No._____

In the Supreme Court of the United States

WENDY ALISON NORA,
Petitioner,
v.
WISCONSIN OFFICE OF LAWYER REGULATION,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

PETITION FOR A WRIT OF CERTIORARI

Wendy Alison Nora
Petitioner, *in propria persona*
ACCESS LEGAL SERVICES
310 Fourth Ave. South, Suite 5010
Minneapolis, Minnesota 55415
VOICE: (612) 333-4144
FAX: (612) 206-3170
Email: accesslegalservices@gmail.com

QUESTIONS PRESENTED

Whether a lawyer can be disciplined based on evidence known by the state to be false and when the state suppresses exculpatory evidence.

Whether the Due Process Clause of the Fourteenth Amendment to the *United States Constitution* requires a full hearing before an unbiased tribunal in a lawyer disciplinary matter.

Whether lawyer disciplinary proceedings may punish a lawyer for exercising the right to Petition the Judiciary for Redress of Grievances under the First Amendment to the *United States Constitution.*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Circuit Court of Appeals Cases

Minnesota Supreme Court Cases

Wisconsin Supreme Court Cases

Other Authority

Rules of the Supreme Court

Federal Rules of Civil Procedure

Wisconsin Supreme Court Rules

United States Code

Wisconsin Statutes

Petitioner, Wendy Alison Nora, respectfully petitions for a writ of certiorari to review the March 30, 2018 Opinion and Order of the Wisconsin Supreme Court suspending her right to practice law before the Wisconsin Supreme Court. On June 12, 2018, Petitioner's Motion for Reconsideration was denied, but the March 30, 2018 Opinion was modified.

OPINIONS BELOW

The March 30, 2018 Opinion and Order of the Supreme Court of Wisconsin as modified on June 12, 2018 is not yet reported by publication in the Northwestern Reporter, but is published in some on-line case law data bases.

The current form of the March 30, 2018 Opinion and Order, as modified on June 12, 2018, is available on the Wisconsin Supreme Court's website at wicourts.gov and may be retrieved at https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=210465

The March 30, 2108 Opinion and Order in its original form is attached as Appendix A (App. 1a) and the June 12, 2018 Order (modifying the parenthetical phase) and Denying Reconsideration is attached as Appendix (App. 32a).

The referee's January 13, 2017 Report, the referee's May 20, 2015 Decision and Order granting summary judgment on to Count Two, and the referee's October 1, 2015 Order denying relief from

the May 20, 2015 Decision and Order are attached as Appendices C (App. 32a), D (App. 36a), and E (App. 79a).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) from the Wisconsin Supreme Court's entry of its order denying the Motion for Reconsideration on June 12, 2018. This Petition for Writ of Certiorari is filed within 90 days of the Wisconsin Supreme Court's denial of the Motion for Reconsideration, under Rules 13.1 and 29.2 of this Court plus the additional 30 days allowed by two (2) extensions of time which were granted for good cause shown under Rule 13.5 on September 12, 2018 and October 5, 2018. A *de minimis* extension of an additional 2 days to October 12, 2018 was requested on October 9, 2018 due to technical compliance issues.

The March 30, 2018 Opinion and Order of the Wisconsin Supreme Court as modified on June 12, 2018 is the final judgment of the Wisconsin Supreme Court. Jurisdiction of this Court arises under 28 U.S.C. sec. 1257.

CONSTITUTIONAL AMENDMENTS AND ETHICS RULES INVOLVED

By the incorporation doctrine followed in *Gitlow* v. *New York*, 268 U.S. 652, 666 (1925), the First Amendment to the Constitution of the United

States applies to the States under the Fourteenth Amendment[1]. Under *Gitlow*, supra, the Fourteenth Amendment should be read to provides, in relevant part, that the States " shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances" (hereinafter "Petition Rights)[2].

Section 1 of the Fourteenth Amendment (the Due Process and Equal Protection Clause) applies to state action and reads:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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

---

1

1 The incorporation doctrine was only used once before *Gitlow*, supra. The incorporation doctrine first appeared in *Chicago, Burlington & Quincy Railroad Co.*, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897).

2

2 *Gitlow*, supra, does not specifically incorporate Petition Rights because First Amendment issue in *Gitlow* was Freedom of the Press, not Petition Rights. In *De Jonge v. State of Oregon*, 299 U.S. 353, 363-365, 57 S.Ct. 255, 81 L.Ed. 278 (1937), this Court applied the incorporation doctrine to the right to assemble. In 83 years since *Gitlow* and 71 years since *DeJonge*, it has never been seriously questioned that the States may not abridge the Petition Rights of the People.

> any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article One, Section 4 of the *Constitution of the State of Wisconsin*, adopted on March 13, 1848 and never amended, mirrors the relevant part of the First Amendment, 77 years before *Gitlow*, supra. The *Constitution of the State of Wisconsin* prohibits the state action taken against Petition by providing "the right of the people to petition the government, or any department thereof, shall never be abridged."

