

Supreme Court Case No. S273590  
State Bar Court Case No. 17-O-01313

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

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***IN RE GREGORY HARPER ON DISCIPLINE***

Licensee No. 146119

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APPEAL FROM A DECISION OF THE REVIEW  
DEPARTMENT OF THE STATE BAR COURT OF  
CALIFORNIA

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**ANSWER TO PETITION FOR REVIEW**

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	4
II.	BRIEF PROCEDURAL BACKGROUND.....	5
III.	ARGUMENT.....	13
	A. The State Bar Court Hearing and Review Departments Orders Denying Additional Discovery Do Not Present Any Issues for Review by this Court. ....	13
	B. Petitioner’s Arguments Lack Merit Because the State Bar Court Correctly Interpreted This Court’s Remand Order and the State Bar Complied with the Court’s Orders. ....	17
	1. The Data Underlying the Farkas Study and Robertson Report Have Been Produced to Petitioner .....	17
	2. The Supreme Court Remand Order Does Not Provide for Full Civil Discovery .....	19
	3. Petitioner’s General Claims of Relevance Do Not Establish Good Cause for Additional Discovery....	21
IV.	CONCLUSION .....	26

## TABLE OF AUTHORITIES

### Cases

<i>Britts v. Superior Court</i> (2006) 145 Cal.App.4th 1112.....	20
<i>In the Matter of Aulakh</i> (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690 .....	13
<i>In the Matter of Geyer</i> (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74 .....	13
<i>In the Matter of Johnson</i> (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233 .....	23
<i>In the Matter of Lapin</i> (Review Dept.1993) 2 Cal. State Bar Ct. Rptr. 279.....	23
<i>Pacific Tel. &amp; Tel. Co. v. Superior Court</i> (1970) 2 Cal.3d 161 .....	21

### Statutes

Evidence Code § 352 .....	23
------------------------------	----

### Rules

State Bar Rule of Procedure Rule 5.66 .....	passim
Rule 5.66(B) .....	22
Rule 5.104(F).....	23
Rule 5.150(K) .....	13

## **ANSWER TO PETITION FOR REVIEW**

### **I. INTRODUCTION**

Gregory Harper (Petitioner) seeks review of the State Bar Review Department's denial of his request to compel additional discovery in the evidentiary hearing pre-hearing proceedings related to the January 28, 2021, Remand Order (Remand Order). In his petition for review (Petition), Petitioner claims that the State Bar has not complied with the discovery directive contained in the Remand Order and seeks permission to conduct civil-litigation-like discovery, including propounding interrogatories, submitting requests for admissions and requests for production of documents to the State Bar, and deposing an untold number of witnesses.

The Petition should be denied because the State Bar has fully complied with the discovery directive contained in the Remand Order by providing Petitioner with the statistical data underlying the Farkas study and Robertson report. As discussed more fully below, Petitioner was afforded liberal opportunities to seek additional discovery beyond the statistical data provided to him by the State Bar, however, Petitioner's multiple motions were unsuccessful due to his failure to adequately describe the

nature and scope of the requested discovery and its relevancy to the allegations or defenses at-issue pursuant to the State Bar Court's orders and the State Bar Rules of Procedure. Moreover, Petitioner has failed to show good cause for any of the additional discovery sought. Finally, Petitioner has failed at each level of review to articulate why the data underlying the Farkas study and Robertson report, identified by this Court's remand order, is insufficient to provide to a statistical expert for analysis given that this same data was used as a basis for the above-referenced study/report.

## **II. BRIEF PROCEDURAL BACKGROUND**

For purposes of this answer, the State Bar's procedural background is limited to the portions of the proceeding relevant to this Petition.

On April 14, 2020, the State Bar Court Review Department issued an opinion finding Petitioner culpable of three counts of misconduct and recommended that he be disbarred after review of the Hearing Department decision in case number 17-O-01313. The Review Department found Petitioner culpable of violating former rule 4-100(A) and Business and Professions Code section

6106 (for a grossly negligent misappropriation and a misrepresentation).<sup>1</sup>

Petitioner filed a petition for review in the Supreme Court and alleged, among other things, disparate impact discrimination based on the reports of Professors Farkas and Robertson. On January 27, 2021, the Supreme Court granted review and remanded the matter to the State Bar Court for a further evidentiary hearing. The order stated in pertinent part that the “Hearing Department shall reopen discovery to permit Harper to obtain all data reviewed for purposes of the Farkas study and the Robertson report with identifying information redacted.”<sup>2</sup>

