THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
July 30, 2024

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

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

Hearing Committee Number Nine concluded that Respondent Larry E. Klayman violated Rules 3.1 (frivolous claims), 3.3(a) (candor to tribunal), 8.1(a) and 8.1(b) (false statements in connection with bar admission application), 8.4(a) (knowingly assisting another in violating the Rules), 8.4(c) (dishonesty), and 8.4(d) (serious interference with the administration of justice) in connection with pleadings filed with the United States District Court for the District of Nevada. The Hearing Committee further concluded that Respondent engaged in conduct unbecoming a member of the Bar in in violation of Fed. R. App. P. 46(c) and Rule 8 of the Rules of the United States Supreme Court.

In connection with various incidents of conduct related to charges specified against the Respondent in this matter, federal courts (before which he appeared or

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

submitted pleadings) found that Respondent: "display[ed] a lack of respect and/or complete ignorance of the independent role of the judiciary," HC Rpt. at 19 (quoting DX 37 at 4); filed pleadings "contain[ing] patently false assertions and lack[ing] the most basic of due diligence in fact checking," HC Rpt. at 29 (quoting DX 79 at 15); and "made it a pattern or practice of impeding the ethical and orderly administration of justice," HC Rpt. at 23 (quoting DX 64 at 13).[1]

The Board agrees with these judicial statements. The Board also agrees with the Hearing Committee that Disciplinary Counsel proved, by clear and convincing evidence, violations of each of the above-referenced Rules. As discussed in detail in this Report, the scope of Respondent's misconduct involved multiple federal judicial forums, occurred on multiple occasions in each forum, and included, in sum, violations of:

- **Rule 3.3(a)**, for knowing and material false statements by Respondent to courts about: the status of a pending disciplinary proceeding; the status of his *pro hac vice* application; the extent of his federal criminal trial experience; a dissenting opinion by a federal Court of Appeals judge regarding Respondent's conduct; and the date set for the trial of his client Cliven Bundy.
- **Rule 8.1(a)**, for knowingly making the same false statements (as outlined immediately above) in connection with his *pro hac vice* application.

[1] "HC Rpt." refers to the Hearing Committee Report and Recommendation; "FF" refers to the Hearing Committee's Findings of Fact; "ODC Br." refers to Disciplinary Counsel's brief to the Board; "Resp. Br." refers to Respondent's brief to the Board; "DX" refers to Disciplinary Counsel's exhibits; and "RX" refers to Respondent's exhibits.

- **Rule 8.1(b),** for failing to disclose facts necessary to correct misapprehensions as to the nature and posture of a pending disciplinary proceeding and about the date set for the trial of Cliven Bundy.
- **Rule 8.4(c)**, for conduct involving dishonesty in connection with making the same false statements as outlined above (in connection with the Rule 3.3(a) violations), as well as false statements about: a federal District Court judge's alleged threats to hold local counsel in contempt; that same federal judge allegedly holding Cliven Bundy in solitary confinement; and an alleged conspiracy between a federal District Court judge and a federal Court of Appeals judge to deprive Cliven Bundy of his constitutional rights.
- **Rule 3.1**, for asserting claims that lacked a sufficient basis in both law and in fact, in connection with both a *Bivens* action and a motion disqualify.
- **Rule 8.4(a)**, for his participation in preparing and filing the *Bivens* action and motion to disqualify.
- **Rule 8.4(d)**, for seriously interfering with the administration of justice through: repeated false statements to courts; filing repetitive, baseless pleadings; participating in the filing of a *Bivens* action and motion to disqualify, both of which asserted claims lacking a sufficient basis in both fact and law; baseless accusations against two federal judges; and, given this misconduct taken together, engaging in a pattern and practice of improper retaliation and unmerited escalation.

Based on this proven misconduct, we recommend that Respondent be suspended for eighteen (18) months with a requirement that he prove his fitness to practice law prior to reinstatement.

II. STANDARD OF REVIEW

The Board may make its own findings of fact, but it "must accept the Hearing Committee's evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record." *See In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam) (quoting *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam)); *see also In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam) (defining "substantial evidence" as "enough evidence for a reasonable mind to find sufficient to support the conclusion reached"). When making our own findings of fact, the Board must employ a "clear and convincing evidence" standard. *See* Board Rule 13.7. We review *de novo* the Hearing Committee's legal conclusions and its determinations of ultimate fact. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194 (Board owes "no deference to the Hearing Committee's determination of 'ultimate facts,' which are really conclusions of law and thus are reviewed de novo").

III. KEY FINDINGS OF FACT

The Board has reviewed the Hearing Committee's findings of fact and adopts the findings, with some additions and revisions. *See* Board Rule 13.7.

A. *In re Klayman* (*Klayman I*), 228 A.3d 713 (D.C. 2020)

On October 1, 2013, Disciplinary Counsel filed a Specification of Charges charging Respondent with representing individual clients in three separate lawsuits against a nonprofit organization that had previously employed him as General Counsel. Respondent was charged with violating Rules 1.9 (conflict of interest) and 8.4(d) (seriously interfering with the administration of justice). DX 8; FF 8.

On June 23, 2014, Disciplinary Counsel filed a Petition for Negotiated Discipline in *Klayman I*. FF 10. The Petition for Negotiated Discipline was supported by an affidavit, signed by Respondent and averring that he agreed to the negotiated discipline "because he believed that he could not successfully defend against disciplinary proceedings based on the stipulated misconduct." *Id.* (quoting DX 10 at 15). Respondent also testified at a limited hearing confirming the statements in the Petition and affidavit. FF 11.

On January 13, 2015, the Hearing Committee assigned to that matter rejected the Petition for Negotiated Discipline, finding that the negotiated sanction of a public censure was unduly lenient for the stipulated misconduct. *Id.* Respondent procured a five-page opinion letter from ethics professor Ronald Rotunda in the matter.[2] The letter stated that it was his "expert opinion that in the present situation Mr. Klayman

[2] Respondent offered Professor Rotunda's opinion letter as an exhibit during the *Klayman I* evidentiary hearing. It was admitted into evidence by the Hearing Committee. *See Klayman I*, Bar Docket No. 2008-D048, at 3 (HC Rpt. June 19, 2017) (admitting Respondent's exhibits 1-26); Resp. Br. to HC, *Klayman I*, Bar Docket No. 2008-D048, at 13 n.17 (Mar. 30, 2016) (quoting letter marked as "Pl.'s Ex. 5").

has not committed any offense that merits discipline." RX 5 at 121. Professor Rotunda pointed to the presiding judge's determination in one of the three underlying matters that "given the circumstances, and the harm that would be caused to [the client], it was ambiguous whether Rule 1.9 required Mr. Klayman's disqualification." RX 5 at 124. Professor Rotunda opined that "[s]eldom in the history of the District of Columbia Bar has someone been the subject of such an investigation for such a technical violation." RX 5 at 125. Professor Rotunda concluded that "Mr. Klayman should not be disciplined." *Id.*; *see* FF 9.

The Hearing Committee explained that the parties could revise and resubmit the Petition. FF 11. On June 22, 2015, Disciplinary Counsel moved to withdraw the Petition for Negotiated Discipline; the Hearing Committee rejected this motion as moot. FF 12. The parties did not resubmit the Petition for Negotiated Discipline. On August 31, 2015, the Board assigned the previously-filed Specification of Charges against Respondent to another Hearing Committee. FF 13.

The evidentiary hearing before the new Hearing Committee took place January 26-28, 2016. Following the close of the first phase of the hearing, the Hearing Committee made its preliminary, non-binding decision that Respondent had violated at least one of the charged disciplinary rules.[3] *Id.* The parties filed post-

[3] *See* Board Rule 11.11 ("At the conclusion of the evidentiary portion of the hearing and after hearing such final argument as the Hearing Committee Chair shall permit, the Hearing Committee shall go into executive session and decide preliminarily whether it finds a violation of any disciplinary rule has been proven by Disciplinary Counsel. In all cases in which the Hearing Committee is able to reach such a preliminary, non-binding determination, the Hearing Committee shall immediately

hearing briefs between March and April 2016. FF 14. The Hearing Committee issued its Report and Recommendation on June 19, 2017, determining that Respondent had violated Florida Rule 4-1.9(a) and D.C. Rules 1.9 and 8.4(d). The Board 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. The Court issued its decision on June 11, 2020, holding that Respondent violated Florida Rule 4-1.9(a) and D.C. Rule 1.9 and suspending Respondent for ninety (90) days. FF 15.

B. Respondent's Nevada District Court *Pro Hac Vice* Application

In March 2016, a federal grand jury in Nevada returned a sixteen-count superseding indictment against Cliven Bundy and eighteen other defendants, charging them with conspiracy, assault on a federal officer, obstruction of justice, and other crimes. FF 16. The criminal matter was assigned to Chief Judge Navarro of the United States District Court for the District of Nevada. Around the time of the indictment, Respondent was retained by Mr. Bundy to represent him. Joel Hansen, a Nevada lawyer, served as local counsel and agreed to seek Respondent's *pro hac vice* application in the matter.[4] FF 17.

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resume the hearing and permit Disciplinary Counsel to present evidence of prior discipline, if any. Respondent shall be permitted to present any additional evidence in mitigation.").

[4] The Local Rules for the United States District Court for the District of Nevada provide that an attorney who has been retained to appear in a particular case but is not a member of the bar of the district court "may appear only with the court's permission . . . by verified petition on the form furnished by the clerk." Nev. Dist. Ct. Local R. IA 11–2.

On March 22, 2016 (almost two months after the *Klayman I* Hearing Committee had made its preliminary determination that Respondent had violated a Rule), Respondent filed a notarized Verified Petition for Permission to Practice In This Case Only By Attorney Not Admitted to the Bar of This Court and Designation of Local Counsel, on a form provided by the clerk, in the Nevada District Court seeking *pro hac vice* admission in connection with his representation of Mr. Bundy. FF 19; DX 21 at 4. Respondent swore that the statements in the Verified Petition were true. DX 21 at 4. One of the questions on the form asked Respondent 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[.]

Respondent provided the following response:

> 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. In a statement attached to the form, Respondent provided additional information concerning *Klayman I*:

> [The proceeding] was filed almost 8 years ago over a claim by Judicial Watch, my former public interest group that I founded and was

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In re Bundy, 840 F.3d 1034, 1042 (9th Cir. 2016), *subsequent mandamus proceeding*, 852 F.3d 945 (9th Cir. 2017) (per curiam).

> 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. Respondent did not disclose the history of the negotiated discipline proceedings in his response. He did not disclose that a Hearing Committee, at the conclusion of a contested hearing, had made a preliminary finding that he engaged in misconduct.[5]

Respondent did disclose that he had received other discipline, but, again, he did not disclose this other discipline in full relevant detail. He reported that he received a public reprimand by the Florida Bar. He stated that Judges William D. Keller of the U.S. District Court for the Central District of California and Denny Chin of the U.S. District Court for the Southern District of New York "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* FF 24-25. But he did not fully disclose the judges' findings. Nor did he disclose that the Federal Circuit had

[5] When asked during oral argument before the Board what his basis was for representing, in the statement provided with his *pro hac* petition, that the pending disciplinary proceeding was "likely to be resolved in my favor," Respondent replied, in part: "I'm entitled to my opinion." He also cited Professor Rotunda's letter and said he had "faith that things would come out in a better way." Oral Argument at 6:03-7:02 (Dec. 21, 2023), https://www.youtube.com/live/OaHCIQHN7kw?si=5FEz_P8Lh1uCZ2P2.

affirmed the revocation of Respondent's ability to appear before Judge Keller in perpetuity, having found that Respondent had accused the judge of racial bias, raised frivolous arguments, and made misrepresentations to the court. FF 26. He did not disclose that the Second Circuit had similarly affirmed Judge Chin's decision, determining that Respondent had asserted claims of partisan and racial bias with no factual basis.[6] FF 27.

