

No. 19. 702

Supreme Court, U.S.

NOV 25 2019

In the Supreme Court of the United States

WENDY ALISON NORA,
Petitioner,

v.

MINNESOTA OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Respondent.

**On Petition for a Writ of Certiorari to
the Supreme Court of Minnesota**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW

Whether Petitioner was denied her Rights to Due Process guaranteed by the Fourteenth Amendment to the *Constitution of the United States* when the Minnesota Supreme Court imposed reciprocal discipline under Rule 12(d) of the Minnesota Rules of Lawyers Professional Responsibility (MRLPR) by ignoring prosecutorial misconduct in the disciplinary proceedings before the Wisconsin Supreme Court.

PARTIES TO THE PROCEEDING

Wendy Alison Nora, Petitioner on review, is a member of the bar of this Court. Petitioner was admitted to practice before the Supreme Courts of Wisconsin on June 9, 1975 and before the Supreme Court of Minnesota on September 20, 1985. Petitioner was suspended from practice before the Wisconsin Supreme Court by a Suspension Order entered on March 30, 2018 and was suspended from practice before the Minnesota Supreme Court as reciprocal discipline to the Wisconsin Suspension Order on May 22, 2019. Rehearing was denied on June 28, 2019.

The Minnesota Office of Lawyers Professional Responsibility is the Respondent herein. The names and contact information for the lawyers representing the Minnesota Office of Lawyers Professional Responsibility is set forth below:

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OPINIONS BELOW

Petitioner seeks review of the May 22, 2019 Opinion and Order of the Minnesota Supreme Court (Appendix A) imposing reciprocal discipline based on the March 30, 2018 Opinion and Order of the Wisconsin Supreme Court¹ (modified on June 12, 2018). Rehearing was denied on June 28, 2019 (Appendix B.)

JURISDICTION

This Court has jurisdiction to grant the Petition for Writ of Certiorari pursuant to 28 U.S.C. sec. 1257(a) and Supreme Court Rule 13.3. The Petition is timely filed within the time allowed from the June 28, 2019 Order Denying Rehearing, including all extensions granted by this Court under Supreme Court Rule 13.5.

The issues of violation of Petitioner's Due Process Rights were consistently asserted and preserved in the proceedings before the Minnesota Supreme Court. See Appendix D.

Petitioner, Wendy Alison Nora, respectfully petitions for a Writ of Certiorari to review the May 22, 2019 Opinion and Order of the Minnesota Supreme Court indefinitely suspending her right to practice law before the Minnesota Supreme Court

¹ See Appendix C.

as reciprocal discipline based on the March 30, 2018 Opinion and Order of the Wisconsin Supreme Court suspending her right to practice law before the Wisconsin Supreme Court². Petitioner moved for rehearing before the Minnesota Supreme Court.

On June 28, 2019, Petitioner's Motion for Rehearing was denied.

CONSTITUTIONAL AMENDMENT AND RULES OF COURT INVOLVED

Fourteenth Amendment to the Constitution of the United States, Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty,

On June 12, 2018, Petitioner's Motion for Reconsideration of the Wisconsin Supreme Court's Opinion and Order, but the March 30, 2018 Opinion was modified to correct the Wisconsin Supreme Court's original finding that Petitioner had been previously disciplined by the Minnesota Supreme Court for "dishonesty", when the Minnesota Supreme Court adopted the Referee's finding that Petitioner had "no selfish or dishonest motive".

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

Rule 12(d) of the Minnesota Rules of Lawyers Professional Responsibility (RLPR)

Reciprocal Discipline. Upon learning from any source that a lawyer licensed to practice in Minnesota has been publicly disciplined or is subject to public disciplinary charges in another jurisdiction, the Director may commence an investigation and, without further proceedings, may file a petition for disciplinary action in this Court. A lawyer subject to such charges or discipline shall notify the Director. If the lawyer has been publicly disciplined in another jurisdiction, this Court may issue an order directing that the lawyer and the Director inform the Court within thirty (30) days whether either or both believe the imposition of the identical discipline by this Court would be unwarranted and the reasons for that claim. Without further proceedings this Court may thereafter impose the identical discipline unless it appears that discipline procedures in the other jurisdiction were unfair, or the imposition of the same discipline would be unjust or substantially different from discipline warranted in Minnesota. If this Court determines that imposition of the identical discipline is not appropriate, it may order such other discipline or such other proceedings as it deems appropriate. Unless the Court determines otherwise, a final adjudication in another jurisdiction that a lawyer

had committed certain misconduct shall establish conclusively the misconduct for purposes of disciplinary proceedings in Minnesota.

