DISTRICT OF COLUMBIA COURT OF APPEALS

BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of **EDWARD R. MARTIN,** **Respondent, A Member of the Bar of the District of Columbia Court of Appeals** **Bar No. 481866** **Date of Admission: June 10, 2003**	**Disciplinary Docket No.** **2025-D047**

ANSWER

Comes now Edward R. Martin, Respondent in the above-entitled matter, and for his answer to the Specification of Charges shows the following:

FIRST DEFENSE—JURISDICTION IS ABSENT IN LIGHT OF THE TAKE CARE CLAUSE AND LACK OF COMPLAINT AGAINST RESPONDENT BY THE FORMER PRESIDENT.

The D.C. Bar lacks jurisdiction over the conduct of the Respondent referred to in the Charges because the Respondent was acting at all relevant times pursuant to the President's authority under the Take Care Clause, U.S. Const., art. II, § 3, to enforce the constitution and laws of the United States. At no time has President Trump complained about the challenged conduct of the Respondent or voluntarily submitted a dispute of that nature to the D.C. Bar for investigation and adjudication.

SECOND DEFENSE—UNDER 28 U.S.C. § 541, 28 U.S.C. § 546, AND THE AUGUST 2, 1985 OLC OPINION THE DC BAR HAS NO JURISDICTION.

The D.C. Bar lacks jurisdiction over the conduct referred to in the Charges under the Take Care Clause of Article II of the U.S. Constitution. *See also* 28 U.S.C. § 541 (U.S. Attorneys to be appointed by President with advice and consent of Senate); 28 U.S.C. § 546 (Acting U.S. Attorneys appointed by the Attorney General); U.S. Department of Justice, Office of Legal Counsel Opinion, *State Bar Disciplinary Rules as Applied to Federal Government Attorneys* (Aug. 2, 1985) ("Rules promulgated by state courts or bar associations that are inconsistent with the requirements or exigencies of federal service may violate the Supremacy Clause."), *available at* https://tinyurl.com/56bft7sb, *last visited* (Mar. 26, 2026) ("OLC Opinion").

THIRD DEFENSE—THE DC BAR HAS NO JURISDICTION WHERE IT INVADES A SPHERE OF UNREVIEWABLE PRESIDENTIAL AUTHORITY.

The D.C. Bar lacks jurisdiction over the conduct of Respondent referred to in the Charges under the Constitution of the United States because the attempt to assert jurisdiction over Respondent's conduct as alleged in the Charges intrudes on the President's exclusive and unreviewable authority over federal criminal and civil investigations occurring during his term of office, pursuant to the Take Care Clause and as such authority is delegated by the President consistent with the U.S.

Department of Justice power structure established in 28 U.S.C. § 506 and as elaborated in *Trump v. U.S.*, 603 U.S. 593 (2024).

FOURTH DEFENSE—THE DC BAR HAS NO JURISDICTION OVER FEDERAL EXECUTIVE BRANCH DISCRETIONARY INVESTIGATIONS IN LIGHT OF THE SEPARATION OF POWERS AND THE SUPREMACY CLAUSE.

The D.C. Bar lacks jurisdiction over the conduct of the Respondent referred to in the Charges because 28 U.S.C. § 530B(a) does not grant to regulatory, local bar entities any authority to regulate the conduct of investigations by U.S. Department of Justice lawyers in the course or conduct of preliminary non-compulsory investigative inquiries. Nor does the statute, by its terms, authorize the D.C. Bar to oversee or second guess the execution of internal DOJ and Executive Branch policies governing enforcement actions and investigations. If the statute were read to do so as to the D.C. Bar or D.C. Court of Appeals, it would violate the separation of powers because both the Bar and the D.C. Court of Appeals are creatures of Article I, as established by Congress, and Congress cannot penetrate into the investigative and prosecutorial functions of the Executive Branch to try to shape how those deliberations are conducted. Additionally, because Section 530B(a) refers to state laws and rules, even if D.C. could be considered a covered analogue of a State, application of Section 530B(a) to the President's exercise of prosecutorial discretion would result in a constitutional conflict, preempted as violative of the Supremacy Clause, U.S. Const., art. VI, cl. 2. States also lack the

constitutional power to intrude on the Executive Branch's deliberations. And the District of Columbia, as a federal enclave, does not wield authority superior to that of the President with respect to the exercise of prosecutorial discretion.