On her own, Judge Navarro learned that Respondent had previously signed the Petition for Negotiated Discipline and stipulated to misconduct in *Klayman I*. FF 30. On March 31, 2016, she declined to grant Respondent's *pro hac vice* application, having determined that his statements that *Klayman I* was "likely to be resolved in my favor" and that "there has been no disciplinary action" were "misleading and incomplete." *Id.* Judge Navarro told Respondent that if he wished to file a new petition, he would need to include additional information, including, among other things "verification that the matter in the District of Columbia disciplinary case referenced in the Verified Petition . . . has been resolved with no

[6] Respondent also reported 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; *see* FF 25. Disciplinary Counsel argued that this statement was dishonest because – with respect to the matter involving Judge Keller – it had concluded only that it lacked clear and convincing evidence that Respondent had engaged in misconduct. The Hearing Committee determined that Disciplinary Counsel failed to prove that Respondent's statement (that it – i.e., Disciplinary Counsel – had determined that he "did not act unethically") was sufficiently distinct from its actual finding (that "the office lacked clear and convincing evidence to file charges") to render the former statement false. *See* HC Rpt. at 55. Disciplinary Counsel did not take exception to the Hearing Committee's determination.

disciplinary action." FF 31 (quoting DX 25 at 2-3). Respondent refiled the application with additional information on April 7, 2016, but made only a partial correction, advising the court that she "misunderstood the nature and current posture of the disciplinary proceedings underway" and that he "had attempted to resolve [*Klayman I*] by agreement, but . . . 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). Respondent supplemented his application but never disclosed the full picture of his disciplinary history.[7] In the April 7, 2016, supplemental filing, Respondent further asserted that Professor Rotunda had opined that he had not violated any Rules. HC Rpt. at 53. Respondent attached Mr. Rotunda's letter to the filing. FF 33.

Judge Navarro denied the refiled application and ordered that it would remain denied until Respondent proved that *Klayman I* had been resolved in his favor. FF 35. The remaining alleged misconduct in the instant matter emanates from Respondent's efforts to reverse Judge Navarro's decision.

[7] Respondent did not disclose in the supplement itself the fact that the *Klayman I* Hearing Committee had made its preliminary nonbinding determination that he had engaged in misconduct. However, his post-hearing brief, which was appended as an exhibit to the supplement, impliedly did so insofar as it argued that the brief would "render moot [the Hearing Committee's] 'preliminary, non-binding determination . . .' that [Disciplinary] Counsel proved by clear and convincing evidence the alleged violations of Rules 1.9 and 8.4(d) of the District of Columbia Rules of Professional Conduct . . . during the hearing heard before the Committee on January 26, 27, and 28 of 2016." DX 26 at 17; *see* FF 33 n.8.

C. The *Bivens* Action[8]

On May 10, 2016, Respondent and Mr. Hansen prepared a *Bivens* complaint on behalf of Mr. Bundy against Judge Navarro, former president Barack Obama, U.S. Senator Harry Reid, and Rory Reid (alleged in the complaint to be Senator Reid's son). *See* FF 36; DX 44 at 2. The complaint was filed in the United States District Court for the District of Nevada by Mr. Hansen. DX 44; FF 36. It sought $50 million in damages, the removal of Judge Navarro from Mr. Bundy's case, and an order admitting Respondent *pro hac vice*. FF 36.

The *Bivens* complaint was premised on the theory that Mr. Bundy had been the victim of a political prosecution. It alleged a conspiracy among Judge Navarro, Senator Reid, and President Obama and contended that the denial of Respondent's *pro hac vice* admission was part of an effort to interfere with Mr. Bundy's constitutional rights. *See* FF 39-42. The complaint stated that

> Defendant NAVARRO, reacting to the commands of her benefactors Harry REID and OBAMA, set out to abridge and harm the constitutional rights of Defendant BUNDY by refusing, without factual or legal bases, to grant *pro hac vice* status to out of state attorney Larry Klayman, knowing that Defendant Bundy was involved in what the Department of Justice called a complicated case and that Defendant Bundy sought a speedy trial as provided by the Sixth Amendment to the Constitution and 18 U.S.C. §§ 3161 through 3174.

DX 44 at 11. The complaint speculated that "as a Latino Democrat woman," Judge Navarro "understood that she would be high on the list for a higher judicial or other

[8] So called "*Bivens* actions" permit parties to bring claims for damages against federal officials who have violated their constitutional rights. *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

appointment if she contributed as the sitting judge to have Defendant BUNDY denied right of counsel of Klayman," as Respondent "has been a strong public advocate in exposing and taking legal actions to address and remedy the rank corruption of Bill and Hillary Clinton." DX 44 at 12-13. Respondent had no factual basis for these entirely speculative statements about Judge Navarro's motives in denying his admission *pro hac vice*.

The *Bivens* complaint further alleged that Judge Navarro had kept Mr. Bundy in solitary confinement against his will and that Mr. Bundy had "done nothing to merit being held in solitary confinement." DX 44 at 12. It also suggested that Judge Navarro targeted Respondent because Respondent had served as counsel to Joe Arpaio, who, as the sheriff in the county where Judge Navarro had attended law school, had been accused of being "anti-Latino." DX 44 at 8-9. Finally, the complaint insinuated that Judge Navarro had a conflict of interest because her husband was a Chief Deputy District Attorney in a county where, the complaint alleged, Senator Reid, "acting in concert with the other Defendants, [had] asked the District Attorney for Clark County to also prosecute [Mr. Bundy] and his family." DX 44 at 9.

On May 24, 2016, Mr. Hansen filed an amended *Bivens* complaint repeating the same claims, but seeking "compensatory and punitive damages" in excess of $90 million, an order removing and recusing Judge Navarro, and the grant of Respondent's *pro hac vice* motion. DX 45 at 18; *see* FF 43.

Although Mr. Hansen signed this amended complaint, Respondent assisted in its drafting. FF 43. The *Bivens* action was eventually dismissed based on stipulation of the parties on October 12, 2016. Respondent was not consulted with respect to the dismissal. FF 45.

D. Motion to Disqualify

On May 20, 2016 – four days before the amended *Bivens* complaint was filed – Mr. Hansen filed a motion to disqualify Judge Navarro based, in large part, on the allegations in the *Bivens* complaint. It alleged that Judge Navarro was "a defendant in litigation with Cliven Bundy." DX 31 at 2. Like the *Bivens* complaint, it alleged that a conspiracy existed among President Obama, Senator Reid, and Judge Navarro. It insisted that Judge Navarro was biased and prejudiced against Mr. Bundy and had left him to "rot" in solitary confinement. DX 31 at 3-4. Respondent's name and address were included on the signature page for the memorandum to the motion, along with a parenthetical stating that his *pro hac vice* application was "pending."[9] DX 31 at 13; *see also* DX 33 at 14 (signature page showing same from May 24, 2016, amended and superseding motion and memorandum to disqualify Judge Navarro).

The Hearing Committee found that Respondent assisted in the preparation of the motion to disqualify because he was identified as "Of Counsel" on pleadings

[9] Both Mr. Hansen and Respondent contended that the inclusion of Respondent's information on that page was a mistake. The Hearing Committee did not credit the testimony of either witness on grounds that it "seem[ed] to be a post hoc rationalization." HC Rpt. at 18.

related to the motion and had participated in filing a "similar" disqualification motion against another judge. FF 45-46. Respondent does not dispute that he assisted in preparing this motion. *See* Resp. Br. at 51, 55-56; ODC Br. at 47. *But see* Resp. R. Br. at 27-28; Resp. Amended Notice of Exceptions, at 8-9 (Oct. 2, 2023).

Judge Navarro denied the motion to disqualify on May 24, 2016, concluding the allegations in the motion had no credible basis and that counsel could not create a conflict by suing her and then using that suit as a basis to disqualify her. FF 46.

E. Petitions for Writ of Mandamus

Following the denial of the disqualification motion, Respondent filed more than a dozen unsuccessful petitions and motions with the Ninth Circuit and the U.S. Supreme Court over the next two and a half years challenging Judge Navarro's denial of his *pro hac vice* application. *See generally* FF 47-77. These motions included numerous allegations of fact that lacked a credible basis.

1. July 6, 2016, Mandamus Petition Filed with the Ninth Circuit

In a July 6, 2016, Emergency Petition for Writ of Mandamus filed by Respondent with the Ninth Circuit, he argued it was critical for him to be admitted as Mr. Bundy's counsel in the criminal matter because Mr. Hansen and successor counsel, Bret Whipple, had insufficient federal criminal defense experience as compared to his own.[10] Respondent described himself as a "former federal

[10] Mr. Hansen moved to withdraw from Mr. Bundy's case for health reasons in September 2016. DX 56. Mr. Whipple served as lead counsel from October 2016 to January 2018. FF 48.

prosecutor at the [United States] Department of Justice," DX 55 at 12, and touted his experience as "a criminal defense lawyer," DX 55 at 21. *See* FF 48; HC Rpt. at 59. He described himself in substantially the same manner in at least six other pleadings. HC Rpt. at 59-60 (citing further examples from DX 60, DX 65, DX 69, DX 73, DX 77, and DX 107). The Hearing Committee concluded that these assertions were false for several reasons.

First, although he had worked at the Department of Justice ("DOJ") for two years, Respondent had not worked on a criminal trial during his tenure there. *See* FF 2-4. Respondent had been involved in a criminal contempt matter during his time at the DOJ but he was not involved in the actual criminal contempt hearing. FF 4; Tr. 539 (Respondent). After he left the DOJ, Respondent had served as counsel for a defendant in no more than six criminal matters (in state and federal courts) and had not represented any defendant at trial. *See* FF 6-7.[11]

In the same July 6, 2016, filing, Respondent claimed that Mr. Hansen practiced in a small firm and was not by trade a federal criminal defense lawyer. FF 48. Almost three months later, on September 29, Respondent reviewed, and filed with the court, an affidavit in which Mr. Hansen represented that he had "been through many federal criminal jury trials." DX 56 at 9; *see* FF 48; Tr. 114-15. Notwithstanding his review of that affidavit, Respondent repeated his claim to the

[11] Respondent spent between 400-600 hours working on four federal criminal matters, though he represented defendants in only two of them. *See* FF 7.

contrary in further pleadings that post-dated Respondent's filing of this affidavit. *See, e.g.*, DX 69 at 22; FF 48.

The July 2016 filing also repeated the claim that Judge Navarro was holding Mr. Bundy in solitary confinement. FF 47. Finally, Respondent also claimed that Professor Rotunda had offered an expert opinion in *Klayman I* that Respondent "did nothing wrong." DX 55 at 17; *see* FF 47.[12] As the Hearing Committee found, Professor Rotunda's letter did not include that conclusion. FF 47.

In her October 14, 2016, answer to this first petition by Respondent to the Ninth Circuit, Judge Navarro addressed her decision not to grant Respondent's *pro hac vice* application. DX 58. Judge Navarro explained that Respondent had: (1) failed to accurately and truthfully describe the D.C. disciplinary proceedings and had made further false and misleading statements by not explaining that he had withdrawn his affidavit only after a hearing committee had rejected the negotiated disposition because the sanction was unduly lenient; (2) failed to mention or disclose other cases in which courts had revoked or denied him *pro hac vice* status because of his "inappropriate and unethical behavior"; (3) "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, with the Second

[12] Respondent's filing referred to Mr. Rotunda's letter as an "affidavit" and indicated that it has been "attached as Exhibit F" to the mandamus petition. DX 55 at 17. Though the petition itself appeared to total only 36 pages, the complete filing totaled 153 pages with its appended exhibits. *See generally* DX 55. Professor Rotunda's letter constituted, at most, five pages of the appended exhibit pages. *See* RX 5 at 121-25.

Circuit finding that Respondent's challenge to a district court's impartiality was "insulting and smacked of intimidation"; and (4) 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. FF 50 (quoting DX 58 at 6-9).

