture case. He was involved in the matter for a period of months, never entered his appearance as counsel, had no role in questioning witnesses, and left DOJ before the case was tried or resolved. Tr. 180-81, 185-86, 394, 536; Tr. 381-83 (Rolffot).

4. Respondent was involved in the DOJ Consumer Affairs Section's criminal contempt action against Troxler Hosiery Company ("Troxler") for violating a court order, and a broader investigation of Troxler. Tr. 183-84, 396, 537-38; *see United States v. Troxler Hosiery Co., Inc.*, 672 F.2d 365 (4th Cir. 1982) (per curiam). However, Troxler was never indicted, and Respondent left the Section before the criminal contempt proceedings took place. Tr. 538-540; *see also* Tr. 184-85.

5. Respondent left the DOJ after about two years to work as an associate for a D.C. law firm doing work in international trade. Tr. 178, 181, 187, 394-95. He later left the D.C. firm to start his own practice in 1983. Tr. 187, 398. In 1994, Respondent founded Judicial Watch with which he severed ties in 2003. Tr. 428-29. He later founded Freedom Watch. Tr. 429. Freedom Watch pays the salary of Oliver Peer, who has served as Respondent's associate since March 2016. Tr. 589, 591 (Peer); *see* Tr. 254.

6. Between 1982, when he left DOJ, and 2016, Respondent was counsel in several criminal matters. *See, e.g.*, Tr. 181, 192-93, 397. When Respondent opened his own firm, the D.C. Superior Court appointed him to represent three or four defendants in criminal cases. Tr. 192-93. None of the three or four criminal cases assigned to him went to trial. Tr. 192.

7. Respondent's pre-2016 involvement in federal criminal matters was limited to four matters: *United States v. BCCI Holdings*, (D.D.C. No. 1:1991cr00655), *United States v. Koshovyy*, (S.D. Fla. No. 1:2004cr20631), *United States v. Hernandez*, (S.D. Fla. No. 1:1998cr00721), and *United States v. Humm*, (S.D. Fla. No. 1:2007mj02948). Tr. 189-191; DX 115. He represented defendants in two of them, neither of which went to trial. Tr. 191, 200-01, 207-08, 402-03; *see* DX 115; DX 117; DX 119. First, Respondent represented a claimant in the *BCCI* forfeiture for a few months in 1993 before the trial court dismissed the claim. Respondent filed an unsuccessful appeal. DX 116; Tr. 193-94. Second, in 2001, Respondent assisted the ACLU in representing a witness in the *Hernandez* case seeking relief from a gag order. DX 118; Tr. 203-06. Third, he and other lawyers represented Margarita Pouchkareva in the *Koshovyy* case against criminal charges for approximately seven months between September 2006 and April 2007, when she pled guilty before trial. DX 117; Tr. 201-03, 540-43. Fourth, he represented Natalia Humm for a short time in 2007. After entering a plea negotiated by another lawyer, Humm fled the country and, after returning, was represented for a short time by Respondent, until her case was transferred to Orlando where she retained another

lawyer who negotiated a new plea. DX 119; Tr. 207-08, 407-09, 544, 547.[2] Respondent spent somewhere between 400-600 hours on these four cases. Tr. 411-12.

Respondent's Prior D.C. Disciplinary Matter

8. On October 1, 2013, Disciplinary Counsel filed charges against Respondent in *In re Klayman*, Bar Docket No. 2008-D048 ("*Klayman I*"). DX 8; Tr. 55-56.

9. In support of his defense, Respondent obtained a letter, dated June 2, 2014, from an ethics professor, Ronald D. Rotunda, referring to Respondent's conduct in *Klayman I* as "a technical violation" and stating that "it is my expert opinion that this bar complaint should not be pursued." Mr. Rotunda concluded that "Mr. Klayman should not be disciplined." RX 5 at 121-25.

10. On June 23, 2014, Disciplinary Counsel filed a Petition for Negotiated Discipline in which Respondent agreed that he violated Rule 1.9 (conflicts of interest) in three matters and Rule 8.4(d) (conduct seriously interfering with administration of justice) in one of the three matters and should be publicly censured.

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[2] On the last day of the first phase of the hearing, Respondent offered a motion and a partial court docket in *Alexander, et al. v. FBI, et al.*, D.D.C. Civil Action No. 1:96-cv-02123-RCL, contending that it showed additional experience in criminal matters. RSX 2; Tr. 716, 719-720. The court docket, of which Committee can take judicial notice, reflects that the court denied plaintiff's motions requesting that it issue show cause orders to hold various defendants in contempt. *Compare, e.g.*, ECF 1064, 1069, 1416, *and* 1441 (Plaintiffs' motions), *with* ECF 1135, 1431, 1435, *and* 1445 (orders denying motions).

DX 10. The Petition for Negotiated Discipline was supported by Respondent's June 23, 2014, affidavit stipulating to the facts and Rule violations set forth in the Petition and averring that he was "agreeing to this negotiated discipline because [he] believe[d] that [he] could not successfully defend against disciplinary proceedings based on the stipulated misconduct." DX 10 at 15; *see* Tr. 56-57. He also accepted full responsibility for his misconduct. DX 10 at 10, 17.

11. Respondent testified at a hearing on the Petition for Negotiated Discipline, confirming under oath the statements in the Petition and affidavit. *See* DX 11 at 2; Tr. 59-60. On January 13, 2015, the Hearing Committee issued an order finding that a public censure was "unduly lenient" for the stipulated misconduct. On that basis, the Committee rejected the Petition for Negotiated Discipline but said the parties could revise and resubmit it. DX 11 at 9; Tr. 61.

12. On June 22, 2015, Disciplinary Counsel moved to withdraw the Petition for Negotiated Discipline. DX 12. On August 3, 2015, the Hearing Committee denied the motion as moot. DX 13; *see* Tr. 66.

13. On August 31, 2015, the Board Office assigned the previously-filed charges against Respondent to another Hearing Committee. DX 14. That Committee held a three-day hearing on January 26-28, 2016. DX 15; Tr. 67-68. At the close of the first phase of the hearing, the Hearing Committee made a preliminary, non-binding decision, finding that Respondent had violated at least one of the charged Rules. DX 15 at 14; Tr. 71. The Committee set a briefing schedule for post-hearing briefs. DX 15 at 17-19.

14. On March 3, 2016, Disciplinary Counsel filed its post-hearing brief, recommending that Respondent be suspended based on the evidence demonstrating he violated Rule 1.9 in three matters and Rule 8.4(d) in one of the three matters. DX 17 at 3; *see* DX 16 at 1. Respondent filed his post-hearing briefs between March 17 and 30, 2016, and additional briefs in April 2016. DX 17 at 3-4.

15. The Hearing Committee issued its Report and Recommendation finding that Respondent engaged in violations of Florida Rule 4-1.9(a) and D.C. Rules 1.9 and 8.4(d) on June 19, 2017. DX 16 at 43. The Board on Professional Responsibility subsequently issued its Report and Recommendation on February 6, 2018, finding that Respondent violated Florida Rule 4-1.9(a) and D.C. Rule 1.9. DX 18 at 1-2. The Court, in turn, issued its decision on June 11, 2020 in which it accepted the Board's recommendation and ordered that Respondent be suspended for ninety days. *In re Klayman*, 228 A.3d 713 (D.C. 2020) (per curiam).

Respondent's Request for Admission *Pro Hac Vice* in the Nevada Federal Court in Order to Represent Cliven Bundy in Criminal Matter

16. On March 2, 2016, a federal grand jury in the District of Nevada returned a sixteen-count superseding indictment against Cliven Bundy, four of his sons, and fourteen others, charging them with conspiracy, assault on a federal officer, obstruction of justice, and other crimes. DX 20 at 1-4, 9.

17. Around the time of his indictment, Mr. Bundy retained Respondent to represent him in the criminal matter, which was assigned to Chief Judge Navarro of the United States District Court for the District of Nevada. Joel Hansen, a Nevada

lawyer, was asked to serve as local counsel and seek Respondent's admission in the case. *See* DX 20 at 1; DX 21; Tr. 50-51, 99-100.[3]

18. Under the local rules for the district court in Nevada, an attorney who is not a member of the bar of the district court may appear only after completing a Verified Petition on the form furnished by the clerk, and with the court's permission. DX 19 at 4-6; *see* DX 64 at 3.

19. On March 22, 2016, Respondent submitted a Verified Petition to the district court stating that Mr. Bundy had retained him in connection with the Nevada criminal case and requesting *pro hac vice* admission.[4] DX 21; Tr. 51-52.

20. The Verified Petition included Respondent's sworn responses to a number of inquiries set forth in the form. Question 5 asked him to attest that:

> [T]here are or have been no disciplinary proceedings instituted against petitioner, nor any suspension of any license, certificate or privilege to appear before any judicial, regulatory or administrative body, or any resignation or termination in order to avoid disciplinary or disbarment proceedings, except as described in detail below[.]

DX 21 at 2.

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[3] Mr. Hansen later sought permission to withdraw for health reasons, and the district court approved his request on the condition that Mr. Bundy find substitute local counsel. DX 20 at 32-33; Tr. 86. On October 24, 2016, Nevada attorney Bret Whipple, who had been representing Mr. Bundy since October 11, 2016, entered his appearance as counsel for Mr. Bundy stating he would provide "full representation" to Mr. Bundy "throughout the duration of [the] trial." DX 39; *see* DX 20 at 34-37.

[4] Respondent submitted a second Verified Petition the next day on March 23, 2016, to correct a missing signature. DX 22; Tr. 52.

21. In response to Question 5, Respondent provided the following description concerning the status of *Klayman I*:

> The only disciplinary case pending is in the District of Columbia, disclosed in the attached. During my 39 years as an attorney, I have remained continually in good standing with every jurisdiction that I have been admitted to, but have responded to a few complaints explained in the attached statement. I also allowed my bar membership in Pennsylvania to lapse for lack of use by not completing CLE's [sic] there, but remain eligible for reinstatement. See attached statement.

DX 21 at 2.

22. Respondent provided further information concerning *Klayman I* in an attached statement. Respondent stated:

> [The proceeding] was filed almost 8 years ago over a claim by Judicial Watch, my former public interest group that I founded and was Chairman and General Counsel, after I left Judicial Watch to run for the U.S. Senate in Florida in 2003-04, that by representing a former client, employee and donor that it had abandoned, sexually harassed and defrauded that I was in conflict of interest. I represented these persons pro bono, did not breach any confidences with Judicial Watch, and did so only to protect their interests in an ethical fashion. I did not seek to break any agreements with Judicial Watch but rather to have them enforced to help these persons. The matter is likely to be resolved in my favor and there has been no disciplinary action.

DX 21 at 7.

23. Lacking from Respondent's statement was the historical context of the disciplinary proceeding, which included Respondent's prior admission to violating conflict of interest and other rules, and that he had signed an affidavit to that effect while pursuing a negotiated disposition. *See* DX 21; DX 22. Nor did he disclose that a Hearing Committee rejected the Petition for Negotiated Discipline as unduly

lenient, and a second Committee had made a preliminary finding within the previous two months – on January 28, 2016 – that he engaged in misconduct at the conclusion of the contested hearing. DX 21; DX 22; DX 15 at 14; *see also* DX 64 at 4, 6.

24. As to other bar complaints, Respondent explained that he "agreed to a public reprimand before The Florida Bar" for failing to timely pay a mediated settlement to a client, but that there was "no showing of dishonesty" and he was never suspended from the practice of law. DX 21 at 7.[5]

25. In further response to the questions about suspensions of his license or privilege to practice, Respondent said that, twenty-two and eighteen years earlier, "two judges vindictively stated that I could not practice before them after I challenged rulings they had made on the basis of bias and prejudice." DX 21 at 7-8; *see* Tr. 73. He explained that those exclusions applied only to the two judges themselves, Judge William D. Keller of the U.S. District Court for the Central District of California and Judge Denny Chin of the U.S. District Court for the Southern District of New York. He said that the "bars of the District of Columbia and Florida reviewed these rulings and found that I did not act unethically" and that he was currently in good standing in both jurisdictions. DX 21 at 8.

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[5] Ms. Humm filed a complaint against Respondent alleging that he failed to provide her with legal services after receiving a $25,000 retainer. DX 26 at 88-89. Respondent eventually agreed to repay her $5,000 but then failed to do so, resulting in a disciplinary complaint that Respondent resolved through consent judgment by paying the full $5,000 and agreeing that he violated four of the Florida Rules of Professional Conduct. DX 26 at 88-96; RX 5 at 143-151.

26. Respondent did not fully disclose Judge Keller's findings, provide information about the case, or reveal that he had appealed the findings to the Federal Circuit, which affirmed the revocation of Respondent's ability to appear before Judge Keller in perpetuity. *See* DX 21; DX 22; DX 64 at 3-4; Tr. 78-79. The Federal Circuit found that Respondent had accused the judge of racial bias, asserted the judge had a financial conflict which "border[ed] on the frivolous," acted in bad faith, made several misrepresentations to the court, including that he had never been sanctioned or denied *pro hac vice* privileges, and had "unreasonably and vexatiously multipl[ied] the proceedings." DX 120 at 2-7, 9-11, 13. Respondent did not disclose any of these findings to Judge Navarro. *See* DX 21; DX 22; Tr. 553.

27. Respondent also did not fully disclose Judge Chin's findings, provide information about the case, or reveal that he had appealed the findings to the Second Circuit, which had affirmed the revocation of his *pro hac vice* status and denial of any future applications. *See* DX 21; DX 22; DX 121; Tr. 82. The Second Circuit found that Respondent had made "claims of partisan and racial bias with no factual basis," and his claims against Judge Chin were "discourteous," "degrading to the court," "prejudicial to the administration of justice," and "smacked of intimidation." DX 121 at 5-6.[6] Respondent did not disclose any of these findings to Judge Navarro. *See* DX 21; DX 22; Tr. 554-55.

[6] The Second Circuit also found that Respondent inaccurately characterized the record and that his comments were "entirely inappropriate." DX 121 at 2.

28. In contrast to Respondent's statement that the "bars of the District of Columbia and Florida reviewed these rulings and found that I did not act unethically," the letter issued by the Office of Disciplinary Counsel had not concluded that Respondent "did not act unethically" before Judge Keller. DX 21 at 8; *see* DX 26 at 80-82; Tr. 443-44. Rather, Disciplinary Counsel concluded that it lacked "clear and convincing evidence of an ethical violation." DX 26 at 82.

29. As the Ninth Circuit later determined, Respondent did not disclose the rulings of other judges who had reprimanded him, denied him *pro hac vice* status, or sanctioned him for misconduct. DX 64 at 3, 10-11.

30. On March 31, 2016, Judge Navarro denied Respondent's Verified Petition "for failure to fully disclose disciplinary actions and related documents." DX 25 at 1. Judge Navarro found that Respondent's statement that the D.C. disciplinary matter "is likely to be resolved in my favor and there has been no disciplinary action" was "misleading and incomplete." DX 25 at 2. On her own, Judge Navarro had learned that Respondent had signed an Affidavit and a Petition for Negotiated Discipline in the D.C. disciplinary proceeding, stipulating to misconduct in three different cases and consenting to a public censure. Judge Navarro found that these documents included "admissions of three separate incidents of stipulated misconduct that were not clearly disclosed in [Respondent]'s Verified Petition." DX 25 at 2.

31. Judge Navarro denied Respondent's petition without prejudice. The judge told Respondent that if he wished to file a new Verified Petition, he should include the following:

> (1) the case numbers for the cases before Judge William D. Keller and Judge Denny Chin that resulted in these judges precluding Klayman's practice before them; (2) verification of the review by the Bar Associations of the District of Columbia and Florida finding that Klayman did not act unethically before Judges Keller and Chin; (3) an updated Certificate of Good Standing from the Supreme Court of Florida; (4) the Florida Bar Association's reprimand verifying that there was no showing of dishonesty in connection with their disciplinary action; (5) the Exhibits attached to this Order; and (6) verification that the matter in the District of Columbia disciplinary case referenced in the Verified Petition (Verified Pet. 7) has been resolved with no disciplinary action.

DX 25 at 2-3.

