No. 19-1205

In the Supreme Court of the United States

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ANTHONY J. LUCERO,

Petitioner,

vs.

PAUL GORDON and PAUL GORDON, LLC,

Respondents.

♦

On Petition for Writ of Certiorari

To the 10th District Federal Appellate Court

♦

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Pursuant to Rule 14(1)(a)

1. Does the *Rooker-Feldman* doctrine permit this United States Supreme Court to review state trial court documents and judgments in this *case within a case* lawsuit which alleges patently egregious violations of Plaintiff's 14th Amendment to the Constitution due process rights by the state trial court, and then rule in favor of Plaintiff's claims for actual, compensatory, and continuing damages arising from Respondents' legal representation failures, criminal deceptions to the courts, and illegal *sham affidavit*?

2. Did Respondents' initial private-party, nongovernmental actions become open to federal constitutional scrutiny when the state trial court overtly encouraged and even ratified Respondents' actions and illegal affidavit to consequently make Respondents *state actors* – with subsequent court rulings against Plaintiff intertwined with Respondents firmly established as *state actors*?

3. Did the state and federal courts err when they should have taken judicial notice, in this legal malpractice case, of Plaintiff's timely, approved malpractice *Certificate of Review* as well as Plaintiff's 19+ evidence submissions, including evidence proving Respondents' sole piece of never substantiated "evidence" - an *affidavit* that was introduced 11 months after evidence deadline - was a patently *sham affidavit*?

4. Did the state and federal courts err in their continued misunderstanding that - besides a trial-court-filed, *in camera* court approved, *Certificate of Review* - Plaintiff did not need an outside *expert witness*, as referenced in both Colorado Rule 702 and its twin, Federal Rule of Evidence 702, wherein both rules require, in part, that the ***expert*** **be qualified** to "*help the trier of fact of fact to understand the*

evidence" - except that in this particular, extremely simple legal malpractice case the *trier of fact* is a sitting judge, an attorney at law, already an expert legal malpractice witness according to case law, who had only to weigh some very simple evidence documents from Plaintiff and one solitary Respondent evidence proffered of a patently *sham affidavit* to conclude that Respondent attorney's legal malpractice was plainly wrong, deceptive, grounds for disbarment and injurious to Plaintiff on so many levels?

LIST OF ALL PARTIES

Rule 14 (1)(b)(i):

The case caption contains the list of all parties.

Petitioner is Anthony J. Lucero. Respondents are Paul Gordon and Paul Gordon LLC.

CORPORATE DISCLOSURE STATEMENT

Rule 14(b)(ii):

In accordance with United States Supreme Court Rule 29.6, Petitioners make the following disclosures:

Anthony J. Lucero has no parent corporation and no publicly held companies would have any of his stock.

List of all Proceedings in state and federal trial and appellate courts that are directly *related* to the case in this Court, pursuant to Rule 14(b)(iii)

The following single case was filed by Attorney Paul Gordon in my behalf:

Anthony Lucero v. James R. Koncilja & Koncilja & Koncilja, P.C., 11CV839, Pueblo, Colorado; Decided 6 August 2012

The following cases were filed by Anthony Lucero, *pro se*:

Anthony Lucero v. Paul Gordon and Paul Gordon, LLC, 13cv248, Pueblo County District Court; Judgment entered June 3, 2015.

Anthony Lucero v. Paul Gordon and Paul Gordon, LLC, 13cv248, Pueblo County District Court; Judgment entered January 30, 2016. (Relief Sought *Pursuant to 60(B)(2)(3)(5).*

Anthony Lucero v. Paul Gordon and Paul Gordon, LLC, 16CA0397, Colorado Court of Appeals; Decided 16 February 2017.

Anthony Lucero v. Paul Gordon and Paul Gordon, LLC, 2017SC304, Colorado Supreme Court; Decided September 11, 2017

Anthony Lucero v. Paul Gordon and Paul Gordon, LLC, 1:17-cv-03142, U.S. District Court for Tenth Circuit; Decided 17 December 2018.

Anthony Lucero v. Paul Gordon, U.S. Bankruptcy Court, Filed April 9, 2019. Court never responded.

