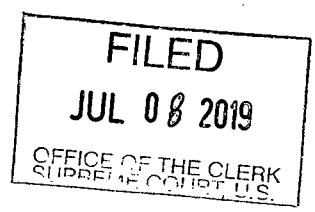
19-5277 ORIGINAL

No.

IN THE

SUPREME COURT OF THE UNITED STATES



IN RE: ROBERT M. KOWALSKI;

Petitioner

v.

EXECUTIVE COMMITTEE FOR THE
NORTHERN DISTRICT OF ILLINOIS,

Respondent

On Petition For A Writ of Certiorari to
the United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Order of the Executive Committee for the Northern District of Illinois declaring that an attorney is "loud and disruptive" and ordering him in custody of the U.S. Marshal for each and every court appearance based upon factual findings made after *ex parte* report(s) made by the U.S. Trustee is a ministerial administrative action evading judicial review or whether it is a criminal contempt proceeding without constitutional safeguards?

Whether the U.S. Trustee for a tactical advantage in the bankruptcy proceedings can seek criminal contempt against an attorney debtor by an ex parte appearance before the Executive Committee?

LIST OF PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the names of all parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner, Robert M. Kowalski, Esq. ("Attorney Kowalski") respectfully prays that a writ of certiorari issue to review the judgment below. It is especially chilling Attorney Kowalski was divested of his constitutional rights to a trial before being held in criminal contempt. The U.S. Trustee appeared ex parte before the Executive Committee for a tactical advantage in Attorney Kowalski's bankruptcy proceedings. It is incumbent upon this Court to take action to remedy the prejudicial severe abuse of the judiciary by the *star chamber* Executive Committee Order and condemn the U.S. Trustee's actions.

OPINIONS BELOW

The Executive Committee Order of October 30, 2018 of the United States District Court Northern District of Illinois Eastern Division appears at Appendix A. The Executive Committee Order of November 27, 2018 of the United States District Court Northern District of Illinois Eastern Division appears at Appendix B. The Executive Committee Order of December 7, 2018 of the United States District Court Northern District of Illinois Eastern Division appears at Appendix C. The Order of April 23, 2019 of the United States Court of Appeals for the Seventh Circuit appears at Appendix D. The Order of June 17, 2019 of the United States Court of Appeals for the Seventh Circuit appears at Appendix E.

JURISDICTION

The date on which the United States Court of Appeals decided the case was April 23, 2019. A timely petition for rehearing was denied by the United States Court of Appeals on June 17, 2019, and a copy of the order denying rehearing appears at Appendix E. This Court has jurisdiction to review under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Federal Provisions

The First Amendment provides: "Congress shall make no law ...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

The Fifth Amendment prohibits: "nor shall any person be ... deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment provides: "No State shall ... deprive any person of life, liberty, or property, without due process of law ...."

STATEMENT OF THE CASE

The Ex Parte Executive Committee Order

On October 30, 2018, Attorney Kowalski received an *ex parte* Order emailed to him from the Clerk of the Court for the Northern District of Illinois Eastern Division entered by the Executive Committee in this matter ("Executive Committee Order").

The Executive Committee *ex parte* Order provides, in pertinent part:

> "The Executive Committee ***has become aware*** that Robert M. Kowalski has been ***loud and disrespectful*** of the court and court personnel. Further, he has become ***verbally combative*** with judges and *often refuses to follow court procedures or* ***respect the authority of the judge.***
>
> Mr. Kowalski's ***inappropriate conduct*** has raised concerns among the Court, the Clerk's Office, and the U.S. Marshals Service.
>
> The Executive Committee finds that there is sufficient cause for concern regarding Mr. Kowalski's conduct if he is not escorted during his time in the Dirksen U.S. Courthouse in Chicago, Illinois or the Roszkowski U.S. Courthouse in Rockford, Illinois." (Emphasis added).

The Executive Committee Order then sentences Attorney Kowalski:

- To "maintain judicial security" to sign in upon arrival at the courthouse (and surrender his identification card upon sign-in);

- To be accompanied at all times by a representative of the U.S. Marshals Service;
- To be subject to further sanctions; and
- To the creation of a miscellaneous file and a miscellaneous docket.

