

**Case No. S281974**  
**State Bar Court Case No. 17-O-01313**

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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GREGORY HARPER

State Bar Number 146119.

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent,

---

**REPLY TO STATE BAR OPPOSITION TO PETITION FOR REVIEW**

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APPEAL FROM A DECISION OF THE HEARING DEPARTMENT

OF THE STATE BAR COURT

OF THE STATE BAR OF CALIFORNIA

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## **I. STATEMENT OF ISSUES PRESENTED**

### **A. WHETHER THE STATE BAR COURT ALLOWED THE CALIFORNIA STATE BAR TO FRUSTRATE THE CALIFORNIA SUPREME COURT ORDERS ALLOWING DISCOVERY WITH RESPECT TO:**

1. The facially neutral policy or policies applied by the State Bar regarding reportable bank actions matters (RABM) and, their disparate impact on and of Black male attorneys resulted in discriminatory discipline of Harper;
2. The rational basis for the extreme weight given by the Hearing Court Judge to the petitioner's decades old prior discipline stemming from reportable bank action bank matters notwithstanding their admittedly disparate impact on Black male attorneys;

### **B. WHETHER HARPER'S DUE PROCESS RIGHT TO DISCOVERY WAS VIOLATED WITH RESPECT TO ACCESS TO INFORMATION REQUIRED TO PROVE THAT HIS DISCIPLINE WAS THE RESULT OF DISPARATE IMPACT AND HE WAS SUBJECTED TO DISPARATE TREATMENT COMPARED WITH SIMILARLY SITUATED WHITE MALE ATTORNEYS.**

### **C. WHETHER THE STATE BAR HEARING JUDGE WAS COMPETENT TO DETERMINE A CASE ROOTED IN CIVIL LAW WITH VASTLY DIFFERENT AND COMPLEX DISCOVERY RELATED TO DISCRIMINATION CLAIMS**

## II. TABLE OF AUTHORITIES

### California Supreme Court

*Sosinsky v Grant* (1992) 6 Cal.App.4th 1548, 1564.....17

### California Courts of Appeal

*Mozetti v City of Brisbane* (1977) 67 Cal.App.3d 565,578.....17

### Miscellaneous

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*Disparate Impact for Policing* <https://www.yalelawjournal.org>.

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*United States Department of Justice Civil Rights Division Manual on proving  
disparate impact* [www.justice.gov/crt/fcs/T6Manual7](http://www.justice.gov/crt/fcs/T6Manual7). ....8

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[www.calbar.ca.gov/About-Us/Our-Mission](http://www.calbar.ca.gov/About-Us/Our-Mission) and See Ruben Duran open letter  
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### **III. INTRODUCTION**

This case has merit. It is a complex matter concerning racial discrimination relative to discipline by the California State Bar (State Bar) involving Black male attorneys, specifically, the petitioner Gregory Harper. Following an untimely complaint in 2017 used as leverage in a fee dispute resolved in 2018, Harper became the subject of a disbarment recommendation by the Hearing Department. The recommendation of is based upon State Bar policies and practices calling for the sanction where there is a possibility of a third discipline regardless of any other factors such as the age of the prior, whether there was any harm or mere mistake. All that matters is whether discipline was imposed. The imposition of discipline is contingent on the unfettered discretion of the person or persons handling the complaint as dictated by the State Bar complaint intake policy which is secret and not known outside of the State Bar. The policy involved here is not mandatory. Even if such were the case, the State Bar does not apply it uniformly.

Using the Farkas study and Robertson reports as starting points, Harper contends the recommended discipline is racially discriminatory. Harper further alleges Black male attorneys are disciplined more often and harshly than his white male counterparts who are treated more leniently than any other group. While the State Bar provides the Farkas study and Robertson report show discipline of Black male attorneys is simply because Black male attorneys have more complaints lodged against them, how the complaints are processed is not addressed in either

study or report. Thus the need for discovery. Petitioner requests judicial notice of discovery pleadings attached as exhibits hereto. See Request for Judicial Notice attached thereto.

### **A. Why Discovery is Necessary**

Ostensibly, the California Supreme Court is reviewing this case because of the following:

1. The State Bar has recognized there are racial disparities in discipline of attorneys it regulates.
2. Racial discrimination, disparities in discipline in general and, the elimination of bias, are important issues, particularly by the State Bar which can and must be addressed by this case.
3. In order to protect the public, State Bar regulation of attorneys must be fair and free of bias.

