

No. 24-1010

In the Supreme Court of the United States

RAPHAEL WEITZMAN,
Petitioner,

v.

COMMITTEE ON GRIEVANCES FOR THE UNITED
STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW
YORK,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

PETITION FOR REHEARING

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PARTIES TO PROCEEDING

The parties to this proceeding are listed in the caption.

RELATED CASES

- 1) United States Court of Appeals (2nd Cir.):
 - a) Committee on Grievances for the United States District Court for the Southern District of New York v. Raphael Weitzman, Docket No: 23-872(L), 23-7556 (CON) (Summary Order dated September 30, 2024)
- 2) Committee on Grievances of the United States District Court (SD. NY.):
 - a) In the matter of Raphael Weitzman, Docket No.: M-2-238 (Opinion and Order dated May 8, 2023)
- 3) Kendu Gerald v. Hawker Financial Company LLC, et al., Index No.: 13453/2016
- 4) United States District Court (SD. NY.):
 - a) Kendu Gerald v. Hawker Financial Company LLC, et al., Docket No.: 1:16-cv-03470-JGK
- 5) New York State Court Appellate Division First Department (NYS):
 - a) Kendu Gerald v. Salvatore F. Damiano et al, Index No: 156166/2013
- 6) New York State Court (NYS):
 - a) Kendu Gerald v. Salvatore F. Damiano et al, Index No: 156166/2013
- 7) United States District Court (ED. NY.)
 - a) Kendu Gerald v. City of New York et al Civil Docket Case #: 1:11-cv-05625-SJ-VMS

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PETITION FOR REHEARING

Petitioner, Raphael Weitzman, respectfully petitions this Court for rehearing of its order dated May 19, 2025 (App. 1a) denying his petition for a writ of certiorari. This petition is filed pursuant to Supreme Court Rule 44.2, which provides that a petition for rehearing of an order denying a writ of certiorari will be granted “only if there are intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented.” Rehearing is warranted because the Court appears to have overlooked substantial grounds, presented in the petition for writ of certiorari, and because intervening circumstances of a substantial effect have arisen, which demonstrate profound due process and equal protection violations that undermine the fundamental fairness of attorney disciplinary proceedings and call for this Court’s intervention. These appear to have been overlooked grounds and intervening circumstances constitute “other substantial grounds not previously presented” and “intervening circumstances of a substantial or controlling effect” in a manner that commanded the Court’s full attention to their dispositive nature.

GROUNDS FOR REHEARING

This petition for rehearing is based on the substantial ground, not previously addressed by this Court in its denial, that the lower courts’ actions, as detailed in the petition for writ of certiorari, represent a severe departure from the accepted and usual course of judicial proceedings, particularly concerning:

1. Systemic Denial of a Meaningful Opportunity to be Heard:

The disciplinary proceedings were marred by a confluence of procedural deficiencies that, taken together, effectively denied Petitioner his fundamental due process right to a meaningful opportunity to be heard, as guaranteed by the Fifth and Fourteenth Amendments and affirmed in *In re Ruffalo*, 390 U.S. 544 (1968). Specifically, the Court appears to have overlooked the substantial impact of:

- i. **Impermissible Ex Parte Communications and Reliance on Extra-Record Evidence:** The professional conduct review committee's reliance on impermissible ex parte communications with Counsel Investigator Evan Chesler (hereinafter "Counsel Investigator") and the consideration of evidence and arguments entirely outside the established trial record (Pet. 7-10). This practice directly contravenes the principles articulated in *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972), and *United States v. Rechnitz*, 75 F.4th 131, 146–47 (2d Cir. 2023), by preventing Petitioner from confronting or rebutting the actual basis for the charges and sanctions. The May 8, 2023 Order's (Pet. App. 12a) explicit reference to "numerous aggravating circumstances, as set forth in detail in Counsel Investigator's brief in support of sanctions" (Pet. 6, 15)—a brief Petitioner never received and which appears to be an ex parte submission—is a critical due process violation that appears to have overlooked.
- ii. **Severe Restrictions on Testimony and Denial of Confrontation:** The restriction of Petitioner's testimony to solely "yes" or

