Case No.

IN THE
SUPREME COURT OF THE UNITED STATES

Tom Jensen,
Plaintiff-Petitioner

vs.

Judge Hannah Lee Blumenstiel, U.S. Bankruptcy Court, et al.
Defendants-Respondents

On petition for Writ of Certiorari to the Court of Appeals of the Ninth Circuit, Case No.18-17049

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is a Bankruptcy Court judge absolutely immune from a complaint for injunctive and declaratory relief for denial of public access to the court?

2. Should attorney disciplinary proceedings before a judge in a District or Bankruptcy Court be secret?

3. Does the public have a right to submit reliable complaints of attorney misconduct to the district court, and does the court have a duty to duly consider them?

LIST OF DEFENDANTS-RESPONDENTS

1. Hannah Lee Blumenstiel, Judge, U.S. Bankruptcy Court, Northern District of California.

2. Judge James Donato, Judicial Liaison Judge to Standing Committee on Professional Conduct, U.S. District Court, Northern District of California.

3. Miles Ehrlich, Chairman of Standing Committee on Professional Conduct, U.S. District Court, Northern District of California.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the U.S. Court of Appeals for the 9th Circuit, Case No. 18-17049.

OPINIONS BELOW

Orders of the Court of Appeals

1. 10/30/2019 Order Denying Appellant-Petitioner's Petition for Panel Rehearing and for Rehearing En Banc. Appendix ("Appx.") 1a.
2. 6/24/2019 Order Granting Appellee-Respondents' Motion for Summary Affirmance. Appx.2a.

Judgment and Orders of the District Court

1. 9/21/2018 Judgment in a Civil Case. Appx.5a.
2. 9/20/2018 Order Dismissing Action; Directions To Clerk (Sua sponte dismissal of J. Donato and Chairman Ehrlich). Appx.6a.
3. 8/27/2018 Order Dismissing First Amended Complaint; Affording Plaintiff Limited Leave to Amend (Sua sponte Dismissal of J. Blumenstiel). Appx.7a.

JURISDICTION

The order to be reviewed was filed and entered on 6/24/2019. The order denying Petitioner's Petition for Rehearing and for Rehearing En Banc was filed and entered on 10/30/2019. This Petition is timely filed. Jurisdiction is under 28 U.S.C. § 1254(1).

RELEVANT LAW and COURT RULES

Articles I and III, and the 1st Amendment of the United States Constitution; 28 U.S.C. §§ 151, 157(a) and (b)(1), 158(a), 1331, and 1361, Appx. 11a-15a; and U.S. District Court for the Northern District of

California, Civil/Bankruptcy Local Rule 11-6 (Attorney Discipline), Appx. 15a-20a.

STATEMENT OF THE CASE

Petitioner, Plaintiff-Appellant Tom Jensen, was barred from public access to a publicly scheduled and docketed Bankruptcy Court proceeding (*In re Schwartz*) - a disciplinary proceeding against an attorney. At the hearing, respondent Bankruptcy Court Judge Blumenstiel barred Jensen and the public from the proceeding citing Civil/Bankruptcy Local Rule 11-6 (Attorney Discipline) as her authority for doing so. Appx.51a, ¶8 (AOB-Statement of the Case). The previously public docket of the proceeding and all its filed papers were subsequently sealed from public view. Opp.[1] 14-15(ECF), sub-§3. The proceeding, however, was held in violation of the procedural mandates of Rule 11-6(e). Appx.50a-51a, ¶ 6 (AOB-Statement of the Case).

Jensen then submitted a complaint of attorney misconduct related to the *In re Schwartz* case, supported by reliable evidence,[2] and of being bared from the *In re Schwartz* proceeding, to the Chairman of the District Court's Standing Committee on

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[1] Appellant's Opposition to Appellees' Motion for Summary Affirmation and Motion to Stay Briefing, DktEntry 16.

