20-1036

SUPREME COURT OF THE UNITED STATES

Robert V. Bolinske,

Plaintiff-Appellant

v.

North Dakota Supreme Court, State of North Dakota, Disciplinary Board the N.D. Supreme Court, Office of Disciplinary Counsel, Inquiry Committee West, Dale Sandstrom, Gail Hagerty, Lisa K. McEvers, Daniel Crothers,

Defendants-Appellees.

Civil No. 10-2516

PLAINTIFF APPELLANT BOLINSKE'S PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court and Eighth Circuit Court of Appeals err in refusing to allow Appellant Bolinske the right to serve and file his proposed Amended Complaint?

2. Did the lower courts err in granting, and refusing to reverse Defendant's Motion to Dismiss?

3. Do exceptions to the Rooker – Feldman and Younger abstention doctrines here exist, accepting all of the allegations set forth in Bolinske's proposed Amended Complaint as true?

4. Have Bolinske's First Amendment and Due Process rights been violated by Defendants?

5. Should the Rooker, Feldman and Younger decisions be re-evaluated and clarified to enable both Bolinske and Defendants to understand their rights and obligations thereunder?

6. Is North Dakota's entire Attorney Disciplinary System unconstitutional in that it allows the taking of an attorney's property without (1) Due Process of law and (2) without the protections afforded by the operation of the Rules of Civil Procedure and other applicable law?

7. Should Defendants be enjoined from further disciplinary action under their

flawed, unlawful and unconstitutional system of attorney discipline?

8. Should the federal courts abstain, under our system of justice and laws when, given the conduct of Defendants, Bolinske has no possible remedy in state court proceedings?

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Robert V. Bolinske, Esq., Plaintiff-Appellant, *Pro Se*

Matthew A. Sagsveen, Esq., Attorney General's Office, Natural Resources Division, counsel for Defendants-Appellees.

I, Robert V. Bolinske, attorney at law, here pro se, respectfully submit this Petition for a Writ of Certiorari in the above captioned matter.

INTRODUCTION AND FACTUAL BACKGROUND

1. May It Please The Court. I have said those words, on countless occasions, in thousands of cases. My name is Robert V. Bolinske.

2. I have been a proud trial attorney for now over 50 years, representing everyone from the most impoverished, to the most physically devastated, to America's greatest corporations and insurance companies.

3. Believe me, I know Justice. And I know Injustice. I see it here.

4. I was raised on a small farm literally in the middle of nowhere, on the edge of tiny Oberon, North Dakota.

5. When I was 12 years old we lost our farm, had an auction sale and, much like in John Steinbeck's "Grapes of Wrath", put what we had left in our grain truck and moved to Minot, North Dakota.

6. It was there, when I was 12 years old, in a one room "apartment", next to a bar, when one day two "thugs" attempted to literally force their way in, to repossess what little furniture we had. (My parents had apparently bought the $299 "three rooms of furniture" on the "installment plan" and couldn't make the payments.) My tiny, courageous mother, then having 6 children, held the door against them, fought like the tiger she was, and kept them from entering. She thereafter took me by the hand to downtown Minot, up a flight of stairs, to see, of all people, an "attorney", whatever that was. He told us they had no right to push their way in and charged us $1.00. It was right then and there that I decided that if an "attorney" could help people like us, then that was what I wanted to be.

7. Two years later, when I was 14, my father and I tore down our Oberon barn, board by board, loaded up the rafters, set them in the dirt just outside of Rugby, North Dakota. Thus was born "Rugby Hide and Fur," a wrecking yard and fur buying business, Located in what had formerly been the top (haymow) of our barn.

8. Again, power and injustice reared their ugly heads. The one dominant wealthy

such business in all of North Dakota, Porter Brothers, immediately proceeded to try to drive my father out of business, (so that they could totally dominate the entire state of North Dakota, and control the prices at which they bought and sold).

9. My Resume, a Campaign Flyer I used in a campaign for a seat on the N.D. Supreme Court, is included as Exhibit 1 in the Appendix to this Petition. (For the sake of economy, all "letter" Exhibits, e.g. "A", are found in the referenced herein Appendix submitted to the Eighth Circuit Court of Appeals.

10. In this case I allege that, likewise, the defendants have basically, attempted to drive me out of business and further, in the process, silence my criticism of them in (1) violation of my First Amendment Rights to Freedom of Speech and (2) without Due Process.

11. I contend that they have used their power to wrongfully, unlawfully, intentionally, and maliciously, in bad faith, harassed and abused me, over the past some five years. They have essentially stolen my life through the wrongful use of their decisions, disciplinary system and control entities.

12. I contend that their actions were taken in retaliation for my criticism of the North Dakota Supreme Court and certain of its' members, the North Dakota Supreme Court, and its Disciplinary agents.

13. I suggest that defendants were originally acting to support and cover-up wrongdoings of their friends and colleagues, N.D. Justice Dale Sandstrom and his wife, District Court Judge Gail Hagerty, who I alleged, had conspired to tamper with public records on the N.D. Supreme Court website, a felony.

14. I now contend that, as matters have evolved, and escalated, defendants are also attempting to cover-up their very own wrong doings in failing to investigate Sandstrom and Hagerty.

15. In the process of attempting to protect themselves, defendants have essentially thrown me, my career, my reputation, all the work I did to become an attorney,, and my rights "under the bus." I submit that they have wrongfully targeted me, and are attempting to "take me down" to protect themselves by preventing an investigation into their own behavior. My law license itself is in jeopardy.

