No. 24A903

In the Supreme Court of the United States

RAPHAEL WEITZMAN,
Applicant,

v.

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

APPLICANT'S APPLICATION FOR STAY OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT'S MANDATE PENDING PETITION FOR CERTIORARI

**Directed to the Honorable Sonia Sotomayor,
Associate Justice of the United States Supreme Court
and Circuit Justice for the Second Circuit**

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Applicant Raphael Weitzman (hereinafter "Applicant") now respectfully requests a Stay of the Second Circuit's November 21, 2024 Mandate (App. 1a)[1] affirming the September 30, 2024 Order (App. 18a) based on the Respondent's May 8, 2023 Order (App. 9a) (hereinafter, "the Mandate") pending this Court's disposition of Applicant's Petition for Writ of Certiorari dated January 16, 2025.

INTRODUCTION

Applicant respectfully submits this application to Stay enforcement of the Mandate which adopted the Southern District of New York's orders, pending resolution of the underlying petition for a Writ of Certiorari.

Applicant raises significant procedural concerns regarding the appellate process and challenges the integrity of the professional conduct review process that led to the orders challenged in the underlying petition for a writ of certiorari.

In the professional conduct review concerning Applicant, the Second Circuit Court of Appeals affirmed (App.18a), without de novo review, the District Court's findings (App. 7a , 9a and 13a) that were based on: (1) impermissible ex-parte communications between the professional conduct review committee and its Counsel Investigator; (2) consideration of evidence and arguments outside the trial record; (3) restrictions on Applicant's testimony to "yes" or "no" answers during the evidentiary hearing, coupled with a denial of his right to counsel and to confront witnesses/evidence; (4) a failure to properly consider Mitigating factors and

[1] References to the Appendix shall hereinafter be referred to as 'App.'.

Applicant's Equitable Defenses of Laches, unclean Hands and Equitable Estoppel; (5) an appearance of impropriety stemming from prior professional relationships between the Respondent's chair, the Counsel Investigator, and a member of the Second Circuit panel; and (6) a violation of equal protection guarantees through discrimination based on Applicant's religion and disparate treatment.

BACKGROUND

The Hon. Katherine Forrest appointed the professional conduct review Committee's Counsel Investigator (App. 29a) (See arguments infra at Pg. Nos. 33 and 34.) concerning a November 16, 2016 settlement conference on May 18, 2017 or six months thereafter, Counsel Investigator began the review October 2, 2017[2] (App. 193a) or five months thereafter with document demands due within fourteen days and closed the review December 15, 2017 or nine weeks thereafter[3][4] (App. 251a). An Order to Show Cause ("OSC") (App. 672a) with a Statement of Charges ("SOC") (App.

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[2]The commentary provided by the American Bar Association's Model Rules for Lawyer Disciplinary Enforcement Rule 11 which the proceedings operated under per the May 8, 2023 Opinion & Order states (App. 9a):

> Evaluation, investigation, and the filing and service of formal charges or other disposition of routine matters generally should be completed within six months; complicated matters generally should be completed within twelve months. The period from the filing and service of formal charges to the filing of the report of the hearing committee generally should not exceed six months. The period for review by the board generally should not exceed six months. Thus, overall time periods generally should not exceed the following: eighteen months for routine matters that are reviewed by the board and twenty-four months for complicated matters that are reviewed by the board.

[3]Counsel Investigator was advised at the concurrent time of Applicant's wife undergoing Stage IV Breast-Cancer treatment including a double Mastectomy, hastily conducted the delayed investigation and then allowed 4 years to pass.

[4]Counsel Investigator's December 15, 2017 email stated (App. 251a):

> We have to provide a recommendation to the Grievance Committee in mid-January [2018], so unfortunately January 16 [2018] is too late for an interview. If you cannot meet with us by January 8, [2018] we will render our report to the Grievance Committee on the basis of the documents you have provided and the record before the court.

672a) were served June 10, 2019 or two and a quarter years thereafter, a one-hour evidentiary hearing was conducted November 16, 2021 or two and a half years thereafter with answers restricted to "yes" or "no" and explanations or questionings were prohibited. The Opinion and Order was issued May 8, 2023 or one and a half years thereafter without a brief on sanctions or sanctions hearing.

Kendu Geralds was a pedestrian struck and seriously injured by a NYC Sanitation truck on November 2, 2011, retained Applicant November 7, 2011 to pursue his claims, entered into a springing purchase and sale of property rights agreement with Pegasus Legal Funding March 7, 2013 purportedly subsumed by other companies that refused binding arbitration mandated by the agreement and lacked standing for any claims. Geralds initiated legal action on May 10, 2016 and at the November 16, 2016 settlement conference over half a year thereafter, the other companies demanded all settlement proceeds be escrowed while their demanded usurious interest accrued and settled their $65,000 claim for $500,000 February 1, 2017 or 11 weeks thereafter.

JURISDICTION

The final judgment of the Circuit Opinion (App. 1a and 18a) is subject to review by this Court under 28 U.S.C. § 1254(1). This Court therefore has jurisdiction to consider and grant this Application for a Stay of the mandate pending the disposition of the Petition for certiorari under 28 U.S.C. § 2101(f).

REASONS FOR GRANTING A STAY OF THE MANDATE

The authority of a court to grant a stay pending appeal is derived from both its inherent powers and specific rules, such as the Federal Rules of Appellate Procedure. The inherent power of courts to grant stays is well-established and deeply rooted in the judicial system. This power is described as "firmly embedded in our judicial system" and "a power as old as the judicial system of the nation" (Coinbase, Inc. v. Bielski, 599 U.S. 736 (2023)).

Applicant, on November 20, 2023 appealed from the Southern District of New York for vacatur/reversal of SDNY's September 7, 2022 and May 8, 2023 Orders suspending the Applicant from the practice of law in the SDNY for a period of two years to the Second Circuit Court of Appeals. The Second Circuit denied the appeal via summary order dated September 30, 2024. Applicant subsequently filed a petition for panel rehearing and rehearing en banc October 24, 2024 which was denied November 14, 2024 (App. 26a).

The applicant for a stay pending review must show that the relief "is not available from any other court or judge." Sup. Ct. R. 23.3. This condition is satisfied because the District Court on October 16, 2023 (App. 13a) denied Applicant's July 12, 2023 Motion to Stay (App.937a) and the Second Circuit denied Applicant's November 24, 2023 Motion to Stay (App. 1035a).

The Hon. Scott S. Harris Clerk Supreme Court of the United States' February 19, 2025 correspondence returned Applicant's February 11, 2025 Application for Stay of the Mandate due to the absence of an Application for same to the United States Court of Appeals for the Second Circuit.

Applicant sent a February 25, 2025 correspondence providing the reasons set forth in paragraph immediately below for Applicant's absence of a prior application to the United States Court of Appeals for the Second Circuit which The Hon. Scott S. Harris Clerk Supreme Court responded in a March 5, 2025 correspondence received March 11, 2025 directing Applicant to *"Please incorporate the reasons stated in the letter for failure to comply with Rule 23.3 on any future application for stay submitted to this Court."*

Seeking a stay from the Second Circuit was "impracticable," based on the the underlying proceedings before the Second Circuit where:

> Denied a Substantively Identical Stay Application: On March 27, 2024, the Second Circuit denied Applicant's motion to stay proceedings pending appeal, which was based on the same core legal arguments presented in the current Application for Stay.
>
> Characterized Applicant's Arguments as "Frivolous" and "Meritless": The Second Circuit's November 21, 2024, Mandate, implementing its September 30, 2024, Order, explicitly labeled Applicant's legal challenges as "frivolous" and "meritless."
>
> Denied Rehearing Without Substantive Reasoning: The Second Circuit's November 14, 2024, order denied Applicant's Petition for Panel Rehearing and Rehearing En Banc (filed October 14, 2024, pursuant to FRAP Rule 40 and Local Rule 40) without providing any substantive analysis, reaffirming its firm rejection of Applicant's legal positions.