In an October 18, 2016, reply brief responding to Judge Navarro's answer, Respondent again asserted that Mr. Hansen was *not a criminal defense attorney by trade*. DX 60 at 8.

2. October 28, 2016, Denial of Mandamus Petition by the Ninth Circuit

On October 28, 2016, the Ninth Circuit denied Respondent's request for mandamus relief. FF 51. In an opinion authored by Judge Jay Bybee, 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. 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. HC Rpt. at 23 n.14.

Judge Gould dissented from the Ninth Circuit's opinion on grounds that Mr. Bundy's right to choose counsel should take precedence over the issue of Respondent's candor. FF 52. But he also recognized the majority's concerns and conceded that Respondent's failure to explain that *Klayman I* had been rejected as unduly lenient "may have been a relevant omission." DX 64 at 17. Specifically, he wrote:

> 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).

3. November 10, 2016, Petition Filed with the Ninth Circuit Seeking Rehearing *En Banc*

On November 10, 2016, Respondent filed an emergency petition with the Ninth Circuit requesting rehearing *en banc*. In this petition, Respondent repeated many of the arguments and claims from his initial petition; he also cited from Judge Gould's dissent. FF 54. The government filed a November 23, 2016, response thereto, representing that Mr. Whipple had been an attorney for twenty years and had "more than a decade of experience representing criminal defendants in the federal district court in Nevada, including complex cases and lengthy trials." DX 66 at 21 n.7. On December 13, 2016, the Ninth Circuit denied the petition for rehearing. FF 54.

4. January 17, 2017, Mandamus Petition Filed with the United States Supreme Court

On January 17, 2017, Respondent filed an emergency petition for writ of mandamus with the United States Supreme Court. Respondent supplemented this petition twice. Respondent repeated his arguments and claims made in the Ninth Circuit. FF 55. Respondent again claimed that "local counsel Joel Hansen . . . has little to no federal criminal experience." DX 69 at 22. Respondent described Mr. Whipple as an attorney with "little experience in federal criminal defense." DX 69 at 22 n.7.

He also criticized Ninth Circuit Judge Bybee, claiming he had "demonstrated an unusual lack of appreciation and sensitivity" to criminal defendants' Sixth Amendment rights. FF 56 (quoting DX 69 at 26). Respondent also represented that Mr. Bundy's trial would commence on February 6, 2017. FF 55. As Respondent conceded during the disciplinary hearing in this matter, however, Mr. Bundy's trial date had not been set. At the time he represented to the Supreme Court that Mr. Bundy's trial would begin on February 6, Respondent was aware that the defendants would be tried in three tiers, with the Tier 3 clients beginning trial on February 6, 2017. His client was in Tier 1, and the Tier 1 trial was not set to begin until thirty days after the conclusion of the Tier 3 defendant's trial. HC Rpt. at 62; FF 55. The mandamus petition also repeated the claim that Judge Navarro had ordered Mr. Bundy to solitary confinement. DX 69 at 21. The Supreme Court denied this petition on February 27, 2017. FF 56.

5. March 9, 2017, Second Mandamus Petition Filed with the Ninth Circuit

Days later, on March 9, 2017, Respondent filed his second emergency mandamus petition with the Ninth Circuit. In this second petition Respondent repeated many of the same arguments made in his earlier petitions to the Ninth Circuit and Supreme Court but also contended there were "changed circumstances" based, in part, on Judge Navarro's trial court rulings with respect to a report released by the Department of the Interior's Office of the Inspector General and on an alleged threat by the Judge to hold Mr. Whipple in contempt. FF 57; DX 73 at 9-14; DX 75 at 4. As he had before, Respondent pointed to his federal criminal defense

experience, said that Mr. Whipple had none, and claimed that Respondent was Mr. Bundy's only experienced counsel. FF 59; DX 73 at 13 ("Petitioner clearly needs experienced, qualified defense counsel, such as Klayman to assist him in navigating the 'wild west, anything goes' environment that the District Court has fostered in favor of the prosecution thus far. Klayman has extensive experience in complex, contentious federal criminal defense, and Petitioner's local counsel, Brett Whipple ('Whipple'), has none.").

In responding to this second petition, both the government and Judge Navarro refuted Respondent's claims that Judge Navarro had threatened Mr. Whipple with contempt. FF 60. On March 20, 2017, the government filed an answer asserting that "[n]othing in the record" supported Respondent's claim. DX 75 at 16. In her March 21, 2017, Answer, Judge Navarro wrote:

> [T]he Petition for Writ of Mandamus states: "The District Court is now seeking to prejudice Petitioner even further by threatening to hold Whipple in contempt for simply listing Judge Navarro's husband as a potential witness or a pre-trial witness." (Pet. for Writ of Mandamus at 20). This statement is false. As demonstrated by the Court's [1691] Show Cause Order and the [1700] Minutes of Proceedings, the Court never threatened Petitioner's current counsel Whipple, in general or specifically with contempt of court.

DX 76 at 2 (footnote omitted).

Both the government and Judge Navarro also refuted Respondent's claims that Mr. Whipple was inexperienced. Judge Navarro wrote that the claim was "demonstrably false," DX 75 at 15, and described Mr. Whipple's past employment

as a public defender and his involvement in numerous multi-defendant complex cases and lengthy criminal trials. FF 60. As Judge Navarro wrote,

> The Petition for Writ also states that Klayman is "the only defense counsel with federal criminal experience that Petitioner has been able to find" and "local counsel Brett Whipple has no federal criminal defense experience." (Pet. for Writ of Mandamus at 12, 21). These statements, too, are false. Whipple, Petitioner'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. *See, e.g.*, *United States v. Osemwengie*, Case No. 2:06-cr-00002-RCJ-GWF (2006) (sixteen defendants); *United States v. Gharfouria*, Case No. 2:10-cr-00547-RFB-PAL (2010) (twenty-seven defendants); *United States v. Benzer*, Case No. 2:13-cr-00018-JCM-GWF (2013) (eleven defendants, fourteen-day jury trial of six defendants). As such, Petitioner currently has competent defense counsel with extensive federal criminal experience.

DX 76 at 4-5.

Undeterred, Respondent filed a reply brief on March 23, 2017, reiterating his claim the Judge Navarro had threatened Mr. Whipple with contempt. FF 60; DX 77 at 14-16.[13] He also disputed that Mr. Whipple had the "necessary federal criminal

[13] Indeed, Respondent appended to his reply brief an affidavit reiterating his claim that Judge Navarro had threatened Mr. Whipple with contempt. *See* DX 77 at 28 ("Mr. Bret Whipple ('Mr. Whipple') was threatened to be held in contempt just for

defense experience to, on his own, effectively represent Bundy in this extremely complex and serious matter." DX 77 at 10.[14]

On March 30, 2017, approximately a week after receiving Respondent's reply, the Ninth Circuit issued its order. The Ninth Circuit found that Respondent's second petition substantively had "no merit[]," that the "changed circumstances" he alleged had "nothing but the most attenuated connections" with his *pro hac vice* application, and that none of the circumstances came close to demonstrating that the trial court erred in not admitting Respondent *sua sponte*. FF 61 (quoting DX 79 at 4, 6). The Ninth Circuit found no credible evidence to support Respondent's claim that the district court had threatened Mr. Whipple with contempt. FF 61. It found that Respondent's claims about Mr. Whipple's experience, as compared to his own, were "demonstrably false." DX 79 at 10. The Ninth Circuit wrote:

> Bundy's real complaint—or, at least, Klayman's complaint—is that these adverse rulings, combined with other factors, demonstrate that Whipple is not able to defend Bundy adequately. Bundy claims

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timely listing Judge Navarro's husband as a potential witness, despite the fact the [sic] he potentially had relevant information beneficial to Bundy's defense.").

[14] Respondent attached, as Exhibit C, to this reply brief an affidavit discussing, among other things, his assessment of Mr. Whipple's experience. *See* DX 77 at 26-33. He again asserted that it was his "impression that, while Mr. Whipple is a competent attorney in state matters, he lacks the required substantial federal criminal defense experience to, on his own, defend Cliven Bundy in this extremely complex and serious matter." DX 77 at 29. Respondent also stated that his "assertion that Mr. Whipple lacks the necessary federal criminal law experience to adequately represent Cliven Bundy on his own is based on my numerous interactions and conversations with him. This was the basis for my view that he has little to no criminal defense experience." *Id.* He conceded that he had not "search[ed] PACER for his litigation history prior to filing the Emergency Petition for Writ of Mandamus." DX 77 at 29-30.

that Whipple is not fully prepared to defend Bundy because "Whipple has no federal criminal defense experience." Petition at 9. He adds, "Klayman has extensive experience in complex, contentious federal criminal defense, and Petitioner's local counsel, [Whipple], has none." *Id.* at 10; *see also id.* at 14 ("Klayman . . . has federal criminal defense experience . . . ."); *id.* at 17 ("Klayman [is] the only defense counsel with federal criminal experience that [Bundy] has been able to find . . . ."); *id.* Ex. I ¶ 9 (Bundy Aff.) ("[Whipple] does not have comparable experience to Larry Klayman who is a former federal prosecutor in any event.").

The assertions made by Bundy about his counsel are demonstrably false. Either Klayman has failed to ascertain the facts by, for example, talking with Whipple or looking at Whipple's website, or he has deliberately misled this court. Neither option paints Klayman in a good light. At best, Klayman has shown such a casual acquaintance with the facts that he is guilty of at least gross negligence in his representations to this court. As both the government and the district court point out to this court in their responses to Bundy's petition, Whipple is well qualified to serve as Bundy's counsel. . . .

Confronted with these facts, Bundy shifted his argument in his reply. First, Klayman now candidly admits in an affidavit that he "did not check Mr. Whipple's PACER history prior to preparing the Emergency Petition for Writ of Mandamus." Reply at 7. (PACER is our public, electronic database, which would have informed Klayman of Whipple's substantial federal criminal experience.) Klayman offered no explanation for missing Whipple's six years as a public defender. According to Klayman's affidavit, he now "believes that Mr. Whipple is a highly competent attorney," but that "Mr. Whipple, on his own, does not have the necessary federal criminal defense experience or the resources to mount a zealous and effect [sic] defense." *Id.*; *id.* Ex. C ¶¶ 11–12, 16 (Klayman Aff.).

By contrast, although Klayman repeatedly assures us that he has "extensive experience in complex, contentious criminal defense," he has provided us no evidence in support. Not a single example. As we noted in our prior opinion, we are well aware of Klayman's substantial experience in federal and state courts, but from what we can tell, it is almost entirely civil in nature. *See, e.g.*, *In re Bundy*, 840 F.3d at 1045–46. Klayman claims that he is a "former prosecutor with the

> U.S. Department of Justice." Klayman Aff. ¶ 3. But the only example he identifies by name is United States v. AT&T, where he was "an instrumental part of the team that helped break up AT&T." *Id.* The AT&T litigation was, of course, an enormously complex case brought by the Antitrust Division, but it was a civil, not a criminal case. *See, e.g.*, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982). It may well be that Klayman has extensive criminal trial experience, and perhaps even federal criminal trial experience, but we cannot verify this from anything Klayman has provided us.

DX 79 at 10-13 (all alterations except fourth omission in original) (footnote omitted). The Ninth Circuit denied Respondent's second mandamus petition. FF 61; DX 79 at 16.

