

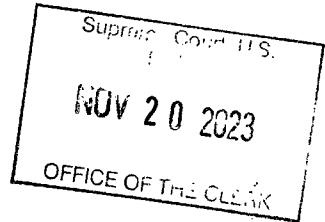
11/20/2024

No. 23-

989

In the
Supreme Court of the United States

IN RE ROBERT J. MURPHY



ROBERT J. MURPHY,

Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where petitioner sought removal in 2010 of unelected administrative Workers' Compensation judges involving their actual or apparent improprieties involving admitted, unrecorded "ex-partे communications" with opposing counsel without presence of petitioner involving pending Workers' Compensation proceedings pursuant to exclusively applicable "Code of Ethics; Removal of Workers' Compensation Judges" 77 P.S. 2504 and nine years later Pennsylvania disciplinary proceedings expressly refused to decide whether 2010 removal proceedings were "ex parte communications" suspending petitioner from Pennsylvania Bar for five years based on clearly erroneous admittedly unconstitutional newly enacted 2014 Pennsylvania Judicial Code, did court clearly err imposing identical reciprocal discipline for the first time after thirteen years because state disciplinary decision unconstitutional reliance on 2014 Judicial Code constitutes harmless error because Workers' Compensation judges' communications were not "ex parte communications" based on admittedly inapplicable 207 Judicial Cannon 3(A)(4) (2010) and therefore not "improper" clearly contrary to this Court's and all federal circuit and district court and Pennsylvania Supreme Court decisions in violation of petitioner's constitutional rights under First, Fifth, Sixth and Fourteenth Amendments.
2. Where state disciplinary complaint was not filed until July 27, 2017 over petitioner's repeated objections involving petitioner's alleged violation of Pennsylvania Disciplinary Rules in 2010 causing indisputable unconstitutional prejudicial delay clearly contrary to Pennsylvania Disciplinary Board rules including 85.10 expressly prohibiting disciplinary proceedings based

on alleged ethical violations occurring more than 4 years prior to alleged disciplinary violations, did court clearly err concluding for first time after thirteen years alleged deferment of disciplinary proceedings did not violate petitioner's due process rights based on clearly erroneous Judicial Notice and contrary to state disciplinary record, *Selling* and codified *Selling* rules and this Court's and federal circuit and all Pennsylvania decisions.

3. Where petitioner compelled to pursue truthful removal proceedings based entirely on underlying cumulative, evolving, circumstances, facts and stated admissions exclusively disclosed by Bachman, Dombrowski and Hagan which clearly violated compensation removal statute which in petitioner's opinion based on his exhaustive objective reasonable due diligence that their disclosed stated admissions throughout entire proceedings clearly violated 77 P.S. 2504 prohibiting "ex parte communications" manifesting impropriety or, at a minimum, appearance of impropriety necessary to prevent waiver and protect Wilson's fundamental constitutional right to fair and impartial proceeding and appeal, did court clearly err imposing identical reciprocal discipline contrary to *Selling* codified rules and this Court's and federal circuit decisions clearly violating petitioner's rights under First, Fifth, Sixth and Fourteenth Amendments to United States Constitution.

PARTIES TO THE PROCEEDINGS

Petitioner

- Robert J. Murphy

Respondent

- United States District Court for the Eastern District of Pennsylvania

Note: The case was captioned *In Re: Robert J. Murphy* in the district and appellate courts. As the “In Re” form is used for extraordinary writs in this court, the district court has been designated as the Respondent. As this case involves the imposition of reciprocal discipline, the district court is an appropriate counter-party to this petition.

LIST OF PROCEEDINGS

FEDERAL COURT PROCEEDINGS

United States Court of Appeals for the Third Circuit
No. 22-1429

In Re Murphy, 2023 U.S. App. LEXIS 18263
Date of Final Opinion: July 18, 2023
Date of Rehearing Denial: August 22, 2023

United States District Court for the Eastern District
of Pennsylvania

No. 19-mc-217
In the Matter of Robert J. Murphy
Date of Final Order: February 16, 2022

RELATED PROCEEDINGS

Supreme Court of Pennsylvania
No. 2649 Disciplinary Docket No. 3
Office of Disciplinary Counsel, *Petitioner*, v.
Robert J. Murphy, *Respondent*.
Date of Final Order: December 19, 2019

OTHER PROCEEDINGS

1. *Office of Disciplinary Counsel (ODC), petitioner v. Robert J. Murphy, respondent* No. 2649 Disciplinary Docket No. 3 (No. 206 D.B. 2016).
2. *In the Matter of Robert J. Murphy*, an Attorney at Law, U.S. Court of Appeals for the Third Circuit, C.A. Misc. No. 20-8004.
3. *Anne Wilson v. Hon. Patricia M. Bachman, et al*, Commonwealth Court of Pennsylvania No. 385 MD 2010, alloc. den. Pa. Supreme Court 70 MAP 2010.
4. *Anne Wilson, et al v. Sandi Vito, Sec. Dept. of Labor and Industry, et al*, Commonwealth Court of Pennsylvania No. 935 MD 2010, alloc. den. Pa. Supreme Court 51 EAP 2011.

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ORDERS AND OPINIONS BELOW

Order of the Third Circuit United States Court of Appeals Denying Petition for Rehearing by the Panel and the Court en banc, filed August 22, 2023, *In Re Murphy* 2023 U.S. App. LEXIS 18263 (August 22, 2023) is reported in the Appendix to This petition at App.33a, App.12a.

Opinion and Judgment of the Third Circuit United States Court of Appeals Affirming the Order of February 16, 2022 by the United States District Court for the Eastern District of Pennsylvania Imposing Identical Reciprocal Discipline (filed August 30, 2023), is reported in the Appendix to this petition at App.1a, App.14a.

Order by the United States District Court for the Eastern District of Pennsylvania Approving and Adopting the Panel's Report and Recommendation Imposing Identical Reciprocal Discipline Imposed by the Commonwealth of Pennsylvania Suspending Robert Murphy from the Bar of the United States District Court for the Eastern District of Pennsylvania For Five Years Retroactive to December 19, 2019 (February 16, 2022), is reported in the Appendix to this petition at App.16a.

Report and Recommendation by the Panel in the United States District Court for the Eastern District of Pennsylvania Imposing Identical Reciprocal Discipline Imposed by the Commonwealth of Pennsylvania (November 29, 2021), is reported in the Appendix to this petition at App.18a.

Order of the Supreme Court of Pennsylvania Suspending Upon Consideration of Report and Recommendation of Disciplinary Board of Pennsylvania Suspending Robert Murphy from the Bar of Commonwealth of Pennsylvania for a Period of Five Years (December 19, 2019), is reported in the Appendix to this petition at App.35a.

Report and Recommendation of Disciplinary Board of the Supreme Court of Pennsylvania (September 3, 2019), is reported in the Appendix to this petition at App.36a.



JURISDICTION

On July 18, 2023 the Third Circuit Court of Appeals filed its Opinion and Judgment affirming United States District Court's February 16, 2022 Order imposing identical reciprocal discipline against petitioner. On August 22, 2023 the United States Court of Appeals for the Third Circuit filed the Order denying Petition for Rehearing by the Panel and the Court en banc without providing notice including electronic notice to petitioner. Subsequently on or about September 11, 2023 the Court provided notice together with the Court's foregoing order denying reargument. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1); U.S. Supreme Court Rule 10(a)(c), 13.3.