FIFTH DEFENSE—NO RESPONDENT TESTIMONY CAN BE COMPELLED IN VIOLATION OF EXECUTIVE PRIVILEGE.

Respondent cannot be forced to testify or take actions in violation of executive privilege.

SIXTH DEFENSE— NO TESTIMONY VIOLATING LAW ENFORCEMENT PRIVILEGE CAN BE USED AGAINST RESPONDENT.

No evidence or testimony given in violation of the law enforcement privilege can be used against Respondent.

SEVENTH DEFENSE—NO RESPONDENT TESTIMONY CAN BE COMPELLED IN VIOLATION OF LAW ENFORCEMENT PRIVILEGE.

Respondent cannot be forced to testify or take actions in violation of law enforcement privilege.

EIGHTH DEFENSE—NO TESTIMONY VIOLATING ATTORNEY-CLIENT PRIVILEGE CAN BE COMPELLED OR USED AGAINST RESPONDENT.

No testimony or evidence can be compelled or presented against Respondent in violation of attorney-client privilege.

NINTH DEFENSE—TESTIMONY IN VIOLATION OF APPLICABLE PRIVILEGES WOULD VIOLATE DUE PROCESS.

Receiving into evidence in this proceeding testimony against Respondent that was given in violation of any of executive privilege, law enforcement privilege, or attorney-client privilege would violate due process because Respondent, observing one or more of the applicable privileges, cannot counter the testimony given against him without violating one or more of the privileges, creating a procedural Catch-22 of which ODC and the D.C. Bar generally have now been put on notice.

TENTH DEFENSE—TESTIMONY IN VIOLATION OF APPLICABLE PRIVILEGES WOULD VIOLATE THE CONFRONTATION CLAUSE.

Receiving into evidence in this proceeding testimony against Respondent that violates any of executive privilege, law enforcement privilege, or attorney-client privilege would violate the Confrontation Clause (U.S. Const., amend. VI) because Respondent, observing one or more of the applicable privileges, cannot counter and thus confront the testimony given against him without violating one or more of the privileges, creating a second procedural Catch-22.

ELEVENTH DEFENSE—D.C. BAR JURISDICTION VIOLATES *LOPER BRIGHT*.

Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), 28 U.S.C. § 530B cannot be read to clearly delegate to the Department of Justice the power to confer on the District of Columbia authority to regulate lawyers serving

in the Department of Justice. *See,* also *West Virginia v. EPA*, 142 S. Ct. 2587 (2022); *Hickman v. Train*, 426 U.S. 167 (1976); OLC Opinion.

28 C.F.R. § 77.2(h), the Justice Department regulation adopted under 28 U.S.C. § 530B, purports to grant the District of Columbia some regulatory authority over lawyers serving in the Department of Justice, but that is an expansion of Section 530B not authorized by the text of the statute. To the extent the regulation purports to do so, it is invalid

TWELFTH DEFENSE—THE D.C. COURT OF APPEALS AND ITS SUBORDINATE ENTITIES LACK SUPERVISORY JURISDICTION OVER THE CHARGED CONDUCT.

The D.C. Bar lacks jurisdiction over the conduct of the Respondent referred to in the Charges because none of the conduct as alleged occurred in a setting over which a local Court of the District of Columbia has supervisory jurisdiction.

THIRTEENTH DEFENSE—D.C. BAR JURISDICTION WOULD VIOLATE 28 U.S.C. § 530B'S LIMITED STATUTORY JURISDICTION.

