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IN THE SUPREME COURT OF FLORIDA
S.C. Case No: SC23-1219
TFB File No. 2020-00,515(2A)

ORAL ARGUMENT REQUESTED

THE FLORIDA BAR

Petitioner,

v.

LARRY ELLIOT KLAYMAN

Respondent.

RESPONDENT'S AMENDED INITIAL BRIEF

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INTRODUCTION

Respondent Larry Klayman ("Mr. Klayman") hereby submits the following brief pursuant to R. Reg. Fla. Bar 3-7.7(c)(3) seeking review by The Florida Supreme Court (the "Court") of the Report ("Report") of Referee J. Lee Marsh (the "Referee") in this reciprocal discipline proceeding. This reciprocal proceeding derives from a suspension order of the District of Columbia Court of Appeals in *In re Klayman*, 20-BG-583 (D.C.C.A.) (the "Sataki Suspension Order") and a suspension order from the District of Columbia Court of Appeals in *In re Klayman*, 18-BG-100 (D.C.C.A.) (the "Judicial Watch Suspension Order").

All items in the Record dated May 17, 2024 will be designated as "(R-[index number][1], [page number])." The Florida Bar's hearing exhibits filed on May 24, 2024 will be designated as "(BTE-[exhibit number], page number])." The Respondent's hearing exhibits filed on May 24, 2024 will be designated as "(FRX-[exhibit number, [page number])."

STATEMENT OF THE CASE AND FACTS

[1] Corresponding with the Third Amended Index of Record docketed on May 24, 2024.

Mr. Klayman is a prominent conservative and Republican public interest litigator and advocate who has been a member continuously in good standing with The Florida Bar since his admission on December 7, 1977, nearly forty-seven years ago. (FRX-2, 0004). Mr. Klayman cherishes the privilege of practicing law in Florida as a long-time citizen and resident of this state; he ran for U.S. Senate in Florida as a Republican in 2003-2004. Florida is Mr. Klayman's primary legal jurisdiction, and his ability to practice law in Florida is critical to the livelihood of his family and colleagues.

Mr. Klayman firmly believes in the importance of ethics in the legal profession, which is why he first founded Judicial Watch in 1994 and subsequently Freedom Watch in 2004. Mr. Klayman has had a distinguished career as both a conservative public interest activist litigator and private practice attorney. A few of his noteworthy accomplishments include: (1) as a trial lawyer for the U.S. Department of Justice's Antitrust Division, Mr. Klayman was part of the trial team during the Reagan administration which successfully broke up the AT&T monopoly, thereby creating competition in the telecommunications industry; (2) while at

Judicial Watch, Mr. Klayman obtained a court ruling that President Bill Clinton committed a crime during the "Filegate" litigation and also triggered the "Chinagate" scandal in a Freedom of Information Act case under 5 U.S.C. § 552 et seq. As a result, Judicial Watch was ultimately awarded almost a million dollars; and (3) while at Freedom Watch, Mr. Klayman obtained two preliminary injunctions in an action against the National Security Agency and the Obama administration. The Honorable Richard Leon of the U.S. District Court for the District of Columbia found for what is believed to have been the first time in this country that the collection of metadata telephone records by the National Security Agency was likely unconstitutional. Presumably because of that ruling, Congress enacted the USA Freedom Act, which sought to end illegal and unconstitutional mass surveillance by government intelligence agencies and the Federal Bureau of Investigation. Mr. Klayman refers the Court to his abbreviated biography for further examples of his litigation successes throughout the years. (FRX-1, 0002).

At this point, Mr. Klayman's distinguished career has been jeopardized. The Referee has recommended a two-year suspension. As a practical matter, this will effectively finish his career, given his

age. The result is difficult to understand given the nature of the offenses involved. What is particularly troubling is the Court's determination to increase—*sua sponte*—the sanction sought by FOBC, given the unprecedented and unexplainable delays in the prosecution of the related proceedings, and the extensive due process violations detailed herein.

I. The Sataki Suspension Matter

The events giving rise to the Sataki Suspension matter occurred in or around the year 2010. They involved Mr. Klayman's representation of the Complainant, Elham Sataki ("Ms. Sataki"), who had represented to Mr. Klayman that she had been sexually harassed at her place of employment at Voice of America ("VOA") and wanted to take legal action to remedy her situation. The allegations of sexual harassment were investigated by the Office of Civil Rights and ultimately deemed to be false. (FRX-25, 1542; FRX-24, 1139-1140).

At the time, Mr. Klayman had no reason to doubt what Ms. Sataki was telling him. Along with Ms. Sataki's union representative at VOA, Mr. Timothy Shamble, the three formulated a plan to have Ms. Sataki relocate to Los Angeles, away from her alleged harasser.

The record clearly reflects that Ms. Sataki wanted to relocate to the Los Angeles VOA branch because it was where her friends and family were located and had a large Persian population. Because the primary relief sought was equitable relief, there was no fee agreement between Mr. Klayman and Ms. Sataki; rather, the record reflects that Mr. Klayman and Ms. Sataki agreed that the representation would be *pro bono*. That arrangement remained throughout Mr. Klayman's representation of Ms. Sataki.

At the onset of the representation, Mr. Klayman, Ms. Sataki, and Mr. Shamble all agreed to try to coax a settlement from VOA to achieve Ms. Sataki's goals through the use of publicity. This is clearly reflected in the record, both by Ms. Sataki's own testimony ("Q: Did you ultimately agree with Mr. Klayman about the publicity?" "A: I did."),[2] as well as her actions. In fact, Ms. Sataki, Mr. Shamble, and Mr. Klayman went together to the Capitol Mall in Washington D.C. to hand out flyers addressing her situation.

When publicity ultimately failed, Mr. Klayman, Ms. Sataki, and Mr. Shamble decided to pursue litigation in the form of a *Bivens* Complaint against the Broadcasting Board of Governors

[2] FRX-24, 1174.

("BBG") of VOA. The record reflects that this was agreed to by everyone. The *Bivens* Complaint was assigned to the Honorable Colleen Kollar-Kotelly ("Judge Kotelly"). Mr. Klayman informed Ms. Sataki and Mr. Shamble immediately that he had a difficult history with Judge Kotelly, as demonstrated in the record. (FRX-24, 0408). Mr. Klayman's concerns were realized as the *Bivens* case unfolded, and he ultimately felt compelled to move to disqualify her; nevertheless, that decision was only implemented after obtaining Ms. Sataki's informed consent. (FRX-24, 1315-16).

During the representation, Mr. Klayman and Ms. Sataki developed a close friendship. Mr. Klayman admittedly cared deeply for Ms. Sataki, but this relationship never became sexual or romantic; to the contrary, the record reflects that Mr. Klayman never sought that type of relationship with Ms. Sataki.[3] (FRX-24, 1270). Unfortunately, however, it became apparent to Mr. Klayman that Ms. Sataki was taking advantage of him when she asked him to buy her a car. She became abusive and hostile toward Klayman, accusing him of taking bribes and mocking his religion as a

[3] A review of the Specification of Charges, FRX-4, will reflect that were no charges to that effect.

Messianic Jew when the *Bivens* case did not go according to plan. At that point, Mr. Klayman advised Ms. Sataki to seek other counsel; he recommended famed women's rights lawyer Gloria Allred, who is a friend of Mr. Klayman, or VOA private practitioner Tim Shea. (FRX-24, 1270). However, Ms. Sataki implored Mr. Klayman to continue as her counsel. (FRX-6, 0278).[4]

Ms. Sataki later became impossible to reach, as confirmed by Mr. Shamble. Mr. Klayman became appropriately suspicious when he received letters purporting to be from Ms. Sataki, instructing him to terminate her cases. The letters were written in perfect English, despite Ms. Sataki's poor written English. Under the circumstances, Mr. Klayman believed that he had a duty to verify this instruction from Ms. Sataki directly. When he was unable to contact her,[5] Mr. Klayman filed a Notice of Appeal on Ms. Sataki's behalf in the *Bivens* case simply to ensure that her legal rights were not forfeited while he continued his efforts to confirm her wishes. Mr. Klayman's concerns about the source of the "termination"

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[4] The Board itself found, "Respondent repeatedly communicated his feelings to E.S., and **that she asked him to continue with the representation**…." (FRX-6, 278).

[5] (FRX-24, 1020).

letters proved to be valid as the record reflects that Ms. Sataki filed another Notice of Appeal *pro se* later on in the *Bivens* case (FRX-24, 1031), evidencing that she did *not* want her case dismissed. Indeed, she asked District of Columbia Office of Disciplinary Counsel ("DCODC") many years later if they could pursue her claims against VOA on her behalf. (FRX-24, 1080).

After Mr. Klayman's representation of Ms. Sataki concluded, he discovered that she had filed complaints against him with DCODC as well as The Florida Bar and The Pennsylvania Bar. (FRX-7, 0303). Because no action was taken by either of these jurisdictions, Mr. Klayman reasonably presumed that The Florida Bar and The Pennsylvania Bar had determined that there was no probable cause to pursue Ms. Sataki's claims. In addition, as Klayman had not heard anything from DCODC for over seven years, he also assumed that the DCODC matter had similarly been closed. Mr. Klayman was therefore shocked to learn in 2017 that DCODC had instituted a Specification of Charges against him. (FRX-4, 0068-0079). That matter then went to the Ad Hoc Hearing Committee ("AHHC") and Board on Professional Responsibility ("Board") before being presented to the D.C. Court of Appeals.

On January 7, 2021, the D.C. Court of Appeals "temporarily" suspended Mr. Klayman pending resolution. (FRX-23, 0918-0919). Following the suspension, this matter languished *for twenty months*—longer than the ultimate eighteen-month suspension—before an order of suspension was entered on September 15, 2022. (FRX-3, 0012-0018). Thus, Mr. Klayman was effectively suspended for a total of thirty-eight months, which has already been served.

II. The Judicial Watch Suspension Matter.

The Judicial Watch Suspension Matter involved the representation of Ms. Sandra Cobas, Ms. Louise Benson, and Mr. Peter Paul that Mr. Klayman undertook in or around 2006, after Mr. Klayman left Judicial Watch. In that matter, DCODC did not institute a specification of charges against Mr. Klayman until 2013—a delay of approximately eight years. (FRX-42, 1862-1882). That matter then went to AHHC and the Board and Mr. Klayman was suspended from the practice of law for a period of ninety (90) days on June 11, 2020, based upon a claimed conflict of interest. Crucially, however, the D.C. Court of Appeals made a point of finding that "[the Court was] not left with 'serious doubt' or 'real

skepticism' that M. Klayman can practice ethically." (FRX-3, 0065). FOBC did not begin reciprocal discipline proceedings until August of 2023, *over three years after the D.C. Court of Appeals' order of suspension* in the Judicial Watch Suspension Matter, and some thirteen years following the initial filing of the claims. (FRX-3).

SUMMARY OF THE ARGUMENT

This reciprocal proceeding should never have been brought by Florida Office of Bar Counsel ("FOBC"). Not only is it time-barred, Respondent Klayman was also denied due process by both the District of Columbia and Florida for the reasons explained herein.

Most notably, this matter was time-barred at every level, including both underlying disciplinary proceedings, starting with the unjustifiable delays in the District of Columbia, and then with The Florida Bar, which effectively sat on Ms. Sataki's complaint for over ten years, only to then take up the issues raised therein as a "reciprocal matter," when it undoubtedly had the opportunity to pursue disciplinary proceedings when the complaint was first presented. As discussed in this brief, the record reflects that Ms. Sataki filed a disciplinary complaint against Mr. Klayman in or around 2011, but action was ever taken. It must therefore be

presumed that the Bar simply failed to find probable cause to prosecute a claim. If it did not, and simply waited for somebody else in some other jurisdiction to initiate proceedings, then the statute of limitations clearly ran while the case was sitting on the shelf.

The Referee and FOBC seized upon the fact that any evidence that The Florida Bar received Ms. Sataki's disciplinary complaint in or around 2011 has long since been lost and/or destroyed, given the now nearly fourteen-year passage of time. However, the Court must realize that any harm flowing from this loss of evidence cannot be placed on Mr. Klayman. *He did not occasion this delay*. Indeed, this type of situation precisely underscores why the doctrine of laches was created—to protect individuals from undue prejudice resulting from a delay that they simply had no control over.

