

19-8894

Supreme Court, U.S.
FILED

JUN 23 2020

OFFICE OF THE CLERK

In The
SUPREME COURT of the UNITED STATES

Michael Halliburton,
Pro se petitioner,

v.

No. : _____

Board of Professional
Responsibility, et al,
Respondent

On Petition for Writ of Certiorari
to the Tennessee Supreme Court

PETITION FOR WRIT OF CERTIORARI

Pro se Petitioner:

Michael Halliburton

552141

Trousdale-Turner Correctional Center

140 Macon Way

Hartsville, Tennessee 37074

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SUPREME COURT, U.S.

QUESTIONS

1. Should the determinations of the Board of Judicial Conduct — responsible by statute and by the Tennessee Supreme Court Rules for maintaining the integrity and impartiality of the judiciary — rest upon robust procedural and substantive due process rights for a party who complains of a judge's violations of those rights to the Board of Judicial Conduct?

2. If the Board of Judicial Conduct refuses to follow its mandate and investigate claims of judicial misconduct, has the complainant, as a party to an action, civil or criminal, in which the complained of judge presides, been denied his or her constitutional right to an impartial judge by being denied a hearing that conforms to the Board of Judicial Conduct's procedural rules, that is, has the complaining party been denied due process under the XIV Amendment?

3. Are the procedures of the Board of Judicial Conduct so deficient as to render it incompetent to adjudicate allegations of violations by its own members of the statutory and constitutional rights of complaining parties?

4. Does the refusal of the Board of Professional Responsibility to follow its mandate to maintain the standards of the legal profession constitute a violation of complainant's VI Amendment right to effective representation in criminal litigation?

5. Does the statutory mandate of the Board of Professional Responsibility to discipline attorney misconduct, that is, compel attorneys to conform to professional norms — Strickland in practice — and assist the public, that is, any user of legal services in the state regardless of residency (especially in the case of criminal litigation) create a substantive due process right for complainants upon which robust procedural due process rights rest?

6. Does the current structure of the Board of Responsibility render it incapable of fulfilling its mandate?

PARTIES

Petitioner, pro se:

Michael Halliburton

552141

Trousdale-Turner Correctional Center

140 Macon Way

Hartsville, TN 37074

Respondents:

Board of Professional Responsibility of the
Supreme Court of Tennessee

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Tennessee Board of Judicial Conduct

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Halliburton v. Board of Judicial Conduct,
M2020-00492-SC-WR-CV. (Appendix A.)

Halliburton v. Board of Professional Responsibility,
M2020-00466-SC-WR-CV. (Appendix B.)

January 24, 2020 Dismissal of January 16, 2020
Complaint Against Judge Carter. (Appendix D.)

Garrett, Letter, March 18, 2020. (Appendix E.)

JURISDICTION

Petitioner is seeking review by the Supreme Court of the United States of the denial and dismissal without comment of two Writs of Certiorari by the Tennessee Supreme Court on April 7, 2020: Halliburton v. Board of Judicial Conduct and Halliburton v. Board of Professional Responsibility. (Appendices A and B.)

Jurisdiction is conferred on this Court by U.S. Sup. Ct. Rules 10(c) and 13(1). The state court decision was final as per In re: John A. Bell, Judge, 344 S.W.3d 304, 312 (Tenn. 2011) affirming the state's highest court's duty to regulate legal practice in the state and to possess the "ultimate disciplinary responsibility for violations of the rules governing" the legal profession. The denial and dismissal of a hearing by the state's highest court is final and conflicts with the Due Process Clause of the U.S. Fourteenth Amendment as read in Pennsylvania v. Finley, 481 US 551 (1987); and it conflicts with the U.S. Sixth Amendment. The petitioner has no avenues for relief without a hearing before this Court.

