No. _____

In the

Supreme Court of the United States

GARY VICTOR DUBIN,

Petitioner,

v.

OFFICE OF DISCIPLINARY COUNSEL,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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Petitioner
Gary Victor Dubin
Member, Supreme Court Bar

QUESTION PRESENTED

Is it a violation of (1) Equal Protection, (2) Due Process and/or (3) Freedom of Speech for a State Supreme Court – especially where exceeding its express powers as set forth in its own State Constitution – to discriminate against attorneys and especially attorneys in its State advocating unpopular causes, through claimed inherent rule-making authority, as promulgated and/or as applied, by denying licensed attorneys the same fundamental procedural and evidentiary rights to a fair and impartial hearing, and to appellate review, in defending against license revocation, as are otherwise constitutional rights provided by its State Constitution through its State Legislature to all other professionals, including physicians, and all other occupations in its State?

LIST OF ALL PARTIES AND CORPORATE DISCLOSURE STATEMENT

The caption of this Petition lists all named parties, and the "Office of Disciplinary Counsel" as the Respondent because it was listed, over Petitioner's objection, as the Petitioner in the disbarment proceedings before the Hawaii Supreme Court.

This further clearly illustrates the widespread ineptitude evidenced and experienced below, for in reality the Respondent is the Hawaii Supreme Court.

This is true because in disciplinary case after disciplinary case, listed as "Original Proceedings," the Hawaii Supreme Court has painstakingly explained that the Office of Disciplinary Counsel and its Disciplinary Board are merely "creatures" of the Hawaii Supreme Court, not agencies for instance, instead "akin to special masters," with therefore no independent legal capacity.

Moreover, the Hawaii Supreme Court Rules require that the Disciplinary Board, not the Office of Disciplinary Counsel, file all charges and recommendations for discipline.

Petitioner here questions the listing of the Office of Disciplinary Counsel, his prosecutor, as the Petitioner below or as Respondent in these certiorari proceedings, having done so in this Petition only in conformity with this Court's Rules, for nowhere else in American law does it appear the prosecutor's office or a special master is listed as a party to a criminal or quasi-criminal action.

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PETITION FOR WRIT OF CERTIORARI

I. JURISDICTIONAL STATEMENT

This Court has jurisdiction to review this *Petition*, timely filed both electronically and mailed to the Court on February 25, 2021, within 150 days following the Hawaii Supreme Court's September 28, 2020 Order denying reconsideration of its Original Proceeding Disbarment entered September 9, 2020.

All Final Orders below are set forth in the Appendix, and pursuant to Rule 14(g)(i) with a list of where federal constitutional questions were raised.

This Court's jurisdiction is based on Section 1257(a) of Title 28 of the United States Code, Supreme Court Rules 10(b) and (c) and 13(1), and COVID-19 related Orders entered by this Court on March 19, 2020 (extending filing deadlines) and on April 15, 2020 (modifying document requirements).

II. AUTHORITATIVE PROVISIONS

The decision below is challenged based upon the First Amendment ("Congress shall make no law . . . abridging the freedom of speech"), and Section 1 of the Fourteenth Amendment "[N]or shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws").

III. CONCISE STATEMENT OF THE CASE

Every State today regulates, by licensing requirements, various occupational and professional practitioners in its jurisdiction, as do many of its cities and counties, pursuant to undeniable police

powers to protect the general welfare of its citizens and residents.

The Hawaii Legislature in Title 25 of its Revised Statutes entitled "Professions and Occupations," pursuant to its "Uniform Professional and Vocational Licensing Act" provides for granting and revoking licenses for State professions and occupations, ranging from barbers to physicians, entrusting subsidiary rule-making authority to specialized licensing boards and commissions under various administrative controls.

Included therein, specifically named are acupuncture practitioners, athletic trainers, alarm businesses, motor vehicle businesses, barbering, beauty culture, boxing contests, mixed martial arts contests, cable television systems, telecommunications, cemeteries, funeral homes, chiropractic, collection agencies, contractors, debt adjusting, unaccredited degree granting institutions, dental hygienists, dentistry, dietitians, dental service organizations, electricians, plumbers, electrologists, elevator mechanics, escrow depositories, hearing aid dealers and fitters, health care professionals, marriage and family therapists, genetic counselors, massage, medicine and surgery, mental health counselors, mortgage brokers and solicitors, real estate and collection agencies, mortgage servicers, naturopathic medical practitioners, notaries public, nurses, nurse aids, nursing homes, opticians, pest control operators, pharmacists, pharmacies, physical therapists, port pilots, private investigators and guards, podiatrists, engineers, architects, surveyors, landscape architects, psychologists, public accountants, radiologists, real estate appraisers, real estate brokers and salespersons, social workers, speech pathologists, audiologists, travel agencies, activity providers, undertakers, embalmers, funeral

directors, and veterinarians.

This exclusive licensing authority is derived from Article V, Section 6, of the Hawaii State Constitution mandating that "all executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments in such a manner as to group the same according to common purposes and related functions."

The Hawaii Legislature, pursuant to exclusive licensing authority, in Section 9 of Chapter 26 of the Hawaii Revised Statutes created the Department of Commerce and Consumer Affairs ("DCCA"), establishing a structure "to supervise the conduct of . . . professions," governing professional and occupational licensing, "to protect the interests of consumers," *inter alia*, consisting of investigative and enforcement officers, hearing officers, voluntary specialized advisory committees, and disciplinary boards.

The Hawaii Legislature, pursuant exclusive constitutional licensing authority, in Chapter 91 of the Hawaii Revised Statutes enacted an Administrative Procedures Act establishing Rules governing the conduct, *inter alia*, of professional disciplinary proceedings embodying due process and other constitutional safeguards protecting the rights of professionals facing sanctions, including license revocation.

Those Administrative Rules provide numerous due process protections for those facing professional and occupational license revocation,

> Among such safeguards are: every

complaint must be under oath subject to criminal statutory penalties; delegated licensing and revocation standards must be clear and unambiguous; the DCCA must represent the public, not complainants; each grievance must be separately investigated and separately tried; the maximum licensing sanction sought must be identified in each discipline petition; investigators and hearing officers must be full time and professionally trained; investigators, hearing officers, and boards must be free of conflicts of interest; *ex parte* contacts among investigators, hearing officers, and boards are prohibited; licensees must be allowed to present evidence and call and cross-exam witnesses; clear, convincing, published findings are required before discipline imposed; peer group specialized mediational and advisory boards required; disciplinary proceedings must be confidential if and until a license is revoked; and a nondiscretionary, separate, independent direct appellate review is guaranteed each licensee.

The Hawaii Constitution, Article III, Section 1, expressly commands all State legislative power shall be exclusively vested in the Hawaii Legislature.

The Hawaii Legislature in turn, in the exercise of exclusive rule-making authority over licensing and disciplining of occupations and professions, by state statute has delegated that responsibility to the DCCA, which administrative regulatory statutes however are completely silent with respect to the regulation of the Hawaii legal profession, while licensing and disciplining physicians, for instance.

Article VI, Section 7 of the Hawaii Constitution does expressly grant its Supreme Court power to promulgate rules and regulations for courts "relating to process, practice, procedure and appeals," but that basic authority is expressly

restricted in the same sentence to "in all civil and criminal cases" -- only in Hawaii courts.

