21-824
No.

In the Supreme Court of the United States

Cecelia F. Abadie, Petitioner
Versus
La. Atty. Disciplinary Board, Office of
Disciplinary Counsel, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

THE LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Cecelia F. Abadie
Petitioner Pro Se
La. Bar No. 19874
20 White Drive
Hammond, Louisiana 70401
985-542-7859
cfabadie@gmail.com

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QUESTIONS PRESENTED

The disciplinary system in Louisiana has strayed from respecting due process for attorneys who allege wrongdoing by a judge. Respondent's client, Mark Anthony Jenkins, was found not the biological father in district court. The legal paternity issue was set for hearing in juvenile court where the parties had stipulated there was no authentic act of acknowledgment by Jenkins. On the day of trial, after a circuit judge had taken the court record from juvenile court, the judge refused to rule, falsely claiming district court decided legal paternity. Opposing counsel filed a writ application falsely presenting the untried issue for "review." Robert Murphy, the writing judge, decided legal paternity by mischaracterizing a statement as a "judicial confession to signing an acknowledgment of legal paternity." Actions to nullify the ruling for lack of supervisory jurisdiction failed in state and federal courts that all ignored court record evidence. Respondent was suspended for alleging collusion to move the issue to circuit court without a trial. The questions presented are: 1) whether suspending respondent for a year and a day, after ignoring evidence that supported her allegation, violated due process and threatens freedom of speech; and 2) whether the same disregard for the evidence against the judge in a federal civil rights action shows access to due process was blocked, and that compels correction of the courts through writ of certiorari.

LIST OF PARTIES

Cecelia Farace Abadie, applicant
Louisiana Attorney Disciplinary Board
Office of Disciplinary Counsel, respondent

RULE 14.1(iii) LIST

State of Louisiana Dept. of Children & Family Services, In the Interest of Mark Jenkins Jr. v. Mark Jenkins Sr., Docket No. 2003-NS-1371, Jefferson Parish Juvenile Court, Order in Minutes of July 7, 2014.

State of Louisiana Dept. of Children & Family Services In the Interest of Mark Jenkins Jr. v. Mark Jenkins Sr., Docket No. 2003-NS-1371, Jefferson Parish Juvenile Court, Minutes of September 15, 2014.

Mark Anthony Jenkins Sr. v. Latasha Jackson, No. 711-419, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, Judgment signed on Feb. 4, 2015.

State of Louisiana Dept. of Children & Family Services: In the Interest of Mark Jenkins Jr. v. Mark Jenkins Sr., Docket No. 2003-NS-1371,

Jefferson Parish Juvenile Court, State of Louisiana, Minutes of April 27, 2015.

Mark Anthony Jenkins Sr. v. Latasha Jackson, No. 15-CA- 293, Fifth Circuit Court of Appeal, State of Louisiana, Order of May 26, 2015.

Mark Anthony Jenkins v. Latasha Jackson, No. 2015-CA-399, Fifth Circuit Court of Appeal, State of Louisiana, Disposition handed down on July 31, 2015.

Mark Anthony Jenkins v. Latasha Jackson, No. 2015-CA-399, Fifth Circuit Court of Appeal, State of Louisiana; rehearing denied **Sept. 2, 2015.**

Mark Anthony Jenkins, Sr. v. Latasha Jackson, No. 2015-CJ-1622, Supreme Court of the State of Louisiana, denied writ of *certiorari*, with one dissent, **Sept. 4, 2015.**

Mark Anthony Jenkins Sr. v. Latasha Jackson, No. 711-419, 24th Judicial District Court, State of Louisiana, denied motion to rebut finding of a judicial confession, judgment signed Feb.1, 2016.

Mark Anthony Jenkins Sr. v. Latasha Jackson, No. 711-419, 24th Judicial District Court, judgment on May 24, 2016; amended to add dismissal of petition Nov. 7, 2016.

Jenkins v. Jackson, 216 So.3d 1082 (La. App., Feb. 22, 2017).

Mark Anthony Jenkins, Sr. v. Latasha Jackson, No. 16-CA-482, Fifth Circuit Court of Appeal, State of Louisiana, denied request for rehearing March 22, 2017.

Mark Anthony Jenkins, Sr. v. Latasha Jackson, No. 2017-C-0652, Supreme Court of the State of Louisiana, denied writ of *certiorari* with "one who would grant," Sept. 6, 2017.

Mark Anthony Jenkins v. Robert M. Murphy et al., United States District Court, Eastern District of Louisiana, Civil Action No. 2-18-cv-33122, dismissed complaint with prejudice Nov. 27, 2018.

Mark Anthony Jenkins v. Robert M. Murphy et al., Civil Action No. 2-18-3122, U. S. District Court, Eastern District of Louisiana, denied new trial, Jan. 14, 2019.

