EXHIBIT A

Defendant	Case Number	Resolution Type	Sentencing Date	Court Sentence: PROBATION	Court Sentence: INCARCERATION	Court Sentence: HOME CONFINEMENT
Dillon, Brittiany	1:21-CR-00360	Plea	11/4/2021	36 months	N/A	2 months
Harrison, Bruce	1:21-CR-00365	Plea	12/16/2021	48 months	N/A	N/A
Wangler, Douglas	1:21-CR-00365	Plea	12/16/2021	24 months	N/A	N/A
Schwemmer, Esther	1:21-CR-00364	Plea	1/10/2022	24 months	N/A	N/A
Kostolsky, Jackson	1:21-CR-00197	Plea	1/11/2022	36 months	N/A	30 days
Walden, Carey Jon	1:21-CR-00548	Plea	1/19/2022	36 months	N/A	30 days
Straka, Brandon	1:21-CR-00579	Plea	1/24/2022	36 months	N/A	3 months

Williams, Andrew	1:21-CR-00045	Plea	2/9/2022	24 months	N/A	N/A
McAlanis, Edward	1:21-CR-00516	Plea	2/15/2022	24 months	N/A	N/A
Nalley, Verden	1:21-CR-00116	Plea	3/10/2022	24 months	N/A	N/A
Loftus, Kevin Daniel	1:21-CR-00081	Plea	3/15/2022	36 months	N/A	N/A
Kelley, Kari	1:21-CR-00201	Plea	3/17/2022	36 months	N/A	N/A
Martin, Zachary	1:21-CR-00201	Plea	3/17/2022	36 months	N/A	N/A
Quick, Michael	1:21-CR-00201	Plea	3/17/2022	24 months	N/A	N/A
Quick, Stephen	1:21-CR-00201	Plea	3/17/2022	24 months	N/A	N/A

Ballesteros, Robert	1:21-CR-00580	Plea	4/28/2022	36 months	N/A	N/A
Webler, Matthew	1:21-CR-00741	Plea	5/3/2022	N/A	45 days	N/A
Spain Jr., Edward	1:21-CR-00651	Plea	5/4/2022	36 months	N/A	N/A
Suarez, Marissa	1:21-CR-00205	Plea	7/12/2022	36 months	N/A	N/A
Todisco, Patricia	1:21-CR-00205	Plea	7/12/2022	36 months	N/A	N/A
Evans III, Treniss	1:21-CR-00225	Plea	11/21/2022	36 months	N/A	20 days intermittent confinement
Panayiotou, Marcos	1:22-CR-00055	Plea	11/29/2022	36 months	14 days intermittent	N/A
Garcia, Jacob	1:22-CR-00118	Plea	1/26/2023	24 months	30 days intermittent confinement on weekends	N/A

Ambrose, Lawrence	1:22-CR-302	Plea	3/13/2023	36 months	N/A	N/A
Saer, Lilith Anton	1:22-CR-374	Plea	4/4/2023	36 months	N/A	N/A
Allen, Chase	1:22-CR-361	Plea	4/20/2023	36 months	14 days	N/A
Colgan, Joshua	1:22-CR-00224	Plea	4/25/2023	36 months	28 days	90 days
Hallon, Luis	1:22-CR-217	Plea	4/26/2023	24 months	N/A	N/A
Robinson, James	1:22-CR-00267	Plea	5/9/2023	N/A	6 months	N/A
Horvath, Ian	1:22-CR-00344	Plea	5/12/2023	36 months	N/A	N/A
Cohen, Menachem	1:22-CR-00393	Plea	6/12/2023	36 months	N/A	N/A

EXHIBIT B

Defendant	Case Number	Judge	Plea?	Sentencing Date	Court Sentence as to 1512: Probation	Court Sentence as to 1512: Incarceration
Hodgkins, Paul	1:21-CR-00188	Moss	Yes	7/19/2021	24 months supervised release	8 months
Chansley, Jacob	1:21-CR-00003	Lamberth	Yes	11/17/2021	36 months supervised release	41 months
Reffitt, Guy	1:21-CR-00032	Friedrich	No – Trial	8/1/2022		87 months
Robertson, Thomas	1:21-CR-00034	Cooper	No – Trial	8/11/2022	36 months supervised release	87 months
Michetti, Richard	1:21-cr-00232	Cooper	Yes	9/6/2022	24 months supervised release	9 months
Williams, Anthony	1:21-CR-00377	Howell	No – Trial	9/16/2022	36 months supervised release	60 months
Hale-Cusanelli, Tim	1:21-CR-00037	McFadden	No – Trial	9/22/2022	36 months supervised release	48 months
Bledsoe, Matthew	1:21-CR-00204	Howell	No – Trial	10/21/2022	36 months supervised release	48 months
Seefried, Hunter	1:21-CR-00287	McFadden	No – Trial	10/24/2022	12 months supervised release	36 months
Thompson, Dustin	1:21-cr-00161	Walton	No - Trial	11/18/2022	36 months supervised release	36 months

Hughes, Joshua	1:21-CR-00106	Kelly	Yes	11/22/2022	36 months supervised release	38 months
Wood, Matthew	1:21-CR-00223	Mehta	Yes	11/28/2022	36 months supervised release	None (12 months home detention)
Reid, William	1:21-CR-00316	Friedrich	No – Trial	12/7/2022	36 months supervised release	37 months incarceration
Decarlo, Nicholas	1:21-CR-00073	Howell	Yes	12/9/2022	36 months supervised release	48 months
Ochs, Nicholas	1:21-CR-00073	Howell	Yes	12/9/2022	36 months supervised release	48 months
Hughes, Jerod	1:21-CR-00106	Kelly	Yes	1/6/2023	36 months supervised release	46 months
Herrera, Erik	1:21-CR-619	Howell	No - Trial	1/13/2023	36 months supervised release	48 months
Rahm, James Jr	1:21-CR-00150	Hogan	No - Trial	1/18/2023	36 months supervised release	12 months incarceration
Hernandez, Andrew Alan	1:21-CR-00445	Kollar-Kotelly	Yes	1/30/2023	36 months supervised release	18 months
Moynihan, Christopher	1:21-CR-226	Cooper	No – Trial (Only on 1512)	2/1/2023	36 months supervised release	21 months
Haynes, Joshua	1:21-CR-594	Chutkan	Yes	2/2/2023	36 months supervised release	32 months

Seefried, Kevin	1:21-CR-00287	McFadden	No – Trial	2/9/2023	12 months supervised release	36 months
Wright, John Douglas	1:21-CR-00341	Kollar-Kotelly	Yes	3/6/2023	36 months supervised release	49 months
Puma, Anthony	1:21-CR-00454	Friedman	Yes	3/21/2023	24 months supervised release	9 months
Bender, Luke	1:21-CR-508	Howell	Stipulated Trail	4/20/2023	36 months supervised releases	21 months
Mitchell, Landon	1:21-CR-508	Howell	Stipulated Trail	4/20/2023	36 months supervised releases	27 months
Colt, Josiah	1:21-CR-00074	Friedrich	Yes	5/10/2023	36 months supervised release	15 months
Shalvey, Dale Jeremiah	1:21-CR-00334	Kelly	Yes	5/11/2023	24 months supervised release	41 months
Bauer, Pauline	1:21-CR-386	McFadden	No – Trial	5/30/2023	24 months supervised release	27 months
Strand, John	1:21-CR-85	Cooper	No – Trial	6/1/2023	36 months supervised release	32 months
Roche, Michael	1:22-CR-00086	Howell	No – Trial	6/9/2023	36 months supervised release	18 months
Adams, Thomas	1:21-CR-00354	Mehta	Stipulated Trial	6/16/2023	36 months supervised release	14 months

Rodriguez, Daniel	1:21-CR-00246	Jackson	Yes	6/21/2023	36 months supervised release	121 months

EXHIBIT C

1 IN THE SUPREME COURT

2 STATE OF GEORGIA

3

4 DISCIPLINARY PROCEEDINGS

5

6 HELD BEFORE SPECIAL MASTER:

7 LARAE DIXON MOORE

8

9 IN THE MATTER OF:)SUPREME COURT DOCKET NO.
)
10 W. McCALL CALHOUN, JR.)STATE DISCIPLINARY BOARD
State Bar No. 103915,)DOCKET NO. 7696
11)
Respondent.)
12

13

14

15 Show Cause Hearing, Pursuant to Bar Rule
16 4-106, taken before Paula N. Marchetti, Certified
17 Court Reporter in and for the State of Georgia, held
18 at the Sumter County Courthouse, Courtroom B, Room
19 227, Second Floor, 500 West Lamar Street, Americus,
20 Georgia 31709, on the 21st day of June, 2023,
21 commencing at 10:05 a.m. and concluding at 12:31
22 p.m.

23

24

25

IN THE SUPREME COURT
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

HELD BEFORE SPECIAL MASTER:
LARAE DIXON MOORE

IN THE MATTER OF:	)SUPREME COURT DOCKET NO.
	)
W. McCALL CALHOUN, JR.	)STATE DISCIPLINARY BOARD
State Bar No. 103915,	)DOCKET NO. 7696
	)
Respondent.	)

Show Cause Hearing, Pursuant to Bar Rule 4-106, taken before Paula N. Marchetti, Certified Court Reporter in and for the State of Georgia, held at the Sumter County Courthouse, Courtroom B, Room 227, Second Floor, 500 West Lamar Street, Americus, Georgia 31709, on the 21st day of June, 2023, commencing at 10:05 a.m. and concluding at 12:31 p.m.

APPEARANCES

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STATE OF GEORGIA
COUNTY OF MUSCOGEE
STATE DISCIPLINARY BOARD DOCKET NO. 7696

Pursuant to Article 8.B of the RULES AND REGULATIONS OF THE BOARD OF COURT REPORTING OF THE JUDICIAL COUNCIL OF GEORGIA, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Marchetti Reporting, LLC.

Marchetti Reporting, LLC, was contacted by the offices of the State Bar of Georgia, to provide court reporting services for this hearing. Marchetti Reporting, LLC, will not be taking this hearing by O.C.G.A. 15-14-37 (a) and (b).

This 4th day of July, 2023.

Paula N. Marchetti
CCR # 4670-2684-9667-4816
Expiration Date April 1, 2024

THEREUPON:

MS. MOORE: All right, good morning, I am LaRae Moore, and I am the Special Master assigned to this case.

This is the, in the matter of W. McCall Calhoun, Jr., State Bar Number 103915, State Disciplinary Board Matter, Docket Number 7696. And this is pursuant to the State Bar's petition for a disciplinary matter.

I guess we can determine if everybody is present; on behalf of the State Bar?

MS. MITTELMAN: Jenny Mittelman on behalf of the State Bar, I have the General Counsel, Paula Frederick, present with me, also.

MS. MOORE: Okay, thank you, and for the respondent?

MR. EVANS: Donald Evans, on behalf of McCall Calhoun.

