

No. 18-6500

UNITED STATES SUPREME COURT

Omnibus Petition for Writ of Mandamus/Prohibition

In re: Sandra Rumanek, *pro se* petitioner

FILED

OCT 25 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

District Court for the District of Delaware case No. 1-12-cv-00759,

and No. 1-17-cv-00123 (related to each other, Third Circuit case No. 14-cv-01472, Supreme Court case No. 15-7000, and Delaware Superior Court Case No. N11C-04-108 (2011))

and

10

Third Circuit Court of Appeal case No. 18-op-1200 and No. 17-3639 (related to D. De. Civ. No. 1-17-cv-00123 and No. 1-12-cv-00759; Third Circuit case No. 14-cv-01472, Supreme Court case No. 15-7000, and Delaware Superior Court Case No. N11C-04-108 (2011))

Questions presented:

1. Did the U.S. District Court for the District of Delaware usurp this Court's judicial power in violation of FRCP Rule 8, Rule 4(a)(b), Rule 15(a)(1)(B), Rule 12(b)(6), Rule 12(f)(1)(2), Rule 60(b)(1)(2)(4)(d)(1)(e) and in its rulings in opposition to dozens of this Court's decisions on similar matters?
2. Did the Court of Appeals for the Third Circuit usurp this Court's judicial power in violation of FRAP Rule 21(1)(b), in its affirmation of the District Court's violations of the Federal Rules of Civil Procedure, and in its rulings in opposition to dozens of this Court's, its own and other Circuit Court decisions on similar matters?
3. Do Rumanek's pleadings and authentic documentary evidence attached to those pleadings prove the RICO conspiracy of a sitting District of Delaware U.S. Magistrate Judge, Delaware state court judges, 11 plaintiff and defense counsel, certain employees of those federal and state courts, Delaware State Police officer(s) and the State of Delaware Attorney General to obstruct justice in the federal and state courts?
(See No. 1-17-cv-00123 Rumanek's Tenth Amended Complaint)
4. Did/does a Delaware state judge's secret alteration of verbatim court proceeding transcripts as provided for, and used as evidenced herein, under Delaware Codes § 4101 and 4101 and 561(d), violate Rumanek's due process civil

rights, and the rights of others who have or may find themselves similarly situated?

Does such transcript tampering call into question the validity of the appellate process in the Delaware State Courts, and for those appealed in the Federal Courts, the validity of the appellate process in the Court of the Appeals for the Third Circuit and this Court? (See Tenth Amended Complaint at pg. 100)

5. Did the EEOC violate Rumanek's rights to equal protection of the Title VII and ADA anti-retaliation statutes by not filing a complaint against her former employer ISM for retaliating against her for being a witness in her colleagues' EEO complaints, and subsequent to that for filing her own complaint?

6. Do the Courts effectively discriminate against *pro se in forma pauperis* parties? Do the Courts effectively discriminate against parties with cognitive disability? Does such discrimination provide equal protection of the laws? Is such discrimination unconstitutional? Does such discrimination constitute cruel and unusual punishment?

7. Do the circuit courts and this Court adequately *sua sponte* oversee the lower courts with regard to due process civil rights and/or equal protection rights violations? Does the lack and/or inadequacy of such allow, and make more likely, the abuse of those rights by the very people sworn to uphold those Constitutional rights and the U.S. Code, as evidenced herein?

Parties

Sandra Rumanek, *pro se* petitioner

Respondents

Independent School Management Inc., (ISM)

Sherry R. Fallon (U.S. Magistrate Judge for the District of Delaware)

David G. Culley

Timothy M. Holly

Mary I. Akhimien

Matthew F. Boyer

Nicholas W. Woodfield

Bernard G. Conaway

R. Scott Oswald

Sandra F. Clark

Joseph J. Rhoades

Louis J. Rizzo, Jr.

Kevin Healy

Charles E. Butler (State of Delaware Superior Court Judge)

Richard R. Cooch (State of Delaware Superior Court Judge)

Delaware State Police Officer Spillan, IBM 770 and various unknown DE State Police

Delaware Attorney General Matthew Denn

Susan Judge

Patrick O'Hare

Annette Furman

Lisa Amatucci

Robert Cruikshank (Intake Supervisor, U.S. District Court for the District of Delaware)

John Cerino (Clerk of the Court, U.S. District Court for the District of Delaware)

State of Delaware

United States of America

Table of Contents/Citations

Appendix A No. 1-17-cv-00123 Sandra Rumanek v. Sherry Fallon et al., Memorandum and Order, DI 139 and 140, issued Sept. 17, 2018

Appendix B No. 18-1200 In re: Sandra Rumanek, Aug. 3, 2018 Opinion and Judgment, and denial of Rehearing issued Aug. 27, 2018

Appendix C No. 17-3639 Sandra Rumanek v. Independent School Management Inc., Aug. 3, 2018 Opinion, Judgment, and denial of Rehearing issued Aug. 28, 2018

Appendix D No. 1-17-cv-00123 Sandra Rumanek v. Sherry Fallon et al., DI 92 Opinion and Order issued Jan. 11, 2018

Appendix E No. 1-12-cv-00759 Sandra Rumanek v. Independent School Management Inc., DI 220 Opinion and Order issued Nov. 21, 2017

FRAP 21(b)(1) pg. 10

FRCP 8 pgs. 13, 20, 23

FRCP 4(a)(b) pg. 20

FRCP 15(a)(1)(B) pg. 20

FRCP 12(b)(6) pg. 20

FRCP 12(f)(1)(2) pg. 22

FRCP 60(b)(4)(6)(d) pgs. 13, 14, 28, 19, 21, 22, 27

28 U.S.C. § 455(b)(1)(2)(4)(d)(1)(e) pg. 12

28 U.S.C. § 1915(e)(1) pg. 30

Civil Rico §1964(c) pertaining to 18 U.S.C. § 1961 *et seq*, sections 1503, 1512, 1513
pgs. 20, 26