[2] The opposing attorneys in the bankruptcy case from which the *In re Schwartz* case arose, abused the unlawful detainer process, and therefore had no right to request relief from the stay, and made false statements and misrepresentations in their motion asserting they did. See Appx.46a-47a; 49a-51a, ¶¶2-5 (AOB-Introduction-Statement of the Case). These facts show that the opposing attorneys who made the complaint against Schwartz had unclean hands, and that their conduct was prejudicial to the administration of justice.

Professional Conduct, Respondent Ehrlich, and to its Judicial Liaison Judge, Respondent J. Donato, to which they failed to respond. Appx.51a-52a, ¶¶ 10-12 (AOB-Statement of the Case).

After the failure to respond by Ehrlich and J. Donato, Jensen filed a Complaint in District Court against J. Blumenstieel, J. Donato, and Chairman Ehrlich, asking solely for injunctive and declaratory relief from being barred from public access to the bankruptcy court proceeding, from the sealing of the docket and records of the case, and from the Standing Committee's failure to accept and consider Jensen's related complaint of attorney misconduct. ER060-064 (First Amended Complaint ("FAC")-Claims and Request for Relief).

Jensen's claims against J. Blumenstiel are based on, inter alia, the following pleadings and arguments: 1) The impropriety and unconstitutionality of secret attorney disciplinary proceedings, Appx.64a-67a, sub-§D (AOB); 2) Discriminatory enforcement of the Rules of Professional Conduct, Appx.71a, quoting FAC (AOB). 3. J. Blumenstiel's violation of the mandatory procedural requirements of Local Rule 11-6 which she cited as purported authority for barring Jensen and the public from the proceeding, Appx. 60a-61a (AOB); and 4) Her improperly assumed capacity as investigator and prosecutor as opposed to a judge in the proceeding. Appx.62a, sub-§2 (AOB).

Jensen's claims against J. Donato and Chairman Ehrlich are based on their violation of his and the public's 1st Amendment right to petition the court with reliable complaints of attorney misconduct. Appx.73a-74a, sub-§5 (AOB).

Jensen's Complaint was dismissed sua sponte by

the District Court, Appx.47a (AOB), on the basis of J. Blumenstiel's purported absolute judicial immunity from complaints for injunctive and declaratory relief under *Mullis v. U.S. Bankruptcy Court*, 828 F.2d 1385, 1394 (9th Cir. 1987), Appx.55a, §I.A (AOB); and Jensen's purported lack of standing to sue J. Donato and Chairman Ehrlich under *Linda R.S. v. Richard D.*, 435 U.S. 614 (1982). Appx.67a-68a, §II.1 (AOB).

After Jensen filed his Opening Brief ("AOB") and Excerpts of Record ("ER"), DktEntry 2, respondent judges filed an unopposed motion for extension of time to file an answering brief, DktEntry 8-1, which was granted, Appx.4a(Order); but instead filed a motion for summary affirmation. DktEntry 12-1. The motion was granted. Appx.2a (Order)

REASONS WHY THE WRIT SHOULD BE GRANTED

1. The Panel failed to follow its own precedent on summary affirmation.

The Panel's disposition notably lacks citation to authority for its summary affirmation and of its required standard of review. *U.S. v. Hooton*, 693 F.2d 857 (9th Cir. 1982) requires that "[m]otions to affirm should be confined to appeals *obviously controlled by precedent* and cases in which *the insubstantiality is manifest from the face of appellant's brief*" (italics added). These requirements were not followed by Respondents nor by the Panel.

Contrary to the requirements of *Hooten*, *Mullis* is not obviously controlling, and Jensen's argument in his Opening Brief that *Mullis* is factually and legally inapposite and inapplicable is clearly substantial because, inter alia, Jensen is a member of the public,

not a bankruptcy litigant as in *Mullis*, and under the circumstances, did not have a bankruptcy litigant's adequate remedies. Appx.55a-60a, §I.A (AOB). Moreover, *Mullis* does not involve a claim of violation of the right to public access to the court, a constitutional question that should be reserved for and decided only by an Article III Court. Appx.63a-64a, sub-§C (AOB) (citing, inter alia, 28 U.S.C. § 1331).