CONSTITUTIONAL AND STATUTORY PROVISIONS AND JUDICIAL RULES AND REGULATIONS INVOLVED

Constitutional Provisions, Statutes, Regulations and Professional/Judicial Rules of Conduct are Reproduced in the Appendix (App.90a)

- U.S. Const. First, Fifth, Sixth and Fourteenth Amendments
- Pennsylvania Workers' Compensation Act, 77 P.S. Sec. 2504
- Administrative Regulation, 34 Pa. Code Sec. 131.24
- Pennsylvania Constitution, Art. II, Sec. I
- 2014 Judicial Code Canon 2, Rule 2.9
- Pennsylvania Disciplinary Board Rules § 85.10
- 1974 Pennsylvania Judicial Code of Conduct
- Federal Rule of Evidence re Judicial Notice 201(e)
- United States District Court Eastern District of Pennsylvania Local Rule 83.6 (II)(D)
- Pennsylvania Rules of Professional Conduct;
 - 3.1-(meritorious claims)
 - 3.3(a) (1)-(candor towards the tribunal)
8.2(a)-(statements concerning judges)
 - 8.4(c)-(misconduct involving fraud, Dishonesty, deceit or misrepresentation)
 - 8.4(d)-(conduct prejudicial to Administration of justice)



CONCISE STATEMENT OF THE CASE

After two decades on May 16, 2006 Anne Wilson, claimant, represented by Robert Murphy (petitioner) recovered fatal workers' compensation benefits against Allied and Travelers Insurance Company (employer/carrier) represented by Neil Dombrowski (Dombrowski) resulting from her husband's work-related fatal injury and denied employer's alleged subrogation claim finally affirmed on appeal. On November 19, 2007 claimant sought penalties against employer for failure to comply with award; and employer sought untimely modification pursuant to pending contested administrative workers' compensation proceedings (compensation proceedings) which had previously been finally denied. After repeatedly continuing prior hearings at employer's request involving critical employer witnesses previously served with subpoena duces tecum by an unelected administrative Workers' Compensation Judge Bachman (Bachman) hearing the pending administrative Workers' Compensation claims appointed by Pennsylvania executive branch pursuant to exclusive authority under the Pennsylvania Constitution Separation of Powers (Pa. Const. Article II Section 1) subsequently scheduled hearing on February 18, 2010. Petitioner again served critical employer witness, Joseph Weimer, with subpoena duces tecum to appear at 2/18/2010 hearing.

On January 26, 2010 Bachman allegedly instructed her staff, Lana Meehan, (Meehan) to contact only claimant's counsel's office to advise Bachman allegedly issued off-the-record oral order that previously served critical subpoena duces tecum on Weimer to appear

at 2/18/2010 hearing would allegedly be vacated which alleged oral order, in fact, was never issued, written, entered, docketed, exists and unappealable. On January 29, 2010 claimant's counsel sent a letter objecting to Bachman's ex parte communication only to petitioner and, if accurate, demanded alleged oral order be entered in record for all purposes and *reconsidered* because alleged oral order clearly exceeded Bachman's limited administrative jurisdiction. (App. 133a). Unknown to petitioner Bachman continually instructed Meehan to conduct ex-partes communications in pending compensation proceedings before her.

At the 2/18/2010 hearing for first time petitioner learned Bachman and Dombrowski admittedly stated at an unknown date and time Bachman conducted multiple ex parte communications over telephone with Dombrowski through Meehan without presence of Petitioner involving alleged multiple material orders which were never issued, written, entered, docketed, exist and unappealable at any time which statements were not under oath and formed entire basis of all petitioner's recusal proceedings including petitioner's removal proceedings against WCJ Bachman, et al in the Commonwealth Court at No. 385 MD 2010 and subsequently WCJ Hagan, et al. in the Commonwealth Court at 935 MD 2010 and all Pennsylvania Supreme Court proceedings seeking allocator which were denied at 51 EAP 2011 and 70 MAP 2010 as follows:

"...Dombrowski: Your Honor, we had telephonic communication with your chambers in recent time with your administrative assistant, Lana.

She advised us the following: One, that claimant and claimant's counsel to abide by

your Honor's interlocutory order.

In addition, it was also represented to us that Lana made contact with claimant's counsel's office with respect to these matters as well.

In addition with respect to claimant's counsel noticing the deposition of the claimant, we received telephonic communication from your chambers that your Honor had sustained employer's objection to the taking of that deposition

In addition, we received telephonic communication from your Honor's chambers indicating that you had ruled that claimant's subpoena request to compel the testimony of attorney Di Liberto, attorney Weimer, attorney Touchstone and attorney Ribble, that you have ruled against and denied those requests of counsel....Your Honor, I advised you today with respect to the civil matters earlier today.

Bachman: Okay.

Dombrowski: In addition, at this point in time, your Honor, I request reconsideration of supersedeas in accord of the rules.

Bachman: Okay....

Bachman: I have not issued. I have not said anything about how I am going to rule on reconsideration of supersedeas....

Murphy: The court had denied the original request for supersedeas.

Bachman: I issued a supersedeas denial....

‘Murphy:...The court can await these decisions on the merits rather than to have further proceedings involved. Finally, we've learned for the first time today, apparently counsel [Dombrowski] indicates numerous ex-parte communications with This Court.

Dombrowski: Whoa.

Murphy: And therefore, we're going to have to request that The Court has to recuse itself, because he says that he's just had numerous communications with The Court as to various alleged oral orders.

“Bachman: That is out of line, I want you to go back and recheck your telephone and recheck with your secretary.

Murphy: I'm talking about what he just said.

Bachman: Those were orders that were given to my secretary, and she relayed both of those orders to both of your offices. Your motion for recusal is denied. Mr Dombrowski, do you want to take up three minutes in order to follow up with your request for reconsideration of supersedeas?

Dombrowski: Yes. First, your Honor, there is no decision that exists that addresses the issue before you today. There is no prior court order involving these parties...

Murphy: For all of those reasons, your Honor, there is certainly no likelihood of success and it would put the widow unquestionably in an irreparable position and require extraordinary proceedings to be implemented....

Bachman: ...The defendant's request for reconsideration of supersedeas is granted as of today, 2/18/2010 and I am going to issue an interlocutory order today." (ODC Ex. 14) (App.146a).

At 2/18/2010 hearing and throughout entire compensation and removal and disciplinary proceedings Bachman never stated, testified or identified receiving any alleged letter dated 2/12/2010 from Dombrowski involving any alleged telephone message from Bachman through Meehan allegedly denying only "reconsideration" of Bachman's alleged non-existent former ruling vacating Weimer's subpoena duces tecum previously served on him to attend 2/18/2010 hearing. Throughout removal and disciplinary proceedings Dombrowski never stated or testified he mailed any foregoing alleged letter to Bachman or Murphy.

Weimer did not appear at 2/18/2010 hearing and on 3/15/2010 Weimer returned subpoena together with witness fee served on Weimer to appear at 2/18/2010 hearing. App.129a.