### **B. Reviewing Discrimination is Complex**

Examining racial discrimination is a very complex matter. Extensive information is necessary, especially if racial discrimination via disparate impact is alleged. This is particularly evident when statistical information is involved. Race and gender of those responsible for processing attorney discipline are also important factors. (See Nancy Leong, *State Court Diversity and Attorney Discipline* 89



Fordham L.Rev. 1223 (2021) Correlations as to discretion in attorney discipline according to race and sex). (Also see *Black Boys face double Jeopardy at school*, Jayanti Owens, (2023) Yale Insights Jayanti Owens <https://insights.som.yale.edu/insights> ; Disparate Impact for Policing (Disparate Impact Liability for Police Practices) <https://www.yalelawjournal.org>. Alisa Tiwari 2019.

### **C. Harper's Burden**

Here, Harper must allege specific policies and/or practices by the State Bar that have a disproportionate negative impact on members of a protected class or, discriminatory effect. The impact often must meet a numerical threshold. Statistical information can be paramount to proving the case. The same information will also show disparate treatment via the implementation or lack thereof in the policies and practices especially of the State Bar. (See *United States Department of Justice Civil Rights Division* [www.justice.gov/crt/fcs/T6Manual7](http://www.justice.gov/crt/fcs/T6Manual7). *Manual on proving disparate impact*; also See *Disparate Impact Unified Law* [www.yalelawjournal.org](http://www.yalelawjournal.org). However, there are several caveats:

### **D. Relevant Discovery Factors**

1. The State Bar court is not a court that handles discrimination matters.
2. Discovery in State Bar court is limited. In this case, the Hearing Department was granted the authority to determine how discovery was handled.

3. Discovery in this matter is extremely challenging because:

a. State Bar Court Has Limited Discovery. Discrimination Discovery is the Province of Civil Courts

1. Information that is necessary in this matter is not the subject of State Bar Court proceedings e.g. work force composition, the race and sex of investigators and factors regarding the disposition of State Bar complaints from 1990 through 2019 is often confidential, within different departments of the State Bar and very difficult to obtain without court order.<sup>1</sup> The court further wanted all discovery matters be preceded by thorough meet and confers. With consent of counsel, Harper went to the lengths of recording some of the meetings. Notwithstanding, the court ordered counsel to have meetings on discovery. (See transcript of Status Conference June 7, 2021, page 12 at lines 20-25 attached hereto.)

2. Discovery was also voluminous especially when it had to be requested

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<sup>1</sup>Although requested through discovery, the State Bar refused to provide its intake policy. The policy was demanded through a Public Record Act request to the California Auditor who conducted a special audit of the State Bar discovering that while dozens of complaints had been filed against nine (9) attorneys, they were not disciplined although the auditor felt such was appropriate. The auditor was limited in providing certain information only the State Bar could provide. The policy was only completely redacted when produced in discovery. After a meet and confer two (2) pages were provided. In April, 2023, after discovery closed the policy was subsequently produced after the denial of Harper's motion for such and a Petition for Writ of Mandate to the Supreme Court. The policy was then produced under the rubric of a Protective Order. It is not available to the public or attorneys.

from third parties after refusal by the State Bar. (See notice of delay from State Auditor regarding State Bar audit information pursuant to Public Record Act Request attached hereto.)

**b. The Hearing Department limited discovery in this matter.**

3. (See Status Conference Transcript June 7, 2021, Id) The State Bar Intake policy here was critical. Although requested through discovery, the State Bar refused to release its intake policy and was only produced after extensive litigation and conferences including a confidential mediation with a State Bar Court discovery judge. Upon review of the intake policy, other issues appropriate for discovery became apparent. Harper and State Bar met and conferred, as ordered by the Hearing Department. When it became apparent that additional time would be necessary, Harper moved for a continued trial date and for motions to compete discovery. The Hearing Department denied the motion noting it did not want the parties to meet and confer “ad nauseam”.
4. Because discrimination is not an area the Office of Chief Trial Counsel and the Office of General Counsel nor the State Bar Court handle, the State Bar by its own admission in its last minute motion for continuance of ninety (90) days with only seven (7) days notice to Harper, petitioned the State Bar Board of Governors for a special allocation in addition to the

millions of dollars already allocated to the State Bar, to obtain specialized outside counsel to assist the Office of Chief Trial Counsel and the Office of General Counsel in opposing Harper, a pro se Petitioner. See motion for continuance attached hereto.)

