

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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ROSE SPANO,

*Petitioner,*

vs.

FLORIDA BAR,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The Florida Supreme Court**

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**PETITION FOR WRIT OF CERTIORARI**

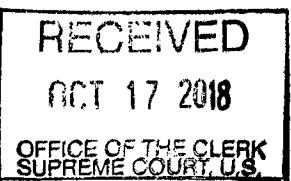
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## **QUESTIONS PRESENTED**

Petitioner, Rose Spano, questions the constitutionality of the Florida Supreme Court's decision to deny the Petitioner a right to an evidentiary hearing, and right to cross examination of witnesses in her bar disciplinary proceedings which created void judgments of suspension and disbarment.

The lower court's denial of Petitioner's omnibus motion to Vacate Void Judgments, which were created by a denial of her (procedural and substantive) due process rights to an evidentiary hearing in bar disciplinary proceedings under the 5th and 14th Amendments to the United States Constitution, amounted to an unlawful taking of Petitioner's liberty and property interests (her Florida Bar license).

Such a denial of Petitioner, Rose Spano's, constitutional rights to an evidentiary hearing and the right to cross examination of witnesses in bar disciplinary proceedings, is of such great importance to the public, that this issue deserves merit review.

## **PARTIES TO THE PROCEEDINGS**

Petitioner, Rose Spano, was the respondent in the court below.

Respondent, the Florida Bar, was the petitioner in the court below.

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**PETITION FOR A WRIT OF CERTIORARI**

Rose Spano, Petitions this Honorable Court for a Writ of Certiorari to review judgments of the Florida Supreme Court entered in her bar disciplinary proceedings, without conducting an evidentiary hearing which would allow for testimony and cross examination of the allegations made against her, that created void judgments amounting to the unlawful taking of Petitioner's bar license.

The Senate, most recently, granted persons the right to an evidentiary hearing and the right to cross examination of their accuser, but such right was denied the Petitioner by the Florida Bar in this case.

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**OPINION BELOW**

The decision of the Florida Supreme Court, included in *Appendix*, 1, is cited as the *Florida Bar v. Rose Spano*, SC00-2222, SC01-275, SC04-397, SC04-852, SC04-2011, Lower Tribunal Nos.: 2001-50,023 (17D), 2004-90,021 (OSC), 2004-51,357 (17D), 2005-90,017 (OSC).

The decisions of the court below in prior orders, included in *Appendices*, 3, 5, are cited as the *Florida Bar v. Spano*, 881 So. 2d 114 (Fla. 2004), and the Florida Supreme Court, Case No. SC04-2011, respectively.

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## **JURISDICTION**

A claim of a present right to admission to the bar of a state and a denial of that right is a controversy. *In re Summers*, 325 U.S. 561, 569 (1945) (When the claim is made in state court and a denial of that right is made by judicial order, it is a case which may be reviewed under Article III of the Constitution when Federal Questions are raised). The Florida Supreme Court denied Respondent's Motion to vacate void judgments on July 16, 2018. The Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1275 (a).

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## **CONSTITUTIONAL PROVISIONS AND APPLICABLE RULES INVOLVED**

### **The Fourteenth Amendment provides:**

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

### **U.S. Const. Amend. XIV.**

### **The Fifth Amendment provides in part:**

No person shall be. . . . denied life, liberty or property without due process of law.

### **U.S. Const. Amend V.**

**Fla. R. Civ. P., Rule 1.540(b)(4) provides:** that the court may relieve a party from a void judgment. "A judgment is void if, in the proceedings leading up to the judgment, there is a violation of due process guarantee of notice and the opportunity to be heard."

**Rule 3-7.6 (2004), Supreme Court of Florida, Rules regulating the Florida Bar provides as follows:**

(a)(1) *Referee.* The chief judge shall have the power to appoint referees to try disciplinary cases and to delegate to a chief judge of a judicial circuit the power to appoint referees for duty in the chief judge circuit. Such appointees shall ordinarily be active county or circuit judges, but the chief justice may appoint retired judges.

(f)(1) *Nature of Proceedings.* A disciplinary proceeding is neither civil or criminal but is a quasi-judicial administrative proceeding.

