No. 19-6917

ORIGINAL

In The

Supreme Court of the United States

IN RE SHERRI JEFFERSON,
Petitioner,

On Emergency Petition for Writ of Mandamus and/or Prohibition, to the Supreme Court of Georgia

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EMERGENCY PETITION FOR A WRIT OF MANDAMUS AND/OR PROHIBITION

SHERRI JEFFERSON
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Riverdale, Georgia 30274
478-922-1529
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QUESTIONS PRESENTED

For fifty-three years under this Court's precedent in *Spevack v. Klein*, 385 U.S. 511 (1967,) lawyers cannot be disbarred for exercising their privilege against self-incrimination. Moreover, an adverse inference must be drawn from proven facts. *Leary v. United States*, 395 U.S. 6, 36 (1969). This court also held in *In re Ruffalo*, 390 U.S. 544 (1968), that lawyers are entitled to notice, and full and fair litigation in attorney discipline proceedings. The Supreme Court of Georgia order of disbarment by virtue of default for exercising Fifth Amendment privilege is in direct conflict with *Spevack, Leary and Ruffalo. Moreover, t*he Georgia Bar failed to give notice of charges of misconduct, denied full and fair litigation, plus fabricated a story that the petitioner lied to three tribunals even though none of the courts issued orders, statements, hearing records, or directives or ever claimed dishonesty or fraud upon the court. Plus, she fully responded to discovery [App. C and G]

1. **Does this Court's opinion in *Spevack v. Klein*, 385 U.S. 511 (1967), *In re Ruffalo*, 390 U.S. 544 (1968), and *North Carolina Board of Dental Examiners v FTC*, 135 S. Ct. 1101 (2015) require that the order of disbarment be reversed, remanded, or vacated and set aside for violation of the Due Process and Self-Incrimination Clause of the Fifth Amendment, and violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment under the U.S. and Georgia Constitution.**

2. **Whether the State Bar of Georgia disciplinary proceedings comport with the Petition Clause of the First Amendment?**
3. **Whether the proper standard for taking the Fifth Amendment in "quasi-criminal" attorney disciplinary proceedings authorize an adverse inference that the disciplinary allegations charged by the State are true, especially where the record is devoid of evidence.**
4. **Whether the Supreme Court of Georgia abused its discretion in examining what it means for attorney disciplinary cases to be "quasi-criminal" in nature when it comes to Fifth Amendment rights.**
5. **Whether Georgia's attorney discipline procedures (use of conflicted prosecutors, investigators, special masters and review board panelist aka *active market participants*, suspensions, collateral estoppel, standard of proof, rules of evidence, discovery, full and fair opportunity to be heard and to litigate and default judgement) comport to constitutional due process standards.**
6. **Whether the Supreme Court of Georgia abused its discretion when it failed to protect the petitioner from abuse by the State Bar of Georgia and their *active market participants* under the federal constitutional standard for enforcement of professional misconduct where the procedures lack uniformity and subjects' attorneys to arbitrary, capricious, discriminatory enforcement and divergence from national standards or no standards at all.**

7. Whether the State Bar of Georgia's formal complaint, report and recommendation, and order of disbarment by virtue of default should be reversed, dismissed or vacated for failure to comply with the requirements of the State Bar of Georgia's Professional Code of Conduct Rule 4-213 and 4-219 hearing provisions, and Georgia law governed by O.G.G.A. 15-19-32 authorizing a trial by jury.

PARTIES TO THE PROCEEDING

The following were parties to the proceedings in the Supreme Court of Georgia:

1. Sherri Jefferson filed an exception to or an appeal from the Report and Recommendation entered by a conflicted ***special master***[1] ***and review board chairperson***[2] to subject her to disbarment by virtue of default.

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[1] Patrick Longan had several conflicts of interest and the petitioner moved both the Board and the Supreme Court for his recusal, reappointment and disqualification, to no avail. [*App. K*]. He is a professor of Mercer University, the alumni of both the petitioner and former Governor Nathan Deal who is employed as a professor at the University. Plus, petitioner successfully sued the university for discrimination. Further, the university also has a competing interest in her sex trafficking program. Moreover, Patrick Longan also served as the attorney for the grievant's employer. Plus, several members of both the investigative panel and review board served as Mercer University's board of trustee and/or are partners in the law firm that represents Mercer University. There is more. {*App. D, E and H*].

[2] Anthony "Tony" Askew, the Review Board Panelist and Chairperson who wrote the report and recommendation for disbarment had numerous conflicts of interest *[App. K*] including serving the

2. The State Bar of Georgia Office of General Counsel, William J. Cobb of Decatur, Georgia, Special Master Patrick Longan of Macon, Georgia, and Review Board Chairman Anthony "Tony" Askew of Atlanta, Georgia were the named appellants in the lower-court proceedings.

The following are parties to the proceeding in this Court:

1. Sherri Jefferson is the Petitioner.

2. The Supreme Court of Georgia is the Respondent.

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental corporation. None of the petitioners has a parent corporation or shares held by a publicly traded company.

