

IN THE SUPREME COURT OF OHIO

ORIGINAL

DISCIPLINARY COUNSEL,	:	Case No. 2013-0999
	:	
Relator	:	
	:	
vs.	:	
	:	
ERIC CHARLES DETERS, ESQ.,	:	
	:	
Respondent	:	

RESPONSE TO SHOW CAUSE AND RENEWED MOTION TO STAY

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Respondent	:	

The Court has lifted the stay on the Show Cause in this matter. While the Court did not grant the stay and lifted the Show Cause, Respondent would like to ask the Court to stay the matter and not yet impose the 60 day reciprocal suspension. Respondent is filing a writ of certiorari to the Supreme Court of the United States. Pursuant to U.S. S.Ct. R. 13(1):

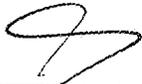
a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment.

The Supreme Court of Kentucky entered its judgment on August 29, 2013. The petition in the Supreme Court of the United States is due November 27, 2013. There are multiple meritorious grounds for review by that Court including the denial of due process, by the failure to permit a record to be made at the Board of Governors when the Board heard the case *de novo*, and the Supreme Court of Kentucky reviews the decision of the Board based on the record created below. An additional ground is whether due process is accorded when bar counsel can override the orders of the Kentucky Supreme Court regarding discipline by filing an objection to reinstatement, making the period of suspension longer than ordered by the Court. For example, in 2012, Respondent served a 112 day Kentucky suspension on a 60 day Order.

Because of these significant due process issues, Respondent wants to petition the

Supreme Court of the United States. Such action could reverse the decision of the Supreme Court of Kentucky. If so, Respondent could avoid an unfair Ohio reciprocal discipline. Accordingly, Respondent implores the Court to stay the reciprocal discipline in this matter until such time as the petition has been filed and the Supreme Court of the United States disposes of the case by denial of the writ or a decision on the merits.¹ If the Writ is denied or not successful, Respondent will have to serve the 60 day reciprocal discipline. The fact this is reciprocal discipline further supports the Stay. If the Stay is not granted and Respondent wins the Writ, he will have unfairly served a 60 day suspension in Ohio.

Respondent attaches some of the law to support the request.


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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon Joseph M. Caligiuri, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7411, Joseph.Caligiuri@sc.ohio.gov by U.S. Mail and e-mail transmission and upon Richard Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5th Floor, Columbus, Ohio. 43215 the persons named below by U.S. Mail on November 6th, 2013.


¹ Counsel would be happy to provide this Court with updates on the status of that matter, by filing a copy of the petition with this Court, and informing this court of the disposition of that petition, and further progress in that case.



Eric C. Deters



The Kentucky Supreme Court held the denial of Deters' motion to have a court reporter present to create a record of the *de novo* hearing before the trier of fact (the Board of Governors of the Kentucky Bar Association) not prejudicial, despite the facts that (1) there is no stenographic or electronic recording of the proceedings for which the "Court . . . decides the case *de novo* itself based on the record developed below," *Opinion and Order* at 13, and yet (2) fundamental principles of due process require notice and an opportunity to be heard. *In re Ruffalo*, 390 U.S. 44 (1968); *In re Oliver*, 333 U.S. 257, 273 (1948); *Randall v. Brigham*, 74 U.S. (7 Wall.) 523, 40 (1868). Immediate relief is needed to prevent irreparable harm to Deters' right to have his due process claims addressed before the question becomes moot because of the running of the suspension.

Deters asked the Kentucky Supreme Court to stay its decision pending certiorari consideration and any merits consideration by this Court, but that motion was denied. *September 5, 2013 Order*.

Question Presented

Whether Kentucky denies fundamental due process to Deters when (1) it refuses to permit him to have a court reporter to create a record of the *de novo* hearing before the Board of governors in a bar disciplinary matter, (2) there is no other stenographic or electronic record of that hearing, and yet (3) the Kentucky Supreme Court admits that it "decides the case *de novo* itself based on the record developed below."

Opinions Below

The Board of Governor's order and recommendation are unreported. The Kentucky Supreme Court's Opinion and Order of May 23, 2013 is currently unreported, but available at

2013 WL 2285216. The order denying the petition for reconsideration of August 29, 2013 is unreported, as is the order denying the stay of September 5, 2013.