Attorney Kowalski appeared before Judge Cox on July 25, 2018, August 1, 2018, August 7, 2018, August 13, 2018, August 14, 2018, September 6, 2018, September 19, 2018, September 20, 2018, September 26, 2018, October 2, 2018, October 4, 2018, October 9, 2018, and October 17, 2018, with official court reporters present each time. Transcripts are available for each appearance. No "inappropriate conduct" or "refusal to follow court procedures" was noted by the Court.

Attorney Kowalski appeared before Judge Wood on September 12, 2018 and October 24, 2018 again with official court reporters present each time and transcripts being available. No "inappropriate conduct" or "refusal to follow court procedures" was noted by the Court.

Prior to that Attorney Kowalski appeared on November 8, 2017 and argued before the Seventh Circuit Court of Appeals in *Kowalski v. Boliker*, 17-1952, 893 F.3d 987 (2018). Again, an official transcript is available and no "inappropriate conduct" or "refusal to follow court procedures" was noted.

Courts have long recognized that argument is just that – argument which may at times be strident, critical and harsh. *Van Duyn v. Smith*, 527 N.E.2d 1005, 173 Ill.App.3d 523 (1988) *citing Sloan v. Hatton*, 66 Ill.App.3d 41, 42, 22 Ill.Dec. 783, 784, 383 N.E.2d 259, 260 (1978):

> "Free speech is not restricted to compliments. Were this not so there could be no verbal give and take, no meaningful exchange of ideas, and we would be forced to confine ourselves to plenitudes and compliments. But members of a free society must be able to express candid opinions and make personal judgments. And those opinions and judgments may be harsh or critical--even abusive--yet still not subject the speaker or writer to civil liability."

Attorney Kowalski is Khashoggi in the Saudi Arabian Embassy

Attorney Kowalski, pursuant to Federal Court Order by Judge Cox entered on October 5, 2018, appeared as a witness for his 2004 examination in his bankruptcy case at the offices of FDIC-R's counsel on October 22 and 23, 2018, an official court reporter was present.

On Friday, October 19, 2018, prior to the upcoming Rule 2004 examination, FDIC-R counsel and Chapter 11 trustee discussed and developed a concerted scheme for Attorney Kowalski's examination.

On Monday, October 22, 2018, Attorney Kowalski appeared without counsel for his Rule 2004 examination. Seeing Attorney Kowalski solo, FDIC-R and Chapter 11 Trustee plotted a trap for Attorney Kowalski for October 23, 2018.

On October 23, 2018, during the court-ordered examination, Attorney Kowalski was assaulted and intimidated by Chapter 11 trustee, Gus Paloian. The Chapter 11 Trustee, bolstered by the FDIC-R in their planned subterfuge, asserted Attorney Kowalski had assaulted the Chapter 11 trustee!

Genesis of October 30, 2018 Executive Committee Order

On October 30, 2018, FDIC-R counsel and Chapter 11 Trustee, without Attorney Kowalski or his counsel present, appeared and testified before Judge Cox. FDIC-R counsel testified re-writing the assault upon Attorney Kowalski, into an assault on the Chapter 11 Trustee. The Chapter 11 Trustee also testified that Attorney Kowalski was "the most menacing, dangerous person." On October 30, 2018, Judge Cox issued a rule to show cause against Attorney Kowalski. Judge Cox did not jail Attorney Kowalski which Messrs. Rein and Paloian sought.

U.S. Trustee Appears before the Executive Committee

Not entirely satisfied with Judge Cox's order, FDIC-R counsel and Chapter 11 Trustee reported the "assault" to the U.S. Trustee, on an ex parte basis. Thereafter, prompted by the FDIC-R and Chapter 11 Trustee, the U.S. Trustee appeared on an *ex parte* basis without notice to Attorney Kowalski before the Executive Committee on October 30, 2018. The U.S. Attorney's ex parte report to the Executive Committee prompting the October 30, 2018 Executive Committee Order.