Anthony Lucero v. Paul Gordon and Paul Gordon, LLC, Case No. 19-1016, U.S. Court of Appeals. Decided 10th Circuit Federal Appellate Court decided October 1, 2019.

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COLORADO

C.R.C.P. § 13-20-602(1)(a)

OPINIONS BELOW

The October 1, 2019 opinion of the United States Court of Appeals for the 10th Circuit that gives rise to this Petition is reprinted in the Appendix at page 1a.

United States District Court for The District of Colorado decided: 17th day of December 2018 in the Appendix at page

Pueblo County District Court decided on January 20, 2016 reprinted in the Appendix at page

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 1983.

Federal review of state court judgments can be obtained only in the United States Supreme Court. 28 U.S.C. § 1257.

U.S. Court of Appeals, 10th Circuit Federal Appellate Court issued its decision on October 1, 2019. This Petition was filed within **90 days** of that decision. Then, upon request, the Clerk of the U.S. Supreme Court allowed Petitioner an additional **60** days from that date to make any necessary corrections and additions. This Petition has been timely filed within those **60** days. The $300 filing fee has already been paid.

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CONSTITUTIONAL PROVISION

Due process clauses within the 5th and the 14th Amendments to The Constitution of the United States.

Article VI, Section II of the United States Constitution, known as the "Supremacy Clause" as it provides that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land."

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STATEMENT OF THE CASE

This is a personal injury case which historically includes two legal malpractice cases, one of which, *Petitioner Anthony J. Lucero v. Respondent Paul Gordon*, is here before you. The other legal malpractice case: *Petitioner Anthony J. Lucero v. Respondent James R. Koncilja; Koncilja & Koncilja, P.C.* is within this Court as No. 19-918. Both separate legal cases arose from Plaintiff's attempts to receive due process justice and compensation for his near-death work-related *injuries in fact* – some of which persist to this day. The abysmal failures of the first attorney, (hereinafter referenced as "Koncilja") to prosecute a civil case against the parties that caused my injuries and then the subsequent failures of Respondent attorney Paul Gordon to prosecute a malpractice case against Koncilja necessitated Plaintiff's efforts to proceed *pro se* in all subsequent legal actions

against attorney Koncilja and Respondent Gordon for the past decade. Blatant state district court errors and bias have also played a significant role in deprivation of justice for Petitioner.

Within my initial work-injury and then legal malpractice cases, neither attorney did any depositions, no interrogatories, no discovery; neither attorney met directly with me about my legal options or advised me of my case status. They were both late in filing or ignored necessary details like court rules and filing deadlines; both violated state and federal codes of attorney ethics, and both lied to the Colorado Supreme Court Attorney Regulatory Council about my documented complaints against them. And, while both attorneys in this civil case committed *intrinsic fraud, fraud in factum*, and *collateral fraud* – this case at hand, which could be considered as the *case-within-a-case* is focused solely on the civil actions and crimes of attorney Paul Gordon of Denver, Colorado. The previously referenced case against attorney James R. Koncilja is within this Court.

How did we all come to this point? Never in my 22 years of military service in the U.S. Marines and Colorado National Guard have I ever experienced such trauma, such costly, irresponsible behavior as I have from attorneys after my work injuries.

The following is my *Statement of the Case*:

Plaintiff's near-death injuries occurred at the Wyndham Hotel & Resort in Colorado Springs, CO, on November 18, 2006, where Plaintiff Lucero worked as an

"Engineer I". Construction workers from Vertical Excellence, Inc. had failed to block off and post warnings in front of an open elevator they were using to move materials. For many months Wyndham had failed to get any required work permits or have any safety protocols or caution signs during that construction remodeling period.

While working at the Wyndham Hotel that fateful day of November 18, 2006, Petitioner fell 12 - 18 feet into an unguarded, open elevator shaft and landed on the myriad steel apparatus atop the elevator below. As a result of that fall at an approximate rate of 34 m.p.h., Plaintiff Lucero suffered many life-threatening internal and external injuries, was placed in an induced coma for three days during initial treatments at Penrose/St. Mary Hospital in Colorado, Springs. All the corporations that were culpable for his injuries are quite large, profitable, and insured. Neither attorney James Koncilja nor Attorney Paul Gordon did, or had done, any investigation of the accident scene, nor did they interview or depose any of those blameworthy.

