UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 26-CV-10910-ABD

VALERIANO DIVIACCHI, individually and on behalf of similarly situated persons

V.

RICHARD C. VAN NOSTRAND,
Individually and in Their
Official Capacity as Chair of the Massachusetts
Board of Bar Overseers
PHYLLIS FEDERICO,
Individually and in Their
Official Capacity as Vice Chair of the Massachusetts
Board of Bar Overseers
JOSEPH S. BERMAN,
Individually and in Their
Official Capacity as General Counsel of the Massachusetts
Board of Bar Overseers

AMENDED COMPLAINT FOR PROSPECTIVE DECLARATORY AND OTHER EQUITABLE RELIEF / JURY DEMAND

NATURE OF THE ACTION:

1. Plaintiff is not seeking monetary damages nor retrospective relief but pursuant to District of Columbia v. Feldman, 460 U.S. 462, 482-83 (1983) and the adjudicated facts of Reinstatement of George, 610 F.Supp.3d 328 (D. Mass. 2022), Plaintiff is seeking a prospective declaration that Massachusetts Supreme Judicial Court *Rule 4:01, § 18(5)* on its face and as it is unconstitutionally maintained and enforced by the Defendants upon the Massachusetts Bar in violation of required Due Process and Equal Protection. Plaintiff has exhausted administrative remedies before the Massachusetts Supreme Judicial Court. Thus this Court has subject matter, 11th Amendment, and 28 U.S.C. § 1983 jurisdiction for prospective relief stopping

unconstitutional "state bar rules, promulgated by state courts in non-judicial proceedings". District of Columbia v. Feldman, 460 U.S. 462, 482-83 (1983).

2. As a supplemental or ancillary claim, Plaintiff is seeking reciprocal discipline review pursuant to this Court's L.R. Rules 83.6.9, 83.6.10(a) of the *de facto* disbarment of this Plaintiff from this Court's Bar based on the Massachusetts limited term 27 month suspension that has become a nationwide, lifetime *de facto* disbarment because Plaintiff refuses to admit to false disciplinary findings. Though this Court went through the reciprocal discipline process of L.R. Rule 83.6.9 for a twenty-seven month limited term suspension, it has not gone through such required process for a reciprocal *de facto* lifetime disbarment from this Court.

JURISDICTION AND VENUE:

3. This action is brought under 42 U.S.C. §§ 1983, 28 U.S.C. §§ 2201 and 2202, and this Court's common law equitable power generally and specifically to regulate its Bar.

4. This Court has subject matter jurisdiction over Plaintiff's claims under 28 U.S.C. §§ 1331 and 1343.

5. This Court has authority to grant declaratory and other relief under 28 U.S.C. §§ 2201 and 2202 and its Common Law Equitable Power.

6. Venue is appropriate under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in this Judicial District, because Defendants operate or do business in this Judicial District, and Plaintiff Diviacchi resides in Boston.

PARTIES:

7. Plaintiff is a resident of Boston, Suffolk County, Massachusetts.

8. Defendant Van Nostrand, as Chair of the Massachusetts Board of Bar Overseers, has an

individual and official Supreme Judicial Court mandated legal duty to ensure that the Massachusetts Bar disciplinary and reinstatement process is fulfilling its legal duties. Defendant Nostrand individually and officially enforces the *Rule 4:01, § 18(5)* at issue.

9. Defendant Federico, as Vice-Chair of the Massachusetts Board of Bar Overseers, has an individual and official Supreme Judicial Court mandated legal duty to ensure that the Massachusetts Bar disciplinary and reinstatement process is fulfilling its legal duties. Defendant Federico individually and officially enforces the *Rule 4:01, § 18(5)* at issue.

10. Defendant Berman, as General Counsel of the Massachusetts Board of Bar Overseers, has an individual and official Supreme Judicial Court mandated legal duty to ensure that the Massachusetts Bar disciplinary and reinstatement process is fulfilling its legal duties. Defendant Berman individually and officially enforces the *Rule 4:01, § 18(5)* at issue.

11. The Defendants through their individual and official duties in the Massachusetts Board of Bar Overseers establish, interpret, and enforce criteria for reinstatement to the Massachusetts Bar after suspension or disbarment including the requirements of the *Rule 4:01, § 18(5)* at issue.

STATEMENT OF FACTS

12. Plaintiff was suspended from the Massachusetts Bar on or 2 January 2016 with reciprocal discipline subsequently entered by this Court for what was supposed to be a limited term suspension of twenty-seven months. Plaintiff continues to maintain and will always maintain that the findings that resulted in his suspension were false and he continues to maintain his innocence of any professional misconduct that would have warranted suspension. Because of unconstitutional provisions in the subject reinstatement *Rule 4:01, § 18(5)* that are the subject of this Action, the Defendants have three times denied reinstatement of the Plaintiff to the

Massachusetts Bar — most recently on or about December 2025 — under the following undisputed facts that grant standing to challenge the constitutionality of this *Rule 4:01, § 18(5)*.