32. On April 7, 2016, Respondent filed a "Supplement to and Renewed Verified Petition" for permission to practice in the court as counsel for Mr. Bundy in his criminal case. DX 26.[7] In response to the first five items, Respondent provided: (1) the case names and citations for the actions involving Judges Keller and Chin; (2) a letter from D.C. Bar Counsel that addressed the matter before Judge Keller, but did not address the matter before Judge Chin, and nothing from the Florida Bar's files, which Respondent claimed were no longer accessible; (3) an updated letter of good standing from the Supreme Court of Florida; (4) a copy of

[7] The district court noted that, contrary to its order, Respondent did not file a new Verified Petition. Thus, it construed his Renewed Petition as a request to reconsider the denial of his original Verified Petition. DX 29 at 1 n.1.

Florida's reprimand; and (5) the exhibits attached to Judge Navarro's order. *See* DX 26. As to the sixth item (with respect to *Klayman I*), Respondent said the court "appears to have misunderstood the nature and current posture of the disciplinary proceeding underway" and provided the following explanation:

> [T]he prior attempted negotiated discipline never entered into effect and Mr. Klayman never chose to pursue any further proposed negotiated discipline as he . . . did not violate any ethical provision of the District of Columbia Code of Professional Responsibility. [Disciplinary] Counsel and Mr. Klayman had attempted to resolve the matter by agreement, but Mr. Klayman later thought the better of having signed the affidavit and agreeing to negotiated discipline it [sic] since he feels strongly that he acted ethically at all times.

DX 26 at 1-2.

33. Respondent did not disclose to the court that the Hearing Committee that considered the negotiated discipline had rejected it as "unduly lenient." DX 58 at 7. Respondent's supplement did not inform Judge Navarro that the Hearing Committee considering the contested case had made a preliminary non-binding determination that Disciplinary Counsel had proven a Rule violation.[8] Respondent attached to his pleading his post-hearing brief and the opinion letter of his expert witness, Ronald Rotunda, but did not include Disciplinary Counsel's brief. DX 26 at 2; *see* DX 64 at 5, 9, 19 n.7.

[8] Although not disclosed in the Supplement itself, the fact that the *Klayman I* Hearing Committee had already made its preliminary non-binding determination was discussed in the brief attached to the Supplement. *See* DX 26 at 17.

34. Respondent then submitted two supplements to his "Supplemental and Renewed Petition" which did not provide any additional information responsive to the district court's inquiries. *See* DX 27; DX 28; Tr. 90.

35. The district court treated Respondent's renewed filing as a request for reconsideration and denied it on April 19, 2016. DX 29. The court found that Respondent "admit[ted] that [the D.C. matter] is still pending," and thus there was "no error with its prior ruling." DX 29 at 2. It ordered that Respondent's petition would remain denied without prejudice until he could provide proof that the D.C. disciplinary proceeding had been resolved in his favor. DX 29 at 2; Tr. 91.[9]

The *Bivens* Actions Against the Federal District Judge Navarro and Others Following the Denial of Respondent's *Pro Hac Vice* Application

36. Within weeks of the trial court's denial of his second request for *pro hac* admission, on May 10, 2016, Respondent and Mr. Hansen prepared a *Bivens* complaint on behalf of Cliven Bundy against Judge Navarro, President Obama, Senator Harry Reid, and others. Tr. 92-93; DX 44. Although Respondent did not sign the document, he readily admits that he was "listed as of counsel on the Bivens action" and assisted Mr. Hansen in preparing the pleading, along with a host of other pleadings filed in the matter. Tr. 480-81; *see also* Tr. 92-93; 106. Indeed, he was listed as "of counsel" in a number of such pleadings. Tr. 106; *see, e.g.*, DX 48 at 1.

[9] The court did not prevent Respondent from consulting with Mr. Bundy as a law clerk or paralegal. DX 58 at 5 n.3; Tr. 103; *see* Tr. 481.

37. The complaint sought $50 million in damages, the removal of Judge Navarro from Mr. Bundy's case, and an order admitting Respondent *pro hac vice*. DX 44 at 16-17. At this disciplinary hearing, Respondent argued the appropriateness of the action by contending that judges do not have absolute immunity and that there is caselaw permitting injunctive relief against judges. Tr. 93, 98.

38. The complaint asserted a myriad of claims that lacked a factual basis. Respondent expressly defended certain of these claims at the hearing in this matter. *See, e.g.*, FF 39.

39. For example, the complaint claimed that Respondent's representation of Joe Arpaio was related to the denial of his *pro hac vice* application because Judge Navarro, a "Latino Democrat woman" and a "Latino activist and a Mexican-American," attended law school at Arizona State University, which was located in the county where Arpaio had been Sheriff. The complaint also alleged that Judge Navarro had pre-judged the Bundy case and was biased and prejudiced. DX 44 at 8, 12-14; DX 45 at 8, 12-14. At the hearing, Respondent explained these positions by stating that

> Judge Navarro went to law school at Arizona State University in Maricopa County, and I believe everybody's [sic] deserves representation. And yes, [Sheriff] Arpaio is a client of mine in certain matters, and I felt that influenced her thinking with regard to me.
>
> If I may say, I never heard Sheriff Arpaio make one prejudicial remark about people of Spanish origin or anything else, but, yes, this was a factor that I felt influenced her decision making, because [Sheriff]

> Arpaio is a lightning rod, and I represented some -- as many people do -- people that are controversial. I'm controversial myself.

Tr. 93-94.

40. The complaint speculated that Judge Navarro had a conflict of interest because her husband was an Assistant DA in Clark County, Nevada and had been named as a witness in the Bundy case. DX 44 at 9; *see* Tr. 162-67.

41. Respondent and Mr. Hansen also claimed that Judge Navarro was acting at the direction of President Obama who had appointed her and Senator Reid who had supported her nomination. Specifically, the complaint alleged that in "react[ion] to the commands of her benefactors" Obama and Reid, Judge Navarro had violated Mr. Bundy's rights by "refusing, without factual or legal bases, to grant *pro hac vice* status" to Respondent. DX 44 at 11; *see also* DX 44 at 8, 14-15.

42. Finally, the complaint claimed that Judge Navarro had kept Mr. Bundy in solitary confinement. DX 44 at 12. Respondent was aware of no order by Judge Navarro doing so. Tr. 158-59. When asked to explain the basis for that contention, Respondent defended that position at the hearing by stating that "[t]he fact is my client was in solitary confinement. You don't get there unless the judge plays a role in that . . . ." Tr. 155-56. Yet, he admitted that he was present at a May 10, 2016, hearing where Mr. Hansen explained to the court that Mr. Bundy was in solitary confinement voluntarily because he was fearful of the prison population. Tr. 157.

43. On May 24, 2016, Mr. Hansen filed an amended *Bivens* complaint against Judge Navarro, President Obama, and others repeating the claims above. DX 45. Again, only Mr. Hansen signed the amended complaint, but Respondent

assisted in drafting the pleading. Tr. 92-94; *see* DX 45. The amended complaint sought "compensatory and punitive damages in excess of $90,000,000." DX 45 at 18. Additionally, it sought an order removing and recusing Judge Navarro from the Bundy criminal matter and the issuance of an order permitting Respondent to be admitted *pro hac vice* in the Bundy criminal matter. *Id*.

44. Based upon the stipulation of the parties, the *Bivens* action was dismissed with prejudice on October 12, 2016. DX 53. According to Respondent, Mr. Hansen did so without consulting with Respondent. Tr. 106.

The Motion to Disqualify

45. On May 20, 2016, shortly before the amended *Bivens* complaint was filed, Mr. Hansen filed a motion to disqualify Judge Navarro based largely on the allegations in the *Bivens* complaint. Respondent's signature was included on the initial motion to disqualify, with the parenthetical: "(Pro Hac Vice Application Pending)," which was not true. DX 31 at 13; *see* DX 33 at 17; DX 34 at 12; DX 35 at 3; DX 36 at 2; *see also* DX 32 at 5. Both Mr. Hansen and Respondent later claimed the signature line for Respondent in the initial filing was a mistake. *See* DX 38; Tr. 480-81; 582-83. The Hearing Committee does not credit this testimony, which seems to be a post hoc rationalization. We find that Respondent assisted in the preparation of the motion to disqualify. Respondent participated in and approved the other filings relating to the motion for disqualification, each of which identified him as "Of Counsel." *See* DX 33 (Defendant Cliven Bundy's Amended and Superseding Motion to Disqualify Judge Gloria Navarro and Memorandum of Law

in Support of Motion to Disqualify Judge Gloria Navarro under 28 U.S.C. § 144 and/or Request for Voluntary Recusal; and Renewed Motion for Pro Hac Vice Status for Larry Klayman); DX 34 (Defendant Cliven Bundy's Memorandum of Law in Support of Motion to Disqualify Judge Gloria Navarro Under 28 U.S.C. § 144); DX 35 (Motion for Leave to File Supplement to Defendant Cliven Bundy's Memorandum of Law in Support of Motion to Disqualify Judge Gloria Navarro Under 28 U.S.C. § 144). Moreover, as discussed below, Respondent testified at the hearing that, after another district court judge learned of *Klayman I* and revoked his *pro hac vice* admission, he participated in filing a similar disqualification motion against that judge.[10]

46. Judge Navarro denied the motion to disqualify on May 24, 2016. DX 37. Relying on Ninth Circuit case law, she ruled that counsel could not sue her to create a conflict and then use the suit as a basis to request her recusal. DX 37 at 3-4. She noted that she was sued only after she denied Respondent's *pro hac vice* application on several grounds, including his lack of candor, and she confirmed that judicial decisions and adverse rulings cannot justify a recusal motion. DX 37 at 4. Judge Navarro found that the conspiracy claim on which the *Bivens* action and disqualification motion were based "displays a lack of respect and/or complete ignorance of the independent role of the judiciary" and "the spurious allegations

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[10] *See* Tr. 568-69 ("I did not move to disqualify herself initially. [] I asked her to correct it, and she wouldn't correct it. And she dug her heals [sic] in."); *see also* DX 126 (Notice of Tentative Ruling on Motion to Revoke Pro Hac Vice).

raise very serious concerns about defense counsel's ability to effectively represent his client in this complex criminal case." DX 37 at 4. She also found that the other allegations in the motion to disqualify had no basis. DX 37 at 5-6.

Respondent's Successive Petitions for Writ of Mandamus

47. On July 6, 2016, Respondent filed an Emergency Petition for Writ of Mandamus with the Ninth Circuit. DX 55; Tr. 111. Respondent requested that the Ninth Circuit compel the district court to admit him *pro hac vice* and argued Mr. Bundy's Sixth Amendment right to counsel would be violated if he was deprived of his counsel of choice. DX 55. Respondent included unfounded claims in the mandamus petition about the political nature of the prosecution allegedly directed by President Obama and Senator Reid (DX 55 at 10-12), and he repeated the claim that the trial court had committed Mr. Bundy to solitary confinement (DX 55 at 11, 17). Respondent did not disclose the procedural history or current status of *Klayman I*. DX 64 at 9.[11] Respondent also claimed that Mr. Rotunda's letter said he "did nothing wrong." DX 55 at 17; *see* DX 55 at 16 n.4; DX 60 at 10; DX 61 at 6; *see also* Tr. 471. As discussed above, Mr. Rotunda's letter did not include this conclusion. *See* FF 9.

[11] Judge Navarro later learned and included in her answer to Respondent's first petition to the Ninth Circuit that a D.C. Hearing Committee had rejected the negotiated discipline as too lenient. DX 58 at 7; DX 64 at 9. Government counsel, not Respondent, advised the Ninth Circuit of the preliminary finding of the Committee in the contested proceeding. DX 59 at 22; DX 61 at 30-33.

48. To support his claim that he could effectively represent Mr. Bundy, Respondent claimed he had been a former federal prosecutor at the DOJ and was an experienced criminal defense attorney. DX 55 at 12, 18, 21.[12] Respondent contrasted his alleged criminal experience with the other lawyers who were representing Mr. Bundy – initially Mr. Hansen who served as local counsel and, subsequently, Bret Whipple, who served as Mr. Bundy's lead and sole counsel from October 2016 through January 2018, when the court dismissed the charges against Mr. Bundy with prejudice. *See, e.g.*, DX 55 at 12; DX 69 at 22 n.7; *see also* DX 39; DX 20 at 32-33; DX 42. Respondent argued that Mr. Bundy was entitled to experienced federal criminal defense counsel and that he had such experience, while claiming that Mr. Hansen and Mr. Whipple did not. For example, Respondent claimed that Mr. Hansen was in a small firm and was not, by trade, a criminal defense attorney. DX 55 at 12; *see also* DX 69 at 22 (claims Mr. Hansen had little to no federal criminal experience); Tr. 115-17. Yet, Mr. Hansen had "been through many federal criminal jury trials" (DX 56 at 9), which Respondent knew, and Respondent had been through none. *See* Tr. 116-17; FF 4, 7. Also, Respondent's firm consisted of one lawyer – himself (although Peer, a Freedom Watch employee, assisted Respondent). Tr. 109-110; FF 6.

[12] Respondent repeated these claims in several other pleadings. *See, e.g.*, DX 60 at 12; DX 61 at 4; DX 65 at 6, 18-19; DX 69 at 6, 21-22, 41; DX 73 at 7, 13, 16-17, 24; DX 77 at 6, 27; DX 90 at 3, 23, 26; DX 107 at 3; Tr. 120-21, 133.

49. When Mr. Whipple became counsel for Mr. Bundy, Respondent claimed that he too had little or no criminal law experience, while Respondent was a "fully qualified and experienced attorney in federal criminal practice." DX 69 at 21-22; DX 73 at 12-13 (arguing that Mr. Whipple "has no federal criminal defense experience").[13] When the prosecutors, the judge, and ultimately the Ninth Circuit confronted Respondent about his statements with respect to Mr. Whipple's criminal experience (*see* DX 75 at 15-16; DX 76 at 4-5; DX 79 at 10-12), Respondent claimed that the statements represented his opinion based on conversations with Mr. Whipple. DX 77 at 9-10; DX 80 at 13; DX 83 at 8-9; Tr. 135-36, 277-78.

50. Judge Navarro answered Respondent's first mandamus petition to the Ninth Circuit explaining her decision not to admit Respondent and providing additional grounds for refusing to grant him *pro hac vice* status, including: (1) Respondent had failed to accurately and truthfully describe the D.C. disciplinary proceedings and had made further false and misleading statements about the withdrawal of his affidavit by failing to disclose that a Hearing Committee had rejected the negotiated disposition because the sanction of public censure was unduly lenient (DX 58 at 6-7); (2) Respondent failed to mention or disclose other

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[13] Mr. Whipple entered his appearance as Mr. Bundy's counsel in October 2016, around the time of the argument of Respondent's first mandamus petition with the Ninth Circuit. DX 39; *see* DX 61. Mr. Whipple's experience as a criminal defense attorney was noted during the argument and in pleadings *before* Respondent falsely claimed that Mr. Whipple had *no* criminal law experience. DX 61 at 23; DX 66 at 14, 21-22 & n.7.

cases in which courts had revoked or denied Respondent *pro hac vice* status because of his "inappropriate and unethical behavior" (DX 58 at 7-8); (3) Respondent had "misrepresent[ed]" the two cases in which two federal district judges had banned him from their courtrooms and had failed to disclose that the judges' decisions were affirmed on appeal, and that the Second Circuit in affirming one of the decisions found that Respondent's challenge to a district court's impartiality was "insulting and smacked of intimidation" (DX 58 at 8-9); and (4) Respondent had been involved in the *Bivens* action that Mr. Bundy filed against her, President Obama, and Senator Reid, after she denied his *pro hac vice* admission, alleging they had conspired to violate Mr. Bundy's rights (DX 58 at 9).

51. On October 28, 2016, the Ninth Circuit denied Respondent's request for mandamus relief. The Ninth Circuit concluded:

> Klayman has made misrepresentations and omissions to the district court regarding the ethics proceedings before the District of Columbia Bar; he has shown a pattern of disregard for local rules, ethics, and decorum; and he has demonstrated a lack of respect for the judicial process by suing the district judge personally. By any standard, the district court properly denied his petition to be admitted *pro hac vice*. Bundy is entitled to a fair trial, defended by competent, vigorous counsel of his choosing. But his right to such counsel does not extend to counsel from outside the district who has made it a pattern or practice of impeding the ethical and orderly administration of justice.

DX 64 at 13.[14]

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[14] The Ninth Circuit also found that Respondent had not disclosed the rulings of other judges who had reprimanded him, denied him *pro hac vice* status, or sanctioned him for misconduct. *See* DX 64 at 3, 10-11.

