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SUPREME COURT OF THE STATE OF WASHINGTON

Bar No. 32347
Supreme Ct. Case No. ~~200,560-8~~

~~20057~~ 200578-1

In re
FREDRIC SANAI
Lawyer (WSBA No. 32347)

BY DONALD R. CARPENTER
CLERK
[Signature]

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SUPREME COURT
STATE OF WASHINGTON

REPLY BRIEF ON APPEAL

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I. INTRODUCTION

In the four months since the opening brief in this appeal was filed, the underlying litigation which gave rise to this proceeding has become an issue drawing the attention of the national legal community. The cause was the website maintained by Chief Judge of the Ninth Circuit Court of Appeals Alex Kozinski. In 2005 he used the website alex.kozinski.com to post materials related to the divorce and federal litigation which gave rise to the disciplinary charges herein. Fredric Sanai's counsel and co-plaintiff Cyrus Sanai pursued misconduct complaints against Judge Kozinski; in the course of investigating why Chief Judge Schroeder of the Ninth Circuit Court of Appeals had found that the website "alex.kozinski.com" did not exist, Cyrus discovered that one of the primary purposes of the website was to distribute pornography, copyrighted mp3 files and blue humor.¹

Cyrus tipped off the Los Angeles Times, which was covering a criminal prosecution for distribution of obscene materials in Los Angeles; Judge Kozinski was presiding over this

¹ A motion for judicial notice of the disciplinary complaint which sets forth these matters dated September 27, 2008, as well as the initial news reports thereon will be filed forthwith.

rara avis. The revelation set off an international furor. United States Supreme Court Justice Roberts assigned the Chief Judge of the Third Circuit Court of Appeals to head up an investigation, which is ongoing. The case is the subject of several articles per month in the legal press as it progresses.

The Sanai cases have thus become a matter that has captured the interest of the public, and perhaps more important, the attention of the United States Supreme Court.

The onslaught of publicity and the unprecedented investigation by the Third Circuit also re-opens an old front. One of the cases that has the potential to undo all of the underlying state court issues was *Sanai v. Thibodeau*. That case was dismissed under an erroneous interpretation of the *Rooker-Feldman* doctrine. However, post-judgment proceedings in case *Sanai v. Sanai*, 02-2165, forced the presiding federal district judge in *Crooks* to take a formal position on the common critical issue in all of the Sanai case: whether the appointment Sassan Sanai's accountant, Philip Maxeiner, as a special master/ judicial referee was an act of corruption. All of the case law stating that such act was a violation of due process was presented to Judge

Coughenour; he refused to recognize, or even acknowledge the existence, of any of it.

Judge Coughenour's endorsement of this practice in a manner consistent with the disposition of the *Sanai* cases—pretending the relevant United States Supreme Court and Court of Appeals case law does not exist—raised, in concert with the developments in federal misconduct law, an opening to redo *Sanai v. Thibodeau*. This is because the conduct committed by Judge Thibodeau and Philip Maxeiner, and the efforts to safeguard it, may constitute crimes under federal law; if so, then Judge Coughenour's present and past rulings would be subject to vacatur on grounds of voidness. The criminality of simultaneously accepting cash from one or multiple sides in a lawsuit while exercising judicial power is one of the key issues in the Porteous impeachment proceedings.²

District Court Judge Thomas Porteous began accepting money from two different legal practices as a state court judge,

² Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit, Docket No. 07-05-351-0085, submitted November 20, 2007, *In re Complaint of Judicial Misconduct (Porteous)*, Docket No. 07-05-351-0085 (Fifth Cir).

appointing them to “curatorships” which were paid by the state, and then having the money kicked back. As a district court judge he continued to receive payments from these lawyers, though there is no proof that there was a specific *quid pro quo* in any case. The plaintiff in a hotly contested lawsuit hired lawyers from the first practice to represent them when the case was reassigned to Porteous just before trial. The defense, learning that these attorneys were close friends of Porteous, hired the second practice based on the open and notorious friendship between Porteous and the principal of the second firm. There is no evidence that either client knew that the attorneys were funding the judge.