State of Georgia as a special assistant attorney in federal courts. The case that the Supreme Court of Georgia falsely accuses the petitioner of lying before the federal court involved her constitutional challenge to Georgia's private citizen warrant statute. That case was pending while Askew of Meunier Carlin & Curfman was representing the State in a copyright violation suit in the same court. In fact, that case is also pending before this court on appeal from Judge Stanley Marcus decision in the 11th Circuit against the State of Georgia Code Revision Commission v. Public Resource Org, Inc., 1:15-CV-02594-MHC. [*App. D*-Exceptions to Report and Recommendation and *App. E*-Disparity and Bad Faith]

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Appendix H – "Third Supplemental to Motion to Vacate and Set Aside Order of Disbarment with Index to the Record below R. 1009-1030 and 1031-1037 dated October 9, 2017, proof of attendance and testimony at the Motion for Sanction hearing *filed on October 10, 2019.*

Appendix I – "Exhibit J in Support of Motion to Vacate and Set Aside Order of Disbarment Index to the Record R. 1588 – 1604; evidence of communications, forwarding of mail, evidence of no stalking or spying, etc., and history of the grievant *filed January 26, 2018* with State Bar Board and Supreme Court with record on *December 3, 2018.*

Appendix J – "Petitioner's Filing" Respondent's Sur-Reply to the State Bar of Georgia's Response to Her Exceptions to the Special Master Report and Recommendation – *Dated June 5th 2018* Index to the Record 1713-1725

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TABLE OF AUTHORITIES

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United States Constitution and Federal Constitutional Standard

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Georgia Supreme Court Fifth Amendment Decision

Georgia Attorney Discipline Cases

Georgia Rules of Professional Conduct

State by State Analysis of Attorney Discipline

JUDICIAL ORDERS BELOW

In re *Sherri Jefferson*, on **October 7, 2019**, the Supreme Court of Georgia issued a per curiam order to disbar. In re *Sherri Jefferson*, on **November 4, 2019**, the Supreme Court of Georgia issued an order denying petitioner motion to vacate and set aside and stay without any finding of fact. Pending before the Court in In re *Sherri Jefferson*, petitioner filed a Notice of Intent to Seek Writ and a Stay of the Mandate on **November 5, 2019** and Amended on **November 6, 2019**, but the court has not yet ruled on it.

JURISDICTION

The All Writs Act, 28 U.S.C. § 1651, authorizes this Court to "issue all writs necessary or appropriate in aid of [its] jurisdictions and agreeable to the usages and principles of law." Alternatively, this Court's certiorari jurisdiction is timely invoked under 28 U.S.C. § 1254(1) and Rule 13 of the Rules of the Supreme Court of the United States.

CONSTITUTION AND STATUTES INVOLVED

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ." U.S. CONST. art. III, §2, cl. 1.

"[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws. . . or deprive of life, liberty, or property ." U.S. CONST. amend. XIV. And GEORGIA

"[C]ongress shall make no law . . . abridging ... the right of the people . . to petition the government for a redress of grievances. U.S. CONST. amend. I and GEORGIA

"[N]o person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . . Nor shall any person be a witness against himself, nor be deprived of life, liberty or property without due process of law , , . U.S. CONST. amend. V and GA. CONST. art. I, §1, cl. XVI

28 U.S.C. § 1651 states: (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. (b) An alternative writ or rule nisi may be issued by a justice or judge of a court.

INTRODUCTION

This case presents the kind of extraordinary circumstances in which this Court exercises its discretionary authority to issue a writ of mandamus or certiorari. The writ of mandamus or certiorari should issue because the Supreme Court of Georgia's October 7, 2019 order of disbarment, November 4, 2019 denial of motion to vacate said order and refusal to issue a mandate contravenes a clearly applicable

rule of procedure and said order is manifestly wrong and defies this Court's precedent in *Spevack v. Klein*, 385 U.S. 511 (1967), *In re Ruffalo*, 390 U.S. 544 (1968), and in the matter *North Carolina Board of Dental Examiners v FTC*, 135 S. Ct. 1101 (2015).

For the immediate, petitioner seeks a writ of mandamus and/or prohibition to compel the Supreme Court of Georgia to stay its mandate and to prevent it from further adjudication and execution of the order in this matter until this Court has considered the Petition for Writ of Certiorari. Alternatively, that the mandamus or prohibition compels the Georgia to comply with the standard set forth in *Spevack, Ruffalo and North Carolina Board of Examiners* and reverse, dismiss, remand, or vacate and set aside its order of disbarment. Further, the Supreme Court of Georgia's blatant refusal and disregard for and compliance with Georgia Rules of Professional Canons and Proceedings Rule 4-213 and Rule 4-219 (evidentiary hearing within 90-days and review board hearings), Georgia law under O.C. G.A. 15-19-32 (trial by jury), and this Court's unambiguous precedent in *Spevack, Ruffalo and North Carolina Board of Examiners* constitutes an exceptional circumstance warranting this Court's intervention, and Petitioner has no other avenue for relief.

Alternatively, Petitioner asks this Court to grant certiorari to exercise its supervisory power, as set forth in Supreme Court Rule 10(a), because the Supreme Court of Georgia has grossly and unjustifiably departed from ordinary judicial procedures.

STATEMENT OF THE CASE

OVERVIEW

The Georgia Bar falsely alleged petitioner violated Rules. 3.3(a)(1) *Candor Toward the Tribunal*, 4.2(a), *Communications with Persons Represented by Counsel* and 8.4(a)(4) *Misconduct.* The first-time petitioner received specific notice of charges and specific allegations to implicate these rules was in the October 7, 2019 order. [*App. J*]. The court disbarred the petitioner by virtue of default judgement falsely citing "willful failure to respond to discovery." [App. A. pgs. 11-12] in that she invoked her Fifth Amendment privilege against self-incrimination and "inferred that petitioner admitted allegations" as facts [App. A pg. 6 fn. 4]. However, the record proves the petitioner[3] fully complied with Discovery and the disciplinary proceedings [*App. G.*

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[3] Petitioner is the founder of the African American Juvenile Justice Project a pro bono service and has been subject to years of abuse by the State Bar of Georgia due to her advocacy on behalf of children. ***App. D, E and I*** Moreover, under her #FemaleNOTFeemale and JUST US project [Juvenile Urban Sex Trafficking in the United States], she has advocated for victims of sex trafficking. She continues to face political and social opposition in Georgia. The record [App. E and App K. 75-100 and 1271 -1365 proves that months prior to the disciplinary action, the petitioner was engaged in legal action against the State Bar of Georgia in **Jefferson v. State Bar of Georgia, Superior Court of Fulton County case No. 2009-cv-177312** because they disseminated emails, held meetings, and conducted interviews with third parties to **"smear Jefferson's standing in her community. . . . to take off our gloves concerning her and the African American Juvenile Justice Project. ..**" The order to disbar and the false statements therein is intended to smear her reputation and subject her to public ridicule, embarrassment and shame.