52. Judge Gould dissented based on his conclusion that Mr. Bundy's Sixth Amendment right to chosen counsel should have taken precedence over the issue of Respondent's candor. DX 64 at 16-17. Specifically, Judge Gould's dissenting statement stated:

> I recognize that the ethical concerns of the majority and the district court, particularly their concern whether Klayman has been candid and forthcoming in his representations seeking pro hac vice admission, have some weight. Klayman properly disclosed the ongoing disciplinary proceeding in his initial application for pro hac vice admission, saying that the proceeding had not yet been resolved. This disclosure was accurate. But then, after the district court discovered his Petition for Negotiated Disposition, he may have come near the line of lack of candor in explaining it away. He stated that the disposition never went into effect because he "later thought the better of having signed the affidavit . . . since he feels strongly that he acted ethically at all times." Yet, what had happened was a D.C. Board on Professional Responsibility Hearing Committee had rejected the disposition as too lenient for the bar's tastes.
>
> At oral argument before us, Klayman explained his view of the difference by saying that after the rejection, he at first continued to negotiate with counsel for the D.C. Bar, but then decided to withdraw from those negotiations. While this shows that Klayman was not lying in his initial explanation, he still seems to have been, at the least, selective in his disclosures to the district court. I agree with Klayman that he was not obligated to relitigate the D.C. proceeding before the district court and that he did not have to provide the district court with the entire record from D.C. And if his disclosures were selective, still he is an advocate, an advocate representing defendant Cliven Bundy, and after submitting a compliant response to the questions in the pro hac vice application, he had no greater duty to disclose any possible blemish on his career or reputation beyond responding to the district court's further direct requests. Yet, for him to tell the district court that it was wrong about the negotiated discipline being in effect and to not

> also tell the court why the disposition lacked effect—its rejection by the bar committee—may have been a relevant omission.

DX 64 at 16-17 (footnote omitted) (*Bundy v. U.S. District Court*, 840 F.3d 1034, 1054-55 (9th Cir. 2016)).

53. Contrary to Respondent's representations in later pleadings, Judge Gould never found, much less "emphatically" or "unequivocally" found, that Respondent was truthful. DX 100 at 11; DX 101 at 8, 11; DX 107 at 11-12; DX 109 at 11, 17, 19; *see* DX 90 at 21; DX 95 at 6-7, 21-22. The portion of Judge Gould's dissent that Respondent cited as support in subsequent pleadings omitted other sentences in the paragraph he quoted and ignored Judge Gould's other statements about Respondent's selective disclosures, relevant omissions, and lack of candor. *See, e.g.*, DX 90 at 20-21. Judge Gould's consistent position throughout the Ninth Circuit proceedings was that Mr. Bundy's Sixth Amendment right to counsel of his choice outweighed Respondent's lack of candor. *See* DX 64 at 13-18.

54. On November 10, 2016, Respondent filed an emergency petition with the Ninth Circuit requesting rehearing en banc. DX 65. Respondent essentially repeated the arguments and claims in his initial mandamus petition, citing Judge Gould's dissent. DX 65. On December 13, 2016, the Ninth Circuit denied the petition for rehearing as no judge on the full court, other than Judge Gould, had requested a vote to grant it. DX 67.

55. On January 17, 2017, Respondent filed an emergency petition for writ of mandamus with the Supreme Court, which he supplemented twice. DX 69; DX 70; DX 71; Tr. 160. Respondent repeated the arguments and claims he

previously made to the Ninth Circuit, and falsely represented that Mr. Bundy's trial would commence on February 6, 2017. DX 69 at 5, 18-26, 43. At the disciplinary hearing, Respondent admitted that Mr. Bundy's trial was not scheduled to begin on that day. However, his concern was that he should be present at the trials of other defendants. *See* Tr. 145, 151, 154.

56. In his first mandamus petition to the Supreme Court Respondent also criticized Ninth Circuit Judge Jay Bybee claiming he had "demonstrated an unusual lack of appreciation and sensitivity" to criminal defendants' Sixth Amendment rights. DX 69 at 26. Respondent would repeat this refrain in numerous other pleadings, citing a dissenting opinion Judge Bybee authored in an unrelated case and his role in preparing memoranda regarding torture while working in the Department of Justice in the George W. Bush administration. *See, e.g.*, DX 69 at 26-27; DX 73 at 27-29; DX 80 at 10-12; DX 86 at 15; DX 100 at 15; DX 101 at 16. In subsequent pleadings, Respondent claimed Judge Bybee was biased and prejudiced, had a conflict of interest based on his alleged ties with Judge Navarro and Senator Reid, and should not be permitted to consider Respondent's subsequent petitions and motions. *See, e.g.*, DX 101 at 14-17. The government waived its right to respond to Respondent's initial and subsequent two mandamus petitions to the Supreme Court, most of which Respondent supplemented more than once. DX 68 at 1; DX 89 at 1; DX 106 at 2. The Supreme Court denied Respondent's first mandamus petition on February 27, 2017. DX 68 at 1.

57. Ten days later, on March 9, 2017, Respondent filed his second emergency mandamus petition with the Ninth Circuit, repeating many of the same arguments made in his earlier petitions to the Ninth Circuit and Supreme Court but contending there were "changed circumstances" based on, among other things, his argument that Judge Navarro had threatened to hold Mr. Whipple in contempt. DX 73 at 9-14, 18-21; *see* Tr. 163-65. We find that this statement was intentionally false.

58. When asked to explain his basis for the statement, Respondent testified inconsistently. In one instance, he testified that

> Mr. Whipple told me that Judge Navarro wanted to potentially hold him in contempt because he had listed as a witness the judge's husband, Brian Rutledge, who was an Assistant DA of Clark County, Nevada, and he told me that that was the reason that he didn't want to resubmit my pro hac vice application. I asked him to do that at that time. He said, "Because if I do that it may get her upset may wind up getting me held in contempt." That's what he told me.

Tr. 162. Moments later, in response to being asked whether he represented to the Ninth Circuit that Judge Navarro had threatened to hold Mr. Whipple in contempt, he responded by stating

> And that's accurate. That's what Bret Whipple told me. And to this day nobody sees the transcript of this sealed hearing that dealt with her husband that she didn't want the public to know about. That's what Mr. Whipple told me. If he was lying, that's Mr. Whipple's problem, but not me, not my problem.

Tr. 163.

59. Respondent also reiterated his federal criminal defense experience, said that Mr. Whipple had none, and claimed that Respondent was Mr. Bundy's only

experienced counsel. DX 73 at 12-13, 16-17, 25. Respondent unsuccessfully sought to have the Ninth Circuit assign his second mandamus petition to a new panel, repeating his criticism of Judge Bybee. DX 73 at 27-29; Tr. 243-45.

60. The Government and Judge Navarro responded to Respondent's second mandamus petition, refuting his claims that the trial court had ever threatened Mr. Whipple with contempt and providing supporting evidence. DX 75 at 16-18; DX 76 at 2-4. They also refuted the claim about Mr. Whipple's alleged inexperience as "demonstrably false" and described Mr. Whipple's past employment as a public defender and his involvement in numerous multi-defendant complex cases and lengthy criminal trials. DX 75 at 15-16; DX 76 at 4-5; *see also* DX 113; DX 114. In reply, Respondent repeated his claim about the contempt threat against Mr. Whipple. DX 77 at 14-16, 28-32; DX 78 at 6; *see* Tr. 162-63. Respondent then claimed his statements about Mr. Whipple's alleged inexperience were based on his belief and reiterated that he "ha[d] extensive experience in complex federal criminal litigation." DX 77 at 27;[15] *see also* DX 77 at 19-13, 29-30; DX 90 at 23; DX 91 at 15.

61. On March 30, 2017, the Ninth Circuit denied Respondent's second mandamus petition. The Ninth Circuit found that Respondent's second mandamus petition was "procedurally irregular" for a number of reasons and substantively had

[15] Respondent also claimed that Mr. Whipple was unable to provide the needed representation because he did not have sufficient resources and was involved in other cases. DX 77 at 11-12.

"no merit[]." DX 79 at 3-4. The "changed circumstances" Respondent alleged had "nothing but the most attenuated connections" with his *pro hac vice* application and none came close to demonstrating that the trial court erred in not *sua sponte* admitting Respondent. DX 79 at 5-6. The Ninth Circuit found no credible evidence to support Respondent's claim that the district court had threatened Mr. Whipple with contempt. DX 79 at 8-9. It found that Respondent's claims about Mr. Whipple's experience were "demonstrably false" and that he either had "failed to ascertain the facts" or "deliberately misled th[e] court." DX 79 at 10. The Ninth Circuit set forth publicly-available information establishing the falsity of Respondent's claims, and noted that Respondent had failed to provide a "single example" of his "extensive experience in complex, contentious criminal defense." DX 79 at 12. The Ninth Circuit concluded that the documents Respondent filed "in support of the petition for a writ of mandamus—by themselves and without looking to our earlier decision's consideration of Klayman's record—entirely support the district court's decision" to deny him *pro hac vice* admission, and that "[t]he petition and reply contain patently false assertions and lack the most basic of due diligence in fact checking." DX 79 at 15.[16]

62. On April 3, 2017, Respondent filed an emergency petition for rehearing en banc repeating his earlier contentions including those that were critical of Judge Bybee. DX 80. He also accused government counsel of being "unethical

[16] Judge Gould dissented but for the same reasons he did in his initial dissent. DX 79 at 17-19.

and dishonest" for filing a response to his second mandamus petition, even though the Ninth Circuit had directed it to do so. DX 83 at 4; *see also* DX 81 at 4 n.1. No judge requested a vote on whether to rehear the matter en banc, and the Ninth Circuit denied Respondent's rehearing petition on May 15, 2017. DX 84.

63. On May 18, 2017, Respondent filed a "Motion to Correct the Record Regarding False Allegations of Misstatements to this Court and the District Court" and an accompanying brief. DX 86; Tr. 210-11. Respondent alleged that the district court and Judge Bybee had made false allegations against him and demanded that the court correct them. DX 86 at 14-17. He also repeated his challenges to the denial of his *pro hac vice* application, insisting that he had not made any misrepresentations or omitted any information he was required to disclose. DX 86 at 8-12. He alleged that "the 'issue' of [his] truthfulness only arose when the District Court was pressed for a reason why it had arbitrarily and capriciously denied [his] *pro hac vice* application by [the Ninth Circuit] and thereby fabricated this diversionary tactic to protect itself." DX 86 at 19.

64. The Ninth Circuit denied Respondent's "Motion to Correct the Record" on May 23, 2017. DX 87. On June 14, 2017, Respondent filed a "Motion for a Separate Judicial Panel to Rule on Klayman's Motion to Correct Record." DX 88 at 4-9. Respondent alleged that because Judge Bybee made misstatements and had a conflict of interest, he should not be allowed "to rule on his own misconduct." DX 88 at 5-8. The Ninth Circuit denied the motion the next day, June 15, 2017. DX 88 at 10.

65. Respondent again sought review by the Supreme Court, filing a second petition for writ of mandamus on July 21, 2017, and two supplemental briefs repeating his claim that the Sixth Amendment required his admission *pro hac vice*. *See* DX 90; DX 91; DX 92. The Supreme Court denied the mandamus petition on October 2, 2017, and denied Respondent's subsequent petition for rehearing on October 30, 2017. DX 89. Respondent again misquoted Judge Gould's dissent in support of his mandamus petition. Respondent wrote:

> However, it bears emphasizing that Mr. Klayman never made any misstatements on the record. Mr. Klayman truthfully and candidly answered the questions presented to him. In fact, Judge Gould agreed with Mr. Klayman, holding that:
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> > I agree with Klayman that he was not obligated to re-litigate the D.C. proceeding before the district court and that he did not have to provide the district court with the entire record from D.C. And if his disclosures were selective, still he is an advocate, an advocate representing defendant Cliven Bundy, and after submitting a compliant response to the questions in the pro hac vice application, *he had no greater duty to disclose any possible blemish on his career or reputation beyond responding to the district court's further direct requests*.

DX 90 at 21 (quoting *Bundy*, 840 F.3d at 1055 (emphasis added)). In an effort to distort Judge Gould's discussion, Respondent removed the 2 sentences preceding, as well as the sentence following that language that would have provided the appropriate context. *See* FF 52.

66. Before Respondent filed his second mandamus petition with the Supreme Court, the D.C. Hearing Committee issued its report concluding that Respondent had violated Rule 1.9 in three matters and Rule 8.4(d) in one of the

matters. DX 16; Tr. 215. Respondent repeatedly claimed that the "sole basis" for Judge Navarro's denying him *pro hac vice* admission was the pending disciplinary matter. *See, e.g.*, DX 83 at 9; DX 86 at 6; DX 95 at 23; Tr. 213. Respondent never disclosed in his petitions the findings of the Hearing Committee or subsequently the Board. Tr. 215-17. Respondent asserted to the Ninth Circuit and other courts that he never had been found to have acted unethically or inappropriately by any bar association for his conduct before a judge. *See, e.g.*, DX 95 at 9 n.1; DX 100 at 9; DX 101 at 9; DX 109 at 19-20; RSX 1 at 76; DX 126 at 8. *But see* Tr. 215-17, 264-66.

67. On October 2, 2017, the same day the Supreme Court denied his second mandamus petition, Respondent filed a third emergency mandamus petition with the Ninth Circuit . DX 95; Tr. 216. In this mandamus petition, Respondent repeated many of the claims the Ninth Circuit and Supreme Court had previously considered and rejected. He made claims about Mr. Whipple and Mr. Bundy's alleged need for Respondent as counsel that were misleading and omitted material information. For example, Respondent routinely referred to Mr. Whipple as "local counsel" when he was the lead counsel. *See, e.g.*, DX 95 at 6, 9, 18-19, 22; *see also* DX 39; DX 41.[17]

[17] At Mr. Bundy's instruction, Mr. Whipple filed a motion for reconsideration of the trial court's denial of Respondent's *pro hac vice* application on November 6, 2017, *after* the Ninth Circuit denied Respondent's third petition. DX 41; *see* DX 96. Mr. Whipple said he would continue to act as lead counsel. DX 41 at 1. Notably, this motion too did not provide the current status of Respondent's D.C. disciplinary matter. *See* DX 41.

He claimed that Mr. Whipple was not prepared for trial (DX 95 at 22) notwithstanding Mr. Whipple's affidavit of September 21, 2017, stating that he was prepared to go to trial and was diligent in the representation (RX 25 at 5; *see* RX 28 at 11-12); Mr. Whipple's statements at the September 27, 2017, hearing to determine whether Mr. Bundy could proceed *pro se* that Mr. Whipple had stopped preparing for trial during the preceding week based on Mr. Bundy's instruction that he did not want Mr. Whipple to represent him (RX 28 at 12-13); and Mr. Whipple's actions immediately following the Magistrate Judge's ruling on September 27, 2017, denying Mr. Bundy's request to proceed *pro se* (RX 28 at 47), which included Mr. Whipple's filing thirteen motions and pleadings with the trial court on September 27 and 28, 2017, (DX 20 at 68-70) – several days *before* Respondent filed his third mandamus petition (*see* DX 95).[18] Notably, Mr. Bundy's unsuccessful motion to represent himself did not include a request for Respondent to serve as his counsel – something Respondent failed to disclose to the Ninth Circuit in his mandamus petition. *See* DX 95 at 7-10.

68. The Ninth Circuit denied Respondent's third mandamus petition on October 4, 2017. DX 96.[19] On October 6, 2017, Respondent filed under seal an "Emergency Motion for Separate Judicial Panel" with a "judicial council complaint"

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[18] Respondent sought to obtain the transcript portion containing the confidential communications between Mr. Bundy and Mr. Whipple. The Magistrate Judge denied the request finding it "highly improper." DX 40.

[19] Judge Gould dissented, saying he would grant the petition to give Mr. Bundy his lawyer of choice. DX 96 at 1.

against Judge Bybee. DX 97; Tr. 227. The Ninth Circuit denied the motion that same day. DX 98.

69. On December 20, 2017, Judge Navarro declared a mistrial in the criminal case against Mr. Bundy, who continued to be represented by Mr. Whipple. DX 20 at 100; Tr. 236. On January 8, 2018, Judge Navarro granted the motions by Mr. Bundy and other defendants to dismiss the charges against them with prejudice. DX 42.