Jurisdiction

The Opinion and Order below were originally filed on May 23, 2013. A timely motion for reconsideration was filed, and on May 31, 2013 the Kentucky Supreme Court entered an order staying the May 23 order until consideration of the petition for reconsideration. On August 29, 2013 an Order Denying Petition for Reconsideration was entered. Jurisdiction is invoked under 28 U.S.C. 1257.

Constitutions, Statutes, and Rules

The Fourteenth Amendment provides, in relevant part, that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law” U.S. Const. amend. XIV, § 1.

Ky. SCR 3.300 provides, in relevant part:

The Respondent shall have all the rights secured to a party by the Rules of Civil Procedure and Kentucky Rules of Evidence with respect to the introduction of evidence. The Respondent shall have the right to compel the attendance of witnesses and the production of books, papers and documents or other writings, except those contained in the investigative file of Bar Counsel, to the hearing or to such depositions as are permitted under SCR 3.340. The Respondent shall have the right to an oral argument or to file a brief before the Trial Commissioner. The Respondent shall be afforded a full opportunity to defend himself/herself by the introduction of evidence, and to cross-examine witnesses. If the facts in the charge would give rise to a criminal proceeding, respondent shall not be compelled to give evidence against himself or herself. If the Respondent is unable to employ counsel, the Chair, or Chair’s lawyer member designee, upon written request accompanied by an in forma pauperis affidavit, made within twenty (20) days after service of the charge, shall appoint counsel for the Respondent.

Ky. SCR 3.350 provides, in relevant part, “The proceedings before the Trial Commissioner shall be reported by videotape, where possible, or if not possible, by a reporter

appointed by the Trial Commissioner. If a transcript must be prepared, it shall be completed within sixty (60) days of the hearing.”

Ky. SCR 3.370 provides, in relevant part:

(5)(a) The Board, after deliberation, and consideration of oral argument, if any, shall decide, by a roll call vote: . . .

(ii.) To conduct a de novo review, in its discretion. In that event it shall make findings as to the guilt or innocence on each Count, and the appropriate discipline to be imposed, if any, and take separate votes as to each. If the Board votes to take de novo review of the case, said review shall be confined to the evidence presented and the record of the case. The Board may consider the admissibility of evidence as well as the appropriate weight of it. The Board shall state, in its written report required by subsection (8), the difference between its findings and recommendations and the report of the Trial Commissioner.

. . . .

(7) Within thirty (30) days after the Board’s decision is filed with the Disciplinary Clerk, Bar Counsel or the Respondent may file with the Court a Notice for the Court to review the Board’s decision stating reasons for review, accompanied by a brief, not to exceed thirty (30) pages in length, supporting his/her position on the merits of the case. The opposing party may file a brief, not to exceed thirty (30) pages in length, within thirty (30) days thereafter. No reply brief shall be filed unless by order of the Court.

(8) If no notice of review is filed by either party, the Court may notify Bar Counsel and Respondent that it will review the decision. If the Court so acts, Bar Counsel and Respondent may each file briefs, not to exceed thirty (30) pages in length, within thirty (30) days, with no right to file reply briefs unless by order of the Court, whereupon the case shall stand submitted. Thereafter, the Court shall enter such orders or opinion as it deems appropriate on the entire record.

Ky. SCR 3.510(2) provides:

If the period of suspension has prevailed for one hundred eighty (180) days or less, the suspension shall expire by its own terms upon the filing with the Clerk and Bar Counsel of an affidavit of compliance with the terms of the suspension, which must include a certification from the CLE Commission that the Applicant has complied with SCR 3.675. The Registrar of the Association will make an appropriate entry in the records of the Association reflecting that the member has been reinstated; provided, however, that such suspension shall not expire by its own terms if, not later than ten (10) days preceding the time the suspension would expire, Bar Counsel files with the Inquiry Commission an opposition to the termination of suspension wherein Bar Counsel details such

information as may exist to indicate that the member does not, at that time, possess sufficient professional capabilities and qualifications properly to serve the public as an active practitioner or is not of good moral character. A copy of such objection shall be provided to the Character and Fitness Committee, to the member concerned, and to the Registrar. If such an objection has been filed by Bar Counsel, and is not withdrawn within thirty (30) days, the Character and Fitness Committee shall conduct proceedings under SCR 2.300. In cases where a suspension has prevailed for one hundred eighty (180) days or less and the reinstatement application is referred to the Character and Fitness Committee, a fee of \$1250.00 shall be made payable to the Kentucky Office of Bar Admissions.