**Minnesota Rules of Professional Conduct
(MRPC) Rule 3.3(a)(1)**

Rule 3.3(a)(1) Candor Toward the Tribunal

(a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal, or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]

SCR 20:3.3(a)(1) of the Wisconsin Supreme Court

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

**Minnesota Rules of Professional Conduct
(MRPC) Rule 3.1**

RULE 3.1: Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not

frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for a defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Wisconsin Supreme Court Rule SCR 20:3.1

SCR 20:3.1 Meritorious claims and contentions

- (a) In representing a client, a lawyer shall not:
- (1) knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law;
... (am) omitted because it was not in effect at the time of the conduct complained of. . .
 - (2) knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or
 - (3) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

STATEMENT OF THE CASE

A. INTRODUCTION

This case presents important constitutional questions regarding the Due Process rights of lawyers in state disciplinary proceedings. This Court held *In the Matter of John Ruffalo, Jr., Petitioner*, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968)

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

This case involves the use of forged documents authenticated by perjured affidavits by the prosecution and the concealment of exculpatory evidence by Wisconsin Office of Lawyer Regulation (OLR) through its retained counsel as the prosecuting attorney after the prosecution knew that the documents which had been produced were fabricated.

Last term, this Court decided *McDonough v. Smith*, No. No. 18-485 on June 20, 2019, writing:

Though McDonough's complaint does not ground his fabricated-evidence claim in a particular constitutional provision, the

Second Circuit treated his claim as arising under the Due Process Clause. 898 F. 3d, at 266. McDonough's claim, this theory goes, seeks to vindicate a "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer."³ *Ibid.* (quoting *Zahrey v. Coffey*, 221 F. 3d 342, 349 (CA2 2000)); see also, e.g., *Napue v. Illinois*, 360 U. S. 264, 269 (1959).

Petitioner has consistently argued, ever since the evidence of that the documents were fabricated appeared, that to use fabricated documents as evidence in state lawyer disciplinary proceedings violates the Due Process Clause at Section 1 of the Fourteenth Amendment to the *Constitution of the United States*.

This Petition presents the issue of whether the use of forged documents authenticated by perjured affidavits and the concealment of exculpatory evidence by Wisconsin Office of Lawyer Regulation (OLR) through its retained counsel as the prosecuting attorney.

3 In this case, the evidence was fabricated by the prosecution's witness, Wisconsin lawyer David M. Potteiger, and was introduced by the prosecution which knowingly relied thereon and concealed exculpatory evidence in the discovery process.

The Petition in *McDonough v. Smith* alerted this Court to the frequent use of fabricated evidence in criminal prosecutions.

The use of fabricated documents has become all too common in criminal prosecutions (see brief of the Amicus Curiae in *McDonough v. Smith*, supra⁴) just as it has been observed to be widespread in civil foreclosure cases throughout the nation. See *United States of America, et al. v. Bank of America Corporation, et al.*, United States District Court for the District of Columbia, Case No. 12-cv-361 (the “National Mortgage Settlement”).

Fabricated evidence is becoming so common that it is now being used in lawyer disciplinary proceedings by the very authorities who have the duty to assure that the parties they are responsible for regulating. Most disturbingly, the Supreme

¹⁰ Brief of Amici Curiae the American Civil Liberties Union, Bronx Defenders, Brooklyn Defender Services, Center for Appellate Litigation, Connecticut Innocence Project, The Innocence Project, The Legal Aid Society, National Association of Criminal Defense Lawyers, Neighborhood Defender Service of Harlem, New York County Defender Services, New York State Association of Criminal Defense Lawyers, Office of the Appellate Defender, and Vermont Office of the Defender General at 1, *McDonough*, 898 F.3d 259 (No. 17-0296-cv), 2018 WL 4191173, at *1. See October, 2018 Petition for Certiorari in *McDonough v. Smith*, at page 32.

Courts of both Wisconsin and Minnesota have turned a blind eye to the substantial proofs that fabricated evidence was used in the Wisconsin disciplinary proceedings in violation of Petitioner's Due Process Rights.

The Minnesota Supreme Court violated Petitioner's Due Process Rights by imposing reciprocal discipline based the Wisconsin Supreme Court's Suspension Order which relied on fabricated evidence.