This is petitioner's first writ of certiorari,

CONSTITUTIONAL AND STATUTORY PROVISIONS

- US Constitution (Appendix BB.)
 - VI Amendment
 - XIV Amendment
- Statutes: Tennessee Code Annotated (Appendix BB.)
 - TCA § 17-5-101, Legislative Intent, BJC.
 - TCA § 17-5-302, Judicial Offenses.
 - TCA § 17-5-308, Trial, BJC.
 - TCA § 27-9-101, Right of Review
 - TCA § 39-16-402(a)(3), Official Misconduct.
 - TCA § 39-16-703, Aggravated Perjury
- Rules
 - Rules of Practice and Procedure of the Board of Judicial Conduct, Rule 3(c), (Appendix DB, p. 3.)
 - Tennessee Supreme Court Rule 10B. (Appendix BB.)
 - Tennessee Supreme Court Rule, Preamble. (Appendix BB.)
 - Tennessee Supreme Court Rule 9, Sec 21. (Appendix BB.)

STATEMENT OF THE CASE

1. Sixth and Fourteenth Amendment Issues First Raised:

May 3, 2019. Complaint against Judge Robert Carter to the Board of Judicial Conduct, Appendix I, p. 7.

January 13, 2020. Complaint against Blake Ballin to the Board of Professional Responsibility, Appendix O, p. 2.

January 16, 2020. Complaint against Judge Robert Carter to the Board of Judicial Conduct, Appendix Q, pp. 2-3, 33, 36, 39, 40.

March 23, 2020. Halliburton v. Board of Judicial Conduct, Appendix A, pp. 2, 4.

March 30, 2020. Halliburton v. Board of Professional Responsibility, Appendix B, p. 7.

2. Chronological Case Narrative.

Board of Judicial Conduct = BJC

Board of Professional Responsibility = BPR

February 9, 2018. Pro-se, post-conviction petition mailed by Halliburton from Trousdale-Turner Correctional Center. The pc petition raises the issue that Judge Carter, the successor judge, is impartial and has a conflict of interest, because his statements claiming that the trial judge accepted the jury's verdict is contradicted by the record the judge himself made.

June 8, 2018. After original court-appointed counsel moved to withdraw because of a conflict of interest with the Shelby County District Attorney's Office, new counsel was appointed. Halliburton raised the issue of the impartiality of the successor judge stemming from a conflict of interest as a potential witness in the case he was presiding over.

October 26, 2018. Letter to counsel, Benjamin Wilkins, asking him to move to recuse Judge Carter. Petitioner outlines the factual and legal basis for the recusal motion.

in detail. Appendix F.

November 9, 2018. Counsel files amended post-conviction petition without giving Halliburton Notice. The petition contains the issues raised in the original pro-se petition, including the issue of judicial bias by the post-conviction judge. (Appendix G.)

January 10-11, 2019. Petitioner testifies at post-conviction evidentiary hearings. He reads all issues of the petition into the record including issues of judicial bias. Neither the judge nor the State addresses the bias issue. During the hearings, Karen Cook and Sam Winnig, the prosecutors from petitioner's trial and potential witnesses at post-conviction, are sitting in the jury box mocking petitioner as he testifies. Ms. Cook interrupts the petitioner's testimony. The interruption by Ms. Cook is erroneously attributed to Ms. Byrd. Three witnesses — in addition to the petitioner — observed the misconduct of the prosecutors and the judge. Petitioner's counsel sat mute and made no objections. (Appendix J.)

April 1, 2019. Letter to Joseph O'zment complaining of Mr Wilkins' failure to advocate. (Appendix H.)

