18-1537

No. 19-_____

SUPREME COURT OF THE UNITED STATES

Youras Ziankovich,
Petitioner

v.

State of Colorado
Respondent.

On Petition for Writ of Certiorari to
Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner is a lawyer licensed by the State of New York and duly authorized to practice before the U.S Department of Homeland Security pursuant to the federal regulations. State of New York requires Petitioner to abide NY RPC while practicing in front of non-court federal agencies, such as DHS.

Petitioner was never licensed or admitted in Colorado. However, Colorado Supreme Court suspended Petitioner's New York license for the violation of Colorado Rules of Professional Conduct while practicing before the U.S. Department of Homeland Security. State of New York found no violation of NY RPC in Petitioner's conduct.

The question presented is whether Colorado violated Petitioner's constitutional rights through maintenance of the discipline proceeding.

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Youras Ziankovich, an attorney duly admitted to practice by the State of New York, appears *Pro* Se in this matter and respectfully petitions for a writ of certiorari to review the order of the Colorado Supreme Court in this case.

INTRODUCTION

This is an attorney disciplinary case maintained by Colorado state authorities against a New York licensed attorney, who was never licensed and/or admitted in Colorado, never practiced in Colorado courts and/or government agencies, and never claimed to be a Colorado licensed attorney. Petitioner's practice was limited to the federal cases only. Petitioner maintained his practice in strict compliance with New York Rules of Professional

Conduct as it is required by New York State rules[1]. However, part of New York rules conflicts with Colorado Rules of Professional Conduct.

Among others, New York and Colorado regulate deposit of client's money in different way. New York requires an advance payment to be deposited into attorney business account[2], while Colorado requires to deposit it into Colorado-regulated trust account COLTAF[3]. New York

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[1] "If a lawyer is licensed only in New York, then the New York Rules of Professional Conduct apply to the lawyer's conduct in non-court matters (meaning all matters not in connection with proceedings pending before a court in which a lawyer has been admitted)". See *NYSBA Ethics Opinion #1027* at 19.

[2] See *NYSBA Opinion #816.*

[3] Even if Petitioner would try to comply with Colorado rules, it is impossible. Colorado banks refused him to open a COLTAF

permits practitioner to charge minimum fee for the services, providing that this fee is clearly described in the written agreement[4]. Colorado treats such minimum fee as a non-refundable payment and/or double charge and forbids it.

Petitioner violated no New York rules. New York grievance authority confirmed in writing that he never been disciplined and there is no discipline action pending against him in the State of New York.

However, Colorado Supreme Court disciplined Petitioner for violation of the Colorado Rules of Professional Conduct, which is beyond Colorado authority, comes into the conflict with federal law supremacy, violates New York State exclusive

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account, because he is not a Colorado licensed attorney, and due to that he is not authorized to open COLTAF account.

[4] See *NY RPC Rule 1.5(d)(4)* and *NYSBA Opinion #599.*

authority to regulate license granted by New York, and is against several controlling federal precedents.

This honorable Court in the case *Sperry v. Florida, 373 U.S. 379* ruled that states may not regulate practice of the person duly authorized by the federal law to practice within boundaries of the said state, unless such person is licensed by this state. "[T]he law of the State, though enacted in the exercise of powers not controverted, must yield when incompatible with federal legislation" *Sperry v. Florida, 373 U.S. 379, 384* (internal quotation and citation omitted).

This reading of *Sperry* was applied by several other federal appellate courts' rulings in the cases where states attempted to regulate out-of-state federal practitioners with the state rules.

"Admission to practice law before a state's courts and admission to practice before the federal courts in that state are separate, independent privileges. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included.... In short, a federal court has the power to control admission to its bar and to discipline attorneys who appear before it" (*In re Poole, 222 F.3d 618, 620*).

"[P]ractice before federal courts is not governed by state court rules. Further, and more importantly, suspension from federal practice is not dictated by state rules" (*In Re Ernest J. Desilets, 291 F.3d 925*).

"[A]s nearly a century of Supreme Court precedent makes clear, practice before federal courts is not governed by state court rules" (*In Re Poole, 22 F.3d 618, 622*).