Lucero hired Respondent attorney Gordon to investigate and prosecute a legal malpractice case against James Koncilja because Koncilja procrastinated until one day shy of two years to file an inadequate complaint in the wrong county, wrong defendants, did absolutely no investigation of the accident, took no pictures, no interrogatories or depositions of known witnesses, no communication with Plaintiff and failed to file or respond to case defendant motions and court orders. Consequently, Lucero's case was dismissed by a Pueblo District Court for failure of Koncilja to prosecute.

Petitioner called Denver attorney Paul Gordon regarding this legal case. They spoke for about 15 minutes that Saturday, December 3, 2011, and Gordon agreed to take Lucero's case. That was the ***only time*** that Lucero was able to speak with Gordon over the phone, during which time and thereafter Gordon never told Lucero about a *Certificate of Review* nor any other matter, including money, contingency or his cost to prosecute.

On Monday, December 5, 2011, Petitioner Lucero drove to Denver and delivered all his Koncilja legal documents to Respondent's paralegal, Tammy Hanks, about 9:30 a.m. Respondent was not at his office at that time. Just four days later Respondent filed my initial *Complaint* against James Koncilja and Koncilja & Koncilja, P.C. on Wednesday, December 7, 2011 - without sending Petitioner Lucero a copy of that filing.

Respondent and Petitioner's very next communication was another email from Gordon on February 9, 2012, containing an 8-page *Contingent Fee Agreement.* (Exhibit 2 in my Pueblo District Court case against Respondent). Neither that *Agreement* nor any other document or email ever sent by Respondent mentioned a *Certificate of Review.* The time period between Gordon's *Complaint* filing and service of process on 12/07/11 to February 9, 2012, was already **69** days. C.R.C.P. § 13-20-602(1)(a) says, "...the plaintiff's or complainant's attorney shall file with the court a *certificate of review* for each acupuncturist or licensed professional named as a party, as specified in subsection (3) of this section, **within 60 days** after the service of the complaint ...." (bold added). Therefore, the 60-day deadline for filing such *certificate* was already nine days too late to

file. But I, a layman, was not told nor did I know anything about a *certificate of review,* court rules, caselaw, statues or attorney rules of professional conduct - at the time.

Counsel for Koncilja filed a *Motion for Order to Dismiss for Failure to file a Certificate of Review.* My attorney, Respondent Gordon, filed a *Request for Order to Compel Certificate.* Respondent argued and wrote to the court that he believed he didn't have to file a *Certificate* unless ordered to do so. On August 6, 2012, Judge Swartz's *order* dismissed Plaintiff Lucero's case against Koncilja because Respondent Gordon had failed "...to file a certificate of review ..."

Lucero received a copy of that ruling, and this was <u>the very first time</u> Petitioner had ever heard or read about a *certificate of review.* Respondent followed the same weak argument of needing to be ordered to file a *certificate of review* into the Colorado Court of Appeals. (It is pertinent to know that in Respondent's email of 09/08/12 [submitted within my Dist. Ct. as Exhibit 9] he said he'd "... go forward [to the appellate court] if [I] would pay the filing fee of $470", even though I later discovered the actual fee was only $223 – submitted as additional evidence that Respondent does frequently deceive. Since Respondent refused to continue, Petitioner's desire to receive his day in court for Koncilja's legal malpractice inspired Petitioner to continue Gordon's filings by filing himself, *pro se,* in the Colorado Supreme Court, though Petitioner Lucero had never before filed any legal action.

Petitioner then picked up all of his own legal documents that Respondent Gordon possessed, including Konciljas' documents that he'd dropped off. Later, On December 11, 2013. Petitioner Lucero filed and served Respondent Gordon with the initial case at hand. On February 7, 2014, Petitioner filed a *Certificate of Review* in court and, the Pueblo District Court completed and approved an *in-camera review* of that *Certificate of Review.* That *certificate* was written by a prominent legal expert with thirty years' experience as an attorney.

