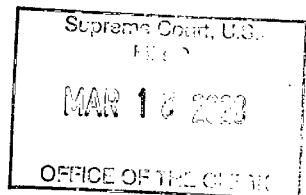


No. 19-116

ORIGINAL  
TRANSMISSION

In the  
Supreme Court of the United States



ROBERT MURPHY,

*Petitioner,*

v.

OFFICE OF DISCIPLINARY COUNSEL,

*Respondent.*

On Petition for a Writ of Certiorari to the  
Supreme Court of Pennsylvania

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

### TO THE CHIEF JUSTICES AND ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT

1. Whether petitioner, Robert Murphy, had fair warning as to reach of disciplinary proceedings and precise nature of charges that petitioner's administrative and extraordinary Workers' Compensation recusal proceedings in pending contested Workers' Compensation proceedings in 2010 (hereinafter recusal proceedings) based on Pennsylvania Workers' Compensation Act 77 P.S. Section 2504 violated Pennsylvania Rules of Professional Conduct 3.1, 3.3(a)(1), 8.2(a), 8.4(c), 8.4(d) based on Pennsylvania Supreme Court's erroneous retroactive application of its newly enacted 2014 Judicial Code which is plainly effective only on and after July 1, 2014 involving only elected judges in violation of petitioner's fundamental constitutional rights including due process and equal protection guaranteed under the First and Fourteenth Amendments to the United States Constitution.
2. Whether Pennsylvania Supreme Court's comingled accusatory and adjudicative functions based on pre-determined conclusion that petitioner's subject recusal proceedings and other alleged unrelated non-existent ethical violations violate petitioner's fundamental right to due process and equal protection.
3. Whether Pennsylvania Supreme Court's final biased fiat order entered 12/19/2019 denying petitioner's petition for review pursuant to Pennsylvania Disciplinary Board's arbitrary, irrational and biased recommendations involving ODC's continuous, intentional, egregious prosecutorial misconduct suspending petitioner from Pennsylvania Bar for a period of

five years based exclusively on Pennsylvania Supreme Court's retroactive application of its 2014 Judicial Code plainly inapplicable to Workers' Compensation recusal proceedings exclusively governed by 77 P.S. Sec. 2504 involving petitioner's truthful recusal proceedings in 2010 is egregiously erroneous in violation of petitioner's fundamental constitutional rights including substantive and procedural due process, equal protection, truthful free speech, compulsory process, cross examination, confrontation and presentation of evidence and a decision by an impartial tribunal based on a full, true, complete and accurate certified record guaranteed under Art. I, Sec. 10, Cl. 1, First, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

## **PARTIES TO THE PROCEEDINGS**

### **Petitioner**

- Robert J. Murphy

### **Respondent**

- Office of Disciplinary Counsel,  
State of Pennsylvania

## LIST OF PROCEEDINGS

1. *Office of Disciplinary Counsel (ODC), petitioner v. Robert J. Murphy, respondent* No. 2649 Disciplinary Docket No. 3 (No. 206 D.B. 2016).
2. *In the Matter of Robert J. Murphy*, an Attorney at Law, U.S. Court of Appeals for the Third Circuit, C.A. Misc. No. 20-8004.
3. *In the Matter of Robert J. Murphy*, United States District Court for the Eastern District of Pennsylvania; MISCELLANEOUS No. 19-mc-0217.
4. *Anne Wilson v. Hon. Patricia M. Bachman, et al*, Commonwealth Court of Pennsylvania No. 385 MD 2010, alloc. den. Pa. Supreme Court 70 MAP 2010.
5. *Anne Wilson, et al v. Sandi Vito, Sec. Dept. of Labor and Industry, et al*, Commonwealth Court of Pennsylvania No. 935 MD 2010, alloc. den. Pa. Supreme Court 51 EAP 2011.

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## OPINIONS BELOW

Order of the Supreme Court of Pennsylvania dated December 19, 2019 is reported in the appendix to this petition at App.1a. Order of the Disiplinary Board of the Supreme Court of Pennsylvania denying Appeal and Request to Stay Proceedings is entered on April 12, 2019, and is reported at App.2a. Order of the Disiplinary Board of the Supreme Court of Pennsylvania denying Petition for Review dated October 19, 2019 is reported at App.6a. Order of the Commonwealth Court of Pennsylvania on *Anne Wilson v. Hon. Patricia M. Bachman, et al*, dated August 4, 2011 is reported at App.10a. Order of the Commonwealth Court of Pennsylvania on *Anne Wilson, et al v. Sandi Vito, Sec. Dept. of Labor and Industry, et al*, dated June 14, 2011 is reported at App.12a.



## JURISDICTION

The Supreme Court of Pennsylvania entered its order on December 19, 2019. This Court has jurisdiction under 28 U.S.C § 1257(1) and Sup. Ct. R. 10(b), (c).



## **CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS AND PROFESSIONAL/JUDICIAL RULES OF CONDUCT INVOLVED**

The following relevant provisions are reproduced in the appendix (App.15a-29a):

- U.S. Const. Art. I, Sec. 10, cl. 1
- U.S. Const. First, Fifth, Sixth and Fourteenth Amendments
- Pennsylvania Workers' Compensation Act, 77 P.S. Sec. 2504
- Administrative Regulation, 34 Pa. Code Sec. 131.24
- Pennsylvania Constitution, Art. II, Sec. 1
- 2014 Judicial Code Canon 2, Rule 2.9
- Pennsylvania Rules of Professional Conduct 42 Pa. C.S.A. § 2503
- Pennsylvania Code of Judicial Conduct;
  - 3.1—(meritorious claims)
  - 3.3(a)(1)—(candor towards the tribunal)
  - 8.2(a)—(statements concerning judges)
  - 8.4(c)—(misconduct involving fraud, dishonesty, deceit or misrepresentation)
  - 8.4(d)—(conduct prejudicial to administration of justice).
- Pennsylvania Disciplinary Enforcement Rule 213. (App.15a-29a)



### CONCISE STATEMENT OF THE CASE

On May 16, 2006 claimant, Anne Wilson, a New Jersey resident represented by Murphy, recovered fatal workers' compensation benefits against Allied and its carrier, Travelers Insurance Company (employer) resulting from her husband's work-related fatal injury affirmed on appeal. On November 19, 2007 claimant sought penalties against employer for failure to comply with award; employer sought untimely modification pursuant to pending contested administrative workers' compensation proceedings (compensation proceedings) which had previously been finally denied. Unelected administrative Workers' Compensation Judge Bachman (Bachman) appointed by executive branch scheduled three compensation hearings prior to February 18, 2010 and issued seventeen subpoenas duces tecum sought by claimant on various critical employer witnesses including Joseph Weimer, Andrew Touchstone, *inter alia* which were served for their appearance at multiple scheduled hearings which were repeatedly continued at employer's request over claimant's objections (Wilson and Touchstone subsequently died in 2011-2013). Bachman scheduled a hearing for February 18, 2010; claimant again requested same previously issued seventeen subpoena duces tecum be issued to same employer witnesses including Weimer to appear at scheduled 2/18/2010 hearing. App.218a-237a.