In the decision of Colorado Supreme Court issued by the Presiding Disciplinary Judge in the name of the court, *Sperry* and the above-cited case laws have been unreasonably rejected.

Colorado Supreme Court rejected Petitioner's argument about lack of subject matter jurisdiction, established Colorado jurisdiction, and ruled that "a lawyer with an out-of-state law license who provides legal services within the physical boundaries of Colorado under federal law is subject to this State's disciplinary authority... The PDJ examined *Sperry* and concluded that it does not prohibit the State of Colorado from exercising jurisdiction to regulate

Respondent's practice of law within this state's physical boundaries. The PDJ reasoned that *Sperry* is distinguishable from the instant case because here the People seek to regulate Respondent's conduct within Colorado, not to enjoin him from practicing before federal agencies" (*Order Denying in Part and Granting in Part Respondent's Motion for Posthearing Relief Under C.R.C.P.59,* page 3).

Application of the Colorado judge's theory creates illogical situation, when a federal practitioner shall follow two different sets of ethical rules at the same time, while such rules may be in conflict. Thus, in this case following New York set of rules creates situation when Colorado rules are violated, and *visa verse.*

Review of the case law in other states resulted finding that most states follow the *Sperry* rule and

found no jurisdiction over out-of-state practitioners. However, in some situations state authorities go beyond the limits and attempt to maintain disciplinary jurisdiction over federal practitioners.

This Court's immediate review therefore is warranted to resolve the square conflict between states' and federal regulations regarding proper disciplinary jurisdiction over out-of-state attorneys involved into federal practice.

OPINIONS

The opinion of the Presiding Disciplinary Judge, Colorado Supreme Court is reported at 433 P.3d 640.

The said opinion has been affirmed by Colorado Supreme Court by the Order and Mandate dated February 1, 2019 without opinion. The Order and Mandate has not been reported.

JURISDICTION

Colorado Supreme Court upheld the Presiding Disciplinary Judge's Opinion and Order on February 1, 2019 without opinion, which does not permit to file a petition for rehearing and makes it final. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

First, Fifth, and Fourteenth Amendments, Interstate Commerce Clause and Supremacy Clause of the U.S. Constitution are involved into this matter. Relevant provisions of the U.S. Constitution, Code of Federal Regulations and state law are reproduced at Pet. App. A-68 to A-101. Relevant ethical opinions are reproduced at Pet. App. A-104 to A-143.

STATEMENT

A. Federal Statutory and Regulatory Background

Authority to practice immigration law by an attorney licensed in any state is governed by 8 C.F.R. Sec. 292.1(a)(1). According to this provision, a person entitled to representation may be represented by any attorney as defined in 8 C.F.R. Sec. 1.2.

8 C.F.R. Sec. 1.2 defines an attorney as "any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law".

Petitioner falls under the definition of the attorney, because he was and still is an attorney in good standing in the State of New York with no discipline record in his state of licensure. Applying regulation, Petitioner is a person authorized to practice before the U.S. Department of Homeland Security by the federal law.

There are ethical rules for the immigration law practitioners established by 8 C.F.R. § 1003.102, and federal government exercises authority to discipline immigration practitioners.

Petitioner as a New York attorney shall follow New York ethical rules while practicing before the non-court federal authority[5], unless such rules are in conflict with federal rules.

[5] See *NYSBA Ethics Opinion #1027*

Practice before the U.S. Department of Homeland Security is authorized and regulated by the federal law. In such situation, under *Sperry*, Colorado is not authorized to regulate Petitioner's immigration practice, and Colorado may not require him to follow Colorado ethical rules, especially when Colorado rules are in conflict with applicable rules for immigration practitioners.

B. Colorado Statutory Background

Pursuant to C.R.C.P. 202.1, "[t]he Supreme Court exercises jurisdiction over all matters involving the licensing and regulation of those persons who practice law in Colorado. Accordingly, the Supreme Court has adopted the [] rules governing admission to the practice of law in Colorado".