13. Petitioner is now 68 years old. The following undisputed facts are true:

1) As a refugee emigrant to the United States from Yugoslavia, since the age of 14 Petitioner has been either a full-time student and part-time worker or a full-time working taxpaying naturalized citizen or both including six years of service in the U.S. Navy;
2) Plaintiff has never filed for bankruptcy nor ever had any bankruptcy problems, debt liens, unpaid creditors, or judgments;
3) He always paid all of his personal and family debts including taxes in full and on-time including all student loans and mortgages;
4) He always paid his income taxes and all other taxes in full and on time and never had any local, state, or federal tax liens;
5) He supported his family by working since he was 14 and as a married adult within > thirty-five years of marriage supporting his child;
6) He never had nor has a criminal record nor any civil liability including no malpractice settlements nor judgments ever entered against him;
7) He is an honorably discharged veteran of the U.S. Submarine Service;
8) He spent the last seven years of his suspension using his personal income and retirement funds to earn a Ph.D. in philosophy, passed the California Bar Exam, and has throughout been willing to pass the Mass Bar Exam as a condition of reinstatement (as fairness would dictate, he is not willing to undergo the stress and financial cost of passing the Mass Bar if reinstatement can then be denied anyway based on his bad attitude);
9) He handled competently approximately one thousand cases in seven different jurisdictions for twenty-five years with no successful — either by judgment or settlement — malpractice case ever filed against him;
10) No one including no client has ever opposed the reinstatement of this Petitioner except for Bar Counsel;
11) Petitioner's limited term 27-month suspension, based on a preponderance of the evidence standard reviewed only by an administrative standard, was based on findings for which he accepts responsibility but for which he continues to deny and will always deny.

14. For Equal Protection purposes, during Plaintiff's suspension, the Defendants and this Court reinstated an Attorney Robert George under the following facts.

15. George is approximately the same age as this Plaintiff. The following is undisputed:

1) Disbarred on 15 March 2015 retroactive to 21 June 2012 as a result of a federal criminal jury trial that resulted in convictions upon the criminal 'beyond a reasonable doubt' standard for seven felony counts involving drug money laundering; conspiracy and

aiding and abetting of drug money laundering; and the structuring of financial transactions to avoid reporting them. The conviction was affirmed by the 1st Circuit using the standards of review for criminal appeals (de novo, clear error, abuse of discretion). "Petitioner engaged in criminal conduct solely for the purpose of making money";

2) He owed >$700,000 in unpaid federal and state taxes for the years 2007, 2008, 2009, 2010, and 2012 in which he failed to file or pay any income taxes;

3) He showed "complete disregard of his tax obligations, for which he has expressed no remorse or regret at all" and showed lawyerly pride in his resolution of his federal tax debt of >$600,000 by a $25,000 borrowed payment from his wife's family;

4) "Petitioner did not merely understate his tax obligations; he ignored them entirely, for years. ... Although he was not prosecuted for income-tax evasion, there can hardly be any doubt that he willfully disobeyed the law. He again minimizes that conduct, stating that his disregard of the law was due to a 'bad habit of paying late.' ... And his apparent lack of concern over the fact that his federal tax liability was settled for approximately 4% of the outstanding amount — which he simply characterized as 'a good result' — is also disturbing";

5) Both George and many of his character witnesses excused his criminal conduct on entrapment by the government and on his being "targeted" by the government which "goes after" attorneys such as him. "More importantly, even today, petitioner's acceptance of responsibility is grudging at best. ... Similarly, the testimony of some of the witnesses called by petitioner at the hearing tended to downplay or minimize the nature of the crimes and his responsibility for having committed them, or suggested that he was somehow a victim of government misconduct. ... [George's] explanation as to his motive for committing the crimes is disingenuous at best";

6) George before disbarment had a successful attorney malpractice case brought against him derived from the loss of a medical malpractice trial as a result of his failure to prepare for trial and misrepresentations made to a client and the court regarding his preparedness. This case resulted in a bar admonition because "the hearing committee rejected substantial portions of Mr. George's testimony basically finding that Mr. George had been untruthful under oath in a bar disciplinary proceeding ...";

7) George had a second successful malpractice case filed against him alongside one of his character witnesses that were both settled during his disbarment. The settlements of those cases did not contain any apologies from Attorney George but as usual required confidentiality agreements barring the release of any details absent a court order. The latter cases involved well into seven figure damages. Though the BBO disciplined Atty George for the prior case, they never asked about nor did anything about the latter cases;

8) Though George did not file for bankruptcy, he was *de facto* bankrupt because he "had some very serious financial obligations at the time that he got into the money laundering" in order to pay debts "and that likely he had hoped to obtain some income and possibly a steady stream of income from his involvement in the deals". "In fact, petitioner committed the crimes at a time when he was paying no federal or state income taxes, and indeed spending money at such a rate that (by his own admission) he could make no tax payments of any kind. As bar counsel noted while failing to oppose his

reinstatement, his claim that his only motivation was to help a former client 'just doesn't ring true,' because he 'had some very serious financial obligation[s] at the time that he got into the money laundering and that likely he had hoped to obtain some income and possibly a steady stream of income from his involvement in the deals ....'. He nonetheless continues to deny that his motive, even in part, was financial gain."