On January 26, 2010 Bachman allegedly instructed her staff, Lana Meehan, to contact only claimant's counsel's office to advise Bachman allegedly issued off-the-record oral order that previously served critical

subpoena duces tecum on Weimer to appear at 2/18/2010 hearing would allegedly be vacated pursuant to unsupported alleged attorney client privilege objection which alleged oral order, in fact, was never issued, entered, or docketed. On January 29, 2010 claimant's counsel filed a letter objecting to Bachman's ex parte communication only to petitioner and, if accurate, demanded alleged oral order be entered in record for all purposes and *reconsidered* because alleged order clearly exceeded Bachman's limited jurisdiction. App.249a. Bachman continually instructed Meehan to conduct ex-parte communications with lawyers, parties, insurance companies and claimants in compensation proceedings before her. App.187a-190a.

At the 2/18/2010 hearing for first time employer's counsel, Mr. Dombrowski (Dombrowski) declared following admitted multiple unlawful ex parte communications with Bachman through Meehan involving alleged material orders which were never issued, written or docketed at any time which declarations were not under oath and which declarations formed the basis of Murphy's recusal proceedings including petitioner's recusal proceedings against Bachman, et al in the Commonwealth Court at No. 385 MD 2010 and Hagan at 935 MD 2010 as follows:

"Dombrowski: Your Honor, we'll be asking you to draw an adverse inference that had these materials been provided by claimant, they would have been contrary to his position. Your Honor, we had telephonic communications with your chambers in recent time with your administrative assistant, Lana.

She advised us the following: One, that claimant and claimant's counsel abide by your Honor's interlocutory order.

In addition, it was also represented to us that Lana made contact with claimant's counsel's office with respect to these matters as well.

In addition with respect to claimant's counsel noticing the deposition of the claimant, we received telephonic communication from your chambers that your Honor had sustained employer's objection to the taking of that deposition.

In addition, we received telephonic communication from your Honor's chambers indicating that you had ruled that claimant's subpoena request to compel the testimony of Attorney Di Liberto, Attorney Weimer, Attorney Touchstone and Attorney Ribble, that you have ruled against and denied those requests of counsel . . . . Your Honor, I advised you today with respect to the civil matters earlier today."

"Murphy: . . . The court can await these decisions on the merits rather than to have further proceedings involved. Finally, we've learned for the first time today, apparently counsel [Dombrowski] indicates numerous ex parte communications with This Court. . . . and therefore, we're going to have to request that The Court has to recuse itself, because he says that he's just had numerous communications with The Court as to various alleged oral orders.

"Judge Bachman: That is out of line, I want you to go back and recheck your telephone and recheck with your secretary.

Mr. Dombrowski: In three minutes in order to follow up with your request for reconsideration of supersedeas? . . . The defendant's request for reconsideration of supersedeas is granted as of today, 2/18/2010 and I am going to issue an interlocutory today." App.199a-203a.

Weimer did not appear at 2/18/10 hearing. App.245a. Approximately ten years later during the subject disciplinary proceedings, all ODC witnesses including Bachman, Dombrowski and Nasuti (ODC's investigator) subsequently and repeatedly contradicted the foregoing alleged off-the-record declarations at disciplinary hearings on November 7, 2017 and October 22-25, 2018 under oath discussed, infra.

Bachman subsequently scheduled multiple mandatory compensation recusal proceedings on March 23, May 4, 2010 and stayed proceedings pursuant to petitioner's recusal motion to contemporaneously expose the truth involving foregoing ex parte communications pursuant to contemporaneous administrative protocols including compulsory process under Compensation Act. Bachman repeatedly refused to issue petitioner's demands for subpoena duces tecum for Bachman, Meehan, Dombrowski and repeatedly denied claimant's motion to recuse herself from recusal proceedings involving disputed facts within her personal knowledge involving their foregoing ex parte communications in which she had a substantial interest contrary to 2504 and applicable law! App.246a-248a. Therefore, on April 16, 2010 petitioner filed petition for extraordinary relief in the nature of prohibition in Commonwealth Court at No. 385 MD 2010 against Bachman and employer seeking Bachman's recusal and to vacate

tainted record pursuant to United States Constitution 14th Amendment and 77 P.S. Sec. 1 et seq. including 2504 and administrative regulations, *inter alia*, based entirely on virtually verbatim allegations involving Dombrowski's foregoing declarations at 2/18/2010 hearing involving Bachman's foregoing admitted, continual, unlawful violations of specific provisions under 2504 and applicable decisions within court's exclusive jurisdiction! App.199a-203a, 217a-237a. On August 4, 2010 Commonwealth Court entered order overruling defendants' preliminary objections for failure to state a claim (demur) and ordered defendants to file an answer within thirty days. App.10a-11a. Bachman and employer intentionally did not file any timely verified answer to claimant's foregoing petition and therefore again admitted and or deemed admitted the factual allegations involving their multiple ex parte communications at the 2/18/2010 hearing pursuant to numerous decisions specifically deciding any unverified purported pleading or petition is a nullity which fundamental requirement to verify any pleading cannot be waived. See *Atlantic Credit et al. v. Juliana*, 829 A.2d 340 (Pa. S. 2003) app. Den. 843 A.2d 1246 (Pa. 2004). Bachman subsequently closed compensation record and ordered parties to file briefs on October 13, 2010 contrary to her prior order staying compensation proceedings; on October 20, 2010 Bachman recused herself without any findings and conclusions further raising a conclusive presumption confirming her actual or apparent improprieties under applicable law and simultaneously filed a motion to dismiss claimant's petition for review as moot which Commonwealth Court granted on October 26, 2010 without vacating allegedly tainted record affirmed on August 25, 2011 by Supreme Court at No. 70 MAP

2010. App.10a-14a; *See M & D Autobody v. W.C.A.B.*, 143 Pa. Commw. 346 (1990), app. Den. 924 1992. App.14a, 252a-253a, 265-266a (confirming presumption of misconduct).

The compensation proceedings were assigned to WCJ Hagan (Hagan). He scheduled proceedings on November 15 and 23, 2010 and July 11, 2011. Hagan refused to reopen compensation record to permit claimant to present any evidence. App.260a-263a. At foregoing hearings, Hagan admitted to following egregious, cumulative, unlawful violations under 2504 and applicable decisions. Hagan ordered Murphy to provide claimant's phone number over strenuous objections and Hagan admittedly conducted prohibited ex parte phone call to son-in-law, Mr. Critschlow, to determine whether non-resident 86 year old dying widow could personally appear at a hearing despite receiving multiple medical records detailing her terminal illness from cancer precluding her personal appearance involving fundamental right to present evidence via trial deposition which Hagan and Bachman subsequently admitted involved merits of proceedings ten years later during subject disciplinary proceedings. Hagan App.164a-177a; Bachman App.177a-179a. At 11/15/2010 hearing Hagan received ex-parte information Bachman's counsel, Howell, believed he had additional time to file an answer to Murphy's extraordinary petition at 385 MD 2010. On 11/23/2010 Dombrowski admitted he sent his 11/22/2010 letter enclosing voluminous unrelated proceedings, orders and opinions in three cases to improperly influence Hagan including: *Thompson v. Rhone Poulenc*, *Stippick v. Allied Signal and Murphy v. Federal Insurance Company*; Hagan admitted Dombrowski delivered