Pursuant to C.R.C.P. 251.1(b), "[e]very attorney licensed to practice law in the State of Colorado is subject to the disciplinary and disability jurisdiction of the Supreme Court in all matters relating to the practice of law. Every attorney practicing law in this state pursuant to C.R.C.P. 204 or 205 is subject to the disciplinary and disability jurisdiction of the Supreme Court when practicing law pursuant to such rules."

C.R.C.P. 204 and 205 enumerate the following categories of the law practitioners, who are subject of the jurisdiction of the Supreme Court under the Section 251.1(b): (204.1) single-client counsels; (204.2) foreign legal consultants; (204.3) judge advocates; (204.4) military spouses, who are admitted to practice in other states; (204.5) law professors; (204.6) pro bono counsels; (205.1)

temporary out-of-state attorneys practicing in Colorado; (205.2) temporary foreign attorneys practicing in Colorado; (205.3) attorneys appearing pro hac vice before the state courts; (205.4) attorneys appearing pro hac vice before the state agencies; (205.5) foreign attorneys appearing pro hac vice before the state courts and/or agencies; (205.6) practitioners pending admission in this State; (205.7) law students. Petitioner is not one of the enumerated practitioners.

There is no valid Colorado state case law to establish jurisdiction of Colorado Supreme Court over non-Colorado attorneys practicing in the federal jurisdiction only.

There is no valid statute or case law required a non-Colorado attorney in federal practice to follow Colorado Rules of Professional Conduct.

C. Facts

Petitioner is a New York licensed attorney, bar number 5196324, who has no discipline record in his state of licensure on the date of this Petition, and he has no discipline action pending against him in New York[6]. He complied with the New York requirement to make a self-report of discipline in other state, but New York grievance authority maintained no reciprocal action within New York. Petitioner

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[6] There is a reciprocal discipline action pending against Petitioner before the Board of Immigration Appeals resulted by the Order of the Colorado Supreme Court. On the day of the Petition, the issue of the due process of law violation while in Colorado Supreme Court has been raised, but not decided by the Board. The Board refused to decide this issue until the federal court will do it, and the Board stayed the discipline action pending such resolution.

received a clients' satisfaction awards in 2017, 2018, and 2019 for the great quality of service.

In June 2017, Petitioner was hired by two clients, Ms. Vyshnyavska, a citizen of Ukraine, and Mr. Zhakyavichyus at that time a citizen of Ukraine and a legal permanent resident within the United States. They were looking for adjustment of status for Ms. Vyshnyavska. Petitioner developed a road map for the couple and entered into two agreements with them. The part of the agreements was a provision about minimum charge in case of the agreement termination without cause in the amount of $1,000 each. Such provision is authorized by the New York Rules of Professional Conduct[7]. The total price for legal services was $6,000. The governing set of the rules of professional conduct under the

[7] See *NY RPC Rule 1.5(d)(4)* and *NYSBA Opinion #599.*

agreements is NY RPC, and the appropriate provision is a part of the written agreement. Petitioner collected advanced payments, which were posted into his business account as required by the New York Rules of Professional Conduct[8].

Relying on unknown sources of information, Ms. Vyshnyavska concluded a few weeks later that the Petitioner's road map is not legitimate[9]. She entered into oral dispute with the Petitioner's employee over the phone and ordered agreement termination.

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[8] See *NYSBA Opinion #816.*

[9] According to the Petitioner's knowledge, both clients followed the Petitioner's road map after the agreement's termination, and all their goals were reached, including obtaining of the "green card" for Ms. Vyshyavska. The road map was found legitimate by the witness expert during the trial in Colorado Supreme Court.

Petitioner tried to settle the conflict, but both clients ordered withdrawal in writing. Petitioner properly calculated the cost of work done in accordance with the agreements and tendered refund checks[10].

Being dissatisfied with the refund amount, Ms. Vyshnyavska asked the unknown third person to prepare on her behalf a grievance complaint, which was filed with the Office of Attorney Regulation Counsel in the Colorado Supreme Court. The Office began investigation.

According to Colorado regulations, the anonymous request cannot be a valid basis for the disciplinary investigation against an attorney. However, despite this fact, Colorado authorities

[10] Both checks were never cashed, and the refund amount is on the Petitioner's NY IOLA account available for the clients.

began investigation. Petitioner was required for full cooperation with investigator under the threat of contempt. He was never advised about his Fifth Amendment right to keep silence. Petitioner's Fifth Amendment rights were severally violated by Colorado[11].