Porteous and the dissenting members of the Fifth Circuit Judicial Council contended that this did not constitute bribery or a criminal act.³ The majority of the Fifth Circuit Judicial Council

³ *In re Complaint of Judicial Misconduct against Porteous*, Docket No. 07-05-351-0085 (5th Cir. 2005, Dennis, C.J, diss.) slip. op. 16 *et seq.*; no one disagrees that it was a violation of the due process requirement of maintaining an appearance of fairness for Porteous to have been accepting these funds, and the dissent agreed that Porteous should be reprimanded. However, there is a difference between a judge violating fundamental due process and committing a corrupt act; the view taken by the majority of the

disagreed. In particular, its order found that Porteous had violated 18 U.S.C. §201. If this view holds, then Maxeiner, Judge Thibodeau, Judge Zilly, and every other judicial official who forwarded, aided or abetted Maxeiner's performance of his powers as a special purpose judicial officer would likewise be guilty of bribery and acting as an accessory thereof under the federal statutes which govern state court actions, including RICO and the Hobbs Act; these statutes are much broader in language and application than the narrowly drafted 18 U.S.C. §201.

Even if not criminal, the mere prospect of criminal sanctions being imposed for such conduct on judges based in Washington State could easily have influenced Judge Coughenour decision to approve the cut-off of Viveca and Fredric's rights. This means that a motion will be brought to vacate the judgment in that case. It may be denied, but at that point all of the issues at issue here will be back up before the Ninth Circuit.

There is one additional consideration that will play out over the next few months: Congress. The House Judiciary

Fifth Circuit put his conduct squarely in the latter, more serious category.

Committee is already taking up the issue of the Porteous impeachment, which presents the same issues.

The stakes thus could not be higher for judges in Washington State, and the incentives are conflicting: on the one hand, disbaring Fredric under the present circumstances when the underlying litigation is still being fiercely fought may well trigger not only United States Supreme Court review but other actions; on the other hand, sending this case back will result in whatever new hearing officer being appointed having to consider the difficult underlying issues. A fair and efficient way to cut this Gordian knot is suggested below.

II. WHY THE MERITS OF THE CASE ARE NOT BEING CHALLENGED.

This is a situation where Fredric had no meaningful opportunity to present a defense, and the result came in without HIS appearance. Fredric is not going to make the mistake of taking up the merits of the findings; this is an invitation to waive his due process contentions, which he forcefully declines.

III. REPLY TO CONTENTIONS OF THE ASSOCIATION.

A. THE DENIAL OF A CONTINUANCE DEPRIVED FREDRIC OF HIS DUE PROCESS RIGHT TO A MEANINGFUL OPPORTUNITY TO BE HEARD, AND THIS WAS ERROR.

Sanai made the assignment of error that “the hearing officer erred when he denied Sanai’s emergency motion for a continuance, and the Board erred when it declined to modify the hearing officer’s decision and remand on these grounds.” Disciplinary Counsel suggests that this does not include the last version of the Fredric’s treating physician reports. That is not true; this was supplementary information provided as soon as possible intended to be considered as part of the ongoing motion. It was submitted to the Hearing Officer and Fredric submitted his declaration on that point; whether the Hearings Officer considered it or not is unknown. It thus properly constitutes part of the record in this case, and is included within the assignment of error.

Disciplinary counsel has submitted arguments that ignore - indeed *contradict* - her contentions before this Court, that she has no evidence, and does not contend, that Sanai’s physician lied

about Sanai's medical condition. The critical exchange was as follows:

The Court: Has the Bar made *any effort* to controvert this? Are you suggesting the doctor has falsely provided this?

Eide: No, I'm not....(omitted)....I'm not controverting what the doctor said.

Id., Time Stamp 16.03 (emphasis added).

The Court: It doesn't surprise me, as a non-doctor, that the tension would rise and worsen as the imminence of the trial occurs, and that seems to be what the doctor is saying. In fact, it is the express advice, as I read what the doctor's declaration, quote, "under penalty of perjury," that he directed the attorney he shouldn't participate in the trial. Right? Do you read it differently? Does the Bar dispute that?

L. Eide: No, sir.

The Court: So it was really impossible for him to participate.

Id., Time Stamp 17:18.

In her written documents, Disciplinary Counsel argues that despite the fact that no one contends that Sanai's claims of medical emergency were false, and that there is zero evidence

contradicting them, that the Hearings Officer was nonetheless authorized to reject them in favor of his own medical opinions.