Responses to Discovery filed on September 5, 2017 at R. 587-602 and 603-615 and *See. App. K*] and that the Georgia court failed to review the record.

Lied to Tribunal

Recently resigned, prosecutor William J. Cobb alleged that the petitioner made **a false statement** and filed frivolous actions, claims, or made misleading statements to the Houston and Fulton County Magistrate Courts and to the United States District Court, the Northern Division. {App. C. pgs. 10-12}. These charges are fabricated.

Rule 3.3, Rule 8.4 and Rule 8.1

The order of disbarment falsely states that petitioner lied in a court filing by asserting that a police report was filed against her in *Jefferson v. Deal* case 1:15-cv-02226 TCB aka *Doe v. Deal* et al when she filed a challenge to Georgia's private citizen warrant statute and that the court dismissed her actions based upon her lies [Appx. A. pgs. 2-5]. **This is false.** [4]Evidence of the report is in the record never considered or reviewed by the Georgia court. The woman [Grievant 2] filed several police reports and/or actions against the petitioner, to include on February 7, 2015 police report No. 15038186500 in the City of Atlanta Police Department Zone 3. The report consists of false accusations. So, petitioner contacted the woman's employer to secure information to prove that petitioner never appeared on school property, never threatened her on the job, never contacted the woman at school, and never

[4] Appx. K Index R. 46-162 and 1271-1365

contacted her via emails, visits, or calls to the school, etc., as alleged. [App. K 75-100 and 1271-1365 and App. C, D and F]. Grievant 2 police report was dismissed following an investigation by the police department, so she filed a private citizen warrant.

Following the order of disbarment, the Bar hand-delivered the order to the clerk at the federal court to convince the court to disbar the petitioner. She sought information for her defense. The court responded below. [App. C. at 10, 11, 12, and 13 - November 6, 2019 Amended Notice of Intent to Seek Review by SCOTUS].

----Original Message----
From: Suzy Edwards <Suzy_Edwards@gand.uscourts.gov>
To: Attysjjeff <attysjjeff@aol.com>
Cc: Uzma Wiggins <Uzma_Wiggins@gand.uscourts.gov>; Lori Burgess <Lori_Burgess@gand.uscourts.gov>; Judith Motz <Judith_Motz@gand.uscourts.gov>
Sent: Wed, Nov 6, 2019 3:30 pm
Subject: RE: Order of Court
Ms. Jefferson: Let me be more clear: I have nothing to give you. I know nothing about this. Neither Judge Batten nor anyone else in his chambers was involved in this matter in any way.

Thank you.

Suzy Edwards
Courtroom Deputy Clerk to
The Honorable Timothy C. Batten, Sr.

U.S. District Court
Northern District of Georgia
(404) 215-1422 (Atlanta)
(678) 423-3021 (Newnan)

From: Attysjjeff <attysjjeff@aol.com>
Sent: Wednesday, November 06, 2019 3:17 PM
To: Suzy Edwards <Suzy_Edwards@gand.uscourts.gov>; attysjjeff@aol.com

Cc: Uzma Wiggins <Uzma_Wiggins@gand.uscourts.gov>; Lori Burgess <Lori_Burgess@gand.uscourts.gov>; Judith Motz <Judith_Motz@gand.uscourts.gov>
Subject: Re: Order of Court

Ms. Edwards,

I am not asking you to determine whether the Supreme Court case is on the docket, I know that it is not on the docket. I am asking your office to turn over the statement, order, hearing records, or information that you gave to the State Bar of Georgia that said that I lied to your court in 2015 in the deal case. What information did your office give them to make then advance that claim against me under Rule 8.1 as I never lied, and was never accused by this office of lying or by the court. In other words, ask Judge Batten to provide to you what order he issued regarding a lie or dishonest act that I committed during self representation in Jefferson v. Deal that would lead the Bar to accuse me of lying to his tribunal as nothing in the order references such and I have all of the order from 2015.

/s/ Sherri Jefferson

False Allegation That Petitioner Lied to Houston and Fulton Courts

To avoid confusion Grievant 1 is the man and Grievant 2 is the woman referenced in the order of disbarment that falsely accused the petitioner of filing multiple pleadings and claims before several different courts, *citing* In the *Matter of Koehler,* 297 Ga. 218 (2015). Petitioner only responded to court filings against her and only filed the federal action challenging the private citizen warrant.

Next, the order alleges that the petitioner lied to the Houston and Fulton courts in a private citizen warrant dispute. The warrants are separate incidents. Petitioner never appeared before the Houston County court because grievant 1 secured a private citizen warrant **ex parte** on April 9, 2015 from Judge Katherine Lumsden's

magistrate, Robert Turner. On February 4, 2015 Grievant 1 filed a formal complaint with the U.S. Postal Inspector General office to prevent the petitioner from forwarding her mail that she learned he received without her authorization, knowledge, or consent. [*App. I*]. He accused the petitioner of forwarding mail belonging to he and his son. Upon investigation, they dismissed his complaint because only her mail was forwarded. Moreover, the petitioner forwarded her mail a year earlier without incident. (*See Appendix I* –also App. K Index to R. 1588-1604). Furthermore, she also learned that he was named as a principal in her business and listed as married on the internet. Moreover, during the pendency of the bar complaint based upon his grievance, according to Equifax report, he put an American Express card under petitioner's name and told AE that the parties were in a relationship from July 17, 2008 through November 8, 2014 and contacted them during the pendency of these disputes to cancel the account ending in No. However, the parties stopped dating in 2008. *[App. K R. 48-114 and I.]*

