No. _____

In the
# Supreme Court of the United States

KYROS LAW P.C., KONSTANTINE W. KYROS,
*Petitioners*,

v.

WORLD WRESTLING ENTERTAINMENT, INC., ET AL.,
*Respondents.*

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

In judicial proceedings in United States District Courts, what Due Process mandates under United States Constitution Article III and Amendment V, Rules Enabling Act, Federal Rules of Civil Procedure and Inherent Judicial Power protect an attorney's reputation, honor, integrity and property? In this case, the U.S. Court of Appeals for the Second Circuit affirmed monetary and non-monetary sanctions imposed by the U.S. District Court for the District of Connecticut under inherent powers.

The first question presented: Are sanctions imposed upon Petitioner under Federal Rules of Civil Procedure derived from inherent judicial power as discussed in *Willy v. Coastal Corp.,* 503 U.S. 131, 139 (1992)?

The second question presented: Are federal courts required to follow the Fifth Amendment due process mandates of *Chambers v. Nasco, Inc.,* 501 U.S. 32 (1991) and *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980) in ascertaining whether Petitioner lacked good faith to award attorneys' fees under the Federal Rules of Civil Procedure?

The third question presented: Did Congress by the Rules Enabling Act, confer upon this Court the authority to adopt the Federal Rules of Civil Procedure and expand inherent power sanctions beyond *Chambers* and *Roadway* to deprive Petitioner of liberty and property?

## LIST OF PARTIES

Petitioner Konstantine Kyros, Kyros Law P. C. ("Kyros") were appellants-cross-appellees in the Second Circuit proceedings. Kyros represented the Plaintiffs in the District of Connecticut.

World Wrestling Entertainment, Inc., Vincent K. McMahon et al. were appellee-cross appellants in the Second Circuit and Defendants in the District of Connecticut.

## RULE 29.6 STATEMENT

Petitioner Kyros has no parent company and not is publicly held.

## RELATED PROCEEDINGS

*Haynes v. World Wrestling Ent., Inc.*, 827 F. App'x 3 (2d Cir. 2020), cert. denied, 2021 WL 1602662 (U.S. Apr. 26, 2021).

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## PETITION FOR A WRIT OF CERTIORARI

## INTRODUCTION

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Second Circuit. The Second Circuit's approach fails to define what due process of law is under the court's sanctions powers. The Court should review to articulate what constitutional rights can be asserted by the Petitioner against the imposition of sanctions in federal courts.[1]

Attorney Konstantine Kyros[2] brought suit on behalf of professional wrestlers[3] for alleged abusive labor practices, along with then-novel claims for the effects of head injuries incurred performing for World Wrestling Entertainment, Inc. The mistreatment of the wrestlers had long been ignored by the powers that be.[4] In 2014, what became this 'consolidated' case

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[1] *For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places.* Ephesians 6:12 KJV.

[2] University Massachusetts at Amherst, B.A. History 1993. Boston University School of Law, J.D. 1996. Kyros, Kyros Law, P.C., which included Anthony Michael Norris (Contoocook, NH) were sanctioned.

[3] Wrestling, said to be the world's oldest sport, is like law, both art and science. "Theseus, the reputed discoverer of scientific wrestling, is said to have learnt its rules from Athena herself." Norman Gardiner, *Greek Athletic Sports and Festivals*. Macmillan, London (1910) at 372.

[4] Marcus Griffin, *Fall Guys*. Reilly & Lee Co. Chicago (1937) at 210. "Some matmen die in the ring, others succumb from shocks sustained while taking those trick falls and out of the ring dives, and others end up mumbling and spatting like punchy fighters

commenced in Portland, Oregon.[5] At around that time, a scientific advance in the diagnosis of athletes head-injuries was embraced by those in power, with significant events in multi-district litigation,[6] published scientific studies,[7] scholarly articles,[8] establishment of research institutions,[9] brain banks at major universities,[10] investigative books,[11] documentaries,[12] newspapers[13] and a Hollywood

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who walk on their heels." The book is said to be rare because Toots Mondt (founded enterprise with Jess McMahon that became WWE) suppressed it by buying all copies he could locate. See Jim Wilson, *Chokehold*. Xlibris (2003) page 52.

[5] *Haynes v. World Wrestling Ent., Inc.,* 827 F. App'x 3 (2d Cir. 2020), cert. denied, 2021 WL 1602662 (U.S. Apr. 26, 2021).

[6] *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB (E.D. Pa. Apr. 22, 2015)

[7] Omalu BI, el at. *Chronic traumatic encephalopathy in a National Football League player. Neurosurgery*. 2005 Jul; J. Mez, *Clinicopathological Evaluation of Chronic Traumatic Encephalopathy in Players of American Football* JAMA. 2017 Jul 25.

[8] William B. Gould IV, *Football, Concussions, and Preemption: The Gridiron of National Football League Litigation*, 8 FIU L. Rev. 55, 55–56 (2012).

[9] Concussion Legacy Foundation, Boston, MA.

[10] Boston University CTE Center.

[11] Muchnick, *Concussion Inc.* ECW Press, Toronto (2015).

[12] League of Denial: The NFL's Concussion Crisis. PBS Frontline, Aired Oct. 8, 2013.

[13] Alan Schwartz, Dementia Risks Seen in Players in N.F.L. Study. New York Times, Sept, 29, 2009.

film.[14] In time, the cultural moment passed into the realm of Mnemosyne. Those in power bought a peace, the culture settled complacently to its 'panem et circenses.' The coming of peace brought the wrestlers' wounds no succor[15] as the courthouse remained a forbidden door.

Kyros was adjudged not to have done his duty to the wrestlers, the public welfare[16] or to have fulfilled his duties to the court,[17] as he acted as deceiver, luring his forces with fool's gold to the courthouse, the claims fought for so unworthy that he lacked a good faith basis[18] to file their pleadings asking for justice. This determination was achieved through an exercise of a hidden, unchecked and unstated discretionary source of power by our federal courts. This power was used to deprive the wrestlers'

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[14] Concussion. [Film] Landesman. Columbia, 2015.

[15] "Life is, in fact, a battle. Evil is insolent and strong… But the world as it stands is no narrow illusion, no phantasm, no evil dream of the night; we wake up to it, forever and ever; and we can neither forget it nor deny it nor dispense with it." -The Master.

[16] "[I]n order to protect the public, Attorney Kyros is ordered…" Pet. App. 76.