(f)(2) *Discovery.* Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

(g) *Bar Counsel.* Bar Counsel shall make such investigation as is necessary and shall prepare and prosecute with the utmost diligence any case assigned.

(h)(2) *Pleadings.* Answer and Motion, the Respondent shall answer the complaint and as part of thereof or by separate motion, may challenge the sufficiency of the complaint. . . .

*(h)(5)(B) After appointment of Referee.* All pleadings, motions, notices, and orders filed after the appointment of a referee shall be filed with the referee and shall bear a certificate of service showing service on staff counsel, bar counsel, and interested parties in the proceedings.

*(i) Notice of Final Hearing.* The cause may be set down for hearing by either party upon not less than 10 days notice.

**Rule 3-7.2(f) (2004), Supreme Court of Florida, Rules Regulating the Florida Bar provides as follows:** "Procedures upon criminal or professional misconduct" states that a petition to modify or terminate suspension filed within (10) days of notice of suspension, defers the suspension until any order resolving the petition.

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#### **STATEMENT OF THE CASE**

Petitioner was denied the fundamental due process right to an evidentiary hearing and cross examination to defend herself against false and/or misleading allegations made by the Florida Bar in disciplinary proceedings, which amounted to the unlawful taking of her Florida Bar license.

On or about March 10, 2004, Petitioner was served with a Motion for Contempt and Rule to Show Cause by the Florida Bar for allegedly not complying with the lower court's order to complete a psychological

evaluation, complete any recommended treatment, and receive counseling by a licensed psychologist. (App. 7). At the same time Petitioner received the March 2004, Motion for Contempt, she was notified by the bar's secretary, Ms. Walker, that a referee would be appointed to conduct an evidentiary hearing.

On March 26, 2004, Petitioner responded to the Florida Bar's Petition for Contempt and Rule to Show Cause, by filing a copy of the psychological evaluation that had been performed by Dr. Richard Sauber, a Diplomat of the American Board of Professional Psychology and Diplomat of the American Board of Professional Disability Consultants. (App. 10).

Without conducting an evidentiary hearing and allowing cross examination of the statements made by its bar counsel, on June 3, 2004, the Florida Bar filed a Motion for Judgment on the Pleadings. (App. 22).

The Bar requested that the lower court issue an order of suspension, without conducting an evidentiary hearing or cross examination pursuant to Bar Rule 3-7.6, because the Florida Bar alleged that Petitioner failed to complete a psychological evaluation by an approved evaluator. The Bar's Motion for Judgment on the Pleadings was never received (or served) on the Petitioner, nor was this Motion ever received by Petitioner's counsel, Mr. Alvin Entin. (App. 24).

Thereafter, without ever conducting an evidentiary hearing before a referee on the Bar's misrepresentative allegations made in their Motion for Judgment on the Pleadings, a 91 day suspension order

was issued by the lower Court. (App. 3). Petitioner immediately responded to the lower court's order by filing a Petition to Vacate and Terminate the court's order of suspension dated August 6, 2004. (Rule 3-7.2, Rules Regulating the Florida Bar). The Petitioner pointed out, the Florida Bar was required to follow Rule 3-7.6, Rules Regulating the Florida Bar, and conduct an evidentiary hearing before the referee.

The Florida Bar filed its Response to the Petition to Vacate and Terminate Court's Order of Suspension and urged that, even without its Motion for Judgment on the Pleadings, the lower court should enter an order of suspension because the Petitioner was alleged to have admitted to the factual allegations of the Petition. Allegations in bar pleadings are only allegations, and must be proven by way of an evidentiary hearing, and an opportunity for the accused to present testimony and cross examine her accuser.

Thereafter, Petitioner filed her Emergency Motion for Temporary Injunctive Relief against the actions of the Florida Bar. She identified those reasons why a hearing was necessary before a referee to defend herself against false and misleading allegations that were being made against her. (App. 29).

Rather than follow Petitioner's constitutional due process rights to have a hearing on the matter or adhere to the Rules Regulating the Florida Bar (Rule 3-7.6), the Florida Bar filed yet another Petition for Contempt and Order to Show Cause. (App. 32). This Petition was filed although there had been no ruling

on Petitioner's Motion to Vacate or Terminate the lower court's August 6, 2004, suspension order, that had been tolled. See, Rule 3-7.2(f)(2) (2004), Rules Regulating the Florida Bar, providing that a petition to modify or terminate a suspension filed within ten (10) days of notice of the suspension, defers suspension until entry of an order on the petition.