On October 31, 2018, Attorney Kowalski requested information

relative to the Executive Committee Order noting he has been a licensed attorney since 1990 and had comported himself accordingly. He believed the Executive Committee Order had an underlying improper purpose. How was Attorney Kowalski expected to practice law while accompanied by a U.S. Marshal in the courthouse? Attorney Kowalski received a cryptic response on November 9, 2018 stating, "the Committee will take no further action in this matter."

FDIC-R Admits Ganging up on Attorney Kowalski

On November 1, 2018, FDIC-R counsel and Chapter 11 Truste, again testified before Judge Cox. Experiencing a Freudian slip, Mr. Paloian admitted that he intentionally stood up obstructing Attorney Kowalski's path thereby provoking a confrontation! On November 1, 2018, FDIC-R counsel in gleefully admitted to Attorney Kowalski's counsel that they had "ganged up" on Attorney Kowalski and "set him up".

Judge Cox Punishes Attorney Kowalski with Civil Contempt by Incarceration?

Judge Cox, having been provided with the October 30, 2018 Executive Committee Order, finding Attorney Kowalski essentially dangerous needing a police escort and implying she is unable to maintain courtroom decorum, was an order which directed her to hold Attorney Kowalski in contempt to punish him, and accordingly jailed him with the purge being the production of unknown documents. How exactly Attorney Kowalski was to "produce documents" while in custody? This does not exactly provide him with the keys to his own cell.

Attorney Kowalski taken into custody on November 1, 2018 was then held in the Metropolitan Correctional Center in the "Special Housing Unit" which is essentially "the hole" or "solitary confinement" (and denied access to his counsel) from November 1, 2018 through November 8th. His solitary confinement was based upon the Executive Committee *ex parte* Order finding Attorney Kowalski dangerous.

Clearly, the Executive Committee was manipulated by the U.S. Trustee in league with the FDIC-R and conflicted Chapter 11

Trustee[1]for an improper purpose namely to bully and coerce Attorney Kowalski and get a leg up tactical advantage in the pending litigation. The U.S. Trustee abjectly fails at its purpose which is to protect the integrity of the bankruptcy system by acting in active concert and league with a fraudulent creditor. The U.S. Trustee exceeded its role to oversee case administration and enforce bankruptcy laws. Manipulating the Executive Committee with *ex parte* false claims is even more egregious when a government agent is using the power of the Executive Committee to perpetrate a fraud by a creditor upon the court.

FDIC-R Presents Fraudulent Claims

The FDIC-R has presented fraudulent falsified claims in Attorney Kowalski's bankruptcy. Seeking a scapegoat to blame for its lax sketchy auditing practices, the FDIC-R has presented fraudulent claims totaling $27,185,728.90. Attorney Kowalski is no crack pot conspiracy theorist.

Although seeming outlandish, the truth is stranger than fiction. Attorney Kowalski's allegations of FDIC-R fraud were verified by none other than the United States government itself in an official report. The FDIC was appointed receiver of the failed institution Washington Federal Bank for Savings ("WaFed") by the Office of the Comptroller of the Currency ("OCC").

US Treasury Verifies FDIC-Rs Fraudulent Claims

The United States Department of the Treasury Office of the Inspector General ("OIG") Audit Report, OIG-19-009, authored by Jeffrey Dye, the Director of Financial Regulation and Oversight filed on November 6, 2018 details the Material Loss Review of WaFed ("Audit Report"). The OIG Audit Report by the United States Department of the Treasury confirms the massive fraudulent loan scheme perpetrated by WaFed! The FDIC-R is seeking payment upon the fraudulent falsified loan scheme.

Contrary to the Executive Committee Order, Attorney Kowalski is not a dangerous crack-pot conspiracy theorist, but rather the undisputed victim of the failed institution. This massive fraudulent

[1] The chapter 11 trustee should have been disqualified due to the simultaneous representation of the three larges creditors of the estate.

falsified loan scheme has been verified by none other than the U.S. government, itself! Nonetheless, the FDIC-R is continuing to perpetrate this fraudulent loan scheme against Attorney Kowalski and the bankruptcy court by intentionally presenting fraudulent loan claims. In furtherance of the scheme, the FDIC-R's attorneys, Rein and Paloian, have made false representations to the Court and manipulated the Executive Committee.