MS. MOORE: Okay, thank you, Mr. Evans, and Mr. Calhoun is present?

MR. EVANS: He is.

MS. MOORE: Okay, all right. Well, are we ready to proceed, are there any preliminary matters that we need to take up?

MS. MITTELMAN: I don't believe there

are any preliminary matters we need to take up, other than I have a notebook for you, which Mr. Evans has seen, and authorized me to deliver to you.

Is that okay, Mr. Evans?

MR. EVANS: It is fine, thank you.

MS. MOORE: Okay.

MS. MITTELMAN: Thank you.

MS. MOORE: Thank you.

MS. MITTELMAN: Actually, we also have one stipulation, we have -- Mr. Calhoun has agreed that he will stipulate to the fact that he intends to appeal his criminal conviction.

MS. MOORE: Okay. So I guess my question, as to the stipulation, is has a notice of appeal been filed already?

MR. EVANS: No, Your Honor, and that would be the -- I would like to, to ask the Court to consider a continuance of this hearing, to enable that.

There, we've only had the rulings from the Court, and there are several posttrial motions that are being prepared, at the moment, including a motion to -- for a new trial, a rehearing, or an adjustment of the felony count.

Mr. Calhoun does not object to the

misdemeanor counts that were -- he was found guilty of. What troubles him, and what troubles the State Bar, is only one of the counts, the felony conviction.

And, and even though, as the Court will learn, the, the Federal judge who found that Mr. Calhoun had committed a felony, in his brief entry into the Capitol Building, on January 6th, she said that she intended him as a misdemeanor, anyway.

MS. MITTELMAN: I'm going to object to the testimony from Counsel. There are documents he can submit, if he would like to.

MR. EVANS: Well, I'm just trying to give the Court a preview of what the file will reflect.

We'll be moving to admit the entire Federal record, which is on Pacer, it's public record, but I didn't want to print out the boxes and drag them down here.

MS. MOORE: Sure, sure, and I guess my question just, at this time, is, so he's been convicted, but there are posttrial motions pending, and the notice -- there is no notice of appeal filed yet, until the posttrial motions are disposed of?

MR. EVANS: And we are asking the, we

are asking this tribunal to simply, having opened the matter, continue the matter, to allow us to, you know, prosecute those posttrial motions, before we even know that an appeal is going to be necessary in this case.

I mean, the, everything has been slowed down and delayed in DC, in the court system there, and these important motions are yet to be heard, and may even mean that we don't need to proceed further with this case.

And, of course, the Court would be aware that January 6th, and everything that happened on that day, is being litigated politically, in the media, and, and in Congress.

And we learn new and interesting facts about the events of that day, the Government's involvement in those events, that pertain to everything that is involved with this charge against Mr. Calhoun.

And given the uncertain circumstances of those proceedings, we think it would be fair, at least, to allow Mr. Calhoun to resolve the posttrial motions before filing a notice of appeal, and certainly before losing his ability to earn a living in Georgia is taken away from him

MR. CALHOUN: I want to -- excuse me, I haven't been sentenced yet.

MS. MOORE: Sure. So, Mr. Calhoun, please allow your attorney to speak for you. I'm not inclined, at this time, to grant a continuance. I'll hear from the State Bar, as to its position.

MS. MITTELMAN: A couple of things, Ms. Moore. First, Mr. Evans said that what's troubling the Bar is the felony conviction. The felony conviction is troubling the Bar, but that is not the only portion of this that would be in issue.

The felony conviction is what -- the reason that we could be here today, regardless of the other, of the misdemeanor convictions, because Mr. Calhoun has been convicted of a felony that damages the representation of the profession in the eyes of the public.

And there's a series of cases that expect that he would, at least, be suspended, pending the outcome of the appeals.

MS. MOORE: Is that what's in --

MS. MITTELMAN: Yes, ma'am, so what's in your notebook are a series of cases, starting with the Stoner case, that all describe the fact that the appearance of a convicted attorney does

great damage to the profession in the eyes of the public. And, therefore, Mr. Calhoun should be suspended, pending the outcome of his appeals.

If he was exonerated, if he was -- if his felony conviction is removed, and we're just looking at the misdemeanors, at that point we reevaluate and have another conversation with Mr. Evans.

But, at this point, there is a felony conviction in place, and the Court would expect him to be suspended pending appeal. So we would object to a continuance.

MR. EVANS: Your Honor, there's another consideration, if I may?

MS. MOORE: And Mister, Mr. Evans, I'm sorry, you can call me Ms. Moore, I'm not a judge, I am a Special Master, so Ms. Moore is fine.

MR. EVANS: Ms. Moore.

MS. MOORE: Okay.

MR. EVANS: The Court -- this tribunal should also consider the harm to McCall Calhoun's 41 current clients, who have already paid their fee for representation, many of them are in the courtroom here today, and who are entitled to the attorney of their choice.

They have a constitutional right to that,

which is going to, you know, while the State Bar maintains that Mr. McCall [sic] has been convicted of what they call a felony in DC, is somehow harm to the profession. That's an abstract principle.

At least 41 clients here are going to lose the lawyer that they've already paid, that they selected, that's their counsel of choice.

And they've got a constitutional right, as well. And, and a continuance, in order to allow McCall to prosecute posttrial motions, at least, would be a benefit for Mr. Calhoun, and would be a blessing for his 41 clients, who he needs to continue to represent, having been paid to do that. And, of course, prematurely takes away his ability to do that.

Then we've trampled on the actual existing. Right now, rights of 41 clients, whereas the State Bar is talking about abstract principles that affects no one, except my client, who is definitely --

MS. MOORE: And I do appreciate the arguments, Mr. Evans, but I believe that in terms of the rules, that certainly would have anticipated these issues.

I know how criminal appeals can certainly

drag out, especially, you know, if there's posttrial motions, and he hasn't even been sentenced.

And then once the appeal is filed, you're looking at, at the bare minimum, on a good day, a year, up to two, two and a half years, before you can even get an opinion.

And so I don't think that the, that the Georgia Bar rules anticipated that a respondent would be able to, in the face of a conviction, would be able to delay a decision that long.

Especially, again, in these situations where the rules provide that a hearing be held within 30 days.

MR. EVANS: The hearing has been, you know, it's started, I'm just asking the Court to consider continuing it.

MS. MOORE: Sure.

MR. EVANS: And not until the appeal is prosecuted, simply until he does appeal, despite we're not at that stage yet, and now I'm asking for the opportunity to prosecute the posttrial motions, which could eliminate the issue altogether, and we may not need to appeal any longer.

And, and so, would a continuance only for that amount of time, and that would be for the

benefit of the existing clients, allow him to try to make an orderly transition to other attorneys, who could, you know, represent them, if the posttrial motions do not achieve the relief sought.

This comports with the Bar's doing what it needs to do, but allowing Mr. Calhoun to handle his existing clients appropriately, during this little window of time we have left before the -- a notice of appeal is filed.

MS. MOORE: I'm going to decline the request and, and move forward with the hearing today.

MR. EVANS: Okay.

MS. MOORE: Okay, are we ready to proceed, then? All right, I guess we can begin with the, it's the State Bar's burden.

MS. MITTELMAN: Yes, Ms. Moore, so I just wanted to verify, Mr. Evans told me there were no witnesses for Mr. Calhoun, but if there will be any witnesses, I want to invoke the rule.

MS. MOORE: Okay. We will invoke the rule of sequestration. If there are any witnesses who intend to speak or testify on behalf of Mr. Calhoun, you're required to step outside, until called.

MR. EVANS: Your Honor, we don't have any witnesses, except perhaps Mr. Calhoun, and I have a tape that was prepared by the US Department of Justice.

MS. MOORE: Okay.

MR. EVANS: And it shows everything that Mr. Calhoun did during the 20 minutes that he followed the crowd into the Capitol Building on January 6th.

MS. MOORE: Okay.

MR. EVANS: All of his interactions with persons, and there's a thumb drive that contains that evidence, as sent to his attorney in DC, and then to our office.

MS. MOORE: Okay.

MR. EVANS: And we made a copy of it for the Court, and if we think it's relevant, and we have also an affidavit from a paralegal in my office, to attest to how she obtained the material, where it came from.

I've shown it to Ms. Mittelman, she's asked for an opportunity to make sure that it's complete and accurate, and contact the Department of Justice, if necessary, to do that, which we don't object to.

MS. MOORE: Okay.

MR. EVANS: But we just want the Court to have the benefit of being able to see exactly what Mr. Calhoun did.

MS. MOORE: Okay.

MR. EVANS: Since there's no question about what his conduct was.

MS. MOORE: Okay. But no witnesses, you have no other witnesses that possibly --

MR. EVANS: Other than, possibly, to authenticate the tape, if that became necessary in the Court's view.

MS. MOORE: Okay. All right, Ms. Mittelman, you may proceed.

MS. MITTELMAN: All right, a brief opening statement, then, Ms. Moore.

This is State Bar Docket Number 7696, in the Matter of McCall Calhoun. The State Bar petitioned the Supreme Court for the appointment of a Special Master, after US District Court Judge Dabney Friedrich found Mr. Calhoun guilty of one Federal felony, and three Federal misdemeanors, related to his involvement in the January 6th riot at the US Capitol.

Bar Rule 4-106 requires the Bar to petition the Court for a show of cause hearing, upon

receiving the evidence that any member of the Georgia Bar has been convicted of a felony, or certain misdemeanors.

According to the Rules of Professional Conduct in the terminology section, which is 1.0(e), you have a copy of that in your notebook, as does Mr. Evans. Convicted, as used in the rules, means, denotes a verdict of guilty, whether or not a sentence has been imposed, as Mr. Evans told you, and as Mr. Calhoun stood up to tell you, he has not been sentenced yet. The Bar has jurisdiction, at this point, because of the felony conviction.

Rule 8.4(a)(2) provides that it's a violation of the Georgia Rules of Professional Conduct for a lawyer to be convicted of any felony.

8.4(a)(3) provides that it's a violation of the rules of professional conduct for a lawyer to be convicted of a misdemeanor, involving moral turpitude, where the underlying conduct relates to the lawyer's fitness to practice law.

Because he intends to appeal his conviction, as he stipulated, the Bar, at this time, is only requesting that Mr. Calhoun agree to be suspended, pending the outcome of his appeals, determination of his appeals, the case law describes

that termination is the first level of appeals, up to the United States Supreme Court, so no habeas matters, or any of those things, would extend the, the return to a final hearing in the matter.

Because he intends to appeal his conviction, I would direct you to the Stoner case, which is in your notebook that I've provided you. And it says the appearance of a convicted attorney, continuing to practice, does more to disrupt public confidence in the legal profession than any other disciplinary problem.

Members of the Bar must maintain a high standard of conduct, if the law is to be respected. The public must be able to respect the individuals who administer it.

