

No. 23-784

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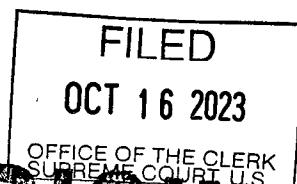
IN THE  
SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF KENNETH JAMES  
ROSELLINI AN ATTORNEY AT LAW

KENNETH JAMES ROSELLINI... PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE  
SUPREME COURT OF  
THE STATE OF NEW JERSEY

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ORIGINAL

## **QUESTIONS PRESENTED**

- 1) Can an attorney can be sanctioned in an ethics proceeding for failure to obey the rules of a tribunal when he is openly asserting that no valid obligation exists, because the orders are unconstitutional under the First and Fourteenth Amendments, and were issued when the state court found Res Judicata as grounds to deny a motion to vacate orders based upon fraud upon the court, when Res Judicata is not a valid basis to deny a motion to vacate an order based upon fraud upon the court, under the Fourteenth Amendment?
- 2) Can an attorney can be assessed a more severe ethics sanction for having asserted a civil rights complaint in federal court against officials of the ethics proceeding, for declaratory and injunctive relief, based upon assertions of violations of free speech under the First Amendment and due process under the Fourteenth Amendment?
- 3) Can a state's highest court issue rules prohibiting lower tribunals in attorney ethics proceedings from considering whether or not the ethics rules they are enforcing violate the Constitution for the United States of America?

## **LIST OF PARTIES**

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Kenneth Rosellini, Esq., Petitioner.
2. New Jersey Office of Attorney Ethics, Respondent

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APPENDIX C Order of the Supreme Court of New Jersey, Denying the petition of Respondent, Kenneth James Rosellini, for review of the decision of the Disciplinary Review Board

APPENDIX D Opinion of the Supreme Court of New Jersey Disciplinary Review Board recommendING by a five to four vote that Kenneth James Rosellini receive a three month suspension from the practice of law, with the four votes recommending censure.

APPENDIX E Opinion of the DISTRICT XI ETHICS COMMITTEE, recommending dismissal without prejudice pending the outcome of the §1983 Constitutional Civil

Rights (First Amendment) case of *Rosellini v. Wilcox*, et al., Docket No: 2:20-cv-20101-MCA-LDW (U.S.D.N.J.)

APPENDIX F Dissenting Opinion of the DISTRICT XI ETHICS COMMITTEE, recommending a higher sanction of reprimand, solely for the reason Kenneth James Rosellini was actively prosecuting his civil rights case and that he should receive the higher sanction regardless of the outcome of that case.

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## OPINIONS BELOW

The Order of the Supreme Court of New Jersey, filed on May 19, 2023, reprinted in the Appendix hereto at Appendix B, pp. 3a-4a, In the Matter of Kenneth Rosellini an Attorney at Law, Case No.: 086980. This ORDERED that Kenneth James Rosellini an Attorney at Law be censured as attorney discipline for violation of the New Jersey Rules of Professional Conduct, RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice); that he satisfy sanctions against him issued in the state family court proceeding of Doblin v. Doblin, and reimburse the Disciplinary Oversight Committee for appropriate administrative costs. The Order of the Supreme Court of New Jersey, filed on May 16, 2023, reprinted in the Appendix hereto at Appendix B, pp. 5a-6a, In the Matter of Kenneth Rosellini an Attorney at Law, Case No.: 086980. This Order denied the petition of Respondent, Kenneth James Rosellini, for review of the decision of the Disciplinary Review Board in DRB 21-231 and 21-232.

The Order of the Supreme Court of New Jersey, filed on July 21, 2023, reprinted in the Appendix hereto at Appendix A, pp. 1a-2a, In the Matter of Kenneth Rosellini an Attorney at Law, Case No.: 086980. This Order granted the motion of the Office of Attorney Ethics for reconsideration (rehearing) and ORDERED that Kenneth James Rossellini [sic] pay the sum of \$12,287.50 by certified check or money order, sent by the U.S. Mail or

comparable delivery method to Dr. Michael Doblin within 45 days of this order.

The Opinion of the Supreme Court of New Jersey Disciplinary Review Board Docket Nos. DRB 21-231 and 21-232 District Docket No. XI-2019-0005E, April 20, 2022, reprinted in the Appendix hereto at Appendix D, pp. 6a-67a. This opinion recommended by a five to four vote that Kenneth James Rosellini receive a three month suspension from the practice of law, with the four votes recommending censure.

