12/7/24

No. 24-7161

IN THE

Supreme Court of the United States

William H. Viehweg,
Petitioner,
v.

Insurance Programs Management Group, LLC, *et al*,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

William H. Viehweg
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Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the lower courts' recognition of three defendants' entries of appearances as their own attorneys, including legal co-counsel, rather than personally, like a *pro se*, is inconsistent with the legal holdings in *Kay v. Ehrler*, 499 U.S. 432; violates 28 U.S.C. Section 1654; and violates petitioner's United States Constitution's Fourteenth Amendment right to due process and equal protection of law?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

RELATED PROCEEDINGS

- Viehweg v. Insurance Programs Management Group, LLC, *et al*, No. 23-03047, U.S. District Court for the Central District of Illinois. Judgment entered January 26, 2024.
- Viehweg v. Insurance Programs Management Group,LLC, *et al*, No. 24-1287, U.S. Court Of Appeals for the Seventh Circuit. Judgment entered September 12, 2024.

CITATIONS OF REPORTS OF OPINIONS

Petitioner has no knowledge of any official or unofficial report of the opinions and orders entered in this case by courts or administrative agencies.

BASIS FOR JURISDICTION IN THIS COURT

The United States Court of Appeals for the Seventh Circuit, in Viehweg v. Insurance Programs Management Group, LLC, *et al*, No. 24-1287, entered its order denying Petitioner's appeal on September 12, 2024. There was no request for an extension of time to file a petition for writ of certiorari. 28 U.S.C. Section 1254(1) provides this court jurisdiction to review this petition for writ of certiorari.

PROVISIONS OF LAW INVOLVED IN CASE

28 U.S.C. Section 1654. In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

18 U.S.C. Section 401(2). A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—(2) Misbehavior of any of its officers in their official transactions.

18 U.S.C. Section 1503(a). Whoever....corruptly....endeavors to influence....the due administration of justice, shall be punished as provided in subsection (b). (b) The punishment for an offense under this section is —(3) ....imprisonment for not more than 10 years, a fine under this title, or both.

18 U.S.C. Section 241. If two or more persons conspire to ....oppress..... any person ..... in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.....They shall be fined under this title or imprisoned not more than ten years, or both.

Federal Rules of Civil Procedure 11(b)(2)(c)(1). Representations to the Court. By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. (c)(1). Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

STATEMENT OF THE CASE

Petitioner filed his complaint alleging violations of the racketeering influenced corrupt organizations laws 18 U.S.C. Section 1962(c)(d) and 18 U.S.C. Section 1964(c). The complaint named two law firms and several of their attorneys. [Doc. #1] Petitioner is not an attorney and filed his complaint personally. The case docket listed Petitioner as "represented by William H. Viehweg", and his representative status as "PRO SE". [Doc. Heading].

Defendant Joseph D. Bracey, who is an attorney, entered his appearance as his own legal counsel. [Doc. 7]. The case

docket listed Bracey as "represented by Joseph Bracey ....LEAD ATTORNEY .... ATTORNEY TO BE NOTICED". The case docket also listed defendant Bracey as being "represented by" attorney "Bhairav Radia" [Doc. Heading].

Defendant John P. Cunningham, who is an attorney, entered his appearance as his own legal counsel. [Doc. 17]. The case docket listed Cunningham as "represented by John P. Cunningham....LEAD ATTORNEY .... ATTORNEY TO BE NOTICED". The case docket also listed defendant Cunningham as being "represented by" attorney "Daniel G. Hasenstab" [Doc. Heading].

Defendant Daniel G. Hasenstab, who is an attorney, entered his appearance as his own legal counsel. [Doc. 18]. The case docket listed Hasenstab as "represented by Daniel G. Hasenstab ....LEAD ATTORNEY .... ATTORNEY TO BE NOTICED". The case docket also listed defendant Hasenstab as being "represented by" attorney "Bhairav Radia" [Doc. Heading].

