

No. _____

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

IN RE HAGENS BERMAN SOBOL SHAPIRO LLP and STEVE W. BERMAN,

Petitioners,

UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA,

Respondent,

**PETITION FOR WRIT OF MANDAMUS TO THE U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Hon. Paul S. Diamond, United States District Judge

No. 2:11-cv-05782 PD (E.D. Pa.)

AND ALL RELATED CASES

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Corporate Disclosure Statement

Under Rule 26.1 of the Federal Rules of Civil Appellate Procedure and Third Circuit L.A.R. 26.1.1, Petitioner Hagens Berman Sobol Shapiro LLP states that it is not a public company, no public corporation owns 10% or more of an interest in it, and it has no parent company.

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INTRODUCTION

On December 2, 2025, in the underlying civil case, the district court issued a “memorandum opinion,” the sole and pointed purpose of which was to publicly announce his referral of Petitioners Hagens, Berman, Sobol, Shapiro LLP (“Hagens Berman”) and Steve W. Berman, Esquire (“Mr. Berman”) (collectively, “Petitioners”) to the Department of Justice for criminal investigation (“Criminal Referral”). The timing of this astonishing prosecutorial referral in a pending civil action raises the specter of actual judicial bias because it comes on the heels of Petitioners’ Motion for Recusal yet cites as its basis the Report and Recommendation of Special Discovery Master William Hanglely (“SDM Hanglely”) issued more than two years earlier (“October 2023 R&R”). To put a finer point on the timing, **the presiding judge received his asserted reasons for the Criminal Referral in October 2023 yet did not make the Criminal Referral until nearly 26 months later, and only after Petitioners filed and briefed the Motion for Recusal, which no counseled party opposed.**

Two days after making the Criminal Referral, the district court denied the Motion for Recusal without substantively addressing the basis for that motion—problematic *ex parte* communications with the Special Discovery Master prior to issuance of the October 2023 R&R—other than to broadly label them as “proper and necessary.” Critically, these 22 *ex parte* communications culminated in the

special master’s *sua sponte* and *ultra vires* recommendation for sanctions against Petitioners, to which recommendation the district court owes an independent and *de novo* review. *See* Fed. R. Civ. P. 53(f).

The district court has not ruled on the sweeping sanctions recommendation which has been hanging over the Petitioners like the sword of Damocles for nearly 26 months. Notwithstanding the court’s now-explicit refusal to rule, *see* (Appx184) (“I will not address the sanctions issue further at this time”), the district court has clearly prejudged the sanctions recommendation by eschewing an extra record referral or a referral under seal in favor of publicly proclaiming the need for a criminal investigation, which referral was instantly and widely reported by the media (as was the sanctions recommendation in the October 2023 R&R).¹

The record below is now so replete with evidence of actual bias—in addition to the appearance of bias—that Petitioners seek the extraordinary remedy of reassignment to another district judge.

¹ The court’s Criminal Referral is nothing if not transparent about what is to become of the special master’s recommendations. Indeed, the district court expressed its strong inclination to enter sanctions, referring to the special master’s factual findings—provided in “painstaking detail”—as “damning,” yet limited by the civil discovery process, thereby justifying criminal investigation.

RELIEF SOUGHT

Pursuant to 28 U.S.C. § 1651(a) and Federal Rule of Appellate Procedure 21, Petitioners respectfully seek a writ of mandamus compelling the district judge to disqualify himself and striking the district court's order of December 2, 2025.

ISSUE PRESENTED

A federal judge is required to recuse himself from any proceeding in which his impartiality might reasonably be questioned. 28 U.S.C. § 455(a). He must also recuse himself where he has a personal bias or prejudice concerning a party. *Id.* at § 455(b).

The issue presented is: Whether the presiding judge should be disqualified based upon a finding of actual bias when he uses a memorandum opinion to publicize his referral of counsel in a pending civil case to the Department of Justice for investigation, despite facing a fully ripe motion for recusal, particularly when the court was aware of the basis for his referral for a period in excess of two years and acted only after his impartiality was questioned in the motion for recusal?

The corollary issue presented is: Whether the presiding judge should be disqualified based upon the appearance of bias due to his extensive *ex parte* communications with a special master culminating in the special master's *ultra vires* and *sua sponte* recommendation for sanctions, the merits of which the court has clearly prejudged?

Petitioners respectfully submit that the presiding judge, through his acts and omissions, including his failure to address Petitioners' extensive objections to the *sua sponte* recommendation for sanctions, has demonstrated deep animus toward Petitioners, the most recent embodiment of which is the Criminal Referral publicly dishonoring and humiliating Petitioners.

FACTUAL BACKGROUND

Between 2011 and 2014, Petitioners filed nine complaints against manufacturers and distributors of the drug thalidomide and substituted as counsel in two pending suits. The cases were removed and then consolidated in the district court.

A. SDM Hangle's Appointment and Recommendations.

On June 27, 2014, the district court entered an order, pursuant to Fed. R. Civ. P. 53, appointing SDM Hangle as special discovery master. (Appx189). In the initial appointment order (the "Appointment Order"), the district court identified various duties for SDM Hangle. The Appointment Order also addressed the possibility of *ex parte* communications during SDM Hangle's appointment, stating in pertinent part:

The Special Master may communicate *ex parte* with the Court without notice to the Parties concerning procedural matters, to assist the Court's understanding of complex discovery matters, or for any other reason reasonably necessary to fulfillment of his duties.

Id. at 3.

On August 11, 2014, December 8, 2014, February 24, 2015, March 11, 2015, March 14, 2016, and April 16, 2018, the district court amended the Appointment Order to expand SDM Hanglely's duties. None of these amendments revised the above-quoted provision identifying three categories of permissible *ex parte* communications.