“no” answers during the evidentiary hearing, coupled with the effective denial of his right to present a full defense, confront adverse evidence, and the practical denial of counsel during this critical phase (Pet. 11-14). This fundamentally undermined the hearing’s integrity, preventing a fair assessment of credibility and facts, contrary to *Goldberg v. Kelly*, 397 U.S. 254 (1970), and SDNY Local Rule 1.5(d)(4) (Pet. App. 112a). Accusing Petitioner of lying approximately every 12 minutes during a one-hour hearing where he was silenced from providing context is a substantial point the Court appears to have overlooked.

2. Failure to Address Substantial Questions of Equal Protection and Impartiality: The petition for writ of certiorari raised substantial questions concerning the violation of Petitioner’s Fourteenth Amendment Equal Protection rights (Pet. App. 67a) and the appearance of impropriety, which may have been overlooked.

- i. Disparate Treatment and Selective Enforcement: The allegations of disparate treatment, particularly the attribution of delays (Pet. App. 59a) due to Petitioner’s religious observances (Pet. App. 346a-354a) while ignoring pecuniary delays by Counsel Investigator, and the broader claim of selective enforcement based on arbitrary distinctions (Pet. 27-28), suggest a violation of Equal Protection that warrants this Court’s review.
- ii. Conflicts of Interest and Appearance of Impropriety: The documented prior

professional relationships between the Respondent's chair, its Counsel Investigator and a member of the Second Circuit panel reviewing the matter (Pet. 28-29) created an appearance of impropriety that, under 28 U.S.C. § 455(a) and established judicial ethics, should have led to disqualification or, at minimum, a more exacting review by the appellate court. The failure of the lower courts to adequately address these clear conflicts is a substantial ground for review that appears to have been overlooked.

3. **Intervening Circumstances: Recent Amendments to Local Rules Governing Attorney Discipline:** The July 1, 2024 and January 2, 2025¹ recent amendments to the Joint Local Rules of the Southern and Eastern Districts of New York, particularly Local Civil Rule 1.5 concerning the "Discipline of Attorneys," provide compelling new grounds for reconsideration of the lower Court's decision. These changes, made effective July 1, 2024, and further refined for January 2, 2025, are not merely stylistic or clarifying; they represent a material alteration to the rules that directly corroborates Respondent-Appellant's consistent allegations regarding the composition and operations of the professional conduct review committee, constitute "intervening circumstances of a substantial or controlling effect" under Rule 44.2 that bear directly on the fundamental fairness of the proceedings Petitioner endured.

¹ <https://www.nysd.uscourts.gov/prior-versions-local-rules>

ARGUMENT

The denial of certiorari in this case appears to have resulted from an oversight of the sheer accumulation of due process violations that, in their totality, rendered the disciplinary proceedings against Petitioner fundamentally unfair. This is not a mere disagreement with the outcome below, but a challenge to the structural integrity of the process itself, constituting “other substantial grounds not previously presented” with sufficient force to demonstrate their collective, dispositive impact as required for rehearing under Rule 44.2. Furthermore, recent developments regarding the local rules governing these very proceedings present “intervening circumstances of a substantial or controlling effect” that demand this Court’s attention.

I. The Court appears to have overlooked the cumulative impact of Due Process violations that denied Petitioner a meaningful hearing.

The petition for writ of certiorari meticulously detailed how Petitioner was systematically deprived of the core components of due process. The reliance on secret evidence and ex parte submissions (Pet. 7-8), as evidenced by the Respondent’s explicit citation to a sanctions brief never served on Petitioner², is a flagrant violation. As stated in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170-172 (1951) (Frankfurter, J., concurring), “*fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights.*” This Court’s oversight of

² The September 7, 2022 Order (Pet. App. 10a) stated “*The parties shall have until September 28, 2022, to make submissions on sanctions, which shall set forth any relevant aggravating and mitigating evidence.*”

such a foundational breach appears to have be a substantial error.