16. It's not paranoia if someone is truly after you. I believe that, if given the opportunity, I can prove all of my allegations. I see a distinct pattern of conduct on defendants' part, which, when woven together, paints a compelling picture of corruption and wrong doing. Needless to say, if I am correct, their careers and reputations are on the line, thus the motivation for their retaliatory actions against me.

17. Contrary to the conclusions of the District Court and the Eighth Circuit Court of Appeals, I am not seeking to "re-litigate" the disciplinary case against me. I am attempting to seek Justice for wrongs done to me. In that process, it quite obviously is necessary to review the underlying facts of the disciplinary case.

18. For the factual basis of the origins of this case, please here read my proposed Amended Complaint, Appendix Exhibit 2. (App.p.2) (I suggest that a reading of that document will demonstrate to you that my allegations of tampering with public recors are very likely true.)

19. The actions of the defendants have gone on now for many years, and involve three separate cases: (1) the Sandstrom-Hagerty matter; (2) the Carter-Watson matter; (3) And, now, the latest case, which has just been concluded, the Discover Bank v. Bolinske matter. I will first attempt to provide you with a broad over-view of these cases.

20. In October, 2016, Bolinske alleged, in a Press Release, that Justice Dale Sandstrom of the N.D. Supreme Court, and his wife, District Judge Gail Hagerty, had conspired to move and hide public records critical of Judge Hagerty on the N.D. Supreme

Court's website, which conduct CONSTITUTES A FELONY. Justice Sandstrom was the sites "web master."

21. Judge Hagerty thereafter filed a disciplinary complaint-grievance against Bolinske. That matter torturously wound its way through the N.D. Supreme Court's Disciplinary System, including the Inquiry Committee West, the Disciplinary Board and eventually, the N.D. Supreme Court itself, a brutal, farcical two year process, fraught with their incompetence and a lack of due process.

22. Despite the fact that Bolinske had spent over two years investigating the matter, and submitted over 500 pages in support of his allegation, it was concluded that Bolinske's allegations had been made either "knowingly" that they were untrue, or with "reckless disregard" as to their truth or falsity.

23. For reasons set forth in Bolinske's many submissions filed with the Inquiry Committee, the Disciplinary Board and the N.D. Supreme Court Bolinske vehemently disagreed, and disagrees, with the findings and conclusions of the identified entities. (Those documents were filed in Disciplinary File No. 6070-W-1610 and N.D. Supreme Court File No. 20170333. Petition of Bolinske, 2018 N.D. 72, 908 N.W. 2d 462)

24. Despite the obvious seriousness of Bolinske's allegations (had they in fact been made "knowingly" or "with reckless disregard" of their accuracy) Bolinske received only a "slap on the wrist", a private reprimand, from the Disciplinary Board. (The Board made absolutely no analysis and refused to allow access to the "record" upon which it made its decision.) It is submitted that the Board's "decision" was basically "contrived", and made in the belief that "the matter would simply go away."

25. However, not being satisfied with the phony decision, (and insult to his character), Bolinske appealed to the N.D. Supreme Court. That Court, through sleight of hand procedural maneuvering, affirmed the Board's decision. Although the N.D.

Supreme Court was obligated to review the matter "de novo", the Court conveniently decided to review only the procedural process, a truly meaningless exercise. By doing so, the N.D. Supreme Court intentionally managed to totally avoid publicity and discussion of or a decision regardingthe actual facts of Bolinske's allegations against Sandstrom and Hagerty. In this way they managed to conceal the seriousness of Bolinske's allegations, , and the Court's prior failure to even investigate the matter.

26. Justice McEver, acting as Chief Justice on the case, actually prevented the examination and evaluation by the Court of two "smoking gun" Exhibit Documents which demonstrated the errors and falsity of the Disciplinary Board's decision, even though both documents were actually already on file at the N.D. Supreme Court.

27. Bolinske contends that the N.D. Supreme Court's decision was just a blatant cover-up of (1) the Justice's failure to investigate his allegations against their friends and colleagues, Sandstrom and Hagerty, and of (2) the facts demonstrating that Bolinske's allegations were likely actually true, and not made "knowingly" to be untrue or with "reckless disregard" thereof.

28. The basis for Bolinske's allegations against Sandstrom and Hagerty, again, are found in Bolinske's Amended Complaint in Bolinske v. N.D.Supreme Court, the State of N.D., the Disciplinary Board of the N.D. Supreme Court, Office of Disciplinary Counsel, Inquiry Committee West, Justice Sandstrom, Judge Hagerty, and N.D. Supreme Court Justices McEvers and Crowthers, an action filed in October, 2018 in U.S. District Court for the District of N.D., Southwestern Division, Case No. 1:18-CV-213. That Amended Complaint is attached hereto as Exhibit 1 (App.p.2) and is hereby incorporated herein as if set forth in full. (Defendants Justice's McEvers and Crothers were in fact served in that action as admitted by their attorney.)

29. Bolinske's next encounter with the above referenced Defendants was in

connection with a case entitled Disciplinary Board of the N.D.Supreme Court of the State of North Dakota v. Robert V. Bolinske, Sr., 2019 ND 213, 932 N.W. 2d 368, a matter begun in 2017 involving a complaint filed against Bolinske by Carter and Watson, Disciplinary Files Nos. 6176-W-1708 and 6177-W-1708, Supreme Court Nos. 20190109 and 20190110. All documents filed and decisions made therein may be examined on the North Dakota Supreme Court website.

