No.

IN THE

Supreme Court of the United States

IN RE:

ASHTON R. O'DWYER, JR., PETITIONER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI & APPENDIX VOL. I (pp. 1a-112a)

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pro se

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the failure of Federal District Judge Carl J. Barbier to recuse himself prior to his summary dismissal of an underlying civil diversity action, on a sua sponte basis, without Notice and without any hearing, on the pretext of enforcing 15-year-old monetary sanctions against Petitioner, violated Petitioner's First Amendment rights to speech and access to courts, and the Fifth Amendment right to due process, where the Judge had previously participated in making the payment of sanctions a condition of Petitioner's right to file pleadings, even Pro Se pleadings, and where the same Judge, who had previously voted to disbar Petitioner, had so enmeshed and entangled himself in Petitioner's affairs as to warrant his recusal for bias and prejudice, thus bringing this case within the parameters established in Supreme Court Rules 10(a) and 10(c)?
2. Whether the First and Fifth Amendments were violated by a Federal District Judge who failed to recuse himself on grounds of bias and prejudice notwithstanding his prior participation in rulings that disbarred Petitioner and made the payment of monetary sanctions a condition of Petitioner's right to file pleadings, even Pro Se?
3. Whether the Circuit Court Judges violated Petitioner's First and Fifth Amendment rights when they failed to recuse themselves notwithstanding their participation in prior rulings that disbarred Petitioner?
4. Whether the violation of Petitioner's First and Fifth Amendment rights by Judges who failed to

recuse themselves constituted judicial misconduct?

5. Regardless of whether judicial misconduct occurred, whether the failure of the District Court and Circuit Court Panel to address any of the substantive constitutional issues involved in this case, when they issued their Orders and Opinion, violated the Judge's Oath (28 U.S.C. §453) and/or Canons 1, 2 and 3 (and applicable Commentary) of the Code of Conduct for United States Judges, resulting in unconstitutional preclusion of judicial review?

7. Whether the Circuit Court Panel members committed judicial misconduct because they failed to address the issues of recusal, disqualification, and conflicts of interest, notwithstanding the fact that each Panel Member was identified in Petitioner's Fifth Circuit Rule 28.2.1 Certificates of Interested Persons as "having an interest in the outcome of this case?"

6. Whether the Lower Courts' decisions, which were issued summarily, without hearing, resulted in unconstitutional preclusion of judicial review?

8. Whether the entire Eastern District of Louisiana and Court of Appeals for the Fifth Circuit Court Benches should have recused themselves in Petitioner's cases due to an unconstitutional risk of bias, because Petitioner had accused "a Brother Federal Judge," namely Stanwood R. Duval, Jr., who all of the other Judges knew well, of corruption and criminal judicial misconduct?

9. Whether the monetary sanctions imposed against Petitioner are time-barred by

prescription, or otherwise "uncollectable," because they were properly "listed," "scheduled," and "discharged" in Petitioner's bankruptcy proceeding?

10. Whether the monetary sanctions were "procured through fraud" and "corruptly motivated" and, therefore, unenforceable pursuant to *Turner v. Pleasant*?

LIST OF PARTIES TO THE PROCEEDINGS

There are no parties to the proceeding other than those listed in the caption.

STATEMENT OF RELATED CASES

"In Re: Ashton R. O'Dwyer, Jr.," Case No. 20-1666 on the docket of the Supreme Court of the United States. Certiorari Denied on October 4, 2021.

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The unreported three-page Per Curium Opinion of the three Judge Circuit Panel is dated May 3, 2023, and is set forth in full at Appendix pages 1a through 4a.

The unreported two-page Order of District Judge Barbier of September 1, 2022 is set forth in full at Appendix pages 5a and 6a.

The unreported three-page Order of District Judge Barbier of September 21, 2022 is set forth in full at Appendix pages 28a through 30a.

JURISDICTION

The Per Curium Opinion of the U.S. Court of Appeals for the Fifth Circuit is dated May 3, 2023. This Petition is filed within the time allowed by 28 U.S.C. §2101(c) and Rule 13(3).

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT PROVISIONS INVOLVED

28 United States Code, §453 – Oaths of justice and judges:

> *Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent*

upon me as _____ under the Constitution and laws of the United States. So help me God."

Fifth Circuit Rule 28.2.1 provides:

"28.2.1 Certificate of Interested Persons. The certificate of interested persons required by this rule is broader in scope than the disclosure statement contemplated in FED. R. APP. P. 26.1. The certificate of interested persons provides the court with additional information concerning parties whose participation in a case may raise a recusal issue. A separate disclosure statement is not required. Counsel and unrepresented parties will furnish a certificate for all private (non-governmental) parties, both appellants and appellees, which must be incorporated on the first page of each brief before the table of contents or index, and which must certify a complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent corporations, or other legal entities who or which are financially interested in the outcome of the litigation. If a large group of persons or firms can he specified by a generic description, individual listing is not necessary. Each certificate must also list the names of opposing law firms and/or counsel in the case. The certificate must include all information called for by FED. R. APP. P.26.1(a), (b) and (c) as appropriate for the case under review. Counsel and unrepresented parties must supplement their certificates of interested

persons whenever the information that must be disclosed changes.

(a) Each certificate must list all persons known to counsel to be interested, on all sides of the case, whether or not represented by counsel furnishing the certificate. Counsel has the burden to ascertain and certify the true facts to the court.

(b) The certificate must be in the following form:

(1) Number and Style of Case;

(2) The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

(Here list names of all such persons and entitles and identify their connection and interest.)

_____

Attorney of record for _____"

Article IV, Section 2, Clause 1 of the U.S. Constitution, the First and Fifth, and Fourteenth Amendments to the Constitution, 28 United States Code §455, and Canons 1, 2, and 3 of the Code of Conduct for United States Judges (and relevant Commentary) appear in the Appendix at 298a-311a, in accordance with the provisions of Supreme Court Rule 14(1)(f).

STATEMENT

This case involves judicial misconduct by three biased and prejudiced Article III Judges, who had "absolutely no business" deciding any matter that even remotely involved Petitioner Ashton R. O'Dwyer, Jr. (AROD), because of the pivotal role each played in imposing "the death sentence" on AROD's professional, financial, and social life, over the course of many years.[1]

The procedural posture of the case is uncomplicated. The District Court record contains only 8 entries. The Fifth Circuit docket sheet contains 45 entries, but the vast majority are unpublished "internal entries," unavailable for Public access for reasons unknown.

On September 21, 2022, Federal District Judge Carl J. Barbier summarily dismissed (App.28a-30a), on a sua sponte basis, without Notice or hearing, AROD's Pro Se Complaint in a civil diversity action seeking damages for the mismanagement of a construction repair project at AROD's home in a 219 unit condominium building complex, which sustained damage in Hurricane IDA on August 29, 2021. All 219 condominium unit owners, including AROD, remain displaced from the complex, which is still unrepaired.