voluminous unspecified critical records pursuant to admitted prohibited ex parte letter which WCJ subsequently utilized to render an adjudication over Murphy's objections. Hagan removed extensive critical documents including briefs and exhibits from Wilson records at Dombrowski's request. Hagan obtained possession of untimely, unverified alleged Bachman answer at 385 MD 2010 provided ex parte to him on his desk which he placed in record in Wilson proceedings and refused to mark as an exhibit. Hagan repeatedly met and discussed pending contested Wilson compensation case with Bachman and Office of Adjudication and reviewed voluminous records in the Wilson case including but not limited to orders and transcripts during repeated discussions and meetings with Bachman involving the merits including the pending motion to recuse Bachman before she recused herself in which Bachman complained that proceedings including petitioner's pending recusal motion were upsetting Bachman and her staff, Meehan. After the entire voluminous Wilson records were transferred to Hagan following Bachman's recusal, Hagan admittedly recycled and shredded at least three boxes of the records in the Wilson case transferred to him over Murphy's objections manifestly contrary to 2504! In *Com v. Dougherty*, 18 A.3d 1095 (Pa. 2011) court reiterated the fundamental prohibition involving any alteration of the record which is the fundamental vehicle for a proper and just adjudication and appellate review of every proceeding including in particular administrative compensation proceedings. Hagan repeatedly denied petitioner's request to recuse under the foregoing circumstances without scheduling a mandatory recusal hearing and issuing written findings

within fifteen days from the recusal hearing. App.164a-177a, 193a-196a, 237a-244a.

Therefore, on December 20, 2010 claimant filed a petition for extraordinary relief to recuse Hagan and vacate tainted record and proceedings based on Hagan's foregoing cumulative admitted unlawful, actual and/or apparent improprieties raising a reasonable question involving Hagan's impartiality pursuant to 77 P.S. Sec. 2504 and applicable law and administrative rules in the Commonwealth Court at No. 935 MD 2010. App.97a-102a, 193a-196a, 237a-244a.

Hagan filed a motion for sanctions pursuant to 42 Pa. C.S.A. Sec. 2503 on basis all claimant's extraordinary proceedings involving Bachman and Hagan were filed in "bad faith, arbitrary, vexatious, dilatory, obdurate and without any factual or legal basis" which standards Pennsylvania Supreme Court has repeatedly decided are identical to same standards under Rules of Professional Conduct 3.1, 3.3(a)(1), 8.2(a), 8.4(c), 8.4 (d) which are subject of ODC's disciplinary proceedings against Murphy in seminal case of *Thunberg v. Strause*, 682 A.2d 295 (Pa. 1996) quoting and relying on this Court's prior decisions!

On April 13, 2011 Commonwealth Court scheduled argument on claimant's application to stay underlying compensation proceedings pending before Hagan. On May 4, 2011 Hagan issue adjudication in pending compensation proceedings and simultaneously pursued same tactic successfully utilized by Bachman to prevent contemporaneous determination of truth of their foregoing admitted actual or apparent improprieties which reasonably questioned their impartiality and filed a motion to dismiss extraordinary petition as moot. After extended hearings Commonwealth Court

granted motion and dismissed proceedings as moot on May 16, 2011 again without considering or vacating tainted record or deciding claimant's foregoing stay application because Hagan's adjudication was allegedly appealable affirmed by Supreme Court on June 18, 2012 at No. 51 EAP 2011.

In letters dated August 26, 2011 and June 21, 2012 unknown to petitioner, Pennsylvania Supreme Court filed a complaint with Office of Disciplinary Counsel requesting ODC investigate Murphy based on their accusations against him on basis of non-existent unrelated alleged ethical violations and pre-judgment that all foregoing recusal proceedings at No. 70 MAP 2010 and 51 EAP 2011 were "wholly unfounded and unsupported by the record" subsequently adopted by the Board verbatim. App.254a-258a.

On August 9, 2012 Nasuti took a telephone statement from Bachman and prepared contemporaneous hand written statement and subsequently wrote the "interlineated 2/12/2010 date" into the hand written statement from his underlying "notes" prepared by him during phone call that: allegedly on 2/12/2010 Meehan left a voicemail message on petitioner's office answering machine only allegedly advising him Bachman's decision not to issue unspecified subpoenas petitioner requested for 2/18/2010 hearing! Bachman's foregoing contemporaneous statement in 2012 clearly contradicts Dombrowski's foregoing declarations at the 2/18/2010 hearing. Nasuti confirmed foregoing instructions from Bachman to Meehan to petitioner as an "ex parte communication" which comes from Bachman through staff member, Meehan which is same as if judge herself conducted ex parte communication

because staff does precisely what judge instructs! App. 152a-161a. On August 9, 2012 pursuant to Supreme Court's complaint, Nasuti simultaneously issued a formal ODC DB-7 letter identifying all petitioner's alleged violations which did not allege Murphy's recusal petition at 935 MD 2010 violated any ethical rules whatsoever. Nasuti's DB 7 allegations pursuant to his investigation was based on statements from all ODC witnesses including Bachman, Meehan, Dombrowski, Hagan and Howell which only allege knowingly false statements of material fact or law, frivolous recusal proceedings, dishonesty and professional misconduct pursuant to R.P.C. 3.1., 3.3(a)(1), 8.4(c) and 8.4(d); the DB-7 formal allegations do not allege any specific ethical violations under R.P.C. 8.2(a) involving knowingly false or reckless statements concerning a judge's integrity. Nasuti conducted investigation and prepared foregoing formal DB-7 notice as well as prior approved disciplinary petitions in 2012 based on statements from all ODC witnesses including Bachman, Meehan, Hagan, Dombrowski and Howell involving which did not include 935 MD 2010 petition!

Since inception of disciplinary proceedings over last approximate ten years including over approximately two and a half years during disciplinary hearings, ODC intentionally and continually suppress all ODC witness statements! ODC intentionally filed six separate false verified motions, objections, proceedings and arguments before original hearing panel declaring ODC had repeatedly searched and provided all ODC witness statements which were clearly false! After Dombrowski, Bachman and Meehan testified on 11/7/2017, ODC subsequently stated it intentionally

refused to produce Bachman's 8/9/2012 critical statement because it was not a "statement" which original hearing panel rejected.

On 4/6/2018 rather than grant petitioner's motion to dismiss involving ODC's intentional, continual, egregious prosecutorial misconduct involving repeated, sworn motions to suppress evidence, fraud on panel and Board, obstruction of justice contrary to multiple prior Board orders to identify and produce all relevant records, Hearing Panel, *sua sponte*, specifically decided ODC's repeated sworn misrepresentations presented in six motions that ODC produced all ODC witness statements relied upon by Panel and Board to repeatedly quash multiple subpoenas duces tecum on all ODC representatives to testify at the 11/7/2017 disciplinary hearing against Murphy while intentionally withholding Bachman's 8/9/2012 statement which " . . . goes to the core of the charges against [Murphy] . . . the majority of the [panel] recommends a mistrial . . . [and] exchange of any and all discoverable statements begin again with a new [panel]". (4/16/2018 Hearing Committee Determination). On July 7, 2018 Board again refused to consider petitioner's motion to dismiss and, *sua sponte*, dismissed hearing panel familiar with ODC's intentional, egregious prosecutorial misconduct and remanded matter for new hearings; and appointed a Master to conduct hearings and report to Board over petitioner's objections.