#### **IV. WHY REVIEW SHOULD BE GRANTED**

##### **A. This is a matter of first impression.**

1. Harper in light of the State Bar recognizing racial disparities in discipline must address its self identified issue.
2. Harper was the first attorney to allege racial discrimination where disbarment was recommended with such remote prior discipline especially where there was no harm. The State Bar has never been called upon to address racial discrimination in its disciplinary process. Additionally, the State Bar has let down the people of the State of California in failing to discipline serious offenders yet pursuing minor offenders vigorously allowing the offenders to continue harming the public. (See *Agaton v State Bar* Superior Court of Los Angeles County 23STCV21606.<sup>2</sup>

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<sup>2</sup> Plaintiffs there are suing the State Bar and certain individuals for failing to act appropriately regarding Thomas Girardi despite dozens of complaints against him and reasonable cause for discipline. Plaintiff's son never received his settlement.

## **V. FACTUAL AND PROCEDURAL BACKGROUND**

This is the reply to a Petition for Review from the hearing Department recommending disbarment of the Petitioner following the evidentiary hearing in this matter. While the Petitioner produced evidence at the hearing, the Hearing Department deemed it inadequate. Additionally, the hearing department did not adequately address the issue of the great weight it placed on the Petitioner's prior discipline as a third discipline mandating disbarment. The Hearing Department claimed privilege in refusing to address the issue. Testimony presented by the State Bar is that disbarment for a third discipline is not mandatory and the court had discretion to impose lesser discipline.

Additionally, the Los Angeles County Bar Association which has the largest number of Black attorneys opposed the "third strike" disbarment rule. The State Bar also conceded while it claimed the committee that makes the rules for disbarment is diverse, it has no Black members. The State Bar also introduced testimony that when a fee dispute is involved a case may be closed at intake. However, all parts of the disciplinary process are highly discretionary and not uniform up to the person or persons processing the case. The State Bar offered no explanation for the attorneys who were identified by the Auditor's special report in which several attorneys committed more egregious violations than the Petitioner and other Black male attorneys who were disciplined notwithstanding they caused no harm yet the State Bar took no action against them and did not

deny that none of the identified attorneys are Black. The expert for the State Bar relied solely on the Farkas study and Robertson report which had missing information that Petitioner sought in discovery, e.g race and sex of attorneys and those processing their complaints as well as the dispositions of the complaints. The State Bar refused to provide such in discovery. Petitioner and the State Bar were in court ordered meet and confer to resolve the discovery demands but ran out of time. Petitioner asked for a continuance of the trial and more discovery time but was denied. Petitioner only received datasets from the State Bar which only had data on Reportable Actions, not Reportable Action bank matters as testified to by their expert Ron Pi. The hearing Department deemed any mention of Thomas irrelevant as the Supreme Court was apparently aware of Girardi and failed to include his offenses in the subject of the hearing although during the same time period he had more serious offenses during the same time period and only had a private reproof and was treated much less harshly when the complaints against him merited disbarment. Petitioner asserted the prior discipline was too remote being almost 30 years old. The State Bar expert also conceded every offense in the Farkas study has equal weight meaning a non sufficient funds check written by mistake has the same weight and effect as the theft of a million dollars.

## **VI. LEGAL DISCUSSION**

### **A. Despite his reasonable and best efforts Discovery was inadequate.**

It is notable that the very institution charged with governing the rights of attorneys to practice law ethically is itself the subject of inconvertible proof that it has its own extraordinary issues of uneven discipline where attorneys can have dozens of complaints misappropriate millions of dollars and not be disciplined yet others will make reasonable mistakes or need resources yet receive harsh discipline.

The State Bar was presented with a study that clearly showed that the facially neutral reportable action bank matters upon which it and the Hearing Department gave such great weight to remote priors. Petitioner requested this Court for review which this Court granted for the sole purpose of allowing Petitioner to get to address the alarming statistic. This Court clearly and succinctly granted Petitioner an opportunity to conduct discovery in search of State Bar culture, policies or processes that may be at the root of a phenomenon that has cost a disproportionate number of Black males to lose their licenses to practice. It is not far-fetched to say that being disbarred because remote reportable bank actions were given material consideration is akin to parking tickets being given material or any weight at all in a charge of capital murder. Petitioner's ability to practice law was revoked because the State Bar court gave significant weight to what amounts to 30 year old minor bookkeeping errors resulting in no harm. There was no relationship between the remote reportable actions justifying disbarment.

#### **B. Bad faith or lack of understanding by the State Bar**

Nevertheless, the State Bar here stonewalled petitioner from the very outset.

First they feigned as though they did not understand this Court's directive regarding what claims Petitioner could pursue requiring Petitioner to waste months litigating, having to come back to this Court obtain another order. Their feigned ignorance was done mostly either to stall and delay Petitioner or a clear lack of understanding. Apparently, they did not act in good faith, Ironically, their consistent theme in their opposition is that Petitioner had time to gather discovery but they gave him little and the Judge, perhaps inexperienced in civil litigation allowed them to continue to drip discovery to Petitioner, literally allowing the State Bar to select what they would turn over on ridiculous claims of privacy and work product as to the very policies and procedures this Court ordered them to give to Petitioner.