Following Barbier's earlier improvident action on September 1, 2022 (App.5a-6a), AROD had timely filed a "Motion to Reopen Case and to Set Aside Summarily-Issued Sua Sponte Order," which also sought Barbier's recusal for bias and prejudice.

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[1] The three Judges are: (1) District Judge Carl J. Barbier, (2) Circuit Judge Don Willett, and (3) Circuit Judge Leslie H. Southwick. Arguably, Circuit Judge Patrick E. Higginbotham also was conflicted. See Reasons, Section III, infra.

(App.7a-27a). Barbier also summarily denied, without any hearing, all relief requested by AROD in his Motion, and invoked an *En Banc* Easter District of Louisiana "Order of Disbarment" dated March 4, 2009, in which Barbier had participated, which provided: "(4) During the disbarment period, and with the exception of exercising appellate rights in these proceedings, Respondent [AROD] shall not file pleadings or documents before this Court, including as a pro se litigant, without first paying all monetary sanctions [approximately $17,000] issued against him and without first obtaining an Order from a member of this Court." (App.28a-30a,267a-277a). The Order of Disbarment also included other onerous conditions, which included, inter alia, AROD's providing "proof" that: "(6)(d) he has successfully completed a course of treatment for stress and anger management with a licensed counselor in that area," which was uncalled for and not supported by any evidence in the case record. (App.276a-277a).

Barbier's sua sponte summary dismissal of AROD's case, without any hearing, until AROD paid the "outstanding monetary sanctions" wrongfully imposed on him about 15 years ago, also provided:

> "**IT IS HEREBY ORDERED** that the *Motion to Reopen Case and to Set Aside Summarily-Issued Sua Sponte Order* is **DENIED.** The Clerk is instructed to file only the Motion itself as Rec. Doc. 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer. Nothing in this order precludes Mr. O'Dwyer from exercising any appellate rights he may have." (App.29a).

On May 3, 2023, the Fifth Circuit affirmed Barbier's unconstitutional dismissal in a three-page Per Curiam Opinion (App.1a-4a) by a Panel (Higginbotham, Southwick and Willett) whose members were specifically identified by AROD in his Fifth Circuit Rule 28.2.1 "Certificates of Interested Persons and Entities" as having "an interest in the outcome of this case," a representation that AROD was required to make "in order that the judges of [the] Court may evaluate possible disqualification or recusal." (App.33a,88a). However, when the Panel ruled sua sponte, without oral argument, the topics of "disqualification or recusal" were not addressed, an omission which AROD avers violated the Panel members' sworn duty as Article III judges[2] as well as Canons 1, 2 and 3 of the Code of Conduct for United States Judges.[3]

Nor did the Panel Opinion address any of the substantive constitutional issues surrounding Barbier's inappropriate dismissal, or Barbier's bias and prejudice, which were the subjects of AROD's Motion to Barbier and are subjects of this Petition. Instead of performing de novo review of the record, and applying the U.S. Constitution and common sense to what Barbier had

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[2] The Judge's Oath provides: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God." 28 U.S.C. §453.

[3] By ignoring and failing to address these issues, the Panel (and Barbier) violated: Canon 1 "personally observe those (high) standards;" Canon 2 "respect and comply with the law;" and Canon 3 "should perform those duties [and] not engage in behavior that is prejudiced or biased."

wrongfully done, the Panel issued an intellectually dishonest, result-oriented decision which focused on AROD's failure to comply with 15-year-old conditions for filing pleadings, rather than on Barbier's (and their own) misconduct. The Panel simply "rubber stamped" prior wrongful judicial action against AROD, not only by Barbier, but by the entire conflicted, biased and prejudiced Eastern District of Louisiana Bench, which had disbarred AROD on March 4, 2009, summarily and without any hearing. (App.267a-277a).

This timely Petition followed.

The reasons for Barbier's and the Circuit Panel's actions, for which AROD now seeks reversal and remand, will become clear in the Reasons for Granting the Petition, infra.

AROD is a disbarred, and disgraced "lawyer-by-education only," whose life was destroyed by the corrupt legal and judicial systems in Louisiana, where the "brand" is corruption. The entire State of Louisiana is currently the subject of a "pattern or practice" investigation by the U.S. Department of Justice, the first such statewide investigation in over 20 years. And although AROD's life during the past "almost 18 years" was made "a living hell" by the many individuals and entities identified in his Rule 28.2.1 Certificates (App.33a-42a,88a-97a), and although the "Reign of Terror" inflicted on him had nothing to do with the lawsuit involving his condominium unit, AROD is living proof that "it does not pay" to be "a whistleblower" in Louisiana, particularly if the people on whom the whistle was blown were Federal Judges and their rich and powerful friends in the Louisiana Plaintiffs' Bar.

AROD's professional, financial, and social "destruction" was accomplished under the guise of "suspension and disbarment proceedings," which were

sham proceedings wrongfully instituted against AROD in retaliation and retribution for his having exposed public corruption and criminal judicial misconduct in the "Victims of KATRINA" litigation, in which AROD represented about 2,000 clients. The corruption of that litigation was enabled by Barbier's Brother Judges on the Eastern District Bench and by some very prominent Members of the Louisiana Plaintiffs' Bar, who have been AROD's opponents and political enemies for almost 18 years, but with whom Barbier was and is so closely aligned that they recently shared billions of dollars in attorney's fees in the BP case, over which Barbier presided. By all rights, the KATRINA litigation should have dwarfed the BP litigation; but not one KATRINA victim recovered a dime in tort damages. (App.44a-45a,101a-108a,124a-141a,142a-167a).

The corruption which AROD exposed, for which he has suffered dearly, directly involved the presiding Judge, Stanwood R. Duval, Jr., and members of the Plaintiffs' Steering Committee (appointed by Duval), who secretly represented the State to prosecute the State's claims against the United States for $400 billion in "man-made KATRINA tort damages." Because they secretly represented the State (but with Duval's full knowledge), the Steering Committee lawyers did not sue the State, or any State agencies, instrumentalities or political subdivisions: To have done so would have exposed their "conflict of interest" by secretly representing the State, while simultaneously representing "the Class" of KATRINA's innocent victims. But when the United States was judicially determined to be immune from suit and legal liability, KATRINA's victims were left holding "an empty bag," because State interests had not been sued by the

Steering Committee. (Ibid and App.126a-128a,131a-133a,143a-145a,203a-238a).

And it was this corruption, which involved the Federal Judiciary, that Barbier and the Circuit Panel wanted to remain hidden from Public scrutiny, that resulted in AROD's disbarment by the *En Banc* Eastern District of Louisiana Bench.

REASONS FOR GRANTING THE PETITION

A malevolently motivated Eastern District of Louisiana Judge, Carl Barbier, who should have recused himself because of actual bias and prejudice, wrongfully dismissed a civil litigation in violation of AROD's constitutional rights, invoking 15-year-old "outstanding monetary sanctions," which are time-barred or are otherwise legally unenforceable.