No facts alleged in Ms.Vyshnyavska's grievance complaint were confirmed. However, the Office of the Attorney Regulation Counsel discovered from documents received from Petitioner under threat of contempt that Petitioner put the minimum charge provision into agreement, and that he posted the advance payment into his business account

[11] In *Spevack v. Klein, 385 U.S. 511 (1967)* this Court found that an attorney is entitled for Fifth Amendment right to do not make self-incriminating statements while under discipline investigation and in court proceeding.

instead of COLTAF account. These two acts violate several provisions of the Colorado Rules of Professional Conduct[12].

D. Colorado Supreme Court Proceeding

On May 25, 2017, the Attorney Regulation Counsel maintained a disciplinary proceeding before the office of the Colorado Presiding Disciplinary Judge for violation of eight provisions of the Colorado Rules of Professional Conduct.

On May 30, 2017, Petitioner moved to dismiss the action due to lack of the subject matter jurisdiction of Colorado. In the motion Petitioner alleged violation of the U.S. Supreme Court *Sperry*

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[12] Petitioner does not dispute that the said acts violate *Colo. RPC*, rather he disputes that he shall follow *Colo. RPC* and that Colorado has a discipline jurisdiction over him.

case law, as well as violation of numerous provisions of the Colorado statute law.

On July 13, 2017, Presiding Disciplinary Judge denied Petitioner's motion and found his own jurisdiction through "reading together" of C.R.C.P.201.1 as well as Colorado Rules of Professional Conduct Sec.8.5. He rejected Petitioner's *Sperry* argument, claiming that *Sperry* does not limit discipline action against attorneys.

On July 19, 2017, Petitioner appealed to the Colorado Supreme Court. The appeal was denied without opinion.

On April 5, 2018, Presiding Disciplinary Judge partially granted summary judgment for the Attorney Regulation Counsel and found Petitioner in violation of six provisions of the Colorado Rules of Professional Conduct.

On April 10 and 11, 2018, the hearing was held in the Colorado Supreme Court before the Hearing Panel. No further violation was found.

On May 31, 2018, the Hearing Panel issued an opinion and order imposing sanctions on Petitioner based on the summary judgment previously granted. Petitioner was found in violation of six provisions of the Colorado Rules of Professional conduct, and his New York license was suspended in Colorado for one year and one day with three months served and the remaining be stayed upon completion of the two-year probation in Colorado. The Presiding Disciplinary Judge as a member of the panel issued a dissenting opinion, were he was looking for more severe discipline.

On June 1, 2018, Petitioner filed a post-trial motion pointing among others that Colorado may not

suspend the license issued by another state and that the action was maintained in violation of Petitioner's constitutional rights, among others in violation of the due process of law.

On June 20, 2018, the Petitioner's motion was partially granted, and some minor corrections were made in the opinion and order. The sanctions were confirmed.

On July 9, 2018, Petitioner appealed to the Colorado Supreme Court and filed for the sanctions be stayed appeal pending.

The Hearing Panel granted stay by its orders dated July 31, 2018 and then confirmed by the order dated September 4, 2018. However, later the Hearing Panel lifted stay by the order dated October 8, 2018 claiming that Petitioner defaulted on the

second motion to lift the stay[13]. The sanctions became effective on October 31, 2018. The three-months period of suspension lapsed on January 31, 2019.

The Colorado Supreme Court denied Petitioner's appeal without opinion by the order dated February 1, 2019.

[13] In fact, Presiding Disciplinary Judge ordered expedite briefing on the motion without good cause, which Plaintiff could not satisfy due to foreign business trip.

REASONS FOR GRANTING THE PETITION

A. Colorado Supreme Court relies on the questionable case law.

There is no case law in Tenth Circuit regarding out-of-state attorney's practice regulation by the state.

Colorado agrees that Petitioner is a New York licensed attorney, who never practiced Colorado law in any form. Colorado asserts the right to regulate practice in federal courts and non-court government bodies located within boundaries of this state.