30. In that matter, in short, Bolinske's fee agreement with his clients was involved. That fee agreement combined a $10,000.00 retainer together with an hourly rate payment. Despite the fact that there was not one case in the entire nation holding to the effect that that fee agreement was in any way improper, the matter was, like the Sandstrom matter, vigorously pursued for some two years. Bolinske prevailed pretty much completely in that case, fighting off phony issue after phony issue.

31. Bolinske contends that, so as not to have to admit total defeat, the N.D. Supreme Court and its disciplinary entities "tagged" Bolinske with a finding that he had not returned the client's files, consisting of some 73 pounds of documents. The problem with that conclusion was that the only evidence in the entire case was that the clients already had copies of the entire file. There was absolutely no evidence to the contrary. In upholding this sketchy decision the N.D. Supreme Court didn't even discuss that fact.

32. Unbelievably, despite the fact that they were then actually defendants in the U.S. District Court action, Justice Crowthers joined in the decision and Justice McEvers participated in prior discussion of the case, but recused herself from the actual written opinion itself.

33. The next case was Discover Bank v. Robert V. Bolinske, Sr., N.D. Supreme Court No. 20200098, 2020 N.D. 228 the decision in which, and all documents filed in the case, are also on the North Dakota Supreme Court website.

34. Despite the fact that Justices Crowthers and McEvers were then actually being sued by Bolinske, Sr., they failed to recuse themselves. (Bolinske had no advance notice that they would in fact sit on and decide the case, since, by N.D. Supreme Court Rule, there was no oral argument.)

35. In fact, Justice McEvers actually wrote the decision of the Court, and Justice Crowthers was Acting Chief Justice.

36. Here is Bolinske's analysis of exactly what he contends is here going on and which explains the decisions and behavior of certain members of the N.D. Supreme Court and its disciplinary agents. No fair-minded person could actually read the facts set forth in Bolinske's Amended Complaint in the U.S. District Court action (which facts were at all times before the N.D. Supreme Court and its disciplinary entities) and conclude "by clear and convincing evidence (the applicable standard of proof) that Bolinske's allegations against Justice Sandstrom were made (1) "knowing" that they were untrue or (2) in "reckless disregard" of their truth or falsity. Yet, that is exactly what was wrongfully here conducted. Why? Because the N.D. Supreme Court and its disciplinary entities (1) were protecting their friends and colleagues, Sandstrom and Hagerty, at Bolinske's expense, and (2) covering up their own failure to seriously investigate the matter.

37. Bolinske was given a private reprimand, just a "slap on the wrist," which punishment, if he had actually intentionally made such serious false allegations, would hardly be appropriate. Someone, it is believed, mistakenly concluded ("hoped") that by imposing no serious discipline, Bolinske would allow the matter to "just go away."

38. It didn't. Bolinske appealed the Disciplinary Board's decision. Faced with now a real dilemma, the N.D. Supreme Court contrived to not conduct a true "de novo" appeal as it was obligated to do, and sought to, and succeeded in not addressing the facts

of the case at all. Thus, once again it sought to protect now not only Sandstrom, but also the Court itself for failing to conduct any meaningful investigation into Bolinske's allegations against Sandstrom. By its procedural maneuverings, it is submitted the Court only dug itself into a deeper hole, and continued cover-up.

39. When next "getting a shot" at Bolinske in the Carter and Watson fee agreement matter, the N.D. Supreme Court and its disciplinary entities, over whom it has virtually complete control, once again put Bolinske through over two years of zealous prosecution, again despite there being, in the entire nation, even one case holding that his fee agreement was improper. And, again, to avoid having it appear that Bolinske had actually won, he was "tagged" with allegedly failing to return the client's 73 pound document file, even though Bolinske testified the clients already had copies of those same documents. There was no evidence to the contrary. The N.D. Supreme Court, in an attempt to somehow surmount this fact, simply chose not to even discuss it in its opinion.

40. Come we now to the Discover Bank v. Bolinske case, 2020 N.D. 228. In an opinion written by Justice McEvers, the Court seemingly goes out of its way at every opportunity to find against Bolinske. Bolinske mis-addressed his Answer and subsequently a default judgment was entered against him. Clearly, Bolinske's mistake in addressing the envelope was the result of "mistake, inadvertence, surprise, or excusable neglect." Bolinske's temporary secretary failed him by not finishing the job. Having to address the envelope in the dark, late at night in his car to get it in the mailbox before midnight, Bolinske's aged eyes failed him. He misread the P.O. box number of the address. Justice McEvers writes that Bolinske cites no "precedent" of his claim of "mistake". et.al., to re-open the Judgment. For goodness sake, N.D.R.Civ.P. 60 (b)(1) is "precedent", (the "law" if you will) and calls for a factual determination of whether that Rule applies. It is a decision just like juries make all the time. Further, default judgments

are frowned upon because, in our justice system, we want decisions made on the merits. Bolinske here in fact made an appearance. Justice McEver's fails to mention in her decision that not only did Bolinske leave a voicemail, he also advised Discover Bank's counsel's agent and employee, in a recorded telephone call, of the factual background of the case and that he was making an appearance in the case. (Attorneys and staff at the law firm refused to take Bolinske's call so he was left with no alternative.) Then, Discover Bank's attorneys allowed two days to go by (prior to entry of the default judgment during which they failed to advise the District Court that Bolinske had in fact "made an appearance." The list of adverse decisions made by Justice McEvers goes on and on.

41. The problem is that Justice's McEvers, who wrote the opinion, and Justice Crowthers, who also heard and decided the case should have recused themselves. They were, at the very time of their decision, being sued by Bolinske in this U.S. District Court action. Needless to say, in any fair system, Bolinske's adversaries in one case should not be deciding his fate in another.