B. FACTUAL BACKGROUND

Petitioner was admitted to practice law before the Supreme Court of Wisconsin on June 9, 1975. She was admitted to practice law before the Supreme Court of Minnesota on September 20, 1985⁵. She has been admitted to practice in three (3) federal district courts (the Western District of Wisconsin, the Eastern District of Wisconsin, and the District of Minnesota) and the Circuit Courts of

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

Appeal for the Seventh and Eighth Circuits. She is a member of the bar of this Court. She has appeared pro hac vice in other jurisdictions.

Nora practiced law without any disciplinary complaint filed by any client or other member of the public between 1991 and 2010 having been found to warrant formal disciplinary investigation (almost 20 years) before she became involved in the defense of homeowners against foreclosures based on evidence that false pleadings, forged documents and falsely sworn affidavits were being submitted in judicial foreclosure proceedings, including two (2) cases involving her own home. She has now been suspended, reciprocally to the Wisconsin Suspension Order in every forum except this Court.

Petitioner defended her home in the second state court foreclosure proceeding. Because she was unable to obtain reasonable ADAA accommodations following the onset of the temporary seizure disorder at the end of 2009⁶, she sought ADAA accommodations from the Dane County Circuit Court (the state court). The United States

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

Department of Justice has taken the position that, under the ADAA effective January 1, 2009 accommodations are an administrative and not a judicial matter. Judges are not immune from suit when acting in their administrative capacity⁷

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

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

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

styled *Nora v. Residential Funding Company, LLC, et al.*

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

Petitioner informed the District Court of the Co-Defendants' Chapter 11 filing and Petitioner proceeded to participate in the Bankruptcy Court case as a creditor and interested party in the Bankruptcy Court on May 18, 2012.

When the District Court dismissed Petitioner's RICO/FDCPA action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine (despite the fact that Petitioner was concurrently seeking relief by Motion to Vacate the Judgment of Foreclosure under Wis. Stat. sec. 806.07(a), the Wisconsin equivalent of Fed. R. Civ. P. 60(b)), Petitioner sought reconsideration of the

dismissal order and eventually filed the RICO/FDCPA action in the Bankruptcy Court, where her Proof of Claim (POC) had been pending as POC No. 2 since May 18, 2012 and joined additional parties and causes of action. The RICO/FDCPA claim was settled in the Bankruptcy Court.

Petitioner was found to have committed four (4) counts of professional misconduct as the result of filing an ADAA action in violation of SCR 20:3.1(a)(3), filing a true and accurate copy of an agreement with the mortgage servicer and reporting exactly what she was told to the Dane County Circuit Court (found to be in violation of SCR 3.3(a)(1)) and for filing the RICO and FDCPA claims in the Federal District Court and in the Bankruptcy Court (found to be in violation of SCR 20:3.1(a)(3)). The Minnesota Code of Professional Conduct has no equivalent to SCR 20:3.1(a)(3).

C. PROCEDURAL HISTORY

On March 30, 2018, the Wisconsin Supreme Court entered an Order suspending Petitioner from practice, in part based on forged documents and perjured affidavits created and executed by one of her litigation opponents in a foreclosure case involving Petitioner's own home. The forged documents and perjured affidavits were relied upon

by the prosecution in the Wisconsin disciplinary matter.

Despite Petitioner's efforts to demonstrate that the use of forged documents authenticated by perjured affidavits violated her Due Process Rights, the Minnesota Supreme Court found that the Wisconsin disciplinary proceedings were not unfair and imposed reciprocal discipline under MRLPR 12(d) on Petitioner on May 22, 2019.

D. LEGAL AUTHORITY

Lawyer disciplinary proceedings have been recognized by this court as quasi-criminal in nature. *Ruffalo*, supra. It is well-established that a conviction procured upon false evidence is a due process violation. The United States Supreme Court held in *Napue v. People of the State of Illinois*, 360 U.S. 264, 269-270, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959)

First, it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment, [citations omitted]. . . . The same result obtains when the State although not soliciting false evidence, allows it

to go uncorrected when it appears [citations omitted].

The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness.

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

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

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

A lawyer should not be disciplined based on evidence known by the state to be false and when

the state suppresses exculpatory evidence consistent with Due Process. The use of false evidence to obtain a conviction (which should also apply in quasi-criminal lawyer disciplinary proceedings) violates the Due Process Clause of the Fourteenth Amendment.

