

No. 20-_____

SUPREME COURT OF THE UNITED STATES

Georgianna Parisi
Petitioner

v.

Dayton Bar Association
Respondent

On Petition for a Writ pf Certiorari to the Ohio Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented:

The Ohio Supreme Court (hereinafter referred to as OSC) violated both the U.S. and Ohio Constitutions by utilizing Superintendence Rules 44-47 which state that court records are not subject to Ohio Revised Code section 149.43 Open Records Act, as enacted by the co-equal branch Ohio Legislature, even though the records it applied the Rules to are not "court documents" as defined in the Rule.

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IV. Petition for Writ of Certiorari

Georgianna Parisi, pro se, respectfully petitions this Court for a Writ of Certiorari to review the decision of the Ohio Supreme Court.

V. Opinion Below

The decision of the Ohio Supreme Court denying Ms. Parisi's direct appeal is reported as 2019-Ohio-5157 on December 17, 2019. In that opinion, see dissent by Justices Kennedy, DeWine, and Stewart. The Ohio Supreme Court denied Ms. Parisi's Reconsideration Motion on June 9, 2020.

VI. Jurisdiction

Ms. Parisi invokes the jurisdiction of this Honorable Court 28. U.S.C. section 1257 having timely filed this Petition for Certiorari within 150 days (regarding the Covid 19 Order) of the Ohio Supreme Court's denial of the Reconsideration Motion.

VII. Constitutional Provisions Involved

Ohio Constitution Article IV Section 5 (A)(1)

IV.05 Other powers of the Supreme Court

(A)(1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court.

Ohio Constitution Article IV Section 2(B)(1)(g)

IV.02 Organization and jurisdiction of Supreme Court

(B)(1) *The Supreme Court shall have original jurisdiction in the following:*

g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

Ohio Constitution Article IV Section 5(B)

(B) The Supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the General Assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the General Assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

U.S. Constitution 5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution 14th Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor 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.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article

VIII. STATEMENT OF THE CASE

The Ohio Supreme Court, in a 4-3 decision (with the dissent writing a lengthy dissertation) decided that the Dayton Bar Association's attorney discipline investigatory records are to be considered "Court's records" under a recently enacted Superintendence Rules 44-47, and therefore are not subject to Ohio's Open Records law, ORC 149.43.

BACKGROUND

In 2008, the Dayton Bar Association (hereinafter referred to as DBA) began an investigation into Petitioner, an attorney, for alleged ethical violations regarding two clients, Royal John Greene and Sylvia Demming. This matter does not relate to the Demming case. Attorney Joseph Moore was assigned to investigate the Petitioner regarding both clients.. At one point, Moore asked the Petitioner if she were married. When she replied in the affirmative, Moore said, "Do you really need to practice law to make ends meet?" Despite reporting this exchange to the DBA, it kept Moore as an investigator, and it is the belief of Petitioner that Moore submitted several reports to the DBA regarding Petitioner in which Moore recommended prosecution. The allegation in the Greene case was that Petitioner had allegedly overcharged Greene, and the DBA did charge Petitioner.

There had been a criminal investigation regarding Greene by the Montgomery County Prosecutor's office. Petitioner was never charged. While the ethics case was pending, Petitioner learned from records she had obtained from the Prosecutor's office through Ohio's Public Records Act ORC 149.43 that the Prosecutor's office representatives had contacted a numberl of Petitioner's former clients, asking that they submit new grievances against her. See exhibits of these documents submitted in *Parisi v. Heck*, S.D. Ohio 3:14-cv-346, 2015 WL 3999300. When these efforts to persuade Petitioner's former clients to file grievances against her proved unsuccessful, a Montgomery County assistant prosecutor filed a new grievance against Petitioner. Moore was once again assigned by the DBA to investigate Petitioner as to one of the clients in the new grievance. Because Petitioner's attorney strenuously objected, another attorney Jonathan Beck was assigned to investigate allegations regarding the other client. Beck requested a deposition of Petitioner and copies of her voluminous billing records. Since Petitioner did not know the status of the criminal investigation, she declined, citing the Fifth Amendment.