42 U.S.C. § 1983 and 42 U.S.C. § 1988 pgs. 21, 26

Allied Chemical Corp. v. Diaflon, Inc. 449 U.S. 33, 34, 101, S. Ct. 188, 190, 66 L.ED2d 193 (1980) pgs. 23-24

Ashcroft v. Iqbal, 556 U.S. 662, 1940 Supreme Court 2009 pg. 13

Bradley v. Fisher, 80 U.S. 335, 353 Supreme Court (1872) pg. 20

Buck v. Davis, 137 S.Ct. 759, 766 Supreme Court (2017) pgs. 18, 21, 22

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546, 547 Supreme Court (1949) pg. 21

Conley v. Gibson, 355 U.S. 41 Supreme Court 1957 pg. 13

Cuyler v. Sullivan, 446 US 335 Supreme Court (1980) pgs. 18, 21

De Beers Consol. Mines, Ltd. v. United States, 325 U.S. 212, 217 Supreme Court (1945) pgs. 10, 22

DeMasi v. Weiss, 669 F.2d 114, 122 (3d Cir. 1982) pg. 23

Dennis v. Sparks, 449 U.S. 24, 27-28, 101 S.Ct. 183, 186-187, 66 L.Ed.2d 185 (1980) pg. 20

ex parte Virginia, 100 U.S. 339, 348, 349 Supreme Court (1880) pg. 20

Gomez v. Toledo, 446 U.S. 635 Supreme Court (1980) pgs. 20, 21

Gonzalez v. Crosby, 545 U.S. 524, 532 Supreme Court (2005) pgs. 18, 21

In re: Murchison, 349 U.S. 133, 136 Supreme Court 1955 pg. 27

In re: Savin, U.S. 267, 275, 276 Supreme Court 1889 pg. 13

Johnson v. Mississippi, 403 U.S. 212, 216, 91 S.Ct. 1778, 1780, 29 L.Ed.2d 423 (1971) (per curiam) pg. 12

La Buy v. Howes Leather Co., 352 U.S. 249, 257 Supreme Court (1957) pg. 24

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 Supreme Court (1988) pg. 12

Los Angeles Brush Corp. v. James, 272 U.S. 701, 706 Supreme Court (1927) pgs. 22, 24

Madden v. Myers, 102 F.3d 74, 78 (Third Cir. 1996) pg. 24

Mireles v. Waco, 502 U.S. 9, 11, 12 Supreme Court (1991) pg. 20

Monroe v. Pape, 365 U.S. 167, 171 Supreme Court (1961) pg. 21

Personnel Administrator of Mass. v. Feeney, 442 U.S. 256, 279, 99 S.Ct. 2282, 60 L.Ed.2d 870 pg. 13

Roche v. Evaporated Milk Assn., 319 U.S. 21, 26 Supreme Court (1943) pg. 21

Satterfield v. Dist. Attorney Phila., 872 R.3d 152, 158, 164 (3d Cir. 2017) pg. 15

Schlup v. Delo, 513 U.S. 298 Supreme Court (1995) pg. 16

Stafford v. Briggs, 444 U.S. 527, 536 Supreme Court 1980 pg. 25

Strickland v. Washington, 466 US 668, 686 Supreme Court (1984) pgs. 16,18,21

Stump v. Sparkman, 435 U.S. 349, 356, 357, 362 Supreme Court (1978)
pg. 20

Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984) pg. 20

Westinghouse Elec. Corp. v. Republic of Philippines, 951 F.2d 1414, 1422 (3d Cir. 1991) pg. 23

Will v. United States, 389 U.S. 90, 100 n.10, 88 S.Ct. 269, 276, n.10, 19 L.Ed.2d 305 (1967) pg. 22

5A C. Wright & A. Miller, *Federal Practice and Procedure* § 1357, at 299 (2d ed. 1990)
pg. 13

Sandra Rumanek petitions this Court for extraordinary writ(s) in the above matters under 28 U.S.C. § 1651.

The Court of Appeals for the Third Circuit has entered a decision in conflict with its previous decisions, the decisions of other courts of appeal, and this Court, and has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the U.S. District Court for the District of Delaware, as to call for exercise of this Court's supervisory power.

The Court of Appeals for the Third Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The Opinions and judgment of the Court of Appeals for the Third Circuit on Rumanek's omnibus petition for extraordinary writ (No. 18-1200) **Appendix B**, and motion for summary reversal (No. 17-3639) **Appendix C**, were issued by the same Panel, Aug. 3, 2018 and rehearing en banc was denied on Aug. 27 and Aug. 28, 2018, respectively. Several days *after* Rumanek began writing this Petition regarding Appendices B through E here, the district court issued a 37-page Memorandum and final order closing 1-17-cv-00123, **Appendix A**. The District Court orders and opinion in these matters, **Appendices A, D and E**, and Third Circuit judgments affirming D and E (**Appendices B and C**), are in opposition to U.S. statutes, this Court's Rules and prior decisions above (which is far from an exhaustive list, more are cited in Rumanek's filings in the above matters including her Tenth Amended

pleading in 1:17-cv-00123). The lower courts' rulings are in opposition to Rumanek's First, Fifth, Sixth, Eighth and Fourteenth Amendment rights and right to equal protection under the Title VII and ADA statutes. Those rulings negatively impact the rights of those similarly situated. (*id* see Tenth Amended pleading).

Consideration by this Court is necessary to secure and maintain the lower courts' conformity to this Court's Rules and decisions, and the U.S. statutes, laws and constitutionally guaranteed rights pertaining to these matters.

