IN THE COMMONWEALTH OF VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Isidoro Rodriguez Petitioner *Pro per,* vs. Virginia State Bar Disciplinary Board Eighth & Main Building 707 East Main Street, Suite 1500 Richmond, VA 23219-2800 Respondent/Defendant	Case No. CL-2018-0016433

VERIFIED PETITION FOR WRIT OF MANDAMUS[1]

Under VA Code § 8.01-644, and the common law,[2] Plaintiff, Isidoro Rodriguez ("Rodriguez"), respectfully petition this Court based upon Art. I § 1, 5, 11 & 15, and Art. VI §§ 1, 5 & 7 of the Constitutions of Virginia ("VA. Const."), and VA Code § 54.1-3935A (2009) for the issuance of writs of mandamus to Respondent/Defendant Virginia State Bar Disciplinary Board ("VSBDB"), and for grounds in support thereof states:

I. THE RELIEF SOUGHT

Rodriguez seeks entry of a writ of Mandamus commanding the respondent VSBDB to cite the provisions of VA Const. and VA Code under which the Supreme Court of Virginia ("Court") gave it judicial authority as a lower court and appoint its members as judges to discipline attorneys?

[1] *See* Isidoro Rodriguez v. General Assembly of the Commonwealth of Virginia et al., Fairfax Cir. Ct. CL-2018-0016227, 11/14/198, Complaint for Declaratory Judgement, Plaintiff's Exhibits A through M, and filed Motions.

[2] VA Code § 1-200, states "The common law of England, insofar as it is not repugnant to the principles of the Bill of Rights and Constitution of this Commonwealth, shall continue in full force within the same, and be the rule of decision, except as altered by the General Assembly. VA Code § 1-10 (2005)

II. WRIT OF MANDAMUS

The writ of Mandamus "orders a person, usually some official of the executive branch of the government, or the judge of a lower court, to carry out some affirmative action." *In re Grant*, 635 F.3d 1227 (D.C. Cir. 2011). For a writ of mandamus to issue, "[1] there must be a clear right in the petitioner to the relief sought, [2] there must be a legal duty on the part of the respondent to perform the act which the petitioner seeks to compel, and [3] there must be no adequate remedy at law." *Board of City. Supervisors of Prince William City. v. Hylton Enters., Inc.*, 216 Va. 582, 584 (1976). "Mandamus is the proper remedy to compel performance of a purely ministerial duty, but it does not lie to compel the performance of a discretionary duty." *Supra*.

III. THE FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED

The Citizens of Virginia ratified Art. I § 5 VA Const. to mandate separation of power between the General Assembly, the Court and the Executive Branch of government.

The Citizens of Virginia ratified Art. VI §§ 1,[3] & 7[4] VA Const. to authorize **only** the General Assembly to enact legislation to give judicial authority, to establish lower courts to the Court, and to appoint lower court judges. These constitutional powers/restrictions which the citizens ratified can neither be delegated nor circumvented.

The Citizens of Virginia ratified Art. VI, § 5[5] VA Const. prohibited the Court from promulgating court rules that would conflict with statutory rights.

The Citizens of Virginia ratified Art. XII § 1 VA Const. to give only to themselves the

[3] **Article VI, § 1 VA Const.,** states in relevant part that **judicial power** shall be vested in courts of original or appellate jurisdiction "**as the General Assembly may from time to time establish**." (Emphasis added)

[4] **Article VI, § 7 VA Const.,** states in relevant part that justices of the Court, and, "**all other courts of record shall be chosen by . . . the General Assembly**. . .. (Emphasis added)

[5] **Art. VI § 5 VA Const.,** states in relevant part that the Court shall have the authority to make rules, "**but such rules shall not be in conflict with the general law"** enacted by the General Assembly. (Emphasis added).

power to amend these constitutional restrictions on the General Assembly and the prohibitions on the judicial authority and jurisdiction of the Court.

Therefore, under Art. 1, 5, and 7 VA Const., and the controlling president of *Fisher's Case*, 6 Leigh (33 Va.) 619 (1835) and *Legal Club of Lynchburg v. A.H. Light*, 13249, 430, 119 S.E. 55 (1923), only the General Assembly has the exclusive legislative powers to establish by statute a ***statewide attorney disciplinary system*** by making suspension or revocation of an attorneys license in a particular circuit court effective in all other courts of Virginia.

