

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 21-3198 & 22-2079

MEGHAN M. KELLY,
Appellant

v.

DISCIPLINARY COUNSEL PATRICIA B. SWARTZ; DISCIPLINARY COUNSEL
KATHLEEN M. VAVALA; DAVID A. WHITE, CHIEF DISCIPLINARY COUNSEL;
OFFICE DISCIPLINARY COUNSEL; BOARD ON PROFESSIONAL
RESPONSIBILITY OF THE SUPREME COURT OF THE STATE OF DELAWARE;
PRELIMINARY INVESTIGATORY COMMITTEE; ATTORNEY GENERAL
DELAWARE

On Appeal from the United States District Court
for the District of Delaware
(District Court No. 1-21-cv-01490)
District Judge: Hon. Colm F. Connolly

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
April 11, 2023

Before: CHAGARES, Chief Judge, SCIRICA and AMBRO, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of Delaware and was submitted on April 11, 2023, pursuant to Third Circuit L.A.R. 34.1(a).

On consideration whereof, it is now hereby ADJUDGED and ORDERED that the appeal is hereby DISMISSED IN PART as MOOT and the remainder of the District Court's judgment entered November 2, 2021, is hereby AFFIRMED. Additionally, the District Court's other orders, including its post-judgment orders entered December 22, 2021, and April 26, 2022, are hereby AFFIRMED. All of the above in accordance with the opinion of this Court. Each party to bear its own costs.

ATTEST:

Patricia S. Dodszuweit



DATE: April 20, 2023

Certified ~~as a~~ copy and issued in lieu
of a formal mandate on June 30, 2023

Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 21-3198 & 22-2079

MEGHAN M. KELLY,
Appellant

v.

DISCIPLINARY COUNSEL PATRICIA B. SWARTZ; DISCIPLINARY COUNSEL
KATHLEEN M. VAVALA; DAVID A. WHITE, CHIEF DISCIPLINARY COUNSEL;
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April 11, 2023

Before: CHAGARES, Chief Judge, SCIRICA and AMBRO, Circuit Judges

(Filed: April 20, 2023)

OPINION*

CHAGARES, Chief Judge.

Meghan Kelly, a Delaware attorney, filed a complaint for injunctive and related relief to halt a state proceeding to adjust her bar status to “disability inactive” (the “disability proceeding”). The disability proceeding has since concluded. For the reasons that follow, we will dismiss the appeal in part as moot and affirm in part the District Court’s judgment dismissing the complaint. We also will affirm the District Court’s other orders, including its post-judgment orders denying reconsideration.

I.¹

Delaware’s Office of Disciplinary Counsel (“ODC”)² informed Kelly in August 2021 that it had concerns about her fitness to practice law and requested that she voluntarily submit to a mental health examination. Kelly refused an examination. The ODC then informed her that it would petition the Preliminary Review Committee (“PRC”)³ to place her Delaware bar membership on disability inactive status.

Kelly responded by filing a 103-page pro se complaint in the United States District

* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

¹ Because we write for the parties, we recite only facts pertinent to our decision.

² The ODC is an independent arm of the Delaware Supreme Court that has authority to recommend disciplinary action regarding the practice of law in Delaware. See Del. Supreme Ct. Rule 64(e)(3).

³ The PRC reviews the recommendations of the ODC following its initial investigation. Delaware Lawyers’ Rules of Disciplinary Procedure (“Del. Disc. Rules”) 3(a).

Court for the District of Delaware naming the ODC and several of its officials, the PRC, the Board of Professional Responsibility (“BPR”),⁴ and the state Attorney General (collectively referred to as “the defendants”). In it, she claims the defendants are pursuing the disciplinary proceeding to malign and retaliate against her based on her political and religious beliefs. Kelly’s complaint seeks injunctive relief and asserts claims under § 1983, for intentional infliction of emotional distress, obstruction of justice, and for injury to her reputation. She seeks relief in the form of an injunction, attorneys’ fees, and “possibly” damages for emotional distress. Complaint 103.⁵

The District Court dismissed the complaint and denied related relief, including a request for a preliminary injunction, concluding that it should abstain under Younger v. Harris, 401 U.S. 37 (1971). It determined: (1) the disciplinary proceeding falls within an “exceptional category” covered by Younger, see Sprint Commc’ns v. Jacobs, 571 U.S. 69, 78 (2013); and (2), the disciplinary proceeding is: (a) a state judicial proceeding that (b) implicates important state interests and (c) allows an adequate opportunity to raise constitutional challenges, see Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423, 432 (1983). Kelly timely appealed.

Kelly then filed in the District Court a “motion for reargument” and other motions, which the court construed as seeking reconsideration under Federal Rule of

⁴ The BPR conducts hearings and makes findings, conclusions, and recommendations in attorney discipline and disability matters. Del. Disc. Rule 2(a). The BPR submits its report and recommendation to the Delaware Supreme Court for review. Del. Disc. Rule 9(e).

⁵ Page 103 of the Complaint appears to have been omitted from the Supplemental Appendix.

Civil Procedure 59(e) and denied. Kelly filed an amended notice of appeal to incorporate that order and continued filing motions in that court. She sought, among other things, reconsideration of the reconsideration denial under Rules 52(b) and 59(e). The District Court denied relief, and Kelly filed a second notice of appeal. The appeals have been consolidated for all purposes.

The Delaware Supreme Court issued an order while the appeals were pending, transferring Kelly to disability inactive status.⁶ It noted that Kelly's court filings "were confusing and unfocused, irrelevant to the issues at hand, demonstrated a lack of understanding of the role of courts, and were non-compliant with court rules." Supplemental Appendix ("Supp. App.") 149. Due to Kelly's religious objection to a mental health examination, none was conducted. The Delaware Supreme Court instead considered the record, noting that Kelly's "inability to make cogent legal arguments, present relevant evidence, or identify relevant legal authority is painfully clear from the record." Supp. App. 154. It concluded that Kelly's "lack of competence to practice law endangers prospective clients, the public, and the orderly administration of justice." Supp. App. 155. The court also considered and rejected Kelly's constitutional claims.

Kelly's bar status is now disability inactive and she cannot practice law in Delaware. If she wishes to seek reinstatement, she must petition the Delaware Supreme Court for reinstatement to active status. See Del. Disc. Rule 19(c).

⁶ The Delaware Supreme Court appointed counsel for Kelly at no cost to her, but she elected to proceed pro se.