[17] Admitted to U.S. District Court for the District of Connecticut, Sworn October 7, 2016 at Bridgeport. Pet. App. 74 "Attorney Kyros' decision to assert frivolous claims has required the court to waste considerable judicial resources…"

[18] "[T]he district court sanctioned Kyros under Rule 11 on the same … lack-of-good-faith grounds that WWE asserted …". Pet. App. 19

representative and voice of his liberty[19]and property[20] upon the filing of signed papers in newly fortified castles of federal judicial power without adequate due process of law long-developed in our lands.[21] The decision below reveals the consequential impact of unrestrained judicial power interpreting semi-legislative[22] procedural rules when used to take away

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[19] *Wisconsin v. Constantineau*, 400 U.S. 433 (1971) Due process protections must be provided "where a person's good name, reputation, honor or integrity is at stake."

[20] Sanctions award to WWE is for $312,143.55 Pet. App. 7. Kyros Posted Surety. "Taking and giving is redistributional, reassigning the indicia of wealth or power..." John Orth. *Due Process of Law: A Brief History*. University Press of Kansas (2003) at 74.

[21] "That no man of what estate or condition that he be, shall be put out of land or tenement, nor taken nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law." Statute of 28 Edw. III, ch. 3 (1354). "No person… shall be deprived of life, liberty, property without due process of law." U.S. CONST. amend. V (December 15, 1791). *Boddie v. Connecticut,* 401 U.S. 371,375 (1971) "Without this guarantee that one may not be deprived of his rights, neither liberty nor property, without due process of law, the State's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things."

[22] "[C]onstruing Fed.R.Civ.P. 11 in a manner consistent with the Rules Enabling Act, it is the opinion of this Court that said rule is not a law within the meaning of 28 U.S.C. § 1331." "Any construction of Fed.R.Civ.P. 11 must necessarily begin with an eye toward the Rules Enabling Act, 28 U.S.C. § 2072.... Accordingly, we find that Rule 11 does not enlarge, abridge or modify any substantive rights, but rather regulates the integrity of papers submitted to the Court." *Port Drum Co. v. Umphrey*, 119 F.R.D. 26, 28 (E.D. Tex. 1988) Interpreting reach of *Sibbach*

the substantive rights of sanctioned attorneys with no procedural protections. This court should accept *certiorari*, and reverse.

## OPINIONS BELOW

The order of the District of Connecticut finding the grounds for sanctions is contained in the appendix to this Petition ("Pet. App.") at 33. The decision of the Second Circuit panel opinion, *Kyros Law P.C. v. World Wrestling Entertainment, Inc.*, 78 F.4th 532 (2023) is Pet. App. 1.

## JURISDICTION

The Second Circuit issued its opinion on August 28, 2023. Pet. App. 1. Petitioners filed a timely petition for rehearing and rehearing en banc, which the Second Circuit denied on October 4, 2023. Pet. App. 110. This petition now here. The jurisdiction of this court is invoked under 28 U.S. Code § 1254(1) and the Judicial Power of the Court established in U.S. CONST. Article III Sec. 2.

## STATUTORY PROVISIONS INVOLVED

This petition involves the interpretation of the Rules Enabling Act 28 U.S. Code § 2072 and its offspring the Federal Rules of Civil Procedure, Rules 1, 8, 9, 11, 37, 41(b). More broadly the petition invokes U.S. CONST. amend V. to the extent the Court has inherent judicial powers exercised under its own rule-

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*v. Wilson & Co., Inc.,* 312 U.S. 1 (1941) to Fed. Rule. Civ. P. sanctions challenged here.

making authorized by the U.S. Congress and Article III.

## STATEMENT OF THE CASE

There are no uniform due process standards in the regional circuits of the U.S. Courts of Appeals and U.S. District Courts under the Federal Rules of Civil Procedure[23] power granted through the Rules Enabling Act to sanction attorneys.[24] To the extent the Rules Enabling Act and its creation the Fed. R. Civ. P. allow sanction without due process of law, both the Rules Enabling Act and Federal Rules of Civil Procedure are outside the scope of their power to the extent attorneys are sanctioned under their provisions

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[23] See Rule 11 Standards American Bar Association Section of Litigation, Standards and Guidelines for Practice Under Rule 11 of the Federal Rules of Civil Procedure June 1988, The ABA at M(3), proposes 13 "factors that the court considers in fashioning a procedure to insure due process."

[24] 28 U.S. Code § 2072 (b) "Such rules shall not abridge, enlarge or modify any substantive right." See letter dated December 17, 1923 from Hon. Albert B. Cummins to Chief Justice William H. Taft (27th President of U.S.) which included this language for the draft legislation ultimately adopted in 1934, in Stephen B. Burbank *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015, 1073 (1982). The Rules Enabling act intends that rule-making powers delegated to the unelected shall not be substantive law, the laws of procedure setting up the organization of the court system were not intended to be rules of just conduct nor the means of ascertaining just conduct. Sanctions characterized as "substantive" during period of Rules Enabling Act debates, *Id.* at 1183

without clearly expressed constitutionally permitted procedures.[25]

To further compound the problem the entire federal law of litigation abuse is discretionary justice, drawing upon equity[26] and from uncertain reservoirs of power[27] which perhaps explains why this Court has

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[25] *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) "Once it is determined that due process applies, the question remains what process is due."

[26] Stephen N. Subrin *How Equity Conquered Common Law: The Federal Rules of Civil Procedure In Historical Perspective*, 135 U. PA. L. REV. 909, 1001 (1987) "major change in American civil procedure… is that equity procedures have swallowed those of common law." However, even equity power is more limited than Fed R. Civ. P. sanctions power. See *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 322 (1999) ("Even when sitting as a court in equity, we have no authority to craft a 'nuclear weapon' of the law.") "Hard was the case of bond creditors, whose debtor devised away his real estate… Story quoting Blackstone: "a debtor may prefer one creditor to others, in discharging his debts…" ,"discretion is a science... governed by the rules of law and equity… in no case does it contradict or overturn the grounds or principles thereof…". Joseph Story, *Commentaries on Equity Jurisprudence as administered in England and America*, at 11, 12. Boston. Little, Brown and Company (1873).