And while no one questions the authority of the Hawaii Supreme Court or any state supreme court to regulate practice and procedures within its state courts, that authority does not include authority over the entire legal profession unless provided for in state constitutions or delegated by legislative enactments, as most Members of the Bar perform legal services in all states totally outside of court, as counselors and draftspersons, not litigators.

The Hawaii Legislature pursuant to Section 602-11 of its Revised Statutes, expressly recognizes that that limited rule-making authority of the Hawaii Supreme Court was restricted to regulating functions within state courts, limited to administration and not substantive rights such as due process: "Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant, nor the jurisdiction of any of the courts, nor affect any statute of limitations."

The Hawaii Supreme Court following Statehood nevertheless began to promulgate rules on its own without legislative approval, regulating the entire Hawaii legal profession, including licensing and disciplining of attorneys for conduct in and outside of court, with Members of the State Legislature either unaware of such overreaching or relatively powerless to object.

The Hawaii Supreme Court, in announcing such broad substantive rule-making powers, usurped legislative authority and overrode the provisions of the Hawaii State Constitution by claiming self-servingly that it has "the ultimate authority . . . to oversee and control the privilege of the practice of law in this state," Rule 1.1 of the Rules of the

Hawaii Supreme Court, entitled "Authority of Hawaii Supreme Court," the so-called "inherent power" doctrine.

Yet American history and practice shows state supreme courts have never had such exclusive "inherent" or "ultimate" authority over the legal profession in the United States, which has instead, even to this day, been disputed by, if not shared with, state legislatures, state bar associations, the American Bar Association, law schools, and even the general public itself, individuals claiming the right to hire whoever they want to, to advocate their rights in court, whether licensed or not by a "nanny state".

In colonial times there was no formal licensing or disciplining of attorneys, looked upon more like tradesmen, merchants and businessmen, with no formal legal training, controlled merely by reputation and performance in a free marketplace, and constitutional rule-making provisions similar to that found in the Hawaii Constitution, *supra*, were interpreted as limited to rules regulating the "practice" of courts as regards forms, the operation and effect of processes, and the mode and time of proceedings.

By the middle of the 19th century there were over 100 law schools who began to acquire a prominent role in attorney licensing, which led to the establishment of educational standards eventually controlling legal profession admission throughout the United States.

Local bar associations before 1870 were mostly social groups, when in 1870 the Association of the Bar of the City of New York emerged to advocate for attorney regulation, and over 1,100 bar associations were created by 1930, being called upon to

organize, discipline, and professionalize lawyers, controlling licensing by overseeing requirements regarding academic curriculum, library facilities and availability of full time faculty, while at the same time protecting lawyers from being falsely criticized.

In all of American history there has never been any agreed, ultimate or inherent authority of state supreme courts to control and to regulate the entire legal professional although many have argued so, and more recently a joint effort by bar associations, law schools, state legislatures, state supreme courts, and the general public to do so.

The licensing and disciplinary models in use today vary from state to state, from broad control by state legislatures such as in California, to the other, Hawaii extreme, the complete judicial regulation of the legal profession by the Supreme Court in the pursuant to its self-described, mistaken "inherent authority," *In re Trask*, 46 Haw. 404, 415, 380 P.2d 751, 758 (1963) ("the primary power in that respect rests with the court and not the legislature").

The Hawaii Supreme Court has thus established, through its own rule-making, a licensing and disciplinary scheme for attorneys that on the surface at least in form tries to closely mirror that of the DCCA, *supra*, promulgating professional rules, creating a prosecutorial Office of Disciplinary Counsel ("ODC"), a peer review oversight Disciplinary Board ("Board) consisting of attorneys and public members, and as a final step itself the actual disciplining body, giving what has amounted to merely make believe window dressing purporting fairness, impartiality, and adherence to due process protections.

While ultimately it is less important who controls an attorney regulatory scheme than

how fair and impartial it is, not only are Hawaii's two separate but supposedly equal systems for licensing and disciplining attorneys versus licensing professionals such as physicians neither explained nor justified, but in practice that dual system treats attorneys prejudicially differently in violation of an attorney's fundamental constitutional rights, when compared, for example, to the separate disciplinary standards controlling DCCA revocation proceedings.

And that is the gravamen of this Petition, for whatever the appearance of propriety of the Order of Disbarment set forth in the Appendix, Exhibit 1, Dubin's constitutional fair and impartial hearing rights were savaged in a manner totally repugnant to the First and Fourteenth Amendments to the United States Constitution.

By way of background, Dubin, 82, graduated *summa cum laude* with an A.B. degree in 1960 from the University of Southern California, earning his J.D. degree *cum laude* from New York University School of Law as a Root-Tilden Scholar in 1963.

He has been a Member in Good Standing of the California State Bar since 1964, the Ninth Circuit Court of Appeals since 1964, this Court since 1976, and fulfilled all the educational and character requirements of the State of Hawaii and studied for and passed the Hawaii State Bar Examination and became a Member of the Hawaii State Bar in 1982 upon relocating to Honolulu after a nationwide practice in lender liability, as the field was called at the time.

Dubin in more than half a century has never been found to have violated any ethical duty to any client in any jurisdictions, except for the most recent Hawaii disciplinary event challenged hereinbelow.

His heretofore unblemished ethical record has extended to his early law teaching career at Stanford, Berkeley, Denver, Harvard, USC, UCLA, Texas, and the RAND Corporation, always found to be of good character, being also admitted *pro hac vice* in state and federal courts in Oregon, Washington State, Arizona, Nevada, New York, New Jersey, and Tennessee, again without ever being disciplined for any ethical violation involving a client or anyone else in any of those other venues either.

Dubin's diverse legal career has also included employment with Covington and Burling in Washington, D.C., assisting Supreme Court Justice William O. Douglas, heading a nationwide Criminal Justice Courts Task Force appointed by President Lyndon B. Johnson developing National Standards and Goals for America's Courts, arguing before the International Court of Arbitration at the Hague, and as a national radio talk show host for the past eight years featuring foreclosure defense issues -- again without ever being disciplined in any of those venues either.

Dubin moved his national law practice to Hawaii in 1982, becoming a Member of the Hawaii State Bar, and began what no other attorney in Hawaii was successful in doing, sustaining a foreclosure defense practice.

Traditionally, homeowners would buy or refinance their homes, signing promissory notes and mortgages. The mortgages would be recorded and the promissory notes placed in the lenders' vaults until paid, and if the homeowners had any difficulties in paying, both the homeowners and their lenders, usual neighborhood banks, savings and loans, or credit unions, would meet and try to work out an accommodation, called a work out, with both having mutual interest at stake in protecting their

relationship, the collateral, and the homeowners' equity simultaneously.

However, some 25 years ago, some banks decided to experiment with "securitization," where mortgages were transformed into securities, sliced and diced, and traded among investment banks serving variously as trustees and loan servicers.

Following the 911 attack on the World Trade Towers, the U.S. Treasury Department, responding to the ensuing financial crisis, seized on the opportunity to jump start the national economy by unlocking homeowners' equity otherwise just literally sitting there unused, and gave its full support to securitization as did Congress with tax incentives, and so began a new era in mortgage lender.