6. April 3, 2017, Emergency Petition for Rehearing *En Banc*

On April 3, 2017, Respondent filed an emergency petition for rehearing *en banc* with the Ninth Circuit repeating his earlier contentions. FF 62. Respondent also accused government counsel of being "unethical and dishonest" for filing a response to his second petition, even though the Ninth Circuit had directed the government to do so. *Id.* (quoting DX 83 at 4). With no judge requesting a vote on whether to rehear the matter *en banc*, the Ninth Circuit denied Respondent's rehearing petition on May 15, 2017. *Id.*

7. May 18, 2017, "Motion to Correct the Record Regarding False Allegations of Misstatements to this Court and the District Court" Filed with the Ninth Circuit

On May 18, 2017, Respondent then filed a "Motion to Correct the Record Regarding False Allegations of Misstatements to this Court and the District Court" and an accompanying brief. FF 63. Respondent alleged that the district court and Judge Bybee had made false allegations against him and demanded that the court

correct them. 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. *Id.* The Ninth Circuit denied Respondent's "Motion to Correct the Record" on May 23, 2017. FF 64. On June 14, 2017, Respondent filed a "Motion for a Separate Judicial Panel to Rule on [Respondent]'s Motion to Correct Record." *Id.* Respondent alleged that Judge Bybee had made misstatements, had a conflict of interest, and should not be allowed "to rule on his own misconduct." *Id.* (quoting DX 88 at 7). The Ninth Circuit denied this motion the next day, June 15, 2017. *Id.*

8. July 21, 2017, Second Mandamus Petition Filed with the Supreme Court

Four days later, on June 19, 2017, the Hearing Committee issued its report in *Klayman I*, finding that Respondent had violated Florida Rule 4-1.9(a) and D.C. Rules 1.9 and 8.4(d). FF 66; DX 16. That next month, on July 21, 2017, Respondent again sought review by the Supreme Court of the Ninth Circuit's denial of his mandamus petition, filing a second petition for writ of mandamus and two supplemental briefs repeating his claim that the Sixth Amendment required his admission *pro hac vice*, and quoting Judge Gould's dissent from the Ninth Circuit's initial denial of Respondent's mandamus petition. FF 65. The Hearing Committee found that Respondent misquoted Judge Gould's dissent by removing sentences from the quotation that would have provided context. *Id.* Respondent wrote:

> As a primary reason that the Ninth Circuit denied Petitioner's Petition for Writ of Mandamus, the Ninth Circuit incorrectly found – and put on the record – that Mr. Klayman had made misstatements on the record,

despite the fact that the Honorable Ronald Gould ("Judge Gould") of the Ninth Circuit expressly found to the contrary:

> 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.
>
> . . . .
>
> . . . 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:
>
> > 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 20-21; *see* FF 65.

In this second mandamus petition, however, Respondent omitted the following sentences from his quotation of Judge Gould's discussion:

> 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. . . . 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.

> . . . 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. . . . 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 (second alteration in original); s*ee* FF 52. Respondent again repeated the claim that Judge Navarro had threatened Mr. Whipple with contempt. *See* DX 90 at 12. Respondent also repeated the claim that Mr. Whipple lacked his own level of federal criminal defense experience. *See* DX 90 at 22-23.

The Supreme Court denied the second mandamus petition on October 2, 2017, and, on October 30, denied Respondent's subsequent petition for rehearing. FF 65.

9. October 2, 2017, Third Mandamus Petition Filed with the Ninth Circuit

While he was seeking review by the Supreme Court for the second time, Respondent filed a third emergency mandamus petition with the Ninth Circuit on October 2, 2017. FF 67. In this petition, Respondent repeated many of the claims the Ninth Circuit and Supreme Court had previously considered and rejected.[15] The Ninth Circuit denied this petition on October 4, 2017. FF 68.

[15] Disciplinary Counsel argues that Respondent made another false statement in his filings in that "after the Committee and Board issued their reports, [he] falsely represent[ed] that he had never been found to have acted unethically or inappropriately by any bar association who reviewed his conduct before a judge." ODC Br. at 44-45; *see* DX 95 at 9; DX 100 at 9, 17; DX 101 at 9, 17. The Hearing Committee did not agree that this statement was false. *See* FF 72. Disciplinary Counsel has not explained how the misconduct at issue in *Klayman I* related to "conduct before a judge." We conclude that the Hearing Committee's determination is supported by substantial evidence in the record, and we do not disturb it.

On December 20, 2017, Judge Navarro declared a mistrial in the criminal case against Cliven Bundy. On January 8, 2018, Judge Navarro granted the motions by Mr. Bundy and other defendants to dismiss the charges against them with prejudice. FF 69.

10. February 6, 2018, Fourth Mandamus Petition Filed with the Ninth Circuit

On February 6, 2018, the same day the Board issued its report in *Klayman I* finding Respondent violated Florida Rule 4-1.9(a) and D.C. Rule 1.9, Respondent filed a fourth petition for writ of mandamus with the Ninth Circuit. FF 70. Then, the next day, he filed an almost identical amended petition. *Id.*

Respondent claimed therein that Judge Gould found that he had provided truthful answers in his *pro hac vice* application. Respondent claimed that 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." DX 100 at 8-9; *see also* DX 101 at 8-9; FF 72.[16]

[16] The Hearing Committee found that Respondent repeated this claim in later filings, *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.").

Respondent also repeated his claims that the trial court and Ninth Circuit's previous rulings were "clearly erroneous." FF 70 (quoting DX 100 at 8). He contended that these rulings should be vacated because they were mooted by the dismissal of the underlying criminal matter against Mr. Bundy. *Id.*

Respondent further claimed that "Judge Bybee's rulings and orders" must be vacated because of his alleged bias. *Id.* (quoting DX 100 at 21). These claims lacked any credible basis. He claimed that Judge Bybee had "close personal . . . associations" with Judge Navarro and Senator Reid that led to "extrajudicial bias." DX 100 at 23; *see* FF 70-71. He stated that Judge Bybee had demonstrated his bias during oral argument questioning; yet, the questions at issue had been asked by a different judge. FF 71. When asked about this misattribution at the hearing in this disciplinary matter, Respondent attempted to explain it away by saying that he had simply misremembered since he had not reviewed the recording prior to filing the petition. The Hearing Committee found that his testimony on this issue was false, given that Respondent had included citations to the recording of the oral argument in other places within the petition. *Id.*[17]

[17] The Hearing Committee found that:

> 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

As to the alleged close relationship between Judge Bybee and Judge Navarro, Respondent claimed that it necessarily had developed because Judge Bybee had been a founding faculty member of the University of Las Vegas's law school and Judge Navarro had attended the University of Las Vegas's undergraduate institution. As the Hearing Committee found, however, the law school had not been established until nine years after Judge Navarro obtained her undergraduate degree from the University.[18] FF 71. On April 24, 2018, the Ninth Circuit denied this fourth mandamus petition. FF 73.

11. July 20, 2018, Third Mandamus Petition Filed with the Supreme Court

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

> around the 46-minute mark, Judge Bybee . . . ."); *id*. at 13 ("At around 46 minutes into the October 21, 2016 hearing, Judge Bybee says . . . .").

FF 71.

[18] Respondent had also claimed 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. This was not true. Shannon Bybee was not Judge Bybee's wife. However, Respondent's associate, Oliver Peer, testified that he was the source of this error, and the Hearing Committee did not find that Respondent violated the Rules in relying on this information. FF 71. Respondent was not charged with a Rule 5.1 failure to supervise count in this matter.

12. October 9, 2018, Fifth Mandamus Petition Filed with the Ninth Circuit

On October 9, 2018, Respondent filed a fifth petition with the Ninth Circuit, repeating his previous arguments in his fourth petition to the Ninth Circuit and third petition to the Supreme Court. FF 75. Respondent's fifth petition was at least his fifteenth (15th) petition or pleading challenging Judge Navarro's denial of his *pro hac* admission, not including the *Bivens* action or the motion to disqualify. *Id.* Respondent also contended that the Ninth Circuit should vacate its prior decisions because Judge Wilken, in the unrelated case *Robles v. Name of Humanity*, had relied on them in revoking Respondent's *pro hac vice* admission. FF 76; DX 109 at 9. Judge Wilken, however, had revoked Respondent's *pro hac* status for a number of reasons. As the Hearing Committee found, these included not only Respondent's history of judicial reprimands and sanctions in numerous other cases, but also his misconduct in *Robles*.[19] FF 76. The Ninth Circuit denied Respondent's fifth petition on December 21, 2018. FF 77.

[19] Respondent had accused the judge of bias without a factual basis; sought the judge's disqualification; dismissed and refiled the action without disclosure in an effort to judge-shop; repeated and rehashed meritless claims; flaunted court rules; and demonstrated 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 (in *Klayman I*) had found that he had. *See* FF 76 (citing DX 126 at 1, 6-8; DX 127 at 5-9).

IV. CONCLUSIONS OF LAW[20]

A. Respondent's Procedural Challenges

Respondent seeks dismissal of these proceedings, including on grounds of alleged prejudicial delay. Relying upon Board Rule 12.2's instruction that "[t]he Hearing Committee's report shall be filed with the Board not later than 120 days following the conclusion of the hearing," he complains that the four-year delay in issuance of the Hearing Committee Report causes it to be time barred and void. *See* Resp. Br. at 23-27. He insists that, given the passage of time, the Hearing

[20] The alleged misconduct at issue in these proceedings occurred in connection with Respondent's filings pending before three tribunals – the U.S. District Court for the District of Nevada, the United States Court of Appeals for the Ninth Circuit, and the United States 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 . . . .

In applying Rule 8.5(b), the Hearing Committee determined that it was unclear whether the Nevada Rules of Professional Conduct applied to Respondent's conduct in connection with the filings before the Nevada District Court (applying to attorneys "admitted to practice") but considered Respondent's conduct under the Rules and caselaw of both jurisdictions, as applicable. With respect to the alleged misconduct before the Ninth Circuit and the Supreme Court, the Hearing Committee applied Rule 46(c) of the Federal Rules of Appellate Procedure and Rule 8 of the Rules of the Supreme Court of the United States, and in accordance with those Rules, analyzed whether the alleged misconduct violated the D.C. Rules and thus was conduct "unbecoming a member of the bar or for failure to comply with any court rule." Fed. R. App. P. 46(c); *see* HC Rpt. at 39-42. The parties have not taken exception to the Hearing Committee's application of Rule 8.5(b), and we adopt its approach.

Committee's Report is necessarily less reliable since memories must have faded, records have been lost, and witnesses have "moved on with their lives." Resp. Br. at 25. But he points to no evidence in support of these claims.

The passage of time, although certainly meriting concern, is not a basis for dismissal of this matter. *See In re Morrell*, 684 A.2d 361, 368 (D.C. 1996). Respondent has not proven that he suffered any prejudice due to this delay. *In re Rachal*, 251 A.3d 1038, 1041 (D.C. 2021) (per curiam) (explaining that Board Rule 12.2 is "directory, rather than mandatory" and denying the respondent's motion to dismiss on grounds of a delayed hearing committee report).[21] Under the circumstances, Respondent has not directed this Board to any authority upon which we may conclude that the matter should be dismissed due to the delay in the Report's issuance, and we decline to do so.

Respondent also claims that, during the four years this matter was pending with the Hearing Committee, he had come to understand "that this matter had been disposed of." Resp. Br. at 12. We find this implausible. The initial phase of the hearing was held in this matter on July 15-16 and 18, 2019. Within months of the

[21] Indeed, Respondent has pursued motions seeking to delay this matter. *See, e.g.*, Motion by Respondent Larry Klayman for Deferral After a Petition has Been Filed and Request for Internal Ethics Review and to File a Reply (Oct. 30, 2018); Second Motion for Reconsideration of the Chair of the Board's Order of November 28, 2018 Regarding Deferral and Recusal of the Chair From this Proceeding and En Banc Review by the Remainder of the Board and Motion to Stay Proceeding (Dec. 10, 2018); Motion to Postpone Prehearing Conference of December 12, 2018 (Dec. 11, 2018); Motion to Reschedule Hearing Date (Jan. 16, 2019); Motion to Continue if Necessary Mitigation/Aggravation Hearing Now Set for September 14-15 by Zoom (Aug. 20, 2020).

final date of the hearing, and after the parties filed their post-hearing briefs, on January 16, 2020, the Hearing Committee issued an order finding that Disciplinary Counsel had proven at least one Rule violation and directing the parties to select dates for the second phase of the hearing in which it would gather evidence in mitigation and aggravation of sanction. Respondent participated in the scheduling of the hearing and called witnesses in support of his mitigation case. The second phase of the hearing occurred on September 14-15, 2020. Respondent could not reasonably have believed that this matter had been dismissed or otherwise "disposed of."