Mark Anthony Jenkins v. Timothy O'Rourke, Jefferson Parish Assistant District Attorney, Jefferson Parish Juvenile Court, et al., United

States Court of Appeals for the Fifth Circuit, No. 19-30112, affirmed district court, Jan. 10, 2020, designated not to be reported.

Mark Anthony Jenkins v. Timothy O'Rourke, Jefferson Parish Assistant District Attorney, Jefferson Parish Juvenile Court, et al., United States Court of Appeals for the Fifth Circuit, No. 19-30112, denied rehearing *en banc* without poll, Feb. 21, 2020.

Mark Anthony Jenkins v. Timothy O'Rourke at al, No. 20-433, filed July 17, 2020, on October 5, 2020 docket, Writ of *certiorari* denied.

In re Cecelia F. Abadie, No. 2020-B-1276, Supreme Court of Louisiana. 5/13/21, Rehearing denied June 29, 2021.

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APPENDIX

6. Essential Material

TABLE OF AUTHORITIES

Cecelia Farace Abadie respectfully petitions for a writ of *certiorari* to review the judgment of the Louisiana Supreme Court.

OPINIONS BELOW

Supreme Court of Louisiana, *In re Cecelia F. Abadie*, No. 2020-B-1276, 5/13/21, rehearing denied June 29, 2021.

In re Cecelia F. Abadie, Louisiana Disciplinary Board, Recommendation to the Louisiana Supreme Court, 17-DB-056, November, 13, 2020.

In re Cecelia F. Abadie, Louisiana Disciplinary Board,

Report of Hearing Committee, No. 17-DB-056, December 11, 2019.

JURISDICTION

The Louisiana Supreme Court's Opinion issued on May 13, 2021. Request for Rehearing was filed on May 26, 2021 and denied on June 29, 2021. Jurisdiction is proper over cases arising under the Constitution of the United States, according to Article 3, Section 2 of the Constitution.

CONSTITUTIONAL PROVISION

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting freedom of speech,....

United States Constitution, Amendment XIV, Sec. 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, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION AND STATEMENT OF THE CASE

Opposing counsel, Kristyl Treadaway, filed the disciplinary complaint against respondent on the day after she and ADA O'Rourke received a courtesy copy of a letter respondent was planning to send to a legislator and district attorney. (App.*infra,* 33-35) The letter alleged they colluded with state fifth circuit judge Robert M. Murphy to prevent a trial in juvenile court to determine if her client, Mark Jenkins, was the legal father. It also alleged attorney Treadaway filed a writ

application and in it lied, claiming the district court erred in deciding legal paternity; and that Judge Murphy decided legal paternity without supervisory jurisdiction. Respondent decided not to send the letter to the addressees.

The Underlying Case

Jenkins and Jackson were not married when her son was born in September, 1997. Jenkins signed the birth certificate at the hospital; later they married, and in 2003 they divorced. Jackson obtained child support through the Department of Child and Family Services (DCFS) in juvenile court. In 2011, Jenkins learned he might not be the father of the child and did not recall if he had signed an **authentic act** of acknowledgment besides signing the birth certificate. Only an authentic act of acknowledgment would make Jenkins the legal father under La. C.C. art. 203. (App, *infra*, 74-5) Normally, an inquiry to the Department of Health and Hospitals (DHH), Center for Records and Statistics would answer that question, but DHH produced a copy of the birth certificate and in a separate statement reported that an original acknowledgment was destroyed during Hurricane Katrina without identifying its form.

After receiving the report from DHH, Jenkins filed a petition for damages for paternity fraud in district court on February 15, 2012. The petition requested a court-ordered paternity test, and revocation of "an

acknowledgment" in case an **authentic act** was discovered.

Paternity test results ruled Jenkins out as the biological father and respondent filed a petition to nullify the child support order in juvenile court. This dual court situation was used by disciplinary counsel and the court to support its charge of duplicative filings. Respondent explained that the same facts applied to different actions in different courts, and there had been several amendments. When Respondent learned that the state registrar automatically forwarded copies of acknowledgments to DCFS under a 1995 statute, she informed juvenile court, and it ordered DCFS to produce what it had. The ADA reported there was no authentic act of acknowledgment. That admission left ODC and the assistant district attorney who obtained the order for support liable for the negligence or fraud. When the ADA's admission was not reported in the minutes, Respondent requested that it be reported and the judge set a hearing for that purpose. The hearing was delayed until April 27, 2015.

On October 17, 2014 Respondent filed a Rule to Show Cause in district court to obtain a ruling on biological paternity. The rule requested an order to DHH to remove Jenkins name from the birth certificate; that the DNA Test Report be admitted into evidence; and Jenkins be found not the father of Jackson's son. (App. *infra,* 75-81) Two judgments were signed on February 4, 2015. Respondent assigned ODC's exhibit

number, ODC 8p, to the judgment on biological paternity she submitted into evidence. (App. *infra,* 38-40) Later she realized ODC used that number for the ruling denying an order to DHH and excluded the judgment on paternity biological.