II.⁷

A.

Kelly's complaint primarily seeks to vindicate First and Fourteenth Amendment rights through an injunction to halt the disability proceeding. See Supp. App. 130–35; see also Supp. App. 39 (“I brought this law suit . . . to enjoin proceedings brought by the Defendants to place my attorney license on inactive disabled in violation of the First Amendment . . . [and] Fourteenth Amendment. . .”). Because Delaware since has concluded the disability proceeding, the requested injunctive relief is no longer available. That aspect of the complaint is therefore moot.⁸ See Berger v. Cuyahoga County Bar Ass’n, 983 F.2d 718, 724 (6th Cir. 1993) (“[I]ssuance of the [disciplinary] decision by the Ohio Supreme Court moots plaintiffs’ claims for injunctive and declaratory relief against defendants.”); Partington v. Gedan, 961 F.2d 852, 858 (9th Cir. 1992) (concluding that, when the underlying disciplinary matter came to a close, “a request for injunctive relief from those proceedings is now a moot issue”).

⁷ Kelly invoked the District Court’s jurisdiction under 28 U.S.C. § 1331. We have jurisdiction to review the District Court’s judgment and orders under 28 U.S.C. § 1291.

⁸ Kelly presents challenges to 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. These issues are beyond the scope of the current appeal. After the District Court dismissed her complaint, Kelly moved to amend the complaint to add claims concerning the Delaware Supreme Court’s decision to adjust her bar status and to add the Delaware Supreme Court as a party. It does not appear that the District Court has ruled upon Kelly’s post-judgment motions, although it appears that these attempts to pursue a federal court challenge to the Delaware Supreme Court’s order would be barred. See, e.g., Partington v. Gedan, 961 F.2d 852, 865 (9th Cir. 1992) (holding that the Rooker-Feldman doctrine barred federal court from reviewing state court imposition of attorney discipline sanction).

B.

To the extent any of Kelly's claims are not moot, we agree that the District Court properly abstained under Younger. We review the District Court's decision to abstain de novo. PDX N., Inc. v. Comm'r N.J. Dep't of Labor, 978 F.3d 871, 881 n.11.

Attorney discipline matters⁹ fall within the narrow range of cases in which Younger abstention may be appropriate. See Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 434 (1982). Younger abstention is therefore appropriate where the disciplinary matter: (1) is a state judicial proceeding that (2) implicates important state interests and (3) provides an adequate opportunity to raise constitutional challenges. Id. at 432. The burden rests on the plaintiff to show that the state procedures do not provide an adequate opportunity to present the federal claims. See Schall v. Joyce, 885 F.2d 101, 107 (3d Cir. 1989).

Kelly argues that the disability proceeding did not permit her to present constitutional claims. She contends, without legal support, that the Delaware Supreme Court is "without subject matter jurisdiction" over her constitutional claims. Kelly Br. 15. Kelly points to no legal bar to bringing her constitutional challenges in the disciplinary proceeding and thus fails to meet her burden.

⁹ Delaware conducts attorney discipline and attorney disability matters in the same manner. Del. Disc. Rule 19(c) ("The [disability] procedures and hearings shall be conducted in the same manner as disciplinary proceedings."). We therefore treat the disability proceeding as equivalent to a disciplinary proceeding for purposes of our analysis.

Kelly also contends that abstention was inappropriate due to “bad faith, harassment, or extraordinary circumstances.” Kelly Br. 18. She is correct that, if shown, bad faith, harassment, or extraordinary circumstances provide exceptions to Younger abstention. See Middlesex, 457 U.S. at 435. Kelly merely presents conclusory statements in this regard. She has failed to support adequately her claim of bad faith, harassment, or extraordinary circumstances to warrant a Younger exception.

Kelly finally claims that she seeks damages that are not available in the state forum, and so her case should have been stayed under Younger rather than dismissed and now should be permitted to proceed. We disagree because damages are unavailable. Delaware’s Disciplinary Rules provide that the BPR, the PRC, the ODC and its members, and others involved in the disciplinary process are “immune from civil suit for any conduct in the discharge of their official duties.” Del. Disc. Rule 10.

C.

We review the District Court’s denial of reconsideration for abuse of discretion. See Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010). Kelly did not show an intervening change in controlling law, the availability of new evidence, or the need to correct a clear error of law or fact to prevent manifest injustice, and thus did not meet the standard for reconsideration. See Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). The District Court therefore did not abuse its discretion in denying relief.

D.

Kelly seeks review of every interim ruling the District Court made in her proceeding. We have considered her arguments and the record below and conclude that no relief is warranted.

III.

For the foregoing reasons, we will dismiss as moot any claims concerning the aspects of Kelly's complaint that seek injunctive relief. We will affirm the remainder of the District Court's judgment, its post-judgment orders, and all other orders on appeal.¹⁰

¹⁰ The defendants' motion for summary affirmance is denied. The defendants' motion to supplement the appendix is granted. Kelly's motion to correct an error of fact is considered but no action will be taken, as it is unclear what relief it seeks. Kelly's motion for reconsideration is denied.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

June 30, 2023

Randall C. Lohan
United States District Court for the District of Delaware
J. Caleb Boggs Federal Building
844 N King Street
Wilmington, DE 19801

RE: Meghan Kelly v. Patricia Swartz, et al
Case Numbers: 21-3198 & 22-2079
District Court Case Number: 1-21-cv-01490

Dear District Court Clerk,

Enclosed herewith is the certified judgment together with copy of the opinion or certified copy of the order in the above-captioned case. The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order is also enclosed showing costs taxed, if any.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

s/ pdb Case Manager

cc:

Attorney General Delaware
Meghan M. Kelly
Canceel Radinson-Blasucci
Zi-Xiang Shen

Appendix B

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On consideration whereof, it is now hereby ADJUDGED and ORDERED that the appeal is hereby DISMISSED IN PART as MOOT and the remainder of the District Court's judgment entered November 2, 2021, is hereby AFFIRMED. Additionally, the District Court's other orders, including its post-judgment orders entered December 22, 2021, and April 26, 2022, are hereby AFFIRMED. All of the above in accordance with the opinion of this Court. Each party to bear its own costs.