May 3, 2019. Petitioner files complaint against Judge Carter with the BJC. Petitioner raises his constitutional right to an impartial judge. The three witnesses to the prosecutorial and judicial misconduct also file complaints with the BJC. Using a form letter, the BJC under Judge Dee summarily dismisses all the complaints for lack of jurisdiction and failure to provide clear and convincing evidence. Petitioner's complaint was dismissed June 3, 2019. The other complaints were also dismissed prior to Judge Carter's ruling. (Appendix CB; Appendix I)

May 20, 2019. Mr. Ballin, petitioner's trial attorney, testifies at post-conviction. Mr. Ballin admits to talking with Ms. Cook in front of the jury while Judge Blackett, the trial judge, was out of the court room, to swearing at his client, and to throwing his briefcase; however, he falsely testifies that the 32 month time to trial was a result of defense's search for a psychologist, and he falsely testifies regarding the prosecution leaving a picture of the victim on the screen during defense's closing argument. Mr. Ballin also admits he failed to cross-examine Dr. Ciocca. It should be noted that Halliburton filed his first complaint against Mr. Ballin on July 24, 2017 for failure to turn over petitioner's client file. (Appendix K.)

May 21, 2019. Halliburton gives statement to the post-conviction court outlining the May 3, 2019, complaint against Judge Carter for misconduct, the misconduct of Ms. Cook and Mr. Winnig, and for Mr. Wilkins' failure to advocate. Petitioner also notes the lack of decorum in the court while petitioner testified in contrast to the respect shown other witnesses. (Appendix J, May 21, 2019, all.)

July 26, 2019. Judge Carter denies post-conviction relief. He uses Mr. Ballin's false testimony regarding the delay in petitioner's trial as grounds for denying petitioner relief on his constitutional right to a speedy trial. (Appendix C, p. 5.)

December 27, 2019 (mailed). Complaint against Beverly Sharpe with the BPR for failure to follow the Board's mandate to protect the public from attorney misconduct. Complaint is dismissed by the Board chairman, January 16, 2020. (Appendix M.)

January 4, 2020 (mailed). Complaint against Rachel Willis, an attorney with the state Attorney General's Office for an ex parte attempt to influence the trial judge to rescind her grant of a new trial to petitioner and

for filing a false document in violation of the law and the professional code of ethics. (Appendix N.)

January 13, 2020 (mailed). Complaint against Blake Ballin for aggravated perjury regarding his testimony as to the cause for delay of petitioner's trial. Dismissed March 18, 2020. (Appendix O.)

January 13, 2020 (mailed). Complaint against Benjamin Wilkins for failure to advocate and unprofessional conduct. Mr. Wilkins is ordered by the BPR to respond to petitioner's complaint. (Appendix P.)

January 16, 2020 (filed). After the belated publication of post-conviction petition transcript in late November, 2019, petitioner files a second complaint against Judge Carter. Petitioner notices discrepancies between what witnesses reported in earlier complaint against Judge Carter and the written transcripts. The second complaint repeats issues from the earlier complaint and adds the following: detailed citations from the transcripts of judicial misconduct regarding prejudgment, failure to memorialize a ruling, and the use of Mr. Ballin's perjured testimony to deny petitioner's prayer for relief on his constitutional right to a speedy trial.

Judge Carter, as successor judge, should have reasonably known Mr. Ballin offered false testimony to the court, and if the judge did not know, then his claim to be familiar with the record was false. The complaint is summarily dismissed by Judge Gay, January 24, 2020. (Appendix Q.)

February 28, 2020. Ms. Sharpe writes that Mr. Ballin's complaint will be closed unless petitioner has a favorable outcome in his criminal case. (Appendix R.)

March 18, 2020. Sandra Garrett, Chief Disciplinary Counsel with the BPR writes that the complaints against Mr. Ballin are closed and no mechanism is given by the Tennessee Supreme Court for an appeal. (Appendix E.)

March 19, 2020 (filed). Complaint against Judge Dee Gay for failure to investigate allegations against Judge Carter, a colleague at the BJC, as per the BJC guidelines and for failure to perform official duties in violation of TCA 39-16-402(a)(3). Complaint is summarily dismissed by Judge Andrew Brigham, April 20, 2020. (Appendix S.)

March 23, 2020 (filed). Writ of certiorari filed with the Tennessee Supreme Court: Halliburton v. Board of Judicial Conduct. (Appendix A.)