70. On February 6, 2018, Respondent filed his fourth petition for writ of mandamus with the Ninth Circuit. DX 100. He filed an almost identical amended petition the next day. *Compare* DX 100, *with* DX 101. Respondent repeated his claims that the trial court and Ninth Circuit's previous rulings were "clearly erroneous." DX 100 at 8; *see also* DX 100 at 9-14. He contended that these rulings should be vacated because they were mooted by the dismissal of the underlying criminal matter against Mr. Bundy. DX 100 at 5-6, 18. Respondent further contended that "Judge Bybee's rulings and orders" must be vacated because of his alleged bias. DX 100 at 11-17, 21-24. According to Respondent, Judge Bybee's decision to rule against Respondent "can only be explained by the appearance of Judge Bybee's extrajudicial bias and prejudice stemming from his personal relationships, friendships, and associations with Judge Navarro and Sen. Reid, ..." DX 100 at 11; Tr. 246, 259. Respondent requested that Judge Bybee be excluded from the panel ruling on his fourth mandamus petition. DX 100 at 24-25.

71. In support of his claim that Judge Bybee was biased, Respondent made a number of false assertions:

(a) Respondent argued that Judge Bybee demonstrated his bias and reacted to his friendship and personal relationship with the trial judge and Senator Reid, by asking Respondent questions about the *Bivens* action during the oral argument in the first mandamus petition. DX 100 at 12-13. This was false. The questions Respondent attributed to Judge Bybee were asked by another Judge on the Panel. *Compare* DX 100 at 13, *with* DX 61 at 45-48. In this disciplinary proceeding, Respondent sought to excuse his false claims by testifying he was "going from memory." Tr. 260, 262. Respondent testified that he had not listened to the recording of the oral argument when preparing the mandamus petition. Tr. 262. But his testimony was false because his fourth mandamus petition before the Ninth Circuit provided a link to the recording in footnote 3, and cited to the recording, by the minute. DX 100 at 12 ("During the hearing, at around the 46-minute mark, Judge Bybee . . . ."); *id.* at 13 ("At around 46 minutes into the October 21, 2016 hearing, Judge Bybee says . . . .").

(b) Respondent argued that Judge Bybee assumed in his questions that Respondent filed the *Bivens* action against Judge Navarro. DX 100 at 12-13. This question was also asked by one of the other judges. DX 61 at 45-46. However, Respondent participated in preparing the *Bivens* complaint, most of the allegations related to him, he approved its filing, he initially told the Ninth

Circuit that he was a plaintiff before clarifying he was not a party, and he was identified as "of counsel" in numerous pleadings. *See, e.g.*, FF 36, 43.

(c) Respondent argued, without any basis, that Judge Bybee and Judge Navarro "are close friends and associates":

> Mr. Klayman has recently discovered regarding the extent to which Judge Bybee is associated professionally and personally to Judge Navarro and Sen. Reid, which indicate the [sic] Judge Bybee was simply "returning the favor" to those who have supported him throughout the years. While Judge Bybee's conduct may be the result of a human reaction towards his close friends and associates, it has resulted in an erroneous ruling that is severely harming Mr. Klayman and therefore must be vacated or corrected.
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> In this regard, it has only recently come to Mr. Klayman's attention toward the end of Mr. Bundy's trial, through Shauna Cox – a paralegal on Mr. Bundy's defense team - that Judge Bybee and Judge Navarro are close friends and associates. This has led Mr. Klayman to do more research on this issue. Judge Bybee, who has long practiced in Nevada, was a founding faculty member of the William S. Boyd School of Law at the University of Nevada, Las Vegas. Not coincidentally, Judge Navarro is also a life-long Las Vegas resident, who attended the University of Nevada, Las Vegas for her undergraduate studies This close interpersonal relationship, friendship, and association between Judge Bybee and Judge Navarro likely influenced Judge Bybee's decision-making and explains why he affirmed Judge Navarro's clearly erroneous rulings.

DX 100 at 14-15. The University of Nevada, Las Vegas ("UNLV") law school, however, was not established until 1998 – nine years *after* Judge Navarro received her undergraduate degree from UNLV. DX 124; DX 125; Tr. 380 (Rolffot). The other basis for Respondent's claim of their alleged close personal relationship – the close-knit Las Vegas legal community (Tr.

247-49) – provided no support for his claims of bias and prejudice. Respondent's argument that Judge Bybee was "return[ing] the favor" to Senator Reid by denying Respondent's *pro hac vice* application was based on pure speculation.

(d) Respondent argued that Judge Bybee and Senator Reid had a "social and familial relationship" because Judge Bybee's wife "Shannon" and Senator Reid were both inducted as members of the same UNLV organization close in time. DX 100 at 16, 23. However, Respondent's associate, Oliver Peer, was the source of this error. He testified that he mistakenly told Respondent that "Shannon Bybee" was Judge Bybee's wife. Tr. 588-89 (Peer); DX 104 at 8; Tr. 248, 253-54. We credit Mr. Peer's testimony.

72. Respondent also asserted that: (a) he had "never once been found to have acted unethically by any bar association" (DX 100 at 9, 17; *see* Tr. 266); and (b) Judge Gould "clearly and unequivocally found that [Respondent] had fulfilled his obligation of candor and truthfully answered all the questions presented to him . . . ." DX 100 at 8-9; *see* DX 100 at 11, 17. As discussed above, the statement concerning Judge Gould was demonstrably false. *See* FF 53.

73. On February 13, 2018, the Ninth Circuit denied Respondent's request that Judge Bybee be recused. DX 102. On April 24, 2018, the Ninth Circuit denied Respondent's fourth mandamus petition. DX 105.[20]

74. On July 20, 2018, Respondent filed a third mandamus petition with the Supreme Court, repeating many of his same claims, including about Judge Gould's alleged "emphatic[]" finding that Respondent was truthful. DX 107 at 11. The Supreme Court denied the mandamus petition on October 1, 2018. DX 106-002.

75. On October 9, 2018, Respondent filed a fifth mandamus petition with the Ninth Circuit, repeating his previous arguments from his fourth mandamus petition to the Ninth Circuit and third mandamus petition to the Supreme Court. *See* DX 109. Respondent's fifth petition was at least his fifteenth petition or pleading challenging Judge Navarro's denial of his *pro hac vice* admission, not including the *Bivens* action and the motion to disqualify, and not counting his amendments and supplements to his filings. *See* DX 55; DX 60; DX 65; DX 69; DX 70; DX 71; DX 73; DX 77; DX 80; DX 83; DX 86; DX 90; DX 91; DX 93; DX 95; DX 100; DX 101; DX 104; DX 107.

76. Respondent also contended that the Ninth Circuit should vacate its prior decisions because Judge Wilken in an unrelated matter, the *Robles* case, had relied on them in revoking his *pro hac vice* admission. DX 109 at 9; Tr. 305, 495-96, 571.

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[20] Judge Gould dissented. He said he did not share Respondent's view that there had been any bias against him by any member of the panel, but found "these proceedings have become overblown." Judge Gould reiterated his belief that the initial denial of Respondent's *pro hac vice* admission was wrong. DX 105 at 4.

Judge Wilken however, had revoked Respondent's *pro hac vice* status for a number of reasons including not only Respondent's history of judicial reprimands and sanctions in other cases but his misconduct in *Robles* including accusing the judge of bias without a factual basis, seeking the judge's disqualification, dismissing and refiling the action without disclosure in an effort to judge-shop, repeating and rehashing meritless claims, flaunting court rules, and demonstrating a lack of candor including by stating that he had never been found to have engaged in unethical or inappropriate conduct *after* the Hearing Committee and Board had found that he had. DX 126 at 1, 6-8; DX 127 at 5-9.

77. The Ninth Circuit denied Respondent's fifth mandamus petition on December 21, 2018. DX 112.

II. CONCLUSIONS OF LAW

After considering the evidence, documents, and testimony before it, the Hearing Committee concludes that Disciplinary Counsel has proven by clear and convincing evidence that Respondent has violated Rules 3.1, 3.3(a), 8.1(a), 8.1(b), 8.4(a), 8.4(c), and 8.4(d). We also conclude that Respondent has engaged in conduct unbecoming a member of the Bar.

A. D.C. Rule 8.5(b) – Choice of Law

The alleged misconduct at issue in these proceedings occurred in connection with Respondent's filings pending before three tribunals – the Nevada District Court, the Ninth Circuit, and the Supreme Court. D.C. Rule 8.5(b) provides that: "[i]n any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional

Conduct to be applied shall be as follows: (1) For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise."[21] Thus, "[w]hen an attorney appears before a federal court the applicable rules of professional conduct will be those governing the bar of that court." D.C. Bar Ethics Op. 311 (Jan. 2002).

With respect to the Nevada District Court proceedings, Local Rule 11-7(a) of the Federal District Court in Nevada provides:

> An attorney admitted to practice under any of these rules must adhere to the standards of conduct prescribed by the Model Rules of Professional Conduct as adopted and amended from time to time by the Supreme Court of Nevada, except as these standards may be modified by this court.[22]

Because the Nevada District Court never granted Respondent *pro hac vice* admission, Respondent was never "admitted to practice" under the District Court's rules. Thus, it is not entirely clear whether the Nevada Rules of Professional

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[21] "'Tribunal' denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity." Rule 1.0(n).

[22] Local Rule 10-7(a) of the Federal District Court in Nevada, which was in effect until May 1, 2016, was substantially similar to the current version of the rule and provided:

> An attorney admitted to practice pursuant to any of these Rules shall adhere to the standards of conduct prescribed by the Model Rules of Professional Conduct as adopted and amended from time to time by the Supreme Court of Nevada, except as such may be modified by this Court.

Conduct ("Nevada Rules") would apply to the matters pending before the District Court or whether this rule is wholly inapplicable such that the D.C. Rules would remain applicable. In any event, with the exception of Rule 8.1(a), the D.C. Rules at issue in these proceedings are substantially similar to the Nevada Rules, and we have considered Respondent's conduct under caselaw from both jurisdictions.

With respect to the disciplinary rules governing proceedings before the Ninth Circuit, Rule 46(c) of the Federal Rules of Appellate Procedure provides that "[a] court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule."

In determining what constitutes "conduct unbecoming" a lawyer, the Ninth Circuit has looked to the state rules where the lawyer maintains his practice, as well as the ABA Model Rules. *See, e.g.*, *In re Girardi*, 611 F.3d 1027, 1029, 1035 (9th Cir. 2010) (conduct at issue constituted "conduct unbecoming a member of the court's bar," because it violated California rules of professional conduct and the ABA's Model Rules.).

The United States Supreme Court has a similar rule. Rule 8 of the Rules of the Supreme Court of the United States (Disbarment and Disciplinary Action) provides:

> Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response,

> or if no response is timely filed, the Court will enter an appropriate order.

Similar to the Ninth Circuit, the Supreme Court has explained that

> "[C]onduct unbecoming a member of the bar" must be read in light of the "complex code of behavior" to which attorneys are subject. . . .
> . . . .
>
> Read in light of the traditional duties imposed on an attorney, it is clear that "conduct unbecoming a member of the bar" is conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts, or conduct inimical to the administration of justice. More specific guidance is provided by case law, applicable court rules, and "the lore of the profession," as embodied in codes of professional conduct.

In re Snyder, 472 U.S. 634, 644-45 (1985).

Because Respondent used a D.C. address and held himself out as a D.C. lawyer in all his filings with the Ninth Circuit and the Supreme Court, we rely on the D.C. Rules as the guide for whether his conduct was unbecoming a lawyer. Applying the D.C. Rules to the proceedings before these tribunals appears consistent with Federal Rule of Appellate Procedure 46(c), Rule 8 of the Rules of the Supreme Court of the United States, *Girardi*, and *Snyder*.

B. <u>There is Clear and Convincing Evidence that Respondent's False Statements Violated Rules 3.3(a), 8.1(a) and (b), and 8.4(c) and Constituted Conduct Unbecoming a Member of the Bar.</u>

Disciplinary Counsel asserts that Respondent violated Rules 3.3(a), 8.1(a) and (b), and 8.4(c) by knowingly making false statements and acting dishonestly in connection with Respondent's attempts to gain *pro hac vice* admission in the Bundy criminal matter. ODC Br. at 40-45; *see* ODC Supplemental Br. at 1 (Feb. 27, 2020).

Disciplinary Counsel contends that Respondent made the following knowingly dishonest statements:

> [1] misleading and incomplete statements concerning the pending D.C. disciplinary matter, including omitting any reference to his prior admissions of misconduct in the affidavit, concealing that the negotiated discipline was rejected as unduly lenient, failing to disclose the timing and circumstances of his decision not to pursue the negotiated discipline, not disclosing the preliminary non-binding finding at the conclusion of the contested proceeding, and misdescribing Rotunda's opinion . . . ;
>
> [2] failing to disclose the basis of the decisions of Judge Keller and Judge Chin or provide information about the cases in his initial submissions, and concealing that appellate courts upheld the orders finding Respondent's misconduct supported the discipline imposed . . . ;
>
> [3] knowing false statements about his own experience in criminal matters and about the lack of experience of Bundy's counsel that went beyond embellishment and were not couched in terms of his opinion or belief . . . ;
>
> [4] misrepresenting to the Supreme Court in his emergency petition that [Mr.] Bundy's trial would begin on February 6, 2017. . . ;
>
> [5] repeating claims that he knew were false, including that the district court has ordered Bundy to be held in solitary confinement and that Judge Navarro had threatened to hold Whipple in contempt . . . ;
>
> [6] concealing from the Ninth Circuit and the Supreme Court the rulings of the Hearing Committee and the Board in the pending disciplinary matter notwithstanding his claim that the pending disciplinary matter was the "sole basis" for Judge Navarro's denial of his *pro hac vice* application and, after the Committee and Board issued their reports, falsely representing that he had never been found to have acted unethically or inappropriately by any bar association who reviewed his conduct before a judge . . . ;

> [7] repeating [sic] mischaracterizing Judge Gould's findings about Respondent's candor by omitting or ignoring other statements in the dissenting opinion . . . ; and
>
> [8] making knowing false and baseless statements about Judge Bybee's actions during the appeal and his alleged bias based on purported relationships with Senator Reid and Judge Navarro that did not exist . . . .

ODC Br. at 42-43 (citations omitted). Respondent denies that he engaged in dishonesty. R. Br. at 44-45.

Rule 3.3 (Candor to Tribunal)

The obligation under Rule 3.3 to speak truthfully to a tribunal is one of a lawyer's "fundamental obligations." *In re Ukwu*, 926 A.2d 1106, 1140 (D.C. 2007) (appended Board Report). Nevada Rule 3.3(a)(1) provides that a lawyer shall not knowingly "[m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Similarly, D.C. Rule 3.3(a)(1) provides that a lawyer shall not knowingly "[m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6."

Rule 3.3 requires the Respondent to "knowingly" make a false statement. As the Board noted in *Ukwu*, it is important for the Hearing Committee to determine (1) whether Respondent's statements or evidence were false, and (2) whether Respondent knew that they were false. *See* 926 A.2d at 1140-41 (appended Board Report). The term "knowingly" "denotes actual knowledge of the fact in question" and this knowledge may be inferred from the circumstances. D.C. Rule 1.0(f);

Nevada Rule 1.0(f) (same); *see also In re Spitzer*, 845 A.2d 1137, 1138 n.3 (D.C. 2004) (per curiam) (Respondent could not "knowingly" violate Rule 8.1(b) without actual knowledge of a Disciplinary Counsel investigation).

Rule 8.1 (Bar Admission and Disciplinary Matters)

Nevada Rule 8.1 provides that:

> An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
>
> (a) Knowingly make a false statement of material fact; or
>
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

D.C. Rule 8.1 provides that:

> An applicant for admission to the Bar, or a lawyer in connection with a Bar admission application or in connection with a disciplinary matter, shall not:
>
> (a) Knowingly make a false statement of fact; or
>
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the lawyer or applicant to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Notably, under the D.C. Rules, the "[l]ack of materiality does not excuse a knowingly false statement of fact." Rule 8.1, cmt. [1].

