

THIRD CIRCUIT COURT OF APPEALS

MEGHAN M. KELLY,)
) Case No 21-3198
) Case No. 22-2079
 v.)
PATRICIA B. SWARTZ, et. al.)

Appellant Meghan Kelly’s Petition for a Panel Rehearing

Appellant Meghan Kelly’s petition for a panel rehearing under Fed.R.App.P. Rule 40 of this Court’s Order and opinion on 4/20/2023, at Third Circuit Docket Items (hereinafter “3DI”) 3DI-181-182, and aver.

1. The Court abused its discretion by dismissing my appeal in part as moot, since the issue of enjoining an unlawful proceeding is capable of repetition yet evading review, and the Court commits a clear error of law, of fact, creating manifest injustice.

2. The Court abused its discretion by affirming the District Court’s judgments at District Court Docket Item Number (Hereinafter “DI”) DI-16-17, DI-30-31, DI-59-60.

3. The District Court and the Third Circuit Panel (collectively and individually also referred herein as “Court”) abused its discretion in affirming the District Court judgements. I showed availability of new evidence, clear error of law, clear error of fact causing manifest injustice requiring the orders below be vacated and the case be remanded to the District Court. Moreover, even without the new evidence contained in the motions of reconsideration and other motions the Court errs in affirming the judgments below. DI-2-16.

4. The Court overlooked the additional facts I alleged below showing violations of my 1st Amendment religious beliefs, 6th Amendment right to self-represent, 14th Amend. procedural due process violations, violations of Equal Protections, and

specific facts showing lack of adequate notice, denial of asserted rights, denial of fair meaningful opportunity to be heard, to call witnesses, to cross examine my suspected accusers, to prevent evidence in my favor, additional conduct causing emotional distress manifesting in the shingles, the state's elimination of evidence in my favor and other voluminous evidence on the record below, including in my motions for a reconsideration. DI-14, DI-20 through DI-24, DI 29, DI-34 through DI-37, DI-39 through DI-44, DI-47 through DI58, and additional docket items after the Order at DI-60. This new and additional evidence contained in DI-14 through DI-58 must not be ignored. It is part of the record on appeal. The Court also erred by ignoring my challenges to state rules. See DI 58, for one example. I met the standard for reconsideration.

5. As an example in my First Motion for reargument and the amendments thereto, I discussed the State's violations relating to appointment of counsel. I immediately informed the state court I declined representation. I faced foreseeable emotional distress at violating my beliefs in Jesus by such appointment over my objection. Jesus teaches us to let the holy spirit to be our advocate when we are brought to the courts for our religious beliefs. The fact I fought hard to fire the counsel who was removed less than two weeks before the improperly scheduled hearing date, does not remove the Defendants' and the Delaware Supreme Court's violation of my First Amendment right to religious belief and exercise of belief and Sixth Amendment right to self-representation, to opportunity to call witness and other rights applicable to the state pursuant to the 1st, 6th and 14th Amend.

6. The US Supreme Court in *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) held,

“Sixth Amendment does not provide merely that defense shall be made for accused but grants to accused personally the right to make a defense; right to self-representation to make one's own defense personally is necessarily implied by structure of the amendment.” U.S.C.A.Const. Amend.”

7. The Delaware Disciplinary procedure was so lacking in notice or opportunity to be heard before the Delaware original disciplinary proceeding as to constitute a deprivation of due process in the Delaware form. There was such an infirmity of proof as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion by the state court.

8. The Court refused to give me pleadings in a case against me to conceal the fact it denied me the opportunity to be heard in objecting to the appointment of counsel, Number 541. I am entitled to records used against me as a party in a proceeding. I am entitled to see if my pleadings were on the record or if I was denied an opportunity to be heard in contravention to 1st and 14th Due Process with disparate treatment based on religious-political belief and poverty. *US Amend I, XIV. See, N. Jersey Media Grp. Inc. v. United States*, 836 F.3d 421, 434 (3d Cir. 2016).

9. The lawyer Disciplinary proceedings before the Defendants and Delaware Supreme Court deprived me of a meaningful opportunity to be heard, the opportunity to prepare, call witness, receive adequate notice, the right to self-represent, to present evidence without the State forum's collusion to conceal evidence and other vitiations of my asserted, not waived Constitutional protections and rights in the Delaware Disciplinary Proceeding. *Greene v. McElroy*, 360 U.S. 474, 475 (1959) (“this Court will not hold that a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted and cross-examined”).

10. The US Supreme Court further held, “It is accused, not counsel, who must be informed of nature and cause of accusation, who must be confronted with witnesses against him, and who must be accorded compulsory process for obtaining witnesses in his favor. U.S. Const. Amend. 6.” *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). I was denied the right of notice, opportunity to confront and right other rights. The Court erred in ignoring these denials contained in my motions for reargument and other motions below.