By failing to swiftly discipline any attorney found guilty of a serious offense, we necessarily impair the public confidence in the law, and this Court's willingness to enforce the law evenhandedly. So, for this reason, we're asking for Mr. Calhoun's suspension, pending appeal.

I'll introduce the evidence, but would like to ask if Mr. Evans has any further opening remarks.

MS. MOORE: Okay, thank you, Ms. Mittelman. Mr. Evans, do you have an opening

statement?

MR. EVANS: Your Honor, all we have is Mr. Calhoun. I'll reserve, however, let the State, let the State Bar proceed.

MS. MOORE: Okay.

MS. MITTELMAN: So, at this time, the State Bar moves for the admission of Exhibit 1, which is a certified copy of the indictment, it is behind tab two in your notebook.

State Bar moves for the admission of Exhibit 1.

MR. EVANS: No objections, Your Honor.

MS. MOORE: Okay, it's admitted, thank you.

(STATE BAR EXHIBIT 1 was admitted into evidence.)

MS. MITTELMAN: The State Bar moves for the admission of State Bar Exhibit 2, which is the verdict of guilty from Judge Dabney Friedrich, entered on March 20th, 2023.

MS. MOORE: Mr. Evans?

MR. EVANS: We object to that, as genuine.

MS. MOORE: Okay, on what basis?

MR. EVANS: Well, we don't, we don't dispute the accuracy of the judgment, we object to

its characterization by the State Bar as a verdict. It's not a verdict, it's a judgment of the Court.

MS. MOORE: Okay, and what, what is your, what is your distinction? How are you distinct -- how are you saying that a verdict is different from a judgment?

MR. EVANS: A verdict is done by a jury.

MS. MOORE: Okay, this was a bench --

MR. EVANS: And this matter did not involve a jury.

MS. MOORE: Okay. But this was a bench trial?

MR. EVANS: It was a bench trial.

MS. MOORE: Okay. But, Mr. Calhoun, he would have been entitled to a jury trial, and my conclusion is that he opted for a bench trial.

MR. EVANS: I'm objecting to her characterization -- to the State Bar's characterizations of the document as a verdict, it's not a verdict.

MS. MOORE: All right.

MS. MITTELMAN: I have no objection to calling it a judgment of guilt, issued by Judge Dabney Friedrich, in the matter of the United States

versus William Calhoun. It's a certified copy of the, the Court document, and admissible for that reason.

MS. MOORE: Okay. I will admit it on the basis that it is a certified copy, reflecting the judgment of Judge Dabney Friedrich in this case. So I'll admit it on that basis.

(STATE BAR EXHIBIT 2 was admitted into evidence.)

MS. MITTELMAN: And with the stipulation that Mr. Calhoun intends to appeal his conviction, at this point the State Bar rests.

And Mr. Calhoun is obligated to show cause why he shouldn't be suspended, pending the outcome of the appeal.

MS. MOORE: Okay. Upon the State Bar resting, upon tendering Exhibits 1 and 2, Mr. Evans, I'll hear from you on behalf of Mr. Calhoun.

MR. EVANS: Your Honor, Mr. Calhoun is -- there's been a petition filed by the State Bar, a new petition, the only grounds stated for his, suspension of his law license is Rule 8.4, and the sole grounds cited in the petition is that Mr. Calhoun was convicted of a felony.

Under the, under the, under Rule 8.4, Subsection B, for purposes of this rule, conviction

shall have a meaning set forth in 1.0(e), okay?
MS. MOORE: Okay.
MR. EVANS: And if the Court would examine one point -- Rule 1.0(e), it says conviction or convicted denotes any of the following, accepted by a court: Whether or not a sentence has been imposed; a guilty plea; a plea of nolo contendere; a verdict of guilty; a verdict of guilty, but mentally ill, or, lastly, a plea entered under the Georgia First Offender, or some -- or a similar statute in Georgia, or another jurisdiction.
Georgia law is, is -- well, let me back up. These are the rules, Bar rules, and they are punishment, and we're in the disciplinary section of the Bar rules.
And, and the Court has made clear, in case after case, that these Bar rules are to be strictly interpreted in favor of the accused, and, and in normal language, and all the rules of statutory construction that apply in criminal laws, apply to this section of the Bar rules.
We have to assume that the Bar rules mean -- say what they man, and mean what they say, and we're limited by the, by the terms of those rules.

There is nothing in the five -- a bench trial does not involve a verdict. And so we don't have a guilty plea, he didn't plead guilty, he didn't plead nolo --
MS. MOORE: Let me ask you --
MR. EVANS: -- he did not --
MS. MOORE: Let me --
MR. EVANS: -- there was no jury, so there was no verdict of guilty.
MS. MOORE: Mr. Evans, let me interrupt you for just a second. Two things, first of all, do you have a copy of the rule that you've cited to?
MR. EVANS: Uh-huh.
MS. MOORE: Secondly, is this your closing argument, or --
MR. EVANS: Well, I move, I move to dismiss the proceeding. They don't have evidence of a conviction.
MS. MOORE: Thank you.
MR. EVAN: I mentioned the rules of statutory interpretation, because they are relevant here, because Georgia law is real clear about the meaning of the term verdict. And you don't have a verdict without a jury.
I cite from Woodham versus State, this is a

2001 case, it is 235 Ga. App. 112 [sic]. Headnote one: The trial court could not have directed a verdict of acquittal, because there is no verdict in a bench trial. That's Georgia law.
Poole versus State, in 2001, trial court could not have directed verdict of acquittal after defendant was convicted following a bench trial, two counts of driving under the influence.
Even if defendant had made a motion for a directed verdict, following the conviction at mistrial, such a motion would have had no meaning when the case was tried without a jury.
Jones versus State, as a preliminary matter -- which is a 1997 case, 226 Ga. App., I have copies for the Court, of all of these cases.
As a preliminary matter, we note that the trial court could not have directed a verdict of acquittal, because there is no verdict in a bench trial.
I have copies of these cases for the Court. I have copies for you, too --
MS. MOORE: Thank you.
MR. EVANS: -- each of those cases. Our Bar rules define conviction as either an admission of guilt, or a finding of guilt by a jury.

That's why they use the term verdict, that's what juries do, and courts cannot do.
The meaning of the word verdict is very clear under Georgia law, and we are talking about the Georgia Rules of Professional Conduct.
We didn't draft them, and we don't know why they left out a bench trial, although it certainly existed when the rules were adopted.
They could have easily stated, and included, in their definition of conviction the result of a bench trial, but chose not to.
And so the canon of statutory construction, that if a, and I cite the Court here to Carothers, which is a Supreme Court decision, from just this year, interpreting the Georgia Bar rules.
And under Carothers, if the -- in considering the, the meaning of Bar admission rules we must afford the text its "plain and ordinary meaning", view it "in the context in which it appears", and interpret it and read it "in its most natural and reasonable way, as an ordinary speaker of the English language would".
This is --
MS. MOORE: You're saying Carothers is a 2023 case?

MR. EVANS: 2021 case.
MS. MOORE: Okay.
MR. EVANS: And, as a, a standard tenet of statutory construction is also that if -- the inclusion of several specific things in a statute, without including the, a, a related thing, the inclusion of the first things, and the exclusion of the other, means that that was probably intended.
MS. MOORE: Well, let me ask you, so since you've cited to Carothers, does Carothers involve a question, is it, does Carothers involve a conviction after a bench trial?
MR. EVANS: No.
MS. MOORE: What does Carothers involve?
MR. EVANS: Involves a -- Bar admission standards, but it's, it's simply a decision that talks about how to interpret the Bar rules, and that's its relevance here.
MS. MOORE: Okay. But does it specifically talk about how to interpret conviction, is that discussed in Carothers, how to interpret conviction?
MR. EVANS: It doesn't discuss felony convictions, that was not with issue in it. But the

Bar rules were an issue.
MS. MOORE: Okay.
MR. EVANS: And how to interpret the Bar rules --
MS. MOORE: Okay, I follow you.
MR. EVANS: -- is what it discusses.
MS. MOORE: All right.
MR. EVANS: And here, you know, at Rule 1.1(e) [sic] expressly mentions pleas and verdicts, but it does not expressly mention a judgment of guilt following a bench trial.
The efforts are, therefore, stronger that such judgments were not intended to fall under the definition of conviction, and, too, issue for the verdict includes a judgment of guilt following a bench trial.
But, as in Carothers, you can look to the normal Heritage Dictionary, and if you look it up, look up the word verdict, it says, in the American Heritage Dictionary, the English language, a verdict is the decision of the jury, after the trial of a case.
MS. MOORE: Okay, so just, just so I'm clear, Mr. Evans, you are, at this point, moving to dismiss the State Bar's petition, is that --

MR. EVANS: That's correct.
MS. MOORE: -- that's where we are, okay. So, as I read Rule 4-106, it says upon receipt of information or evidence that a conviction for any felony has been entered, so is not a judgment a conviction?
MR. EVANS: Well, it's, were it not for (b)(1), 8.4(b)(1), do you have a copy of that, Judge -- Mrs. Moore?
MS. MOORE: Thank you.
MR. EVANS: Very clear what a conviction means, from the Bar rules. And it says the purpose of this rule, conviction shall have a meaning set forth in Rule 1.0(e).
MS. MOORE: Okay. Ms. Mittelman, what's the State Bar's position, or response?
MS. MITTELMAN: This is a, this is a conviction, and 8.4 says it is a violation of the Georgia rules to be convicted of any felony.
In the, I, in the terminology section, it's not exclusive, it says it denotes any of the following, but doesn't say only the following, it can't possibly be the case that a judge's decision, in a bench trial, is unworthy of the outcome that the disciplinary rule expects.

At this particular time, there's no question that Mr. Calhoun has been convicted of a felony in a bench trial.
And I believe the Court should follow the direction in Stoner and the following, in the ensuing cases.
MS. MOORE: Okay. So, Mr. Evans, I'm going to deny your motion to dismiss --
MR. EVANS: On what grounds, Your Honor?
MS. MOORE: Mr. Evans, I agree, I mean the plain language says upon a conviction. And I believe that if the Supreme Court did not intend for a judge's judgment of guilty to apply, then they can, they can say that.
MR. EVANS: Well --
MS. MOORE: They can review, they can review, you know, they can review their cases, and, and specifically say that, but I, at this point I don't think that that alone is enough to, to dismiss this case. I mean, the rule clearly says upon conviction.
MR. EVANS: But it's by a conviction, Your Honor, and it's very specific, and it lists five specific things that constitute a conviction

for purposes of the Bar rules. And a bench trial result is not included among them.

The -- they, you can't add that, it probably needs to be added. If they thought about it, they may want to add it. But it's too late to add it for this case.

And we don't have a conviction here, and so we're not dealing anymore with conviction of a felony. We're dealing with a judgment of a felony, which our Bar rules don't speak to.

So we should be done here.

MS. MOORE: Okay, I'm going to deny the motion.