On 2/18/2010 petitioner sent a letter to Bachman reiterating request to recuse herself based entirely on foregoing verbatim "ex-partem communications" which Bachman initially denied at 2/18/2010 hearing. Petitioner's recusal requests did not allege the "ex parte communications were improper". (App.162a). On 2/25/2010 Bachman acknowledged petitioner's recusal request based on her foregoing admissions and scheduled a hearing to recuse her on 3/23/2010 to present evidence and oral argument; and Bachman stayed all compensation proceedings until she rendered a written ruling on the recusal request pursuant to Bachman's foregoing 2/25/2010 notice and applicable

law. (App.136a). On 3/2/2010 petitioner sent a letter to Bachman again demanding Bachman issue requested subpoena duces tecum on Bachman, Meehan and Dombrowski to appear at scheduled removal hearing on 3/23/2010 repeatedly based on the foregoing verbatim request at 2018 hearing which did not allege “improper ex parte communications” and further demanded Bachman remove herself from pending removal proceedings pursuant to applicable administrative removal proceedings, law and rules including *Municipal Publications Inc. v. Court of Common Pleas*, 489 A.2d 1286 (Pa. 1985) expressly prohibiting Bachman from adjudicating removal proceedings under the circumstances involving the admitted communications involving “ex parte communications”. (App.130a). After refusing to issue foregoing subpoena duces tecum to appear at recusal hearing and continuing 3/23/2010 recusal hearing without any evidence Bachman scheduled another recusal hearing for 5/4/2010. On 4/1/2010 petitioner again sent a letter demanding Bachman issue same foregoing subpoena duces tecum on Bachman, Meehan and Dombrowski pursuant to extensive due diligence and all applicable law pursuant to Pennsylvania Workers’ Compensation Act, Code of Ethics; Removal of Workers’ Compensation Judges 77 P.S. 2504 involving actual or apparent improprieties in which impartiality might reasonably be questioned based entirely on foregoing admissions at 2/18/2010 hearing involving material witnesses who have personal interest in the proceedings and personal knowledge of disputed facts specifically prohibiting Bachman from adjudicating the recusal proceedings including ruling and assessing her own credibility involving alleged “ex parte communica-

tions" under the circumstances. *See Municipal. In Re Larson*; 77 P.S. 2504.

Since Bachman would not issue subpoenas and would not recuse from recusal proceedings on April 16, 2010 petitioner filed petition for extraordinary relief in Commonwealth Court at No. 385 MD 2010 against Bachman and employer seeking Bachman's recusal and to vacate tainted record pursuant to United States Constitution 14th Amendment and 77 P.S. Sec. 1 et seq. including 2504 and administrative regulations, *inter alia*, based entirely on foregoing verbatim allegations involving Bachman and Dom-browski's foregoing admissions at 2/18/2010 hearing within court's exclusive jurisdiction! On August 4, 2010 Commonwealth Court entered order overruling defendants' preliminary objections for failure to state a claim (demur) and ordered defendants to file an answer within thirty days. Bachman and employer intentionally did not file any timely verified answer to claimant's foregoing prohibition petition and therefore again admitted and or deemed admitted factual allegations involving their multiple ex parte communications at 2/18/2010 hearing pursuant to applicable Pennsylvania law repeatedly deciding any unverified purported pleading or petition is a nullity which fundamental requirement to verify any pleading cannot be waived. *See Atlantic Credit et al. v. Juliana*, 829 A.2d 340 (Pa. S. 2003) app. Den. 843 A.2d 1246 (Pa. 2004). Bachman purported to file an unverified document purporting only to deny "prohibited ex parte contacts relating to proceedings before her" again acknowledging conducting ex parte communications/contacts with opposing counsel without presence of petitioner as alleged in the extraordinary

petitions. See Disciplinary Board Report. *Id.* paragraph 34. (App.47a). Bachman subsequently closed compensation record and ordered parties to file briefs on October 13, 2010 contrary to her prior order staying compensation proceedings! On October 20, 2010 Bachman recused herself without any findings and conclusions further raising a conclusive actual and deemed presumption confirming her actual or apparent improprieties in violation of 2504(a)(1)-(3), (5)-(7), (13) under applicable law including *M & D Autobody v. W.C.A.B.*, 143 Pa. Commw. 346 (1990), app. Den. 924 1992 based on an unexplained order to recuse herself after approximately 8 months in which she refused to recuse herself and simultaneously filed a motion to dismiss claimant's petition for review as moot. Commonwealth Court granted mootness motion on October 26, 2010 without vacating allegedly tainted record affirmed on August 25, 2011 by Supreme Court at No. 70 MAP 2010 based entirely on foregoing alleged ex-parte communications.

WCJ Hagan (Hagan) refused to reopen compensation record to permit claimant to present any evidence. Over petitioner's strenuous objections Hagan conducted prohibited ex-parte phone call to Wilson's son-in-law, Critschlow, to determine whether non-resident 86 year old dying claimant could personally appear at hearing despite receiving multiple medical records detailing Wilson's terminal illness involving her right to present evidence. Hagan received ex-parte communication Bachman's counsel, Howell, believed he had additional time to file answer at 385 MD 2010. Dombrowski admitted sending 11/22/2010 letter enclosing unrelated proceedings to influence Hagan: *Tompson v. Rhone Poulenc; Stippick v. Allied Signal*;

Murphy v. Federal Insurance Company. Hagan admitted Dombrowski delivered unspecified alleged compensation records pursuant to prohibited ex-parte letter to Hagan which Hagan subsequently utilized to render unfavorable adjudication against Wilson over petitioner's objections. Hagan removed Wilson's records at Dombrowski's request. Hagan obtained alleged Bachman answer at 385 MD 2010 provided ex-parte to him on his desk which he placed in Wilson's record and refused to mark exhibit. Hagan discussed Wilson case with Bachman and Office of Adjudication including alleged orders pending motion to recuse Bachman. Hagan admittedly shredded at least three boxes of original records in Wilson case contrary to 2504 and *Com. v. Dougherty*, 18 A.3d 1095 (Pa. 2011) prohibiting record alteration which is vehicle for just adjudication and appellate review. Commonwealth Court denied Hagan's specific sanction motion involving identical disciplinary standard of rules which are subject of subsequent disciplinary proceedings against petitioner based on foregoing undisputed facts. Supreme Court affirmed Commonwealth Court's order dismissing petitioner's extraordinary relief petition at 935 MD 2010 on 12/20/2010; as a result ODC never alleged petitioner violated any disciplinary rules involving 935 MD 2010 proceeding in their 8/9/2012 DB-7 investigative letter. App.102a.

On August 9, 2012 Pennsylvania Office of Disciplinary Counsel (ODC) issued a DB-7 investigative notice letter to Petitioner asserting all alleged facts involving alleged violation of Rules of Professional Conduct 3.1, 3.3(a)(1), 8.4(c) and 8.4(d) based only on conclusory allegations without specific facts involving Petitioner's actual complete accurate statements and

opinions throughout removal proceedings! The DB-7 letter only involved alleged conclusory accusations throughout entire removal proceedings that Petitioner's removal proceedings were based entirely on Bachman, Dombrowski's, Meehan's and Hagan's alleged "improper ex-parte communications" which violated foregoing ethical rules involving voluminous cumulative, evolving, proceedings, statements, admissions and opinions including involving Bachman's removal from pending removal proceedings based entirely on underlying unverified statements from Bachman, and Dombrowski involving ex parte communications from court Bachman through Meehan with Dombrowski without presence of petitioner involving alleged undated, off-record, telephone ex parte communications, proceedings and contact involving numerous alleged material oral "orders" denying claimant, Wilson, right to present evidence including: denying subpoenas duces tecum; and denying Wilson's trial deposition; and abide by non-existent alleged interlocutory order to produce unspecified discovery which alleged proceedings and oral orders, in fact, were never issued, written, entered, docketed, exist or appealable at Feb. 18, 2010 Workers' Compensation hearing (quoted in full, *supra*)! App.102a, 146a-148a; App.138a-140a.