On April 9, 2015, it appears that the grievant 1 claimed he was harassed on December 23, 2014. Petitioner never harassed him. Compelling, he called to wish petitioner and her family a Merry Christmas on December 25, 2014 at 12:42 pm; moreover, he asked for her legal assistance in a December 9, 2014 meeting. (*See Appendix I and K at 48-114 and 1271-1365).* Nevertheless, upon return from vacation, petitioner was taking into custody on April 10, 2015 on a BOLO and APB warrant. No bond, she was confined for two days without knowing the charges. Judge Turner sent a public defender to the jail to force the petitioner to admit to

harassing communications by text with the grievant. Notwithstanding, during confinement, the judge issued another warrant for stalking. The petitioner refused because she was not guilty, her last responsive communication was on January 19, 2015 when the call was interrupted by Grievant 2 whom joined the conversation to denounce petitioner as an attorney. The petitioner had no prior interactions with Grievant 2. Petitioner never harassed him or her and never spoke to Grievant 1 or 2 again. Aside, Georgia did not have a harassing text communication law effective April 2015. Petitioner remained confined for five days while a denied preliminary hearing, food, water, subject to multiple strip searches and forced to wash her hair with some harsh chemical. *App. K. Index 48-114*

On April 15, 2015, the petitioner was finally released on an O.R. bond after the court denied her request for a preliminary hearing to confront the accusers. Petitioner never had any proceedings before the Magistrate court. The warrants were subject to constitutional challenge on the grounds of denial of due process. So, all the accusations cited in the October 7, 2019 order, especially pages 2-5 are false. *App. H-J and K [Index to Record 75-100 and 1271-1365].* The county prosecutor did not accept the case from the judge or prosecute the private citizen warrant. *See App. D. G. and H.*

The petitioner never had a detective to spy on grievant 1 or two. She asked the post office to investigate why he was receiving her mail without her authorization, knowledge or consent and why the internet had postings that he was the principal

of her law firm and she had his last name with all mail going to his home. *(Appendix I* pgs. 1-17)

Next, petitioner never appeared before the Fulton court on the private citizen warrants filed by Grievant 2. Petitioner filed a motion to dismiss the warrant for criminal defamation on constitutional grounds that Georgia ruled it unconstitutional and based upon Free Speech Clause of the First Amendment. Further, the disbarment order states that the petitioner accused the woman of having bloodshot eyes. This is not disparaging. Grievant 2 took pictures of herself and either she or someone sent the photo to the petitioner. Photos demonstrated bloodshot eyes and constructive and actual possession of alcohol. Grievant 1 alleged that Grievant 2 sent the photos because she took them at a public event with him in October 2015 and asked petitioner and Grievant discussed the matter. Petitioner never disparaged anyone. *App. K – Index 75-114.* Nevertheless, the Fulton court dismissed the action without any hearing, proceeding or notice.

Petitioner Request of Review Panel Hearing

The order falsely asserts that the review board denied the petitioner's request for review based upon the merits of the case. In fact, the board granted the hearing in writing for a June 17, 2018 hearing date. {*App. D and see Appx. K. – Index R. 1009-1030, 1438-1446 Request for Review of Special Master Report, Review by Review Board at R. 1605-1632, 1633-1642 and 1763-1792, and 1818-1840*}. Then, Mr. Askew issued the November 28, 2018 report and recommendation without affording a hearing. His report states that the petitioner never requested a hearing. Untrue.

The order to disbar states that he "incorporated the finding of facts" of the special master [Appx. A. pg. 8]. So, he failed to consider the case and did not act independently as required. [*Appx. K 1797-1817*]. Nevertheless, on November 30, 2018 the petitioner challenged his report and raised concerns about denial of a hearing with proof of communications[5] of him and the entire board copied by the Clerk of the Board and petitioner. Then, Mr. Askew changed his report on December 3, 2018 to falsely state that **he was not authorized to grant a hearing** under the Rules. [*App. D- Exceptions to Report and Recommendation and Appx. K. Index R. 1841-1843*]

Forum Shopped for Special Master of Choice

On March 27, 2015, the State Bar sent petitioner a demand by email to change her homestead address by falsely asserting return of mail so that Mr. Patrick Longan from Katherine Lumsden's circuit could preside as special master. {*App. E, F, and H, plus Appx. K 177-211 and 1271-1365*].

> Updated mailing address for the State Bar of Georgia
> From:attysjjeff <attysjjeff@aol.com>
> To: Wolanda Shelton <WolandaS@gabar.org>
> Date: Fri, Mar 27, 2015 11:33 am
>
> Good morning, Ms. Jefferson.
>
> I am writing to request a current mailing address for you. The State Bar of Georgia has been attempting to mail you important documents and they have been returned by the U.S. Post Office. Feel free to email me your correct address and please contact the Membership Department to update your mailing address with the State Bar of Georgia.

[5] The emails that the October 7, 2019 alleges in their footnotes are not substantiated by the record, which is false if the court reviewed the record and the exceptions to the report and recommendations, the email to the Board in November 30, 2018 is timely filed App. E and App. K 1818-1843 and 1844-1883

Thank you for your prompt attention to this matter.

Wolanda Shelton

Grievance Counsel

The following day, on March 28, 2015 Shelton served the petitioner via email with a complaint filed by the grievant 1 and 2, however, the information therein, misspelled petitioner's name, has an incorrect name and location of the county courthouse in his homestead, and other altered material called into question who actually wrote the grievances. *App. K. Index 46-114*

Proceedings involving complaint, evidentiary hearing, discovery, and conflicts

The bar disciplinary proceedings should be akin to adversary proceedings of a quasi-criminal nature. *In re Gault*, 387 U.S. 1, 33.