MR. EVANS: Next, Your Honor, we move to dismiss, because the conduct that Mr. Calhoun is accused of committing is also made illegal under the, under the Georgia Code, specifically in O.C.G.A. § 16-11-34.1, entitled Disruption of the Senate or House of Representatives. I've got a copy of it for you.

MS. MITTELMAN: Could I have a copy, as well?

MR. EVANS: Uh-huh.

MS. MITTELMAN: Thank you.

MS. MOORE: Thank you.

MR. EVANS: If you, the Court will look at the indictment, and compare it to O.C.G.A. § 16-11-34.1, you will see that the same conduct is included in both.

Now, what Mr. Calhoun is accused of doing is interfering with an official proceeding of the House of Representatives to, I guess, complete the election of the presidency, as they were doing on January 6th.

Now, the actual facts of the case would reveal that Mr. Calhoun's entry into the Capitol was long after Congress had stopped doing whatever it was doing.

But I know the Court's not concerned about the -- about whether the judge in DC got the case wrong, and we're not here to relitigate that matter before this Court.

But we are here to defend his Bar license, and he's entitled to keep his Bar license unless he's clearly in violation of the State Bar rules.

Now, we've already hit on the fact that he's not been convicted, as that word, as that term is defined under State Bar rules.

But what I'm, what I'm pointing out now is that the conduct at issue, Bar rules punish conduct,

not the interpretation of that conduct put on it by someone else.

DC, and the folks in DC, can call what McCall did, in walking through the Capitol Building, between the ropes, where the public is generally admitted, on every other day, and in leaving 20 minutes later, without speaking to anyone, interfering with the, interfering with anyone, didn't touch anything.

We've got a tape that shows everything he did when he was in the Capitol Building. They can call that a felony. But, in Georgia, we have standards, and McCall Calhoun's conduct was not felonious.

It is a violation of this Statute, but this is a misdemeanor. So the conduct that they call a felony is, in Georgia, a misdemeanor.

MS. MOORE: Yes, but, but I, I, for purposes of this hearing, I think we are, our only, the only question is whether or not he was a convicted of a felony, in whatever jurisdiction, I don't think that --

MR. EVANS: It's not a felony.

MS. MOORE: I think, I think you would apply the standards in the jurisdiction where he

committed the offense, I don't --

MR. EVANS: You don't substitute your, your judgement someone else for his conduct.

MS. MOORE: How is it that -- how is it that we take a felony, committed in some other State, and then try to compare it with the laws of this State, and say because it was, it wasn't even committed in Georgia, so why are we applying Georgia law?

MR. EVANS: Because he's a Georgia lawyer, and we, the Georgia Rules of Professional Conduct -- if Mr. Calhoun had gone to Pakistan and eaten pork, they call that a felony. We don't consider it a felony.

But if they, if the State Bar was here with a conviction out of Pakistan, for eating pork, would you make the same statement?

They can call it a felony if they want to. The same conduct is already made illegal in Georgia, but it's a misdemeanor.

MS. MOORE: He's -- my understanding is he is, he was tried and convicted for felonies, for offenses occurring in another jurisdiction, and, therefore, he is judged by that, the standards and the laws of that jurisdiction. And if those laws

say his conduct amounted to a felony or a misdemeanor, that we are bound by that.

We can't take those facts and then turn around and apply Georgia law on the substantive offenses. I'm not talking about the Georgia Bar rules, which is what we're here for today.

So any argument that his conduct in DC, criminal conduct in DC doesn't meet criminal conduct standards of Georgia, I'm not persuaded, because I'm not -- that's not the standard.

The only issue is whether or not his conviction is a felony conviction, regardless of what State it occurred in. He's not alleged to have committed that criminal offense in Georgia.

So I don't see any reason why we're applying Georgia law to the, to the underlying offenses.

MR. EVANS: Ms. Moore, because of the, what the rules speak to are unprofessional conduct. And, and the --

MS. MOORE: In addition to convictions, criminal convictions, unprofessional conduct and convictions.

MR. EVANS: I admit that it's an issue of first impression under Georgia law.

MS. MOORE: This is an issue of first impression?

MR. EVANS: When, when there is -- our Bar rules speak to when there is more than one jurisdictional law at issue, and it guides a, an attorney's behavior, it's in the conduct of laws section.

And, oftentimes, a lawyer, particularly a lawyer who practices in more than one State, can find himself in a position where the Bar rules, the Rules of Professional Conduct, of one State, point in a different direction than the professional rules of conduct for Georgia.

And it's no different. And, in fact, in New York and several other jurisdictions they'd apply the same model rules as Georgia does.

The fact that the conduct at issue is a felony in another State, but not in New York, precludes punishment.

And I think, given the fact that we're using the same rules that New York does, and the conduct at issue in, if we, if we take the, the judge's ruling in DC as authoritative for the moment, all he's alleged to have done is to interfered with an ongoing Congressional hearing,

that's made illegal in Georgia, but it's a misdemeanor. Same conduct, same exact conduct.

And we move to admit, as we keep talking about conduct, I move to admit a tape that was made by the US Government, and tendered in the prosecution of Mr. Calhoun in DC, of all of his activities in the Capitol Building, every single one.

You can see him enter, you can see him walk up the stairs. You can see him wait to allow people to pass, and he walks by Nancy Pelosi's office, not in it, just staying between the ropes. And then you'll see him walk on out.

As far as Mr. Calhoun was concerned, if it was, if, if -- he was, he was, he was participating in a political protest over an election that he, and many others, felt had been stolen. And all he did was walk along like everybody else did.

It's interesting, his co-defendant in this case, Mr. Nalley, rode with, rode with --

MS. MITTELMAN: Your Honor, I object to the testimony. If he wants to offer the evidence, I'll respond to his request to admit it.

MS. MOORE: Okay. So, again, Mr. Evans, just step by step. With respect to your

motion to dismiss the petition on the grounds that the offense that he was convicted of in DC is a misdemeanor in Georgia, I'm going to deny that -- well, before I do that, let me give the State Bar an opportunity. Do you have a response to that?

MS. MITTELMAN: None other than you've expressed, Your Honor.

MS. MOORE: Okay, I'm going to deny that motion.

Are there any more motions, before we move into the defense, the Respondent's proof? Any more motions?

MR. EVANS: No, Your Honor.

MS. MOORE: Okay. Okay, so, Mr. Evans, you have, you've mentioned, I guess, wanting to admit or tender some evidence, a recording of the events of that day. And upon your moving to admit that, what's the State Bar's response?

MS. MITTELMAN: Your Honor, I question the relevance, given the fact that the -- we have a limited purpose here today, related to the conviction and appropriate suspension, pending the outcome of the appeals.

But I have not seen the contents of the flash drive, so aside from your ruling related to

relevance, which I do question what relevance this would have, I would like the opportunity to look at it, and, if you admit it, so that I can raise appropriate objections, related to contents.

And Mr. Evans has told me that his secretary downloaded the contents, or got the contents from the US Attorney, so I would need to verify that with them, but, subject to your ruling on relevance.

MS. MOORE: Mr. Evans, how long is it, how long is the recording?

MR. EVANS: About 20 minutes.

MS. MOORE: So --

MR. EVANS: I'd ask to play it now.

MS. MOORE: So I do, I do question its relevance. However, in, in an effort to, to give Mr. Calhoun as complete a hearing as possible, or to give him the opportunity, I would, I would consider reviewing it with, though, the State Bar having the opportunity to review it.

If it's 20 minutes, and it takes her about 20 minutes to review, that would give me the opportunity to peruse some of the cases that the State Bar has submitted.

So we can, we can -- that's how I'd like to

handle that. I will, that will give her the opportunity to review, I can review the cases, and then after she's reviewed that, I'll entertain any objections, any additional objections.

MR. EVANS: Okay.

MS. MOORE: Let's, I guess, be in recess for 20 minutes?

MR. EVANS: Okay.

MS. MOORE: Or sooner, if --

MS. MITTELMAN: Your Honor, I also --

MS. MOORE: Hold on, just one second. Go ahead, Ms. Mittelman, I'm sorry.

MS. MITTELMAN: I also would like the opportunity to verify its origin, so I would need an opportunity to call the US Attorney's office to check. I guess Mr. Evans' secretary got it from a particular US Attorney, so we need to check with them.

MS. MOORE: Okay, that's fine, yes.

(An off-the-record discussion was had at this time.)

MS. MOORE: So, again, I'll be in recess, allow you two to confer on review on that, and, again, after recess, I'll certainly hear from Ms. Mittelman, if she is able to reach someone, or not, I'm not saying at this point in time that I'm

going to review it.

I'm going to give her the opportunity, and then we can come back and hear any objections, if any.

MR. EVANS: Thank you.

(After a brief recess, the deposition resumed with the same appearances.)

MS. MOORE: Okay, we, after a, looks like about a 30 minute recess, we are back on the record.

And I guess my first question is the status of the parties' attempts to review the evidence, and maybe come to an agreement, or not, as to, as to the relevance and admissibility of a recording.

MS. MITTELMAN: So, Your Honor, the State Bar looked at the video on the thumb drive, it was two minutes and 21 seconds.

I notified Mr. Evans that it was not a 20 minute video. He spent the remainder of the time going to his car looking for a different thumb drive.

At this point, and I don't know how the two minute and 21 second video was created, and haven't been able to get a clear answer on exactly where it -- what it is, it appears to be a montage video

of Mr. Calhoun's presence in the Capitol on January 6th.

I still question its relevance, but if Your Honor wants to take that two minute and 21 second video for what it's worth, I have no objection.

MS. MOORE: Okay, with no objection from the State Bar, I'll consider it.

MR. EVANS: All right.

MS. MITTELMAN: Mr. Evans, you'll need to give the court reporter a copy of the video to attach to the official transcript.

Is that the only copy you have?

MR. EVANS: This one is, but I can make as many copies as we want to. I'll go back to my car.

MS. MOORE: I, well, let me ask something basic, how are you are you going to play it? I do not have a laptop. I don't have any -- I didn't bring a laptop, so I don't have a means of playing it.

MR. EVANS: If there is not a means of playing it in the courtroom, I can go get my computer.

MS. MOORE: Okay, do you have a laptop?

MR. EVANS: Uh-huh.

MS. MOORE: Okay, we'll take a -- Mr. Evans? Mr. Evans, what, we'll take a five minute break, I'll let you go get your laptop so we can review it.

MR. EVANS: I'll be right back.

MS. MOORE: Okay.

(After a brief recess, the deposition resumed with the same appearances.)

MS. MOORE: Mr. Evans, where are we, as far as the video?

MR. EVANS: You know, it is, there's a longer montage, but it does not apply, appear to apply directly to Mr. Calhoun.

Ms. Moore, I would ask to admit the, the entire Federal docket, actually, and the transcripts, and all, the proceedings from the District Court.

I didn't bring physical copies because they are all available on Pacer, and we don't intend to argue specifically from them today. However, we want them to be part of the record, because we expect that the matter will be heard at a later date.