On April 27, 2015, the hearing to report the stipulation in the minutes was held in juvenile court. Attorney Treadaway stipulated for the parties that there was no authentic act of acknowledgment. The judge read the district court judgment of February 4, 2015 and observed that district court had ruled that Jenkins was not the biological father. He then set the legal paternity issue for trial on June 15, 2015, and ordered memoranda on the legal paternity issue. (App., *infra,* 40-42). Treadaway filed an appeal from the district court's judgment on May 18, 2015. It stated that the district court erred in finding "appellee was not the father of Mark Anthony Jenkins Jr." (Emphasis added.) (App., *infra,* 82-83) The appeal was denied for improper procedure and she was given until June 25, 2015 to file an "appropriate application seeking review of the interlocutory rulings contained in the February 4, 2015 judgment." On May 26, 2015, respondent amended the petition in district court to add DCFS as a defendant, alleging it was liable for paternity fraud or negligence. Treadaway moved for stay in the juvenile court proceedings.

On June 15, 2015, the day set for trial, the juvenile court judge granted the stay without referring to a

trial on legal paternity. (App *infra* 42-44) The judge and Treadaway both claimed district court had ruled on legal paternity and her "appeal" was "pending." (App,*infra,* 83-85). That claim had not been raised before. The juvenile court judge stated there would be no argument, and later in the hearing he stated that he did not have the court record **because the circuit court had "requested it." (App., *infra*, 84).**

On June 23, 2015, Treadaway filed a writ application. (App. *infra*, 85-86). She claimed district court erred in finding Jenkins not the "legal father." The Opposition Brief, (App. *infra,* 87) stated the issue had not been decided at trial. The Feb. 4, 2015 judgment (App *infra* 38-40) proved it. Judge Robert Murphy wrote the disposition of July 31, 2015 (App *infra* 44-53) and ruled Jenkins "judicially confessed" to signing an "acknowledgment of legal paternity." (App, *infra* 49) That ruling in effect decided that Jenkins was the legal father. Respondent filed for Rehearing. It was denied. Respondent applied for writ of *certiorari.* It was denied on September 4, 2015 with one dissent. Justice Hughes wrote:

> Respectfully, the seemingly untimely review and intervention of the Court of Appeal to decide an issue not addressed in the trial court's judgment, based on the concept of a"judicial confession," is clearly wrong.... (App., *infra*, 56)

Respondent sent the letter complaining of collusion to attorney Treadaway and ADA O'Rourke on September 14, 2015. Treadaway immediately filed the disciplinary complaint. Respondent responded with the court records to prove what had occurred in the courts and gave a deposition.

On March 10, 2016, Respondent filed a petition in district court to nullify the circuit court's ruling for lack of supervisory jurisdiction. The district court avoided finding lack of jurisdiction, even though, during the hearing, **the district judge admitted he had not ruled on legal paternity. (App., *infra,* 87).** The court dismissed the petition to nullify as "prescribed." Respondent pointed out that an action to nullify an absolutely null ruling does not prescribe. That was ignored.

Respondent appealed on September 16, 2016. On December 13, 2016 respondent was offered a private admonition (App. *infra*. 97-99). Although the offer by letter does not state it, the private admonition was contingent on apologizing for the allegation against Judge Murphy. The allegation against the judge was the only infraction cited in the letter.

On appeal, Judge Robert Murphy was on the panel to review the dismissal of the petition to nullify his 2015 ruling. The "Facts and Procedural History" in

Jenkins v. Jackson, 216 So. 3d 1082 (La. App., 2017), rendered on February 22, 2017, is reported on pages 1082 through 1088 in chronological order. On page 1087, there are material omissions. It reported:

> After the trial court rendered its February 4th judgment, Mr. Jenkins filed a "petition for Alteration of a Birth Certificate ...on February 9, 2016. Subsequently he filed a "Motion to Amend the Petition a Third Time." In that Motion, Mr. Jenkins sought.... Mr. Jenkins also filed a "Motion for Order to Calculate the Probability of Paternity." ...and requested that the DNA information be used in the instant matter.
>
> On June 23, 2015, Ms. Jackson filed a supervisory writ with this Court, seeking review of the trial court's February 4, 2016 judgments. Ms. Jackson alleged that the trial court erred when it overruled her exception of prescription and found Mr. Jenkins not to be the legal father... *Jenkins* at 1087.

The **hearings in juvenile court on April 27, 2015, and June 15, 2015 are not even mentioned in the disposition's "facts."** The disposition also misrepresented the law on supervisory jurisdiction:

> Because the 24th Judicial District Court is a district court within our circuit, this Court had **supervisory jurisdiction** to render determinations relevant to Mr. Jenkins' petition, which included the legal and biological paternity of [Mark Anthony Jenkins, Jr.]. *Jenkins,* at 1090 (Emphasis added.)