However, various state laws governing promissory notes and mortgages were designed for the traditional lending model, ill equipped as were this Nation's judges, to deal with securitization, which created an entirely new industry neither disclosed to borrowers nor understood by federal or state judges in applying centuries old English property law.

The securitized secondary mortgage market, as it is sometimes called, grew so rapidly as a virtual underground casino where close to 100 million mortgages in one form or another were being constantly traded and sold to investors without any regulatory supervision and were being solicited with little if any attention to whether a homeowner could afford the loan, and rewarded initiators who upon immediately trading their mortgages became free of any financial obligations, with in effect no further liability for the first time.

The result was predictable. A flood of foreclosures followed in state courts, leading to the Mortgage Crisis of 2008. Most homeowners were not aware of the fact that most securitized trusts had lost through carelessness or had for convenience placed on microfiche and destroyed their promissory notes as well as mortgage assignments if any, which led to the creation of armies of robo-signers signing and notarizing phony re-creations for filing falsely under oath in court and with state recording offices.

Securitization had become a multi-trillion-dollar business, with the federal government fully aware of the problems, however being on the hook for having guaranteed most of the mortgage loans, and as a result the federal government, the securitized trusts, and the loan servicers worked together to hide the true facts from both the American people and the courts, while preoccupied bailing out investment banks to avoid what was believed to otherwise become an even largely threat to the national economy.

"Big Law," consisting of leading Wall Street-connected law firms, financed in the hundreds of billions according to press reports, were immediately hired to cover up what in many instances had been underlying predatory lending, consisting of false appraisals, false loan applications, and false "no-doc" financial statements, as well as lost or otherwise nonexistent loan documentation, much of which however was required by the common law and the UCC before lenders could foreclose under traditional state laws.

Being honest with our courts and borrowers was apparently never considered to be a viable option so long as needed documents could be falsified and predatory lending successfully covered up. After all, most homeowners in default could not easily

be expected to afford lawyers and few lawyers or judges were trained in or understood the newer skills and expertise that would be needed for foreclosure defense.

Foreclosure judges were ill-prepared for such non-traditional foreclosures and nether was the traditional law on the books, and Big Law, Fannie Mae, Freddie Mac, and HUD teamed up to retain local law firms in each state, unfairly pejoratively termed "foreclosure mills" to record and to present their false documents in state courts, fully blameworthy for blindly taking orders from frankly crooks.

While a few attorneys in each state, contacted by homeowners facing foreclosure since 911. have tried to help, not only have they found themselves at a comparative disadvantage financially against the foreclosure mills being supported by Big Law and Fannie Mae, Freddie Mac, and HUD in the background, but almost all of them with a few exceptions never understood securitization in order to be able to help, nor were their foreclosure judges comprehending either what was really going on in the underground secondary securitized marketplace.

As a result, the war against foreclosure defense attorneys, led by state attorney regulatory agencies, began, and a foreclosure defense practice in the United States became and still is an inherently dangerous enterprise in that clients facing foreclosure are often understandably emotional wrecks; moreover, they rarely fully understand the legal system, and if they lose, some are instinctively prone to turn against their attorneys, viewing their own counsel as just a part of what they perceive to be a rigged system, or otherwise some are just dishonest and believe that by complaining and embarrassing their

attorney they can at least get their money back.

Previously, foreclosure judges in Hawaii as in most states had merely asked homeowners and commercial owners in foreclosure proceedings if they were behind in making monthly mortgage payments, recognizing few if any foreclosure defenses.

In the years that followed his moving his lender liability practice to Honolulu, Dubin created the first successful foreclosure defense practice in Hawaii and in the process became very controversial and very vulnerable to regulatory abuse, ironically due to his success as well as the hidden dangers in representing the general public in foreclosure defense.

Hawaii is a small State; the Hawaii legal community even smaller. There are, for instance, more judges in California than there are litigators in the Hawaii, less than a few hundred appearing regularly in our courts.

Moreover, Dubin started his Hawaii law practice as an outsider, not having previously attended local schools nor having family members who were or who had been Hawaii attorneys or Hawaii judges, otherwise often important credentials in small legal communities.

There have been at least three major reasons why Dubin became controversial, leading to his recent disbarment: his appellate practice, his radio show, and ironically his increasing public support.

First, initially Hawaii trial judges, both state and federal, were largely unable to free themselves from feeling bound to prior local and national established case precedent that unfairly prejudiced homeowners in foreclosure cases, which finally led

Dubin to seek the help of both state and federal appellate courts, including this Court.

In the past twenty years, in addition to prevailing in at first over fifty low-level nonjudicial foreclosure cases, and then in both judicial foreclosure trials, both jury and bench tried, and hearings for his clients, Dubin began to achieve a remarkable, unprecedented nearly one hundred appellate victories for homeowners, some legal issues taking him more than ten years and numerous failed appeals before finally changing early appellate case precedents, with many other of his appeals still awaiting decision, most of which consumer appeals involved foreclosure defenses, set forth below for example in reverse chronological order, by case name, case citation, and year decided:

2021 -- *Cambridge Management, Inc. v. Nicole Jadan*, Hawaii Supreme Court, SCWC-17-0000176 (February 16, 2021) (decided in his client's favor after Dubin's recent disbarment); *Wilmington Savings Fund Society vs. Ryan*, Hawaii Supreme Court, --- P.3d ----, 2021 WL 128554 (January 14, 2021) (decided in his client's favor after Dubin's recent Disbarment).

2020 -- *PennyMac Corp. v. Godinez*, 148 Hawai'i 323, 474 P.3d 264 (2020); *U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust v. Verhagen*, 148 Hawai'i 322, 473 P.3d 783, 2020 WL 5948127 (App. 2020); *U.S. Bank National Association as Trustee for CSMC Mortgage Loan Trust 2006-7 v. Compton*, 148 Hawai'i 275, 472 P.3d 42, 2020 WL 5587685 (App. 2020); *Sakal v. Association of Apartment Owners of Hawaiian Monarch*, 148 Hawai'i 1, 466 P.3d 399 (2020); *HawaiiUSA Federal Credit Union v. Monalim*, 147 Hawai'i 33, 464 P.3d 821 (2020); *U.S. Bank National Association, as Trustee for Harborview Mortgage*

Loan Trust 2005-16 v. Thede, 146 Hawai'i 235, 460 P.3d 340, 2020 WL 1695145 (App. 2020); *U.S. Bank National Association as Trustee for SARM 05-19XS v. Thede*, 146 Hawai'i 235, 460 P.3d 340, 2020 WL 1686161 (App. 2020); *Hawaii National Bank v. Chirayunon*, 146 Hawai'i 118, 456 P.3d 191, 2020 WL 433368 (App. 2020).

