

Virginia State Bar  
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Sent Via Email: webintake@vsb.org

June 4, 2021

Subject: Complaint Against Attorney Steven Giballa, Potential Violations of Rules 3.3, 3.4, 3.5

To Whom it may Concern,

This complaint is submitted against Attorney Steven Giballa for what I believe to be numerous violations of the Virginia Bar Association professional guidelines in his submissions to the EEOC on behalf of the United States Secret Service in the matter of [REDACTED] v. U.S. Department of Homeland Security (U.S. Secret Service) EEOC Case No. [REDACTED] Agency Case No. [REDACTED]

This complaint requests the Virginia State Bar investigate and render a judgement if Attorney Giballa made numerous statements to the EEOC in his professional capacity as an attorney for the Secret Service both verbally and in writing which he either knew to be false, or any reasonable person would have believed to have been false, in violation of Rule(s) 3.3 Candor Toward the Tribunal. Further, I also request the Virginia State Bar investigate and render a judgement if Attorney Giballa also violated Rule(s) 3.4 Fairness, by obstructing access to evidence and concealing information having potential evidentiary value.

This is not a case of an attorney accidentally making a few erroneous statements which they may not have known to be false. This is a case in which I believe the written record will show attorney Giballa engaged in a systemic pattern of submitting false statements, withholding of discovery, withholding of material facts, and turning a blind eye to a Special Agent perpetrating what most reasonable human beings would consider to be a fraud upon the EEOC. It is difficult to imagine a scenario whereby these acts were done with any intent other than to perpetrate a deception upon the EEOC.

Some of attorney Giballa's more egregious submissions in this matter were claiming an audio file that the United States Secret Service was ordered to produce in discovery was "largely audible" and contained "audible portions", when the file was virtually blank and contained nothing of any use of or significance. The bar association should listen to this audio file, and take statements from Mr. [REDACTED] and his former attorney Thomas Gagliardo to decide if Mr. Giballa committed a fraud upon the EEOC with such a statement. They should further read Attorney Giballa's Opposition to Spoliation Sanctions and Attorney Gagliardo's rebuttal Supplement to his motion for Spoliation Sanctions which refutes Attorney Giballa's statements. The Virginia bar should make a judgement on Attorney Giballa's candor in this matter. Further, Attorney Giballa

made the statement in his November 9, 2020 submission to the EEOC that it was never demonstrated that the audio file existed, when he knew the United States Secret Service produced a quality control worksheet under discovery signed by two Special Agents affirming the file both existed and was audible. Further, the chain of custody for the file was always within the United States Secret Service. Additionally, Attorney Giballa described the audio file as partially audible, which was not true. Significantly, Attorney Giballa reiterated the identical arguments in his November 9, 2020 arguments that he submitted in his original opposition to Mr. [REDACTED] appeal on October 19, 2018. Attorney Giballa received a copy of the Complainant's response identifying the inaccuracies in his response of October 19, 2018 on April 23, 2019, so there was no excuse for repeating the same erroneous statements in his submission on November 9, 2020.

Attorney Giballa also misled the EEOC by stating the Office of the Inspector General “[made] no finding of misconduct or impropriety.” First, on knowledge and belief, Attorney Giballa knew the case had not been closed by the Office of the Inspector General, and that findings are not published until such time as a case is closed. Second, on knowledge and belief, Attorney Giballa is aware the Office of the Inspector General disposes of cases without any merit rapidly, so the fact this case has remained open for years is indicative that some finding is being investigated. Unless the Virginia State Bar can provide a likely and believable alternate explanation, this statement has all the hallmarks of an attempt to deceive the EEOC that the Office of the Inspector General had closed the case and made no adverse inferences, which would be a clear material misrepresentation of the facts.

After witnessing the deposition of Special Agent Ellen Ripperger as Attorney Giballa did, any reasonable person would have had serious doubts pertaining to her credibility in this matter, and known that her explanations on how an audio recording under her command and control which was certified as audible by Secret Service quality control could not simply have become corrupted without tampering after being ordered for production under discovery. In my judgement, an ethical and honest attorney at that point would have recused themselves and not continued to present explanations which might be fraudulent to the EEOC.

The final two submissions to the EEOC by Mr. [REDACTED] (provided with this complaint) outline more than 16 materially false statements, which Attorney Giballa certainly had to know or suspect were false. I request the Virginia State Bar pay particular attention to the materially false statements outlined in the following 3 documents, which attorney Giballa referred to in his November 9, 2020 Opposition as “*disputes of legal interpretations, rather than genuine disputes of material fact.*” I think the Virginia State Bar can examine the submission and make a determination as to what if any liberties were taken by attorney Giballa in his representation of “facts” in his submissions to the EEOC. Attorney Giballa further goes on to state in the same submission “*None of the Request’s purported “erroneous statements” constitute an erroneous interpretation of material fact or law*” - which is not true.

Submission on February 22, 2021 – Identifies 9 false statements made by Attorney Giballa.

Submission on October 18, 2020 – Identifies 7 false statements made by Attorney Giballa.

Submission on September 19, 2018 – Identifies numerous false statements by Attorney Giballa.