[27] *Chambers v. Nasco.*, 501 U.S. 32, 48 ("Likewise, the Advisory Committee Notes on the 1983 Amendment to Rule 11, 28 U.S.C. App. p. 575, declare that the Rule "build[s] upon and expand[s] the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation," citing as support this Court's decisions in *Roadway Express* and *Hall*.") *Hall v. Cole*, 412 U.S. 1, 5 (1973) ("in the exercise of their equitable powers, may award attorneys' fees when the interests of justice so require.") However, the holding of *Hall* rests not any such power but rather an award of fees created by the legislature. *Hall*, 15:

heard no significant Fed. R. Civ. P. sanctions appeals since the 1993 amendments.[28] Absent any statutory or clear rule constraints the Fed. R. Civ. P. sanctions regime cannot constitutionally exist above or be granted any inherent judicial power without adhering to existing fundamental underlying due process rights. The only originating power the courts could have to fashion procedural common law which Fed. R. Civ. P. sanctions powers purport to be, would derive from U.S. Const. Art. III[29] and its inherent power which even in its extremity does not permit the erection of non-legislative national trans-substantive procedural rules which act to deprive lawyers of their

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"the allowance of counsel fees to the successful plaintiff in a suit brought under § 102 of the LMRDA is consistent with both the Act and the historic equitable power of federal courts to grant such …".

[28] Advisory Committee changes to the Rules have created problems with precedent i.e. *Pavelic & LeFlore v. Marvel Entertainment,* 493 U.S. 120 (1989) said to be "overruled" by 1993 amendment in treatise on subject, at 2 Solov, Hirsh, Simpson, *Sanctions Under Rule 11*. Jenner & Block (2010).

[29] Amy C. Barrett, *Procedural Common Law*, 94 Va. L. Rev. 813, 879 (2008) "Article III plays a limited role in the overall development of judicially crafted procedural regulation, because the inherent procedural authority conferred by Article III is limited." Further, "It must be recognized that inherent authority is local authority, permitting each federal court to regulate only its own proceedings." Other powers as conferred by the Judiciary Act of 1789 are subject to constitutional limits, "[T]hat a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument." *Marbury v. Madison,* 5 U.S. 137,180 (1803).

inherent human rights.[30] The Fed. R. Civ. P. incorporates inherent authority grounded in the root existence of the court[31] into the murkier waters of inherent authority of the power to craft procedure. The 1983-1993 revised Rule 11 sanctions unify that power, submerging it under a set of rules conjured up by a wizard[32] that would set the industrious courts to work interpreting a code borne of imprecision, and as here with *Kyros v. WWE,* its progeny bear the same characteristics.

The current system permits and even unwittingly encourages this despotic and arbitrary judicial powers exercise ostensibly based on an 'Advisory Committee' that imagined it would be a good policy to create experimental[33] rules in 1983 or 1993 with the ill-defined objective to curb "abuses."[34] All

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[30] Fairness of procedure is "due process in the primary sense."*Brinkerhoff-Faris Co. v. Hill,* 281 U.S. 673, 681 (1930) quoted in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123,161 (1951). Due process is inherently procedural, Kyros may have his liberty and property taken if the procedure is fair under the U.S. Constitution.

[31] *United States v. Hudson*, 11 U.S. 32, 34 (1812) "powers which cannot be dispensed with in a court, because they are necessary to the exercise of all others…"

[32] And developed by Judge William W. Schwarzer.

[33] Stephen B. Burbank, *The Transformation of American Civil Procedure: The Example of Rule 11*, 137, 1927 U. PA. L. REV. 1925 (1989). "Rule 11… was avowedly an experiment… [Advisory Committee] knew little about the jurisprudence of sanctions…".

[34] Burbank, Stephen B., *The Costs of Complexity*, 85 MICH. L. REV. 1463 (1987). 1222, 1478, n. 61 "[I]n a formless system, abuse

exercise of such power emanates from the inherent power of the court and as such the two controlling cases are *Chambers v. Nasco, Inc.,* 501 U.S. 32 (1991) and *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980) which mandate[35] due process while confining the exercise of inherent power to the matters before the court unlike national trans-substantive Fed. R. Civ. P. application.

Under Fed. R. Civ. P inherent power granted to the inferior courts by 28 U.S. Code § 2072, a judge may be: "acting as accuser, fact finder and sentencing judge, not subject to restrictions of any procedural code and at times not limited by any rule of law governing the severity of sanctions that may be imposed." *Mackler Prods., Inc. v. Cohen*, 146 F.3d 126, 128 (2d Cir. 1998) quoted in *Schlaifer Nance Co., Inc. v. Est. of Warhol*, 194 F.3d 323, 334 (2d Cir. 1999).[36] That dicta is to announce a verity in the form of a warning that judges under the newly formulated Fed. R. Civ. P may in their discretion be untethered to any

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may be in the eye of the beholder." To define abuses, has emerged a federal common law for the conduct of litigation cataloguing it.

[35] *Chambers,* 501 "[M]ust comply with the mandates of due process."

[36] Pet. App. 16 "[T]he district judge in role of accuser, fact finder and sentencing judge all in one." *Aliquis non debet esse judex in propria causa.* Frankfurter, Landis. *Power of Congress over Procedure in Criminal Contempts in "inferior" Federal Courts. A Study in Separation of Powers.* Harvard Law Review, Jun. 1924, Vol. 37, No 8). 1056 "subtle dangers of bias, unconsciously operating, owing to inevitable human infirmities where one person combines in himself the roles of accuser, trier of facts and intentions, and judge."

mandates of due process, as in this case with Kyros who acted in good faith under the rules and court orders.

If the Second Circuit decision stands, it marks the demise of any illusory Fed. R. Civ. P. judicial notice requirements, as the opinion of the court blurs the lines of what due process standard applied to Kyros, developed under non-binding decisions in this federal semi-legislative regime.[37] The opinion incrementally broadens the reach of Rule 11 to extend to reach through superseded[38] amended complaints. This is in combination with a new equity power that knows no restraint,[39] which allows and invites secret in *mens rea* determinations of counsel upon Jimmy Snuka, King Kong Bundy, Mr. Fuji, Ivan Koloff, Ashley Massaro et al.[40] claims taken by affidavit *in camera* to ascertain whether their counsel was acting

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[37] Typical holding of the type Kyros relied upon below, of no legally binding effect. "The failure to identify in the order the sanctioning power pursuant to which sanctions are imposed constitutes an abuse of discretion and requires remand." Citing to *Arnold v. Fed. Nat'l Mortg, Ass'n* 2014 U.S. App. Lexis 9711 (5th Cir.) Joseph at 615. This seemingly objective due process notice is revealed by the Second Circuit to be an inconsequential detail. 21-3127 Kyros Br. at 32.

[38] Pet. App. 21 n. 4 "[C]ourts should ordinarily not reach back in time to sanction filings that were later superseded…". Possibly the first U.S. Court of Appeals to so hold.