The exceptional circumstances of these matters warrant the exercise of this Court's discretionary powers: (1.) The facts and overwhelming documentary evidence presented in Rumanek's pleadings show that sitting U.S. Magistrate Judge Sherry R. Fallon has led a years-long RICO conspiracy to deprive Rumanek's constitutional rights and right to equal protection of the Title VII and ADA laws. A conspiracy that began while Fallon was defense counsel in Rumanek's state case, Rumanek v. Coons and Theodore, NC11C-04-108 (2011). (2) The facts and documentary evidence show that Delaware Attorney General Matthew Denn is aware of and facilitated a State of Delaware judge's illegal and secret alteration of Rumanek's state trial transcripts as part of that RICO conspiracy, in violation of the due process clause of the Fifth Amendment. (3) The facts and documentary evidence show that employees of the U.S. District Court for Delaware have deliberately tampered with Rumanek's filing documents in attempts to hide the Fallon-led RICO conspiracy to obstruct justice in Rumanek's federal and state cases. (*id* see Tenth Amended Complaint)

Rumanek has tried, in vain, multiple times to obtain relief in *any* form from the Delaware District Court and the Third Circuit Court of Appeals. Rumanek cannot obtain adequate relief for the defendants' grievous assaults on her rights from any other court.

1. **Appendix A, pg. 13 para. 1** - The Chief Judge of the Third Circuit usurped this Court's judicial power by effectively vacating Chief Justice John Roberts' June 5, 2017 Order appointing Senior Judge Joseph F. Bataillon to Rumanek's Del. district court case No.'s 1-17-cv-00123 and 1-12-cv-00759, and replacing him with Chief Judge Christopher Conner of the Middle District of Pennsylvania (July 7, 2017 order, see dockets).

See De Beers Consol. Mines, Ltd. v United States, 325 U.S. 212, 217 Supreme Court 1945:

"[W]hen a court has no judicial power to do what it purports to do — when its action is not mere error but usurpation of power — the situation falls precisely within the allowable use of § 262." De Beers, 217

2. The Court of Appeals violated FRAP Rule 21(b)(1): The panel accepted and answered Rumanek's petition for writ of mandamus, without ordering the respondents to answer. *See* docket. *See De Beers*, 217

3. **Appendix B para. 1 footnote 1; and Appendix C pg. 4, 5, 6, 7, footnotes 3, 5:** The Opinions do not consider that the Third Circuit Court's affirmation of

Magistrate Judge Sherry Fallon's judgment was directly attributable to Fallon's, defendants' counsels', Rumanek's counsels', Clerk of the Court John Cerino's, Intake Supervisor Robert Cruikshank's and State Court judges Charles E. Butler's and Richard Cooch's RICO conspiracy to obstruct justice and to effect a fraud on the federal and state courts, including *this* Court. *See 1-17-cv-00123 Tenth Amended Complaint*

The Opinions do not note Rumanek's cognitive disability was the preeminent material fact in Rumanek's two original, concurrent cases in Delaware Federal and State courts. A disability that has been maliciously, deliberately exploited by the defendants in order to defeat justice in the matters. A disability that has been affirmed by the Third Circuit yet was effectively dismissed by the same insofar as providing Rumanek equal protection of the law. *id* *See Tenth Amended Complaint*

Appendix C, footnote 2; pg. 3 para. 2; Appendix E pg. 3,4

A cognitive disability that Fallon knew was caused by her client in Rumanek's State case – during the 11 months Fallon was defense counsel in that matter. During those 11 months, Fallon conspired with Rumanek's counsel, ISM's counsel and the other defense counsel to obtain Rumanek's voluminous filing in her pending, active EEOC complaint against her former employer, ISM. Fallon also had Rumanek's employment records, along with all Rumanek's medical records. Fallon had all the material facts in both of Rumanek's claims. Less than three months later, Fallon was illegally 'presiding' over Rumanek's federal claim. *id*

All counsel in both cases had knowledge of Rumanek's cognitive disability – and knew it was caused by Fallon's client in Rumanek's State case. Just as all counsel in Rumanek's federal and State cases and the two judges in the State case knew Fallon was defense counsel in that matter for 11 months, and knew Fallon was illegally 'presiding' over Rumanek's federal case. Material facts they all conspired to keep from Rumanek and the Courts in order to, thus far, successfully deprive Rumanek's constitutional rights and obstruct justice in the Courts. *id*

See Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 850 Supreme Court 1988 in which this Court affirmed the Fifth Circuit decision concluding that:

"[A] violation of § 455(a) is established when a reasonable person, knowing the relevant facts, would expect that a justice, judge, or magistrate knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances. Moreover, although the judgment in question had become final, the Court of Appeals determined that under the facts of this case, the appropriate remedy was to vacate the court's judgment...We now affirm."

Here, Sherry Fallon violated 28 U.S.C. § 455(b)(1)(2)(4)(d)(1)(e): Fallon, all counsel in both matters and state court judges Richard Cooch and Charles Butler were all "conscious of the circumstances." They, with deliberate intent, conspired to create and exploit the "circumstances" in order to obstruct justice in Rumanek's cases and negatively impact the rights of others similarly situated. *See* Johnson v. Mississippi, 403 U.S. 212, 216, 91 S.Ct. 1778, 1780, 29 L.Ed.2d 423 (1971) (per curiam); In re: Savin, U.S. 267, 275, 276 Supreme Court 1889; *See* Rumanek's pleadings in 1-14-cv-00123 and 1-17-cv-00123 and citations in each to the Court's

prior decisions.

Appendix A, footnote 1: Rumanek's pleadings and attached authentic documentary exhibits are clear that each 'judge', officer of the court, and government official/employee defendant has through her/his own individual actions, violated the Constitution. Their discrimination against Rumanek is indisputably purposeful and is/was undertaken "*because of*,' not merely '*in spite of*,' [the action's] adverse effects upon an identifiable group. Personnel Administrator of Mass. v. Feeney, 442 U.S. 256, 279, 99 S.Ct. 2282, 60 L.Ed.2d 870.' Ashcroft v. Iqbal 556 U.S. 662, 1940 Supreme Court 2009"

"To decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record. *See* 5A C. Wright & A. Miller, *Federal Practice and Procedure* § 1357, at 299 (2d ed. 1990)"

Pension Ben. Guar. Corp. v. White Consol. Ind., 998 F.2d 1192, 1196 Court of Appeals, 3rd Circuit 1993