MS. MOORE: I, I don't see how admitting the entire docket is relevant to this

proceeding.

The issue, again, the issue, in my mind, is simply whether or not there is a felony conviction, or misdemeanor convictions, involving moral turpitude, that's it. And I don't --

MR. EVANS: We don't need to worry about those misdemeanors, because it's not part of the case.

MS. MOORE: Okay, well, no, I think they are.

MS. MITTELMAN: They certainly are part of the petition, Ms. Moore.

MS. MOORE: Okay.

MR. EVANS: Well, you've not specified in what regard they -- any of them pertaining to moral turpitude, which means that it's only partially an issue.

MS. MOORE: Well, again, and remember, the reason we're here today is for, for a suspension, reported recommendation as to a suspension, and they are, they, they accompany a felony.

So, at the very minimum, you have the felony. If, for some reason, pending appeal, something different happens with the felony, then I

guess, you know, you all could come back and consider the misdemeanor, or litigate whether or not the misdemeanors rise to the level of moral turpitude.

But, I, I just don't see the relevance of admitting the entire record. Again, I'm not here to relitigate the underlying facts and circumstances that led to the convictions.

MR. EVANS: Well, I'd like to play the two minute tape, which is a condensed version of Mr. Calhoun's activities as part of the record.

MS. MOORE: Okay, and that's the same two minute tape --

MR. EVANS: Yes.

MS. MOORE: -- that you've listened to, Ms. Mittelman?

MS. MITTELMAN: I believe so, if it is, if it's on your computer, based on the thumb drive, two minutes, 21 minute -- 21 seconds, is fine with me.

MS. MOORE: Okay, it's admitted, and I'd like to look at it. And I'll note for the record, it was without objection from the State Bar.

(RESPONDENT'S EXHIBIT 1 was admitted into evidence.)

(The Special Master reviews the video.)

(An off-the-record discussion was had at this time.)

MR. EVANS: Some people are shouting, not Mr. Calhoun. Now he's trying to leave.

MS. MOORE: Okay. All right, for the record, I have reviewed the two, two minute, two minute and 15 second video tendered by the Respondent.

MR. EVANS: And it's on this tape.

MS. MOORE: Okay.

MR. EVANS: I'll give it to the court reporter.

MS. MOORE: Okay, thank you. All right, Mr. Evans, do you have any other evidence?

MR. EVANS: We'd ask the Court to include the transcripts from the Federal proceedings in the record.

MS. MOORE: I --

MR. EVANS: And they're useful, and they are useful in that, that the, we're talking -- the Federal judge was very interested in why Mr. Calhoun was being charged with a felony.

And the person, his co-defendant, who was right beside him the whole time, they rode from Americus together, stayed in a hotel room together, went to the Capitol together, and they left and

1 drove back together. Their conduct was exactly the
2 same.
3 Why is it that Mr. Calhoun was charged with
4 a felony, and the co-defendant was only charged with
5 a misdemeanor? The judge had a hard time with that.
6 And I think that that is significant for the Supreme
7 Court's review of this matter.
8 Because Mr. Calhoun felt that he was
9 engaged in a political protest that was protected
10 under the First Amendment. This is a protected
11 speech.
12 Mr. Calhoun had no notice that his
13 activities, which were no different than the
14 co-defendant, who was charged with a misdemeanor,
15 how his activities could be elevated to a felony,
16 and would have had no expectation, while committing
17 those acts, that his were, were considered a felony,
18 whereas the person beside him was only a
19 misdemeanor.
20 And that's just a prosecutorial decision,
21 but the conduct is the same. And what we want the
22 Supreme Court to be able to understand is exactly
23 what his conduct was.
24 I think they'll also be interested in how
25 the Federal judge responded to the lack of any

1 overt -- we could both admit, from what we've seen
2 on the short two and a half minute video, that Mr.
3 Calhoun did not raise his voice, didn't appear to
4 speak to anyone.
5 He was making photographs, and walking
6 along, not to the front of any crowd, following --
7 every door he entered was open. Other people were
8 going through them, every door that he exited
9 through was open. Other people were walking through
10 that, as well.
11 At no point would Mr. Calhoun have
12 recognized that his conduct was anything that would
13 ever impair his ability to practice law in Georgia.
14 And the Supreme Court needs to be made
15 aware of that. And it's going to relate to the
16 arguments that I'll be making in a moment.
17 MS. MOORE: What, what's the Bar's
18 position?
19 MS. MITTELMAN: Ms. Moore, this sounds
20 like arguments related to the appeal of the criminal
21 case, and they don't have any place here.
22 There's a conviction in place. The Federal
23 judge found that, after hearing evidence, that Mr.
24 Calhoun had engaged in a felony, in -- by corruptly
25 obstructing, influencing and impeding an official

1 proceeding, that is a proceeding before Congress,
2 specifically Congress's certification of the
3 electoral college vote, as set out in the 12th
4 Amendment of the Constitution of the United States,
5 in 3 U.S.C. § 15-18, in violation of 18 U.S.C.
6 1512(c) and 2.
7 She listened to the evidence, she made the
8 finding, there's a conviction in place. Mr. Evans'
9 arguments are more appropriate for the appeal of the
10 criminal case. So I see no reason to include the
11 entire transcript of the criminal trial.
12 MS. MOORE: Thank you. Mr. Evans, I
13 tend to agree. I think the only thing the
14 transcript would assert is -- the only purpose of
15 the underlying transcript, again, is to relitigate
16 those issues.
17 MR. EVANS: No, no.
18 MS. MOORE: There is a process, there
19 is a process by which, you know, which is his
20 opinion, by which he can certainly relitigate those
21 issues.
22 But for the purposes of this proceeding,
23 again, I think the only issue is whether or not it's
24 a conviction.
25 MR. EVANS: No, Your Honor, if I could,

1 if I may?
2 MS. MOORE: Sure.
3 MR. EVANS: The, under Rule 8.4,
4 misconduct, there are comments to the rule. And
5 in -- first of all, it's a matter of law, and the
6 Supreme Court has ruled that the State Bar rules
7 must be interpreted in light of the primary purpose
8 of disciplinary proceedings, which is to protect the
9 public from attorneys who are not qualified to
10 practice law, due to incompetence, or unprofessional
11 conduct. And that's in the matter of Allison, which
12 is 267 Ga. 638.
13 Comments to Rule 8.4 confirm that the rule
14 concerns only crimes which fall both, under both the
15 rubric of moral turpitude, and involve conduct
16 relating to the fitness of the lawyer to practice
17 law. That's conduct number 2.
18 The rule is concerned with addressing those
19 crimes that indicate lack of those characteristics
20 relevant to law practice.
21 It begs the question of why the rules
22 specify that moral turpitude, and not the underlying
23 conduct connected to the practice of law, is
24 required for misdemeanors, but not for felonies.
25 I think that the Court should, I think

this -- you should interpret the rule of -- even regard to felony, to either require some degree of moral turpitude, or which indicate, in some way, that the activity, the conduct at issue, bears on the fitness of the respondent to practice law.

Now, Mr. Calhoun's participation as a private individual, he was not appearing in a court, he was not representing any other person, other than himself, and he participated in a political protest concerning the 2020 election, and, and got caught up in whatever was going on, on January 6th, at the Capitol.

But he walked through open doors, following a crowd that had been in there for some time, and had no notice that he was committing a felony at the time he was acting.

Nor does the conduct, that is at issue in the felony count, have anything to do with moral turpitude, he's exercising his First Amendment rights. He didn't do anything to -- he didn't even enter one of the chambers where any of the activity could have been taking place. He was always in the hallway.

Nor does anything that we saw of, or that is alleged in the indictment leading to the felony

conviction, involve his fitness to practice law. Nothing about what we saw on the tape made him any less a lawyer than, than I, or anyone else in the, any lawyer in this room

MS. MOORE: Again, Mr. Evans, you keep going back to his underlying conduct, and, basically, what you're arguing is that his, his -- the conduct underlying his conviction is not enough for him to face public discipline.

But I would, I would go back to, and rely on, at least one of the cases that the State Bar has submitted, the Stoner case. Even the appearance of a convicted attorney continuing to practice does more to disrupt public confidence. That's where we are today.

MR. EVANS: No, public --

MS. MOORE: The public doesn't, the public knows that he's a convicted felon. The public doesn't know that his conduct underlying the conviction, you know, is not enough to, to bear on his fitness to practice law. The public doesn't know that.

MR. EVANS: Well, the rule says it must, because, I mean, comment number two says here, concern is limited to those matters which fall under

both the rubric of moral turpitude, and involve underlying conduct. That's what the rule says, ma'am.

MS. MOORE: Sure, so --

MR. EVANS: That -- relating to the fitness of the lawyer to practice law.

MS. MOORE: Your, your arguments are noted, and are recorded in the record. And whatever the decision, as far as the reported recommendation that I issue today, and you realize that I don't make the decision as to whether or not he should be suspended pending appeal. I make a recorded recommendation to the Supreme Court.

The Supreme Court is certainly free to disagree with whatever I argue, or whatever is in my reported recommendation. They are free to agree or disagree to any objections, or exceptions you might have to a report and recommendation.

And, but, at this time, as far as where we are today, I just don't see how a full transcript from Mr. Calhoun's trial is relevant to this determination today. So I'm going to overrule --

MR. EVANS: On that basis?

MS. MOORE: Yes.

MR. EVANS: I have one additional

argument.

MS. MOORE: Sure.

MR. EVANS: Under comment five, to Rule 8.4 --

MS. MOORE: Are we still under -- we're under Rule 8.4?

MR. EVANS: Uh-huh.

MS. MOORE: Okay, comment five, go ahead.

MR. EVANS: A lawyer may refuse to comply with an obligation imposed, by law, upon a good faith belief that no valid obligation exists.

Mr. Calhoun's reasons for being there, and reasons for participating, are relevant to a violation of Rule 8.4, whether or not it's called a felony.

Because under the comment number five, a lawyer is entitled to refuse to comply with an obligation imposed by law, where he has a good faith belief that no valid obligation exists.

MS. MOORE: Okay. I appreciate your argument, but I'm going to deny on that basis, as well. Do you have any additional evidence?

MR. EVANS: One moment, please.

MS. MOORE: Sure.

