

No. _____

Supreme Court of the United States

9th Cir. Case No. 21-16838

In re Gary Victor Dubin, Petitioner.

9th Cir. Case No. 21-16839

Gary Victor Dubin, Petitioner,
vs.

Office of Disciplinary Counsel, et al., Respondents.

9th Cir. Case No. 21-16863

Gary Victor Dubin, et al., Petitioners,
vs.
Hawaii State Supreme Court, et al., Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

◆

JOINT PETITION FOR WRIT OF CERTIORARI

◆

GARY VICTOR DUBIN
55 Merchant Street, Suite 3100
Honolulu, Hawaii 96813
Telephone: (808) 537-2300
Facsimile: (808) 523-7733
E-Mail: gdubin@dubinlaw.net

Counsel of Record for Joint Petitioners

QUESTIONS PRESENTED

Whereas, in Petitioner Dubin's three separate timely appeals, filed by him both as an attorney and as personally representing himself and nearly one-half of his clients also personally aggrieved, a Circuit Court motions panel dismissed all three Petitioners' appeals without a hearing for Dubin's alleged failure to file three opening briefs all due at the same time.

Whereas, Dubin meanwhile had been in bed in three successive hospitals recovering from hip surgery followed by a period of supervised rehabilitation, unable yet to walk let alone prepare three opening briefs.

Whereas, the Clerk's Office was notified of Dubin's hospitalization, and Dubin's staff timely requested short-term briefing extensions, neither they nor his doctors knowing when he would fully recover, which extension requests, submitted by his staff, the Clerks' Office graciously granted.

Whereas, before the three opening briefs were due pursuant to the most recent written extension from the Clerk's Office and while the briefs were being completed by Dubin upon his recovery, a motions panel abruptly entered three separate orders dismissing all three appeals seemingly unaware of the Clerk's last granted extensions and Dubin having done as the Clerk exactly advised.

Whereas, Dubin filed a timely request with the motions panel for reconsideration in each appeal and for leave to file his opening briefs forthwith and for other related procedural relief, setting forth under oath the fully documented health information earlier given to the Clerk, with a copy of the last written Clerk's extension.

And whereas, the motions panel ironically thereafter waited four full months before denying reconsideration and denying Dubin leave to file the opening briefs or to consider lesser sanctions.

Therefore, both alternatively and/or concurrently:

1. Was it an abuse of discretion and a violation of Due Process for a Circuit Court to dismiss timely filed appeals for failure to file opening briefs, a claims processing rule, without first verifying the factual circumstances by formally issuing Petitioner Dubin an order to show cause?
2. Was it an abuse of discretion and a violation of Due Process for a Circuit Court to dismiss timely filed appeals for failure to file opening briefs, a claims processing rule, where its Clerk's Office had granted an intervening extension for filing and related "Help Desk" filing advice, upon which Clerk's advice Petitioner Dubin had relied?

3. Was it a violation of the Americans With Disabilities Act for a Circuit Court not to provide reasonable filing accommodations where Petitioner Dubin was suffering from a known temporary disability and to instead dismiss timely filed appeals for resulting failure to file opening briefs, a claims processing rule?
4. Was it a violation of Due Process derived Equal Protection Rights for a Circuit Court to dismiss timely filed appeals for failure to file opening briefs, a claim processing rule, while affording the right to appeal for others not suffering from a temporary disability?

THE PARTIES

NAMED PETITIONERS AND NAMED RESPONDENTS IN JOINT PETITION

9th Cir. Case No. 21-16838

In re Gary Victor Dubin

USDC Respondent and
CA9 Appellant and USSC Petitioner

Gary Victor Dubin

No Opposing Parties

9th Cir. Case No. 21-16839

Gary Victor Dubin

vs.

Office of Disciplinary Counsel, et al.

USDC Plaintiff and
CA9 Appellant and USSC Petitioner

Gary Victor Dubin

USDC Defendants and
CA9 Appellees and USSC Respondents

The Office of Disciplinary Counsel of The Hawaii Supreme Court; Bradley R. Tamm in his individual personal capacity while serving under color of law as both the Chief Disciplinary Counsel of the Office of Disciplinary Counsel of the Hawaii Supreme Court and the Fund Administrator of the Lawyers' Fund for Client Protection of the Hawaii Supreme Court; and Clifford L. Nakea in his individual personal

capacity while serving under color of law as Chairperson of the Disciplinary Board of the Hawaii Supreme Court

9th Cir. Case No. 21-16863

Gary Victor Dubin, et al., *Petitioners*,
vs.
Hawaii State Supreme Court, et al.,
Respondents.