In excess of 140 authentic documents are attached to Rumanek's complaint and Rule 60(d) motion. The public record is voluminous and unequivocal – Rumanek's constitutional rights and right to equal protection of the laws have been systematically violated over and over again by these defendants. None of the defendants submitted an exhibit with their Rule 12 motions to dismiss, and they disputed none of Rumanek's. (*id*)

See FRCP Rule 8 and Conley v. Gibson, 355 U.S. 41 Supreme Court 1957

4. Fallon and ISM counsel Timothy Holly conspired to and did file deliberately false documents with the Third Circuit: ISM's response to and Fallon's Opinion on

Rumanek's Omnibus Motion for JNOV filed Feb. 24, 2014. Rumanek subsequently petitioned this Court for a writ of certiorari, No. 15-7000, which was denied on Jan. 11, 2016. (see docket)

Appendix C pg. 4: The Third Circuit panel overlooks the fact that Rumanek has now filed **two** Motions for Relief in the matter of *Rumanek v. ISM*, No. 1-12-00759.

See Tenth Amended complaint (and Sixth Amended Complaint) at pg. 7:

"Rumanek filed a Motion for JNOV *pro se* in U.S. District Court on Feb. 24, 2014, see D.I. 155.

"March 4, 2014 Rumanek filed a Revised Motion for JNOV, see D.I. 162.

"Fallon denied Rumanek's Revised Motion the following day, see D.I. 164.

"ISM counsel Holly, Akhimien and Boyer opposed the Motion, see D.I. 167, filed March 10, 2014.

"March 18, 2014 Rumanek filed a Reply, D.I. 172, noting that ISM had not addressed in any manner Rumanek's assertion of her protected activity on Nov. 24, 2010, and ISM's written admission and trial admission that it fired her for that protected activity immediately following Rumanek's protected activity. See D.I. 172 appended here as Exhibit 23; *See* Ex. 21 writ pgs. 19-26; *See* DI 197, DI 200, DI 202, and DI 205, Revised Amended Rule 60(b)(4)(6)(d)(3) Motion pgs. 16-23.

"Magistrate Judge Fallon denied the appeal and her Opinion, D.I. 175 did not address Rumanek's assertion of retaliatory termination for her protected activity on Nov. 24, 2010, or the testimony produced at trial that proved Rumanek's claims against ISM that Fallon refused to put before the jury in any manner. In those Court documents Fallon, Holly, Akhimien and Boyer concealed the pertinent portion of Rumanek's letter to the EEOC on Nov. 24, 2010, EEOC FOIA00110-111 (see DI 197-11 Ex. Jj), notifying the agency of Rumanek's retaliatory termination for engaging in protected opposition. Fallon's Opinion is virtually identical to ISM's Opposition.

See No.'s 75 and 147 in this Complaint and referenced exhibits...

"Rumanek appealed to the Third Circuit Court of Appeals. That Court issued a 15-page Panel Opinion on Rumanek's *pro se* appeal of Fallon's summary judgment ADA and Title VII rulings and Fallon's instructions to the jury in *Rumanek v. ISM* that were in opposition to the ADA and Title VII statutes and settled law." (emphasis added)

Rumanek had simultaneously filed a Third Circuit appeal of Fallon's Opinion DI 175 (*id*) and judgment on her Motion for JNOV. Her Omnibus Brief stated the above, that Fallon did not address her assertion of retaliatory termination for protected activity and Rumanek provided the testimony at trial that proved the same: However the Third Circuit has never conducted a de novo review and issued an Opinion or Judgment on Rumanek's Omnibus Motion for JNOV.

Rumanek's Omnibus Appeal to the Third Circuit **No. 14-1472** attached her three docketed appeals, and at pg. 2 states:

"Trial took place January 13-16, 2014 and ended with a verdict against Rumanek. The jury was out for 2.5 hours. Judgment was issued on January 27, 2014. Rumanek filed a *pro se* Motion for JNOV and/or for a new Trial on February 24, 2014 [D.I.155].

Rumanek filed a revised Motion on March 4, 2014 [D.I.162]. It was denied by the court on March 5, 2014 due to "substantive changes" which the Court said effectively extended the deadline for filing. [D.I.164].

ISM filed an Opposition to Rumanek's Motion on March 10, 2104 [D.I.167]. Rumanek filed an Amended Motion to D.I. 155 with no changes other than citations on March 14, 2014 [D.I.170] and it was not denied.

Rumanek filed a Reply to ISM's Opposition on March 18, 2014 [D.I.172]. Rumanek's Revision listed citations and explanatory language regarding those citations.

Rumanek's Reply to ISM's Opposition to the Motion responded to its assertions, with the exception of one issue regarding Rumanek's former counsel, The Court declined to respond to Rumanek's Reply with regard to Rumanek's engagement in protected opposition on Nov. 24, 2010, stating that any additional arguments raised in a reply brief in support of a motion under rule 59 will not be considered. The argument was raised in Rumanek's original Motion; Rumanek did not provide citations in that Motion. (emphasis added)

5. **Appendix C, footnote 3, 4:** Rumanek never had assistance of counsel in either matter. (*id*) See Satterfield v. Dist. Attorney Phila., 872 R.3d 152, 158, 164 (3d Cir. 2017)

No attorney actually representing his plaintiff client would (1) ‘ignore’ the defendant’s written confession produced at discovery (2) conspire with defense counsel to hide that confession and the other preeminent material fact of the case (3) ‘agree’ to a ‘judge’ whose mission he knows is to obstruct justice in his client’s claims in state and federal courts (4) with that illicit ‘judge’ and defense counsel suppress the same throughout the matter, including ignoring the defendant’s verbal confession at trial, and, finally, conspiring with the same to prevent his client’s successful appeal. Rumanek had no “due process” – in either matter – as required under the U.S. Constitution; there was a Fallon-led Rico conspiracy to deny it. *id*

“[A] fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding.”
Strickland v. Washington, 466 US 668, 686 (Supreme Court 1984).