Article One, Section 4 of the *Constitution of the State of Wisconsin*, provides:

> **Right to assemble and petition.** SECTION 4. The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.

Additionally, Article One, Section 3 of the *Constitution of the State of Wisconsin,* adopted on March 13, 1848 and never amended, provides:

> **Free speech; libel.** SECTION 3. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws

> shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libel, the truth may be given in evidence, and if it shall appear to the jury that the matter charged as libelous be true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

The Wisconsin Rules of Professional Conduct which Petitioner is charged with violating but which she would have proved that she did not violate in a full and fair hearing, without the use of false evidence, are

> **SCR 20:3.1 Meritorious claims and contentions**
> (a) In representing a client, a lawyer shall not:
> (1) knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law;
> (2) knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or
> (3) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows

> or when it is obvious that such an action would serve merely to harass or maliciously injure another.

and

> **SCR 20:3.3 Candor toward the tribunal**
> (a) A lawyer shall not knowingly:
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

Petitioner attempted to defend against the (ever-changing) charges of violations of SCR 20:3.1(a) and 3.3(a) on the basis that her actions were protected by the First Amendment, that her legal positions were supported by existing law, that her factual statements were true, and that she did not bring the actions merely to harass or injury another.

Despite the Petitioner having raised the both her federal and state constitutional protections, the Wisconsin Supreme Court did not dispose of the issue on state constitutional grounds.

STATEMENT

This case presents important constitutional questions regarding the Due Process rights of lawyers in state disciplinary proceedings. This Court held *In the Matter of John Ruffalo, Jr.,*

Petitioner, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968)

> These are adversary proceedings of a quasi-criminal nature . . . absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process.

This case involves the use of forged documents authenticated by perjured affidavits and the concealment of exculpatory evidence by Office of Lawyer Regulation (OLR) through its retained counsel as the prosecuting attorney; the preclusion of the lawyer's defense by terminating the evidentiary hearing before the hearing was complete by an actually biased referee whose conduct in the proceedings was as nothing less than as co-prosecutor with OLR; and the use of lawyer disciplinary proceedings to punish the lawyer for the exercise of her First Amendment (Petition Rights) at the request of and for the benefit of her litigation opponents.

The Wisconsin Supreme Court, PER CURIAM through one or more of the unnamed and unelected law clerks designated as "Court Commissioners", did not decide the state issues raised by Petitioner, but addressed her rights by misapplying decisions

of this Court [3].

3

3 Petitioner learned, while preparing her Motion for Reconsideration, that lawyer disciplinary opinions are not written by the justices, but are delegated to law clerks designated as Court Commissioners under Section III.H. of the Wisconsin Supreme Court's *Internal Operating Procedures Manual* (IOP) presently retrievable at https://www.wicourts.gov/sc/IOPSC.pdf. This information was probably publicly available on-line in the IOP which is somewhat obscure. The IOP was not concealed and could have been discovered by Petitioner, who simply assumed, based on case law, that the Wisconsin Supreme Court justices were writing their own decisions.

Petitioner notes that the Opinion and Order was not written by any of the Wisconsin Supreme Court Justices because the legal errors are so pervasive that it is comforting to know that justices elected by the People of the State of Wisconsin did not write the Opinion. The writer(s) adopted the prejudicial legal and factual errors of the referee, who, in turn, parroted the positions of the OLR prosecutor, with whom she appeared to act as co-prosecutor–conduct Petitioner had never seen in over 40 years of practice before elected Wisconsin Circuit Court judges. Petitioner has concluded that SCR 21.15(4) creates a cognitive bias in those referees who are not circuit court judges, but are simply Wisconsin-licensed lawyers, whose self-interest in preserving their licenses are challenged by the SCR 21.15(4), which provides:

> **SCR 21.15 Duties of attorneys.**
>
> . . .
>
> (4) Every attorney shall cooperate with the office of lawyer regulation in the investigation, prosecution and disposition of grievances, complaints filed with or by the director, and petitions for reinstatement. **An attorney's wilful failure to cooperate with the office of lawyer regulation constitutes violation of the rules of professional conduct for attorneys.**

The Wisconsin Supreme Court misapplied this Court's holdings on the freedom of speech in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 638 (1985) ("The States and the Federal Government are free to prevent the dissemination of commercial speech that is false, deceptive, or misleading.") Petitioner's exercise of her Petition Rights was not commercial speech. Petitioner speech consisted of written pleadings and other communications in the course of litigation to protect her private rights and interests under her First Amendment Petition Rights.