Jensen further argued, inter alia, that under controlling U.S. Supreme Court authority, e.g. *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 458 U.S. 50 (1982), the bankruptcy court, as an Article I court is of inferior and limited jurisdiction, and is, therefore, tantamount to a state court, and should be treated as such in regard to judicial immunity and claims for injunctive and declaratory relief. Appx.57a-59a, sub-§3 (AOB). In that regard Jensen pointed out, inter alia, that 1) The bankruptcy court did not have jurisdiction to hear and decide constitutional questions, Appx.63a-64a, sub-§C (AOB); 2) 28 U.S.C. §1361 applied to the facts of this case, Appx.59a, n.6 and related text (AOB); [3] and 3) Recent legislation *analogously* gave explicit congressional approval under 42 U.S.C. §1983 for a suit for declaratory relief against state court judges and "implicitly overruled *Mullis*" on this basis. Opp.16(ECF) (citing *Brandon v. Reynolds*, 201 F.3d 194, 198 (3d Cir. 2000) ("[T]he 96 amendments to § 1983 were not intended to alter the availability of declaratory relief against judicial officers.").

Jensen also cited favorable on-point and persu-

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[3] Citing *Center for Constitutional Rights v. [Judge] Lind*, 954 F.Supp.2d 389 (D.Md. 2013)(4th Cir.)(Suit under § 1361 for denial of public access to court-martial proceedings).

asive authority that calls the holding of *Mullis* into question, and demonstrates a significant circuit split on the issue of an Article I judge's immunity from injunctive and declaratory relief. See e.g. *Detroit Free Press v. Ashcroft [and Judge Creepy and Judge Hacker]*, 303 F.3d 631 (6th Cir. 2002) (Affirming district court's grant of preliminary injunction mandating right of public access to immigration court (deportation) hearings).[4] Appx. 59a-60a, sub-§b) (AOB). *Scruggs v. Moellering*, 870 F.2d 376, 378 (7th Cir. 1989) ("There is no judicial immunity for a claim for injunctive relief." ... The *Mullis* "exception to *Pulliam*" [466 U.S. 522 (1984)] for federal judges is "of doubtful merit"). Appx. 58a (AOB) (citing *Scruggs*). See also *Lind* (n.1 and related text) supra.

For the foregoing and following related reasons, *Mullis* does not obviously control under the facts of this case, and Jensen's arguments that it does not are substantial. Summary affirmation was, therefore, inappropriate and a violation of Jensen's statutory right of appeal. See also n.9, and related text infra.

2. Jensen did not have any other adequate or proper remedy.

Cases in other circuits question *Mullis* on the basis that the requirement of no other adequate remedy for granting equitable relief is adequate to screen such claims against judges. *Scruggs* supra. *Scruggs*

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[4] Citing at 696, *Richmond Newspapers v. Virginia*, 448 U.S. 555, 584 (1980) ("[T]he First Amendment protects the public and the press from abridgment of their rights to access to information about the operation of *their government, including the judicial branch* ...")(Stevens, J. concurring)(emphasis added by *Detroit Free Press*).

points out that *Mullis* "is based on the proposition that the *plaintiff's* remedy at law for an abuse of federal judicial power is always adequate" (italics added). However, Jensen was a member of the public, not a litigant, when he was barred from the *In re Schwartz* proceeding; and Jensen did not have any other adequate remedy at law because the *In re Schwartz* proceeding and its docket were sealed preventing a motion and appeal in that court.[5] Additionally, the Bankruptcy Court is not the proper court to hear a constitutional claim. The District Court had sole jurisdiction under 28 U.S.C. § 1331, as well as a duty to hear such a claim. See Appx.63a-64a, sub-§C (AOB). *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Therefore, *Mullis* is inapposite and inapplicable.