USDC Plaintiffs and
CA9 Appellants and USSC Petitioners

Gary Victor Dubin, doing business as the Dubin Law Offices; individually and on behalf of all Hawaii attorneys similarly situated, and his clients Christie Adams; Toru Akehi; Gwen Alejo-Herring; Gloria Almendares; Jeris Yukio Amazakii; Debra Anagaran; Dirk Apao; Margaret Apao; Jerry Badua; Julia Badua; Liao Lucy Bamboo; Mia Ban; Roman Baptiste; Charles Bass; Laurie Bass; Agripino Pascua Bonilla; Ruth Rojas Bonilla; Sherilyn May Rojas Bonilla; Kanoa Ross Bristol; Donna Brooks; David R. Brown; Reynaldo Cabudol; Christy Carrico; Phineas Casady; Joyce Chandler; William Chandler; Jennifer Chapman; Luis C. Chavez; 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; Eric Lee Davies; William Davis; Vandetta Davis; Yukiko Hayashi Day; Paige De Ponte; Fatima Duncan; Carolina Cabudol Eala; Edwin Paet Eala; David Wendell Ellis; Lori Lynn Ellis; Janice Ellison; Scott Ellison; Nelie Baniaga Escalante; Norberto Ramelb Escalante; Elena Fedorova; Akiko Fergerstrom; Justin Fergerstrom; John J. Freepartner Iii; Lisa Marie Freepartner; Michael J. Fuchs; Irene Sajor Gano; Royd Allen Gano; Edna Gantt; Paul Gantt; Leah Gillespie; Robert Gillespie; Elizabeth Gillette; David Goodwin; Malia Grace; Antonio Grafilo; Nelia Grafilo; Howard Greenberg; Kenneth Hagmann; Michael Jon Hammer; Darryl Hashida; Sean Hayworth; Nicole Flores Hosaka; Tod Hosaka; Christian Jensen; David Kaplan; Donald Karleen; Beata Karpusiewicz; Jaroslaw Karpusiewicz; Yvonne M. Keahi; Keith Kimi; Oteliah Kind; Kory Klein; Mary Knudsen; Ralph Knudsen; Eleana U. Koahou; Lenore Lannon; Robert Lannon; Stephen Laudig; Mallory Aspili Longboy; Shari Arakawa Longboy; Frank James Lyon; Eric Mader; Amy Kathleen Maher; Michael Charles Maher; Gwen Marcantonio; Mark Marcantonio; Armand Mariboho; Darla Mariboho; Jennifer Martin; Maryellen Markley; Laura Marques; Chanelle Leola Mattos; Joseph Keaoula Mattos; William Mcthewson; Emilou N.A. Mikami; Rickey R. Mikami; Troy Mizukami; Jonnaven Jo Monalim; Misty Marie Monalim; Robert-Gavin Moore; Teresa Moore; Thomas Morton; Terry

Lynne Ohara Moseley; Yvonne Nielsen; 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; Kelly Kalanikapulaha'ole Sampaio; Richard Milikona Sampaio, Jr.; John Savage; Ronald Schranz; John Shigemura; Jason Siegfried; Meleana Smith; Jody 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; Bruce Robert Travis; Elise Travis; Darren Tsuchiya; Lance Tsuchiya; Malia Olivas Tsuchiya; Anthony Tucker; Gladys Tupulua; Hedy Udarbe; Rustico Udarbe; Valerie Uyeda; Edward Vallejo; Jon Van Cleave, M.D.; Patrick Verhagen; Stephen Ward; Donovan Webb; Valerie Woods; Lerma Yamashita; Jack Young; and Nancy Patsy Young; individually and on behalf of all clients of Hawaii attorneys similarly situated

USDC Defendants and
CA9 Appellees and USSC Respondents

The Supreme Court of the State of Hawaii, in its legislative rule-making capacity and in its

judicial capacity; The Honorable Mark E. Recktenwald, in his official capacity while serving as Chief Justice of the Supreme Court of the State of Hawaii; The Honorable Paula A. Nakayama, in her official capacity while serving as Associate Justice of the Supreme Court of the State of Hawaii; The Honorable Sabrina S. Mckenna, in her official capacity while serving as Associate Justice of the Supreme Court of the State of Hawaii; The Honorable Michael D. Wilson, in his official capacity while serving as Associate Justice of the Supreme Court of the State of Hawaii; and The Honorable Katherine S. Leonard, in her official capacity while serving as appointed substitute Associate Justice of the Supreme Court of the State of Hawaii, The Office of Disciplinary Counsel of the Hawaii Supreme Court, in its individual capacity as a non-agency Special Master; The Disciplinary Board of the Hawaii Supreme Court, in its individual capacity as a non-agency Special Master; The Lawyers' Fund for Client Protection of the Hawaii Supreme Court, in its individual capacity as a non-agency Special Master; Bradley R. Tamm in his individual capacity while serving under color of law as both the Chief Disciplinary Counsel of the Office of Disciplinary Counsel of the Hawaii Supreme Court and the Fund Administrator of the Lawyers' Fund for Client Protection of the Hawaii Supreme Court; Clifford L. Nakea in his individual capacity while serving under color of law as Chairperson of the Disciplinary Board of

the Hawaii Supreme Court; Roy F. Hughes in his individual capacity while serving under color of law as a Hearing Officer of the Disciplinary Board of the Hawaii Supreme Court; Charlene M. Norris in her individual capacity while serving under color of law as Senior Disciplinary Counsel of the Office of Disciplinary Counsel of the Hawaii Supreme Court; and Andrea R. Sink, in her individual capacity while serving under color of law as an Investigator of the Office of Disciplinary Counsel of the Hawaii Supreme Court