Ky. Civ. R. 76.44 provides, in relevant part:

The taking of an appeal to the Supreme Court of the United States or the filing in that court of a petition for review on a writ of certiorari does not affect the finality of an opinion or final order. An order staying execution or enforcement of an opinion or final order may be entered upon motion under the following conditions and circumstances and for the periods designated: . . . (b) When a party desires to make application for a writ of certiorari, a stay may be granted by any judge of the appellate court for such specified number of days not exceeding 90, as may reasonably be required to enable the writ to be obtained, and may be conditioned upon the giving of adequate security as specified in Title 28, Section 2101(f), U.S. Code.

Statement of the Case

Eric Deters was admitted to the practice of law in Kentucky on October 10, 1986. In 2011, hearings were held on nineteen counts of misconduct in his professional activities, first before a trial commissioner pursuant to Ky. SCR 3.300 and 3.350, and then before the Board of Governors pursuant to Ky. SCR 3.370. At the Board of Governor's hearing on September 16, 2011, Deters had appeared with a court reporter and videographer, but was denied the use of them on the grounds that he needed to request permission for such in advance. He did not argue the point with the Board or subsequently with the Kentucky Supreme Court.

“Following an evidentiary hearing, the trial commissioner issued a report finding Deters guilty of sixteen of the nineteen counts and recommending that he be suspended from the practice of law for one hundred eighty-one days. Pursuant to SCR 3.370(6), the Board of

Governors rejected the commissioner's report and reviewed the files *de novo*. The Board now recommends that this Court find Deters guilty of four of the nineteen counts and suspend him for sixty-one days." *Kentucky Bar Ass'n v. Deters*, 360 S.W.3d 224, 227 (Ky. 2012) ("Deters 1") *reinstatement granted*, 2012-SC-000344-KB, 2012 WL 2362595 (Ky. June 15, 2012). The Court then went on to suspend him from practice for sixty-one days effective March 2, 2012. *Id.* at 235-236.

On June 15, 2012 he was reinstated to the practice of law, *Deters v. Kentucky Bar Ass'n*, 2012-SC-000344-KB, 2012 WL 2362595 (Ky. June 15, 2012) ("Deters 2").¹ On August, 13, 2012, mindful of his experience at the hearing in 2011, Deters filed a motion requesting the presence of a court report and videographer, in advance of the Board of Governors' *de novo* hearing in two additional files against Deters.. This was denied without comment by the Board.² On September 15, 2012, the Board of Governors of the Kentucky Bar Association, pursuant to Ky. SCR 3.370, held a *de novo* hearing in two additional files against Deters. *Opinion and Order* at 8.

The Board recommended a finding of guilty in both files and a total of sixty days of suspension. Deters filed a brief in the Kentucky Supreme Court objecting on due process grounds to the failure to have a stenographic or video record of the *de novo* hearing before the Board of Governors, as he had requested. The Kentucky Supreme Court responded to that argument in this manner:

¹ He actually served 112 days. Bar Counsel had filed an objection to his automatic reinstatement pursuant to KY. SCR 3.510(2), and therefore he had to go through the Character and Fitness Committee process. *Deters v. Kentucky Bar Ass'n*, 2012-SC-000344-KB, 2012 WL 2362595 (Ky. June 15, 2012)

² Matters in Kentucky state courts are routinely recorded, not stenographically, but electronically, by either audio recording devices or by video recording devices. See, e.g., Ky. Civ. R. 98, Procedures for video recorded court proceedings and appeals. The bar discipline proceedings before the Trial Commissioner are to be recorded by videorecorder if possible. Ky. SCR 3.350.

The Court sees no prejudice in this practice as it relates to this Court's review of the matter. When this Court undertakes review of a disciplinary proceeding, whether at the party's urging under SCR 3.370(7) or the Court's own motion under SCR 3.370(8), it is not bound as it would be in a pure appeal. The Court is not required to defer to the findings of fact or conclusions of law of the trial commissioner or the Board. Rather, in disciplinary proceedings, **those entities act as administrative agents of this Court to produce a record** and a recommendation.