11. The State denied me of the meaningful opportunity to litigate the question of subject-matter jurisdiction in the sham proceeding against me, and thus I may reopen that question in a collateral attack based on adverse judgment. This Court has not allowed me the opportunity to present the facts to show this. I must be afforded notice and the opportunity to be heard under the 5Th Amendment applicable to the federal courts to prevent unconstitutional vitiation of rights by this Court. US Amend I, V.

12. I incorporate herein by reference in its entirety along with the pleadings referred therein 3DI-98, the memory stick referred to at DI-58, and the District Court items DI-62 to DI-148 since this Court appeared to consider the additional Orders at DI-106, DI-111. The Court errs as a matter of law and as a matter of fact creating manifest injustice against me by ignoring the legal arguments, claims and additional facts on the record below. Id.

13. The Court errs as a matter of law for not considering my motion to withdraw my motion to amend the complaint at DI 43, my additional motions to amend the complaint as a matter of right to include additional claims, facts, foreseeable harm and additional information discovered and arising in the course of this litigation,

including but not limited to items in DI-43, DI-58, DI 69-75, DI-77, DI-81, DI-85-87. DI 95.

14. The Court abused its discretion in denying me the right to amend the complaint as a matter of right, despite the lower Court not ruling on my motion to amend which I withdrew and reserved the right to amend as a matter of right prior to the Order at DI 60, (DI 58) and more specifically after the order when the case is remanded DI 43, DI 58, DI 69 through 81.

15. My claims relate not only to my petitions in Kelly v Trump but also First Amendment violations of my right to petition applicable to the state pursuant to the 14th Amendment regarding petitions for bar dues. DI 2-4, 3DI 74. Should this case be dismissed the statute of limitations would foreclose me an opportunity to assert my claims anywhere in the only forum which may offer relief, the District Court. This Court was apprised of the Delaware Supreme Court's collusion in Kelly v Trump and the DE Disciplinary proceeding, and my claims for damages, nominal relief and equitable relief other than enjoining the disciplinary proceeding. DI 43, DI 58, 3DI-6 page 3 through 11, 3DI-26 through 3DI-29, 3DI-31-32, 3DI 36 through 3DI 46, 3DI 51 through 3DI 62, 3DI-68, 3DI-69, 3DI-71-3DI-76, 3DI-83-84, 3DI-93, 3DI-95 through 3DI-99, 3DI-103-107, 3DI-119-3DI-198; See, Reed v. Goertz, No. 21-442, at *5 (Apr. 19, 2023)("Ex parte Young doctrine allows suits like Reed's for declaratory or injunctive relief against state officers in their official capacities.") Id at 6-7 and 24 (Rocker-Feldman and 28 USC 1257 do not prohibit violations of procedural due process claims); See, Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989).

16. Further whether Rooker-Feldman applies to claims I have not yet made is not ripe on appeal. The District Court did not review the merits of my claims. This appeal is limited to the improvident dismissal under Younger, and denial of my asserted right to amend the complaint once as a matter of right. The claims if accepted as pled show independent federal claims I must be allowed to argue before preemptive denial, including but not limited to void or voidable subject matter jurisdiction of the Delaware forum. US Amend V. I also seek to amend the complaint to include a number of new claims too numerous to outline that I must be afforded the opportunity to be heard on before being preemptively denied in violation of the US Amend V opportunity to be heard, including but not limited to assertions that DE Disciplinary rules are unconstitutional per se and some as applied which are not prohibited by the Rooker-Feldman doctrine. See, *Parkview Assoc. Partnership v. City of Lebanon*, 225 F.3d 321, 327-28 (3d Cir. 2000); *Skinner v. Switzer*, 562 U.S. 521, 532 (2011); Id at 33 n 10 (“The Court further observed in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 292–293, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005), that “[w]hen there is parallel state and federal litigation,” state preclusion law may become decisive, but “[p]reclusion ... is not a jurisdictional matter.””).

17. This Court errs in finding no legal bar in presenting my claims before the state forum. The Disciplinary proceeding forbids asserting my claims for damages, nominal relief and equitable relief against the Defendants and State court under the state disciplinary proceeding. The proceeding is limited in subject matter jurisdiction under Del. Disc. Rule 1(a), 5, 10. Claims for damages, nominal damages and equitable relief are prohibited. See, *In re a Member of the Bar of the Supreme Court, of the State Enna*,