When one examines the uncontradicted case record, which Barbier and the Fifth Circuit Panel virtually ignored, it will be obvious to any objective observer that Barbier's sua sponte summary dismissal of AROD's litigation and ordering the return of AROD's Exhibits to him, "unfiled," so that corruption the Exhibits revealed remained secret, was motivated by the following:

(1) Barbier's actual bias and prejudice against AROD.

(2) Barbier's actual bias and prejudice for his Eastern District Brethren, particularly Judge Stanwood Duval, who presided over the KATRINA litigation, but who AROD accused of criminal judicial misconduct which adversely impacted almost 500,000 members of "the Class" of KATRINA's

innocent victims, including AROD's 2,000 KATRINA clients.

(3) Barbier's actual bias and prejudice for his many rich and powerful friends within the Louisiana Plaintiffs' Bar, who AROD accused of criminal professional misconduct while serving as Plaintiffs' Steering Committee lawyers in the KATRINA litigation. These "friends of Barbier" have been AROD's adversaries and political enemies for the past 17 years and played a prominent role in AROD's disbarment to ensure that their corruption, which AROD exposed, remained "covered up," dead and buried.

Barbier was one of 20-odd judges on the Eastern District Bench[4] who recused themselves on February 12, 2010 in the high profile "USA v. Ashton R. O'Dwyer, Jr.," Criminal Case No. 10-34, and reassigned the case to the Senior Judge of another District. (App.278a; See also App.155a)). That Judge, Donald Walter, of the Western District, wasted no time dismissing the spurious criminal indictment against AROD, concluding: "O'Dwyer's statements did not constitute a threat as a matter of law," a result later affirmed by the Fifth Circuit. (App.294a-297a). AROD avers that this *en masse* self-recusal constituted a binding a judicial admission of the bias and prejudice that the entire Eastern District Bench held against AROD. (App.278a).

The same desire to keep judicial corruption on the Federal Bench covered up spurred a conflicted

[4] One exception: AROD's Bankruptcy Judge.

Fifth Circuit Panel to "rubber stamp" Barbier's improvident action without addressing the substantive constitutional issues implicated, an omission that violated their sworn Judge's Oaths and Canons 1, 2 and 3 (and Commentary) of the Code of Conduct.

Additionally, the sanctions (time-barred anyway) were "corruptly motivated" and "procured through fraud" 15 years ago and should not have been enforced. *Turner v. Pleasant*, 663 F. 3d 770 (5th Cir. 20110).

Under the circumstances, the summary dismissal of AROD's civil litigation, on a sua sponte basis, without Notice, much less any hearing or oral argument, cannot stand.

I. THE UNDISPUTED FACTS SHOW THAT BARBIER'S ACTIVE PARTICIPATION IN AROD'S SUSPENSION AND DISBARMENT, AND IN OTHER LITIGATION INVOLVING AROD, OVER THE COURSE OF MANY YEARS, SO ENMESHED AND ENTANGLED HIM IN MATTERS INVOLVING AROD AS TO DEMONSTRATE BARBIER'S ACTUAL BIAS AND PREJUDICE.

It is self-evident to advocate that: "The conduct of a judge who was an integral part of the prosecutorial process, because he previously voted to disbar a lawyer, should be studied carefully to determine whether the judge became so enmeshed in matters involving the lawyer as to make it most appropriate for another judge to sit in a case involving the same lawyer." The truism originated in *Johnson v. Mississippi*, 403 U.S. 212 (1971) and its progeny, which includes an erudite analysis from the Court of Appeals

for the District of Columbia in *In re Evans*, 411 A.2d 984 (App. D.C. 1980). The critical holdings are as follows:

***Johnson v. Mississippi*, 403 U.S. 212 (1971)**

"It would, therefore, seem that a fair hearing would entail the opportunity to show that the version of the event related to the judge was inaccurate, misleading, or incomplete.

We mention this latter point because our remand will entail a hearing before another judge. In concluding that Judge Perry should have recused himself, we do not rely solely on the affidavits filed by the lawyers reciting intemperate remarks of Judge Perry concerning civil rights litigants. Beyond all that was the fact that Judge Perry immediately prior to the adjudication of contempt was a defendant in one of petitioner's civil rights suits and a losing party at that. From that it is plain that he was so enmeshed in matters involving petitioner as to make it most appropriate for another judge to sit. Trial before "an unbiased judge" is essential to due process. (Citations to Supreme Court cases omitted)." 403 U.S. at 215-216.

***In re Evans*, 411A.2d 984 (App. D.C. 1980)**

"Under these circumstances, however, the judge should decline to sit in a contempt proceeding involving that attorney, if the judge's protracted prosecutorial pursuit of the alleged misconduct has caused him to become 'so enmeshed in matters involving petitioner as to make it most appropriate for another judge to sit.' [citing *Johnson*]. We emphasize that here it is the

> extensive and protracted nature of the action taken by the trial judge which causes it to rise to the level of impermissible personal bias. This history of personal involvement with appellant's alleged misconduct is such that it must be said of the trial judge's participation in the contempt case that 'his impartiality might reasonably be questioned.' [citations omitted]. We must reverse and remand appellant's second conviction for a new trial before a different judge." 411 A.2d at 996.

The *Johnson* "so enmeshed and entangled" Rule was recently reinforced in *Williams v. Pennsylvania*, 579. U.S. 1 (2016), where this Court held: "Where a judge had an earlier significant personal involvement as a prosecutor in a critical decision in defendant's case, the risk of actual bias in the judicial proceeding rises to an unconstitutional level." 579 U.S. at 16.

In his Motion to Reopen Case (App.7a-27a), AROD specifically moved: "For the disqualification and recusal of Judge Barbier from presiding over this action on grounds of actual bias and prejudice," also requesting "...the appointment of an unbiased and unprejudiced Judge to preside..., one who is not associated in any way with the legal, judicial and political systems of the State of Louisiana, and with the Louisiana Plaintiffs' Bar." (App.8a). However, so strong was Barbier's actual bias and prejudice against AROD that he ignored that specifically requested relief before summarily ruling against AROD, again, without any hearing. (App.28a-30a).

Barbier's bias, prejudice and failure to self-recuse were ignored by the Circuit Panel, who also failed to address their own "interest in the outcome of

this case," which AROD twice brought to the Panel's attention in his Rule 28.2.1 Certificates. (App.33a,88a).

AROD does not make his allegations of bias and prejudice lightly.