On 9/3/2019 Disciplinary Board recommended petitioner's five year suspension from practice of law based entirely on lynchpin conclusion without any evidence Pennsylvania Supreme Court's newly enacted 2014 Judicial Code applicable only to elected judges not Workers' Compensation judges appointed by executive branch and enacted on January 8, 2014 and effective only on and after July 1, 2014 specifically Canon 2, Rule 2.9 involving an alleged administrative

exception to “ex parte communications” retroactively applies to decide whether all petitioner’s foregoing recusal proceedings in 2010 violated Pennsylvania Rules of Professional Conduct 3.1 (frivolous proceedings), 3.3(a)(1) (knowingly making false statement, material fact or law to a tribunal or failure to correct a false statement), 8.2(a) (a false or reckless statement as to the truth concerning qualifications or integrity of a judge, adjudicatory officer or public legal officer or candidate for election or appointment to judicial or legal office), 8.4(c) (dishonesty), 8.4(d) (professional misconduct prejudicial to the administration of justice. The Board’s 9/3/2019 recommended findings and report refused to decide whether petitioner’s foregoing recusal proceedings in 2010 pursuant to legislature’s exclusive statutory provisions under 77 P.S. 2504 involving pending contested Compensation proceedings before Bachman and Hagan violated foregoing Rules of Professional Conduct based entirely on findings and decision to retroactively apply foregoing 2.9 rule exception to prohibited ex parte communications involving Bachman, Hagan and Dombrowski effective only after 7/1/2014 without any evidence and clearly and admittedly has absolutely no application to foregoing recusal proceedings in 2010 or at any time including currently. App.1a-89a, (court’s fiat order; Board’s Recommendation), 112a-113a.

ODC never alleged in DB-7 letter Murphy’s extraordinary petitions at 385 MD 2010 and 935 MD 2010 involving Bachman, Hagan and Dombrowski violated any ethical rules including foregoing specific ethical rules. App.102a.

The DB-7 letter and amended petition filed 7 years later did not allege much less specifically allege

that petitioner ever accused Bachman, Dombrowski, Hagan or Meehan involving their alleged ex parte communications, proceedings and contacts *involved any fact in issue or the merits* of Wilson's pending compensation proceedings. App.102a, 115a. The state disciplinary proceedings never proved petitioner ever accused Bachman, Dombrowski, Hagan or Meehan involving their alleged ex parte communications, proceedings and contacts *involved any fact in issue or the merits* of Wilson's pending compensation proceedings.



REASONS FOR GRANTING CERTIORARI

Petitioner respectfully petitions this Honorable Court to grant certiorari where Third Circuit Appellate Court decided an important fundamental question affecting all attorneys practicing law in all federal courts throughout country including in particular Pennsylvania which clearly conflicts with all following relevant decisions and reciprocal disciplinary rules for all other United States Appellate Courts and District Courts prohibiting reciprocal discipline based on state disciplinary proceedings which are clearly contrary to this Court's seminal decision in *Selling v. Radford*, 243 U.S. 46 and all federal codified reciprocal disciplinary rules without notice or hearing, without any evidence and contrary to state disciplinary record and standard and scope of review involving appeals from District Court's reciprocal disciplinary decision in violation of petitioner's fundamental constitutional rights guaranteed under the First, Fifth, Sixth Amendments to the United States Constitution and following decisions. *See Caperton v.*

A.T. Massey Coal Company, 556 U.S. 868; *Selling v. Radford*, 243 U.S. 46; *In Re Ruffalo*, 390 U.S. 544; *Rogers v. Tennessee*, 532 U.S. 451; *Bouie v. City of Philadelphia*, 378 U.S. 347, 354; *Thread v. US*, 354 U.S. 278; *Tumey v. Ohio*, 273 U.S. 510; *Marks v. US*, 430 U.S. 88; *Matthews v. Eldridge*, 424 U.S. 319; *Moore v. Sims*, 442 U.S. 415; *Cleveland Board of Education v. Loudermill*, 470 U.S. 532; *Pennekamp v. Florida*, 328 U.S. 331, 353; *Times v. Sullivan*, 376 U.S. 254; *Landmark Communications Inc., v. Va.*, 435 U.S. 829; *In Re Primus*, 435 U.S. 412; *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1054; *Committee on Professional Ethics and Grievances of the Virgin Islands Bar Association v. Johnson*, 447 F.2d 169, 172-174 (3rd Cir. 1971); *In Re Abrams*, 521 F.2d 1094, 1102-1103; *Standing Committee on Discipline of the United States District Court v. Yagman*, 55 F.3d 1430; *In Re Surrick*, 338 F.3d 224 (3rd Cir. 2003), cert. den. 540 U.S. 1219; *In Re Kensington*, 368 F.3d 289 (3rd Cir. 2004); *City of Pittsburgh v. Simmons*, 729 F.2d 953 (3rd Cir 1984); *Portland Audobon Soc. v. Endangered Species Comm.*, 984 F.2d 1534 (9th Cir. 1993); *Stone v. F.D.I.C.*, 179 F.3d 1368 (Fed. Cir. 1999); *Com. v. Murray*, 83 A.3d 137 (Pa. 2013); *In Re: Larsen*, 616 A.2d 529 (Pa. 1992); *Municipal Publications v. Court of Common Pleas*, 489 A.2d 1286 (Pa. 1985); *M & D Autobody v. W.C.A.B.*, 599 A.2d 1016 (Pa. Comm. 1992); *Tindal v. W.C.A.B.*, 799 A.2d 219 (Pa. Commw. 1992), app. Den. LEXIS 64 Pa. 1992; *Roche v. Com. State Board of Funeral Directors*, 437 A.2d 797 (Pa. Comm. 1981); *In Re Deleon*, 902 A.2d 1027.

Since this Court's seminal decision in *Selling* all federal courts are expressly prohibited from imposing

reciprocal discipline where an intrinsic consideration limited entirely to state record demonstrates one of following infirmities: (1) that state procedure, from want of notice or opportunity to be heard, was wanting in due process; (2) that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on part of federal court that it could not, consistent with its duty, accept as final conclusion on that subject; or (3) that some other grave reason exists which should convince federal court that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon the court not to disbar except upon the conviction that, under the principles of right and justice, it is constrained so to do; (4) that the misconduct or other basis established for the discipline or prohibition is deemed by the federal court to warrant substantially different action. Whenever a federal court decides whether to impose reciprocal discipline based on state disciplinary proceedings "appropriate action" must always embody a proper application of governing legal precepts. If the federal court's action does not comply with *Selling* and codified rules no reciprocal discipline shall be imposed. The federal courts are expressly prohibited from effectively acting as an advocate but are limited to decide whether state disciplinary proceedings are flawed based entirely on an independent review of state disciplinary record. The foregoing decisions demand that notice of the exact and precise nature and theory of the alleged disciplinary violations be provided before commencement of the proceedings. *Selling*, 243 U.S. at 51. *In Re Surrick*, 338 F.3d 224, 229 (3d Cir 2003); *In Re Abrams*, 521 F2d 1094, 1102,

1103 relying and quoting from *In re Ruffalo* and *Byrd*; U.S.D.C. E.D. Pa. Loc. Civ. R. 83.6 (II)(D).