On October 21, 2004, Petitioner filed a Response and Verified Motion to Strike the Florida Bar's Petition for Contempt, alleging that the Bar's Petition for Contempt was facially deficient. (App. 38). Petitioner asserted that her representation of herself, *pro se*, in her own custody battle for her child was not the practice of law while suspended, and that a timely filed Petition to Modify or Terminate the suspension was pending, which tolled any suspension until there was a ruling by the lower court on this petition.

Thereafter, the Florida Bar filed its Motion for Judgment on the Pleadings alleging that Petitioner continued to practice law in violation of the lower court's August 6, 2004, suspension order, which was tolled. (App. 42). The Florida Bar also asserted that Petitioner's filing of her Verified Motion to Strike the bar's October 12, 2004, Contempt Petition was unresponsive to its Petition.

On April 8, 2005, *absent any evidentiary hearing* on Petitioner Rose Spano's Verified Motion to Strike and Vacate in which she swore that she had not received the Bar's previous Motion for Judgment on the Pleadings, the lower court issued an order. The lower

court without ever holding an evidentiary hearing, and denying Petitioner's right to cross examination, entered its order denying Petitioner's Motion to Strike and Vacate the Bar's Petition for Contempt and Order to Show Cause, granted the Florida Bar's Motion for Judgment on the Pleadings, and summarily disbarred the Petitioner: (App. 5).

Certiorari is being sought to the Supreme Court of the United States for a reversal of the lower court's orders.

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#### **REASONS FOR GRANTING THE PETITION**

Petitioner's right to an evidentiary hearing and the right to cross examine her accuser are fundamental rights under the Constitution in a bar disciplinary proceeding. Petitioner's Florida Bar License is a valuable Liberty and Property Interest, that is to be afforded the protections of Due Process of law under the 5th and 14th Amendments of the United States Constitution. Failure by the court below to grant Petitioner's right to an Evidentiary Hearing before a Referee and her right to cross examine the Florida Bar regarding the false or misleading allegations made against her, amounted to an Unlawful Taking of this Interest, and violated the Fundamental Constitutional Protections of Due Process in this Country. Thus, this case warrants merit review.

This Court and the court below have set forth the fundamental nature of due process as follows: The

essence of due process is that fair notice and a reasonable opportunity to be heard must be given to interested parties before a judgment is rendered. . . . Due process envisions a law that hears before it condemns, proceeds upon inquiry, and renders judgment only after proper consideration of issues advanced by adversarial parties. In this respect, the term due process embodies a fundamental concept of fairness that derives ultimately from the natural rights of all individuals. *Scull v. State*, 589 So.2d 1251 (Fla. 1990); *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991); *State ex rel. Gore v. Chillingworth*, 171 So. 649 (Fla. 1936).

The Due Process clause of the United States Constitution provides that certain substantive rights such as life, liberty and property cannot be deprived except pursuant to constitutionally adequate procedures. The words of the Due Process Clause at a minimum, require that the deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. "Property" cannot be defined by procedures provided for its deprivation, any more than life or liberty. The right to due process is conferred not by legislative grace, but by constitutional Guarantee. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985); *Barry v. Bachi*, 443 U.S. 55, 99 S.Ct. 264 (1979); *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780 (1971); *Morgan v. United States*, 304 U.S. 1 (1938).

In the present case, Petitioner acquired her Florida Bar license in 1985. Petitioner's bar license

qualifies as a protected property interest. *The Florida Bar v. Fussel*, 179 So. 2d 852 (Fla. 1965) (A license to practice law is earned and acquired only after an arduous and expensive period of education. It can be retained and employed as a productive source of livelihood only by diligence and an ethical devotion to its responsibilities. In this vein, it has characteristics of property which should not be withdrawn by a governing authority save by proper application of traditional concepts of due process. Under our system, no written rule is necessary to prescribe that this contemplates both notice and an opportunity to be heard, before an individual — regardless of his offense — is subject to the disciplinary exercise of government power.) *Id.* at 854-55.