On June 7, 2021, during the remand proceedings, the State Bar Court Hearing Department issued two orders: (1) a Status Conference Order, which ordered the State Bar to provide Petitioner with “all data underlying the Farkas study and Robertson report” on June 7, 2021, and (2) an Order on Discovery Motions, which required the parties to Meet and Confer prior to the filing of any motions for discovery.<sup>3</sup> On June 7, 2021, the

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<sup>1</sup> State Bar’s Appendix, Exhibit 11.

<sup>2</sup> State Bar’s Appendix, Exhibit 1.

<sup>3</sup> State Bar’s Appendix, Exhibit 3.

State Bar provided all data underlying the Farkas study and Robertson report and included a declaration regarding the chain of custody.<sup>4</sup> On July 2, 2021, the State Bar provided an amended/supplemental declaration.<sup>5</sup>

On August 12, 2021, the Hearing Department issued a Status Conference Order addressing its requirements for discovery motions.<sup>6</sup> The Status Conference Order required compliance with the State Bar Rules of Procedure, rule 5.66<sup>7</sup> and outlined requirements for any party filing a motion for further discovery. The Status Conference Order required that the party seeking further discovery provide: (i) the precise discoverable information sought; (ii) the purpose for which it is being sought including which claim or defense it supports; (iii) the method of discovery sought for the particular request (e.g., interrogatories, depositions, etc.); (iv) and any other information to assist the court in evaluating the relevance of the discovery request.

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<sup>4</sup> See Petitioner's Exhibit A, attached to his Petition for Review.

<sup>5</sup> State Bar's Appendix, Exhibit 12.

<sup>6</sup> State Bar's Appendix, Exhibit 4.

<sup>7</sup> All subsequent references to a Rule are to the State Bar Rules of Procedure found at <https://www.statebarcourt.ca.gov/Portals/2/documents/Rules/Rules-of-Procedure.pdf>

On August 19, 2021, after briefing from the parties, the Hearing Department issued the Order Re Applicable Burdens and Standards of Proof on Remand.<sup>8</sup> The order outlined the burden and standard of proof that will be applied in the evidentiary hearing. The Hearing Department ruled that the remand order limited the proceedings to the analysis necessary to evaluate Petitioner’s allegations of disparate impact discrimination. The Hearing Department expressly ruled “[t]he Remand Order does not direct a disparate treatment analysis.”<sup>9</sup>

On September 3, 2021, Petitioner provided the State Bar with a meet and confer letter regarding his requests for further discovery. On September 8, 2021, the parties met and conferred over Petitioner’s proposed discovery requests. The State Bar informed Petitioner that it would provide him with the investigation files related to his prior disciplines. On September 10, 2021, Petitioner filed a Motion for Further Discovery and to Compel Compliance with the Supreme Court Order.<sup>10</sup>

Petitioner’s motion sought discovery related to a claim of

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<sup>8</sup> State Bar’s Appendix, Exhibit 5.

<sup>9</sup> State Bar’s Appendix, Exhibit 5, pages 4-5.

<sup>10</sup> State Bar’s Appendix, Exhibit 10.



disparate treatment, full civil discovery in the form of interrogatories, requests for admissions and documents, as well as form interrogatories, production of emails and communications between Ron Pi and Professor Farkas, evidence related to the State Bar Court's deliberative process, and interrogatories and depositions related to the collection and use of data in the Farkas study. Petitioner also sought enforcement of his California Public Record Act request. On September 17, 2021, the State Bar filed an opposition to Petitioner's motion.<sup>11</sup>

On October 14, 2021, the hearing judge issued her order denying Petitioner's motion for further discovery. In denying the motion, the hearing judge found that Petitioner's requests for discovery related to a disparate treatment claim were inappropriate in light of the remand order, that Petitioner's request for unlimited civil discovery was inappropriate under the State Bar Rules of Procedure, and that Petitioner's request for all *information* reviewed by Farkas and Robertson in the preparation of their respective study and report fell outside the scope of the January 27, 2021, remand order. The hearing judge

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<sup>11</sup> State Bar's Appendix, Exhibit 6.