9) Regarding George's testimony at his reinstatement hearing, he "was not completely forthcoming about the nature and extent of his own criminal conduct, particularly his money laundering and structuring"; he "was not candid about the motivation for his misconduct ...."; he "on several occasions during his initial testimony, the petitioner showed an unfortunate tendency to try to minimize or explain away his crimes by adding or omitting detail to his narrative that did not square with the record";

10) Bar Counsel did not object to George's reinstatement and never bothered to investigate the malpractice case against him filed and settled during his disbarment;

11) A former client objected and testified against George's reinstatement, but his testimony was dismissed as that of a "disgruntled former client";

12) In order to achieve reinstatement, the BBO gave him credit for the pro bono work and his reputation as a competent attorney prior to disbarment and then credit for his pro bono work and MCLE courses after disbarment. Bar Counsel did not investigate why the prior work and education did not stop him from committing crimes nor what charitable work if any George did once he was reinstated and got what he wanted. Nor did Bar Counsel investigate as to whether he attended or actually learned anything at MCLE — unlike passing a bar exam, paying a fee is enough.

In re Reinstatement of George, 610 F.Supp.3d 328 (D. Mass. 2022)

STATEMENT OF THE CASE

Constitutional Issues:

16. *Rule 4:01, § 18(5)* requires the following for reinstatement:

> On any petition the Board, the hearing committee, special hearing officer, or panel shall promptly hear the petitioner who shall have the burden of demonstrating that he or she has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.

17. Though *Rule 4:01, § 18(5)* references a "burden", but, in violation of required procedural and substantive due process, it does not actually state what burden of proof is to be used nor is there any clear and unambiguous case law from the Supreme Judicial Court clarifying what is the

burden of proof. Issues such as what evidentiary standard to use and how it is used in the reinstatement process are issues of fundamental fairness and of substantive due process. *See* In re Ruffalo, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968); *see* In Re Barach, 540 F.3d 82, 84 (An evidentiary standard may render "state court [disciplinary] proceedings fundamentally unfair, and thus, violated due process rights".); In Re Oliveras-Lopez De Victoria, 561 F.3d 1, 3 (1st Cir. 2009); *See* Law Students Civil Rights Research Council, 401 U.S. 154, 164; 91 S.Ct. 720, 727 (1971) (the burden of proof "raise[s] substantial constitutional questions" as to the "permissible ... burden of proof ... required for admission to practice law implicates Due Process Clause of the Fourteenth Amendment")

18. Furthermore, the terms "moral qualifications", "competency and learning", and "integrity and standing" are on their face vague and ambiguous terms that violate constitutional rights to due process and equal protection unless cured through "long usage" of "well-defined contours" so that it is "abundantly clear that ... construction of the [term] is both extremely narrow and fully cognizant of protected constitutional freedoms". Law Students, 401 U.S. at 159-160, 163; 91 S.Ct. at 725-27 (1971) *citing* and *quoting* Schware v. Board of Bar Examiners, 353 U.S. at 247, 77 S.Ct. at 760; Konigsberg v. State Bar, 353 U.S. 252, 262-263 (1961); Rhode, D. L., "Moral Character as a Professional Credential", Yale Law Journal, Vol. 94:3, 491-603 (January 1985) at 571 ("Surely moral merit is at least as elusive as other terms the [Supreme] Court has declared infirm, such as "gangsters," "sacreligious," "humane," and "credible and reliable" [citations ommitted]); Genusa v. Peoria, 475 F. Supp. 1199, 1207-08 (C.D. Ill. 1979) ("The portion ... relating to 'showing evidence of rehabilitation sufficient to warrant the public trust' must fail

constitutional scrutiny for the same reasons as the 'good character and reputation' standard ...").

19. There is no "long usage", "well-defined contours", or "abundantly clear" construction of any of these *Rule 4:01, § 18(5)* terms that is anywhere close to being "both extremely narrow and fully cognizant of protected constitutional freedoms". In fact, the opposite is true. Instead, the *Rule 4:01, § 18(5)* process based on such vague terms is little more than "a form of Kadi justice with a procedural overlay. Politically nonaccountable decisionmakers render intuitive judgments, largely unconstrained by formal standards and uninformed by a vast array of research that controverts the premises on which such adjudication proceeds." *supra*, "Moral Character as a Professional Credential", Yale Law Journal, p. 584. *See* infra.

20. Massachusetts follows "a minority rule" allowing discipline "to be made on the basis of a preponderance of the evidence". In Re Barach. 540 F.3d 82, 84 (1st Cir. 2008).

21. However, for reinstatement, neither *Rule 4:01, § 18(5)* nor related case law states what burden of proof is to be used for reinstatement. It only states that a limited term suspension based on such preponderance of the evidence standard is now treated the same as a disbarment in that it "is conclusive evidence" that an attorney at the time of suspension is "morally unfit to practice law, and it continues to be evidence" of a "lack of moral character" when an attorney petitions for reinstatement. In re Diviacchi, 419 Mass. 1003, 1005-1006 (2022). However, this pretend well-defined contour is not enforced in practice. Though all suspended attorneys are presumed "morally unfit to practice law, and it "continues to be evidence" of a "lack of moral character", the "heavy burden" to overcome such presumption is not enforced upon to all attorneys:

> 1) an attorney suspended for 30 days or less is at the time of suspension morally unfit to practice law and the suspension continues to be evidence of lack of moral character, yet

the attorney is reinstated automatically the following month — while the presumption of lack of moral character remains and is uncontested;

2) an attorney suspended for up to a year is morally unfit to practice law and the suspension continues to be evidence of lack of moral character, yet the attorney is reinstated automatically the following day while the presumption of lack of moral character remains and is uncontested (though passing a MPRE is required of some);

3) however, pick one additional day out-of-a-hat, and an attorney suspended for one-year-and-a-day can effectively be disbarred for life nationwide because the suspension is proof of moral inferiority that the attorney may not be able to overcome through a "heavy burden" of reinstatement requirements.