Respondent next surmises that the Hearing Committee must have colluded with Disciplinary Counsel to ensure that he would remain suspended following the termination of his eighteen-month suspension in *In re Klayman* (*Klayman II*), 282 A.3d 584 (D.C. 2022) (per curiam). *See* Resp. Br. at 13-14. Respondent offers no evidence in support of this rank speculation.

Finally, Respondent contends that Disciplinary Counsel failed to prove that he violated any Rule. As discussed herein, we find that Disciplinary Counsel has proven violations of each of the charged Rules, and we deny Respondent's motion to dismiss on this ground as well.[22]

[22] In each instance where we find that Respondent violated a disciplinary Rule, we also find that Respondent engaged in conduct unbecoming a member of the bar, in violation of Fed. R. App. P. 46(c) and Rule 8 of the Rules of the Supreme Court. *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.); *In re*

B. Respondent Violated the Rules by Making Repeated False Statements to Courts.

Rule 3.3(a)(1) – 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." 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).

"Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation." *In re Reback*, 487 A.2d 235, 239 (D.C.), *vacated sub nom. Matter of Reback*, 492 A.2d 267 (D.C. 1985), and on *reh'g*, 513 A.2d 226 (D.C. 1986). The D.C. Rules of Professional Conduct, and caselaw, prohibit not only affirmative misrepresentations but material omissions. *In re Krame*, 284 A.3d 745, 757-58 (D.C. 2022) (respondent's failure to disclose time records in his possession, caused the court to believe that he did not have them, and the omission amounted to

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Snyder, 472 U.S. 634, 644-45 (1985) ("'[C]onduct 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.").

a material misrepresentation in violation of Rules 3.3(a)(1) and 8.4(c)); *In re Samad*, 51 A.3d 486, 499 n.8 (D.C. 2012) (Rule 3.3(a)(1) is violated where an omission of information is "the equivalent of an affirmative misrepresentation" (quoting Rule 3.3, cmt. [2])).

Rules 8.1(a) and (b) – 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.

D.C. Rule 8.1(a) differs from the Nevada Rule in that, under our Rule, the "[l]ack of materiality does not excuse a knowingly false statement of fact." Rule 8.1, cmt. [1]. Both jurisdictions' Rules require Disciplinary Counsel to prove by clear and

convincing evidence that Respondent "knowingly" made a false statement. *See also* D.C. Rule 1.0(f); Nevada Rule 1.0(f).

As set out above, D.C. Rule 8.1(b) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . [f]ail to disclose a fact necessary to correct a misapprehension known by the lawyer . . . to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority . . . ." *See also* Nevada Rule 8.1(b) (substantially similar).

Rule 8.4(c) - 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.

Dishonest conduct includes "not only fraudulent, deceitful or misrepresentative conduct, but also 'conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.'" *Samad*, 51 A.3d at 496 (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam)). The Court holds lawyers to a "high standard of honesty, no matter what role the lawyer is filling," *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994) (per curiam) (appended Board Report), because "[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." *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc).

Dishonest intent can be established by proof of recklessness. *See In re Romansky*, 825 A.2d 311, 315-17 (D.C. 2003). "To show recklessness, [Disciplinary] Counsel must prove by clear and convincing evidence that [an

attorney] 'consciously disregarded the risk'" that [his] conduct was untruthful or that it would lead to a misapprehension of the truth." *In re Dobbie*, 305 A.3d 780, 805 (D.C. 2023). The entire context of the respondent's actions, including his 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." *In re Ukwu*, 926 A.2d 1106, 1113 (D.C. 2007). 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 8.1(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 Failure to Disclose the Status of *Klayman I*

Disciplinary Counsel argues that Respondent violated Rules 3.3(a), 8.1(a) and 8.1(b), and 8.4(c) by making false, misleading, and incomplete statements to courts concerning the status of *Klayman I*. ODC Br. at 41-46. It contends that Respondent did so by omitting – in his statements in and relating to his Verified Petition for *pro hac vice* admission – any reference to his prior admissions of misconduct in the affidavit and accompanying petition for negotiated discipline (in the *Klayman I*

matter), 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, concealing the Hearing Committee and subsequent Board recommendations from the Ninth Circuit and the Supreme Court, and representing that he had never been found to have acted unethically or inappropriately by any bar association who reviewed his conduct before a judge.

With the exception of the last contention, the Hearing Committee agreed that Respondent's statements in each instance were knowingly false and violated the charged Rules. Regarding Respondent's statements to the District Court, it reasoned that

> 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.

HC Rpt. at 49.

Respondent does not contend that he ever fully disclosed the status of the *Klayman I* proceedings. Rather, he argues that he was required to disclose no more than he did. He insists that he was not required to provide "intricate details" of the disciplinary proceeding, and that he had no duty to disclose the non-binding Hearing Committee determination. Resp. Br. at 30-32, 34. He argues that he had no obligation to disclose the fact that he had entered into negotiated discipline because

the *pro hac vice* application did not ask for it, the negotiated discipline "never went into effect because it was withdrawn by both sides," and it could only be used against him for impeachment purposes under Board Rule 17.10.[23] Resp. Br. at 33; *see also* Resp. Br. at 34.

We agree with the Hearing Committee's recommendation as to this charge. Respondent knowingly withheld from multiple judicial forums material information concerning the status of his disciplinary proceeding. And it was only in the context of a petition marred by these material omissions that Respondent's unfounded representation (his "opinion") that the pending proceeding was "likely to be resolved in my favor" – the effective equivalent of urging the courts to "move along, there's nothing to see here" – could appear to have any validity. Even when Respondent knew that a misapprehension concerning the disciplinary proceeding had arisen, he failed to correct it. His disclosures "evinc[ed] a lack of integrity and straightforwardness, and [were] therefore dishonest." *Shorter*, 570 A.2d at 768.

Respondent insists that "none of the purported 'misrepresentations' . . . stem from any statements where Mr. Klayman had a duty to provide certain information and failed to do so." Resp. Br. at 29. Not so. Respondent's duty to provide accurate

[23] The Hearing Committee rejected Respondent's argument concerning the application of Board Rule 17.10. It reasoned that it is a limited exclusionary rule to protect a respondent from the situation of a rejected petition for negotiated discipline and associated affidavit being used against the respondent as substantive evidence in a contested proceeding. HC Rpt. at 51-52. It does not forbid considering the content of a rejected petition to determine the veracity of Respondent's statement that "[t]he matter is likely to be resolved in my favor." *Id.* We agree.

and truthful responses to courts stems directly from his status as a member of the Bar. *See Hutchinson*, 534 A.2d at 924 ("Lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law.").

Respondent violated Rules 3.3(a), 8.1(a) 8.1(b), and 8.4(c) through his materially incomplete statements to courts regarding the status of the *Klayman I* proceedings and through his related failure to correct any misapprehension as to the nature and posture of these proceedings.

2. Respondent's Description of Professor Rotunda's Letter

The Hearing Committee found that Respondent's representations concerning Professor Rotunda's letter were knowingly false or misleading and violated Rules 3.3(a), 8.1(a) and 8.4(c). HC Rpt. at 47-49, 53-54. In his supplement supporting his *pro hac vice* application, Respondent told the District Court that Professor Rotunda had opined that he had not violated any Rules. HC Rpt. at 53. In his first mandamus petition filed with the Ninth Circuit, he claimed that Professor Rotunda's letter concluded that he "did nothing wrong." FF 47; *see also* HC Rpt. at 49.[24] The Hearing Committee found that Respondent's statements were not true and that

[24] Notwithstanding the Hearing Committee's conclusions, Respondent's brief addresses only the statements made to the Nevada District Court. Resp. Br. at 34-35; Resp. Reply Br. at 21-22. While Disciplinary Counsel's brief cites to the Hearing Committee's findings concerning the statements made both to the District Court and the Ninth Circuit concerning the letter, its brief does not explicitly address his assertion made to the Ninth Circuit, that Professor Rotunda concluded he "did nothing wrong." *See* ODC Br. at 22; *see also* ODC Br. at 17.

Professor Rotunda had instead concluded that Respondent engaged in a "technical violation" of the Rules. RX 5 at 125; HC Rpt. at 53.

Respondent characterizes the Hearing Committee's determination as "outrageous[]," because he did not hide the contents of Professor Rotunda's letter, which was attached to the *pro hac vice* application.[25] Resp. Br. at 34. Respondent argues that his statement was not dishonest in light of Professor Rotunda's opinion that he should not be disciplined. *See* Resp. Br. at 35. Respondent asserted that "Professor Rotunda's clearly stated opinion that 'Mr. Klayman has not committed any offense that merits discipline' must take precedence, and as such Mr. Klayman's summary of Professor Rotunda's opinion – which again was not hidden and actually attached and provided to the District Court in its entirety – was not dishonest." *Id.* He argues that "[u]nder the full context of Professor Rotunda's letter, therefore, it is clear that when he was using the term 'technical violation,' he was speaking hypothetically, not saying that Respondent had committed an ethical violation." Resp. Reply Br. at 22.

Reasonable minds may disagree concerning the import of Professor Rotunda's letter. It was five pages long and included a number of opinions concerning the *Klayman I* proceedings broadly. *See* RX 5 at 121-25. Although, arguably, Professor Rotunda does appear to have concluded that Respondent may have engaged in a "technical violation" of the Rules, he did not make this statement expressly or

[25] As discussed above, Respondent's July 6, 2016, mandamus petition filed with the Ninth Circuit indicated that Professor Rotunda's letter had been "attached as Exhibit F" to the petition. *See* DX 55 at 17.

directly in the letter. *See* 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."). Professor Rotunda also appears to have concluded that the application of Rule 1.9 in *Klayman I* was unclear. *See, e.g.*, *id.* ("Judge Lamberth recognized that the D.C. [Rule] was not clear when disqualification was necessary under Rule 1.9 and thus took no further action."). He raised questions concerning whether the disciplinary matter should have been pursued at all. The letter, therefore, could be viewed as ambiguous in a number of respects.

The Hearing Committee, however, concluded that Professor Rotunda's letter did not state what Respondent proclaimed – that Respondent "did nothing wrong" or that he had not violated any Rules. The Hearing Committee's findings are supported by substantial evidence and we are constrained to accept them. *See Klayman I*, 228 A.3d at 717 (substantial evidence is "enough evidence for a reasonable mind to find sufficient to support the conclusion reached"); *see also In re Szymkowicz*, 124 A.3d 1078, 1084 (D.C. 2015) (the mere existence of substantial contrary evidence contrary to a hearing committee's finding does not provide a basis for the Board or Court to substitute its judgment on indisputably factual issues).

The Hearing Committee then concluded that Respondent's statements concerning Professor Rotunda's letter were knowingly false in each instance. But its conclusions do not appear to rest upon any particular credibility determination. Nor did the Hearing Committee otherwise explain the basis for its conclusion. *See Krame*, 284 A3d at 754 ("[A]lthough a respondent's state of mind might be an

ultimate fact that is reviewed de novo, a Hearing Committee's credibility findings can still constrain the determination of ultimate fact."). We review the Hearing Committee's conclusions concerning Respondent's intent *de novo*. *See Dobbie*, 305 A.3d at 805 (whether an attorney's conduct amounted to recklessness is reviewed *de novo* as it is a legal question, not a factual one).