Based upon that holding in *Legal Club of Lynchburg v. A.H. Light*, 13249, 430, 119 S.E. 55 (1923), the General Assembly enacted in 1932 the Acts of Assembly p. 139 ("1932 Act") (codified as VA Code § 54.1-3935 (1950), to establish a ***statewide decentralized attorney disciplinary system*** to give judicial authority and jurisdiction to discipline attorneys only to each County Circuit Court established/appointed by the General Assembly.[6]

Consistent with the original constitutional draftsmen open distrust of the motive of individuals in government generally, and the Court specifically, [7] as well as the prohibition under Art. VI § 5 VA Const., the 1932 Act delegated to the Court only limited authority to prescribe, adopt, promulgate and amend rules of unprofessional conduct, **but specifically prohibited the Court from "promulgating rules or regulations prescribing a code of ethics governing the professional conduct of attorneys which are inconsistent with any statute" i.e. VA Code § 54.1-3935 (1950)**. *See* VA Code § 54.1-3915 (1988).

[6] *See When Has the Supreme Court of Appeals Original Jurisdiction of Disbarment Proceedings*, R.H.C. Virginia Law Review, Vol. 10, No. 3 (Jan. 1924), pp. 246-248; and David Oscar Williams, Jr., *The Disciplining of Attorneys in Virginia* 2 Wm. & Mary Rev. Va. L. 3 (1954).

[7] It was Patrick Henry who wrote, "[p]ower is the great evil with which we are contending. We have divided power between three branches of government and erected checks and balances to prevent abuse of power. However, where is the check on the power of the judiciary? If we fail to check the power of the judiciary, I predict that we will eventually live under **judicial tyranny**." (Emphasis added)

For more than eighty-nine (89) years, from 1932 until 2017, the General Assembly did not amend the 1932 Act's ***decentralized statewide attorney disciplinary system,*** *see* VA Code 54.1-3935 (1932 thru 2009), to enact legislation augmenting the Court authority to issue court rules to create the VSBDB as a lower court to discipline attorneys or appoint VSBDB members as judges.

A review of the legislative history to the 1998 amendment to VA Code § 54.1-3935 (1998) (Plaintiff's Exhibit B2 filed with the Complaint for Declaratory Judgement) confirms that the entire General Assembly rejected any change and only **accepted and ratified the Senate bill which did not delegate any expanded new rulemaking power to the Court**.

The legislative history to the 1998 amendment confirms that the entire General Assembly **specifically rejected** the House bill (Plaintiff's Exhibit B4 filed with the Complaint for Declaratory Judgement) proposal to delegate **expanded rulemaking power to the Court**, thereby rebuffing Court's rules: (a) creating a ***centralized attorney disciplinary system*** under the control of the Court; (b) giving judicial power to discipline attorneys to the VSBDB as a "lower court;" and, (c) permitting the Court and Defendant Virginia State Bar ("VSB") to appoint VSBDB members as "lower court" judges.

However, in defiance of the General Assembly's rejection of the House proposal, in 1998 the Court still put into effect Rule Part 6, § IV (Plaintiff's Ex. C) to establish a ***centralized statewide attorney disciplinary system*** under the Court's control, created the VSBDB as a "lower court" with judicial power to discipline attorneys, and appointed VSBDB members as "judges."

In 2004, in violation of VA Code §§ 18.2-499 a business conspiracy was commenced by Washington D.C. Lobbyist/former U.S. Attorney General Eric Holder and the Managing Partner of Rodriguez's dissolve client, to injure Rodriguez's international law business, reputation, profession, statutory property rights by their filing two fraudulent VSBDB complaints against

Rodriguez for litigating to enforce his Choate Virginia Attorney's Lien on the client's claim to a 50% share to $18 Billion USD of treasure trove and for Rodriguez litigating to enforce his rights as a father right pursuant to the Hague Convention, VA Code, and Joint Custody Agreement (http://www.liamsdad.org/others/isidoro.shtml).

On November 27, 2006, based only on unconstitutional Court Rule Part 6, § IV surreally giving the VSBDB judicial authority and jurisdiction to discipline an attorney, the VSBDB issued a *Void Ab Initio Order* disbarring Rodriguez for litigating to enforce statutory rights (http://www.vsb.org/docs/Final_Order_Rodr_11-28-06.pdf).