ATTEST:

s/ Patricia S. Dodszeit
Clerk

DATE: April 20, 2023

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
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TELEPHONE
215-597-2995

April 20, 2023

Attorney General Delaware
Office of Attorney General of Delaware
Delaware Department of Justice
820 N French Street
Carvel Office Building
Wilmington, DE 19801

Meghan M. Kelly
34012 Shawnee Drive
Dagsboro, DE 19939

Caneel Radinson-Blasucci
Office of Attorney General of Delaware
Delaware Department of Justice
820 N French Street
Carvel Office Building
Wilmington, DE 19801

Zi-Xiang Shen
Office of Attorney General of Delaware
Delaware Department of Justice
820 N French Street
Carvel Office Building
Wilmington, DE 19801

RE: Meghan Kelly v. Patricia Swartz, et al

Case Numbers: 21-3198 & 22-2079

District Court Case Number: 1-21-cv-01490

ENTRY OF JUDGMENT

Today, April 20, 2023 the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

For the Court,

s/ Patricia S. Dodszeit

Clerk

s/ pdb Case Manager 267-299-4943

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 21-3198 & 22-2079

MEGHAN M. KELLY,
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(Filed: April 20, 2023)

OPINION*

CHAGARES, Chief Judge.

Meghan Kelly, a Delaware attorney, filed a complaint for injunctive and related relief to halt a state proceeding to adjust her bar status to “disability inactive” (the “disability proceeding”). The disability proceeding has since concluded. For the reasons that follow, we will dismiss the appeal in part as moot and affirm in part the District Court’s judgment dismissing the complaint. We also will affirm the District Court’s other orders, including its post-judgment orders denying reconsideration.

I.¹

Delaware’s Office of Disciplinary Counsel (“ODC”)² informed Kelly in August 2021 that it had concerns about her fitness to practice law and requested that she voluntarily submit to a mental health examination. Kelly refused an examination. The ODC then informed her that it would petition the Preliminary Review Committee (“PRC”)³ to place her Delaware bar membership on disability inactive status.

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Court for the District of Delaware naming the ODC and several of its officials, the PRC, the Board of Professional Responsibility (“BPR”),⁴ and the state Attorney General (collectively referred to as “the defendants”). In it, she claims the defendants are pursuing the disciplinary proceeding to malign and retaliate against her based on her political and religious beliefs. Kelly’s complaint seeks injunctive relief and asserts claims under § 1983, for intentional infliction of emotional distress, obstruction of justice, and for injury to her reputation. She seeks relief in the form of an injunction, attorneys’ fees, and “possibly” damages for emotional distress. Complaint 103.⁵

The District Court dismissed the complaint and denied related relief, including a request for a preliminary injunction, concluding that it should abstain under Younger v. Harris, 401 U.S. 37 (1971). It determined: (1) the disciplinary proceeding falls within an “exceptional category” covered by Younger, see Sprint Commc’ns v. Jacobs, 571 U.S. 69, 78 (2013); and (2), the disciplinary proceeding is: (a) a state judicial proceeding that (b) implicates important state interests and (c) allows an adequate opportunity to raise constitutional challenges, see Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423, 432 (1983). Kelly timely appealed.

Kelly then filed in the District Court a “motion for reargument” and other motions, which the court construed as seeking reconsideration under Federal Rule of

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Civil Procedure 59(e) and denied. Kelly filed an amended notice of appeal to incorporate that order and continued filing motions in that court. She sought, among other things, reconsideration of the reconsideration denial under Rules 52(b) and 59(e). The District Court denied relief, and Kelly filed a second notice of appeal. The appeals have been consolidated for all purposes.

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Kelly's bar status is now disability inactive and she cannot practice law in Delaware. If she wishes to seek reinstatement, she must petition the Delaware Supreme Court for reinstatement to active status. See Del. Disc. Rule 19(e).

⁶ The Delaware Supreme Court appointed counsel for Kelly at no cost to her, but she elected to proceed pro se.

II.⁷

A.

Kelly's complaint primarily seeks to vindicate First and Fourteenth Amendment rights through an injunction to halt the disability proceeding. See Supp. App. 130–35; see also Supp. App. 39 (“I brought this law suit . . . to enjoin proceedings brought by the Defendants to place my attorney license on inactive disabled in violation of the First Amendment . . . [and] Fourteenth Amendment. . .”). Because Delaware since has concluded the disability proceeding, the requested injunctive relief is no longer available. That aspect of the complaint is therefore moot.⁸ See Berger v. Cuyahoga County Bar Ass'n, 983 F.2d 718, 724 (6th Cir. 1993) (“[I]ssuance of the [disciplinary] decision by the Ohio Supreme Court moots plaintiffs’ claims for injunctive and declaratory relief against defendants.”); Partington v. Gedan, 961 F.2d 852, 858 (9th Cir. 1992) (concluding that, when the underlying disciplinary matter came to a close, “a request for injunctive relief from those proceedings is now a moot issue”).

⁷ Kelly invoked the District Court’s jurisdiction under 28 U.S.C. § 1331. We have jurisdiction to review the District Court’s judgment and orders under 28 U.S.C. § 1291.

⁸ Kelly presents challenges to 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. These issues are beyond the scope of the current appeal. After the District Court dismissed her complaint, Kelly moved to amend the complaint to add claims concerning the Delaware Supreme Court’s decision to adjust her bar status and to add the Delaware Supreme Court as a party. It does not appear that the District Court has ruled upon Kelly’s post-judgment motions, although it appears that these attempts to pursue a federal court challenge to the Delaware Supreme Court’s order would be barred. See, e.g., Partington v. Gedan, 961 F.2d 852, 865 (9th Cir. 1992) (holding that the Rooker-Feldman doctrine barred federal court from reviewing state court imposition of attorney discipline sanction).

B.

To the extent any of Kelly's claims are not moot, we agree that the District Court properly abstained under Younger. We review the District Court's decision to abstain de novo. PDX N., Inc. v. Comm'r N.J. Dep't of Labor, 978 F.3d 871, 881 n.11.

Attorney discipline matters⁹ fall within the narrow range of cases in which Younger abstention may be appropriate. See Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 434 (1982). Younger abstention is therefore appropriate where the disciplinary matter: (1) is a state judicial proceeding that (2) implicates important state interests and (3) provides an adequate opportunity to raise constitutional challenges. Id. at 432. The burden rests on the plaintiff to show that the state procedures do not provide an adequate opportunity to present the federal claims. See Schall v. Joyce, 885 F.2d 101, 107 (3d Cir. 1989).