22. Thus the application under *4:01, § 18(5)* of a reinstatement presumptive standard of moral unfitness and a "heavy" burden of proof is a matter of picking one additional day out of a hat. Though this one day is "abundantly clear" and a "well-defined contour", it is arbitrary and capricious with no rational nor empirical basis for picking a number out of a hat as a means to determine the application of a still undefined "heavy burden". "Procedural due process guarantees that a state proceeding which results in a deprivation of property is fair, while substantive due process ensures that such state action is not arbitrary and capricious." Licari v. Ferruzzi, 22 F.3d 344, 348-50 (1st Cir. 1994); Law Students, *supra*; Newman v. Com. of Mass., 884 F.2d 19, 23, 25 (1st Cir. 1989). "[S]ubstantive due process protects individuals against state actions which are 'arbitrary and capricious,'". Amsden v. Moran, 904 F.2d 748, 753-54, 757 (1st Cir. 1990) *quoting* Newman, *supra*, 884 F.2d 19, 25 (1st Cir.1989), *cert. denied*, 493 U.S. 1078, 110 S.Ct. 1132 (1990).

23. Furthermore, different classes of attorneys with different reinstatement standards for no rational reason are an Equal Protection violation. It is well-established that the Equal Protection guarantees contained in the United States Constitution are violated when a law is not enforced

evenhandedly. Yick Wo v. Hopkins, 118 U.S. 356, 373-74, 6 S.Ct. 1064, 1072-73, 30 L.Ed. 220 (1886). The Equal Protection demands of the 14th Amendment apply even to a court's power to regulate classes of attorneys. *See*, In re Griffiths, 413 U.S. 717, 718, 722-26; 93 S. Ct. 2851 (1973). To pass the Equal Protection rational basis test, disparate treatment under law must have a legitimate state interest, and there must be a rational connection between the means and goals. *See generally*, City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 105 S. Ct. 3249 (1985).

24. In addition to the above *4:01 § 18(5)* presumption and "heavy burden" that are arbitrarily and capriciously required by the Defendants of one class of attorneys but not others, there are the additional vague terms stated by *S.J.C. Rule 4:01, § 18(5)* that s enforced and maintained upon attorneys suspended for more than a-year-and-a-day actually consist of multiple and varied vague and ambiguous standards of "good moral character" and "competency" that are enforced arbitrarily and capriciously depending on the elitist popularity of the reinstatement petitioner — *i.e.,* to attorneys such as George, *supra*, and Hiss, *infra*, while not to others.

25. The multiple varying standards that can be arbitrarily and capriciously picked by any reinstatement panel to recommend or not to recommend reinstatement are at least as follows:

1) The standard of the foundation Massachusetts case of Matter of Alger Hiss, 368 Mass. 447, 457-58 (1975) constantly cited by Defendants as moral guidance:

> ... such an appreciation of the distinctions between right and wrong in the conduct of men toward each other as will make him a fit and safe person to engage in the practice of law. ... Such an appreciation, if deeply felt and strongly anchored, will serve as a firm foundation and justification for the order of reinstatement. Matter of Hiss, 368 Mass. 447, 457-58 (1975).

26. According to this standard, repentance of the basis for suspension is not required because "[m]ere words of repentance are easily uttered and just as easily forgotten." Hiss, 457-58. According to this standard, it is error to require "admission of guilt and repentance as part of the proof of present good character and rehabilitation". In the Matter of Dawkins, 432 Mass. 1009, 1112, n. 4 (2000). However, other than Hiss, until partially arbitrarily and capriciously waived for the Brahmin George reinstatement *supra*, this standard though nominally present is routinely, arbitrarily, and capriciously ignored and reinstatement petitioners — except for the elitist chosen few — *are always* required to admit guilt and show repentance or they are denied reinstatement. Such requirement of repentance is usually hidden by a nominal and purely illusory semantic distinction without a difference between requiring "an admission to the factual predicates of misconduct" and a "reasonable understanding of the misconduct that led to his ... suspension"; or, is hidden behind such words as "repentance", "understanding", or rehabilitation. Diviacchi, *supra.* This distinction is a semantic illusion because the meaning of such "understanding" requires from reinstatement petitioners an "admission" to the factual predicates of the suspension misconduct plus repentance and remorse for that misconduct — regardless of whether a petitioner denies they committed the misconduct. *Compare*, Diviacchi, *supra*, Hiss, 368 Mass. 447, 457-58 (1975), George, *supra*; *compare*., Hiss, *supra*, Matter of Gordon, 385 Mass. 48, 59 (*Dissent* 1982). A reinstatement cannot honestly "repent" or "take responsibility" for acts they did not commit; a petitioner cannot "understand" how unethical conduct led to their suspension when they did not commit the unethical conduct. Defendants want a performance that no morally competent or honest attorney would give — performative rehabilitation is an attribute of

dishonesty and moral incompetence not proof by any standard of honesty and moral competence.

