

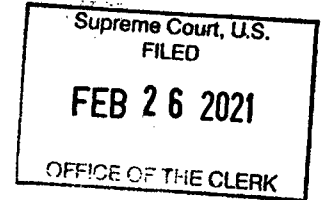
IN THE SUPREME COURT OF THE UNITED STATES

JOHN C. NIMMER,

Case No. 20-6546

TKK
Petitioner,

Vs.



HON. MICHAEL G. HEAVICAN,

PETITION FOR REHEARING

Chief Justice

Chief Justice of the Nebraska
Court in his official capacity;

(From the United States Court
of Appeals for the Eighth
Circuit)

HON. STEPHANIE F. STACY, Justice
of the Nebraska Supreme Court
in her official capacity;

HON. LINDSEY MILLER-LERMAN,
Justice of the Nebraska Supreme Court
in her official capacity;

Submitted by,

HON. WILLIAM B. CASSEL, Justice
of the Nebraska Supreme Court
in his official capacity;

John C. Nimmer
1429 S. Grandview Ave. #8
Papillion, NE 68046
402-345-8040

HON. JONATHAN J. PAPIK, Justice
of the Nebraska Supreme Court
in his official capacity;

Pro Se Petitioner

HON. JEFFREY J. FUNK, Justice
of the Nebraska Supreme Court
in his official capacity;

HON. JOHN R. FREUDENBERG, Justice
of the Nebraska Supreme Court
in his official capacity;

MARK A. WEBER, Counsel for Discipline,

Respondents.

COMES NOW the Petitioner John C. Nimmer, and pursuant to Supreme Court Rule 44.2 petitions for rehearing of this Court's February 22, 2021 Order denying Petitioner's August 14, 2020 Petition for Writ of Certiorari, that a certiorari writ be granted, and a briefing schedule and oral argument set. The grounds are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The undersigned therefore certifies this motion for rehearing is submitted in good faith and not for delay.

Rulings since the August 14, 2020 Petition for Writ of Certiorari have now wholly foreclosed federal review over even the most egregious constitutional violations in attorney disciplinary cases. Also as admission to and continued federal practice is as a practical matter wholly dependent upon state licensure, abstention for reasons of federalism is both inappropriate and an unwarranted ceding of jurisdiction over the federal practice of law to the states.

No Federal Review Is Now Available For Constitutional Violations In State Attorney Discipline Matters

1. There is no possibility of federal review of factually based (as applied) constitutional violations in attorney discipline cases.

A. Cases filed in US District Courts:

- i. Cases filed while state discipline proceedings are pending are denied for Younger abstention, even in situations of bad faith such as racism against a lawyer and his clients. See Timothy L. Ashford v. (Nebraska) Office for Counsel for Discipline, 20-757, cert. petition docketed December 2, 2020; cert. denied January 25, 2021; rehearing requested February 17, 2021.
- ii. Cases filed after state discipline proceeding are concluded are always denied under the Rooker-Feldman doctrine. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

B. Certiorari is never granted for cases filed directly in the US Supreme Court (despite US District Courts in the course of dismissing claims under Rooker-Feldman routinely arguing plaintiffs should instead have gone directly to SCOTUS). Gary Victor Dubin v. (Hawaii) Office of Disciplinary Counsel, 20A79, Application for Stay docketed October 30, 2020, certiorari denied December 7, 2020.

2. There is no possibility of federal review of facial (systemic/institutional) constitutional infirmities in attorney discipline cases.

- A. Cases filed in US District Court prior to the conclusion of state disciplinary proceedings are dismissed under Younger (see Ashford, supra. where in part his claims were facial not applied), and after conclusion of state disciplinary proceedings are purportedly concluded, dismissed for lack of standing. See Nimmer v. Heavican, et. al, 4:18cv-3123, Dist. Nebr.; summarily affirmed 8th circuit Case No. 19-2426; US Sup. Ct. Case 20-6546 cert. denied February 22, 2021.
- B. The US Supreme Court never grants certiorari review for cases directly filed with it. See Dubin, supra.—where some of his claims were facial not applied.

The Undesirable Consequences

Wholesale ceding of jurisdiction over the federal practice of law to the states is incompatible with the existence of concurrent separate sovereigns. Weaponization of the attorney discipline process to sideline attorneys representing unpopular causes or clients robs them of the means of peaceful redress. As written by Shakespeare in Henry VI, the refrain of would be

tyrants that “The first thing we do, let's kill all the lawyers” sounds like a Proud Boys or Antifa battle cry. Historical misuses of attorney discipline—principally disbarment—for improper purposes has occurred against attorneys criticizing Cromwell’s 17th century English government, and in America attorneys defending both loyalists and patriots, ministers of nonapproved religious denominations, abolitionists, advocates of civil liberties and rights, alleged communists, free speech advocates, and those exercising religious liberty and conscience rights. As with an independent judiciary, attorneys are essential to the rule of law and they must therefore have a meaningful opportunity to defend themselves against improper allegations of misconduct and its debilitating consequences of suspension and disbarment.

Why Grant Certiorari For This Case?

Understandably this Court cannot grant certiorari for every attorney discipline case, but it can provide guiding precedent to state and lower federal courts by granting this one. Petitioner’s US District Court facial attack (Note 1) against the constitutional infirmities of the Nebraska attorney discipline system is bigger than his situation and applicable to a host of other cases. It is settled law that lawyers have a property interest in their licenses to practice, and due process applies in their taking. Legal sophistry to deny

any and all claims that separation of powers (Note 2) is mandated by due process and other constitutional protections (privileges and immunities; states to have a republican form of government which mandates separation of powers) renders the requirement meaningless. It is fundamentally unfair for Frank James to judge Jesse James' cause, and for the Nebraska Supreme Court to judge the claims of its wholly dependent Counsel for Discipline. Granting Petitioner certiorari, then determining if, when, and before which courts a federal facial institutional challenge may be brought would have great precedential value.

Endnotes

- (1) September 4, 2018 Verified Petition in Nimmer v. Heavican, et. al, 4:18cv-3123, Dist. Nebr., is accessible both on the PACER system and through the following google documents hyperlink:
<https://docs.google.com/document/u/1/d/e/2PACX-1vQb8b7-U8A0dBajDCsOYR8sypLHRH74pymIIPILzW9UzFb-8zmqlIRvEtQVD9CLlgKeGIuXQmPZJdS/pub>
- (2) It further a principal of both the natural and English common law, which at times are appropriate interpretative guides for constitutional jurisprudence, that no one is to judge his own cause (Nemo iudex in causa sua). Sir Edward Coke, Institutes of the Laws of England, § 212, 141 (1628); "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny." James Madison, Federalist No. 47; "Power tends to corrupt and absolute power corrupts absolutely. Lord Acton.