Approximately seven years later Meehan repeatedly testified that 6 or 7 years prior to the commencement of disciplinary hearings in 2017, she gave Nasuti a statement that she only conducted an ex parte phone call with Dombrowski on 2/12/2010 pursuant to Bach-

man's instructions to advise only that petitioner's prior 1/29/2010 request to reconsider sustaining an alleged attorney client objection to previously served subpoena duces tecum on Weimer to attend 2/18/2010 hearing was denied and nothing else! She never reached Murphy to communicate this alleged oral order which was never written, issued or docketed. App.162a-164a, 180a. Meehan testified Bachman continually instructed her to conduct extensive voluminous continuing ex parte communications involving contested compensation proceedings before her involving lawyers, parties, insurance companies and unrepresented claimants. 187a-190a. ODC's original and amended disciplinary petitions in December 16, 2016 and July 27, 2017 against Murphy specifically rely on Meehan's foregoing statement to Nasuti approximately in 2012 and specifically allege Meehan's foregoing statement provided to Nasuti under oath, *i.e.* that allegedly on 2/12/2010 Bachman only instructed Meehan to separately advise counsel by telephone that Bachman had allegedly denied petitioner's request for *reconsideration* only and Meehan allegedly called Dombrowski and only advised petitioner's request for reconsideration had been denied and did not reach petitioner but allegedly left a message on an office machine allegedly advising only that petitioner's request for reconsideration had been denied as the entire basis upon which petitioner's 2/18/2010 recusal motion is based pursuant to paragraphs 5-12 signed and verified by Messrs. Killian and Gottsch. 204a-216a. Meehan repeatedly testified that she did not call petitioner involving any alleged oral orders which are the subject of the 2/18/2010 hearing transcript declarations by Dombrowski as follows: "and it [Meehan's sworn statement and testimony at App.178a] says here that you didn't reach

Murphy apparently? . . . Q. You don't recall calling me?  
A. No. I had so many cases, Mr. Murphy (11/7/2017  
hearing transcript *id.* 409).

ODC has continually and intentionally refused to identify, produce and suppresses all ODC witness statements from Dombrowski, Bachman, Hagan, Meehan and Howell including Howell's statements upon which ODC filed its original and amended petitions including notes, memos and reports thereof (App.204a-216a). ODC has not identified and provided Meehan's foregoing favorable and critical statement provided to ODC six or seven years prior to disciplinary hearings in 2017 and upon which ODC's original and amended disciplinary petitions are based identified as part of ODC Exhibits 100-110, 34 (1-44) within ODC's exclusive possession pursuant to Master's amended order denying petitioner's motion to order ODC to deliver these critical original records upon which the Master issued multiple orders including granting all ODC's proceedings including ODC's ex parte letters dated 10/3/2018 without ODC witnesses filing any mandatory motion contrary to Pa. R.D. E. 213 to quash duly served subpoenas duces tecum on all ODC's foregoing witnesses and protective orders precluding their testimony at the hearings commencing 10/22/2018–10/26/2018 over petitioner's repeated objections which are not subject to review and appeal by the Pennsylvania Supreme Court. App.2a, 4a-9a, 26a-29a. ODC continually and intentionally suppresses all foregoing ODC Exhibits 100-110, 34 (1-44) involving all ODC witness statements, notes, memos and reports thereof which form basis of ODC's disciplinary proceedings and prior approved disciplinary petitions prepared by Nasuti in 2012 which are substantially

different from Nasuti's DB-7 allegations and subsequent original and amended disciplinary petitions against petitioner subsequently filed in December 16, 2016 and July 27, 2017!

All foregoing ODC records and exhibits were the subject of petitioner's multiple subpoena duces tecum served on ODC's representatives to appear at the original merits hearing on 11/7/2017 upon which the panel recommended a mistrial involving ODC's intentional refusal to identify and disclose Bachman's foregoing 8/9/2012 critical statement! Petitioner again duly issued and served subpoenas duces tecum including on all ODC's witnesses involved in the investigation and disciplinary petition proceedings against petitioner including but not limited to Messrs. Killian, Hernandez, Gottsch, Sidroski, Ciampoli and Howell, *inter alia*, to produce all ODC's foregoing witness statements, notes, memos and reports in its exclusive possession including Meehan's foregoing statement provided to Nasuti in 2012 as well as Nasuti's "notes" upon which he prepared Bachman's 8/9/2012 statement which ODC intentionally suppresses and which are the subject of ODC's foregoing exhibits 100-110, 34 (1-44). ODC continues to suppress all favorable and exculpatory evidence including all witness statements including all ODC witness statements, notes, memos and reports which remain in ODC'S exclusive possession and were never filed with Board or the Supreme Court contrary to their own mandatory rules and which foregoing ODC witness statements have never been provided to petitioner, or the Disciplinary Board or Pennsylvania Supreme Court to conduct mandatory de novo review based on

full, true, complete and accurate original certified record. App.1a, 2a, 4a-9a.

Seven years after 2/18/2010 hearing Bachman specifically declares under oath she is completely unaware of the ethical standards under 2504 and administrative rules but admitted she never personally conducts or communicates any ex parte communications to parties or their counsel in pending Workers' Compensation proceedings before her regarding her orders, rulings, instructions, disposition of proceedings over the phone because she knows these ex parte communications are unlawful and clearly violate unspecified ethical codes. Contrary to this sworn statement Bachman admittedly was the subject of the mandatory recusal proceedings in *Tyndal* case where court expressly reiterated Workers' Compensation recusal proceedings are governed exclusively by 2504 not Supreme Court's professional and Judicial Conduct Codes as stipulated by ODC. App.151a, 17a-21a.

At disciplinary proceedings ODC specifically stipulated applicable legal standards to determine Workers' Compensation recusal proceedings involving a Workers' Compensation judge in pending contested compensation proceedings is clearly 77 P.S. 2504 pursuant to the *Tyndal* decision and repeated in all Pennsylvania appellate decisions. App.151a, 191a.

At the 11/7/2017 hearing seven years later and again at 10/24/2018 hearing under oath Dombrowski repeatedly contradicted his alleged 2/18/2010 declarations regarding alleged nature and content of entire ex parte communication with Bachman's staff, Meehan and confirmed Bachman's 8/9/2012 statement to Nasuti that alleged entire off-the-record ex parte communications from Bachman through Meehan to Nasuti were

limited to alleged oral orders only denying unspecified requests for subpoenas by petitioner which alleged orders were never entered, written or docketed at App.185a as follows:

“Gottsch: Q. Would you please describe the circumstances of that [Meehan 2/18/2010] phone call? . . . [Dombrowski] . . . In this particular instance, she had telephoned me and I had answered the phone—or someone had directed the call to me and she shared with me a ruling the judge had made with respect to a request that claimant’s counsel, Mr. Murphy, had with respect to subpoenas regarding multiple individuals. I think it might have been five or six. I don’t recall. And she shared with me that the judge had ruled—and I think the judge had affirmed my objections to these individuals attending an upcoming [2/18/2010] hearing. And then she shared with me that she was calling Attorney Murphy next after she shared with me the substance of the ruling. And that was the end of the call.