The D.C. Bar lacks ***statutory*** jurisdiction over the conduct of the Respondent referred to in the Charges because, even if 28 U.S.C. § 530B granted disciplinary authority in circumstances like those here to the D.C. Bar, it only does so "to the same extent and in the same manner as other attorneys in that State," and the D.C. Bar has never attempted to charge, much less discipline, conduct as alleged in the Charges.

FOURTEENTH DEFENSE—D.C. BAR JURISDICTION WOULD VIOLATE 28 C.F.R. § 77.2(j)(2)'S LIMITED REGULATORY JURISDICTION.

Even if there were valid Section 530B statutory jurisdiction here (which there is not), the D.C. Bar lacks ***regulatory*** jurisdiction over the conduct of the Respondent referred to in the Charges because 28 C.F.R. § 77.2(j)(2) denies jurisdiction to the D.C. Bar where it would otherwise exist if the D.C. Bar "would not ***ordinarily*** apply its rules of ethical conduct to particular conduct or activity by the attorney." This is so even assuming Section 77.2 is a valid enactment consistent with *Loper Bright*, which it is not, at least as applied here. The D.C. Bar not only does not ordinarily apply its rules of ethical conduct to the charged conduct of the Respondent, but it has also never done so.

FIFTEENTH DEFENSE – RESPONDENT IS ENTITLED TO OFFICIAL IMMUNITY OR QUALIFIED IMMUNITY.

The conduct referred to in the Charges is not subject to discipline by the D.C. Bar under the doctrine of official immunity. This applies to prosecutorial immunity in addition to Executive immunity. *See, Imbler v. Pachtman 424 US 409 (1976). See also, e.g.*, *Nixon v. Fitzgerald,* 457 U.S. 731 (1982); *Banneker Ventures, L.L.C. v. Graham*, 798 F.3d 1119 (2015); *Clifton v. Cox*, 549 F.2d 722, 729-30 (9th Cir. 1977). In the alternative, he is entitled to qualified immunity. Further, these are threshold defenses and Respondent is entitled to have them adjudicated by a real judge in a forum which provides the type of due process

applicable to such matters. Respondent is also entitled to have these issues resolved on appeal if necessary, *before* any evidentiary trial of this case. The processes of the D.C. Bar are unlawful because they deny respondents who are federal attorneys these procedural and substantive defenses.

SIXTEENTH DEFENSE—FAILURE TO STATE A RULES VIOLATION.

The Charges fail to state a violation of the Rules of Professional Conduct.

SEVENTEENTH DEFENSE—LACK OF DUE PROCESS FAIR NOTICE.

Respondent lacks fair notice that the conduct alleged in the Charges constituted a violation of the D.C. Bar Rules. This is especially true with respect to the charge in Count I that Respondent violated his oath of office to uphold the Constitution.

EIGHTEENTH DEFENSE—NO RULE OF PROFESSIONAL CONDUCT WAS VIOLATED AND ESPECIALLY NONE WAS VIOLATED WITH SCIENTER.

Respondent denies that he has violated any Rule of Professional Conduct as alleged in the Charges and the Charges do not aver (or sufficiently aver) the prerequisite elements of the conduct on which the Charges are constructed, including failure of any required scienter to act in a dishonest fashion for self-gain or to achieve an illicit objective for former President Trump.

NINETEENTH DEFENSE—ODC'S PROSECUTION HERE IS POLITICAL IN NATURE.

The Charges should be dismissed because they are brought for political reasons selectively enforced rather than any concern for enforcement of the Rules of Professional Responsibility.

TWENTIETH DEFENSE—WHETHER DEI POLICIES AT GEORGETOWN UNIVERSITY LAW CENTER ARE LAWFUL IS BEYOND THE JURISDICTION OF THE DISCIPLINARY PROCESS.