Rule 8.4(c) (Dishonesty)

Nevada Rule 8.4 provides that "[i]t is professional misconduct for a lawyer to [e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation." D.C. Rule 8.4(c) contains the same prohibition. Dishonesty is the most general category in Rule 8.4(c), defined as:

> fraudulent, deceitful, or misrepresentative behavior [and] conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness. . . . Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

In re Shorter, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam) (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007). Dishonesty in violation of Rule 8.4(c) does not require proof of deceptive or fraudulent intent. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). A respondent may violate Rule 8.4(c) where, at a minimum, they acted in reckless disregard for the truth. *In re Discipline of Hafter*, 128 Nev. 905, 381 P.3d 623 (2012). A violation of Rule 8.4(c) may also be established by sufficient proof of recklessness – *i.e.* proof that the respondent "consciously disregarded the risk" created by his actions. *Romansky*, 825 A.2d at 315-17; *see also, e.g.*, *In re Boykins*, 999 A.2d 166, 171-72 (D.C. 2010) (finding reckless dishonesty where the respondent falsely represented to Disciplinary Counsel that medical provider bills had been paid, without attempting to verify his memory of events from more than four years prior, and despite the fact that he had recently received notice of non-payment from one of the providers). The entire context of the respondent's actions,

including their credibility at the hearing, is relevant to a determination of intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-97 (D.C. 2019) (per curiam).

The Court has stated that "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *Ukwu*, 926 A.2d at 1113. Even technically true statements can violate the Rule. *Shorter*, 570 A.2d at 768 (finding a violation of the predecessor to Rule 8.4(c) where the respondent's statements were "technically true" but nevertheless "evinc[ed] a lack of integrity and straightforwardness" because he "refrained from supplying" the information he knew was being sought "for his own benefit"); *In re Scott*, Bar Docket Nos. 135-07 & 089-08, at 17-18 (BPR Mar. 17, 2010) (finding a violation of Rule 8.l(a) because even though respondent's statement was "technically accurate," it was misleading), *recommendation adopted in relevant part*, 19 A.3d 774 (D.C. 2011).

1. Respondent's Statements Concerning His Pending D.C. Disciplinary Matter Violated Rules 3.3(a)(1), 8.1(a) and (b), and 8.4(c) and (d) and Constituted Conduct Unbecoming a Member of the Bar.

Disciplinary Counsel argues that, in violation of Rules 3.3(a)(1), 8.1(a) and (b), and 8.4(c), Respondent knowingly made false or misleading statements to the Nevada District Court and the Ninth Circuit concerning *Klayman I*. *See* ODC Br. at 42; *see* ODC Supplemental Br. at 1, 3-4 (Feb. 27, 2020). Specifically, it contends that he knowingly failed to acknowledge his prior admissions of misconduct made in the affidavit accompanying his Petition for Negotiated Discipline, concealed that the negotiated discipline was rejected as unduly lenient, failed to disclose the timing and circumstances of his decision not to pursue the negotiated discipline, failed to

disclose the preliminary non-binding finding at the conclusion of the contested proceeding, and misdescribed Mr. Rotunda's opinion. ODC Br. at 42. We agree. *Scott*, 19 A.3d 774 is instructive.

In *Scott*, a respondent attempting to secure admission to the D.C. Bar violated Rules 8.1(a), 8.1(b), and 8.4(c) when she answered "No" in response to an inquiry from the Committee on Admissions asking whether she had "any charges or complaints now pending concerning your conduct as an attorney." 19 A.3d at 777. At the time respondent submitted her answer, she knew that a disciplinary complaint had been initiated against her but maintained that she viewed the complaint as a fee dispute. Though her answer had been "technically accurate" because the complaint had been styled as a "grievance," and not a complaint, it was nevertheless found to be a dishonest statement. *Scott*, Bar Docket Nos. 135-07 & 089-08, at 17-18, *recommendation adopted in relevant part* 19 A.3d at 777-780. Moreover, the pending grievance was found to be material to her application for admission because "[a]n applicant's disciplinary standing in another court is clearly material to the [District of Columbia's requisite] assessment of [her] 'good moral character and general fitness' as evidenced by the [Committee on Admissions'] repeated requests for updates with this information."[23] *Scott*, Bar Docket Nos. 135-07 & 089-08, at 17.

[23] The former version of Rule 8.1(a) applied to the *Scott* proceedings because the misconduct occurred before February 1, 2007, the effective date of the rule that deleted the materiality requirement. *Scott*, Bar Docket Nos. 135-07 & 089-08, at 16 n.12.

Here too, Respondent's repeated attempts to *'walk the line'* of truthfulness by providing technically accurate information while withholding or favorably characterizing other facts was, at a minimum, reckless, misleading, and lacked the candor and integrity required for members of the bar when communicating with tribunals. Further, the Hearing Committee finds that the Respondent's repeated 'walk the line' approach was designed to intentionally mislead. Indeed, when Respondent filed his "Supplement to and Renewed Verified Petition," he acknowledged that the District Court lacked the full picture concerning the status of the disciplinary proceedings, stating that the court "appears to have misunderstood the nature and current posture of the disciplinary proceedings underway." FF 32. Instead of providing clarification, he continued to obfuscate the status of his disciplinary proceedings. Respondent sought to explain the "nature and current posture of the disciplinary proceeding underway," stating that he "thought the better of having signed the affidavit and agreeing to negotiated discipline . . . since he feels strongly that he acted ethically at all times." FF 32 (quoting DX 26 at 1-2). He further represented that he was "confident of ultimately prevailing and he was entitled to express his reasoned opinion in this regard." DX 26 at 2. He also falsely asserted that Professor Rotunda had opined that Respondent had not violated any Rules. *See* FF 9, 47.

In addition to more specific defensive arguments discussed below, Respondent argues that the Hearing Committee cannot find a violation based on the disclosures regarding the then-pending D.C. disciplinary matter because Judge

Gould determined that Respondent "disclosed what he was required to disclose." R. Br. at 46. Respondent is wrong. Judge Gould's observations do not bind the D.C. discipline system. He was not deciding whether Respondent's *pro hac vice* application violated any disciplinary rules, and Disciplinary Counsel cannot be estopped by judicial comments in a proceeding to which it was not a party. *See In re Robbins*, 192 A.3d 558, 565-66 (D.C. 2018) (per curiam) (no estoppel where Virginia determined that conduct did not violate a disciplinary rule); *In re Wilde*, 68 A.3d 749 (D.C. 2013) (same).

Because the Court of Appeals had not yet considered *Klayman I,* Respondent was "technically" correct in asserting that "there has been no disciplinary action." FF 22 (quoting DX 21 at 7). Respondent's representations to the district court were nevertheless evasive and misleading because he omitted that he had admitted to misconduct in the affidavit, that the negotiated discipline Hearing Committee had rejected the negotiated disposition as "unduly lenient," and that after hearing the evidence in the contested case, the *Klayman I* Hearing Committee had already made a preliminary, non-binding determination that Respondent had violated at least one of the Rules. *See* FF 10-11, 13, 23; R. Br. at 47. In short, Respondent's true statement that "there has been no disciplinary action" was misleading because it portrayed an incomplete picture of the *Klayman I* status. This information was also material to the District Court's consideration of Respondent's *pro hac vice* application as demonstrated by its requirement that Respondent supplement his

application with proof that the matter had been resolved without disciplinary action. *See* FF 31.

Moreover, Respondent went further than *walking the line* of truthfulness. When he did not like the courts' rulings, he filed multiple petitions for writs of mandamus, emergency petitions, motions to correct the record, and even alleged bias against the tribunal – all with little or no merit. *See* FF 47-77. This violates Rules 3.3(a), 8.1(a) and (b), and 8.4(c) and (d).

Respondent defends his failure to disclose the Petition for Negotiated Discipline or supporting affidavit (in which he conceded that he could not defend a Rule violation) because "the affidavit was withdrawn by both sides, and is clearly of no force and effect, except for impeachment purposes."[24] R. Br. at 46 (citing Board Rule 17.10); *see also* R. Br. at 28-29. In support of this, Respondent invokes Board Rule 17.10, *see, e.g.*, R. Br. at 46, which provides, in relevant part:

> If a petition for negotiated discipline is rejected, admissions made by a respondent in the petition for negotiated discipline, the accompanying affidavit, or the limited hearing may not be used as evidence against respondent in a contested disciplinary proceeding

[24] Respondent does not address Disciplinary Counsel's argument that he failed to disclose the fact that the Hearing Committee considering the negotiated discipline rejected it as unduly lenient. Nonetheless, we understand that this issue is encompassed within Respondent's argument that the negotiated discipline proceeding was "of no force and effect." R. Br. at 46.

> under Chapter 7 of these Rules involving the same charges, except for purposes of impeachment.

Board Rule 17.10.[25]

Board Rule 17.10 protects a respondent from the discrete situation of having a rejected petition for negotiated discipline and associated affidavit used against her as substantive evidence in a contested proceeding before a Hearing Committee. It neither contemplates nor forbids considering the content of the rejected petition or the admission in the affidavit when determining the veracity of Respondent's purported prediction that "[t]he matter is likely to be resolved in my favor." Thus, Rule 17.10 is a limited exclusionary rule, it does not nullify the content of the affidavit. Respondent's suggestion that this procedural rule supports his decision to omit details about the D.C. disciplinary proceeding in his *pro hac vice* application is without merit. *See* FF 10-15, 20-23; R. Br. at 28-29, 45-46. His failure to accurately

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[25] The current Board Rule 17.10 was amended effective November 6, 2018. The prior version, which was effective as of August 1, 2008, reads:

> Admissions made by a respondent in the petition for negotiated discipline, the accompanying affidavit, or the limited hearing may not be used as evidence against respondent in a contested disciplinary proceeding under Chapter 7 of these Rules, except for purposes of impeachment at any subsequent hearing in a contested matter.

While the prior version of Board Rule 17.10 was in force at the time Respondent sought to enter into the negotiated discipline, for the purposes of Respondent's argument, there is no material difference between the former and current version of the Board Rule, and our analysis is the same under either construction.

disclose the status of the negotiated discipline violated Rules 3.3(a), 8.1(a) and (b), and 8.4(c).

Respondent's Renewed Pro Hac Vice Application

In his Supplement in support of his *pro hac vice* motion, Respondent sought to explain the "nature and current posture of the disciplinary proceeding underway," stating that he "thought the better of having signed the affidavit and agreeing to negotiated discipline . . . since he feels strongly that he acted ethically at all times." FF 32 (quoting DX 26 at 1-2). He further represented that he was "confident of ultimately prevailing and he was entitled to express his reasoned opinion in this regard." DX 26 at 2. He also asserted that Professor Rotunda had opined that Respondent had not violated any Rules. *See* FF 9, 47.

Disciplinary Counsel argues that Respondent's description of Professor Rotunda's opinion is misleading because Professor Rotunda concedes that Respondent engaged in "technical" Rule violations. *See* ODC Br. at 9 n.2; ODC Reply Br. at 16; RX 5 at 125 ("Seldom in the history of the District of Columbia Bar has someone been the subject of such an investigation for such a technical violation."). Respondent counters that Professor Rotunda opined that Respondent had "not committed any offense that merits discipline" (RX 5 at 121), which Respondent argues "[i]n the context of a disciplinary proceeding, this is the same as a finding that Mr. Klayman had 'not committed any ethical violation.'" R. Br. at 18; *see* R. Br. at 47. We disagree. Respondent's representation that Professor Rotunda opined that he violated no Rule was knowingly false. *See* FF 47. In making this

statement, he violated Rules 3.3(a), 8.1(a), and 8.4(c) and engaged in conduct unbecoming a member of the Bar. We do not find that this statement violated Rule 8.1(b) because the record evidence does not establish that Respondent failed to correct any misapprehension concerning Professor Rotunda's opinion.

Respondent did not disclose the Hearing Committee's preliminary non-binding determination in the body of his renewed application, although it is discussed in the brief that Respondent attached to his renewed petition. FF 33 & n.8. The Hearing Committee finds that Respondent's failure to disclose the Hearing Committee's non-binding determination in his renewed applications also violated Rule 3.3(a), 8.1(a), and 8.4(c).

2. Respondent's Statements Concerning the Decisions of Judge Keller and Judge Chin Did Not Violate Rules 3.3(a)(1), 8.1, or 8.4(c).

In response to Question 5 on the *pro hac vice* application, Respondent also disclosed that

> [m]any years ago, 22 and 18 years respectively two judges vindictively stated that I could not practice before them after I challenged rulings they had made on the basis of bias and prejudice. These judges were William D. Keller and Denny Chin of the U.S. District Court of the Central District of California and the U.S. District Court for the Southern District of New York. The rulings applied to them not to to [sic] the tribunal or judicial body as a whole. The bars of the District of Columbia and Florida reviewed these rulings and found that I did not act unethically.

DX 21 at 7-8; *see* FF 25.

Disciplinary Counsel points to a number of reasons that Respondent's statements were dishonest. First, Respondent failed to disclose either judge's actual

findings, the information about the case, or that he had unsuccessfully appealed the judges' decisions. ODC Br. at 13-14. Moreover, the Office of Disciplinary Counsel disputes that it ever stated that Respondent did "nothing wrong" before Judge Keller, clarifying that "the office lacked clear and convincing evidence to file charges." ODC Br. at 14; *see* FF 28. Finally, Disciplinary Counsel argues that there is no record evidence that the office ever investigated his conduct before Judge Chin or found that he did nothing wrong. ODC Br. at 14-15. According to Respondent, he was not required to do more and "[i]t is indisputable that [sic] District of Nevada *pro hac* vice application does not ask the applicant to disclose whether he or she appealed any of the decisions by judges to bar the applicant from their courtrooms to the appellate courts." R. Br. at 47.

We find that Disciplinary Counsel has not met its burden as to this charge with respect to Respondent's answer to Question 5 on his *pro hac vice* application. First, we find that Respondent was not required to provide what Disciplinary Counsel argues are the missing details in these two matters. Second, as to Respondent's conduct before Judge Keller, we cannot find that his statement that the D.C. Bar found that he "did not act unethically" is sufficiently distinct from the finding that "the office lacked clear and convincing evidence to file charges" to render the former false. Similarly, Disciplinary Counsel has offered no affirmative evidence that Respondent was dishonest in making the same statement concerning Judge Chin. Disciplinary Counsel did not present any evidence to rebut Respondent's contention that it had found that he did not act unethically in the matter before Judge Chin.

Disciplinary Counsel seems to suggest that Respondent was never investigated regarding Judge Chin, and without an investigation, Disciplinary Counsel could not have determined that he did not act unethically. But Disciplinary Counsel presented no evidence on this issue. Its assertion that Respondent has not proven that his conduct was ever investigated appears to impermissibly shift the burden of proof to Respondent to prove that his statement was true, when it is Disciplinary Counsel's burden to prove that the statement is false. *See* Board Rule 11.6 ("Disciplinary Counsel shall have the burden of proving violations of disciplinary rules by clear and convincing evidence.").

3. Respondent's Statements About His Criminal Trial Experience Were Knowingly Dishonest and Constituted Conduct Unbecoming a Member of the Bar Because They Violated 3.3(a)(1), 8.1(a), and 8.4(c).

Disciplinary Counsel argues that Respondent violated Rules 3.3(a)(1), 8.1(a), and 8.4(c) by making knowing false statements to the Ninth Circuit and the Supreme Court concerning his experience practicing criminal law and that of local counsel (Mr. Hansen and Mr. Whipple). *See* ODC Br. at 42, 44. We agree. The statements were made in support of Respondent's argument that he should be permitted to appear as Mr. Bundy's counsel. In his July 6, 2016, mandamus petition, Respondent asserted that

> Local Nevada attorney Joel Hansen entered a notice of appearance for Defendant Bundy, Petitioner here, shortly after his indictment and arraignment. However, Mr. Hansen practices in a small firm, is not by trade a federal criminal defense lawyer, and lacks the resources to defend Mr. Bundy on his own. Moreover, Defendant Bundy lacks the financial resources to hire high powered criminal defense lawyers. For these reasons, public advocate Larry Klayman,

> a former federal prosecutor at the U.S. Department of Justice and the founder of Judicial Watch and Freedom Watch, was asked to step in by Mr. Bundy and his wife, Carol, in his private capacity to defend Mr. Bundy . . . .

DX 55 at 12; *see also* FF 48. Disciplinary Counsel argued that the statement regarding Mr. Hansen's criminal experience is incorrect because he submitted an affidavit in which he represented that "been through many federal criminal jury trials." FF 48 (quoting DX 56 at 9). Respondent counters that this scant evidence is not sufficient to contradict Respondent's opinion that Mr. Hansen did not have an extensive criminal background. R. Br. at 19, 37, 48.