March 30, 2020 (filed). Writ of certiorari filed with the Tennessee Supreme Court: Halliburton v. Board of Professional Responsibility. (Appendix B.)

April 7, 2020. Tennessee Supreme Court denies and dismisses both of petitioner's writs without comment, but grants in forma pauperis. (Appendices A and B.)

April 30, 2020. Letter to Floyd Flippin, Chairman of the BPR, concerning the failure of his staff to follow the Board's mandate and protect the constitutional rights of complainants. (Appendix T.)

May 13, 2020. Mrs. Sharpe with the BPR emails Ms. Ferkin telling her that the complaints against Mr. Ballin have been reopened and given priority. (Appendix U.)

May 18, 2020. Mr. Wooten emails Ms. Ferkin informing her that Judge Chris Craft, former chair of the BJC and colleague of Judge Carter in Shelby

County, will not release audio files of post-conviction hearings to Halliburton. Order not to release the audio files was handed down January 7, 2020. (Appendix V.)

May 29, 2020 (filed). Complaint against Karen Cook for unprofessional conduct during trial and post-conviction as well as vindictive prosecution. (Appendix W.)

May 29, 2020 (filed). Complaint against Sam Winnig for professional misconduct during the appeal of Judge Blackett's grant of a new trial to petitioner and during petitioner's post-conviction hearings. (Appendix X.)

June 11, 2020 (mailed). Complaint against Judge Brigham for official misconduct, obstruction of justice, and collusion to protect fellow BJC members from disciplinary action in violation of TCA § 39-16-402(a)(3) and the complainant's constitutional rights. (Appendix Y.)

ARGUMENT

A. Why This Honorable Court Should Grant This Writ.

The problems announced in the present writ emerged with the petitioner's attempt to exercise his constitutional right to a fair trial. For the sake of economy, petitioner has combined the two writs submitted to the Tennessee Supreme Court into this one writ. As the facts show, petitioner received neither a fair trial nor fair post-conviction hearings. The evidence (and not conclusory statements) reveals a concerted and vindictive effort by the judiciary and the prosecution to deny petitioner his constitutional rights, and an inability of counsel to defend those rights either through incompetence, cowardice or a conflict of interest. In an effort to secure his constitutional rights, petitioner turned to the BPR and the BJC, because other avenues of relief were obstructed. As a result of his complaints to the Boards, petitioner discovered that the Boards did not follow their mandates to protect the public's constitutional rights to effective counsel and an impartial judge. The procedural safeguards in Tennessee are woefully insufficient to protect the substantive constitutional rights of the public.

Therefore, the petitioner argues that all his questions to the Court should be answered in the affirmative.

Sixteen states have established judicial conduct commissions by statute like Tennessee. All fifty states have commissions overseeing attorney and judicial conduct. (Appendix EB, p. 15.) Any citizen of any state may use the legal system in Tennessee (or any other state) and be exposed to the inadequate procedural safeguards of the BPR and BJC — as the facts of petitioner's case have made crystal clear. The safeguards are so defective that capricious and arbitrary decisions are routine in the same complaint and between complaints. (See in particular the erratic treatments of the Ballin complaints and the contrasting treatments of the Wilkins and Ballin complaints.) If the Court does not intervene, then a manifest miscarriage of justice will be allowed to stand. As far as petitioner can tell, this case is one of first impression. However, the BJC's own statistics reveal that the problem of the Board ignoring its mandate has been occurring for decades, and the lack of a case ripe for review until now is no indictment of the present petition; rather it is a testament to the effectiveness of the legal profession — in particular

the state's judiciary — in protecting its members from the consequences of their own misconduct. Therefore, petitioner prays this honorable Court grant his petition.