These however were not the only untrue statements submitted by Attorney Giballa. Untrue statements were submitted throughout the entire course of the proceedings for this case. Given the number of erroneous statements, some of which contradict information obtained from the United States Secret Service during discovery (such as Materially False Statement #3 identified in the February 22, 2021 submission, which claimed the Complainant had no disability when the Secret Service admitted he had in discovery admissions), and many of which were resubmitted as true despite being disproven by rebuttals citing written artifacts from the Complainant. Given these circumstances, it is nearly impossible to conceive of a scenario of where so many erroneous statements could all be a matter of a simple misunderstanding or innocent mistake.

In my judgement and interpretation of the Virginia State Bar rules, there is written evidence Attorney Giballa committed numerous violations of Rules 3.3 (Candor) and 3.4 (Fairness), and there is circumstantial evidence to suggest he may have violated rule 3.5 (Impartiality). I am requesting the Virginia State Bar examine the documents contained in this submission and render a decision based on their professional judgement if Attorney Giballa violated any of the following rules governing the conduct of Attorneys in the State of Virginia.

#### Violation of Rule(s) 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal;
- (2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
- (3) fail to disclose to the tribunal controlling legal authority in the subject jurisdiction known to the lawyer to be adverse to the position of the client and not disclosed by opposing counsel; or
- (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(c) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) A lawyer who receives information clearly establishing that a person other than a client has perpetrated a fraud upon the tribunal in a proceeding in which the lawyer is representing a client shall promptly reveal the fraud to the tribunal.

#### Violation of Rule(s) Rule 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(a) Obstruct another party's access to evidence or alter, destroy or conceal a document or other material having potential evidentiary value for the purpose of obstructing a party's access to evidence. A lawyer shall not counsel or assist another person to do any such act.

(c) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law.

(e) Make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

(f) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.

#### Violation of Rule(s) Rule 3.5 Impartiality And Decorum Of The Tribunal

(e) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

- (1) in the course of official proceedings in the cause;
- (2) in writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party who is not represented by a lawyer;
- (3) orally upon adequate notice to opposing counsel or to the adverse party who is not represented by a lawyer; or
- (4) as otherwise authorized by law.

Last, I would like to note something highly irregular, which is the EEOC refused the complainant's submission on February 22, 2021. The EEOC refused the submission in writing, signing the Federal Express slip as "refused", and returning it unopened to the Complainant. Shortly thereafter, the EEOC reaffirmed its prior summary judgement in favor of the Secret Service. One must ask the question as to how the EEOC knew what the contents of the Complainant's correspondence of February 22, 2021 would be. It could have been a new complaint, a withdrawal of the current complaint, or something totally unrelated to the matter with the Secret Service. Yet somehow, the EEOC knew the package contained information about the Secret Service polygraph case, material that if accepted, would have to be added to the public record and discoverable.

Suspiciously, the same correspondence was sent to the Secret Service by email on the same date it was sent by Federal Express to the EEOC. If an ex parte communication was had between the Secret Service and the EEOC asking they refuse this package, such a communication would likely be a violation of Rule(s) 3.5, Impartiality and Decorum of the Tribunal. The question must be investigated as to why the EEOC refused a package from Mr. [REDACTED] with no knowledge of its contents, and further how often the EEOC refuses packages without opening them? What

exactly would be so important that the EEOC would have Mr. [REDACTED] name at the front desk of the EEOC with instructions to refuse any packages from him?

It is my hope that the Virginia State Bar will take this requested fact finding into potential improprieties seriously, study the written records submitted in this matter, hold a public hearing where questions can be asked in this matter, and reach a fair and impartial decision based on the evidence of record.

Thank you for your attention in this matter. Please keep all submissions made in this matter confidential. If you should require any further documentation in this matter please reach out to me.

Sincerely,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Attachments:

1. 20141213 Formal\_Complaint\_of\_Discrimination\_Under\_29\_CFR\_Part\_1614.pdf
2. 20160229 Agency.Discovery [REDACTED].pdf
3. 20161003 Danny Seiler Signed Affidavit 10\_4\_2016.pdf
4. 20161004 Spoliation Sanctions Motion.pdf
5. 20161006 Supplement to Motion for Sanctions.pdf
6. 20161013 Agency.Opposition.Spoliation.pdf
7. 20161201 MSJ.Final.pdf
8. 20180919 Appeal EEOC # [REDACTED] [REDACTED] v USSS.pdf
9. 20181019 Agency's Opposition to OFO Appeal - [REDACTED] v DHS.pdf
10. 20190329 Comments on Deposition of SA Ellen Ripperger to OIG.pdf
11. 20190329 Deposition of Ripperger, Ellen OIG Submission.pdf
12. 20190423 Response to Agency Opposition [REDACTED] [REDACTED] v USSS.pdf
13. 20201018 RFR Appeal II EEOC # [REDACTED] [REDACTED] v USSS Submitted.pdf
14. 20201109 USSS OPPOSITION TO REQUEST FOR RECONSIDERATION.pdf
15. 20210222 RFR Response to Agency Opposition EEOC # [REDACTED] [REDACTED] v USSS.pdf