The uncontradicted District Court record reveals that, for a period of as many years as the outstanding monetary sanctions are old, Barbier has been "so enmeshed in matters involving [AROD] as to make it most appropriate for another judge to sit," just as was held in *Johnson v. Mississippi.*

The Eastern District record reveals that:

(1) Barbier voted to permanently disbar AROD, summarily and without any hearing. (App.267a-277a). The March 4, 2009 "Order of Disbarment" was entered without AROD being given the opportunity to address the Court, and although that Order purportedly was entered "For the *En Banc* Court," it was signed only by Ivan L.R. Lemelle based on Lemelle's "finding" that: "There is no need for oral argument or evidentiary hearing on defenses or answers asserted here," which was totally false. (App.270a,277a). All of AROD's Recusal Motions, Objections, and arguments also were summarily denied without any mention of Judge Duval's and his Louisiana Plaintiffs' Bar cronies' corruption of the KATRINA litigation. (App.146a-155a,198a-200a,201a-202a).

(2) The case records in the suspension and disbarment cases included Orders containing outrageous and false

statements to the effect of: "Indeed, O'Dwyer acknowledged to Judge Lemelle that he could not think of a fairer judge to hear the complaint against him." (App.153a, 201a and 251a). That Barbier participated in at least one *En Banc* Order containing that falsity (App.240a-255a) speaks volumes about his (and his Brethren's) actual bias and prejudice. And the fact that the Fifth Circuit Panel also failed to address the "no fairer judge" statements validates AROD's assertion that the Panel was merely "a rubber stamp" for Barbier (and "a conflicted one," at that). See Section III, infra.

(3) The March 4, 2009 Order of Disbarment "For the *En Banc* Court," in which Barbier participated, was designed "to silence AROD forever" and to deny him all access to the forum of "open court" for speaking about the corruption of the KATRINA litigation, which he had exposed, "ruffling the feathers" of many of Barbier's rich and powerful friends, who continue to wear black robes and hold licenses to practice law. However, many of these same people have been AROD's mortal enemies for "almost 18 years."

(4) On September 4, 2009, Barbier participated in the issuance of yet another summarily-issued sua sponte *En Banc* Order signed by Chief Judge Vance in the disbarment case (08-5170), namely: "Order Barring Access to Federal Court Building," which was unprecedented and

"dripped" with bias, prejudice and animus for AROD.

(5) The Order Barring Access also summarily dismissed AROD's allegations of judicial misconduct and corruption against Lemelle as "baseless," which was untrue. (App.132a-136a,151a-155a,198a-200a). Duval's name and his corruption of the KATRINA litigation were not even mentioned.

(6) On October 8, 2010, Barbier had the temerity to summarily dismiss, on a sua sponte basis, Civil Action No. 08-3170 (App.279a), which AROD had filed against the Eastern District Judges, including Barbier, to require them to follow their Rules for Attorney Disciplinary Enforcement, and to provide AROD due process in a real trial, which the Rules required, instead of summary disposition "on the papers," which was the only "Rule" followed in the cases against AROD. (App.155a-156a).

(7) And Barbier committed judicial misconduct in this case by having members of his Staff intercept AROD's "proper papers," including 5 Exhibits which accompanied AROD's Motion to Reopen Case. (App. 168a-181a, 182a-197a). After AROD's papers were delivered to Deputy Clerks for filing on September 16, 2022, Barbier and/or his Staff did "something" to enable Barbier to issue a post hoc Order saying: "The Clerk is instructed to file only the Motion itself as

> Rec. Doc. 4, without the voluminous documents tendered as exhibits. The exhibits should be returned to Mr. O'Dwyer." (Ibid and App.29a). That Order violated Rules 5 ["A paper not filed electronically is filed by delivering it: (A) to the clerk."] and 77 ["Every district court is considered always open for the filing of any paper... (and) ...making a motion"], FRCP, as well as 28 U.S.C.§452 ("All courts of the United States shall be deemed always open for the purpose of filing proper papers...") and §457 ("The records of district courts...shall be kept at one or more places where court is held.").

Most significantly, on February 12, 2010, Barbier and his 20 or so Eastern District Brethren on the Eastern District Bench judicially admitted their bias and prejudice by self-recusing, *en masse*, in the spurious Federal criminal case. (App.278a; See also App.155a), acknowledging their inability to be fair and impartial in any matters involving AROD. And the reasons for that *en masse* recusal still existed when Barbier failed to recuse himself in this case. AROD avers that the foregoing undisputed facts demonstrate that Barbier has been so "enmeshed" and "entangled," and in "a prosecutorial capacity," in matters involving AROD for the past 15 years "as to make it most appropriate for another judge to sit," as this Court held in *Johnson v. Mississippi*, requiring that Barbier's and the Fifth Circuit's actions should be reversed.

II. THE "OBJECTIVE STANDARD" TEST FOR BIAS, RECENTLY REINFORCED IN *WILLIAMS V. PENNSYLVANIA*, AS WELL AS PRECEDENTS GOVERNING DISQUALIFICATION AND RECUSAL, REQUIRE REVERSAL, BECAUSE BARBIER'S PARTICIPATION BELOW CONSTITUTED AN IMPERMISSBLE RISK OF ACTUAL BIAS THAT WAS SIMPLY "TOO HIGH TO BE CONSTITUTIONALLY TOLERABLE."

The Rules which fair tribunals must follow were recently reinforced in *Williams v. Pennsylvania*, 579 U.S. 1 (2016), which held:

> "Due process guarantees 'an absence of actual bias' on the part of a judge. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, L.Ed. 942 (1955). Bias is easy to attribute to others and difficult to discern in oneself. To establish an enforceable and workable framework, the Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, 'the average judge in his position' is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'. *Caperton*, 556 U.S., at 881, 129 S.Ct. 2252. Of particular relevance to the instant case, the Court has determined that an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case. See *Murchison*, 349 U.S., at

> 136-137, 75 S.Ct. 623. This objective risk of bias is reflected in the due process maxim that 'no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.' (citations omitted)." Id., at 8-9.

This Court also held: "The Court now holds that under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case." Id., at 8. Stating things in another way, this Court also said: "Where a judge had an earlier significant, personal involvement as a prosecutor in a critical decision in the defendant's case, the risk of actual bias in the judicial proceeding rises to an unconstitutional level." Id., at 16.

AROD died "a professional, financial, and social death" at Barbier's (and his Brethrens') hands, and Barbier "added insult to injury" by summarily dismissing the civil litigation arising out of mismanagement of the still-unfinished hurricane damage repair project, putting the issue of where AROD will live the remaining days of his life in jeopardy: an unconstitutional result the Fifth Circuit inexplicably affirmed. Due process and the laws governing disqualification dictate that Barbier's failure to self-recuse required reversal.

Because he harbored actual personal bias and prejudice, Barbier's recusal was required by 28 U.S.C.§455(b)(1) ("personal bias or prejudice concerning a party").

Alternatively, even if actual bias and prejudice cannot be proven, when an objective fact-finder considers all of the facts and circumstances, "the probability of actual bias and on the part of the judge or

decision maker [Barbier] is simply too high to be constitutionally tolerable." The unconstitutional risk of bias was applicable here because Barbier actually had "earlier significant, personal involvement" in AROD's suspension and disbarment proceedings by actively participating in multiple capacities as "accuser, investigator, prosecutor, judge, jury, and executioner," giving rise to "an unacceptable risk of actual bias" on Barbier's part. *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 872 (2009); *Williams v. Pennsylvania*, 579 U.S. 1, 8 and 14 (2016); and cases cited therein in both cases.