This Court distinguished commercial speech from non-commercial speech in *Zauderer* and just last term on June 26, 2018, this Court decided *National Institute of Family and Life Advocates, DBA NIFLA, et al. v. Xavier Becerra, Attorney General of California, et al.*, No. 16-1140. This

---

Although Petitioner refers to the Opinion and Order of the Wisconsin Supreme Court, she is mindful that the Opinion and Order was actually written by law clerks designated as Court Commissioners and not by any justice of the Wisconsin Supreme Court.

Court required strict scrutiny of limits placed on the speech of licensed professionals, holding

> Outside of the two contexts discussed above—disclosures under *Zauderer* and professional conduct—this Court's precedents have long protected the First Amendment rights of professionals. For example, this Court has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers, . . . And the Court emphasized that the lawyer's statements in Zauderer would have been "fully protected" if they were made in a context other than advertising. 471 U. S., at 637, n. 7.

The Wisconsin Supreme Court's misapplied this Court's holding in *Zauderer* in Petitioner's case. App. 23a, ¶31.

The Wisconsin Supreme Court next misapplied *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974) ("But there is no constitutional value in false statements of fact"). *Gertz* involved the issue of Freedom of the Press. Petitioner's case involves Petition Rights and the limits of licensed professional speech, Petitioner agrees that knowingly making false statements of fact is a

violation of the Code of Professional Conduct and never suggested otherwise. Her defenses both made and attempted was that her statements of fact were true. App. 23a, ¶31.

Petitioner's defense that her statements in Counts Three and Four were true. As to Count Two, her August 26, 2009 FAX to the Dane County Circuit Court, alleged to be false based on forged documents and falsely sworn affidavit evidence of which was concealed by OLR, was true to the best of her knowledge. Petitioner's ADAA action which his the subject of Count One was filed to obtain accommodations for her persistent health limitations and to assure that the Dane County Circuit Court complied with the ADAA.

Petitioner also completely agrees and did not take any position inconsistent with the quotation from *McCoy v. Court of Appeals of Wisconsin, Dist. 1*, 486 U.S. 429, 436 (1988) ("Neither paid nor appointed counsel may deliberately mislead the court with respect to either the facts or the law, or consume the time and the energies of the court or the opposing party by advancing frivolous arguments.") App. 23a. Again, Petitioner's defenses are that she did not deliberately mislead any court with respect to either the facts or the law and did not advance frivolous arguments in violation of

SCR 20:3.1(a) were ignored, suppressed and precluded defense.

Anyone can be lose their liberty or have their property rights taken by state action if fundamental Due Process requirements are allowed to be violated.

A. Factual background

Petitioner was admitted to practice law before the Supreme Court of Wisconsin on June 9, 1975. She was admitted to practice law before the Supreme Court of Minnesota on September 20, 1985[4]. She has been admitted to practice in three (3) federal district courts (the Western District of Wisconsin, the Eastern District of Wisconsin, and the District of Minnesota) and the Circuit Courts of Appeal for the Seventh and Eighth Circuits. She is a member of the bar of this Court. She has appeared pro hac vice in other jurisdictions. Nora practiced law without any disciplinary complaint

---

4

4 On January 19, 1990 Petitioner was indefinitely suspended from the practice of law in Minnesota with the right to reapply for admission within 30 days as the result of her *admitted* conduct in defense of agricultural businesses during the Farm Crisis in which she had been overzealous. *In re the Disciplinary Action against Nora*, 450 N.W.2d 328, 329 (1990).

filed by any client or other member of the public between 1991 and 2010 having been found to warrant formal disciplinary investigation (almost 20 years) before she became involved in the defense of homeowners against foreclosures based on evidence that false pleadings, forged documents and falsely sworn affidavits were being submitted in judicial foreclosure proceedings, including two (2) cases involving her own home.

In 2003 and again in 2009, she defended her own home in two (2) foreclosure actions, using what she knew was the entirely conventional legal positions: that the party seeking the remedy of foreclosure had to be the party to which payments were owed. At that time, Petitioner had almost (2) decades of experience in defense of property owners in foreclosures dating back to the Farm Crisis of the 1980s.

In her 2003 foreclosure case, which was commenced after she was 10 days late in making her mortgage payment following a catastrophic flood leading to a mold infestation which forced her to vacate her home, she contended that the entity which attempted to foreclose on her home known as Mortgage Electronic Registration Systems, Inc. (commonly known as "MERS") was not the real party in interest in the action. She began to escrow

her mortgage payments while she lived in a rental property and undertook to restore her damaged home. The first foreclosure action settled in 2004.

In 2005, Petitioner discovered that terms of the 2004 settlement agreement with the mortgage servicer had been breached and she sought relief for the breach of contract. She once again began escrowing her mortgage payments and sought to make the mortgage payments to the law firm which had previously represented "MERS" and had settled the 2003 foreclosure action in the name of the mortgage servicer. It is now well-established that "MERS" is not the real party in interest in foreclosure cases because it does not and is not entitled to receive payments on mortgage notes.