Executive Committee Manipulated to Perpetrate FDIC-R Fraud

Not only is the FDIC-R perpetrating a fraud upon the bankruptcy court and the U.S. Trustee, but it has enlisted the Court's Executive Committee on an *ex parte* behind-the-scenes "star chamber" basis to prey upon the hapless debtor, Attorney Kowalski, by branding him dangerous, all-the-while trampling upon his constitutional rights.

The Executive Committee conducting *ex parte* proceedings violates Attorney Kowalski's constitutional rights and also the Court's judicial ethics responsibility to not consider communications made to the judge outside the presence of the parties or their lawyers. Attorney Kowalski was not given the opportunity to respond and this *ex parte* communication was not for scheduling, administrative or emergency purposes. It was done specifically so that one party, the FDIC-R, would gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication, to gain this Court's assistance to further its fraudulent loan scheme. This is nothing but a FDIC-R cover-up of the highest order, victimizing Attorney Kowalski in the process. How do we know FDIC-R is perpetrating a fraud upon this Court? Again, the United States Department of the Treasury Audit Report has officially confirmed the same.

No Day in Court for Attorney Kowalski

Attorney Kowalski filed a Motion to Vacate the October 30, 2018 Order. However, he was unable to present it – the presentment date being stricken. On November 27, 2018, the Executive Committee issued an Order denying Attorney Kowalski's Motion to Vacate – without even allowing presentment of the motion.

On April 23, 2019, the Seventh Circuit dismissed Attorney Kowalski's appeal for lack of jurisdiction likening the Executive Committee Order to a ministerial administrative order similar to

ejecting an "unruly" customer from a restaurant. This analogy must fail. An unruly customer is patent to all present who can personally observe the objectionable behavior. Here, Attorney Kowalski was castigated as "loud and disruptive" by the Executive Committee (despite audio tapes to the contrary of all court appearances) based upon closed door back room whispered conferences between unknown actors. Moreover, calling the Order as administrative nonetheless fails to accord with due process considerations as Attorney Kowalski was not accorded any due process safeguards. On June 19, 2019, the Seventh Circuit denied Attorney Kowalski's Motion for Rehearing.

REASONS FOR GRANTING THE PETITION

I. Whether the *ex parte* Executive Committee Orders violated Attorney Kowalski's Constitutional Rights?

Injunction

The Executive Committee Order has the effect of an injunction and is therefore appealable. *In re Chapman*, 328 F.3d 903, 904-05 (7th Cir. 2003) (per curiam); *In re Palmisano*, 70 F.3d 483, 484 (7th Cir.1995); *In re Long*, 475 F.3d 880 (7th Cir., 2007). The Executive Committee Order requires Attorney Kowalski to be taken into custody in the Federal courthouse buildings. It requires Attorney Kowalski to surrender his identification card to the U.S. Marshal for access to the buildings. It denies Attorney Kowalski's range of motion within the courthouses. It interferes with Attorney Kowalski's ability to engage in dialogue with clerks and court personnel. It interferes with Attorney Kowalski's ability to practice law. What client wants an attorney in federal custody to represent him or her? The U.S. Marshal prohibits Attorney Kowalski from accessing courtrooms, being in the physical proximity of court personnel, physically inserting the Marshal between Attorney Kowalski and the court personnel, presenting a barrier to dialogue, relegating Attorney Kowalski to having to shout over the Marshal barrier, and impeding Attorney Kowalski's simplest courthouse tasks such as filing a motion, scheduling a date, and tendering courtesy copies. The Executive Committee Order affects Attorney Kowalski's ability to conduct business on a daily basis. It is undoubtedly an injunction.