To challenge the unconstitutional Court's rule and the VSBDB *void ad initio order*, Rodriguez filed two administrative claims under the common law and Virginia Tort Claims Act VA Code § 8.01-195 by Certified Mail respectively on June 8, 2005, and November 8, 2007, No. 7004-1350-0001-7098-4500, and No. 7004-0750-0000-8170-5576. (Plaintiff's Ex. E)

In response, in violation of Art. I §§ 5, 11 & 15 VA Const., Art. VI §§ 1, 5, & 7 VA Const., the 5th, 7th, and 14th Amend. U.S. Const., and the common law,[8] Defendant Attorney General of Virginia abused and misstated the doctrine of sovereign immunity under the common law (Plaintiff's Ex. H3) so to deny access to a common law jury trial[9] on the issue of acts outside of judicial authority to block any meaningful adjudication by an impartial court by filing motions for summary judgment to dismiss Rodriguez's challenges to the Court's unconstitutional court rules

[8] Consistent with the common law, which the laws of Virginia are grounded, the General Assembly enacted the English Rule in Va. Code §8.01-195.3(3), to hold that a judge or government attorney had no immunity from suit for acts outside of his judicial capacity or jurisdiction.

[9] As Thomas Jefferson wrote in a letter to Thomas Paine in 1789: **"I consider trial by jury as the only anchor ever yet imagined by men, by which the government can be held to the principles of its constitution."** (Emphasis added) *See* Martinez v. Lamagno and DEA, 515 U.S. 417 (1995) (Rodriguez argued and won before the United States Supreme Court to reverse the USCA for the 4th Circuit, to order a common law evidentiary hearing before a jury for acts outside the scope of employment.

and VSBDB *void ad initio order*, Isidoro Rodriguez v. Hon. Leroy Rountree Hassell, Sr., et al., No. 081146 (2008); Fairfax Cir Ct. No CL-2007-1796) (surreal *void* order issued in defiance of the common law to declare absolute immunity and unaccountability for violation of the VA Const. and VA Code). (Plaintiff's Ex. F and G)

Subsequently, Rodriguez was again deprived of *due process* by the summary disbarring from Federal practice based on the refusal to review the Court's unconstitutional court rules and the VSBDB *void ad initio order* (Plaintiff's Ex. G1, list of *void ab initio orders*) (*See* Plaintiff's Ex. G2, relevant parts of the United States Tax Court *void* disbarment order use of legal sophistry to disregard the prohibitions under Art. VI §§ 1, 5 & & VA Const., VA Code, and the *Void Ab Initio Order Doctrine*).

Based upon this evidence of willful violations of the common law and VA Const./VA Code by systematically denying Rodriguez of access to an impartial court and a common law trial by jury to challenge the Court's rule and the VSBDB *void ab initio order,* Rodriguez's filed a federal action under the common law and federal civil rights statutes,[10] *Isidoro Rodriguez v. John/Jane Doe of the VSBDB et al.*, (2013) EDVA No. 3:12-cv-00663. (Plaintiff's Ex. H1 and H2)

In response, in 2011 Defendant Office of Attorney General again violated the common law, VA Const/VA Code, and the 5th, 7th, and 14th Amend. U.S. Const. by misuse of sovereign immunity to file a motion for summary judgment and monetary sanctions (Plaintiff's Ex. H3).

In violation of the *Void Ab Initio Order Doctrine,* VA Const., and VA Code, the Hon. Dist. Judge John A. Gibney used *stare decisis/res judicata* to issue an **unpublished *void order***

[10] The language of Section 1983 makes no mention of immunity. But the Supreme Court held in Pierson v. Ray, 386 U.S. 547, 555 (1967), that under this federal statute enacted in 1871 Congress did intend to incorporate only the existing common law immunities under the state constitution for lawful acts within the scope of employment, legislative and judicial authority-however, acts outside legal authority has no immunity. *See* Robert Craig Waters, *"Liability of Judicial Officers under Section 1983"* 79 Yale L. J. (December 1969), pp. 326-27 and nn. 29-30).

(https://casetext.com/case/rodriguez-v-doe-5), in 2013 to enjoin and prior restrain Rodriguez from filing future federal litigation challenging the Court's unconstitutional court rules and the VSBDB *void ab initio order* (aff'd https://www.gpo.gov/fdsys/pkg/USCOURTS-ca4-13-01638/pdf/USCOURTS-ca4-13-01638-0.pdf).