Kelly argues that the disability proceeding did not permit her to present constitutional claims. She contends, without legal support, that the Delaware Supreme Court is "without subject matter jurisdiction" over her constitutional claims. Kelly Br. 15. Kelly points to no legal bar to bringing her constitutional challenges in the disciplinary proceeding and thus fails to meet her burden.

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Kelly also contends that abstention was inappropriate due to “bad faith, harassment, or extraordinary circumstances.” Kelly Br. 18. She is correct that, if shown, bad faith, harassment, or extraordinary circumstances provide exceptions to Younger abstention. See Middlesex, 457 U.S. at 435. Kelly merely presents conclusory statements in this regard. She has failed to support adequately her claim of bad faith, harassment, or extraordinary circumstances to warrant a Younger exception.

Kelly finally claims that she seeks damages that are not available in the state forum, and so her case should have been stayed under Younger rather than dismissed and now should be permitted to proceed. We disagree because damages are unavailable. Delaware’s Disciplinary Rules provide that the BPR, the PRC, the ODC and its members, and others involved in the disciplinary process are “immune from civil suit for any conduct in the discharge of their official duties.” Del. Disc. Rule 10.

C.

We review the District Court’s denial of reconsideration for abuse of discretion. See Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010). Kelly did not show an intervening change in controlling law, the availability of new evidence, or the need to correct a clear error of law or fact to prevent manifest injustice, and thus did not meet the standard for reconsideration. See Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). The District Court therefore did not abuse its discretion in denying relief.

D.

Kelly seeks review of every interim ruling the District Court made in her proceeding. We have considered her arguments and the record below and conclude that no relief is warranted.

III.

For the foregoing reasons, we will dismiss as moot any claims concerning the aspects of Kelly's complaint that seek injunctive relief. We will affirm the remainder of the District Court's judgment, its post-judgment orders, and all other orders on appeal.¹⁰

¹⁰ The defendants' motion for summary affirmance is denied. The defendants' motion to supplement the appendix is granted. Kelly's motion to correct an error of fact is considered but no action will be taken, as it is unclear what relief it seeks. Kelly's motion for reconsideration is denied.

Appendix C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 21-3198 & 22-2079

MEGHAN M. KELLY,
Appellant

v.

DISCIPLINARY COUNSEL PATRICIA B. SWARTZ; DISCIPLINARY COUNSEL
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OFFICE DISCIPLINARY COUNSEL; BOARD ON PROFESSIONAL RESPONSIBILITY OF
THE SUPREME COURT OF THE STATE OF DELAWARE; PRELIMINARY
INVESTIGATORY COMMITTEE; ATTORNEY GENERAL DELAWARE

On Appeal from the United States District Court
for the District of Delaware
(District Court No. 1-21-cv-01490)

SUR PETITION FOR PANEL REHEARING

Present: CHAGARES, Chief Judge, SCIRICA, and AMBRO, Circuit Judges

The petition for rehearing filed by Meghan M. Kelly, Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby

ORDERED that the petition for rehearing by the panel is denied.

BY THE COURT,

s/Michael A. Chagares
Chief Circuit Judge

Dated: June 22, 2023
PDB/cc: Meghan M. Kelly
All Counsel of Record

Appendix D

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 21-3198 & 22-2079

MEGHAN M. KELLY,
Appellant

v.

DISCIPLINARY COUNSEL PATRICIA B. SWARTZ; et al.

(D. Del. No. 1-21-cv-01490)

Present: SCIRICA, Circuit Judge

1. Motion filed by Appellant Meghan M. Kelly in 21-3198, 22-2079 to recuse Honorable Judge Anthony J. Scirica;
2. Motion filed by Appellant Meghan M. Kelly in 21-3198, 22-2079 for caveat to Motion for this Court to recuse Judge Scirica to move him for judicial consideration of drafting laws to prevent non-lawyers and non-judges from practicing law or taking the place of people judges without government authority;
3. Motion by Appellant for a Second Caveat to Motion for this Court to recuse Judge Scirica to move him for judicial consideration of drafting laws to prevent judges from speaking engagements on behalf of political think tanks such as lobbyists at the Federalist Society.

Respectfully,
Clerk/pdb

ORDER

The foregoing motions are denied.

By the Court,

s/ Anthony J. Scirica
Circuit Judge

Dated: June 20, 2023

PDB/cc: Meghan M. Kelly

All Counsel of Record

Appendix E

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 21-3198 & 22-2079

MEGHAN M. KELLY,
Appellant

v.

DISCIPLINARY COUNSEL PATRICIA B. SWARTZ;
DISCIPLINARY COUNSEL KATHLEEN M. VAVALA; DAVID A. WHITE,
Chief Disciplinary Counsel; OFFICE DISCIPLINARY COUNSEL;
BOARD ON PROFESSIONAL RESPONSIBILITY OF THE
SUPREME COURT OF THE STATE OF DELAWARE;
PRELIMINARY INVESTIGATORY COMMITTEE;
ATTORNEY GENERAL DELAWARE

(D. Del. No. 1-21-cv-01490)

Present: CHAGARES, Chief Judge, SCIRICA and AMBRO, Circuit Judge

1. Motion by Appellant to Reconsider the Order dated June 20, 2023 Denying Appellant's Motion for the Recusal of Judge Scirica and Pursuant to Rule 2 for a New Panel to Consider my Motion for a Rehearing (Docket Entry No. 206);
2. Motion by Appellant to Strike Exhibit No. 6 Pages 56 through 111 to Docket Entry No. 206.

Respectfully,
Clerk/pdb

ORDER

Appellant previously moved for the recusal of Judge Anthony Scirica in this matter. Upon review of appellant's motion, Judge Scirica concluded that he need not recuse in this case. By order entered June 20, 2023, Appellant's motion to recuse Judge Scirica was denied.

Appellant now seeks en banc review of Judge Scirica's decision not to recuse and to have a new panel hear her appeal. The merits panel declines to refer the matter to the en banc Court and instead shall rule on Appellant's request. 3rd Cir. I.O.P. 10.3.3. Appellant's request for reconsideration is denied. Judge Scirica's prior position as

member and chair of the Committee on Judicial Conduct and Disability is not cause for his recusal in this matter. Appellant has not demonstrated any basis which would question Judge Scircia's impartiality to consider this case and the matter will not be assigned to another merits panel.