The Pennsylvania state disciplinary decision imposed a five year disciplinary suspension on petitioner because it expressly refused to decide whether admitted alleged off-record, undated, unrecorded, multiple, separate communications involving unelected Workers' Compensation judges with opposing counsel without presence of petitioner including via telephone from Bachman with opposing counsel, Dombrowski, through staff, Meehan, involving pending Workers' Compensation proceedings were "ex parte communications". The state disciplinary decision relied entirely on clearly erroneous unconstitutional conclusion that retroactive application of Pa. Supreme Court's newly enacted 2014 Judicial Code Rule 2.9 which is admittedly only applicable to elected judges provides "ex parte communications" from a court to counsel are only proper in certain circumstances which only involves elected judges "ex parte communications" for "administrative" purposes provided they do not deal with substantive matters or issues on the merits, where judge reasonably believes communications will not result in one party gaining a procedural or tactical advantage and where there is adequate notice to both sides". Therefore the state disciplinary decision specifically concluded that the calls by Meehan were not prohibited under 2014 Code of Judicial Conduct but administrative because there is no evidence that the subject calls included a discussion of the merits of case or any fact in issue only because petitioner used these communications to assert repeatedly that Bachman and Dombrowski and subsequently Hagan "had improper ex parte

communications about the merits of the case and have admitted that they had prohibited ex parte communications about the merits of the case". App. Disciplinary Board Report *id.* p. 31 F.F. 12, 13 App.41a, 68a-69a; District Court Opinion *Id.* 8. App.26a-27a; Third Circuit Opinion *Id.* App.7a-9a. Ultimately Third Circuit concluded if the recusal proceedings involved improper ex-partie communications/contact including in particular if found in the Workers' Compensation proceedings there would be no basis for any disciplinary proceedings as follows, "... if an improper ex-party contact was found to have occurred in the Workers' Compensation case, there would no longer be a basis for the disciplinary proceedings". App.3a, 10a.

Approximately 8 years later following all petitioner's removal proceedings, the entire state disciplinary record proceedings commencing on 10/22 through 10/26/2018 indisputably demonstrates the following facts: petitioner never alleged throughout all removal proceedings involving Bachman, Dombrowski and Hagan conducted ex parte communications discussing any fact in issue or the merits of the case; ODC never presented any evidence to establish petitioner accused Bachman, Hagan and Dombrowski conducted any "ex parte communications" discussing facts in issue or the merits of the case. ODC's 8/9/2012 DB-7 investigative notice letter never alleged Murphy's judicial removal proceedings involving Bachman and Dombrowski in Commonwealth Court at 385 MD 2010 and Bachman and Hagan, Dombrowski in Commonwealth Court at 935 MD 2010 violated any ethical rules whatsoever; 8/9/2012 ODC's DB-7 notice did not allege petitioner violated Pennsylvania Rule of Professional Conduct 8.2(a); ODC did not

allege much less present any evidence whatsoever Bachman, Dombrowski, Hagan relied on the non-existent newly enacted 2014 Pa. Judicial Code Rule 2.9 which was unknown involving their ex-parte communications involving pending Workers' Compensation proceeding; Bachman and Hagan repeatedly admitted that the subject telephone communications from Bachman through Meehan to Dombrowski involving alleged oral orders denying witness subpoenas precluding claimant, Wilson, from presenting evidence which were never written, dated, entered, docketed, or appealable clearly involved the merits of the pending Workers' Compensation case; Bachman admitted she does not give out her rulings, instructions, disposition of proceedings to parties or their counsel in pending Workers' Compensation proceedings over the telephone because that would be talking to one attorney over the phone when the other attorney is not present which clearly violates the ethical rules 77 P.S. 2504 (App.144a-145a); Bachman repeatedly admitted and/or deemed admitted violating 77 P.S. 2504(a)(1)-(3), (5)-(7), (13) record based on her failure to file any timely verified answer at No. 385 MD 2010 pursuant to *Atlantic Credit*; Bachman admitted and deemed admitted violating 77 P.S. 2504(a)(1)-(3), (5)-(7), (13) when she recused herself on 10/20/2010 pursuant to *M & D Autobody*; Hagan conducted multiple ex parte communications with Bachman including involving the entire Workers' Compensation record created by Bachman including involving pending recusal proceedings involving Bachman; Hagan conducted ex parte communications, contacts and proceedings with opposing counsel, Dombrowski, and destroyed three boxes of Wilson's Workers' Com-

pensation records transferred to him following Bachman's recusal!

The entire state disciplinary record indisputably demonstrates ODC stipulated and repeatedly admitted to Pa. Supreme Court and administrative authorities that only Code of Ethics to remove Workers' Compensation Judge was 77 P.S. 2504(a)(1)-(13) (b) pursuant to applicable law which is exclusively applicable to determine whether to remove Workers' Compensation judges pursuant to the Pennsylvania Constitution, separation of powers Article II Section 1 and all applicable law. *See Municipal, Tindal.* App.112a-113a.

The entire state disciplinary record indisputably demonstrates that the state disciplinary proceedings never rendered any findings and conclusions whatsoever that petitioner violated R.P.C. 3.1, 3.3(a)(1), 8.2(a), 8.4(c), 8.4(d) based on the clearly and admittedly inapplicable 2010 Pennsylvania Judicial Code Cannon 3(A)(4). App.1a-90a. Disciplinary Report and Recommendation *Id.* pages 1-48; 12/19/2019 Pennsylvania Supreme Court Order; District Court 11/29/2021 Opinion *Id.* p. 1-12; Third Circuit Opinion 7/18/2023 Opinion *Id.* 1-10.

After thirteen years for first time the Third Circuit decision decided that state disciplinary decision relying entirely on the retroactive application of the newly enacted 2014 Pennsylvania Judicial Code of Conduct Rule 2.9 which is clearly and admittedly inapplicable to remove Workers' Compensation judges rather than the existing exclusively and admittedly applicable Workers' Compensation Ethical Code 77 P.S. 2504 constituted constitutional error in violation of petitioner's foregoing constitutional rights

including due process. However the appellate court clearly erroneously decided the state disciplinary decision constituted harmless error because under applicable law in 2010 the “ex parte communications” including via phone involving Bachman and Dombrowski and subsequently Hagan without the presence of Petitioner was not “improper” under the 207 PA. Code Cannon 3(A)(4) (2010) promulgated in 1974. The court based its decision on the clearly erroneous reliance on a 1994 intermediate appellate case, *Mercy Reg'l Health System v. Department of Health*, 645 A.2d 924, 929 (Pa. Commw. 1994) decided prior to Pennsylvania Legislature’s enactment of the foregoing Workers’ Compensation Code 77 P.S. 2504 enacted in 1996 pursuant to Pennsylvania constitutional legislative power. Throughout entire disciplinary proceedings ODC repeatedly admitted provisions under 2504 are exclusively applicable to decide whether Workers’ Compensation judges’ actual or apparent impropriety raise a reasonable question mandating disqualification in pending Workers’ Compensation proceedings! *Mercy* did not and could not decide whether 2504 applied to remove an unelected administrative Workers’ Compensation judge which was not an issue because it had not yet been enacted and involved a separate and distinct inapplicable administrative rule under an entirely separate statutory health scheme and merely referred to the separate general term “ex parte” which refers to the common and approved usage as a communication between the decision-maker and one party outside of the record and where the other party does not have notice or opportunity to contest as a rationale to specifically decide that the administrative proceedings which subsequently included the

entire transcript of the off-the-record *ex parte* contact conflicted with the foregoing general definition involving only the term “*ex parte*” requiring the entire proceedings be vacated! *Mercy* did not and had no reason to consider the specific universal definition of the term “*ex parte communication*” expressly and specifically prohibited under 2504 as clearly defined under applicable Pennsylvania and federal law including specifically in the Third Circuit in 2010.