In response to this surreal federal court's *void order* issued in defiance of the common law granting ***impunity*** and unaccountability for the violations of Art. I §§ 11 & 15, and Art. VI §§ 1, 5, & 7 VA Const., and the 5th, 7th, & 14th Amend. U.S. Const., Rodriguez petitioned for redress the General Assembly (Plaintiff's Exhibit D and I) (*See* http://www.isidororodriguez.com) (*See also* presentation in 2010 to NOVA General Assembly members https://t.co/sLv7pz3zD5), the Inter-American Commission on Human Rights (IACHR) (P-926-16), and the United Nations Committee on Human Rights (*see* http://www.isidororodriguez.com).

The General Assembly's reaction in January 2017 was as follows:

(i) To violate the prohibition under Art. I § 1, 5 & 9 VA Const. by enacting in 2017 an **ex post facto** alteration to the ***decentralize statewide attorney disciplinary system*** established, instituted and unchanged for more than 85 years in the Commonwealth since 1932 under VA Code § 54.1-3935 (2098), by enacting VA Code § 54.1-3935 (2017) to unconstitutionally retroactively "[c]onform the statutory procedure for the disciplining of attorneys" by adopting Court Rule Part 6, § IV, 13-6; and,

(ii) To violate the citizen's mandate of separation of power and the citizen's control of amending the Constitution of Virginia under Art. VI § 1, 5 & 7 and XII § 1 VA Const. by retroactively adopting in 2017 Court Rule Part 6, § IV, 13-6: (a) to surreptitiously establish under the Court's control a ***centralized statewide attorney disciplinary system***; (b) to surreptitiously establish VSBDB as a lower court with judicial authority to discipline attorneys; and, (c) to surreptitiously adopt the Court's appointment of VSBDB members as judges.

I. PETITIONER IS ENTITLED TO A WRIT OF MANDAMUS.

A. Petitioner Has a Clear Right to the Relief Sought.

When the legislature delegates authority to the Court to promulgate regulations, those

regulations must neither exceed the scope of the authority delegated nor be inconsistent with the limitations and prohibitions under the VA Const., and VA Code. See, e.g., *Brown v. United Airlines, Inc.*, 34 Va. App. 273, 276, 540 S.E.2d 521, 522 (2001) (legislative enactment which delegates to authority to adopt rules does not permit adoption of inconsistent and illegal rules). [11]

Furthermore, "delegations of legislative power are valid only if they establish specific policies and fix definite standards to guide the official. . .. Delegations of legislative power which lack such policies and standards are **unconstitutional and void.**" *Ames v. Town of Painter*, 239 Va. 343, 349, 389 S.E.2d 702, 705 (1990) (Emphasis added).

Thus, given Art. I § 5 and Art. VI §§ 1, 5, & 7 VA Const. grant and prohibition of power only to the General Assembly to enact legislation to confer judicial authority, to create the lower courts, and to appoint lower court judges, the question which the VSBDB has systematically refused to address and answer since 2003 during the past fifteen years, is:

> UNDER WHAT PROVISIONS OF THE VA CONST. AND VA CODE DID THE COURT HAVE LEGAL POWER TO GIVE JUDICIAL AUTHORITY TO THE VSBDB TO ACT AS A LOWER COURT, AND VSBDB MEMBERS TO ACT AS JUDGES WITH THE JUDICIAL AUTHORITY TO DISCIPLINE ATTORNEYS?

The obvious answer is that since the VSBDB is an entity only created sometime in 1998 under unconstitutional Court Rule Part 6, § IV (Plaintiff's Ex. C), the VSBDB does not have any constitutional judicial authority, judicial power, or jurisdiction to render any order to discipline an attorney. Therefore, based on the *Void Ab Initio Order Doctrine,* the VSBDB order is *void ab initio*--and may be impeached directly or collaterally by all persons, at any time, or in any manner

[11] Regarding the limits on the judicial authority of courts, *Marbury v. Madison*, 1 Crunch 137, 140 (1803), held that "[c]ourts are constituted by authority, and they cannot act beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable but simply *void*, and this even prior to reversal." *Vallely v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 353, 41 S. Ct. 116 (1920).

as a complete nullity from its issuance. *Collins v. Shepherd*, 274 Va. 390, 402, (2007); *Singh v. Mooney*, 261 Va. 48, 51-52(2001); *Barnes v. Am. Fertilizer Co.*, 144 Va. 692, 705 (1925). Thus, the 2006 VSBDB *void ab initio order* disbarring Rodriguez for litigating to enforce his statutory rights was invalid at the moment of issuance.