We find the question of whether Respondent acted at least recklessly in his statements about the Rotunda opinion letter to be close. On the one hand, there is certainly evidence that Respondent was aware of the actual language of the letter and, so, simply could have used that actual language to avoid misleading the receiving courts. Further, viewing Respondent's conduct on this point in the context of its surrounding circumstances lends support to the position that Respondent characterized Professor Rotunda's conclusion as he did in an effort to minimize the interference of the pending *Klayman I* matter with his *pro hac vice* admission. Finally, the fact that Respondent's *pro hac vice* admission had been stalled, at least in part, by his lack of transparency arguably should have put Respondent on high alert to the need for candor in communications with the courts. On the other hand, Disciplinary Counsel did not prove that Respondent's statements concerning the letter's contents were *not* rooted in some degree of misunderstanding by Respondent regarding Professor Rotunda's conclusions. Respondent also points to the fact that he appended the actual letter to his filings.[26]

[26] We give this last factor little weight. Respondent is responsible, and accountable, for what he actually said in – or omitted from – his own statements in this matter.

Ultimately, we find that Disciplinary Counsel did not prove that Respondent was more than negligent here. It did not prove that he consciously disregarded the risk that his statements concerning Professor Rotunda's letter were untruthful or would lead to a misapprehension of the truth. As such, we do not sustain this charge.

3. Respondent's Statements that Judge Navarro Threatened to Hold Mr. Whipple in Contempt

The Hearing Committee found that Respondent's statements that Judge Navarro threatened to hold Mr. Whipple in contempt were "intentionally false." FF 57; *see also* HC Rpt. at 66-67. Before the Board, Respondent argues that there is insufficient evidence that his statements were false. He claims that the Hearing Committee relied solely on Judge Navarro's answer in reaching this conclusion. Resp. Br. at 44-45. But the Hearing Committee also considered that the Ninth Circuit reviewed the issue and found no credible evidence to support Respondent's claim that Judge Navarro had threatened Mr. Whipple with contempt. *See* FF 61; HC Rpt. at 67. Nor has Respondent offered any directly contrary evidence in support of his claim. Substantial evidence supports the Hearing Committee's finding that the claim was false.

In explaining his basis for making these statements, Respondent points to Mr. Whipple as the source of his information. He says that Mr. Whipple told him that Judge Navarro had threatened him with contempt. But the Hearing Committee

disbelieved Respondent on this issue, finding that he had offered inconsistent hearing testimony. FF 57-58.[27]

We agree with the Hearing Committee that Respondent's statements were recklessly false and violated Rule 8.4(c). Even if Mr. Whipple told Respondent that Judge Navarro had threatened him with contempt, once Judge Navarro and the government denied the claim, Respondent was duty bound to confirm whether his statement was true before making the claim again. *See In re Edwards*, 278 A.3d 1171, 1173 (D.C. 2022) (per curiam) (respondent engaged in reckless dishonesty where she had previously been placed on notice that her statement was false). There is no evidence that he did so, and Respondent has not identified any basis upon which he continued to have an objectively reasonable belief that the court had threatened Mr. Whipple. Disciplinary Counsel did not prove that his statements were *intentionally* false, in violation of Rules 3.3(a) or 8.1(a); nor did it prove that he violated Rule 8.1(b) by failing to correct a misapprehension concerning the alleged contempt threat. But Disciplinary Counsel did prove, and the Board concludes, that Respondent made his statements regarding Mr. Whipple being threatened with

[27] Respondent first testified that Mr. Whipple told him that he did not want to resubmit Respondent's *pro hac vice* application "because if I do that it may get her upset may wind up getting me held in contempt." However, in response to a subsequent question regarding whether he had represented to the Ninth Circuit that Judge Navarro had threatened Mr. Whipple with contempt, he stated "that's accurate. That's what Bret Whipple told me. . . . If he was lying, that's Mr. Whipple's problem, but not me, not my problem." FF 58-59 (quoting Tr. 162-63).

contempt in reckless disregard of whether they were false and, thus, violated Rule 8.4(c).

4. Respondent's Statements that His *Pro Hac Vice* Application Was Pending

Respondent participated in filing multiple pleadings which identified him as "Of Counsel" and/or indicated "(Pro Hac Vice Application Pending)." FF 45; *see, e.g.*, DX 31 at 13; HC Rpt. at 71. The Hearing Committee found that Respondent's statement that his *pro hac vice* application was still pending, when Respondent knew that it had been denied twice, was a knowingly false statement. HC Rpt. at 71-72.

Respondent argues that the statement that his *pro hac vice* admission was pending is not a knowingly false statement because "up until the Bundy Trial was concluded by Judge Navarro [Respondent was] attempting to gain *pro hac vice* admission, not only through the District Court, but also through the Ninth Circuit and the Supreme Court. This is the textbook definition of 'pending.'" Resp. Br. at 49; *see* Resp. Br. at 48; *see also* Resp. Reply Br. at 25-26. It is not. Merriam Webster defines "pending" as "not yet decided."[28] Though Respondent was attempting to obtain the assistance of a higher court to *reverse* the District Court's denials of Respondent's *pro hac vice* application, that does not mean that the application itself

[28] *Pending*, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/pending (last visited July 19, 2024).

was still "pending." It was not and, by making this claim, Respondent violated Rules 3.3(a), 8.1(a), and 8.4(c).[29]

5. Statements Concerning Respondent's Federal Criminal Trial Experience, as Compared to Mr. Hansen and Mr. Whipple

The Hearing Committee found that Respondent made knowing false statements inflating his own criminal trial experience while minimizing, or even negating, the criminal defense experience of Mr. Hansen and Mr. Whipple. HC Rpt. at 60. The Hearing Committee concluded that

> [t]here 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. [to HC] at 19, 37) but, while not specific, it suffices to support the finding that his comparison was false.

Id.

For his part, Respondent disputes that he made false statements concerning his criminal trial experience. He insists that he had, in fact, obtained "significant experience" at the DOJ and that the 400-600 hours that he spent on "criminal defense cases" following his departure from the DOJ cannot be discounted. Resp. Br. at 37-39. He argues that he was merely expressing his opinions as to Mr. Hansen's and

[29] We find that Disciplinary Counsel has not proven that Respondent violated Rule 8.1(b) by failing "to disclose a fact necessary to correct a misapprehension" in this instance.

Mr. Whipple's experience based on his observations and communications with them. Resp. Br. at 39-40.

Respondent may have had some level of experience related to federal criminal defense work. But, as the Hearing Committee made clear, the broader issue is that Respondent represented that, as compared to Mr. Hansen or Mr. Whipple, he was the significantly more experienced federal criminal defense attorney. The Hearing Committee found that that was simply not true. HC Rpt. at 56-60. Substantial evidence supports its finding.

We also conclude that Respondent knew that his statements were not true. There is ample record evidence that both Mr. Hansen and Mr. Whipple were experienced federal criminal trial attorneys and that Respondent knew so. *E.g.*, FF 48-49. Before the relevant statement by him minimizing Mr. Hansen's experience, Respondent had reviewed Mr. Hansen's affidavit concerning his criminal defense experience. HC Rpt. at 56-57. Respondent had also been alerted to Mr. Whipple's substantial experience as a criminal defense attorney by the government in its November 23, 2016, filing nearly two months *before* he made claims that Mr. Whipple lacked such experience in his January 17, 2017, Supreme Court mandamus petition. DX 66 at 21 n.7; DX 69 at 22; HC Rpt. at 22 n.13; *see also* HC Rpt. at 57. And, by the time Respondent repeated his claims about Mr. Whipple's lack of experience in his second mandamus petition to the Supreme Court, the Ninth Circuit – like Judge Navarro earlier – had already determined those claims to be "demonstrably false." FF 61; *see* FF 60, 65.

Respondent's contention that, in characterizing these lawyers as inexperienced, he was merely reciting his "opinions" concerning Mr. Hansen's and Mr. Whipple's experiences has no merit. Resp. Br. at 39-40; Resp. Reply Br. at 23; *see* HC Rpt. at 57-58, 60. We do not see how Respondent could have reasonably or honestly construed either Mr. Hansen's or Mr. Whipple's federal criminal defense experience – as elaborated in the record before multiple courts and the details of which he does not appear to dispute – as constituting "little" or "no" such experience, whether relative to his own experience or otherwise.[30]

The context in which Respondent made his false statements about the experience of Mr. Hansen and Mr. Whipple underscores that he made them knowingly and intentionally. "A play cannot be understood on the basis of some of its scenes, but only on its entire performance." *Ukwu*, 926 A.2d at 1116 (quoting *Andrews v. Philadelphia*, 895 F.2d 1469, 1484 (3d Cir. 1990), *superseded in part by statute*, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1074). "Intent must ordinarily be established by circumstantial evidence, and in assessing intent, the court must consider the entire context. . . . '[I]t is generally in the interests of justice that the trier of fact 'consider the entire mosaic.'" *Id.* (citations omitted).

[30] To the extent the rejection of Respondent's appeal to his "opinion" on this issue implies a credibility finding, the Hearing Committee appears to have made such a finding by rejecting Respondent's testimony on this point at the hearing: "Respondent's comparison of his experience with Mr. Bundy's two other lawyers was not a statement of opinion and was plainly false." HC Rpt. at 60 (apparently responding to Respondent's hearing testimony on this point, HC Rpt. at 58-59 (quoting Resp. Br. to HC at 19 (quoting Tr. 135))).

Respondent was attempting to construct the false scenario for the courts, that without his appointment – and if left only with Mr. Hansen or Mr. Whipple as counsel -- Mr. Bundy would be denied the effective assistance of counsel.

We agree with the Hearing Committee and conclude that Respondent's assertions concerning his experience, as compared to that of Mr. Hansen and Mr. Whipple, were demonstrably, knowingly false. He violated Rules 3.3(a), 8.1(a), and 8.4(c).[31]

6. Respondent's Representations of Judge Gould's Dissent

The Hearing Committee concluded that Respondent's statements to the Ninth Circuit and to the Supreme Court regarding Judge Gould's dissent were false and made in violation of Rules 3.3(a), 8.1(a) and 8.1(b), and 8.4(c). HC Rpt. at 67-72. It found that, "[n]otwithstanding Judge Gould's balanced discussion of Respondent's candor," in at least six pleadings Respondent mispresented Judge Gould's position as an emphatic assertion that he had been candid and truthful. HC Rpt. at 68. The Hearing Committee further found that "by surgically removing the

[31] Disciplinary Counsel also contends that Respondent's "knowing false statements about his own experience in criminal matters and about the alleged lack of experience of Bundy's counsel that went beyond embellishment and were not couched in terms of his opinion or belief" violated Rule 8.1(b) as well. *See* ODC Br. at 41, 43-44. The Hearing Committee did not sustain this charge. *See* HC Rpt. at 60. Because Disciplinary Counsel has not pointed to evidence of a "misapprehension known by [respondent] to have arisen" or that he "knowingly failed to respond to a lawful demand for information from an admissions or disciplinary authority" concerning his experience, Mr. Whipple's experience, or Mr. Hansen's experience, we see no reason to depart from the Hearing Committee's approach. We do not find that there is clear and convincing evidence concerning this charge.

clarifying context from the paragraph, Respondent drafted these pleadings knowing that they misrepresented the truth as to Judge Gould's actual findings." HC Rpt. at 70-71.

Respondent argues that taking "compelling excerpts" from a judge's publicly available opinion cannot constitute dishonesty in violation of the disciplinary rules. Resp. Br. at 46; *see* Resp. Br. at 47-48; Resp. Reply Br. at 25. Respondent's conduct here, however, went markedly beyond appropriately taking and using "compelling excerpts." We agree with the Hearing Committee's determination that Respondent knowingly mischaracterized Judge Gould's dissent. There is no express, or even implied statement, in this dissent that could be construed reasonably as an "emphatic" finding that Respondent had been truthful. HC Rpt. at 68; *see* FF 53, 74. To the contrary, Judge Gould opined that "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 17. That Judge Gould's opinion was available to the public does not alter our conclusion as to Respondent's knowing misuse and mischaracterization of that opinion. Respondent violated Rules 3.3(a), 8.1(a), and 8.4(c) in his representations about Judge Gould's dissent.[32]

[32] We find that Disciplinary Counsel has not proven that Respondent violated Rule 8.1(b) by failing "to disclose a fact necessary to correct a misapprehension" in this instance.