[39] *Optima est lex minimum relinquit arbitrio judicis: optimus judex qui minimum sibi.* Herbert Broom, *A Selection of Legal Maxims,* T. & J. W. Johnson Law Booksellers. Philadelphia 1845 at 50.

[40] 21-3127, Appendix Vol IV. A-588-834

without a good faith basis. A new Star Chamber[41] has been created, one beyond the power of reason, facts or light of day. The power has been "codified" since *Oliveri v. Thompson*,[42] see Gregory P. Joseph, *Sanctions: The Federal Law of Litigation Abuse*,[43] a tome not destined to be placed on a dusty shelf next to *Blackstone's Commentaries*, *Coke's Institutes*, *Kent's Commentaries*, the complete works of Daniel Webster, Cooley's *Treatise of the Constitutional Limitations* and the entire body of Joseph Story's work in the

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[41] John Fox, *History of Contempt of Court*, Oxford (1927) at 86-89 Describing it as an "inquisitorial procedure," in which Lord Camden in *Donaldson v. Beckett* (1774) "spoke of Star Chamber decrees … as the effects of the grossest tyranny and usurpation… of the common law." Frankfurter, Landis supra n.36 at 1045. ("it assumed authority over contempts against any court and asserted its power, unlike common-law courts, by a summary procedure without a jury... abolished in 1641… the atmosphere of corrupt and arbitrary practices which it had generated partly survived.")

[42] ("Unfortunately, however, we do not yet have an integrated 'code' of sanctions to supply coherent guidance. Indeed, the sources of judges' sanctioning power are diverse, and the standards invoked have not always been either clear or consistently applied.") *Oliveri v. Thompson*, 803 F.2d 1265, 1271 (2d Cir. 1986).

[43] 6th ed. 2020.

Petitioners' law library.[44] It's erudition[45] is as complete as the future of American civil procedure.

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[44] The law in the sense of nomos is not reflected in this work but rather a compendium of guidance to judges on how to exercise "restraint and discretion," under the federal law of litigation abuse arising under Fed. Rule Civ. P. in the absence of any clearly formulated legislation. Fox supra n. 41, 88 Lord Camden on the Star Chamber: ("the whole bedroll of citations and precedents which had been produced and described them as 'that heterogenous heap of rubbish which is only calculated to confound your Lordships.'")

[45] Joseph supra n. 43, 539: ("Inherent power is a murky and uncertain doctrine, and its full scope is far from clearly defined.") On the 'Risk of Chilling Zealous Advocacy': ("Precisely where to draw the line between valid and competing concerns of this sort is necessary vague." 229), ("The 1993 Rule codifies the due process rights of persons charged with sanctionable behavior. Subdivision (c) provides that sanctions may be awarded only 'after notice and a reasonable opportunity to respond' to the charge of a violation have been afforded.") ("The 1993 Advisory Committee Note does little more than reiterate the text, except to add that whether oral argument or an evidentiary hearing is necessary 'will depend on the circumstances'." at 30.) The codification is not by statute nor are the standards clearly expressed to attorneys to be sanctioned. Pet. App.13 ("[R]epeated failures to comply with the clear, and unambiguous provisions of the Federal Rules of Civil Procedure…"). Exhumed from *Business Guides v. Chromatic Commun.*, 498 U.S. 533, 560 (1991) Though even interpreting the "clear and unambiguous" signing requirement drew a dissent: ("passages quoted from the treatise authored by Professors Wright and Miller do not seem to me unambiguous endorsements of the majority's position.") at 560.

### A. Procedural Due Process Protections Accorded to Kyros by the Second Circuit and District of Connecticut

#### 1. Due Process by Sanctions Motion Practice.

The Second Circuit in upholding the district court,[46] ruled that Kyros had already shipwrecked[47] his cause at the moment he filed the complaint.[48] When his nemesis filed a motion in August 2016 requesting sanctions under various sources of authority, Kyros was permitted by the Fed. R. Civ. P. in place at that time to file a response. That response fulfilled all constitutionally mandated opportunity to be heard due process requirements.[49]

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[46] "This case never should have been brought." *Healey v. Chelsea Resources, Ltd.*, 947 F.2d 611, 615 (2d Cir. 1991).

[47] "Mr. Hart, here's a dime. Call your mother, and tell her there is serious doubt about you becoming a lawyer." *The Paper Chase.* [Film] Bridges. Twentieth Century Fox (1973).

[48] *Cooter & Gell v. Hartmarx*, 496 U.S. 384, 496 (1990) "As the Rule 11 violation is complete when the paper is filed…".

[49] "we reject Kyros's argument that the district court violated his due process rights by depriving him of notice and an opportunity to be heard before imposing sanctions. Here, Kyros had abundant notice of the risk of, and the potential grounds for, sanctions based on WWE's motions and the district court's interim order reserving judgment.") Pet. App. 21. The reference to interim order is dubious since the interim order Pet. App. 79 provides the notice the Second Circuit deemed devoid of meaning Pet. App.102 "pursuant to Rule 11(c)3, the Court will *sua sponte* revisit to whether to award attorney's fees as a sanction on *Laurinaitis* Plaintiff's counsel."

This is because a 'formal procedure' 21 days[50] after the filing of the *Laurinaitis* complaints the sanctions had in fact already vested under the certification signing requirement.[51] The wisdom of the designers of Fed. R. Civ. P. 11 who now stand alongside the founding fathers[52] had granted Kyros

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[50] "Days after the Rule 11(c)(2) safe harbor period passed…." "WWE's motions gave Kyros the explicit benefit of the Rule's safe harbor provision…". Pet. App. 19, 21. The rule is munificent in the due process it accords the accused. Even this is not meaningful as notice, it was gamesmanship within the rule, as WWE served Kyros with 'general' notice under Fed. R. Civ. P. 11(c)2 complaining of all matters great and small. WWE then filed the served motion along with a large memorandum with allegations that had not been included in the original papers. See Jossen, Steiner, *How the Second Circuit Liberalized Rule 11 Sanctions Availability Reflecting on Star Mark Management'* New York Law Journal August 20, 2012. Illustrates the tactics employed by WWE counsel against Kyros and wrestlers under a devised safe harbor now venerated as a sacred due process protection in tradition of Madisonian reverence for the Constitution by the Second Circuit.