MR. EVANS: Call McCall Calhoun.
MS. MOORE: Okay.
W. McCALL CALHOUN, JR.
was called as a witness, and having first been duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. EVANS:
Q. Please be seated. Can you state your name for the record?
A. William McCall Calhoun, Jr.
Q. And, Mr. Calhoun, were you present on January 6th at the US Capitol?
A. Yes, I was.
Q. Why were you there?
A. To protest the January 6th -- I mean, excuse me, the 2020 election, and the problems that it had.
Q. Were you alone?
A. No.
Q. Who traveled with you?
A. I rode up there with my co-defendant, Verden Nalley, that's who, that's who I went with.
Q. Were you with Mr. Nalley all day?
A. Yes. We were never more than, you know, ten feet away from each other, all day long. For

the most part, it may have been, I mean, in other words, it was never more than a matter of, I think he went to the Capitol first, and I lost sight of him, but we met up in the -- as soon as I went in.
Q. Now, were you with Mr. Nalley when you made the decision to walk over toward the Capitol?
A. Yes.
Q. And what did you see along the way, did you see -- well, let me back up.
Did you see anything, along your path to the Capitol, that made it clear to you that --
MS. MITTELMAN: Ms. Moore --
Q. -- you were engaged in criminal behavior?
MS. MITTELMAN: -- this seems like a relitigation of the underlying criminal conviction.
MR. EVANS: No, it's not.
MS. MITTELMAN: Then I'd ask Mr. Evans to tell us what it is, otherwise.
MR. EVANS: We're making the argument under 8.4(e), of Subsection 5.
MS. MOORE: Again, Mister -- Mr. Evans, I am giving you some leeway, in an effort to allow you to, you know, represent your client and make the case today.
But, again, we're not going to relitigate

the entire case
MR. EVANS: Not going to do that, I'm sticking to the Bar rules.
MS. MOORE: Okay, go ahead.
BY MR. EVANS:
Q. Was there anything that indicated to you that you had embarked upon what would later be alleged to be a criminal endeavor?
A. No, and I, as a lawyer, we are, we're all trained to, you know, be very mindful of, that we do have a law license, and there's certain very bright lines that we don't cross, if we want to keep that license.
One of those, or two of those lines are you don't, you know, commit an assault at a political protest, or do any vandalism or property damage at a political protest.
You don't insight others to riot. You don't conspire to riot, or, you know, do bad things that are inherently bad, is what I'm talking about.
And so I was very conscious not to do any of those things. And I think I testified to this at my trial, but my, my purpose was to engage in civil disobedience to protest the election.
I, and, again, this is sort of covering

what I've previously testified to, but I, when I found myself at the bottom of the stairs, I had to make a, you know, and Nalley had gone on up the stairs, and at the top there was a terrace, and then the door we went in was, you know, right there.
But he'd gone up, up the stairs, was headed up the stairs, and I was at the bottom of the stairs. And I thought, you know, well, you know, if I go in there, up those stairs right now, then, you know, I'm going inside.
You know you're not going to do anything wrong. The worst that can happen to you is you're going to be charged with some type of trespass.
And, sometimes, when civil rights are at stake that affect millions of people, and the right to vote is such a right, and to have that vote counted, I resolved then that I'd take a misdemeanor for the cause, you know, take one for the team, if it came to it. So that's what I did.
But I know I did not commit a felony, because every felony has a bad act in the timeline of that felony.
And you can -- that any juror can point to and go, aha, right there, that's when that person knew they were committing a serious crime. There is

no such actus reus in my case.

And it's being, you know, still being litigated, but you've got to do a felonious act. You've got to attempt to do a felonious act in order to commit a felony.

And that is just not present in my case. And the appellate case law that, such as it's developing out of January 6th, particularly the Miller appeal, that challenged the applicability of 18 U.S.C. § 1512(c)(2), you know, they, they, they discuss that.

I mean, you, you know, and in that case, all of the appellant -- or the appellees, I guess they were, had attacked a police officer in some fashion, that was sufficient.

But just walking through the Capitol, that's covered by other statutes, which have been rendered superfluous by the, you know, government's decision to prosecute things like that.

Q. Did you --

A. Because now they just wanted a one to 20 year felony that you tag on trespassers, that's what that's about. Now, and, you know, it's a double standard of the --

Q. Did you genuinely believe that you were

exercising your First Amendment rights?

A. That was the whole point of it.

Q. And was that belief a good faith belief?

A. Yes, I did nothing to bring dishonor on myself, or the State Bar, nothing.

The government is trying to set a precedent to -- for prosecuting and convicting a lawyer for thinking the wrong way. That's basically what this is about.

Q. Now, did you break a window?

A. No.

Q. Did you enter a doorway that was not open?

A. No.

Q. Had others gone before you?

A. Yes.

Q. How long were you there?

A. According to the video, I was in there about, it was, I want to say 20, it was either 27, 23 minutes, something like that.

And almost half of that time was spent trying to get out. Because there was so many people coming in, it took a while to get out.

But I stayed in the publicly accessible areas, and, you know, I mean, I did not go into any Senate or House Chamber.

And so it -- furthermore, there are hundreds, if not thousands of, of persons who were in the Capitol, because I estimated it must have been about 10,000 people that went through there that day.

But of the ones that are charged, of the thousand or 1,500 or so that have been charged, and this is what the judge was inquiring about, you know, what did I do that was different from those people who didn't get charged with a felony? And that, that's, that's the question.

And that's why the conduct is important, because the conduct does not show a felony, at all. And I'm, I have every confidence the Supreme Court is going to overturn this case, if the trial judge doesn't do it, you know, first. But we're not -- that's still in progress.

Q. Now, as you left the Capitol and made your way home, did you feel like you were hiding from a crime?

A. No. And I, we, you've got -- it's important to keep in mind, there were a lot of things that happened that day in Washington.

The, you know, when the Capitol, people entered the Capitol after 2:00 o'clock, I think, I

want to say sometime around, it was 2:00, before 2:15, they had entered the Capitol, the first people had, apparently.

They were in the Capitol, somebody, other people were in the Capitol until about, I think after 8:00 o'clock, around 8:30. Before 3:00 o'clock, Nalley and I were in the car, headed back to Georgia.

So a lot of stuff happened after we weren't even in town, that, that the government has, you know, lain at my feet, that I didn't know, I didn't have anything to do with.

I mean, that's part of the, you know, we've heard this thing called an insurrection, we've heard it called this violent -- there were over, there were probably two million people there that day. And, and, you know, I -- a handful did something violent, but I wasn't one of them. And I didn't, and that, that's just the way it is.

I can't help what, I'm not responsible for what others do, any more than they are responsible for what I do. If -- unless it's a conspiracy, which it wasn't.

So it's, it's just, it's been a lot of misperception, misinformation, and misrepresentation

about what happened on January the 6th in the media. And it's, it's just -- most of it is just, it's lies. I mean, it's not what, what happened.

I'm not saying that some people didn't do some bad things, there were a handful of people who did do some bad things. But I was not one of them.

MS. MOORE: Mr. Evans, anything else?

MR. EVANS: Nothing further.

MS. MOORE: Thank you. Do you have any other witnesses, or evidence? I'm sorry, Ms. Mittelman?

CROSS-EXAMINATION

BY MS. MITTELMAN:

Q. I've just got one question for you, then, Mr. Calhoun. Can we all assume you have no remorse for going, January 6th, to the Capitol?

A. Why would I have remorse?

MS. MITTELMAN: Okay, thank you.

MS. MOORE: Any redirect?

REDIRECT EXAMINATION

BY MR. EVANS:

Q. Mr. Calhoun, you've got -- did you feel a little remorse when you spent 57 days in solitary confinement?

A. The feeling, to feel remorse requires that

the person had to have done something inherently wrong. It is not wrong to engage in civil disobedience to fight for civil rights.

And I think that's something that the left has forgotten. It is not wrong to engage in peaceful political protests, and that is objectively what I did. I did not do anything more than that.

Q. Do you feel remorse now that the State Bar is trying to take your license away?

A. If, if the State Bar, you know, it's -- no, I do not. Because it is, I can answer that with a question, what's more important than the right to vote? A Bar license? I'd give up a hundred Bar licenses, if that's what it takes.

But, you know, I don't think there's any grounds to feel remorse. I mean, do I like the idea that I, you know, had to go up there and do that? No, I don't. But somebody had to go up there to protest this election. And peacefully protesting is not a crime.

Q. Did you do anything, at all, in the Capitol, that was not peaceful?

A. No. That's all, that's all settled. I mean, it's all on video. There's no dispute about what I did in the Capitol, it's covered on video.

The US Attorney was questioned by the judge, what did he do that was different, and, finally, after that went on for, seemed like over half an hour, the US Attorney, one of them finally stood up and said we're going on his mere presence.

And that, in conjunction with my, some social media posts that they said showed my intent. But I didn't act, just looking at that, in the best light for the government, or for the Bar, I did not act -- no matter what I posted on social media, I didn't act on it. And I didn't threaten anybody, I didn't do anything, I didn't commit a crime.

So it's, you know, it's all First Amendment protected activity. I mean, and sometimes in, in political protesting, as anybody who's familiar with the civil rights era will know, sometimes you have to, you know, get a ticket for doing something that is, you know, illegal.

But it doesn't involve moral turpitude, and you don't commit a felony against anybody, you don't assault anybody, you don't use violence, you engage in peaceful protests, and that's where we've seen it.

It's a protected First Amendment right. If you want to step across the line, because they're

saying don't step across that line, you walk across it, you get arrested. You pay your fine and you're done.

That, that's, that's what happened here, except they're, they have turned it into a felony, and I mean, it's --

Q. Were your actions and decisions, on that day, made in good faith?

A. Yes.

MR. EVANS: Nothing further.

MS. MOORE: Thank you. Mr. Calhoun, you can step down. Mr. Evans, any additional witnesses or evidence?

MR. EVANS: No, Your Honor.

MS. MOORE: All right, I will, I'll hear closing remarks, then. I guess it remains the State Bar's burden, so they'll close last.

Mr. Evans, I'll allow you to go first.

MR. EVANS: Well, you've heard several of the arguments, and, and just to complete the thought of, of argument number two, under Rule 8.4 we contend that the use of the term felony, within the meaning of the Bar rules, is a, it has to be a matter which is, both shows moral turpitude and underlying conduct, relating to the fitness of the

lawyer to practice law.

And an unrelated -- participation in an unrelated political protest, concerning an election, as a private individual, does not meet either of those standards, even though what they call it in DC was a felony.

Now, same conduct's not a felony in Georgia law. We've got a statute directly on point, which we've cited to the Court, and you've heard that argument.

MS. MOORE: Let me, let me interrupt you and ask you this, do you, you have any authority, from cases, disciplinary cases, previously decided by the State Bar, where they have engaged in this sort of analysis?

MR. EVANS: Not in Georgia, but in New York, in other jurisdictions. I have all ALR on it, which I can submit to the court, and I will do that.

MS. MOORE: Okay, no Georgia cases?

MR. EVANS: In Georgia, I did not find one, and I'm not saying there doesn't exist one, but the, the concept has been used repeatedly in other States, as a defense, and has been found to be a valid defense in other States.

MS. MOORE: All right.

MR. EVANS: And it's particularly important here because, as you heard from Mr. Calhoun himself, he's careful about what he felt like the lines were, and he was willing to cross the threshold of the Capitol, and, and commit a misdemeanor, as civil disobedience, as part of his political protest.