2019 -- *Matter of Trust Agreement Dated June 6, 1974, as Amended*, 145 Hawai'i 300, 452 P.3d 297 (2019); *Wells Fargo Bank, N.A. v. Pierce*, 144 Hawai'i 436, 443 P.3d 128, 2019 WL 1254039 (App. 2019); *Wilmington Savings Fund Society, FSB v. Akehi*, 144 Hawai'i 430, 433 P.3d 122, 2019 WL 2559486 (App. 2019); *PL III, LLC v. Puu Lani Ranch Corp*, 144 Hawai'i 385, 442 P.3d 448, 2109 WL 2281269 (App. 2019); *U.S. Bank National Association v. Jung Hoon Kim*, 144 Hawai'i 383, 442 P.3d 446, 2019 WL 2205680 (App. 2019); *Bank of Hawai'i v. Marques*, 144 Hawai'i 379, 442 P.3d 442, 2019 WL 2082546 (App. 2019); *Association of Apartment Owners of Terrazza/Cortebella/Las Brisas/Tiburon v. Lopez*, 144 Haw. 5, 433 P.3d 662, 2019 Haw. App. LEXIS 34, 2019 WL 336919 (2019); *Wells Fargo, N.A. v. Cole*, 144 Haw. 6, 433 P.3d 444, 2019 Haw. App. LEXIS 35, 2019 WL 351213 (2019); *In re Davis*, 144 Haw. 65, 435 P.3d 1079, 2019 Haw. App. LEXIS 84, 2019 WL 967783 (2019); *Bayview Loan Servicing, LLC v. Woods*, 2019 Haw. App. LEXIS 122, 2019 WL 1254039 (2019); *In re Trustees under the Will of Estate of Campbell*, 2019 Haw. App. LEXIS 132, 2019 WL 1292282 (2019).

2018 -- *Federal National Mortgage Association v. Amaral*, 142 Hawai'i 356, 418 P.3d 1212, 2018 WL 2425855 (2019); *Wells Fargo Bank M.A. v. Behrendt*, 142 Haw. 37, 414 P.3d 89 (2018); *Bank of New York Mellon v. St John*, CAAP-17-0000436 (App. 2018); *U.S. Bank Trust v. Schranz*, CAAP-17-0000519 (App. 2018); *HSBC Bank USA v. Bartolome*, 2018 Haw.

App. LEXIS 285 (2018); *U.S. Bank v. Kotak*, 2018 Haw. App. 264 (2018); *Wilmington Savings Fund Society v. Riopta*, 2018 Haw. App. LEXIS 270, 2018 WL 2928182 (2018); *U.S. Bank v. Swink*, 2018 Haw. App. LEXIS 236, 2018 WL 2714851 (2018); *JPMorgan Chase Bank v. Rundgren*, 2018 Haw. App. LEXIS 228 (2018); *MTGLQ Investors v. Brennan*, 2018 Haw. App. LEXIS 226, 2018 WL 2439384 (2018); *Fannie Mae v. Amaral*, 2018 Haw. App. LEXIS 224 (2018); *Blue Mountain Homes v. Page*, 142 Haw. 354, 2018 Haw. App. LEXIS 210 (2018); *HSBC Bank USA v. Moore*, 2018 Haw. App. LEXIS 156, 142 Haw. 210, 416 P.3d 931 (2018); *U.S. Bank v. Fergerstrom*, 2018 Haw. App. LEXIS 180, 2018 WL 2110079 (2018); *Bayview Loan Servicing v. Pierce*, 2018 Haw. App. LEXIS 162 (2018); *Bank of Hawaii v. Kimi*, CAAP-17-0000712 (2018); *Sakal v. Association of Apartment Owners of Hawaiian Monarch*, 143 Haw. 219, 426 P.3d 443, 2018 Haw. App. LEXIS 356, 2018 WL 3583580 (2018); *PennyMac Corp. v. Travis*, 143 Haw. 329, 430 P.3d 890, 2018 Haw. App. LEXIS 466, 2018 WL 6074792 (2018); *Association of Apartment Owners of Century Center v. Young Jin An*, 143 Haw. 523, 432 P.3d 2, 2018 LEXIS Haw. App. 501, 2018 WL 6716879 (2018); *Ramirez v. Aurora Loan Servicing*, 143 Haw. 524, 432 P.3d 3, 2018 LEXIS Haw. App. LEXIS 507, 2018 WL 6804180 (2018); *Bank of New York Mellon v. West*, 143 Haw. 525, 432 P.3d 4, 2018 Haw. App. LEXIS 509, 2018 WL 6818681 (2018).

2017 -- *Bank of America, N.A. v. Miyake*, 139 Hawai'i 426, 391 P.3d 1248, 2016 WL 3548347 (2017); *U.S. Bank v. Mattos*, 140 Haw. 26, 398 P.3d 615 (2017); *HSBC Bank USA v. Yamashita*, 2017 Haw. App. LEXIS 482 (2017); *Deutsche Bank National Trust Company v. Garcia*, 2017 Haw. App. LEXIS 322, 2017 WL 2829398 (2017); *Bank of America v. Yeh*, CAAP-16-0000128 (2017); *U.S. Bank v. Wright*, 2017 Haw. App. LEXIS 270, 2017 WL

2735634 (2017).

2016 -- *Association of Apartment Owners of Century Center v. Young Ja An*, 139 Haw. 278, 389 P.3d 115 (2016); *Mount v. Apao*, 139 Haw. 167, 384 P.3d 1268 (4 Consolidated Separate Appeals 2016); *Federal Home Loan Mortgage Corporation v. Moore*, 2016 Haw. App. LEXIS 514 (2016); *First Horizon Home Loans v. Galiza*, 138 Haw. 142, 377 P.3d 1060 (App. 2016); *Bank of Hawaii v. Mostoufi*, 138 Haw. 141, 377 P.3d 1059 (App. 2016); *Association of Apartment Owners of Century Center v. Nomura*, 138 Haw. 141, 377 P.3d 1059 (App. 2016); *Association of Apartment Owners of Century Center v. Thai Hawaiian Massage, Inc.*, 138 Haw. 140, 377 P.3d 1058 (App. 2016); *Bank of New York Mellon v. Lizarraga*, 138 Haw. 51, 375 P.3d 1289 (App. 2016); *Association of Apartment Owners of Century Center Inc. v. Nomura*, 138 Haw. 51, 375 P.3d 1289 (App. 2016); *JPMorgan Chase Bank v. Benner*, 137 Haw. 326, 372 P.3d 358 (App. 2016); *Association of Apartment Owners of Century Center Inc. v. Young Jin An*, 137 Haw. 204, 366 P.3d 1083 (App. 2016); *U.S. Bank v. Smith*, 2015 Haw. App. LEXIS 617 (2016).

2015 -- *Takushi v BAC Home Loans Servicing, LP*, 2015 U.S. LEXIS 634, 135 S. Ct. 1152, 190 L. Ed. 2d 909; *Santiago v. Tanaka*, 137 Haw. 137, 366 P.3d 612 (2015); *Mount v. Apao*, 136 Haw. 365, 361 P.3d 1268 (App. 2015); *Hawaii National Bank v. Chirayunon*, 136 Haw. 372, 362 P.3d 805 (App. 2015).

2014 -- *Lee v. Mortgage Electronic Registration Systems, Inc. (In re Mortgage Electronic Registration Systems (MERS))*, 555 Fed. Appx. 661, 2014 U.S. App. LEXIS 2019, 2014 WL 351358 (2014); *Krog v. Koahou*, 133 Haw. 186, 324 P.3d 996 (2014); *Pappas v. Duran*, 134 Haw. 179,

339 P.3d 533 (App. 2014); *Tanaka v. Santiago*, 133 Haw. 510, 331 P.3d 488 (App. 2014); *American Savings Bank v. Riddel*, 134 Haw. 114; 334 P.3d 777 (App. 2014); *Federal National Mortgage Association v. Brown*, 133 Haw. 452, 330 P.3d 390 (App. 2014).