[51] The importance of which itself is a fiction, see Risinger, D. Michael, *"Honesty in Pleading and Its Enforcement: Some Striking Problems with Federal Rule of Civil Procedure 11"* (1976). Minnesota Law Review. 1066 at 8-10 Fn. 20. Risinger comprehensively debunks *Great Australian Gold Mining Co. v. Martin,* L.R. 5 Chp. Div 1, 10 (1877) as to any historical antecedents of a signing requirement guiding modern Rule 11, which he attributes to a "indignor quandoque bonus dormitat Homerus," by Joseph Story. The theory underpinning revised Rule 11 is *a priori* knowledge must for certain exist under so-called objective criteria. The modern origin is David Dudley Field who "placed faith in [the] verification requirement in order to inhibit frivolous claims…" Subrin supra n. 26 at 977.

[52] Who perfected the U.S. Constitution, the perfect instrument of liberty. Risinger Id. at 10 ("the requirement of counsel's signature

fair warning, positing that as a policy objective that 'abuses' could be eliminated through an unstudied rule they devised disingenuously called a "safe harbor."[53]

Kyros did not withdraw the wrestlers complaints within 21 days,[54] which left the judge with

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was originally a boon rather than a burden to counsel, for it ensured that they were consulted before a Bill was filed.")

[53] The provision was nothing of the kind, and as used here to test the legal sufficiency, feint defenses, intimidate counsel, pressure plaintiffs into dropping their claims, and risk losing Fed. R. Civ. P. 15(a)(1)(B) right to amend. See Carl Tobias, *The 1993 Revision of Rule 11*, 70 Ind. L.J. 171, 207 (1994) noting "some attorneys… may be tempted to employ the safe harbor device for inappropriate tactical benefits…".

[54] The rule-makers didn't factor the legal ethics of dismissing sixty-three wrestlers claims simply because WWE lawyers valued for their "ruthless aggression" whom Vince McMahon hired "at a cost of about a million dollars a year" filed a motion. See Wilson, supra Fn.4 at 533. If Kyros elected to dismiss as under Fed. R. Civ. P. 41(a)(2) he would breach his primary duty, the duty to represent his clients. Each of the plaintiffs after submitting affidavits *in camera* without further notice from the court, would then have had to "knowingly, voluntarily and intelligently consented" to any contemplated dismissal by Kyros who would have had to demonstrate same to the court. In contrast to the District of Connecticut, Second Circuit treatment of Kyros' fidelity to his clients, Judge Paul S. Diamond E.D. Penn. went to great lengths to make sure the clients (Courageous people harmed by thalidomide under a wobbly tolling theory) of a major law firm were not dropped in the face of threatened sanctions, even ordering a special discovery master to get to the bottom of the affair. Doc. # 420 2:11-cv-05782-PD *Johnson v. Smithkline Beecham Corporation, et al.* Kyros was adjudged to be in violation of Fed. R. Civ. P. and sanctioned for not immediately dropping his clients claims before a 21 day safe-harbor asserted by WWE as affirmed by Second Circuit; perhaps a clear rule

an inexorable weapon which was ostensibly used to dispose of the controversy years later. The existence of WWE motion(s) alone is a sufficient basis for the judge's discretion to later sanction says the Second Circuit.[55]

The sanctions were amply sustained because we learn from the Second Circuit, WWE's sanctions motions supplied constitutionally appropriate notice.[56] Below, Kyros argued that notice in the guise of the source of authority, or rather the failure to cite a correct source of judicial power[57] for the sanctions required remand, because the question of what due process requirements followed could not be determined absent this threshold inquiry. The Second Circuit, once again, locates the constitutional due process solution in the effect of a filed motion.

'Notice' in Second Circuit sanctions jurisprudence is now achieved in a newly assertive capacious scheme. As above, with some sort of opportunity to be heard having been effectuated by

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should be established as to what procedures govern these situations, as of now there is none but a contradictory and irrational procedure in the inferior courts of the United States.

[55] "[I]ts actual decision was explicitly framed as a decision on WWE's earlier filed motions… we reject Kyros' argument that the sanctions order was imposed sua sponte such that the district court was bound by the procedural requirements of Rule 11(c)(3)." Pet. App. 20. Words are wise men's counters.

[56] Pet. App. 21 see supra n. 45.

[57] Pet. App. 102 "pursuant to 11(c)3, the court will sua sponte revisit whether to award attorney's fees as a sanction.." 21-3127 Kyros Br. at 12.

motion,[58] the motion is also elevated to the fulfillment of an exalted constitutionally mandated due process notice requirement.[59] The thrust of the Second Circuit appeal was that the District Court judge failed to state a viable source of authority in the decretal order. That is in failing to so state, Kyros could not know the scope of the sanctions due process due nor anything else by way of the nature of the penalties imposed upon him.[60] The Second Circuit interprets a deracinated "notice and an opportunity to be heard" from the general framework of Rule 11 and 37 sanctions imposed upon motion.[61] As such, decisions in the inferior courts may now safely dispense with any due process notice as to the precise grounds of their sanctions.

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[58] Sanctioned under Rule 37 like the animating concern of *Pavelic* Kyros argued no notice, or hearing personal to him. Any Kyros defense would also violate work-product and attorney-client privilege. Pet. App. 121

[59] The source of authority remains unidentified.

[60] Hamilton, *Federalist No. 78* "To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them" "The district court's failure to specify which conduct of Gavin violated which rule or statute also merits remand because not every type of attorney misconduct is sanctionable under every rule." *Insurance Ben. Administrators, Inc. v. Martin*, 871 F.2d 1354, 1361 (7th Cir. 1989) 21-3127 Kyros Br. at 11,12.

[61] See supra n. 48.

### B. Akin to Contempt of Court: Failure of Kyros to Obey Court Orders.

The district court sanctioned Kyros under inherent authority powers, as the decretal order makes plain.[62] In order to determine what was done "this Court has judged that conclusions about the purposes for which relief is imposed are properly drawn from an examination of the character of the relief itself." *Hicks v. Feiock*, 485 U.S. 624, 636 (1988).

The District Court commanded Kyros. Petitioner was required[63] to commence the filing of amended pleadings in compliance with Fed. R. Civ. Pro. 1, 8, 9[64] and 11, and "*Laurinaitis* Plaintiffs shall submit for *in camera review* [affidavits] ...[65] If Kyros did not comply Hon. Judge Vanessa Bryant announced dismissal powers under 41(b)[66] and "pursuant to

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[62] "The Court's prior cases have indicated that the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct…. Thus, as the Court of Appeals for the Ninth Circuit has recognized, Rule 11 'does not repeal or modify existing authority of federal courts to deal with abuses . . . under the court's inherent power.' *Zaldivar v. Los Angeles,* 780 F.2d 823, 830 (CA9 1986)." *Chambers* at 48-49.