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JOINT PETITION FOR WRIT OF CERTIORARI

I. JURISDICTIONAL STATEMENT

This Court has jurisdiction to review this Joint Petition for a Writ of Certiorari, timely filed both electronically and by U.S. Priority Mail sent to the Court on April 20, 2023 HST, within 90 days of entry of three final, related, and identical dispositive Orders of the Ninth Circuit Court of Appeals, filed first on September 21, 2023, Petitioners having timely moved for reconsideration of each Order on October 5, 2023 HSD and for additional relief, which were each identically denied between January 20 and January 25, 2023 and mandates issued.

All dispositive Orders entered below are set forth in the accompanying Appendix.

This Court's certiorari jurisdiction as well as that of the District Court's non-discretionary jurisdiction is based upon federal question jurisdiction involving violations of federal Freedom of Speech, Due Process, and derivative Equal Protection Rights.

II. AUTHORITATIVE PROVISIONS

The Circuit Court did not reach the merits of Petitioners' federal constitutional claims, but instead dismissed based upon purely procedural claim processing grounds.

As a result, the underlying merits of Petitioners' constitutional claims properly before the Circuit Court are not the subject of this Petition for review.

The three identical procedural dismissal orders entered below instead represent a conflict between Ninth Circuit Rule 42-1 and four Fifth Amendment Due Process Fair Hearing Guaranties, which conflict only this Court can resolve, as follows:

Ninth Circuit Rule 42-1: “In all instances of failure to prosecute an appeal to hearing, an order may be entered by the clerk dismissing the appeal. . . . [T]he Court may take such other action as it deems appropriate, including imposition of disciplinary and monetary sanctions on those responsible for prosecution of the appeal.”

versus

Fifth Amendment: “No person . . . shall be deprived of life, liberty, or property without due process of law,” derivatively requiring (1) notice and an opportunity to be heard, (2) lack of contrary reasonable governmental reliance, (3) lack of discrimination due to disability as implemented by the Congressional Americans With Disabilities Act, (4) equal protection regarding equal forum rights to appeal, and (5) the consideration of lesser sanctions.

III. CONCISE STATEMENT OF THE CASE

Upon learning of the abrupt dismissal by a previously unknown Circuit Court Motions Panel, Dubin on behalf of all Petitioners in all three cases filed under oath an identical “Motion for Reconsideration of September 21, 2022 Dispositive Order, And For Leave To File Oversized Consolidated Or Separate Opening Briefs.” *See* Doc. No. 20, CA9 Case No. 21-16838;

Doc. No. 30, CA9 Case No. 21-16839; Doc. No. 31, CA9 Case No. 21-16863.

The Court will find therein Petitioners' statement of documented objections to the Motions Panel's abrupt dismissal orders, which in denying reconsideration the objections were completely ignored, as shown in the accompanying Appendix.

Again, it is not the issues appealed to the Ninth Circuit Court of Appeals that are the subject of this Joint Petition, but the applicability of its Rule 42-1.

As fully documented in the official records of the Circuit Court in all three cases readily available to this Court and its staff, here is the material timeline:

1. The Notices of Appeal were all three filed within a few days of November 1, 2021, and the opening briefs all became due at the same time on March 9, 2022.

2. Thereafter, faced with completing three opening briefs all due at the same time, plus a gigantic largely duplicative appendix for each, Dubin with a mounting work schedule, the only attorney fully knowledgeable and a full-time participant in the history of that triple-headed past litigation, secured several very short-term, back-to-back extensions of approximately one-week each, for each of the three opening briefs, all during the 30-day month of April 2022 until May 6, 2022, as a result of a yet unidentified increasingly troublesome illness.

3. Subsequently, in early May 2002 Dubin was diagnosed as needing hip surgery consisting of

the insertion of a foot long titanium support, resulting in thereafter being bedridden in three separate hospitals for the next two and one-half months, during which time his office secured for him several more short-term extensions mostly of a week's duration until August 31, 2022, no one knowing how long Dubin would be hospitalized and able to walk on his own following his hip surgery and work again.

4. Beginning May 23, 2022, Dubin was warned by the Clerk that no further extensions would be granted "absent extraordinary and compelling circumstances."

5. Again, Dubin fully complying, on June 30, 2022, in granting a further extension the Clerk warned that no further extension requests would be granted "that are unaccompanied by a sworn affidavit an evidence supporting the basis for the extension."