B. Legal Argument.

A complainant to the BPR or BJC has rights and interests established by the US Constitution and Supreme Court precedent, namely the right to effective counsel and the right to an impartial judge. The VI Amendment and Strickland v. Washington, 466 US 688 (1984) establish the right to effective counsel — specifically with respect to criminal prosecutions, as is the case with petitioner; the XIV Amendment and Tumey v. Ohio, 273 US 510 (1927) protect the right of parties to an impartial judge — or an impartial board or agency administrator. The petitioner's interests in the proceedings of the BPR and BJC initiated by a claim of harm from a member of the bar goes well beyond statutory or regulatory construction and finds interests rooted in the Constitution. The petitioner now looks to three factors to determine the adequacy of the procedures of the BPR and BJC: (1) the private

interest affected; (2) the risk of the erroneous deprivation of that interest; and (3) the government's interests and burdens. Mathews v. Eldridge, 424 US 319, 334, 335 (1976).

1. The Private Interests Affected.

When speaking of the right to procedural due process, the Court has found that an interested party must have more than "an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead have a legitimate claim of entitlement to it." (Board of Regents of State Colleges v. Roth, 408 US 564, 577 (1972).)

Furthermore, the Court has determined that statutes and rules "define the contours of 'liberty' or 'property,' the 'broad and majestic terms' enshrined in the Fourteenth Amendment," and the defining statutes and rules lie primarily to legislative and administrative bodies. (*Ibid.*, 571.) The statutes and rules controlling the BJC and the BPR connect the missions of the boards to the protection of the constitutional rights to effective counsel and an impartial judge — not only to individuals, but to the people as a whole.

The BPR's "Mission Statement" proclaims that the BPR works

To assist the Court in protecting the public from harm from unethical lawyers by administering the disciplinary process; to assist the public by providing information about the judicial system and the disciplinary system for lawyers; and to assist lawyers by interpreting and applying the Court's disciplinary rules. (Appendix Z.)

The mission of the Board clearly goes beyond that of a licensing body and extends to assuring the public is not harmed - which in the case of the legal profession means harm to one's legal rights. Also, the BPR is to assist the Court by disciplining attorneys whose conduct falls short of the norms established and promulgated in the Tennessee Supreme Court Rules. The standards "imposed upon members of the bar as conditions for the privilege to practice law" bear directly upon what counts as effective counsel in Strickland, (Appendix Z.) The BPR's obligation to assist the Court in its constitutionally defined duties further

implicates the BPR in the delineation of the right of a complainant to due process. The breadth of the BPR's mission requires it to have a broad view toward the public's interest in preserving the integrity of the courts and members of the bar.

Under the terms of the "Mission Statement" the BPR assists the court, the public, and members of the bar in equal measure. In point of fact, the BPR offers none of the procedural protections to the public that it offers to members of the bar, who are exposed to the forfeiture of a property interest, while a complainant from the public could easily be exposed to the forfeiture of both property and liberty through attorney misconduct.

The BPR is a creature of the Tennessee Supreme Court which "has the ultimate power and duty of ensuring adherence to professional responsibility standards." In the system established by the Court an attorney alleged to have engaged in misconduct is entitled to a robust set of procedural protections: representation by counsel, an evidentiary hearing, the right to cross-examination of witnesses, presentation of evidence, and a right to appeal to circuit or chancery court. Review by a trial court includes a five step analysis of the

Board's hearing panel's findings; Finally, the attorney may appeal to the State Supreme Court. (Sallee v. Tennessee Board of Professional Responsibility, 469 S.W.3d 18, 35, 36 (Tenn. 2015); Mabry v. Board of Professional Responsibility, 458 S.W.3d 900, 908, 909 (Tenn. 2014).)

A complainant who is seeking relief from or recognition of an attorney's misconduct has no right to an appeal. In fact, the BPR actively discourages the public from filing complaints against an attorney who is actively harming them during on-going litigation. On the second page of the BPR's "Complaint/Assistance Form," one finds the following caveat: "The Board does not intervene in any on-going legal matter." (Appendix AB, p. 2, in box.) The caveat runs contrary to the minimal protections offered by Tennessee Supreme Court Rule 9, Section 21:

Processing of disciplinary complaints shall not be deferred or abated because of substantial similarity to the material allegations made in other pending criminal or civil litigation or because the substance of the complaint relates to the respondent attorney's alleged conduct in pending litigation, unless authorized

by the Board, in its discretion, for good cause shown. (Appendix BB.)