2013 -- *Scroggin v. Mandarin Oriental Management (USA)*, 129 Haw. 106, 294 P.3d 1092 (2013); *Karpeles Manuscript Library v. Duarte*, 129 Haw. 90, 294 P.3d 1076 (App. 2013).

2012 -- *Isobe v. Sakatani*, 2012 Haw. App. LEXIS 587, 2012 WL 1951332 (2012); *Wells Fargo Bank v. Markley*, 126 Haw. 265, 269 P.3d 800 (App. 2012).

2011 -- *Low v. Minichino*, 126 Haw. 99, 267 P.3d 683 (App. 2011); *U.S. Bank v. Salvacion*, 2011 Haw. App. LEXIS 387 (2011).

2009 -- *State v. Bereday*, 2009 Haw. App. LEXIS 246 (2009); *Doe v. Doe*, 120 Haw. 149, 202 P.3d 610 (App. 2009).

2008 -- *Bank of Hawaii v. Shinn*, 120 Haw. 1, 200 P.3d 370 (2008); *Moyle v. Y & Y Hyup Shin Corporation*, 118 Haw. 385, 191 P. 3d 1062, amended 2008 Haw. LEXIS 205 (2008); *Western Financial Bank v. Raras*, 2008 Haw. App. LEXIS 313 (2008).

2006 -- *808 Development, LLC v. Murakami*, 111 Haw. 349 (2006); *Mohr v. Ing*, 2006 Haw. App. LEXIS 180 (2006).

2005 -- *KNG Corporation v. Kim*, 107 Haw. 73, 110 P. 397 (2005).

2003 -- *Dunster v. Dunster*, 2003 Haw. App. LEXIS 46 (2003).

2002 -- *Mellon Mortgage Company v. Bumanglag*, 2002 Haw. App. LEXIS 21 (2002); *Associates Financial Services Company of Hawaii v. Richardson*, 99 Haw. 446, 56 P.3d 748 (App. 2002); *Norwest Mortgage v. De Rego*, 2002 Haw. App. LEXIS 9 (2002).

2001 -- *GE Capital Hawai'i v. Yonenaka*, 96 Haw. 32, 25 P.3d 807 (App. 2001).

2000 -- *Hawaii Community Federal Credit Union v. Keka*, 94 Haw. 213, 11 P.3d 1 (2000); *GE Capital Hawai'i v. Barlan*, 2000 Haw. App. LEXIS 113 (2000).

1999 -- *GE Capital Hawai'i v. Miguel*, 92 Haw. 236, 990 P.2d 134 (App. 1999).

Second, and if all of those appellate victories, many of which have cost and will cost lenders millions if not hundreds of millions of dollars annually, were not enough to generate antagonism and vendettas among some losing counsel and some vested interests, Dubin also started his own, self-financed, one-hour weekly radio talk show on Hawaii's major local A.M. station KHVH, co-hosted by former Hawaii Governor John D. Waihee III with his legislative and executive experience adding enormously to the show, the first of its kind, which became syndicated throughout the United States on iHeart Radio.

Eventually building a local and national radio audience, including some judges and some state legislators, of over several hundred thousand listeners weekly, Dubin would discuss various foreclosure defense issues, recent judicial decisions, and needed improvements in the local legal system, which was the first time that the general public as well as the entire legal community, including

local judges, became aware of what was actually going on in all Hawaii Courts.

That pioneering effort was appreciated by many, not everyone, and the ODC, later prosecuting Dubin used those radio broadcasts, ignoring the First Amendment, as one of the major reasons to disbar him, even trying to justify an emergency interim suspension, arguing to the Hawaii Supreme Court that Dubin's weekly radio shows were "a menace to the general public".

The ODC staff member making that charge in court papers before the Hawaii Supreme Court, who appears not to have practiced law in his entire life, was subsequently promoted.

That was truly a ridiculous, animus charge. Dubin's weekly topics, often with guests, did address some highly controversial subjects, but always in a thoroughly respectful and professional manner, a few of which shows during his eight years of broadcasting prior to his disbarment included, for instance, the following featured topics, illustrative of all eight years, all over 400 hours of which past weekly broadcasts are archived and can be listened to at www.foreclosurehour.com by Members of this Court and by its staff:

2020 -- E.g., "*The Abolition of Unjust Enrichment in the Awarding of Foreclosure Deficiency Judgments, the Emerging Majority Rule*" (May); "*The Hidden Secrets Behind Legal Reasoning That Every Homeowner Needs To Know To Survive Foreclosure*" (March); "*The United States Supreme Court and the Current Foreclosure Crisis: The Causes and Effects of a Ten-Year Record of Institutional Neglect*" (February); "*Do Some Judges Discriminate Against Homeowners In Foreclosure*

And If So What Can Be Done About It?" (January).

2019 -- E.g., "*'Larry the Banker' Is Back: Exclusive Tell-All Interview With Retired Big Five Bank Executive*" (December); "*What Every Homeowners Needs To Know About When And How A Lender's Attempted 'Acceleration' and Subsequent Unilateral 'Deceleration' Of Mortgage Balances Affects The Running Of The Statute Of Limitations And Hence Foreclosure Defense*" (October); "*What Every Homeowner Needs To Know About The Myths And Realities Of Custodians Of Records In Defending Against Foreclosure*" (July); "*What Every Homeowner Needs To Know About The Myths And Realities Of Foreclosure Auctions As A Defense To Forfeiture in Foreclosure*" (July); "*The 68 Mostly Under Used Affirmative Defenses That Can Save Your Home From Foreclosure And You And Your Family From Eviction*" (June); "*Is a Homeowner's Appeal Moot Upon the Sale of Foreclosed Property?*" (May); "*The 20 Most Overlooked Foreclosure Defenses*" (March).

2018 -- E.g., "*Myths and Realities That Every Homeowner Needs To Know About Truth-In-Lending Act (TILA) Rescissions As A Defense To Foreclosure*" (December); "*How To Draft Discovery Requests That Will Defeat Foreclosure*" (September); "*Ten Strategies for Defeating Foreclosure by Objecting to the Admissibility of Business Records as an Exception to the Hearsay Rule*" (August); "*How To Disprove Standing of Pretender Lenders in Foreclosure Proceedings by Offensively Weaponizing Your Discovery Even if Appearing Pro Se*" (July); "*Understanding Hawaii's 25 New Foreclosure Standing Requirements*" (July); "*Does a Different Statute of Limitations Apply to the Enforcement of Mortgages than to the Enforcement of Notes?*" (May); "*Congratulations, You Defeated Plaintiff's Motion for Summary Judgment, But Do You*

Know The Ten Things You Need To Do Next?" (April); "*Ten Urgently Needed Structural Reforms of the American Foreclosure System Completely Out of Service*" (February).

2017 -- E.g., "*What Every Homeowner Needs To Know To Emotionally Survive Foreclosure*" (November); "*What Every Homeowner Threatened With Foreclosure Needs To Know About the Advantages and Disadvantages of Bankruptcy*" (August); "*10 Ways Courts Could Easily Reduce Otherwise Increasing Residential Foreclosure Case Backlogs by More Than 95% While Protecting Homeowners at the Same Time -- Are Any Judges Listening?*" (July); "*10 Easy Ways To Lose a Judicial Foreclosure Case: The Most Common Mistakes Made Defending Against Foreclosure*" (June); "*The Rule Ritual, Neil Gorsuch, and the Case of the Frozen Truck Driver -- Its Significance for the Future of Foreclosure Defense*" (March); "*How Fannie Mae and Freddie Mac Were Used To Steal Public Pension Funds*" (February); "*Ten Things That Every Foreclosure Judge Needs To Know*" (January).