1. On January 28, 2017, the Bar advanced its formal complaint. On February 2, 2017 the petitioner filed her Answer and requested an evidentiary hearing under Rule 4-213. She also filed challenges and sought reappointment of Patrick Longan as the special master, but her request was denied[6]. In February 2017, Mr. Cobb filed a responsive pleading to the motion to recuse and disqualify Mr. Longan based

[6] This is supported in the record below under Disciplinary Board record. R. 177-211, 260-269, 270-320-321, 322-326, 327-329, 576-586, 689-702, 711-725, 726-739, 740-753, 774-790, 802-819, 791-801, 1179-1190,1567-1578, 1579-1587, 1633-1642, 1643-1652, 1653-1671, 1713-1725, and 1735-1762 and articulated in the Motion to Vacate and Set Aside in the Appendix.

upon conflict of interest [Appx. L and K. Index R. 322-326]. He wrote Ms. Bridget Bagley, counsel for the review board. He said, **that the conflicts although apparent will not deny due process because he will file a request for discovery, then will allege that the petitioner failed to comply with discovery, then will seek a sanction and because he will win by virtue of default the Supreme Court of Georgia will deny review**[7]. Bagley agreed as the counsel for the review board and denied reappointment. [Appx. L and K – Index R. 327-329].

Six months later, Cobb filed a Motion for Sanctions[8] without ever serving discovery upon the petitioner {App. D, F and K}. He claimed that he mailed discovery via regular U.S. mail, but customary practices had been to email and mail for all communications. He did not email mail. [App. D. G and H]. More compelling, is after the clerk of the disciplinary board finally allowed petitioner to review the docket, petitioner noted dozens of documents never received that had been filed by the State and special master. So, she moved the board to furnish all documents instanter. [*Appx. K – Index R. 963-972].*

On September 11, 2017, the special master issued an untimely notice for a September 18, 2017 sanction hearing for failure to comply with discovery even

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[7] This is supported in the record below under Disciplinary Board record. R. 320-321, 322-326 and 327-329. Articulated in the Motion to Vacate and Set Aside in the appendix.

[8] R. 409-411, and 607-679

though the scheduling order concluded all discovery on October 31, 2017. Petitioner challenged the notice to no avail. {*App. L and K Index R. 334*}. Then, Longan personally called two Mercer University law school graduates and judges to ask to use their courtroom – conflicted judge, Katherine Lumsden of Houston County and Karyn Powers of Clayton County. He scheduled use of Powers' courtroom over objections and conducted an open court session. He secured a blue uniform police officer not county bailiff and denied petitioner access to her phone not William Cobb. He forced petitioner to sit in the area where probationers sat. He denied her due process, created a hostile environment, and interrupted her on the record. [App. H and K]. Under these circumstances, she still testified regarding compliance with discovery. [App. L, K Index *Transcripts* and App. H].

Violation of Rules of Professional Conduct

Legally and Factually Flawed October 7, 2019 Order of Disbarment

Romantic Relationship

2. In reliance upon the October 7, 2019 order to disbar the petitioner, the Supreme Court of Georgia **grossly and incorrectly states the following**:

That the petitioner had a romantic relationship with a client [Grievant 1], which is false and contradicted by the record in the case[9]. Moreover, the grievant states in his own statement that he last dated the petitioner about six[10] years prior to

[9] . App K. R 75-100, 114-162 and 1271-1365

[10] December 9, 2014 was a brief business meeting.

December 9, 2014 meeting. More compelling, the record proves that on January 16, 2009, the petitioner contacted the State Bar of Georgia ethics department to seek permission to represent the grievant [See below and App. E]. Grievant was divorced for eleven years and had custody of his son. He needed assistance retrieving his son from his former wife who removed the child without authorization from a church retreat. Petitioner never had a romantic relationship and the parties were not dating during or after he sought legal representation[11].

Rebecca Hall of the State Bar Ethics committee provided response to petitioner's request for guidance. Petitioner sent the communication to all parties including the presiding judge [Katherine Lumsden] via email, fax and certified mail. Then, six months later the petitioner successfully represented grievant 1 before Lumsden's court.

Petitioner was never charged under Rule 1.7 because the Bar knew that she did not have a conflict of interest.

> -----Original Message-----
> From: Becky Hall <BeckyH@gabar.org>
> To: attysjjeff@aol.com
> Sent: Fri, 16 Jan 2009 3:03 pm
> Subject: RE: Confidential - Reply from the State Bar of Georgia
>
> Thank you for the clarification. My advice would differ somewhat if A and B were not already divorced. (See In the Matter of James W. Lewis, 262 Ga. 37 (1992). Rule 1.7 is the rule on point. The main question you should ask

[11] Id

> yourself is whether there is any thing now (or in the foreseeable future), including your own interests, that would prevent you from doing your professional best on behalf of Person A. (For instance, if you become so incensed with the situation (or otherwise angry at B), that you are not able to speak to (or otherwise negotiate with) the opposing party, then you should not represent A.) If you are a member of another state/district's bar association, you may want to contact them, as different jurisdictions differ slightly on romantic relationships with clients. I hope you find this helpful.

Petitioner won custody of his son without incident.

Periods of representation were 2009-2011, which includes the Georgia Court of Appeals and not 2008-2010 as alleged in the order to disbar. {App. A. pgs. 2-5]. Months later, Katherine Lumsden filed a bar complaint citing she had no knowledge the parties dated. Her frivolous bar complaint was overcome because Lumsden retained Claire Chapman, GAL to do a case study on the petitioner and after the January 16, 2009 ethics inquest. *[App. E and App.*K 75-100 and 1271-1365[. Still, the Bar opened the case from 2009 through October 16, 2014. Then, proceeded in March 2015 with this case. Lumsden is the bar complaint referenced in the order [App. A]. The order also notes a *prior bar*[12] *complaint* and during

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[12] The order also notes a private reprimand against the petitioner, but does not explain that in 2004 the petitioner was falsely accused after admission to practice law that she failed to put on her Fitness Application that she had litigation regarding the construction of her home. Well, **she dd not have litigation within any meaning, she has a home-warranty arbitration award in her favor against a Georgia homebuilder**. It was not court-ordered. Next, she was accused of charging in violation of Rule 1.5, which Georgia does not have a set rate for attorney fees. She charged the exact community-market rate of all her colleagues in the same area. Nevertheless, the

pendency grievant 1 moved on' with his life. But the petitioner moved on with her life years earlier [App. I pgs. 1-17].