Furthermore, the Court has determined that

the Code of Professional Responsibility mandates, however, the Board of Professional Responsibility can and should bring disciplinary actions. We should not rely on legal malpractice actions to do the work of the criminal justice system and the Board of Professional Responsibility, especially where doing so may discourage the thorough representation of indigent criminal defendants. (Gibson v. Trant, 58 S.W.3d 103, 116 (Tenn. 2001).)

The complainant is not offered a means of appealing the BPR's decision. (Appendix E.) The complainant may file a complaint to the Board, but the Board never has to offer any evidence to complainant or to a court that it actually has acted in a reasonable way, obeyed the law, or refrained from acting capriciously. The relief the Board promises is the assurance that the constitutional rights, the property and the liberty of the

complainant, will not be harmed in a way violative of the law or code of conduct, Nonresponsive answers to a complainant's allegations are certainly not sufficient to maintain standards that are the basis for the protection of constitutional rights.

The finding of the BPR has no direct effect on a cause, but the indirect effect can be substantial in a complainant's effort to have ineffective counsel withdraw when court and counsel refuse to take action. In addition, the Board's ruling can influence whether a complainant pursues a legal malpractice suit and whether that suit is successful or not. Action by the Board against attorney misconduct could also support a claim of ineffective assistance of counsel, although a reprimand by the Board would not be conclusive to show deficient and prejudicial performance, certainly disbarring an attorney would have more weight to that end. In any case, the Board's actions against an attorney do not compel any specific course of action — or any action at all — by a civil or criminal court. In the end, procedures protecting the interests of a complaining member of the public in effective counsel also protects the integrity of the judicial process.

The lack of procedural protections for complainants at the BJC also raises serious questions concerning the protection of the fundamental right to an impartial judge. TCA § 17-5-101 describes the intent of the Legislature in creating the BJC, "The BJC should regulate judicial conduct with the aim of preserving judicial integrity and 'enhancing public confidence in the judicial system.'" Appendix BB. Further, the Board is to sanction judicial conduct that "brings the judiciary into disrepute or that may adversely affect the administration of justice in this state." Under TCA § 17-5-302, Judicial Offenses:

Offenses of which the board may take cognizance shall include the following [inter alia]:

- (2) Willful or persistent failure to perform the duties of the office;
- (3) A violation of the code of judicial conduct as set out in Tenn. Sup. Ct. R. 10;
- (4) The commission of any act constituting a violation of so much of the Tennessee Rules of Professional Conduct as set out in Tenn. Sup.

Ct. R. 8 as is applicable to judges.
(Appendix BB.)

The Preamble to the Rules of the Tennessee Supreme Court begins:

An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. (Appendix BB.)

It should be noted that the text cited above connects the essential traits of the state judiciary to the health of the system of justice in the United States. Similar logic makes itself felt in state court precedent: Alley v. State. ties the Tennessee Supreme Court Rules to the US Code on recusal and looks to other state jurisdictions to support its findings. (Alley v. State, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994).)

As with the broad mandate of the BPR, the BJC also claims an expansive mandate and asserts the civilization preserving nature of its mission. Central to that mission is the independence, impartiality, and competence of the judiciary not only for Tennessee, but for the nation. Legal protections afforded judges by the BJC are commensurate with that mission. Judges found by the BJC to have violated the Code of Judicial Conduct by an investigative panel have full procedural protections as per TCA § 17-5-308, Trial:

This enactment contemplates a full evidentiary hearing measuring up to all requirements of due process, to include the right to be represented by counsel, the right to compulsory process to secure the attendance of witnesses, the right to confrontation and of cross-examination, and the right to a speedy public trial. (Appendix BB.)