There have been no intervening changes in law or fact since these rulings. Given this consistent and unequivocal rejection of Applicant's arguments, and the prior denial of a substantively identical stay request, it is reasonable to conclude the Second Circuit would deny a stay application and requiring the foregoing would serve no purpose other than to delay the inevitable and unnecessarily consume judicial resources.

The standard for bypassing the lower court stay requirement is articulated in cases such as W. Airlines, Inc. v. Int'l Bhd. of Teamsters, 480 U.S. 1301, 1304-05 (1987) where Justice O'Connor stated that a stay may be granted directly by the Supreme Court when seeking a stay from the lower court would be impracticable. This principle aligns with the considerations underlying Federal Rule of Appellate Procedure 8(a)(2)(A)(i) which allows for a motion for a stay in the appellate court if "moving first in the district court would be impracticable."

Applicant's recourse invokes this Court's power under Rule 23 to address the substantial constitutional questions raised in Applicant's Petition for Writ of Certiorari which is under this Court's consideration involving fundamental rights to Due Process and Equal Protection and respectfully requests that the Court consider the Application for Stay recognizing the extraordinary circumstances that warrant bypassing the usual procedural step of seeking a stay from the Second Circuit Court of Appeals which the interests of justice and judicial economy strongly favor.

If the Mandate is not stayed, Applicant will continue to suffer grave prejudice and have his constitutional rights infringed.

Once Rule 23.3 is satisfied, the U.S. Supreme Court employs a four-factor balancing test to determine whether to stay a mandate pending appeal. The factors considered are:

Likelihood of Success on the Merits: The applicant must make a strong showing that they are likely to succeed on the merits of the appeal (Nken v. Holder, 556 U.S. 418 (2009)).

Irreparable Harm: The applicant must demonstrate that they will be irreparably injured absent a stay (Nken v. Holder, 556 U.S. 418 (2009))[1], (Hilton v. Braunskill, 481 U.S. 770 (1987)).

Harm to Other Parties: The court must consider whether issuance of the stay will substantially injure the other parties interested in the proceeding (Nken v. Holder, 556 U.S. 418 (2009)), (Alabama Association of Realtors v. Department of Health and Human Services, 594 U.S. 758 (2021)).

Public Interest: The court must evaluate where the public interest lies (Nken v. Holder, 556 U.S. 418 (2009))[1], (Alabama Association of Realtors v. Department of Health and Human Services, 594 U.S. 758 (2021)).

These factors are consistently applied across various cases and contexts (Nken v. Holder, 556 U.S. 418 (2009))[1], civil procedure (Hilton v. Braunskill, 481 U.S. 770 (1987))[2], and public health (Alabama Association of Realtors v. Department of Health and Human Services, 594 U.S. 758 (2021))[3]. The burden of proof lies with the appellant to justify the stay based on these factors (43 C.F.R. § 4.21).

I. THERE IS A STRONG LIKELIHOOD THAT FOUR JUSTICES WILL GRANT CERTIORARI

The underlying petition uncovered systemic flaws in professional conduct review proceedings that violated constitutional guarantees of due process and equal protection. These constitutional infringements erode the fairness and integrity of the legal profession, raising concerns with implications far broader than the individual circumstances presented herein.[5]

Fundamental due process rights were denied through a series of procedural violations, the right to present evidence was curtailed by restricting testimony to "yes or no" answers, the rights to confront accusers and to be represented by counsel were denied and further violations included ex-parte communications, an incomplete record, opaque procedures, unreasonable delays, unclear disciplinary rules, and the denial of de novo appellate review. The Fourteenth Amendment's Equal Protection Clause was violated by a discriminatory, unfair, and biased professional conduct review.

Applicant therefore requests the Court stay the effectiveness of the Mandate allowing this Court sufficient time to review the evidence on record and arguments presented in support thereto, so as to avoid further prejudice to Applicant, conclusively leading to this Court reversing the Second Circuit's November 21, 2024

[5]Schware v. Bd. of Bar Exam. of State of N.M., 353 U.S. 232, 238–39, 77 S. Ct. 752, 756, 1 L. Ed. 2d 796 (1957) A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.

Mandate affirming the September 30, 2024 Order based on the Respondent's May 8, 2023 Order. In the typical case, … the stay of mandate is entered solely to allow this Court time to consider a petition for certiorari… Bell v. Thompson, 545 U.S. 794, 806, 125 S. Ct. 2825, 2833, 162 L. Ed. 2d 693 (2005).

a) VIOLATION OF APPLICANT'S DUE PROCESS RIGHTS

The Fifth and Fourteenth Amendments to the U.S. Constitution, along with Article I, §6 of the New York State Constitution, guarantee due process, a fundamental right requiring notice and an opportunity to be heard before any deprivation of life, liberty, or property. This principle is affirmed by numerous Supreme Court decisions and SDNY Local Civil Rule 1.5(b) (App.88a).

Attorney-discipline matters are "of a quasi-criminal nature." In re Ruffalo, 390 U.S. 544, 551 (1968) Attorney disciplinary proceedings while not criminal prosecutions possess characteristics akin to criminal proceedings such as the need for due process and the adversarial nature of the proceedings. In re Ruffalo confirms an attorney is entitled to due process in professional conduct review proceedings.

In Fuentes v. Shevin, 407 U.S. 67, 80, 92 S. Ct. 1983, 1994, 32 L. Ed. 2d 556 (1972) the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L.Ed.2d 62 … 'Parties whose rights are to be affected are entitled to be heard.' Baldwin v. Hale, 1 Wall. 223, 233, 17 L.Ed. 531. (See Supra Pg 7) (Infra Pg 14).

Hamdi v. Rumsfeld, 542 U.S. 507 (2004) reiterated that due process requires a neutral and detached judge in the first instance ensuring decisions are made fairly and without bias (See Infra Pg Nos. 32 and 33).

The District Court did not address asserted due process violations while the Second Circuit Court's September 30, 2024 Summary Order *"discern[ed] no due-process violations"* without elaboration, leaving no understanding of its reasoning and at odds with the record.

Respondent denied Applicant due process when:

- Respondent's May 8, 2023 Order stated (App.10a) *"there are numerous aggravating circumstances, as set forth in detail in ... brief in support of sanctions,"* a brief the record is devoid of and vaguely alluded to by Counsel Investigator in their March 6, 2024 unsigned appellate brief to be an ex-parte communication which denied Applicant an opportunity to address/refute (See Infra Pg 16).
- Respondent's acceptance of matters outside the September 13, 2018 deposition transcript (hereinafter "deposition transcript") confirms it did not consider the transcript but it's non-record index or parentheticals (See Infra Pg. Nos. 26-27).
- Applicant's October 3, 2022 submission on sanctions containing mitigating factors (hereinafter "Submission on Sanctions") were not considered (See infra Pg Nos. 19-20).