Despite her efforts to pay her mortgage to the law firm, in 2005 and 2006, her payments were refused. In 2009, the second foreclosure action was commenced on March 3, 2009 in Dane County, Wisconsin Circuit Court by a stranger to her title. The second foreclosure followed the breach by a mortgage servicer of the 2004 settlement agreement, which resolved the 2003 foreclosure action.

On April 14, 2009, shortly after the second foreclosure action was commenced, Petitioner was injured in a car accident. As a result of her injuries,

Petitioner became progressively more impaired. At the end of 2009, she began to experience seizures. She tried to seek accommodations under the Americans with Disabilities Act as Amended effective January 1, 2009 (the ADAA), 42 U.S.C. sec. 1201, et seq., in all of her cases[5], including her personal litigation matters, in early 2010.

The factual basis for the Wisconsin Supreme Court's Opinion and Order on Counts One, Three and Four of the Amended Complaint (Appendix A, at App. 1a) cannot be upheld because the evidentiary hearing was not completed and was terminated by the actually biased referee before Petitioner completed presenting her defense to the charges set for in Counts One, Three and Four, even as limited as her defenses had already, in error, been restricted. Petitioner was denied her

---

5

5 Petitioner was diagnosed with a condition known as "fibromyalgia" in 1995 and had been able to practice law with reasonable accommodations, but did not seek to be reinstated to practice law before the Supreme Court of Minnesota, following an unsuccessful reinstatement attempt in 1991 [*In re Disciplinary Action Against Nora*, 471 N.W.2d 670 (Minn., 1991), until January 11, 2007, due to her health condition. *In re the Petition for Reinstatement to the Practice of Law of Wendy Alison Nora,* 725 N.W.2d 745 (Minn., 2007). If Petitioner had been given a full hearing in the Wisconsin proceedings, she would have testified to these facts.

right to a full hearing which the Wisconsin Supreme Court established is one of the due process rights in lawyer disciplinary proceedings. *State v. Hersh*, 390 Wis.2d at 398, 243 N.W.2d at182.

As to the facts in support of Count Two (Appendix F, App. 111a), the Wisconsin Supreme Court re-wrote ¶22 of the Amended Complaint to allege that the factual allegation in ¶22 "necessarily included that she had received his writing (i.e., his email)" on August 25, 2009 which Respondent did not receive from OLR's Grievant-Witness, David M. Potteiger (Potteiger) with which Petitioner had not previously been charged, contrary to *Ruffalo*, 390 U.S. at 552.

¶22 of the December 23, 2013 Amended Complaint reads:

> 22. On August 25, 2009, Attorney David Potteiger (Potteiger), as RFC's representative, informed Nora in writing that the reservation of her counterclaims found in Nora's Foreclosure Repayment Agreement counteroffer was rejected; no settlement offer existed.

¶24 of the December 23, 2013 Amended

Complaint reads:

> 24. On August 26, 2009, Potteiger reasserted in writing to Nora the same rejection of the counteroffer as set forth in his **August 25, 2009 letter**, confirming no settlement offer existed. (Emphasis added.)

(Appendix F, App. 111a)

The undisputed facts are that Petitioner received an email from Potteiger on August 26, 2009 at 11:21 a.m. to which a letter dated August 25, 2009 was attached. Petitioner admitted receiving a copy of the letter dated August 25, 2009 because it was attached to the email purportedly re-sent by Potteiger on August 26, 2009. It was later discovered that the letter included a footnote (footnote 3) which could not have been written before August 26, 2009 because it refers to information which Potteiger could not have known until August 26, 2009. OLR knew that the facts in Count Two were based on false evidence because footnote 3 refers to a letter sent by OLR to an attorney in Potteiger's office, which OLR knows would have been sent by mail and could not have been received in Potteiger's office until the following day, on August 26, 2018.

In order to uphold the referee's May 20, 2015 Decision and Order granting Summary Judgment to OLR, the Wisconsin Supreme Court ignored the evidence of forged documents authenticated by Potteiger in falsely sworn affidavits and the impossibility that Petitioner could have received an email to which a Motion was attached. The attached Motion contained information which could not have been known to Potteiger until August 26, 2009. Contrary to the Due Process requirement that Petitioner have notice of the allegation against her before the hearing commenced under *Ruffalo*, supra, the Supreme Court of Wisconsin re-wrote ¶22 of the Amended Complaint to make it appear that Petitioner had prior notice that the "writing" was an email and that she "necessarily" received on August 25, 2009 at ¶26 (App. 18a-19a). The attachment to the August 26, 2009 email which was purportedly "re-sent" on that date could not have contained footnote 3 because the information contained therein could not have been known to Potteiger on the day before it was received by Potteiger's office.