Fact discovery in the consolidated cases closed on November 30, 2014. *Johnson et al. v. SmithKline Beecham Corporation et al.*, 2:11-cv-05782-PD, ECF No. 270 (E.D. Pa. Jul. 18, 2014). In 2014 and 2015, multiple plaintiffs stipulated to entry of judgment on their claims and five had summary judgment entered against them. The claims of many other plaintiffs remain pending.

After discovery closed in 2014 the district court imposed a stay of other case deadlines. *Id.* The litigation ground to a halt as the district court referred various ancillary matters to SDM Hanglely between 2014 and 2018. The district court initially authorized SDM Hanglely to address discovery issues and consider requests for sanctions, (Appx189; Appx193), and later assigned additional tasks related in relevant part to motions for voluntary dismissal and motions to withdraw as counsel, all filed in 2014 and 2015 (*see* Appx194; Appx200; Appx202; Appx. 204).

On December 4, 2014, SDM Hanglely issued a report recommending that sanctions be imposed against Hagens Berman in favor of defendant Grünenthal

with respect to claims raised by three plaintiffs. *Johnson*, 2:11-cv-05782-PD, ECF No. 414. The district court promptly adopted the recommendation, *id.* at ECF No. 483, imposed sanctions, and entered judgment against those plaintiffs, *id.* at ECF No. 514. On August 10, 2016, following interviews and investigation, SDM Hanglely recommended that certain voluntary dismissals be approved.² *Id.* at ECF No. 535. In 2017, 2019 and May 2021, SDM Hanglely presided over hearings principally related to Hagens Berman’s motions to withdraw from the representation of five plaintiffs. Lawyers from the firm answered SDM Hanglely’s questions under oath and the firm, through counsel, produced documents. In the 28 months following the May 2021 hearing, SDM Hanglely engaged in no further fact-finding, held no hearings, and sought no additional information.

On October 12, 2023, SDM Hanglely issued the scathing and acerbic October 2023 R&R in which he strayed well beyond the authority invested by the district court and offered a *sua sponte* recommendation that the court impose some unspecified sanction on Petitioners and former Hagens Berman attorney Tyler Weaver. (Appx1). Notably, SDM Hanglely did not indicate that “the civil discovery process limited” his inquiries, as the district court later stated when justifying the Criminal Referral. (Appx184-185).

² Although SDM Hanglely recommended in 2016 that the *stipulated dismissals* be approved, *the court has not acted* on that recommendation. (*see* Appx164)

B. Petitioners' December 2023 Objections.

Petitioners filed a comprehensive 133-page set of Objections to SDM Hangle's factual findings and conclusions, supported by 129 exhibits, on December 13, 2023 ("December 2023 Objections"). (Appx254). The December 2023 Objections also raised concerns about the district court's ability to conduct an independent and *de novo* review of the October 2023 R&R in light of its extensive *ex parte* communications with SDM Hangle.

Nearly 20 months later, on August 5, 2025, the district court issued an Order to Show Cause and related Memorandum Opinion ("August 2025 OSC and Opinion"). Astonishingly the district court adopted SDM Hangle's so-called factual findings³ without analysis, inaccurately stating:

The Parties have not objected to the great majority of Mr. Hangle's factual findings, which, in any event, I have reviewed de novo and adopt. I will thus rely on those undisputed facts throughout this Memorandum.

(Appx160) (emphasis added).

The first sentence of this statement—that Petitioners did not object to “the great majority of Mr. Hangle's factual findings”—is flatly wrong.

Petitioners submitted a 224-paragraph statement of facts controverting Mr.

³ As Petitioners noted in their Objections to the August 2025 OSC and Opinion, the October 2023 R&R is unconventional and problematic in that does not identify or designate “findings of fact” to which the parties could readily or effectively object. (Appx1091).

Hangley’s assertions in their December 2023 Objections, with each paragraph supported by evidence. (Appx45-13). The pertinent “facts” set out in the October 2023 R&R were thoroughly refuted, not “undisputed.” Here are two examples illustrating Petitioners’ extensive refutation of SDM’s factual findings:

Adequacy of the Presuit Investigation. SDM Hangley asserted that Petitioners “irresponsibly” brought claims by “understaffing, under-investigating and underpreparing the cases.” (Appx148). Petitioners’ December 2023 Objections responded with voluminous contrary evidence.

- Before filing its first complaint in October 2011, “[f]irm staff and attorneys billed over 713 hours to factual investigation [and] legal research into the statute of limitations and causes of action under Pennsylvania law[.]” (Appx287; Appx497-755).
- Petitioners researched and developed legal theories and facts to support the claims, and attached their work product to the Objections. (Appx294-333; Appx392-459; Appx765-999; Appx1005-1079.)
- The investigation conducted prior to filing the first complaint is detailed in 76 paragraphs under the heading: “The Firm Conducted

an Appropriate Factual and Legal Inquiry Before Filing its First Complaint in October 2011.” (Appx309-40; Appx286-91).

The March of Science and Other Statute of Limitations Theories

In response to SDM Hangle’s criticism (Appx148) that there was no expert support for Hagens Berman’s “March of Science” theory that certain injuries were not associated with Thalidomide until approximately 2009 or later, when medical orthodoxy evolved, Petitioner supplied a 2023

Declaration from [REDACTED]

[REDACTED] (Appx293-294; Appx755-64). Hagens Berman described in detail the other experts with whom it consulted at paragraphs 104-114.