The three defendant/attorneys, Bracey, Cunningham and Hasenstab, collectively, also entered their appearances as legal counsel for all the other co-defendants. [Doc. 7, 17, 18]

Petitioner moved to disqualify the three defendant/attorneys from appearing as their own legal counsel, citing 28 U.S.C. Section 1654. [Doc. 12, 31]. The court denied petitioner's motions stating "each party in this case is either representing itself or is

represented by counsel", and that "This comports with the plain language of section 1654". [Doc. T/O May 12, 2023]

Petitioner moved for reconsideration of his motions to disqualify Bracey, Cunningham and Hasenstab. [Doc. 35]. Cunningham and Hasenstab responded stating that the court "has conclusively determined that the statute does not prohibit Cunningham, Hasenstab, or Bracey from acting as their own attorneys". [Doc. 36]. The court denied Petitioner's motion. [Doc. T/O June 20, 2023]

Petitioner moved for a show cause order against all defendants arguing that the defendant/attorneys' appearances as their own attorneys were under the color-of-law and with the intent to obstruct justice, and that all the defendants conspired with the intent to deny petitioner his United States Constitution Fourteenth Amendment right to due process and equal protection of law. [Doc. 55]. Petitioner also moved to recuse the district judge arguing that the judge had allowed the proceedings to continue under the color-of-law due to his partiality in favor of the defendant/attorneys and against the non-attorney *pro se* petitioner. [Doc. 57]. Both motions were denied by the court. [Doc. T/O December 29, 2023].

In the court's order dismissing the petitioner's complaint for failure to state a cause of action, the court stated "The Supreme Court has recognized the potential issues that may arise when attorneys appear on their own behalf in court but has never ruled

that they are prohibited from doing so. See *Kay v. Ehrler*, 499 U.S. 432, 437 (1991)". The court's order granted the petitioner leave to amend his complaint. [Doc. 61]

Petitioner, citing *Kay*, moved for reconsideration of his motions for show cause order and recusal. [Doc. 62]. The court denied petitioner's motion. [Doc. T/O January 16, 2024].

Petitioner moved for entry of judgment. [Doc. 63]. The court granted petitioner's motion. [Doc. T.O January 25, 2024]. Petitioner filed his notice of appeal. [Doc. 65]

In the appellate court, the three defendant/attorneys again entered their appearances as their own attorneys. [Doc. 5, 6]. Petitioner, again, moved to disqualify said three defendant/ attorneys from representing themselves as their own legal counsel. [Doc. 8]. The appellate court summarily denied petitioner's motion. [Doc. 9].

The appellees' joint brief stated that the three defendant/ attorneys "are appearing in this case 'by counsel' as they are attorneys of record and are not appearing as non-attorney *pro se* defendants". Said brief further stated that "The *Kay* decision did not analyze (section) 1654", and citing a 7th Circuit case, stated that "Pro Se litigation is a burden on the judiciary". [Doc. 13].

The appellate court entered its nonprecedential disposition affirming the lower courts dismissal, and stated "the Supreme Court in *Kay* merely held that a self-represented lawyer could not collect a fee award under 42 U.S.C. Section 1988...". The court

further stated that "we sternly warn him that any future litigation based on these already-litigated events may result in monetary sanctions against him that, if unpaid, can lead to a filing bar." [Doc. 19].

Whereupon petitioner filed this writ of certiorari.

ARGUMENT

Whether the lower courts' recognition of three defendants' entries of appearances as their own attorneys, including legal co-counsel, rather than personally, like a *pro se*, is inconsistent with the legal holdings in *Kay v. Ehrler*, 499 U.S. 432; violates 28 U.S.C. Section 1654; and violates petitioner's United States Constitution's Fourteenth Amendment right to due process and equal protection of law?

Litigant/Attorney as own Client.

Rule 11 of the Federal Rules of Civil Procedure clearly applies to an attorney's entry of appearance as legal counsel. An attorney filing his entry of appearance as his own attorney, "certifies" that the "legal contention" that a litigant, who happens to be an attorney, can appear as his own attorney, is "warranted by existing law". But existing law does not warrant said "legal contention".

The language in 28 U.S.C. Section 1654 of "personally or by counsel" has consistently been held to be co-relative in nature, mutually exclusive, and disjunctive. Section 1654's stark choice of being represented personally (alone), or represented through another person as legal counsel, with all the attorney/client relationship benefits and privileges, is clearly intended to incentivize the choice of legal counsel. Section 1654 expressly applies to all courts, and therefore all cases, and all litigants.