Respondent and Petitioner had an *attorney-client relationship* (though Respondent never gave advice and only communicated by email – refusing to meet or talk on the phone). Respondent also owed Petitioner a legal *Duty of Care,* about which he failed, and Respondent should have known that a *Certificate of Review* is almost always necessary in a legal malpractice lawsuit.

Respondent never once presented any defensive evidence to the court in this entire case at hand of *Lucero v. Gordon*: no emails, no letters, no meetings notes nor phone call records. For months Respondent presented no defensive evidence, failed to respond to my discovery requests, but then, months later Respondent filed a *Motion for Summary Judgment* accompanied by an affidavit. However, pursuant to C.R.C.P. 56 (h) – it was an affidavit submitted in bad faith; it was a *sham affidavit* which contained at least three blatant lies. Respondent's "affidavit," was submitted in Pueblo District Court Case 13cv248, 10 months too late[1]

[1] ***Dinosaur Park Investments, LLC v. Tello,* 192 P.3d 513 (Colo. App. 2008); *Bob Blake Builders, Inc. v. Gramling,* 18 P.3d 859 (Colo. App. 2008)**

after Petitioner served Respondents with a Complaint. Gordon's law partner and defense attorney Stephen McWhirter, told Lucero, "Now we have an issue." Petitioner responded with a motion to dismiss Respondent's motion and sham affidavit (*USA Leasing Inc. v. Montelongo*, 25 P.3d 1277 (Colo. App. 2001), (*Ginter v. Palmer & Co.*, Colo. App. 585 P.2d 583 (1978), and Pueblo District Judge Reyes ruled against Respondent's motion and affidavit, saying Respondent's affidavit could not be used, but the court erred by not ruling that Gordon's affidavit, filed 10 months was too late, should have been barred altogether: *Even if his affidavit wasn't perjured the Colorado Supreme Court* ruled that an "affirmative defense" cannot be presented for the first time in a motion for summary judgment. . Relevant *State Actor* status discussed later

Petitioner had submitted to the trial court 23 emails between Petitioner and Respondent, including document information about the corporations that had been culpable for Lucero's life threatening injuries in fact; evidence of culpability; medical and video documents about Lucero's extensive injuries from the Wyndham Hotel accident and many financial documents regarding attorney James Koncilja. That is, Petitioner showed the state trial court that attorney James Koncilja could have won the initial personal injury case against Wyndham Hotel and their contractors, and that that after Koncilja's neglect and failure to prosecute, Respondent himself could have won a legal malpractice case against Koncilja, who had sufficient funds to pay a judgment. Petitioner proved to Respondent that Konciljas, while not having legal malpractice insurance, were - according to all property and financial records –

owners of buildings and numerous properties within Pueblo worth millions of dollars. They self-insured for their legal malpractice. Had Konciljas, subsequent to Petitioner's lawsuit, sold or placed assets in trust, any judgment against Konciljas would have been retroactive to the earlier time.

Emboldened by the trial court not dismissing his case for filing a defensive affidavit too late, Respondent filed another *Motion for Summary Judgment*, with the exact same lies within his *sham affidavit* submission, shortly after Judge Kim Karn replaced retiring Judge Victor Reyes. Again, Respondent submitted absolutely no evidence to support his *sham affidavit*, i.e., no copies of letters, emails, notes from phone calls nor meetings.

Petitioner then filed a seven-page *Motion in Limine to Preclude Defendants' Affidavit*, and suggested that if Respondent recanted his affidavit lies, he wouldn't be prosecuted for perjury, pursuant to *C.R.S. §18-8-508 (2014)*. Judge Karn ruled that Respondent's affidavit couldn't be submitted again *without a court order*. At the same time, the court agreed with Respondent that Petitioner, who had already submitted a *Certificate of Review* that passed an *in-camera* review was also required to disclose an expert witness. Petitioner tried very hard, but only found one attorney who wanted $22,000 to be an expert witness. Therefore, since Respondent had no evidence at all, save for a *sham affidavit*, and Petitioner had many evidence documents that were easy to understand, Petitioner Lucero found many cases that showed that Judge Karn, as an experienced attorney, could be the expert as there were not difficult issues beyond law and evidence, including no

technical medical or business issues. Case law frequently states that where the trial court is sitting as a finder of fact in a legal malpractice case, the sitting judge is capable of drawing its own "inferences from the record" and "need not admit expert testimony on a matter that it is capable of resolving without such testimony." *See* C.R.E. 702 *Testimony by Experts.* (*Millenson v. Dept. of Highways, 41 Colo. App.* 460, 590 P.2d 979 (1978).