OLR concealed the exculpatory evidence which would prove nonreceipt of the subject email. Petitioner recognizes with great regret that the author of the Wisconsin Supreme Court Opinion and Order knows that Petitioner could not have

received the email but re-wrote ¶22 to make it appear that Petitioner admitted to a fact with which she had not been charged and could not have prepared to defend.

Reading ¶¶22 and 24 together (Appendix F, App. 115a-117a), in context, Petitioner was charged, Petitioner admitted the receipt of the August 25, 2009 letter but she did not receive it until she received the "re-sent" email on August 26, 2009 Petitioner cannot be found to have admitted to the re-written factual allegation in ¶22.

Petitioner was denied due process and the opportunity to defend against a charge of which she had no notice until March 30, 2018 contrary to *Ruffalo*, supra, 390 U.S. at 552.

Moreover, it is well-established that a conviction procured upon false evidence is a due process violation. The United States Supreme Court held in *Napue v. People of the State of Illinois*, 360 U.S. 264, 269-270, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959)

> First, it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth

> Amendment, [citations omitted]. . . . The same result obtains when the State al though not soliciting false evidence, allows it to go uncorrected when it appears [citations omittted].
>
> The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness.

In *Brady v. State of Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) this Court held:

> We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Exculpatory evidence of the fraud committed by Potteiger consisting of a forged copy of an email never sent, authenticated by a falsely sworn affidavit was withheld when specifically demanded by the Petitioner in discovery.

B. Procedural background

Petitioner defended her home in the second state court foreclosure proceeding. Because she was unable to obtain reasonable ADAA accommodations following the onset of the temp-orary seizure disorder at the end of 2009[6], she sought ADAA accommodations from the Dane County Circuit Court (the state court). The United States Department of Justice has taken the position that, under the ADAA effective January 1, 2009 accommodations are an administrative and not a judicial matter. Judges are not immune from suit when acting in their administrative capacity[7]

On November 15, 2010, Petitioner filed a civil rights action based on the deprivation of ADAA accommodations in the United States District Court for the Western District of Wisconsin (the District Court) in the case titled *Nora v. Colás, et al.*, Case No. 10-cv-709.

6

6 From at least January, 2010 through early 2011, the Dane County Circuit Court did not have an ADA accommodations specialist, reportedly due, in part, to funding issues.

7

7 *Forrester v. White*, 484 U.S. 219, 229-230, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988)

In October, 2010, after a judgment of foreclosure was entered on March 3, 2010, Petitioner discovered that the assignment of mortgage was signed and notarized in a falsely claimed capacity. On November 30, 2010, Petitioner filed an action in the United States District Court for the Western District of Wisconsin (the District Court) against multiple parties under the Racketeer Influenced and Corrupt Organization Act (RICO) for violations of 18 U.S.C. sec. 1961, et seq. and for violations of the Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. sec. 1692, et seq. as Case No. 10-cv-748 styled *Nora v. Residential Funding Company, LLC, et al.*

On May 14, 2012, while the Federal District Court action was pending, five (5) of the RICO Co-Defendants, including Residential Funding Company, LLC (RFC) and two (2) of the identified mortgage servicers filed for Chapter 11 protection which proceeded under the administratively consolidated lead case titled *In re Residential Capital, LLC (In re RESCAP)* as Case No. 12-12020 in the United States Bankruptcy Court for the Southern District of New York (the Bankruptcy Court).

Petitioner informed the District Court of the Co-Defendants' Chapter 11 filing and Petitioner

proceeded to participate in the Bankruptcy Court case as a creditor and interested party in the Bankruptcy Court on May 18, 2012.

When the District Court dismissed Petitioner's RICO/FDCPA action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine (despite the fact that Petitioner was concurrently seeking relief by Motion to Vacate the Judgment of Foreclosure under Wis. Stat. sec. 806.07(a), the Wisconsin equivalent of Fed. R. Civ. P. 60(b)), Petitioner sought reconsideration of the dismissal order and eventually filed the RICO/ FDCPA action in the Bankruptcy Court, where her Proof of Claim (POC) had been pending as POC No. 2 since May 18, 2012 and joined additional parties and causes of action.

Petitioner was charged with four (4) counts of professional misconduct as the result of filing the ADAA action, filing a true and accurate copy of an agreement with the mortgage servicer and reporting exactly what she was told to the Dane County Circuit Court and for filing the RICO and FDCPA claims in the Federal District Court and in the Bankruptcy Court.