That "holding" actually claims that a trial on an issue pled in the petition is not needed for the Court of Appeal to take up the issue on a supervisory writ application. Rehearing was requested, (App. 68-72), and denied on March 22, 2017. (App. 57) Writ of *certiorari* was denied on September 6, 2017, with only Justice Hughes willing to grant it. (App., *infra,* 57-58)

On March 22, 2018, respondent filed *Mark Anthony Jenkins v. Robert M. Murphy and Timothy O'Rourke,* a civil rights complaint under U.S.C. 42:1983 in United States District Court, Eastern District of Louisiana. (App. *infra* 72-74) It was amended to add Judge Barron Burmaster of the juvenile court and attorney Kristyl Treadaway. The Amended Complaint presented the court records, including Jenkins' Rule to Show Cause, the February 4, 2015 Judgment, Jackson's Exception of Prescription to the rule, and the fifth circuit's disposition of July 31, 2015.

The *Rooker-Feldman* objection was granted by ignoring the facts showing lack of supervisory juris-

diction. The Opinion & Reasons copied word-for-word the "Facts and Procedural History" given in *Jenkins* at1084-1088. It ignored the facts regarding events in juvenile court on April 27, 2015 and June 15, 2015. The district court made the issue one of simple subject matter jurisdiction and avoided the issue of supervisory jurisdiction over the content of the judgment. It ruled: "...it is clear that the July 31, 2015 order Jenkins questions is **not** void for lack **subject matter jurisdiction**...." (App. *infra* 88-91) The Federal Fifth Circuit affirmed, adopting the *Jenkins'* holding and not noticing that the district court decided subject matter jurisdiction, but holding referred to supervisory jurisdiction. (App. *infra* 91-95)

The Disciplinary Process

Respondent was given no choice of a committee member. Discovery requests for "specific instances when she failed to provide competent representation," and for law supporting Judge Murphy's supervisory jurisdiction were denied in the attached letter, (App. *infra.* 99-101), claiming that disciplinary matters are neither civil nor criminal and discovery does not apply. However, "Suspension is a quasi-criminal punishment in character, any disciplinary rules used to impose this sanction on attorneys must be strictly construed resolving ambiguities in favor of the person charged. *Matter of Thalheim,* 853 F.2d 383,388 (5th Cir. 1988).

Therefore, respondent should have been afforded at least civil procedure. Respondent had no notice of the specific documents, within 939 pages of exhibits going back to 2012, about which she was going to be questioned. On May 31, 2019, 14 months after Jenkins' civil rights complaint was filed in federal court, the hearing before the disciplinary committee took place. Questioning about the details of her pleadings took place after hours of the hearing had passed, and respondent was exhausted.

Respondent had presented a timeline and pre-hearing argument to the Committee. (App. *infra* 66-67) She testified to the court records she had given to the panel members and entered into evidence. (App. *infra* 95-97) The records documented the crucial events of October 17, 2014 through July 31, 2015 (App. 96) and *infra,* pages 4-6. In her Post-Hearing Memorandum (App. infra 64-66), Respondent summarized the evidence and its significance. She explained it was not coincidental that the juvenile court judge and opposing attorney told the same lie at the hearing on June 15; and that the judge's refusal to hear the issue, and the attorney's presentation of the issue in a writ application from district court were steps that were needed to illegally present the untried issue to the circuit court. She pointed to the misrepresentations of facts and law in Judge Murphy's disposition that were used to rule that Jenkins had judicially confessed to signing an "acknowledgment of legal paternity."

The Hearing Committee's Recommendation ignored the evidence. It stated, "Respondent did not present any proof of any misconduct, and did not defend against the Rule 8.2 violation." (App. *infra* 27) It described the civil rights complaint in federal court as a "continuing the attack" on the judge. (App. *infra* 27)

The Committee Report stated that respondent's letter to opposing counsel was sufficient to prove the charge of impugning the judge's integrity. (App. *infra* 26) The evidence that the judge ruled without supervisory jurisdiction was irrelevant to the Committee. It accepted every instance of a mistake in respondent's work that disciplinary counsel alleged, and ignored respondent's explanations for her choices. (App. *infra* 26) Respondent explained that she delayed service of the petition in juvenile court while she determined if it were possible to handle all of the actions in district court; that the pleadings in district court and juvenile court were not duplicative because the same facts applied to the different causes of action in those courts. She cited the civil procedure article that requires a petition to nullify a circuit court ruling be filed in district court. The Disciplinary Board accepted the findings of incompetence with one exception. After presenting the court records and explaining that denial of a trial was denial of due process, (App. *infra* 59-61), the only response from the Disciplinary Board was "Have you apologized to Judge Murphy?"