The only evidence throughout entire state disciplinary proceedings including from Nasuti, ODC’s investigator that admittedly an “*ex parte communication*” under applicable Pennsylvania law including under all Black’s Law Dictionaries including 2009 is “*ex parte communication. A communication between counsel and the court when opposing counsel is not present.*” App.112a-114a.

All Pennsylvania appellate and federal decisions including by Pennsylvania Supreme Court and the Third Circuit have specifically and repeatedly decided “*ex parte communications*” including as defined under Black’s Law Dictionary and applicable decisions are clearly either actually or apparently improper and prohibited which raises a reasonable question involving impartiality to seek removal which constitutes a violation of all ethical codes and decisions particularly in Pennsylvania. In *Com. v. Murray*, 83 A.3d 137 (Pa. 2013) quoting and relying on *Yohn* and BLACK’S LAW DICTIONARY (9th Edition 2009) “...an ex parte communication by definition, involves the inclusion of one party in a consultation with a judge over the exclusion of another. Accord BLACK’S LAW DICTIONARY (9th Ed 2009) defining an *ex parte communication* as

'a communication between counsel and the court when opposing counsel is not present".

In Re: Larsen, 616 A.2d 529 (Pa. 1992) specifically decided

"We find that such a [ex parte] tip violates the rule forbidding all attorneys (including judges and justices) to communicate with a judge regarding a case, outside of the presence of one or more of the parties or their attorneys, and that a recommendation of discipline would seem appropriate despite the absence of any improper motive for the improper ex parte communication.... While all ex parte communications with judges regarding cases pending before those judges, may be equally prohibited, all ex parte communications are not equally sanctionable".

Id. 532 Pa. at 384, 386.

In *Yohn v. Love*, 76 F. 3d 508, (3rd Cir. 1996) court specifically decided that "Black's Law Dictionary defines 'ex parte' proceeding as any 'judicial or quasi judicial hearing in which only one party is heard....' BLACK'S LAW DICTIONARY 576 (6th ed. 1990). Here, only one party, the Commonwealth, had the opportunity to participate in the telephone conversation, and the subject matter of the phone call went beyond what Yohn's counsel expected would be discussed. In our view, this was clearly an ex parte proceeding." *Yohn* specifically "reiterated that due process requires adequate, meaningful notice before any ex parte communication including disclosure of the specific issues and all the facts in order to rebut any ex parte communication relying on *In re Gault*, 387 U.S. 1, 33." *Gault* reiterated the fundamental requirement

necessary to constitutional notice is “Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must ‘set forth the alleged misconduct with particularity.’”

In *Portland* the Court reiterated the foregoing fundamental principle: “By definition, *ex parte* contacts cannot be addressed and rebutted through an adversarial discussion among parties... (citing cases).”

In *US v. Boyle*, 2022 U.S. DIST LEXIS 145088 U.S.D.C.E.D. PA the court again reiterated that BLACK’S LAW DICTIONARY (11th Ed. 2019) continues its longstanding definition of “*ex parte communication*” is a “a communication between counsel or a party and the court when opposing party is not present”.

Although it is undisputed that the 2010 Pennsylvania Judicial Code does not apply to remove a Workers’ Compensation judge nonetheless in an analogous circumstance the Court in *In Re Segal*, 173 A.3d 603 (Pa. 2017) involving an elected judge subject to the separate 2010 Judicial Code also reiterated judge’s “*ex parte communication*” without the presence of counsel involving pending case are not “authorized by law” but involve “improper *ex parte* communications” in violation of the Pennsylvania Judicial Code in effect in 2010 Cannon 3(A) (4) requiring removal from the bench.¹ See *In Re Roca*, 173

¹ 1974 Pennsylvania Judicial Code Cannon 3(A)(4) “judges should accord to all persons who are legally interested in a proceeding, or their lawyers, full right to be heard according to law, and, except as authorized by law, must not consider *ex parte* communications concerning a pending matter.”

A.3d 1176 (Pa. 2017) reiterating and incorporating the *Segal* decision.

In Re Kensington, 368 F.3d 289 (3rd Cir. 2004) quoting and relying on *City of Pittsburgh v. Simmons*, 729 F.2d 953 (3rd Cir 1984) removing judge based on ex parte communication with interested persons without the presence of counsel creating, at a minimum, the appearance of impropriety and partiality to any objective reasonable person under all the circumstances because any ex parte communication by definition is unrecorded and off-the-record and an anathema to the system of justice precisely recording “the exact words of counsel and the exact words and rulings of the court” verbatim creating an appearance of impropriety including in particular effectively prohibiting a fair adjudication including a meaningful appeal where there is no official certified record and therefore cannot “serve as a basis for adjudication” based on the federal Judicial Code 28 U.S.C. § 455(a).

“By definition, ex parte contacts cannot be addressed and rebutted through an adversarial discussion among the parties... (citing cases). Basic fairness requires that ex parte communications play no part in Committee adjudications, which involve high stakes for all the competing interests and concern issues of supreme national importance.... Behind-the-scenes contacts have no place in such a process. For the foregoing reasons we hold the Committee’s proceedings are subject to the ex parte communications ban of 5 U.S.C. § 557(d)(1).”

The Pennsylvania legislature expressly and specifically prohibit all “ex parte communications” without

any exceptions under 2504 including necessary to prevent actual or apparent impropriety and necessary to expeditiously adjudicate individual employees compensation and medical benefits and prevent delay arising from adjudicatory removal proceedings delaying adjudications depriving critical compensation and medical benefits to injured employees depending on compensation and medical benefits necessary to survive and where WCJ acts as fact finder and judge where adjudication is virtually unreviewable if there is any supporting evidence in the record.

Petitioner respectfully submits that after 13 years for first time appellate court clearly erred when it denied petitioner's reargument petition from Panel's decision affirming District Court's decision that District Court did not abuse its discretion to impose identical reciprocal discipline because Murphy did not carry his burden to establish state decision violated any codified Selling requirements based on Court's clearly erroneous findings and conclusions based on inapplicable Judicial Notice and clearly inapplicable 207 PA. Judicial Code and *Mercy* decision that undated, off-the-record, unrecorded multiple communications including via telephone communications from Bachman to Dombrowski through Meehan and subsequently Hagan without presence of Murphy involving pending workers' compensation proceedings were not "ex parte communications" under then-governing law because 207 Judicial Code Cannon 3(A)(4) 2010 stated "ex parte communications" were prohibited except as "authorized by law" and therefore not "improper" because Murphy allegedly had notice pursuant to alleged subsequent separate off-record, unrecorded telephone

call expressly denied by Meehan and opposing counsel's, Dombrowski's, subsequent alleged multiple hearsay letter admitted over objection involving only a completely separate and unrelated denial involving a prior *reconsideration request* which allegedly vacated a single previously served subpoena on Weimer which was clearly contrary to the alleged subjects admittedly discussed in the 2/18/2010 transcript involving multiple separate, undated, unwritten, undocketed, unappealable alleged oral orders which do not exist. App.1a-36a, 112-113a, 146a, 163a.