The benchmark on the right of Rodriguez to challenge the VSBDB *void ab initio* order is the U.S. Supreme Court decision in *Pennoyer v. Neff*, 95 US 714, 733 (1877), holding,

> Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, **on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law**. . . . **To give such proceedings any validity, there must be a tribunal competent by its constitution--that is, by the law of its creation--to pass upon the subject-matter of the suit**." (Emphasis added).

Therefore, Rodriguez has a right to a Writ of Mandamus to command the respondent VSBDB to explain under what law it has and is acting as a lower court with judicial authority.

B. Petitioner Has a Right to Question the VSBDB Legal Authority.

As the Court has explained in *Clay v. Ballard*, 87 Va. 787, 13 S.E. 262, 263 (1891), "where the object is to enforce obedience to a public statute it has been invariably held that the writ is demandable of right." Thus, notwithstanding the holding in *Messina v. Burden*, 228 Va. 301, 307 (1984),[12] consistent with the common law at the time of the ratifying of the VA Const., sovereign immunity does not make the VSBDB immune from a Writ of Mandamus seeking equitable relief.

Dating back to 1613, under the common law there is no absolute judicial and ministerial

[12] "[T]he doctrine of sovereign immunity is 'alive and well' in Virginia." *Niese v. City of Alexandria*, 264 Va. 230, 238, 564 S.E.2d 127, 132 (2002) (quoting *Messina v. Burden*). "Sovereign immunity is a rule of social policy, which protects the state from burdensome interference with the performance of its governmental functions and preserves its control over state funds, property, and instrumentalities." *City of Virginia Beach v. Carmichael Dev. Co.*, 259 Va. 493, 499, 527 S.E.2d 778, 781 (2000); *City of Chesapeake v. Cunningham*, 604 S.E.2d 420, 426 (2004).

immunity for acts outside of scope of employment and jurisdiction, and action for equitable relief and damages will lie for the conspiracy to issue and enforce a *void order* as part of an illegal enterprise, *The Case of the Marshalsea*, 77 Eng. Rep. 1027 (K.B. 1613).[13] It was Blackstone who first discussed various English common law statutes that provided for accountability and removal of judges for misbehavior and acts outside of the jurisdiction and judicial authority. 4 William Blackstone, *Commentaries* 140 at 141. Thus, common law held that a right without a remedy is no right at all.[14] To enforce the limitation and prohibitions, as well as their constitutional rights against the government, including the Court,[15] under the Common law, citizens can bring a civil suit for declarative and equitable relief in Virginia against the government or government officials for acts outside the scope of employment, legislative authority, and judicial authority in violation of the VA Const. and VA Code.

Regarding quasi-judicial immunity for the VSBDB, it extends: (1) only if they are

[13] Sir Edward Coke found that Article 39 of the Magna Carta restricted the power of judges to act outside of their jurisdiction such proceedings would be *void*, and actionable,

> [W]hen a Court has (a) jurisdiction of the cause, and proceeds inverso ordine or erroneously, there the party who sues, or the officer or minister of the Court who executes the precept or process of the Court, no action lies against them. But (b) **when the Court has no jurisdiction of the cause, there the whole proceeding is [before a person who is not a judge], and actions will lie against them without any regard of the precept or process** . . . Id. 77 Eng. Rep. at 1038-41. (Emphasis added)

[14] Consistent with the common law, which the laws of Virginia are grounded, the General Assembly enacted the English Rule in Va. Code §8.01-195.3(3), to hold that a judge or government attorney had no immunity from suit for acts outside of his judicial capacity or jurisdiction. *See also* Robert Craig Waters, *"Liability of Judicial Officers under Section 1983"* 79 Yale L. J. (December 1969), pp. 326-27 and nn. 29-30).