Due to the framing of the charges, adjudicating the legality of conducting an investigation into a potential crime and adjudicating the legality of Georgetown University Law Center's DEI policies and their application both as an institution and in the classroom is a logically necessary prerequisite to adjudicate the charges. The D.C. Bar disciplinary process has no jurisdiction or authority, nor is it a forum that provides the prerequisite due process protections to even commence any adjudication of the legality of conducting an investigation into a potential crime and adjudicating the legality of Georgetown University Law Center's DEI policies and their application both as an institution and in the classroom.

TWENTY-FIRST DEFENSE—VIOLATION OF EQUAL PROTECTION.

The Office of Disciplinary Counsel wields its disciplinary authority here in a politically biased manner, prosecuting Republicans and especially supporters of President Trump with unequal application, excessive and improper zeal and upon frivolous grounds, while turning a blind eye to or only belatedly and grudgingly

stirring itself to administer reluctant slaps on the wrist for egregiously dishonest or felonious conduct by Democrats and opponents of President Trump such as Kevin Clinesmith, Mark Elias, members of the intelligence Community, Michael Sussman, and Hunter Biden, to name a few. This selective prosecution/disparate treatment of alleged violations of the Rules of Professional Conduct violates the equal protection component of the Fifth Amendment of the United States Constitution. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 214–18 (1995).

TWENTY-SECOND DEFENSE—SELECTIVE PROSECUTION IN VIOLATION OF THE CONSTITUTION AND D.C. RULE OF PROFESSIONAL CONDUCT 3.8(a)

The Charges constitute a selective prosecution that violates equal protection, due process, and D.C. Rule of Professional Conduct 3.8(a). ODC has not brought charges against any of the attorneys involved in flagrant violations of constitutional rights such occurred in the knowingly fraudulent and dishonest Russia Hoax investigation, the knowingly dishonest and fraudulent prosecution of Michael Flynn, and the massive and systematic government censorship campaign at issue in *Missouri v. Biden*. U.S.D.C. for the Western District of Louisiana, Case No. 22-cv-1213, which was resolved by consent decree filed March 25, 2026. See https://nclalegal.org/filing/consent-decree/ (last visited Mar. 27, 2026).

TWENTY-THIRD DEFENSE—ODC MAY NOT VIOLATE THE CONFIDENTIALITY OF THE INVESTIGATIVE STAGE OF THE DISCIPLINARY PROCESS.

ODC has conducted itself in violation of its own rules, including violating the confidentiality of the investigative stage, D.C. Bar Rule XI, Section 17; by mailing notice of its investigation to the general public mailbox of the U.S. Attorney's Office for the District of Columbia.

TWENTY-FOURTH DEFENSE—ODC'S FILING OF CHARGES OCCURRED AT LEAST IN PART TO RETALIATE AGAINST RESPONDENT FOR COMPLAINING ABOUT AND INVESTIGATING DISCIPLINARY COUNSEL'S WEAPONIZATION OF THE BAR DISCIPLINARY PROCESS AGAINST MEMBERS OF THE TRUMP ADMINISTRATION, INCLUDING RESPONDENT.

The filing of charges was in retaliation for Respondent complaining about and investigating Disciplinary Counsel's weaponization of his authority against lawyers who worked for or were supportive of President Trump, including against Respondent. Such penalization/retaliation is a violation of the Due Process Clause of the Fifth Amendment. Inquiries and investigation of this conduct were within the scope of Respondent's duties as Director of the Weaponization Task Force, and Disciplinary Counsel is prohibited from bringing pretextual investigations and charges to either protect himself from accountability or to retaliate against Respondent for performing the lawful functions of his office.

TWENTY-FIFTH DEFENSE—ODC'S OPENING ITS INVESTIGATION BASED ON A COMPLAINT FILED BY SOMEONE WITH NO PERSONAL KNOWLEDGE REINFORCES THE LACK OF REGULATORY JURISDICTION UNDER SECTION 77.2 AND IS A GATEWAY TO POLITICAL WEAPONIZATION OF THE BAR DISCIPLINARY PROCESS.