Petitioner respectfully submits court clearly erred for the first time after thirteen years concluding all Murphy's removal proceedings violated all ethical rules 3.1, 3.3(a)(1), 8.2(a), 8.4(c) and 8.4(d) because Workers' Compensation judges admitted communications with opposing counsel without presence of petitioner including via telephone communications were not improper and therefore state proceedings relying entirely on Rule 2.9 was harmless manifestly contrary to all repeated foregoing decisions by this Court under *Selling* and all federal circuit and district courts including specifically in the Third Circuit and specifically the foregoing Pennsylvania Supreme Court decisions specifically deciding that all ex parte communications are improper and prohibited under all ethical codes including the 207 PA Judicial Code Cannon 3(A)(4) and certainly the Workers' Compensation Code 77 P.S. 2504 without any exceptions!

Under the Federal Rules of Evidence 201 any federal court may only take Judicial Notice of adjudicative facts not subject to reasonable dispute and if the court takes Judicial Notice before notifying a party the party on request is entitled to be heard in order

to rebut the notice. Obviously the court's reference to Judicial Notice throughout including unrelated alleged separate investigative notice letter assertion involving a separate accusation without any facts in support effectively abandoned for eight years does not constitute an indisputable adjudicative fact under F.R.E.201. The court clearly erred thirteen years later in relying on Judicial Notice involving an alleged DB-7 investigative notice letter admittedly not included in the state disciplinary records and refusing petitioner the opportunity to rebut this alleged judicial notice contrary to his fundamental due process right under *Selling* and all the foregoing cases involving legal assertions without any facts in an unrelated separate investigative letter.

When a procedural due process violation has occurred because of ex parte communications, such a violation is not subject to the harmless error test because it involves structural error involving due process unfairness. See *Tumey, Stone v. F.D.I.C.*, 179 F3d 1368 (3d Cir. 1999). Petitioner submits the court decision 13 years later for first time relying on Judicial Notice and a clearly admittedly inapplicable 207 PA Code Judicial Code Cannon 3 (A) (4) and an inapplicable *Mercy* case rather than foregoing applicable Pennsylvania Supreme Court and all federal decisions without notice and an opportunity to be heard in violation of petitioner's constitutional rights and this Court's decision in *Selling* and all the foregoing decisions including codified rules clearly constitutes unfairness involving structural error not subject to a harmless error analysis.

Moreover *Yohn* reiterated correct harmless error inquiry is whether error has substantial influence on

decision despite sufficient evidence to support result apart from error. Obviously state disciplinary decision refused to decide whether all alleged "communications" were "ex parte communications" based entirely on admittedly inapplicable Rule 2.9 which clearly not only had a substantial influence but ultimate influence as the linchpin (*See* Third Circuit's Opinion at App.10a) to impose state disciplinary punishment particularly where admittedly it was undisputed that 2504 was exclusively applicable to decide removal proceedings where all foregoing applicable Pennsylvania decisions clearly prohibited all ex parte communications between judges and opposing counsel without the presence of counsel as improper raising a reasonable question to disqualify based on actual or apparent misconduct! There was no prior notice, hearing or any evidence whatsoever involving 207 PA Code involving state disciplinary proceedings relied upon by appellate court for first time thirteen years later to impose identical state reciprocal discipline without any notice or hearing or affording petitioner a hearing and clearly without any evidence and manifestly contrary to limited standard and scope of review under *Selling* and Codified *Selling Rules* depriving petitioner of his fundamental rights under the First, Fifth, Sixth Amendments of the United States Constitution.

Petitioner respectfully submits that the appellate court's decision for the first time relying on the admittedly inapplicable Pennsylvania Judicial Code 2010 Cannon 3(A)(4) and the completely inapplicable *Mercy* case and Judicial Notice and the Harmless Error Doctrine thirteen years later where the state disciplinary decision as well as the District Court did not and shall not rely on Pennsylvania Judicial Code

2010 Cannon 3(A)(4) including incomplete and inaccurate records in the unrelated District Court in the action captioned *Murphy v. O.D.C.*, 2019 WL 4752059 (E.D. PA., *aff'd.* 810 F. App's 89 (3d Cir. 2020) including a separate and distinct investigative notice without any specific facts or circumstances allegedly notifying Murphy O.D.C. was considering unspecified actions violated P.R.P.C. 8.2(a) and alleged completely inaccurate Judicial Notice involving state disciplinary deferment over petitioner's repeated strenuous objections which are in the state disciplinary records involving clear factual and legal errors without evidence, without notice and without affording petitioner the opportunity to respond involving imposition of identical federal reciprocal discipline on petitioner manifestly violates petitioner's fundamental constitutional rights guaranteed under the 1st, 5th, 6th Amendments and all the foregoing decisions.

The Third Circuit court specifically acknowledged that if the then pending Workers' Compensation proceedings determined that an improper *ex parte* contact occurred in the Workers' compensation proceedings "there would no longer be a basis for the disciplinary proceedings." *id.* (App.3a, 10a). It is indisputable the state disciplinary record clearly and convincingly demonstrated repeated continual, evolving, multiple, undated, off-record, unrecorded, "ex parte communications" prohibited under exclusively applicable 2504(1)-(3), (5)-(7), (13) raising a reasonable question to seek to disqualify Bachman and Hagan from pending compensation proceedings to prevent waiver and a fair hearing pursuant to Wilson and petitioner's fundamental constitutional rights guaranteed under First, Fifth, Sixth and

Fourteenth Amendments and all foregoing decisions.
Caperton, Selling, Murray, Yohn, Tumey, inter alia.

In *Matthews v. Eldridge*, 424 U.S. 319 court reiterated fundamental requirement of due process is opportunity to be heard at a meaningful time and in a meaningful manner. Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Due process is flexible and calls for such procedural protections as particular situation demands. Accordingly, resolution of the issue whether administrative procedures are constitutionally sufficient requires analysis of governmental and private interests that are affected. More precisely, identification of specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Matthews*, 333-335; *Moore*, 432; *Roche*; *In Re Deleon*; *Kelly v. R.R. Retirement Board*, 625 F.2d 486 (3d Cir. 1980)

As a result of Commonwealth Court's orders mooting Wilson's petitions for review at 385 MD 2010 and 935 MD 2010 petitioner was precluded from contemporaneously determining full extent, nature, content and parties involving Bachman, Hagan and Dombrowski admitted off-record, unrecorded ex parte communications in pending contested Workers' Compensation proceedings before them which violate 77

P.S. 2504 including based on available discovery proceedings which are not available in subsequent disciplinary proceedings. Petitioner respectfully submits disciplinary proceedings against petitioner pursuant to amended petition filed 7/27/2017 were unconstitutionally and unfairly and prejudicially delayed for approximately 8 years contrary to Murphy's fundamental constitutional rights to meaningful fair, timely notice and opportunity to be heard involving state disciplinary administrative proceedings involving alleged ethical violations occurring 8 years earlier in 2010.