Beck and Dianna Anelli, counsel for the Petitioner, exchanged a series of emails in which Petitioner's counsel asked if the criminal investigation had been completed. As was later determined, Beck lied to Anelli by stating he did not know the status of the criminal investigation. Through the same Public Records Act request that is noted above, Petitioner found the Prosecutor's office had sent a letter to the DBA, predating these emails, saying it would not prosecute Petitioner.

In his report, Beck told the same lie to the DBA Certified Grievance Committee (hereinafter referred to as CGC) by saying that he did not know the status of the criminal investigation. The Committee charged Petitioner with failure to cooperate with an investigation, as recommended by Beck.

Through an administrative mistake, Petitioner obtained a copy of Beck's report to the CGC, Beck was deposed in which he admitted that he had lied to Anelli and to the CGC regarding the status of the criminal investigation. He stated he was instructed to lie by John Ruffolo, Bar Counsel, and Brian Wildermuth, CGC Chair. As noted in the federal case, Ruffolo and Petitioner had a contentious history, since he told her while both were in law school, when she asked for physical assistance while she was suffering from pneumonia, that "girls" come into law school and take "jobs away from men" and that "girls" needed to be learn to be just as tough as men.

Even though the OSC justices, appellate judges, and others have had certified copies of the deposition of Beck noting that he had been told to lie about the existence of said evidence by Ruffalo and Wildermuth, to date, none of these attorneys have faced any consequences for their ethical violations.

In *Parisi, Supra*, the federal court declared that the DBA was a prosecutorial arm of the Ohio Supreme Court. Based upon that decision, Petitioner asked the DBA for copies of any and all communications and any and all records concerning the Petitioner via the Open Records Act. When the DBA refused to provide these documents, Petitioner brought an action under the Open Records Act ORC 149.43 to obtain the records. The Ohio Supreme Court ultimately determined that the Petitioner had brought the request using the wrong vehicle, and stating that Superintendence Rules 44-47 applied to the records that Petitioner was seeking. The Petitioner timely moved the OSC for reconsideration, which it denied. It is from that decision that the Petitioner files her Petition for Certiorari.

CURRENT MATTER

Petitioner seeks the investigatory records prepared in the investigations conducted by DBA representatives regarding her. Given the outrageous conduct promulgated by both the Prosecutor's office (utilizing a criminal investigator in a non criminal matter to contact Petitioner's former clients to request they file bar grievances), and the DBA (having Bar Counsel Ruffolo instructing an investigating attorney to lie to both the CGC and Anelli), and given the misogynist behavior of both Moore and Ruffolo, Petitioner reasonably believes that the investigatory reports may contain numerous falsehoods, which might allow Petitioner to re-open the very flawed ethics prosecution of her.

OHIO SUPREME COURT DECISION

The OSC cited the Ohio Rules of Superintendence 44-47 as controlling the release of the records Petitioner sought, despite the documents being sought not coming under the definition for "court" or "case documents" as defined in the said Superintendence Rules. Petitioner had requested the documents under ORC 149.43, Ohio's Open Records Act. That Act provides that if documents are not provided, an aggrieved party can file a Mandamus Action under the Act, which is exactly what the Petitioner did.

IX. REASONS FOR GRANTING THE WRIT

I. The Ohio Supreme Court (hereinafter referred to as OSC) violated both the U.S. and Ohio Constitutions by utilizing Superintendence Rules 44-47 which state that court records are not subject to Ohio Revised Code section 149.43 Open Records Act, as enacted by the co-equal branch Ohio Legislature, even though the records it applied the Rules to are not “court documents” as defined in the Rule.