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

First, it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment, [citations omitted]. . . . The same result obtains when the State although not soliciting false evidence, allows it to go uncorrected when it appears [citations omitted].

The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness.

REASONS FOR GRANTING THE PETITION

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

This Court has been careful to assure that lawyer disciplinary proceeding do not violate the Due Process Rights. The issue of use of fabricated evidence in lawyer disciplinary proceedings has not previously been heard and considered by this Court.

The Minnesota Supreme Court wrote,
In re Huff, 872 N.W.2d 750, 753-754 (Minn., 2015)

The purpose of reciprocal discipline is “to prevent a sanctioned attorney from avoiding the consequences of misconduct by simply moving his or her practice to another state.” *In re Heinemann*, 606 N.W.2d 62, 64 (Minn.2000). “Conservation of judicial resources also militates in favor of deferring to sanctions imposed elsewhere.” *In re Morin*, 469 N.W.2d 714, 717 (Minn.1991). Unless we determine otherwise, another jurisdiction’s determination that a lawyer has committed misconduct conclusively establishes “the misconduct for purposes of disciplinary proceedings in Minnesota.” Rule 12(d), RLPR ; *In re Wolff*, 810 N.W.2d 312, 316 (Minn.2012). We may impose reciprocal disci-

pline “unless it appears that discipline procedures in the other jurisdiction were unfair, or the imposition of the same discipline would be unjust or substantially different from discipline warranted in Minnesota.” Rule 12(d), RLPR; accord *In re Hawkins*, 834 N.W.2d 663, 668 (Minn. 2013).

B. The question clearly presented here is a matter of substantial importance.

This Court has been reluctant to interfere with attorney disciplinary proceedings and decisions by state authorities as a matter of comity and federalism, deferring to state court disciplinary proceedings except where Due Process violations occur as in *Ruffalo*.

In *Napue v. Illinois*, 360 U.S. 264, 269-270, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), this Court held that it is a Due Process violation for the prosecution to obtain a conviction on testimony it knew to be perjured. Last term, this Court addressed the use of fabricated evidence in a criminal case in *McDonough v. Smith*, No. 18-485.

The issue for which Movant seeks review is whether the use of forged documents authenticated by perjured affidavits in a lawyer disciplinary proceeding must be considered so that the growing

problem of the use of fabricated evidence will be identified as a Due Process violation in civil cases, including quasi-criminal lawyer disciplinary proceedings.

C. The issues of violation of Petitioner's Due Process Rights were consistently raised and preserved.

To demonstrate that the federal issues were timely raised and consistently preserved required by Rule 14.1(g)(i), Petitioner has produced a true and correct copy of her December 7, 2018 Memorandum in Opposition to the Petition for Reciprocal Discipline as Appendix D (App. 91) to demonstrate that she timely raised the federal issues below as required by Rule 14.1(g)(i).

D. Petitioner's Due Process Rights were violated by the imposition of reciprocal discipline based in proceedings in violation of her Due Process Rights.

Petitioner is being punished for misconduct she did not commit on the basis of false evidence which resulted in unfair hearing in violation of her Due Process Rights.

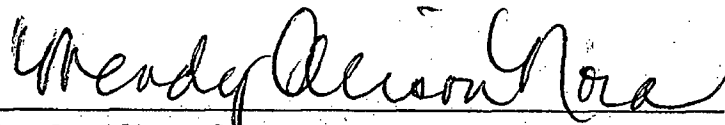
CONCLUSION

Reciprocal discipline cannot constitutionally be imposed based on false evidence, concealment of exculpatory evidence and deprivation of a full and fair opportunity to be heard.

Petitioner asks this Court to grant her Petition for Writ of Certiorari to the Minnesota Supreme Court in order to establish that lawyers have the right to be free from the use of false evidence, the concealment of exculpatory evidence and a full and fair hearing in quasi-criminal lawyer disciplinary proceedings by extending *Napue v. Illinois*, supra, to lawyer disciplinary cases and reversing the reciprocal discipline imposed by the Supreme Court of Minnesota.

Dated at Madison, Wisconsin this 22nd day of November, 2019.

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

A handwritten signature in cursive script that reads "Wendy Alison Nora". The signature is written in dark ink and is positioned above a horizontal line.

Wendy Alison Nora, *in propria persona*
ACCESS LEGAL SERVICES, LLC