2016 -- E.g., "*Special Checklist of Twenty Proven Ways of Bulldozing Through a Foreclosing Mortgagee's Dismissal and Summary Judgment Firewalls*" (November); "*Securities Fraud; In Search of the Holy Grail of Foreclosure Defense*" (July); "*The Notice of Default And Right To Cure -- How To Use This Most Overlooked Foreclosure Defense To Defeat Summary Judgment And Win At Trial*" (July); "*What Every Homeowner Needs To Know About Loan Modifications*" (June); "*How to Use a Forensic Audit in Your Defense*" (February); "*How To Use The Rules of Evidence As Your Defense*" (February).

2015 -- E.g., "*What Every Homeowner Needs To Know About Foreclosure Defense Attorneys: Why They Remain An Endangered Species*

And What If Anything Can Be Done About It" (December); "*What Every Homeowner Needs To Know About Surviving In Foreclosure Court*" (November); "*What Every Homeowner Needs To Know About Force-Placed Insurance*" (October); "*Ten Hidden Secrets of Securitized Trusts They Desperately Do Not Want You or Your Judge To Know*" (August); "*25 Ways in Which Foreclosure Attorneys Are Knowingly Committing Fraud On Our State and Federal Courts*" (June); "*Exposing The Top Ten Worst Foreclosure Frauds Of This Century*" (May); "*A 28-Count Indictment Against the Majority of America's Foreclosure Judges*" (March); "*What Every Homeowner Needs To Know About Robo Notaries*" (March); "*Exclusive Tell-All Interview with Bank of America Robo Whistle Blower*" (March); "*20 Winning Ways To Defeat Promissory Notes In Foreclosure Proceedings*" (February).

2014 -- E.g., "*Exclusive Tell-All Interview With Retired Big Five Bank Executive*" (December); "*What Every Homeowner Needs To Know About Deficiency Judgments*" (November); "*Ways of Defeating Foreclosure Summary Judgments*" (November); "*What Every Homeowner Needs To Know About Appellate Judges*" (October); "*What Every Homeowner Needs To Know About Foreclosure Judges*" (September); "*What the Government does not want you to know about its 17 billion dollar settlement with the Bank of America*" (August); "*Exposing the Mainland Mortgage Mafia*" (August); "*Deadbeats Are Not The Problem: The Legal System Is*" (July); "*Piercing the Securitized Veil*" (May); "*1,000 and One Ways To Defeat Foreclosures by Securitized Trusts*" (March); "*The Advantages of Public vs. Private Banks*" (February); "*Special Robo-Signer Exclusive Exposé*" (January).

2013 -- E.g., "*Most Significant 2013 Foreclosure News Events and Awards*"

(December); "*No Foreclosure Is Hopeless: Your Note Is Paid Off*" (November); "*Securitization Issues, Foreclosure and Bankruptcy*" (October); "*Understanding the history and functions of MERS*" (September).

Third, as a result of Dubin's increasing trial and appellate victories and his *pro hac vice* practice in other jurisdictions, including in Canada, now also embarrassingly shut down as a result of his disbarment, Dubin became one of the leading foreclosure defense attorneys in North America and the Hawaii Judiciary rightfully considered to be one of the most knowledgeable and respected in the entire United States.

thousands of unsolicited testimonials probably never before received in such volume and with such praise by any attorney, too numerous to be quoted here; a partial list can be read on Dubin's website, www.foreclosurehour.com, hardly the kind of angry "obituaries" a disbarred attorney might be expected to receive.

The ODC meanwhile followed the recent national trend, prosecuting half a dozen Hawaii foreclosure attorneys, leading mostly to disbarments, prior to going after Dubin, through its ignorance eyeing foreclosure defense attorneys as taking money from vulnerable foreclosure defendants behind on mortgages, having no defenses.

While those charges against some may well have been true, it was certainly not the case with regard to Dubin, whose record speaks for itself, but Dubin became the most obvious and prominent, big target prize to go after, a disbenefit of being successful, by those at the ODC coveting promotions, or for other personal reasons like jealousy.

All nationwide attorney disciplinary agencies, like the ODC, began acting in unison, targeting foreclosure defense attorneys, sending memos to each other encouraging a regulatory disbarment sweep, to the point where the ODC even posted an advertisement on Craigs' List asking any client dissatisfied with Dubin's performance to contact them immediately.

Dubin became raw meat for the ODC, who subjected him to procedures that likely would have even made ancient Judges of the English Star Chamber blush, allowing him through all four years trying to disbar him none of the DCCA protections given members of other professions and occupations in Hawaii, a virtual orgy of constitutional deprivations, even violating their own rules:

For instance, of the very few complaints received against Dubin, one was allowed to be signed anonymously and docketed even though eight years old;,

For instance, all were based on vague and contradictory ethical rules even said in their preamble as guides only;

For instance, all were docketed and investigations delayed, putting Dubin to the costly burden of preparing a defense and submitting voluminous requested boiler plate documentation even if not related to what was being complained about, a dream fishing expedition for abusive prosecutors;

For instance, the four complaints the ODC had, all frivolous, were lumped together in one petition for discipline and tried together although unrelated, each case being used to prejudice the others.

For instance, the ODC's petition for discipline requested only one specific sanction, attending ethics classes, hiding seeking disbarment until after the time to extend confidentiality had expired; Dubin was thus tricked not to seek to extend the confidential period, as a result appearing in various media stories that severely injured his law practice and cash flow, causing clients to leave him and potential new clients to keep away.

For instance, the ODC investigator exclusively assigned to Dubin's cases was former wife and paralegal of a notorious ambulance chaser who filed two malpractice cases against Dubin, both dismissed with prejudice, Dubin being awarded summary judgment and his fees and costs in the second one, who put a TV ad on cable TV accusing several attorneys, including Dubin, of legal malpractice while she was working for hm, obviously having placed those cable ads, and when Dubin asked the Board Chairperson for reassignment to another investigator, he was ignored.

For instance, the volunteer ODC hearing officer nonrandomly selected by the Board Chairperson was at the same time opposing counsel of Dubin in an ongoing civil case, who had lost his client's appeal in that case which Dubin had won, and upon remand, settlement negotiations were still ongoing while nevertheless Dubin's hearing officer, yet refusing to recuse himself.

For instance, the Board Chairperson, admitted later on the record that an attorney with the loudest of loud mouths on the Board had told him privately, before the hearing scheduled to determine what discipline if any to recommend to the Hawaii Supreme Court, that that Board Member was acrimoniously opposing attorney in two of Dubin's lower court cases and two of Dubin's

appellate cases, yet was told not to disclose it at the Board Meeting.

For instance, the ODC rehired as Special Counsel a former staff attorney to prosecute Dubin before the Hawaii Supreme Court, although she had represented Dubin as an attorney in defeating an ODC prior targeting of him, and when she denied having received a retainer from Dubin, and Dubin presented a copy of his $15,000 check to her to the Court, the Court disqualified her and the entire ODC staff over the ODC's objection, but she had already filed the disbarment Petition with the Court.