This contention is ridiculous, and the case law cited contradicts this contention. The documents provided by Fredric's physician were extremely specific. Moreover, they were the *only* evidence that could be presented under the circumstances; there was no way that the treating physician could be put forth as an appearing witness on such short notice. *In re Disciplinary Proceeding Against Cohen*, 150 Wn.2d 744 (2005) involved a case where no expert testimony was submitted **at a hearing**, and instead a letter which did not address all of the points brought up by the attorney was used instead. This Court ruled that under those circumstances, the lack of expert testimony (which could have been furnished) meant that the amount of evidence put forward to show physical disability as a defense to the charges was inadequate. Here, Fredric is not arguing that he had any disability that is a defense to the charges; on the contrary, he contends and will contend that he did nothing wrong, and still believes that he will prevail on the merits of every case when all is said and done.

In re Disciplinary Proceeding Against Whitt, 150 Wn.2d 744 (2003), was a case where the Board modified a recommendation of the Hearings Officer based on its misunderstanding of the testimony of an expert witness. "This

court defers to the hearing officer's findings of fact provided they are supported by a clear preponderance of the evidence. *In re Disciplinary Proceeding Against Dann*, 136 Wn.2d 67, 76, 960 P.2d 416 (1998).” *Witt, supra*, at 717. The standard is NOT that this Court defers to conclusions of fact of the Hearings Officer with no evidentiary support at all, as asserted by Disciplinary Counsel.; where there is no “clear preponderance” of evidence, then this Court reviews matters de novo.

Thus, given that the Hearings Officer’s factual conclusion that there was no support for Fredric’s claim was supported by no evidence at all - let alone a clear preponderance of the evidence - this Court cannot defer to it. On *de novo* review, there is no evidence - as the Bar has admitted - that the doctor was lying.

Sanai argued this issue as one of due process, where the standard is whether there was a meaningful opportunity to be heard. Disciplinary counsel argues that the question should be evaluated on sliding scale set forth in *Trummel v. Mitchell*, 156 Wn.2d 653, 670-671 where consideration number five is “any others that have a material bearing upon the exercise of the discretion vested in the court”. Obviously, the fundamental due process requirement, imposed by the Fourteenth Amendment, that the opportunity to be heard should be “meaningful” is a consideration that overwhelms any other factor. Here, the need

was absolute, as Sanai was barred not only from participating in this matter, but any other work for an extended period.

As for the other factors, listed in *Trummel*:

- (1) the need for a continuance was absolute;
- (2) there was no need whatsoever of prompt disposition of the action; indeed, not only are Judge Zilly's rulings all on appeal, the dramatic change in the stance of this case, coupled with the investigation ordered to be conducted by the Third Circuit (which Cyrus is in the process of expanding), show that the trial was precipitate. As this Court noted when it denied the petition to summarily suspend Fredric, he poses zero threat to the people of Washington.
- (3) Delay imposed no prejudice of any kind on the "adverse party". The argument that these witnesses, all lawyers, would be injured by rescheduling is meritless; lawyers consistently cope with shifting schedules caused by trial movements.
- (4) There were prior continuances due to the ongoing litigation; given that the same litigation is still ongoing, in federal and in state court, the history of prior continuances was irrelevant.

**B. THE HEARINGS OFFICER AND DISCIPLINARY BOARD
ERRONEOUSLY DENIED SANAI'S RIGHT TO COUNSEL OF
HIS CHOICE.**

Despite the protestation, it is Disciplinary Counsel which is misrepresenting the impact of *United States v. Gonzalez Lopez*, 126 S.Ct. 2557 (2006). The Sixth Amendment right to counsel has two exclusive components: the right to counsel paid by the government if indigent, and the right to counsel of one's choice. These two rights are EXCLUSIVE; a criminal defendant gets a free lawyer *or* a lawyer of his or her choice, but not both. *Gonzalez Lopez* decided, for the first time, whether the right to counsel of one's choice included counsel *pro hac vice*. The Supreme Court said **yes**. Since the Fifth Amendment's right to counsel of one's choice (which in state courts is applied via the Fourteenth Amendment) is the same as the Sixth Amendment right, *Gonzalez Lopez* establishes such a right. *McCuin v. Tex. Power & Light Co.*, 714 F.2d 1255, 1262 (5th Cir.1983) (citing *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1118 (5th Cir.1980)); *Powell v. Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932)).

There simply was no constitutionally valid reason to deny Fredric his counsel of choice. Indeed, this proceeding is more or less proof of why out-of-state counsel is necessary.