There was also a paucity of proof of any disciplinary violation. This is clearly shown in the record. Mr. Klayman has provided detailed records which show his contention that there was no evidence that he had violated any applicable ethical rules. As just one of the many examples, he provides AHHC hearing cites in the Sataki Suspension Matter which confirmed Ms. Sataki's admission

that she had approved of pursuing her claims through adverse publicity, which included personally publicizing her case in conjunction with her union representative, Mr. Shamble, on Capitol Hill. That proof—which was corroborated by independent witnesses—runs contrary to the very allegations which were alleged against Mr. Klayman.

The serious due process violations in this case, in both the District of Columbia and Florida, must be considered by the Court. The most prominent examples are the fact that Mr. Klayman was completely denied discovery and witnesses died or became unavailable, despite the extraordinary passage of time—caused solely by DCODC—which dramatically hampered Mr. Klayman's ability to defend himself. In *any* jurisdiction, this type of event would clearly raise due process concerns.

LEGAL STANDARD

In a reciprocal discipline matter, the law is well settled that the Court is "not automatically bound by an out-of-state determination of guilt by a disciplinary agency." *Fla. Bar v. Kandekore*, 766 So. 2d 1004, 1007 (Fla. 2000). In *Kandekore*, this

Court established the following standard for determining whether another jurisdiction's findings should be accepted as conclusive:

> [W]hen the accused attorney shows that the proceeding in the foreign state was so deficient or lacking in notice or opportunity to be heard, that there was such a paucity of proof, or that there was some other grave reason which would make it unjust to accept the foreign judgment as conclusive proof of guilt of the misconduct involved Florida can elect not to be bound thereby. *Id.*

See also Fla. Bar v. Wilkes, 179 So. 2d 193 (Fla. 1965). Thus, a Florida referee is free to essentially consider the inquiry *de novo* if there is "grave reason" to believe that the earlier proceedings were unjust.

Wilkes explained the logic behind the decision to not automatically adopt findings made in other jurisdictions:

> For at least two reasons it would be incongruous to apply the principle of the full faith and credit provision to judgments of disbarment. First, the issues adjudicated are not the kind to which the clause was intended to apply.... Second, to our knowledge neither of the principles under discussion has ever been held to require one state automatically to admit to practice an individual merely because a sister state has admitted him. (Those states which do admit to practice on a showing of admission in certain other states do so on the basis of reciprocity, and not on any obligation of comity or full faith and credit.) Thus, if these principles do not control or affect admission to practice there is no logical basis upon which they can be made applicable to disbarment or removal from practice. This is so because the authority

> and responsibility of the state is the same in admission to practice as it is in disbarment. It is to protect the public against those who for any reason are unfit to practice law. Both functions are given to this court under our state constitution *and we must exercise both or abdicate our constitutional mandate under Art. V, Sec. 23, Florida Constitution,* F.S.A.

Id. at 196. (Emphasis added.) *See also Fla. Bar v. Tipler*, 8 So. 3d 1109 (Fla. 2009). Furthermore, even where proof of "guilt" by another jurisdiction is deemed adopted, a finding to that effect does not apply to the discipline imposed. "[T]he discipline awarded in the foreign judgment is not binding on Florida." *Wilkes*, 179 So. 2d at 201. Lastly, whether discovery was allowed in a foreign jurisdiction is a factor this Court must consider in determining whether to adopt discipline from another jurisdiction. *Tipler,* 8 So. 3d at 1117.

ARGUMENT

I. Both the Sataki Suspension Matter and the Judicial Watch Suspension Matter Are Time-Barred as a Matter of Law.

Under Florida law, attorney discipline matters are subject to both a six-year statute of limitations, as well as the doctrine of laches. In the District of Columbia, there is no statute of limitations, but the doctrine of laches does apply. Apparently for that reason, at the sanctions hearing, a choice of law issue was

raised by the Referee pursuant to *Merkle v. Robinson*, 737 So. 2d 540 (Fla. 1999).

Merkle was a *tort* case involving a statute of limitations in a medical malpractice action. *Merkle* expressly found that "*in tort actions* involving more than one state, all substantive issues should be determined in accordance with the law of the state having the most 'significant relationship' to the occurrence and parties." *Id.* at 542 (emphasis added). That decision was not appropriate for application here and does not preclude application of Florida's six-year statute of limitations.

First, *Merkle* expressly limited its finding to tort actions. This is not a tort action. It is a reciprocal disciplinary process, which is an administrative proceeding.

Next, even assuming that the logic in *Merkle* is applicable here, any analysis would still require a determination as to which state has the most "significant relationship" to these proceedings. That assessment clearly favors the application of Florida law. This is a reciprocal disciplinary proceeding being conducted under the authority of the Supreme Court of Florida. The rules applied in this matter necessarily implicate Florida's rules of attorney conduct,

including the Rules Regulating The Florida Bar and the evidentiary rules governing the proceedings. As undersigned counsel noted during his testimony,[6] "if you look at the opinions that are cited, some of the opinions from other jurisdictions make it clear that each state really has to abide by its own rules and decide under its own laws whether or not to proceed and to what extent to proceed on claims being advanced against a lawyer in multiple jurisdictions." (R-81, 2530). This appears to be particularly true to the extent that The Florida Bar is asking a Florida referee and this Court to limit a Florida lawyer's ability to practice law in Florida—not Washington DC. This logic was confirmed by this Court in *Wilkes*, which analogized reciprocal *admission* to the Bar to matters addressing attorney reciprocal discipline. *See supra*, pp. 11-12.

Lastly, the only rights affected by this proceeding are Respondent's right to practice law in Florida, within the purview of Florida's rules and laws. Based on that assessment, even if *Merkle*

[6] Undersigned counsel testified as an expert in this matter. He has since agreed to serve as co-counsel in the presentation of this matter before this Court.

is in fact applicable—and Respondent submits that it is not—Florida's six-year statute of limitations would apply.

In any event, as detailed herein, both the Sataki Suspension Matter and the Judicial Watch Suspension Matter are time-barred, both with regard to the proceedings in the District of Columbia and here in Florida, as well, based on the statute of limitations as well as the doctrine of laches—which applies even under District of Columbia law.

The Florida Supreme Court has also made it clear that "the Bar has an obligation to process disciplinary cases in a fair and just manner." *Fla. Bar v. Kane*, 202 So. 3d 11, 19 (Fla. 2016). *See also Fla. Bar v. Rubin*, 362 So. 2d 12, 16 (Fla. 1978) ("The Bar has consistently demanded that attorneys turn 'square corners' in the conduct of their affairs. An accused attorney has a right to demand no less of the Bar when it musters its resources to prosecute for attorney misconduct."); *Fla. Bar v. Randolph*, 238 So. 2d 635, 639 (Fla. 1970) ("We have pointedly held that the responsibility for exercising diligence in the prosecution rests with the Bar. When it fails in this regard the penalizing incidents which the accused

lawyer suffers from unjust delays, might well supplant more formal judgments as a form of discipline.").

Respondent would respectfully submit that the unjust delays here should supplant "more formal judgments as a form of discipline." The delays amount to the absurd and should have been considered.

In a case styled *In re Burns*, 73 V.I. 600 (2020), a disciplinary complaint was filed against attorney Warren Burns on May 25, 2018. The complaint remained at the Virgin Islands Office of Disciplinary Counsel without further action for slightly less than two years. On March 5, 2020, Burns filed a Petition for Writ of Mandamus to the Supreme Court of the Virgin Islands alleging that the delay in resolving the grievance "had violated his due process rights and continues to cause him harm...." *Id.* at 607.

The court agreed with Burns, while simultaneously acknowledging that a "writ of mandamus is a drastic remedy which should be granted only in extraordinary circumstances." *Id.* at 608. It set forth the relevant standard when determining whether an attorney has been subject to undue delay in attorney discipline matters:

> To the extent the ODC believes it has the unfettered authority to keep an investigation open indefinitely, it is mistaken. Attorney discipline matters are quasi-criminal proceedings to which the constitutional right to due process applies.... Moreover, substantial delays in investigating, prosecuting, and adjudicating grievances are inconsistent with the primary purpose of the disciplinary system, which "is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.

Id. at 610-11. The court then sought guidance from the ABA Model Rules of Lawyer Disciplinary Enforcement, which state that the "[e]valuation, investigation, and the filing and service of formal charges or other disposition of routine matters *generally should be completed within six months*; *complicated matters generally should be completed within twelve months*." *Id.* at 613. (Emphasis added.) The court therefore concluded that Mr. Burns "has a clear and indisputable right to the relief he has sought." *Id.* at 615 ("ODC [must] either dismiss a grievance or transmit it to the PRC for a hearing in a timely fashion; it does not give the ODC the option to simply hold on to a grievance indefinitely.").

The applicability of *Burns* to this case is apparent. Mr. Klayman was subject to <u>significantly</u> longer delays at every single

level. In the Sataki Suspension Matter, the proceedings were dormant for over seven years before DCODC finally filed a Specification of Charges. (FRX-4, 0068). The Judicial Watch Suspension Matter also sat dormant for over seven years before DCODC finally filed a Specification of Charges. (FRX-42, 1862). Those delays were further compounded to the extent that FOBC then sat on this matter for over three years before instituting a reciprocal discipline complaint. The accrued delay by that point totaled some ten years, which then increased by yet another four years, given the time required for the prosecution. The fourteen-year delay is frankly outrageous and unconscionable, and clearly eclipses the two-year delay that Burns faced—a delay that the Supreme Court of the Virgin Islands felt was so egregious that it warranted extraordinary mandamus relief. Given the policy issues addressed in *Burns*, it is clear that this entire reciprocal disciplinary proceeding should be deemed time-barred as well.[7]

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[7] Professor Rotunda's opinion letter further buttresses this conclusion:

In *Florida Bar v. Rubin*, 362 So. 2d 12 (Fla. 1978) (per curiam), the Florida Supreme Court threw out charges because of the Bar's delay in violation of the Florida rules… One can summarize this case as

a. The Sataki Suspension Matter

For the Court's convenience, the following is a brief timeline of relevant dates:

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the Bar delaying finalization of two cases (where the Bar was disappointed with the recommended discipline) because it was confident it would secure a conviction in a third case still in the pipeline in the hope of securing greater overall discipline. The Court said, 'Whatever other objects the rule may seek to achieve, it obviously contemplates that *the Bar should not be free to withhold a referee's report which it finds loo lenient until additional cases can be developed* against the affected attorney, in an effort to justify the more severe discipline which might be warranted by cumulative misconduct. The Bar's violation of the prompt filing requirement in this case, to allow a second grievance proceeding against Rubin to mature, is directly antithetical to the spirit and intent of the rule. In addition, it has inflicted upon Rubin the 'agonizing ordeal' of having to live under a cloud of uncertainties, suspicions, and accusations for a period in excess of that which the rules were designed to tolerate. (FRX-19, 745).

Professor Rotunda also referenced other jurisdictions where such delays have been found to have been improper. For instance, in *Office of Prof'l Conduct v. Dahlquist (In re Dahlquist)*, 2019 UT 15, 443 P.3d 1205 (Sup.Ct.), the Supreme Court of Utah interpreted its four-year statute of limitations for attorney discipline proceedings as running from the date that "a party with an interest in filing an informal complaint" discovers the misconduct. *Id*. at P29. Similarly, in *In re Grigsby*, 815 N.W. 2d 836, the Minnesota Supreme Court concluded that a 727 day delay in instituting a disciplinary action--less than two years--mandated dismissal even where the attorney's ethical violations were "obvious." In *Tennessee Bar Ass'n v. Berke*, 344 S.W. 2d 567, 571-72 (Tenn. 1961), the Tennessee Supreme Court dismissed disciplinary proceedings for laches when the grievance was filed nine years after the alleged misconduct and the attorney was not responsible for the delay. None of the delays here were occasioned by Respondent.

2010 – 2011: Mr. Klayman's representation of Ms. Sataki.

November 2, 2010: Ms. Sataki files a complaint against Mr. Klayman with DCODC. (FRX-7).

July 7, 2011: DCODC sends Ms. Sataki a letter asking for a written reply to Mr. Klayman's explanations on or before July 15, 2011 which stated "[i]f we do not hear from you promptly, we may assume that you are satisfied with the attorney's explanations." (FRX-15, 0689). Ms. Sataki never replied. (FRX-16, 0691).