7. Respondent's Statements Concerning Mr. Bundy's Trial Date

In his January 17, 2017, mandamus petition with the Supreme Court, Respondent represented that Mr. Bundy's trial would begin on February 6, 2017. FF 55. This was a knowingly false statement. When he made this statement, Respondent knew that his client's trial date had not yet been set and that his client's trial would not begin until thirty days *after* the trial of *other* defendants in the matter, whose trial was scheduled to begin February 6, concluded. *See* HC Rpt. at 62-63; FF 55.

Respondent defends his statement regarding his client's trial date by stating that his "ultimate fundamental concern was that [he] be present at any of these trials in the capacity as counsel, that would let me communicate with lawyers who were representing the other defendants." He further explains that he could "sit inside the well" and have "access to information that was under seal and things like that." Tr. 150, *quoted in* Resp. Br. at 42-43. Respondent included no such clarification or explanation in his pleading to the Supreme Court, however. *See* HC Rpt. at 61-63.

The Hearing Committee found a violation of Rules 3.3(a), 8.1(a) and 8.1(b), and 8.4(c) (HC Rpt. at 61, 63), and we agree with that determination.

8. Respondent's Statements that Judge Navarro Was Holding Mr. Bundy in Solitary Confinement

The Hearing Committee found that Respondent's repeated contention that Judge Navarro ordered Mr. Bundy to be held in solitary confinement violated Rule 8.4(c) because it was a false statement made with unconscionable disregard for its veracity. HC Rpt. at 65. The Hearing Committee concluded, however, that

Disciplinary Counsel failed to prove Respondent knew these statements were false. HC Rpt. at 66. We agree that Respondent's statements about Judge Navarro ordering his client into solitary confinement were recklessly dishonest, in violation of Rule 8.4(c).

The Hearing Committee found that, "[b]ased on statements from Judge Navarro, the prosecutor, and Mr. Bundy" at a May 10, 2016, hearing, "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." HC Rpt. at 64. There is substantial evidence in support of the Hearing Committee's determination that Respondent's claim was false.

Respondent disclaims any dishonest intent. He argues that – notwithstanding his presence in the gallery at the May 10, 2016, hearing (FF 42) – in stating that Judge Navarro ordered his client into solitary confinement, he was relying on the statement to him of Mr. Bundy, who (according to Respondent) told him he was in solitary confinement against his wishes. Resp. Br. at 43-44. But, as the Hearing Committee stated, "[e]ven 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." HC Rpt. at 65 (emphasis added). Further, when questioned at the disciplinary hearing in this matter about the basis for his contention that Judge Navarro ordered his client into solitary confinement, Respondent fell back on the assertion, "You don't wind up in solitary

confinement on your own." *Id.* (quoting Tr. 159). As the Hearing Committee stated, "[i]n 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." *Id.*

Under these proven circumstances, we find that Respondent's repeated statements that Judge Navarro ordered his client, Cliven Bundy, into solitary confinement were recklessly dishonest, in violation of Rule 8.4(c).

9. Statements Concerning Discipline by Judges Chin and Keller

The Hearing Committee determined that Disciplinary Counsel did not meet its burden in proving that Respondent's failure to make more detailed disclosures concerning the judges' findings or Respondent's unsuccessful appeals violated any Rule.[33] HC Rpt. at 54-56. It found that Disciplinary Counsel did not prove that Respondent was required to provide additional details as to the two matters. We agree. Question 5 of the *pro hac vice* application asked that Respondent disclose, among other things, the "suspension of any . . . privilege to appear before any judicial, regulatory, or administrative body . . . ." FF 20. Respondent disclosed that Judges Chin and Keller "stated that I could not practice before them . . . ." FF 25.

[33] The Hearing Committee also rejected Disciplinary Counsel's argument that Respondent's statement that "the bars of the District of Columbia and Florida reviewed [the judges'] rulings and found that I did not act unethically" (FF 25) was dishonest. The Hearing Committee reasoned that it could not find that his statement was "sufficiently distinct" from Disciplinary Counsel's finding that it lacked clear and convincing evidence to file charges. HC Rpt. at 55. Disciplinary Counsel has not taken exception to this finding. *See* ODC Br. at 43-44.

On these facts, we cannot find that Respondent was knowingly or recklessly dishonest, and we do not sustain the charge.

10. Statements Concerning Relationships Between Judge Bybee, Senator Reid, and Judge Navarro

The Hearing Committee determined that Disciplinary Counsel failed to meet its burden in proving that Respondent's statements that Judge Bybee and Senator Reid had a "social and familial relationship" were false because he had relied on research performed by his associate. *See* HC Rpt. at 72. But the Hearing Committee did not address whether Respondent's claims that Judges Navarro and Bybee and Senator Reid were in a conspiracy to deprive Mr. Bundy of his constitutional rights violated the Rules. *See* ODC Br. at 35-37, 45 n.16; FF 71. We conclude that these were reckless false statements. These claims were rooted in no more than rank speculation and conjecture on Respondent's part, made – at the very minimum – with conscious disregard as to their veracity. *See Dobbie*, 305 A.3d at 805. In making these statements, Respondent violated Rule 8.4(c).

C. The *Bivens* Action and the Motion to Disqualify Violated Rule 3.1 and Respondent is Responsible Under Rule 8.4(a).

1. Rule 3.1 Violations

The Hearing Committee found that Respondent violated Rule 3.1 as to the claims raised in the *Bivens* action and the motion to disqualify. It concluded that he participated in asserting claims that lacked both a sufficient basis in fact as well as in law. *See* HC Rpt. at 73-76.

Nevada Rule 3.1 prohibits a lawyer from "assert[ing] or controvert[ing] 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).

a. Respondent's Factual Contentions

We have already determined that Respondent had made dishonest statements – having no factual basis – in stating that: Judges Navarro and Bybee and Senator Reid were in a conspiracy to deprive Mr. Bundy of his constitutional rights; Mr. Whipple and Mr. Hansen did not have federal criminal litigation experience; Judge Navarro had ordered Mr. Bundy to be held in solitary confinement and threatened to hold Mr. Whipple in contempt; and, Judge Gould found that Respondent was truthful. Because Respondent lacked an objectively reasonable basis for asserting these claims in the *Bivens* action and the motion to disqualify, he violated Rule 3.1.

b. Respondent's Legal Contentions

Consistent with the Hearing Committee's conclusion, we also find that the *Bivens* action against Judge Navarro was frivolous because judges have absolute

immunity from suit.[34] *See Austin v. Chesney*, No. 22-CV-02506-LB, 2022 WL 3205201, at *3 (N.D. Cal. May 2, 2022) ("A federal judge is absolutely immune from civil liability for acts performed in her judicial capacity and, unlike the judicial immunity available to state judges sued under § 1983, a federal judge's immunity is not limited to immunity from damages and instead is immune in actions for declaratory, injunctive, and other equitable relief." (first citing *Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996), *superseded by statute on other grounds*, *Nordin v. Scott*, No. 22-15816, 2023 WL 4418595, at *1 (9th Cir. July 10, 2023); and then *Mullis v. U.S. Bankruptcy Court for Dist. of Nevada*, 828 F.2d 1385, 1394 (9th Cir. 1987) (applying judicial-immunity doctrine to *Bivens* action))).[35] Similarly, like

[34] Respondent relies on the testimony of his expert witness, Dean Erwin Chemerinsky, for the proposition that the number of filings (over a dozen) was reasonable under the circumstances. *See* Resp. Br. at 11, 53-54, 56. But the number of filings is not the source of an independent charge during these proceedings. Rather, it is the frivolous nature of the filings that constituted misconduct.

[35] Respondent argues that his expert witness, Dean Chemerinsky, testified that a *Bivens* action is possible against judges and that he stated that "In answer to the case, you say there are some cases that are allowed injunctive suits against judges. . . ." Resp. Reply Br. at 29 (quoting Tr. 684). But Respondent omitted a critical segment from the witness's opinion on this issue. Dean Chemerinsky's full testimony on this issue was as follows:

> The Supreme Court has said that judges have absolute immunity in civil suits for money damages for their judicial tasks, but not immunity for their administrative tasks.
>
> The Supreme Court in *Employer versus Allen* then said judges do not have immunity to sue for injunctive relief. Congress amended Section 1983 in the Judicial Improvements Act of 1996 to say that

Judge Navarro, we find that the motion to disqualify was frivolous because an attorney may not sue a judge and then rely on that lawsuit as a basis to disqualify the judge. *Ely Valley Mines, Inc. v. Lee*, 385 F.2d 188, 191 (9th Cir. 1967) (counsel may not, "by filing specious pleadings, transmute a law suit between others into the judge's own case solely for the purpose of disqualifying him"), *superseded on other grounds*, *In re Mortgages Ltd.*, 771 F.3d 623 (9th Cir. 2014).

2. Rule 8.4(a) Violations

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

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> judges cannot be sued for injunctive relief unless there's an absence of declaratory relief where they're violating a declaratory judgment.
>
> So in answering your question, can there ever be suits against injunction, the literal answer is: Yes, but it's quite restricted. In answer to the case, you say there are some cases that are allowed injunctive suits against judges, but generally judges can't be sued for money or for an injunction.
>
> I hope that elaboration of the law is useful.

Tr. 683-84. Respondent has not argued that the limited circumstances to which Dean Chemerinsky pointed somehow apply in this case, such that there was a "faint hope of success on the legal merits" of the *Bivens* action. *Spikes*, 881 A.2d at 1125.

violated Rule 8.4(a) when he assisted another attorney in drafting and submitting filings containing false statements to the court).

Respondent violated Rule 8.4(a) with respect to his participation in drafting and filing of the *Bivens* action and the motion to disqualify. It is clear that he was involved with the drafting of the pleadings. FF 36, 45.[36] He argues that "there is nothing in the record evidencing [his] level of involvement." Resp. Reply Br. at 28. This is a red herring. The plain language of Rule 8.4(a) dictates that it is "professional misconduct" to "knowingly assist . . . another" in violating the Rules. The Rule contains no such limiting language requiring a particular threshold of "assistance" before the Rule applies.

Respondent next argues that, even if he had "prepared, signed and filed the *Bivens* complaint and the Motion to Disqualify, there would still be no ethical violation" because Mr. Hansen (the attorney who signed and filed the pleadings) was not sanctioned. Resp. Reply Br. at 28. Thus, in his view, because Mr. Hansen was not proven to have been disciplined, the predicate finding for a Rule 8.4(a) violation has not been met. Respondent has directed us to no precedent in support of this reading of the Rule and we are aware of none.

We agree with the Hearing Committee that he violated Rule 8.4(a).

[36] The Hearing Committee did not credit Respondent's apparent attempt to distance himself from the drafting of the motion to disqualify by arguing that his signature was mistakenly included on the filing. *See* FF 45. Instead, the Committee explicitly found that Respondent assisted in the preparation of the motion to disqualify. *Id.*

D. Respondent Seriously Interfered with the Administration of Justice.

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].

To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate 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 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). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). "Rule 8.4(d) does not have a strict scienter requirement; even conduct "somewhat less blameworthy" than recklessness—i.e., negligent conduct—can violate it." *Dobbie*, 305 A.3d at 808.

Failure to make material disclosures in connection with bar admission applications "interfered with the administration of justice by preventing a complete review of the applicant's character and fitness to practice law . . . ." *Scott*, 19 A.3d at 781. Frivolous pleadings have also been held to violate Rule 8.4(d). *See Spikes*, 881 A.2d at 1127 (frivolous defamation actions "waste[d] the time and resources of this court, delay[ed] the hearing of cases with merit[,] and cause[d] appellees unwarranted delay and added expense."); *see also Yelverton*, 105 A.3d at 427-28 (the respondent's filings violated Rule 8.4(d) where they targeted the trial judge, accused him of bias and improper *ex parte* communications, and twice asked for his recusal without any objectively reasonable basis); *In re Pearson*, 228 A.3d 417, 426-27 (D.C. 2020) (per curiam) (similar).