**C. Harper virtually forced to petition the Supreme Court and third parties ( California Auditor) for evidence.**

The Hearing Department virtually forced Harper to petition the Supreme Court for any discovery. Not many civil judges would have allowed the State Bar to get away with such tactics especially after ordering thorough meet and confers. This is the classic stone wall tactic lawyers to abuse the discovery process. It begs the question whether Petitioner really was given due process by allowing what are purely civil claims of civil discrimination to be adjudicated in a forum wholly unequipped to oversee a complicated civil claim with an judge who constantly demonstrated a lack of understanding of issues related to discovery in



discrimination claims. Based on the State Bars' bad faith delay tactics, anything less than overturning his disbarment is an injustice. Should this Court make it clear that Petitioner is entitled to the information sought in Petitioner's discovery requests, it is likely the State Bar will engage in the same conduct and require Petitioner to come back and ask this Court for the discovery he seeks, especially if this Court does not assign this case specially to a civil courthouse before a civil judge.

**D. The facially neutral policy of reportable bank actions and their disparate impact on Black male attorneys**

We are here because a study commissioned by the State Bar determined there was a statistically significant disparate impact on Black male attorneys with respect to discipline associated with reportable bank actions. These actions, especially for Black males, are counted as priors that require elevated discipline under State Bar policy. Petitioner had remote, decades old minor reportable action matters which in this case were given the full force and effect by the Hearing Department resulting in disbarment in an action which should have not been pursued by the State Bar in the first place. The State Bar has admitted to a longstanding policy of not being used as leverage for clients seeking to pressure lawyers to capitulate to fee disputes for fear of State Bar investigation. The policy clearly provides that it does not prosecute in cases that are in fee arbitration. Petitioner was not only in fee arbitration when the State Bar decided to prosecute him, they pursued him notwithstanding the fact that his fee dispute was settled in

the ordinary course of the State Bar fee dispute process. Petitioner was not allowed discovery to determine how did it come to pass that he was prosecuted when the State Bar policy on fee disputes was that he shouldn't be. As the Court will see by perusing Petitioner's discovery requests, he was not allowed discovery that might prove he was a victim of disparate treatment. (See Petitioner's exhibits that are attached hereto and are part of the record via the petition to this Court directly regarding discovery abuse). *Sosinsky v Grant* (1992) 6 Cal.App.4th 1548, 1564; *Mozetti v City of Brisbane* (1977) 67 Cal.App.3d 565,578.

**E. There is no rational basis for the extreme weight given to petitioner's priors and petitioner was not allowed to inquire as to why the judge gave so much weight to the prior discipline.**

There is no rational basis for the extreme weight given by the Hearing Department to the Petitioner's remote priors. The only person who can answer that inquiry is the judge who has refused to do so despite this Court's order of January 27, 2021 attached forthwith. Anything else is speculative and unfair. The State Bar takes the position that the disparity in discipline makes sense because Black males receive more complaints than any other demographic. They are comfortable with that explains other than to opine that Black male attorneys cannot afford counsel. While Harper never informed the court he could not afford counsel and had never had pro bono counsel, the hearing department never denied it advised Harper to obtain pro bono counsel because he is Black. Apparently Harper's race was a factor in the Hearing department's thinking. If frequency of complaints is

expected to result in higher rates of discipline for Black male attorneys, there has to be a legitimate reason to allow the disparity. It appears there is an overall public policy requiring non harmful remote priors to be counted against Black males in the same manner they are counted against white males. Here, Harper's remote prior complaints were made by banks. The subsequent complaints was for failure to supervise a bad employee who was terminated and a misunderstanding by a client. There is no legitimate reason for discipline because a Black male lawyer will likely get more complaints because of systemic racism because they get more complaints against them.