In 2016, Petitioner sent a letter to the DBA asking for any and records and any and all communications related to her, pursuant to ORC 149.43 Open Records Act. The DBA denied her request, stating that the records were not subject to disclosure. The Petitioner filed a Mandamus Action, as contemplated by ORC 147.43. At no point did the DBA state (nor did it ever brief) that the records sought were subject to Sup. R. 44-47. In a surprise ruling, the OSC noted that prior to promulgating Supt. R. 44-47 in 2009, it followed ORC 149.43 in determining which court records were subject to public disclosure. The decision discussed the development of Supt. R. 44-47, claiming that the Open Records Act “does not govern the court.” *State ex rel Parisi v. Dayton Bar Association Certified Grievance Committee*, 2019-Ohio-5157 5162. Without substantiation, the Court stated that the “important constitutional principle of separation of powers” required the Court to promulgate these Superintendence Rules. *Parisi, Id.* at 5162. Yet, since the Open Records Act came into existence in 2004, the courts in Ohio have resolved issues related to public disclosure of both court and non court records by applying the principles of the Open Records Act without complaint or an indication of any incident. *The Parisi, Id.* Court continued that it had the authority to usurp the legislature’s Open Records Act under Ohio Constitution Article IV Section 5(A)(1) Other powers of the Supreme Court which states that In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state.

In the *Parisi, Supra* decision, while the OSC acknowledged that certified grievance committees functioned independently from it, it nevertheless declared that documents prepared and created in attorney discipline cases “must be considered records of this court for purposes of disclosure” based upon the OSC being the “ultimate arbiter of attorney discipline”. *Parisi, Id.* at 5171. The Court then declared, “Therefore, any documents prepared in attorney-discipline cases, like those requested by Parisi, may be sought only through a request made pursuant to Sup. R. 44 through 47.” *Parisi, Id.* at 5171.

While the Constitution Article IV Section 5(B) notes that the proposed rules are to be filed with each house of Ohio’s General Assembly, and the General Assembly can adopt a “concurrent resolution of disapproval”, there is nothing in Sup. R. 44-47 to suggest to an observer that the intent of said rules is to supplant Ohio’s Open Records Act. Indeed, Sup. R. 44 Court Records-Definitions, 45-Public Access, 46-Court Records-Bulk Distribution, and Court Records—Application, Remedies, and Liability do not in any way give notice that the purpose of these specific rules is to supplant Ohio’s Open Records Act, as it applies to court documents. In fact, Sup. R. 45(A) states that court records are presumed open to public access. Under Sup. R. 45(E)(1) Restricting Public Access to a case document, the restriction states any party to a “judicial action or proceeding” or other person who is the subject of information in a case document can file a motion to restrict public access to the information or to the document. Yet,

in this case, it is the Petitioner, the very party herself, who is requesting access to denied documents.

Furthermore, R. Sup. 44 Court Records-Definitions (C)(1) defines “case document” as a document and information submitted to the court or filed with a clerk of court” The documents sought by Petitioner were never submitted to any court nor were they ever filed with a clerk of court. In fact, the requested documents were only submitted to the CGC. It is possible that the investigatory documents were submitted to the Office of Professional Conduct’s Probable Cause Panel, but all documents submitted to that body are destroyed once the Panel makes its decision. And all Ohio attorney discipline cases are filed with the Office of Professional Conduct which is not the Ohio Supreme Court’s clerk of court division.

On the other hand, ORC 149.43 Availability of Public Records for Inspection and Copying (A)(1) defines a “public record” as records kept by any (emphasis added) public office which would presumably include courts. It is noted that this Act was amended seven times in 2019, and at no point did the legislature specifically exempt court documents. The statute specifically states it applies to investigatory records in quasi-criminal proceedings [such as in attorney disciplinary cases See *In re Ruffalo*, 390 U.S. 544 (1968)]. In *Parisi v. Heck*, S.D. Ohio 3:14-cv-346, 2015 WL 3999300, the Court stated that the DBA was a prosecutorial arm of the Ohio Supreme Court. Since the DBA was acting as both the investigator and the prosecutor, and no investigatory records were ever filed with any court, it would appear that all investigatory records would come under the category of investigatory records in ORC 149.43.