42. Please see N.D. Supreme Court Justice Meschke's opinion in Reems v. St. Joseph's Hospital, 536 N.W. 2d, N.D. 1995 discussing a judge's duty to recuse him or herself. Justice Meschke stated "disqualification for bias depends not on whether the judge believes he can preside fairly and impartially; rather, it depends on whether the litigants can reasonably question the judge's impartiality." A fair trial in a fair tribunal is a basic requirement of due process. The principle that requires the appearance of judicial impartiality is deeply embedded in our legal system. Under our rules, a judge is disqualified "whenever the judge's impartiality might reasonably be questioned."

43. In any fair system of justice, both Justice McEvers and Justice Crowthers should have recused themselves, but, so as to control the decision, and further do damage to

Bolinske, they didn't.

44. Further, Bolinske actually ran against Justice McEvers for a seat on the N.D. Supreme Court in 2018, and caused her to expend literally tens of thousands of dollars in personal funds in the election. That fact, combined with being presently sued by Bolinske should also have caused her to recuse herself.

45. (Bolinske in no way contends that any of his allegations apply to the Chief Justice of the N.D. Supreme Court, Justice Jon Jensen. It is noted that Justice Jensen has recused himself in the Discovery Bank matter. It is surmised that Justice Jensen, who was not on the Court originally, when the Hagerty complaint-grievance was heard, realizes the truth of Bolinske's allegations against Sandstrom, and does not wish to become involved in what Bolinske contends is a cover-up of that fact by other members of the Court.

46. Why didn't, it must be asked, members of the Court simply ask Justice Sandstrom about the accuracy of Bolinske's allegations against him? And, why, despite being invited many times by both the media and Bolinske to admit or deny Bolinske's allegations, has former Justice Sandstrom chosen to remain silent? Why didn't the N.D. Supreme Court originally investigate this matter as it should have? Obviously if Bolinske's allegations against Sandstrom are true, Defendants' entire vicious house of cards and vicious retaliatory actions against Bolinske will be exposed, at great damage to Defendants.

47. It is not purely paranoia to suggest that the N.D. Supreme Court, through several of its members, and it's disciplinary entities and process, is attempting to silence and punish Bolinske. Why? To deter him and other attorneys from further investigation into and criticism of the N.D. Supreme Court. Bolinske has chosen to bet his very career and reputation on the truth of his allegations. Is it truly asking too much to have them

fairly investigated? Quite apparently, for the N.D. Supreme Court, it is.

48. So as to avoid any possible misunderstanding of my (Bolinske's) position it is this: I, Robert V. Bolinske, Sr., my reputation, hardwork in becoming an attorney, and legal career have been wrongfully thrown under the bus and my very license to practice law threatened by the individuals and entities above named in a totally unjust and corrupt attempt to (1) save and protect themselves and (2) their friends, Hagerty and Sandstrom. Their conduct is also (1) an abuse of their authority and (2) an utterly despicable denial of Due Process and Justice itself, by those who have taken a sacred Oath to protect them.

SPECIFIC FACTUAL BACKGROUND

49. In October, 2016, I alleged in a press release that substantial evidence existed that Justice of the N.D. Supreme Court Dale Sandstrom, while a Justice, had committed a felony in violation of N.D.C.C. §12.1-11-05 which prohibits tampering with public records. I further alleged that Sandstrom had conspired with his wife District Judge Gail Hagerty to misfile and hide a Petition for Supervisory Writ I had filed with the N.D. Supreme Court which was highly critical of Hagerty. Somehow, mysteriously, the Petition which was filed in a civil case was transferred to and essentially hidden in public records in a criminal case in which Justice Sandstrom had previously written the decision.

50. Civil and criminal cases have vastly different (1) case and (2) docket numbering systems. Criminal cases are designated, e.g., "Criminal No. 960066". (This is the State of N.D. v. Paul Shephard, 554 N.W.2d 861 (N.D. 1996) case in which my Petition highly critical of Sandstrom's wife, Hagerty, was placed and essentially hidden.) Civil cases, as in which my Petition for a Supervisory Writ was filed, are designated, e.g., (1) "20000075 R.S.S.", which was the docket number and (2) the case designation was "Civil No. 99-C-1007" for the Supervisor Writ case against Hagerty. (Delano Grey Bear v. N.D. Department of Human Services, 651

N.W. 2d 611 (N.D. 2002).)

51. Further, the Petition for a Supervisory Writ in Grey Bear was a civil case begun in 2000 and ultimately decided by the N.D. Supreme Court in 2002, while the Shepherd case was decided in 1996. Thus, we have records from a civil case (Grey Bear) begun in 2000 being placed in the records of a criminal case (Shepherd) in which the decision written by Sandstrom was issued in 1996.

52. Justice Dale Sandstrom was the creator of the N.D. Supreme Court website, was the website's "Web-Master", and had total control over and access to the website in which the records were misplaced and hidden from public view. Sandstrom, as Hagerty's husband, had both motive and opportunity to make the improper and unlawful record transfers.

53. Prior to making the above allegations I did some two years of investigation, research and analysis, and submitted approximately 350-500 pages of evidence and analysis in support of my claims.

54. I am an experienced trial lawyer, graduated from the University of North Dakota magna cum laude, Phi Beta Kappa and with Honors in 1966, and graduated from Harvard Law School in 1969. I would not have made the subject allegations unless I believed them to be true and had accumulated substantial evidence in their support.