- The absence of a de novo review by the Second Circuit (See arguments infra Pg Nos 11-12 and 33-34; App. 573a-574a).
- Applicant's January 26, 2022 Objections (App.861a) to Mag. Sarah Netburn's January 12, 2022 Order (App. 36a) were never ruled upon pursuant to 28 U.S.C. § 636(b)(1)(C) (App. 70a).
- Respondent required Applicant to respond to the June 10, 2019 OSC with SOC containing numerous references to the deposition transcript Respondent withheld until June 11, 2021 (App. 31a).

b. VIOLATION OF DUE PROCESS: RESPONDENT'S IMPERMISSIBLE EX-PARTE SUBMISSIONS

Counsel Investigator in their March 6, 2024[6] unsigned appellate brief made the following limited argument concerning their brief in support of sanctions (App. 543a):

> *"The Local Civil Rules do not prohibit ex parte communication between the Grievance Committee and its counsel"*

though prohibited by the American Bar Association's Model Rules for Lawyer Disciplinary Enforcement Rule 4(D) (App.92a) which the proceedings operated under per the May 8, 2023 Opinion & Order as well as the Federal Rules of Civil Procedure

[6]Conversely Applicant made multiple efforts to obtain additional banking records discussed in the January 27, 2022 Report and Recommendation (hereinafter "R&R") subsequent to discovering demands for same were not made at the deposition (See infra Pg Nos 25-27) rejected by Respondent as untimely and then improperly attributed to Applicant as a refusal to produce.

Mag. Netburn pronounced from the bench on October 6, 2021 applicable, (App. 39a) further inhibiting Applicant's defense.

"[A] judge should not initiate, permit, or consider ex-parte communications" unless "authorized by law[,]" "when circumstances require it ... for scheduling, administrative, or emergency purposes" (and even then, "only if the ex-parte communication does not address substantive matters and the judge reasonably believes that no party will gain a[n] ... advantage as a result of the ex-parte communication") ... " Code of Conduct for United States Judges, Canon 3(A)(4)(a)–(b), (d). In other words, ex-parte communications are the exception rather than the rule, and they require particular justification. ("Ex-parte communications between the government and the court deprive the defendant of notice of the precise content of the communications and an opportunity to respond." (citing In re Taylor, 567 F.2d 1183, 1187–88 (2d Cir. 1977))), United States v. Rechnitz, 75 F.4th 131, 146–47 (2d Cir. 2023).

A full record not only protects the rights of the parties and enables future proceedings—including, of course, appeals that come before this Court—but also preserves and promotes transparency, a feature "pivotal to public perception of the judiciary's legitimacy and independence." See United States v. Aref, 533 F.3d 72, 83 (2d Cir. 2008). In the unusual circumstance where a court reporter is unavailable, a district court is well-advised to promptly place on the record a full description of such communications. See, e.g., United States v. Mejia, 356 F.3d 470, 475 (2d Cir. 2004) United States v. Rechnitz, 75 F.4th 131, 146 (2d Cir. 2023).

c. RESPONDENT'S EXTRA-RECORD ARGUMENTS VIOLATE DUE PROCESS AND APPELLATE PROCEDURE

The record is devoid of the Counsel Investigator's brief in support of sanctions[7].

The September 7, 2022 Opinion and Order stated *"The parties shall have until September 28, 2022, to make submissions on sanctions, which shall set forth any relevant aggravating and mitigating evidence"* (See Supra on Pg No. 7).

It has long been recognized that 'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights' Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170—172, 71 S.Ct. 624, 647, 95 L.Ed. 817 Frankfurter, J., concurring. Fuentes v. Shevin, 407 U.S. 67, 81, 92 S. Ct. 1983, 1994, 32 L. Ed. 2d 556 (1972).

Counsel Investigator in their March 6, 2024 unsigned appellate brief for the first time made the following argument (App.573a) *"Judge Koeltl made the initial referral to the Grievance Committee"*[8] and further argued in their April 1, 2024 opposition to Applicant's motion to strike *"The Grievance Committee acknowledges that the fact that Judge Koeltl was the judge who referred Respondent-Appellant's*

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[7]The deposition transcript, Evidentiary Hearing transcript (App. 480a), Applicant's Objections to Magistrate Sarah Netburn's Order Dated January 12, 2022 and Applicant's submission on sanctions were all absent from the record until Applicant's September 21, 2023 motion to supplement the record on appeal was granted September 28, 2023.

[8]Mag Netburn Ordered June 11, 2021 *"By June 18, 2021, [Counsel Investigator] ...shall provide all discovery material in his possession to Raphael Weitzman."* (App. 31a) which Counsel Investigator's June 15, 2021 correspondence (App. 479a) confirmed compliance with:

> *"I also agreed to provide additional documents - if any - substantiating the charges against Mr. Weitzman ... I have also verified that neither I nor my Firm has any additional documents responsive to Mr. Weitzman's request."*

disciplinary matter to the Grievance Committee does not explicitly appear in the Appendix. However, it is reasonable to infer that, because the Geralds matter was before Judge Koeltl, it was Judge Koeltl who referred the matter to the Grievance Committee" (App.613a) though the Court in Int'l Bus. Machines Corp. v. Edelstein, 526 F.2d 37, 45 (2d Cir. 1975) stated *"the appellate court will not speculate about the proceedings below, but will rely only upon the record actually made."*

Respondent's March 6, 2024 unsigned appellate brief also included other evidence not submitted at the trial level as noted in Applicant's Motion to Strike. Respondent's March 6, 2024 Brief in the lower Court pages 9, 24, 32-33, and 42 (App.888a-890a) failed to cite specific portions of the record to support claims but instead introduced post hoc arguments.

It is the general rule that a federal appellate Court cannot consider an issue not presented to the lower Court. In Hormel v. Helvering, 312 U.S. 552, 556, 61 S.Ct. 719, 721, 83 L.Ed. 1037 (1941), the Court explained that this is "essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues . . . (and) in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence."

The principle that appellate courts do not consider matters outside the trial record when reviewing and affirming a lower court's judgment is well-established. Appellate review inherently requires a decision from a lower court to review, and factual challenges must be appraised based on the complete trial record (Dupree v.

Younger, 598 U.S. 729 (2023)). This principle is reinforced by the requirement that any arguments or evidence must be raised and considered in the trial court first (Dupree v. Younger, 598 U.S. 729 (2023)).

In re Peters, 642 F.3d 381, 384 (2d Cir. 2011) in relevant part:

> *"when the district court is accuser, fact finder and sentencing judge all in one"* ... this Court's review is *"more exacting than under the ordinary abuse-of-discretion standard."* The facts of this matter required a de novo review by the Second Circuit.

On May 18, 2017, Respondent appointed Counsel Investigator (App.193a, 13a, 686a and 923a) "to ... take any[9] ... necessary and appropriate actions in regard to complaints of professional misconduct" pursuant to 28 CFR § 600.1. However, the conflation of the roles of "investigator" and "counsel" within this appointment raise serious concerns. An investigator is tasked with objectively gathering and evaluating evidence and maintaining impartiality throughout the process. Conversely, counsel serves as an advocate, constructing legal arguments to support a specific outcome. In this instance, the designated individual was expected to perform both functions, compromising the neutrality expected of an investigator by simultaneously advocating for a particular resolution of the professional misconduct complaints. The investigator's role is to provide an impartial factual basis, while counsel uses that

[9] Judicial power to outside parties is non-delegable. Such delegation, particularly to those with potential biases, violates the due process right to a fair and impartial hearing and core judicial functions, like making ultimate factual findings and ruling on evidence.

basis to advocate for a position. This dual role created an inherent conflict, blurring the lines between impartial fact-finding and partisan advocacy.