ORC 149.43(A)(2) deals specifically with confidential law enforcement investigatory records (See *Parisi v. Heck*, *Id.*), such as the records which the Petitioner is requesting. None of the noted exceptions preventing disclosure apply to the records Petitioner requests. ORC 149.43(A)(4) Trial Preparation Record is defined as meaning any record containing any information specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal, action or proceeding” The records requested by the Petitioner could also fall under this category. It is patently clear that even as recent as 2019 the Ohio legislature, a co-equal branch of government with the courts, had intended the Ohio Open Records law to apply to both investigatory records and trial preparation records.

There is nothing in Sup. R. 44-47 which in any way mentions or refers to the prosecution of attorney discipline cases.

Ohio’s Governance of the Bar R. V deals with attorney discipline. Gov. Bar. R. V discusses both confidentiality and public access to documents. In Section 8 (B)(3) , it states that “All other investigatory materials and any attachments prepared in connection with an investigation conducted pursuant to Section 9 of this rule or submitted with a complaint filed pursuant to Section 10 of this rule shall be discoverable as provided in the Ohio Rules of Civil Procedure.” (only the relevant portion is quoted). The section permitting discovery of investigatory records was not in effect at the time that Petitioner was charged. At no point in this discussion is there any reference to which, if any, documents are subject to Sup. R. 44-47.

PETITIONER SOUGHT THE REQUESTED DOCUMENTS UNDER THE PROPER VEHICLE

The OSC's decision is wrong. The documents sought by the Petitioner are not now, and never have been, court documents, as defined by Sup. R. 44. Petitioner specifically sought any and all documents and any and all communications regarding Petitioner relating to the events which lead up to her being charged with unethical actions. All these documents pre-dated the request by the DBA to the Office of Professional Conduct to formally charge Petitioner. These documents were never filed with the Office of Professional Conduct nor were they were filed with any Court or any Clerk of Court.

As noted in *Parisi v. Heck*, S.D. Ohio 3:14-cv-346, 2015 WL 3999300, the DBA is considered a prosecutorial arm of the OSC. Once charges were formally accepted, it could conceivably be argued that there was some semblance of a court case. Prior to that time, however, all documents were not court documents, and, had the Office of Professional Conduct's Probable Cause Panel not certified the case against the Petitioner, then none of the requested documents would have been associated with any court case. Again, these documents were not filed with the Office of Professional Conduct, and were never docketed or reviewed by any court officer. They are not administrative court documents. These documents relate specifically to the investigatory phase involving Petitioner. The definition section of Sup. R. 44 is very specific as to the type of documents to which it applies as it clearly states that a case document is a document which is submitted to a court or filed with a clerk of court. None of the documents sought by the Petitioner were every submitted to a court or filed with a clerk of court.

Sup. R. 44 does not apply to the documents which the Petitioner seeks. The DBA specifically denied Petitioner access to the said documents because it stated the documents were "not subject to disclosure" under the Open Records Act. The Open Records Act applies to Petitioner's request.

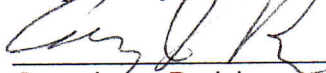
This matter is of national importance because governmental transparency is an issue with which every government, federal, state, and local, deals. While the specific idiosyncrasies may not be present in every case involving open records, it is especially vitally important that courts know how to resolve issues regarding the public disclosure of governmental documents.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court issue a Writ of Certiorari to review the decision of the Ohio Supreme Court

Dated November 5, 2020

Respectfully submitted,



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Pro Se

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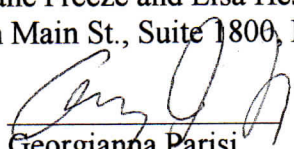
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CERTIFICATE OF SERVICE

I herein certify that on November 5, 2020, I served via regular mail, postage prepaid, the foregoing Petition for A Writ of Certiorari to Stephane Freeze and Lisa Hesse, Freund, Freeze, and Arnold, Attorneys for the Appellees, One South Main St., Suite 1800, Dayton, Ohio 45402.



Georgianna Parisi,