Further in the alternative, Barbier should have recused himself pursuant to 28 U.S. Code, §455(a) and Canon 3(C)(1), which mirror each other, and require disqualification of "[a]ny ...judge ...of the United States... in any proceeding in which his impartiality might reasonably be questioned," such as this one.

And because it was not only Barbier's bias and prejudice against AROD that warranted his recusal, but also Barbier's bias and prejudice in favor of AROD's enemies on the Federal Bench and in the Louisiana Plaintiffs' Bar, Canon 2 also was implicated. Canon 2 and the Commentary which follows Canon 2 require respect for and compliance with law so as to promote public confidence in the integrity and impartiality of the judiciary, and disallow financial "or other relationships" to influence judicial conduct or judgment, and thus proscribe impropriety and the appearance of impropriety in all activities. Accordingly, AROD avers that even if actual bias and prejudice was not proven, the likelihood or appearance of bias rose to an unconstitutional level. See *Peters v. Kiff*, 407 U.S. 493, 503 (1972) wherein the Court stated: "Moreover, even if there is no showing of actual bias in the tribunal,

this Court has held that due process is denied by circumstances that create the likelihood or appearance of bias." And because Barbier did not preside over the KATRINA litigation, and because AROD was not involved in the BP litigation, Barbier's bias and prejudice against AROD, actual or likely (but reasonably "plausible," given the extensive and protracted nature of his personal involvement in AROD's affairs), was "extra-judicial." *Liteky v. United States*, 510 U.S. 540 (1994).

Lastly, it has been said that: "...the most biased judges [are] the least likely to withdraw," which Barbier himself confirmed when he "doubled down" and ignored AROD's attempt to recuse him below. (App28a-30a). See John Leubensdorf, Theories of Judging and Judge Disqualification," 62 NY.U.L. Rev. 237, 245 (1987).

III. TWO PANEL MEMBERS, WILLETT AND SOUTHWICK, ALSO SHOULD HAVE SELF-RECUSED AND BY NOT DOING SO VIOLATED AROD'S RIGHTS.

On May 3, 2023, a Fifth Circuit Panel which included Willett and Southwick,[5] whose presence on the Panel was previously unknown to AROD, issued its three-page Per Curiam Opinion (App.1a-4a), which is significant as much for what it does not say, as for what it does say, albeit wrongly. But all three Panel

[5] Higginbotham participated in summarily dismissing a real property case involving AROD (No. 14-30971) and doing so "on the papers," without oral argument, revealing his bias and prejudice against AROD through inappropriate gratuitous comments. Higginbotham's Panel participation, while wrongful, was not as egregious as Willett's or Southwick's.

members (among other Fifth Circuit judges) had been identified in AROD's Rule 28.2.1 Certificates (App.33a,88a) as having "an interest in the outcome of this case." The Rule provides: "The certificate of interested persons required by this rule is broader in scope than the disclosure required by FED. R. APP. P. 26.1. The certificate of interested persons provides the court with additional information concerning parties whose participation in a case may raise a recusal issue." Neither AROD's including their names in the referenced Certificates, nor what, if anything, the judges may have evaluated because of being named, was addressed by the Panel. No information whatsoever, not even the identities of the Panel members, was communicated to AROD prior to May 3, 2023.

a) Circuit Judge Willett

This omission raised a red flag in Willett's case, because Willett was a member of another Fifth Circuit Panel (Costa, Duncan, and Willett) which previously affirmed AROD's wrongful disbarment in Federal Court, which was the subject of a related case on this Court's docket, No. 20-1666. One of the constitutional issues in 20-1666 was Duncan's denial of due process to AROD, because he participated on the Panel while failing to disclose his "longstanding direct extensive and substantial relationships with the State of Louisiana," which had disbarred AROD, but which directly employed Duncan for several years and was his most lucrative client while in private practice prior to joining the Federal Bench in May 2017. (App.280a-281a). In 20-1666, not only did Duncan, Willett and Costa fail to address their recusal, once AROD put

them on notice of Duncan's conflicts of interest, they also ordered that the entire Fifth Circuit case record should be SEALED from Public access. (App.284a-285a). What were Duncan, Willett and Costa hiding in 20-1666? Who were they protecting? What were they trying to keep covered up?

The third of the "Questions Presented" in 20-1666 was:

> "Whether under *Williams v. Pennsylvania*, 136 S.Ct.1988 (2016), all of the original Panel Members should have been disqualified from deciding Respondent's "Motion to Re-Open Case, etc.," and his "Motion for Reconsideration," which had put the entire Panel "on notice of" undisclosed conflicts of interests by their "Brother" Panel Member?"

In 20-1666 AROD accused Willett (and Costa) of judicial misconduct by "failing to intervene" and to take any action to disqualify and recuse their clearly conflicted Panel Member, Duncan, once the entire Panel was on notice of Duncan's failure to disclose his conflicts, arguments set out at App. 280a-289a. More particularly, AROD averred that by allowing Duncan's continued participation in AROD's case, and by continuing to participate in the case themselves, Willett and Costa effectively joined in Duncan's unethical behavior, running afoul of *Williams*, which held that a constitutional violation of a due process right by one Judge on a Panel of three did not constitute "harmless error," recognizing the truth of the proverb: "One bad apple spoils the whole barrel." The *Williams* Court had "little trouble concluding that a due process violation arising from the participation of an interested judge is a

defect "not amenable" to harmless-error review, regardless of whether the judge's vote was dispositive," citing *Puckett v. United States*, 556 U.S. 129, 141 (2009).

In 20-1666, Duncan, Willett and Costa did nothing and remained completely silent after they had been placed on notice of Duncan's undisclosed conflicts of interest. Even worse, they "circled the wagons" around their Brother, Duncan, and ruled against AROD in Orders that were issued summarily, without any explanation or written reasons. AROD averred that such conduct rendered Willett (and Costa) equally as guilty of unethical behavior as Duncan." (App.286a,289a).