On 9/3/2019 Disciplinary Board recommended petitioner’s five year suspension from practice of law based entirely on lynchpin conclusion without any evidence that Pennsylvania Supreme Court’s newly enacted 2014 Judicial Code applicable only to elected judges not Workers’ Compensation judges appointed by executive branch and enacted on January 8, 2014 and effective only on and after July 1, 2014 specifically Canon 2, Rule 2.9 involving an exception to “ex parte communications” retroactively applies to decide whether all Murphy’s foregoing recusal proceedings

in 2010 violated Pennsylvania Rules of Professional Conduct 3.1 (frivolous proceedings), 3.3(a)(1) (knowingly making false statement, material fact or law to a tribunal or failure to correct a false statement), 8.2(a) (a false or reckless statement as to the truth concerning qualifications or integrity of a judge, adjudicatory officer or public legal officer or candidate for election or appointment to judicial or legal office), 8.4(c) (dishonesty), 8.4(d) (professional misconduct prejudicial to the administration of justice. The Board's 9/3/2019 recommended findings and report refused to decide whether petitioner's foregoing recusal proceedings in 2010 pursuant to Pennsylvania legislature's exclusive statutory provisions under 77 P.S. 2504 involving pending contested Compensation proceedings before Bachman and Hagan violated foregoing Rules of Professional Conduct based entirely on its findings and decision to retroactively apply foregoing 2.9 rule exception to prohibited ex parte communications involving Bachman, Hagan and Dombrowski effective only after 7/1/2014 which only permits elected judges to engage in ex parte communications and clearly has absolutely no application to foregoing recusal proceedings in 2010 or at any time including currently. App.1a, court's fiat order; Board's Recommendation 30a-83a, 17a-26a.

Petitioner raised violation of his fundamental constitutional rights guaranteed under Article I Section 10, Cl. 1, First, Fifth, Sixth and Fourteenth Amendments to United States Constitution pursuant to extensive objections and responses and limited appeals only to Disciplinary Board under Pa. R.D.E. 213 involving ODC's motions to quash duly served subpoenas duces tecum and enter protective orders

which are expressly prohibited from any review by the Pennsylvania Supreme Court App.28a; petitioner's multiple briefs on exceptions before initial hearing panel and subsequently Master; briefs on exceptions before Disciplinary Board; petition for review and application before Pennsylvania Supreme Court involving foregoing issues including: Pennsylvania Supreme Court's erroneous and unconstitutional retroactive legislative and judicial application of its newly enacted completely inapplicable 2014 Judicial Code including Rule 2.9 to decide petitioner violated Pa. R.C.P. 3.1 (frivolous proceedings), 3.3(a)(1) (knowingly making false statement, material fact or law to a tribunal or failure to correct a false statement), 8.2(a) (a false or reckless statement as to the truth concerning qualifications or integrity of a judge, adjudicatory officer or public legal officer or candidate for election or appointment to judicial or legal office), 8.4(c) (dishonesty), 8.4(d) (professional misconduct prejudicial to the administration of justice); and repeated unappealable administrative fiat orders quashing petitioner's subpoenas duces tecum served on critical material witnesses who have personal knowledge of all these issues including ODC's continuous, intentional, egregious prosecutorial misconduct; and recommended findings, conclusions, reports and Court's suspension order based on Supreme Court's accusations and preconceived determination that petitioner's recusal proceedings lacked any legal or factual merit without any support in the record and without a full, fair, impartial hearing before an impartial tribunal based on a full, true, complete and accurate certified record; and Master's amended order 4/10/2019 authorizing ODC to retain all its records identified as ODC Exhibits 100-110, 34 (1-44) precluding de novo hearing

and review by the Disciplinary Board and the Pennsylvania Supreme Court based on a full, true, complete and accurate certified record.



### REASONS FOR GRANTING CERTIORARI

Petitioner respectfully prays this Honorable Court grant certiorari based on Pennsylvania Supreme Court's deprivation of petitioner's fundamental constitutional rights to ordered liberty guaranteed under Art. I, Sec. 10, Cl. 1, First, Fifth, Sixth and Fourteenth Amendments to United States Constitution and this Court's repeated decisions including due process, equal protection, judicial free truthful speech, confrontation, cross examination, compulsory process, prohibited ex post facto laws, and speedy trial by a fair, impartial tribunal based on a full, accurate, complete certified record including: *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868; *Williams v. Pennsylvania*, 136 S.Ct. 1899; *In Re Ruffalo*, 390 U.S. 544; *Bradley v. Richmond School Board*, 416 U.S. 696; *Rogers v. Tennessee*, 532 U.S. 451; *Bouie v. Columbia*, 378 U.S. 347; *Calder v. Bull*, 3 Dall. 386; *Goldberg v. Kelly*, 397 U.S. 264; *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232; *Ex-Parte Secombe*, 60 U.S. 9, *Ex Parte Burr*, 22 U.S. 529; *Konigsberg v. State Bar of California*, 353 U.S. 252; *Times v. Sullivan*, 376 U.S. 254, 279; *N.A.A.C.P v. Button*, 371 U.S. 415; *In Re Primus*, 435 U.S. 412; *Kyles v. Whitley*, 514 U.S. 419; *Jencks v. U.S.*, 353 U.S. 657; *Com. Prof'l Ethics and Grievances of the Virgin Island Bar Assn v. Johnson*, 447 F.2d 169 (3d Cir 1971); *In Re Schlesinger*, 172 A.2d 835 (Pa. 1961).

In *Ruffalo*, this Court reversed Sixth Circuit's disbarment pursuant to state's disciplinary suspension based on charges attorney hired defendant's employee, a railroad car inspector, while off duty to investigate Federal Employer's Liability Claims against inspector's employee not included in original charges against petitioner but subsequently added from evidence presented during the disbarment proceedings. This Court decided attorney was not precisely and specifically notified as to the reach and precise nature and scope of grievance procedure and charges which deprived attorney of due process. In *Johnson* the court decided attorney was not provided adequate notice that alleged violation of its attorney/client relationship to his client as her attorney and breach of alleged attorney/client relationships with parties to a real estate transaction until the latter part of the case in violation of attorney's due process rights and declared: "Due process contemplates notice which gives a party adequate opportunity to prepare his case. In these circumstances, respondent [attorney] was entitled to know the exact nature of the charges."