C. The August 2025 OSC and Opinion and the Firm’s Response.

In addition to ignoring Hagens Berman’s objections to SDM Hangle’s findings, the August 2025 Memorandum did not address the substance of Petitioners’ concerns regarding the *ex parte* communications with SDM Hangle. Instead, the court accused Petitioners of objecting in bad faith because they paid SDM Hangle’s invoices without raising the issue of *ex parte* communications.⁴ (Appx175-177). The district court did not rule on the sanctions recommendation

⁴ In the Appointment Order, the district court ordered that plaintiffs and defendants share in equal measure SDM Hangle’s fees and costs, (Appx192), which have totaled \$2,604,889.80. (See Appx252-55).

but again directed Petitioners to show cause why sanctions should not be imposed. (Appx182-83).

On October 4, 2025, Petitioners timely filed their 156-page response (“October 2025 OSC Response”). (Appx1084). There, Petitioners corrected the record regarding Judge Diamond’s assertion (Appx182-83) that SDM Hanglely had recommended sanctions based on purported obstruction of discovery, (Appx1115-1117). SDM Hanglely referenced discovery misconduct only tangentially in his October 2023 R&R and *did not recommend that discovery-related sanctions be imposed*. Petitioners also unearthed the decade-old discovery motion and explained how both SDM Hanglely and the court had repeatedly mischaracterized it. *Id.*

The October 2025 OSC Response also addressed the legal authorities underpinning the recommendation for sanctions and rebutted the accusation that Petitioners had acted in bad faith. It challenged the recommendation of sanctions on due process grounds because Petitioners had not received adequate notice of the specific acts or omissions for which they might be sanctioned, the authority under which sanctions might be levied, and the form those sanctions might take. These failings were particularly consequential given the unsubstantiated assertion that Petitioners engaged in “misconduct bordering on the criminal.” (See Appx183).

D. The Motion for Recusal and Subsequent Criminal Referral.

On October 24, 2025, Petitioners filed a Motion for Recusal pursuant to 28 U.S.C. § 455(a). The Motion for Recusal highlighted that throughout his appointment, SDM Hanglely engaged in *ex parte* communications with the district court at least 146 times.

Most concerning, 22 of those communications occurred after the final May 2021 hearing was held by SDM Hanglely and before the October 2023 R&R was issued, during which time SDM Hanglely's sole focus was preparation of the October 2023 R&R. Based upon the timing of those communications, there is a good faith basis to believe that those *ex parte* communications related directly to the substance of the October 2023 R&R. Such communications would preclude the court from conducting a *de novo* review or, at the very least, would create an appearance of bias requiring the court's recusal. (Appx205).

Three days later, the district court ordered any interested party who wished to respond to the Motion for Recusal to do so by November 12, 2025. *Johnson*, 2:11-cv-05782-PD, ECF No. 864. No represented litigant opposed the Motion for Recusal.

On December 2, 2025, the district court issued what is referred to herein as the Criminal Referral—a public “memorandum opinion” stating that it had referred Petitioners to the Department of Justice for a criminal investigation. (Appx183). Extensive publicity followed. *The Criminal Referral was solely based on SDM*

Hangley's October 2023 "findings" that Petitioners "conducted grossly inadequate pre-suit investigations; obstructed discovery; recklessly (or, perhaps, intentionally) made false and baseless allegations intended to toll the limitations clock, doctored evidence⁵, and sought to abandon Plaintiffs to evade Defendants' sanctions requests." (Appx183). The mountain of evidence submitted by Petitioners in their December 2023 and October 2025 objections was utterly ignored. Instead, the court incorrectly described Petitioners' objections as "largely repeat[ing] the unsuccessful arguments they had made to Mr. Hangley." (Appx184). But in fact, very little of Petitioners' evidence and arguments were considered by SDM Hangley because the 2017, 2019 and 2021 hearings primarily concerned motions to withdraw from the representation of five plaintiffs. No notice was given that a blunderbuss sua sponte sanctions recommendation would be forthcoming, which is the whole point of Petitioners' due process challenge.

On December 4, 2025, the district court denied the Motion for Recusal. (Appx186). As with the August 2025 Opinion, the district court conspicuously elected not to directly address the primary basis for the request, i.e., the extensive *ex parte* communications with SDM Hangley while he prepared the *ultra vires* and

⁵ This "doctoring" allegation related only to Mr. Weaver, and was never suggested as a basis for sanctions against Petitioners. (See Appx152) ("I do not recommend that Hagens Berman be held jointly liable for sanctions earned by Mr. Weaver.")

sua sponte recommendation for sanctions to which the district court owes an independent and *de novo* review.

REASONS FOR GRANTING THE WRIT

In making a public statement that he had referred Petitioners to the Department of Justice for a criminal investigation, the district judge essentially accused Petitioners of engaging in criminal activity. Yet he continues to preside over the thalidomide litigation, in which Petitioners represent many plaintiffs. And someday he will adjudicate the sanctions recommendation against Petitioners, for which he is to conduct *de novo* review.

Not only is the power differential between Petitioners and the district judge staggering, but Petitioners have no meaningful way to defend themselves against this public accusation. To rebut the charge in the court below would risk fomenting even greater ire of the district judge—ire that would be calamitous for Petitioners’ clients. To remain silent is to permit a baseless accusation, leveled by an Article III judge no less, to hang like a dark, ignominious cloud over Petitioners’ professional reputations. What began as a smoldering appearance of impropriety implicating the district judge’s impartiality has now boiled over into evidence of actual personal bias against Petitioners. Mandamus is necessary to effect disqualification and the reassignment that section 455(b)(1) requires.

