STEVEN R. DONZIGER, ESQ.

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September 24, 2018

VIA EMAIL

John Horan, Esq.
Referee appointed by the Court
Fox Horan & Camerini LLP
825 Third Avenue
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Re: Matter of Steven R. Donziger

Mr. Horan,

I write this reply to the Committee's September 20, 2018 response ("Response") to my September 18, 2018 letter ("Letter"), even though you have indicated, I believe hastily, that your views on the substance of the dispute are already formed. The apparent slapdash nature of the process of considering my positions exacerbates the due process concerns I raised in the Letter, particularly given that my livelihood, professional reputation, and ability to support my family is implicated by this proceeding. The First Department appointed you to administer a fair process where due process issues are addressed with sensitivity and consistent with the protections afforded a person in my position by the U.S. and New York Constitutions, as well as by the NYCRR rules. Binding international law also protects my right to earn a living and other rights based on my professional skill without being deprived of that ability absent due process of law. My specific concerns follow.

Scope of Post-Suspension Hearing

First, the only case cited by the Committee in its response to my letter does not address the issue under dispute, *i.e.* the scope of a post-suspension hearing. The Committee's invocation of this case appears to be wholly misleading. In fact, ***there is no indication that a post-suspension hearing ever was requested,*** much less conducted, in the case cited. Rather, the review of the case history in the Appellate Division's 1998 decision indicates that ***only a mitigation hearing*** was conducted:

> In our decision dated October 16, 1997 (Matter of Kramer, 235 A.D.2d 87, 664 N.Y.S.2d 1, lv. denied 91 N.Y.2d 805, 668 N.Y.S.2d 560, 691 N.E.2d 632), we temporarily suspended respondent from the practice of law and referred the matter back to the Departmental Disciplinary Committee for consideration of aggravating and mitigating factors and recommendation of the

> appropriate sanction. The Committee now moves for an order pursuant to 22 NYCRR 603.4(d) confirming the Hearing Panel's findings and its recommendation that respondent be disbarred.

Matter of Kramer, 247 A.D.2d 81, 82 (1998). Even assuming, arguendo, that collateral estoppel would apply to a mitigation/sanction hearing, the same *would not and cannot apply* to the fundamentally different post-suspension hearing provided under 1240.9. The written briefing to the Appellate Division addressed a range of issues, including both the propriety of collateral estoppel and the propriety of suspension and the "immediate threat" determination. The Appellate Division indicated that I should be allowed a post-suspension hearing as to its decision without any limitation. The Committee provides no explanation for why one conclusion in the Appellate Division's July 10 order (collateral estoppel) should be off-limits, while others (suspension/immediate threat) would be allowed.

The only plausible view of the post-suspension hearing is what I articulated in my letter: the hearing provides the respondent with the opportunity for more careful consideration of the arguments and underlying evidence that was not available because the Appellate Division was acting on an urgent basis in light of a prima facie concern about "immediate threat." This more careful consideration can now proceed given that I am suspended on an interim basis. This opportunity cannot be denied me just because it is inconvenient to the Committee or to the Referee whom I assume is volunteering his time and who might have limited capacity to deal with the complex factual and legal issues presented, given that he appears to maintain a full-time law practice. This issue must be discussed on Wednesday so I can properly understand what hearing I am being afforded and the scope of the evidence that will be considered. Only then can I properly prepare for the first hearing.

Waiver of Confidentiality of Proceeding

Second, I am deeply concerned about the Committee's response to my waiver of confidentiality. It seems obvious that the confidentiality described in section 1240 cited by the Committee *provides for the protection of respondents, and not for the protection of the Committee which has no legitimate interest in a closed proceeding if the Respondent waives confidentiality*. This is even more true after severe punishment already has been imposed on the respondent *and been unilaterally publicized* by the First Department with grievous harm to the respondent's personal and professional reputation. There is simply no issue because confidentiality already has been waived given that interim discipline already has been imposed and made public.

The confidentiality provisions cited in the Committee's letter are *not* provided to benefit the Committee's apparent self-serving interest in shielding details of its activities from the public or in trying to prevent legitimate third-party independent groups like Global Witness from engaging in a monitoring of its process. Global Witness already has expressed deep concern about my treatment including my designation as a "threat to the public order" despite not having had a single client complaint in 25 years of law practice. The fact that the Committee attorneys oppose

the public monitoring of their own conduct suggests they fear that their own process is something to be ashamed of, and that it will reflect poorly on themselves.

Given that Mr. Jorge Dopico (Chief Attorney of the Grievance Committee), Ms. Goldstein and Mr. Davidson (appointed as outside "pro bono" counsel despite the fact the Grievance Committee has 24 staff attorneys listed on its letterhead) did not provide me with an opportunity to be interviewed, much less to present evidence, prior to moving to suspend me based on Judge Kaplan's problematic findings (after receiving a referral letter from Judge Kaplan's own SDNY colleagues), their apparent desire to keep this matter hidden from public scrutiny might be understandable. Their reckless behavior up to this point is nothing to be proud of in my view. That said, I consider such a request by the Committee to constitute yet another violation of my due process rights. I should be afforded a public hearing no different than a criminal defendant given that my livelihood is at stake and that Judge Kaplan has "found" on a civil standard of proof without the usual panoply of due process protections, such as a jury of impartial fact finders, that I am a criminal felon – a finding which I reject entirely based on evidence I plan to present. You might be aware that having a *public hearing* is part of the normal due process protections afforded a person in my position as repeatedly has been been recognized by our nation's courts in a variety of similar contexts. I note also that I repeatedly have released documents related to this process to the public, and spoken about it publicly, without as much as a hint of protest by the Committee which at the 11th hour (after Global Witness and journalists inquired about attending) suddenly expressed its desire that the hearing be closed.