There was no “*impartial tribunal*” no “*adversarial testing*.” The material facts, the “*issues*” were deliberately and conspiratorially hidden from the courts – and the jury – in federal and state court. *id* Tenth Amended Complaint

“*No juror, acting reasonably*” would have found for ISM – or awarded Rumanek \$1 in her state case – had Fallon, all Rumanek’s counsel, all defense counsel, Cooch, Butler, and State Police Officer Spillan not conspired to defeat justice, beginning prior to Fallon’s ever becoming ‘judge’ in *Rumanek v. ISM*, and continuing through discovery, summary judgment, trial and appeal in both matters. *id*

See Schlup v. Delo, 513 U.S. 298 (Supreme Court 1995)

6. **Appendix C pg. 7, footnote 5.** Due to her cognitive disability Rumanek only began to unravel the Fallon-led conspiracy to deprive her rights and effect fraud on the courts after receiving this Court's denial of her petition for writ of certiorari.

From 1-17-cv-00123, Sixth Amended Complaint at pgs. 3-5, with referenced filings in 1-12-cv-00759:

"This complaint is not time-barred: It is a complaint of fraud on the court, and the malicious tortious acts of the defendants to deny Rumanek's rights under the U.S. Constitution and Civil Rights Act and their conspiracy in defeat of justice in her state and federal cases: See Herring v. US, 424 F. 3d, 384 Third Circuit Court of Appeals – 2005

"Rumanek did not become aware of Magistrate Judge Sherry Fallon's fraud on the court until Jan. 27, 2016 (see DI 197-1 and DI 200-1 pg. 1-2; No. 201 in this Complaint and the referenced exhibits) and did not become aware of the other defendants' fraud on the court in conspiracy to deprive Rumanek's constitutional and civil rights and defeat justice in *Rumanek v. ISM* and *Rumanek v. Coons and Theodore* until after Jan. 27, 2016 – piece by piece, individual by individual.

"Rumanek did not discover her own counsels' fraud on the court in conspiracy to deprive her civil rights and obstruct justice until Nov. 20, 2016. See No. 202 in this Complaint; See DI 197-1 Affidavit at No. 45, DI 197 at Summary; DI 199 Motion to Amend, DI 200 at Summary and Relief Requested, DI 200-1 Amended Affidavit at No. 45 and DI 200-3 Ex. Ee transcript of April 3, 2013 oral argument, DI 204 Motion for leave to Revise, and DI 205 at Relief Requested...

"Due to Rumanek's cognitive disability, her discoveries/realizations have been and are on-going. This Complaint, like Rumanek's affidavits DI 197-1 and DI 200-1 from pg. 3 forward, is written in a timeline format, or at least prior to amendments in response to the Defendants' Motions to Dismiss, it was. **Rumanek's Affidavit DI 197-1 and DI 200-1 state how she obtained documents from her case files at No.'s 6, 8, 9 and the Delaware Superior Court Prothonotary at No. 10, and what Rumanek found after she found on Jan. 27, 2016 that Sherry Fallon had been defense counsel for Theresa Theodore: That the Complaint and Affidavit necessarily state what happened and when it happened and who was involved should not be misconstrued as otherwise.**" (emphasis added)

In Stickland v. Washington this Court determined that:

“The benchmark for judging any claim of ineffectiveness [of counsel] must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.”
Stickland v. Washington, 466 U.S. 668, 686 Supreme Court (1984)

See also Buck v. Davis, 137 S.Ct. 759, 766 Supreme Court (2017), in which this Court found denial of Buck’s Rule 60(b)(6) motion for ineffective counsel was an abuse of discretion; *See* Cuyler v. Sullivan, 446 US 335 Supreme Court (1980); *See* Gonzalez v. Crosby, 545 US 524, 532 Supreme Court (2005)

The facts and authentic documents in Rumanek’s pleadings clearly show the RICO conspiracy of all of Rumanek’s counsel - Nicholas Woodfield, R. Scott Oswald, Bernard Conaway, Joseph Rhoades and Kevin Healy - with Sherry Fallon, all defendants’ counsel, Cooch and Butler. *id*

A Fallon-led RICO conspiracy that has continued and expanded with Rumanek’s filing of her Rule 60 Motion of Fraud on the Court in D. Del. Civ. No. 1-12-cv-00759 and her filing of D. Del. Civ. No. 1-17-cv-00123: See Tenth Amended Complaint at pgs. 89-101 and referenced document exhibits

A cancerous conspiracy that continues to unfold in original documentary evidence, piece by piece, to Rumanek, who was amending her complaint for the Eleventh time when Appendix A issued. In addition to stating violation of her Sixth Amendment rights, Rumanek has included the following, in blue:

“178. Rumanek asked Fallon to appoint other counsel for her for the appeal process. Fallon said no; she could require Woodfield and Oswald to continue to represent Rumanek. Rumanek reminded Fallon that she had contacted chambers about her counsel refusal to provide her with Fallon’s pre-trial rulings, (*id*), and Rumanek had no faith in them. Rumanek said no, she did not want them to represent her.

Fallon told Holly if he could find case law to support his position that Rumanek not be allowed to terminate her counsel and represent herself, she would give him a few days to get it to her. Fallon refused Rumanek’s request for other counsel in order to obstruct justice in the appellate courts and protect her RICO conspiracy with all defendant counsel, Cerino, Cruikshank, Butler, Cooch and the State of Delaware. Fallon violated Rumanek’s Sixth Amendment right to effective assistance of counsel.”