By opinion and judgment entered April 20, 2023, this panel affirmed the decision of the District Court. Appellant's petition for panel rehearing was denied on June 22, 2023. Further review of an or the decision by this Court in this case should be presented in the Supreme Court of the United States. This matter is closed in the Court of Appeals.

Appellant's motion to strike exhibit No. 6 at pages 56 through 111 to docket entry No. 206 is granted.

By the Court,

s/ Michael A. Chagares
Circuit Judge

Dated: July 10, 2023
PDB/cc: Meghan M. Kelly, Esq.
All Counsel of Record

Appendix F

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 21-3198 & 22-2079

Meghan Kelly,

Appellant

v.

Patricia Shwartz, et al.

(D. Del. 1-21-cv-01490)

- 1) Motion by Appellant Meghan M. Kelly to recuse the Honorable Tamika Montgomery-Reeves
- 2) Motion by Appellant to Recuse the Honorable Peter J. Phipps
- 3) Motion by Appellant to waive costs for preparation and transmittal of the record to the Supreme Court of the United States in *Meghan M. Kelly v. Disciplinary Counsel Patricia B. Swartz, et al.*, S.Ct. No. 22-6783

ORDER

At the direction of the Court, the motion to recuse the Honorable Tamika Montgomery-Reeves is granted. The motion to recuse the Honorable Peter J. Phipps is denied. The motion to waive costs for transmittal of the record to the Supreme Court of the United States is denied as unnecessary and premature. In the event that the Supreme Court should grant Appellant's petition for writ of certiorari, the Supreme Court will contact the Clerk for the Court of Appeals who will transmit the record. Should Appellant seek relief from any other costs associated with the petition for writ of certiorari, Appellant should seek such relief in the Supreme Court.

For the Court,

s/ Patricia S. Dodszuweit

Clerk

Date: March 15, 2023

PDB/cc: Meghan M. Kelly, Esq.
Cancel Radinson-Blasucci, Esq.
Zi-Xiang Shen, Esq.

Appendix G

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 21-3198 & 22-2079

CCO-028

MEGHAN M. KELLY,
Appellant

v.

DISCIPLINARY COUNSEL PATRICIA B. SWARTZ;
DISCIPLINARY COUNSEL KATHLEEN M. VAVALA; DAVID A. WHITE,
Chief Disciplinary Counsel; OFFICE DISCIPLINARY COUNSEL;
BOARD ON PROFESSIONAL RESPONSIBILITY OF THE
SUPREME COURT OF THE STATE OF DELAWARE;
PRELIMINARY INVESTIGATORY COMMITTEE; ATTORNEY GENERAL
DELAWARE

(D. Del. No. 1-21-cv-01490)

Present: PHIPPS, Circuit Judge

1. Motion by Appellant Meghan M. Kelly in 21-3198 and 22-2079 for Extension of Time to File Brief for 45 Days.
2. Motion by Appellant Meghan M. Kelly in 21-3198 and 22-2079 to Stay Appeals while Appellant Petitions the Supreme Court of the United States to Review the State-Court Disciplinary Decision and the Third Circuit's Reciprocal Disciplinary Decision

Respectfully,
Clerk/pdb

ORDER

The foregoing Motion by Appellant Meghan M. Kelly in 21-3198 and 22-2079 for Extension of Time to File Brief for 45 Days is granted. Beyond this extension, this order provides no other relief. The motion to stay these appeals is denied.

By the Court,

s/ Peter J. Phipps
Circuit Judge

Dated: January 6, 2023
PDB/cc: Meghan M. Kelly, Esq.
Caneel Radinson-Blasucci, Esq
Zi-Xiang Shen, Esq.

Appendix H

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 21-3198 & 22-2079

Kelly v. Swartz

To: Clerk

- 1) Appellant's Motion to Recuse Judge Hardiman and Future Judge Montgomery-Reeves

At the direction of the Court, the request for Judge Hardiman's recusal is granted.

No action will be taken on the request to recuse future Judge Montgomery-Reeves. As the appellant alludes to in her motion, future Judge Montgomery-Reeves has not yet received her commission and become a judge of this Court. The appellant may renew her request for future Judge Montgomery-Reeves's recusal after she becomes a judge of this Court. That may not be necessary, however, if this appeal is assigned to a merits panel in the meantime that does not include her. A formal recusal motion may also be unnecessary if, as may be the case, future Judge Montgomery-Reeves participated in related state-court proceedings. See 3d Cir. L.A.R. 26.1.2.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: January 6, 2023

PDB/cc: Meghan M. Kelly, Esq.
Caneel Radinson-Blasucci, Esq.
Zi-Xiang Shen, Esq.

Appendix I

examination on September 7, 2021 to determine her fitness and mental capacity to practice law. (D.I. 7-1 at 96) Plaintiff refused to submit to this examination. On September 27, 2021, the ODC sent Plaintiff a letter stating that it was going to present to the PRC on November 3, 2021 a petition to transfer Plaintiff to disability inactive status. (D.I. 7-1 at 103)

II.

The Delaware Supreme Court, through its inherent power and authority and pursuant to section 161 of Title 10 of the Delaware Code, maintains standards of professional conduct for all lawyers subject to its jurisdiction, disposes of individual cases of lawyer discipline and mental capacity, and administers the system by which disciplinary and mental capacity determinations are made. See 10 Del. C. § 161; Del. Law. R. of Disciplinary Proc. (DLRDP) Rule 1(a). That system is comprised of three agencies created by the Delaware Supreme Court: the Board, the ODC, and the PRC. See DLRDP 1(b). Disciplinary and disability matters are heard by the Board, upon a petition filed by the ODC after approval by the PRC. See DLRDP 9. The Board's rulings on disciplinary and mental capacity matters are subject to review by the Delaware Supreme Court. See *In re Nadel*, 82 A.3d 716, 720 (Del. 2013) (holding that role of Delaware's Supreme Court in disciplinary proceedings "is to review the record independently and determine whether there is substantial evidence to support the [Board's] factual findings."). The procedures and hearings for discipline and mental capacity proceedings are the same. DLRDP 19(c).

III.

The *Younger* abstention doctrine requires that the Court abstain from adjudicating Plaintiff's Complaint and motions. *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). The Court may raise the issue of *Younger* abstention *sua sponte*. *O'Neill v. City of Philadelphia*, 32 F.3d 785, n.1 (3d Cir. 1994).