3. Judge Blumenstiel is not entitled to absolute judicial immunity for denial of public access to the court.

The Bankruptcy Court is an inferior court under the jurisdiction of the District Court, therefore a bankruptcy judge should be amenable to suit for injunctive and declaratory relief in the District Court under the circumstances of this case. *Northern Pipeline* supra. 28 U.S.C. §§ 151, 157(a) and (b)(1),

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[5] A writ of mandamus was not the proper remedy because it is uncertain to which court it could have been successfully addressed, if any, and declaratory relief is in the "nature of mandamus." 28 U.S.C. §1361. Appx.59a, n.6 and related text (AOB). And see *U.S ex rel. Girard Trust v. Helvering*, 301 U.S. 540, 544 (1937)("[T]he writ of mandamus may not be employed to secure the adjudication of a disputed right for which an ordinary suit affords a remedy equally adequate, and complete."). Appx.64a, n.10 (AOB). Opp.15(ECF), n.2 and related text.

158(a). Appx.63a-64a, sub-§C (AOB). Giving such absolute judicial immunity to a bankruptcy judge is, in effect, an improper delegation of judicial power to the Bankruptcy Court that violates Article III. Id.

Judge Blumenstiel cited Rule 11-6 as her authority for barring Jensen and the public from the *In re Schwartz* proceeding. However, she was acting in clear violation of the procedural and substantive mandates of Rule 11-6, and therefore had no legitimate authority or jurisdiction under it. Jensen thoroughly explicated this circumstance in his briefs. See Appx.60a-61a, sub-§B.1 (AOB). Opp.10-13 (ECF), sub-§2 ("Appellees misrepresent and misapply the procedural mandates of Rule 11-6").[6]

At the time Blumenstiel barred Jensen and the public from the proceeding, she was improperly acting in the investigative and prosecutorial capacity of the Standing Committee under Rule 11-6(e)(1-4), not in a judicial capacity under Rule 11-6(e)(5). Appx.17a-19a (Rule). J. Blumenstiel, therefore, is not entitled to judicial immunity. Appx. 62a-63a, sub-§§2 and 3(AOB); Opp.18(ECF), sub-§(B) (citing, inter alia, *Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U.S. 719, 736 (1980).

Furthermore, common law does not recognize absolute judicial immunity for the act of denial of public access to the court, judicial act or not. Otherwise there would be no such right.

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[6] J. Blumenstiel had no jurisdiction or authority under the Rule because she was not assigned to the case under the procedural mandates of 11-6(e)(4). Appx.18a(Rule). Furthermore, J. Blumenstiel did not make a finding of compelling government interest, nor of narrow tailoring to protect the public interest, nor does Rule 11-6(e) provide for such. *Center for Auto Safety* infra ("presumption of public access." required).

4. Secret attorney disciplinary proceedings are improper and unconstitutional.

(a) *Local Rule 11-6(e) is not valid authority for secret attorney disciplinary proceedings.*

Local Rule 11-6(e) is not valid authority for secret attorney disciplinary proceedings. Without statutory or common-law authority for such secrecy, the Rule cannot stand. None has been cited and none exists. Cf. *Gorbach v. Reno*, 219 F.3d 1087, 1091 (9th Cir. 2000)(en banc)(The regulation "is void because of the absence of statutory authority for it"). Rule 11-6(e) is also improperly inconsistent with the Federal Rules of Civil Procedure, Rule 83. *Brown v. Crawford Co., Ga.*, 960 F.2d 1002, 1008-1009 (11th Cir. 1992)("A local rule must be consistent with [ ] federal statutes and rules adopted under 28 U.S.C. §§2072 and 2075."). The Federal Rules do not provide for a secret class of court proceedings; the common law requires the presumption of open hearings, and where secrecy is deemed to be required, a court must provide proper justification for it. Appx.66a-67a, sub-§3 (AOB) (citing *Press Enterprises* infra). See also *Richmond Newspapers*, *Detroit Free Press*, *Lind*, supra, and *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (requirement of "presumption of public access").