And Rumanek added the following as to Clerk of the Court John Cerino, at No. 184,

also in blue:

“July 1, 2014 Rumanek sent a letter, with attachments, to Clerk of the District Court John Cerino (**DI 180**), in which Rumanek informed the Court that Fallon’s Opinion DI 175 on Rumanek’s Motion for JNOV had incorrectly characterized her counsels’ *“false communication to me prior to and during trial”* [footnote 4 in Fallon’s Opinion] *“regarding the admissibility of important evidence in my case”* as a *“disagreement”* between us about *“trial strategy.”* As I stated, I was completely unaware that the Court had ruled that evidence could be presented until weeks after the trial.” Rumanek also informed the Court in that letter:

“Beginning Jan. 31, 2014, I made repeated, fruitless requests of my attorney to obtain the Judge’s rulings on the issues still in dispute on Jan. 10, 2010. [see attached]. This particular matter was certainly not unknown to the Court, as I called Judge Fallon’s chambers of Feb. 4, 2014 about counsel’s refusal to provide me the full information on her Jan. 10 rulings. This very matter is why I terminated my counsel, which was the subject of a Motion to Withdraw hearing held on March 4, 2013. The testimony in that hearing was sealed by request of my former counsel.”

“Clerk of the Court John Cerino conspired with Sherry Fallon, ISM’s counsel and Rumanek’s counsel to commit fraud on the court and obstruct justice pre-trial, at trial, and on appeal. Cerino violated Rumanek’s Sixth Amendment right to effective assistance of counsel and her Fifth Amendment right to due process of law.

“Rumanek’s letter, with attachments, DI 180 is also docketed as DI 198 Exhibit Nn in Rumanek’s Rule 60(d) Motion in *Rumanek v. ISM*.

As Judge Conner states in **Appendix A, pg 35**, Cerino has yet to be served – the dismissal is in violation of FRCP 4(a)(b), FRCP 8, FRCP 15(a)(1)(B), FRCP 12(b)(6) and this Court's rulings in Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984); Dennis v. Sparks, 449 U.S. 24, 27-28, 101 S.Ct. 183, 186-187, 66 L.Ed.2d 185 (1980).

7. **Appendices A, B, C, D and E generally:** As Rumanek quotes this Court in her 1-17-cv-00123 Sixth, Seventh, Eighth, Ninth and Tenth Amended complaints at pg. 8:

“Whether an act done by a judge ‘is judicial or not is determined by its character, and not by the character of the agent.’ See ex parte Virginia, 100 U.S. 339, 348, 349 Supreme Court – 1880” ...

“[T]he necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him.’ See Stump v. Sparkman, 435 U.S. 349, 356, 357 Supreme Court – 1978”

And in her Amended Petition for Extraordinary Writ, 18-1200:

“In Mireles. V Waco the Supreme Court reiterated previous findings on judicial immunity:

*“[O]ur cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i. e., actions not taken in the judge's judicial capacity. Forrester v. White, 484 U. S., at 227-229; Stump v. Sparkman, 435 U. S., at 360. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Id.*, at 356-357; Bradley v. Fisher, 13 Wall., at 351.”*

Mireles. V Waco, 502 U.S. 9, 11, 12 – Supreme Court 1991

See Civil Rico §1964(c) pertaining to 18 U.S.C. § 1961 et seq, sections 1503, 1512, 1513

Judge Conner makes clear error of law in dismissing the claims against Fallon. The Third Circuit makes clear error of law in upholding that dismissal. Judge Conner makes clear error of law in dismissing Rumanek's claims against all the defendants.

As this Court reiterated in Gomez v. Toledo, 446 U.S. 635 Supreme Court 1980:

"By the plain terms of § 1983, two—and only two—allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law. See Monroe v. Pape, 365 U. S. 167, 171 (1961)" Gomez at 640

See also Buck v. Davis, 137 US 759 Supreme Court (2017); Cuyler v. Sullivan, 446 US 335 Supreme Court (1980); Strickland v. Washington, 466 US 668 Supreme Court (1984); Gonzalez v. Crosby, 545 US 524, 532 Supreme Court (2005); Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546, 547 Supreme Court (1949)

In Roche v. Evaporated Milk Assn., this Court determined that a writ has traditionally been used "*to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.*" Roche v. Evaporated Milk Assn., 319 U.S. 21, 26 Supreme Court (1943)

The District Court orders, unsupported by case law; denying Rumanek's Rule 60 motion of fraud on the court in 1-12-cv-00759, dismissing all claims against Fallon in 1-17-cv-00123 and now dismissing Rumanek's complaint against all defendants

in that matter have been followed by further orders in contravention of laws promulgated by this Court.

8. **Appendix B, pg. 2, 3, footnote 2:** The Third Circuit does not note that in addition to Sherry Fallon, there are 23 defendants in 1-17-00123. As Rumanek wrote in her April 30, 2018 Amended Petition for Extraordinary Writ, accepted by the Third Circuit Court, the district court has violated this Court's Federal Rules of Civil Procedure by denying her motions to amend and her Seventh, Eighth, Ninth and Tenth amended complaints *in response to* the later-added defendant's Rule 12 motions – even striking two of them from the docket in violation of FRCP 12(f)(1)(2). *See* Rumanek's Amended Petition 18-1200, at pgs. 1-4.

These actions are judicial "*usurpation of power*" and justify this Court's invocation of mandamus "*as a means of policing compliance with the procedural rules.*" *See* De Beers Consol. Mines, Ltd. v. United States, 325 U.S. 212, 217 (1945) and Will v. United States, 389 U.S. 90, 100 n.10, 88 S.Ct. 269, 276, n.10, 19 L.Ed.2d 305 (1967); *See also* Los Angeles Brush Corp. v. James, 272 U.S. 701, 706 (1927)

9. **Appendix C, pg. 6, 7:** The District Court makes clear error of law in denying Rumanek's Rule 60(b)(4)(6)(d) motion. The Third Circuit panel makes clear error of law in affirming the decision. (*id*) *See* Buck v. Davis, 137 S.Ct. 759, 766 Supreme Court (2017)

10. Appendix B, footnote 3 notes the District Court's orders in 1-17-cv-00123 would be reviewable "*after final judgment and a properly filed notice of appeal.*" The District Court had already violated the Federal Rules numerous times, and continues to do so in its Sept. 17 memorandum, **Appendix A (id).** e.g. *see* FRCP Rule 8. The Third Circuit has rubber-stamped it, violated FRAP, and abrogated its responsibility. (*id*)

Rumanek is not trying to circumvent the appeal process: She has persisted through the process for four-plus years. *id, See* Rumanek's Tenth Amended Complaint, Amended Petition for Mandamus to the Third Circuit, and dockets.