55. Further, Rule 8.3, (a.), Reporting Professional Misconduct, (the N.D. Rules of Professional Conduct) provides that "A lawyer who knows that another lawyer has Committed a violation of these Rules that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall initiate proceedings under the North Dakota Rules for Lawyer Discipline". (Emphasis added.) That is exactly what I did in filing a Grievance Complaint against

(Exhibit C) Sandstrom and Hagerty. In it I alleged that not only did they conspire to and actually tamper with public records, but that they also repeatedly failed to recuse themselves as Judges in Bolinske's cases. That Complaint was not even seriously investigated but was instead wrongfully summarily dismissed by the Office of Disciplinary Counsel. Instead, it was me who was placed in the stocks in a farcical, unfair, incompetent and unconstitutional grievance procedure created by the North Dakota Supreme Court and administered by the Office of Disciplinary Counsel, the Disciplinary Board of the N.D. Supreme Court, and the N.D. Supreme Court itself.

56. "As a public citizen, a lawyer should seek improvement of the law, the administration of justice and quality of service rendered by the legal profession" Preamble: A Lawyer's Responsibilities – N.D. Rules of Professional Conduct. That is exactly what I was attempting to accomplish in reporting what I believed to be the unlawful and wrongful conduct of Justice Sandstrom and his wife District Judge Hagerty.

57. Judge Hagerty filed a Grievance Complaint against me dated October 21, 2016, alleging that my allegations above described violated the N.D. Rules of Professional Conduct. I denied that my conduct was unethical, and contended that I was actually ethically required to report the suspected violation.

58. The Inquiry Committee, after a minimal 30-45 minute hearing in March, 2017 found that I violated Rules of Professional Conduct relating to making false statements concerning the qualifications of integrity of a judge. It further concluded that my allegations were made "knowingly or with reckless disregard as to their truth or falsity". I steadfastly deny the accuracy of that finding and contend that I can prove its falsity with the N.D. Supreme Court's very own

documents.

59. The Inquiry Committee based its finding solely on its conclusion that my allegations were made "knowingly or with reckless disregard of their "truth or falsity" because Chief Justice VandeWalle had advised Bolinske in a letter dated September 19, 2008, that the misfiling had occurred as a result of "clerical oversight". First, that is not what Justice VandeWalle said at all. Instead, in his letter, he said that "they are unsure of what happened. However, sometime ago data was transferred from one machine to another and it appears that during the transfer the improper case name was entered for the above (Re: Bolinske v. Hagerty) case". Second, a letter dated October 30, 2008 from N.D. Supreme Court Chief Deputy Clerk Colette Bruggman to Bolinske specifically states, as to the cause of the mis-filings, that "The information provided tends to rule out data transfer as the cause". Thus, the N.D. Supreme Court's very own records clearly establish that the basis for the Inquiry Committee's decision is factually erroneous in that it makes clear that the "clerical mistake" during a "data transfer" was not the cause of the records being hidden.

60. Then, when I appealed the Inquiry Committee's decision to the Disciplinary Board of N.D. Supreme Court, the decision was affirmed with no hearing, no opportunity for Bolinske to appear, no record of its proceedings, no analysis, discussion or explanation whatsoever. In its letter decision dated July 24, 2017, the Disciplinary Board states only the conclusion that "the Disciplinary Board affirmed the decision of the Inquiry Committee the Inquiry Committee West to issue an admonition". Consequently, in any appeal to the N.D. Supreme Court, which I pursued, there was no record, no analysis and no explanation to review, effectively denying me the opportunity and right to review the Disciplinary Board's decision.

61. I appealed to the N. D. Supreme Court, which, without investigating or even discussing the actual facts of the case, affirmed the Disciplinary Board's decision.

62. I contend that the entirety of North Dakota's disciplinary procedures, rules and the implementation thereof were in this case a farce and a sham in that I was unlawfully denied my substantive and procedural Due Process rights under the U.S. Constitution, all to my substantial damage, in that I was subjected to the potential taking or suspension of my property in the form of my hard-earned law license and right to practice law, substantial emotional distress and the serious financial losses which I suffered in being required to respond to the machinations, allegations, lack of competence, and farcical procedures of the North Dakota Supreme Court and its agents, the Office of Disciplinary Counsel and the Disciplinary Board.

63. More specifically, I was denied in the above proceedings before the Inquiry Committee and/or Disciplinary Board:

(1) A jury trial of his peers and right of voir dire;

(2) The right of cross-examination;

(3) The right to confront his accusers;

(4) The right to call witnesses;

5) The right to record the proceedings at the Inquiry Committee and the Disciplinary Board stages;

(6) The right to a reasonable amount of time to present his case, not the mere 30-45 minutes as he was here given by the Inquiry Committee;

(7) The right to even appear and argue my case before the Disciplinary Board;

(8) All the protections afforded to me by the rules of civil procedure and rules of evidence;

(9) The right to know the nature and definitions of the allegations against me in

that the words "with reckless disregard" are nowhere even defined in the Rules of Professional Conduct. Nor is the meaning of "clear and convincing evidence." the standard that must be reached before discipline of any type may be imposed on a lawyer).

(10) The right to discovery;

(11) The right to see and challenge the report prepared by Disciplinary Counsel;

(12) The right to respond to Findings of Fact and Conclusions of Law, because there were here none created, resulting in the denial of a meaningful appeal process.

64. Even North Dakota Supreme Court Justice Crowthers, at oral argument, questioned the process, rules and procedures used in the disciplinary process and suggested that they be "tweaked". Instead, Bolinske submits that they be taken out behind the barn and shot. It is a disgrace that this extremely flawed system, created by attorneys of all people, should be allowed to exist, and jeopardize the rights and reputations of attorneys.

