No. 22-619

In The

# Supreme Court of the United States

IN THE MATTER OF LARRY E. KLAYMAN

*Petitioner*

**On Petition For A Writ Of Mandamus**
**To The District Of Columbia Court Of Appeals**

**PETITION FOR REHEARING**

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## PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner Larry Klayman ("Mr. Klayman") respectfully petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the District of Columbia Court of Appeals ("DCCA").



## PETITION FOR REHEARING

The District of Columbia attorney discipline apparatus has erroneously and without the requisite "clear and convincing evidence," suspended Mr. Klayman, a conservative activist attorney and the founder of both Judicial Watch and Freedom Watch, from the practice of law, unjustly damaging his legal practice, his colleagues and his family's well-being. This is strongly shown through the fact that **Ms. Sataki had filed identical Complaints in Pennsylvania and Florida and they were summarily dismissed as being frivolous and meritless**. App. 161

This is not just happening to Mr. Klayman, but to numerous other prominent conservative attorneys under a very partisan District of Columbia Bar Disciplinary Counsel, as set forth in detail in Mr. Klayman's Petition for Writ of Mandamus ("Petition"). This is exemplified by "The 65 Project," a "dark money" group with ties to the Democratic Party whose goal is to "oust, shame, and potentially disbar over 100 lawyers who assisted former President Donald Trump with his

post-2020 election lawsuits."[1] Their self-admitted goal is to not only "bring the grievances in the bar complaints, but shame them and make them toxic in their communities and in their firms."[2] Recently Harvard law professor emeritus Alan Dershowitz compared the state of affairs to the "kind of ridicule that suspected communists faced during the era of Sen. Joe McCarthy in the 1950s."[3] Professor Dershowitz stated:

> If you are perceived as enabling Trump in the in the [left-wing] communities of New York and Washington, D.C., your personal life will be affected; and judges are influenced by that. . . . That's why there cannot be a trial of Trump either in Manhattan or in the District of Columbia, because no judge will have the courage to throw out the case and have their personal and family and professional lives ruined. We are living in an age of left-wing McCarthyism, and I went through the

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[1] Zachary Rogers, *Democrat-tied 'dark-money' group seeks to disbar over 100 Trump-linked lawyers, per report*, CBS Austin, Mar. 7, 2022, available at: https://cbsaustin.com/news/nation-world/democrat-tied-dark-money-group-seeks-to-disbar-over-100-trump-linked-lawyers-says-report-the65project-donald-election-overturn-axios-clinton-melissa-moss-david-brock.

[2] Kathryn Rubino, Trump Election Attorneys Staring At Coming Wave Of Ethics Complaints, Above the Law, Mar. 7, 2022, available at: https://abovethelaw.com/2022/03/with-coming-wave-of-ethics-complaints-trump-attorneys-may-actually-face-consequences-for-their-actions/.

[3] Michael Katz, Dershowitz to Newsmax: Left-Wing McCarthyism Targets Trump Defenders, Newsmax, Mar. 24, 2023, available at: https://www.newsmax.com/newsmax-tv/alan-dershowitz-left-wing-mccarthyism/2023/03/24/id/1113761/.

> original McCarthyism. This is extraordinarily dangerous.

Thus, in sum, this Court needs to step in and intervene, as an attorney's political and other beliefs should not be the basis for disciplinary action, one way or the other. Acting on the basis of political ideology is not the proper function of the District of Columbia Office of Bar Disciplinary Counsel ("ODC") or the District of Columbia Board on Professional Responsibility ("Board") and swift action must be taken by this High Court so that the District of Columbia attorney disciplinary apparatus performs its functions in a neutral unbiased fashion.

## REASON FOR REHEARING

A petition for rehearing should present intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Supreme Court Rule 44. The Court must intervene here in order to correct a manifest injustice that has been committed through the District of Columbia attorney discipline process. Mr. Klayman's suspension is arbitrary and capricious, and must be reversed in full, or at a minimum, the DCCA must be ordered to give Mr. Klayman "time served," via his twenty (20) month "temporary suspension," the same treatment received by Mr. Clinesmith.