Inexplicably, Willett was a Panel member in this case and he voted to affirm Barbier's wrongful and unconstitutional summarily-issued sua sponte dismissal, without Notice, much less any hearing or oral argument. Had AROD known before May 3, 2023 that Willett was on his Panel, then he would have immediately moved for Willett's disqualification and recusal, because Willet's participation violated AROD's Fifth Amendment right to due process as a result of "the likelihood of bias and prejudice" on his part.

b) Circuit Judge Southwick

Panel member Southwick also ran afoul of the Rules reinforced in *Williams*. Southwick was one of three judges who summarily denied, without hearing, AROD's Motion for Reconsideration and Petition for Rehearing in the appeals of his suspension and disbarment cases (App.191a, 292a-293a), when AROD unsuccessfully attempted to reinstate those appeals (Fifth Circuit Case No. 08-46 consolidated with 09-12), after his timely, and fully briefed, appeals were

summarily dismissed by the Fifth Circuit Clerk "on a technicality," namely AROD's failure to file "hard copies" of Record Excerpts while confined to his home by Court Order in the criminal case. On May 26, 2010, the Clerk unilaterally imposed the draconian sanction of summary dismissal of AROD's appeals, sua sponte, without any hearing. (App.290a). And the Clerk's notifications were mailed to AROD's office, not to his home, where he was confined, the result being that AROD didn't see any notice until "it was too late." The Clerk also did not extend the courtesy of a telephone call to AROD prior to dismissal notwithstanding the fact that AROD had just been released from 34 days of solitary confinement in jail, because of the spurious Federal criminal charges. Additionally, Record Excerpts (Docket Sheet, District Court Orders, and timely Notice of Appeal) were always readily available for viewing by the Clerk and/or the Court via PACER.

Southwick also participated as a Panel member in *In the Matter of: Ashton R. O'Dwyer, Jr.*, Case No. 14-30971 on the Fifth Circuit docket, decided on May 21, 2015. That case involved a wide range of issues remarkably similar to those in this case. All issues were decided against AROD without the benefit of oral argument, with Southwick (and Higginbotham) on the Panel.

Had AROD known that Southwick was on his Panel prior to receipt of the Opinion of May 3, 2023, he would have immediately moved to disqualify and recuse him, citing *Williams* and Southwick's role in failing to reinstate the appeals in his disciplinary cases. And by his failure to address his being identified in the Rule 28.2.1 Certificates (App.33a,88a), Southwick gave AROD no opportunity to challenge his presence on the Panel by filing a recusal motion: AROD did not know

and could not have known that Southwick was on the Panel until after receiving the Per Curiam Opinion.

AROD avers that Southwick's participation on the Panel, and his failure to disclose his participation before the Per Curiam Opinion notwithstanding his name being in AROD's Rule 28.2.1 Certificates, deprived AROD of the opportunity to disqualify him, causing "an unconstitutional risk of bias" to exist.

Willett and Southwick, each in his own way, played integral parts in the "prosecution" of AROD and his ultimate disbarment. And their prior critical rulings in the appeals of AROD's disciplinary cases cast serious doubt about whether AROD could be assured that no member of the Circuit Court was "predisposed to find against him." *Williams*, supra. See also *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980). The following words of Justice Kennedy in *Williams* are equally applicable here:

> "No attorney [or Judge] is more integral to the accusatory process than a prosecutor who participates in a major adversary decision. When a judge has served as an advocate for the State in the very case the court is now asked to adjudicate, a serious question arises as to whether the judge, even with the most diligent effort, could set aside any personal interest in the outcome... In addition, the judge's "own personal knowledge and impression" of the case, acquired through his or her role in the prosecution, may carry far more weight with the judge than the parties' arguments to the court."

IV. BARBIER'S SUMMARY DISMISSAL OF THE COMPLAINT, AND THE CIRCUIT PANEL'S SUMMARY AFFIRMATION, WITHOUT ORAL ARGUMENT, AND WITHOUT ADDRESSING BARBIER'S BIAS AND PREJUDICE OR HIS DUTY TO SELF-RECUSE, NOT ONLY VIOLATED AROD'S CONSTITUTIONAL RIGHTS, BUT ALSO THE JUDGES' OATHS AND THE CODE OF CONDUCT.

In addition to the obvious denial of 5th Amendment due process, because they were issued summarily, on a sua sponte basis, without Notice, much less any hearing, Barbier's Orders (App.5a-6a,28a-30a) denied AROD 1st Amendment rights because they thwarted court access and were self-executing[6]. And the Circuit Court's failure to address the constitutional issues (App.1a-4a) resulted in "preclusion of judicial review." Article IV, Section 2, paragraph 1, of the Constitution, and *Chambers v. Baltimore & Ohio R. Co.*, 207 U.S. 142 (1907), and cases cited therein, where this Court stated:

> "The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship..." 207 U.S. at 149.

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[6] Would AROD's lawsuit against a 100% legally liable tortfeasor for damages, after being rendered a paraplegic in "a slam dunk" automobile accident case, also be subject to sua sponte summary dismissal?

Barbier and the Circuit Panel also violated AROD's 1st Amendment right which prohibits any "...law ...abridging ...the right of the people ...to petition the government for a redress of grievances," for "The right of access to the courts is indeed but one aspect of the right to petition." Congressional Research Service, "U.S. Constitution Annotated: Amendment 1, Rights of Assembly and Petition," Legal Information Institute, Cornell Law School, Retrieved 17 June 2020.

Barbier and the Circuit Panel also violated AROD's 1st Amendment right to freedom of speech, because the summary dismissal of his civil litigation violated his right to make good faith allegations seeking legal redress against contractors and others sued for mismanaging a hurricane damage repair project, which is a form of speech guaranteed by the Constitution. In *Thomas v. Collins*, 323 U.S. 516, 530 (1945), this Court explained: "It was not by accident that the rights to freedom in speech and press were compiled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances," labeling them "cognate rights." See also *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011). Barbier and the Circuit Panel violated AROD's cognate rights.

Lastly, by not addressing the substantive legal issues of bias, prejudice and recusal in their Orders and Opinion, Barbier and the Fifth Circuit Panel failed to "do their jobs as Article III Judges," thus violating the Judge's Oath and Canons 1 ("personally observe those [high] standards"), 2 ("respect and comply with the law"), and 3 ("should perform those duties... [and] not engage in behavior that is prejudiced or biased.") and Commentary of the Code of Conduct for United States Judges. (App.298a-311a).

V. ANY LEGAL RIGHTS TO COLLECT THE 15-YEAR-OLD SANCTIONS HAVE PRESCRIBED OR ARE OTHERWISE LEGALLY UNENFORCEABLE.

Any legal rights of the beneficiaries (Barbier was never "a beneficiary") to collect the 15-year-old sanctions have prescribed under applicable law or are legally unenforceable. And they were corruptly motivated and wrongfully imposed through fraud.

Berrigan's $10,000 sanction is almost 15 years old; Duval's $7,058.50 sanction is over 15 years old. The Louisiana Civil Code specifies liberative prescription for the following causes of action as:

3-years: Collection of Debts (Civil Code Article 3494)

5 years: Collection on negotiable instruments (Civil Code Article 3498)

10 years: Contract enforcement (Civil Code Article 3499)
Monetary judgments (Civil Code Article 3501)

And until Barbier self-anointed himself "bill collector," which did not bestow upon him any right to collect money, no effort was made by anyone during the past 15 years to collect either sanction.