Mandamus, though disfavored and extraordinary in nature, is appropriate when petitioners, such as those here, have a “clear and indisputable” right to issuance of the writ and no other adequate means to obtain the desired relief. *In re School Asbestos Litigation*, 977 F.2d 764, 772 (3d Cir. 1992) (citing *Kerr v. United States District Court*, 426 U.S. 394, 403 (1976); *Will v. United States*, 389 U.S. 90, 96 (1967)).

The district court’s protracted *ex parte* communications with SDM Hanglely, particularly considering the volume and timing of the communications relative to the hearings on the motion to withdraw and issuance of the *ultra vires* and *sua sponte* recommendation on sanctions, suggests at a minimum that the communications involved the actual substance of the October 2023 R&R, to which the district court owes *de novo* review. These circumstances gave rise to the appearance of the district judge’s bias, as set forth in the Motion for Recusal. What ensued following the filing of the Motion for Recusal demonstrates the district judge’s actual personal bias against Petitioners.

I. The Court Should Disqualify the Presiding District Judge Based on the Display of Actual Bias.

Mandamus is a proper means to force a district judge to disqualify himself under 28 U.S.C. § 455. *In re School Asbestos Litigation*, 977 F.2d at 770, 775. Indeed, appellate courts traditionally use mandamus to “confine an inferior court to a lawful exercise of its prescribed jurisdiction.” *Schlagenhauf v. Holder*, 379 U.S.

104, 109-10 (1964) (quoting *Roche v. Evaporated Milk Association*, 319 U.S. 21, 26 (1943)). Mandamus may also lie “to prevent a district court from usurping a power that it lacks and to rectify clear abuses of discretion,” and mandamus may be “especially appropriate to further supervisory and instructional goals, and where issues are unsettled and important.” *In re School Asbestos Litigation*, 977 F.2d at 773 (citing *Mallard v. United States District Court*, 490 U.S. 296, 309 (1989); *Sporck v. Peil*, 759 F.2d 312, 315 (3d Cir. 1985); *United States v. Christian*, 660 F.2d 892, 895–97 (3d Cir. 1981); *Rapp v. Van Dusen*, 350 F.2d 806, 810 (3d Cir. 1965) (en banc)).

And, as this Court has expressed, “section 455 reflects Congress’s view that the adjudication of a case by a judge with an actual *or* apparent bias is an ‘abuse of judicial power,’ because it is a threat to the integrity of the judicial system.” *Id.* at 778 (quoting *Roche*, 319 U.S. at 31) (emphasis in original). “Interlocutory review of disqualification issues on petitions for mandamus is both necessary and appropriate to ensure that judges do not adjudicate cases that they have no statutory power to hear, and virtually every circuit has so held.” *In re School Asbestos Litigation*, 977 F.2d at 778 (citations omitted). Indeed, “[a] fair trial in a fair tribunal is a basic requirement of due process.” *In re Murchison*, 349 U.S. 133, 136 (1955).

Regrettably, what Petitioners once described as the district court's appearance of bias, requiring recusal under section 455(a), took a dire turn on December 2, 2025, toward demonstrative personal bias, thus necessitating disqualification under section 455(b)(1) and this Court's intervention. Indeed, this is the "rare case" where the petition "is based on a judge's conduct extrinsic to the merits of a ruling." *In re School Asbestos Litigation*, 977 F.2d at 774, n.5. The district court has now displayed the kind of "deep-seated . . . antagonism" toward Petitioners that effectively forecloses the possibility of plaintiffs receiving "fair judgment," *United States v. Liggins*, 76 F.4th 500, 506 (6th Cir. 2023) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)) and which simultaneously implicates Petitioners' constitutional rights to process and impugns judicial neutrality.

In light of Congress's mandate that a federal judge recuse himself under circumstances such as these, Petitioners respectfully submit, to this Court, the quintessentially necessary request to disqualify the district judge from the underlying proceeding and assign another judge in his stead.

As detailed above, the district judge was required to recuse himself under section 455(a) because his impartiality "might reasonably be questioned." And as this Court has made clear, regardless of actual impartiality, where a reasonable person might perceive bias to exist, the judge is not permitted to preside. *In re*

School Asbestos Litigation, 977 F.2d at 782 (citing *In re Murchison*, 349 U.S. at 136) (“Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way justice must satisfy the appearance of justice”). However, rather than rule on the motion that had then been pending over a month, the district judge very intentionally announced to the public that he had referred Petitioners to the Department of Justice for a criminal investigation.

Petitioners do not assert this lightly, but it is clear given timing and circumstance that the Criminal Referral is an act of retaliation against them for filing the Motion for Recusal. The district judge justified his extraordinary decision to publicly refer Petitioners for criminal investigation by explaining that he had “a duty to notify the proper authorities if he felt a crime was being committed in his courtroom.” (Appx188) (quoting *Martinez v. Winner*, 771 F.2d 424, 435 (10th Cir. 1985)). Yet for almost 26 months after receiving the “damning” October 2023 R&R—which is the entire basis for referral—the district judge ignored this duty. It was not until Petitioners moved for the district judge to recuse himself that he determined a criminal investigation was “more than warrant[ed].” (Appx188) Respectfully, and Petitioners very much appreciate the sensitivity of the issue at

hand, the Criminal Referral evinces not only the district judge's personal bias, but also his disregard for his plain duty to disqualify himself under section 455.