After Mr. Hansen withdrew as Mr. Bundy's counsel for health reasons, Mr. Bundy retained Bret Whipple to represent him. FF 17 n.3. Disciplinary Counsel next argues that Respondent made similar false statements regarding Mr. Whipple's experience. In his January 17, 2017 mandamus petition in the Supreme Court, Respondent asserted that Mr. Whipple "has little experience in federal criminal defense." DX 69 at 22 n.7. He repeated this theme in his March 9, 2017, mandamus petition in the Ninth Circuit, where he asserted that Mr. Whipple had "no federal criminal defense experience," (DX 73 at 12) and that in contrast to his own "extensive experience in complex, contentious federal criminal defense, . . . [Mr.] Whipple . . . has none." DX 73 at 13; *see also id* at 16 (Respondent describing himself as "the only experienced, qualified counsel with experience in federal criminal defense that [Mr. Bundy] has been able to find"), 25 (describing Mr. Whipple as "a local and relatively inexperienced counsel who is not by trade a criminal defense lawyer").

In her response to Respondent's mandamus petition, Judge Navarro made the following assertions regarding Mr. Whipple's criminal practice experience:

> Whipple, [Mr. Bundy's] current counsel, has extensive federal criminal experience in the United States District Court for the District of Nevada. Whipple has been a member of the State Bar of Nevada since October 14, 1996. (*See* Exhibit 1). He served as a Clark County Public Defender from 1996 to 2003. He has been an active member of the Las Vegas Criminal Justice Act Panel ("CJA Panel") for at least thirteen years. (*See* Exhibit 2). The Court performed a search of Whipple's name and bar number in CM/ECF, the Court's electronic filing system. The Court found 99 criminal cases where Whipple has been either assigned to or retained in since about 2004, including 11 active cases. Of these 99 cases, several of these cases have been complex, multi-defendant cases.

DX 76 at 4; *see also* DX 75 at 15-16 (Government's Answer making similar assertions regarding Mr. Whipple's experience); FF 60. In response to Judge Navarro's filing, Respondent conceded that he had not done a PACER search of Mr. Whipple's experience, but argued that the Bundy case was far more complex than some of the cases Mr. Whipple had tried. Importantly, Respondent asserted that it was his and Mr. Bundy's opinion, that Mr. Whipple did not have the necessary experience and resources to represent Mr. Bundy on his own. DX 77 at 9-10.

In this proceeding, Respondent does not contest the evidence of Mr. Whipple's experience cataloged by Judge Navarro. Instead, he argues that his

> opinion regarding Mr. Whipple's experience was based on "my own analysis as I said in talking to him that he didn't seem to have a great depth of federal criminal practice because he didn't even know what a petition for a writ of mandamus was -- I had to send him a copy of

> it -- and for other discussions in terms of his strategy, what he was planning to do."

Resp Br. at 19 (quoting Tr. 135).

Disciplinary Counsel next argues that Respondent made knowing false statements about his own criminal practice experience. He most often described himself as a former federal prosecutor, citing his time at the DOJ. *See, e.g.*, DX 55 at 12, 18, 21; FF 48. Some of Respondent's representations sought to characterize his level of criminal practice experience. *See, e.g.*, DX 55 at 21 (Respondent is "a criminal defense lawyer"); DX 60 at 12 (Respondent is an "experienced criminal defense counsel"); DX 61 at 4 ("I am a criminal defense lawyer in large part."); DX 65 at 6 (Respondent "is the only experienced federal criminal defense lawyer to offer his representation" Mr. Bundy); DX 69 at 21-22 ("Klayman is a former federal prosecutor with the U.S. Department of Justice, who therefore has extensive experience in federal criminal proceedings. Importantly, Klayman is the only fully qualified and experienced attorney in federal criminal practice that [Mr. Bundy] has been able to find that [Mr. Bundy] can afford."); DX 73 at 13 ("Klayman has extensive experience in complex, contentious federal criminal defense, and [Mr. Bundy]'s local counsel, [Mr.] Whipple . . . has none."), 16 (Respondent is "the only experienced, qualified counsel with experience in federal criminal defense that [Mr. Bundy] has been able to find"), 24 (Respondent is "a highly experienced former federal prosecutor"); DX 77 at 6 (Respondent "has extensive federal criminal defense experience based partially upon his time working at the U.S. Justice

Department"), 27 (Respondent has "extensive experience in complex federal criminal litigation"); DX 107 at 3 (Respondent is a "criminal defense lawyer").

There is clear and convincing evidence that Respondent made knowing false statements about his own criminal experience, and knowingly mischaracterized the criminal experience of Mr. Hansen and Mr. Whipple. Respondent had ample opportunity to demonstrate his experience in the record. At no point in his recitation of his experience is there any instance of his acting as counsel during a criminal trial. FF 2-7. In contrast, the other lawyers in the Bundy case had participated in criminal trials. Respondent tries to undermine the statement of Mr. Whipple that he had participated in "many" criminal trials as subjective, (R. Br. at 19, 37) but, while not specific, it suffices to support the finding that his comparison was false. If the proceeding turned solely on whether Respondent had exaggerated the importance of his role in the matters he described, our conclusion might be different. Slight exaggeration of a lawyer's experience may not be considered a violation of Rule 8.4. That said, Respondent's comparison of his experience with Mr. Bundy's two other lawyers was not a statement of his opinion and was plainly false. Respondent's knowing false statements about his comparative experience in criminal matters were knowingly false in violation of Rules 3.3(a)(1), 8.1(a), and 8.4(c), and consequently constituted conduct unbecoming a member of the bar. *See Snyder*, 472 U.S. at 644-45; *Girardi*, 611 F.3d at 1035.

4. Respondent's Statement that the Bundy Trial Would Begin on February 6, 2017, Was Conduct Unbecoming a Member of the Bar Because it Violated Rules 3.3(a), 8.1(a) and (b), and 8.4(c).

Disciplinary Counsel argues that Respondent violated Rules 3.3(a)(1), 8.1(a), and 8.4(c) by making knowing false statements in his January 17, 2017, emergency petition for writ of mandamus, filed with the Supreme Court, that Mr. Bundy's trial would commence on February 6, 2017. *See* DX 69 at 5 ("[Mr. Bundy], and other Defendants, are now scheduled to stand trial beginning on February 6, 2017 – about three weeks from now – and still does not have his legal team in place as a result of the lower courts' actions and inactions."), 18 ("**These constitutional issues are at the forefront of Petitioner's current Petition, and must be decided immediately, since Petitioner is set for trial to commence on February 6, 2017 without a legal defense team, and faces possible life imprisonment if convicted.**"), 19 ("Crucially, although trial is set to begin on February 6, 2017 – less than three weeks away – Bundy still does not have a legal defense team because the District Court and Ninth Circuit erroneously denied Klayman's – Bundy's counsel of choice – applications to be admitted *pro hac vice.*"), 43 ("Based on the foregoing, this Emergency Petition for Writ of Mandamus, respectfully, must be granted and, in so doing, Judge Navarro must be ordered to grant Klayman's *pro hac vice* status, so Petitioner may have a defense team before trial is scheduled to commence on February 6, 2017."). We agree.

Disciplinary Counsel argues that, when Respondent made these statements, he knew that the February 6 date pertained to certain of Mr. Bundy's co-defendants

and that Mr. Bundy was not scheduled to be tried until thirty days after the conclusion of the trial commencing on February 6, and that he made these false statements in order to ensure that the Supreme Court would rule more quickly. ODC Br. at 27. Respondent contends that his emergency mandamus petition also stated that Mr. Bundy's trial date was in dispute. R. Br. at 49; *see also* R. Br. at 20. Disciplinary Counsel replies that the trial court order setting the date was not currently being disputed. ODC Reply Br. at 17, 22-23.

We conclude that Respondent's statements concerning Mr. Bundy's trial date were knowingly false. The magistrate judge's December 12, 2016, order, ECF 1098 (*see* DX 20 at 43) made this clear. It indicates that the defendants would be tried in three tiers. Only the defendants in Tier 3 would begin on February 6, 2017. Mr. Bundy would be tried in Tier 1 along with four other defendants. That trial would not begin until thirty days after the conclusion of the trial for Tier 3 defendants. DX 20 at 43. This order was affirmed by Judge Navarro on December 29, 2016, ECF 1214. *See* DX 20 at 47. Respondent acknowledged that he was aware of this fact. *See* Tr. 154; FF 55. Yet, he knowingly made representations to the contrary.

Respondent argues that the Supreme Court mandamus petition asserted that Respondent intended to challenge the trial court's decision regarding the scheduling of the three anticipated trials. R. Br. at 20; DX 69 at 5 n.1. It may well have been the case that Respondent intended to argue that Mr. Bundy should be included in the first trial (scheduled to begin on February 6, 2017). But instead, he asserted that Mr. Bundy was, in fact, scheduled for trial on February 6, 2017, when he knew that that

statement was not true. We conclude that he violated Rules 3.3(a), 8.1, and 8.4(c) and engaged in conduct unbecoming a member of the bar. *See Snyder*, 472 U.S. at 644-45.

5. Respondent's Claims that the District Court Ordered that Mr. Bundy Be Held in Solitary Confinement Violated Rule 8.4(c) and Constituted Conduct Unbecoming a Member of the Bar.

Disciplinary Counsel points out several instances in which the Respondent participated in filing the *Bivens* complaint against Judge Navarro, President Obama, and Senator Reid on the basis that Judge Navarro had no legal or factual basis to deny the Respondent's *pro hac vice* application and that they conspired to violate Mr. Bundy's rights. *See, e.g.*, ODC Br. at 18-21, 25-26; FF 36-43. Disciplinary Counsel points out that the *Bivens* complaint was written at the Respondent's direction by Mr. Hansen given the Respondent was listed on numerous documents as "of counsel." *See* ODC Reply Br. at 13.

Disciplinary Counsel questioned the Respondent at length and provided documentation of his written retainer with Mr. Bundy to demonstrate that he was aware that local counsel for Mr. Bundy, Mr. Hansen, was filing documentation with the court in regard to the Respondent's *pro hac vice* application. *See* Tr. 50-57. Respondent indicated that the *pro hac vice* application was filed quickly due to Mr. Bundy's placement in solitary confinement. Tr. 53. Respondent argues that his statements concerning Mr. Bundy in solitary confinement were based on statements from not only Judge Navarro and the prosecutor, but Mr. Hansen and Mr. Bundy. R. Br. at 35, 37, 49-50.

In our view, resolution of this charge based on Rule 3.3(a), Rule 8.1, and Rule 8.4(c) turn entirely on the question of whether the respondent knew that Mr. Bundy had agreed or asked to be segregated from the rest of the prison population for his safety.

According to Disciplinary Counsel, Respondent knew that this assertion was false because he attended a May 10, 2016, hearing where Mr. Bundy's confinement was discussed. ODC Br. at 20; *see* FF 42. Based on statements from Judge Navarro, the prosecutor, Mr. Hansen, and Mr. Bundy, it was clear that Mr. Bundy had agreed to or requested to be segregated from the rest of the prison population for his safety, and that the court had not ordered Mr. Bundy to be placed or kept in solitary confinement and had no authority to do so. *See* DX 30 at 29-30, 51-52, 62-63; DX 37 at 5.

Respondent contends that he did not file the original or amended *Bivens* Complaint and that Disciplinary Counsel has not established that he otherwise participated in drafting or preparing the document. With respect to the motion to disqualify Judge Navarro, he claims that he did not file the motion and that his name was included on the motion due to Mr. Hansen's clerical error, which was subsequently corrected. *See* R. Br. at 15-17, 35-36.

As to the mandamus petitions with the Ninth Circuit (*see* DX 55, filed on July 6, 2016) and Supreme Court (*see* DX 69, filed on January 17, 2017), he disclaims any knowledge of Mr. Bundy's request to be placed in solitary confinement, arguing that, irrespective of his presence at the May 10, 2016, hearing in the gallery, he "went

off what he was told by Mr. Bundy directly, and the fact that he had visited Mr. Bundy in prison over 30 times and observed his client's confinement." R. Br. at 35. During the hearing, and in contrast to his representations to the Ninth Circuit and Supreme Court, Respondent backed away from arguing that Judge Navarro had indeed issued an order placing Mr. Bundy in solitary confinement.

> Q. You told the supreme court that Judge Navarro order him into solitary confinement. When was that order issued?
>
> A. You don't have to issue an order. They can communicate with the marshall's office orally and they can suggest or order that to happen. It doesn't have to be done in an order.
>
> Q. So are you saying that there was an order? And I'm asking –
>
> A. I'm saying in one manner, shape or form I believe that there was. You don't wind up in solitary confinement on your own.

Tr. 158-59. In short, Respondent's only "evidence" that Judge Navarro ordered Mr. Bundy to be held in solitary confinement was the fact that Mr. Bundy was held in solitary confinement.

We find that Respondent's statements that Judge Navarro had ordered Mr. Bundy be held in solitary confinement violated Rule 8.4(c) because they were false and made with unconscionable disregard as to their veracity. Even if Mr. Bundy told Respondent that he was forced into solitary confinement, Respondent had no credible basis for his assertion that Judge Navarro caused his client to be placed there. Given that these statements were repeated in Respondent's mandamus petitions with the Ninth Circuit and Supreme Court, we also find that they constituted conduct unbecoming a member of the bar. *See Snyder*, 472 U.S. at 644-

45; *Girardi*, 611 F.3d at 1035. Because Disciplinary Counsel failed to prove that Respondent knew that his statements were false, it did not prove that Respondent violated Rules 3.3(a)(1) or 8.1(a). *See In re Verra*, Bar Docket No. 166-02, 24-28 (BPR July 20, 2006) (though respondent should have known that a statement included in a letter submitted by counsel was false, no Rule 8.1(a) violation where the record lacked clear and convincing evidence that respondent did know), *recommendation adopted* 932 A.2d 503 (D.C. 2007) (per curiam).

6. Respondent's Claims that Judge Navarro Threatened to Hold Mr. Whipple in Contempt Violated Rules 3.3(a)(1), 8.1(a) and (b), and 8.4(c) and Constituted Conduct Unbecoming a Member of the Bar.

Disciplinary Counsel argues that Respondent violated Rules 3.3(a)(1), 8.1 and 8.4(c) by contending in his second emergency mandamus petition with the Ninth Circuit, that Judge Navarro had threatened to hold Mr. Whipple in contempt. *See* DX 73 at 13-14 ("Indeed, the District Court is now seeking to prejudice [Mr. Bundy] even further by threatening to hold Whipple in contempt for listing Judge Navarro's husband as a witness."); FF 57-58. We agree. Judge Navarro filed an Answer to a Ninth Circuit Order issued in response to Respondent's petition stating:

> This statement is false. As demonstrated by the Court's . . . Show Cause Order and the . . . Minutes of Proceedings, the Court never threatened Petitioner's current counsel Whipple, in general or specifically with contempt of court.

DX 76 at 2; *see* FF 60. In response to Judge Navarro's filing, Respondent reiterated the claim that she had threatened Mr. Whipple with contempt. *See* FF 60; DX 77; DX 78.

Respondent defends this charge by arguing that Mr. Whipple told him directly that Judge Navarro had threatened him with contempt. R. Br. at 39.

We find that Respondent's repeated statements that Judge Navarro threatened to hold Mr. Whipple in contempt violated Rule 8.4(c) because they were false and misleading. Respondent also made these statements with conscious disregard as to whether they were true or not. Once Judge Navarro filed the Answer explicitly denying the claim that Mr. Whipple was threatened with contempt, Respondent was on notice as to the potential falsity of his statements. Yet, he persisted in filing yet another document making the same claim. Respondent violated Rule 8.4(c). Prior to the latter filing, the record establishes that Respondent knew that his statements were false and failed to notify or correct the false statement made to the Court. For this reason, we conclude that Respondent violated Rules 3.3(a)(1), 8.1(a), and 8.1(b) when he filed his emergency mandamus petition and reply. Because we have found violations of each of the foregoing disciplinary rules, we also find that Respondent engaged in conduct unbecoming a member of the bar. *See Snyder*, 472 U.S. at 644-45; *Girardi*, 611 F.3d at 1035.

7. Respondent's Repeated Mischaracterization of Judge Gould's Dissent Violated Rules 3.3(a)(1), 8.1(a) and (b), and 8.4(c) and Engaged in Conduct Unbecoming a Member of the Bar.