No client for the relevant legal advice, analysis, or investigative actions of Respondent has complained of his conduct. This matter arose from a complainant who had no personal knowledge of any relevant facts. Opening bar investigations based on complaints from random cranks on the other side of the country enshrines the obvious practice that has opened the door to politically motivated weaponization of the bar disciplinary process, the very subject matter of Respondent's complaints about and investigation of Disciplinary Counsel.

TWENTY-SIXTH DEFENSE—THE CHARGES VIOLATE THE D.C. HUMAN RIGHTS ACT BECAUSE THEY DISCRIMINATE AGAINST RESPONDENT'S POLITICAL AFFILIATIONS AND BELIEFS.

Respondent is being discriminated against in violation of D.C. Human Rights Act, § 2-1401.01, on account of his political affiliation and beliefs.

TWENTY-SEVENTH DEFENSE – THE D.C. BAR DISCIPLINARY PROCESS UNCONSTITUTIONALLY DEPRIVES RESPONDENT OF HIS RIGHT TO JURY TRIAL AS EXISTED AT COMMON LAW.

The Disciplinary Process of the D.C. Bar denies respondents any right to a jury trial. This is an unconstitutional infringement of the 6th and 7th Amendment rights to jury trial as existed for attorney discipline at common law. The D.C. Court of Appeals, its disciplinary adjuncts, and the ODC cannot decide that attorneys are

entitled to only some constitutional rights but not others when a constitutionally protected property right is involved.

TWENTY-EIGHTH DEFENSE – THE D.C. BAR DISCIPLINARY PROCESS DEPRIVES RESPONDENT OF HIS RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES.

Count I of the Charges purports to assert jurisdiction to initiate litigation against Respondent based an alleged constitutional tort through the medium and forums of a bar discipline allegation of violation of the attorney's oath of office to uphold the constitution. This illegal end run around a federal employees' legal right to available procedures and defenses for such claims in *Bivens*-style civil litigation unconstitutionally deprives Respondent of his substantive and procedural defenses available to federal employees in constitutional tort litigation.

TWENTY-NINTH DEFENSE – THE ODC LACKS STANDING TO ASSERT A CONSTITUTIONAL TORT CLAIM AGAINST RESPONDENT.

The ODC lacks standing to assert on behalf of any other person that Respondent violated their constitutional rights.

THIRTIETH DEFENSE – NO ADVERSE EMPLOYMENT DECISION WAS MADE AGAINST ANY GEORGETOWN LAW STUDENT.

Contrary to the lurid speculations of the charges, no actual adverse employment decision has been made against any Georgetown Law student or graduate based on the school's DEI policies and practices.

THIRTY-FIRST DEFENSE – PROSECUTORIAL IMMUNITY

Respondent is entitled to prosecutorial immunity from the charges asserted against him. Such immunity cannot be avoided through a bar proceeding where the charges in such a proceeding are adjudicated by non-lawyers, non-judges and under severely curtailed discovery and trial procedures, not cured by the "review" of the severely circumscribed record by a judicial body twice removed from adjudication.

THIRTY-SECOND DEFENSE – GEORGETOWN LAW'S DEI POLICIES ARE UNLAWFUL.

Georgetown Law' DEI policies and practices are 1) illegal under Georgetown University's obligations pertaining to its administration of federal funds; 2) unconstitutional under *Students for Fair Admissions, Inc. V. President and Fellows of Harvard College*, 600 U.S. 181 (2023) and *Mahmoud v. Taylor*, 606 U.S. 522 (2025); 3) violate Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(d) (Title VI); 42 U.S.C. §§2000e–2000e-17 (Title VII); and the D.C. Human Rights Act, D.C. Code §§ 2-1401-2-1404. Therefore, Respondent was acting properly to investigate Georgetown Law's violations of these laws.