expressly stated that Petitioner was not precluded from obtaining further discovery, however, Petitioner was required to follow the rules and process set by the court. The hearing judge then denied Petitioner's specific requests for discovery, finding a lack of good cause for the discovery requested. The hearing judge denied Petitioner's motion without prejudice, reiterating that any party seeking additional request for discovery must meet the requirements of the Rules of Procedure and the August 12, 2021, order.<sup>12</sup>

On November 4, 2021, Petitioner filed his Second Motion to Compel Further Discovery.<sup>13</sup> The Second Motion sought, in part, reconsideration of the October 14, 2021, order as well as seven categories of documents, three relating to policies and procures of the Office of Chief Trial Counsel, and four relating to records pertaining to the race of complainants and members of the State Bar. On November 12, 2021, the State Bar filed an opposition to Petitioner's motion.

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<sup>12</sup> State Bar's Appendix, Exhibit 7.

<sup>13</sup> State Bar's Appendix, Exhibit 13.

On December 8, 2021, the hearing judge issued an order granting Petitioner's motion in part and denying the motion in part.<sup>14</sup> The hearing judge granted Petitioner's request for his prior investigative files and the three categories of documents relating to the policies and procedures of the Office of Chief Trial Counsel. (On December 22, 2021, the Office of Chief Trial Counsel produced the above-referenced documents to Petitioner.) The hearing judge denied the motion to reconsider the October 12, 2021, order as Petitioner failed to present new or different facts, circumstances, or law to support his motion. The hearing judge also denied Petitioner's requests for the following general discovery: (i) full civil discovery related to non-statistical information related to the Farkas study and Robertson report, (ii) discovery related to internal court deliberations, (iii) interrogatories and depositions to identify the data relied upon in the Farkas study and Robertson report, and (iv) all source materials reviewed by Farkas and Robertson. The hearing judge found that Petitioner had not presented good cause for his requests for nonstatistical information, his request for discovery

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<sup>14</sup> State Bar's Appendix, Exhibit 14.

related to internal court deliberations was duplicative, his request for interrogatories and depositions related to the data relied upon in the Farkas study and Robertson report would cause an undue burden on the State Bar, as the information was publicly available and identified within the respective reports, and that Petitioner failed to articulate the specific material and its relevance to his claims in his general requests for subpoenas and depositions related to the source materials for the Farkas study and Robertson report. Finally, the hearing judge denied Petitioner's request for four categories of material relating to the races of complaining witnesses and attorneys who had been investigated and charged with various misconduct, due to lack of good cause.

On December 27, 2021, Petitioner filed a petition for interlocutory review with the Review Department.<sup>15</sup> On January 19, 2022, the State Bar filed its response to Petitioner's petition.<sup>16</sup> On February 9, 2022, the Review Department issued its ruling denying Petitioner's petition.<sup>17</sup> The Review Department found

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<sup>15</sup> State Bar's Appendix, Exhibit 15.

<sup>16</sup> State Bar's Appendix, Exhibit 16.

<sup>17</sup> See attachment to Petitioner's Petition at page 17 of the petition document,

that the Hearing Department had not abused its discretion or made an error in law in denying Petitioner's request for additional discovery.

### III. ARGUMENT

#### **A. The State Bar Court Hearing and Review Departments Orders Denying Additional Discovery Do Not Present Any Issues for Review by this Court.**

The State Bar Review Department held there was no abuse of discretion or legal error in the hearing judge's December 8, 2021, order denying Petitioner's motion for additional discovery. This finding is supported by the record, including the State Bar Rules of Procedure. Rule 5.150(K) provides that the standard of review for discovery motions is abuse of discretion or error of law unless otherwise specified. (See *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [abuse of discretion standard applies to discovery rulings].) The generally accepted test for applying the abuse of discretion standard test is, given all the circumstances before it, did the trial court exceed the "bounds of reason." (*In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74, 78.)

First, the hearing judge ruled in her August 19, 2021, order regarding the applicable burdens and standards of proof on remand that disparate treatment is not at issue in this evidentiary hearing, finding that the Remand Order directed a disparate impact analysis.<sup>18</sup> The hearing judge then properly denied all of Petitioner's requests for discovery related to allegations of disparate treatment for lack of good cause. Second, the hearing judge correctly denied Petitioner's requests that failed to comply with rule 5.66<sup>19</sup>, and the August 12 discovery order. In failing to describe the nature and scope of the information sought with any specificity or the relevance of the information to Petitioner's burden as outlined in the ruling on the applicable burden of proof in this matter<sup>20</sup> he failed to establish good cause for his requests. As the hearing judge noted in her December 7, 2021, order denying Petitioner's second request for full civil discovery, Petitioner cannot circumvent the State Bar

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<sup>18</sup> State Bar's Appendix, Exhibit 5, pages 4-5.