971 A.2d 110, 125 (Del. 2009), regarding limited jurisdiction. Moreover, even if the State Court entertained my claims, my procedural due process rights are violated by a partial, unfair, biased forum. US Amend I, XIV. The Federal Forum is the only forum which has jurisdiction over my claims. The Supreme Court had no jurisdiction to resolve claims for damages, nominal relief and equitable relief against the state and itself in a disciplinary proceeding. This creates a bar. The lack of personal jurisdiction over the Delaware Supreme Court members which violates the 14th Amendment also places a bar to my claims in the state proceeding. Allowing the State Court to rule in its own favor in a partial forum offends the notions of fairness and jurisdiction apparently may be upheld under the Fourteenth Amendment Due process Clause applicable to the Defendants and the state Court. The Delaware Supreme Court does not have personal jurisdiction over its own alleged Constitutional and federal violations wherein it is the judge and party. *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694 702-03 (1982) ("The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause. US Amend XIV. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. Thus, the test for personal jurisdiction requires that "the maintenance of the suit . . . not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

18. Younger does not require abstention to my case. The state case has concluded. There is no bar. Even if there was a case: 1. Younger does not apply to my claims for damages and nominal relief and different equitable relief I sought below. DI 2-

43, 58. The Court erred by dismissing instead of staying the case 2. Younger does not apply to federal constitutional claims or ancillary claims I had no opportunity to assert on the state forum, including but not limited to 42 U.S.C.A. §§§ 1983, 1985, 1988, my defamation claims, claims for emotional distress, damages and nominal relief for First Amendment claims and the additional claims I should be afforded an opportunity to include in an amended complaint, which I do not have the space or time to outline at this point as improvident. 3. Bad faith, harassment, or extraordinary circumstances have arisen in my case that make abstention inappropriate including the Delaware Supreme Courts collusion with the Defendants by secretly knowingly concealing two material pieces of evidence necessary for my defense, and preventing their discovery to fix the outcome in bad faith. In addition the State Court incited the disciplinary proceeding for improper purposes. DI 58, DI 77. The Court selectively discriminated against me, compelled me to violate my asserted religious right to religious belief and self-representation causing emotional distress so great a police man checked on me, denied me of sufficient notice, denied meaningful opportunity to be heard, ignored my motions to subpoena witnesses and perform discovery. (DI 20-24, DI 34-39, DI 41). 4. The Courts erred in denying my right to amend the complaint as a matter of right to amend the complaint to include procedural and substantive due process violations, equal protections violations, 6th Amendment violations, Constitutional challenges to the Delaware Rules of Disciplinary procedure, ADA physical disability claims and other conduct and claims that required I add the Delaware Supreme Court and the members to my complaint on January 24, 2022. (DI 43, 3DI 98).

19. I must be granted leave to amend the complaint as a matter of right under FRCP(a), to correct any defects or arguments relating to a Younger dismissal to prevent manifest injustice that shocks the conscience in terms of loss of fundamental rights, and government punishment for the exercise of my rights, including the right to petition. See, *Mayle v. Felix*, 545 U.S. 644, 663 (2005). The Supreme Court in *Foman v. Davis*, 371 U.S. 178, 182 (1962) held the “outright refusal to grant the leave [to amend the complaint] without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.” This Court abuses its discretion by denying my asserted right to amend the complaint. 3DI 98.

20. The new and additional facts and arguments contained in my motions and pleadings must be considered to prevent abuse of discretion, clear error of law, clear error of fact and to prevent manifest injustice against me by denying me the opportunity to be heard to safeguard my exercise of First Amendment rights, creating loss of First Amendment rights and my interest in my ability to work in my profession

21. I respectfully request this Court vacate the District-Order, and remand the case back to the Delaware District Court for review, granting leave to amend the complaint in the amount of 30 days from the date of the order or longer period to allow me to consult with opposing counsel in good faith since I believe the courts and the government are in peril. I believe the courts are our hope of a hero to prevent or reverse an economic crash, which appears to be designed to eliminate the government down the line. I hope the court may use this case to safeguard the Constitutional limits which preserve these United States from demise.

22. The Third Circuit and District Court (hereinafter “Courts”) overlooked the fact I invoked my right to amend the complaint once as a matter of right under FRCP. Though the Court argues my plea to enjoin the case against me as moot. This is capable of repetition and evading review, and has created manifest injustice against me as well as other lawyers and professionals who have legitimate claims for which they should not be punished for making in violation of the First Amendment right to petition, merely because the claims are against the government or government agents. This disparately favors government agents in violation of the Equal protections Clause in their private and official capacity, making it impossible to correct misconduct by just decrees.

23. Court overlooked the fact I have colorable claims against the Delaware Supreme Court and its members in both their professional and personal capacity, under an Ex Parte Young theory as well as equitable claims for prospective and other relief. In *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908).