Furthermore, secrecy of attorney disciplinary proceedings is a constitutional question that should not be decided by a local rule. *Id.*

(b) *Secret attorney disciplinary hearings are inconsistent with prevailing practice.*

Secret attorney disciplinary proceedings are inconsistent with prevailing practice and the ABA

Model Rules for Lawyer Disciplinary Enforcement. ABA Model Rule 16, and the ABA Clark Commission, and McKay Commission recommendations from which Model Rule 16 arises, call for public attorney disciplinary proceedings. See ABA report of the (McKay) Commission on Evaluation of Disciplinary Enforcement (1991), Recommendation 7 (Recommending totally open proceedings). ABA Special (Clark) Commission on Evaluation of Disciplinary Enforcement, Problems and Recommendations in Disciplinary Enforcement (1970) p.143 (Secrecy "denies the public information" that would demonstrate effective enforcement)(quoted by *Daily Gazette* infra at 712). California attorney disciplinary proceedings are public, and such proceedings are now public upon the filing of formal charges in all but 11 states. See Mark Harrison, Osborn Maledon, "Public access to Attorney Disciplinary Proceedings and Records." [7] Appx.66a, sub-§2 (AOB).

(c) *Secret Attorney Disciplinary Proceedings are Unconstitutional*

Attorney disciplinary proceedings have, historically, been open to the public until they were only recently taken over by the organized bar in the early 1900's, with "scandalous" results. E.g. *Ex Parte Wall*, 107 U.S. 265 (1883)(Involving public attorney disciplinary proceedings). And see Leslie Levin, "Case for less Secrecy in Lawyer Discipline," 20 *Georgetown Journal of Legal Ethics* 1, 1, 10-17 (2007). The ABA Clark Commission (1970) and McKay Commission (1989-1991) were created because the state of secret

[7] Paper produced for distribution at the APRL Annual Meeting on Saturday, August 1, 2009.

attorney discipline was "scandalous." Id. There is, therefore, no historical or principled basis for secret attorney disciplinary hearings, the first prong of the *Press Enterprises* test of whether secret court proceedings are unconstitutional under the 1st Amendment right to public access to the courts. *Press Enterprises v. Superior Court*, 478 U.S. 1, 10-11 (1986). The second prong of the *Press-Enterprises* test - the positive benefits of public scrutiny - has been met in this case, and by the Clark and McKay Commission reports and recommendations. Appx. 66a-67a, sub-§3 (AOB). Levin supra at 38-42. *Daily Gazette Co. v. Committee on Legal Ethics*, 326 S.E.2d 705, 711 (W.Va. 1984) (Secrecy improperly "favors insulating the legal profession from adverse publicity over the public interest" in open proceedings).

The necessity of public scrutiny is demonstrated in this case because, inter alia, Jensen's related reliable complaint of attorney misconduct was ignored showing discriminatory enforcement of the Rules; J. Blumenstiel acted outside her jurisdiction and authority in violation of the procedural and substantive mandates of Rule 11-6(e); and J. Blumenstiel was improperly acting as investigator, prosecutor and judge in the *In re Schwartz* case. See *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016)("An unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator at the same time."). Appx.61a-62a (citing *Williams*); 62a, sub-§2 (citing *Supreme Court of Va.* supra) (AOB). These circumstances clearly show the necessity of public scrutiny of attorney disciplinary proceedings, and the danger of such secrecy.

Moreover, prosecution of attorney misconduct is

held to be for the purpose of, inter alia, protecting "the public from prejudice." *Ex Parte Wall* supra at 288. If so, it is plainly clear that the protection of the public requires attorney disciplinary proceedings to *be public*. The public cannot be deemed "protected" by secret proceedings because they allow unreasonable, arbitrary, and discriminatory enforcement to go undetected. "An open disciplinary system demonstrates its fairness to the public. Secret records and secret proceedings create public suspicion regardless of how fair the system actually is. A fully open system will preclude the possibility of disciplinary officials committing improprieties ..." as is made evident in this case. ABA Lawyer Regulation for a New Century, Sept. 18, 2018, p. 34.

5. Article III case or controversy "standing" law is not applicable to denial of public access to the court.

The Panel's cited case, *Robbins v. Spokeo*, 867 F.3d 1108, 1111 (9th Cir. 2017), in its Order (Appx.3a) denying Jensen's standing is, like *Mullis*, factually and legally inapposite. *Robbins* is not a 1st Amendment petition case, and 1st Amendment standing is distinctive as to "intangible" injury because of the significance of 1st Amendment rights. Refusal to accept and duly consider reliable complaints of attorney misconduct is significant because it threatens self-government and checking of government abuses.