6. Again, on August 17, 2022, Dubin complying, in granting a further extension the Clerk warned that "failure to file the opening brief by August 31, 2022, MAY result in dismissal of the appeal." (emphasis added.)

7. Each time the Clerks were understanding, granting extensions, and even subsequent to August 31, 2022, the Clerk's "Help Desk" first extended the filing deadline for Dubin until September 12, 2022, as shown in Doc. No. 20, its Exhibit C, CA9 Case No. 21-16838; Doc. No. 30, its Exhibit C, CA9 Case No. 21-16839; Doc. No. 31, its Exhibit C, CA9 Case No. 21-16863.

8. And then by email the Clerk's Office extended the deadline to September 19, 2022, as shown in Appendix A, of which this Court may

take judicial notice, in the files of the Court Clerks' Office, but advised Dubin to file a motion to consolidate the three opening briefs, which he then was preparing to do, making it easier for the Court's review and for him to complete the briefing as he had already prepared, even before his hip surgery, a separate duplicate Appendix for each appeal consisting of more than 3,000 pages each.

9. The granting by the Clerk's "Help Desk" of that additional extension to September 19, 2022, was in part to allow Dubin to request the three briefs be consolidated so as to make their preparation simpler, given Dubin's anticipated recovery, especially for the printing of the Appendix and for review by the Court, but he was told could only be approved according to the Clerk by the Court and not by the Clerk's Office, and on Dubin's own Motion.

10. Dubin then filed his motion to consolidate, having already filed a request for a further extension, but thereafter a motions panel, never having been heard from previously, filed dispositive orders identical in each of the three cases, shown in Appendix B, Appendix C, and Appendix D, dismissing each for failure to file an opening brief by the motions panel's mistaken "August 31, 2022" deadline, obviously unfamiliar with the further extensions by its own Clerk's Office, and it ignored the consolidation request.

11. In so doing, the motions panel was not only unaware of the additional extensions, *supra*, received from the Clerk's "Help Desk" and it further apparently misinterpreted why Dubin had submitted seemingly incomplete consolidation drafts, the purpose of which was to

show why consolidation was necessary and not for any formal draft approval by it.

12. It was the Clerk's Office and not a motions panel who Dubin and his staff had been communicating with throughout his health ordeal, and not a motions panel obviously unaware of what had transpired and why, as well as it being unaware of Dubin's temporary disability at 84.

13. Dubin sought reconsideration, which was summarily denied without explanation, as shown in Appendix E, Appendix F, and Appendix G.

14. Dubin's motion for reconsideration and to consolidate the three appeals was not even acted upon by the motions panel until after an unexplained four months' decision delay by it, after its abrupt dismissal of the three appeals whose opening briefs were all due at one and the same time for ironically supposedly an inordinate delay on Dubin's part, notwithstanding his temporary health issues.

15. By this time, Dubin had been discharged from the hospital and recuperating at home, visited by a physical therapist several times a week.

16. Following the events summarized above, Dubin has now work wise fully recovered from his hip surgery, and could have easily filed all three opening briefs, separately or consolidated, in less time than it took the motions panel to act on his motion for reconsideration, should the expedition of court business by the filing of three opening briefs all at the same time despite his illness, lying in a hospital bed nevertheless, be

considered to be a superior, yet required human achievement even though most mortals are obligated to file just one opening brief, with extensions, on time.

17. At no time did the motions panel report its having considered issuing lesser sanctions, or explain why it was dismissing with prejudice all three cases without first finding fault with any of Dubin's client Joint Petitioners also claiming having their own injuries for which they were seeking District Court review.

IV. LEGAL ARGUMENT SUPPORTING WRIT

Again, this Joint Petition is not about the merits of the three underlying Ninth Circuit Appeals, since what is being challenged are instead the procedural dismissals, *supra*, pursuant to Circuit Rule 42-1.

Yet, for purposes of this Court's review, the underlying reasons for the reopening of these three original appeals below to the Ninth Circuit Court of Appeals from the Hawaii District Court should nevertheless be not only of great interest to Justices of this Court and to its staff and to the entire legal profession as well, but most importantly it underscores why it is also urgent that certiorari be granted by this Court.

First of all, it should not take possession of a legal degree, nor the pondering over scores of uncontested boilerplate and relevant cases, to be able to quickly discern what was a clear abuse of discretion and a violation of Dubin's fundamental due process rights and those of his Petitioner clients.

Any motions panel suddenly on the scene and obviously without knowledge of Dubin's current physical condition, nor the contemporary extensions granted by its own fully authorized Clerks, to have nevertheless dismissed with prejudice and without notice and without an order to show cause and without consideration of lesser sanctions all approximately 200 Petitioners' three cases, so clearly contrary to ADA and due process derived equal protection rights.

Research has as yet not found a single reported opinion of this Court considering, upon certiorari, the appropriateness or constitutionality of a Circuit Court having dismissed with prejudice appeals for having failed to file an opening brief due to health reasons.