Petitioner does not fall under Colorado disciplinary jurisdiction pursuant to C.R.C.P. 251.1(b), because he was never admitted or otherwise permitted to practice law in Colorado, and never agreed to be in discipline jurisdiction of

Colorado[14]. The Presiding Disciplinary Judge's establishment of the jurisdiction over Petitioner pursuant to C.R.C.P. 202.1 is expansible reading of law and is in inconsistence with the federal and even state case law.

Petitioner is required by his state of licensure to follow New York Rules of Professional Conduct while practicing before the non-court agency, such as

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[14] An attorney through the act of oath of office or by *pro hac vice* admission expressly agrees to be in discipline jurisdiction of the state of licensure and binds himself with the state rules of professional conduct. An attorney at any time may escape from such jurisdiction by giving up the license. In this case, Petitioner expressly agreed for New York and Board of Immigration Appeals discipline jurisdiction only and never agreed for the Colorado discipline jurisdiction.

Department of Homeland Security[15] regardless of any conflicts with Colorado rules.

Colorado relies on the only state case *People v. Hooker, 318 P.3d 77, 80 (Colo. O.P.D.J. 2013)*, which is questionable. In that case the out-of-state practitioner defaulted on the disciplinary charges in Colorado. In *Hooker* the practitioner committed acts that clear violate all known rules of professional conduct and was later disbarred by his state of licensure as well as by the federal authorities. Application of the Colorado discipline jurisdiction did

[15] "If a lawyer is licensed only in New York, then the New York Rules of Professional Conduct apply to the lawyer's conduct in non-court matters (meaning all matters not in connection with proceedings pending before a court in which a lawyer has been admitted)". See *NYSBA Ethics Opinion #1027* at 19.

not change the outcome of his numerous discipline actions against him in other jurisdictions.

Review of other Colorado disciplinary cases for at least 25 years resulted a conclusion that before *Hooker*, Colorado never claimed to have a discipline jurisdiction over non-Colorado lawyers in federal practice.

Later, while Petitioner's appeal to the Colorado Supreme Court was pending, Presiding Disciplinary Judge entered another questionable decision in the case *People v. Jones, 422 P.3d 1093 (Colo. O.P.D.J. 2018).* Mr. Jones, a Georgia attorney, was found in default in the discipline action for alleged violation of Colorado Rules of Professional Conduct while soliciting clients in Colorado for his Georgian practice. Review of the following discipline proceedings in Georgia results that Georgia found no

violation in his activity, and on the date of this petition Mr. Jones has clear discipline record in his state of licensure. Mr. Jones did not look for the review of the Colorado PDJ's decision.

B. Other states' rulings in the similar proceedings are dissent

Other states, with the two exceptions discussed below, never successfully asserted disciplinary jurisdiction over out-of-state federal practitioners.

I. Iowa found its limited discipline jurisdiction

In Iowa discipline action *Iowa Supreme Court Attorney Disciplinary Bd. v. Carpenter, 781 N.W.2d 263 (Iowa 2010)*, Iowa found the state jurisdiction in the case of the out-of-state practitioner, but found

that "[w]ith regard to violations that typically warrant sanctions not directly affecting an attorney's licensure, such as reprimands and restitution, it is possible to impose the same sanctions on non-Iowa licensed lawyers as would be imposed on attorneys with an Iowa license. In contrast, when a non-Iowa licensed attorney commits misconduct that typically warrants a sanction directly affecting licensure, such as suspension or revocation, such sanctions are not feasible because there is no Iowa law license to suspend or revoke".

This finding is fair and reasonable. However, in this case Colorado invoke authority to suspend the other state's license, which is clear beyond Colorado jurisdiction.

II. West Virginia asserted its discipline jurisdiction over out-of-state attorney

The only similar case found in other jurisdiction, which was never revoked or dismissed by the federal court, is *State ex rel. York v. W. Va. Office of Disciplinary Counsel, 744 S.E.2d 293 (W.Va. 2013)*. In this case, Mr. Olen York, an Ohio licensed attorney, maintained an office in West Virginia for the practice before the USPTO. The Supreme Court of Appeals of West Virginia claimed a jurisdiction over the defendant based on the office maintenance within the state borders. At the same time, the USPTO disciplinary authority found Mr. York in violation of the federal ethical rules, and Ohio imposed sanctions in reciprocity of the federal discipline. Like in *Hooker*, the West Virginia case did not change the outcome of the federal discipline

action, and the federal discipline action was not based on the West Virginia reciprocal discipline.