But he was not going to cross the line to a felony, did not think he was doing anything that would impair his ability to continue to represent the 41 clients, and others, that depend on him, currently. And that number would have been 150, prior to January 6th of 2021.

MS. MOORE: You said how many?

MR. EVANS: Generally he handles caseloads of about 150 people. But spending three months in jail, various jails in Georgia, and then in Oklahoma, and then DC, and then 57 days in solitary confinement, only out for one hour a day, left him unable to handle that same caseload, as you can imagine.

And, simply, he's been punished enough. The State Bar does not need to further punish him for what he thought, genuinely thought was a protected First Amendment free speech activity, that

he did nothing that was inconsistent with what he expressed to this Court as his good faith belief, at the time.

And, and the rules clearly allow exactly that. I mean, what would be the point of comment five, to Rule 8.4, if it did not allow an attorney to make a good faith decision about his conduct, even if it does violate a law. If he -- and I believe that the, Mr. Calhoun's statements meet that, meet that standard.

MS. MOORE: Don't, don't you, do you not think that maybe that standard is more appropriately considered at a later point in this process? Maybe at the point in time where the consideration was for disbarment, maybe in mitigation?

MR. EVANS: It would certainly be a matter of mitigation, but what we're trying to do right now is to keep his license intact.

I mean, we've asked for a continuance, we did not get one. The -- he's got plenty of opportunities to get rid of that felony, but why the, I don't see why the State's concern that he's currently, on paper, convicted, although the proceedings are not done, why that causes more

damage than the 41 clients that he does have, who have already paid him, and they're going to lose their counsel of choice.

Why does an abstract concern outweigh the concrete physical concerns of 41 people who are going to lose their lawyer if the State Bar does this?

MS. MOORE: And I, I certainly, I certainly understand that argument, and, and do believe in the right of individuals to be able to select a lawyer of their own choosing, and have the lawyer that they'd like, but I don't think that is without limits.

And, again, what we're, what we're talking about here today, when I look at the rules overall, right, and even the, the expediency at which this, the rules anticipate that this issue is to be addressed, I don't see a process, I mean, to me the rules suggest that they take this very seriously, a conviction, a criminal conviction is taken very seriously.

MR. EVANS: Sure.

MS. MOORE: And I think that's reflected even in the period of time at which we are to consider this, and have these hearings.

And so I just, I don't see, you know, in order to -- A, relitigating the underlying issues, even, you know, your argument for a continuance, I think that everything in the rule points to these -- this issue should be decided, and should be decided quickly.

As I mentioned to you before, my job here today is to determine, is to issue a reported recommendation, based on what's in front of me.

My job is not to determine whether or not, you know, Mr. Calhoun, in good faith, exercised his right to protest, or was exercising his First Amendment rights.

MR. EVANS: Oh, it is, it is, because that's what it says under Rule 8.4.

MS. MOORE: No, my issue is only to determine whether or not he has been convicted, after he, he certainly had an opportunity, and I understand your argument, and your point about whether or not a judicial decision is a conviction, I've certainly, I've looked at the cases you've submitted, and they seem to indicate that, they seem to be consistent with your definition of verdict.

But I still have a hard time believing that a judge's decision, in whatever jurisdiction, in

these situations, is to be given no consideration. For that matter, that would just mean any, any lawyer who's ever committed any criminal offense would just have a bench trial, and that would buy them some more time, in terms of, in terms of the State Bar rules, which I'm sure they would be certain to know are coming, if a judge finds them guilty. So, I just, I don't -- I'm not persuaded by that argument that --

MR. EVANS: We can both read English, though.

MS. MOORE: Again, if it is to be -- if verdict is to be interpreted that narrowly, then it would, it's going to be for the Supreme Court to say so.

MR. EVANS: It says what it says.

MS. MOORE: It says what it says.

MR. EVANS: And Georgia law says what it says.

MS. MOORE: But if it's going to be interpreted that narrowly, it's -- I will allow the Supreme Court to say that.

MR. EVANS: Your Honor, we ask you, also, to focus on comment number three, to Rule 8.4. And it says, in material part, although a lawyer is

personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to practice law, the law practice.

Offenses including violence, dishonesty, breach of trust, or serious interference with the administration of justice, are in that category.

MS. MOORE: And, again --

MR. EVANS: Mister -- and, again, we get back to the conduct.

MS. MOORE: With all due respect to your argument, I still think that we are, we are premature in terms of me making that determination, at this point.

MR. EVANS: All felonies are not created equal. And the comments to Rule 8.4 clearly focused the Court's attention, and, and you, as, acting as Special Master here, should also focus your thoughts about the actual conduct that's at issue.

Because not all felonies are created equal. If you commit murder, I can, there's not going to be any contest about whether your Bar license needs to be revoked. There are a lots of felonies that fall in that category.

MS. MOORE: If you, if you --

MR. EVANS: But the rules are designed to be rules of reason, that should be interpreted with reference to the purposes of legal representation, and the law itself, that's comment number 13, to the Rules of Professional Conduct.

MS. MOORE: So the State Bar has presented me with seven cases considering this exact scenario, where a person has either voluntarily petitioned for a suspension of their license, after conviction, or where it was recommended even after dispute.

Do you have any cases where the Georgia Supreme Court has said, in these -- under these particular circumstances, we are not going to suspend? I'm not talking about disbarment, issue a suspension.

Show me one case where the Supreme Court has said it's not appropriate, or it's not, you know, we won't impose a suspension, after conviction.

MR. EVANS: I don't have a Georgia case involving a First Amendment protest that resulted in a felony charge, because they typically don't. I mean, they, it's a constitutional principle, and

normally they are not violated.

I mean, but you can see from the tape, and you heard from the testimony, that's all the man did. But, they've called it a felony in DC, and, but I don't think that your inquiry should be limited to what they did in DC, for reasons of their own, whatever they could be.

And we're not relitigating the case, but all conduct is not the same.

MS. MOORE: Part of the risk that you take when you, when you go to any other State, and you're a Georgia lawyer, and you go to any other State, part of the risk that you take is that, is that you may commit an offense that, under that State, is a felony.

MR. EVANS: Well, if you're going -- if you live in Georgia, and you want to protest a Federal election, the only place you can go do that is DC. That's where the Federal elections occur.

And that's, and, and it wasn't Mr. Calhoun's singular idea to do that, he said that there were probably two million people there on that day, doing the same thing, or a species of it.

And normally that's protected free speech. Not in this instance. And so not all felonies are

the same, and that's why we've always tried, and we keep coming back to, in this hearing, well, look at the conduct, you can see what the man did.

It's no mystery, we've got a two and a half minute compilation of the tape. Every single activity that he committed was on some tape, and that's the Federal government's compilation of pictures of -- that they sought, if they found something worse, I'm sure they would have put that in the tape.

MS. MOORE: Okay.

MR. EVANS: That's all the man did.

MS. MOORE: Okay.

MR. EVANS: Did it look like a felony to you?

MS. MOORE: I'm not here -- I respect the decision that the DC Circuit Judge, or District Judge imposed.

MR. EVANS: Without, without looking at the reasons for it, and any examination of the transcript?

MS. MOORE: It is not for me, it is not for me to consider the underlying basis, only that, that Mr. Calhoun had an opportunity, he had his choice of judge, or a jury of his peers.

He opted for a judge, and the judge found, based on whatever happened in court that day, I certainly wasn't there, and they found that his conduct amounted to a felony.

He has the right to appeal, as I'm sure he is exercising that right, or intends to exercise that right. And, you know, if somebody got it wrong, then, then I'm sure that will bear out. But, again, for the reason we're here today, is only for me to consider --

MR. EVANS: Whether he should be, his law license should be suspended for commission of an act, which either shows a lack of moral turpitude, or is underlying conduct connected to the, to the practice of law, and shows that he's unfit to do that, and --

MS. MOORE: I don't think --

MR. EVANS: And nothing about the conduct that you've seen would indicate either of those two things.

MS. MOORE: I don't, I don't think my purpose here today, and, again, if I'm wrong, the Supreme Court can correct me, but I don't think my purpose here today is to determine the underlying conduct. I think my purpose here today is to

determine whether, whether or not there is a felony conviction.

MR. EVANS: And, and I've got two arguments that speak to that, and I'll be done.

MS. MOORE: You can make them quick, Mr. Evans?

MR. EVANS: Yes.

MS. MOORE: Thank you.

MR. EVANS: I mentioned in the, in the, in arguments, that the statute in Georgia would treat Mr. Calhoun's conduct as a misdemeanor. And if you notice, that statute is O.C.G.A. 16-11-34.1.

And the Supreme Court has analyzed the constitutionality of O.C.G.A. § 16-11-34, not 34.1, which criminalized simply disrupting a public meeting.

MS. MOORE: But because, as we've discussed before, because Mr. Calhoun is not alleged to have committed this offense in Georgia, this statute is not relevant to, to this, to our consideration here today.

MR. EVANS: Well, in the --

MS. MOORE: I appreciate --

MR. EVANS: -- Supreme Court's analysis of a similar statute, they found it

unconstitutional, and the decision --

MS. MOORE: I appreciate --

MR. EVANS: -- Your Honor, so the record is clear, the decision I would like -- you don't have to read it, but I'm asking you to read 280 Ga. 444.

MS. MOORE: All right, again, just so the record is clear, that is 280 Ga. 444, the State v. Fielden, and the State versus Touchton, and, again, I, I've, I've already ruled that this is not relevant, your argument will be --

MR. EVANS: My argument will be that the Supreme Court would, if they had the Federal statute that, that Mr. Calhoun was convicted of a felony under, before, just like they did in this case, they would consider that to be an unconstitutional statute.

MS. MOORE: Okay.

MR. EVANS: That's how they interpret the law.

MS. MOORE: Thank you.

MR. EVANS: And we are talking about our Supreme Court.

MS. MOORE: Okay, your argument is on the record, Mr. Evans.

MR. EVANS: Thank you.

And then, lastly, by sanctioning attorney discipline for all felonies, without regard to moral turpitude, or whether the underlying conduct bears some relation to his fitness to practice law, without either of those two factors in play, the Supreme Court lacks authority, under the Constitution, to discipline attorneys.

And that constitutes an unreasonable restraint on Mr. Calhoun's right to work in his chosen profession, free from unreasonable government interference.

That's not just me saying that, Ms. Moore, this is, let me quote you from Justice Peterson's concurrence in matter of Palazzola -- I assume that I have it here.

MS. MOORE: That was, that's a disciplinary matter?

MR. EVANS: It is -- yes.

MS. MOORE: You said a matter of Palazzola, what's --

MR. EVANS: Yes, it is, the matter of Palazzola, I have the cite on my desk, where is Palazzola? I get all confused here. I've got a copy for Your Honor, that is a 2020 case 310 Ga.

634.

MS. MOORE: Thank you.