October 24, 2011: Ms. Sataki files Supplemental Complaint with DCODC where she attests—with a certification that this is true and correct to the best of her knowledge—"Complaint also filed in Pennsylvania and Florida." (FRX-7, 0305). This included a signed attestation that Ms. Sataki "certifies to the Office of Bar Counsel that the statements in the foregoing Complaint are true and correct to the best of my knowledge." (FRX-7, 0306). These filings completely undermine the Referee's primary reason for discrediting Klayman's contention that the Bar had necessarily rejected the Florida filings in 2011, because Ms. Sataki's supplemental complaint was not made "under penalty of perjury." That finding was simply wrong. Further, it is difficult to understand how the Referee could ignore the primary evidentiary basis for Respondent's contention that the statute of limitations had run with regard to that particular prosecution, given the complainant's own admission that a complaint had **in fact** been filed against Mr. Klayman in Florida over 12 years ago.

January 15, 2014: H. Clay Smith, Assistant Bar Counsel of DCODC emails a private investigator to try to "locate a complainant that has dropped off the map." Mr. Smith admits that Ms. Sataki did not respond to their July 7, 2011 letter and that they had not heard from her since 2011, thereby abandoning her complaint against Mr. Klayman. (FRX-16, 0691).

July 20, 2017: DCODC files a Specification of Charges, seven years after they were filed. (FRX-4).

January 7, 2021: The D.C. Court of Appeals "temporarily" suspends Mr. Klayman. (FRX-23, 0918).

September 15, 2022: The D.C. Court of Appeals suspends Mr. Klayman for another eighteen months. (FRX-3, 0037).

August 9, 2023: FOBC initiates this reciprocal discipline matter in Florida.

Given these irrefutable dates, both the D.C. proceedings and the Florida reciprocal discipline proceedings are necessarily time-barred.

i. The Sataki Suspension Matter is Time-Barred in the District of Columbia.

In the District of Columbia, attorney discipline proceedings are subject to laches. The DCCA has found that attorney disciplinary proceedings are "quasi-criminal in nature." *In re Williams*, 513 A.2d 793, 796 (D.C. 1986). Thus, "[t]he accusatorial quality of attorney discipline proceedings, coupled with their grave consequences, demand the provision of due process safeguards." *Id.* The *Williams* court held that an undue delay that impaired a respondent's defense could result in a due process violation. "*A delay coupled with actual prejudice could result in a due process violation*, in which

case we would be unable to agree with a finding that misconduct had actually been shown." *Id.* at 797.

Here, DCODC did not institute a Specification of Charges until 2017, (FRX-4), over seven years after Ms. Sataki filed her initial complaint against Mr. Klayman. (FRX-7). This extraordinary delay severely prejudiced Mr. Klayman, as the AHHC hearing was not conducted until May of 2018. (FRX-24, 0938). During the interim eight years, Mr. Klayman and his witnesses' memories faded, documents and evidence were lost and destroyed, and material witnesses Dr. Arlene Aviera and Professor Ronald Rotunda became unavailable due to death and illness. Then, to grossly compound this prejudice, Mr. Klayman was denied leave to conduct discovery by the AHHC, despite the unexplained and unjustified delay by DCODC and notwithstanding the fact that discovery is expressly allowed in the District of Columbia in attorney discipline proceedings. (FRX-17). *See* Board on Professional Responsibility Rules, Chapter 3. Importantly, whether discovery was allowed is a factor that this Court must consider in determining whether to adopt discipline from another jurisdiction. *See also Tipler,* 8 So. 3d at 1117 ("Tipler's claim that the Alabama proceedings were deficient

in due process fails because (1) he was afforded a full opportunity to conduct discovery….").

Given this egregious, prejudicial delay, it is clear that under District of Columbia law and the doctrine of laches, the Sataki Suspension Matter is time-barred.

ii. The Sataki Suspension Matter is Time-Barred in Florida.

In addition to being time-barred in the District of Columbia, the Sataki Suspension Matter is also time-barred in Florida under both the statute of limitations and laches. Florida applies a six-year statute of limitations for attorney discipline matters. The Bar is required to open an investigation "within 6 years from the time the matter giving rise to the investigation is discovered or, with due diligence, should have been discovered." Bar Rule 3-7.16(a)(1); *Fla. Bar v. Phoenix*, 311 So. 3d 825, 831 (Fla. 2021). However, Florida also applies the doctrine of laches to unjustifiable delays in attorney discipline matters. *See Fla. Bar v. Walter*, 784 So.2d 1085 (Fla. 2001).

The record here clearly reflects that Ms. Sataki filed a disciplinary complaint with The Florida Bar in 2011. (FRX-7). There was no action taken by The Florida Bar for more than six years.

Recognizing this, FOBC advanced the argument outlined above—which the Referee apparently accepted—that there was no "evidence" that The Florida Bar **actually** received the complaint from Ms. Sataki in 2011.[8] At the sanctions hearing, the Referee commented:

> There is no indication of what address it was sent to, whether it was sent to the proper place. It could have been sent to the governor. It could have been sent to the legislature. It could have been sent to the local 7-11, for all the referee knows. There's a paucity of evidence for it actually being sent to the Florida Bar." (R-86, 3710).

Thus, notwithstanding unrefuted evidence of Sataki having in fact filed a complaint in Florida in 2011, the Referee could only speculate as to why it perhaps had not been received. Then, in his Report, the Referee stated, "that there is no indication of the complaint being made under penalty of perjury or that it may or

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[8] The irony of this argument cannot be overstated. Both The Florida Bar and the District of Columbia Bar sat on Ms. Sataki's complaint for many, many years, only to have the FOBC belatedly advance the argument that critical evidence has not been presented to the court—which may have existed at the time—confirming that Ms. Sataki filed a complaint in 2011.

may not have been served in Florida. Accordingly, this referee finds that Respondent failed to show that the original complaint was ever transmitted to or received by The Florida Bar." (R-83, 2674). That determination was belied by the fact that Ms. Sataki certified to the Office of Bar Counsel "that the statements in the foregoing Complaint are true and correct to the best of my knowledge." (FRX-7, 0306). And of course, those statements included Ms. Sataki's admission that she had filed a complaint in Florida.

The Referee's statements are plainly unsupported by the record. To the contrary, the only evidence in the record is that Ms. Sataki's Complaint was sent to The Florida Bar. There is not one iota of record evidence that The Florida Bar did not receive Ms. Sataki's Complaint in 2011, or that Ms. Sataki sent her Complaint in 2011 to "the governor" or a "local 7-11" instead of the address that certainly would have been provided on the actual complaint itself. Thus, it appears that the Referee strained to find a basis for discrediting uncontroverted evidence, simply to avoid the limitations argument. (*See* R-89, 3795).

There is additional compelling and uncontroverted evidence that The Florida Bar did in fact, receive Ms. Sataki's Complaint in

2011. In the first place, the record shows that The Pennsylvania Bar confirmed to Mr. Klayman that they received the "supplemental complaint" filed by Ms. Sataki in 2011. (FRX-27, 1694). If Ms. Sataki was able to successfully transmit the complaint to Pennsylvania, she should have been presumed to have been able to do so successfully to Florida, as well. Next, as recently as January 5, 2023, Ms. Sataki through her counsel Robert O. Saunooke confirmed that she had sent a disciplinary complaint to Florida in 2011 in the Motion to Amend Answer and Motion to Dismiss which he filed in *Klayman v. Sataki*, 2022-CA-010491 (15th Jud. Cir. Fla.). (R-67, 2096). Indeed, without being unduly glib, the only evidence that Mr. Klayman lacks is perhaps a tracking number showing delivery to The Florida Bar or testimony from the individual working intake at The Florida Bar back in 2011! Unfortunately, Mr. Klayman is unable to obtain such evidence now, nearly fourteen years after the Florida filing due to the unwarranted delays in initiating this matter. This type of prejudice underscores why the doctrine of laches should have been imposed.

Given the fact that it cannot be reasonably disputed that The Florida Bar received Ms. Sataki's Complaint in 2011, undersigned

counsel testified concerning his opinion as an expert at the hearing, which was preceded by an affidavit.

> The Florida Bar would have investigated Ms. Sataki's Complaint back in 2011 when it was filed. The only reasonable conclusion is that The Bar found it to have no merit and dismissed it, as Mr. Klayman was never subjected to any form of discipline as a result of Ms. Sataki's Complaint. Now, some twelve (12) years following the filing of Ms. Sataki's complaint, I believe The Florida Bar should forgo initiating any disciplinary action which relates to Mr. Klayman's representation of Ms. Sataki." (FRX-11, 0401). "Under this scenario, full faith and credit should be given to The Florida Bar's decision to dismiss the Sataki Matter back in and around 2011, and The Florida Bar should not be allowed to relitigate this matter." (FRX-11, 0401).

The affidavit was followed by sworn testimony during the March 28, 2024 hearing:

> If, in fact, the Florida Bar investigated, and there is certainly record evidence that it did, then that – the determination by the Florida Bar not to proceed further should prevent any proceedings at this point in time based upon the same facts and the same allegations. …. And if you look at the opinions that are cited, some of the opinions from other jurisdictions make it clear that each state really has to abide by its own rules and decide under its own laws whether or not to proceed and to what extent to proceed on claims being advanced against a lawyer in multiple jurisdictions. (R-81, 2530).

That testimony was further supported by the legal opinion of Professor Ronald Rotunda, another expert in legal ethics, who sadly

passed away during the period of DCODC's unjustified and unexplained delay. Mr. Rotunda also opined that the Sataki Suspension Matter was time-barred under Florida law:

> A very surprising item about this complaint is that it was filed over five years ago about alleged events that occurred in. December 2009 and shortly thereafter. The complainant, Elham Sataki, made similar complaints to the Pennsylvania Bar and the Florida Bar, both of which dismissed the complaint years ago. For some reason, [DCODC] sat on this complaint for years and is now resurrecting it.... The caselaw shows that DCODC is subject to laches. (R-9, 0150).

Accordingly, the Sataki Suspension Matter is time-barred under Florida law, under both doctrines of statute of limitations and laches.

b. The Judicial Watch Suspension Matter.

For the Court's convenience, below is a brief timeline of relevant dates:

Around 2006 – Underlying events; Mr. Klayman's representation of Ms. Benson, Ms. Cobas, and Mr. Paul.

October 1, 2013 – DCODC institutes a Specification of Charges. (FRX-42).

June 11, 2020 – D.C. Court of Appeals suspends Mr. Klayman for ninety days.

August 29, 2023 – FOBC initiates reciprocal discipline complaint.

For the reasons set forth in the preceding section, this proceeding should have been time-barred in the District of Columbia under the doctrine of laches, given the approximately twelve-year delay between the events at issue and the ninety-day suspension. This was further compounded the additional three-year delay which was apparently required before Florida saw fit to commence reciprocal discipline – a total of approximately fifteen years. (FRX-42). As was observed by Professor Rotunda:

> That brings up the problem of laches. The doctrine of laches bars untimely claims not otherwise barred by the statute of limitations.... Laches applies to bar a claim when a plaintiff has unreasonably delayed in asserting a claim and there was undue prejudice to the defendant as a result of the delay. *Jeanblanc v. Oliver Carr Co.*, 1995 U.S. App. LEXIS 19995, *9 (D.C. Cir. June 21, 1995). Among the inequities that the doctrine of laches protects against is the loss of or difficulty in resurrecting pertinent evidence. *Id.*
>
> Note that Mr. Klayman left Judicial Watch on September 19, 2003. He filed his appearance on behalf of Ms. Cobas on August 7, 2006 — long after he left Judicial Watch. There is no claim that he violated any confidences of Judicial Watch or that he earlier represented Judicial Watch against Ms. Cobas. This Bar Complaint was filed on May 1, 2014. The delay in filing the complaint was nearly 8 years.
>
> The conduct alleged by Bar Counsel occurred between seven and eight years ago. Given the substantial delay in

> bringing the present Petition before the Board, Mr. Klayman's ability to defend this case has been detrimentally prejudiced, particularly as recollection and memory fade over the course of approximately seven to eight years and witnesses and the individuals involved may be unavailable in support of Mr. Klayman's defense. In Paul's case, for instance, he is in federal prison in Texas. Ms. Cobas has health problems and Ms. Benson is now an 83-year-old woman. The Bar should not use this unique factual situation to discipline Mr. Klayman given the equitable doctrine of laches. (FRX-45, 2604-2605).