Respondent delegated to their Counsel Investigator without providing adequate supervision. The lack of oversight extended further, as the Counsel Investigator, in turn, delegated responsibilities to summer and junior associates without adequate supervision (App. 480a). The absence of quorum information in Respondent's May 8, 2023 Opinion & Order and October 16, 2023 Order, unlike the May 18, 2017 Order, raise questions about the procedural validity of the later Orders.

d. VIOLATION OF DUE PROCESS: APPLICANT RESTRICTED TO "YES OR NO" ANSWERS AT EVIDENTIARY HEARING

At the one-hour evidentiary hearing, Applicant was improperly restricted to "yes" or "no" answers, silencing any attempts at providing context or detailed explanations (See infra Pg No. 15). This limitation was exacerbated by the fact that the Applicant was accused of lying approximately every 12 minutes, with no meaningful opportunity to rebut these accusations, present a defense or ask questions (App.480a). This approach directly contravenes SDNY Local Rule 1.5(d)(4), which mandates that the Magistrate Judge conducting the hearing "shall hear witnesses called by ... the respondent attorney." The imposed restrictions prevented the Applicant from being genuinely "heard" as required by this rule, undermining the fairness and integrity of the hearing.

During the evidentiary hearing, Counsel Investigator asked leading and badgering questions designed to elicit admissions under duress (App. 915a) (App. 512a, Line 23; App. 515a Line 25; App. 516a Line 1; App. 511a Lines 20-25; App. 512a Lines 1-2; App. 538a Lines 12-24; App. 515a Lines 20-25; App. 516a Lines 1-5; App. 516a Lines 6-25; App. 517a Lines 1-3; App. 534a Lines 23-25, App. 535a Lines 1-9; App. 515a Lines 4-19; App. 514a Lines 8-10; App. 510a Lines 10-21; App. 509a Lines 13-21; App. 517a Line 25; App. 518a Lines 1-5; App. 519a Lines 14-18; App. 525a Lines 1-11; App. 532a Lines 11-25; App. 533a lines 1-21; App. 536a Lines 10-11 and Lines 19-25; App. 537a Lines 1-8; App. 539a Lines 9-10; App. 527a Line 25 and App. 528a Lines 1-5).

Justice Hugo Black stated "Petitioner is entitled to every presumption of innocence until and unless such a violation has been charged and proved in a proceeding in which he, like other citizens, is accorded the protection of all of the safeguards guaranteed by the requirements of equal protection and due process of law. This belief that lawyers too are entitled to due process and equal protection of the laws will not, I hope, be regarded as too new or too novel." Cohen v. Hurley, 366 U.S. 117, 149, 81 S. Ct. 954, 972, 6 L. Ed. 2d 156 (1961).

The R&R stated (App. 40a, 58a) *"Weitzman was evasive and obstructive"* though Applicant was never ruled so and impossible as Applicant was only permitted to respond with "yes" or "no" (App. 497a Lines 9-25 and App. 498a Lines 1-21), (App. 495a Lines 1-14), (App.495a Lines 23-25 and App. 496a Lines 1-14).

This Court in Bronston v. U.S. emphasized that it is the responsibility of the

lawyer to recognize and address evasive answers through further questioning, rather than resorting to perjury charges for unresponsive answers (Bronston v. U.S., 409 U.S. 352 (1973)). In re Mason, 208 A.D.2d at 36, mere alleged 'evasiveness' has never been enough under the law for purposes of imposing this factor.

The fundamental requisite of due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914). The hearing must be 'at a meaningful time and in a meaningful manner.' In re Ruffalo, 390 U.S. 544 (1968), the Supreme Court noted that a lawyer's right to appear and argue before the ultimate trier of fact is essential to the lawyer's ability to defend against charges brought. Also see O'Neal v. Esty, 637 F.2d 846, 848 (2d Cir.1980). (See Supra Pg 7).

In re Ruffalo, 390 U.S. 544 (1968), the Court noted that a lawyer's right to appear and present a defense is not merely a formality. Instead, it is central to ensuring that disciplinary actions are just, that the factual record is fully developed, and that the lawyer's contentions and defenses are heard by the ultimate trier of fact. In other words, face-to-face advocacy is essential to the adjudicative process, serving as a fundamental safeguard of fairness and integrity in legal proceedings that can result in severe professional consequences.

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. E.g., ICC v. Louisville & N.R. Co., 227 U.S. 88, 93—94, 33 S.Ct. 185, 187—188, 57 L.Ed. 431 (1913).

Applicant was limited to written submissions which are insufficient in matters where credibility and veracity are central. They lack the flexibility of oral argument, precluding the ability to adapt to the decision-maker's concerns and to shape arguments in real-time to address issues deemed important, especially when witness credibility is being assessed (App. 539a Lines 23-25 to App. 540a Lines 1-3).

Applicant was denied counsel at the evidentiary hearing (App. 498a) *"you are a witness now, not an advocate. You are a witness now. You must answer ... questions honestly and completely."* violative of 28 U.S.C. § 1654(App. 67a).

A Party should not be deprived of right to try his case and testify on his own behalf ... merely because he is a lawyer. International Electronics Corp. v. Flanzer, C.A.2 (Conn.) 1975, 527 F.2d 1288. Machadio v. Apfel, 276 F.3d 103, 106 (2d Cir. 2002) Litigants in federal court have a statutory right to choose to act as their own counsel. 28 U.S.C. § 1654 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel....").

e. RESPONDENT ERRED BY OVERLOOKING OR MISAPPREHENDING MATERIAL FACTS AND LAW

Respondent's September 7, 2022 Order did not elaborate on the findings, leaving no clear understanding of their reasonings.

Respondent's May 8, 2023 Opinion and Order (See, Supra on Pg 7) did not elaborate on the findings, leaving no clear understanding of their reasonings and was a reiteration of Respondent's September 7, 2022 Order.

Respondent's October 16, 2023 Order did not elaborate on the findings, leaving no clear understanding of their reasonings and was a reiteration of Respondent's May 8, 2023 Opinion and Order.

The Court of Appeal's September 30, 2024 Summary Order did not elaborate on the findings, leaving no clear understanding of its reasoning and was a reiteration of Respondent's Opinions and Orders.

The Court of Appeal's November 14, 2024 Order did not elaborate on the findings, leaving no clear understanding of its reasoning.

The Court of Appeal's September 30, 2024 Summary Order inaccurately characterized Respondent's May 8, 2023 Order asserting that the Respondent found Applicant's mitigating factors *"insignificant in light of the aggravating circumstances—including Weitzman's prior disciplinary action[10], the number of violations[11] and Weitzman's lack of remorse."*[12] However, the May 8, 2023 Order stated, "The Committee has reviewed the entirety of the submission of Respondent and concludes that there are no significant mitigating factors. *On the other hand,*

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[10]The May 8, 2023 Order's sole aggravating factor—that a disciplinary motion was made on consent—indicates Applicant's willingness to acknowledge fault, as evidenced by his admission of misconduct and consent to a public reprimand. This was Applicant's only disciplinary matter, occurring during the year of extreme personal challenges. (See Infra Pg Nos. 19 and 20).

[11]The R&R properly declined to make findings outside the scope of the March 31, 2021, Order (App. 30a).