All petitioner's recusal proceedings were based on Bachman and Hagan's admitted continued cumulative unlawful violation of the exclusive statutory provision under 77 P.S. 2504 and Wilson's fundamental constitutional right to seek recusal guaranteed under the 14th Amendment to the United States Constitution. *See Caperton*. ODC's DB-7 formal notice in August 2012 upon which its original and amended disciplinary petitions were subsequently filed never notified petitioner that he would be charged with any ethical violations involving any recusal proceedings at 935 MD 2010 or that any recusal proceedings specifically

violated R.P.C. 8.2(a) involving allegedly false or reckless statements concerning judge's integrity. ODC's disciplinary petitions alleging all ethical violations against petitioner were premised entirely on petitioner's recusal proceedings involving administrative judges' admitted unlawful violations under applicable exclusive statutory provisions under 77 P.S. 2504 to decide petitioner's recusal proceedings upon which petitioner prepared his defense including presentation of expert evidence including ODC's own stipulation (App.151a) that all petitioner's recusal proceedings did not violate any ethical rules and were true and based on petitioner's objective reasonable basis after due diligence that the foregoing admitted cumulative ex parte communications by Bachman, Hagan and Dombrowski in pending Workers' Compensation proceedings involved actual and/or apparent improprieties reasonably questioning the administrative judge's impartiality under 2504 and all applicable Pennsylvania appellate decisions! Accordingly petitioner was clearly obligated to timely seek recusal to protect his elderly dying client's weekly compensation benefits and prevent waiver of Wilson's right to seek recusal requiring petitioner to raise recusal proceedings at earliest possible moment under applicable law otherwise Wilson would have waived her critical fundamental constitutional and statutory right to recuse based on Bachman's, Hagan's and Dombrowski's actual or apparent improprieties regardless of their egregious cumulative unlawful violations under 77 P.S. 2504. ODC did not present any evidence that Supreme Court's newly enacted 2014 Judicial Code including specifically Canon 2 Rule 2.9 applied to determine whether petitioner violated any ethical rules! As a result petitioner was trapped into presenting evidence

including unrebutted expert evidence petitioner's recusal proceedings in 2010 under the applicable 2504 statutory provisions did not violate any ethical rules and petitioner had a reasonable objective belief after due diligence to seek recusal and truthful under 2504! After record had been closed involving administrative judge's manifest violations under 2504, Master subsequently and erroneously excluded petitioner's critical indisputable and unrebutted expert evidence including from Mr. Ruggieri that petitioner's recusal proceedings did not violate any ethical rules whatsoever and were clearly true and based on an objective basis after due diligence. After all evidence had been concluded approximately 10 years after petitioner sought administrative recusal proceedings, on 12/19/2019 Court clearly and erroneously suspended petitioner from practice of law for 5 years based on Board's recommended report on 9/3/2019 that all petitioner's recusal proceedings violated ethical rules 3.1, 3.3(a)(1), 8.2(a), 8.4(c), 8.4(d) based on their egregiously erroneous retroactive application of Court's newly enacted 2014 Judicial Code Rule 2.9 exception to admitted ex parte communications which did not exist and plainly was not effective or applicable in 2010 to petitioner's recusal proceedings or currently applicable to any compensation recusal proceedings governed exclusively under 2504 including pursuant to ODC's binding stipulation! Petitioner submits ODC's disciplinary proceedings including amended disciplinary petition completely failed to provide any adequate notice and fair warning regarding reach of disciplinary proceedings and precise and exact nature of basis of charges against petitioner depriving petitioner of due process contrary to First and 14th Amendment and this Court's foregoing decisions.

In *Williams* this Court decided where Pennsylvania Supreme Court Justice previously participated peripherally approved a death sentence as District Attorney involved in his subsequent judicial participation as a member in denying post-conviction relief violated Due Process Clause of the Fourteenth Amendment because Court co-mingled accusatory and adjudicative functions of Supreme Court which objectively requires recusal pursuant to due process Constitutional guarantee. This Court's precedents set forth an objective standard mandating recusal when likelihood of bias on part of judge "is too high to be constitutionally tolerable." To establish an enforceable and workable framework, this Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. This Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, "the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" Therefore Court determined that an unconstitutional potential for bias exists when same person serves as both accuser and adjudicator in a case. This objective risk of bias is reflected in due process maxim that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome (citing cases)."

On 8/26/2011 and 6/21/2012 entire Pennsylvania Supreme Court repeatedly filed subject disciplinary complaints against petitioner with ODC based on completely inaccurate, unrelated, non-existent alleged ethical violations involving recusal proceedings together with their prejudgment that petitioner's recusal

proceedings at No. 385 MD 2010 and 935 MD 2010 involving “accusations and assertions and acts committed by a [Workers’ Compensation Judge and others that appear [ed] to be wholly unfounded and unsupported by the record . . .”

Contrary to Supreme Court’s completely unfounded biased and prejudicial accusations against petition in (App.254a-258a) these recusal proceedings were only dismissed as moot because administrative judges Bachman and Hagan successfully avoided contemporaneous decisions involving their actual or apparent improprieties reasonably raising question regarding their impartiality under 2504 by Commonwealth Court based on Bachman’s subsequent recusal raising a presumption of ethical misconduct under applicable law (*see M & D Auto*) and simultaneous motion to dismiss matter as moot based on her recusal to prevent a decision on merits involving her egregious continual, unlawful, actual or apparent improprieties contrary to 2504; and Hagan’s motion to dismiss as moot to prevent contemporaneous determination of merits of his foregoing unlawful egregious *ex parte* communications contrary to Section 2504 based on his adjudication which court granted on basis that adjudication was appealable while simultaneously finally and specifically denying that all petitioner’s foregoing recusal proceedings involving Bachman and Hagan were not filed in “bad faith, vexatious, obdurate, dilatory, false or frivolous without any factual or legal merit” as specifically alleged in Hagan’s and employer’s motion for sanctions involving identical legal standards which are subject of ODC’s disciplinary proceedings against petitioner based on R.P.C. 3.1, 3.3(a)(1), 8.2 (a), 8.4(c), 8.4(d). App.12a.

Under these extraordinary circumstances petitioner submits Pennsylvania Supreme Court clearly unconstitutionally combined accusatorial and adjudicative functions and has substantial interest in utilizing its plainly inapplicable newly enacted 2014 Code to target and severely sanction petitioner clearly raising an objective unconstitutional potential for bias which exists when the same persons serve as both accusers and adjudicators involving Murphy's alleged ethical violations pursuant to their accusations filed with ODC and their specific prejudgment that all Murphy's recusal proceedings which are subject of current disciplinary proceedings were "wholly unfounded and unsupported by the record" contrary to Commonwealth Court's final specific order that all petitioner's recusal proceedings were clearly not dilatory, obdurate, vexatious, reckless or filed in bad faith without any factual or legal basis involving the recusal proceedings at No. 385 MD and 935 MD 2010. The Commonwealth Court finally and specifically decided that all foregoing recusal proceedings are not filed in bad faith, false, reckless, frivolous, vexatious, dilatory and lacked any factual or legal merit alone demonstrating petitioner's recusal proceedings did not violate R.P.C 3.1, 3.3(a) (1), 8.2(a), 8.4(c), 8.4(d) and were based on an objectively reasonable basis after due diligence including voluminous proceedings and hearings before the Commonwealth Court! Petitioner respectfully submits that this Court's decisions involving the objective risk of bias as reflected in due process maxim that no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome has clearly been violated by Pennsylvania Supreme Court's 12/19/2019 order suspending petitioner from the practice of law for five years where Court is both

accuser and adjudicator and prejudged its decision that petitioner's recusal proceedings were "wholly unfounded and unsupported by the record" subsequently adopted by the administrative authorities which is a violation of petitioner's fundamental right to due process and equal protection including a decision by a fair and impartial tribunal based on a complete record guaranteed under the 1st and 14th Amendments and this Court's foregoing decisions including *Caperton and Williams*.