1. Procedural Background for COUNT ONE of the Amended Complaint

Petitioner's ADA action was filed to obtain accommodations under the Americans with Disabilities Act as Amended effective January 1, 2009 (ADAA) and for damages resulting from the denial of the requested accommodations. Petitioner's position was that the Defendant Dane County Circuit Court Clerk failed to provide an administrative process for obtaining ADAA accommodations and that the Dane County Circuit Court judge was not acting in a judicial capacity when he denied Petitioner's request for disability accommodations, but was acting in an administrative capacity, contrary to 42 U.S.C. sec. 1201, et seq. There is substantial evidence in the record (Exhibits 200-250) which show that Petitioner's intent in filing the ADA action, which was ignored by the referee and disregarded by the Wisconsin Supreme Court, was to obtain ADAA accommodations and to bring the Dane County Circuit Court into compliance with the ADAA requirements.

2. Procedural Background for COUNT TWO of the Amended Complaint

Petitioner defended against Count Two of the Amended Complaint on the grounds that the

contents of Petitioner's filing in the Dane County Circuit Court were true and accurate. Forged documents were submitted by the prosecution which were falsely authenticated by the Affidavit of the grievant (who was opposing counsel and a RICO Defendant) to make it appear that Petitioner received an email from the grievant before Petitioner FAXed true and accurate copies of the relevant documents to the Dane County Circuit Court.

The prosecution, OLR, learned that there was substantial evidence (and later that there was conclusive evidence) that the documents were forged and proceeded to support the Petitioner's conviction for making a true statements and producing true and accurate copies of documents, based on false documents created by the grievant. The nature charges with respect to the Petitioner's true statements kept changing up to and including the Wisconsin Supreme Court's March 30, 2018 Opinion and Order in violation of the due process principles recognized in *In the Matter of John Ruffalo, Jr.*, Petitioner, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968). "This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process", *Ruffalo*, 390 U.S. at 552.

3. Procedural Background for COUNTS THREE and FOUR of the Amended Complaint

Petitioner was denied a full hearing in the disciplinary proceedings below. The evidentiary hearing was terminated before Petitioner had finished presenting her defenses, after Petitioner was denied the opportunity to defend herself by obtaining exculpatory evidence in the exclusive possession of the prosecution was was denied the opportunity to call witnesses in her defense. In an effort to prevent Petitioner from producing relevant evidence in her defense that she had a factual basis for her RICO and FDCPA claims, OLR withdrew charge of violation of SCR 20:3.1(a)(2), objected to her attempt to introduce the factual basis for her claims, which were erroneously sustained by the actually-biased referee, who was required to cooperate with OLR.

C. Legal authority

1. A lawyer cannot be disciplined based on evidence known by the state to be false and when the state suppresses exculpatory evidence.

The use of false evidence to obtain a con-

viction (which should also apply in quasi-criminal lawyer disciplinary proceedings) violates the Due Process Clause of the Fourteenth Amendment.

The United States Supreme Court held in *Napue v. People of the State of Illinois*, 360 U.S. 264, 269-270, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959)

> First, it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment, [citations omitted]. . . . The same result obtains when the State although not soliciting false evidence, allows it to go uncorrected when it appears [citations omitted].
>
> The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness.

2. The Due Process Clause of the Fourteenth Amendment to the *United States Constitution* requires a full hearing before an unbiased tribunal in a lawyer disciplinary matter.

It is well-established that due process must be accorded before a property right is taken by state action. See, for a few examples, *Mullane v. Central Hanover Bank Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965), *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

3. Lawyer disciplinary proceedings may not be used to punish a lawyer for exercising the right to Petition the Judiciary for Redress of Grievances under the First Amendment to the *United States Constitution.*

In Bordenkircher v. Haynes, 434 U.S. 357, 363, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978) the United States Supreme Court held, "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort . . . and for an agent of the State to pursue a course of action whose objective is to

penalize a person's reliance on his legal rights is "patently unconstitutional."

If Petitioner's claims were not frivolous as a matter of fact in violation of SCR 20:3.1(a)(2) or law in violation of SCR 20:3.1(a)(1), she cannot be held to have filed her ADAA and RICO/FDCPA claims when she knew or when it was obvious that doing so would "merely serve to harass or maliciously injure another" in violation of SCR 20:3.1(a)(3) and she has been punished for doing what the law plainly allows her to do. The punishment of the Petitioner in the proceedings below is patently unconstitutional.

REASONS FOR GRANTING THE PETITION

A. The questions presented have not been decided by this Court.

This Court has been careful to assure that lawyer disciplinary proceeding do not violate the First and Fourteenth Amendments to the *Constitution of the United States.* See *In re Sawyer*, 360 U.S. 622, 640, 79 S.Ct. 1376, 3 L.Ed.2d 1473 and *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1038, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991). It appears that this is the first case in which the issue clearly arises for review of whether or not a lawyer may be

punished for exercising her own Petition Rights.