[12]The finding in the May 8, 2023, Order regarding Applicant's alleged lack of remorse creates an untenable dilemma for attorneys facing disciplinary charges. By stating that "Respondent has refused to acknowledge the wrongful nature of his misconduct and has shown no remorse," the Order penalizes Applicant for exercising his right to defend himself. This approach violates due process and contradicts In re Gould, 253 A.D.2d 233, 237 (1st Dep't 1999), ("vigorous defense on the facts should not be held against [an attorney] as an aggravating factor". Such a practice forces attorneys to choose between mounting a defense and risking increased sanctions.

there are numerous aggravating circumstances, as set forth in detail in [Counsel Investigator's] *brief in support of sanctions*." This distinction is material, as the May 8, 2023 Order did not weigh the mitigating factors against aggravating factors but rather concludes that there were no significant mitigating factors (See Supra Pg 10-11).

In re Villanueva, 633 Fed. Appx. 1, 5 (2d Cir.2015) the court stated: "[a]n attorney's culpability for misconduct may be mitigated if, during the relevant time period, the attorney was overwhelmed by the illnesses or other dire circumstances of close family and friends, or by grief, depression, shock, or other forms of mental trauma." The concept is supported by broader jurisprudence on regulation of the legal profession, due process requirements and the analogous principles found in Eighth Amendment cases regarding proportionality and individual circumstances.

In 2015, Applicant's wife began suffering from health problems that tragically culminated in a 2016 diagnosis of Stage IV breast cancer carrying a five-year prognosis. The devastating diagnosis profoundly impacted the entire family, beyond the immense physical and psychological challenges of the disease, Applicant's wife also endures cognitive impairments from chemotherapy. The profound emotional impact on the family also includes Applicant's children having had to undergo therapy and some prescribed antidepressants.

Applicant's mitigating factors included:

(a)absence of a dishonest or selfish motive as Applicant made every effort by justly prosecuting his client's claims;

(b) Applicant's continued cooperation throughout the disciplinary proceedings as confirmed by Counsel Investigator's on August 2, 2018 (App.256a);

(c) Applicant's reputation and good standing in the legal community;

(d) the unreasonable delay in the professional conduct review (See infra, Pg 29 and 33-35) (Supra Pg Nos 2 and 3) and

(e) the November 16, 2016 monetary sanction (App.142a Lines 6-7 and App. 144a Lines 11-15).

The clear and convincing evidence standard, mandated by both SDNY Local Civil Rule 1.5 (App. 88a) and the American Bar Association Standards for Imposing Lawyer Sanctions (App. 112a) as cited in the May 8, 2023 Opinion & Order was misapplied in the underlying proceedings.

Respondent's May 14, 2020 correspondence (App. 669a) stated that if the Committee found "no good cause to conduct a[n] [evidentiary] hearing, it will proceed with an order sustaining the charges." The evidentiary hearing was not a separate event, but a direct result of the "good cause" determination. It's the process that flows from that finding and one must assume the professional conduct review committee acted in good faith and genuinely believed they found "good cause".

In order for an attorney to be disciplined for a misstatement, it must be knowing, and there must be court reliance. Passlogix Inc., 708 F. Supp. 2d at 393-94.

Even when it comes to sworn testimony, "an isolated instance of perjury, standing along, will not constitute a fraud upon the court." Id. At 394 (citing McMunn v. Mem'l Sloan-Kettering Cancer Ctr., 191 F. Supp. 2d 440, 445 (S.D.N.Y. 2002)). See Passlogix, 708 F. Supp. 2d at 394 (in imposing a sanction, court must consider: (i) whether the misconduct was the product of intentional bad faith; (ii) whether and to what extent the misconduct prejudiced the injured party; (iii) whether there is a pattern of misbehavior rather than an isolated instance; (iv) whether and when the misconduct was corrected; and (v) whether further misconduct is likely to occur in the future") an analysis of which this matter is devoid of.

The Supreme Court has consistently underscored the critical importance of accuracy and precision in legal arguments. Misrepresenting an opponent's position, particularly by modifying their words, constitutes a violation of due process, as it precludes a fair opportunity to respond and effectively defend one's position. The principle established in Brady v. Maryland, 373 U.S. 83 (1963)—that the prosecution must disclose exculpatory evidence to ensure fairness—is directly relevant here. Modifying an opponent's words effectively "hides" their true argument counter to the transparency and fairness Brady demands.

The Court's September 30, 2024 Summary Order states *"Weitzman withdrew ... his client's escrow account in March and then represented to the court that he disbursed those funds in November"* while the evidentiary transcript (App.4a) testimony stated monies were *"disbursed"* not disbursed from escrow (App. 533a). The funds were not removed from escrow in November of 2016 and to be voluntarily re-

escrowed when the action was ordered dismissed on November 22, 2016 (App. 27a) and mooted by the settlement of the underlying matter.

Judge Koeltl held a conference December 1, 2016 (App.162a Lines 18-21) concerning Mag. Peck's November 16, 2016 settlement conference:

> *"THE COURT: You're going to keep the money in escrow until this is all decided, aren't you?*
>
> *MR. WEITZMAN: No, your Honor. We disbursed the funds when the case was marked closed."*

The Court's December 1, 2016 conference confirms, per the foregoing it's understanding the funds were no longer in escrow, contrary to the R&R's finding (App. 45a and 52a) *"Mr. Weitzman represented to the Magistrate Judge on November 16, 2016, that those funds were being kept in Mr. Weitzman's escrow account and agreed to keep them there."*

Judge Koeltl at the December 1, 2016 conference stated (App.165a Lines 6-9) *"THE COURT: So far as I know, and the parties -- I don't, you know, I don't decide things until it's briefed on the facts and the law..."(regarding escrow)* and further stated *"if the plaintiff faithfully complies with ... escrow ... there should be no further sanctions imposed."*

Judge Koeltl acknowledged the funds disbursed at the December 1, 2016 conference and deferred the escrow issue to Mag. Peck (App. 164a Lines 4-9) *"THE COURT: I don't have any order from the magistrate judge. ... And I'll refer it to the*

magistrate judge and you can discuss with the magistrate judge whether he vacated that order" which never occurred because said issue was also mooted.

All funds paid were for the following legitimate purposes:

Attorney's Fees: These fees were explicitly permitted as deductions from the settlement proceeds, as clearly stated in the purchase and sale agreement (App.646a). This agreement allowed for the payment of "Permitted Liens," which include "liens for attorneys' fees and reimbursable costs." Furthermore, the agreement specified that payments for the property rights "shall be paid only from the Proceeds and shall be paid only to the extent that there are available Proceeds."

Withdrawals to River Asset Management and Cannon Loans: These payments served to offset the usurious interest rates charged by other companies. The usurious interest, detailed in the purported purchase and sale agreement, reached an effective rate of almost 800% over three years. The investments were necessary to mitigate the financially damaging impact of the predatory lending.

All settlement funds used for loans were meticulously documented and outlined within the corresponding loan agreements, ensuring transparency and accountability.

The R&R (App. 51a, 54a) unfairly criticized Applicant's record production, which occurred three years after the initial request and Counsel Investigator's

statement to the contrary August 2, 2018 email (See infra Pg No. 25), despite the following mitigating factors:

> Overlooked Sealed Documents: The R&R (App. 50a) states that the records were "sealed" though they were accessible to Magistrate Judge Netburn, Respondent, and Counsel Investigator as per the February 21, 2017 Order (App.28a). This contradicts the claim of unavailability and suggests an oversight in the R&R's assessment.
>
> Existence of Record Loan Agreements: Applicant provided comprehensive loan agreements documenting all transactions. These agreements offer clear evidence of the legitimate use of funds and contradict any implication of impropriety.
>
> Guidance from Counsel Investigator: Applicant diligently followed the directions provided by Counsel Investigator regarding the production of records. This demonstrates a good-faith effort to comply with the requests.
>
> Lack of Subsequent Demand: No further requests for records were made after the initial production. This suggests satisfaction with the provided documentation and undermines the R&R's focus on the three-year gap.