In foregoing cases including *Ruffalo, Burr, Secombe, Schware, Koningsberg* this Court long ago recognized that power of states to control practice of law involving attorney's fundamental constitutional reputational and livelihood rights cannot be exercised so as to abrogate federally protected rights and the courts shall not exercise their supervisory control in an arbitrary or irrational or biased manner in disciplinary proceedings which this Court has characterized as being "quasi criminal" in nature and disciplinary proceedings must proceed according to the most exacting demands of due process of law. In *Schware* this Court specifically decided New Mexico Supreme Court's decision cannot exclude a person from the practice of law in any manner or for reasons that are not reasonably supported on the record before this Court because an arbitrary or irrational decision where there is no basis for their finding or where their action is invidiously discriminatory clearly contravenes substantive and procedural due process or equal protection.

In *Bouie and Rogers* this Court reiterated that Article I Section 10, cl. 1 of United States Constitution expressly prohibits any ex post facto laws by states

which this Court has generally considered to apply to legislation involving criminal matters pursuant to this Court's decision in *Calder* which makes any action done before the passing of the law which was innocent when done criminal and punishes such action; aggravates a crime; changes punishment; or alters the rules of evidence in order to convict the offender. In *Rogers* this Court specifically decided that limitations on ex post facto judicial decision-making are inherent in the notion of fairness pursuant to due process recognized in *Bouie* and concluded that state's highest court's decision in Tennessee abolishing year and a day rule under which no defendant could be convicted of murder did not constitute unconstitutional retroactive judicial decision-making because Court's decision was not unexpected and indefensible by reference to law which had been expressed prior to conduct at issue.

In *Bradley v. Richmond School Board*, 416 U.S. 696, 711 (1974), this Court said: "We anchor our holding in this case on the principle that a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary." Accordingly this Court vacated appellate court's judgment because congressional amendment to permit attorneys' fees in desegregation proceedings passed during proceedings could allow district court, petitioners reasonable attorney fees for services rendered prior to enactment of § 718 because propriety of the award was pending resolution on appeal when statute became law and because no manifest injustice would occur from a retroactive application of § 718 to facts and the statute was not

expressly limited to proceedings subsequent to its enactment relying on numerous decisions from this Court.

Petitioner submits that Pennsylvania Supreme Court's promulgation of 2014 Code plainly and specifically states that it was enacted on 1/8/2014 and effective only on and after 7/1/2014 and applicable only to elected judges and is clearly, plainly and specifically completely inapplicable to petitioner's recusal proceedings to recuse Workers' Compensation judges Bachman and Hagan in 2010 appointed by executive branch or at any time including currently because petitioner's recusal proceedings to recuse Bachman and Hagan in pending contested compensation proceedings based on their admitted cumulative, unlawful, actual or apparent improprieties which reasonably questions their impartiality is governed exclusively by legislature's statutory code pursuant to 77 P.S. 2504 within Pennsylvania legislature's exclusive constitutional legislative authority under Separation of Powers Doctrine pursuant to Pennsylvania Constitution Article II Section 1 not newly enacted inapplicable 2014 Canon 2 Rule 2.9 exception to prohibited ex parte communications involving only elected judges. Therefore Supreme Court's 12/19/2019 order applying 2014 Judicial Code including specifically Canon 2 Rule 2.9 to decide petitioner's recusal proceedings in pending contested Compensation proceedings in 2010 which is clearly inapplicable in 2010 or at any time is egregiously erroneous and contrary to petitioner's fundamental right to due process to apply 77 P.S. 2504 which is the law exclusively in effect in 2010 as well as currently in order to decide whether petitioner's recusal proceedings violated the

ethical rules pursuant to R.P.C. 3.1, 3.3(a)(1), 8.2(a), 8.4(c), 8.4(d)!

Where Pennsylvania Supreme Court acts in dual capacity including legislative capacity to rescind 2010 Judicial Code and promulgate 2014 Judicial Code including creating an unexpected exception to all previously prohibited ex parte communications involving 2504 clearly constitutes a prohibited ex post facto law retroactively severely sanctioning petitioner for conduct involving recusal proceedings which were previously and clearly prohibited under 2504 without any exceptions whether allegedly administrative, procedural or substantive and which is clearly indefensible by reference to the law which had previously been expressed that all recusal proceedings involving Compensation judges in 2010 and currently are decided pursuant to 77 P.S. 2504 and administrative regulations 131.24 and applicable decisions clearly prohibiting any ex parte communications without any exceptions whatsoever necessary to protect claimants pursuant to its remedial purposes including as reflected in ODC's foregoing stipulation to that effect. App.151a. 77 P.S. § 2504 plainly and expressly provides workers' compensation judges must adhere to this Code of Ethics. The Section 2504(a)(7) provides WCJ must "disqualify himself from proceedings in which impartiality may be reasonably questioned. . . . More importantly, violations of those [Judicial] Codes are not a proper subject for consideration of the lower courts [administrative] to impose punishment for attorney or judicial misconduct." *Tindal v. Workers' Comp. Appeal Bd. (City of Phila.)*, 799 A.2d 219 (Pa. Commw. Ct. 2002).

Supreme Court's 12/19/2019 order acting in dual capacity as legislator and judicial decision maker retroactively applying inapplicable 2014 Judicial Code Canon 2 Rule 2.9 which plainly and expressly is effective only on and after July 1, 2014 and applicable only to Common Law judges not Workers' Compensation administrative recusal proceedings seeking recusal of administrative Workers' Compensation judges Bachman and Hagan is egregiously erroneous, manifestly unfair and a prohibited ex post facto law, biased, arbitrary and irrational and violates petitioner's fundamental substantive and procedural due process and equal protection rights guaranteed under Article I Section 10, cl. 1 and First and Fourteenth Amendments to United States Constitution and this Court's foregoing decisions.

All Pennsylvania appellate decisions have applied 2504 provisions to recuse Workers' Compensation judges and/or vacate tainted records who violated 2504. *See e.g. Tyndal, supra; M. & D. Autobody, supra; Kinter v. W.C.A.B.* 579 A.2d 1010 (Pa. Comm. 1990) app. Den. 588 A.2d 915 (1991); *Suprock v. W.C.A.B. Millersville University*, 657 A.2d 1337 (Pa. Comm. 1994); *Steinhouse v. W.C.A.B. (A. P. Green)*, 783 A.2d 352 (Pa. Commw. 2001). The Court's 12/29/2019 order applying 2014 Code to petitioner's compensation recusal proceedings clearly violates petitioner's fundamental right to equal protection contrary to all foregoing appellate decisions continually applying legislature's statute pursuant to 77 P.S. 2504 to determine whether to recuse compensation judges pursuant to all foregoing appellate decisions and within the legislature's exclusive legislative power!