In addition, a judge may appeal directly to the state Supreme Court as a matter of right. The state Supreme Court derives its authority for supervisory control of lower courts of the state from common

law. It may set ethical rules and discipline judges for violations of these rules. "In Tennessee, current disciplinary authority is vested in the Court of the Judiciary." The Tennessee Supreme Court reviews the Court of the Judiciary's findings de novo. (In re: John A. Bell, Judge, 344 S.W.3d 304, 313, 314 (Tenn. 2011).) The judiciary receives more protections than other members of the bar consonant with a judge's elevated role in the maintenance of the integrity of the courts and the rule of law. On the other hand, the complainant to the BJC has no right to appeal the Board's decision. In response to every complaint filed by petitioner (or other witnesses and complainants) the BJC responded that they lacked jurisdiction and that complainant did not provide clear and convincing evidence. However, the BJC never addressed any of the evidence or allowed the judge to respond to the allegations. The BJC offered no explanation as to how the Board's mandate requires it to assure the impartiality of the judiciary, but that it can then completely ignore a complaint with substantial evidence of misconduct regarding judicial impartiality on the basis of a lack of jurisdiction. (Appendix CB - for complaints and a

sample response.) Furthermore, the BJC under both the chair and the vice-chair neglected to follow the minimal prophylactic against a conflict of interest provided by the Board's own rules. As per the "Rules of Practice and Procedure of the Board of Judicial Conduct," Rule 3(c), the BJC should form a Special Investigative Panel if a member of the BJC is the subject of a complaint of judicial misconduct. (Appendix DB, p. 3.) Judge Carter, the subject of multiple complaints regarding the Halliburton case, is a member of the Board, as is Judge Gay, the Board chair. At no time was a Special Investigative Panel formed. There is no way for an aggrieved member of the public to address the summary dismissal of a complaint with a form letter from the Board filled with boiler plate.

As a result of the inaction of the BPR and the BJC, petitioner filed a writ of certiorari with the Tennessee Supreme Court. Both writs were denied and dismissed without comment. (Appendix A and B.) Petitioner has contended in all his complaints with the BPR and the BJC that any answers would incriminate the subjects of the complaints as to the alleged misconduct. The ultimate issue for the present writ is the failure of the Board's to follow

their mandates and that the procedural protections granted a complainant (for all practical purposes none) are inadequate to protect the substantial constitutional rights both Boards are obligated to the public to protect. The petitioner maintains that he has shown conclusively that the BPR and the BJC are directed to protect the VI and XIV Amendment rights of members of the public harmed by misconduct of counsel or judge. It should also be noted that the petitioner has shown due diligence in pursuing his complaints, and that as per Tenn. Sup. Ct. R. 10B regarding disqualification, "A party who is represented by counsel is not permitted to file a pro se motion under this rule." (Appendix BB.) In other words, any petitioner (or defendant), in particular an indigent petitioner, is condemned to pursue his case with ineffective counsel appointed by an impartial judge. Even in the abstract this should shock the conscience of a reasonable person. The specifics of petitioner's case certainly do.

2. Risk of an Erroneous Deprivation of the Interest.

Once the BJC or the BPR determines to take formal

action against a judge or attorney respectively, the judge or attorney has a full panoply of due process rights, including notice, counsel and confrontation. The disciplinary measures at hand can mean the loss of a law license or, in the case of a judge, a recommendation of removal from office. In addition to procedural rights during hearings, the judge or attorney may appeal to the courts for relief. The Boards provide none of these procedural guarantees to a complainant. In the present case, both Boards have seen fit to ignore their own rules in order to protect colleagues from the consequences of their misconduct. The Tennessee Supreme Court also has chosen to do nothing.