Jurisdiction

This Court has jurisdiction to hear this appeal. The *ex parte* Executive Committee Order imposing sanctions upon Attorney Kowalski can only be considered a judicial act. The Executive Committee Order reflects the Committee "became aware" of Attorney Kowalski's conduct. The source of the awareness is not disclosed. Attorney Kowalski believes the FDIC-Rs counsel, Messrs. Rein and Paloian, are the genesis for the awareness. Attorney Kowalski's nebulous conduct is being "loud" and "disrespectful". Yet, Attorney Kowalski's appearances are all recorded on transcripts and Attorney Kowalski's courtroom conduct is monitored by U.S. Marshals. No aberrant courtroom conduct was ever noted! Yet, the Executive Committee nonetheless "became aware" of the loud disrespectful conduct by unknown sources. The Executive Committee's awareness can only be from testimonial or documentary evidence from unknown individuals. Entertaining the testimony and judging the credibility of these unknown individuals can only be a judicial function.

Further, Executive Committee actions such as disbarment of an attorney is a judicial action. *In re Palmisano*, 70 F.3d 483 (7th Cir. 1995). Sanctions against Attorney Kowalski is similarly a judicial action. This Court has jurisdiction over this appeal because the Executive Committee of the U.S. District Court's imposition sanctions on Attorney Kowalski is a judicial action rather than an administrative action. Even though the Executive Committee is an "administrative arm" of the district court, *Palmisano*, 70 F.3d at 484, it is capable of exercising judicial power, Id. at 485. The Committee's action in prospectively controlling an attorney's liberty in the courthouse is most appropriately characterized as a judicial action, because it directly impacts his ability to access the court. Furthermore, such restrictions are referred to as "injunctions," see Davis, 878 F.2d at 212, which are judicial remedies. *See Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 207, 65 S.Ct. 226, 89 L.Ed. 173 (1944) ("the usual judicial remedies of injunction and award of damages"). This Court should be convinced that the Executive Committee's imposition of sanctions upon Attorney Kowalski is a judicial action under the general and inherent authority of the court to control and regulate its own affairs, *see Davis*, 878 F.2d at 212; *Schilling v. Walworth County Park & Planning Comm'n*, 805 F.2d 272, 274-75 (7th Cir.1986); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962), this Court has jurisdiction over this appeal and can proceed to the merits of Attorney

Kowalski's arguments. *In re Chapman*, 328 F.3d 903 (7th Cir., 2003)

Ex Parte Executive Committee Order Violates Attorney Kowalski's Due Process Rights

The injunction violates Attorney Kowalski's Fourteenth Amendment right to due process because it was issued without notice or an opportunity for him to be heard. *Ex parte* communications are disfavored. They should be avoided whenever possible and, even when they are appropriate, their scope should be kept to a minimum. Courts have discussed in other contexts the dangers of allowing *ex parte* proceedings in criminal cases. *See, e.g., In re Taylor*, 567 F.2d 1183 (2d Cir.1977); *United States v. Miller*, 495 F.2d 362 (7th Cir.1974); *United States v. Solomon*, 422 F.2d 1110 (7th Cir.), cert. denied, 399 U.S. 911, 90 S.Ct. 2201, 26 L.Ed.2d 565 (1970); *United States v. Palermo*, 410 F.2d 468 (7th Cir.1969); *Haller v. Robbins*, 409 F.2d 857 (1st Cir.1969); *U.S. v. Napue*, 834 F.2d 1311 (7th Cir., 1988). There is no secrecy to maintain, no reason to depart from the strong norm that judicial proceedings are open to public view. *See, e.g., Baxter International, Inc. v. Abbott Laboratories*, 297 F.3d 544 (7th Cir. 2002); *In re Husain*, 866 F.3d 832 (7th Cir., 2017). Federal courts may not impose injunctions without giving litigants notice and a chance to respond. *See, e.g., Qureshi v. United States*, 600 F.3d 523, 526 (5th Cir. 2010); *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 819 (4th Cir. 2004) (collecting cases); *Wallis v. Exec. Comm. of the U.S. Dist. Court* (7th Cir., 2013). Further, prior to disciplining Attorney Kowalski, the essential requirements of any such proceeding are notice and the opportunity to be heard. *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1967); *In re Echeles*, 430 F.2d 347 (7th Cir., 1970).