"*Younger* . . . and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *Middlesex*, 457 U.S. at 423. Under *Middlesex*, the issue of whether a state bar's discipline (and thus, in this case, mental capacity) proceeding falls within the reach of *Younger* turns on three questions: (1) whether the proceeding is a state judicial proceeding; (2) whether the proceeding implicates important state interests; and (3) whether there is an adequate opportunity in the proceeding to raise constitutional challenges. *Id.* at 432.

Before ascertaining whether the *Middlesex* conditions exist, the Court must first determine whether the parallel state action falls within one of "three exceptional categories": (1) criminal prosecutions, (2) "certain civil enforcement proceedings," or (3) "civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013) (quotation marks, alteration omitted); *see also Harmon v. Department of Finance*, 811 F. App'x 156, 158 (2020).

In *Middlesex* the Court held that state attorney disciplinary proceedings "bear a


close relationship to proceedings criminal in nature.” 457 U.S. at 432; *see also Sprint*, 571 U.S. at 70. Delaware treats attorney mental capacity proceedings in the same manner it treats attorney disciplinary proceedings. DLRDP 19(c). Formal charges of incapacity may be instituted only upon a finding of probable cause by the PRC. DLRDP 9(c). If an attorney contests the findings of the PRC, a hearing is held before the Board. DLRDP 9(d). The hearing is governed by the Delaware Rules of Evidence, DLRDP 9(f)(2); sworn testimony may be adduced at the hearing by both the ODC and the attorney, DLRDP 9(f)(1). An attorney can appeal adverse findings of the Board to the Delaware Supreme Court, which “review[s] the record independently and determine[s] whether there is substantial evidence to support the [Board’s] factual findings.” *In re Nadel*, 82 A.3d at 720. These procedures and the role the Delaware Supreme Court exercises in attorney mental capacity proceedings make clear that the proceedings bear a close relationship to criminal proceedings and fall within one of the exceptional categories covered by *Younger*.

The Court therefore turns to the three *Middlesex* conditions. First, Delaware’s mental capacity proceedings for attorneys constitute state judicial proceedings. *In re Nadel*, 82 A.3d at 720. Second, Delaware has an extremely important interest in ensuring that its attorneys do not suffer from a mental incapacity. *See Middlesex*, 457 U.S. at 434 (recognizing “the important state obligation to regulate persons who are authorized to practice law”). Third, “[m]inimal respect for the state processes . . . precludes any *presumption* that the state courts will not safeguard federal constitutional rights.” *Id.* (emphasis in the original). Plaintiff has not alleged, and there is no reason

to believe that the Delaware Supreme Court would deny her an opportunity to raise the constitutional challenges she makes in her Complaint.

Accordingly, the Court will: (1) deny Plaintiff's motion to expedite (D.I. 6) and letter/motion for emergency relief (D.I. 14); and (2) dismiss as moot the motions for temporary restraining order and preliminary injunction, to e-file and to appear remotely (D.I. 7, 9, 11, 12); and (3) abstain under the *Younger* abstention doctrine and dismiss the Complaint.

An appropriate Order will be entered.


Chief Judge

November 2, 2021
Wilmington, Delaware

Appendix J

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEGHAN KELLY,

Plaintiff,

v.

DISCIPLINARY COUNSEL PATRICIA
B. SWARTZ, et al.,

Defendants.

Civ. No. 21-1490-CFC

ORDER

At Wilmington this Twenty-second day of December in 2021, for the reasons set forth in the Memorandum issued this date,

IT IS HEREBY ORDERED that:

1. Plaintiff's motion for reargument construed as a motion for reconsideration is denied. (D.I. 20)
2. Plaintiff's motion to amend the motion for reargument is granted. (D.I. 21)
3. Plaintiff's motion to amend Exhibit G of the Complaint is denied as moot. (D.I. 23)


Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEGHAN KELLY,

Plaintiff,

v.

DISCIPLINARY COUNSEL PATRICIA
B. SWARTZ, et al.,

Defendants.

Civ. No. 21-1490-CFC

MEMORANDUM

I. INTRODUCTION

Pro se Plaintiff Meghan Kelly is a Delaware attorney. Defendants are the Delaware Board on Professional Responsibility (the Board), the Office of Disciplinary Counsel of the Supreme Court of the State of Delaware (the ODC), the ODC's counsel, the Preliminary Review Committee (PRC), and the Delaware Attorney General. Plaintiff filed this action on October 25, 2021 pursuant to 42 U.S.C. § 1983 and § 1985 and Federal Rule of Civil Procedure 65. She sought an order "to enjoin proceedings brought by the Defendants to place [her] attorney license on inactive disabled" status in violation of her First and Fourteenth Amendment rights. (D.I. 2 ¶ 14) On November 2, 2021, the Court denied Plaintiff's motion to expedite and letter/motion for emergency relief, dismissed as moot motions for temporary restraining order and preliminary injunction, to e-file and to appear remotely, abstained under the Younger abstention doctrine, and dismissed the Complaint. (D.I. 16, 17)

Plaintiff has filed a motion for reargument construed as a motion for reconsideration, a motion to amend the motion for reargument, a motion to amend

Exhibit G to the Complaint, and a letter asking me to consider new evidence. (D.I. 20, 21, 23, 29) I will grant Plaintiff's motion to amend the motion for reargument and will consider the amended reargument. (D.I. 21) I do not consider the "new evidence" as it did not exist when Plaintiff commenced this action.

II. MOTION FOR RECONSIDERATION

Plaintiff moves for reconsideration of the November 2, 2021 Memorandum and Order on the grounds that it "essentially eliminat[ed her] ability to protect [her] fundamental rights in exchange for [her] license to practice law" and sacrificed her individual liberties. (D.I. 20 at 20; D.I. 21-2) In addition, Plaintiff asserts the Court erred as a matter of law by disregarding all her pled facts and legal arguments. (*Id.*)

The standard for obtaining relief under Rule 59(e) is difficult for Plaintiff to meet. The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 178 F.3d 669, 677 (3d Cir. 1999). "A proper Rule 59(e) motion . . . must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010) (citing *North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)). A motion for reconsideration is not properly grounded on a request that a court rethink a decision already made. See *Glendon Energy Co. v. Borough of Glendon*, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993). Motions for reargument or reconsideration may not be used "as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided." *Brambles USA, Inc. v.*

Blocker, 735 F. Supp. 1239, 1240 (D. Del. 1990). Reargument, however, may be appropriate where "the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the court by the parties, or has made an error not of reasoning but of apprehension." *Brambles USA*, 735 F. Supp. at 1241 (D. Del. 1990) (citations omitted); See also D. Del. LR 7.1.5.