The closest discussion appears to be in a statement filed by Justice Kagan, with whom Justice Ginsberg and Justice Breyer joined, the Court denying review with only Justice Kennedy and Justice Sotomayor voting to grant review, in Joseph v. United States, 574 U.S. 1028 (2014), a certiorari petition challenging a dismissal resulting from a failure to obey a court rule requiring a statement of issues on appeal to include all issues even though in Joseph's case, described as a career drug offender, he omitted to do so where this Court issued a subsequent decision changing precedent which presented Joseph with a new theory or claim.

After the statement first observed that "courts of appeals have wide discretion to adopt and apply 'procedural rules governing the management of litigation that discretion is not unlimited. Procedural rules of course must

yield to constitutional and statutory requirements,’ ” yet the statement concluded where the failure to include an issue in Joseph’s statement of issues on appeal was due to supervening events, the three justices favored “deferring, for now, to the Eleventh Circuit in the hope that it will reconsider whether its current practice amounts to a ‘reasonable exercise[]’ of its authority,” . . . at the same time, troubled, noting that ‘at other times, the court [Eleventh Circuit] abandons the rule without explanation.” *Ibid.*

In Petitioners’ case, however, the Ninth Circuit Court of Appeals has already refused to reconsider, dismissing the three appeals with prejudice.

But there is an even more constitutionally concerning issue here.

Just last week in Axon Enterprises, Inc. v. Federal Trade Commission, Case No. 21-86, this Court, wisely championing access to justice as a practical matter, held that a dispute with an agency can go directly to a District Court to challenge agency proceedings without waiting first for a decision from the agency involved.

Not only is that however exactly what happened by analogy to Petitioner Dubin and his Petitioner clients and to their constitutional challenges to the Office of Disciplinary Council (ODC), an administrative agency recommending the loss of Dubin’s Hawaii law license.

But, unlike Axon, even after the administrative decision of the ODC was rubber-stamped by the Disciplinary Board (DB), another administrative agency, and after a

subsequent so-called original proceeding before the Hawaii Supreme Court sitting nonetheless as another administrative agency with no discovery permitted, with no trial allowed, and not even hear a hearing, the state administrative decisions below were again constantly rubber-stamped, allowing, unlike in Axon, for no non-discretionary appeal anywhere except the very unlikely odds seeking discretionary review in this Court, which proved unavailing to Dubin in Case No. 20-1249, of which this Court may take judicial notice.

Petitioners meanwhile had their own federal constitutional challenges to those Hawaii administrative proceedings, by analogy similar to those challenges in Axon, including lack of jurisdiction, as shown in Doc. No. 20, its Exhibits D and E, CA9 Case No. 21-16838; Doc. No. 30, its Exhibits D and E, CA9 Case No. 21-16839; Doc. No. 31, its Exhibits D and E, CA9 Case No. 21-16863.

Some of those more significant federal due process challenges to the weaponization of the Hawaii Attorney Disciplinary apparatus that denied Dubin Due Process and the Petitioner clients ultimately his legal services were:

1. Dubin's sole ODC hearing officer was an opposing attorney of his in an active case and during the proceedings they were even engaged in settlement discussions in that other case, yet Dubin's hearing officer refused to disqualify himself.
2. At the next administrative hearing level, one of the DB's primary voting members was also an opposing attorney of Dubin in an active case, and was admittedly told by the DB

chairperson not to disclose that fact to anyone, and that member also, when challenged, refused to disqualify himself.

3. At the ODC hearing, Dubin was not allowed to confront or to cross-examine a material opposing witness who failed to show at the hearing although subpoenaed to appear, her claiming without any proof to be ill, yet was allowed by the conflicted hearing officer to testify through her appearing husband.

4. Exculpatory evidence was withheld by the ODC prosecutor, even denying its existence at the hearing.

5. Four separate disciplinary cases were all tried together before one hearing examiner, over Dubin's objection, causing cross-contamination of the evidence and confusion among cases, four different cases being tried at one and the same time, often time wise interspersing the witnesses, arguments, and evidence.

6. Some of the final charges which ethical rules Dubin was found to have violated by the Hawaii Supreme Court were not even a part of the petition for discipline itself, staff book-keeping errors and not even disclosed or charged by the prosecutor until in ambush fashion just minutes before the seven days of ODC hearings were about to terminate, preventing Dubin to investigate the new charges or to call rebuttal witnesses, all of which was requested by Dubin yet refused by the conflicted hearing officer.

7. Dubin was moreover criticized for ethical mistakes, based upon false *ex parte* information seen by the Justices of the Hawaii Supreme

Court without any disclosure to Dubin during any of the proceedings.