[15] At common law the doctrine of sovereign immunity does not apply for: (A) **acts outside the scope of employment**, *Burnam v. West*, 681 F. Supp. 1169, 1172 (E.D. Va. 1988); *Tomlin v. McKenzie*, 251 Va. 478, 468 S.E.2d 882 (1996); *Fox v. Deese*, 234 Va. 412, 422-25, 362 S.E.2d 699, 706 (1987); *Messina v. Burden*, 228 Va. 301, 321 S.E.2d 657 (1984); *Crabbe v. School Bd.*, 209 Va. 356, 164 S.E.2d 639 (1968); *Sayers v. Bullar*, 180 Va. 222, 22 S.E.2d 9 (1942); *Deeds v. DiMercurio*, 30 Va. Cir. 532 (Albemarle County, 1991); (B) **grossly negligent conduct**, *McLenagan v. Karnes*, 27 F.3d 1002 (4th Cir. 1994); *Glasco v. Ballard*, 249 Va. 61, 452 S.E.2d 854 (1995); *Meagher v. Johnson*, 239 Va. 380, 389 S.E.2d 310 (1990); *Messina v. Burden*, 228 Va. 301, 310, 321 S.E.2d 657, 662 (1984); *Frazier v. City of Norfolk*, 234 Va. 388, 362 S.E.2d 688 (1987); *Bowers v. Commonwealth*, 225 Va. 245, 253, 302 S.E.2d 511 (1983); *James v. Jane*, 221 Va. 43, 53 (1980); (c) **intentional torts**, *Tomlin v. McKenzie*, 251 Va. 478, 468 S.E.2d (1996); *Fox v. Deese*, 234 Va. 412, 362 S.E.2d 699 (1987); *Elder v. Holland*, 208 Va. 15, 155 S.E.2d 369 (1967); *Agyeman v. Pierce*, 26 Va. Cir. 140 (Richmond 1991.; or (4) **acts characterized as bad faith**, *Tomlin v. McKenzie*, 251 Va. 478, 468 S.E.2d 882 (1996); *Schnupp v. Smith*, 249 Va. 353, 457 S.E.2d 42 (1995) (immunity lost by showing of malice in a slander action); *Harlow v. Clatterbuck*. 230 Va. 490, 339 S.E.2d 181 (1986).

performing judicial functions, (2) only if acting within their jurisdiction; and (3) only if acting in good faith "acting within the scope of their duties." *Imbler v. Pachtman*, 424 U.S. 409, 422-23 (1976); *Andrews v. Ring*, 266 Va. 311 at 321, 585 S.E.2d 780 (2003) (the court explicitly declined to grant blanket immunity to non-prosecutorial conduct, stating, "We do not decide in this case whether actions of a prosecutor in the role of investigator or administrator are entitled to absolute immunity.") *See Hueston v. Kizer*, 2008 Va. Cir. LEXIS 280, 36-37 (Va. Cir. Ct. May 29, 2008) (court denied absolute immunity).[16]

The VSBDB has legal duty to perform the act of responding to the Writ of Mandamus which Rodrigues seeks to compel. The record confirms the systematic denial of access to an impartial court and common law jury trial to challenge the Court's unconstitutional court rules, the VSBDB *void ad initio order,* and the alleged collusion to since 2003 to "resist the execution of the laws under color of authority,"[17] *Board of City Supervisors of Prince William City. v. Hylton Enters., Inc.*, 216 Va. 582, 584 (1976).

C. Petitioner Has No Adequate Remedy at Law.

Rodriguez seeks to enforce obedience to the VA Const., and VA Code by the VSBDB. Rodriguez is authorized to seek that relief in this Court via mandamus. The inquiry here is not only whether there is *any* alternative remedy, but also whether there is an "adequate" alternative remedy "at law" given the business conspiracy to damage Rodriguez's law practice, reputation, profession, and property rights.

[16] *See Katia Gutierrez de Martínez v. Lamagno and DEA*, 115 S.Ct. 2227 (1995) (Rehnquist dissenting) (Mr. Rodriguez argued and won a common law action before the U.S. Supreme Court holding that there was a right to an evidentiary hearing before a jury on the alleged acts of federal government employees outside the scope of employment (https://www.oyez.org/advocates/isidoro_rodriguez).

[17] VA Code §§ 18.2-481 and 482, makes it a Class 2 felony for, "[r]esisting the execution of the laws under color of authority," and the common law confirms that is no immunity for acts outside of authority or jurisdiction.

The record confirms that Rodriguez has no alternative to this Writ of Mandamus given the past 15 years of systematic denial of access to an impartial court and common law trial by a jury of the VSBDB acts outside the scope of employment and acts outside of judicial authority. This is confirmed by the enacting of VA Code § 54.1-3935 (2017) outside of the **'sphere of legitimate legislative activity**" by an ***ex post facto*** change to the ***decentralize statewide attorney disciplinary system*** established since 1932 to surreally retroactively "conform the statutory procedure for the disciplining of attorneys" to unconstitutional Court Rule Part 6, § IV, 13-6.