THIRTY-THIRD DEFENSE - ODC LACKS JURISDICTION TO FILE CHARGES AGAINST RESPONDENT BASED ON RESPONDENT'S INTERPRETATION OF CATHOLIC RELIGIOUS DOCTRINE.

ODC lacks jurisdiction to file charges against Respondent based on Respondent's, ODC's, or Mr. Argento's interpretation of Catholic religious

doctrine. Charging Respondent based on any position Respondent might take regarding his interpretation of catholic religious doctrine is a violation of his First Amendment rights.

THIRTY-FOURTH DEFENSE – RESPONDENT WAS LAWFULLY EXECUTING THE PRESIDENT'S EXECUTIVE ORDERS AND ENFORCEMENT PRIORITIES.

Respondent's conduct did not violate any rule of the D.C. Bar because it was the lawful and proper execution of the President's Executive Orders relating to DEI and Weaponization. *See* Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, available at https://www.federalregister.gov/documents/2025/01/29/2025-01953/ending-radical-and-wasteful-government-dei-programs-and-preferencing (last visited Mar. 28, 2026); Executive Order 14173, *Ending illegal discrimination and restoring merit-based opportunity*, https://www.federalregister.gov/documents/2025/01/31/2025-02097/ending-illegal-discrimination-and-restoring-merit-based-opportunity (last visited Mar. 28, 2026). Georgetown University is also a large federal contractor and is therefore governed by federal anti-discrimination laws in contracting and by the recently issued Executive Order, *Addressing DEI Discrimination by Federal Contractors*, https://www.whitehouse.gov/presidential-actions/2026/03/addressing-dei-discrimination-by-federal-contractors/ (last visited Mar. 28, 2026), Georgetown annually administers hundreds of millions of dollars in federal student aid funds,

including loans and grants. *See* Title IV Program Volume Reports, at https://studentaid.gov/data-center/student/title-iv (providing data on student loans, by school) (last visited Mar. 28, 2025). The administration and operations of Georgetown's educational programs are therefore subject to both Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, codified at 20 U.S.C.§§ 1681–1688. Georgetown also exceeds the investigatory threshold established by Executive Order 14173, with investments of $3.6 Billion. *See* Georgetown University, Consolidated Financial Statements, June 30, 2024 and 2023, https://georgetown.app.box.com/s/p4dykc6kw954km39vlx59z5ht1ddrlf3, p. 3 (last visited Mar. 28, 2026). Nor is there a classroom or curricular exemption for violating the Constitution and laws of the United States. See *Bob Jones Univ. v. United States*, 461 U.S. 574, 103 S. Ct. 201 (1983) (revocation of tax exemption for a religious school for practicing racial discrimination); *Mahmoud, supra*; *Henderson v. Springfield* R-12 Sch. Dist., 163 F.4th 478 (8th Cir. 2025) (teachers had standing to assert First Amendment claims arising from compelled DEI training materials); *Mais v. Albemarle Cnty. Sch. Bd.*, 657 F. Supp. 3d 813 (W.D. Va. 2023) (Title VII: hostile environment created by DEI "anti-racism" training program; case settled and dismissed). The DEI programs and policies of Georgetown Law are therefore subject to compliance review, investigation and enforcement by the U.S. Attorney for the District of Columbia.

THIRTY-FIFTH DEFENSE – THERE IS NO BIVENS-TYPE CLAIM AGAINST FEDERAL PROSECUTORS FOR FIRST AMENDMENT VIOLATIONS.

The disguised constitutional tort against Respondent should be rejected because there is no *Bivens*-type cause of action available against a federal prosecutor for violation of First Amendment rights. *See Ziglar v. Abbasi*, 582 U.S. 120 (2017), and *Egbert v. Boule*, 596 U.S. 482 (2022). *Egbert* specifically refused to extend *Bivens* to the First Amendment context as would be required for such a claim against a federal prosecutor. Nor can *Bivens* be extended to prosecutors in light of their immunity under *Imbler v. Pachtman*, 424 U. S. 409, 421 (1976). Any *Bivens*-like finding cannot be "back doored" via a bar proceeding which, absent a proper adjudication of actionable conduct, cannot substitute its own adjudication under unconstitutional procedures.