The approximately two-page Criminal Referral "memorandum opinion" is a remarkable document. Despite the district court's characterization, it is not actually a judicial "opinion" in any recognized sense of the term, in that it does not explain the legal and factual bases supporting a court order. Rather, the court's "memorandum opinion" serves no apparent purpose other than to publicly accuse Petitioners and another individual of unspecified criminal conduct:

Mr. Hanglely has described in painstaking detail the apparent efforts of Hagens Berman, Mr. Berman, and Mr. Weaver over some ten years to prepare, file, and prosecute fraudulent lawsuits. Because the civil discovery process limited him, Mr. Hanglely's investigation and findings, damning as they are, appear to be only partial. Because his findings more than warrant further investigation, I have referred this matter to the Department of Justice. *See Martinez v. Winner*, 771 F.2d 424, 435 (10th Cir. 1985) ("[A judge has] a duty to notify the proper authorities if he felt a crime was being committed in his courtroom.").

(Appx183).

Although "[a] judge . . . has a duty to take all lawful measures reasonably necessary to prevent the occurrence of a crime in his courtroom," *Martinez*, 771 F.2d at 435, this duty does not contemplate blending judicial and prosecutorial roles. Nor does it contemplate a judge issuing a public statement regarding a criminal referral, particularly when the subjects referred are attorneys appearing

before the judge in active civil cases.⁶ Indeed, the only purpose of making such a public statement is to publicly excoriate and embarrass Petitioners—in other words, to retaliate.⁷ The district judge has now announced to the plaintiffs, the defendants, Petitioners’ non-party clients and potential clients, and the public at large, that he believes Petitioners have engaged in criminal activity relative to the underlying civil proceeding. And there is absolutely nothing Petitioners can say or do, other than seek the relief requested herein. *Cf. also In re Baroni*, 643 B.R. 253, 275 (Bankr. C.D. Cal. 2022) (“permitting parties in interest to make accusations of criminal wrongdoing and force respondents to defend against a criminal referral would upset the balance of rights and remedies established by Congress in connection with the liquidation of a bankruptcy estate by giving parties a bludgeon with which to leverage others”).

Unlike an instance meriting a criminal contempt order, which is used to punish “retrospectively for a complete act of disobedience,” *United States v.*

⁶ “Summary punishment always, and rightly, is regarded with disfavor and, if imposed in passion or pettiness, brings discredit to a court as certainly as the conduct it penalizes.” *Sacher v. United States*, 343 U.S. 1, 8 (1952).

⁷ As recognized by the U.S. Supreme Court, avoiding public ridicule for the wrongfully accused is one of the reasons why federal grand jury investigations proceed with a degree of secrecy. *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 219 (1979) (“...by preserving the secrecy of [grand jury] proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule”); *see also Butterworth v. Smith*, 494 U.S. 624, 629 (1990) (noting the “equally important function” of “safeguard[ing] citizens against an overreaching [State] and unfounded accusations”).

Donziger, 38 F.4th 290, 305 (2d Cir. 2022) (internal quotations omitted),
Petitioners have not disobeyed the district court. The court has not *adjudicated*
them in contempt nor adjudicated them under a theory of liability or as having
violated any governing authority. Petitioners sit at the court’s mercy, waiting to
learn whether sanctions will be imposed, and what the details of those sanctions
will be; and it was during this period of limbo that Petitioners discovered, along
with the rest of the world, that the district court had referred them to the
Department of Justice.

Such action is not simply prejudicial to Petitioners (and the plaintiffs they
represent), it dangerously blurs the line between the separation of two branches of
power—the judicial and the executive—and it grievously undermines the public’s
confidence in a neutral judiciary. “[O]ur Constitution’s separation of powers exists
in no small measure to keep courts from becoming partisans in the cases before
them.” *Donziger v. United States*, 598 U.S. ----, 143 S. Ct. 868, 870 (2023)
(Gorsuch and Kavanaugh, JJ., dissenting from denial of certiorari) (“However
much the district court may have thought Mr. Donziger warranted punishment, the
prosecution in this case broke a basic constitutional promise essential to our
liberty. In this country, judges have no more power to initiate a prosecution of
those who come before them than prosecutors have to sit in judgment of those they
charge”). *Cf. In re United States*, 441 F.3d 44, 67 (1st Cir. 2006) (“This petition is

not about a ‘judge's ordinary efforts at courtroom administration,’ nor about ‘judicial remarks . . . that are critical’ of counsel or a party. A judge’s investigation of a prosecutor’s office under the label of government misconduct as to the grand jury is not just a ruling in the ordinary course. It poses the risk that the line will be crossed ‘between executive and judicial roles, and between the formulation and evaluation of positions in litigation’”) (quoting *Liteky*, 510 U.S. at 555, 556) (cleaned up).

Two days after issuing the Criminal Referral “memorandum opinion,” the district court denied the Motion for Recusal. As was the case with the August 2025 Opinion, the court failed to address Hagens Berman’s concerns regarding the substance of the court’s *ex parte* communications with SDM Hanglely. Indeed, this is not simply a matter of a special master communicating *ex parte* with a judge; the timing suggests with great probability that the substance of SDM Hanglely and the district court’s 22 *ex parte* communications was the scathing, public 158-page October 2023 R&R. But the court bypasses the issue altogether in its order and summarizes Petitioners’ arguments as nothing more than a demonstration of their “dislike” for the court’s rulings. (Appx188).

Petitioners respectfully submit that under these circumstances, no other adequate remedy is available to them. Petitioners strenuously dispute that review after final judgment could cure the harm they and their clients have incurred but

even if such were possible, it could not cure the “additional, separable harm to public confidence that section 455 is designed to prevent.” *In re School Asbestos Litigation*, 977 F.2d at 776. As this Court has explained, “Congress enacted subsection 455(a) precisely because ‘people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.’” *Id.* at 782 (quoting *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864–65 (1988)). In high profile cases such as this one, where press coverage is not unusual, “such suspicions are especially likely and untoward.” *Id.*

The absence of remedy combined with the detrimental and potentially irreparable show of bias supports and indeed necessitates the award of the extraordinary remedy Petitioners seek.