Moreover, Article III's enumerated controversies do not mention or apply to the Court itself, and the case law interpreting Article III case or controversy provisions apply only to other branches of the government. Appx.69a-70a, sub-§2 (AOB). *Flast v.*

Cohen, 392 U.S. 83, 100-101 (1968) ("The question whether a particular person is a proper party to maintain the action does not, by its own force, raise *separation of powers* problems related to improper judicial interference in areas committed to *other* branches of the Federal Government.")(italics added). *Thread v. U.S.*, 354 U.S. 278, 281 (1957) (The federal court has "autonomous control over the conduct of their officers"). Opp.29(ECF), sub-§(B) (citing *Thread*). In other words, the Court has inherent supervisory jurisdiction and duty when it is policing itself rather than other branches of the government. Jensen's "standing" is, therefore, covered by constitutional provisions other than Article III. One is Jensen's pleaded violation of his, and the public's 1st Amendment right to petition the court with a reliable complaint of attorney misconduct. The other is the Court's constitutionally implied duty to maintain the integrity of its officers and the judicial process, and its explicit ethical duty to act on reports of attorney misconduct. *Thread* supra (The court is "an instrument or agency to advance the ends of justice"). Appx.67a, n.12 and related text (AOB)(citing and quoting relevant codes of judicial conduct).

Denial of the right to petition the court with a reliable complaint of attorney misconduct is, or should be held to be, a species of denial of public access to the court that is an injury per se, no other injury should be required, and strict scrutiny should be applied. Appx.72a-74a, sub-§§ 4-5 (AOB). *Center for Auto Safety*, supra, ("The presumption of access is 'based on the need for federal courts, although independent - indeed, particularly because they are

independent - to have a measure of accountability and for the public to have confidence in the administration of justice'."). *Ex Parte Wall* supra at 269 (Demonstrating a history of complaints of attorney misconduct by the public received and acted on by the federal court). Notably, the complaint in *Wall* did not involve a personal injury to the complainant. Opp.26(ECF) (citing *Center for Auto Safety* and *Ex Parte Wall*.) And see Rules of the U.S. Court of Federal Claims, Rule 83.2(g)(2) ("The Clerk of the Court **must** refer to the Standing Panel: [ ] any complaint received from a **member of the public**.")(emphasis added). See also Levin supra at 17 (Complaints "come from clients, from other lawyers, from **third parties**, and occasionally from judges")(emphasis added). And compare *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) ("When a plaintiff brings an action [regarding public access to the court], he does so not for himself alone, but also as a 'private attorney general,' [advancing] the public interest by invoking the injunctive powers of the federal courts.")(text in brackets substituted for text in original). *Flast* at 109 (Standing may be "very great when measured by a particular constitutional mandate")(J. Douglas concurring). *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 14-15 (1942)("That a court is called upon to enforce public rights and not the interests of private property does not diminish its power to protect such rights. ... Courts no less than administrative bodies are agencies of government. Both are instruments for realizing public purposes."). Appx. 70a, sub-§3 (AOB) (citing *Scripps*).

Jensen has, nevertheless, met the case or contro-

versy requirement of personal injury, as well as intangible 1st Amendment injuries, on the bases of personal injuries from prior attorney misconduct, the ongoing impact it has had on his 1st Amendment advocacy activities, and the Standing Committee's refusal to accept and duly consider Jensen's reliable complaint of attorney misconduct that required much unremunerated time and effort to produce, which was wasted. Appx.74a-75a, sub-§6 (AOB). Opp:27(ECF), sub-§(C) (citing *U.S. v. Students Challenging Regulatory Agency Procedures (Scrap)*, 412 U.S. 669, 685-690 (1973). See also § 6(b) below.