However, Petitioner persisted, filed a third *Motion for Summary Judgment*, with his same *sham affidavit*. The trial court violated its own previous ruling and allowed Respondent's motion and "affidavit," with no other supporting documentation to justify her ruling.

Because retiring Judge Reyes gave advice to Respondents in open court about what Colorado state rule they could use and at what time to file, Respondents were being encouraged, moved, nudged toward being *State Actors.* Similarly, subsequent state trial court Judge Karn further nudged Petitioners toward the role of *State Actors* by not ruling in favor of Petitioner's numerous motions to disallow Respondents' *sham affidavit* - that was filed 10 months after the deadline - and disobeying her own order to not allow Respondent's affidavit without a prior motion, and not ruling for Petitioner's motion that she, herself can be the expert witness since it involves no concepts outside of Colorado court rules and law, and there is substantial caselaw to support that ruling, e.g., "**State action is ... present** if a private party is a willful participant in joint action with the State or its agents." *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1453 (10th Cir. 1995). (Bold added).

Subsequent filings in state and federal courts continued to err on the side of Respondents, always on procedural, never on substantive grounds. The state court *wrongfully entered its judgment!*

Even 10th District Federal District Court Judge Martinez was confused, only giving a cursory look at the facts, following previous errors by writing several times that Petitioner failed to file a *Certificate of Review*, when that was patently not true, as Petitioner not only filed before the 60 day time limit, a *Certificate of Review* from an renowned attorney that was approved by Pueblo District Court Judge Crockenberg on March 17, 2014, writing, "The Court has reviewed the document submitted by the Plaintiff and finds that it does comply with C.R.S. 13-30-602."

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REASONS FOR GRANTING THE PETITION

I. *Rooker-Feldman* doctrine permits this United States Supreme Court to review state trial court documents and judgments in this *case within a case* lawsuit which alleges patently egregious violations of Plaintiff's 14th Amendment to the Constitution. due process rights by the state trial court, and then return this case to the lower court to rule in favor of Plaintiff's claims for actual, compensatory, and continuing damages arising from Respondents' legal representation failures, criminal deceptions to the courts, and illegal *sham affidavit*?

It's appropriate for this United States Supreme Court to decide this case at hand, with its multiple parts, pursuant to *Booker v. Fidelity Trust Co*, 263 U.S. 413, 414 (1923), *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). See also, *Kiowa Indian Tribe of Okla. v. Hoover*, 150 F.3d 1163, 1169 (1998). As a rule, federal review of state court judgments can be obtained only in the United States Supreme Court. 28 U.S.C. § 1257; *Mayotte v. U.S. Bank National Ass'n*, 880 F.3d 1169, 1173 (10th Cir. 2018); and *Kiowa Indian Tribe* supra at 1169.

There is a *Rooker-Feldman* issue if the federal suit alleged that a defect in the state proceedings invalidated the state judgment, i.e., repeated violations of *due process* or *equal protection* rights by the state court. Cases governed by *Rooker-Feldman* involved complaints "seeking review and rejection of a state court judgment." See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp. [SABIC]*, 544 U.S. 280, 125 S.Ct. 1517 (2005). The state court wrongfully entered its judgments that Petitioner herein protests, by the lower courts' ignoring evidence documents, court filings, and Petitioner's due process rights.

This *Petition for Writ of Certiorari* is a *Rooker-Feldman* issue as Petitioner is alleging that defects in the state proceedings invalidated the state judgment. *Plain Error* violations of my 5th and 14th Amendment due process rights give rise to these issues that Petitioner prays that this Court recognizes.