Once this Court undertakes review of a case, it "shall enter such orders or opinion as it deems appropriate **on the entire record.**" SCR 3.370(8). Thus, the demeanor and actions of the Board and Bar Counsel are not relevant. This **Court instead decides the case de novo itself based on the record developed below.** Any potential unfairness shown by a Board member or by Bar Counsel is alleviated by this Court's independent review of a lawyer's alleged misconduct.

Opinion and Order at 12-13 [emphasis supplied].³ The court accepted the recommendations of the Board of Governors, and on May 23, 2013, entered an Opinion and Order suspending Deters for sixty days. *Id.* at 20-21.

Deters filed a petition for reconsideration, and simultaneously, a motion for stay pending the reconsideration and petition for writ of certiorari. On May 31, 2013, the Kentucky Supreme Court granted the motion for stay pending the reconsideration of its opinion and order, but denied the motion for stay pending a petition for a writ of certiorari. *May 31, 2013 Order.*

On August 29, 2013, the Court issued an Order Denying the Petition for Reconsideration, *August 29, 2013 Order*, and thus lifting the stay. Deters again moved the Kentucky Supreme Court for a stay pending the filing of a petition for a writ of certiorari, pursuant to Ky. Civ. R. 76.44.

Standards for Granting a Stay

"In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari

³ As the court itself noted, it did its "de novo" review solely on the record before it: no additional oral argument or evidence was taken, unlike the proceeding before the Board of Governors, where both were presented.

from the Supreme Court.” 28 U.S.C. 2101(f). For a stay to be granted, the moving party must show “a likelihood of irreparable injury that, assuming the correctness of the applicants’ position, would result were a stay not issued; a reasonable probability that the Court will grant certiorari; and a fair prospect that the applicant will ultimately prevail on the merits.” *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 510 U.S. 1309, 1310 (1994). Justice Brennan provided the following test for stays:

First, . . . a “reasonable probability” that four Justices will consider the issue sufficiently meritorious to grant certiorari Second, . . . a fair prospect that a majority of the Court will conclude that the decision below was erroneous. . . . Third, . . . that irreparable harm is likely to result from . . . denial Fourth, in a close case it may be appropriate to “balance the equities”

Rostker v. Goldberg, 448 U.S. 1306, 1308 (1980) (Brennan, Circuit Justice) (citations omitted) (granting stay pending appeal). This test also governs cases from state courts. *See In re Roche*, 448 U.S. 1312 (1980) (Brennan, Circuit Justice) (granting stay of decision of state court).

Reasons to Grant a Stay and Certiorari and to Reverse the Decision Below

The reasons to grant a stay are also reasons to grant certiorari, and to reverse.

I. A Certiorari Grant and Merits Success Are Likely.

There is more than a “reasonable probability” that four Justices will vote to grant certiorari and more than a “fair prospect” that Deters will prevail on the merits. *Rostker*, 448 U.S. at 1308. These outcomes are likely.

A. The Decision Below Conflicts With Numerous Precedents of This Court.

The practice of law has long been recognized as a right that, once acquired, is entitled to due process protection. Chief Justice Marshall noted in *Ex Parte Burr*, 22 U.S. (9 Wheat.) 529, 530 (1824) that: “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.” Justice Field, writing for the Court in *Ex Parte Garland*, 71 U.S. (4 Wall.) 333 (1866), reiterated this sentiment:

The attorney and counsellor being, by the solemn judicial act of the court, clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency.

Id. at 379. The Court, in *Ex Parte Bradley*, 74 U.S. (7 Wall.) 364, 375 (1868), also recognized that the lower court had no power to punish an attorney without notice or an opportunity to defend. The same term, the Court, discussing attorney discipline in *Randall v. Brigham*, 74 U.S. (7 Wall.) 523 (1868), stated “[N]otice should be given to the attorney of the charges made and opportunity afforded him for explanation and defence. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation.” Due process also requires notice of and adherence to those regulations.

A century later, the Court again reiterated the due process rights in disciplinary proceedings in *In re Ruffalo*, 390 U.S. 544 (1968). The Court cited *Randall* in determining that fair notice and an opportunity to be heard had been denied Ruffalo, the court concluding, “This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process.” *Id.* at 552.