This is an important distinguish with this case. Here, the state of licensure found no reason to maintain independent investigation and did not impose reciprocal sanctions upon learning about Colorado discipline. Federal discipline case is pending, but it is based on the reciprocal, not on the independent investigation of the issue. In other words, at this point only Colorado believes that Petitioner violated applicable rules, but the state of licensure found no violation and no reason for Colorado rules application.

III. Arizona was denied

disciplinary jurisdiction by Ninth Circuit

In *In re Poole, 222 F.3d 618 (9th Cir. 2000)* Arizona state authority claimed that the practice of the Illinois licensed attorney before the United States District Court for the District of Arizona shall be regulated by the Arizona Rules of Professional Conduct. The Ninth Circuit in well-grounded decision citing numerous federal cases, rejected Arizona's authority to regulate federal practice with the state rules. Among other, the Ninth Circuit found that *Sperry* is fully applicable case for the discipline matters: "*Sperry* involved an antipodal situation: potential federal interference with the operation of state law... In short, this case is not about any federal effort to displace state discipline; it is about

the inappropriate reliance on state authority to impose federal discipline" (*In re Poole,* 622).

IV. Michigan was denied regulating admission and practice before the federal court within its boundaries by Sixth Circuit

In *In Re Desilets, 291 F.3d 925 (6th Cir. 2002),* the State Bar of Michigan claimed that the admission to the federal court within this state shall be governed by the State of Michigan rules.

The Sixth Circuit rejected this assertion and found that *Sperry* case law is fully applicable for the attorneys: "The only plausible distinction between *Sperry* and *Poole* is that the enabling Congressional statute in *Sperry* expressly allowed for the prosecution of patents by non-lawyers. This is a distinction without a difference, given that

Rittenhouse is a duly licensed lawyer who meets the requirements for admission to the Bar of the Western District of Michigan" (*In Re Desilets*, 929).

"When state licensing laws purport to prohibit lawyers from doing that which federal law expressly entitles them to do, the state law must give way" (*Id*, 930).

V. Third Circuit denied Pennsylvania's claim to regulate federal practice by the state rules

In *Baylson v. Disciplinary Bd. of Supreme Court, 975 F.2d 102 (3d Cir. 1992)* Pennsylvania adopted a new rule of the state Rules of Professional Conduct and claimed that this new rule is applicable to the Pennsylvania licensed attorneys practicing federal law. The Third Circuit ruled that Pennsylvania by application of the state rules to

federal practitioners violates the Supremacy Clause, because this new rule is in direct conflict with the federal law.

VI. Other states successfully claimed disciplinary jurisdiction in cases related to practice without local license only

During long litigation in Colorado Supreme Court, the Colorado government cited dozens of other states' discipline cases to support claim that the state may enforce its rules of professional conduct on the out-of-state-licensed federal practitioners. Among others, Colorado cited *Florida Bar v. Kaiser, 397 So.2d 1132 (Fla. 1981), In re Coale, 775 N.E.2d 1079 (Ind. 2002), In re Discipline of Droz, 160 P.3d 881 (Nev. 2007), In re Defihlo, 762 S.E.2d 552 (S.C. 2014),* and others. However, in all those cases out-of-state attorneys were disciplined for the practice of law

without local license in state courts and/or government agencies.

C. This Court should reverse the Colorado Supreme Court's decision

Colorado Supreme Court found its jurisdiction to regulate out-of-state federal practitioners and to require them to follow state rules while practicing within Colorado borders. This is incorrect decision, which may have absurd results in the further cases. As it was pointed above, if Colorado Supreme Court would not be stopped in its attempts to regulate federal practice, federal law practitioners will be required to follow two or even three sets of rules at the same time, which may be in conflict, and then they would be punished for violation of either of it.