II. Did Respondents' initial private-party, nongovernmental actions become open to federal

constitutional scrutiny when the state trial court overtly encouraged and even ratified Respondents' actions and illegal affidavit to consequently make Respondents *state actors* – with subsequent court rulings against Plaintiff intertwined with Respondents firmly established as *state actors*?

As frequently referenced in caselaw, to distinguish between the four categories of *State Actors*, one must ask two questions: Whether the actor is governmental or nongovernmental and whether the actor is acting in a public or private capacity. [*Santa Clara Law Review*, Vol. 51. No. 3, Article 4. *Making Sense of State Action*] In this instance, for reasons that follow, Respondents can be placed in category (3) nongovernmental entities, e.g., in this instance a non-governmental attorney (or attorneys) acting in a public capacity. The outcomes of the Supreme Court case law demonstrate that the actors in the first two categories are state (public) actors, meaning that their actions are state actions subject to constitutional scrutiny. See e.g. *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 400 (1955); *Terry*, 345 U.S. 462-65.

Analysis of Supreme Court decisions points to a spectrum of relationships between the state and a private party/action. On this spectrum, the state might mandate a private action, encourage it, permit it, discourage it, or prohibit it. Here, where the private actions of Respondents were undertaken by the state, that would be an unconstitutional deprivation of the rights of Petitioner. In this instant case, on that spectrum, the state (court) has not only permitted actions by Respondents that are harmful to Petitioner but has also *authorized* and even *encouraged* state violations by Respondent. That cooperation and encouragement between the state and private party Respondent Gordon has created a symbiotic relationship

that has deprived Petitioner of his due process rights to a fair hearing and trial.

How can the above analysis make that conclusion? One example: retiring Judge Victor Reyes, with Petitioner listening, suggested to Respondent and his attorney, Stephen McWhirter, after denying their motion for summary judgment with the sham affidavit, that they could file a motion for directed verdict during a trial. That was wrong and did directly align Respondent with the state action, making them *State Actors.*

Later, new Judge Kim Karn also denied Respondent Gordon's second motion for summary judgment that was submitted without any evidence at all. However, she also wrote in her opinion that their affidavit could not be submitted a third time without a court order. By not ruling that Respondent could be held in contempt of court for filing a sham affidavit, Judge Karn allowed, even *encouraged* Respondent to submit a third time. This aligned Respondent with the state courts and allowed them to be *State Actors.* In fact, with their third copy of a motion for summary judgment – without any changes from the first, Judge Karn accepted Respondent's third exact motion with the same sham affidavit - *without a required court order*– still with no other evidence besides that which was *created out of thin air* sham affidavit, making Respondent definitely a state actor.

III. Whether the state and federal courts erred when they should have taken *judicial notice*, in this legal malpractice case, of Plaintiff's timely, approved legal malpractice *Certificate of Review* as well as Plaintiff's 19+ evidence submissions, including evidence proving Respondents' sole piece of never substantiated "evidence" - an *affidavit* that was introduced 10 months after evidence deadline, which was a patently *sham affidavit*?

Petitioner believes that much of the above question has already been addressed, so the question may seem redundant. Perhaps, what underlays that question are the broken rules of professional conduct relating to attorneys - that I have read over the years - where in this instance two or more attorneys and judges have neglected those rules and responsibilities to their clients, the public, and to those who depend upon judges to follow their own judicial rules, the United States Constitution and its amendments, case law and general rules of honesty and respect for higher powers.

It bears reintroducing the state case law that precludes the presentation of an "affirmative defense" for the first time in a summary judgment. So Respondent made two errors – presentation of his only evidence for the first time 10 months late and also in a motion for summary judgment. Gordon had already waived that defense, but the Colorado courts allowed those illegal actions. If you were accused of some crime or legal error, would you not put forward that defense as soon as possible? And not ten months later? Would you not also offer evidence that proved you actually had an affirmative defense? That your affidavit was credible? In this instance, Respondent went through the entire Colorado judicial system and two federal courts with one false, perjured affidavit and no supporting evidence!