## I. The DCCA's Suspension Order Will Cause Grave and Manifest Injustice And Must Be Reduced to "Time Served"

As set forth in full in Mr. Klayman's Petition, the DCCA effectively and improperly summarily adopted, without itself apparently deeply delving into the record, the fatally flawed Report from the Board. This is shown in its Suspension Order, the DCCA wrote, "[w]e accept the Board's conclusion that Mr. Klayman violated the Rules of Professional Conduct, and we adopt the Board's recommended sanction," "[w]e 'accept the findings of fact made by the Board unless they are unsupported by substantial evidence of record,'" "[o]ur cases do not appear to make clear whether our review on this issue is deferential or de novo . . . We need not decide the issue, because we agree with the Board's conclusion," and "[w]e conclude that the Hearing Committee and the Board acted reasonably by choosing to largely credit E.S.'s testimony over that of Mr. Klayman." App. 17. This ignored the well-established precedent that under Board Rule 11.5, charges against Mr. Klayman must be proved by "clear and convincing" evidence. *In re Vohra*, 68 A.3d 766, 784 (D.C. 2013).

As set forth in full in Mr. Klayman's Petition, this clearly improper conduct was driven by the District of Columbia attorney discipline apparatus' transformation into a political weapon and tool that is no longer interested in protecting the public from attorney misconduct and instead has focused on becoming a weaponized political tool to weed out members of the District of Columbia Bar who happen to be

conservative politically. This is shown through the existence of Project 65, as set forth above, and as further conclusive evidence, the Court need not look any further than the completely disparate "selective prosecutorial" treatment afforded by the D.C. attorney discipline apparatus to Mr. Clinesmith in handling *In Matter of Kevin E. Clinesmith*, 21-BG-018 (D.C. App.). App. 124. In that case, Mr. Clinesmith, the former senior FBI lawyer who dishonestly falsified a surveillance document in the Trump-Russia investigation and who pled guilty to felony charges – was completely ignored by ODC, and only temporarily suspended for five months after he pled guilty, and only after ODC's "blind eye" was uncovered and subjected to negative publicity. Clinesmith also did not submit any affidavit under Rule 14(g) for five (5) months after he was suspended. Despite this, not only did the D.C. attorney disciplinary apparatus fast-track his case, DCCA let Clinesmith off with "time served" in just seven (7) months. And importantly, the Court imposed no reinstatement provision on Clinesmith, despite him literally being a convicted felon. App. 124

Here, not only was Mr. Klayman not found to have acted dishonestly, all of the purported ethical violations found by the DCCA were unsupported by the record, as set forth in detail in his Petition. Indeed, it is uncontroverted that **Ms. Sataki had filed identical Complaints in Pennsylvania and Florida and they were summarily dismissed as being frivolous and meritless**. App. 161. Thus, at a bare minimum, the Court must order the DCCA to afford the

same treatment to Mr. Klayman and Mr. Clinesmith – that is, "time served" from the temporary suspension. Again, Mr. Clinesmith is a convicted felon who dishonestly falsified a surveillance documents. If he is given "time served" after just seven (7) months, Mr. Klayman must be afforded the same treatment after having served a suspension period of twenty (20) months.

## II. There Was Also a Significant Deprivation of Due Process

In addition to the clearly unconscionable conduct set forth above rendering an order of allowing Mr. Klayman to have done "time served" the only reasonable outcome, it is important to recognize that this disciplinary proceeding (the "Sataki Matter") involves events that occurred in 2010 – over twelve (12) years ago. Even more egregiously, this matter was not even instituted until 2017 – seven (7) years after the Complaint was filed by the Complainant! App. 142. Thus, there was a minimum of (7) year delay before this case was even instituted. During those seven (7) years, having had no contact from ODC, Mr. Klayman very reasonably believed that the Sataki Matter had been closed, **particularly given the fact that Ms. Sataki had filed identical Complaints in Pennsylvania and Florida and they were summarily dismissed as being frivolous and meritless**. App. 161. Mr. Klayman therefore had discarded his records pertaining to his representation of Ms. Sataki, as case records need only be kept for five (5) years in the District of

Columbia[4] making his defense after the Sataki Matter was resurrected by ODC *sua sponte* subject to extreme prejudice.