II. Significant Bases on Which to Question the District Court’s Impartiality Preceded the Recent Display of Actual Bias.

The salient question is “not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias.” *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (quoting *Caperton v. A.T. Massey Coal Co. Inc.*, 556 U.S. 868, 881 (2009)). “Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself.” *Id.* at 16.

A. *Ex parte* Communications Between SDM Hangle and the District Court.

1. Applicable Legal Authority

Rule 53(b)(2)(B) provides that an order appointing a special master must state “the circumstances, if any, in which the master may communicate *ex parte* with the court or a party.” The Advisory Committee’s Notes to the 2003 amendments to Rule 53 underscore the caution that must be employed by special masters and courts to avoid unauthorized *ex parte* communications, advising:

Ex parte communications between a master and the court present troubling questions. Ordinarily the order should prohibit such communications, assuring that the parties know where authority is lodged at each step of the proceedings. Prohibiting *ex parte* communications between master and court also can enhance the role of a settlement master by assuring the parties that settlement can be fostered by confidential revelations that will not be shared with the court. Yet there may be circumstances in which the master’s role is enhanced by the opportunity for *ex parte* communications with the court. A master assigned to help coordinate multiple proceedings, for example, may benefit from off-the-record exchanges with the court about logistical matters. The rule does not directly regulate these matters. It requires only that *the court* exercise its discretion and address the topic in the order of appointment.

Fed. R. Civ. P. 53 advisory committee notes to 2003 amendments (emphasis added). The Advisory Committee Notes makes clear that *ex parte* communications between the special master and the court are disfavored, given the “troubling questions” they present. The Notes also recognizes that certain types of *ex parte* communications may be necessary for the special master to accomplish his or her

duties. At all times, though, the court must act with discretion and address the topic of *ex parte* communications in its appointment order. *Id.*

Federal district court judges are also bound by their own Code of Conduct with respect to *ex parte* communications. The Code of Conduct for U.S. Judges provides,

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The judge should adhere to the following standards:

(A) *Adjudicative Responsibilities.*

...

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider *ex parte* communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized *ex parte* communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. A judge may:

(a) initiate, permit, or consider *ex parte* communications as authorized by law;

(b) when circumstances require it, permit *ex parte* communication for scheduling, administrative, or emergency purposes, but only if the *ex parte* communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication;

Code of Conduct for U.S. Judges, Canon 3(A)(4).

The above-quoted language is entirely consistent with the policy underlying Rule 53(b)(2)(B), which requires the presiding judge to expressly state in the order of appointment “the circumstances, *if any*, in which the master may communicate *ex parte* with the court” Fed. R. Civ. P. 53(b)(2)(B) (emphasis added). Both the Code of Conduct and Rule 53 recognize that, without appropriate restrictions, *ex parte* communications can destroy the appearance of impartial justice. To protect the integrity of judicial decision-making, especially *de novo* review, judges and masters must avoid *ex parte* communications on any factual or legal issue that will be the subject of judicial review. Independent decision-making without influence or bias is the cornerstone of our American civil justice system.

2. The *Ex Parte* Communications Go Well Beyond the Scope of the Appointment Order

Consistent with Rule 53(b)(2)(B), the Appointment Order delineated the three permissible types of communications between SDM Hangle and the district court:

- (i) Communications concerning procedural matters;
- (ii) Communications to assist the district court’s understanding of complex discovery matters; or
- (iii) Communications for any other reason reasonably necessary to the fulfillment of his duties.

(Appx189).

As memorialized in his billing records, SDM Hanglely communicated *ex parte* with the Court on at least 146 occasions throughout the course of his appointment. But it is not merely the volume of *ex parte* communications that is concerning. It is also their timing and duration. With few exceptions, SDM Hanglely's time entries reflecting his communications with the court consist of general, perfunctory references that inform simply that an *ex parte* communication occurred. Moreover, SDM Hanglely documented certain communications with the district court in block entries that describe other tasks. This practice makes it impossible to parse how much of the recorded time involved communications with the court as opposed to unrelated activities such as research and drafting. But careful scrutiny of the billing records permits certain conclusions.

The first category of permissible *ex parte* communications set forth in the Appointment Order are those relating to procedural matters. In contrast to his other entries, SDM Hanglely took care to note when his *ex parte* communications with the district court related to such matters. For instance, SDM Hanglely's time entry on September 5, 2017, states "discuss hearing logistics with the Court and Staff (.40)." Therefore, it is reasonable to conclude that time entries that do not reflect communications procedural in nature pertain instead to communications not procedural in nature.

The second category of *ex parte* communications permitted by the Appointment Order is communications related to complex discovery issues. Any such issues were largely resolved by December 4, 2014, when SDM Hanglely issued a report and recommendation regarding discovery sanctions. *See Johnson*, 2:11-cv-05782-PD, ECF 414. While a few minor issues arose thereafter, they were resolved at the latest by May 2015. *See id.* at ECF 508. Thus, *ex parte* communications occurring after May 2015 did not relate to complex discovery issues.

All that remains is the third category set forth in the Appointment Order—communications for any other reason reasonably necessary to the fulfillment of SDM Hanglely’s duties. While no doubt broad, the language cannot be read as a “catch-all” provision justifying any and all *ex parte* communications between SDM Hanglely and the district court. Otherwise, Rule 53’s requirement that the court clearly state the circumstances under which *ex parte* communications between the special master and court are permitted would be rendered meaningless. As discussed above, this is no mere technicality. Rule 53 requires the district court to conduct a *de novo* review of any objections to the special master’s conclusions of law and findings of fact. The court’s ability to do so is jeopardized if it engages in substantive discussions with the special master regarding the subject matter of a report and recommendation prior to its filing. Unfortunately,

this is exactly what seems to have happened here. *And the presiding judge has never stated otherwise.* The December 4 Order states only that the district court’s *ex parte* communications with SDM Hanglely “were both proper and necessary to administer this complex collection of cases.” (Appx186).