27. Further, the Defendants' reliance upon Hiss exemplifies the irrational, arbitrary, and capricious nature of the Defendants' application of *Rule 4:01 § 18(5)*. It is now an undisputed historical fact that Alger Hiss of Hiss was in fact a communist spy, war-time traitor, and perjurer. In Hiss, all his statements were perjury and he successfully with the aid of his Brahmin character references and years of performative virtue perjured himself into reinstatement. Not only is this perjurer traitor Hiss still listed as an honorable attorney in the Massachusetts Bar, the Hiss case based upon his perjury is used as a foundation guide for setting the "contours" of the vague and ambiguous terms of *Rule 4:01 § 18(5)*. Using Hiss as a foundation for *Rule 4:01 § 18(5)* is as rational as using Plessy v. Ferguson as a foundation for *42 U.S.C. §§ 1983*, Buck v. Bell as a foundation for the ADA, or Pontius Pilate as a guide for judicial integrity.

28. Another standard for readmission after a term suspension is one that "is adequately amenable to the fitness inquiry of original applicants" for the Bar:

> [a] hearing to determine character and fitness should be more of a mutual inquiry for the purpose of acquainting this court with the applicant's innermost feelings and personal views on those aspects of morality, attention to duty, forthrightness and self-restraint which are usually associated with the accepted definition of 'good moral character.' ... The approach should not be that of the adversarial nature of bar discipline cases ... . In the Matter of Prager, 422 Mass. 86, 95, 100-101 (1996).

Under this standard, *citing* to the 1871 case of Bradley v. Fisher, 80 U.S. 335 (1871), the Supreme Judicial Court has created a Goodspeak *bad thoughts* prohibition on First Amendment speech for anyone who wants to be reinstated pursuant to *Rule 4:01, § 18(5)*: not just their in-court speech but their "out of court" opinion and criticism of the legal system and anyone in it —

regardless of whether they are a judge or not — must have “a reasonable factual basis”, must not be expressed in a “vituperative and hyperbolic manner”, and must not be open to interpretation as “contempt for the legal and disciplinary system.” *See* Diviacchi, *supra*.

29. Another standard supposedly consists of “two distinct requirements, focusing, respectively, on (I) the personal characteristics of the petitioner; and (ii) the effect of reinstatement on the bar and the public”. Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att'y Disc. R. 69, 73 (1982). Under this standard, in violation of First Amendment protection, a *Rule 4:01, § 18(5)* panel is allowed to make a judgment as to whether a petitioner has the proper “temperament” to be an attorney. *See* Diviacchi, *supra*. There is no attempt to define “temperament” or why a passionless, cold-blooded temperament is better than a person’s honest expressions of emotion in the face of perceived injustice. Nor, is any means delineated for determining the effect of reinstatement upon the bar and the public. George Orwell once said, “[t]here are some ideas so absurd that only an intellectual could believe them.” In any substantive comparison of the reinstatements of George and Hiss and of many others to the denial of reinstatement of this Plaintiff and of many others, any sense of fairness or of equal treatment would be so absurd that only a lawyer would sense them. Such unfairness and inequality makes a mockery of the rule of law and of respect for justice or the public interest.. *See* infra at ¶33 and for example:

> 1. On “competency and learning”, Defendants make no attempt to create any conceptual, empirical, or even dogmatic (such as re-passing the MassBar Exam) criteria by which reasonable attorneys or anyone could understand what is required to satisfy this vague and ambiguous term. In some cases, varying from Matter of Hiss, 368 Mass. 447 (1975) to Matter of Scannell, 31 Mass. Att’y Disc. R. 554 (2015), all it takes to prove “competency and learning” in the law after years of disbarment (in the Hiss case, it was

25 years of disbarment in which Hiss did not practice law) simply the submission of character testimony is sufficient to the Defendants for reinstatement. In practice, there exists an assumption that some MCLE courses are required. How many and what kind? Even the one universally dogmatically acceptable standard for competency and learning consisting of the re-passing of the bar exam is not acceptable for reinstatement purposes. A petitioner could spend ten's of thousands of dollars on MCLE courses and repass the bar exam and still be rejected as legally incompetent for reinstatement. On the other hand, simply performatively paying for random MCLE courses may succeed if Defendants in their unbridled discretion are in the mood. George, *supra*

2. For some reinstatement cases, proven malpractice, felonies, intentionally not paying taxes, and drug abuse mean nothing, for others it bars reinstatement. *Compare* Hiss and George, *supra* with Matter of Gordon, 385 Mass. 48, 59 (1982); Matter of Waitz, 416 Mass. 298 (1993). The Matter of Scannell, 31 Mass. Att'y Disc. R. 554 (2015) allowed the reinstatement of Scannell who received two separate year-and-a-day for five felonies including one of child endangerment; forging multiple official court documents and associated perjury; and misappropriation of $5000 and other client fees. In allowing reinstatement in Scannell — again with no opposition from Bar Counsel — the BBO excused the petitioner's life all the way back to his alcoholism in high school and accepted his education consisting of having passed AA. In Matter of Ellis, 457 Mass. 413 (2010), in allowing reinstatement after disbarment based on a criminal conviction, Defendants accepted his competence and excused the petitioner's unemployment and crimes based on "the parenting of his children at home while his wife worked, his [failed] efforts to become a teacher, his coaching endeavors on four of his town's youth teams, and his [unspecified] many charitable activities through his church and other organizations." As with George, no one asked if he did these activities before disbarment nor investigate as to whether he continued them after he got the reinstatement he wanted.