4. Violation of Due Process Under Rule 4.2

The Supreme Court alleges that the petitioner violated Rule 4.2 when she communicated with the grievant under legal representation on March 2, 2015 knowing that the person filed a bar complaint against the petitioner. [App. A pgs. 2-5]. Wolanda Shelton of the State Bar of Georgia served the petitioner with the complaint 26 days later on March 28, 2015 via email as referenced herein and petitioner had no knowledge of the complaint when she served her responses upon the pro se grievant 2 to the private citizen warrant and malicious prosecution on March 2, 2015. [App. E and F]. But the bar has changed their allegations throughout the course of this case every time the petitioner disproves them.

The facts to implicate Rule 4.2 have been that 1). petitioner communicated on January 26, 2015. Evidence proved the party was not under legal representation when petitioner mailed letter and that their attorney contacted petitioner for the first time on January 27. 2015, 2). That petitioner communicated on February 13, 2015, the bar received evidence that the grievant had filed a private citizen warrant and proceeded *pro se*.). That petitioner contacted the grievant when she served her with the January 26, 2015 letter that had been returned to the petitioner due to the

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Bar pursued her for violation. Unaware of how to challenge or fight the Bar, reprimand was issued in 2006. **See Appx. E Disparity and Discrimination**

incorrect zip code, the bar received evidence that those communications were **not** subject to any legal representation and was just a copy of the letter directed to law enforcement in response to their January 19, 2015 allegations. [App. D, F. and J].

Violation of Petitioner's Right to Due Process in Prosecution of Rule 3.3, 8.1 and 8.4

7. The bar overcharged the petitioner in the shot-gun formal complaint with no facts to support Rules 3.3, 8.1 and Rule 8.4. Then continued to change the allegations during the course of the proceedings every time the petitioner filed a response, including falsely asserting she violated 1). when she filed her Motion to Dismiss, 2). when she said that she did not receive Discovery, 3). That she changed her mailing address to change homestead when in fact, Wolanda Shelton forced petitioner to change her address on March 27, 2015; and, finally 4). that she lied to the Houston, Fulton and federal court. All of their accusations are false.

The record proves denial of due process by their many changes in notice of charges and accusation to implicate Rules 3.3, 4.2, 8.1 and 8.4. at App. K -R. 3-45, 1058-1067, 1068-1138, 1366-1437 and the October 7, 2019 order at App. A

STANDARD OF REVIEW

This Court may "issue all writs necessary or appropriate in aid of [its] jurisdiction and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). An applicant for a writ of mandamus must demonstrate **(1) that the applicant's right to the writ is "clear and indisputable,"** *Cheney v. United States Dist. Court*, 542 U.S. 367, 381 (2004); **(2) that he has "no other adequate means to**

attain the relief he desires," id. at 380; and **(3) that the writ is otherwise appropriate under the circumstances.** See id. at 381. A writ is appropriate in matters where the applicant can demonstrate a "**judicial usurpation of power**" or **a clear abuse of discretion.** See id. at 380 (citations and quotations omitted).

As this Court noted in *Ex Parte Peru*, 318 U.S. 578, 583 (1943), "[t]he writs [of mandamus and prohibition] afford an expeditious and effective means of confining the inferior court to a lawful exercise of its prescribed jurisdiction, or of compelling it to exercise its authority when it is its duty to do so."

The writ here, if granted, would do both: It would prevent the Supreme Court of Georgia [and its arm – State Bar of Georgia Office of General Counsel] from knowingly entering orders that contravenes with this court's precedents and that violates the rights of attorney litigants; from knowingly entering orders that deny due process and denies full and fair litigation and participation; cease the use of judgment by virtue of default for discovery matters protected under the Fifth Amendment and cease denial of evidentiary hearings and jury trials permitted by Georgia law and, this case can set or reinforce uniform guidelines for state disciplinary boards under a *quasi-criminal* standard or prong test. Moreover, this court can compel the Supreme Court of Georgia to cease violating the petitioner's civil and constitutional rights and protect its own jurisdiction as Congress intended.

REASONS FOR GRANTING THE PETITION

Petitioner recognizes that the writ of mandamus is an extraordinary remedy reserved for extraordinary circumstances. Those circumstances exist here, where the Supreme Court of Georgia has violated petitioner's constitutional and civil rights and disregarded three Supreme Court cases issued by this court and relevant to attorney discipline proceedings. Petitioner has no other means to compel the Supreme Court of Georgia to follow the rule of procedure under which this case should have concluded. See Cheney, 542 U.S. at 380–81 (quotations and citation omitted); see also Ker r v. U.S. Dist. Ct. for the N. D of Cal., 426 U.S. 394, 403 (1976).

Alternatively, **this Court may construe a petition for an extraordinary writ as a petition for writ of certiorari.** See, e.g., Calderon v. Thompson, 523 U.S. 538, 549 (1998). This Court will grant a petition for writ of certiorari only "for compelling reasons." Sup. Ct. R. 10. One such reason is that a lower court "has so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's supervisory power." SUP. CT. R. 10(a).

I. There Is a Reasonable Probability that this Court Will Issue a Writ of Mandamus or Grant Certiorari and Reverse the Judgment Below

The order of disbarment violates due process, equal protection, and self-incrimination rights accorded petitioner under the U.S. Constitution and Georgia, civil rights under 42 U.S. C. 1983, and contravenes supreme court precedent in *Spevack v. Klein*, 385 U.S. 511 (1967), *In re Ruffalo*, 390 U.S. 544 (1968), *Theard v.*

United States 354 U.S. 278, 281 -282. P. 547 and the use of *active market participants* not supervised by the State Bar of Georgia or the Supreme Court of Georgia to protect attorneys from anticompetitive acts and conduct that deprive due process and equal protection during disciplinary actions violates constitutional rights. See also, *North Carolina Board of Dental Examiners v FTC*, 135 S. Ct. 1101 (2015).