Disciplinary Counsel argues that Respondent violated Rules 3.3(a)(1), 8.1 and 8.4(c) by mischaracterizing the content of Judge Gould's dissent and omitting important context. *See* ODC Br. at 43. We agree.

Addressing concerns about Mr. Bundy's right to counsel under the Sixth Amendment, Judge Ronald Gould dissented from the Ninth Circuit's decision affirming the denial of Respondent's pro hac vice admission. FF 52. Notwithstanding Judge Gould's balanced discussion of Respondent's candor, in at least six subsequent pleadings, Respondent mispresented Judge Gould's position as an emphatic assertion that he had been candid and truthful. *See* FF 53-54.

Months later, in an emergency mandamus petition filed in the Ninth Circuit, Respondent repeated this misconduct.

> However, what is not disputed is that Mr. Klayman has been candid and truthful to Judge Navarro and has disclosed all that he had a duty to disclose. The Honorable Ronald Gould recognized this, holding that:
>
> > Klayman properly disclosed the ongoing disciplinary proceeding in his initial application for pro hac vice admission, saying that the proceeding had not yet been resolved. **This disclosure was accurate.**
>
> *Bundy v. United States Dist. Court (In re Bundy)*, 840 F.3d 1034, 1054 (9th Cir. 2016 (emphasis added). Mr. Klayman never made any misstatements on the record. Mr. Klayman truthfully and candidly answered the questions presented to him. In fact, the Judge Gould agreed with Mr. Klayman, further holding that:
>
> > I agree with Klayman that he was not obligated to re-litigate the D.C. proceeding before the district court and that he did not have to provide the district court with the entire record from D.C. And if his disclosures were selective, still he is an advocate, an advocate representing defendant Cliven Bundy, and after submitting a compliant response to the questions in the pro hac vice application, **he had no greater duty to disclose any possible blemish on his career or reputation beyond responding to the district court's**

> **<u>further direct requests</u>**. Bundy, 840 F.3d at 1055 (emphasis added).

DX 95 at 6-7.

Respondent repeated these claims again in his February 6, 2018, mandamus petition, filed before the Ninth Circuit. He wrote

> Importantly, the Honorable Ronald M. Gould ("Judge Gould") clearly and unequivocally found that Mr. Klayman had fulfilled his obligation of candor and truthfully answered all the questions presented to him in his *pro hac vice* application, and therefore should have been admitted:
>
> > after submitting a compliant response to the questions in the pro hac vice application, he had no greater duty to disclose any possible blemish on his career or reputation beyond responding to the district court's further direct requests." *Bundy v. United States Dist. Court (In re Bundy),* 840 F.3d 1034, 1055 (9th Cir. Oct. 28, 2016) . . . .

DX 100 at 8-9. He later stated that

> [I]t is clear from the record that Mr. Klayman truthfully and candidly answered the questions presented to him in the Nevada *pro hac vice* application, as was his sole duty as an out of state attorney hired on as part of Mr. Bundy's defense team. Judge Gould clearly emphasized this fact, and as such, Judge Navarro's rulings were in clear error.

DX 100 at 11.

Respondent repeated these statements in his amended mandamus petition filed on the next day. *See* DX 101 at 8-9, 11. He reiterated this contention in his July 20, 2018, mandamus petition filed with the United States Supreme Court, *see* DX 107 at 11-12, as well as in a further mandamus petition filed with the Ninth Circuit on October 9, 2018. *See* DX 109 at 11 ("Judge Gould [] emphatically found that Mr. Klayman had been truthful"), 13 ("It is obvious that ODC lacks clear and convincing evidence of any wrongdoing, much less any basis in fact or law – given Judge

Gould's forceful opinion and factual finding – but has still incredibly proceeded with the filing and Institution of the Specification of Charges, which will result in a costly and drawn out legal proceeding."), 17 ("Judge Gould further correctly recognized, and emphasized, the severe damage to Mr. Klayman resulting from the Pro Hac Vice Ruling, and particularly the Ninth Circuit's adoption of the incorrect finding by the District Court that Mr. Klayman had not been truthful in his application"), and 19 ("Judge Gould has expressly made the factual finding that Mr. Klayman was truthful.").

"Lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law." *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) (per curiam); *see also In re Dobbie*, Board Docket No. 19-BD-018, at 32 (Jan. 13, 2021) (Rule 8.4(c) violated where the underlying document was "so clear, that one can scarcely reach any conclusion but that the motion [drafted by the respondents] was written with a reckless disregard for the truth . . . .").

Here too, it is clear that Judge Gould's dissent did not "emphatically" find that Respondent had been truthful in his disclosures to the district court. FF 53. Respondent's claim that Gould's opinion was cited to in the briefs and is publicly available and that he did not represent that Gould's opinion was limited to the excerpts that he selected serves as further evidence as to his intent. *See* R. Br. at 50-51. We can reach no conclusion other than that, by surgically removing the clarifying context from the paragraph, Respondent drafted these pleadings knowing

that they misrepresented the truth as to Judge Gould's actual findings. Consequently, Respondent violated Rules 3.3(a)(1), 8.1(a) and (b), and 8.4(c) in each instance and engaged in conduct unbecoming a member of the Bar. *See Snyder*, 472 U.S. at 644-45; *Girardi*, 611 F.3d at 1035.

8. Respondent's Statements that His *Pro Hac Vice* Application Was Pending Violated Rules 3.3(a)(1), 8.1(a) and (b), and 8.4(c).

On May 20, 2016, in a motion to disqualify Judge Navarro from the Bundy case, Respondent was listed as "of counsel" with the parenthetical: "(Pro Hac Vice Application Pending)." FF 45; DX 31 at 13; *see also* DX 32 at 5. Three subsequent filings in the case included the same information and a signature mark (/s/) for Respondent. DX 33 at 17; DX 34 at 10, 12; DX 35 at 3. Another filing in the case lists respondent as "of counsel" without the signature line. DX 36 at 2. Mr. Bundy's attorney at the time, Mr. Hansen, later stated that the signature line for Respondent in the initial filing was a mistake. DX 38. But Respondent participated in preparing the motion and approved its filing, and he participated and approved the other filings relating to the motion for disqualification, which identified him as "Of Counsel (Pro Hac Vice Application Pending)." FF 45; DX 31; DX 33; DX 34; DX 35; DX 36; *see* Tr. 568-69; *see also* DX 47; DX 48; DX 49; DX 50; DX 51;DX 52;.

Respondent's answer to all of this is simply that he did not sign the pleading in question. This is clearly false for the pleadings where his signature is indicated. Further, the parenthetical is false in each case. His *pro hac vice* application to participate as Mr. Bundy's counsel had been denied twice (FF 30-31 35; DX 25; DX 29) and was not pending. As the government argued in response to the motions,

even if the statement were true, it provided no basis for Respondent to act as an attorney in the case. DX 32 at 5. Given Respondent's role in preparation of these pleadings, as noted above, and his prominent place in their content, his contention that this was all Mr. Hansen's mistake lacks credibility. We find that Respondent violated Rules 3.3(a), 8.1(a), 8.1(b), and 8.4(c).

9. Disciplinary Counsel Has Not Proved by Clear and Convincing Evidence that Respondent's Statements about Judge Bybee Violated Rules 3.3(a)(1), 8.1(a) and (b), or 8.4(c).

Disciplinary Counsel argues that Respondent violated Rules 3.3(a)(1), 8.1(a), 8.1(b), and 8.4(c) by accusing Judge Bybee of bias and a conflict of interest in a series of filings. *See* ODC Br. at 43-44; FF 56-57, 59, 62-64, 68, 70-71. We disagree. In part, these accusations were based on the contention that Judge Bybee and Senator Reid had a "social and familial relationship" because Judge Bybee's wife "Shannon" and Senator Reid were both inducted as members of the same UNLV organization close in time. FF 71; DX 100 at 16, 23. In fact, Shannon Bybee was not Judge Bybee's wife. Respondent's associate, Oliver Peer, testified that he advised Respondent of the husband-wife relationship: "I looked it up and then I think I jotted it down . . . . I was very confident at the time when I told Mr. Klayman." Tr. 593; FF 71. There is nothing further in the record about the basis for Peer's confidence. The question for the Committee is whether Respondent's reliance on his associate's representation relieves him of responsibility for this falsehood. Peer's testimony is sufficient to preclude a finding based on clear and convincing evidence that Respondent violated the charged Rules. *See* FF 71.

C. Disciplinary Counsel Has Proved by Clear and Convincing Evidence that Respondent Violated Rules 3.1 and 8.4(a) and Engaged in Conduct Unbecoming a Member of the Bar.

Nevada Rule 3.1 prohibits a lawyer from asserting or controverting an issue unless there is a basis in law and fact for doing so that is not frivolous. D.C. Rule 3.1 contains the same prohibitions. Comment [1] to the D.C. Rule notes that an "advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure." *See In re Yelverton*, 105 A.3d 413, 424 (D.C. 2014) ("Rule 3.1 establishes that a lawyer has a broader obligation toward the system as a whole"). A claim is frivolous if, after an objective appraisal of the merits, "a reasonable attorney would have concluded that there was not even a 'faint hope of success on the legal merits' of the action being considered." *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005).

Under both D.C. Rule 8.4(a) and Nevada Rule 8.4(a), "[i]t is professional misconduct for a lawyer to . . . [v]iolate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." *See In re Asher*, 772 A.2d 1161, 1169-1170 (respondent violated Rule 8.4(a) when he assisted another attorney in drafting and submitting two letters containing false statements to the court).

Disciplinary Counsel argues that Respondent violated Rule 8.4(a) when he assisted in the filing of the *Bivens* action, given that, under well settled law, the President and Judge Navarro had absolute immunity with respect to claims for damages and with respect to injunctive relief. ODC Br. at 19, 45-46; ODC Reply

Br. at 13-14, 35-27. Disciplinary Counsel further argues that he violated Rule 3.1 in a number of instances, including: (i) the filing of the motion to disqualify Judge Navarro, (ii) his later attacks on Judge Bybee and efforts to exclude him from the Ninth Circuit panels, (iii) his claim that Mr. Whipple had no experience in criminal matters, and Respondent had substantial criminal experience; (iv) the claim that the court had ordered Mr. Bundy to be held in solitary confinement; (v) the claim that the trial court had threatened Mr. Whipple with contempt; (vi) the claim that Judge Gould emphatically found that Respondent was truthful; (vii) the claim that no bar association had found that Respondent acted unethically or inappropriately; and (viii) the assertion that Judge Bybee was biased and had a conflict of interest because of his purported questions to Respondent during oral argument and his alleged relationships with Judge Navarro and Senator Reid. *See* ODC Br. at 45-47.

Disciplinary Counsel argues that a reasonable attorney would have concluded that there was not even a faint hope of success on the legal merits with respect to each of the claims enumerated above. Specifically, they argue that the conspiracy and other claims made in the *Bivens* action had no basis in fact and were frivolous as a matter of law because judges and Presidents have absolute immunity under established case law. ODC Br. at 46. They further contend that the motion to disqualify was based upon the same baseless claims as set forth in the *Bivens* complaint. Finally, they contend that the knowing misstatements asserted in the pleadings listed above also violated Rule 3.1 because Respondent knew that they had no factual basis when he repeated them in multiple pleadings. ODC Br. at 46-

47. With respect to Respondent's involvement in the filing of the *Bivens* action and the motion to disqualify, Disciplinary Counsel contends that the nature of these filings is consistent with Respondent's practice of retaliating and seeking to intimidate judges who rule against him. ODC Br. at 46.

Respondent argues, in response, that though he participated in the drafting of the motion, he did not sign and was not responsible for filing the *Bivens* action or the motion to disqualify. He also points to a proffered expert opinion that there are circumstances under which an attorney may successfully challenge the judicial and Presidential immunity claims. He argues that he sought injunctive relief against the judges, in order to have a federal court rule on the issue and that it was not intended to create a conflict of interest for Judge Navarro. R. Br. at 16-17, 35, 52-54. Respondent also argues that he was entitled to characterize his criminal defense experience in contrast to that of Mr. Whipple for the court; that he relied on his client's assertion and his own observation of his client in concluding that he had been placed into solitary confinement; that he relied on what Mr. Whipple told him in arguing that Mr. Whipple was threatened with contempt; he was entitled to rely on excepted portions of Judge Gould's publicly available dissenting opinion in advocating for himself and his clients; that he had never been subject to any final, binding sanction by any bar association before a judge; and that, with respect to the alleged personal relationships between Judge Bybee, Judge Navarro, and Senator Reid, there is nothing in the record to disprove those claims. *See, e.g.*, R. Br. at 17-18, 37-39, 48-54.

We have concluded that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Rule 3.1 with respect to his claim that Mr. Whipple had no experience in criminal matters, and Respondent had substantial criminal experience; the claim that the court had ordered Mr. Bundy to be held in solitary confinement; and the assertion that Judge Bybee was biased and had a conflict of interest because of his questions to Respondent during oral argument and his alleged relationships with Judge Navarro and Senator Reid. We have determined that Respondent's statements concerning his criminal experience were intentionally misleading and that and his assertion that Judge Navarro was holding his client in solitary confinement were false. Finally, the Hearing Committee also finds that Disciplinary Counsel has proven by clear and convincing evidence that Respondent also violated Rule 8.4(a) with respect to his participation in drafting and filing of the *Bivens* action and the motion to disqualify.

Accordingly, we recommend that the Board conclude as a matter of law that Disciplinary Counsel has proved by clear and convincing evidence that Respondent violated Rules 3.1 and 8.4(a) in each of these instances and engaged in conduct unbecoming a member of the Bar. *See Snyder*, 472 U.S. at 644-45; *Girardi*, 611 F.3d at 1035.

D. Disciplinary Counsel Has Proved by Clear and Convincing Evidence that Respondent's Actions Violated Rule 8.4(d) and Engaged in Conduct Unbecoming a Member of the Bar.

Nevada Rule 8.4(d) provides that "[i]t is professional misconduct for a lawyer to [e]ngage in conduct that is prejudicial to the administration of justice." D.C. Rule

8.4(d) differs from Nevada Rule 8.4(d) in that D.C. Rule 8.4(d) prohibits an attorney from engaging "in conduct that seriously interferes with the administration of justice." However, this "prohibition of conduct that 'seriously interferes with the administration of justice' includes conduct proscribed by the previous Code of Professional Responsibility under DR 1-102(A)(5) as 'prejudicial to the administration of justice.'" D.C. Rule 8.4, cmt [2].

Disciplinary Counsel has alleged numerous instances of Respondent's conduct in violation of Rule 8.4(d), including the making of false and misleading statements; the filing of the *Bivens* action and motion to disqualify Judge Navarro; the allegations of bias and prejudice against Judge Navarro and Judge Bybee; and the continuous filing of pleadings after having been denied *pro hac* admission. ODC Br. at 48-49. In response, Respondent argues that the alleged violations of Rule 8.4(d) are based solely on the number of pleadings that were filed by Respondent. Respondent argues that the number of filings he made was reasonable as evidenced by Dean Chemerinsky's testimony that such filings were reasonable and the fact that the courts never sanctioned Respondent for his filings. R. Br. at 54-55; *see also* Tr. 691 (Chemerinsky).

For a serious interference with the administration of justice under Rule 8.4(d) to occur, Disciplinary Counsel must show by clear and convincing evidence that (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process (*i.e.* the 'administration of justice') with respect to an identifiable case or

tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). A Rule 8.4(d) violation does not require any actual interference with judicial decision-making but requires only that the conduct "potentially impact upon the process to a serious and adverse degree." *Hopkins*, 677 A.2d at 61; *In re White*, 11 A.3d 1226, 1230 (D.C. 2011) (per curiam). To taint the judicial process the lawyer does not have to act knowingly or with scienter. *See In re L.R.*, 640 A.2d 697, 700-01 (D.C. 1994) (Court rejected lawyer's contention that scienter, or at least reckless disregard for a known obligation, must be shown before a rule violation could be found). Each of Disciplinary Counsel's alleged instances of misconduct will be addressed in turn. Respondent's dishonesty in connection with his *pro hac vice* application also violated the Rule.