The disciplinary process must not have a discriminatory effect against any member, be applied equally, to all attorneys. ( See <https://www.calbar.ca.gov/About-Us/Our-Mission> and See *Ruben Duran open letter disclosures of findings regarding Thomas Girardi*, where the State Bar of California in addition to its disclosure of failure to act despite hundreds of complaints involving misappropriation and misconduct of a white male attorney the bulk of which occurred from 1990 through 2019. Thomas V. Girardi's clients were actually harmed. They lost at least eighteen (18) million dollars yet he only received a single private reproof. He lied to judges and clients and stole their money even in the face of dozens of complaints. However, the State Bar while admitting Harper caused no harm, was disciplined as were other Black attorneys for minor offenses when the cases could have been closed with no discipline or a warning. In one report prepared by attorney Alyse

Lazar, who reviewed 115 files of past complaints against Girardi. The review identified numerous instances in which complaints were closed without complete investigations or, in light of facts warranting discipline. A second report was completed by Halpern, May, Ybarra and Gelberg. That report details instances where Girardi's efforts to buy relationships and exercise influence at the State Bar—at all levels—likely impacted the handling of some complaints against him, causing those complaints to be closed improperly. Also See *Auditor's Special Report 2022-030 State Bar's Disciplinary Process*, April 2022. Here, the State Bar in acknowledging the racial disparities in its discipline system formed an Ad Hoc Commission to address disparities in its disciplinary system which includes matters relevant to this case. Yet the State Bar itself by stonewalling Petitioner is standing in the way of answers.

## **VII. CONCLUSION**

Again, the purpose of the evidentiary hearing was to show whether the discipline imposed is discriminatory. The court ordered the reopening of discovery to do so. The discovery process here is unique, complex and arduous for all parties. There was no objection from the State Bar to continuing discovery for a full and fair hearing. Following discovery requests for the data underlying the Farkas study and Robertson report, the Supreme Court on July 20, 2022 ordered the parties submit particularized discovery requests. However, the meet and conferring by the Hearing Department was complex requiring conferences between the many lawyers

at the Office of Chief Trial Counsel (OCTC) , Office of General Counsel (OGC) as well as special counsel. The Hearing Department was adamant the case proceed although discovery had closed months before Harper received the critical Intake guidelines and ordered the parties to meet and confer before filing any motions to compel. The State Bar communicated in the meet and confer it had difficulty but, in good faith would comply with the requests. A motion to vacate the trial date for motions and discovery was submitted and denied. The Petitioner has therefore been prejudiced. Considering the forgoing, Petitioner therefore requests Review of this Petition or other appropriate remedy.

Dated: December 20, 2023

Respectfully submitted,

/s/ Gregory Harper

GREGORY HARPER –

## VERIFICATION

I, GREGORY HARPER, declare: I am the PETITIONER in the above-entitled matter. I have read the foregoing REPLY TO ANSWER TO PETITION FOR REVIEW and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on December 20, 2023, at Berkeley, Alameda County, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Gregory Harper

GREGORY HARPER –

CERTIFICATE OF WORD COUNT (Rule 8.204)

I, Gregory Harper, Petitioner in Pro Se certify pursuant to the California Rules of Court, that the word count for this document is 3592 words, excluding the tables, this certificate, and any attachment permitted under rule 8.204(d). This document was prepared in WordPerfect, and this is the word count generated by the program for this document. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed, at Berkeley, California, on December 20, 2023.

/s/Gregory Harper

GREGORY HARPER

#### **VIII. AUTHENTICATION OF EXHIBITS**

I, Gregory Harper, the Petitioner herein hereby certify the exhibits attached to this Reply to Answer to Petition for Review are authentic copies of the original documents.



**PROOF OF SERVICE**  
**Case Name: HARPER v STATE BAR**  
**Case No. 17-O-01313**

I, declare:

I am over the age of eighteen years and not a party to the cause of action. My business address is 3060 EL CERRITO PLAZA #100 EL CERRITO, CA 94530, I served the documents described as **REPLY TO ANSWER TO PETITION FOR REVIEW AND REQUEST FOR JUDICIAL NOTICE** on the interested parties in this matter by true copy thereof as follows:

Service of the above document(s) was effectuated by the following means of service:

☐ **By First Class Mail** -- I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service. It is deposited with the United States Postal Service in the ordinary course of business on the same day it is processed for mailing. I caused such envelope(s) to be deposited in the mail at El Cerrito, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Personal Service** -- By causing to personally deliver a true copy thereof in a sealed envelope.

☐ **By Overnight Delivery Service** -- I caused such envelope(s) to be deposited in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents. The envelope was deposited with the express service carrier with delivery fees paid or provided for.

☐ **Facsimile Transmission** -- I served the documents in this matter via facsimile transmission to:

☒ **Email Transmission** -- I served the documents in this matter via electronic transmission to: Brady.Dewar@calbar.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and executed December 20, 2023 at: El Cerrito, California.

/s/ Phyllis Carr  
PHYLLIS CARR

**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **HARPER ON DISCIPLINE**

Case Number: **S281974**

Lower Court Case Number:

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12/20/2023

Date

/s/GREGORY HARPER

Signature

HARPER, GREGORY (Pro Per)

Last Name, First Name (PNum)

Harper Legal Group

Law Firm