The Opinion of the DISTRICT XI ETHICS COMMITTEE, March 31, 2021, reprinted in the Appendix hereto at Appendix E, pp. 67a-100a, with a dissenting Opinion reprinted in the Appendix hereto as Appendix F, pp. 101a-107a. By a two to one vote, in this proceeding in which the presenter sought admonishment against Kenneth James Rosellini, the majority recommended dismissal without prejudice pending the outcome of the §1983 Constitutional Civil Rights (First Amendment) case of *Rosellini v. Wilcox*, et al., Docket No: 2:20-cv-20101-MCA-LDW (U.S.D.N.J.). The dissenting opinion recommended a higher sanction of reprimand, solely for the reason Kenneth James Rosellini was actively prosecuting his civil rights case and that he should receive the higher sanction regardless of the outcome of that case.

## **JURISDICTION**

The date on which the Supreme Court of the State of New Jersey granted reconsideration (rehearing) filed by the Office of Attorney Ethics was July 21, 2023, a copy of this order appears at Appendix A.

This matter involves federal questions under the under the First and Fourteenth Amendments to the Constitution for the United States of America.

The jurisdiction of this Court is invoked under 28 U.S.C. §2104.

### **CONSTITUTIONAL, PROVISIONS, STATUTES AND POLICIES AT ISSUE**

#### **First Amendment to the Constitution of the United States**

Congress shall make no law . . . abridging the freedom of speech . . .

#### **Fourteenth Amendment to the Constitution of the United States**

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

### **STATEMENT OF THE CASE**

This matter stems from New Jersey Attorney Ethics proceedings brought against Kenneth James Rosellini, primarily under New Jersey Rule of Professional Conduct. 3.4, which states that an attorney in the State of New Jersey shall not knowingly "disobey an obligation under the rules of a

tribunal except for an open refusal based on an assertion that no valid obligation exists". The "rules of a tribunal" Kenneth James Rosellini has disobeyed are frivolous litigation sanctions orders that were issued when he filed, pro bono, on behalf of a client, a motion in New Jersey Superior Court to vacate family court orders based upon fraud upon the court, including allegations that there was forged signature on a settlement agreement, which was not properly placed upon the record and which went missing from the record, which had never been litigated before. That motion was denied based upon Res Judicata, which as a matter of due process is not a valid basis to deny a motion to vacate orders based upon fraud upon the court, and the sanctions were issued against me on a cross-motion, which is also not permitted under the court rules. Kenneth James Rosellini appealed these orders on behalf of his client, appeals which were denied, and additional sanctions were issued, totaling over \$14,000. Kenneth James Rosellini openly asserts that these orders are constitutionally invalid, and were issued in retaliation for him having raised issues of fraud upon the court which expose the state courts' own wrongdoing.

Kenneth James Rosellini's client, Linda Doblin, passed away in August of 2022. She was denied justice in her lifetime. At the time of the fraud upon the court, she was a hearing disabled financially dependent spouse who had obtained a

final order of divorce after being subjected to spousal abuse, with primary custody of her minor child and with necessary financial support from her ex-spouse. Due to the ex-spouse's successful fraud upon the court and abuse of process, less than three years after the final arbitrator's judgment pursuant to the divorce, my client found herself a) bankrupt, b) with her child effectively in the sole custody of the spouse, with one hour a week supervised visitation with her son, the father enabled to abuse their son's education by sending him away to an isolated desert Scientology indoctrination camp for months at a time, and c) subjected to malicious criminal prosecution for interference with custody (which was dismissed when the subject settlement agreement came up missing from the court record), when her son in accordance with the law, time after time sought refuge with his mother from abuse from the spouse. Kenneth James Rosellini and the courts have an obligation to see that the fraud in this case is exposed, and that what happened to my client never happens again to any person appearing in the New Jersey Courts.

When ethics proceedings were brought against Kenneth James Rosellini seeking a finding of admonishment, he raised the following legal issues and filed a federal complaint seeking, *inter alia*, the following relief with respect to those issues.

Count I seeks declaratory relief under 28 U.S.C. §2201 for the following:

- A. Declaring as a matter of due process under the Fourteenth Amendment to the Constitution for the United States of America, that state court officers have a duty and obligation to guard against fraud upon the court to ensure their constitutional integrity, and that the doctrine of *Res Judicata* may not be used as a legitimate basis under the Fourteenth Amendment to deny an application to vacate or void a state court judgment based upon fraud upon the court; and
- B. Declaring as a matter of due process under the Fourteenth Amendment to the Constitution for the United States of America that any state court sanctioning a litigant, or an attorney appearing before it, must set forth both the reason for the sanction and the basis in law upon which the sanction was issued; and
- C. Declaring as a matter of due process under the Fourteenth Amendment, that Rule 1:20-15(h) of the Rules Governing the Courts of the State of New Jersey violates the due process clause of the Fourteenth Amendment, both on its face and as applied to the Plaintiff, because it instructs persons to take actions regardless of whether those actions violate the Constitution for the United States of America; and

D. Declaring that Rule 1:4-8 of the Rules of the Courts of the State of New Jersey violates the First Amendment and both the Due Process and Privileges and Immunities clauses of the Fourteenth Amendment as to the fundamental rights of free speech and advocacy of litigants in state courts, so that it violates the Constitution of the United States of America both on its face and as applied to Plaintiff; and