The inexplicable three-year delay by FOBC in initiating reciprocal discipline compounded the prejudice stemming from the delay in the District of Columbia; the doctrine of laches should be applied here as well, particularly since the apparent motivation to delay the reciprocal discipline proceeding reflects a transparent attempt to "stack" disciplinary proceedings—the Judicial Watch Suspension Matter with the Sataki Suspension Matter—a practice that was expressly forbidden by this Court in *Rubin*:

> Whatever other objects the rule may seek to achieve, it obviously contemplates that *the Bar should not be free to withhold a referee 's report which it finds too lenient until additional cases can be developed* against the affected attorney, in an effort to justify the more severe discipline which might be warranted by cumulative misconduct. The Bar's violation of the prompt filing requirement in this case, to allow a second grievance proceeding against Rubin to mature, is directly antithetical to the spirit and intent of the rule. In addition, it has inflicted upon Rubin the 'agonizing ordeal' of having to live under a cloud of

> uncertainties, suspicions, and accusations for a period in excess of that which the rules were designed to tolerate. (Emphasis added).

Rubin, 362 So. 2d at 15. *See also Fla. Bar v. D'Ambrosio*, 25 So. 3d 1209 (Fla. 2009) (referring to the practice of "stacking" disciplinary proceedings as unfair).

The Judicial Watch Suspension Matter is also time-barred under both District of Columbia and Florida law.

II. The Record Reflects a "Paucity of Proof" Under *Kandekore* which should have mandated Rejection of the District of Columbia Suspension Orders.

As was noted above, this Court is not bound by the orders of the D.C. Court of Appeals, particularly where there was a "paucity of proof" in the District of Columbia disciplinary proceedings. Here, the record clearly shows this "paucity of proof," which the Referee simply ignored.

a. The Sataki Suspension Matter.

First and foremost, Mr. Klayman was not charged with anything even remotely suggesting that he had acted dishonestly, or that he failed to represent Ms. Sataki competently or zealously. This was explicitly recognized by the chairperson of the AHHC, Warren Anthony Fitch: "CHAIRMAN FITCH: I do note, Mr. Klayman, there's

no charge here about lack of zealousness. There's no charge of lack of competency." (FRX-24, 0980). Instead, the charges against Klayman appear to stem solely from his desire to do everything possible to help his client achieve her desired outcome in part because of the feelings he developed for his client.

Mr. Klayman had seven material witnesses testify on his behalf at the AHHC hearing, including Mr. Shamble, Ms. Sataki's union representative and president, Ms. Gloria Allred, Hon. Stanley Sporkin, Mr. Keya Dash and Mr. Joshua Klayman, as well as Mr. Klayman himself and Professor Ronald Rotunda through a legal opinion.[9] Ms. Sataki was the only material witness for DCODC. Yet she was impeached on numerous occasions, as confirmed by the D.C. Court of Appeals: "It is true that [Ms. Sataki's] testimony on various issues was impeached or contradicted by other evidence." (FRX-3, 0054). Despite this, the D.C. Court of Appeals concluded that "the Hearing Committee and the Board acted reasonably by

[9] Professor Rotunda passed away during the interim period of delay occasioned by DCODC, which is why he could not testify in person.

choosing to largely credit E.S.'s testimony over that of Mr. Klayman." (FRX-3, 0055).[10]

The problem with this statement is apparent. Even assuming that Mr. Klayman's testimony was somehow seen as self-serving and was effectively "cancelled out" by Ms. Sataki's impeached testimony, the D.C. Court of Appeals still failed to consider the unimpeached testimony of the remaining material witnesses, which show a clear paucity of proof of any ethical violation. In particular, the Court should certainly have considered the compelling testimony of Mr. Shamble—Ms. Sataki's union representative—who in effect served as Mr. Klayman's "co-counsel" and who had first-hand knowledge of every facet of Mr. Klayman's representation of Ms. Sataki.

> Q. Now did there come a point in time that you met me?
> A. Yes.
> Q. Larry Klayman?
> A. Yes.
> Q. When was that?
> A. She had contacted me and said that she had hired an attorney that she had met, and she brought you in to discuss the case. So I met you in my office.
> Q. And we met with Ms. Sataki present?

[10] A review of this order also shows that Ms. Sataki's name was shielded as "E.S." whereas Mr. Klayman's full name was published for consumption by D.C. liberal news media.

A. Yes.
Q. Did we have several meetings in that regard with her?
A. Yes. (FRX-24, 1222).

As set forth herein below, there is an overwhelming amount of evidence—both testimonial from Mr. Klayman's witnesses as well as physical—that there was a paucity of proof for each of the disciplinary violations at issue.

i. District of Columbia Rule of Professional Conduct 1.7(b)(4) – Conflict of Interest – Based on Mr. Klayman's "Emotional Interest" and Personal Relationship with Ms. Sataki.

The D.C. Court of Appeals found that Mr. Klayman had a conflict of interest because he had "strong feelings" for Ms. Sataki. (FRX-3, 0056). It did **not** find that Mr. Klayman's "feelings" were sexual or romantic or nature. Instead, the D.C. Court of Appeals simply wrote, "[w]hether or not his feelings for [Ms. Sataki] were sexual or romantic in nature, Mr. Klayman indisputably had strong feelings for [Ms. Sataki]." (FRX-3, 0055). The Referee, however irrelevant, then *sua sponte* altered the findings of the D.C. Court of Appeals and stated in his Report, "[i]n April 2010, Respondent began to repeatedly express **romantic feelings** towards E.S. Respondent told E.S. that he loved her…." (FRX-3, 0040).

This is belied by the Record, which contains uncontroverted testimony by Mr. Klayman on this matter. While Klayman explained that he cared deeply for Ms. Sataki, his "love" was in a platonic sense. He never intended a sexual or romantic relationship with her. (FRX-24, 1270). There was simply no evidence of an actual ethical violation.

Having an "emotional interest" does not represent an ethical violation in <u>any</u> jurisdiction. Neither the D.C. Court of Appeals, the FOBC nor the Referee have provided any legal authority to the contrary. This is for good reason—there almost certainly is not a single jurisdiction which has found that an attorney is not allowed to care deeply for, or even love, a client. Such an illogical finding would mean that attorneys are prohibited from representing spouses, family members, and even friends. Bar associations can only police the **actions** of their members. It is impossible for them, or frankly anyone, to police nebulous, undefinable, subjective **feelings**—particularly in a situation where there has been a near decade and a half delay in prosecution. Most people cannot accurately remember how they felt weeks ago, much less nearly fourteen years ago.

This argument is borne out by the fact that nearly every bar association has implemented rules pertaining to *sexual* relationships between attorneys and clients. Bar associations which have considered this issue have determined that only inappropriate **actions** can give rise to attorney discipline. Here, the record unequivocally reflects that there was no sexual component to relationship; thus, there is no conflict of interest.

It is certainly important to note that even a sexual relationship between an attorney and a client would not necessarily support prosecution for an ethical violation under Florida's Rules of Professional conduct. In Florida, sexual relationships with clients are not prohibited *unless* the relationship "exploits or adversely affects the interests of the client or the lawyer-client relationship." Fla. Bar Rule 4-8.4. Here, there is no suggestion that Mr. Klayman failed to represent Ms. Sataki zealously, diligently, or competently, as found by AHHC chairperson Mr. Fitch. (FRX-24, 0980). To the contrary, Mr. Shamble testified that he actually *recommended* Mr. Klayman to many other VOA employees after seeing how hard he worked for Ms. Sataki. (FRX-24, 1225). Mr. Shamble also testified, "I've had several employees that have hired attorneys, and they

have asked for the union to cooperate with them and to, you know, help them with their cases. But, in all honesty, I've never seen one go as far and as dedicated as Mr. Klayman was towards Ms. Sataki. **I felt like he went above and beyond**." (FRX-24, 1226) (emphasis added).

Lastly, the record reflects that even if there was a conflict of interest—and there categorically was not—it was waived by Ms. Sataki. When Mr. Klayman realized that his representation of Ms. Sataki was becoming difficult due to their personal relationship, he advised Ms. Sataki to seek other counsel, such as Ms. Gloria Allred or Tim Shea. (FRX-24, 1270). Notwithstanding that recommendation, Ms. Sataki requested that Mr. Klayman continue representing her. This was reflected in the Board's Report when it wrote that Mr. Klayman "repeatedly communicated his feelings to [Ms. Sataki]" and "she asked him to continue with the representation." (FRX-6, 0277).

In sum, there is a paucity of proof that there was any conflict of interest. While Mr. Klayman cared deeply for Ms. Sataki, that is not an ethical violation in any jurisdiction.

ii. District of Columbia Rule of Professional Conduct 1.6 (a)(1) for Revealing and Using Client Secrets – Based on Using Publicity.

The D.C. Court of Appeals found that Mr. Klayman had violated D.C. R. Prof. Cond. 1.6(a)(1)'s prohibition against "revealing and using client secrets" by attempting to achieve Ms. Sataki's goals through the use of publicity. The Referee then made numerous findings in this regard that are not supported by the record. At a bare minimum, the Referees findings paint an incomplete and inaccurate picture of the facts on the record. For example, the Referee wrote that Ms. Sataki:

> …wanted the case to be 'very quietly handled.' She explained her concerns about publicity to Respondent. Respondent eventually began to pursue a strategy designed to draw attention to E.S.'s case. (R- 2666-2667).[11]

Yet the record reflects that Ms. Sataki admitted at the AHHC hearing that she agreed to use publicity:

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[11] The Referee simply adopted in haste, without any consideration of Mr. Klayman's submission, the proposed report that was presented to him by FOBC—which FOBC in turn simply "borrowed" from DCODC. Thus, the Report is replete with factual errors and misstatements. *See* Respondent Mr. Klayman's Proposed Order of May 1, 2024 docketed as Exhibit 3 to Respondent Larry Elliot Klayman's Notice of Intent to Seek Report of Referee.

> Q: "And that we agreed we would get some positive publicity here to try to coerce VOA into a favorable settlement so you could be in LA, correct?" A: "Correct." (FRX-24, 1057).
>
> Q: "Did you ultimately agree with Mr. Klayman about the publicity?" A: "I did." (FRX-24, 1174).

Any argument that Ms. Sataki was somehow coerced or pressured into using publicity is also unsupported by the record. In this regard, the uncontroverted testimony of Ms. Sataki as well as Mr. Shamble—who had first-hand knowledge of the contemporaneous details of and personally participated in Mr. Klayman's representation of Ms. Sataki—is crucial. Remarkably, neither the D.C. Court of Appeals nor the Referee even *acknowledged* the testimony of this key witness.

Ms. Sataki further testified that she knew contemporaneously of Mr. Klayman's efforts to publicize her case and did not object:

> Q: "You are aware that, and you testified to this yesterday, that I believed that you had agreed to that and I wrote articles that were very favorable to you. You're aware of that?"
> A. "Yes."
> Q. And I sent you copies of them at the time."
> A. "Yes."
> Q. "Emailed them to you."
> A. "Yes, you did."
> Q. But you are aware that I copied you on an email to Los Angeles Times where I was trying to get an interview for

> you?”…. “And you never sent me back anything saying, "Larry don't do this. I don't want to have an interview with the LA Times."
> A. “Correct, I -- correct.” (FRX-24, 1057-1058).

Mr. Shamble testified that he, Mr. Klayman, and Ms. Sataki met together and discussed and approved using publicity:

> Q: “Did there come a time when we had discussions, you, me and her, about using publicity to try to coax the agency into settlement or a reasonable solution?”
> A. “Yes.”
> Q. “Was she present at the time?”
> A. “Yes. It was in my office.” (FRX-24, 1223).

Mr. Shamble then testified that Ms. Sataki herself personally participated in publicizing her case, severely undercutting any argument that Ms. Sataki had been coerced into using publicity and did not actually wish to do so:

> Q. “And did there come a point in time when you actually went with her and distributed publicity?”
> A. “I remember one time. The VOA was on the mall here in Washington, some kind of public -- it might have been a recruitment fair or something. But we had an article and both her and I were distributing it to people in the vicinity, tried to let people know and to let the agency know that, you know, we were going to publicize this.”
> Q. “And she was there when she gave it out and she approved of that?”
> A. “Yes. We were both on the mall handing that out.” (FRX-24, 1223).