3. The Defendants have made a farce of the concepts of "detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest." Defendants still use Hiss as a foundational guide for moral competence — a case in which an unrepentant World War II communist spy and perjurer conned his way into reinstatement after 25 years of disbarment based on nothing except Brahmin social networking. Similarly, in George, a disbarred convicted felon was reinstated despite he and his Brahmin character references maintaining that he was entrapped by the US Attorney — at least in Hiss the Brahmin friends accepted the perjury (while ignorant of the spying) and did not blame the US government against which Hiss was spying during war. Except for elitist attorneys, to the general public, the multiple and moving targets — consisting of at least three different standards by which reinstatement is decided — and the use of Hiss and George as paradigms of moral competence in reinstatement procedure show it lacks integrity, is unjust, and is detrimental to the public interest.

30. On the vague and ambiguous concepts of "competency" and "learning", Massachusetts law provides no criteria for defining these concepts. Massachusetts *Rule 4:01, § 18(5)* law is all over the place on this issue with the only guidance being that it sometimes requires an unspecified amount of MCLE courses while at other times it does not require any MCLE courses. Massachusetts has no mandatory MCLE requirement. So, as long as an attorney pays his annual registration, one can sit on one's bar card for decades and then one day decide to open a law office as a legally competent attorney by definition without ever having handled a case. How many and which MCLE courses are required to establish competence? No one has any clue. Might as well pick them out of a hat just like the one-year and one-year-and-a-day distinction for reinstatement burdens. According to the last published MCLE data, MCLE has about 9000-10,000 "program participants" in its fiscal year — no distinction as to how many of these are repeat participants. So, out of 42,000 licensed attorneys — considered "competent" and "learned" enough to represent any client in any court in Massachusetts — at least about 32,000 take no MCLE courses in any given year.

31. Reinstatement under *Rule 4:01, § 18(5)* can be "conditioned upon [an attorney] once more passing the bar." <u>Matter of Gordon</u>, 385 Mass. 48, 52 (1982). However, reinstatement panels and the *SJC* refuse to use this option to establish competency instead they suggest that petitioners re-pass the MassBar Exam <u>before</u> applying for reinstatement. Then, upon passing it, *Rule 4:01, § 18(5)* panels may — or may not — consider it sufficient to prove competence and may deny reinstatement for other reasons anyway. This demand is no more than an unfair show of force and not a fair criteria for competence or in the public interest.

32. Under *Rule 4:01, § 18(5)*, an attorney who maintains his innocence of professional misconduct is allowed to do so as long as they are suspended for less than a-year-and-a-day. Once that additional one day of suspension is picked out of a hat, *Rule 4:01* "contours" now require evidence of additional vague "rehabilitation" for reinstatement despite having completed the limited term suspension in full. These different categories of attorneys who deny culpability are not founded upon any rational basis nor upon any empirical test that would satisfy equal protection. An attorney who maintains that they cannot be rehabilitated from something they did not do is substantively the same moral person regardless of how long they were suspended. However, for those suspended for more than a-year-and-a-half, their suspension acts as a nationwide lifetime disbarment for maintaining their innocence.

33. Further, as even the Supreme Judicial Court admits, it is "improper" to use reinstatement "to extract further punishment" for past sanctioned misconduct. In the Matter of Weiss, 474 Mass. 1001, 1004 (2016). However, *Rule 4:01, § 18(5)* allows such to occur as exhibited by many suspended attorneys who give up on trying to be reinstated and by this Plaintiff's hopeless continuing attempts at reinstatement. The reality of the situation is that the Massachusetts twenty-seven month suspension of this Petitioner is actually a *de facto* lifetime disbarment because the Petitioner has no intention of ever giving up his First Amendment speech critical of the Massachusetts Bar and its disciplinary process nor of arguing his actual innocence of the disciplinary findings against him. Citing to the 8th Amendment bar of cruel and unusual punishment, another state supreme court was prophetic in its warning that reinstatement rules — such as *Rule 4:01, § 18(5)* — can not constitutionally be used to do what the discipline did not:

... the Court in recent years has considered it disproportionate punishment to deny an attorney the right to practice law indefinitely. ... A good starting point for applying the cruel and unusual punishment standard ... is the concept of disproportionality. ... In general this Court has rejected vengence as a civilized instinct.

...

(Concurring)

...