[63] No safe haven accorded to Kyros. ("Instead of saying to the defaulter 'I don't care whether you appear or no,' it sets its will against his will- But you shall appear.") Fox supra n. 41 at 46. ("When informed that the witnesses' appearances had been ordered, not requested, the attorney answered, '[M]y client chooses not to obey.'") *Brockton Sav. B. v. Peat, Marwick, Mitchell*, 771 F.2d 5, 9 (1st Cir. 1985).

[64] Twiqbal.

[65] App. 100.

[66] *Link v. Wabash R. Co.*, 370 U.S. 626 (1962). Pet. App. 102.

11(c)3, the court will sua sponte revisit whether to award attorney's fees as a sanction…"[67]

*Laurinaitis* plaintiffs merits fell under WWE's earlier motion to dismiss directed to the earlier filed complaint as the Judge did not require WWE to file further opposition to their claims, the merits having been appealed were dismissed.[68]

After review of the 63 *in camera* secret affidavits,[69] a review of the amended complaint, Themis decreed Kyros violated her orders,[70] "lacked good faith"[71] and granted attorney's fees for two

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[67] Pet. App. 102.

[68] *KST Data, Inc. v. DXC Tech.*, 980 F.3d 709 (9th Cir. 2020). ("A defendant is not required to file a new answer to an amended complaint…") The amended complaint added a new plaintiff Estate of Harry Masayoshi Fujiwara in the Chancery Court, Probate Division, of Knox County, Tennessee. Docket No. 80460-2, a claim that was apparently dismissed under the earlier filed WWE motion under summary order 18-3278-cv(L) *Haynes, et al. v. World Wrestling Entertainment, Inc.*

[69] *Kyros Law P.C. v. World Wrestling Entertainment, Inc.* 78 F.4th 532 (2023) App. 13 "Kyros … submitted affidavits on behalf of the plaintiffs." See text of order Pet. App. 37.

[70] "[A]ffidavits that Kyros had filed did not comply with its September 2017 order." Pet. App. 13.

[71] "Plaintiff's counsel therefore lacked any good faith basis…". Pet. App. 70.

earlier filed WWE motions[72] asking for sanctions.[73] The Second Circuit upheld this sanctioning procedure on motion grounds, because the Judge was able to award attorneys' fees upon the earlier Rule 11 motions.

The District Court exercised inherent judicial power[74] to sanction Kyros who was not accorded adequate due process to infer his state of mind under *Chambers* or *Roadway* or notice or opportunity to speak in his defense under Mandates given to all courts under Article III. This is a radical impermissible expansion of the court's inherent powers.[75]

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[72] "[C]onfirmed court was granting in part WWE's December 2016 sanctions motion…to extent it sought the award of attorney's fees and costs." See text of order App. 76. Pet. App.13.

[73] "[T]he district court sanctioned Kyros under Rule 11 on the same timeliness and lack of good faith grounds that WWE had asserted in its earlier sanctions motions." Pet. App. 19.

[74] "The sheer breadth and magnitude of its sanctions effort are probably unprecedented… the district court not only invoked every conceivable legal theory on which sanctions could be imposed, but also levied every conceivable sanction.." *Blue v. U.S. Dept. of Army*, 914 F.2d 525, 535 (4th Cir. 1990). Pet. App. 33.

[75] *Bloom v. Illinois,* 391 U.S. 194,202 (1968) "in contempt cases, an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power." This is not an inference drawn by a judge on an adversary's pre-trial motion.

## REASONS FOR GRANTING THE PETITION

### I. Fed. R. Civ. Pro. 11 Sanctions Powers are Inherent Authority Powers that Mandate US Const. amend. V Due Process.

The inherent textual inconsistencies in Fed. R. Civ. P. 11 evidenced in the opinion demonstrate the limited utility of interpreting the operation of the rule using logical deduction or analysis. Some of its inherent limitations and contradictions have been unveiled by the Second Circuit opinion.

Judge Hon. Vanessa L. Bryant does not disguise the fact that her ruling[76] is circumventing her earlier notice[77] to Kyros citing to provisions that removed just a bit of her discretion, that is 11(c)3 required an order to show cause,[78] which does not allow for fee-shifting.[79] Fee-shifting may be awarded

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[76] Pet. App. 33.

[77] Pet. App. 102.

[78] An order to show cause could allow Kyros prove his guilt or innocence of any charges by his adversary on pre-trial disputed facts of any alleged misconduct to the court. Kyros maintains then as now, he acted in good faith at every moment and at every stage of the process, the Second Circuit determinations remove whatever thin formal procedural impediments provided by the Rule to destroy Kyros, his life, career and honor without any right to ever testify in any court in his defense.

[79] "Rule 11 is not a fee-shifting statute…" *Cooter & Gell* at 409 ("The revision provides that a monetary sanction imposed after a court-initiated show cause order be limited to a penalty payable to the court,") 1993 Fed. R. Civ. P. 11 Advisory Committee Note. The reasoning is not spontaneous order of the common law developed through hundreds of years of common law, it is 'policy' directed. The social engineers on the committee soon realized

upon a motion, so the court denies WWE's sanction motion in part,[80] and grants "it to the extent it sought the award of attorney's fees…"[81] The Second Circuit holds that Rule 11 motions exist concurrent with her inherent powers and she can choose a 1993 advisory committee created rule to circumvent the earlier notice and exercise her powers without running into any 'codified' due process requirements.[82] The opinion also bypasses *Roadway Express,* 767 "bad faith exception for the award of attorney's fees," decreeing that bad-faith determinations "would have to precede and sanction under the court's inherent powers." And bypasses *Chambers*.[83]

We can see that the Fed. R. Civ. P. has empowered the judge to use discretion is selecting which power to exercise to award attorney's fees, or is

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through experiential deduction that the rule could have undesired unpredictable impacts to impede settlement, as in a case where remained the judge's discretion to issue sanctions regardless of the wishes of the litigants.

[80] Pet. App. 34.

[81] Pet. App. 76 Achieving an 'end around' the confines of announced 11(c)3 procedure Pet. App 102.

[82] "[C]ourt's sanctions order…based on… two motions… not some new or spontaneous initiative…". Pet. App. 19.