THIRTY-SIXTH DEFENSE – THE D.C. BAR'S ADMINISTRATIVE PROCESSES VIOLATE THE APPOINTMENTS CLAUSE OF THE CONSTITUTION.

The disciplinary processes of the D.C. Bar violate the Appointments Clause of the U.S. Constitution by giving presumptive effect to the recommendation of the Board of Professional Responsibility and the Hearing Committees that staffed by an extra-constitutional hybrid of lawyers and lay volunteers who (a) are not properly appointed under the Appointments Clause; and who (b) have neither the statutory authority of special masters, nor the constitutional authority of juries.

THIRTY-SEVENTH DEFENSE – THE D.C. BAR'S ADMINISTRATIVE PROCESSES VIOLATE THE OATHS CLAUSE OF THE CONSTITUTION.

The disciplinary processes of the D.C. Bar violate the Oaths Clause of the U.S. Constitution in that the members of the Hearing Committees and the Board of Professional Responsibility do not appear to swear oaths consistent with Article VI of the Constitution.

THIRTY-EIGHTH DEFENSE – THE D.C. BAR'S DISCIPLINARY PROCESS VIOLATES THE PRIVATE NON-DELEGATION DOCTRINE.

The disciplinary processes of the D.C. Bar violate the private non-delegation doctrine in that it delegates federal governmental powers to private citizens who are not appointed in accordance with the Appointments Clause and who do not take oaths as required by the Oaths Clause who make factual findings and make legal rulings that are accorded presumptive deference upon review by the D.C. Court of Appeals. Because the separate branches hold each of their powers (legislative, executive, and judicial) exclusively, the Constitution "permits no delegation" of federal governmental power. *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 472 (2001). No one branch can authorize another entity outside of itself "to exercise power in a manner inconsistent with the Constitution." *DOT v. Ass'n of Am. R.R.*, 575 U.S. 43, 68 (Thomas, J., concurring). This "nondelegation doctrine" prohibits the delegation of any governmental power—legislative, executive, or

judicial— outside of their constitutionally prescribed boundaries. *Whitman*, 531 U.S. at 472 (legislative); *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 496–97 (2010) (executive); *Stern v. Marshall*, 564 U.S. 462, 482-83 (2011) (judicial). The "private-nondelegation doctrine" also prohibits Congress or either of the other two branches from empowering private entities to wield any of the Federal government's constitutionally prescribed powers. *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495, 537 (1935).

THIRTY-NINTH DEFENSE – MEMBERS OF THE HEARING COMMITTEES AND THE BOARD OF PROFESSIONAL RESPONSIBILITY ARE PERMITTED TO SERVE WITHOUT DISCLOSING CONFLICTS OF INTEREST OR BURDENED BY CONFLICTS OF INTEREST AND BIAS AGAINST RESPONDENTS.

The D.C. Bar disciplinary processes allow volunteer members to serve on Hearing Committees and on the Board of Professional Responsibility without any disclosure of their conflicts of interest or biases and without permitting respondents to conduct any voir dire to ferret out bias or conflicts of interest. Even worse, when biases or conflicts of interest are discovered, they are not disqualifying – to the contrary, members of Hearing Committees and the Board of Professional Responsibility are permitted to serve despite clear political bias or conflicts of interest, depriving respondents of their constitutional rights to a neutral and detached adjudication as required by the Due Process Clause

FORTIETH DEFENSE - RESPONSE TO ENUMERATED PARAGRAPHS.

The following responses correspond to the enumerated paragraphs of the Specification of Charges.

1.

Admitted, except that Respondent denies violating any rule of professional conductor rules of the D.C. Bar.

2.

Admitted.

3.

Admitted.

4.

Admitted.

5.