Respondent/Defendant VSBDB would not suffer any prejudice for complying with VA Const. and VA Code if this Court were to resolve this controversy via mandamus. Mandamus relief is appropriate where "[n]o prejudice was suffered by any party, and harm rather than good would result from sending the parties back to try the same issue, to be raised by different pleadings." *May v. Whitlow*, 201 Va. 533, 538 (1960).

In this case, all parties *benefit* from having this Court immediately and authoritatively decide the important constitutional questions presented in this case particularly based on the record of the General Assembly enacting ***ex-post-facto*** legislation in response to Rodriguez petitions since 2008 challenging the unconstitutional Court rules and the VSBDB *void order*, thus forcing Petitioners to seek mandamus.

Finally, "the extraordinary nature of this litigation cannot be ignored as a factor in the overall decision." *Abelesz v. OTP Bank*, 692 F.3d 638, 652 (7th Cir. 2012). It is imperative that access to an impartial court be provided to permit review and consideration of the validity of the Court rules and the VSBDB *void ab Initio Order* issued in violation of VA Const. and VA Code.

II. PETITIONER IS ENTITLED TO A WRIT OF PROHIBITION.

For substantially all of the preceding reasons, Rodriguez is also entitled to a writ of

prohibition. The writ of prohibition "commands the person to whom it is directed not to do something which . . . the court is informed he is about to do." *In re Commonwealth*, 278 Va. 1, 17 (2009) (quotation marks omitted). A writ of prohibition may serve to "suspend all action, and to prevent any further proceeding in the prohibited direction." *Id.* (quotation marks omitted). The writ is used to restrain a government actor "either when he has no jurisdiction or when he exceeds his jurisdiction . . .." *In re Commonwealth*, 222 Va. 454, 461 (1981).

Here the limitations and prohibitions under the VA Const. And VA Code is clear. Thus, by "exceeding the scope of [their] authority," Respondent/Defendant VSBDB is acting *ultra vires*—that is, without judicial authority and "jurisdiction" of a court. *City of Arlington v. FCC*, 133 S. Ct. 1863, 1870 (2013).

It settled that "a party must establish . . . irreparable harm and lack of an adequate remedy at law, before a request for injunctive relief, will be sustained." *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 61 (2008) (quotation marks omitted) (*See* Motion for Injunctive Relief filed 11/14/18). An action for injunctive relief plainly cannot be an "adequate remedy at law" when an injunction does not issue *unless* the movant establishes the "lack of an adequate remedy at law." *Id.* Here the record of the systematic denial of access to an impartial court and common law trial by a jury shows no adequate remedy at law. Also, there is no adequate remedy because Petitioner who at almost 73 years old cannot be compensated for the injury to his health and shorten lifespan due to his heart attack caused by the stress of being unlawfully disbarred and unemploy as an attorney since 2006.

Nor would a Circuit Court injunction remedy be "adequate." A remedy is "adequate" only if it is "equally as convenient, beneficial, and effective as the proceeding by mandamus." *Cartwright v. Commonwealth Transp. Comm'r of Va.*, 270 Va. 58, 64 (2005) (quotation marks

omitted). To be adequate, a remedy "*must reach the whole mischief*, and secure the whole right of the party in a perfect manner, at the present time and in the future, otherwise equity will interfere and give such relief and aid as the particular case may require." *McClaugherty v. McClaugherty*, 180 Va. 51, 68 (1942) (emphasis added) (quotation marks omitted). And in determining whether to issue the writ, "[c]onsideration must be given to the urgency that prompts the exercise of the discretion, the public interest, and interest of other persons, the results that will occur if the writ is denied, and the promotion of substantial justice." *Goldman v. Landsidle*, 262 Va. 364, 370–71 (2001).

Time is of the essence. This is apparent based upon the **ex-post facto** change to the ***decentralize statewide attorney disciplinary system*** by retroactively enacting in 2017 VA Code § 54.1-3935 (2017). This retroactive delegation of legislative power to the Court to "[c]onform the statutory procedure for the disciplining of attorneys" to unconstitutional Court Rule Part 6, § IV, 13-6, obfuscates the issues by (a) accepting the Court's control of a ***centralized statewide attorney disciplinary system***; (b) accepting as a lower court theVSBDB with judicial authority; and, (c) accept as judges" VSBDB members appointed by the Court.

CONCLUSION

For the preceding reason, all factors strongly support Rodriguez's request.

Respectfully submitted,

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