In addition to this compelling testimony, Mr. Klayman presented the testimony of Keya Dash ("Mr. Dash"), a prominent member of the Persian community in the Washington D.C. area, who also confirmed that Ms. Sataki wished to publicize her case. For instance, Mr. Dash testified that he was present at a dinner with Mr. Klayman and Ms. Sataki where they sought the assistance of John Boehner regarding Ms. Sataki's case:

> Q. What did I say to Ms. Sataki about Mr. Boehner?
> A. "Let's go talk to Mr. Boehner."
> Q. With regard to helping her?
> A. That's right. To plead her case to him and enlist his support.
> Q. What did you observe at that point? Did we then go over and I introduced Ms. Sataki?
> A. I observed a couple of things: that you knew him, that you were friendly with him, that he heard the case. He seemed very interested in it. In fact he seemed to side with her. And that it was a good interaction.
> Q. Were you aware as to whether or not I then sought his help?
> A. Excuse me?
> Q. Are you aware whether or not we sought his help to resolve a situation with her at Voice of America after that?
> A. Yes, I am aware that that was the entire purpose. (FRX-24, 1360).

Mr. Dash also testified that Ms. Sataki sought his help personally to publicize her case using his connections in the Persian community:

> Q. So, Mr. Dash, you used your personal efforts and the prestige of your family in the Persian community to try to help Ms. Sataki?
> A. Yes. I believe she knew I was reluctant to help in the beginning and **she tried to have me coax them, and I did**. I did speak to her. (FRX-24, 1360) (emphasis added).

Accordingly, there was a paucity of proof that Mr. Klayman had improperly revealed and used client secrets. Rather, the record shows that this was part of a strategy that was thoroughly discussed and approved between Mr. Klayman, Ms. Sataki, and Mr. Shamble.

iii. District of Columbia Rules of Professional Conduct 1.2 and 1.16(a)(3) for Failure to Abide by Client's Wishes and Failure to Cease Representation.

The D.C. Court of Appeals concluded that Mr. Klayman had violated D.C. R. Prof. Cond. 1.2 for "failure to abide by client's wishes" and Rule 1.16(a)(3) for "failure to cease representation" by filing a Notice of Appeal in the *Bivens* case to preserve Ms. Sataki's jurisdiction over the case while he attempted to confirm with her that she wished to drop the matter after she became unresponsive. The Referee's Report omits numerous material facts and concludes without any record citation that "[i]n July 2010, E.S. wrote to Respondent and directed him to withdraw the case against the

BBG.... Respondent also continued to act on E.S.'s behalf." (R-83, 2668).

Mr. Klayman was caught in a difficult situation at that precise point in time, without any reasonable course of action available. He had to balance competing ethical considerations without guidance from his client, who had had ceased responding to Klayman's request for direction. This was particularly problematic in light of the August 4, 2010 letter purportedly terminating representation, which was written in perfect English. The language utilized did not comport with Mr. Klayman's knowledge of Ms. Sataki's poor written English. (FRX-24, 1260). Mr. Klayman knew that the letter had not been written by her, and thus he testified: "[t]hat's why I needed to be able to talk to her (before I dismissed cases)." (FRX-24, 1260). Because he was unable to reach Ms. Sataki to confirm any desire to dismiss her case, he knew he could not simply abandon Ms. Sataki's case, which could also have subjected him to discipline, as well as a potential malpractice lawsuit for adversely affecting her legal rights, without her consent.

Given the competing ethical considerations, Mr. Klayman chose to err on the side of caution, to ensure that Ms. Sataki's

rights were not forfeited. He did not litigate Ms. Sataki's case any further; rather, he simply moved for reconsideration of issues that had already been briefed. He then filed a notice of appeal to ensure that Ms. Sataki's right of appeal was not forfeited. Ultimately, Mr. Klayman's decision was vindicated by the fact that Ms. Sataki *herself*, filed an untimely Notice of Appeal [12] eight days after Klayman filed the initial notice.[13] Years later, Ms. Sataki *admitted* that she did not want to stop prosecuting her case, even asking DCODC to represent her in this regard:

> Q: "That you wanted Bar Counsel to file a sexual harassment case for you. You asked them that within the last year, against VOA."
> A: "I asked if it's doable."
> Q" And you asked Bar Counsel to do it for you, correct?
> A: "I asked if it's doable…." (FRX-24, 1080).

Thus, the record reflects that Mr. Klayman did not fail to timely cease representation; nor did he act contrary to Ms. Sataki's instructions by simply ensuring that her rights were not forfeited while he attempted to contact her to confirm her instructions.

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[12] *Sataki v. Broadcasting Board of Governors et al*, 1:10-cv-00534 (D.D.C.), ECF No. 91, filed on January 27, 2011.
[13] *Id.*, ECF No. 89, filed on January 19, 2011.

Lastly, although the D.C. Court of Appeals did not reach this conclusion, the Referee *sua sponte* appears to assert an additional violation of D.C. R. Prof. Cond. 1.2(a) regarding the decision to file the *Bivens* Complaint. According to the Referee "[Ms. Sataki] did not agree to the BBG suit and wanted to focus on VOA and her harasser and supervisors." Tellingly, the Referee did not provide any record citations to support this finding[14] which is belied by the uncontroverted record testimony of Mr. Klayman:

> In the interim, it was felt and agreed by her that we would bring litigation and that we would bring a Bivens type of case. And I didn't name anyone in particular. I just named the entire board of directors who are responsible, and I put on notice the board of governors what was going on, that they should resolve it. So there was no attempt to single out Hillary Clinton or anybody else. My friend Blanquita Cullum was also named, and I did it for Ms. Sataki and actually destroyed a friendship. But I did things based on what I think are the merits, and I felt at that time that she deserved my full and uncompromised representation. That's what we were trying to do, was to coax a settlement out of them, to tell the board of governors that they're personally at risk unless they settle this. That was the goal. (FRX-24, 1430-1431).

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[14] The Referee appears to be referring to an allegation by DCODC that Mr. Klayman had brought the Bivens Complaint as an avenue to sue Hillary Clinton, which was then converted into a finding "of fact." This supports Respondent's belief that the Referee virtually adopted wholesale whatever FOBC put in front of him without any actual consideration of the record

This strategy was also confirmed by Mr. Shamble:

> Q. How many people were on the Board of Governors at that time when we were trying to settle?
> A. I don't remember how many there were. I think it was eight.
> Q. And the very top person on the Board of Governors, who was that? Was it the Secretary of State, Mrs. Clinton?
> A. The Secretary of State has a seat on the board. (FRX-24, 1228).

Thus, there is no violation under D.C. R. Prof. Cond. 1.2 for filing the *Bivens* Complaint, as the D.C. Court of Appeals has already ruled, and accordingly, there is a total paucity of proof that Mr. Klayman violated either D.C. R. Prof. Cond. 1.2(a) or D.C. R. Prof. Cond. 1.16(a)(3).

iv. District of Columbia Rule of Professional Conduct 1.5(b) – Absence of a Fee Agreement

Neither the D.C. Court of Appeals nor the Board concluded that Mr. Klayman had violated D.C. R. Prof. Cond. 1.5(b) for not having a written fee agreement with Ms. Sataki. To the contrary, the D.C. Court of Appeals wrote: "[t]he Board, however, did not explicitly state its own conclusion on that issue.... we see no need to address that issue given the other violations that we uphold." (FRX-3, 0062).

Despite this, in his Report, the Referee found without any evidentiary support whatsoever that Mr. Klayman was "found to have violated the District of Columbia Rules of Professional Conduct…1.5(b) (requiring written agreement regarding representation) and (c) (contingent fee agreement shall be in writing).[15]" The Referee then made additional statements in his Report, without any record cites, which are also unsupported by the record: (1) "Respondent and E.S. agreed that he would represent her in a case against VOA, on a contingent basis, receiving forty percent of any award E.S. won. There was no retainer agreement and Respondent later unilaterally increased his contingent fee to fifty percent[,]" and (2) "E.S. and Respondent agreed that the money Respondent was providing would be paid out of any award E.S. won, in addition to the contingency fee." (R-83, 2666). The record plainly contradicts those conclusions.

The record shows that from the onset of the representation, it was agreed that the representation would be *pro bono*. In fact, this

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[15] Importantly, "[i]circumstances in which paragraph (b) requires that the basis for the lawyer's fee be in writing, an individualized writing specific to the particular client and representation is generally not required." D.C. R. Prof. Cond.1.5, cmt. 2

was one of the areas where Ms. Sataki's testimony was impeached by her own admissions:

> Mr. Klayman: "And I told you that I would help you as a friend, did I not?"
> Ms. Sataki: "You told me you help me, yes."
> Mr. Klayman: "Yeah, and that you had no money, that I would help you and not charge you, correct?"
> Ms. Sataki: **Yes. We talked about that**. At the end you're going to get 40 percent. I explained, I don't have any money to pay for a lawyer, but then you said that I – we can -- at the end, "because this is a strong case and I'm going to help you with that," and we get 40 percent. We talked about that."
> Mr. Klayman: **"It's not true that that 40 percent came up at that time at that dinner. It did not come up, did it?"**
> Ms. Sataki: **"I don't remember."**
> Mr. Klayman: **Then why did you just say that?"** (FRX-24, 1040) (emphasis added).

This is buttressed by the unrefuted testimony of Mr. Klayman detailing this agreement:

> And I said, "Well, I'll try to help you, and, you know, I'll do it out of friendship. We're now friends." I mean, I do that. I'm not wealthy. I don't have much. I never made a lot of money, and so it was clear I would do it pro bono for her and try to help her, you know. (FRX-24, 1244).

It was not until later, after the representation of Ms. Sataki became difficult that Mr. Klayman **proposed** a contingency fee of 50% **going forward**. This was admitted by Ms. Sataki as well:

> Q: But what I was talking about, Ms. Sataki, is if I continued to represent you, given the difficulty in our relationship, regardless of what the cause was, then I'm saying then I **want 50 percent going forward, correct**?"
> A. "Correct."
> Q. "But we never got to that point, because representation ceased before I ever started to pursue any damage claims, correct?" (FRX-24, 1097) (emphasis added).

This **proposal** was never agreed to, which is why there was never anything memorialized in writing.

"The basic elements of an enforceable contract are offer, acceptance, consideration, and sufficient specification of essential terms." *Jericho All-Weather Opportunity Fund, LP v. Pier Seventeen Marina & Yacht Club*, 207 So. 3d 938, 941 (Fla. 4th DCA 2016). Here, there was an offer, but no acceptance by Ms. Sataki. Thus, there was no valid contract to memorialize. Further, to this day, Mr. Klayman has never tried to collect a single dollar from Ms. Sataki despite having borne the expense of the litigation—further proving that the agreement between the parties was *pro bono.* (FRX-24, 1264). This is best summarized in the legal opinion of Professor Rotunda:

> Mr. Klayman tells me that he did disclose the fee when they first talked about the case. The fee was zero - he did it as a pro bono matter. Several months later, when the

> case got more difficult than either of them expected, he told the client that he would have charge a fee. Or, of course, she would retain another lawyer and he could transfer the files to that other lawyer. She chose not to hire a new lawyer and he proposed a contingent fee. She never signed a fee agreement because she was hard to contact and the case ended at her request. He never charged her any fee. (FRX-9, 0392).

Accordingly, the record clearly shows a paucity of proof of a violation of D.C. R. Prof. Cond. 1.5, which is why neither the Board nor the D.C. Court of Appeals concluded that this rule had been violated. The Referee's decision to find a violation on those grounds even when the D.C. Court of Appeals did not unfortunately appears to reflect his prejudicial mindset. (*See* R-89, 3795).

v. District of Columbia Rule of Professional Conduct 1.4(b) – Explaining Matters to Client.

The D.C. Court of Appeals wrote that Mr. Klayman violated D.C. R. Prof. Cond. 1.4(b), which requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The only example of this alleged misconduct provided by the D.C. Court of Appeals or the Referee was a Motion to Disqualify the Honorable Colleen Kollar-Kotelly ("Judge Kotelly") in the *Bivens* case. This was not supported by the record.