Ex Parte Executive Committee Order Was an Indirect Criminal Contempt

The *ex parte* proceedings before the Executive Committee violated Rule 42, Federal Rules of Criminal Procedure. The *ex parte* October 30, 2018 and November 27, 2018 proceedings were principally a criminal contempt trial in absentia, and compliance with Rule 42 was required. Federal courts' contempt power is regulated by statute and rule. 18 U.S.C. Sec. 401 (1976); Rule 42, Federal Rules of Criminal Procedure; see *United States v. Wilson*, 421 U.S. 309, 315 n.

6, 95 S.Ct. 1802, 1806 n. 6, 44 L.Ed.2d 186 (1975) (Rule 42 applies the contempt power defined in section 401). Section 401 recognizes two types of contempt: direct and indirect. Direct contempt is contumacious conduct committed in the actual presence of the court, *Matter of Heathcock*, 696 F.2d 1362, 1365 (11th Cir.1983), and may be punished summarily, *Wilson*, 421 U.S. at 316, 95 S.Ct. at 1806. "In the actual presence of the court" does not limit direct contempts to those which take place in a courtroom, but some degree of the formality usually found in the courtroom setting must accompany an exercise of the judicial function so that the proceedings are "in the actual presence of the court." *Matter of Heathcock*, 696 F.2d at 1366. There are two further conditions which must be met before a contempt may be punished summarily. First, time must be of the essence in dealing effectively with the contempt. *Wilson*, 421 U.S. at 319, 95 S.Ct. at 1808; *United States v. Moschiano*, 695 F.2d 236, 251 (7th Cir.1982), cert. denied, --- U.S. ----, 104 S.Ct. 110, 78 L.Ed.2d 111 (1983). Second, there must be some "compelling reason for an immediate remedy." *Id.* All other contumacious conduct is indirect contempt the exclusive remedy for which is provided by Rule 42(b). *Harris v. United States*, 382 U.S. 162, 167, 86 S.Ct. 352, 355, 15 L.Ed.2d 240 (1965) ("Rule 42(b) prescribes the 'procedural regularity' for all contempts in the federal regime except those unusual situations envisioned by Rule 42(a) where instant action is necessary to protect the judicial institution itself").

Attorney Kowalski was charged with four allegedly contumacious acts: (1) ***loud and disrespectful*** of the court and court personnel; (2) ***verbally combative*** with judges; (3) *often refuses to follow court procedures or (4)* ***respect the authority of the judge***. All this conduct, if indeed it occurred, could only be considered a direct contempt as it took place before the court. Yet, no direct contempt was noted by any judge before which Attorney Kowalski appeared.

Rule 42(b) provides the exclusive procedure for dealing with Attorney Kowalski's alleged conduct. The *ex parte* Executive Committee proceedings was flawed violating Rule 42(b) as the Executive Committee was an improper tribunal to try Attorney Kowalski's contempt. The October 30, 2018 and November 27, 2018 Executive Committee Orders clearly hold Attorney Kowalski in contempt and sentence him to surrender his liberty in order to enter a federal courthouse suffering a police escort. The Fourth Amendment

prohibits this sort of unreasonable seizure by the government. An attorney subject to discipline might face fine, censure, suspension, or disbarment, but he would not face deprivations of his liberty or imprisonment. Attorney Kowalski was not provided with any of his Fifth or Sixth Amendment rights and was deprived and continues to be deprived of his liberty and property right in practicing law all without presentment or indictment, to be informed of the nature and cause of the accusation, a speedy trial, a public trial, an impartial jury trial, right to confront witnesses against him, compulsory process, assistance of counsel, and right against compelled testimony. Because the proceedings below were not an attorney disciplinary proceeding, the Executive Committee was not the proper tribunal to try the proceeding.

The Executive Committee, established by local rules of the Northern District of Illinois, is charged with administering and conducting the business of the district court; it is solely an administrative body. The Executive Committee may conduct attorney disciplinary proceedings, but it may not hear contempt proceedings. See Rules 3.50-3.59, General Rules for the United States District Court Northern District of Illinois; 4 Wright & Miller, Federal Practice and Procedure: Civil Sec. 1019 (1969). Procedure in a contempt hearing conducted pursuant to Rule 42(b) is no different than in any other criminal trial. 8B Moore's Federal Practice p 42.05 (2d ed. 1983). Whatever else the Executive Committee may be, it is not a "court" empowered to conduct criminal trials. The Executive Committee exceeded its jurisdiction in holding Attorney Kowalski in criminal contempt. The court should accept the petition for writ to reverse.