[83] *Chambers* at 51 "court's inherent power to impose attorney's fees…" limited to "bad-faith conduct or willful disobedience of a court's order."

it the same power shrouded under a rule that pretends a formalism[84] it doesn't possess?[85]

*Willy v. Coastal Corp.,* 503 U.S. 131, 139 (1992) confronted this issue but stopped short of reaching the logical conclusion about the source and nature of the power conferred by Rule 11 "Our conclusion that the District Court acted within the scope of the Federal Rules and that the sanction may constitutionally be applied even when subject-matter jurisdiction is eventually found lacking makes it unnecessary for us to consider respondent's alternative contention that the sanction may be upheld as an appropriate exercise of the District Court's 'inherent powers.'"[86] This is an important Rubicon to cross and likely why this Court hesitates, because in *Willy* we learn that the Court of Appeals for the Fifth Circuit did reach its judgment grounding Rule 11 sanctions as emanations of inherent authority.[87] This would mean *Roadway* and

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[84] Michelman, *Formal and Associational Aims in Procedural Due Process, in Due Process:* NoMos XVIII 126, 129 (1977) ('a procedure is formal insofar as its purpose is to vindicate legal entitlement to secure to an individual that which is rightfully his'), see Burbank Supra n. 34 at 1474 Fn. 61.

[85] The Fed. R. Civ. P. sanctions procedures borne of equity in the *Chambers*-sense are supported by a rigid design that masks its 'broader than equity' discretion under new interpretive formless forms of action grounded in inherent power.

[86] "To compound this lack of specificity, courts have relied occasionally on precedents involving one form of power to support the court's use of another." *Eash v. Riggins Trucking Inc.*, 757 F.2d 557, 562 (3d Cir. 1985).

[87] *Willy* at 314, "It concluded that the authority to impose Rule 11 sanctions rested in the 'inherent powers' of the federal courts-those powers' 'necessary to the exercise of all others.' *Id.,* at 966

*Chambers* had identified the source and guide to the exercise of all Rule 11 authority and a ruling in *Willy* on this point as to the origin of the power implicated would undisguise it under its Rule 11 mask.[88]

Rule 11 is a satellite around a much larger universe of the courts inherent judicial powers. Just as a judge may reach down from the heights of these unlimited powers, Judge Bryant can now reach up and act through them with Fed R. Civ. P. discretion disguising the source of her power as upon a motion.[89]

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(quoting *Roadway Express, Inc.* v. *Piper,* 447 U. S. 752, 764 (1980). The court concluded that the exercise of Rule 11 powers was an example of such inherent powers."

[88] This would, by way of logical deduction, mandate any findings under Rule 11 be subject to a determination that Kyros had acted in bad faith and evidence be produced of the same under *Chambers* articulation of due process.

[89] Motion: "A written… application requesting a court make a specified ruling or order." Black's Law Dictionary. The elasticity of the power, even extending to the discretion to interpret the formal rules themselves is evident from the Second Circuits failure to identify what source of power was exercised in WWE's requested relief upon motion which included a request that inherent authority sanctions be imposed on Kyros. Joseph, in a rare judicial kayfabe exposes this: ("All of the procedural protections developed in the 1993 Rule could in practice be undercut because they have not been expanded to apply to sanctions awardable under other powers, particularly… inherent power of the court. Rather than serving a Rule 11 motion…. A party could serve and immediately file a …. inherent power motion instead.") As WWE did here, or did it? Joseph hopes the "incongruity," will be resolved as "the procedures specified in Rule 11…. [s]hould ordinarily be employed when imposing a sanction under the court's inherent powers." at 31. He refers to due process procedural protections that will "depend on the circumstances." A formless due process code. Supra n. 45.

The effect is to efface the due process rights to speak ostensibly embedded in the Rule as well as the contours of the notice, as well as, specific findings upon the matters raised in the motion.[90] That is a conclusion that Rule 11 is no rule at all but a *Fata Morgana* of inherent power.[91]

Judicial power exercised in this *unlimited* discretionary manner is encouraged under the Fed. R. Civ. P. and its source of thinking may be found in the expressed view of the Advisory Committee on due process as is found in its published note analyzed below.[92]

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[90] "Marry, sir, they have committed false report; moreover, they have spoken untruths; secondarily, they are slanders; sixth and lastly, they have belied a lady; thirdly, they have verified unjust things; and to conclude, they are lying knaves." Much Ado About Nothing, Act 5, Scene 1. 21-3127 Kyros Br. 35-55.

[91] ("Affirmative words are often, in their operation, negative of other objects than those affirmed, and, in this case, a negative or exclusive sense must be given to them or they have no operation at all.") *Marbury* at 174.

[92] 1983 Fed. R. Civ. P. 11 Advisory Committee Note. "(Advisory Committee Notes are 'a reliable source of insight into the meaning of a rule')." *Hall v. Hall*, 138 S. Ct. 1118, 1130 (2018).

## II. Due Process Protections under the Federal Rules of Civil Procedure Inherent Power Sanctions Granted Under Rules Enabling Act in the 1983-1993 Amendments are Inadequate under the Fifth Amendment.

In the Advisory Committee notes we read "the procedure [to sanction] obviously[93] must comport[94] with due process requirements." The juxtaposition of obvious and due process telegraphs that the drafter is signifying that the obviousness makes the matter not worthy of further development. This is because the judicial comportments of constitutional due process are situational "depend on the circumstances"[95] with an unknown "format to be followed" that will somehow

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[93] In a way that is easily perceived or understood clearly or a matter clearly, totally, unmistakably true.

[94] In accord or agree with.

[95] The Rule fails to articulate any due process mandates mischaracterizing *Morrissey* which decided what *was* due under the circumstances. ("minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reason for revoking parole.") *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972).

base it's assessments on the "severity."[96] However, Kyros and those subjected to the Rule's power to extirpate their rights can be reassured that any sentencing judge's "participation in the proceedings"[97] "provides him with full knowledge of the relevant facts…"[98] The designer under said modified rule

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[96] No severity scale was drafted or adopted by the designers. This signifies the evident failure to study phenomenon the Rule sought to address or lack of background in rulemaking by the designers of this rule. Burbank, Supra n. 33 at 1040, 'Veil of Ignorance' as 'apt metaphor.'