This extreme prejudice was shown in the unavailability of key witnesses Ronald Rotunda, App. 94, and Dr. Arlene Aviera, App. 267, due to ODC's unconscionable delay in bringing charges against Mr. Klayman, as set forth fully in Mr. Klayman's Petition. Even more, Mr. Klayman was not even allowed to take the deposition of Ms. Sataki, despite the seven (7) year delay caused by ODC in even filing the Specification of Charges. Had Mr. Klayman been allowed to depose Ms. Sataki, he would have been able to avoid the severe prejudice that resulted from ODC and Ms. Sataki conspiring to introduce a myriad of alleged records for the first time literally on the eve of the hearing, without giving Mr. Klayman any opportunity to review them, as set forth above. And, he would have been able to uncover fraudulently withheld exculpatory evidence in the form of a video interview of Ms. Sataki publicizing her case, despite falsely claiming at the hearing that she did not approve of publicity in her case, as set forth in detail in Mr. Klayman's initial Petition.

All this goes to show that reciprocal discipline in the Sataki Matter must, at the outset, be denied due to the doctrines of laches, and in particular due to the completely unjustified and highly prejudicial nature of the delay. The DCCA has found that attorney

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[4] https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-283#footnote11.

disciplinary proceedings are "quasi-criminal in nature." *In re Williams*, 513 A.2d 793, 796 (D.C. 1986). Thus, "[t]he accusatorial quality of attorney discipline proceedings, coupled with their grave consequences, demand the provision of due process safeguards." *Id*. The *Williams* court held that an undue delay that impaired a respondent's defense could result in a due process violation. "A delay coupled with actual prejudice could result in a due process violation, in which case we would be unable to agree with a finding that misconduct had actually been shown." *Id*. at 797.

Then, in *In re Ekekwe-Kauffman*, 210 A.3d 775 (D.C. 2019), the DCCA analyzed this fundamental principle even further. In *Ekekwe-Kauffmann*, the DCCA was also faced with a seven-year delay, but in that case, the Respondent only made general allegations of prejudice and thus "has not identified the missing witnesses, made a proffer of their anticipated testimony, or explained her attempts to find them." *Id*. at 786.

This is the exact opposite of what has happened here. Mr. Klayman identified Professor Rotunda and Dr. Aviera as being unavailable due to the delay (death and illness), and clearly proffered the testimony of both witnesses in the form of a letter from Professor Rotunda, App. 94, and for Dr. Aviera on numerous occasions, including in his February 15, 2018 Motion to Notice and Have Issued Subpoenas Duces Tecum to Take the Depositions of Elham Sataki and Arlene Aviera. App. 167. Once again, in that motion, Mr. Klayman wrote, "[i]t is thus believed that the deposition

testimony of . . . Ms. Aviera will disclose crucial exculpatory evidence necessary for Respondent's defense, and reveal that he acted properly at all times and even sought to get Ms. Sataki other counsel." As set forth above, not only was this simple request, along with Mr. Klayman's request to depose Ms. Sataki, denied by the AHHC on several occasions, ODC was able to take advantage of this denial and (1) bury exculpatory evidence and (2) introduce unsubstantiated, unauthenticated hearsay into the record on the eve of the hearing without giving Mr. Klayman any real chance to review them.

## III. There Was Inadequate Evidence of Any Misconduct

As set forth in full in Mr. Klayman's Petition, there was simply no evidence to support any charges of misconduct against him. Mr. Klayman therefore respectfully requests that the Court thoroughly review his Petition in this regard. However, it bears emphasizing below the most egregious erroneous finding by the DCCA below.

### 1. There Was No Failure to Abide By Ms. Sataki's Wishes

Chief among the alleged ethical violations manufactured by ODC and "rubber stamped" by the Board and the D.C. Court of Appeals was a purported failure to abide by Ms. Sataki's decisions regarding the use of publicity in her case. As the record conclusively

showed, this was absolutely not the case, as Ms. Sataki agreed to the use of publicity at the time – which she even admitted at the Hearing, and then personally participated in publicizing her case at the time and even after the fact.

First and foremost, at the AHHC hearing in this matter, Ms. Sataki herself was forced to admit that she had approved and agreed with the use of publicity:

> Q: **Did you ultimately agree with Mr. Klayman about the publicity?**
>
> A**: I did.** App. 183.