The Court has reviewed Plaintiff's motion for reconsideration and amended motion, both of which provide great detail on why she believes reconsideration is appropriate. The Court has also reviewed the Complaint, the applicable law, and the Memorandum and Order at issue, and analyzed the issues while considering Plaintiff's motions. Except for the copies of statutes and newspaper articles that are readily available, the "new evidence" Plaintiff asked the Court to consider was obtained after this Court's November 2, 2021 ruling. That type of "new evidence" does not justify reconsideration. See *Sherwin-Williams Co., v. PPG Indus., Inc.*, 2021 WL 3710128, at *4 (W.D. Pa. Aug. 20, 2021); see also *Hudson's Bay Co. Fur Sales v. Am. Legend Coop.*, 651 F. Supp. 819, 846 (D.N.J.1987) (in ruling on a motion for reconsideration Court should consider new evidence only if it existed at the time of the operative pleading, but was either not discoverable or unavailable during discovery). Moreover, even if the Court considered the "new evidence," Plaintiff has failed to demonstrate any of the necessary grounds to warrant a reconsideration of the Court's November 2, 2021 Memorandum and Order. Therefore, the motion and amended motion for reconsideration will be denied. (D.I. 20)

III. MOTION TO AMEND

Plaintiff moves to amend Exhibit G that is attached to the Complaint. (D.I. 23)

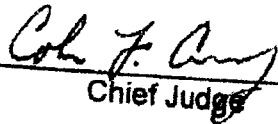
She indicates that the most important page of Exhibit G, the last page, is missing. The last page shows that Plaintiff "crossed off local counsel's address" as instructed by Chancery Court staff. (D.I. 23 at 1) The motion will be denied as moot. The page in question was previously filed as "Exhibits to Appendix G". (See D.I. 4-9 at 196).

IV. CONCLUSION

For the above reasons, the Court will: (1) deny Plaintiff's motion for reargument (D.I. 20); (2) grant Plaintiff's motion to amend the motion for reargument¹ (D.I. 21); and (3) deny as moot Plaintiff's motion to amend Exhibit G (D.I. 23).

An appropriate order will be entered.

December 22, 2021
Wilmington, Delaware



Chief Judge

¹ As discussed, I considered the amended motion for reargument.

Appendix K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEGHAN KELLY,

Plaintiff,

v.

DISCIPLINARY COUNSEL PATRICIA
B. SWARTZ, et al.,

Defendants.


Civ. No. 21-1490-CFC

ORDER

At Wilmington this 26th day of April in 2022, for the reasons set forth in the
Memorandum issued this date,

IT IS HEREBY ORDERED that:

Plaintiff's pending motions (D.I. 33, 34, 36, 37, 39, 41, 42, 47, 48, 54) are
DENIED.



Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEGHAN KELLY,

Plaintiff,

v.

DISCIPLINARY COUNSEL PATRICIA
B. SWARTZ, et al.,

Defendants.

Civ. No. 21-1490-CFC

MEMORANDUM

I. INTRODUCTION AND BACKGROUND

Pro se Plaintiff Meghan Kelly is a Delaware attorney. Defendants are the Delaware Board on Professional Responsibility (the Board), the Office of Disciplinary Counsel of the Supreme Court of the State of Delaware (the ODC), the ODC's counsel, the Preliminary Review Committee (PRC), and the Delaware Attorney General. Plaintiff filed this action on October 25, 2021 pursuant to 42 U.S.C. § 1983 and § 1985 and Federal Rule of Civil Procedure 65. She sought an order "to enjoin proceedings brought by the Defendants to place [her] attorney license on inactive disabled" status in violation of her First and Fourteenth Amendment rights. (D.I. 2 ¶ 14) On November 2, 2021, the Court denied Plaintiff's motion to expedite and letter/motion for emergency relief; dismissed as moot motions for a temporary restraining order and preliminary injunction, to e-file and to appear remotely; abstained under the Younger abstention doctrine; and dismissed the Complaint. (D.I. 16, 17)

On November 8, 2021, Plaintiff filed a motion for reargument (construed as a motion for reconsideration), followed by a motion to amend the motion for reargument, a

motion to amend Exhibit G to the Complaint, and a letter asking me to consider new evidence. (D.I. 20, 21, 23, 29) On December 22, 2021, this Court granted Plaintiff's motion to amend the motion for reargument, considered the amended reargument construed as a motion for reconsideration, did not consider evidence that did not exist when Plaintiff commenced this action on October 25, 2021, denied as moot Plaintiff's motion to amend Exhibit G of the complaint as it was already in the record, and denied Plaintiff's motion for reconsideration. (D.I. 30, 31)

On January 3, 2022, Plaintiff filed a notice of appeal of the December 22, 2021 Memorandum and Order. (D.I. 21) On January 11, 2022, Plaintiff filed a motion to waive PACER costs due to utter poverty. (D.I. 33) The same day she filed a motion to amend findings of fact and alter the December 22, 2021 Order to include the availability of new evidence not previously available, to correct clear errors of law and fact, and to prevent manifest injustice. (D.I. 34 at 1) The Court construes the filing as a motion for reconsideration of the December 22, 2021 order denying Plaintiff's motion for reconsideration.

On January 14, 2022, the United State Court of Appeals for the Third Circuit in *Kelly v. Disciplinary Counsel Swartz*, No. 21-3198 at docket item 22 (3d Cir.) stayed the appeal pending this Court's decision on the motion to amend pursuant to Fed. R. Civ. P. 52 and 59 filed on January 11, 2022. (See D.I. 34) Since then, Plaintiff has filed: (1) a third emergency motion to alter and amend the December 22, 2021 judgment pursuant to Fed. R. Civ. P. 52(b), 59(e), 60(b)(1), (2), and (6), and 65 (D.I. 36); (2) an emergency motion for immediate relief requesting review of motion filed simultaneously herewith

(D.I. 37); (3) a second additional motion pursuant to Fed. R. Civ. P. 52(b), 59(e), and 60(b)(1), (2), and (6) to amend findings of facts and alter the order dated December 22, 2021 based on new findings of fact, to prevent clear error of facts, clear error of law, and to prevent manifest injustice (D.I. 39); (4) a third emergency motion pursuant to Fed. R. Civ. P. 52(b), 59(e), 60(b)(1), (2), and (6), and 65 (D.I. 41); (5) an emergency motion for immediate relief requesting review of motion filed simultaneously herewith (D.I. 42); (6) a motion for an urgent emergency preliminary restraining order to be applied immediately with a waiver of bond to prevent immediate and irreparable injury by compelled violations of my religion but for my exercise of religious belief (D.I. 47); (7) a motion to expedite (D.I. 48); and (8) a different motion for exemption to appear in person in court, for remote proceedings or to appear remotely due to foreseeable costs relating to transportation creating a substantial burden upon plaintiff's access to the courts and forced violation of her religious beliefs by threat of indebtedness (D.I. 54).