The record reflects that Mr. Klayman informed Ms. Sataki of his difficult past experiences with Judge Kotelly:

> Q: And I told you at the time that we had drawn a very difficult judge that I had been in front of in the past. You remember that?"
> A: "Yes, I remember that.... That it was a very difficult judge, and that he had problem with that judge."
> Q. "And her name was Colleen Kollar-Kotelly, correct?"
> A. "Correct, I remember that."
> Q. "And I told you that I had had other cases with her where I had difficulty, right?"
> A. "Yes."....
> Q. "For that reason, I filed pleadings to try to get the case sent to another judge, Judge John Roberts, who the case had initially been assigned to, but then somehow it got reassigned to Judge Kotelly. You remember that?"
> A: "Yes."
> Q. "But that request for reassignment was denied by the court, correct?"
> A. "Yes." (FRX-24, 1059).

Mr. Klayman further testified the following;

> I had prior discussions with [Ms. Sataki] Judge Kotelly and the need of her potentially having to disqualify herself. She knew about the motion for reassignment. She knew that ultimately I would have to ask the judge, if necessary, to disqualify herself. (FRX-24, 1315).

This is again buttressed and confirmed by the testimony of Mr. Shamble, who knew of the history between Mr. Klayman and Judge Kotelly:

> Q: Yes, Mr. Shamble, did I ever discuss with you in the presence of Ms. Sataki the judge that we drew in the

> federal court for her cases against the Board of Governors? And to refresh your recollection, Judge Colleen Kollar-Kotelly.
> A. I know that you discussed it with me. (FRX-24, 1233).

Accordingly, there was a paucity of proof that Mr. Klayman did not explain matters to Ms. Sataki concerning the motion to disqualify Judge Kotelly, or any other matters.

b. The Judicial Watch Suspension Order.

In the Judicial Watch Suspension Order, the D.C. Court of Appeals concluded that Mr. Klayman violated D.C. R. Prof. Cond. 1.9 with regard to his representation of Mr. Paul, Ms. Cobas, and Ms. Benson. Nevertheless, in doing so, it clearly found: "we [the Court] are not left with 'serious doubt' or 'real skepticism' that M. Klayman can practice ethically." (FRX-3, 0034). There are several factors, which are omitted from the Referee's Report that show a paucity of proof in this regard.

First, the D.C Court of Appeals found that Mr. Klayman had not acted dishonestly or testified untruthfully, and that he had acted under what he believed to be advice of counsel. Mr. Klayman testified the following:

> And I want to add one other point, and I'm glad you asked it, Mr. Corcoran, and I believed that Mr. Duggan

> had given the advice of counsel that I could do this, otherwise he wouldn't have prepared the pleading. So that's another one of my defenses in this case. This is a very reputable firm in Philadelphia, and he's a seasoned litigator. (FRX-44, 2223).

The Court rejected any allegation that Mr. Klayman had testified dishonestly in this regard:

> Additionally, Mr. Klayman's testimony was to the effect that the circumstances caused him to believe that Mr. Dugan had given the advice of counsel. We agree with the Board that there was no proof by clear and convincing evidence that Mr. Klayman testified dishonestly as to his belief and recollection. Accordingly, we accept the Board's conclusion rejecting the finding that Mr. Klayman testified falsely. (FRX-3, 0033).

Mr. Dugan further testified that he would not have taken any action that he believed violated the D.C. Rules of Professional Conduct, such as filing an opposition to Judicial Watch's motion to disqualify if he did not have grounds to do so:

> Q: As a member of both the District of Columbia Bar, and as a member of the U.S. District Court for the District of Columbia, you would not take any action or file any pleading (denying a conflict), which you believed violated any D.C. Bar rule or the rule of the District Court?
> A: That's correct. (FRX-44, 2554).

Second, the Honorable Royce Lamberth ("Judge Lamberth"), the jurist presiding over Mr. Paul's case, was the only person who ruled that Mr. Klayman should be disqualified as a result of a

conflict of interest. *Paul v. Judicial Watch, Inc.*, 571 F. Supp. 2d 17, 27 (D.D.C. 2008). No other court, including the courts presiding over the matters involving Ms. Benson and Ms. Cobas, issued an order disqualifying Mr. Klayman. Mr. Klayman ceased representation in those cases after Judge Lamberth ruled, evidencing his good faith. In fact, Judge Lamberth took special note of the extraordinary circumstances in this case, specifically of the potential hardship to the client, Mr. Paul, which informed Mr. Klayman's actions:

> …the Court takes note of Paul's argument that he will suffer prejudice if Mr. Klayman is disqualified…the essence of the hardship that Paul asserts will result from disqualification of Klayman is an inability to obtain alternate counsel for lack of financial resources. The Court is not unsympathetic to this concern. *Id*.

Third, despite granting Judicial Watch's Motion to Disqualify, Judge Lamberth chose not to sanction Mr. Klayman. That determination demonstrates that Judge Lamberth did not believe that Klayman's conduct warranted sanctions or discipline. As Judge Lamberth presided over Mr. Paul's case, he had firsthand knowledge of the facts at issue in that matter. Thus, his decision should be afforded great deference.

Fourth, not only did Judge Lamberth choose not to sanction Mr. Klayman, he actually took time out of his schedule to testify on Klayman's behalf at the AHHC hearing voluntarily, without being subpoenaed. (R-29, 1289-1295). Judge Lamberth provided the AHHC with compelling testimony that he believed that there was, at a minimum, a clear ambiguity regarding Mr. Klayman's representation of Mr. Paul, and that as such, there was a "legitimate debate about [Mr. Klayman's] conduct." (R-29, 1290). Judge Lamberth further testified that he did not see fit to refer Mr. Klayman Bar Counsel in the District of Columbia, despite having done so on numerous occasions in the past with other lawyers:

> Well, I -- during the course of my career, I have referred a number of matters to Bar Counsel. Sometimes I -- I think I felt I was overwhelming them with the numbers of referrals I've made. It seems to me in a case like this, where there was a legitimate debate about the conduct -- although I -- I ended up saying it was clear in the opinion, but it took me a number of pages to say it. (R-29, 1290).

Judge Lamberth further explained the extraordinary circumstances involved in this case, particularly with regard to Mr. Paul's situation:

> …but also that there was some notion I had that Mr. Paul was in a very bad position. He was unable to afford

> counsel, he couldn't find other counsel. He was in a bind, and I had some feeling that there was a situation that was unusual, in the sense that counsel for Mr. Paul, who had previously been with Judicial Watch, found himself in an awkward position, where he had a very needy client who needed services who could not otherwise afford services. And so I thought it was a fairly unusual circumstance. (R-29, 1291).

Thus, where the presiding jurist over Mr. Paul's case voluntarily took the time to testify on Mr. Klayman's behalf that he did not think Mr. Klayman's conduct was sanctionable, there clearly exists a "paucity of proof" of misconduct under *Kandekore*.

Fifth, in addition to Judge Lamberth's testimony, Mr. Klayman provided the AHHC with the opinion of one of the nation's preeminent experts in legal ethics, Professor Rotunda, who came to the same conclusion as Judge Lamberth in his letter opinion of June 2, 2014 (FRX-45), and as reflected in his sworn hearing testimony. (FRX-46). Indeed, Professor Rotunda, one of the top experts in professional ethics in the nation observed: "[t]he situation involving these particular clients…provided a unique set of circumstances, one that the D.C. Rules of Professional Conduct do not expressly take into account. Given this unprecedented situation, Respondent, out of necessity, attempted to correct the

wrongs caused by Judicial Watch . . .” Specifically, Professor Rotunda opined, pro bono, that Mr. Klayman was acting under the doctrine of necessity to preserve the rights of his clients:

> One should also consider Mr. Klayman's actions in light of the doctrine of necessity. We know that judges can decide cases even if they are otherwise disqualified if there is no other judge available to decide the case. For example, the Court of Claims applied the “rule of necessity” and held that, under that rule, its judges could hear the case involving their own salaries. Otherwise, no judge would be available to decide some important legal questions. The court then turned to the judges’ substantive claim and denied it. *Atkins v. United States*, 556 F.2d 1028 (Ct.Cl.1977) (per curiam), cert. denied, 434 U.S. 1009 (1978). See also, *United States v. Will*, 449 U.S. 200 (1980). The *Will* Court explained: “The Rule of Necessity had its genesis at least five-and-a-half centuries ago. Its earliest recorded invocation was in 1430, when it was held that the Chancellor of Oxford could act as judge of a case in which he was a party when there was no provision for appointment of another judge.”
>
> Faced with the dilemma of either representing Cobra, Paul, and Benson, or allowing them to lose their legal rights, Mr. Klayman sided with the rights of the clients, in accordance with Rule 1.3, and thus, justifiably, chose to represent them. (FRX-45, 2604).

Accordingly, there was a paucity of proof that Mr. Klayman violated D.C. R. Prof. Cond. 1.9 in the Judicial Watch Suspension Order.

III. There Has Been a Deprivation of Due Process That Requires Rejection of the District of Columbia Suspension Orders.

Beyond the time-barred nature of these proceedings as set forth in detail above, there were a litany of additional due process violations in both the District of Columbia as well as this reciprocal discipline proceeding which should be considered by the Court.

a. The Due Process Violations in the District of Columbia.

In the District of Columbia, an attorney discipline proceeding is first presented for a hearing before the AHHC, which will issue a non-binding Report to the Board on Professional Responsibility. The Board considers this Report and issues its own Report and Recommendation to the D.C. Court of Appeals. Then, the Court of Appeals considers the Board's Report and Recommendation and issues a final order that is binding on the attorney. This layered process gives the appearance of multiple safeguards against due process violations. Yet the findings in this case appear to suggest that the Board and the D.C. Court of Appeals merely "rubber stamped" everything that occurred at the AHHC hearing, with little to no actual independent review or consideration of the record.

This becomes manifest from even a cursory review of the final orders of suspension by the D.C. Court of Appeals. (FRX-3). None of those orders contain record citations.[16]

This is why what occurred before the AHHC is so essential to a fair appraisal of those proceedings. The AHHC hearing in the Sataki Suspension Matter included Michael Tigar ("Mr. Tigar"), chairperson Warren Anthony Fitch ("Mr. Fitch"), and a layperson. Mr. Tigar was a part of the AHHC. He has been a longstanding advocate of radical communist views and ideology. It would be an understatement to suggest that his political leanings are diametrically opposed to Mr. Klayman's conservative activism. (FRX-19).[17] Mr. Fitch also proved to be Mr. Tigar's ideological kin, as he was extremely deferential to Mr. Tigar throughout the AHHC hearing. That is not simply Klayman's assessment; it is borne out in the transcripts. (FRX-24).

Then, at the Board, the sitting chairperson, Matthew Kaiser ("Mr. Kaiser") also proved to be ideologically opposed to Mr.

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[17] Indeed, esteemed investigative author Bob Woodward wrote in his book about the Supreme Court, The Brethren, that Mr. Tigar in his early career had been fired at the urging of FBI Director J. Edgar Hoover, from his High Court clerkship by Justice William Brennan for his subversive communist ties. (R-10, 725-726).

Klayman. Mr. Kaiser served as lead counsel in a civil lawsuit against former President Donald Trump for assault stemming from January 6, 2021. (R-9, 0282). Mr. Kaiser has also written articles for *Above the Law* where he has equated Trump and "tyranny."[18] Yet Klayman has been a staunch advocate and supporter of former President Trump.

Merely being ideologically opposed to Mr. Klayman is not an issue. However, if it is clear that these ideological differences manifested in a multitude of procedural maneuvers and rulings that severely harmed Mr. Klayman's ability to assure a fair proceeding in the District of Columbia, the result would be a legitimate due process violation. Unfortunately, that is precisely what occurred.

Additionally, it should be noted that Mr. Klayman was denied any discovery by the AHHC, despite having timely moved for discovery, including the depositions of the Complainant, Ms. Sataki as well as her psychiatrist, Dr. Arlene Aviera ("Dr. Aviera"), who had become unavailable to testify due to an illness that manifested during the over seven-year delay by DCODC in filing a Specification

[18] Matt Kaiser, *Trump and Tyranny*, Above the Law, July 26, 2016, available at: https://abovethelaw.com/2016/07/trump-and-tyranny/

of Charges. (FRX-17, 0698-0700). Mr. Klayman clearly set forth to the AHHC why discovery was needed when he sought leave to take those depositions:

> [i]t is thus believed that the deposition testimony of…Ms. Aviera will disclose crucial exculpatory evidence necessary for Respondent's defense, and reveal that he acted properly at all times and even sought to get Ms. Sataki other counsel. (FRX-17, 0695).