<sup>19</sup> Rule 5.66 generally requires the moving party to demonstrate good cause for additional discovery and to describe the nature and scope of the requested discovery and its relevancy to the claims or defenses.

<sup>20</sup> State Bar's Appendix, Exhibit 5.

Rules of Procedure in his attempts to obtain discovery in this matter.

Petitioner's motion for additional discovery vaguely asserts that additional discovery is necessary to satisfy his burden of proof, however he fails to articulate with any specificity how this information is relevant to proving either his prima facie case for disparate impact discrimination or rebutting any legitimate business interest the State Bar may have. Petitioner has not specified how the discovery sought will aid in proving his claims.

Petitioner seeks the depositions of Professors Farkas and Robertson and the State Bar investigators and prosecutors involved in each of his disciplinary matters, as well as written discovery in the form of interrogatories, requests for admissions, and production of documents. Yet Petitioner failed to specify why the additional discovery is relevant or necessary to the evidentiary hearing beyond his assertion that he should be allowed carte blanche to conduct full civil discovery. Petitioner failed to explain what admissible evidence or information might be gleaned from the depositions or written discovery, particularly given the hearing judge's ruling that the evidentiary hearing is restricted to a disparate impact analysis.

In this Petition, Petitioner again fails to describe with any specificity the relevance of the information he seeks. Petitioner merely reiterates his belief that he is entitled, under the Remand Order, to obtain all information potentially reviewed by Professors Farkas and Robertson in the creation of their reports. Petitioner contends that without this information, he is unable to retain an expert to conduct the statistical analysis required to prove his prima facie case. However, Petitioner fails to explain what relevance the additional information he seeks has to his efforts to retain an expert given that he has the underlying data used by Professors Farkas and Robertson in their reports. Moreover, petitioner provides no context for what issues his purported expert finds with the statistical data provided by the State Bar.

Thus, the Review Department's finding that Petitioner failed to show abuse or discretion or error of law with the Hearing Department's order denying additional discovery was appropriate and supported by the record.



**B. Petitioner’s Arguments Lack Merit Because the State Bar Court Correctly Interpreted This Court’s Remand Order and the State Bar Complied with the Court’s Orders.**

1. The Data Underlying the Farkas Study and Robertson Report Have Been Produced to Petitioner

On June 7, 2021, pursuant to the Remand Order, the State Bar produced to Petitioner the statistical data underlying the Farkas study and the Robertson report. Also, on June 7, 2021, and July 2, 2021, the State Bar produced declarations regarding the chain of custody of the data. The declarations explain that the data produced to Petitioner was never provided to either Professor Farkas or Professor Robertson. The data provided to Petitioner constituted the data underlying Professor Farkas’ study that included regression tables that were created using the underlying data.

On September 10, 2021, Petitioner filed a Motion for Further Discovery and to Compel Compliance with the Supreme Court Order, arguing that the State Bar had not produced all “data” underlying the Farkas study and Robertson report, because the State Bar solely produced the statistical information used to create the regression tables upon which the Farkas study and Robertson report were based. On October 14, 2021, the

hearing judge issued an order denying Petitioner's motion to compel discovery and ruled that the State Bar had complied with the Remand Order when it produced the statistical data underlying the Farkas study.<sup>21</sup>

Petitioner asserts that the hearing department will not permit Petitioner to obtain the data reviewed for the Farkas study and Robertson report because the court denied Petitioner's request for additional discovery. However, in her order, the hearing judge held the "Remand Order discovery directive is limited to production of the statistical data relied upon in the Farkas study and Robertson report." It is undisputed that the State Bar provided Petitioner with said statistical data on June 7, 2021.

The hearing judge did not preclude Petitioner from seeking additional discovery but required Petitioner to comply with rule 5.66 and her August 12, 2021, order related to motions for additional discovery. Petitioner's motions failed to comply with rule 5.66. Therefore, the Review Department did not err in

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<sup>21</sup> State Bar Appendix, Exhibit 7, pages 3-4.

finding no abuse of discretion or error of law in the Hearing Department's order denying additional discovery.