[97] The sanctions proceeding and underlying action become unified under same Judge. *In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process… But our system of law has always endeavored to prevent even the probability of unfairness.") Second Circuit cited *Huebner v. Midland Credit Mgmt. Inc.*, 897 F.3d 42, 53 (2d. Cir. 2018) ("This deferential standard is applicable to the review of Rule 11 sanctions…. Because the district court is familiar with the issues…") Pet. App. 16. *See also* Schwarzer, *Sanctions Under the New Federal Rule 11,* 104 F.R.D. 181, 198 (1985) evidentiary hearing "should be avoided, unless the court must find disputed facts or resolve issues of credibility." *Eastway Const. Corp. v. City of New York,* 637 F. Supp. 558, 568 (E.D.N.Y. 1986).

[98] How are these relevant facts established? After a trial by jurati; retrospective *LoGrasso* Rule 56 application; no personal notice or opportunity to speak to Kyros under Rule 37; pre-trial sanctions motion (one or two or both) which ask for relief under 28 U.S. Code § 1927, inherent authority and/or Rule 11 but granted under unknown grounds; *sua sponte* discretion determinations under 11(c)3 & 41(b) power grant under enabling act or through secret *In Camera* affidavits? The incongruity is as unyielding as its incoherence with respect to what if any due process is owed to Kyros.

desires the rule's stated object[99] can now be achieved as "little further inquiry will be necessary."

But there is more, enter Josef K.[100] The next paragraph demonstrates the rationalist naivete of one who speaks of "efficiencies achieved" in the new regime.

The "self-evident" due process concerns alluded to are now directly subordinated to a new concern, "satellite litigations" conjured up by those to be sanctioned. The author appears to view some part of the matter, perhaps the merits, but likely the policy objective to be the larger sphere.[101] That a sanctioned attorney may believe the sanctions occupy that larger sphere[102] does not merit consideration.[103] To save

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[99] The notes state the old Rule 11 was ineffective in "deterring abuses" and the goal of this radical revision is "[t]o reduce reluctance of courts to impose sanctions."

[100] "…[M]ajor concern was that the broadened availability of sanctions might lead to protracted and expensive satellite litigation over the appropriateness of sanctions… Its reporter [Arthur Miller]…. described his own 'Kafkaesque dream' of courts being besieged by motions to sanction attorneys for making frivolous motions for sanctions." 101 F.R.D. 161, 200 (1984). *Golden Eagle Distributing Corp. v. Burroughs*, 801 F.2d 1531, 1537 (9th Cir. 1986)

[101] A satellite is an object that moves around a larger one.

[102] Of the law of the land.

[103] Burbank, Stephen B., "*The Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11: An update*" 19 Seton Hall L. Rev. 511 (1989) at 15 "sanctions not regarded as 'only money' by sanctioned parties. We concluded that the Constitution requires prior notice and opportunity to be heard in almost all cases under Rule 11."

money "costs," the remedy is not to preserve a record but to also strictly limit discovery[104] in matters that impact lives, reputations, property and fundamental fairness.[105]

Due process under this Fed. R. Civ. P. 1983 drafter's theory, we sense, is no process at all. When something is so "obvious" one may guess that the drafter has lost some of the Spirit of '76 with the conviction of James Madison whose compatriots had lately won a war securing said rights which had to be restored by force of arms. Kyros does not now have to guess that in 2024, the 1983 developed standards which forgot meanings of important eternal law of the land would render self-evident concepts that animate the U.S. legal landscape like due process to the status of those important things that "cease to carry a definite meaning."[106]

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[104] See how a Massachusetts court handled a Rule 11 evidentiary 'hearing of some kind' under the old rule in Jonathan Harr, *A Civil Action*. Random House, NY 1995 at 110-119.

[105] The Rule was notably unsuccessful in quelling Kyros who vigorously asserted his curtailed constitutional rights under the charge made against him and the legion of doom, due process that relies upon unbridled equity discretion which can ignore the text of its own charges. As then, as now, Kyros petitioned to the courts, and as such, the docket continued to grow and grow, multiple appeals to the Second Circuit were taken, hearings held, and argued for the amount of the award to be set, and so forth and so on. (*Jarndyce v Jarndyce*) gravitationally completely collapsed object "black hole" is engendered by this rule in a contested case.

[106] Hayek, *The Constitution of Liberty*. Chicago, 1960 page 1. In dedication: "To the unknown civilization that is growing in America." "If old truths are to retain their hold on men's minds,

The judicial power of the inferior federal courts to impose sanctions has constitutional limitations as articulated in *Chambers*, *Roadway Express.*[107] The lower courts cannot be allowed to characterize Kyros's activity as *Chambers*-like and then decisively remove whatever vestiges of a fair procedure existed under a newly formulated "science of law" sanctions regime.[108]

A key figure in the development of codification opined: "If the decision of litigated questions were to depend upon the will of the Judge or upon his notions of what was just, our property and our lives would be at the mercy of a fluctuating judgment, or of caprice."[109]

The dangers of the code were not foreseen by Field or by the designers of revised Rule 11 which is not a "tradition of a common law that was not conceived as the product of anyone's will but rather as a barrier to all power including that of the king… intended to apply to an unknown number of further instances… by defining a protected domain…".[110]

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they must be restated in the language and concepts of successive generations."

[107] *Roadway Express, Inc. v. Piper,* 447 U.S. 752, 764 (1980) "Because inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion."

[108] They are moving Grandpa's grave to build a sewer.

[109] Subrin supra n. 26 at 935, quoting Field. "[A] characteristic product of the constructivist rationalism which regards all rules as deliberately made, and therefor capable of exhaustive statement." Hayek, *Law, Legislation and Liberty*. Chicago, 1973, 117.

[110] Id. at 85-86.

The Second Circuit opinion upholds inherent sanctions powers far beyond the confines of *Chambers*, *Roadway*. The judicial power exercised under the rule-making grant to this Court is a clear and unambiguous violation of the natural rights of Konstantine Kyros, as such this Court now has a vehicle to correct the misdirection of American civil procedure.

## CONCLUSION

"By the law of the land is most clearly intended the general law; a law which [____] before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty property, and immunities under protection of the general rules which govern society."[111]

The division of truth from falsity is timeless, "it defies death."[112]

*"Suppose ye that I am come to give peace on earth? I tell you, Nay; but rather division…. I bring not peace but a sword."*[113]

For the foregoing reasons, Petitioner, Konstantine Kyros requests that this court grant his petition.

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[111] *The Works of Daniel Webster*. Volume V, Tenth Edition. Boston Little, Brown and Company 1857 (Dartmouth College Case) at 487-488.

[112] Senator Thomas J. Walsh. S. Rep. No. 1174, 69th Cong., 1st Sess. 9-16 at 21(1926).

[113] Luke 12:51 KJV.

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Dated: January 2, 2024