II. DISCUSSION

Plaintiff seeks relief under Rule 52(b) and 59(e). A motion under Rule 52(b) or 59(e) is the functional equivalent of a motion for reconsideration. *Butamax Advanced Biofuels LLC v. Gevo Inc.*, 2015 WL 4919975, at *1, (D. Del. Aug. 18, 2015). Federal Rule of Civil Procedure 52(b) provides that, no later than 28 days after the entry of judgment, a party may move to have the court "amend its findings – or make additional findings," and the Rule 52(b) motion may accompany a motion for new trial under Rule 59. Rule 52(b) "permits [a party] to ask the court to correct, on the non-jury record before it, any errors of law, mistakes of fact or oversights that require correction." *U.S.*

Gypsum Co. v. Schiavo Bros., Inc., 668 F.2d 172, 180 (3d Cir. 1981). Factual determinations are correctable under Rule 52(b) if the district judge who heard the evidence believes that they are necessary, and capable of being made without the grant of a new trial. *U. S. Gypsum Co. v. Schiavo Bros.*, 668 F.2d 172, 180 n.9 (3d Cir. 1981)

A motion for reconsideration/amendment of judgment filed pursuant to Federal Rule of Civil Procedure 59(e) is "a device to relitigate the original issue decided by the district court, and [it is] used to allege legal error." *United States v. Fiorelli*, 337 F.3d 282, 288 (3d Cir. 2003). The moving party must show one of the following in order to prevail on a Rule 59(e) motion: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice. *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). A motion for reconsideration is not appropriate to reargue issues that the court has already considered and decided. *Brambles USA Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990).

Having reviewed Plaintiff's filings as well as the applicable law, the Court concludes that Plaintiff has failed to demonstrate any of the necessary grounds to warrant a reconsideration of the Court's December 22, 2021 Order. Therefore, all motions pertaining to the motion for reconsideration of the December 22, 2021 Order will be denied. (D.I. 34, 36, 37, 39, 41, 42)

In addition, the Court will deny all other motions filed by Plaintiff subsequent to

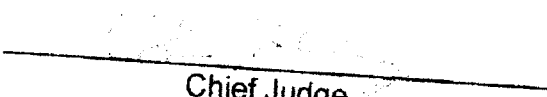
the filing of her notice of appeal. (D.I. 33, 47, 48, 54)

III. CONCLUSION

For the above reasons, the Court will deny Plaintiff's motions. (D.I. 33, 34, 36, 37, 39, 41, 42, 47, 48, 54)

An appropriate order will be entered.

April 26, 2022
Wilmington, Delaware



Chief Judge

Appendix L

2. Plaintiff was granted *in forma pauperis* status in this case on October 28, 2021. (D.I. 15) The Court takes judicial notice that at one time, Plaintiff had PACER rights as an attorney. Plaintiff's PACER rights were suspended when her license was placed on inactive disabled status.

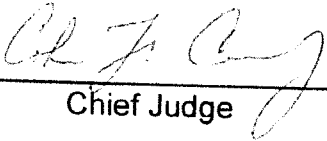
3. Plaintiff now seeks e-filing rights. (D.I. 83) That motion is **GRANTED**.

4. Plaintiff also requests a waiver of PACER fees associated with filing electronically in this Court (D.I. 62) and moves to amend that motion (D.I. 63). The motion to amend the request for waiver is **GRANTED**. (D.I. 63) The motion for a waiver of PACER fees is **GRANTED IN PART**. (D.I. 62) The United States Court of Appeals for the Third Circuit granted Plaintiff, as a non-attorney, a waiver of PACER fees. See Case No. 21-3198 at D.I. 30. In order for a waiver to be granted, a party must first have a PACER account. When a court grants a request to waive PACER fees, the Court must provide PACER with the account number to which the exemption applies and set a duration of time for the exemption. It may be that Plaintiff already has a PACER account. If she does not have a PACER account, she shall set one up. Either way, Plaintiff shall file a renewed motion for a PACER exemption in this Court, and in the motion she shall advise the Court of the PACER account number to which she wishes the exemption to apply along with a proposed duration of the exemption. Plaintiff shall file the renewed motion on or before **January, 20, 2023**.

5. Plaintiff's remaining motions are **DENIED** as they were filed subsequent to the first notice of appeal. (D.I. 61, 65, 66, 69, 77, 80, 81, 82, 85, 95, 96)

6. With the exception of a renewed motion for PACER exemption, Plaintiff is placed on notice that future filings in this Court during the pendency of Plaintiff's

appeals before the United States Court of Appeals for the Third Circuit will be docketed and not considered.



Chief Judge

Appendix M

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEGHAN KELLY,

Plaintiff,

v.

DISCIPLINARY COUNSEL PATRICIA
B. SWARTZ, et al.,

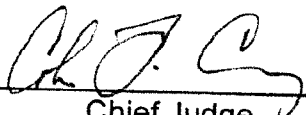
Defendants.

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: Civ. No. 21-1490-CFC
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ORDER

At Wilmington this 5th day of January 2023, having considered Plaintiff's renewed motion for an exemption to PACER (D.I. 108);

IT IS HEREBY ORDERED that Plaintiff's renewed motion is **GRANTED**. (D.I. 108) Plaintiff Meghan Kelly PACER Account No. 6975241 shall be exempt from the payment of fees for access via PACER to the electronic case files maintained in the United States District Court for the District of Delaware in Civil Action Number 21-1490-CFC, only. This exemption shall be applied nunc pro tunc to October 25, 2021. This exemption may be revoked at the discretion of the Court at any time. A copy of this Order will be forwarded to the PACER Service Center.



Chief Judge