The Court has recognized that a lawyer's "failure to make material disclosures" in connection with a bar admission application, "interfered with the administration of justice by 'preventing a complete review of [the respondent's] character and fitness' to practice law in the District." *Scott*, 19 A.3d at 781. False and misleading statements to the courts may violate Rule 8.4(d), even if the courts were not misled. *See In re Reback*, 513 A.2d 226, 232 (D.C. 1986) (en banc) (submitting document with false signature constituted conduct seriously interfering with the administration of justice); *In re Baber*, Board Docket No. 11-BD-055, at 29-30 (BPR Dec. 30, 2013) (Baber's misrepresentations at hearing and false and

baseless claims in motions violated Rule 8.4(d)), *recommendation adopted in relevant part* 106 A.3d 1072 (D.C. 2015) (per curiam)). As the Court addressed in *Yelverton*, frivolous motions that, among other things, target trial judges and accuse them of bias without any objectively reasonable basis, violate Rule 8.4(d). 105 A.3d at 428 ("[R]espondent's numerous meritless, repetitive, and at times vexatious motions and other filings, considered in their totality, caused more than *de minimis* harm to the judicial process and violated Rule 8.4(d).").

Respondent's frivolous *Bivens* action against Judge Navarro and others, the baseless motion to disqualify, and the baseless claims he asserted in multiple pleadings violated Rule 8.4(d). The filing and pursuit of frivolous claims taints the judicial process in more than a *de minimis* way because it unnecessarily wastes the time and resources of the courts. *In re Barber*, 128 A.3d 637, 641 (D.C. 2015) (per curiam) (respondent's frivolous claims and appeal violated Rule 8.4(d), as well as Rule 3.1). Respondent's retaliatory actions against Judge Navarro and Judge Bybee also violated Rule 8.4(d) because he accused the judges of bias and wrongdoing after they ruled against him, sought to disqualify them, sued Judge Navarro, and filed a complaint against Judge Bybee. *See, e.g.*, FF 39, 41, 56, 70-71. Respondent's conspiracy allegations and unfounded and personal attacks on the judges and efforts to intimidate them did not advance or serve his client's interest. Rather, such unfounded allegations and attacks display a lack of respect for the judiciary and ignorance of the independent role of the judiciary. They undermine public confidence in the administration of justice, as Judge Navarro, the Ninth Circuit, and

other courts found. Finally, Respondent's repetitive pleadings and motions raising the same previously rejected arguments and claims also violated Rule 8.4(d). His interminable mandamus petitions and requests for rehearing taxed the courts' limited resources, when a reasonable lawyer would have known that they had no chance of success. The purported "changed circumstances" that Respondent recounted in some of his pleadings provided no justification for the successive petitions that rehashed many, if not most, of the same claims. In any event, the "changed circumstances" that Respondent cited had little or nothing to do with the district court's decision to deny his pro hac vice admission, as the Ninth Circuit found. *See, e.g.*, FF 57-61. The only changed circumstance that was actually relevant to his admission was the findings in the ongoing disciplinary matter, which, of course, Respondent never disclosed. Instead, Respondent falsely claimed that no bar association had ever found he engaged in misconduct before a judge.

For the foregoing reasons, we recommend that the Board find that Respondent engaged in violations of Rule 8.4(d) and that engaged in conduct unbecoming a member of the Bar. *See Snyder*, 472 U.S. at 644-45; *Girardi*, 611 F.3d at 1035.

III. RECOMMENDED SANCTION

"[T]he choice of sanction is not an exact science but may depend on the facts and circumstances of each particular proceeding. . . . Indeed, each of these decisions emerges from a forest of varying considerations, many of which may be unique to the given case." *In re Edwards*, 870 A.2d 90, 94 (D.C. 2005) (internal quotations and citations omitted). The sanction imposed in an attorney disciplinary matter is

one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *Cater*, 887 A.2d at 17. "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *Reback*, 513 A.2d at 231 (citations omitted); *see also In re Goffe*, 641 A.2d 458 464 (D.C. 1994) (per curiam). The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (*citing In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)).

Disciplinary Counsel asserts that Respondent should be suspended for at least one year and that he be required to prove his fitness to practice law prior to reinstatement. ODC Br. at 50. Respondent contends that no sanction is warranted.

R. Br. at 56. For the reasons discussed below, we recommend that Respondent be suspended for one year, with a fitness requirement.

While lawyers have duties and obligations to their clients, they also have ethical responsibilities to other lawyers, and are officers of the court, by which they are licensed to practice law. In fact, "[l]awyers have a greater duty than ordinary citizens to be scrupulously honest *at all times,* for honesty is 'basic' to the practice of law. . . . Every lawyer has a duty to foster respect for the law, and *any* act by a lawyer which shows disrespect for the law tarnishes the entire profession." *Cleaver-Bascombe*, 986 A.2d at 1200.

While there is no evidence that Respondent's client suffered prejudice in this matter, Respondent's misconduct was serious. In an effort to obtain *pro hac vice* admission to the district court, over a period of two years, Respondent violated seven disciplinary Rules, needlessly taxing the judicial system with a flurry of pleadings that repeated knowingly dishonest statements. Indeed, Respondent engaged in extensive dishonesty concerning the status of a pending disciplinary proceeding while in the midst of that very proceeding. "The nature of a case is made more egregious by repeated violation of a rule prohibiting dishonest conduct, as there is nothing more antithetical to the practice of law than dishonesty." *In re Howes*, 39 A.3d 1, 16 (D.C. 2012) (internal quotation marks omitted).

Respondent denies any remorse for his misconduct. When asked by the Chair whether he would do anything differently, he denied that he would.

> [The matter] needed strong representation. My clients were in prison for two years without bail, and the government withheld information

> that they were no risk, and they suffered greatly. So no, I wouldn't do anything differently.

Tr. 1139. But the point that Respondent misses is a critical one. The Court has cautioned that

> when an attorney undertakes to act on behalf of another person in a legal matter, no matter how pure or beneficent his original intention may have been, he invokes upon himself the entire structure of the Code of Professional Responsibility and its consequent enforcement through disciplinary proceedings
>
> . . . **All attorneys must act in an ethical manner when they act as attorneys regardless of what motivates them to undertake the attorney-client relationship.**

In re Fay, 111 A.3d 1025, 1028 (D.C. 2015) (per curiam) (emphasis added).

In mitigation, Respondent offered testimony from ten character witnesses on his behalf. *See generally* Tr. 864-986, 1014-1031-38. The character witnesses, while believable, did not serve to add much to our consideration of a reduced sanction where, as here, Respondent indicated no recognition of the wrongfulness of his conduct, expressed no remorse, and where the likelihood of repeat violations is high.

Disciplinary Counsel urges this Committee to consider two additional factors in aggravation: (i) *In re Klayman*, 228 A.3d 713 (D.C. 2020) – the Court's decision in *Klayman I*, issued during the pendency of this matter (*see* DX 128); and (ii) two *pro se* lawsuits that Respondent filed against the members of the Office of Disciplinary Counsel, as well as the Office itself (*see* DX 129; DX 130). We decline to do so.

First, in accordance with the Court's guidance in *In re Askew*, 225 A.3d 388, 399 (D.C. 2020) (per curiam), because *Klayman I* was pending in the disciplinary system at the same time as the instant matter, it is not appropriate to consider the Court's prior disciplinary decision to be an aggravating factor. Rather, the Board's recommended sanction will consider Respondent's violations in this case as if they were pending simultaneously with the violations found in *Klayman I*.

Second, uncharged misconduct considered in aggravation of the sanction must be proven by clear and convincing evidence. *See In re Schwartz*, Board Docket No. 13-BD-052, at 6-9 (BPR July 31, 2017), *recommendation adopted* 221 A.3d 925 (D.C. 2019) (per curiam). In its post hearing brief on sanction, Disciplinary Counsel argues that

> Respondent retaliated against Disciplinary Counsel and its employees for filing charges against him by repeatedly suing them, asserting baseless claims. In the latest case to be dismissed, the court sanctioned Respondent. *Klayman v. Porter*, *et al*., Case No. 2020 CA 00756 B (D.C. Super. Ct. Oct. 1, 2020). The D.C. Circuit has now denied Respondent's appeals of his first two federal actions against Disciplinary Counsel. Consistent with his modus operandi, he filed repetitive motions to recuse or disqualify the federal judge who rule against him in those cases – conduct that further demonstrate that Respondent will continue to abuse the legal system not only by filing baseless and retaliatory claims, but by attacking judges who rule against him and multiplying the proceedings to maximize the burden and expense on his adversaries.

ODC Sanction Br. at 3-4 (Oct. 9, 2020). Because Disciplinary Counsel substantively raised the issue of aggravation for the first time in the post-hearing brief, and the conduct was uncharged, the Hearing Committee declines to consider whether

Disciplinary Counsel has proven these purported aggravating factors by the clear and convincing evidence standard.

Although Respondent's misconduct involves violations of the Nevada Rules, we look to D.C. disciplinary cases in determining our recommended sanction. *See, e.g.*, *In re Ponds*, 888 A.2d 234, 235, 245-47 (D.C. 2005) (analyzing D.C. caselaw to determine sanction where the respondent violated two Rules under the Maryland Rules of Professional Conduct); *In re Zakroff*, 934 A.2d 409, 424 (D.C. 2007) (noting, in a reciprocal discipline case, that D.C.'s *Kersey* standard may lead to a different sanction result than one reached in Maryland).

The Court has imposed lengthy suspension periods where a respondent engages in dishonesty that is protracted or accompanied by other serious violations. *See Martin*, 67 A.3d at 1053-54 (citing *In re Wright*, 885 A.2d 315, 316-17 (D.C. 2005) (per curiam) (one-year suspension for pattern of dishonesty in several matters)); *Ukwu*, 926 A.2d at 1119-1120 (two-year suspension for neglecting client matters, dishonesty to client, and false testimony before the Hearing Committee)).

In *In re Rosen*, 570 A.2d 728, 728 (D.C. 1989) (per curiam), the Court imposed a nine-month suspension with a fitness requirement for Rosen's reckless false statement in his application to be admitted to the Maryland Bar. Rosen failed to disclose disciplinary complaints filed after his original application and asserted nothing had changed. Rosen made a single reckless misstatement. *See* 570 A.2d at 729-730. By contrast, Respondent made repeated false and misleading statements over an extended period and most, if not all, of them were made knowingly.

Other lawyers who have asserted and pursued frivolous claims with no acknowledgment of their misconduct and no indication they would conform their conduct in the future have been suspended with a fitness requirement and, in some cases, disbarred. *See Barber*, 128 A.3d 637 (disbarment for pursuing frivolous claims, dishonesty, and other misconduct across three matters); *Yelverton*, 105 A.3d 413 (thirty-day suspension with fitness requirement for filing multiple and baseless post-trial motions, some of which accused judge of bias and misconduct); *In re Orci*, 974 A.2d 891 (D.C. 2009) (per curiam) (disbarment for filing multiple frivolous claims to harass and intimidate others, violating court orders, and dishonesty); *In re Shieh*, 738 A.2d 814 (D.C. 1999) (reciprocal case where Court rejected Board's recommended sanction and disbarred the respondent for abusing the judicial system by filing baseless and repetitive actions, and attacking judges).

In *In re Adkins*, 219 A.3d 524 (D.C. 2019) (per curiam), the Court suspended the respondent for three years with proof of fitness for similar misconduct involving the respondent's application for admission to the D.C. Bar. Adkins submitted an application for admission to this court's bar by motion but omitted required information from a supplemental questionnaire: "The omitted information included civil lawsuits filed by or against him, his criminal convictions, and his past overdue debts . . . [and] his filings contained specific misrepresentations concerning his criminal conviction arising from an alcohol-related hit-and-run accident." *Id*. at 524. Adkins' misconduct violated D.C. Rules 8.1(a) (knowing false statement of material facts on admission application), 8.1(b) (failure to disclose a fact necessary to correct

a misapprehension known by the applicant to have arisen), 8.4(b) (criminal act that reflects adversely on the honesty, trustworthiness, or fitness as a lawyer), 8.4(c) (dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (serious interference with the administration of justice). "[Adkins'] omissions and false statements precluded the Committee on Admissions from properly scrutinizing his fitness, resulting in his admission to the bar." *Id.* Finally, Adkins "provided false testimony" to the Hearing Committee. *Id.*

In *In re Small*, 760 A.2d 612 (D.C. 2000) (per curiam), the Court suspended the respondent for three years with proof of fitness for misconduct involving the respondent's application for admission to the Bar in violation of D.C. Rules 8.4(b) (commission of a criminal act reflecting adversely on lawyer's honesty, trustworthiness or fitness to practice law) and 8.1(b) (failure to disclose a necessary fact to correct misapprehension known by lawyer or failure to respond reasonably to lawful demand for information from admissions or disciplinary authority). Small was convicted of felony vehicular homicide for driving while impaired in New York after he had submitted his D.C. Bar application. Small failed to update his pending D.C. Bar application to reflect his criminal matter, and also made a false statement on his supplemental questionnaire by failing to disclose the criminal matter prior to his swearing-in. *Id*. at 612-13.

In *In re Rohde*, 234 A.3d 1203 (D.C. 2020) (per curiam), the Court publicly censured the respondent for similar misconduct for a false statement on *a pro hac vice* application in violation of Virginia Rules 3.3(a)(1) and 8.4(c). Rohde

knowingly made a false statement to the United States District Court for the Eastern District of Virginia in connection with an application to be admitted to that court *pro hac vice*, "by representing that there had not been any action in any court pertaining to his conduct or fitness as a member of the bar, even though [he] knew that . . . his criminal felony conviction" had been referred to the Board. *Id*. at 1203. Rohde also "misled the attorney sponsoring his pro hac vice application, by failing to disclose to her the prior conviction and the related disciplinary proceedings." *Id*. The Board reasoned that while Rohde's conduct involved dishonesty, he had consulted in good faith with another attorney regarding whether the pending referral should be disclosed on the *pro hac vice* application, and that there were no aggravating factors. *In re Rohde*, Board Docket No. 15-BD-107, at 19-20, 24 (BPR Mar. 11, 2020).

Under Court precedent, Respondent's conduct may warrant a suspension period exceeding one year. However, given the Court's guidance in *In re Cleaver-Bascombe*, the Committee will not recommend a sanction exceeding that recommended by Disciplinary Counsel. *See* 892 A.2d at 412 n.14 ("Our disciplinary system is adversarial—[Disciplinary] Counsel prosecutes and Respondent's attorney defends—and although the court is not precluded from imposing a more severe sanction than that proposed by the prosecuting authority, that is and surely should be the exception, not the norm, in a jurisdiction, like ours, in which [Disciplinary] Counsel conscientiously and vigorously enforces the Rules of Professional Conduct.").

Finally, we recommend that Respondent be required to prove his fitness to practice law before reinstatement. A fitness showing is a substantial undertaking. *Cater*, 887 A.2d at 20. Thus, in *Cater*, the Court of Appeals held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Id*. at 6. Proof of a "serious doubt" involves "more than 'no confidence that a Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

In determining whether a serious doubt has been raised as to Respondent's fitness, to the extent possible, we have considered the *Roundtree* factors cited in *Cater*: "(1) the nature and circumstances of the misconduct for which the attorney was disciplined; (2) whether the attorney recognizes the seriousness of the misconduct; (3) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones; (4) the attorney's present character; and (5) the attorney's present qualifications and competence to practice law." *Cater*, 887 A.2d at 21 (quoting *In re Roundtree*, 503 A.2d 1215, 1217 (D.C.1985)).

The application of these factors supports the imposition of a fitness requirement. The nature of Respondent's misconduct reveals that he is comfortable acting dishonestly as a matter of course. His misconduct was serious, repeated, and

prolonged. Respondent lacks remorse and does not appreciate the seriousness of his misconduct. Nor is there record evidence that he has taken any remedial steps to address the misconduct or to prevent future misconduct. In sum, we find that there is clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law.

IV. CONCLUSION

For the foregoing reasons, the Hearing Committee finds that Respondent violated Rules 3.1, 3.3(a), 8.1(a), 8.1(b), 8.4(a), 8.4(c), and 8.4(d). The Hearing Committee also finds that Respondent engaged in conduct unbecoming a member of the Bar. The Hearing Committee recommends that Respondent be suspended for one year and that he be required to prove his fitness to practice law prior to reinstatement.

HEARING COMMITTEE NUMBER NINE

Buffy J. Mims

Buffy J. Mims, Chair

Robin J. Bell

Robin J. Bell, Public Member

Christian S. White

Christian S. White, Attorney Member