PROCEEDINGS BELOW

65. Plaintiff Bolinske was served with a Motion to Dismiss based largely on claims that certain elements of his Complaint were insufficient. Bolinske then prepared, filed and served a proposed Amended Complaint and brought a motion for leave of the Court to serve and file the Amended Complaint pursuant to Rule 15.

66. For the sake of economy, plaintiff Bolinske also incorporated the facts and allegations set forth in his proposed Amended Complaint as part of his Response to defendants Motion to Dismiss.

67. Defendants' attorneys, in their Memorandum in Support of Motion to Dismiss,

succinctly set forth the legal standards applicable to a Rule 12 Motion to Dismiss at page

> 2. "The same standards are applied to a Rule 12(b)(1) and a 12(b)(6) motion to Dismiss." Gray v. Devils Lake Pub. Sch., 316 F. Supp. 3d 1092, 1098 (D.N.D. 2018) (citing Satz v. ITT Fin. Corp., 619 F.2d 738, 742 (8th Cir. 1980). When Ruling on a motion to dismiss, the court must accept the allegations in the complaint as true. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 12(b)(6) claim is to test the legal sufficiency of a complaint so as to eliminate those actions "which are fatally flawed in their legal premises and deigned to fail, thereby sparing the litigants the burden of unnecessary pretrial and trial activity. Young v. City of St. Charles, 244 F.3e 623,627 (8th Cir. 2001). The court will grant a motion to dismiss if the complaint fails to contain "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570."

68. Defendants' attorneys then kindly set forth the flaws in Bolinske's original Complaint, kind of like a roadmap, in their Memorandum in Support of Motion to Dismiss dated November 14, 2018.

69. In response, Bolinske went through all claimed deficiencies and prepared an Amended Complaint, adding facts that, according to Defendants' cited cases, would, if ultimately proven, defeat Defendants' legal arguments.

70. The first motion before the District Court was Bolinske's Motion to Amend, his Complaint. As the Court well knows, leave to amend a Complaint shall be "freely given." Bolinske contended that once Bolinske's Motion to Dismiss, which is directed at the original Complaint, because it is submitted, pretty much moot and should have been denied. It appears to Bolinske that, then, if defendants' are so inclined, that they would have to bring a second Motion to Dismiss directed at the Amended Complaint.

71. In further support of his Motion to Amend, Bolinske submitted the following documents, incorporated herein just as if set forth in full:

1. Bolinske's Briefs to the North Dakota Supreme Court in a new disciplinary proceeding against Bolinske. (Exhibits H and I)

2. Respondent Bolinske's corrected (1) Objections to Hearing Panel Report and (2) Petition for Review and (3) Request for Oral Argument in the North Dakota State court grievance proceeding against Bolinske. (Exhibit G)

3. Bolinske's Notice of Claim filed with the N.D. Office of Management and Budget dated 9-19-17. (Exhibit A)

72. These documents were provided to the Court to show the ongoing actions of defendants against Bolinske. These materials were provided also because, as defendants' attorneys point out in their Memorandum in Support of Motion to Dismiss at p.2:

> "The court may generally only look to the allegations contained in the complaint to make a Rule 12(b)(6) determination. MccAuley v. Fed Ins.Co., 500 F 3d 784, 787 (8th Cir. 2007). However, in considering a motion to dismiss, the district court may sometimes consider materials outside the pleadings,such as materials that are necessarily embraced by the pleadings and exhibits attached to the complaint." Mattes v. ABC Plastics, Inc. 323 F .3e 695 n. 4 (8th Cir. 2003)(citation omitted.) "in this circuit, Rule 12(b)(6) motions are not automatically converted into motions for summary judgment simply because one party submits additional matters in support of or opposition to the motion...Some materials that are part of the public record or do not contradict the complaint may be considered by a court in deciding a Rule 12(b)(6) motion." Nixon v. Coeur D'Alene Tribe, 164 F .3e 1102, 1107 (8th Cir. 1999)."

DECISIONS BELOW

73. Instead of proceeding as requested by Bolinske, after a Hearing, at which oral argument was presented, the Honorable Donovan W. Frank, District Judge, in his Memorandum Opinion and Order, dated June 20, 2019 denied Bolinske's Motion to Amend Complaint Without Prejudice and Granted, Without Prejudice, defendants' Motion to Dismiss. It is from that Order and resulting Judgment Bolinske appealed to the Eighth Circuit Court of Appeals, which affirmed Judge Frank's decision in an opinion filed August 4, 2020.

LAW AND ARGUMENT

74. Judge Frank based his decision upon the so-called Abstention Doctrines set forth in Younger v. Harris, 401 U.S. 37, 43 (1071) and Rooker-Feldman. Rooker v.Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). The Abstention Doctrines, hold, generally, that district courts lack subject matter jurisdiction over challenges to state court judgements.

75. Bolinske respectfully submits that Judge Frank was in error, in that exceptions, here present and alleged in the Amended Complaint, make the Abstention Doctrines above referenced here inapplicable.

76. Younger, supra, held that a district court must abstain when the moving party has an adequate remedy at law and will not suffer irreparable harm, and (1) there is a pending state proceeding, (2) that implicates an important state interest and (3) affords an adequate opportunity to raise federal statutory and constitutional challenges. See, Gillette v. N.Dakota Disciplinary Bd. Counsel, 610 F. 3d 1045, 1048 (8th Cir.210).