As an aside, Rule 42(b) notes that if, "the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent." Where the allegedly contumacious conduct so provokes the judge reviled that he or she becomes personally embroiled in the controversy, or where there is such a likelihood of bias or the appearance of bias that the judge is unable to hold the balance between vindicating the interests of the court and the interests of the accused, or where the conduct involves an insulting attack on the integrity of the judge, then recusal is required. *Taylor v. Hayes*, 418 U.S. 488, 501, 94 S.Ct. 2697 2704, 41 L.Ed.2d 897 (1974); *Spruell v. Jarvis*, 654 F.2d 1090, 1095 (5th Cir.1981); *In re Dellinger*, 461 F.2d

389, 394 (7th Cir.1972). Given the *ex parte* nature of the proceedings, it is unknown to which judge the loud disrespect was alleged or the composition of the Executive Committee panel. Accordingly, Rule 42(b) may be implicated as to recusal. However, for these proceedings the criminal sanctions and "further sanctions" against Attorney Kowalski must fail because it is clear that all of the sanctions imposed by the Executive Committee were the result of the Committee's conclusion holding Attorney Kowalski in contempt. Because that holding was flawed the sanctions must fail.

Attorney's Spirited Argument is Protected by the First Amendment

Attorney Kowalski's loud, disrespectful argument, if any, is conduct protected by the First Amendment and therefore cannot be ground for contempt. To be contemptuous a publication must actually interfere with the orderly administration of justice. *Bridges v. California*, 314 U.S. 252, 270, 62 S.Ct. 190, 197, 86 L.Ed. 192 (1941). An inherent tendency or a reasonable tendency to interfere is not enough. *Id.* at 273, 62 S.Ct. at 198. *See Wood v. Georgia*, 370 U.S. 375, 389, 82 S.Ct. 1364 1372, 8 L.Ed.2d 569 (1962) (in absence of showing of substantive evil actually designed to impede course of justice, utterances entitled to protection). Here there is no showing that Attorney Kowalski's allegedly loud, disrespectful argument actually interfered with the administration of justice in any manner; therefore, this speech is entitled to protection. *In re Oliver*, 452 F.2d 111, 114-15 (7th Cir.1971).

Attorney Kowalski was not provided with the opportunity to appear before the Executive Committee and never responded to the merits of any "awareness" of the Executive Committee. To amount to contempt, conduct must constitute a material disruption or obstruction of the judicial process and the court must enter findings concerning that disruption or obstruction. *United States v. Seale*, 461 F.2d 345, 369-70 (7th Cir.1972); *In re Dellinger*, supra, 461 F.2d at 400.

Rippling Prejudicial Effects of the Executive Committee Order

The Orders branding Attorney Kowalski as an enemy of the state prejudiced Attorney Kowalski in other proceedings. Attorney Kowalski was greatly prejudiced by the wide distribution of the *ex parte* Executive Committee Order to all judges throughout the courthouse. The Executive Committee Orders advise judges that

Attorney Kowalski is a dangerous security risk requiring a police escort. The Executive Committee Orders are just that Orders directing all the judges within the Northern District of Illinois and being widely disseminated.

Upon receipt of the Executive Committee Order, Judge Cox viewed this as a direct affront to her authority to maintain her courtroom decorum. Judge Cox immediately jailed Attorney Kowalski to punish his civil contempt. Judge Cox jailed Attorney Kowalski in solitary confinement for a week requiring him to purge his contempt by the production of documents. On November 28, 2018, a day after the Executive Committee's November 27, 2018 Order, Judge Cox also entered an order converting Attorney Kowalski's Chapter 11 reorganization bankruptcy proceedings to Chapter 7 liquidation proceedings.