MR. EVANS: And the, Justice Peterson writes: I would observe not every bad thing a lawyer does should jeopardize the lawyer's ability to work. For that matter, I'm not at all sure that the inherent authority to regulate the practice of law, that the Georgia Constitution vests in this court, includes the authority to adopt such far -- such a far reaching rule, even if the Court wanted to, and even if the Court's inherent constitutional authority extended so broadly. This is the concurrence.

MS. MOORE: Thank you.

MR. EVANS: Other provisions of the Georgia Constitution might prohibit the Court from exercising that authority like this. Georgia lawyers are people, too.

And the Georgia Constitution's due process clause guarantees, to the people of Georgia, the right to work in one's chosen profession, free from unreasonable government interference.

This court has long exercised the solemn responsibility to protect the public by regulating the practice of law. The more core to the

protection of the public a regulation is, the more clearly the exercise of our authority to regulate is reasonable.

But the further that -- from that core our regulations stretch, the greater the risk that our reach exceeds our power.

It's not at all clear to me that the dishonest conduct involving associates' retirement accounts, which was at issue in that case, that is at issue here, has anything to do with the retirement account -- anything to do with the protection of the public.

And, of course, considers only the right to work, long guaranteed by the Georgia Constitution's due process clause. Other constitutional rights may require us to tread even more lightly.

The gist of the regulation has to be reasonable. You can't just say felony, without regard to what kind of a felony it is, and they're not all created equal.

DC can call it a felony. But we can see what the man did, and it's not a felony in Georgia. It's never been a felony before. It's been First Amendment's freedom of speech. But it is -- they're calling it a felony.

What I'm saying, the Court needs to look beyond that, particularly in this unique circumstance, where the exercise of a constitutional freedom has been -- is being used, first by the Department of Justice, and now by the State Bar, to deprive Mr. Calhoun of his due process rights to work in the profession of his choosing.

And to deny the 41 people, several of whom are here in the courtroom, the lawyer of their choice.

Are you going to throw all those principles away to punish a man for walking for 20 minutes in the Capitol, without causing any trouble?

MS. MOORE: All right.

MR. EVANS: We ask --

MS. MOORE: I'm sorry, go ahead.

MR. EVANS: We ask the report and recommendation to certainly include consideration of these important factors.

MS. MOORE: I've noted your arguments, thank you. And again, for the record, the case cite is 310 Ga. 634, Supreme Court, In the Matter of Christopher John Palazzola. Did I say it --

MS. MITTELMAN: Palazzola, I believe it was.

MS. MOORE: All right, thank you. Ms. Mittelman, your closing?

MS. MITTELMAN: Yes, so just briefly, we vacillated today between arguments that Mr. Calhoun's underlying conduct is not relevant, and then extensive presentation and argument related to the fact that he didn't do anything wrong when he was in Washington.

And that, at this point, given the State Bar's petition for violations of 8.4(a)(2) and 8.4(a)(3), the conviction is the violation of the Bar rules.

And, for that reason, because the State has a legitimate interest in the relationship of the courts and attorneys in such serious matters, and we are concerned that the public must have trust in these folks who are practicing law in this State, I would rely on the Stoner case, and the cases following Stoner.

I would point out that I'm not aware of any instance where a felony conviction hasn't resulted in discipline of some sort.

I agree with you, Ms. Moore, that the nature of the underlying conduct becomes significant when we are asking for a final disposition of this

matter.

But, in this instance, we have a felony conviction, misdemeanor convictions involving moral turpitude. The Court has never interpreted, has never interpreted gradations of felonies in 8.4(a)(2) matters, there's a felony or there isn't. In this case there is.

We are not asking anything other than a suspension pending the outcome of the appeals. Mr. Calhoun will have his right to make his arguments related to the propriety of the conviction, of both the felonies and the misdemeanors.

I would point out in the Stoner case, Mr. Stoner raised the issue of his clients' constitutional right to counsel. The Court said the right to counsel doesn't mean the right to counsel of one's own choosing in every situation.

In this case, we don't have any idea whether Mr. Calhoun took these clients on following the conviction, in the face of the conviction, but none of those things are relevant at this juncture, because there is a violation of 8.4(a)(2), 8.4(a)(3), and we would ask for a suspension pending the outcome of those appeals.

MS. MOORE: Thank you.

MR. EVANS: Your Honor, could we -- I would argue, upon this, to send you the ALR, that I referred to earlier.

MS. MOORE: For the New York case?

MR. EVANS: For the, yeah, for the discussion of that principle, generally, as it's applied in other States, I think is relevant here.

Would you -- are there any other authorities that you would like for us to research for you, and resubmit to you, that would help you in your report?

MS. MOORE: I'm, I'm not interested in the ALR information, especially as it pertains to maybe how other States view this.

Because I haven't, I haven't seen anything so far, I mean, again, all of the cases, all of the similar cases dealing with suspension, at the juncture after conviction, seem to indicate that suspension is, is appropriate.

And, again, I do think it's premature. I certainly understand your argument, but I think it's premature in terms of what to do at this juncture.

MR. EVANS: Well, the punishment comes now, starts if the recommendation is to suspend, and the Supreme Court agrees, his punishment starts

1 right now.
2 MS. MOORE: I, I understand, but I
3 think that certainly the State Bar is, is entitled
4 to, entitled to the, I guess, a benefit, for lack of
5 a better word, of the underlying conviction. I
6 mean, someone else has, has found him guilty of a
7 felony.
8 MR. EVANS: It wasn't a verdict.
9 MS. MOORE: Again, I understand your
10 arguments as to that. But if, if, if that is too
11 narrow of an interpretation, in other words, if, you
12 know, I just think it's for the Supreme Court to
13 say, you know, a judge, a judgment, or a judge's
14 decision, or a judge's opinion, or a judge's ruling
15 is not a verdict for purposes of discipline.
16 MR. EVANS: If that's what they meant,
17 they would have said that.
18 MS. MOORE: Well, and I think this is
19 the opportunity, if this is how they want to
20 interpret it, this will be the opportunity for them
21 to interpret it that way. I just think that is a
22 narrow reading.
23 MR. EVANS: But that is what it says.
24 MS. MOORE: I don't disagree that
25 that's what it says. You know, whether or not

1 that's the intent, to exclude situations where a
2 defendant has, has forgone his right to a jury, and
3 instead opted on a judge, and then to make the
4 decision, and then say the judge's decision doesn't
5 qualify for a conviction, I, I'm just, I don't --
6 that's a stretch.
7 MR. EVANS: Well, we don't know why
8 they drafted it that way, but they drafted it that
9 way.
10 MS. MOORE: I, I --
11 MR. EVANS: That's all we've got in
12 front of us.
13 MS. MOORE: I understand, your
14 arguments are well taken, and are noted for the
15 record. But, I will say that, at this point, I
16 think --
17 MR. EVANS: And the felony has to
18 involve, for it to be material to the Bar license,
19 it has to involve either moral turpitude or
20 something that relates to his ability to practice
21 law.
22 MS. MITTELMAN: Ms. Moore, I would say,
23 on that point, the rule says a felony, I understand
24 his argument, and it's probably time to stop
25 arguing, isn't it?

1 But the rule, the comments, I think, are in
2 reference to the misdemeanor provisions, which are
3 also relevant here.
4 But I wouldn't want anyone to think we had
5 conceded that there are gradations of felony for the
6 purposes of the Georgia disciplinary system.
7 MS. MOORE: Sure.
8 MS. MITTELMAN: Thank you.
9 MS. MOORE: So with that, Counsel, I
10 will say that I believe that the State Bar has met
11 its burden of establishing that Mr. Calhoun has
12 committed a felony, conviction, and which would
13 warrant my issuing a reported recommendation.
14 Again, just to be clear --
15 MR. EVANS: So you're done considering
16 anything, you're not going to read anything more?
17 MS. MOORE: I'm not at this time, no.
18 MR. EVANS: All right.
19 MS. MOORE: Just to be clear, just to
20 be clear, Mr. Evans, I issue a report and
21 recommendation for the Supreme Court to consider.
22 MR. EVANS: You've already made your
23 mind up.
24 MS. MOORE: And -- pardon?
25 MR. EVANS: But you've already made

1 your mind up.
2 MS. MOORE: Well, no, I have, I have
3 decided -- yes, I'm telling the party that I have
4 decided that the State Bar has met their burden of
5 establishing that Mr. Calhoun has committed a
6 felony, and misdemeanor offenses, and that it would
7 be appropriate to recommend, to the Supreme Court,
8 that he be suspended. And that's what my
9 recommendation will say.
10 And I would assume you except to my ruling,
11 and that's fine with the Court, the court
12 reporter -- or the record will reflect that, but
13 that will be my ruling.
14 Anything further?
15 MR. EVANS: When can we expect a
16 report?
17 MS. MOORE: Question, do we need to
18 wait for a transcript?
19 MR. EVANS: Yes.
20 MS. MITTELMAN: You, the rule says that
21 you should rule with -- make your recommendation
22 within 30 days of the hearing.
23 If you don't think you have enough time,
24 after the receipt of the transcript, to meet that,
25 you can extend the deadline on your own.

I was also going to ask if you want proposed reports from the parties, which I'm happy to do, but the rule, specifically 4-106, talks about a 30 day deadline.

MS. MOORE: So, Mr. Evans, to your point, I will wait for the transcript. And therefore, that way you can, you can have a copy of the transcript, or the Supreme Court can have a copy of the transcript, as well, as they are reviewing my report and recommendation.

I would like a proposed report and recommendation, but I'm sure that I will add my, my own language to a shell report. Does that answer your question?

MR. EVANS: I didn't ask a question.

MS. MOORE: Oh, somebody asked who -- when would the report and recommendation be issued.

MS. MITTELMAN: I asked if you'd like one, yeah, happy to do it.

MS. MOORE: No, no, no, I'm sorry, you did ask a question, Mr. Evans, you asked when I --

MR. EVANS: When to expect a report.

MS. MOORE: Oh, okay, okay. Does that answer that question, as to when to expect a report?

MR. EVANS: It does.

MS. MOORE: Okay, all right, anything further?

MS. MITTELMAN: Nothing from the State Bar.

MS. MOORE: Okay. Well, I appreciate everybody for presenting their arguments, and their side, in a professional manner, and if there's nothing further, we are adjourned. Thank you.

MS. MITTELMAN: Thank you.

(The hearing was recessed at 12:31 p.m.)

STATE OF GEORGIA
MUSCOGEE COUNTY

CERTIFICATE OF REPORTER

I hereby certify that the foregoing transcript was taken down as stated in the caption and the statements thereto were reduced to this transcript under my direction, that the foregoing pages 5 through 90 represent a true, complete and correct transcript of the proceedings, and I further certify that I'm not of kin or counsel to the parties in the case, am not in the regular employ of counsel of any of said parties, nor am I in anywise interested in the result of said case.

This 4th day of July, 2023.

Paula N. Marchetti, RPR, CCR
Certificate No. 4670-2684-9667-4816

Exhibits

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