The Standing Committee's refusal to accept and duly consider Jensen's reliable complaint of attorney misconduct has *chilled* Jensen's and the publics submission of attorney misconduct complaints, and is a "present inhibitory effect" on Jensen's 1st Amendment petition rights.[8] See *Laird v. Tatum*, 408 U.S. 1, 11 (1972)("Chilling effect" may arise from "governmental regulations that fall short of a direct prohibition"), p.25 (J. Douglas and Marshall dissenting), pp.38-39 (J. Brennen, Stewart, and Marshall dissenting). Furthermore, rejection of all complaints from the public, including those that are reliable, as is Jensen's, is an *overbroad* prohibition. Judges, and the court have an ethical duty to consider such complaints regardless of their source. ABA Model Code of Judicial Conduct, Canon 2.15(D); and Code of Conduct of United States Judges, Canon 3(b)(5). Appx.67a n.12 (AOB)(quoting Codes).

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[8] Jensen's experience, see sub-§6(b) infra, and this case demonstrate that attorney misconduct prejudicial to the administration of justice will continue to occur until attorneys can't so easily get away with it.

6. Jensen's pending Motion is not moot.

(a) *The Court of Appeal's errors and its failure to correct them impeaches the Panel's and the Court's process.*

Jensen's pending Motion, Appx.21a; and Supporting Declaration, DktEntry 7-2, concern, in part, unreasonable and prejudicial errors in the listing of Jensen's prior case on the docket of the Court of Appeals. Jensen had only one prior district court case reversed on the first appeal and affirmed on the second. There were, however, four purported prior cases, none ECF, originally listed on the docket. One was a *criminal* case that did not involve any party named Jensen. A second error was a case with a *defendant* named "Tom Jensen," but the docket identifies him *only* as "an individual defendant." The remaining two listed cases concerned Jensen, but the listing of them did not show that they involved the *same* district court case and two successive appeals. See, inter alia, Appx.22a-24a, ¶¶ 1-7; 26a-27a, sub-§3; 27a-28a, sub-§B (Motion). The two cases in which Jensen was not a party have been deleted, but Jensen's prior case is still not listed correctly. The prejudicial and unreasonable nature of the foregoing errors are relevant to this Petition as general impeachment of the Panel and its process.

(b) *The Motion provides evidence supporting Jensen's standing.*

The additional relevant issue raised in Jensen's Motion is that the circumstances of his prior case are relevant to and evidence of his standing to assert his personal and public right to submit complaints of attorney misconduct to the Court because "[a]ttorney

misconduct is involved in the prior case, and it shows that attorney misconduct has a long history in this court causing wrongful judgments to be made." Appx. 33a(Motion). As part of the grounds for such consideration, Jensen's Motion cites and quotes Penelope Pether, "Constitutional Solipsism: Toward a Thick Doctrine of Article III Duty, or Why the Federal Circuits' Nonprecedential Status Rules Are (Profoundly) Unconstitutional," 17 *William and Mary Bill of Rights Journal*, 955, 961 (2009) - citing and quoting 9th Circuit former Judge Alex Kozinski. See Appx. 34a(Motion):

> "[U]npublished decisions 'are not safe for human consumption,' because of the '[judicial] fear that they may say something that is *wrong*.' Judge Kozinski admitted that '[u]npublished dispositions - unlike opinions – are often drafted entirely by law clerks and staff attorneys. ... [T]hey cannot conceivably be presented as the view of the Ninth Circuit Court of Appeals. To cite them as if they were - as if they represented more than the bare result as explicated by some law clerk or staff attorney – is a particularly subtle and insidious form of fraud'." [9]

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[9] Such a disposition is not an appeal as of right, and is instead an improperly abbreviated appellate process - a de facto certiorari procedure. Pether at 962. See also Stanley v. Illinois, 405 U.S. 645, 656 (1976)("[T]he Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the over zealous concerns for efficiency and efficacy ...").