REASONS FOR GRANTING WRIT

"The supreme court has general supervisory jurisdiction over all other courts." La. Constitution of 1974, Art. 5, sec. 5. Therefore, when wrongdoing by a fifth circuit judge comes to its attention, it is obligated to pay attention to it and deal with it, even when the wrongdoing is presented to it in a disciplinary action against an attorney. Instead of recognizing the violation of supervisory jurisdiction and the facts that show it was done by collusion, the supreme court violated law and due process, and suspended respondent for a year and a day, requiring her, in effect, to lie in order to be reinstated.

A. **All of the misrepresentations of facts in the Supreme Court's Opinion benefitted Judge Murphy by disparaging respondent; and hiding the fact that he ruled on legal paternity without supervisory jurisdiction by fabricating a "judicial confession" to signing an acknowledgment that the parties had already stipulated had never been signed.**

Despite being a trier of fact, the Supreme Court's "Underlying Facts" did not consider the facts in the court records submitted by respondent. The "Underlying Facts" incorrectly stated: "Because respondent

continued to file pleadings on the issue of Mark's revocation of his acknowledgment of paternity... on November 20, 2014, Ms. Treadaway filed a second exception of prescription, and...Judge Steib again denied the exception of prescription." (App. *infra* 10)

The facts are that Respondent only asked for revocation of "an acknowledgment" in the petition filed in district court in February, 2012. **Respondent never asked for a hearing on revocation.** In 2013, Latasha Jackson's first attorney filed an exception of prescription to revoking an authentic act of acknowledgment without any evidence that there had been an authentic act of acknowledgment. On April 27, 2015, Treadaway stipulated there had been no authentic act of acknowledgment to revoke. (App. *infra* 41) Treadaway's November 20, 2014 exception of prescription was to **rebut the presumption of biological paternity that is created by signing the birth certificate acknowledgment.**

The "Underlying Facts" incorrectly stated: "Respondent opposed the writ application with the Fifth Circuit Court of Appeal, essentially arguing that, because neither the HHR nor DCFS could produce a copy of the signed acknowledgment of paternity, the issue of whether Mark can revoke the acknowledgment was not prescribed." (App. *infra* 11) That was never an argument. Respondent's Opposition Brief, (App. *infra* 60) argued that the circuit court did not have supervisory jurisdiction over that issue.

The "Underlying Facts" incorrectly claimed:

> Because the previous pleadings by respondent in the 24th JDC case indicated that Mark signed the birth certificate and an acknowledgment of paternity (considered a judicial confession by the Fifth Circuit), the Fifth Circuit reversed Judge Steib's ruling ...regarding the issue of Mark's revocation of his acknowledgment of legal paternity. (App. *infra,* 11)

That statement ignored the fact that the district court (Judge Steib) had not ruled on legal paternity, and the fifth circuit did not have supervisory jurisdiction to decide anything regarding legal paternity, including the so-called "judicial confession" to signing an "acknowledgment of legal paternity."

B. **Besides misstating the facts, the Opinion ignored Code of Professional Conduct Rule 8.2(a) that requires the court must consider the evidence to determine objective support for an allegation.**

Rule 8.2(a) provides: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." It follows that consideration of the attorney's evidence is needed to determine if the allegation was based on objective evidence that made it a reasonable conclusion. "The Louisiana rule is identical to the ABA rule." *U.S. v. Brown*, 72 F. 3rd 25, 30 (5th Cir. 1995). In addition,

the comment to Rule 8.2 "suggests that the rule is primarily a prohibition on comments made to the public that would undermine public confidence in the administration of justice." *U.S. v. Brown*, p. 29. In respondent's case, she did not make the allegation public. She confronted opposing attorneys in a private letter because she knew they assisted the circuit judge.

Garrison v. Louisiana, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964) held "this rule proscribes only statements which the lawyer knows to be false or which the lawyer makes with reckless disregard for the truth, it comports with the First Amendment's guarantee of free speech." *Louisiana State Bar Ass'n v. Karst*, 428 So.2d 406 (La.1983) interpreted DR 8-102(B), the predecessor of Rule 8.2(a). It adopted an objective standard, rather than a subjective standard, in analyzing whether a statement is knowingly or recklessly made.

> It is the reasonableness of that belief and the good faith of the attorney in asserting it that determines whether or not one had "knowingly made false accusations against a judge." ... In our opinion, DR 8-102(B) is violated when an attorney intentionally causes an accusation to be published which he knows to be false, or which in the exercise of ordinary care, he should know to

be false." *Karst* quoted in *In re Mire*,197 So.3d 656, 667 (La. 2/19/16)

Courts of other states have reached similar conclusions, and have almost universally disciplined attorneys under an objective reasonableness standard. *Mire* at 667.