As indicated, you already are in receipt of a letter from Global Witness, a leading human rights advocacy group based on London that monitors human rights and oil industry corruption as a civil society organization. Global Witness has expressed interest in monitoring the attorney disciplinary proceeding against me as have other NGOs. As a practical matter, I have been unrepresented and may require assistance (short of counsel) at the hearing from Mr. Aaron Page (who monitored the earlier conference call without objection) or another person. I might also want my family, friends, or community supporters to attend the hearing for reasons of personal support. I request that you reject the Committee's assertions regarding confidentiality and make clear that I am entitled to bring and invite persons to the hearing, including independent journalists and human rights organizations, as I may find necessary for my defense and/or the broader public policy implications of this proceeding.

Concern Over Conflicts of Interest

I also have a third concern relating to potential conflicts of interest by you, Mr. Davidson, Ms. Goldstein, and Mr. Dopico. I have refrained from raising this issue but I feel compelled to do so prior to the commencement of the proceedings in light of the nature of your perfunctory response to my letter and other concerns that recently have become manifest. I am concerned about the fairness of the upcoming proceedings given the relationships of all of those involved (both the referee and the Grievance Committee attorneys) with each other, and possibly with Judge Kaplan and his colleagues who clearly are trying to orchestrate my disbarment given the contents of the referral letter signed by Judge Kevin P. Castel. In the interests of full transparency, I respectfully

request that you order all parties (including the referee) to disclose any conflicts or potential conflicts that might impair the fairness of the proceeding or the perceived fairness of the proceeding. Once this information is divulged, I should be given the right to lodge any objections if warranted.

Mr. Horan's Conflicts or Potential Conflicts

As referee, I believe you are obligated to run various conflicts checks. I request that you disclose whether you or your law firm has had any matters before Judge Kaplan and Judge Castel in the past; whether you have any matters currently pending before Judge Kaplan and Judge Castel; and whether the nature of your practice or your firm's practice is such that it appears regularly in the federal courts of New York (particularly the SDNY and Second Circuit) that are the source of the referral of me for bar discipline based on a theory of collateral estoppel; and whether your firm has ever or currently represents the Chevron corporation or any of its subsidiaries, agents, or affiliates. I also request that you disclose the same with regard to the other five SDNY district court and magistrate judges who signed off on the Castel referral letter. It is critically important that these disclosures, or any other actual or potential conflict you or your firm may have, be made prior to the commencement of the first hearing. Global Witness also has indicated to me that it will be pressing for disclosures on this point from you and the relevant staff attorneys of the Committee to determine whether the hearings comport with due process.

Mr. Davidson's Conflicts or Potential Conflicts

With regard to Mr. Davidson, it is likely that his large corporate law firm (Hughes Hubbard & Reed) has or has had matters before both Judge Kaplan and the six SDNY judges or magistrates who made the referral of me for bar discipline. Given that Mr. Davidson is the former head of the litigation department of this law firm, it is also likely that he personally has appeared before Judge Kaplan and the other SDNY referring judges and might even have a social relationship with some or all of these individuals. Some or all of this might constitute a conflict of interest and I should be afforded the opportunity to argue the point and seek relief if warranted. Mr. Davidson's firm also needs to disclose whether it has represented, or currently represents, Chevron or any of its affiliates in any proceeding. The firm's website indicates it represents multiple oil and gas clients and has been involved in deals involving the sale of Chevron-affiliated properties. Further, Mr. Davidson should disclose whether he is aware of any communications between himself, or his law firm, or the staff attorneys of the Grievance Committee, with any lawyer who has worked for Chevron, including any relevant lawyer at the Gibson Dunn law firm which has orchestrated Chevron's avowed demonization campaign against opposing counsel.

Mr. Dopico's Conflicts or Potential Conflicts

Mr. Dopico and all staff attorneys at the Grievance Committee also need to disclose any personal relationships with the referring judges from the SDNY (Mr. Dopico and Judge Castel obviously have such a relationship), Judge Kaplan, and whether they have had any communications with

regard to this proceeding with any SDNY judge or clerk involved in the Chevron RICO matter or in my bar referral, or with any Chevron lawyer involved in the case, as outlined above.

I suggest that we use Wednesday's session as an opportunity to deal with these and any other preliminary matters and to set the parameters for a subsequent hearing where relevant evidence can be presented, if the referee permits. To be clear, I do not at this stage plan to present witnesses at Wednesday's hearing given the uncertainty about the scope of the proceeding.

Thank you for your expeditious attention to these matters.

Sincerely,

Steven R. Donziger

Cc:

Grievance Committee Attorneys (**Via Email**)
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