ODC continually delayed disposition of disciplinary proceedings against petitioner during last approximate 8 years over petitioner's repeated objections causing continuing actual irreparable prejudice to petitioner to defend and/or mitigate alleged ethical violations against him. The foregoing decisions have repeatedly and specifically decided that prejudicial delay in conducting a state hearing including disciplinary proceedings clearly violates constitutional rights under the First, Fifth, Sixth and Fourteenth Amendments entitling petitioner to a timely, meaningful hearing including a speedy disposition of the alleged ethical violations. *Roche* vacated the decision suspending the funeral director's license because the Court in *Roche* specifically decided that, at a minimum, the delay of 4 years is presumed to be prejudicial. *Kelly* reiterated administrative proceedings undertaken by an agency contrary to its regulations is illegal and of no effect holding that three-year-and-nine-month delay in appeal of disability benefits determination violated due process. *In Re Deleon*, the Pennsylvania Judicial Conduct Board that whenever there is a lengthy delay

540 days prejudice must be presumed and dismissed disciplinary proceedings against the judge!

All ODC's critical witnesses including Bachman, Hagan, Dombrowski, Meehan and investigator Nasuti admittedly lacked critical material present recollection of all the information, records, statements, communications, instructions involving petitioner's alleged ethical violations occurring in 2010. ODC never identified or produced Nasuti's original legal tablet from which his 8/9/2012 memorandum statement from Bachman was produced 8 years later including the critical interlineated date, identity and contents of her statement. ODC admitted that it cannot attest to the accuracy and completeness of their disciplinary records and files which Murphy repeatedly subpoenaed. ODC and the Master and the Board have not provided to the Pennsylvania Supreme Court the full, true, complete and accurate original certified record including but not limited to ODC allegedly privileged Exhibits 34 (1-44) and withheld these allegedly privileged documents which involves all ODC witness statements, notes, memos and reports thereof including the critical statements from Meehan, Bachman, Dombrowski, Hagan and Mr. Howell whose information and statements to ODC including Nasuti form the basis of original ODC disciplinary petitions prepared by Nasuti and subsequently approved by ODC albeit never filed as well as ODC's original and amended disciplinary petition filed 7/27/2017 including paragraphs 5-45. App.102a-129a.

ODC has never identified or produced the written instructions from Meehan involving Bachman's alleged instructions to her which are the subject of the foregoing 2/18/2010 transcript which she immedi-

ately recorded in the compensation file necessary to insure that the alleged instructions were properly communicated. The claimant, Wilson, is deceased regarding the ex parte communications to her family by Hagan. Mr. Touchstone is deceased who would have testified regarding ex parte communications involving Bachman, Hagan and Dombrowski. ODC has not searched, learned, identified and produced as soon as possible all favorable evidence including all statements, notes, memos and reports from all witnesses including ODC witnesses, Bachman, Hagan, Meehan, Dombrowski and Howell upon which ODC issued the DB-7 letter and original and amended disciplinary petitions against petitioner including prepared by Nasuti identified as part of alleged privilege documents, ODC Ex. 34, *inter alia*. Virtually the entire legal counsel representing ODC admittedly withheld Bachman's statement for over 8 years and repeatedly lied under oath specifically alleging all statements, notes and memoranda from ODC witnesses were timely produced proven to be false resulting in a mistrial. App.5a, fn. 6.

The foregoing administrative rules and decisions including specifically 85.10 is a Rule of Repose absolutely prohibiting the Board and ODC from entertaining any alleged ethical violations occurring more than 4 years prior to filing their complaint, *i.e.* amended disciplinary petition filed 7/27/2017 superseding the original disciplinary petition filed a few months earlier 12/16/2016. The removal Workers' Compensation proceedings involving Bachman and Hagan were dismissed as moot in 2010 and 2011 after the Commonwealth Court denied imposing any sanctions against petitioner based on standards identical to the

ethical standards which are the subject of the state disciplinary proceedings. The remaining Workers' Compensation proceedings simply did not involve any ex parte communications based on Commonwealth Court's foregoing decisions which would decide whether any communications were ex parte communications prohibited under 2504. Petitioner repeatedly objected to deferring the state disciplinary proceedings which could serve no useful purpose whatsoever other than to prejudicially delay petitioner's right to a meaningful notice and opportunity to be heard because the Workers' Compensation proceedings could not and would not decide the disciplinary proceedings against petitioner which is exclusively within the jurisdiction of the Pennsylvania Supreme Court through the administrative authorities involving Pennsylvania Disciplinary Board and ODC! The administrative disciplinary proceedings including the investigation were not expeditiously completed for approximately 7 years and the superseding amended petition completely changed the alleged facts and alleged violation of Pa. R.P.C. 8.2(a) which were the subject of the DB-7 investigative notice. The 2014 Judicial Code was not enacted until January 8, 2014 after the Court vacated the then-existing prior applicable 2010 Judicial Code and the 2014 Code did not exist in 2010 and would not have been available had ODC timely proceeded to determine whether Murphy violated any ethical rules pursuant to 77 P.S. 2504 and applicable law.

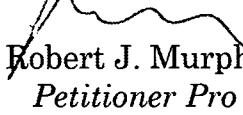
For over 7 years the administrative disciplinary authorities intentionally delayed the disciplinary proceedings without conducting any proceedings while simultaneously withholding all information, records and statements while petitioner had no capacity or

forbidden intrusion on the field of free expression. A federal court is compelled to examine for itself the statements in issue and the circumstances under which they were made whether they are of a character protected under the principles of U.S. Const. amend. I, as adopted by the Due Process Clause of the U.S. Const. amend. XIV. Where record does not support conclusion petitioner knew or reasonably should have known his attorney speech challenging the state's power created a substantial likelihood of material prejudice in pending legal proceedings lies at the very center of the protections afforded under First and Fourteenth Amendments which clearly prohibits a state from imposing disciplinary punishment on an attorney and federal courts are not bound by state disciplinary decisions. *Gentile v. State Bar of Nevada*, 501 U.S. 1030 *Id.* 1033-1059. In *In re Kendall*, 712 F.3d 814 collecting and quoting cases including *Gentile* and *Pennekamp* applied same standards in *Gentile* to reverse Virgin Island's judge's contempt proceedings involving his judicial opinions based on expressive free speech analysis involving judicial proceedings.

Petitioner was compelled to pursue removal proceedings based entirely on the underlying cumulative, evolving, circumstances, facts and stated admissions exclusively disclosed by Bachman, Dombrowski and Hagan which clearly violated workers' compensation removal statute and applicable rules and all foregoing Pennsylvania decisions exclusively involving their stated admissions which in petitioner's opinion based on his objective reasonable due diligence involving Hagan, Dombrowski and Bachman's exclusive disclosed stated admissions throughout entire proceedings clearly violate the mandatory admittedly exclusively applicable

removal workers' compensation statute 77 P.S. 2504 and subdivisions prohibiting "ex parte communications" without exceptions manifesting impropriety or, at a minimum, appearance of impropriety necessary to prevent waiver and protect Wilson's fundamental constitutional right to fair and impartial proceeding and appeal pursuant to Wilson and Murphy's fundamental rights guaranteed under the 1st, 5th, 6th and 14th Amendments to United States Constitution and all decisions which clearly did not violate any foregoing Pennsylvania ethical rules R.P.C. 3.1, 3.3(a)(1), 8.2(a), 8.4(c), (d) involving disclosed opinions based on truthful underlying facts and stated admissions from Bachman, Hagen and Dombrowski. Under the circumstances Murphy respectfully submits appellate court clearly erred to impose identical reciprocal discipline contrary to all the foregoing decisions including the seminal Selling codified requirements.

Respectfully submitted,


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