For instance, during Dubin's proceedings, the ODC had been providing *ex parte* communications to Members of the Hawaii Supreme Court behind Dubin's back pertaining to alleged additional complaints from clients to the ODC piling up against Dubin which was not true, prejudicing Dubin's case, and when Dubin post-disbarment found out about it and that it was the Court's stated policy to accept prejudicial *ex parte* communications from the ODC which it labeled one of its "creatures" being "akin to special masters," the Court did not deny it, saying only it played no part in the disposition of Dubin's case, although receipt of such *ex parte* communications is itself prohibited by the Hawaii Rules of Professional Conduct and the Hawaii Revised Code of Judicial Conduct.

For instance, at his omnibus four-case hearing, the conflicted hearing officer denied Dubin his right to cross-examine the wife of one complainant although she was clearly a joint complainant, yet her testimony was nevertheless allowed in indirectly through testimony of her husband, and despite Dubin's belief she had authored the anonymous complaint, *supra*.

For instance, the hearing officer adopted the ODC's proposed findings and recommendation without changing a single syllable or single punctuation mark, and the Board did the same thing, whereas the Hawaii Supreme Court in turn ignored those ridiculously one-sided and unsupported findings, coming up with its own findings without giving Dubin a chance to respond.

For instance, no ODC staff member knew anything about foreclosure defense or about the problems dealing with emotional homeowners, nor did the hearing officer or Board Members, hardly their specialty, who were attorneys representing landlords and anti-consumer clients, in no way Dubin's peers from the standpoint of able to appreciate the perils of homeowner representation. The analogy would be as if the DCCA empaneled a foot doctors to review a complaint against a brain surgeon.

For instance, Dubin was denied the ability to seek nondiscretionary appellate review of the Disbarment Order, which was the first original proceeding adversely affecting his right to practice law, whereas the termination of a DCCA license, for instance of a physician, may be appealed to Circuit Court and thereafter the Intermediate Court of Appeals.

The flagrantly vicious, unchecked "gotcha" animosity with which the ODC targeted Dubin speaks for itself. Yet, despite the ODC's targeting of Dubin and its attempt to create a false narrative of misconduct, the ODC failed to prove its case, producing no clear and convincing evidence of misconduct.

However, the ODC did succeed in convincing a busy Hawaii Supreme Court, with increasing

caseloads, one Justice short, and by constant complications caused by COVID-19, to enter its Order of Disbarment with eight adverse findings in three of the four separate cases tried together, the fourth case dropped completely: "We find and conclude, by clear and convincing evidence, that Petitioner Gary V. Dubin committed the following misconduct."

The real tragedy in all of this is that ironically, supposedly acting to protect the general public, the Hawaii Supreme Court hurt the very people it was trying to protect, Dubin's clients, who were excluded from testifying at the Board hearing and upon his disbarment lost their investment in his lawyering and foreclosure defense representation, since there are virtually no other fully competent foreclosure defense attorney in Hawaii.

Dubin's displaced clients are not the type to scale the walls of the courthouse, but deserved to be heard, but they were excluded from Dubin's disciplinary hearings by the hearing officer, and many of them have now banded together to consider seeking leave to file an amicus brief in this proceeding as the real parties in interest, *the general public*, and the list grows every day, and this Court may be hearing from all of them:

Christie Adams; Toru Akehi; Gwen Alejo-Herring; Debra Anagaran; Dirk Apao; Margaret Apao; Jerry Badua; Julia Badua; Liao Lucy Bamboo; Mia Ban; Roman Baptiste; Charles Bass; Laura Bass; Agripino Pascua Bonilla; Ruth Rojas Bonilla; Sherilyn May Rojas Bonilla; Donna Brooks; David R. Brown; Christy Carrico; Phineas Casady; Joyce Chandler; William Chandler; Jennifer Chapman; Stephen Cheikes; Mervin Halfred Naea Ching; Lucia Ching; Sutah Chirayunon; Seung Choi; Brett Christiansen; Ah Mei Chun; Hugh John Coflin; Janet Coflin;

Russel Cole; Paul Collins; Watoshna Lynn Compton; George Costa; Gregory Clyde Souza Cravalho; Toni Noelani Cravalho; Roger Cundall; William Davis; Vandetta Davis; Yukiko Hayashi Day; Paige De Ponte; Fatima Duncan; David Wendell Ellis; Lori Lynn Ellis; Janice Ellison; Scott Ellison; Nelie Baniaga Escalante; Norberto Ramelb Escalante; Akiko Fergerstrom; Justin Fergerstrom; Michele Lisa Freepartner; John Freepartner; Michael J. Fuchs; Edna Gantt; Paul Gantt; Leah Gillespie; Robert Gillespie; Elizabeth Gillette; David Goodwin; Malia Grace; Antonio Grafilo; Nelia Grafilo; Howard Greenberg; Kenneth Hagmann; Michael Hammer; Darryl Hashida; Nicole Flores Hosaka; Tod Hosaka; Christian Jensen; David Kaplan; Donald Karleen; Beata Karpusiewicz; Jaroslaw Karpusiewicz; Eleana Keahi; Yvonne Keahi; Keith Kimi; Oteliah Kind; Kory Klein; Mary Knudsen; Ralph Knudsen; Lenore Lannon; Robert Lannon; Stephen Laudig; Mallory Aspili Longboy; Shari Arakawa Longboy; Frank James Lyon; Eric Mader; Gwen Marcantonio; Mark Marcantonio; Armand Mariboho; Darla Mariboho; Maryellen Markley; Laura Marquez; William McThewson; Emilou N.A. Mikami; Rickey R. Mikami; Jonnaven Jo Monalim; Misty Marie Monalim; Roger Moore; Teresa Moore; Thomas Morton; Terry Lynne Ohara Moseley; Ailyn Ounyoung; Samrit Ounyoung; David L. Owles; Lori Y. Owles; Raquel Pacheco; John Perreira; Rose Perreira; Michael Pierce; Mario Portillo; Eboni Prentice; Rosario Ramos; Lurline Rapoza; Merrillyn M.J.L. Rapoza; John Riddel, Jr.; Jeanette Rosehill; Marcus Rosehill; Ray J. Ruddy; Michele Colleen Rundgren; Todd Rundgren; Jo Russo; John Savage; Ronald Schranz; Jason Siegfried; Meleana Smith; Jodi Solbach; Elizabeth Spector; Daniel Joseph Spence; Elaine Damloa Spence; Eileen Evelyn Stephenson; Connie Swierski; David Swierski; Bonnie Swink; Jack Swink; Evelyn Takenaka; Nadine Tamayose; Reid Tamayose; Karri

Teshima; Clover Thede; Dylan Thede; Lana M. Toleafoa; Saumani Lopi Toleafoa; Elise Travis; Bruce Robert Travis; Darren Tsuchiya; Lance Tsuchiya; Malia Olivas Tsuchiya; Anthony Tucker; Gladys Tupulua; Hedy Udarbe; Rustico Udarbe; Valerie Uyeda; Jon Van Cleave, M.D.; Patrick Verhagen; Stephen Ward; Donovan Webb; Valerie Woods; Jack Young; and Patsy Young.