SDM Hanglely’s fact-finding duties concluded in May 2021, with the last series of hearings related to Hagens Berman’s motions to withdraw as counsel for five of the plaintiffs. In the two-plus years between when these hearings concluded and when SDM Hanglely issued the October 2023 R&R, there is virtually nothing that he and the district court could have discussed—other than his work on the Report and Recommendation. There were simply no other matters pending. Nevertheless, SDM Hanglely’s *ex parte* communications with the court continued unabated during this period, notwithstanding the district court’s charge to conduct a *de novo* review of any objections to the forthcoming R&R (and given the inflammatory contents of the document, objections were a near certainty). *See* (Appx219).

In calendar year 2022, SDM Hanglely recorded 48.60 hours of time communicating with the court and/or with unidentified third parties (i.e., “telephone”). (Appx220). Of those 48.60 hours, time entries totaling 32.90 hours explicitly reference communications with the court, notwithstanding that the only

task being undertaken by SDM Hangley during this time period was the drafting of the Report and Recommendation:

Date	Timekeeper	Description	Hours
01/06/22	William T. Hangley	Telephone with the court.	0.40
03/08/22	William T. Hangley	<i>Fact investigation</i> and research.	0.90
3/17/22	William T. Hangley	Follow up with court re recent dismissal of related litigation. <i>Review that docket.</i>	0.70
05/06/22	William T. Hangley	Telephone with the court.	0.40
06/13/22	William T. Hangley	<i>Telephone</i> and research.	1.30
06/15/22	William T. Hangley	Drafting and research. <i>Telephone.</i>	4.50
06/23/22	William T. Hangley	Correspondence with the court and with counsel (re Harrellson settlement). Continued review and drafting	5.00
06/28/22	William T. Hangley	Record review and drafting. <i>Telephone.</i>	5.00
09/19/22	William T. Hangley	Telephone with the Court. Drafting R&R.	7.00
11/21/22	William T. Hangley	Draft report. Correspondence with the court.	4.00
11/28/22	William T. Hangley	<i>Telephone</i> and record review.	4.00
12/21/22	William T. Hangley	Research and telephone with the court.	3.60
12/22/22	William T. Hangley	Research and discussion with Judge Diamond.	7.00
12/23/22	William T. Hangley	Research and drafting. Telephone with the court.	4.80

Id.

SDM Hangley and the district court continued communicating in 2023 during the lead up to the issuance of the Report and Recommendation in October of that year. SDM Hangley’s time entries reflect eight communications with the court and an additional “telephone” communication with persons unknown:

Date	Timekeeper	Description	Hours
02/28/23	William T. Hangley	Drafting and telephone with the court.	3.00

03/10/23	William T. Hangle	J. Summers re staffing arrangements and coverage. Telephone with the Court.	0.90
05/03/23	William T. Hangle	<u>Telephone</u> . Review transcripts and citations.	5.30
06/02/23	William T. Hangle	Discuss case questions with the court. Review testimony.	0.90
07/07/23	William T. Hangle	Telephone with the court.	0.30
07/10/23	William T. Hangle	Telephone with the court.	1.00
08/04/23	William T. Hangle	Drafting and correspondence with the court.	4.20
08/10/23	William T. Hangle	Research and record check. <u>Telephone</u> .	4.40

See id.

SDM Hangle and the court engaged in no fewer than 22 *ex parte* communications between June 2021 and October 2023, while the only task before SDM Hangle was preparation of the October 2023 R&R. (Appx219-220). The timing and volume of these *ex parte* communications alone irreparably compromised the court’s ability to conduct an impartial *de novo* review of SDM Hangle’s recommendation.

The court did not thereafter act on the matter for almost two years. When the court issued its August 2025 Opinion, it summarily adopted all SDM Hangle’s factual findings, erroneously stating that Petitioners failed to object to “the great majority” of them. (Appx160). The voluminous December 2023 Objections and October 2025 OSC Response specifically refuted SDM Hangle’s assertions of fact. An impartial *de novo* review of these would have at least *acknowledged*

Petitioners' challenges to the findings, even if the court ultimately adopted the findings. Further, despite the assertion in the December 2023 Objections that the court's *ex parte* communications with SDM Hanglely may have compromised its ability to conduct a *de novo* review, the district court declined to address the content of those communications. Rather than attempt to dispel the cloud of partiality gathering over the case by assuring Petitioners that its communications with SDM Hanglely had not involved substantive matters, the court sidestepped the merits of the issue and blamed Petitioners for failing to object to SDM Hanglely's bills.

Petitioners respectfully suggest that the record appears to support the notion that the court and SDM Hanglely engaged in a collaborative review of the case leading to issuance of the October 2023 R&R. This suggestion is buttressed by not only the extent and duration of *ex parte* communications, but also the summary adoption of SDM Hanglely's factual findings in the face of Petitioners' extensive December 2023 Objections. Moreover, the district court's own words regarding the *ex parte* communications suggest a close and lengthy association antithetical to the strictures of Rule 53: "Mr. Hanglely's communications with Chambers staff, my law clerks, and me (averaging considerably less than an hour a week), over the now eleven years Mr. Hanglely has served, were both proper and necessary to administer this complex collection of cases." (Appx186). Rule 53 contemplates

two independent layers of review on the merits, and the record strongly suggests that Petitioners will receive only one, whenever the October 2023 R&R is finally adjudicated.