***In re Mire*, 197 So. 3d 656 (La. 2016) marks the Louisiana Supreme Court's significant deviation from considering the totality of the attorney's evidence to determine if the allegation was reasonable.** In a partition of community property case, trial judge Keaty made a disclosure regarding her relationship with the former wife's family. However, when bias was suspected, Mire investigated and found the disclosure was incomplete. Mire obtained a transcript of the disclosure, and then subpoenaed the court reporter's CD. The CD was examined by an expert who testified that that it did not come from court's machine. It "was kind of salt and peppered with different types of audio files that were on here and there, not just the files that would come from FTR...." He agreed it was spliced. (*Mire*, 662) The technician who produced the CD testified that the "court reporter provided him with two forms of media, an audio cassette tape and digital media." His job "was to take the two recordings, find the point where they overlapped, and make them into one continuous piece of audio. He said he was told the digital recorder in the courtroom was not working, so

the backup recorder stated via audio cassette tape and then was switched to the digital recorder once it began functioning again. He emphasized his splice did not delete any material; it added matter." Judge Keaty testified that perhaps splicing was needed to take out another hearing but the docket showed there were no other hearings that day. (*Mire,* 663)

Despite the testimony, the disciplinary committee found no factual basis for Mire's allegations of corruption, and the board adopted its findings. The Supreme Court suspended Mire for a year and a day after giving the following one paragraph analysis.

> [R]respondent relies heavily on the purportedly corrupted audio tape from the Hunter hearing as providing support for the assertions of incompetence and corruption of the legal profession. We acknowledge there is evidence in the record of these disciplinary proceedings indicating the court reporter's tapes **may have been spliced as a result of a malfunction of the court reporter's machine.** However, we see no evidentiary support for respondent's implication that Judge Keaty or any person either through incompetence or corrupt intent added substantive statements to the official transcript which were not contained in the original hearing. **Ordinary**

experience suggests that equipment can malfunction. (Mire, 668) Emphasis added.

Justice Weimer's Dissent stated, "The majority has failed to account for some key evidence...." (*Mire*, 670). He listed: 1) Judge Keaty's real estate company was marketing Ms. Hunter's separate property that was subject to a community property reimbursement claim. (670). 2) Splicing was proved but with there was no proof that the court recorder malfunctioned. 3) Judge Keaty's son employed Ms. Hunter's sister. 4) The court reporter sued to enjoin Mire from obtaining the tapes. 5) Judge Keaty recanted her explanation that redaction of the recordings was needed to take out other hearings that day. 6) Judge Keaty amended her personal disclosure form after denying it was inaccurate. 7) Judge Keaty was in fact recused from the case for a "community interest." (*Mire*, 672)

Justice Weimer stated: "We are required to evaluate the totality of the facts in this record to *determine* if there is an objective factual basis for the attorney to have made the allegations." (*Mire* at 670.) "The standard the majority describes is focused entirely on respondent's statements and whether there is objective support for those statements." .... "I believe that a reasonable person could justifiably disbelieve that the court's recording went haywire at the exact moment of Judge Keaty's purported disclosure." (*In re*

Mire, 190 So.3d 705,706 (Mem)(La.2016), rehearing denied.

C. **In denial of due process in respondent's case, the supreme court went farther than "not considering the totality of evidence," it ignored all of the evidence.**

The Louisiana Supreme Court's Opinion claimed respondent presented no defense to the charge of impugning the integrity of Judge Murphy. It claimed the defense was "unspoken." It "... seemed to be that she believes the allegations, contained in the collusion letter and federal lawsuit." Then it claimed the "unspoken" defense made allegations against Judge Murphy based on "speculation and conjecture rather than solid evidence." (App. *infra* 18) That was the explanation for not mentioning any defense evidence in the Opinion. (App. *infra* 61-63)

Respondent filed an Application for Rehearing (App. *infra* 61-63) in which she referred again to the material court records that proved Judge Murphy ruled without supervisory jurisdiction in order to find Jenkins was the legal father. The records proved the lies to avoid a ruling in juvenile court, where the stipulation meant Mr. Jenkins was not the legal father. Though he was not the biological father, and there is proof he was deceived by both Ms. Jackson and the Department of Child and family Services, he paid

support until Ms. Jackson's son was a major, while she was remarried and a employed as a certified teacher. Respondent argued that considering the evidence was required for due process and that the Opinion of the court was not the result of true adjudication.

The Fourteenth Amendment provides: "...nor shall any State deprive any person of life, liberty, or property, without due process of law." Due process means that "(P)ersons whose rights may be affected by State action are entitled to be heard...." *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 17 L.Ed. 531 (1864). "Being heard" means more than simply the right to file evidence into the record and present oral and written argument. Being heard means having a fair tribunal that will actually consider the evidence. *Miller -El v. Cockrell,* 537 U.S. 322 (2003). *Miller-El* dealt with courts' failures to consider extensive evidence presented by the defense regarding exclusion of blacks from juries.