And the sense of our original majority opinion that has been withdrawn was to set a clear guide for readmission to practice law, by a rule that readmitted persons disbarred who had continued their lives for five years without further default, after paying all penalties for any crime they had committed that resulted in disbarment; or after remedying whatever personal deficiency caused behavior for which they were disbarred.

It was a sensible rule — as sensible as any that I have seen laid down by any other court — in an area wherein every court has had great difficulty finding its way.
Now, with this opinion, readmission to practice is tuned to rehabilitation ... The process is opened to prejudiced judgments of a most subjective nature because no one knows what rehabilitation is, in this context; and therefore its existence is nearly impossible of any kind of proof. One judge may believe that hours of work in good causes prove rehabilitation. Another may believe that helping in the soup line in a mission, for example, is proof of rehabilitation. But the applicant may have done the same work before disbarment. Should he then, in the process of demonstrating "rehabilitation", work twice as long? Should one prove rehabilitation by joining the Civitan Club in addition to the Kiwanis? Should one have a religious rebirth? *How does one prove he is no longer untrustworthy?* Especially if he maintains, as has he the right, that he *never was* untrustworthy?

One might suppose that considering the tenor of the revised decision and of the dissents, that a lawyer, scarred by disbarment might by, say, a heroic, painful and disfiguring sacrifice to medical experimentation, gain a quicker rehabilitation! I would vote that he stay out five years, no matter what; and that all others return in five years, if their behavior was shown law-abiding in that time.

To say that my reasoning is simply a mask for reluctance to do a difficult part of judging — that my insistence upon a provable standard for behavior that would entitle a disbarred lawyer to practice again is an avoidance of responsibility to make the subjective judgment necessary — simply turns the problem into the solution. Because the difficulty of the task — the difficulty in finding strands of logic to which to attach a reasoned decision about what one must do to regain a license to practice law, proves the ultimate subjectivity that I decry.

Such subjective judgments are simply too fraught with danger to the rule of law.

In re Smith, 214 W.Va. 83, 585 S.E.2d 602, 605-06, 608-09 (1980) [Emphasis added].

34. It must be noted, all this arbitrary and capricious process is being done not to shorten a suspension — such as would occur with a probation or parole hearing — but to reinstate someone after they have completed the suspension without any prejudice. As *Rule 4:01, § 18(5)* reinstatement law stands now, its moving target standards are analogous to:

> — jailors mitigating a life sentence because they believe a prisoner is rehabilitated by their popularity among the jailors while using the same rehabilitation sophistry to extend at their unbridled discretion unpopular inmates' limited term sentences to life-sentences.

Just as it would be unconstitutional for jailors to do the above, the same is true of *Rule 4:01.*

Reinstatement to this Court's Bar:

35. Pursuant to L.R. Rule 83.6.10(a):

> REINSTATEMENT: (a) Reinstatement after Suspension. An attorney who has been suspended shall be automatically reinstated at the end of the period of suspension upon the filing of an affidavit stating that:
> (1) the period of suspension has expired; and
> (2) the attorney has complied with all requirements of any order of suspension.

36. Petitioner respectfully submits he has complied fully with the restatement requirements as stated in this Court's Local Rules. When Plaintiff previously moved for reinstatement to this Court's Bar, such Motion was denied because he had not as yet been reinstated into the Massachusetts Bar. *See* In Re Diviacchi, No. 16-mc-91020-IT (2022).

37. It is now several years later. It is evident that the Massachusetts 27-month limited term suspension is really a *de facto* lifetime and nationwide disbarment because the Plaintiff will never admit to the false disciplinary findings that are the basis of his suspension nor waive his First Amendment rights to criticize them with whatever temperament his honesty requires.

38. This Court has never made a reciprocal discipline decision of life-time disbarment of this Plaintiff from this Court. This Court's Local Rule 83.6.10(a) and Rule 83.6.10(b) admit the reality and common law tradition that limited term suspensions are not the same as disbarment. Unlike *Rule 4:01, § 18(5)*, this Court's Rules 83.6.10(a) and Rule 83.6.10(b) are fundamentally fair and do not involve Due Process and Equal Protection issues created by using a "preponderance" standard to issue discipline that sometimes — with the arbitrary picking of one day out of a hat — go on to create a "heavy burden" for reinstatement of some attorneys but not for others. *See* Barach, *supra*, at 84 (An evidentiary standard may render "state court [disciplinary] proceedings fundamentally unfair, and thus, violated due process rights".) Id.

39. "The judgment of the state court as to the type and kind of discipline is not conclusive for federal disciplinary purposes." *In re Ruffalo,* 390 U.S. 544, 547, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968). A federal court remains free to make its own judgment as to the *federal* discipline to be imposed." In Re Barach. 540 F.3d 82, 83 (1st Cir. 2008). "We understand the importance of a lawyer's right to practice law and agree that, once granted, that right cannot be taken away in an arbitrary or capricious manner." Id. at 84.

40. Though Petitioner has not located any cases in which an attorney has been reinstated into this Court while suspended in Massachusetts, such reinstatement in reciprocal discipline cases has occurred in other District Courts. In re Surrick, 2004 WL 1109774 (E.D. Penn. 2004) (An attorney may be reinstated to practice in federal court even if their suspension in state court has not yet expired, provided they demonstrate the requisite moral qualifications and competency.)