The R&R's emphasis on the delayed production is misplaced and suggests a biased assessment of Applicant's actions.

In an October 2, 2017 email, Counsel Investigator requested six items from the Applicant due October 30, 2017 (App. 193a-194a) while Counsel Investigator's August 2, 2018 email acknowledged Applicant's cooperation, stating, "and again, we appreciate your cooperation thus far in providing us with requested documents and relevant information" (App. 256a).

At the deposition, Counsel Investigator advised Applicant (App.338a, Lines 6-13):

> *"Q. Do you have records of these investments?*
> *A. I could check.*
> *Q. And if we requested these records after this deposition would you be willing to provide them?*
> *A. If I have them, absolutely.*
> *Q. Thank you."*

taking no issue with prior productions while inquiring about Applicant's willingness to continue to comply with record requests which were never subsequently requested; the September 13, 2018 deposition transcript was provided June 18, 2021 and only after being ordered to on June 11, 2021 or 2.5 years thereafter (App. 31a).

The R&R took issue with Applicant's record productions after 3 years (App.50a):

> *"Weitzman violated this Rule. He has failed to put forward any evidence that he kept the required contemporaneous records. The documents he proffers as records are sealed materials"*

which overlooked sealed documents[13], record loan agreements, Counsel Investigator's

[13]Counsel Investigator alleged "Request/Demand" at the deposition was not one and the sealed documents/records were available to Mag. Netburn, Respondent and Counsel Investigator per the February 21, 2017 Order (App.28a):

> *"The attached affidavits were submitted by third party defendant Raphael Weitzman regarding Mr. Weitzman's distribution of the settlement fur.ds that were at issue in this case. The Court now files the affidavits and attachments under seal because they contain bank account information. The documents, however, shall be made available to judges and other officials and*

directions and lack of subsequent demand.

The R&R (App.39a) took issue *"Weitzman was the only person to testify"* disregarding Applicant could not call Judge John Koeltl, Magistrate Peck, opposing counsel in the underlying action Jeffrey L. Bernfeld given his conduct in the underlying action (App. 689a) or Geralds (upset by the results of the declaratory judgment actions) all of whom had relevant information and would have provided different perspectives on the allegations.

Counsel Investigator used a deposition miniscript[14] at the evidentiary hearing which obscured what a standard transcript would have revealed, the court reporter's misunderstanding of Counsel Investigator's statements as demands (App. 338a, 340a and 413a)[15]:

> *"DOCUMENT REQUESTS:*
> *Request for records of investments.....79*
> *Request for loan agreement documentation .....81"*

which convinced Respondent that Applicant refused to respond to said demands.

The R&R did not consider the record surrounding the two parentheticals in the deposition transcript (App. 340a):

> *"Q. And if we consulted with you after the deposition and requested that loan agreement, would you be willing to provide it?*
> *A. Absolutely."*

or only considered the non-record Index of the transcript (parentheticals and indexes are not part of a record).

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agents of the Court."

[14]Miniscript transcripts are less accurate, readable, and clear than full transcripts because they are produced more quickly, with less time for the court reporter to ensure accuracy and completeness.

[15]Counsel Investigator never provided the court reporter or their agency's information.

Counsel Investigator thwarted Respondent's proposed resolution of the underlying matter (App. 478a) and Applicant raised issues (App.1033a) with Counsel Investigator's handling of proceedings including the foregoing in a September 10, 2021 Motion (App. 699a).

Applicant was initially allowed to file (App. 34a) a Reply Written Submission December 28, 2021 to Counsel Investigator's December 21, 2021 Written Submission. However, Counsel Investigator objected to Applicant's 15-page reply, arguing it exceeded the 5-page limit, contained irrelevant information, and failed to properly address the alleged ethical violations (App. 686a). Magistrate Judge Netburn then struck the Applicant's reply for exceeding the page limit without leave (App.861a), despite the fact that Applicant had sought permission to file a lengthier document.

The R&R incorrectly contended:

> *"Respondent and the Financing Companies disagreed as to the portion of the settlement to which each interested party, including Respondent, was entitled."*

whereas the Evidentiary hearing transcript (App.493a) testimony was:

> *"A. There was a disagreement as to any entitlement and amounts of entitlement."*

The SOC at pt. 7 (App.675a) drafted by Counsel Investigator incorrectly stated:

> *"Judge Peck "so ordered" that Respondent [Petitioner] retain the money in his escrow account."*

and the R&R (App. 52a) incorrectly stated:

> *"Weitzman seeks to evade this conclusion by arguing that the "will" in "will be retained"*

the R&R (App.55a) incorrectly stated:

> *"Weitzman represented to the Magistrate Judge on November **16, 2016**, that those funds were being kept in Mr. Weitzman's escrow account and agreed to keep them there."*

whereas, the November 16, 2016 conference transcript questioned not ordered the following (App. 144a):

> *"And when we were off the record, you represented and agreed, Mr. Weitzman, that the proceeds of the auto accident which are in dispute in this case, the million and a half dollars, will be retained in your attorney escrow account until this case is resolved, right?"*

Applicant relied on the plain language "will" primarily used to express future actions that are decided at the moment of speaking while "will be" is used when talking about a state of being or a continuous action that will exist or be happening at some point in the future. (Merriam-Webster Dictionary 11th Edition Definition of will - used to express futurity)

The R&R took issue with Applicant being unable to clearly recall transactions from over six years disregarded Respondent's laches and Applicant's personal issues at the relevant times which if timely pursued would have been inapplicable. Respondent's laches, time's effect on memory and the surrounding circumstances makes such inferences improper.

Applicant was unjustly denied the opportunity to refer to records for the purpose of refreshing recollection during the November 16, 2021 Evidentiary hearing (App. 484a, Lines 11-12; App. 500a, Lines 4-11; App. 506a, Lines 8-11).

'Though a witness can testify only to such facts as are within his own knowledge and recollection, yet he is permitted to refresh and assist his memory by

the use of a written instrument, memorandum, or entry in a book' Putnam v. United States, 162 U.S. 687, 694–95, 16 S. Ct. 923, 926, 40 L. Ed. 1118 (1896).

Despite the February 22, 2016 settlement check being deposited into escrow March 2, 2016, the Court failed to address a critical issue that none of the other companies ever established a legitimate entitlement to funds. The Court's failure to adjudicate this matter deprived Applicant of the opportunity to contest these claims and to preserve the funds.

The R&R at (App. 52a) changed retain to retained and then argued they equally apply though:

"Retain" is the present tense form of the verb while "Retained" is the past tense of the verb "retain" raise further due process issues (See Supra Pg Nos. 21 and 22).

The R&R (App. 45a) stated:

> *"Though he did not raise this at the conference, Mr. Weitzman later contended that at the time he had severe bronchitis and was taking medication that causes drowsiness and dizziness. Respondent's Submission at 23."*

though the medical condition was raised with Mag. Peck prior to the conference (App. 687a). The R&R (App. 53a) stated:

> *"If Weitzman made a false statement because of his health, he was obliged to correct it, which he has never done since he continues to assert his statements were true."*

disregarded Petitioner clarifying Judge Koeltl's understanding at the December 1, 2016 conference (See supra Pg 22).