In DeMasi v. Weiss, 669 F.2d 114, 122 (3d Cir. 1982), the petitioner sought mandamus and argued the trial court's failure to protect defense counsel's work product from discovery as mandated by Federal Rule of Civil Procedure 26(b)(3) constituted clear error of law. The Third Circuit accepted the petition and found for the petitioner.

In Westinghouse Elec. Corp. v. Republic of Philippines, 951 F.2d 1414, 1422 (3d Cir. 1991) the Third Circuit determined the "*prerequisite for mandamus jurisdiction emanates from the final judgment rule.*" The Court ruled that the prerequisite was satisfied with respect to a discovery order Westinghouse asserted was in violation of FRCP Rule (26)(b)(3). The Third Circuit granted mandamus because Westinghouse "*ha[s] no other adequate means to attain the relief [it]*

desires,' Sporck v. Peil, 759 F.2d 312, 314 (3d Cir. 1985) (quoting Allied Chemical Corp. v. Diaflon, Inc. 449 U.S. 33, 34, 101, S. Ct. 188, 190, 66 L.ED2d 193 (1980)"

In La Buy v. Howes Leather Co., 352 U.S. 249, 257 (S.Ct. 1957), this Court reiterated that mandamus should issue when its Rules are violated:

"As this Court pointed out in Los Angeles Brush Corp. v. James, 272 U.S. 701, 706 (1927): '... [W]here the subject concerns the enforcement of the ... [r]ules which by law it is the duty of this Court to formulate and put in force,' mandamus should issue to prevent such action thereunder so palpably improper as to place it beyond the scope of the rule invoked. As was said there at page 707, were the Court '... to find that the rules have been practically nullified by a district judge .. . it would not hesitate to restrain [him]. . . .'"

The rules and the laws that apply to these matters have been "*practically nullified*" by the district court and the Third Circuit. Rumanek has no other means to obtain the relief she desires. (*id*)

11. Appendix B pg. 3-4: In Madden v. Myers, 102 F.3d 74, 78 (Third Cir. 1996) the Third Circuit held that Mandamus is appropriate where a judge's impartiality might reasonably be questioned and "*in these instances serves not only to correct a harm to a litigant, but to preserve judicial integrity and public confidence. Review after final judgment might cure the harm to the litigant, but it would not cure the additional separate harm to the public confidence.*" Madden, 78

And in Stafford v. Briggs this Court determined:

"Looking first to 'the whole statute,' two things are apparent: (1) § 1 of the Mandamus and Venue Act of 1962 is explicitly limited to 'action[s] in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.' 28 U. S. C. § 1361. (2) The 'civil

action' referred to in § 2 of the Act is one 'in which a defendant *is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority. . .*' 28 U. S. C. § 1391 (e) (emphasis added). The highlighted language, cast by Congress in the present tense, can reasonably be read as describing the character of the defendant at the time of the suit. So read, it limits a covered 'civil action' to one against a federal official or agency who is at that time acting—or failing to act—in an official or apparently official way. Such 'civil actions' are those referred to in § 1 of the Act, *i. e.*, 'action[s] in the nature of mandamus.'"

Stafford v. Briggs, 444 U.S. 527, 536 Supreme Court 1980

Without the intervention of this Court, any hope of *restoring* public confidence in the judiciary with regard to these matters will be lost. And the grievous harm done to Rumanek will continue to expand to others similarly situated.

To Appendix A, pg. 36: As Rumanek states in her Tenth Amended Complaint DI-

135-1 at pg. 121, with an addition in her 11th amended complaint, in blue:

"Defeating justice and denying Rumanek equal protection under the law was the defendant judges' and attorneys' goal – one they conspired together to very effectively achieve. Their over-arching goal was to undermine federally protected Title VII and ADA rights and the rights of those disabled by injury. The extreme animus of Fallon, Butler and the defendant defense attorneys to those rights and the animus and callous disregard of Rumanek's attorneys to those rights is clear. The fraud on the court by these officers of the court diminished the right to equal protection under the law of those similarly situated to Rumanek.

"The Delaware Attorney General's callous disregard of and animus to Rumanek's civil rights, and certainly by extension those of others who claim personal injury and/or civil rights violations, is equally clear.

"The interests of liability insurance companies is not to compensate those who are personally injured fairly, or even at all.

"However the lawyers hired by those companies and by plaintiffs, and, of course, judges have above all else a duty to the Court, a duty to the law, a duty to the U.S. Constitution – not to their own discriminatory biases. And certainly not to the profit of those companies or their own.

"The goal of the Title VII and ADA statutes is to eradicate willful, malicious discrimination – by making it financially painful for companies to willfully, maliciously violate the rights of those protected under the statutes. Providing people who have been personally injured through the deliberate or careless wrongful acts of others the opportunity to be made 'whole' is why we have a civil justice system. Cases brought to trial and fairly adjudicated in the Court by the officers of the Court serve to uphold the laws. That is not what happened in *Rumanek v. ISM* and *Rumanek v. Coons and Theodore* (*id*).

"Instead Rumanek's disability was maliciously exploited by these officers of the Court in their conspiracy to defeat justice, in direct opposition to the U.S. Constitution and the Civil Rights Act, 42 U.S. § 12101 (b)(1)(2)(3)(4). Rumanek has filed and amended this complaint, and responded to the defendants' Rule 12 motions to dismiss to the best of her ability, understanding and awareness at each point. She hopes it is now sufficient.

"The defendants' violations of Rumanek's First, Fifth, Sixth, Eighth and Fourteenth amendment rights and her right to equal protection under the Title VII and ADA laws with the intent and/or result of obstruction of justice; directly and unjustly produced the loss of her Title VII and ADA retaliation case against her former employer ISM, directly and unjustly produced her monetary "award" of \$1 in *Rumanek v. Coons and Theodore*, directly and unjustly produced her loss in the appellate courts – and in the case of defendants Fallon, Butler, Holly, Culley, Cruikshank, Akhimien, Boyer, Cerino, Rhoades, Denn, Judge, O'Hare, Furman and Amatucci, and some or all of the other defendants, have attempted to do so in *this* matter.