The referenced letter speaks for itself. Otherwise, the allegations of this paragraph are denied.

6.

The referenced letter speaks for itself. Otherwise, the allegations of this paragraph are denied.

7.

The referenced letter speaks for itself. Otherwise, the allegations of this paragraph are denied.

8.

The referenced letter speaks for itself. Otherwise, the allegations of this paragraph are denied.

9.

The referenced letter speaks for itself. Otherwise, the allegations of this paragraph are denied.

10.

The referenced letter speaks for itself. Otherwise, the allegations of this paragraph are denied.

11.

Denied.

12.

Denied.

13.

Respondent admits that Disciplinary Counsel furnished Respondent with a document purporting to be a letter from Phillip Argento as referred to in this paragraph. Otherwise, the allegations of this paragraph are denied.

14.

Respondent admits that Disciplinary Counsel opened an investigation of him on March 28, 2025, and that Disciplinary Counsel purports to have done so based on the alleged Argento complaint letter. Otherwise, the allegations of this paragraph are denied.

15.

The referenced letter of March 31, 2025 speaks for itself. Otherwise, the allegations of this paragraph are denied. Respondent further shows that Disciplinary Counsel's chronology purposely omits material facts that cast the matter in an entirely different and exculpatory light, which is evidence of Disciplinary Counsel's bad faith.

16.

The referenced letter of April 8, 2025 speaks for itself. Otherwise, the allegations of this paragraph are denied. Respondent denies that the referenced letter was an ex parte contact within the meaning of any rule of professional responsibility. Further, Respondent shows that the Chief Judge has pre-judged the issue of whether there was an ex parte contact and must therefore be recused from any consideration of the charge that Respondent violated any rule regarding ex parte contacts.

17.

Respondent admits that his letter of March 31, 2025 was not sent to Disciplinary Counsel and that Disciplinary Counsel sent the referenced letter of April 15, 2025 and that it asked for a response by April 25, 2025. Otherwise, the allegations of this paragraph are denied.

18.

Respondent's referenced email to Disciplinary Counsel speaks for itself. Otherwise, the allegations of this paragraph are denied. Respondent denies that the referenced email was an ex parte contact within the meaning of any rule of professional responsibility. Further, Respondent shows that the Chief Judge has pre-judged the issue of whether there was an ex parte contact and must therefore be recused from any consideration of the charge that Respondent violated any rule regarding ex parte contacts.

19.

The referenced email from the Chief Judge speaks for itself. Otherwise, the allegations of this paragraph are denied. Respondent denies that any of his communications was an ex parte contact within the meaning of any rule of professional responsibility. Further, Respondent shows that the Chief Judge has pre-judged the issue of whether there was an ex parte contact and must therefore be

recused from any consideration of the charge that Respondent violated any rule regarding ex parte contacts.

20.

The referenced letter speaks for itself. Otherwise, the allegations of this paragraph are denied.

21.

Respondent admits that Disciplinary Counsel filed a motion to compel responses to written inquiries on April 28, 2026.

22.

Respondent admits that he sought an extension of time to retain counsel.

23.

The referenced letter speaks for itself and is a legitimate complaint about the misconduct of Disciplinary Counsel. Otherwise, the allegations of this paragraph are denied.

24.

Respondent admits that the Chief Judge responded on the date indicated and shows that the response speaks for itself. Otherwise, the allegations of this paragraph are denied. Respondent denies that any of his communications was an ex parte contact within the meaning of any rule of professional responsibility.

25.

Respondent admits that through counsel he responded to Disciplinary Counsel's written inquiries on June 10, 2026.

26.

Denied.

Respectfully submitted this 30 day of March, 2026.

/s/ Harry W. MacDougald
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CERTIFICATE OF SERVICE

I hereby certify that I have on this day served counsel for the opposing party with a copy of this ***Answer*** by email addressed to:

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This this 30 day of March, 2026.

/s/ Harry W. MacDougald
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