The R&R (App. 48a) which adopted Counsel Investigator's submission erroneously stated:

> *"These acts caused the balance of his escrow account to fall to zero despite potential client and third-party interests in those funds."*

The R&R acknowledges here the escrowed funds but erroneously refers to the other companies as "potential clients." This designation is inaccurate and misrepresents the relationship between the Applicant and these entities; these companies were derivative claimants with contingent claims. Applicant had no attorney-client relationship with these companies and therefore owed them no duty of representation, nor any obligation to provide them with legal counsel. The R&R's misleading language blurred crucial distinctions and created the erroneous impression that Applicant owed a broader duty of care. This misrepresentation unduly influenced the assessment of Applicant's actions and lead to unfair conclusions.

The R&R (App. 51a) improperly characterized Applicant's affidavit as an inadequate "post-hoc explanation." While the R&R correctly noted the requirement that entries be made "at or near" the time of the relevant transaction, it failed to articulate the specific timeframe applicable in this instance. Moreover, the R&R did not explain how Applicant's actions purportedly exceeded this unspecified period. The R&R further erred by disregarding the loan agreement, contemporaneous loan documents, and banking records, while focusing solely on the affidavit which was created weeks later at the Court's request.

Mag. Netburn disregarded law and evidence, relied instead on intuition (App.56a), similar to the improper judicial conduct described in U.S. v. Paladino, 401 F.3d 471 (7th Cir. 2005), where a judge signaled to the jury his belief in the

defendant's guilt. The R&R itself acknowledged that "*Weitzman's response is not entirely clear*" (App.55a), indicating the need for clarification rather than immediate conclusion Applicant's statements lacked credibility.

Nor, contrary to the theory of the Trial Judge, does the fact that the proceeds of the settlement had been deposited in defendant's attorney's account make them "trust" funds and as such a subject larcenous taking (cf. People v. Yannett, 49 N.Y.2d 296, 425 N.Y.S.2d 300, 401 N.E.2d 410). The Rules of the First, Second and Fourth Departments require that attorneys practicing in those departments not commingle clients' funds and deposit them in a separate special account (22 NYCRR 603.15 renumbered 603.27, 691.12, 1022.5 (repealed)) and the First and Second Department Rules also require that the proceeds of settlement of a personal injury or wrongful death action be deposited in such an account (22 NYCRR 603.7(d)(1) renumbered 603.25, 691.20(d)(1)). Nothing in those rules, however, establishes a trust interest in those funds in anyone other than the client.

Counsel Investigator summarily decided the funds were co-mingled without stating with whom and they were always kept separate from any other assets. River Asset Management LLC was a sole member LLC electing as a sole proprietor with its identity indifferent from Applicant.

The only other pertinent regulation is the Code of Professional Responsibility Disciplinary Rule 9-102 which mandates that *"All funds of clients paid to a lawyer or law firm shall be deposited in one or more identifiable bank accounts"* and that the attorney shall *"Promptly pay or deliver to the client as requested by a client the funds*

in the possession of the lawyer which the client is entitled to receive." (1017 Matter of Iversen, 51 A.D.2d 422, 381 N.Y.S.2d 711. It is not, however, violated by the failure to pay money to a third person to whom the client is obligated (Matter of Kelly, 23 N.Y.2d 368, 382, 296 N.E.2d 937, 244 N.E.2d 456). People v. Keeffe, 50 N.Y.2d 149, 156, 405 N.E.2d 1012, 1015 (1980).

The Court's September 30, 2024 Summary Order:

> *"Weitzman ... argues that his conduct should be excused ... because his client was "extremely difficult to represent,"*

misleading as the foregoing was stated among multiple mitigating factors.

f. VIOLATION OF APPLICANT'S EQUAL PROTECTION RIGHTS

The Equal Protection Clause mandates fairness and impartiality in attorney disciplinary proceedings, prohibiting discriminatory application of rules and sanctions and protects against disparate treatment, such as selective prosecution.

The R&R attributed adjournments initiated by Applicant for religious holidays (App. 691a) as delaying the professional conduct review (App. 57a) but not Counsel Investigator's convenience adjournments. Counsel Investigator actively litigated at least four complex cases during the subject period, including some in this court.

Applicant alleges an Equal Protection violation, asserting he faced disciplinary action while the Counsel Investigator, who engaged in more severe misconduct did not, indicating disparate treatment based on the differing backgrounds. A central tenet of Equal Protection is the prohibition of selective prosecution, which occurs when disciplinary authorities target certain attorneys based on protected

characteristics or other impermissible factors. While firm type ("white-shoe" vs. "non-white-shoe") is not a traditionally recognized protected class, Applicant argues that such a distinction serves as a proxy for protected characteristics or constitutes an arbitrary basis for selective enforcement. This type of selective enforcement indicates implicit bias, even if unintentional. Applying disciplinary rules based on a firm's size or perceived prestige, rather than the attorney's actual conduct, is arbitrary and capricious and explains the issuance of non-published orders/summary orders.

g. FAILURE TO PROPERLY CONSIDER LACHES AND OTHER EQUITABLE DEFENSES: LOWER COURT'S RULING, AFFIRMED BY SECOND CIRCUIT, PREJUDICED APPLICANT AND VIOLATED DUE PROCESS

The second circuit Court's September 30, 2024 Summary Order:

> *"Weitzman does not identify any wrongdoing necessary for unclean hands or equitable estoppel, nor does he show that the lengthy investigation prejudiced him, as the laches defense requires."*

Counsel Investigator never denied any of the foregoing allegations and the Second Circuit, which does not conduct independent investigations, did not examine these allegations and it also did not conduct a de novo review (App. 18a) (App.1017a- App. 1025a).

Applicant's laches defense argued *"the lengthy investigation prejudiced him"*.

The R&R improperly based its findings on Applicant being unable to clearly recall transactions from over six years, the Court should have further considered the

personal issues at the relevant times and the consequential emotional impact of *"the lengthy investigation."* (See supra, Pg 29 and 33-34) (Supra Pg Nos 2 and 3).

h. CONFLICTS OF INTEREST AND APPEARANCE OF IMPROPRIETY IN PRIOR PROCEEDINGS

The Hon. Katherine Forrest, chair of Respondent's professional conduct review committee was employed by Respondent's Counsel Investigator immediately prior and subsequent to her judicial office.

The Hon. Lewis J. Liman, a Judge of SDNY served on the Second Circuit panel for this matter was Counsel Investigator's associate and also is a colleague of Respondents (composed of judge or judges of SDNY some of whom the appeal took issue with).

Federal law provides that: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."[16] ... All counsels and judges have an obligation to disclose personal, financial, or professional conflicts of interest giving the other party opportunity to object to same... even the mere appearance of a conflict of interest is enough to disqualify counsel a judge from participating in a case. "A Lawyer Should Avoid Even the Appearance of Impropriety," has been invoked in attorney conflict cases. See, e.g., Fund of Funds, Ltd. v. Arthur Andersen & Co., 567 F.2d 225, 234-35 (2d Cir.1977).

[16]28 U.S. Code § 455(a)

The impartiality of the decisions made were compromised due to Counsel Investigator's involvement and Applicant's prior complaints created a clear conflict of interest and suggests retaliatory intent (See Supra Pg Nos. 26-27).

II. THERE IS A STRONG LIKELIHOOD THAT THE COURT WILL OVERTURN THE CIRCUIT OPINION

"Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," due process guarantees must scrupulously be observed. *Wisconsin v. Constantineau,* 400 U.S. 433, 437 (1971). The "profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. *The right to exercise it ought not to be lightly or capriciously taken from him." Ex parte Burr,* 22 U.S. 529, 530 (1824).

If the due process and equal protection violations were permissible, the rules should have explicitly stated same and none were alleged to fall under the limited exceptions (App.88a-91a).