If one is to have an opportunity to be heard, and that decision is reviewed in any fashion (whether “de novo” on the record, or solely on the record for errors of law or abuses of discretion), it is a fundamental prerequisite that there be a record of what transpired, especially

before a trier of fact. As the Ruffalo Court pointed out, “These are adversary proceedings of a quasi-criminal nature.” *Id.* at 551.

The right to a record of proceedings is assumed in many of the cases, but expressly prescribed in a number of cases, especially involving deprivation of rights or liberties.

The principle of [*Griffin v. Illinois*, 351 U.S. 12 (1956) (plurality opinion)] is that ‘(d)estitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts,’ 351 U.S., at 19, a holding restated in [*Eskridge v. Washington State Bd. of Prison Terms & Paroles*, 357 U.S. 214 (1958) (per curiam)] to be ‘that a State denies a constitutional right guaranteed by the Fourteenth Amendment if it allows all convicted defendants to have appellate review except those who cannot afford to pay for the records of their trials,’ 357 U.S., at 216.

Draper v. Washington, 372 U.S. 487, 488 (1963) (reaffirming *Griffin*). In a case involving a nonfelony charge, this Court said, “appellant cannot be denied a ‘record of sufficient completeness’ to permit proper consideration of his claims.” *Mayer v. Chicago*, 404 U.S. 189, 198 (1971) (even when the punishment was only a fine). And in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), this Court held that Mississippi could not deny the petitioner appellate review of the sufficiency of the evidence on which the trial court based its parental termination decree because of her poverty.

In the case at bar, the petitioner was not asking for anything at the Commonwealth’s expense, but at his own expense, and yet the fundamental right to have a record of the fact-finding proceedings before the Board of Governors, even at his own expense, was denied him. Ky. SCR 3.350 requires a record, preferably a video record, but otherwise a stenographic record, before a Trial Commissioner, but does not specifically state that a record must be made before the Board of Governors when it sits *de novo*. Nevertheless, a record of the proceedings is fundamental to the due process requirement of being heard when the Kentucky Supreme Court

does its review. “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Indeed, counsel has not had the opportunity to examine all the bar disciplinary regulations in all fifty states. However, counsel has been able to review a few of the surrounding states, and all require the creation of a record of the proceedings. Indiana requires a record of the fact-finding proceedings. Ind. R. Admis. B. & Disc. Att’y Rule 23, at § 14, describing proceedings before the hearing officer in disciplinary matters, states in relevant part, “(h) The proceedings may be summary in form and shall be without the intervention of a jury and **shall be conducted on the record.**” [emphasis supplied] The following section, § 15, describing review by the Indiana Supreme Court, states in relevant part,

(b) In the event a party does not concur in a factual finding made by the hearing officer and asserts error in such finding in the petition for review, **such party shall file with the petition for review a record of all the evidence before the hearing officer relating to this factual issue.** Within thirty (30) days of the filing of the transcript, opposing parties may file such additional transcript as deemed necessary to resolve the factual issue so raised in the petition for review. Any transcript filed must be settled, signed and certified as true and correct by the hearing officer. The cost of procuring a transcript shall be borne by the party obtaining it for purposes of seeking review. [emphasis supplied]

Ohio also requires a record at the fact-finding stage. Ohio Gov. Bar R. V, which deals with disciplinary procedure, particularly § 6, dealing with proceedings of the Board after filing of the complaint, states in relevant part: “(F) *Hearing.* Upon reasonable notice and at a time and location set by the panel chair pursuant to the hearing procedures and guidelines of the Board, the panel shall hold a formal hearing on the complaint. Requests for continuances may be granted by the panel chair for good cause shown. **All hearings shall be recorded by a court reporter provided by the Board and a transcript filed with the Secretary.**” [emphasis

supplied] In *Dayton Bar Ass'n v. Clinard*, 60 Ohio St.3d 59, 573 N.E.2d 45 (1991), the Ohio Supreme Court remanded a disciplinary proceeding to the panel for further evidentiary proceedings where it appeared that the record of a disciplinary hearing did not contain all relevant evidence due to the ineffectiveness of the attorney's counsel.⁴