77. In Younger, the Supreme Court held that federal courts may not enjoin pending state court criminal proceedings absent a showing of "bad faith, harassment or any other unusual circumstance that would call for equitable relief." 401 U.S. at 54, 91 S.Ct. 746. These principles are also extended to civil cases. See, e.g., Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423 (1982).

78. In Plouffe v. Ligon, 606 F.3d 890 (8th Cir. 2010), the Court stated "Even if these three requirements [listed above] are met, a federal court should not abstain if there is a showing of "bad faith, harassment or some other extraordinary circumstance that would make abstention inappropriate." Plouffe, supra, pp 892-3. (Emphasis added)

79. In Plouffe, the court also stated "We generally review the grant of a motion to dismiss de novo, accepting the allegations in the complaint as true and construing them

in the light most favorable to the non-moving party." Plouffe, at 893.

80. Bolinske submits that two of the three elements of the above referenced test are not here present. There is no ongoing state court proceeding in which Bolinske's constitutional rights can be protected. They were already run over roughshod, and denied in the entire disciplinary process. And, there is here no adequate remedy except in the federal courts.

81. For (1) alleging that N.D. Supreme Court Justice Dale Sandstrom and his wife, District Court Judge Gail Hagerty appeared to conspire to commit a felony, (tampering with, transferring and hiding public records on the N.D. Supreme Court website) and otherwise criticizing "justice" in North Dakota, Bolinske has been pilloried. No one has investigated or sought to hold accountable Justice Sandstrom and his wife, District Judge Hagerty, despite specific requests to the N.D. Supreme Court, the N.D. Attorney General, and N.D. Disciplinary Counsel. (Disciplinary Counsel, in fact, despite the considerable evidence submitted by Bolinske, summarily dismissed a Grievance Complaint brought by Bolinske against Sandstrom and Hagerty, with no investigation whatsoever. (Exhibit C)

82. The N.D. Supreme Court and its controlled underlings, have essentially stolen some five years of Bolinske's life by tying him up in endless, frivolous, baseless grievance litigation, causing him substantial financial, emotional, physical and reputational damage.

83. It is further submitted that the above referenced entities and defendants have, by their actions, attempted to silence Bolinske, and deter the exercise of his First Amendment free speech rights.

84. Not done with Bolinske yet, the defendants went after Bolinske again in an equally specious disciplinary proceeding. Please see the The Disciplinary Board v.

Bolinske, 2019 N.D.213, decision and related materials in the Appendix. (Exhibits E, F, G, H, I, J and K)

85. And, further demonstrating their unfairness, one of the defendants, Justice McEver's, who Bolinske announced he was running against for a seat on the N.D. Supreme Court, actually participated in this case as the active Chief Judge at the oral argument before the N.D. Supreme Court. While she did thereafter recuse herself it is suggested that her prior participation in the case, in discussion prior to the decision, and in her ruling inadmissible two "smoking gun" documents establishing the guilt of Sandstrom and Hagerty, created by the Supreme Court itself, and referenced and quoted in the record, so tainted the procedure and decision as to deny Bolinske due process.

86. And, again, believe it or not, Justice Crowthers, WHILE he was actually a named defendant in this case, sat upon, heard, and decided the second Grievance, (the Carter-Watson fee agreement matter) Disciplinary Board v. Bolinske case, 2019 N.D. 213, a clear conflict of interest.

87. How can it possibly be fair and just that an adverse party in a lawsuit gets to sit on a case as the acting Chief Justice and decide adversely another disciplinary matter brought against Bolinske?

88. Further, Justice Crowthers, (a defendant in the case now before you) himself actually made a ruling in the second Grievance matter, the Disciplinary Board v. Bolinske case, supra, in which, it is submitted, allowed into evidence improper material which was then conveniently used as the very basis for concluding that Bolinske improperly failed to return the clients files. (Please see Exhibit J, Bolinske's letter to the N.D. Supreme Court dated July 1, 2019 for the factual circumstances of that matter.) Bolinske testified, and there was no testimony to the contrary, in the record or otherwise, that the clients already had the 73 pounds of documents making up Bolinske's file,

making the duplication and return of these same documents an expensive and meaningless folly, because the clients already had them.

89. Please also see Peterson v. Sheran, 635 F.2d 1335 (8th Cir.) 1980 in which this court stated

> "Preliminarily, we must respond to appellee's contention that federal courts generally lack subject matter jurisdiction over deprivations of federal constitutional rights alleged to have occurred in state judicial proceedings. Appellees' argument seems to be that, because decisions of the highest state court on federal constitutional ***1339** issues can only be reviewed in the United States Supreme Court, relief from deprivations of constitutional rights in state judicial proceedings is not available under 42 U.S.C. § 1983 and 28 U.S.C. § 1343. We reject this contention. Federal courts have jurisdiction over claims that state judicial proceedings have resulted in deprivations of federal constitutional rights as long as the claims are otherwise properly before the federal courts." (citing cases; 635 F.2d. at 637)

90. The Court, in its decision though, denied Appellant Peterson relief because his action was filed in federal district court during the pendency of his case in state court. That is not true in this case. The North Dakota Supreme Court had already ruled against Bolinske when this, Bolinske's action, was filed in federal district court. Petition of Bolinske, 2018 ND 72, 908 N.W.2d 462, reh'g denied (N.D. 2018).

91. And, further, unlike in Peterson, supra., Bolinske did present his federal claims in state court, and he did allege specific claims of bias, harassment and denial of procedural and substantive due process.