The fact that Sanai's disbarment is being sought for contesting the appointment of Philip Maxeiner while appeals of all but one of the relevant orders are still ongoing raises the obvious question of why the Bar Association is in such a hurry. The answer which leaps out at one is that the Association is desperate to conclude this disbarment before the ongoing appeals of matters before Judge Zilly can be concluded, for if successful, most of the Bar's case would collapse.

The unseemly enthusiasm to bury the dagger into Fredric Sanai is due not to any alleged incompetence, but rather to the risk that his contentions may well be borne out. Now that the Sanai cases have caught the attention of the United States Supreme Court, that risk is even higher.

The same consideration is behind the desire to exclude Cyrus. If he were a bad lawyer, there would be no reason to seek his exclusion, indeed the Bar Association would be thrilled; the problem is that Cyrus is extremely effective at challenging judicial misconduct, and has a skill set and resourcefulness outside anyone in Washington State. Perhaps more important, he belongs to a Bar Association (that of California) which does not attack its members for combating judicial malfeasance. Only two complaints have ever been filed against him with the California Bar; one by Los Angeles County Superior Court Judge Elizabeth Grimes after she was tossed off of the *Sanai v. Saltz* case for

misconduct, and the second by Ms. Eide. Neither went anywhere. As for the subsequent ruling by Judge Grime's successor Judge Greene, that case is up on appeal and thus subject under California procedure under Code Civ. Proc. §916.

There was no constitutionally valid reason to bar Cyrus' representation in this case. If not dismissed with prejudice as suggested below, on remand Cyrus should be permitted to act as Fredric's counsel.

C. THE HEARINGS OFFICER AND BOARD ERRONEOUSLY DENIED SANAI'S DISCOVERY ON HIS CONSTITUTIONAL CHALLENGES.

The primary reason for addressing the discovery issues is so that on remand Sanai can have the discovery requested. Accordingly, the timing of the requests is completely irrelevant; moreover, the Hearings Officer denied them on the merits, for the reasons outlined in his order.

The case law cited by the Association are not good law. The correct analysis was set forth in *Matter of Certain Complaints Under Investigation by an Investigating Committee of the Judicial Council of the Eleventh Circuit (Williams v. Mercer)*, 783 F.2d 1488 (11th Cir. 1986).

The Eleventh Circuit Court of Appeals issued the only on-point decision concerning the application of the judicial

deliberation privilege to cases involving judicial corruption. The decision arose from the ultimately successful efforts to discipline United States District Court Judge Alcee Hastings for his solicitation of a bribe.⁴ Judge Hastings challenged the authority of the Judicial Council of the Eleventh Circuit to subpoena his documents and compel his law clerks to testify concerning the deliberations Judge Hastings conducted on various matters on grounds of judicial privilege:

Although we have found no case in which a judicial privilege protecting the confidentiality of judicial communications has been applied, the probable existence of such a privilege has often been noted. In *Nixon v. Sirica*, 487 F.2d 700, 717 (D.C. Cir. 1973), the District of Columbia Circuit analogized President Nixon's executive privilege, "intended to protect the effectiveness of the executive decision-making process," to that "among judges, and between judges and their law clerks." The same court subsequently reiterated this analogy in *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 729 (D.C. Cir. 1974).

...

The Supreme Court's reasons for finding a qualified privilege protecting confidential Presidential communications in *United States v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974), support

⁴ Judge Hastings was impeached by the House of Representatives for bribery and perjury and convicted by the Senate, which removed him from the judiciary. He beat a criminal conviction when the main witness refused to testify. He subsequently won a seat in the House of Representatives, where he serves today.

the existence of a similar judicial privilege. The Court based the executive privilege on the importance of confidentiality to the effective discharge of a President's powers, stating,

[T]he importance of this confidentiality is too plain to require further discussion. Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision-making process.

Id. at 705, 94 S.Ct. at 3106. The Court discerned the constitutional foundation for the executive privilege — notwithstanding the lack of any express provision — in the constitutional scheme of separation of powers and in the very nature of a President's duties:

[T]he privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of the confidentiality of Presidential communications has similar constitutional underpinnings.

Id. at 705-06, 94 S.Ct. at 3106-07.