See 18 U.S.C. § 1961 et seq, sections 1503, 1512, 1513, §1983

"The defendants' unconstitutional acts against Rumanek for attempting to uphold her rights under laws and constitution of the United States, and their exploitations of and attempted exploitations of her cognitive disability in violation of her right to equal protection of the laws and her right to be free of cruel and unusual punishment have caused Rumanek extreme financial hardship, humiliation, embarrassment, and mental and physical suffering."

Appendix C footnote 3, Appendix B pg. 3, para. 3: Rumanek asserts these are "*the most extraordinary of circumstances.*"

As this Court ruled In re Murchison:

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of

law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that '*every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.*' Tumey v. Ohio, 273 U. S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way '*justice must satisfy the appearance of justice.*' Offutt v. United States, 348 U. S. 11, 14."

In re Murchison, 349 U.S. 133, 136 Supreme Court 1955

There has been no "justice" in these matters thus far – only a falsely, criminally-crafted "appearance" of it by Sherry Fallon in conspiracy with the other named defendants.

The lower court decisions are usurpation of judicial power and in clear error of law.

Rumanek respectively requests this honorable Court grant her petition for extraordinary writ(s) and review *de novo* her Dist. Del. complaint No. 17-00123, her Rule 60(d) briefs and motions in No. 12-00759, the documentary evidence, and take any and all appropriate action to bring these matters to a just and swift conclusion – in the interests of Rumanek, the citizens of Delaware, the federal and state courts, and our U.S. Constitution and laws.

RELIEF REQUESTED

1.) In the matter of Del. No. 1:12-cv-00759, Rumanek requests this Court reverse the jury verdict, reverse the judgments of the District Court and the Third Circuit Court of Appeals and award Rumanek compensatory damages against ISM (back and front pay) in the amount of \$3,200,000.00 and punitive damages in the amount of \$1,000,000.00 for ISM's *admitted* deliberate, malicious violations of her rights under the Title VII and ADA anti-retaliation statutes.

2.) In the matter of Del. No. 1:17-cv-00123, Rumanek requests the Court reinstate Sherry Fallon as a defendant, accept Rumanek's Tenth Amended Complaint and grant Rumanek the relief she requests at pgs. 127-128:

"Sandra Rumanek respectfully requests that the Court enter judgment in her favor and, in no particular order, grant the following relief:

- a. Remove Fallon from the bench. Fire Cruikshank. Fire Cerino.
- b. Cause impeachment proceedings to be initiated against Cooch and Butler.
- c. Initiate or cause to be initiated disbarment proceedings against Culley, Holly, Akhimien, Boyer, Woodfield, Oswald, Conaway, Rhoades, Clark, Healy and Rizzo.
- d. Award Rumanek damages in the amount of \$32,000,000.00
- e. Cause an investigation of the Delaware State and Federal Courts to be undertaken with regard to deprivation of plaintiffs' and/or defendants' civil rights and right to equal protection of the laws by the conspiracy of lawyers and judges and court personnel in; falsification of proceedings records, withholding of material facts and evidence, court personnel's illegal tampering with *pro se* plaintiff/defendant filings, fraud on the Court, and false police/witness testimony, etc. as evidenced herein: And take any and all action necessary to remediate the Courts to the interest of justice *for all*.
- f. Require the Delaware Courts to audio-video record all proceedings before the Court and to provide those recordings, at no additional cost, to plaintiffs and defendants in conjunction with Court Stenographers' **verbatim** digitally time-stamped transcripts of those proceedings. Require the Courts to provide those recordings and transcripts at no cost to *pro se in forma pauperis* parties claiming civil rights violations.

g. And/or any other relief or action this Court and/or the U.S. Department of Justice deem just and proper."

3.) In the matter of Delaware Superior Court Case No. N11C-04-108 (2011), Rumanek requests the Court take any action it deems just.

4.) Rumanek requests the Court find the EEOC violated Rumanek's rights to equal protection of the Title VII and ADA anti-retaliation statutes by not filing a complaint against ISM for the same: And issue any appropriate order(s) that serves to remediate the EEOC's policies in regard to retaliation against EEO witnesses in order to strengthen those laws and protect those who are similarly situated.

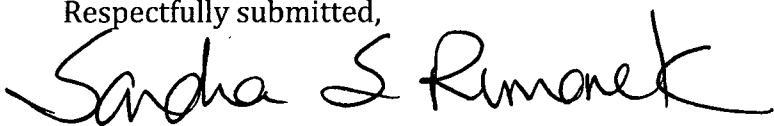
5.) Rumanek requests the Court find that the courts effectively discriminate against those with cognitive disability and that such discrimination does not provide equal protection of the laws, and is therefore unconstitutional. Remediate the Courts to provide equal protection of the laws.

6.) Rumanek requests the Court find the Delaware Codes § 4101 and 4101 and 561(d) cited in Rumanek's Tenth Amended Complaint at pg. 100 are in violation of the due process civil rights of Rumanek, and others, under the U.S. Constitution and take all appropriate action.

7.) Throughout this process Rumanek has moved the District Court and the Third Circuit Court of Appeals, multiple times, to appoint an attorney to represent her

under 28 U.S.C. § 1915(e)(1) – those requests have at each point been either denied or ignored. If this petition falls short insofar as well-representing the interests of Rumanek and by extension those who are or may find themselves similarly situated, Rumanek requests the Court appoint her counsel so that it can be corrected. Rumanek also requests the Court appoint counsel to represent her until these matters are concluded.

Respectfully submitted,



/s/Sandra S. Rumanek

Sandra S. Rumanek
16 B Oakhurst Avenue Greenville SC 29609
sandrarumanek@gmail.com
302-494-5992

October 24, 2018