8. And there were many other egregious due process errors denying Dubin a fair hearing, a perfect kangaroo court. For example, the ODC earlier tried to have the Hawaii Supreme Court suspend Dubin, which was denied for lack of evidence, yet a year later on the same identical false evidence, Dubin was disbarred, as if the proof required for disbarment was somehow lesser than the proof required for suspension, as if disbarment were a lesser sanction than suspension. Simply made no sense.

The problem seems to have been that if anything was actually wrong with Dubin's foreclosure defense practice it was that he *was* too successful in court and thus became too controversial in a jurisdiction that is often considered "bank town."

For just in the past 20 years alone, Dubin, in addition, the record shows, won scores of foreclosure cases including jury trials, and more than 105 foreclosure appeals, including in this Court and in the Ninth Circuit Court of Appeals.

And after that, Dubin's success accelerated when a new thoughtful majority took over the Hawaii Supreme Court.

Dubin was disbarred immediately after the Hawaii Supreme Court had ruled favorably on his two most important mortgage appeals 3-2, HawaiiUSA Federal Credit Union v. Monalim, 147 Haw. 33, 464 P.3d 821 (2020) and Sakal v. AOAO of Hawaiian Monarch, 148 Haw. 1, 466 P.3d 399 (2020), and then only after one of the Court's three-member majority, Justice Pollack,

who authored both the Monalim and the Sakal Opinions, was forced to retire due to age limitations a few months before Dubin's disbarment took place, without his vote.

In fact, both opinions caused a nuclear reaction in "bank town," Monalim causing lenders to forgo most deficiency judgments in foreclosure cases, saving borrowers millions of dollars of housing equity annually, and Sakal causing such a panic among hundreds of condo associations that a special session of the Hawaii Legislature was convened to try to overrule the Sakal decision.

The additional piece of this judicial jigsaw puzzle, not taught in law schools, is that Hawaii is a young completely one-party State whose judges are selected by the Governor after nominated by a committee and the Governor's selection then is required to be confirmed requiring State Legislature approval.

What is even more distressing and what is even more important for this Court to understand is the legendary Captain Cook treatment given Dubin in the context of the national background underlying this saga that can only be corrected by this Court.

Like too many unpopular causes today, foreclosure defense attorneys have become an endangered species nationwide, serving as prey for administrative agencies influenced by powerful vested interests like that in Hawaii in the historical absence of any judicial oversight by our federal courts.

This was, for instance, not the first time Dubin was administratively targeted.

While he was pursuing for clients, for instance, twenty-seven years ago a \$60 Million counterclaim against the biggest bank in Hawaii, false failure to file federal tax return charges were brought against him conveniently by the brother of a state court judge heading the Hawaii IRS criminal investigation division, and Dubin's bench trial was switched at the very last minute from an impartial Hawaii federal judge who surely would have thrown the misdemeanor charges out, as he earlier had a letter from the IRS stating that he had no filing requirement for the years in question due to losses.

Instead, Dubin's bench trial was hand-picked by a Visiting District Judge from the California Central District, the notorious Manuel Real, well-known for his abuses especially by older Justices of this Court.

Judge Real self-selected Dubin's case from the trial calendar and promptly convicted Dubin of three misdemeanors.

Dubin had selected a bench trial earlier before Judge Real grabbed his case from the trial calendar, away from the Magistrate Judge that had been agreed to by all sides, allowed to do so because of his seniority.

Dubin was finally exonerated when the IRS admitted, after an IRS Seattle District review, that he in fact had no filing requirement for the years in question due to losses caused by borrowers unable to pay for his services, and that instead the IRS refunded him and paid him \$100,000 for prior years.

Yet the Hawaii District Court which sanctioned him for the government's alleged bogus tax loss,

with interest now owing Dubin over \$300,000, has still not returned his 1995 fine money he was forced by Judge Real to pay, there being in fact admittedly no tax loss at all.

Getting his money back from the District Court has been like trying to take bananas away from a starving gorilla, the IRS explaining to Dubin in writing that the Hawaii District Court and not the IRS nor the U.S. Government is awarded criminal fines, yet another unconstitutional violation hidden from the general public, a practice of financially rewarding prosecuting entities for convictions, which this Court supposedly outlawed a long time ago.

Meanwhile, the American Bar Association Journal, in its September 1, 2008 edition, after a multi-year-long investigation, wrote up the entire saga involving Judge Real, exonerating Dubin, of which this Court can find on the Internet and take judicial notice of, and upon his restarting his Hawaii law practice, Dubin became a sort of local folk hero, even the Hawaii attorney regulators at that time concluding that he had been “railroaded.”

One Hawaii federal Magistrate Judge, the one, *supra*, who was scheduled to bench try Dubin, told Dubin later after he had served 19 ½ months in three California federal prisons, and after a settlement conference in another case and after Dubin was exonerated, asked to speak with Dubin alone, closed his office door, and actually hugged Dubin warmly and apologetically, telling Dubin that “everyone knew that you had been railroaded.” Dubin may be one of the few attorneys hugged by a federal judge, discreetly in chambers!