On October 24, 2018, a mere six days prior to the Executive Committee Order, Attorney Kowalski had argued a Motion to Stay before Judge Andrea Wood in 18-cv-05388. The October 24, 2018 Minute Order reflects a decision to be forthcoming in "short order". On October 30, 2018, the Executive Committee Order was entered and distributed. Thereafter, no decision was forthcoming in "short order." The Executive Committee Order denying Attorney Kowalski's Motion to Vacate was entered and distributed on November 27, 2018. Not coincidentally, Judge Wood's Order denying Attorney Kowalski's Motion to Stay was denied, the very next day, on November 28, 2018.

Injunctions require the posting of a bond. The purpose of the bond is to protect pay any damages for losses caused by the injunction should the party who obtained the injunction and thus caused the loss fail to pay the damages, then the injured party can proceed against the surety directly. Fed.R.Civ.P. 65.1. An order denying an injunction bond, a supersedeas bond (as security for a stay of execution of judgment), or any other request for security to protect a litigant, is immediately appealable. *E.g., Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949); *In re Carlson*, 224 F.3d 716, 718 (7th Cir.2000); *Olympia Equipment Leasing Co. v. Western Union Telegraph Co.*, 786 F.2d 794, 795-96 (7th Cir.1986); I*n re UNR Industries, Inc.*, 725 F.2d 1111, 1117 (7th Cir.1984); *Atlantic Fertilizer & Chemical Corp. v. Italmare*, S.p.A., 117 F.3d 266 (5th Cir.1997); *Habitat Educ. Ctr. v. United States Forest Serv.*, 607 F.3d 453 (7th Cir., 2010). No bond was posted to protect

Attorney Kowalski. It would add insult to injury to suggest the *ex parte* injunction which prejudices the entirety of the judiciary of the Northern District of Illinois against Attorney Kowalski is a harm for which no remedy can be fashioned or for which he suffered no damages. The appropriate remedy for the Executive Committee's action is not merely to vacate the Executive Orders.

Benjamin Franklin at the Cockpit

On January 29, 1774, dutiful servant of the British crown, Benjamin Franklin was called to appear before King George's Privy Council – a select group of the king's advisors – in an octagonal-shaped room in Whitehall Palace known as the Cockpit. The Privy Councillors and common-law judges comprised the Star Chamber. Solicitor General Alexander Wedderburn unleashed a withering tirade against Franklin, spurred by the jeers and applause from the audience in the Cockpit. Up until his Cockpit ordeal, Franklin was steadfastly committed to achieving "an accommodation of our differences." However, Franklin left the Cockpit as a budding American revolutionary.

Franklin was able to confront his accuser; Attorney Kowalski was not. Franklin's Star Chamber was established to ensure fair enforcement of laws. The Executive Committee is duty bound to administer and conduct business of the court. IOP02. FDIC-Rs attorneys appeared before the Executive Committee Cockpit whispering falsities against Attorney Kowalski subjecting him to criminal sanctions without notice or an opportunity to be heard. Franklin's Star Chamber became synonymous with social and political oppression through its arbitrary use and abuse of its power. In modern usage, "star chamber" can mean where a powerful person uses a legal privilege to condemn a person. Here, the FDIC-R abused its position with the Executive Committee to condemn Attorney Kowalski in a secretive proceeding. The United States Constitution prohibits bills of attainder - the practice of declaring a person guilty of crime and punishing them often without trial. This conspiratorial framework cannot withstand constitutional scrutiny or the transparency of our United States government. Benjamin Franklin left the Cockpit a revolutionary in the making. Attorney Kowalski left the Executive Committee cockpit jailed and impoverished. It is incumbent upon this Court to entertain the writ to end these star chambers. For, once people lose faith in the rule of law, the door to anarchy opens.

CONCLUSION

In light of the above, Attorney Kowalski was denied of his constitutional rights guaranteed by the First, Fourth, Fifth, Sixth and Fourteenth Amendments which subjected him to criminal and further sanctions by the Orders of the Executive Committee based upon *ex parte* back room whispers to this star chamber. If the guarantees of democracy and rule of law are to be upheld, these star chambers must be exposed, rooted out and harshly condemned. Attorney Kowalski urges that the petition for a writ of certiorari should be granted.

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Respectfully submitted,

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