The term "counsel" has been defined as "Advice and assistance given by one person to another in regard to a legal matter, proposed line of conduct, claim, or contention." Black's Law Dictionary, Abridged Fifth Edition, (1983). The clear intent of congress was that the term "counsel" was to be considered synonymous with the terms legal counsel and 'attorney'.

In *Kay v. Ehrler*, 499 U.S. 432, this court concluded, unanimously, that a lawyer who represents himself in litigation should be treated like other *pro se* litigants, and not like a client who has had the benefit of the advice and advocacy of an independent attorney. In reaching said conclusion, the Court reasoned that the word 'attorney' assumes an agency relationship, or one who is appointed and authorized to act in the place or stead of another. This Court further reasoned that even a skilled lawyer who represents himself is deprived of the judgment of an independent third party in making sure that reason, rather than emotion, dictates the proper tactical response.

Therefore, applying the underlying legal holdings supporting the final holding in Kay to section 1654, a litigant, who happens to be an attorney, can appear personally (*pro se*) or through another person acting as his legal counsel (attorney/client), not as his own legal counsel (attorney).

In this case, the acts by three defendant litigants, who happen to attorneys, of entering their personal appearances, not *pro se*, but as their own attorneys (counsel), were unwarranted by existing Supreme Court holdings of applicable law.

Contemptuous Conduct.

An attorney, as a member of the court's bar, is an "officer" of the court. The act of an attorney entering his appearance on behalf of a client should be considered to be an "official transaction". When said act of entering his appearance is knowingly not "warranted" by law, is absent justification, and is not intended to change the law, said attorney's representation to the court should be considered to be fraudulent, and said conduct "Misbehavior".

Said three attorneys should be treated the same as an attorney who enters his appearance on a revoked law license. The acts of the three defendants of entering their appearances as their own attorneys, should be considered to constitute *prima facie* contempt per 18 U.S.C. 401.

The three co-defendants, having chosen to not lawfully enter their appearances as *pro se*, and having chosen to not lawfully enter their appearances through another person as their legal counsel, and instead choosing to unlawfully enter their appearances as their own legal counsel, warrant an order to show cause why said attorneys should not be held in contempt per 18 U.S.C. Section 401, disqualified from the case, and have stricken all filed documents. Per Federal Rule of Civil Procedure 11(c)(1), said attorneys' two law firms, also co-defendants, should be held jointly responsible.

Unlawful Common Interest.

All defendants, by entering their appearances through three co-defendant attorneys, clearly intended to act in common interest. A common interest defense strategy must be for a lawful purpose, such as mutually challenging the legal viability of the complaint. The common interest doctrine, which provides the privilege of confidentiality, requires all parties to be represented by legal counsel. It would be reasonable for parties entering into common interest to expect confidentiality, and unreasonable for them to knowingly waive it. To bring the attorney/client privilege of confidentiality to the common interest group, the three co-defendant attorneys who entered their appearances as their own attorneys would have to be recognized by the court as being in an attorney/client relationship with themselves.

It is commonly said that if the law favors an attorney's case, he argues the law; if the facts favor his case, he argues the facts; but if neither favor his case, he pounds on the table. Defendants, appearing to have concluded that the petitioner's complaint, under a standard of possibility, was legally sufficient as to some alleged acts, mutually agreed to pound on the table. A RICO complaint is especially troubling to defendants who are attorneys as it alleges felonious conduct.

The proper remedy for an unlawful appearance as legal counsel is disqualification, though it is considered drastic. Disqualification of said three attorneys would deny the other defendants their choice of attorney, also considered drastic. So the defendants, employing the ends justify the means reasoning, influenced the court to rule, as to representative status, the legally impossible to be possible. That ruling in non-compliance with the law and in breach of impartiality, was intended to further influence the court to rule, as to the legal sufficiency of the complaint, the legally possible to be impossible.

When used in a statute, the term corruptly generally imports a wrongful design to acquire some pecuniary or other advantage. Black's Law Dictionary, abridge fifth edition, 1983.

Defendants clearly intended to make the immediate issue of the case, not the legal sufficiency of the petitioner's complaint, but the petitioner's status as a non-attorney *pro* se versus the composition of the defendants' common interest group. The

defendants, by weaponizing their common interest defense, clearly intended to intimidate the court by overwhelming the judicial wall of impartiality through shear numbers and, as members of the court's bar, demand exceptional and preferential treatment. The defendants actions of corruptly endeavoring to influence the court to abuse its discretion by recognizing a litigant/attorney as being in an attorney/client relationship with himself, unwarranted by Supreme Court legal holdings, violates 18 U.S.C. Section 1503(a).