Long ago, in *Wood v. Carpenter*, 101 U.S. 135 (1879), this Court affirmed a Circuit Court's enforcement of a state statute of limitations against an otherwise innocent Creditor, who had failed to use

proper due diligence to discover fraud by an unsavory Debtor, saying:

> "Statutes of limitation are vital to the welfare of society, and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose, by giving security and stability to human affairs; important public policy lies at their foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary. Mere delay, extending to the limit prescribed, is itself a conclusive bar." 101 U.S. at 139.

In *The Harrisburg*, 119 U.S. 199 (1886), in the absence of any Federal statute for wrongful death in a ship collision on the High Seas, this Court applied the time limits of the wrongful death statutes of the adjacent states. Suit was time-barred because it was filed more than one year after the collision.

Even the Internal Revenue Service imposes on itself a 10-year "expiration date" for collecting unpaid taxes (unless involving fraud). 26 U.S.C. §6502 establishes a 10-year life on collections for unpaid taxes "by levy or by a proceeding in court," conditioning same "only if ...made ...within 10 years after the assessment of the tax," known as "Assessment Statute Expiration Date" and "Collection Statute Expiration Date."

AROD further avers that if, at the time the sanctions were imposed some 15 years ago, he had picked up a gun and committed an armed robbery of his main protagonists for the imposition of sanctions, namely Assistant Attorneys General Michael Keller

and Phyllis Glazer of the Louisiana Department of Justice, stealing cash from them at gunpoint, Federal prosecutors would have been barred from prosecuting, trying or punishing AROD for armed robbery after 6 years. 18 U.S.C. §3282. State prosecutors would have been barred from prosecuting AROD after 6 years. Article 572 of the Louisiana Code of Criminal Procedure.

Even if the 15-year-old sanctions should not be set aside as being prescribed and time-barred, they were discharged in AROD's Federal bankruptcy proceedings. See Section VI, infra. Alternatively, they were "procured through fraud" and were "corruptly motivated." See Section VII, infra.

VI. THE LOWER COURTS' DECIDING THE SANCTIONS AND BANKRUPTCY ISSUES ON A SUMMARY BASIS, WITHOUT ANY HEARING AND WITHOUT CONSIDERING ANYTHING THAT CAN LEGITIMATELY BE CALLED "EVIDENCE," VIOLATED AROD'S DUE PROCESS RIGHTS.

The issues surrounding "unenforceability" of the monetary sanctions were fully briefed to Barbier and to the Circuit Court, including why it was inappropriate to decide "the wrongful sanctions" issues summarily, without any hearing and without evidence from 15 years ago, evidence unavailable to AROD. (App.7a-27a,31a-85a,86a-110a). The due process implications are obvious, but both Barbier and the Circuit Court all but ignored AROD's arguments and failed to acknowledge the important public policy reasons for Federal Courts' enforcing State statutes of limitation and whether

creditors should lose their rights when they "sit on their hands" for 15 years.

"Discharge in bankruptcy" also was fully briefed below. (App.21a-23a,80a-84a). Arguably, issues of "listing, scheduling or discharge in bankruptcy" are applicable only to "the $7,058.50 Duval sanction," because Article XII, Section 12 of the Louisiana Constitution of 1974 at Article XII, Section 12 provides that: "Prescription shall not run against the State in any civil matter" (which begs the question of whether Duval's "sanction" was a "civil matter"). AROD honestly concluded, based upon his review of the available portions of the Bankruptcy Court record, that his "debts" to both the Eastern District and to the State had been "listed" and "scheduled," and that all "creditor-beneficiaries" had been included in the Bankruptcy Court's own "Creditors' Mailing Matrix" by "the Bankruptcy Noticing Center." Accordingly, AROD argued reasonably that the sanctions were properly "scheduled" and that he could not be held responsible for the failure of the creditors, their lawyers, or the Chapter 7 Trustee to exercise proper due diligence to get any monies owed by AROD paid into the proper hands prior to his discharge in bankruptcy.

The fact that four Federal Judges reached a different conclusion underscores why it was inappropriate, and unconstitutional, for the issues of "listing," "scheduling," or "discharge" to be decided summarily, without hearing or oral argument, and without reference to anything worthy of being called "evidence".

If Barbier and the Circuit Judges truly believe that they are correct, and that AROD is wrong, then

charge AROD criminally with bankruptcy fraud and perjury and arrest him.

The holding of *In re Schaffer*, 515 F.3d 424 (5th Cir. 2008), which Barbier got "wrong", also was fully briefed, as were the "to and for the benefit of a governmental unit" and "not compensation for pecuniary loss" issues under 11 U.S.C. §523(a)(7). (App.21a-22a,81a-84a). Nonetheless, there was quite a bit of "mixing metaphors" on these issues, both by Barbier and by the Circuit Court. The real issues are:

1) The "disciplinary fund" mentioned in Rule 9.1.1 of the Eastern District's "Rules for Disciplinary Enforcement," cited by the Circuit Panel is the "the court's Attorney's Registration and Disciplinary Fund," which was not mentioned by Barbier in addressing the Berrigan sanction of September 25, 2008. That "fund" did not exist at that time; it is first mentioned in the Eastern District's Rules by Amendment to Rule 9.1.1 on December 16, 2013, AFTER the sanction (or "debt") would have "prescribed" under Louisiana law (3 years on debts, Civil Code Art. 3494). And when "the fund" was first mentioned on the Eastern District's web-site in 2013, it replaced the "Disciplinary Enforcement Fund," which also was not mentioned, either by Barbier or by Berrigan.
2) The Duval sanction was to reimburse the State for the "cost" to the State for the services of Assistant Attorneys General Keller and Glazer, i.e., it was

> "compensation for actual pecuniary loss." Therefore, the third prong of *In re Schaffer* was not met, and the Duval sanction was discharged in AROD's bankruptcy proceedings.

And neither Barbier nor the Circuit Panel made reference to this Court's very recent decision in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. ___(2023). In no sense can any "fund" that Berrigan may have had in mind when she wrongfully sanctioned AROD 15 years ago be called "a governmental unit," as recently discussed in *Luc du Flambeau*. This, too, demonstrates why it was inappropriate for the issues surrounding the enforceability of the 15-year-old monetary sanctions to have been decided summarily, wrongly and unconstitutionally, on woefully incomplete and "less than crystal clear" case records, without any hearing and without any evidence being adduced in open court. That this occurred in both lower Courts violated AROD's due process rights.

VII. THE SANCTIONS WERE "PROCURED THROUGH FRAUD" BY STATE COUNSEL AND "CORRUPTLY MOTIVATED" BY DUVAL (AND STATE COUNSEL) AND, ACCORDINGLY, SHOULD HAVE BEEN DEEMED UNENFORCEABLE PURSUANT TO TURNER V. PLEASANT, 663 F. 3d 770 (5th Cir. 2011).

Neither Barbier nor the Circuit Panel produced Berrigan's or Duval's Orders imposing sanctions some

15 years ago, putting AROD, who lacks PACER access, at a disadvantage, because the Panel addressed the "enforceability" of the sanctions like Barbier, on a summary basis, without evidence and without hearing or oral argument. Without PACER, AROD does not have access to the Motions underlying the sanctions, the Briefs and Memoranda, or hearings transcripts.