> ...this Court concludes that the District Court did not give full consideration to the substantial evidence put forth in support of the *prima facie* case. Instead, it accepted without question the state court's evaluation .... More fundamentally, the court was incorrect in not inquiring whether a "substantial showing of the denial of a constitutional right" had been

proved as Sec. 2253(c)(2) requires. *Miller -El* at 324.

Morgan v. United States, 304 U.S. 1, 58 S.Ct. 773, 82 L.Ed. 1129 (1938) dealt with the Department of Agriculture's strategy to ignore evidence presented by market agencies at the Kansas City Stockyards and not reveal its position to the plaintiffs. The court stated: "The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be a barren one." *Morgan* 18.

Respondent presented specific facts cited to specific court documents: the lies told by the juvenile court judge and attorney Treadaway; the disposition's ruling without supervisory jurisdiction; a circuit court judge requesting the juvenile court record before the day set for trial. Those facts were not addressed or rebutted in the Supreme Court's Opinion. Instead, it ignored the facts. The Opinion accepted without question the disciplinary committee's and board's sketchy and very general rendition of the case. The only descriptions of the collusion allegation given in the Opinion were these two paragraphs:

> Respondent accused Fifth Circuit Judge Robert Murphy of colluding with DCFS against Mark so Mark would not be

> reimbursed for the child support payments he made to Latasha. Respondent also accused Ms. Treadaway of requesting the stay in the Juvenile Court case as a way to give the Fifth Circuit time to collude with the DCFS. (App. *infra* 13)
>
> The federal lawsuit accused Judge Murphy, Mr. O'Rourke, and Ms. Treadaway of conspiring "to allow Judge Murphy to usurp the issue of legal paternity from Juvenile Court.... (t)he conspirators stopped Juvenile Court from deciding legal paternity, so that it could take the place of biological paternity, which was the issue decided in district court. (App. *infra* 14)

Morgan recognized the strategy of avoiding a joining of the issues in order to avoid consideration of the evidence. *Morgan* noted how counsel for the Government gave a "very general" "sketchy" discussion and did not "reveal the claims of the Government." *Morgan* at 24. There was no information regarding "the Government's concrete claims...." *Morgan* at19.

> ... there must be a hearing in a substantial sense. And to give the substance of a hearing, which is for the purpose of making determinations upon the evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them." *Morgan* at 23.

Instead of confronting the evidence presented by the market agencies at the Kansas City Stockyards,

> [The]secretary accepts and makes as his own the findings which have been prepared by active prosecutors for the Government, after ex parte discussion with them and without according any reasonable opportunity to the respondents in the proceeding to know the claims thus presented ...." That is more than an irregularity in practice; it is a vital defect. *Morgan* at 22.

Failing to act "in accordance with the cherished judicial tradition embodying the basic concepts of fair play" discredits the judicial body. *Morgan* at 22. The Supreme Court found the Secretary of Agriculture's order invalid because the required hearing was not given. For the same reason, the Supreme Court's judgment in respondent's should be reversed.

M*atsushita Electric Industrial Co. LTD et al. v. Zenith Radio Corporation et al,* 475 U.S. 574, 109 S.Ct. 1348, 89 L.Ed.2d 538 (1986), gives criteria to evaluate evidence of collusion. 1) The trier of fact must consider whether there was an illegal conspiracy that caused cognizable injury; and 2) whether the evidence tends to exclude the possibility that the alleged conspirators acted independently. *Matsushita* at 575.

In the *Jenkins* case, the injury, denial of a trial on legal paternity and the opportunity to have the stipulation of April 27, 2015 considered, was proved by the juvenile court minutes of June 15, 2015 (App. *infra* 43-44), and the district court judgment of February 4, 2015. (App. *infra,* 39). Secondly, the facts show that the alleged conspirators did not act independently. Judge Murphy would not have been able to make the first ruling on legal paternity if Judge Burmaster had held the trial he had set on June 15, 2015. Before the June 15, 2015 hearing, Judge Burmaster had ordered the ADA to search DCFS records for acknowledgments by Jenkins. He had ordered memoranda on the legal paternity issue, (App. *infra* 41) and the right to reimbursement of child support if fraud was proved. He read the district court judgment, and the Minutes reported his statement that district court had found Jenkins was not the biological father. (App.*infra* 41) However, after a circuit court judge requested his record, as he stated in the hearing on June 15, 2015, (App. *infra* 84), suddenly and without explaining why he came to believe he had been mistaken for over a year, he refused to rule. He falsely stated that the district court had decided legal paternity.

It was not a coincidence that attorney Treadaway told the same lie in court on June 15, 2015. (App. *infra* 84). There had to be prior agreement or prior instruction from the same source. Treadaway filed her writ

application eight days after claiming her request for a review was "pending" and claimed district court had erred in ruling on legal paternity in the judgment of February 4, 2015. Anyone looking at the district court judgment of February 4, 2015 (App. *infra* 38-40) would know her claim in the assignment of errors was untrue. After receiving the letter from respondent, she filed the complaint inviting ODC to examine the case. She was not concerned that ODC would confront her with the lie. In all of the hearings, reports and the Opinion that followed, no one, except respondent, mentioned her lie about what district court had decided on February 4, 2015. Finally, Judge Murphy had obviously been kept informed of what was happening in the *Jenkins* case. He knew when to request the juvenile court record.