Returning to the dismissal of Petitioners' three cases, dismissal of course is the harshest of all sanctions. Even Circuit Rule 42-1 lists alternative and less severe sanctions, and 200 of his Petitioner clients were not at fault even were you to conclude that Dubin, ill at 84 and recovering from hip surgery, in any way was.

The right to practice law is a property right. It is Dubin's only livelihood and for most of his Petitioner clients their homes are all the equity their family possess in life.

Prior to the above-described unconstitutional fiasco, for which surely there must be a federal court remedy, Dubin in 58 years as an attorney had never before been found to have committed any unethical act whatsoever having appeared before hundreds of judges and serving thousands of clients.

Lest this Court conclude, as perhaps his motion panel mistakenly thought, that Dubin is just another defalcating attorney raising discredited defenses in foreclosure proceedings, clogging the courts, taking advantage of borrowers unable to pay their mortgages, of which foreclosure defense attorneys there are agreed much too many, Dubin's personal and professional achievements as follow speak for themselves, belying the defamation inflicted upon him by an army of misfits parading their own vested interest narratives.

Dubin graduated first in his class at Los Angeles High School in 1956 and then graduated from the University of Southern California in 1963, awarded an A.B. degree in Political Science, graduating summa cum laude, first in his class, and received the Order of the Palm from USC

President Dr. Topping, awarded at that time in 1963 exclusively to one graduating senior for superior achievements in scholarship, athletics, and community service combined.

Dubin thereafter received many law scholarship offers wherever he applied, including from Harvard Law School, but lacking funds at the time he accepted a full tuition public service Root Tilden scholarship to New York University School of Law, which included books, room and board, and jet travel, graduating first in his law section cum laude, inducted into the Order of the Coif, and worked as a summer associate at Covington & Burling in Washington, DC.

Dubin has since been a Member of the California State Bar and still is since January 1964, and admitted to this Court's Bar in 1974, as well as the Hawaii State Bar in 1982, and Federal District Courts in California (Northern, Central, and Southern Districts) and in the Ninth Circuit Court of Appeals since 1974.

Dubin has also appeared pro hac vice in state and federal courts in Arizona, Colorado, Indiana, Nevada, New Jersey, New York, Oregon, Tennessee, and Washington State, and was admitted and argued at the International Court of Arbitration at the Hague.

Dubin's teaching experience has also been diverse, having taught law classes at Stanford, Berkeley, Denver, Harvard, Texas, and multidisciplinary seminars at USC in the Political Science Department, UCLA in its School of Public Affairs, and at the RAND Corporation in Santa Monica. Dubin also was appointed as the first Visiting Law Professor in the Criminal Division of the U.S. Justice Department in Washington, D.C.

Dubin seeks a fair hearing on appeal before the Ninth Circuit Court of Appeals, and not Star-Chamber injustice otherwise unfairly descending a guillotine blade intended to cancel his existence.

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 reestablish 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.

Despite all of the procedural and jurisdictional obstacles confronting an innocent attorney who has been framed and disbarred, I and my clients similarly disadvantaged have found a way to bypass all of those procedural and jurisdictional hurdles in the supporting legal theories that constitute the bedrock of our three District Court cases, similar to how by analogy identical jurisdictional hurdles were bypassed in Axon, *supra*.

The legal reasoning supporting each of the three potentially bellwether cases now in this Court's collective hands is otherwise lost, for now readily available to this Court and to its staff in pleadings and in motion papers in the District Court electronic records below.

V. CONCLUSION

For each and for all of the above reasons, Petitioners all pray that this Court accepts certiorari and sets aside the challenged three Ninth Circuit Court of Appeals' summary dismissals, and in an expedited fashion.

Respectfully submitted,

/s/ Gary Victor Dubin

GARY VICTOR DUBIN
*Counsel of Record
for Petitioners*

Honolulu, Hawaii
April 20, 2023

APPENDIX

A. TRANSCRIPT OF EMAIL CORRESPONDENCE
BETWEEN DUBIN AND THE COURT'S HELP
DESK ON SEPTEMBER 9, 2022

IN THE NINTH CIRCUIT COURT OF APPEALS

In re Gary Victor Dubin)	No. 21-16838	
—————)	No. 21-16839
Dubin versus Office of	}	No. 21-16863	
Disciplinary Counsel, et al.			
—————)	
Dubin versus Hawaii	}		
Supreme Court, et al.			
—————)	

On September 9, 2022, Dubin wrote: “Please understand my dilemma. The Court needs understandably to review the briefing to determine whether to approve the reasoning behind the consolidation and the enlargement of the page limits. That is why I included my draft. Since that is unacceptable to you, I have accepted your suggestion to submit the formal consolidated brief and excepts of record, but to do that very large undertaken [sic] I have requested a few more days from you other than as you instructed over the weekend. And please note that I still cannot find any instructions in the local rules governing consolidation in my circumstances. Perhaps I have missed it.”