'Such procedural violation of due process would never pass muster in any normal civil or criminal litigation. 370 F.2d, at 462. In re Ruffalo, 390 U.S. 544, 550–51, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968).

Nat'l Ass'n for Advancement of Colored People v. Button, 371 U.S. 415, 439, 83 S. Ct. 328, 341, 9 L. Ed. 2d 405 (1963) For a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights. See Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796; Konigsberg v. State Bar, 353 U.S. 252, 77 S.Ct. 722, 1 L.Ed.2d 810. Cf. In re Sawyer, 360 U.S. 622,

79 S.Ct. 1376, 3 L.Ed.2d 1473. In NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 461, 78 S.Ct. 1163, 1171, 2 L.Ed.2d 1488

The requirements of procedural due process must be met before a State can exclude a person from practicing law. 'A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.' Schware v. Board of Bar Examiners, 353 U.S. 232, 238—239, 77 S.Ct. 752, 756, 1 L.Ed.2d 796. As the Court said in Ex parte Garland, 4 Wall. 333, 379, 18 L.Ed. 366, the right is not 'a matter of grace and favor.' Willner v. Comm. on Character & Fitness, 373 U.S. 96, 102, 83 S. Ct. 1175, 1179–80, 10 L. Ed. 2d 224 (1963)

The Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 6 of the New York State articulated in several cases and SDNY Local Civil Rule1.5(b) permits discipline only after ... an opportunity to respond (See Supra Pg Nos. 7 and 8) which was not met, thus discipline may not be imposed.

For the foregoing reasons, Applicant respectfully requests the current application for a stay of the Second Circuit's mandate be granted until such time this Court conducts a review of the records and evidence presented on applicant's Petition for a Writ of Certiorari to avoid further harm and prejudice until this Court decides such matters.

III. FURTHER IRREPARABLE HARM WILL OCCUR WITHOUT A STAY

First, there is no likelihood that any harm could arise from staying the Mandate which is based on Respondent's May 8, 2023 Suspension Order pending appeal. Prior to this case, Applicant had no disciplinary actions prior to the subject year or subsequent thereafter and the year of the underlying action, the basis of which is this matter when Applicant was faced with extreme personal difficulties. The only aggravating factor cited by Respondent demonstrated that Applicant conceded to errors in the appropriate circumstances.

Second, the integrity of the Respondent's decision will not be harmed if a stay is granted.

IV. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST SUPPORT A STAY

This Court should grant a stay because Applicant raises serious arguments and the balance of harms tips heavily in his favor. Regardless, any harm Respondent might suffer, pales in comparison to the harm Applicant continues to suffer.

There are weighty constitutional issues that favor a stay in this case. The greatest care must be taken to prevent unnecessary harm before any lawyer's career is destroyed. Applicant unquestionably has a constitutionally protected property interest in his license to practice law. See In re Ruffalo, 390 U.S. 544, 550-51(1968) (stating that disciplinary proceedings for indefinite suspension of law license were "quasi-criminal" in nature, thus entitling attorney to due process protections); see also Erdmann v. Stevens, 458 F.2d 1205, 1209-10 (2d Cir. 1972) (observing that "a

court's disciplinary proceeding against a member of its bar is comparable to a criminal rather than to a civil proceeding," and that, "for most attorneys[,] the license to practice law represents their livelihood, loss of which may be greater punishment than a monetary fine"). Applicant likewise possesses a liberty interest, protected by the due process clause, in his "good name, reputation, honor [and] integrity." Goss v. Lopez, 419 U.S. 565, 574 (1975) (quoting Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971)); see Paul v. Davis, 424 U.S. 693, 708-09 (1976) (stigmatization by government action, combined with a corresponding alteration of legal status, triggers due process liberty protections).

Supreme Court of the United States Justice Douglas in Barsky v. Board of Regents of University, 74 S.Ct. 650 stated:

> *"The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property. The American ideal was stated by Emerson in his essay on Politics, 'A man has a right to be employed, to be trusted, to be loved, to be reversed.' It does many men little good to stay alive and free and propertied, if they cannot work. To work means to eat. It also means to live. For many it would be better to work in jail, than to sit idle on the curb. The great values of freedom are in the opportunities afforded man to press to new horizons, to pit his strength against the forces of nature, to match skills with his fellow man."*

As noted above, Applicant's indisputably presents a substantial case on the merits. In addition, there is no doubt that the balance of equities weighs in favor in granting the stay:

- Absent a stay, the destruction of Applicant's livelihood, and the financial consequences for Applicant's family will be devastating.

- Applicant and his wife are paying for his three children's education with related expenses.
- Applicant is the sole caregiver for his 88-year-old mother, a holocaust survivor with unique issues associated with same currently suffering from moderate to severe Dementia.
- Applicant has practiced in the Federal Courts for years without harm, grievances, or sanctions . In light of the lack of a reoccurrence during the years, the Respondent has failed to justify how a two-year suspension has any preventative purpose–the sole basis for imposing discipline.

The two-year suspension is a permanent ban that avoided the stricter procedural requirements associated with such a sanction.

CONCLUSION

Based on the foregoing, Applicant respectfully requests this Court grant a Stay of the Second Circuit's November 21, 2024 Mandate affirming the September 30, 2024 Order based on the Respondent's May 8, 2023 Order pending Applicant's January 16, 2025 Petition for a Writ of Certiorari.

Dated: New York, New York
March 12, 2025

/s/ Raphael Weitzman
Raphael Weitzman

No.

In the Supreme Court of the United States

RAPHAEL WEITZMAN,
Petitioner,

v.

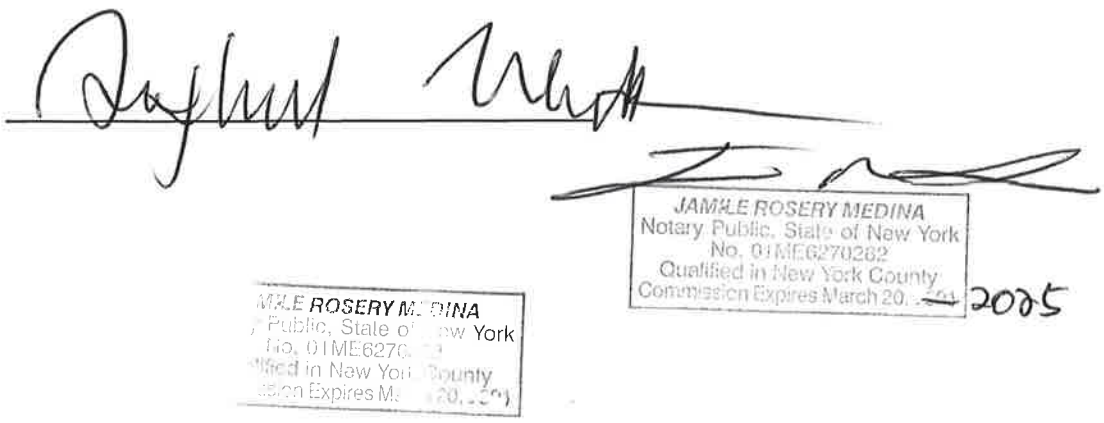
COMMITTEE ON GRIEVANCES FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK,
Respondent.

CERTIFICATE OF SERVICE

It is hereby certified that on March 14, 2025, the Application for Stay in the above-captioned case was served, as required by U.S. Supreme Court Rule 29.5(c), on the following:

Committee on Grievances for the Southern District of New York
United States District Court
500 Pearl Street
New York, NY 10007

Executed on March 14, 2025



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