Tennessee also requires a record. Tenn. S.Ct. R. 7, Art. XIII deals with formal proceedings before the State Board of Law Examiners. The relevant portions of § 13.03 of that rule, dealing with the hearings, state:

(j) **The Administrator shall arrange for the presence of a court reporter to transcribe any oral hearing.** The per diem charge of such reporter shall be paid by the party requesting the hearing, or, in the case of a show cause order, by the Board. **In its discretion, the Board may waive the presence of a reporter and use an electronic or similar recording device.** At the direction of the Board, **or at the request of any party, a transcription of the hearing shall be made, and shall be incorporated in the record, if made.** The party requesting the transcription shall bear the cost thereof. If the Board elects to transcribe the proceedings, any party shall be provided copies thereof upon payment to the Board of a reasonable compensatory charge. [emphasis supplied]

Finally, West Virginia also requires a record. W. Va. Law. Disciplinary Proc. R. 3.9 states simply: "Hearings before a Hearing Panel Subcommittee of the Lawyer Disciplinary Board shall be recorded by stenographic, mechanical, or electronic means. Upon request, the lawyer shall be entitled, at the lawyer's expense, to a copy of a videotape, audiotape, or transcript of the hearing."

⁴ There is a hole in the Ohio rules, just like the one in the Kentucky rules. Ohio Gov. Bar R. V provides: "(J) Review by Entire Board. After review, the Board may refer the matter to the hearing panel for further hearing, order a further hearing before the Board, or proceed on the certified report of the prior proceedings before the hearing panel. After the final review, the Board may dismiss the complaint or find that the respondent is guilty of misconduct. If the complaint is dismissed, the dismissal shall be reported to the Secretary of the Board, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the hearing panel." [emphasis supplied] Although the rule would seem to permit the same result Kentucky imposed upon Deters, counsel has not found any Ohio case like this one, and the Dayton Bar case suggests that Ohio would have afforded Deters the right to a transcript.

B. This Case Presents an Important Federal Question.

This is a case of great public importance. Just as our men and women in uniform protect us from external threats, the legal profession is the protector of our democracies from within. Dick the Butcher, in Henry VI, part 2, Act 4, Scene 2 says, “The first thing we do, let's kill all the lawyers.” Although also intended as a joke in that play, it illustrates that then, as now, lawyers protect our rights. Just as lawyers protect the rights of others, so they too should be accorded the same protections, not less, that are accorded other rights and privileges. This involves the failure of elementary due process principles to be applied to the lawyer discipline process. It involves longstanding issues concerning the meaning of what process is due. It involves respect for the Constitution, the rule of law, and decisions of this Court. If Kentucky is allowed to abrogate this Court’s holdings due process cases in such a willful and transparent fashion, respect for the Constitution, the rule of law, and this Court will be eroded. More states may try to carve out exceptions to providing records for hearings affecting property and liberty interests, based on their own allegedly unique circumstances.

To summarize Part I, the decision below conflicts with this Court’s holdings in numerous precedents, violates basic requirements of procedural due process, and raises important federal questions. Thus, there is more than a “reasonable probability” that four Justices will vote to grant certiorari and more than a “fair prospect” that the Corporations will prevail on the merits.

II. Deters Has Irreparable Harm.

Deters has irreparable harm, because the length of the suspension imposed by Kentucky is only sixty days. Without a stay, the suspension time will have run, and the violation of Deters’ due process rights, will have become moot. “Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of

issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.” *Bell v. Burson*, 402 U.S. 535, 539 (1971) (drivers’ licenses).

III. The Balance of Harms and Public Interest Favor Deters.

Justice Brennan included “balanc[ing] the equities” in the stay standards, but only “in a close case.” *Rostker*, 448 U.S. at 1308. This is not a close case, but the balance favors Deters. Attorneys in the Commonwealth are not afforded basic due process rights that would be afforded, for free, to indigents in other quasi-criminal matters. *Cf. Williams v. Oklahoma City*, 395 U.S. 458, 459 (1969) (“convicted for a violation of a city ordinance, quasi criminal in nature”) with *In re Ruffalo* at 551 (“These are adversary proceedings of a quasi-criminal nature.”). Therefore, it is in the public interest to decisively put an end to this by providing the relief requested herein.

Conclusion

For the foregoing reasons, the requested stay should granted.