II. The Balance of Equities Weighs in Petitioner's Favor The harm

The issues that befall the petitioner and other attorneys subject to disciplinary action in Georgia outweighs the harm to Georgia and their State Bar from having to delay enforcement of the October 7, 2019 order of disbarment under default judgment. Rule 4-213 prescribes,

(a) Within 90 days after the filing of petitioner's answer to the formal complaint or the time for filing of the answer, whichever is later, the Special Master **shall** proceed to hear the case.

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. Where the "evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealously," the individual's right to show that it is untrue depends on the rights of confrontation and cross-examination." See *Goldberg v. Kelly*, 397 U.S. 254, 269(1970). See also *ICC v. Louisville & Nashville*

R.R., 227 U.S. 88, 93 -94 (1913), *Greene v. McElroy*, 360 U.S. 474, 496 -97 (1959). Mathews v. Eldridge, 424 U.S. 319, 343-45 (1976).

Bad Faith, Discriminatory, Disparity and Malicious

On October 7, 2019, the same day of disbarment of petitioner, the Supreme Court of Georgia denied discipline of a white female attorney, *In re Denise Hemmann.*[13] *She* has appeared before the court five times for allegedly violating the rights of clients since 2010. Notwithstanding, petitioner's order of disbarment is contradicted by the Georgia Court's recent holding in Re *Joel S. Wadsworth* S19Y1329, where the court held on November 4, 2019 that he should not be disbarred because the evidence did not support a finding even though he defaulted and never filed any response to the bar complaint. *See Appendix E. "Bad Faith, Disparity and Discrimination" filed December 28, 2018 and App. F. Motion to Vacate and Set Aside.*

Similarly argued, under the equal protection component of the Fifth Amendment's Due Process Clause, the decision whether to prosecute may not be based on an arbitrary classification such as race or religion. *Oyler v. Boles*, 368 U.S. 448, 456

III. Petitioner is Indisputably Entitled to the Relief She Seeks

It is as much the duty of the prosecutor [or the Judge] to refrain from improper methods calculated to produce a wrongful conviction (discipline) as it is to use every

[13] In re *Denise Hemmann*, S10Y1067 (2010), S19Y0032 (2019) and S19Y1546 (2019)

legitimate means to bring about a just one. 318 U. S. 248. Viereck v. United States, 318 U.S. 236 42.

Violation of Due Process for Fairness of Process

Both the Georgia and United States Constitutions prohibit the state from depriving "any person of life, liberty, or property, without due process of law." United States Const., amend. XIV, sec. 1; see also Ga. Const., supra. This Court held that the conduct of hearing officers by a person who, while he had not investigated the case heard, was also an investigator who must judge the results of others' investigations just as one of them would someday judge his, raised a substantial problem which was resolved through statutory construction. {App. A. 11-13}. *Wong Yang Sung v. McGrath,* 339 U.S. 33 (1950). In *Gibson v. Berryhill*, 411 U.S. 564 (1973). For such reasons, O.C.G.A. 15-19-32 is the legislative intent in Georgia, contrary to the holding by the Georgia Court to deny relief via a trial by jury.

The order to disbar and the report and recommendation to discipline is a want of prosecution and is void. *Selling v. Radford*, 243 U.S. 46, 51. Denied due process by conflicted triers of fact, petitioner seeks relief. "It is axiomatic that a fair tribunal is a basic requirement of due process." *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876 (2009); U.S. Const. Amend. XIV. This court has recognized that a litigant's due process rights are violated when the circumstances of a judicial decision "g[i]ve rise to an unacceptable risk of actual bias." *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1908 (2016). See *Daniels v. Williams*, 474 US 327, 337 (1986); see also *Zinermon v. Burch*, 494 US 113 (1990).

IV Petitioner Has no Other Adequate Means to Attain the Relief She Desire

This Court is in the best position to correct the Georgia's court patent error. Petitioner has no adequate alternative remedy. She has attempted, unsuccessfully, to get the Georgia Court to correct its error by filing a motion to vacate. The only remaining alternative is to proceed by way of mandamus or certiorari. Notwithstanding, the petitioner is reasonably concerned that the Supreme Court of Georgia will lack the objectivity and neutrality to countermand the State Bar of Georgia's ill-advised directive and report and recommendation for disbarment and may be waiting on this Court to step-in. Resort to the Supreme Court of Georgia or the federal circuit would thus not serve as an adequate alternative avenue of relief and a Writ with clear directive is the only method.

V. The Writ is Otherwise Appropriate Under the Circumstances

The information cited within alone would be sufficient to justify the exercise of this Court's mandamus jurisdiction, but there is more here. As outlined above, these missteps on the part of the Supreme Court of Georgia and their arm – State Bar of Georgia were not simply the kind of errors to which all judges, at one time or another, fall prey. Rather, the error was precipitated by an intervention from the special master and review board chairman who serve the State Bar of Georgia and the Supreme Court in disciplinary cases and surely, discussion with the judicial assistants, clerks and/or staff attorneys. Petitioner requires unbiased relief.