The historical behavior of the BJC offers a clear example of the constitutionally deficient procedures used in treating complaints. From 1991 to 2011 approximately 94% of all complaints were summarily dismissed according to the "Summary of Oversight of Judicial Conduct in Tennessee, 1971 to 2011," (Appendix EB, pp. 1, 15-16.) According to the BJC's "Quarterly Report, October 1, 2018 through December 31, 2018," the Board summarily dismissed 97.7% of over 200 complaints in the last two quarters of the year.

(Appendix EB.) The capriciousness and lawlessness of the BJC is on full view in the contrasting treatments of Judge Blackett, the trial judge, and Judge Carter, the successor judge. The Shelby County District Attorney's Office filed an anonymous complaint against Judge Blackett for her ruling in petitioner's case, and the DA also pursued her through the courts. Judge Blackett was recused retroactively and her grant of a new trial to petitioner vacated — along with her sentencing — for a putative ex parte conversation with jurors that she denied having in her response letter. (Appendix FB.) The District Attorney's Office for Shelby County was then given a green light by the appellate Court to force Judge Blackett to recuse herself from more than 200 cases. (Appendices GB, HB and IB.) No public reprimand was issued to the judge in the matter although she was effectively removed from the bench for two months by the DA's Office without a hearing, without an investigation and without legislative action. Even though more evidence was offered in support of allegations against Judge Carter — and the charges were of a much more serious nature — Judge Blackett and her lawyer had to respond in writing, while no such condition was placed on Judge

Carter. In response to petitioner's complaints against Judge Carter, the Board summarily dismissed the complaints with a form letter and never once required the judge to respond to the substantive issues raised in the complaints. Political considerations in the resolution of issues of impartiality are prima facie extrajudicial.

Until May of this year the BPR engaged in the same tactics of obfuscation and obstruction, but then the complaint against Mr. Ballin was re-opened and the complaints against Mr. Wilkins, Mr. Cook, Mr. Willis and Mr. Winnig moved forward. (Appendix U.) This Court has found that the significance of the protected right bears on the strength of the procedures necessary to protect that right.

(Tennessee v. Lane, 541 U.S. 509, [Section V] (2004).)

The Constitution, statutes and rules all point to the fundamental nature of the right to effective counsel and an impartial judge as well as the obligation of the Boards to protect those rights. Whatever the outcome of the complaints, the Boards do not have procedural rules strong enough to protect the fundamental rights at stake.

3. The Government's Interests and Burdens.

The petitioner maintains that Tennessee's current procedures at the BPR and BJC are constitutionally deficient. However, the remedies produce no undue burden for the state. The government has an interest in not overburdening the already taxed judicial system, but it also has an interest in preserving the integrity of the state and nation's judicial system. Since both the BPR and BJC have completely opaque methods of evaluating complaints, it is impossible to know how many complaints lack clear and convincing evidence, or have a jurisdictional bar. The use of the terms by the Boards is equally inscrutable. Moreover, it is impossible to determine what if any resources are actually consumed in complaint evaluation and dismissal. Courts have dealt with frivolous complaints through fees and sanctions for abusive filings. The Tennessee Supreme Court Rules already provide methods of appeal for bar members. Under TCA § 27-9-101, "Anyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have the order or judgment reviewed

by the courts, where not otherwise specifically provided, in the manner provided by this chapter." (Appendix BB.) So, the government already has mechanisms in place for appeals from board findings. However, members of the bar have not allowed constitutional protections they enjoy to be extended to their fellow citizens in the public in spite of much high-minded rhetoric. The burden for the state is low, in that it only requires open proceedings, responsive answers to complaints and an avenue for appeal. The consequences of a dysfunctional system of addressing legitimate grievances against the legal profession for society is high — the destruction of the rule of law. The petitioner prays this honorable Court would grant this writ and implement whatever relief it deems necessary to restore balance and justice.

CONCLUSION

The petitioner requests that the Court grant the petition for writ of certiorari.

Respectfully Submitted,
Michael Halliburton, 06-15-2020

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