The Pennsylvania Supreme Court has also repeatedly decided to apply every ethical code promulgated by Court including Professional and Judicial Codes in effect at time of alleged misconduct. *See e.g. In Re Roca*, 2016 Pa. Jud. Disc. LEXIS 55, Aff'd 173 A.3d 1166 applying then existing 1974 Judicial Code including Canons 2(B), 3(A), 4 including derivative constitutional violations involving prohibited ex parte communications by common law judges and actual and/or apparent improprieties involving family members involving alleged misconduct in June 2012 and specifically refusing to apply 2014 Judicial Code. In *Montgomery County Bar Assoc. v. Hecht*, 317 A.2d 597 (Pa. 1974) court applied then existing judicial code of 1970/1974 occurring in 1970 involving attorney's disciplinary proceedings for false swearing imposed by Court of Common Pleas prior to Pennsylvania Supreme Court's creation of Disciplinary Board. Supreme Court's 12/19/2019 suspension order applying 2014 Judicial Code Canon 2 rule 2.9 retroactively to petitioner's recusal proceedings in 2010 clearly violates plaintiff's fundamental right to due process and equal protection guaranteed under First and Fourteenth Amendments to United States Constitution in which Pennsylvania Supreme Court applied 2014 Code to decide whether petitioner violated foregoing ethical rules clearly contrary to all Court's foregoing prior decisions in which it has repeatedly applied its ethical codes including Professional and Judicial Conduct Codes in effect at the time of the alleged ethical misconduct to decide whether any attorney or judge violated either the then existing Rules of Professional Conduct or then existing Code of Judicial Conduct in accordance with all the foregoing Codes and decisions.

Petitioner submits that review of the undisputed record as reflected in appendix clearly demonstrates petitioner's recusal motions involving Bachman and Hagan were based virtually verbatim on their undisputed conduct actual or apparent improprieties under 77 P.S. 2504 in violation of Wilson's fundamental right to a fair and impartial tribunal. App.151a-161a, 164a-179a, 183a-185a, 191a-192a, 200a. Bachman repeatedly admitted she continually conducted ex parte communications with numerous lawyers, parties, insurance companies and unrepresented claimants through Meehan including specifically involving Wilson's case in which she repeatedly and intentionally conducted ex parte communications through Meehan with Dombrowski involving critical material ex parte communications including involving evidentiary matters which are clearly prohibited under 77 P.S. 2504 as well as analogous provisions under professional and judicial codes albeit 2504 prohibits all ex parte communications without any exceptions whatsoever including alleged administrative procedural or substantive exceptions. Bachman repeatedly refused to recuse herself from recusal proceedings involving disputed material facts within her personal knowledge where she had a substantial interest including her potential removal from office resulting from her cumulative and intentional instructions to Meehan to conduct ex parte communications in violation of 2504. *See e.g. Municipal Publications Inc. v. Court of Common Pleas*, 489 A.2d 1286 (Pa. 1985) and *Judicial Inquiry Review Board v. Snyder*, 523 A.2d 294 (Pa. 1987) specifically deciding every judge must recuse from recusal proceedings involving judge's alleged ex parte communications. The indisputable record appendix clearly demonstrates petitioner's recusal

proceedings overwhelmingly demonstrate Hagan admittedly engaged in unlawful cumulative violations of Section 2504 and mandatory regulations including 131.24 including multiple *ex parte* communications with Bachman, Office of Adjudication and employer's counsel, Dombrowski, Wilson's son-in-law including removing and destroying original records in Wilson case essential for further appropriate proceedings including appeals. App.164a-179a. Under the circumstances the record clearly does not reasonably support the Pennsylvania Supreme Court's 12/19/2019 order that petitioner's recusal proceedings violated ethical rules 3.1 involving frivolous proceedings, 3.3(a)(1) involving a knowingly false material statements of fact or law to a tribunal, 8.2(a) knowingly false or reckless statements concerning Bachman or Hagan's integrity or qualifications, 8.4(c) dishonesty, fraud, deceit or misrepresentation, 8.4(d) professional misconduct prejudicial to the administration of justice and demonstrates petitioner's recusal proceedings are truthful and based on his reasonably objective belief that Bachman and Hagan clearly conducted cumulative, continual, unlawful, admitted violations of 77 P.S. 2504 in violation of Wilson's fundamental right to a fair and impartial tribunal to protect her weekly compensation benefits including appropriate recusal administrative and extraordinary recusal proceedings necessary to prevent immediate waiver of her right to recuse Bachman and Hagan under 2504 and applicable decisions mandating that recusal proceedings must be raised at the earliest possible moment otherwise waived! *In New York Times* Court emphasized any rule compelling critic of official conduct to guarantee truth of all his factual assertions leads to self-censorship which would deter parties from voicing

their criticism even though it is believed to be true and even though it is in fact true because of doubt whether it can be proved in court or fear of expense of having to do so. The Court's 12/19/2019 suspension order is clearly erroneous, irrational and arbitrary and violates petitioner's fundamental constitutional rights to judicial free speech, cross examination, confrontation, compulsory process, speedy, fair trial contrary this Court's foregoing decisions. *See Schware, Konigsberg, Goldberg, Kyles, NY Times, Button, Primus, Jencks, Schlesinger, supra.*

ODC continually suppresses evidence including all ODC witness statements from ODC witnesses including Dombrowski, Hagan, Meehan, Nasuti and Howell identified in ODC's Exhibits 100-110, 34 (1-44). Contrary to petitioner's fundamental right to due process Board repeatedly issued fiat orders without any rationale quashing petitioner's subpoenas duces tecum served on ODC's representatives Killian, Sidroski, Gottsch, Hernandez, Ciampoli who conducted investigation and have personal knowledge regarding ODC favorable witness statements in ODC's possession identified in ODC Exhibits 100-110, 34 (1-44). Petitioner duly served ODC's witness, Howell, seeking only factual information who provided statements upon which ODC's amended petition is predicated including paragraphs 15-45 are based. All ODC's witnesses including Bachman and Hagan waived any alleged privileges which lack any factual or legal merit and unreviewable by Supreme Court. App.2a-9a, 150a-159a, 160a-162a, 164a-169a. *See e.g. Jencks, Kyles* repeatedly deciding petitioner is entitled to all ODC witness statements, notes, memos and reports. ODC has continually denied petitioner's fundamental due

process right to all ODC witness statements based on its continued egregious prosecutorial misconduct!

The Court's 12/19/2019 order is not based on a full, true, complete and accurate original record because Master and Board did not provide complete record including ODC's foregoing exhibits 100–110, 34 (1-44) to Supreme Court to conduct mandatory *de novo* review of entire record contrary to petitioner's fundamental rights to due process equal protection, cross-examination, confrontation, compulsory process and a full, fair hearing before an impartial tribunal contrary to this Court's decisions. *See Goldberg.*



## CONCLUSION

Petitioner prays this Honorable Court grant the within petition for these reasons.

Respectfully submitted,

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