B. The questions are clearly presented here and are matters of great importance.

This Court has been reluctant to interfere with attorney disciplinary proceedings and decisions by state authorities as a matter of comity and federalism, deferring to state court disciplinary proceedings except where Due Process violations occur as in Ruffalo, or where First Amendment Rights are implicated. See *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982). In cases involving a lawyer's First Amendment Rights like *Sawyer*, supra, 360 U.S. at 640, *Gentile*, supra, at 501 U.S. at 1038, and *In re Edna Smith Primus*, 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978).

Petitioner's fundamental right to petition the judiciary for redress of grievances in her own private and personal capacity resulted in punishment through a series of Due Process violations below.

C. Petitioner's First and Fourteenth Amendment Petition and Due Process Rights were consistently raised and preserved.

To demonstrate that the federal issues were timely raised and consistently preserved required by Rule 14.1(g)(i), Petitioner has produced a true and correct copy of OLR's December 23, 2013 Amended Complaint as Appendix F (App. 97a), along with her Motions to Dismiss or for a More Definite Statement and Answer to the Amended Complaint and for Judgment on the Pleadings as Appendix G (App. 111a) to demonstrate that she timely raised the federal issues below as required by Rule 14.1(1)(g)(i). As Appendix H (App. 127a), Petitioner has provided her June 6, 2015 Motion for Reconsideration of the Summary Judgment Opinion and Order timely raising the discovery of the issue of fraud and the Due Process violations within 20 days after the Summary Judgment Decision and Order (Appendix D, App. 36a). Petitioner has also produced her Brief on Appeal as Appendix I (App. 247a), the Transcript of the November 7, 2017 Oral Argument as Appendix J (App. 314a) as well as her Motion for Reconsideration of the March 30, 2018 as Appendix K (App. 372a) to demonstrate her strenuous efforts to preserve the federal issues below.

Petitioner also raised and preserved the Due Process issue of proceedings before a biased tribunal by filing two (2) Motions to Disqualify the referee on November 19, 2015 and June 20, 2016 which have not presently been produced as Appendices. The referee's Decisions and Orders of December 28, 2015 and December 1, 2016 in which she refused to recuse herself for conflicts of interest and actual bias respectively have not been provided as Appendices to this Petition. Petitioner represents that she twice moved to have the referee disqualify herself for bias. The first Motion to Disqualify was based on her apparent conflict of self-interest and the second Motion detailed the actual bias by which the referee showed favoritism toward the prosecution to the extent of acting as co-prosecutor and her violations of the Petitioner's rights to be fully and fairly heard in defense against the ever-changing charges against her.

D. Petitioner's Rights under the First and Fourteenth Amendments were violated.

In re Sawyer, 360 U.S. 622, 640, 79 S.Ct. 1376, 3 L.Ed.2d 1473 (1959), this Court held:

> [I]t hardly needs elaboration to make it clear

> that the question of the total insufficiency of the evidence to sustain a serious charge of professional misconduct, against a backdrop of the claimed constitutional rights of an attorney to speak as freely as another citizen, is not one which can be subsumed under the headings of local practice, customs or law.

In *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1038, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991)

> We have held that "in cases raising First Amendment issues . . . an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499, 104 S.Ct. 1949 1958, 80 L.Ed.2d 502 (1984) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 284-286, 84 S.Ct. 710, 728-729, 11 L.Ed.2d 686 (1964)).

In the Matter of John Ruffalo, Jr., Petitioner, 390 U.S. 544, 556, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968), Justice White, joined by Justice Marshall wrote, concurring,

> I would hold that a federal court may not deprive an attorney of the opportunity to practice his profession on the basis of a determination after the fact that conduct is unethical if responsible attorneys would differ in appraising the propriety of that conduct.

Part of Petitioner's defense was that her conduct was not frivolous because responsible attorneys would differ in appraising the merits of her claims. The Sixth Circuit allowed a RICO claim involving a forged Assignment of Mortgage (similar to Petitioner's claim) to survive a Motion to *Dismiss* in *Slorp v. Lerner, Sampson and Rothfuss, et al.* (UNPUBLISHED). The UNPUBLISHED Opinion was presented in and made part of the record of the proceedings below. The Sixth Circuit Court of Appeals also held that the FDCPA applies to real estate foreclosure cases, as Petitioner was con-tending.

As to the *Rooker-Feldman* doctrine, Petitioner contends that the Ninth Circuit Court of Appeals in held that the *Rooker-Feldman* doctrine does not prevent relief from fraudulently procured judgments in *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140-1141 (9th Cir., 2004), acknowledging a

circuit split of authority. This Court has not been called upon to resolve the circuit split, but Petitioner cannot be frivolous if the Ninth Circuit panel takes the same position.