These undisputed facts, standing alone, violated AROD's right to due process.

But since the sanctions were "procured through fraud" and "corruptly motivated" by "Officers of the Court", *Turner v. Pleasant*, 663 F. 3d 770 (5th Cir. 2011) is applicable, rendering the sanctions unenforceable. It is noteworthily ironic that *Turner* involved a corrupt Eastern District Judge who was impeached and found guilty by Congress of crimes involving moral turpitude. The issues implicating *Turner* were fully briefed below (App.14a-16a,19a,23a,72a-78a), but like other constitutional issues were not addressed by Barbier or by the Panel. And although Barbier and the Panel were well-aware of AROD's allegations of criminal judicial misconduct by Duval, those allegations also were ignored by both, while AROD was pilloried.

The imposition of the sanctions against AROD was advocated by two Assistant Attorneys General of the Louisiana Department of Justice, who represented State interests: (a) in AROD's civil rights case (over which Berrigan presided), and (b) in the KATRINA litigation (over which Duval presided). These two state lawyers, Michael Keller and Phyllis Glazer (as well as Judge Duval) each had "an axe to grind" against AROD:

1) Keller and Glazer, not only because they represented the State in the KATRINA litigation, but also because they were defending their "Boss", Louisiana Attorney General Charles C. Foti, Jr., personally, in AROD's civil rights case. Foti had ordered the "criminal gangland-style hit" on AROD by State "Goons with guns and badges" at 5 minutes past midnight on September 20, 2005, a "hit" straight out of "All the King's Men," within 12 hours of AROD's filing the first "Victims of KATRINA" lawsuit. (App.73a-75a,103a-105a,116a-123a,139a-140a).

2) Presiding Judge Duval, because he knew that his "close personal friend of long-standing," KATRINA Plaintiffs' Steering Committee lawyer Calvin Fayard was secretly representing State interests sued by AROD. (App.127a-128a,131a-133a,142a-167a).

Keller, Glazer and Duval had "reasons" for wanting AROD "silenced" discredited and marginalized. The imposition of monetary sanctions against AROD accomplished several goals for them in addition to being embarrassing and expensive for AROD.

Perhaps nothing demonstrates the "fraud upon the Court" that was perpetrated by Keller and Glazer, and enabled by Duval, fraud which the uncontradicted record fully supports, is something AROD didn't learn until much later: Unbeknownst to AROD at the time, on that very same day, February 28, 2007, while Keller

and Glazer were standing at the podium in open court, orally arguing that Duval should impose sanctions against AROD, their "Boss," Attorney General Foti, was presenting a Federal Form-95 to the Corps of Engineers on behalf of the State, staking out the State's $400 billion Federal Tort Claims Act claim for damages against the United States. (App.144a-145a). Neither Keller nor Glazer, nor Duval, mentioned this fact during oral argument on the issue of sanctions against AROD on February 28, 2007.

The "veil was well and truly lifted" for AROD exactly six months later, on August 29, 2007, when Duval's friend, Calvin Fayard, and "a bunch" of Fayard's "friends" and co-conspirators in the Louisiana Plaintiffs' Bar, filed a number of Civil Actions on behalf of State interests against the United States, which revealed to AROD, for the first time, Steering Committee Members' prior secret representation of the State. (App.144a-145a). This "revelation" about the previously "secret" representation by the plaintiffs' lawyer cabal, on whom Duval had bestowed "control and management of the KATRINA litigation, and the cabal's patently obvious conflict of interest, told AROD a number of things: (1) Why Duval had summarily dismissed "on the papers" every claim that AROD had filed against State interests: Duval didn't want Fayard's (and others') conflict of interest (and Duval's own corrupt knowledge of the conflict) revealed and "spotlighted," and (2) Why Duval was sanctioning him: Duval believed he could use his Article III power to force AROD to betray the interests of his 2,000 or so KATRINA clients and coerce AROD into silence. (App.148a-149a,151a-158a).

The profuse relationships between and among Barbier (a former plaintiffs' lawyer and past-President

of the Louisiana Trial Lawyers' Association) and the Louisiana Plaintiffs' Bar, and even with Duval and his family, and their mutual friends, have been chronicled in The New York Times and in The Washington Post in the following articles by award-winning Journalists: (a) Joe Nocera, "Getting Skewered in New Orleans," The New York Times, July 19, 2013; and (b) Steven Mufson, "In New Orleans courts, the legal gusher BP cannot contain," The Washington Post, March 1, 2014. Some of the plaintiffs' lawyers identified in those articles recently shared attorney's fees in the BP case totaling billions. But on October 23, 2008, AROD sued some of those very same lawyers (whom Barbier counts among his friends, and vice versa) in Civil Action No. 08-4728 on the Eastern District docket (App.203a-238a), which also named Duval as a defendant, and which AROD has dubbed: "The largest legal malpractice Class Action lawsuit in the annals of American jurisprudence." (App.107a,157a-158a). AROD avers that it was in retaliation and retribution for his having exposed corruption in the KATRINA litigation, and for his filing Civil Action No. 08-4728 against Duval and his plaintiffs' lawyer cronies, that AROD was disbarred. (App.125a-126a,146a,148a-149a,154a). Indeed, just two weeks after filing that lawsuit, on November 7, 2008, then Chief Judge Vance summarily issued an Eastern District *En Banc* Order which "cut AROD's legs off at the knees" and suspended him from the practice of law in Federal Court and precluded him from all Court access. (App.107a,157a-158a,240a-255a). AROD was later taken out of the fight entirely by his summary disbarment (allegedly by the *En Banc* Eastern District Court) on March 4, 2009, via a written "Order of Disbarment" signed only by Lemelle, who had previously recommended AROD's suspension to the

Eastern District Court. (App.158a,267a-277a). And AROD was summarily disbarred without hearing and without ever being given any opportunity to address the *En Banc* Court. Ibid.

AROD respectfully submits that sanctions imposed against him by Berrigan and Duval, at the urging of lawyers for the State, viz. Keller and Glazer, were procured through fraud and that they were corruptly motivated, and that the issues involving *Turner v. Pleasant* should have been robustly addressed at contradictory hearing.

CONCLUSION

To paraphrase Justice Kennedy in *Williams*, Petitioner Ashton R. O'Dwyer, Jr. was constitutionally entitled to "a proceeding in which he [could] present his case with assurance that no member of the court [was] predisposed against him." Here, all four Article III Judges in the Courts below were inclined against him. For all of the reasons identified herein, a Writ of Certiorari should issue to review the action of the United States Court of Appeals for the Fifth Circuit, with instructions to vacate the May 3, 2023 Per Curiam Opinion, with the entire matter remanded for reconsideration by unbiased and unprejudiced, fair and impartial Judges.

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