COUNT I - SUBSTANTIVE DUE PROCESS

41. The allegations and all referenced exhibits contained in the preceding paragraphs are incorporated by reference as if fully set forth here.

42. The above facts state a violation of the substantive due process requirements of the 14th Amendment and are a deprivation of constitutional rights causing Plaintiff and attorneys similarly situated to suffer irreparable injury for which there is no adequate remedy at law. Unless recognized and declared by this Court, Plaintiff and attorneys similarly situated will continue to suffer irreparable harm.

43. Plaintiff and attorneys similarly situated are entitled to prospective declaratory relief against continued enforcement and maintenance of Defendants' unconstitutional laws, practices, procedures, and policies pursuant to 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§1983, 1988.

COUNT II - PROCEDURAL DUE PROCESS

44. The allegations and all referenced materials contained in the preceding paragraphs are incorporated by reference as if fully set forth here.

45. The above facts state a violation of the procedural due process requirements of the 14th Amendment and are a deprivation of constitutional rights causing Plaintiff and attorneys similarly situated to suffer irreparable injury for which there is no adequate remedy at law. Unless recognized and declared by this Court, Plaintiff and attorneys similarly situated will continue to suffer irreparable harm.

46. Plaintiff and attorneys similarly situated are entitled to prospective declaratory relief against continued enforcement and maintenance of Defendants' unconstitutional laws, practices,

procedures, and policies pursuant to 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§1983, 1988.

COUNT III - EQUAL PROTECTION

47. The allegations and all referenced material contained in the preceding paragraphs are incorporated by reference as if fully set forth here.

48. The above facts state a violation of the equal protection requirements of the 14th Amendment and are a deprivation of constitutional rights causing Plaintiff and attorneys similarly situated to suffer irreparable injury for which there is no adequate remedy at law. Unless recognized and declared by this Court, Plaintiff and attorneys similarly situated will continue to suffer irreparable harm.

49. Plaintiff and attorneys similarly situated are entitled to prospective declaratory relief against continued enforcement and maintenance of Defendants' unconstitutional laws, practices, procedures, and policies pursuant to 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§1983, 1988.

COUNT IV - FIRST AMENDMENT

50. The allegations and all referenced material contained in the preceding paragraphs are incorporated by reference as if fully set forth here.

51. The above facts state a violation of the First Amendment right of free speech made applicable to the states by the 14th Amendment and are a deprivation of constitutional rights causing Plaintiff and attorneys similarly situated to suffer irreparable injury for which there is no adequate remedy at law. Unless recognized and declared by this Court, Plaintiff and attorneys similarly situated will continue to suffer irreparable harm.

52. Plaintiff and attorneys similarly situated are entitled to prospective declaratory relief

against continued enforcement and maintenance of Defendants' unconstitutional laws, practices, procedures and policies pursuant to 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§1983, 1988.

COUNT V - EIGHTH AMENDMENT

53. The allegations and all referenced material contained in the preceding paragraphs are incorporated by reference as if fully set forth here.

54. The above facts state a violation of the Eighth Amendment bar of cruel and unusual punishment made applicable to the states by the 14^{th} Amendment and are a deprivation of constitutional rights causing Plaintiff and attorneys similarly situated to suffer irreparable injury for which there is no adequate remedy at law. Unless recognized and declared by this Court, Plaintiff and attorneys similarly situated will continue to suffer irreparable harm.

55. Plaintiff and attorneys similarly situated are entitled to prospective declaratory relief against continued enforcement and maintenance of Defendants' unconstitutional laws, practices, procedures and policies pursuant to 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§1983, 1988.

COUNT VI - *LOCAL RULE 83.6.9* RECIPROCAL DISCIPLINE

56. The allegations and all referenced material contained in the preceding paragraphs are incorporated by reference as if fully set forth here.

57. Massachusetts has *de facto* disbarred Plaintiff for life.

58. Pursuant to *Local Rule 83.6.9* and associated constitutional and federal common law and *Local Rule 83.6.10,* Plaintiff is entitled to a hearing on whether his *de facto* disbarment will be reciprocally enforced in this Court's Bar.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Grant prospective declaratory relief that *Rule 4:01, § 18(5)* on its face and as enforced and maintained upon Massachusetts attorneys similarly situated is unconstitutional;
2. Grant a *Local Rules 83.6.9* and *83.6.10* hearing on reciprocal discipline and/or reinstatement to this Court's Bar;
3. Grant such other and further relief as the court deems just and proper.

JURY DEMAND

Plaintiff demand trial by jury of all claims and causes of action so triable.

Plaintiff *pro se*,
/s/ Valeriano Diviacchi   Date: 6 May 2026
Plaintiff Valeriano Diviacchi
pro se Valeriano Diviacchi
24 Holton Street
Boston, MA. 02134
617-542-3175
vdiviacchi@me.com

CERTIFICATE OF SERVICE

I hereby certify that on 7 May 2026 I served this Amended Complaint upon Defendants Counsel by filing with the Court's e-filing system which will automatically result in service on any Defendants Counsel. Plaintiff does not know of any Defendants who require service by mail.

/s/ Valeriano Diviacchi