I. It is well-established that

federal practice is not regulated by state rules

As Ninth Circuit pointed in *In re Poole, 222 F.3d 618 (9th Cir. 2000)*, it is established by more than 100 years precedents of this Court that practice before the federal courts and/or government bodies is not regulated by the state rules.

Federal law requires the practitioner before the U.S. Department of Homeland Security to follow discipline rules established by 8 C.F.R. § 1003.102. It contains an exhausted list of the grounds for discipline of the practitioners. Here, it was established that Petitioner was engaged in the practice before the U.S. Department of Homeland Security, and no violation of the 8 C.F.R. § 1003.102 was found.

Petitioner is a New York licensed attorney, and due to that he is a subject of the New York Rules of Professional Conduct, because he expressly agreed to be bind by it through accepting his appointment as an attorney and counselor-at-law in the State of New York. Section 8.5(b) of the NY RPC provides the choice of law for the Petitioner's conduct and results the only correct finding that Petitioner shall abide NY RPC. This finding is confirmed by the New York State Bar Association's Ethical Committee in *Opinion #1027.*

Applying this rule, Petitioner is a subject to the rules for practitioners before the U.S. Department of Homeland Security and NY RPC. No reasonable analysis concludes that Colorado Rules of Professional Conduct should govern the Petitioner's conduct.

II. Colorado law does not permit

action against Practitioner

As it was demonstrated above, there is no case law in Colorado or in Tenth Circuit, which would permit Colorado to enforce Colorado Rules of Professional Conduct on the federal practitioner.

Even application on the Colorado Rules of Civil Procedures gives a result that Petitioner is not a subject of the disciplinary jurisdiction of the State of Colorado.

Section 251.1 of C.R.C.P. provides an exhausted list of persons subject to the Colorado jurisdiction, and Petitioner is not one of them. The expansible reading of the law by Presiding Disciplinary Judge in Colorado should not be a valid basis for the jurisdiction, because after reading of all

applicable rules, no one reasonable practitioner would reach the same conclusion.

Action without proper subject matter jurisdiction violates due process of law under Fourteenth Amendment.

Application of the additional requirements, such as abiding of the Colorado RPC on Petitioner violates his *First Amendment* rights as well as *Supremacy* and *Interstate Commerce Clauses* of the *U.S. Constitution.*

III. Colorado may not suspend a New York license

As it was cited above, in the case *Iowa Supreme Court Attorney Disciplinary Bd. v. Carpenter, 781 N.W.2d 263 (Iowa 2010)*, the Iowa Supreme Court reached a conclusion that Iowa may

not suspend a license, which was not granted by Iowa.

Here Petitioner's New York license was suspended by Colorado, which is absurd by itself, and constitutes violation of the *Interstate Commerce Clause* of the *U.S. Constitution*, because this Colorado action crosses borders of the state, and due to that should not be governed by Colorado.

In addition, suspension of the New York license severally interferes into New York State's sovereignty, because Colorado comes into the field which is regulated by New York exclusively.

D. This case presents a recurring question of the exceptional importance warranting the Court's immediate resolution

As it was demonstrated above, besides the clear ruling of this Court in *Sperry v. Florida, 373 U.S. 379 (1963)*, states attempt to enter the field exclusively regulated by the federal law.

This case is a great example what may happened when two different states require lawyer to follow two different sets of rules, and one of the states punished him for violation of its rules, while the second state makes a conclusion that the lawyer promptly complied with its rules.

At least Iowa and West Virginia attempted previously to enforce state jurisdiction on the federal practitioners. However, in those cases, the outcomes were not affected by the state actions, because

respondents' behavior was unethical considering any rules. In this case Petitioner committed something punishable by one state, when his action was permitted and even required by the second state. In addition, he did not violate federal ethical rules, and his violations are in the field of different interpretations of the same acts by different states.

Unless this Court would issue a clear ruling, new cases with the similar background may come to the same absurd results in the future. Such situation requires this Court's intervention to restore uniformity in the interpretation of the discipline rules for lawyers practicing federal law outside of their state of licensure.

CONCLUSION

Due to the above-stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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June 5, 2019