Finally, Justice John Paul Stevens has remarked in *Marshall v. Marshall*, 547 US. 293, 318, 126 S. Ct. 1735, 164 L.Ed.2d 480 (2006) ("Rather than preserving whatever vitality that the 'exception' has retained as a result of the Markham dicta, I would provide the creature with a decent burial in a grave adjacent to the resting place of the *Rooker-Feldman* doctrine. See *Lance v. Dennis*, 546 U. S. 459, 468 (2006) (Stevens, J., dissenting)").

The conduct for which Petitioner is being punished on the basis of false evidence, ignoring evidence, precluding defenses and denial of a full hearing is not malum per se and is only malum prohibitum if there was not legal or factual basis for her ADAA and RICO/FDCPA claims. Her interpretation of the scope of the *Rooker-Feldman* doctrine is the same as the judges of the Ninth Circuit Panel in *Kougasian*, supra and the circuit split has not been resolved.

Based on her experiences over the past decade of seeing the persistence of the *Rooker-Feldman* doctrine in federal district and

bankruptcy courts involving foreclosure **fraud** cases and, based on exhaustive research, appearing to be the only lawyer in the history of jurisprudence to have been disciplined by a licensing authority for "violating" the *Rooker-Feldman* doctrine, she agrees with Justice Stevens in his dissent in *Lance v. Dennis*, 546 U. S. 459, 468 (2006) (" Last Term, in Justice Ginsburg's lucid opinion in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), the Court finally interred the so-called 'Rooker-Feldman doctrine.' And today, the Court quite properly disapproves of the District Court's resuscitation of a doctrine that has produced nothing but mischief for 23 years"). The *Rooker-Feldman* doctrine, when applied to preclude federal court subject matter jurisdiction over judgments procured by fraud is not just mischievous but is actually destructive of the fundamental property rights of the people of this nation.

The Wisconsin Supreme Court adopted findings of fact and conclusions of an actually biased referee entered without a full hearing which was termination before completion after Petitioner was denied the opportunity to fully and fairly defend against the charges.

CONCLUSION

In the proceedings below, Petitioner sought only to have a full and fair hearing before an impartial referee in proceedings in which known false evidence would not be used against her. Rather than address Petitioner's Due Process issues and allow her a full and fair hearing, the Wisconsin Supreme Court refused to address the failure of the proceedings to meet the Wisconsin Supreme Court's own Due Process requirements established in *State v. Hersh*, 73 Wis.2d 390, 243 N.W.2d 178 (Wis., 1976). The Wisconsin Supreme Court held that an attorney's constitutional due process rights involve "only his right to prior notice of charges, his right to prepare to defend these charges and his right to a full hearing on these charges." *State v. Hersh*, 390 Wis.2d at 398, 243 N.W.2d at182.

The Wisconsin Supreme Court adopted clearly erroneous and unsupported findings and conclusions made by an actually biased referee who had a duty to "cooperate" with the prosecution under SCR 21.15(4). Petitioner was prevented from presenting her complete defense. Petitioner was denied the opportunity to defend against the ever-changing charges of misconduct and was found to have violated the Rules of Professional Conduct

based on false evidence, concealment of exculpatory evidence and deprivation of a full and fair opporunity to be heard.

Petitioner asks this Court to grant her Petition for Writ of Certiorari in order to once again reiterate that prior notice of the charges in lawyer disciplinary proceedings is required[8]. This Court is asked to grant the Writ of Certiorari to establish that lawyers have the right to be free from the use of false evidence, the concealment of exculpatory evidence and a full and fair hearing in quasi-criminal lawyer disciplinary proceedings[9] by extending *Napue v. Illinois*, supra, to lawyer disciplinary cases. Finally, this Petition will allow this Court to establish that a state may not use lawyer disciplinary proceedings to punish a lawyer for lawfully exercising her First Amendment Petition Rights under the Due Process Clause of the Fourteenth Amendment in accordance with *Bordenkircher v. Haynes*, supra.

8

8 *In the Matter of John Ruffalo, Jr., Petitioner,* 390 U.S. 544, 556, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968)

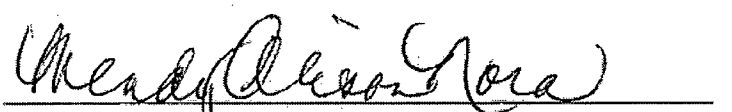
9

8 *Id.*

The Petition for Certiorari should be granted to clarify the First and Fourteenth Amendment Rights of lawyers in disciplinary proceedings.

Dated at Madison, Wisconsin this 11th day of October, 2018.

AN IMAGE OF THE SIGNATURE BELOW
SHALL HAVE THE SAME FORCE AND EFFECT
AS THE ORIGINAL



Wendy Alison Nora, *in propria persona*
ACCESS LEGAL SERVICES
310 Fourth Avenue South, Suite 5010
Minneapolis, Minnesota 55415
VOICE:(612) 333-4144
FAX: (612) 206-3170
Email: accesslegalservices@gmail.com
Minnesota Bar #0165906