If so, the same must be true of the judiciary. The Court, indeed, likened "[t]he expectation of a President to the confidentiality of his conversations and correspondence" to "the claim of confidentiality of judicial deliberations." *United*

States v. Nixon, 418 U.S. at 708, 94 S.Ct. at 3107. Judges, like Presidents, depend upon open and candid discourse with their colleagues and staff to promote the effective discharge of their duties. The judiciary, no less than the executive, is supreme within its own area of constitutionally assigned duties. Confidentiality helps protect judges' independent reasoning from improper outside influences. It also safeguards legitimate privacy interests of both judges and litigants.

We conclude, therefore, that there exists a privilege (albeit a qualified one, *infra*) protecting confidential communications among judges and their staffs in the performance of their judicial duties.

....
Like any testimonial privilege, the judicial privilege must be harmonized with the principle that "the public . . . has a right to every man's evidence." *United States v. Bryan*, 339 U.S. 323, 331, 70 S.Ct. 724, 730, 94 L.Ed. 884 (1950). This principle is no less applicable to proceedings under the Act than to criminal proceedings.

Once the party asserting the privilege has met the burden of showing that the matters under inquiry implicate communications among a judge and his staff concerning performance of judicial business — as Simons and Miller have shown here — those matters are presumptively privileged and need not be disclosed unless the investigating party can demonstrate that its need for the materials is sufficiently great to overcome the privilege. To meet this burden, the investigating party can attempt to show the importance of the inquiry for which the privileged information is sought; the relevance of that information to its inquiry; and the difficulty of obtaining the desired information through

alternative means. The court then must weigh the investigating party's demonstrated need for the information against the degree of intrusion upon the confidentiality of privileged communications necessary to satisfy that need.

Williams, supra, at 1518-1520, 1521-22.

Williams v. Mercer is the only federal case to analyze the existence and application of the judicial deliberation privilege, and it concludes that the privilege must be a qualified one in order for the public interest in enforcement of judicial integrity to be preserved. The cases cited by the Association either address the question of whether, on the relevant facts, it was error to compel judicial testimony or not, plus long-outdated case law concerning whether judicial testimony can be considered to attack a judgment. None of these factors are relevant here.

Fredric's primary defense was (and is) that the appointment of Philip Maxeiner was (and is) a fundamental violation of due process that cannot be reconciled with the published law on the issue. "Due process, under the Fourteenth Amendment and the Fifth Amendment to the United States Constitution bar a judicial official, or a special purpose judicial officer, from being in the pay of a private litigant, just as this Court would be barred from ruling on this case if it were receiving money from, say, Sassan Sanai. *See In re Complaint of Judicial Misconduct (Porteous)* Docket No. 07-05-351-0085 (Fifth Cir.

September 10, 2008) (finding that acceptance of money from private parties in litigation before the judge constitutes judicial misconduct and “high crimes and misdemeanors” meriting impeachment). The case law is crystal clear that a specially appointed judicial officer, such as a special master or judicial referee, is subject to the same requirements of actual and apparent impartiality as a judge. *In re Kempthorne*, 449 F.3d 1265 (D.C. Cir. 2006)(special master held to same standards of impartiality as a judge); *Edgar v. K.L.*, 93 F.3d 256, 260-62 (7th Cir. 1996) (issuing writ of mandamus compelling recusal of district court judge where court-appointed investigative “experts” had “become partisans [and] carri[e]d an unacceptable risk for compromising impartiality,” and thus could “no longer claim the mantle of judicial appointment,” with its “special weight” of “presumed neutrality”); *see also In re Gilbert*, 276 U.S. 6, 9 (1928) (“When respondent accepted appointment as master he assumed the duties and obligations of a judicial officer.”); *In re Kensington Int’l, Ltd.*, 368 F.3d 289 (3d Cir. 2004) (issuing writ of mandamus requiring recusal of district court judge based, in part, upon the appearance of bias by court-appointed special advisors); *Cobell v. Norton*, 334 F.3d 1128, 1144 (D.C. Cir. 2003) (disqualifying monitor appointed as special master because that was “a judicial role” and he had developed “significant prior knowledge. . . on the basis of which he had formed and expressed opinions of continued

relevance to the litigation”). The fact that Maxeiner was appointed as part of the initial decree of divorce is irrelevant; in *Griffin v. Griffin*, 327 U.S. 220 (1946), a divorce case, the United States Supreme Court held that the basic elements of due process apply to post-judgment enforcement efforts in a state court divorce; where they are absent, the judgment entered to enforce the earlier judgment is void. The existence of *de novo* review or close supervision does not cure a constitutional infirmity arising from a financial interest in the litigation held by a person exercising judicial power. *Ward v. Village of Monroeville* 409 U.S. 57 (1972).