On September 9, 2022, the Court's Help Desk responded: “It is fine to have until Monday, September 19, to make the necessary corrections.”

B. ORDER DISMISSING APPEAL
DATED SEPTEMBER 21, 2022

IN THE NINTH CIRCUIT COURT OF APPEALS

In re Gary Victor Dubin,) No. 21-16838
Respondent-Appellant.)

}

Before: M. SMITH, BRESS, and VANDYKE,
Circuit Judges.

On August 17, 2022, this Court granted appellant's eighth motion for an extension of time to file the opening brief. The court set a deadline of August 31, 2022, and warned appellant that no further extension of time would be granted.

On September 8, 2022, appellant filed in appeal No. 21-16863 a motion to consolidate the appeal with appeal Nos. 21-16863 and 21-16839, along with an incomplete draft of a consolidated opening brief and an incomplete index of excerpts of record.

This appeal is dismissed for failure to prosecute. *See* 9th Cir. R. 42-1.

The motion for an extension of time to file the opening brief (Docket Entry No. 18) is denied as moot.

DISMISSED.

C. ORDER DISMISSING APPEAL
DATED SEPTEMBER 21, 2022

IN THE NINTH CIRCUIT COURT OF APPEALS

Dubin, Plaintiff-Appellant) No. 21-16839
versus Office of)
Disciplinary Counsel of the)
Hawaii Supreme Court, et)
al., Defendants-Appellees.)

Before; M. SMITH, BRESS, and VANDYKE,
Circuit Judges.

On August 17, 2022, this Court granted appellant's eight motion for an extension of time to file the opening brief. The court set a deadline of August 31, 2022, and warned appellant that no further extension of time would be granted.

On September 8, 2022, appellant filed in appeal No. 21-16863 a motion to consolidate the appeal with appeal Nos. 21-16863 and 21-16839, along with an incomplete draft of a consolidated opening brief and an incomplete index of excerpts of record.

This appeal is dismissed for failure to prosecute. *See* 9th Cir. R. 42-1.

The motion for an extension of time to file the opening brief (Docket Entry No. 18) is denied as moot.

DISMISSED.

D. ORDER DISMISSING APPEAL
DATED SEPTEMBER 21, 2022

IN THE NINTH CIRCUIT COURT OF APPEALS

Dubin, dba Dubin Law Offices, Plaintiffs-Appellants versus the Hawaii Supreme Court, et al., Defendants-Appellees. } No. 21-16863

Before: M. SMITH, BRESS, and VANDYKE,
Circuit Judges.

On August 17, 2022, this Court granted appellant's [sic] eight motion for an extension of time to file the opening brief. The court set a deadline of August 31, 2022, and warned appellant [sic] that no further extension of time would be granted.

On September 8, 2022, appellant [sic] filed in appeal No. 21-16863 a motion to consolidate the appeal with appeal Nos. 21-16863 and 21-16839, along with an incomplete draft of a consolidated opening brief and an incomplete index of excerpts of record.

This appeal is dismissed for failure to prosecute. *See* 9th Cir. R. 42-1.

The motion for an extension of time to file the opening brief (Docket Entry No. 18) is denied as moot.

DISMISSED.

E. ORDER DENYING RECONSIDERATION
DATED JANUARY 20, 2023

IN THE NINTH CIRCUIT COURT OF APPEALS

In re Gary Victor Dubin,) No. 21-16838
Respondent-Appellant.)

)

Before: M. SMITH, BRESS, and VANDYKE,
Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 20) is denied. *See* 9th Cir. R. 27-10.

All other requests in Docket Entry No. 20 are denied.

No further filings will be entertained in this closed case.

F. ORDER DENYING RECONSIDERATION
DATED JANUARY 20, 2023

IN THE NINTH CIRCUIT COURT OF APPEALS

Dubin, Plaintiff-Appellant) No. 21-16839
versus Office of)
Disciplinary Counsel of the)
Hawaii Supreme Court, et)
al., Defendants-Appellees.)

Before: M. SMITH, BRESS, and VANDYKE,
Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 30) is denied. *See* 9th Cir. R. 27-10.

All other requests in Docket Entry No. 30 are denied.

No further filings will be entertained in this closed case.

G. ORDER DENYING RECONSIDERATION
DATED JANUARY 25, 2023

IN THE NINTH CIRCUIT COURT OF APPEALS

Dubin, dba Dubin Law } No. 21-16863
Offices, Plaintiffs- }
Appellants versus the }
Hawaii Supreme Court, et }
al., Defendants-Appellees. }

Before: M. SMITH, BRESS, and VANDYKE,
Circuit Judges.

Appellants' motion for reconsideration (Docket Entry No. 31) is denied. *See* 9th Cir. R. 27-10.

All other requests in Docket Entry No. 31 are denied.

No further filings will be entertained in this closed case.