IV. Whether the state and federal courts erred in their continued misunderstanding that - besides a trial-court-filed, *in camera* court approved, *Certificate of Review* - Plaintiff did not need an outside *expert witness*, as referenced in both Colorado Rule 702 and its twin, Federal Rule of Evidence 702, wherein both rules require, in part, that the *expert* be qualified to "*help the trier of fact of fact to understand the evidence*" - except that in this particular, extremely

simple legal malpractice case the *trier of fact* is a sitting judge, an attorney at law, already an expert legal malpractice witness according to case law, who had only to weigh some very simple evidence documents from Plaintiff and one solitary Respondent evidence proffered of a patently *sham affidavit* to conclude that Respondent attorney's legal malpractice was plainly wrong, deceptive, grounds for disbarment and injurious to Plaintiff on so many levels?

My reading has shown that most states do not require expert witnesses in a legal malpractice case. They allow it if a party wants to introduce an expert, but generally experts are saved for cases that are outside the knowledge of judges. For example, the *Kansas Law* Review, vol. 40, p. 328 B. specified that The Federal Rules of Evidence 702 specify that expert witness testimony is not needed unless the issue to which the testimony would be directed was "not within the common knowledge of the average layman. (*Bridger v. Union Ry.*, 355 F.2d 382 (6th Cir. 1966). Additionally, Rule 702 allows expert testimony if it will aid the trier of fact understand the issues at bar. (*Opinion and Expert Evidence Under the Federal Rules*, Herman E. Garner, 36 La. L. Rev. 123, at 128). (Emphasis added.)

"Here, however, the trial court served as the trier of fact. Because the proffered testimony concerned matters of legal practice, the trial court was in a particularly appropriate position to assess whether such testimony would be helpful in its deliberations. We, therefore, conclude that the trial court's exclusion of the testimony did not constitute an abuse of discretion. See *Tri-State Generation &*

Transmission Co. v. City of Thornton, 647 P.2d 670 (Colo. 1982) (fn. 12).

As already stated, in Respondents': *Defendants' Renewed Motion for Summary Judgment* and also in the *Affidavit of Paul Gordon* there are consistent lies that are all proven by the large amount of evidence that Petitioner submitted. All my evidence, emails, legal complaints, Colorado Supreme Court Regulatory Council, and others point to the fact that Respondent consistently lied. He made up things that were never true. He had no evidence of any sort, not *any* evidence. His single "evidence", his repeatedly submitted *sham affidavit* could not be corroborated in any respect and sentences #'s 3, 4, and 7 were outright lies. He could corroborate nothing. He didn't even bother to make up times that he might have called me or written.

The reiterated point is that there is a time bar for submission of evidence. He missed that by 10 months and even though I objected repeatedly that it was far too late to introduce his *first* evidence, but the trial court allowed it. Why? Did they not want an attorney to go to prison for fraud before the court? Possibly. Nevertheless, Respondent Gordon's actions were a total dereliction of duty that was so palpable as to be apparent without the presentation of expert witness testimony on deviation – from accepted professional standards. *Schmidt v. Hinshaw, Culbertson, Hoelmann, Hoban & Fuller*, 75 Ill. App. 3d. 516, 31 Ill Dec. 357, 394 N.E. 2d 559 (1979).

CONCLUSION and PRAYER FOR RELIEF

Plain error: The Colorado state and appellate courts have committed plain error, i.e., errors that are so obvious, substantial, and prejudicial that failure of the United States Supreme Court to correct it would infringe Petitioner's due-process rights and damage the integrity of the judicial process.

I, Petitioner, do pray that this U.S. Supreme Court recognize the travesty, the miscarriages of justice that has occurred since my near-death injuries of November 18, 2006, and rule to overturn the lower court decisions, reprimand the judges that have allowed these errors to continue for so many years.

I can go no further. I have put years of my life into these legal matters, and my wife thinks my efforts are futile. Nevertheless, I have tried, and as a Marine, I was taught to always get up when you fall. Keep trying. I still have serious disabilities from my near-death internal and external injuries. I pray for relief.

Respectfully submitted,

Anthony J. Lucero

March 13, 2020

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