2. The Supreme Court Remand Order Does Not Provide for Full Civil Discovery

Petitioner argues that the hearing judge must issue an order allowing respondent to obtain “any discovery.” (Petition, p. 7, lines 17-18.) Petitioner's overly broad legal conclusions without authority were properly rejected by the State Bar Hearing and Review Departments. In his underlying motions to compel, Petitioner argues that the Remand Order provides for the allowance of full civil discovery. The plain meaning of the Remand Order contradicts this assertion and the hearing judge relied on the plain meaning of the order to find that the “data” in question is the statistical information that was provided to Petitioner on June 7, 2021.<sup>22</sup>

Petitioner provides no explanation for his belief that he is entitled to broad, civil discovery beyond his claim that the Remand Order grants him such full discovery. In denying his request for full civil-like discovery, the hearing judge did not preclude discovery outside the statistical data underlying the

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<sup>22</sup> State Bar's Appendix, Exhibit 7, pages 3-4.

Farkas study and Robertson report. The hearing judge merely required Petitioner to comply with the rules by outlining the nature and scope of the discovery he sought. Petitioner failed twice to do so. Accordingly, the Review Department did not commit error in failing to find abuse of discretion in the hearing judge's denial of Petitioner's motions.

Finally, Petitioner does not identify any error of law by the hearing judge nor cite to any authority to support his position that the hearing judge abused her authority by denying additional discovery in what was essentially a motion for reconsideration of the hearing judge's first order denying additional discovery.

Even in the civil discovery context, which Petitioner urges this Court to adopt in this case, without question "management of discovery lies within the sound discretion of the trial court."

*(Britts v. Superior Court (2006) 145 Cal.App.4th 1112, 1123.)*

"One of the prime purposes of the Discovery Act is to expedite the trial of the action. This purpose will be defeated if appellate courts entertain petitions ... by which review of the orders of trial courts in discovery proceedings are sought and which do not clearly demonstrate an abuse of discretion where discovery is

denied...” (*Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 171, fn. 11 [Citations omitted].)

Petitioner, in support of his various motions, cited to general authority for civil cases and essentially contends that the hearing judge misinterpreted the word “data” in her order. As discussed above, the October 14, 2021, order correctly interpreted the meaning of data. Although Petitioner does not directly challenge the hearing judge’s October 14, 2021, order, assuming the issue is properly before the court, the hearing judge in her October 14, 2021, order reasonably relied on the plain language of the Remand Order and the dictionary definition of data. As such, Petitioner failed to demonstrate that the hearing judge abused her discretion in determining that the State Bar provided Petitioner the data ordered by the Supreme Court.

3. Petitioner’s General Claims of Relevance Do Not Establish Good Cause for Additional Discovery

Petitioner’s underlying motion to compel/motion for reconsideration vaguely asserts that Petitioner is entitled to discovery because the information sought (i.e., depositions, interrogatories) is relevant to his claims of discrimination. Petitioner’s motions to compel further discovery related to his

disparate impact claim, however, failed to comply with the requirements of rule 5.66 and the Hearing Department's August 12, 2021 order outlining the requirements of a motion to compel further discovery. For this reason alone, the hearing judge's denial of additional discovery is not an abuse of her discretion or an error of law. In failing to describe the nature and scope of the information sought with any specificity and the relevance of the information to Petitioner's burden as outlined in the ruling on the applicable burden of proof in this matter<sup>23</sup>, Petitioner failed to establish good cause for his requests. As the hearing judge noted in her December 8, 2021, order denying Petitioner's request for full civil discovery, Petitioner cannot circumvent the Rules of Procedure in his attempts to obtain discovery in this matter.<sup>24</sup>

Petitioner has not directly challenged the hearing judge's reliance on rule 5.66(B) or her order setting forth minimum requirements to obtain additional discovery. The requirements of rule 5.66(B) and the hearing department's August 12, 2021, order are reasonable and necessary for the hearing department to manage this evidentiary hearing. Rule 5.66(B) requires Petitioner

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<sup>23</sup> State Bar's Appendix, Exhibit 5.