Further compounding the harm flowing from the lack of discovery and delay, on the day the AHHC began, DCODC claimed to have recently received "additional documents" from the Complainant that Mr. Klayman was not given a chance to review before they were introduced—without authentication—into evidence. (FRX-18, 0702-0705). Had Mr. Klayman been allowed discovery, he would not have been blind-sided at the last minute in this fashion.

In addition to those issues, material witnesses Ronald Rotunda and Dr. Aviera became unavailable to testify due to death and illness during the interminable delay by DCODC. As a result, DCODC and Ms. Sataki were able to present purely hearsay testimony and summaries of medical records without any proper foundation:

> MR. KLAYMAN: At this point, for the record, as your Honor may recall, I had requested to be able to depose Dr. Aviera. That would have alleviated this issue, and I was denied. That's why I also needed her file, because this is just selective things that are being produced by Bar Counsel from her file, not the whole file. So this is a highly prejudicial area of testimony for her to be testifying, A, without my having discovery, which I requested early on, and B without Dr. Aviera to testify. (FRX-17, 0697).

Notably, in the AHHC's order denying discovery prior to the hearing, it had stated that Mr. Klayman would be given an opportunity to re-raise this issue at the AHHC hearing: "Respondent will be given ample opportunity at the hearing to explore these issues...." (FRX-17, 0699). Unfortunately, when Mr. Klayman raised this issue again at the AHHC hearing, he was denied. (FRX-24, 0972).

After the AHHC concluded, Mr. Klayman discovered that Ms. Sataki had participated in a television interview regarding her case against VOA, which severely undercut the contention that she wished to pursue her claims with limited publicity. (FRX-13, 0623-0624). Mr. Klayman moved the Board to supplement the record with this evidence. Inexplicably, that request was denied by the Board. (FRX-20, 0861-0862).

Once this matter got to the D.C. Court of Appeals, Mr. Klayman was "temporarily suspended" on January 7, 2021, for twenty months—more than double the length of the eighteen-month suspension—before finally issuing its order of suspension on September 15, 2022. This resulted in a total *de facto* suspension of thirty-eight months.

In contrast, the Court must consider the case of Kevin Clinesmith—the former senior FBI lawyer who falsified a surveillance document in the Trump-Russia investigation and who pled guilty to felony charges. (R-9, 0210). DCODC did not even initiate discipline proceedings against Mr. Clinesmith until five months after he pled guilty to felony charges, and only did so after receiving negative publicity for their inaction. (R-9, 0210). Once he was given a temporary suspension, the D.C. Court of Appeals fast-tracked his case and then "sanctioned" him with "time-served" of just seven months. (R-9, 0210). In contrast, the Michigan Bar temporarily suspended him the day he pled guilty, and then imposed a two-year suspension period which was much more in line with the expected punishment for Mr. Clinesmith's actions. (R-9, 0210). Unfortunately, viewed through the lens of this stark

contrast, it becomes clear what types of forces inform the actions of the D.C. Attorney Discipline Apparatus, and why Mr. Klayman's due process rights were disregarded at every turn.[19]

b. The Due Process Violations in Florida.

In addition to the due process violations that occurred in the District of Columbia, the Court should also consider the due process violations which have occurred before the Referee in this matter. Those concerns are set forth in detail in Mr. Klayman's Updated and Renewed Motion for Recusal and to Vacate Report and Recommendation,[20] which was denied by the Referee after just one day. (R-90, 4347). Those concerns should be considered by this Court.

The Referee issued subpoenas allowing Mr. Klayman to take depositions of members of the D.C. Attorney Discipline Apparatus—Mr. Tigar, Mr. Fitch, Mr. Kaiser, and DCODC attorneys Hamilton Fox, III and H. Clay Smith. The Referee then quashed these subpoenas before Mr. Klayman was able to conduct any

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[19] Not coincidentally, Mr. Clinesmith was represented by Eric Yaffe, Esq., who just so happened to be the former chairperson of the Board.

[20] R-89, 3795.

discovery. (R-78, 2171). Deprivation of due process is a key factor under *Kandekore.* Here, the Referee's decision to deny Mr. Klayman leave to conduct essential discovery constituted a due process violation in and of itself.

The Referee's decision to backtrack was erroneous. It appears to have been based on FOBC's assertion that an injunction issued by the Honorable Reggie Walton ("Judge Walton") prevented Mr. Klayman from being able to depose the enumerated individuals. Unfortunately, the Referee seized on this "red herring" despite Klayman's contention that the earlier injunction was not applicable to this reciprocal proceeding. (R-58, 1689). Predictably, as set forth in Klayman's Motion for Reconsideration and Leave to File Reply Pleadings, the U.S. Court of Appeals for the District of Columbia Circuit ultimately *vacated* Judge Walton's injunction order as being factually and legally unsupported. *See* June 11, 2024 Order and Opinion of the U.S. Court of Appeals for the D.C. Circuit in *Klayman v. Porter et al*, 22-7123:

> Yet, in this case, the district court neither tried alternative means of addressing any perceived improper litigation tactics nor explained why nothing else would work. There is no need to haul out a sledgehammer if a tack hammer will suffice.

> For the foregoing reasons, we vacate the district court's pre-filing injunction, affirm the district court's dismissal of Klayman's damages claims, and reverse the district court's dismissal of Klayman's claims for injunctive relief as to all of the ODC Employees except Kaiser. We remand to the district court for further proceedings on those injunctive-relief claims.

There is simply no logical reason why the Referee could not have reconsidered his ruling given the reversal of Judge Walton's injunction order by the D.C. Circuit.

The Referee also refused to allow the underlying record in the Sataki Suspension Matter and the Judicial Watch Suspension Matter into the record of these proceedings. (R-95). This is contrary to every other Court and jurisdiction considering the issue of reciprocal discipline, which generally mandate production of the *entire* underlying record. This effectively prevented Respondent from presenting compelling evidence of deficiencies in those proceedings.

Even assuming some arguable basis for these rulings—and Respondent believes there is none—the Referee's conduct at the March 27-28 sanctions hearing appears to reflect that he had either prejudged the entire case, or was otherwise irritated by the need to allow Mr. Klayman to fully develop his case, as set forth in full in

Mr. Klayman's Updated and Renewed Motion for Recusal and to Vacate Report and Recommendation. (R-89). In that regard, Mr. Klayman would respectfully request that the Court review the transcripts, which reflect an attitude of condescension and disrespect toward Mr. Klayman that was clearly palpable.[21]

Accordingly, not only were Mr. Klayman's due process rights violated in the District of Columbia, but the harm was then compounded by the conduct of the Referee.

IV. The Facts of This Case Do Not Warrant Any Suspension of Mr. Klayman From the Practice of Law.

Respondent has demonstrated "that the proceeding in the foreign state was so deficient or lacking in notice or opportunity to be heard," "that there was such a paucity of proof," and other "grave reasons" to believe that the D.C. proceedings violated any semblance of due process, particularly given the appalling delays in the initiation and prosecution of those proceedings. Thus, this

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[21] Mr. Klayman was respectful and courteous to both the Referee and FOBC throughout this matter—that is clearly borne out in the record and transcripts. Nevertheless, he firmly took issue with any perceived misstatements of fact made during the proceedings, or any attempt to mischaracterize his relationship with Ms. Sataki. Legitimate efforts to correct the record should not have provided grounds for additional discipline.

Court is not bound by either order of suspension by the D.C. Court of Appeals. The Court should instead determine that no sanctions are warranted[22] against Mr. Klayman for the reasons set forth above as well as the following.

First, the Court should consider the prejudice caused to Mr. Klayman by the extraordinary lapses of time that occurred in both matters. Those delays were unprecedented and unwarranted, and effectively stymied Respondent's practice for years. The Sataki Suspension Order involves events that occurred approximately *fourteen years ago*; the Judicial Watch Suspension Order involves events that occurred approximately *eighteen years ago*. This is far beyond what any Court would deem an acceptable delay, particularly in Florida, which applies both a hard six-year statute of limitations and the doctrine of laches to attorney discipline matters.

Mr. Klayman has presented uncontroverted evidence in the form of Ms. Sataki's Supplemental Complaint (R-9, 254), that she **in fact** filed a Bar complaint against Respondent in or around October

[22] And, even in the event that the Court finds that a suspension is warranted, it should be applied retroactively, *nunc pro tunc* as "time served," which is what both the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. District Court for the District of Columbia have done.

24, 2011. That evidence was corroborated as recently as January of 2023, when Ms. Sataki's counsel in another proceeding styled *Klayman v. Sataki*, 2022-CAB-010491 (15th Jud. Cir. Fla.) confirmed that a disciplinary complaint was filed in Florida in or around 2011. (R-67, 2095).

Given the ordinary sequence of events in Florida Bar matters, as reflected by the testimony of undersigned counsel, the only reasonable conclusion is that The Florida Bar had already investigated the Sataki Suspension Order and decided that no discipline was warranted or that there was simply no probable cause to initiate further proceedings. Unfortunately, due to these delays, discovery regarding that issue was essentially foreclosed. That prejudice alone should have occasioned a determination that it was inappropriate to proceed at this late date with a reciprocal proceeding. Instead, given the unconscionable passage of time, and the fact that there have been no similar allegations against Mr. Klayman made during this interim period, the earlier decision by the Bar should be given full faith and credit and should not have been resurrected and relitigated in 2024.

This Court should also consider the mitigating factors set forth by The Florida Bar in its publication "Florida's Standards for Imposing Lawyer Sanctions." Many of those factors are readily applicable here:

- **Absence of a Prior Disciplinary Record**. Mr. Klayman's Certificate of Good Standing reflects that he has continuously been a member in good standing with The Florida Bar since 1977. (FRX-2).

- **Absence of Dishonest or Selfish Motive**. Mr. Shamble testified that he referred other VOA employees to Mr. Klayman after seeing how diligently and zealously he had represented Ms. Sataki. (FRX-24, 1225).

- **Full and Free Disclosure to the Bar and Cooperative Attitude**. Mr. Klayman's October 18, 2022 letter to The Florida Bar reflected his desire and willingness to cooperate with FOBC to try to work something out through settlement. Unfortunately, the Bar was not responsive. (FRX-10).

- **Character and Reputation Evidence**. The recommendation letter of the Hon. Royce Lamberth (FRX-77, 3570), the testimony of the Honorable Stanley Sporkin (FRX-24, 1352), and the character witnesses who testified on Mr. Klayman's behalf at the March 28, 2024 sanctions hearing, Bob Barr, Stephen Sulzer, and Frederick Sujat all speak to Mr. Klayman's high character and excellent reputation.[23]

[23] Mr. Klayman had planned to have numerous other character witnesses testify on his behalf, but the Referee cut the hearing short, thus preventing him from having a full opportunity to call witnesses, despite the fact that the Referee had previously stated that he could go beyond two days if necessary. Furthermore, the

- **Timely Good Faith Effort to Rectify Consequences of Misconduct.** Mr. Klayman has taken CLE courses on conflicts of interest, and has never been even *accused* of any similar conflicts in the now approximately eighteen years since the events of the Judicial Watch Suspension Matter occurred. As far as the Sataki Suspension Matter is concerned, Mr. Klayman has grown and learned as an individual and attorney and has made a consistent effort to keep his personal and professional lives separate and apart. Notably, in the approximately fourteen years since the events underlying Sataki Suspension Matter occurred, Mr. Klayman has never been accused of any similar conduct. And despite having already fulfilled his CLE requirement, Klayman voluntarily attended the recent Florida Bar Convention in Orlando to take courses on legal ethics.

Most importantly, the cases cited by the Referee in his Report bear little resemblance—and absolutely no relevance—to the events underlying this prosecution. Certainly, none contemplated—let alone countenance—reciprocal discipline after decades long delays.

In *Fla. Bar v. Rush*, 361 So. 3d 796 (Fla. 2023),an attorney was suspended for a period of three years based on facts that are not even remotely comparable to the facts at issue here. In *Rush*, an attorney was retained in an eminent domain action between his clients, North Park, and Florida Department of Transportation

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Referee rejected as evidence (and actually mocked character evidence) in the form of articles written about Mr. Klayman as "advertisements for a book." (R-85, 3113).