Mr. Klayman also provided testimony from numerous witnesses who showed that Ms. Sataki's belated claim was false, such as Mr. Shamble, Ms. Sataki's union representative who worked closely with Mr. Klayman in his representation of Ms. Sataki. This means that Mr. Shamble was deeply involved in Mr. Klayman's representation and therefore had contemporaneous personal knowledge. The record is indisputably shows that Mr. Shamble, Mr. Klayman, and Ms. Sataki at the time discussed strategy all together and collectively decided that the use of publicity would be beneficial to help Ms. Sataki achieve her desired outcome. And, even more, as the final straw which shows the egregious error by the D.C. Court of Appeals is the undisputed fact that Ms. Sataki personally participated with Mr. Shamble in publicizing her case. App. 53.

Mr. Shamble also testified as to why he believed the use of publicity was a good strategy. He testified

that publicity was a helpful tool in dealing with an agency as notoriously difficult and anti-labor as VOA. Specifically, he testified "[w]e've done it. It's something that you can use to pressure managers, if they're intractable, you know, to try to get them to come to some sort of agreement. We have our own website, so we use it, too." App. 53.

Even further buttressing the testimony of Mr. Shamble and Mr. Klayman were numerous other witnesses who had contemporaneous personal knowledge. This included Keya Dash ("Mr. Dash declared under oath that he was present when the use of publicity to coax the BBG into settlement was discussed with Ms. Sataki, and that Ms. Sataki approved of its use."); This also included Joshua Ashley Klayman, Mr. Klayman's sister and herself a distinguished Wall Street lawyer ("Ms. Sataki openly discussed the VOA case with Ms. Klayman many times. [Ms. Joshua Ashley Klayman testified] "Yes, quite openly. And I met her multiple times. It wasn't that I just met her one time. Yes, she was quite open with what the circumstances of her challenges were. . . . an, she was very, very open, which – I'm not a litigator. I don't really know anything about litigations, but I was surprised that she was so open." App. 196.

Lastly, and as even more clearly conclusive evidence that Ms. Sataki at all times not only approved of publicity, but also that she went out of her way to personally publicize her own case is the fact that Mr. Klayman incredibly learned during the Board briefing process that Ms. Sataki had participated in making a

documentary about her case, with intimate personal details about her, against Voice of America ("VOA"), which further undercuts any possible false claim that Ms. Sataki did not agree to publicize her case.[5] The video, which is in Ms. Sataki's native language Farsi, was translated by one of Mr. Klayman's witnesses, Keya Dash, as well as a respected Farsi certified translator who used to work for VOA, Mohammad Moslehi. App. 206.

Unsurprisingly, Ms. Sataki did not disclose this to the AHHC and Mr. Klayman's defense team had to find this themselves during the appellate briefing process. This clearly fraudulent conduct was obviously done in concert with ODC, who must have known about this crucial exculpatory evidence and chose not to disclose it. This clear fraud grossly prejudiced Mr. Klayman because it was not part of the record at the AHHC hearing or the Board level, and the D.C. Court of Appeals refused a motion to remand this matter back to the Board to open the record to review this video shows its inherent bias on this and other issues – a clear violation of Mr. Klayman's due process and other rights. What would be wrong with trying to get to the truth, that is unless this does not comport with the predetermined narrative?

In any event, based on the foregoing, it is more than abundantly clear that the primary and case determinative alleged ethical violation found by the D.C. Court of Appeals was completely unsupported by the

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[5] https://www.youtube.com/watch?v=e3g5f61muZ4.

record, much less the standard of clear and convincing evidence.

## CONCLUSION

Based on the foregoing, the Court must grant Mr. Klayman's Petition for Rehearing and step in and take a stand to ensure that the rights of attorneys in the District of Columbia are not discriminated against and thus trampled upon simply due to their political beliefs.

Dated: April 14, 2023

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

Pursuant to Rule 44, Rules of the Supreme Court, counsel hereby certifies that this petition for rehearing is restricted to the grounds specified in Rule 44, paragraph 2, Rules of the Supreme Court, and is being presented in good faith and not for delay.

LARRY KLAYMAN, ESQ.