To date no party or judge who has touched the Sanai cases has been able to reconcile this case law concerning the due process requirements for special masters, judicial referees, etc., with what occurred in this case. It is *prima facie* judicial corruption, of the kind that when committed by federal judges was one of the few successful grounds for impeachment. *In re Complaint of Judicial Misconduct against Porteous*, Docket No. 07-05-351-0085 (5th Cir. 2005), Dennis, C.J, diss.) slip. op. 16 *et seq.*

In the context of this case, demanding depositions of judicial officers to explain why they believed that what they were doing was valid was not only a necessary part of the defense, it was entirely appropriate given the inability of any judge to

articulate grounds for appointing, validating, or defending Maxeiner that is consistent with firmly established constitutional grounds.

As for the requests for admission, the issue is not whether answers should have been compelled, but whether any responses at all should have been required. Where a defense such as a legal conclusion is raised, the objector is required under the rules to explain the position of the objecting party. Under CR 36, which applies to disciplinary proceedings pursuant to ELC 10.11(b), "a party who considers that a matter of which an admission has been requested presents a genuine issue for trial or a central fact in dispute may not, on that ground alone, object to the request; he may, subject to the provisions of rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it." The Bar Association should have been forced to state what its position was on these matters which it stated were legal conclusions, and thus necessarily issues that were central to the determination of the charges brought against Fredric. Instead, the Hearings Officer allowed the Bar Association to say nothing, which was completely improper.

IV. HOW THIS COURT MAY EXTRACT ITSELF FROM THIS MESS.

It appears from oral argument that Justice Sanders and the Justices who were not privy to the prior visits of the

underlying divorce litigation to this Court are not happy with the posture of this case. They are right to be concerned. As the Sanai cases have risen to the top of litigation presenting judicial misconduct within the federal courts, it should be obvious that it is only a matter of time before the scrutiny focuses in on the participation of the state courts in this debacle.

Obviously, if this Court believes that the appointment of Maxeiner was so obviously and clearly consistent with the law on the final interests of tribunals, it can so state in this proceeding. However, this Court may wish to carefully consider the judicial reaction from the United States Supreme Court and the political reactions within Congress and Washington State. If this Court steps back and looks at this situation soberly, it should realized that it made a mistake in refusing to review the prior petitions put to this Court.

This Court has the power under RAP 2 to make exceptional orders where justice requires. Sanai respectfully suggests that this Court correct its past error and dispose of the *Sanai* matters as follows:

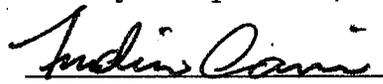
1. Enter judgment in favor of Fredric in these proceedings.
2. Under RAP 2 issue an order recalling the mandates in the prior two *Sanai v. Sanai* petitions, vacate its orders, and issue an order to show cause why the judgments of the Court of Appeals and Judge

Thibodeau should not be vacated, the case remanded for new trial, and Viveca restored to the position she occupied as of April 2002 in all respects. Then, after due consideration of objection, enter that order.

V. CONCLUSION.

For the reasons set forth above, the decision of the Disciplinary Board should be reversed, and the matter remanded to a new Hearings Officer in Clark County, Washington with instruction to order the new Hearings Officer to order the Bar Association to respond to the requests for admission, to allow Sanai to subpoena appropriate witnesses, and to admit *pro hac vice* counsel Cyrus Sanai in association with Fredric Sanai, or another Washington State-admitted attorney.

Respectfully submitted this 28th day of September, 2008.


Fredric Sanai, WSBA 32347

CERTIFICATE OF FILING AND SERVICE

The undersigned, deposes and states as follows:

That I am now, and at all times herein mentioned, was a citizen of the United States and a resident of the State of Washington, over the age of 18 years, and am competent to be a witness therein.

On September 30, 2008 I personally filed with the Clerk for the Supreme Court of Washington State Fredric Sanai's original Reply Brief on Appeal in case *In re Fredric Sanai*, no. 200,560-8, and mailed a true copy to disciplinary counsel for the Washington State Bar Association at this address:

Ms. Linda Briggs Eide
Washington State Bar Association
1325 4th Ave. Suite 600
Seattle WA 98101-2539.

Dated this 30th day of September, 2008.


(signature)

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