A justice asked why Judge Murphy was singled out from the panel by the allegation. Respondent pointed to the disposition Judge Murphy wrote. The disposition of July 31, 2015, (App. infra 44-53) confused one writ application with another; one exception of prescription with another; and the law on acknowledgment by registry of a birth certificate with the law on authentic acts of acknowledgment. Judge Murphy avoided the specific term "authentic act of acknowledgment" and employed "legal acknowledgment" or "formal acknowledgment" to avoid distinguishing between a birth certificate acknowledgment and an acknowledgment by authentic act. The disposition was confusing.

Unraveling it required close attention and being alert to the intention to deceive.

Judge Murphy reached his intended ruling that Jenkins "judicially confessed" to signing an acknowledgment of legal paternity by ignoring the requirements for a judicial confession. In his dissent to denial of writ of *certiorari* Justice Hughes stated the judicial confession was clearly wrong.

The only comment in the Opinion regarding the explanation was, "Her explanation as to why she focused her allegations of collusion on Judge Murphy makes little sense in light of the fact that Judge Windhorst and Judge Liljeberg also signed the 2nd Fifth Circuit ruling." (App. *infra.* 22-23).

D. The failure of the Supreme Court and the federal courts to recognize a ruling without supervisory jurisdiction shows that access to due process was and can again be blocked. Only a writ of *certiorari* can correct the courts.

In the "Initial Brief of Disciplinary Counsel," on p. 11 cited in Justice Weimer's Dissent, in *In re Mire*, at 673, the Justice cited Disciplinary Counsel's statement: "...we can never allow ourselves to tarnish the image of our profession by accepting the use of language like that employed by the Respondent." Justice Weimer recognized disciplinary counsel's misunderstanding of his role and duty.

This position is both constitutionally untenable and unwise. As the Supreme Court has observed, judicial efforts to squelch criticisms of the judiciary can result in worse outcomes than any criticism could:

'The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.' *Bridges v. State of California*, 314 U.S. 252, 270-71, 62 S. Ct. 190, 86 L.Ed. 192 (1941). Quoted in *In re Mire,*

In the cases of *Cohen v. Virginia, 6 Wheat.* 319, and *Ames v. Kansas*, U.S. 470, S.C. 4 S.Ct. 437, the court held that when a state instituted a suit it necessarily submitted itself to all reviews in and transfers to the federal courts, which the constitution and laws establishing the court authorized, i.e., that having voluntarily taken the position of suitor, the state had necessitated the enforcement of all

> legally established rules by which the rights of parties litigant were ascertained and adjudged.... *Hans v. State of Louisiana*, 10 S.Ct 504, 134 U.S. 1, 19, 33 L.Ed. 842 (1890)

In re Graham, 453 N.W. 2d 313 (Minn. 1990), involved an attorney who stated in letters to a U.S. attorney and to the Chief Justice of the Eighth Circuit that a state judge, a United States Magistrate Judge, and various attorneys had conspired to fix the outcome of a federal case. *In the Matter of Emile J. Becker, Jr.* 620 N.E.2d 691 (Ind. 1993), dealt with an attorney who accused a judge of deliberately failing to record the witness and making no attempt to correct the damage. The prosecuting attorney in *Matter of Westfall,* 808 S.W. 2d 829 (Mo. 1991) spoke on television regarding a judge's ruling, stating the judge's reasons were "a little bit less than honest" and that he "reached the conclusion he wanted to reach." Those allegations were serious but the evidence was frivolous. Those attorneys were charged with violating Rule 8.2. Their punishments, respectively, were a 60-day suspension, 30-day suspension, and a public reprimand. Comparing their punishments to that of respondent and Mire seems to indicate that the more objective the evidence and reasonable the allegation, the more the attorney has to be punished.

The supreme court's suspensions in *Mire* and *Abadie* are in restraint of reasonable, objectively

supported complaints against judges. The *New York Times v. Sullivan,* 376 U.S. 254, 288 (1964) standard makes a person liable if the statement is false, **and** the speaker knew the statement was false or acted with reckless disregard of the truth. That makes the disciplinary actions against respondent and attorney Mire violations of their freedom of speech, and a danger to all attorneys and the people of Louisiana.

Respondent prays that writ of *certiorari* issue to the Louisiana Supreme Court and that after due consideration, the ruling suspending respondent be reversed.

Respectfully submitted,

Cecelia Farace Abadie, pro se
La. Bar No.19874
20 White Drive
Hammond, Louisiana 70401
985-542-7859, cfabadie@gmail.com