Petitioners did not consent to the extensive and pervasive *ex parte* communications that occurred throughout SDM Hangle's appointment in this matter. Nor is there any support for the suggestion that Petitioners waived these concerns by timely paying SDM Hangle's monthly invoices. It is hardly controversial to acknowledge the disparity in authority at issue in the case at bar. Petitioners were faced with the ultimate Catch 22: seek additional clarity of various time entries at the very real risk of disturbing the individual charged with making a decision on the merits of its case or say nothing and await the results knowing that there are unexplained *ex parte* communications.

The August 5 Opinion states "the Firm's decision to complain for the first time only *after* Mr. Hangle issued his R&R belies the Objection itself." (Appx177) Respectfully, this statement ignores the ethical obligations of the court. It is incumbent upon the court and SDM Hangle, not Petitioners, to monitor the content of their communications. Imposing the obligation of policing the relationship of the court and its special master is beyond problematic. Literally, no good can come of it other than the antagonism of both judicial officers.

Moreover, Petitioners could not have known until after SDM Hanglely issued the October 2023 R&R that he would exceed his authority in such dramatic fashion, which underscores the import of these troubling *ex parte* communications.

B. The Lingering, Publicly Available Report and Recommendation.

SDM Hanglely issued the October 2023 R&R on October 12, 2023.

Petitioners timely filed their Objections on December 13, 2023. The court took no action for nearly two years. When it finally turned to the October 2023 R&R, the district court did not rule on the *sua sponte* recommendation to impose sanctions. Respectfully, the court has perpetuated the uncertainty hanging over Petitioners (and the clients they represent) by, on the one hand, declining to state the specific acts or omissions for which Petitioners might be sanctioned (along with the authority under which sanctions might be levied, and the form those sanctions might take if levied) and, on the other, withholding a ruling on the recommendation. Instead, Petitioners exist in their professional community with the special master's unadjudicated accusation of misconduct bordering on the criminal, the threat of unspecified future sanctions, and now the court's public proclamation of its belief that Petitioners have engaged in criminal misconduct. There is no end in sight to this ongoing reputational and professional harm.

Rather than rule on the two-year-old recommendation, or the Motion for Recusal then-pending before it, the district court referred Petitioners to the

Department of Justice for a criminal investigation. With the issuance of the Criminal Referral, the district court's personal bias against Petitioners can no longer be doubted.

CONCLUSION

The district court has committed egregious errors which have wrought havoc on the pending civil actions, inflicted grievous harm on Petitioners' personal and professional reputations, and compromised Petitioners' ability to continue to represent their clients in these cases. Additionally, the district court's conduct impairs the ability of certain plaintiffs appearing before the court to receive a fair and impartial proceeding, implicates Petitioners' rights to due process, and undermines the public's faith in a neutral judiciary. These errors cannot be rectified on appeal. The only appropriate and available remedy is the disqualification of the presiding district judge and the striking of the district court's December 2, 2025, memorandum Opinion. With due respect and deference, Petitioners submit their request for this extraordinary relief.

Date: December 12, 2025

Respectfully submitted,

SAXTON & STUMP

s/ Christopher C. Conner

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Certificate of Admission to the Bar

Christopher C. Conner certifies as follows:

1. I am a member in good standing of the United States Court of Appeals for the Third Circuit.
2. Pursuant to 28 U.S.C. § 1746, I certify that under penalty of perjury that the foregoing is true and correct.

Dated: December 12, 2025

s/ Christopher C. Conner

**Certificate of Compliance with Fed. R. App. P. 21 and Third Circuit L.A.R.
32.1 and 32.2**

Christopher C. Conner certifies as follows:

1. This Petition for Writ of Mandamus complies with Fed. R. App. P. 21(d) because it contains less than 7,800 words, excluding the exempted portions.

2. This Petition for Writ of Mandamus complies with the type face requirements of the Third Circuit L.A.R. 32.1(c) and Fed. R. App. P. 32(a)(5) & (6) because it was prepared in proportionally-spaced typeface using Microsoft Word in 14-point Times New Roman font.

3. Pursuant to 28 U.S.C. § 1746, I certify that under penalty of perjury that the foregoing is true and correct.

Dated: December 12, 2025

s/ Christopher C. Conner _____

Certificate of Identical Compliance Briefs

Christopher C. Conner certifies as follows:

1. The text of each of the electronic and hard copy forms of this Petition for Writ of Mandamus and associates appendices are identical.
2. Pursuant to 28 U.S.C. § 1746, I certify that under penalty of perjury that the foregoing is true and correct.

Dated: December 12, 2025

s/ Christopher C. Conner

Certificate of Virus Check

I hereby certify that, pursuant to Third Circuit L.A.R. 31(c), that the virus detection program Webroot has been run on the electronic versions of the Petition for Writ of Mandamus and accompanying appendices (Volumes One through Five), and that no viruses have been detected.

Dated: December 12, 2025

s/ Christopher C. Conner

Certificate of Service

I hereby certify that on December 12, 2025, copies of the foregoing **Petition for Writ of Mandamus** and those portions of the **Appendix** not filed under seal were served via email upon all counsel of record and parties proceeding pro se in this matter at the following email addresses:

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On this same date, a copy of the **Petition for Writ of Mandamus and Appendix** were served via email upon Respondent U.S. District Court for the Eastern District of Pennsylvania:

The Honorable Paul S. Diamond
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Philadelphia, PA 19106-1773
Chambers_Judge_Paul_S_Diamond@paed.uscourts.gov

Dated: December 12, 2025

s/ Christopher C. Conner