Counsel Investigator in his March 6, 2024 unsigned appellate brief for the first time made the following argument (Pet. App.315a) *“Judge Koeltl made the initial referral to the Grievance Committee”* and further argued in their April 1, 2024 opposition to Petitioner’s motion to strike *“The Grievance Committee acknowledges that the fact that Judge ... who referred Respondent-Appellant’s disciplinary matter to the Grievance Committee does not explicitly appear in the Appendix. However, it is reasonable to infer that”* (Pet. App.318a) though the Court in Int’l Bus. Machines Corp. v. Edelstein, 526 F.2d 37, 45 (2d Cir. 1975) noted, *“the appellate court will not speculate about the proceedings below, but will rely only upon the record actually made.”*

Furthermore, the severe restriction of Petitioner’s testimony to “yes” or “no” answers (Pet. 11-12) transformed the evidentiary hearing into a charade. It prevented any meaningful opportunity to explain, clarify, or provide context, especially when credibility was at issue. This Court in *In re Ruffalo*, 390 U.S. at 550-51, emphasized that attorney disciplinary proceedings are “quasi-criminal” and demand procedural due process. Silencing the accused in such a manner is antithetical to this principle.

The original petition demonstrated that this was not a minor procedural flaw but a structural defect that made a fair hearing impossible.

The failure of the Second Circuit to conduct a de novo review in light of these substantial procedural irregularities and the conflation of roles by the Counsel Investigator (Pet. 10) further compounded these due process violations. This Court’s guidance is needed on the level of appellate scrutiny required when such pervasive procedural errors infect attorney

disciplinary hearings.

II. The Court appears to have overlooked substantial questions of Equal Protection and Judicial Impartiality.

The petition for writ of certiorari also presented substantial and potentially overlooked, arguments concerning equal protection and the appearance of judicial impropriety. The claim of selective enforcement and disparate treatment based on Petitioner's religious observances versus the Counsel Investigator's conduct (Pet. 27-28) raises serious Equal Protection concerns that merit this Court's attention, particularly in the context of attorney discipline where fairness and impartiality must be paramount.

Furthermore, in assessing the substantiality of Petitioner's Equal Protection claims, particularly the allegations of disparate treatment and religious discrimination (Pet. 27-28), the Court appears to have overlooked the deeply concerning societal context in which these disciplinary proceedings unfolded. As widely reported, including in a New York Times article dated June 2, 2025³, there has been a significant and alarming rise in antisemitic incidents across the United States, creating an environment of heightened anxiety and vulnerability for Jewish individuals. The potential for such pervasive societal biases to subtly influence the actions and decisions within a disciplinary committee, leading to the selective enforcement or unfair targeting alleged by Petitioner, constitutes a substantial ground that this Court may have overlooked when denying certiorari.

³<https://www.nytimes.com/2025/06/02/us/boulder-antisemitism.html>

The claim that Petitioner's religious identity may have played a role in the adverse and disparate treatment he faced takes on added weight and urgency against this backdrop, suggesting that the lower court's failure to rigorously examine these claims was a departure from the accepted and usual course of judicial proceedings requiring this Court's review.

Moreover, the unaddressed conflicts of interest arising from the professional relationships between key figures in the disciplinary process and the judiciary (Pet. 28-29) cast a pall over the entire proceeding. The integrity of the justice system demands not only actual fairness but also the appearance of fairness. The failure to address these documented conflicts, as detailed in the certiorari petition, is a substantial oversight.

III. Intervening circumstances: Recent amendments to local disciplinary rules implicate the fairness of Petitioner's prior proceedings.

Subsequent to Petitioner's March 27, 2024 Reply brief to the Second Circuit (23-872, 2d. Cir. Dkt. No. 235), significant amendments to the EDNY-SDNY Joint Local Civil Rules, particularly Rule 1.5 governing the Discipline of Attorneys was implemented effective July 1, 2024.