Defendants clearly appear to have acted on their personal prejudices and biases that a non-attorney *pro se* should not be allowed to file a civil RICO case in the federal courts. Defendants appear to have been acting in conspiracy to oppress the petitioner's exercise of his right to seek redress in the federal courts under the RICO statutes, and his right, per statute, to appear as a *pro se*, in violation of 18 U.S.C. Section 241.

Denial of Due Process.

The denial of Petitioner's due process rights began when the district court recognized the three defendant/attorneys as their own legal counsel. The date of said appearances preceded any motions to dismiss. The district court's failure to strike said appearances, on its own initiative and over petitioner's formal objection, constituted a detrimental impediment to any further proceedings.

At the time of the defendants' entries of appearances, it would be reasonable to presume that the court had not read the petitioner's complaint. It would also be reasonable to presume that the court, knowing that the petitioner was a non-attorney *pro* se filing a federal civil RICO complaint with many defendants, had doubts about said complaint's legal sufficiency. Therefore, it would be reasonable to conclude that the lower courts might have used a less harm comparative in weighing the drastic remedies of disqualification versus 'momentarily' violating petitioner's due process rights.

Petitioner, a non-attorney, lawfully complied with Section 1654 by appearing personally and without counsel. In doing so, it is reasonable to conclude that Petitioner's complaint is not the best presentation of his claims.

Petitioner's motions to disqualify, show cause, and recuse were timely and appropriate in the district court. Petitioner's motions to disqualify were timely and appropriate in the appellate court.

In this case, the lower court divided the self-representative status in Section 1654 into two different classes, one with attorney/ client privileges, and one without. The lower court's recognition of three self-represented litigants as their own attorneys, granted said litigants with all the privileges provided by an attorney/client relationship (confidentiality, legal co-counsel, and legal fees). The court did not grant the other self-represented litigant, the petitioner,

the same privileges. Said class differentiation was based clearly on membership in the court's bar.

In a jury trial, a litigant's "character" is a fact issue to be decided by individual jurors. But in this case, three litigants have been recognized in their personal representative status as officers of the court. As such, the court has effectively acted as an expert witness vouching for the "good character" of said litigants. Petitioner, as *pro se*, alone, is subject the the old adage that he who relies on his own judgment is a fool. Any juror could, understandably, view the litigants through the partial eyes of the court.

The lower courts' exercise of the above said discretion, recognizing two classes of self-represented litigants, both opposing and unequal, contrary to existing law, without justification, violated the petitioner's United States Constitution's Fourteenth Amendment's right to due process and equal protection of the law.

CLOSING

The Supreme Court's holding in *Kay*, that a litigant, who happens to be an attorney, and chooses to represent himself, appears personally like a *pro se*, and not in an attorney/client relationship with himself, should be binding on the lower courts.

Though an attorney may personally harbor biases and prejudices in conflict with the law, in his capacity as an officer of the court, said attorney must act in compliance with the law. An

attorney's intentional act in non-compliance with the law, against an opponent litigant due to his representative status and the nature of his claim, should be held to be misconduct, warranting disqualification and striking of documents.

The defendants' common interest legal strategy, for the purpose of wrongfully influencing the court, should be held to be unlawful, and all proceedings, based on, and subsequent to said unlawful act, held to be null and void, as fruit of the forbidden tree.

In this case, all the defendants, acting in unlawful common interest, clearly intended to overwhelm the court's duty to uphold the law, and wrongfully cause the court, based solely on the status of representation and in a breach of fundamental fairness, to act partially, in favor of said defendants and in disfavor of the plaintiff. The lower court's rulings and threat of sanctions if the petitioner sought lawful review of its rulings, created a hostile litigation environment for the non-attorney *pro* se plaintiff, threatened the public's trust in the impartiality of the judiciary, undermined this Supreme Court's authority, and constituted manifest injustice.

CONCLUSION

THEREFORE, Petitioner prays that this honorable court grant his petition for writ of certiorari.