("FDOT") involving placement of a drainage pond on the property. *Id.* at 799. Rush insisted on pursuing a "nonmonetary benefit" argument involving relocating the drainage pond because it would entitle him to an award of statutory attorney's fees. *Id.* While Rush's clients initially agreed, they later changed their minds when a buyer of the property was not able to fund the purchase until the eminent domain case was settled. *Id.* Rush was then instructed to settle the eminent domain action quickly to facilitate the sale of the property. *Id.* Despite this instruction, "Rush began filing a series of unauthorized pleadings and motions in the eminent domain case seeking to preserve and advance his claim for attorney's fees based on his nonmonetary benefits argument." *Id.* Rush even "sent FDOT a settlement proposal waiving monetary benefits in favor of Rush's nonmonetary benefits argument." *Id.* at 800.

When North Park hired additional counsel, Mr. Pettit, to settle the eminent domain case as quickly as possible, Rush refused to cooperate with him, leading to confusion by the Court and further delaying the eminent domain case. *Id.* Rush then threatened counsel for FDOT at a hearing to the extent that he "continued to berate her and followed the pair out of the courthouse." *Id.* As a

result, FDOT refused to settle informally with North Park, further delaying the eminent domain action.

Finally, when Mr. Pettit sent Rush a client-approved settlement offer for Rush to sign and submit to FDOT with the instruction that it could not be modified, Rush nevertheless modified the language *without approval* because he feared that the language constituted a waiver of his attorney's fees! *Id.* When Rush was finally terminated, he sued North Park seeking fee arbitration, while pursuing 21 separate causes of action, all of which were denied. *Id.* Free from Rush's interference, North Park and FDOT settled, and North Park was finally paid the monetary value of the property taken. Despite this, Rush continued to seek his attorneys' fees based on his nonmonetary benefit argument. Given these egregious facts, Rush was suspended for three years.

It is difficult to believe that the Referee found that these two matters are remotely comparable, or that the *Rush* matter provides any precedential support for the rulings here. The facts of *Rush* are not remotely analogous. Rush's actions were driven solely by his desire to maximize the amount of attorney's fees he would receive. For that reason, he repeatedly ignored direct instructions from his

clients, even to the point of committing fraud to achieve his goals. He then sued his clients to try to collect his fees. Here, Mr. Klayman's only interest was to help Ms. Sataki achieve her desired outcome and to preserve her legal rights after she became unresponsive. Mr. Klayman never asked to be paid back for any out-of-pocket expense and never sought to collect any fees whatsoever from Ms. Sataki. In the process, he clearly preserved her potential right to proceed with the underlying action. Any other conduct would have put her at risk. The cases are completely distinguishable.

In *Fla. Bar v. Herman*, 8 So. 3d 1100 (Fla. 2009), an attorney was suspended from the practice of law for ninety days with a probation period of two years. *Id.* at 1102. Herman represented Aero Controls and Triple J Leasing, both of whom were in the business of selling and repairing component airplane parts and leasing aircrafts, respectively, in a contract dispute and litigation over the purchase of an aircraft and in a lease agreement of another aircraft to Air Kazakhstan. *Id.* The trial in the contract dispute concluded in February of 2018 and the lease agreement matter concluded in March of 2018. *Id.* In June of 2018, Herman

incorporated a company called Nation Aviation as a direct competitor to Aero Controls and Triple J Leasing. Then, to compound this ethical challenge, Herman put Thomas Bristow—Aero Controls' former top salesman—in charge of his new company. As was noted by the court:

> By January 1999, Herman was the sole monetary investor in Nation Aviation. At that point, he had to choose between closing Nation Aviation and losing his investment or allowing Bristow to run the company exclusively as a seller and lessor of aircraft parts. Herman chose the latter, putting his company (which was now under the direction of his client's former top salesman) in direct competition with his client, Aero Controls. **The referee concluded that Herman, who was still representing Aero Controls, should have called Titus at that point to disclose the conflict and request a waiver, but did not, because of monetary concerns. His failure to disclose was dishonest and deceitful**.

Id. at 1103 (emphasis added). There can be no question why the attorney in that matter was sanctioned. In contrast, however, there was no monetary issue driving any conflicts of interest in this case. There was also nothing dishonest or deceitful in Mr. Klayman's conduct. He never hid *anything* from *anyone*. Thus, *Herman* is similarly inapplicable to the facts here.

Fla. Bar v. Tipler, 8 So. 3d 1109 (Fla. 2009) is also completely distinguishable. In *Tipler*, the attorney entered into a fee agreement with a female client, offering her a credit of $200 for each time she engaged in sex with Respondent" and a "$400 credit if she arranged for other females to have sex with him." *Id.* at 1112. Tipler was charged, and he ultimately pleaded guilty to one count of solicitation of prostitution. *Id.* In a separate disciplinary proceeding in Alabama, Tipler represented a plaintiff in a medical malpractice case, and attempted to submit into evidence a video depicting the patient the day before the surgery. Tipler had the decedent's son authenticate the video, but without informing the son, edited the video to remove scenes that would have been harmful to the case. As a result, the son unknowingly gave false answers concerning the authenticity of the tape. *Id.* at 1113. Tipler was indicted for perjury and pled guilty to interference with judicial proceedings. Any suggestion that this conduct is somehow comparable to the matters that are at issue in this action simply defies credulity.

As should be readily apparent, the authority cited by the Referee does not even remotely resemble the facts of this case; their disposition has no bearing on this case. Each of the sided cases

involved gross evidence of misconduct, motivated by greed. Nevertheless, Respondent feels constrained to point out that in the Florida reciprocal proceeding Tipler asserted a lack of due process. The Court weighed the fact that Tipler had been allowed discovery in Alabama as a factor in determining whether to impose reciprocal discipline. *Id.* at 1117. In contrast, Mr. Klayman was denied discovery both in the District of Columbia as well as here in Florida which would support a lack of due process under *Tipler*.

If the Court determines that some form of discipline is warranted here, the Court should consider its holding in *Fla. Bar v. Glick*, 383 So. 2d 642 (Fla. 1980). In *Glick*, the attorney was found to have committed serious ethical violations, including that he had allowed his client to take title to property without advising his client concerning known defects in the title. He also prepared an incomplete deed and never refunded to his client a fee paid for the handling of a quiet title suit, which he never prosecuted. In a separate action, he failed to appear at a hearing. As a result, his client's action was dismissed. Yet the attorney never attempted to reopen the case. *Id.* at 643.

The attorney was found guilty of violating Florida Bar Code of Professional Responsibility Disciplinary Rule 6-101(A)(1), (A)(2), and (A)(3) (*and FOBC recommended a sixty-day suspension and probation).* The Court, however, took note of the attorney's thirty-year career practicing law in Florida without any disciplinary history. In addition, the Court (somewhat remarkably) noted that the charges did not involve dishonesty or fraud. For that reason, the Court instead only ordered a public reprimand and a one-year conditional probation.

There are obviously several points which need to be made with regard to that decision. First, The Bar is seeking more significant punishment here, despite the fact that the misdeeds in each can hardly be equated as similar. The only similarity stems from the fact that Mr. Klayman has been a member in good standing with The Florida Bar for nearly forty-seven years. The charges against him do not involve dishonesty or fraud. Nor do they implicate his competence, diligence, or zeal in representing clients. Given the circumstances, it is difficult to reconcile the public reprimand or probation meted out in *Glick* with the punishment assessed in this matter.

Respondent would respectfully suggest that more appropriate deference should be extended to the decision in *In re Welcome*, 58 V.I. 604 (2013). In *Welcome*, the Supreme Court of the Virgin Islands considered a disciplinary proceeding where the appropriate "baseline" suspension was determined to be six months. *Id.* at 613. After determining this "baseline" sanction, the Court analyzed the effect of "substantial delay" in adjudicating those proceedings. In *Welcome*, the attorney was not served with the grievance for eight years, without any explanation. During the interim period, her case file had been "lost or destroyed," which "made it difficult for her to defend against the charge that she failed to communicate with [the client]." *Id.* at 614. Given these facts, the Supreme Court of the Virgin Islands found that the attorney "never had an opportunity to respond to the grievance 'while the matter was still fresh.'" *Id.* at 616. The Court found that, given the delay, the attorney "could have reasonably assumed, due to her familiarity with the EGC's procedures by virtue of her then-membership, that the EGC had returned the grievance to [the client] because it failed to meet the minimum criteria for docketing, *see* V.I.S.Ct.R. 207.1.5(b), or because it concluded that it was frivolous, *see* V.I.S.Ct.R.

207.1.7(c)." *Id.* Thus, with this substantial delay as a primary mitigating factor, the Court recommended that the baseline six-month suspension period be reduced to a public reprimand. *Id.* at 618.

The facts of *Welcome* parallel Respondent's situation. Mr. Klayman also experienced over seven-year delays in both disciplinary matters in the District of Columbia. These delays were occasioned entirely by DCODC, with no justification or explanation. Mr. Klayman testified about the prejudice caused by these delays, including case files being lost and/or destroyed, witnesses becoming unavailable, and memories fading over time.[24] It would have been equally reasonable for Klayman to believe that the disciplinary matters against him in Florida and Pennsylvania had been dismissed during the lengthy interim delay, or that the appropriate authorities had determined that there was simply no probable cause for further investigation, let alone prosecution.

[24] Nor was he able to go back to demonstrate conclusively that Ms. Sataki had in fact filed a grievance matter against him as far back as 2011, although the evidence that **was** produced by Mr. Klayman on that point was conclusive.

Thus, similar to *Welcome*, there should be significant mitigation in any discipline imposed. Under the circumstances, while Respondent does not believe that there was probable cause to initiate disciplinary proceeding *at all*, given the nature of the offenses presented and the paucity of proof, Respondent would respectfully suggest that he should not be subjected to anything more severe than a public reprimand if the Court deems that his interaction with his former clients indeed merits discipline.

CONCLUSION

Put simply, this matter should never have been initiated by FOBC. There are several highly compelling reasons which support that conclusion.

Mr. Klayman values the privilege of practicing law in Florida. Both his public interest advocacy and private litigation practice are focused on this State. His membership and good standing in the Florida Bar is vital to his livelihood, and the well-being of his family and his colleagues. Furthermore, Mr. Klayman has grown considerably as a person and a lawyer in the many years following the events which formed the basis for the Judicial Watch Suspension Matter and the Sataki Suspension Matter, which

occurred between fourteen and eighteen years ago, respectively. He has taken CLE courses on conflicts of interest and other matters and refrained from forming personal relationships with his clients out of an abundance of caution, despite the fact that those relationships do not and did not constitute ethical violations. Nor has Mr. Klayman been even accused of any other violations of the rules governing The Florida Bar in the nearly two decades that have passed since these claims were first advanced.

Accordingly, Mr. Klayman respectfully requests that the Court decline to adopt the Judicial Watch Suspension Order and the Sataki Suspension Order and instead determine that he should not be subject to any discipline whatsoever in this matter. Mr. Klayman has been dealing with these issues for the better part of the past eight years, including four years more than three years of a functional suspension in D.C. The imposition of any additional suspension could only be characterized as "overkill," particularly given the nature of the offenses which are at issue and the lack of *any* compelling evidence of improper motivation, or any other indication and that the Bar need be concerned about Mr. Klayman's present fitness to practice law. Nevertheless, as was noted above, if

the Court feels that it should assess some form of discipline, notwithstanding extraordinary, prolonged anxiety and the loss which this matter has occasioned for the better part of the past many years, then, consistent with *Glick*, probation or a public reprimand should be sufficient.

Dated: September 3, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing has been furnished to The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, via the E-Filing Portal, with copies to Shaneé L. Hinson, Bar Counsel, at shinson@floridabar.org, and Patricia Ann Toro Savitz, Staff Counsel, at psavitz@floridabar.org, on this 3rd day of September, 2024.

By: */s/ Robert M. Klein*
Robert M. Klein

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this initial brief has been generated in Bookman Old Style 14-point font in compliance with Rule 9.045 of the Florida Rules of Appellate Procedure. The undersigned further certifies that this brief complies with the word count requirement of Rule 9.210(a)(2)(B) of the Florida Rules of Appellate Procedure, and with the Court's August 12, 2024 Order granting Respondent's Motion for Leave to File Brief in Excess of Words/Pages, because this document contains 17,867 words, not including the cover page, table of contents, table of citations, certificate of compliance, certificate of service, and all signature blocks.

By: */s/ Robert M. Klein*
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