92. (In the second grievance against Bolinske, the Watson-Carter grievance, (Disciplinary Board v. Bolinske, 2019 N,D. 213 (N.D.2019) Bolinske waived all his constitutional claims (for this very reason) so that they would not be "pending" in state court, not, as the Eighth Circuit erroneously apparently believed, in this case presently before you.)

93. On a simple motion to amend my complaint, which pursuant to the Rules of Civil Procedure, should be (1) "freely given" (Rule 15) and considering that (2) a Complaint need only be "a short and plain statement of the claim showing that the pleader is entitled to relief" (Rule 8), and that the Rules "should be construed and administered to secure the just, speedy and inexpensive determination of every action" (Rule 1), I now find myself more than over 24 months after commencement of the action before you, the United States Supreme Court, fighting to simply amend my Complaint. Speedy? Simple? Just? Inexpensive? (Rule 1). Hardly. (There is something horribly wrong with this picture. It should be no secret why American people are angry. I submit that it is largely because they don't believe they can get JUSTICE for their grievances against "the government" and other abusers of their rights. They can't even afford an attorney. Hell, I am an attorney and just look how far I have progressed.)

94. District Judge Frank and the Eighth Circuit have judged my case even though they have not heard it. I have not even yet, after two years, set foot on the litigation battlefield to use all the tools of Discovery to support my allegations, let alone get my case before a jury, where I certainly intend to ultimately prevail.

95. No, they say, I can't even amend my Complaint, even though the laws requires that they accept, on my motion to amend before them, all my allegations as true.

96. I respectfully suggest that if all my allegations are true, which I contend they are, there should be absolutely no question that I be entitled to try them before a jury of my peers.

97. I have alleged, and believe I can prove, if given a chance, that the North Dakota Supreme Court and its controlled disciplinary entities chose to, in their decision in this case, to favor and protect their colleagues and friend Justice Sandstrom and his District

Court wife, Judge Hagerty.

98. I again allege that the North Dakota Supreme Court, in an effort to protect itself from charges of corruption for not investigating Justice Sandstrom is in subsequent decisions and disciplinary actions against me, further seeking to also protect itself, at my expense, by, basically trying to silence me. (The cover-up, it is said, is always worse than the initial misdeed.)

99. Again, I am not, in this present case before you, "attempting to relitigate" the state disciplinary proceedings as concluded by Judge Frank and the Eighth Circuit. I am attempting to protect my Free Speech rights and recover damages for wrongs I assert have been done to me, my name, reputation and career.

100. The background information included with respect to my allegations against Sandstrom and Hagerty are provided because it is important to determine the over-all motivation and good faith, or lack thereof, of the North Dakota Supreme Court in this, and subsequent disciplinary proceedings and decisions.

101. It has further been decided by Judge Frank and the Eighth Circuit that, taking all my allegations as true, I have adequate opportunity to have my rights protected in state court proceedings. That is actually laughable. Again, I point out that I am actually sueing in this case two of the five Justices who refuse to recuse themselves are still sitting on and deciding cases against me. One, McEvers, even wrote the adverse decision in the Discover matter. How on earth in any system of justice can that be fair, just and in

compliance with Due Process? Surely you wouldn't want your opponents in one case deciding your rights in another, nor would any fair minded person.

102. Further, many of the parties to this action were not even parties in the state court proceedings. How could I possibly have then asserted and pursued in the state court proceeding my present claims against them in this case?

103. It is further contested that exceptions to the Rooker-Feldman and Younger doctrines have by my allegations, (again taken as true) been established. If these prior decisions do prevent me from proceeding to protect my rights, they should be re-examined, and clarified. Younger is some 50 years old. Rooker is over 75 years old. I, and all persons similarly situated should not have to be put through the absolute Hell I have been subjected to. We, and the lower courts should by you be instructed clearly as to our rights, the law and remedies thereunder.

104. Our system of government is one of checks and balances. If my allegations are accepted as true, and, indeed, prove to be true, the North Dakota state entities and individuals named in this action must be subjected to federal court control and over-sight. There is no one else to do it. Defendants cannot be permitted to run rough shod over the rights I am here seeking to protect with impunity. In the face of the wrongs I am alleging it is impossible to believe that I can receive any form of justice in state court proceedings. The federal courts must step in to assure citizens of their rights, and day in court, in the face of excessive and abusive use of state power.

105. Finally, it is contended that North Dakota's entire attorney disciplinary system is unconstitutional in that it results in a taking of property without Due Process of law, and fails to afford an attorney many other rights guaranteed to him or her by our laws and Constitution. The ways in which that occurs, and the constitutional and other flaws present in the system, e.g., no right to a jury trial, are enumerated above and will not be here repeated. Please note that Bolinske's (1) hard earned career as an attorney (2) his license to practice law, wich could be suspended or even revoked, and (3) the cost, time and resources necessary to fight the grievances all constitute Bolinske's "property" which cannot, under our Constitution, be taken without due process of law. It is respectfully submitted that North Dakota's attorney disciplinary system is woefully inadequate under our Constitution. Why, it is submitted, can an attorney's property be taken from him without the protections under the constitution? An attorney's "property" should have the same protections afforded the property of any other citizen.

CONCLUSION

For the reasons set forth herein, it is respectfully requested that the decisions of the lower courts be reversed and that this matter be remanded with directions to grant Plaintiff-Appellant Bolinske's Motion to Amend his Complaint.

Further, it is requested that (1) North Dakota's attorney disciplinary system be declared unconstitutional and (2) the defendants be prohibited and enjoined from further disciplinary action against Bolinske until the State of North Dakota's unconstitutional

attorney disciplinary system is corrected.

Dated Jan. 4, 2021

Respectfully Submitted,

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