24. Delaware brought a disciplinary case against me to conceal and cover up its violation of federal laws and my Constitutional rights, and to punish me for the exercise of Constitutional rights including but not limited to the First Amendment right to petition the courts for disparate treatment by its own members based on religious-political-or poverty animus and procedural due process violations. DI 2-4 My religious beliefs in Jesus outlined in my petitions are the source of Defendants adjudication of disability. They indicate my religious beliefs confuse Defendants. They cite my belief in the Bible as a source of the disciplinary proceeding at Number 7 of the petition. They cite my protected private speech outlined in my private petitions outlining my private

religious beliefs and exercise of religious beliefs in the letter dated August 23, 2023 as the source of concern of disability.

25. The baseless allegations the panel cites, that I allegedly “lack competence to practice law and endanger prospective clients, the public and the orderly administration of justice” is to cover up my petitions to the courts for the governments’ violation of the Constitution and federal law, including its own violations. The State Court intentionally secretly sealed my petitions in violation of my First Amendment right to petition to conceal material evidence in my favor to cover up its own violations of my procedural and substantive due process rights. This concealment is also a procedural due process violation.

26. The Court asserts my legitimate arguments are not cogent, in order to cover up its own misconduct, while further covering up State misconduct by adjudicating me disabled. It may not be convenient to uphold justice. It is easier to orderly administer standardized injustice than to uphold the 1st Amendment applicable to the State via the 14th to accommodate individuals whose religious beliefs or arguments are not standardized to the common norms. Nevertheless, the asserted Constitutional limits supersede eliminating freedom for convenience, productivity and administration of court business. Freedoms are not for sale, or none are free. We are for sale products to bargain favor with foreign and private government partners. My license to practice law was not exchanged for the freedom to belief in Jesus Christ or other Constitutional liberties.

27. This Appellate Court improvidently cites to the mere allegations that my religious beliefs in the petitions are not clear, unfocused [to the Defendants’ aim] and confused the Defendants. My religious beliefs need not be clear, nor do they need to

understand them for me to assert my First Amendment right to genuine religious belief without a government incited substantial burden but for the exercise of religious belief and other First Amendment rights. Moreover, they are relevant to this matter, Kelly v Trump, and the disciplinary proceedings even if Defendants do not find my religious belief in Jesus Christ not money as savior and God reasonable. *Matthew 6:24*.

28. This Court improvidently cites the false allegation my pleadings “were non-complaint with the Court rules.” There is no rule I violated during Kelly v Trump, or the Delaware Disciplinary proceeding.

29. Moreover, the Defendants were non-compliant with rules, preemptive federal law and the preemptive Constitution limits which restrain their conduct within the purview of superseding law. The allegation my defense of religious beliefs contained in my speech “were confusing and unfocused and irrelevant to the issues at hand” are to cover up the very real issues that were relevant to whether the disability proceeding was brought in retaliation for my exercise of the right to petition the State over the course of about 20 years, and my right to private religious-political belief, private-religious exercise of belief, private right to associate based on religious-political belief without being restrained by a mere license to practice law, and right to equal protections, procedural due process and to be free from collusion to intimidate me to cause me to withdraw my petitions in Kelly v Trump in violation of 1985 and 1988, the First Amendment applicable to the state pursuant to the 14th Amendment, other federal law, and state claims for intentional or reckless infliction of emotional distress, defamation and other claims.

30. Defendants made a motion by short letter despite my objection to appointed counsel in violation of my First Amendment right to petition. I certainly was permitted to draft a letter, dated December 18, 2022. Albeit, I also drafted motions. DI 1-DI 58.

31. This Court errs as a matter of law and as a matter of fact by claiming the “Delaware Supreme Court's order adjusting her status, claiming she was denied notice, discovery, an impartial judge, an ability to present evidence and witnesses, and the like are beyond the scope of this appeal.” I asserted these claims in legal and factual arguments below, including in my motions of reargument. They are material to the District Court’s clear error of fact, clear error of law and this appeal to prevent manifest injustice against me, and others by creating case law which will chill the exercise of professionals’ religious beliefs under the threat they may no longer buy and sell and die of want.

32. Even if the Court finds the fact my poverty, limited access to research, and poor typing skills create a burden to the Court. The Court has unclean hands as I asserted stays in order to gain time needed to research, draft and proofread petitions without waiver of rights. Moreover, I have not practiced law in years. If this Court finds me disabled, it does not grant the State a right to eliminate fundamental rights of every claimant they deem disabled or dumb, including me.

33. This case presents a unique important Constitutional question as to whether a disciplinary proceeding brought to punish petitions against the government, in violation of the US Amend I right to petition, and right to speech, on subject matter grounds, and the Equal Protections Clause is subject to voidability. Defendants seek to

discipline Colleague Abbott for petitioning against the County and Courts. Are the courts above the law, or will this Court rule judges may be corrected within the purview of the Constitutional limits 1. Cases and controversies and impeachment, without vindictive retribution for correction.

Dated June 3, 2023

Respectfully submitted,

/s/Meghan Kelly

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