The explicit statement in Local Civil Rule 1.5(a⁴) that "Magistrate judges and district judges may serve on the Committee on Grievances" is a substantive shift from the previous rule's silence. This new authorization suggests judicial service was either previously unauthorized or lacked clear textual basis,

⁴ <https://www.nysd.uscourts.gov/prior-versions-local-rules>

thereby legitimizing a composition that was arguably problematic.

While Committee Notes frame these as mere "clarifications," reflecting the perspective of the drafting committee commentary should be critically assessed. The "novelty" of this specific inclusion implies prior non-adherence or addresses underlying misconduct, as Petitioner has consistently argued.

These explicit rule changes validate Petitioner's long-standing concerns about the Committee's operational integrity and due process.

These changes to the very rules under which Petitioner was disciplined appears to constitute "intervening circumstances of a substantial or controlling effect" as contemplated by Supreme Court Rule 44.2. Petitioner has sought, and continues to seek, clarification regarding the specific origin, composition of the proposing committee, precise rationale, timeline, and necessity for these particular additions and deletions to Rules 1.5. The fact that the rules governing attorney discipline—rules central to Petitioner's case and the due process violations alleged—were deemed to require amendment so soon after Petitioner's proceedings were fully submitted, and with a current lack of public transparency regarding the specific motivations targeting these rules, raises profound questions. These amendments may implicitly acknowledge deficiencies or areas of concern within the prior iteration of Rule 1.5 that directly and adversely impacted the fairness, transparency, and due process afforded to Petitioner. The potential that Petitioner was subjected to a disciplinary framework subsequently recognized as needing material revision is a substantial intervening circumstance that undermines confidence in the outcome of his case. This Court's review is necessary to consider whether these rule changes reflect a

systemic issue that prejudiced Petitioner and to ensure that discipline is imposed under a framework that is, and was, fundamentally fair. The lack of clarity surrounding the impetus for these specific changes further compounds the concern that the prior rules may have been inadequate or unfairly applied.

CONCLUSION

The purpose of this submission is not merely to address the outcome of Petitioner’s individual appeal, which would be moot at this juncture if not for the profound errors committed. Rather, it is to respectfully urge this Court to recognize that its denial of certiorari appears to have overlooked substantial constitutional infirmities and that significant “intervening circumstances of a substantial or controlling effect” have arisen, which, if left uncorrected, threaten the due process and equal protection rights of all attorneys facing disciplinary proceedings. The issues presented are not trivial; they go to the heart of what constitutes a fair and impartial adjudicatory process. These constitute “other substantial grounds not previously presented” with the clarity of their cumulative, devastating impact on the fairness of the proceedings, and new “intervening circumstances,” warranting rehearing under Rule 44.2. Granting this petition for rehearing is essential to right a manifest wrong and to ensure that the principles of fundamental fairness, as enshrined in the Constitution and this Court’s precedents, are rigorously upheld in proceedings that can strip an individual of their livelihood and reputation.

For the foregoing reasons, and those stated in the original petition for a writ of certiorari, Petitioner respectfully requests that this Court grant rehearing, vacate its prior order denying certiorari, and grant the

petition for a writ of certiorari.

Dated: New York, New York
June 18, 2025

/s/ Raphael Weitzman
Raphael Weitzman

No. 24-1010

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PETITION FOR REHEARING

CERTIFICATE OF GOOD FAITH

I, Raphael Weitzman, Petitioner pro se, certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court of the United States namely that there are “intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented.”

Dated: New York, New York
June 18, 2025

/s/ Raphael Weitzman
Raphael Weitzman

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APPENDIX A

LETTER FROM HON. SCOTT S. HARRIS TO THE PETITIONER

Supreme Court of the United States

Office of the Clerk

Washington, DC 20543-0001

Scott S. Harris

Clerk of the Court

(202) 479-3011

May 19, 2025

Mr. Raphael Weitzman 30 Wall Street
8th Floor
New York, NY 10005

Re: Raphael Weitzman v. Committee on Grievances for the
United States District Court of New York for the Southern
District of New York

No. 24-1010

Dear Mr. Weitzman:

The Court today entered the following Order in the
above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely

2a

/s/ Scott S. Harris

Scott S. Harris

Clerk