<sup>24</sup> State Bar's Appendix, Exhibit 14, p.2.

articulate the specific relevancy for the discovery he seeks. It is also well-established that a judge may exercise reasonable control over the proceedings. (See *In the Matter of Lapin* (Review Dept.1993) 2 Cal. State Bar Ct. Rptr. 279, 295; see rule 5.104(F) [judge has discretion to exclude evidence if “its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time”]; see also Evid. Code, § 352; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [hearing judges have wide latitude regarding presentation of evidence and relief will not be granted without showing of actual prejudice].)

Petitioner failed to even attempt to explain the relevance of his general requests.

In his November 4, 2021, motion<sup>25</sup>, Petitioner requested the following four categories of documents:

- (1) Any writings, documents, or records that would reveal the race of any State Bar complaints, conducted investigations, and charges filed against any member for reportable action bank matters;

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<sup>25</sup> State Bar’s Appendix, Exhibit 13.

(2) Any writings, documents or records that would reveal the race of any member who had State Bar complaints filed against them following the resolution of any attorney-fee dispute;

(3) Any writings, documents or records that would reveal the race of any complainant, who filed any State Bar complaints against any member and the race of those members;

(4) Any writings, documents, or record that reveal or disclose of the level of discipline, if any, filed against white members and black members of the State Bar, following a State Bar complaint.

Petitioner's underlying motion asserted that the additional discovery is necessary to satisfy his burden of proof, however he failed to articulate with any specificity how the information is relevant to proving either his prima facie case or rebutting any legitimate business interest the State Bar may have. Petitioner has neither specified how the discovery sought will aid in proving his claim of disparate impact nor identified any alleged discriminatory policy of the State Bar relevant to his claim and request for additional discovery.



In his motion, Petitioner also seeks the depositions of Professors Farkas and Robertson and the State Bar investigators and prosecutors involved in his disciplinary matters, as well as written discovery in the form of interrogatories, requests for admissions, and production of documents. Petitioner again fails to specify why this additional discovery is relevant or necessary beyond his assertion that he should be allowed to conduct full civil discovery. Petitioner has the study and report from Professors Farkas and Robertson as well as the statistical data used in the study/report. Petitioner, however, fails to explain what admissible evidence or information might be gleaned from depositions or written discovery for purposes of proving his disparate impact claim. Petitioner also failed to demonstrate good cause or describe with any specificity the nature and scope of the discovery he seeks from the deponents, and in doing so, failed to comply with the requirement of rule 5.66 and the hearing department's order regarding discovery motions. Thus, the State Bar Hearing and Review Departments correctly denied Petitioner's motion.

#### IV. CONCLUSION

For all of the foregoing reasons, the State Bar requests that  
Petitioner's Petition for Review be denied.

Dated: April 1, 2022

Respectfully submitted,

VANESSA L. HOLTON  
ROBERT G. RETANA

By: /s/Robert G. Retana  
ROBERT G. RETANA

Attorneys for Respondent  
The State Bar of California  
Chief Trial Counsel

**WORD COUNT CERTIFICATE PURSUANT TO  
CALIFORNIA RULE OF COURT 8.520(C)(1)**

Pursuant to rule 8.520(c)(1) of the California Rules of Court, I hereby certify that this brief contains 4,003 words. I have relied on the word count of the computer program used to prepare the brief.

Dated: April 1, 2022

/s/Robert G. Retana  
ROBERT G. RETANA

## PROOF OF SERVICE

I, Joan Randolph, hereby certify that I electronically filed and served the attached **ANSWER TO PETITION FOR REVIEW** with the Clerk of the California Supreme Court and to Petitioner Gregory Harper in pro per at [ghlaw@pacbell.net](mailto:ghlaw@pacbell.net) by transmitting a true copy via this Court's TrueFiling system on April 1, 2022, and on:

Clerk of The State Bar Court  
845 South Figueroa Street  
Los Angeles CA 90017  
Email: michelle.cramton@calbar.ca.gov

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

Executed in San Francisco, California this 1<sup>st</sup> day of April, 2022.

/s/ Joan Randolph  
JOAN RANDOLPH

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **HARPER ON DISCIPLINE**

Case Number: **S273590**

Lower Court Case Number:

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2. My email address used to e-serve: **robert.retana@calbar.ca.gov**
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Date

/s/Joan Randolph

Signature

Retana, Robert (148677)

Last Name, First Name (PNum)

The State Bar of California

Law Firm