Please know that *all* eight of the Court's disbarment findings are factually unfounded and were completely discredited by Dubin in his motion for reconsideration after receiving them without notice, however his motion matter-of-factly denied.

Dubin is not asking this Court to try his disciplinary case, aware that this is not a trial court, but instead to set aside his disbarment as a matter of law based on egregious violations of his First and Fourteenth Amendment Rights to Equal Protection, Due Process, and Free Speech.

At the same time, Dubin wishes to dissuade this Court from believing that he did anything wrong, certainly nothing to warrant disbarment, and, for that reason only, included as Exhibit 3 in the Appendix is his motion for reconsideration (without its voluminous exhibits however, available to the Court electronically on the Hawaii Judiciary Website), therein responding to every alleged factual finding against him that emerged from the Star Chamber proceedings he faced, and the denial thereof is set forth as Exhibit 2 to the Appendix.

IV. LEGAL ARGUMENT SUPPORTING WRIT

The repercussions of disbarment are enormous, as explained by Chief Judge Major of the Seventh Circuit Court of Appeals in *In re Fisher*, 179 F.2d

361, 370 (1950), quoting earlier Illinois State Supreme Court Opinions:

> "The disbarment of an attorney is the destruction of his professional life, his character, and his livelihood.***** A removal of an attorney from practice for a period of years entails the complete loss of a clientele with its consequent uphill road of patient waiting to again re-establish himself in the eyes of the public, in the good graces of the courts and his fellow lawyers. In the meantime, his income and livelihood have ceased to exist."

First, the Order of Disbarment should be reviewed and reversed by this Court because Dubin's right to equal protection was clearly violated.

Members of every other profession and every other occupation in Hawaii, from physicians to barbers to loan brokers and so on, not only have their procedural due process rights safeguarded as explained above, but are entitled to an automatic appellate review of a final DCCA final license revocation in two consecutive state courts.

It is only attorneys who are treated differently, the first and final attorney adjudication, for instance, taking place by the Hawaii Supreme Court, with only a discretionary direct appeal possible to this Court by writ of *certiorari*, in which the chances for review regarding the adequacy of the findings on grounds of evidence insufficiency are nil, numbers-wise.

As Justice Black in *Griffin v. Illinois*, 351 U.S. 12 (1966), explained, a state is, for instance, not required to provide for any appeal, but it cannot discriminate by allowing some to appeal and not allowing others that same equal right.

There has been a literal explosion of such attorney disbarments throughout the United States in recent years in our "cancel culture," at least two others seeking *certiorari* review in this Court, denied recently, in an area of the law urgently needing attention and leadership from this Court.

Moreover, in straying from the requirements of Equal Protection, the Hawaii Supreme Court did so by asserting inherent rule-making authority not given to it in the Hawaii State Constitution, nor delegated to it by the State Legislature, a further troubling equal protection, *ultra vires* issue heightening the need for review; *Cf, United States v. Lopez*, 514 U.S. 549, 567 (1995).

Second, the record of Dubin's disciplinary proceedings is filled with Due Process violations, abridging his rights to present and cross-examine witnesses and to a fair trial, most notably in the context of disciplinary proceedings, the most fundamental requirement of a fair trial being a trained, impartial, unconflicted hearing officer and administrative review Board, yet in Dubin's case he had neither, not even an unconflicted investigator.

These due process issues have a long and unresolved, twisted history in this Court.

Throughout the past approximately 100 years our courts have often tried to assert inherent jurisdiction over attorneys using summary proceedings, creating many constitutional

concerns, *Ex Parte* Wall, 107 U.S. 265, 274 (1882).

In *Cohen v. Hurley*, 366 U.S. 117 (1961), Justices Black, Douglas, Brennan, Warren dissenting, upheld disbarment of an attorney exercising his Fifth Amendment right to silence.

In *In re Schlesinger*, the Pennsylvania Supreme Court, 172 A.2d 835, 840 (Pa. 1961), paralleling the dissent in *Cohen*, set aside summary disbarment based upon being a Member of the Communist Party.

It had reportedly been commonplace in early English Courts to discipline attorneys, thought their servants, almost ruthlessly, forgetting that such powers were one reason the colonists broke away from England and adopted the Fourteenth Amendment.

The most flagrant due process violation in Dubin's case was the Board Chairperson hiding the fact one Board Member before Dubin's hearing confided in him he had an obvious conflict of interest, being one of Dubin's opposing attorneys in two civil cases and two ongoing appeals.

And that was no mere inadvertent omission, for that same Chairperson at the start of the hearing asked anyone sitting around a huge conference table having a conflict with Dubin to raise their hands so Dubin could respond, and two others did, but the one attorney Board Member who was instructed by the Chairperson not to, didn't, participating in the Board's disbarment recommendation.

In *Aetna Life Insurance v. Lavoie*, 475 U.S. 813 (1986), this Court vacated an Alabama Supreme Court judgment because a state supreme court judge, one of five judges entering judgment, was

found disqualified, Justice Brennan and Justice Blackburn finding it irrelevant the disqualified judge had cast the deciding vote, 475 U.S. at 830-831; Justice Blackburn, with Justice Marshall concurring, went further, concluding, 475 U.S. at 831-832: "For me, Justice Embry's mere participation in the shared enterprise of appellate decision making -- whether or not he ultimately wrote, or even joined, the Alabama Supreme Court's opinion -- posed an unacceptable danger of subtly distorting the decision making process."

More recently, this Court in *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016), a death penalty case analogous here, confronted the same issue as in *Lavoie*, and in a 5-to-3 decision by Justice Kennedy, adopted the language and reasoning of the concurring opinions in *Lavoie*, 134 S. Ct. at 144-147: "The Court has little trouble concluding that a due process violation arising from the participation of an interested judge is a defect 'not amenable' to harmless-error review, regardless of whether the judge's vote was dispositive."

As this Court warned in *In Re Murchinson*, 349 U.S. 133, 136 (1955): "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias."

Third, while references to Dubin's weekly radio broadcasts were not directly mentioned in the disbarment order, they definitely bothered some judges and some opposing attorneys to hear their conduct and their cases and decisions discussed live and contemporaneously for the first time regularly in public, even in a fair and professional manner.

But the staff of the ODC were outwardly more

than bothered, culminating in an early attempt to suspend Dubin calling his show in court papers a "menace to the general public."

V. CONCLUSION

Attorneys are not servants of the court. And this is not early England. And the United States Constitution does not exclude attorneys from its protections.

The right to practice law, once earned, is a property right It is Dubin's only livelihood.

Dubin has been a contributing Member of the Legal Profession for 57 years. He and every other attorney similarly situated deserves this Court's robust constitutional protection.

Respectfully submitted,

/s/ Gary Victor Dubin

GARY VICTOR DUBIN
Counsel of Record
Attorney for Petitioner

Honolulu, Hawaii
February 25, 2021

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Supreme Court Rule 33.1(h), that this *Petition for Writ of Certiorari* consists of **8,976 words** (less than the maximum 9,000 allowed, excluding headings and signature block), as determined by the word count function of the Microsoft Office Windows operating system utilized.

DATED: Honolulu, Hawaii; February 25, 2021.

/s/ Gary Victor Dubin
GARY VICTOR DUBIN
Counsel of Record