Jensen also cited the Appeals Court's judicial notice of Jensen's prior case as grounds for arguing and providing evidence that he did not receive a full and fair hearing in his prior case, it was wrongly decided, and he did not have a genuine opportunity for correction of its errors on appeal because of attorney and judicial misconduct.[10] Appx.32a-37a, sub-§5 (Motion). Jensen's Motion and Supporting Declaration provide evidence that he was injured by attorney misconduct because the decisions in his prior case were based solely on inadmissible hearsay in support of defendants' defense. This involved, among other things, declarations by defendants of purported facts that were not based on their personal knowledge, i.e. perjury, and suborning of perjury by their attorneys. Jensen was also injured by judicial misconduct. The case was reversed in part on the first appeal because the district judge failed to treat the pleaded facts as true as she was obligated to do by law. Appx.34a-37a, sub-§(b) (Motion). Similarly on summary judgment, the

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[10] The facts and claims of Jensen's prior case are the neglect of Jensen's mother's personal and health care in a residential care facility for the elderly and retaliation against Jensen for reporting it and advocating for its correction which retaliation was ratified by the defendant state regulatory agency. Jensen's mother suffered much and ultimately unnecessarily died of complications of an untreated urinary tract infection, signs and symptoms of which Jensen reported less than a year before she finally developed "acute pyelonephritis [kidney infection] with right staghorn calculus [kidney stone], [and] bacteremia [blood infection]." Jensen's mother's medical records show that this infection was acquired during a previous hospitalization and was not monitored or treated thereafter by her defendant doctor who ignored Jensen's reports. Appx.35a-36a, n.2 and related text (Motion).

second district judge improperly treated defendants' disputed declarations based on inadmissible hearsay as true. See Appx.36a, n.3 and related text (Motion). This experience, among others like it in his volunteer 1st Amendment advocacy activities, motivated and informed Jensen's complaint of attorney misconduct to the Standing Committee.

The foregoing injuries are not merely personal to Jensen. The public was also substantially injured by the Court's ratification of elder abuse, retaliation for reporting it, and attorney and judicial misconduct supporting it. This is demonstrated by the 6/28/2019 *San Francisco Daily Journal* article titled "An Unspoken Epidemic: Elder Neglect in Assisted Living Facilities," by Kathryn Stebner and Carmen Guadagni, decrying the current state of such care and its continuing negligent oversight by the state regulatory agency. Petition for Rehearing, DktEntry 21, p.10(ECF) (citing *Daily Journal* article). Jensen's prior case was filed nearly 20 years ago. There is no doubt that the state of such care would have been better if Jensen's case had been properly decided in his favor, and there is no doubt that the Court's ratification of the abuse of Jensen's mother, the retaliation for reporting it, and the attorney and judicial misconduct supporting it, has had and continues to have a significant impact on the public.[11] These facts invoke the Court's duty to consider its errors and take meaningful measures to prevent them such as accepting and duly considering complaints of attorney misconduct from the public.

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[11] Jensen's prior case was brought before this Court on a petition for writ of certiorari which was denied. *Tom Jensen v. Sweet Home Care Facility*, Case No. 06-546.

Jensen's Motion, therefore, is not moot but is evidence of his and the public's "standing" to submit reliable complaints of attorney misconduct to the Standing Committee, and the District Court's duty to accept and consider them.

CONCLUSION

1. A Bankruptcy Court judge should not be absolutely immune from complaints for injunctive and declaratory relief for denial of public access to the court. The Court of Appeal's summary affirmation denied Jensen an appeal as of right; *Mullis*, as applied in this case, is inapposite and inapplicable; a Bankruptcy judge does not have the jurisdiction or authority to decide constitutional questions; and constitutional questions are reserved for an Article III court.

2. Attorney disciplinary proceedings before a judge in a District or Bankruptcy Court should not be secret. Attorney disciplinary proceedings have a long history of being public, and the reasons why they should be public are amply demonstrated by this case, and by ample authority. Public proceedings are necessary to protect the integrity of the process and the public's confidence in it.

3. The public should have a right to submit reliable complaints of attorney misconduct to the court, and the court has a constitutional and ethical duty to duly consider them because attorney misconduct and effective enforcement of the Rules of Professional Conduct are matters of utmost public concern, and acceptance and due consideration of such complaints is necessary to protect the integrity of the judicial process and the public's confidence in it.

Respectfully Submitted by,

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