Respondent violated Rule 8.4(d) by failing to make material disclosures concerning *Klayman I* in connection with his *pro hac vice* application, participating in the filing of the *Bivens* action and motion to disqualify Judge Navarro, continuing to file baseless and repetitive pleadings, and accusing Judges Bybee and Navarro of bias. HC Rpt. at 77, 79. Respondent's conduct in this matter constituted a pattern and practice of improper retaliation and unmerited escalation. We find that Respondent violated Rule 8.4(d).

V. SANCTION

The sanction imposed in an attorney disciplinary matter must 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.*,

Hutchinson, 534 A.2d at 924; *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

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)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)). Finally, the sanction must comply with the comparability standard of D.C. Bar R. XI, § 9(h)(1), which provides that the sanction must not "foster a tendency toward inconsistent dispositions for comparable conduct" or "otherwise be unwarranted." *See In re Murdter*, 131 A.3d 355, 359 n.1 (D.C. 2016) (per curiam) (appended Board Report); *see also Hutchinson*, 534 A.2d at 923-24.

A. Seriousness of the Conduct at Issue

"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's misconduct was serious. Over a period of two years, in frivolous and repetitive pleadings filed in multiple forums, Respondent repeatedly put forth the same false or misleading statements that he knew were not accurate. This factor weighs heavily in aggravation of sanction.

B. Prejudice, if Any, to the Client Which Resulted from the Conduct

There is no evidence that Respondent's client was prejudiced by his misconduct.

C. Whether the Conduct Involved Dishonesty

The charged misconduct involves extensive and repeated dishonesty before courts. This is compounded by the Hearing Committee's determination that Respondent testified falsely under oath during the hearing, FF 71, a significantly aggravating factor. *See Bradley*, 70 A.3d at 1195 (respondent's false testimony before the Hearing Committee "is a significant aggravating factor").

D. Violations of Other Disciplinary Rules

The "violation of other disciplinary rules" prong of the analysis considers how many disciplinary rules were violated. *Dobbie*, 305 A.3d at 812. Respondent

violated seven Rules in this matter: 3.1, 3.3(a), 8.1(a), 8.1(b), 8.4(a), 8.4(c) and 8.4(d). This factor weighs in aggravation of sanction.

E. Previous Disciplinary History

Respondent has two instances of prior discipline, which serve to aggravate his sanction. *See Klayman II*, 282 A.3d 584 (violations of Rules 1.2(a) (failure to abide by client's decisions), 1.4(b) (communication), 1.5(c) (fees), 1.6(a)(1) and (3) (confidentiality), 1.7(b)(4) (conflict of interest), and 1.16(a)(3) (termination of representation)); *Klayman I*, 228 A.3d 713 (violations of Rule 1.9 (conflict of interest)). We note, however, that these prior instances of discipline involved different Rules than are at issue in the current matter.

F. Whether the Attorney Has Acknowledged His Misconduct

Respondent has neither acknowledged nor demonstrated remorse for his misconduct. Indeed, he explicitly affirmed that he would not do anything differently. HC Rpt. at 82-83. This factor weighs heavily in aggravation of sanction. *See Dobbie*, 305 A.3d at 812 (considering that respondents admitted that they had made mistakes and would do things differently if given the opportunity).

G. Other Circumstances in Mitigation or Aggravation

Respondent argues that the Hearing Committee failed to consider the "dire context of the situation – literally life and death for Mr. Bundy . . . ." Resp. Br. at 61. We have no reason to doubt that Respondent believed that his client's criminal matter required a zealous defense. But there are limitations to the zeal that an attorney may exercise on his client's behalf. *See* Rule 1.3(a), cmt. [1] ("The duty of

a lawyer, both to the client and to the legal system, is to represent the client zealously within the bounds of the law, including the Rules of Professional Conduct . . . .”). Here, Respondent’s conduct significantly and substantially exceeded the bounds of zealousness.

Disciplinary Counsel argues that the Board should also consider, in aggravation, two lawsuits that Respondent filed against members of the Board and the Office of Disciplinary Counsel – *Klayman v. Hon. Blackburne-Rigsby, et al.*, Civil Action No. 21-0409 (ABJ) (D.D.C); *Klayman v. Hon. Blackburne-Rigsby, et al.*, Case No. 21-7069 (D.C. Cir.) (Doc. #1917436 at 20). ODC Br. at 56-57. Arguably, of course, Respondent’s conduct in filing these lawsuits could be viewed as evidence of additional, improper retaliatory and escalatory litigation by the Respondent. However, we decline to consider the filing of these lawsuits in aggravation of sanction in the matter before us, as Disciplinary Counsel has neither argued with specificity, nor proven by clear and convincing evidence, that the filing of these lawsuits violates any disciplinary Rule.[37]

[37] The Court has instructed that uncharged misconduct considered in aggravation of the sanction must be proven by clear and convincing evidence. *See, e.g.*, *In re Downey*, 162 A.3d 162, 168 (D.C. 2017) (“[W]e are not persuaded that Disciplinary Counsel proved [uncharged] dishonesty as an aggravating factor by clear and convincing evidence.”); *In re Boykins*, 999 A.2d 166, 175 (D.C. 2010) (to justify the enhanced sanction of a fitness requirement upon reinstatement, Disciplinary Counsel must prove the facts by clear and convincing evidence); *Cater*, 887 A.2d at 25 (same). In the absence of the requisite clear and convincing evidence, we do not believe that we have authority to consider these lawsuits in aggravation of sanction.

H. Sanctions in Cases Involving Comparable Misconduct

The Court has imposed a wide range of sanctions in cases involving dishonesty, depending on the severity of the attendant circumstances. *See Edwards*, 278 A.3d at 1172-75 (two-year suspension with fitness where the respondent made a reckless false statement on her *pro hac vice* application form, displayed a pervasive lack of record keeping, and had prior discipline for strikingly similar misconduct); *In re Tun*, 195 A.3d 65, 68, 74-76 (D.C. 2018) (one-year suspension where the respondent filed a recusal motion with a court that contained a false statement and then offered false testimony to the hearing committee); *Bradley*, 70 A.3d at 1195-96 (two-year suspension with fitness where the respondent engaged in multiple years of intentional client neglect, gave intentionally false testimony to the hearing committee, and had three prior informal admonitions, two of which were for similar misconduct); *Ukwu*, 926 A.2d at 1109-1111, 1115, 1118-1120 (two-year suspension with fitness where respondent engaged in dishonesty, intentionally neglected clients, failed to communicate and act with reasonable promptness, and provided untruthful testimony before the hearing committee).

Cases involving lawyers who assert frivolous claims in violation of Rules 3.1 and 8.4(d) have resulted in a range of sanctions from a suspension of thirty days to ninety days. *See, e.g.*, *Pearson*, 228 A.3d at 417, 428-29 (ninety-day suspension for lawyer who litigated frivolous claims against his dry cleaner); *Spikes*, 881 A.2d at 1119, 1127-28 (D.C 2005) (thirty-day suspension for filing a frivolous defamation claim based on privileged complaint to Disciplinary Counsel).

Disciplinary Counsel argues that "[g]iven the nature and seriousness of [Respondent's] misconduct, his attitude, . . . and his repetition of the same misconduct including in disciplinary proceedings, the Board should recommend disbarment." ODC Br. at 50. The challenge with this position is that the Court has generally "reserve[d] the sanction of disbarment for the most extreme attorney misconduct, and [has] done so in two types of dishonesty cases – (1) intentional or reckless misappropriation where the presumptive sanction is disbarment, and (2) dishonesty of the flagrant kind." *In re Johnson*, 275 A.3d 268, 281 (D.C. 2022) (per curiam). *But see In re Giuliani*, Board Docket No. 22-BD-027, at 61-63 (BPR May 31, 2024) (citing *In re Addams*, 579 A.2d 190, 194 (D.C. 1990)) (recommending disbarment to avoid undermining public confidence in the bar by appearing to tolerate lawyers who attempt to disenfranchise hundreds of thousands of voters without a factual basis). This matter involves neither misappropriation, nor flagrant dishonesty.[38] The three cases to which Disciplinary Counsel has directed the Board's attention – *In re Barber*, 128 A.3d 637 (D.C. 2015) (per curiam), *In re Orci*, 974 A.2d 891 (D.C. 2009) (per curiam), and *In re Shieh*, 738 A.2d 814 (D.C. 1999) – involve misconduct that is considerably more egregious than that at issue here.

Barber involved three separate disciplinary matters. Disbarment was held to be the appropriate sanction, in part, because the respondent's dishonesty was

[38] Flagrant dishonesty has been defined as dishonesty that "reflect[s] a continuing and pervasive indifference to the obligations of honesty in the judicial system." *In re Pennington*, 921 A.2d 135, 142 (D.C. 2007) (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)); *see In re Pelkey*, 962 A.2d 268, 281-82 (D.C. 2008) (disbarment for "persistent, protracted, and extremely serious and flagrant acts of dishonesty").

described as "flagrant" and he "intentionally put his clients' interests in jeopardy for his own monetary benefit, and his clients suffered mightily for it." Board Docket No. 10-BD-076, at 42 (BPR Dec. 31, 2013).

In *Orci*, the respondent falsified documents, repeatedly and knowingly made false representations to courts, filed multiple frivolous claims to harass and intimidate others, engaged in self-dealing, and charged for legal services he did not perform. 974 A.2d at 891-92.

In *Shieh*, a reciprocal matter, the respondent levied upon the court system "a history of lawsuits (many duplicative), frivolous motions (including for removal of cases to federal court and recusal of judges), meritless appeals, and disobedience of court orders," which resulted in "his conviction on three counts of criminal contempt for which he escaped punishment by fleeing to his native Taiwan, where he remains a fugitive from justice in California." 738 A.2d at 815-16.

I. Sanction Recommendation

We are mindful, as the Court has opined, that the imposition of a sanction is not "an exact science," *In re Thyden*, 877 A.2d 129, 144 (D.C. 2005) (quoting *In re Fair*, 780 A.2d 1106, 1115 n.24 (D.C. 2001)), and that it is impossible to "match" all factors in different disciplinary cases. *Yelverton*, 105 A.3d at 429. Having considered the aforementioned cases alongside the sanction factors discussed above, we conclude that an eighteen-month suspension would be consistent with prior cases involving comparable conduct.

J. Fitness

A fitness showing is a substantial undertaking. *Cater*, 887 A.2d at 20. Thus, in *Cater*, the Court 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). "An attorney's lack of candor with a judicial tribunal, especially under the penalty of perjury, casts serious doubt on his fitness to practice law." *In re Tun*, 286 A.3d 538, 545 (D.C. 2022).

Here, Respondent has given the Board every reason to have a serious doubt that he will conform his conduct to the Rules in the future. Over the course of years, he has demonstrated a persistent lack of candor with tribunals. He has not taken responsibility for his actions and has maintained that he would engage in the very same misconduct again should the circumstances arise. Even before this very Board, he has attempted to mischaracterize the course of the proceedings. Under these circumstances, we are compelled to recommend that he be required to demonstrate his fitness to practice law prior to being reinstated.

VI. CONCLUSION

For the foregoing reasons, the Board finds that Respondent violated Nevada 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). The Board also finds that Respondent engaged in conduct unbecoming a member of the Bar. The Board recommends that Respondent be suspended for eighteen (18) months with a requirement that he prove his fitness to practice law prior to reinstatement.[39] We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Robert L. Walker

All members of the Board concur in this Report and Recommendation, except Ms. Blumenthal and Mr. Tigar, who are recused.

[39] Respondent was suspended with a fitness requirement in *Klayman II*, 282 A.3d 584. The Board has taken judicial notice of the D.C. Bar's records indicating that he has not yet been reinstated to the practice of law.