Petitioner's bar license is a valuable Fifth Amendment property right because it affords the Petitioner the means by which she earns a living. *Green v. Brantley*, 719 F. Supp. 1570 (N. D. Ga. 1989); *Barry v. Bachie*, 443 U.S. 55, 99 S. Ct. 2642 (1979); *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586 (1971); *Wells Fargo Armored Services Corp. v. Georgia Public Service Commission*, 547 F. 2d 938, 941 (5th Cir. 1977). Thus, Fifth Amendment procedural due process protections are necessary before the Petitioner's license can be terminated or impaired. The individual must be given an opportunity for a hearing before he or she is deprived of any significant property interest. This principle requires a hearing prior to the discharge of an employee who has a constitutionally protected property interest in employment. *Cleveland Board of Education v. Loudermill*, 470

U.S. 532, 105 S.Ct. 1487 (1985); *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780 (1969).

This Court has recognized the severity of depriving a person of the means of a livelihood. The opportunity for the employee to present his or her side of the case is an obvious value in reaching an accurate decision. Dismissal for cause will often involve factual disputes. Even where the facts are clear, the appropriateness of the charges, may not be. *Cleveland, Id.*

If a property or liberty interest is implicated, as in the present case, the 5th Amendment requires that an individual be given an opportunity for a hearing before he or she is deprived of such interest. *Boddie*, at 379; *Goldberg v. Kelly*, 397 U.S. 254, 268 (1970). The extent to which procedural due process must be afforded the Petitioner in this case is determined by the extent to which she will be condemned to suffer from a grievous loss and whether there is an interest to be protected by the state which would approve a summary adjudication.

In *Goldberg v. Kelly*, this Court required the maximum procedural protections of adequate notice and a meaningful hearing before an individual's welfare benefits could be terminated. *Id.*, at 264-65. A "meaningful hearing" in this context was held to be an effective opportunity to defend by "confronting any adverse witnesses and by presenting his own arguments and evidence orally". *Goldberg* at 267-68.

In the present case, the Petitioner was not afforded the essential principles of due process of law in

the lower court's entry of the August 6, 2004, suspension order. (App. 3). She was denied the opportunity for a hearing to confront and cross examine her accuser. *Coleman v. Watts*, 81 So.3d 650 (Fla. 1955); *Morgan v. United States*, 304 U.S. 1 (1938). The Florida Bar's filing of a Motion for Judgment on the Pleadings was contrary to the procedural and substantive due process rights guaranteed by the 5th and 14th Amendments. The lower court's order, granting the Bar's Motion for Judgment on the Pleadings, without conducting an evidentiary hearing, resulted in a deprivation of Petitioner's due process rights which created a suspension order, void *ab initio*.

Additionally, the lower court's entry of the April 8, 2005, disbarment order, (App. 5), clearly shows that the Petitioner was also denied due process of law in its' entry. She was given no opportunity for an evidentiary hearing to confront and cross examine her accuser. The Florida Bar's filing of a Motion for Judgment on the Pleadings was in violation of the due process protections of the 5th and 14th Amendments. The due process denial by the court below, in failing to conduct an evidentiary hearing and allow cross examination on the Petition for Contempt, (App. 32), created a void judgment of disbarment. Florida law holds, a judgment is void if, in the proceedings leading up to the judgment, there is a violation of the due process guarantee of notice and the opportunity to be heard. *Touloute v. City of Fort Lauderdale*, 80 So. 3d 1129 (Fla. 4th DCA 2012); Rule 1.540(b)(4), Fla. R. Civ. P.

Petitioner's Florida Bar license constituted a valuable property and liberty interest. The lower court's decision to deny the Petitioner a right to an evidentiary hearing and cross examination in her bar disciplinary proceedings, a fundamental right under the Constitution, is of such public importance, that this case deserves the Court's merit review.

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### **CONCLUSION**

Here, the denial of Petitioner's constitutional due process rights to an evidentiary hearing, and the right to confront and cross examine her accuser in her bar disciplinary proceedings, amounted to an unlawful taking of her liberty and property interest (her Florida Bar license). The denial of Petitioner's constitutional due process rights also resulted in the entry of void orders and judgments requiring reversal of the court below's order.

The foregoing warrant review by certiorari in this matter and, therefore, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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