

IN THE
Supreme Court of the United States

RICHARD POLIDI,

Petitioner,

v.

MICHELLE K. LEE, JAMES O. PAYNE, ELIZABETH U. MENDEL, JOHN
HEATON, KIMBERLY C. WEINREICH, UNITED STATES,

Respondents.

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

PETITION FOR REHEARING

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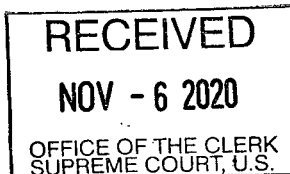


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PETITION FOR REHEARING

Pursuant to Rule 44.2 of the United States Supreme Court, the petitioner respectfully petitions the Court for an order (1) granting rehearing, (2) vacating the Court's October 5, 2020 order denying certiorari, and (3) granting the writ of certiorari, or to take other appropriate action in view of the following ethical grounds:

1. To allow a withholding of all exculpatory evidence when a Court has not precluded or restricted its disclosure, where no other procedure exists for a defendant to obtain it through discovery or otherwise, is submitted to allow an act of will inconsistent with the rule of law. Such an allowance is submitted to be inconsistent with the ethical principles to which the legal profession aspires as well as the applicable rules of professional conduct.

2. The Virginia Rules of Professional Conduct Rule 3.8(d) provides that "A lawyer engaged in a prosecutorial function shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence which the prosecutor knows tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment, except when disclosure is precluded or modified by order of the court[.]" The plain language of the rule indicates that its application is dependent upon the function performed by the lawyer. The application of prosecutorial immunity depends likewise on that function. In view of that symmetry, it is submitted that either both apply, or neither applies.

3. Ethics prosecutors successfully opposed a legal obligation to provide exculpatory material in their possession because they were not functioning as prosecutors in connection with the prosecution of the petitioner. In the instant matter, however, they sought and received the same broad immunity extended to those who function as prosecutors. In this matter, the United States District Court for the Eastern District of Virginia engaged in a functional analysis and found specifically that the same ethics prosecutors did perform prosecutorial roles. The fact that those respondents who functioned as prosecutors shared the same protections in the instant matter, without previously sharing the same responsibilities in the prosecution, has left the petitioner without recourse in this matter. Importantly, it has left them without the material exculpatory evidence he strongly and reasonably believes to exist.

4. No Judge has adjudicated the merits of the ethics issues raised in this matter. The respondents have likewise not addressed them on their merits.

5. The petitioner advised the District Court, as well as the United States Court of Appeals for the Federal Circuit, of the lack of a due response by his former attorney in the underlying North Carolina ethics prosecution to a request to release all communications between him and the North Carolina State Bar relating to that prosecution. Such conduct contravenes North Carolina Rules of Professional Conduct Rules 1.6 and 1.16. Those communications, and the contents therein, constitute client property.

6. On October 14, 2020, after the filing of the petition for a writ of certiorari and the Court's denial thereof, the North Carolina State Bar took the position that the communications it had with the petitioner's attorney during the underlying North Carolina prosecution are confidential and constitute the work product of the Bar.

7. The North Carolina State Bar possesses statutory and administrative responsibilities to regulate and supervise the legal profession. The petitioner is not excluded from the protections provided by those responsibilities. The protections include that of requiring compliance by the petitioner's former counsel with the obligation to release the requested communications. Upon information and belief, officials of that Bar continue to refuse to perform their duties, unethically and unlawfully. The Bar has now taken the position that the communications are confidential when the Bar, in fact, is the party having the legal responsibility to assist the petitioner with receiving them.

8. Canon 3(B)(6) of the Code of Conduct for United States Judges (the "Code") indicates that "A Judge should take appropriate action upon receipt of reliable information indicating the likelihood ... that a lawyer violated applicable rules of professional conduct." The commentary to this Canon states that "Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence."

9. Upon information and belief, the Courts took no action to require the former attorney in North Carolina to comply with his ethical and legal obligations in connection with the client file, proceeding instead to enter Orders against the petitioner, to accuse him of engaging in surmise, and to dismiss the matter.

10. Upon information and belief, the Courts had ethical duties in this matter to take appropriate action within the due authority of the Court to prevent ongoing attorney misconduct affecting this case.

11. Canon 1 of the Code states that “A Judge should maintain and enforce high standards of conduct” Canon 2(A) states that “A Judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” It is respectfully submitted that, consistent with those Canons, the Courts had ethical duties to use their authority to require that the petitioner be allowed to view his client file.

12. Canon 3 of the Code states that “A Judge should perform the duties of the Office fairly, impartially and diligently[.]” Canon 3(A)(1) states that “A Judge should be faithful to ... the law and should not be swayed by partisan interests, public clamor, or fear of criticism.” It is respectfully submitted that these Canons likewise guided the Courts take action concerning the attorney client file.

13. Canon 3(A)(4) states that “A Judge should accord to every person who has a legal interest in a proceeding, and that person’s lawyer, the full right to be heard according to law.” It is respectfully submitted that, without access to information to which the petitioner was entitled under the law and under the rules of ethics, information he required to proceed fairly in this matter, the Courts did not accord him the full right to be heard.

14. This issue is not one of discovery; it relies of the very Code of Conduct of United States Judges. It is submitted that requiring the respondents to address the foregoing ethical issues is an appropriate action which is consistent with Canon 3(B)(6) of the Code.


15. The attached Appendix includes two motions submitted by the petitioner to the appellate Court addressing the foregoing issues.

CONCLUSION

The petitioner respectfully requests that the Court take appropriate action, consistent with the guidelines embedded in the Code of Conduct, to address the merits of the foregoing and ongoing ethics issues in connection with the present matter.

This the 30th day of October, 2020.

Respectfully Submitted,

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CERTIFICATE OF PARTY

I certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Supreme Court Rule 44.2.

This the 30th day of October, 2020.

By: RM Polidi
Richard Polidi

**Additional material
from this filing is
available in the
Clerk's Office.**