VI. Abuse of Discretion

To the contrary, {App. A. Order pg. 11}, the Supreme Court of Georgia did abuse its discretion. In support of its order to disbar, the Georgia court relies upon its ruling in *Redding* Decided: June 15, 1998, S98Y0977 ***and*** In the *Matter of Sam Levine*, 303 Ga, 284, 288 (2018). But Levine was provided three (3) reappointments of special masters by the same prosecutor due to conflicts; plus, an evidentiary and review board hearing. [*App. L*] Plus, he did not respond to discovery or attend any hearing. In *Redding*, the Georgia court said, that "a civil proceeding may result in an adverse inference being drawn by the fact finder, which applied in disciplinary proceedings." However, *Ruffalo* determined that attorney disciplinary proceedings are *quasi-criminal.* The order of disbarment and use of adverse inferences against fabricated statements and lies is in conflict with this court's holding in *Leary v. United States*, 395 U.S. 6, 36 (1969) and *Barnes v. United States*, 412 U.S. 837 (1973). [*App. D* Exception to Report and Recommendation[14] and *App. H* Motion to Vacate and Set Aside and Challenges to Order of Sanction and Request for Review by Panel Index to Record at 1009-1030 and 1031-1037].

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[14] In the October 7, 2019 order to disbar, the Georgia Court states that petitioner failed to cite to the record the email communications within her exception report and therefore, they did not know whether she supplemented the record. She originally filed those emails and communications under R. Index R. 1818-1840 and 1844-1883 and the Board responded when it amended their report Index R. 1841-1843. The emails included *App. D* is the same provided to the Board. Also, emails are in R. 75-100 and 1271-1365 – ***See. Appendix K***

Redding differs from this case in many aspects. **1)** she was served with Request to Admit under O.C.G.A 9-11-36 **not** interrogatories and production of documents under OCGA 9-11-33 and OCGA 9-11-34 like petitioner **2)**. Redding allegedly answered **2 out of 20** questions by invoking her Fifth Amendment privilege to 18 questions, here **petitioner completely answered 20 questions** with *only* three (3) out of 20 objected on grounds of wording and a demand for all passwords and submission of devices, computers and telephones. This question is outside the scope of discovery. [*App. G*] **3)** In *Redding*, the bar filed a motion for summary judgment. OCGA 9-11-36 states that failure to answer Request to Admit in 30 days is deemed admitted. This rule is not applicable to interrogatories or production. Petitioner advocates for victims of sex trafficking and manages a project for youth, that the Bar has tried to shut down [App. E and G] her objections were proper. Moreover, the har assisted the grievant in advancing frivolous private citizen warrants to give them jurisdiction over the petitioner and her Fifth Amendment privilege was also proper. Redding and petitioner's case are distinguishable.

Special master denied petitioner an evidentiary hearing, and sanctioned by virtue of default judgment by falsely asserting that she "did not respond to discovery" [App. A. 11-12 and App. G] and ordered disbarment, but this Court said, "in this context penalty is not restricted to fine or imprisonment. It means . . . the imposition of any sanction which makes assertion of the Fifth Amendment privilege costly." *Spevack*, (515). The Supreme Court of Georgia recently set new standards for invoking Fifth Amendment guidelines in DUI case, which contradict their decision

in this case to protect persons against self-incrimination. See *Elliot v. Georgia* S18A1204 (Feb 18, 2019). In *Spevack*, this court held, "We find no room in the privilege against self-incrimination for classification of people so as to deny it to some and extend it to others." (516).

The writ is likewise proper where, as here, a party seeks to forestall a lower court's persistent disregard of procedural rules promulgated by this Court. See Will , 389 U.S. at 90, 96, 100; Roche , 319 U.S. at 31; see also La Buy v. Howes Leather Co., 352 U.S. 249, 313–14 (1957) ("Where the subject concerns the enforcement of the rules which by law it is the duty of this court to formulate and put in force, mandamus should issue to prevent such action thereunder so palpably improper as to place it beyond the scope of the rule invoked.") (quotations and alterations omitted).

VII. Petitioner also lacks an adequate remedy through the ordinary appellate process.

This court is petitioner's only remedy and it is by discretion only as Georgia attorney do not have any direct appellate process. Therefore, the Bar continues to abuse the rights of lawyers because they evade judicial review. Jurisdictionally speaking, attorney discipline varies state by state lacking uniformity except to use of the ABA standard for discipline, but **not due process**.

Florida appoints a county or circuit judge and **mandatory hearing** to receive Final review is by their supreme court and Board of Governors. **Texas attorneys have a trial in the district court and appeals by the Board. In Michigan, a**

hearing is held in the county where the attorney resides or the primary office of practice, elected by the attorney. In **Pennsylvania**, their supreme court held In re *Schlesinger,* that the use of committees [now called *active market participants*] to review cases of professional misconduct **without affording the attorney a hearing is a denial of due process.** 404 Pa. 584 (1961).

New York requires hearings. See 22 N.Y.C.R.R. sec. 603.4 €, 691.4(1), 806.4 (f) and 1022.19) f). New York also requires "**proof that the lawyer had a full and fair opportunity to litigate clause."** In **Nevada,** this court held**,** In *Gentile v. The State Bar of Nevada,* 111 S. Ct. 2720 (1991), that disciplinary Rule 7-107, which sanctioned an attorney from speaking to the press **was void for vagueness.** Finally, the **ABA Clark Commission** requires due process in every disciplinary proceeding, that includes fair notice of the charges, a right to counsel, right to cross examine witnesses, right to present arguments to the adjudicators, right of appeal **including filing of briefs and presentation of oral arguments before the court** pursuant to the state rules , and a clear and convincing evidence model. **None of these rules were followed in this case.** Georgia's proceedings do not comport to due process and this Court is the only remedy available for review.

VIII. Alternative petition for writ of certiorari.

In the alternative, for the reasons previously stated, compelling reasons exist for this Court to exercise its supervisory powers and grant certiorari under Rule 10(a). "This Court ... has a significant interest in supervising the administration of the judicial system," and its "interest in ensuring compliance with proper rules of

For the reasons set forth above, this Court should grant the petition for writ of mandamus and/or prohibition should be granted

WHEREFORE, this Court should grant the petition for writ of mandamus and/or prohibition should be granted.

Respectfully submitted,

This 16th day of November 2019

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