E. Declaring that New Jersey Rule of Professional Conduct 8.4(d) and Rule of Professional Conduct 3.4(c) violate the First Amendment and both the Due Process and Privileges and Immunities clauses of the Fourteenth Amendment to the extent that they infringe upon the fundamental rights of free speech and advocacy of litigants in state courts, so that these rules violate the Constitution of the United States of America both on their face and as applied to Plaintiff; and

F. Declaring that Rule 1:4-8, RPC 8.4(d), RPC 3.4(c), and any inherent power possessed by state courts, may not be used for purposes of intimidation or chilling fundamental rights under the First Amendment and both the Due Process and Privileges and Immunities clauses of the Fourteenth Amendment so that they infringe upon the fundamental rights of

free speech and advocacy of litigants in state courts.

Count II of the Complaint sought injunctive relief for the following:

An injunction enjoining these defendants from violating the rights of litigants appearing before the courts of the State of New Jersey, and abusing the process of law so as to deny litigants their fundamental rights under the First Amendment and both the Due Process and Privileges and Immunities clauses of the Fourteenth Amendment for their benefit and to injure persons appearing before the courts of the State of New Jersey.

[See pp. 13a-17a, 36a-49a, 79a-88a on Res Judicata and Due Process, pp. 16a-40a, 55a-61a, 81a, 89a, on First Amendment, pp. 18a, 54a-57a, 107a, on the Fourteenth Amendment, pp 35a, 54a-55a, on Rule 1:20-15(h)]

Subsequent to the filing of the federal civil rights complaint, on March 31, 2021 the District Ethics Panel issued a 2-1 decision that the Complaint should be dismissed without prejudice for Kenneth James Rosellini to pursue the issues raised in the federal complaint. The public panelist who refused to recuse himself, issued a dissenting opinion in clear retaliation for the filing of the federal

complaint; in violation of Kenneth James Rosellini's First Amendment rights he found [emphasis added]:

**...in light of the fact that Mr. Rosellini continues to pursue his quest, and now cites that he is being denied his right to free speech as guaranteed by the First and Fourteenth Amendments to the Constitution, I would now recommend that the District Review Board consider to issue a reprimand as a result of this hearing, regardless of the outcome of his latest Civil Complaint.**

Subsequently, the Office of Attorney Ethics (“OAE”) sought censure, citing with approval the dissenter’s opinion. When the Disciplinary Review Board (appellate review from the District Ethics Panel) found for Suspension, the OAE adopted that position to the New Jersey Supreme Court. After Briefing on an Order to Show Cause and Petition for Review, and Oral Argument, the New Jersey Supreme Court issued orders denying Petition for Review, and for Censure, without addressing any of the constitutional issues raised. On a motion for reconsideration by the Office of Attorney Ethics, the Supreme Court then ordered that Kenneth James Rosellini pay the subject sanctions within 45 days of the order.

## REASONS WHY CERTIORARI SHOULD BE GRANTED

### I. First Amendment Rights of Attorneys to Advocate for their Clients must be Recognized and Settled

An attorney cannot be assessed a more severe ethics sanction, as the New Jersey Supreme Court has done, for having advocated for his client consistent with the First Amendment and having asserted a civil rights complaint in federal court against officials of the ethics proceeding, for declaratory and injunctive relief, based upon assertions of violations of free speech under the First Amendment and due process under the Fourteenth Amendment.

It is true, as Cottingham contends, that “disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment, and [the] **First Amendment protection survives even when the attorney violates a disciplinary rule** he swore to obey when admitted to the practice of law.” Gentile v. State Bar of Nev., 501 U.S. 1030, 1054, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991).

*See In re Disciplinary Proceeding Against Cottingham*, 423 P.3d 818, 826 (Wash. 2018) (emphasis added). The First Amendment right of attorneys to advocate for their clients as Petitioner has done is essential to the judicial process.

While the Supreme Court and others have, on several occasions, upheld restrictions on

courtroom speech, they have done so, not because First Amendment rights do not exist in the courtroom, but rather because such restrictions served to protect a defendant's constitutional right to a fair trial and to preserve the dignity of the courts. 1 *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1081-82, 115 L. Ed. 2d 888, 111 S. Ct. 2720 (1991) (O'Connor, J., concurring) ("Lawyers are officers of the court and, as such, may legitimately be subject to ethical precepts that keep them from engaging in what otherwise might be constitutionally protected speech. *This does not mean, of course, that lawyers forfeit their First Amendment rights, only that a less demanding standard applies.*") (emphasis added, citation omitted); *United States v. Gurney*, 558 F.2d 1202, 1209-10 (5th Cir. 1977) . . . .

The majority also rests its holding that attorneys have no First Amendment rights in the courtroom on the belief that attorneys are simply like "other trial participants" who have no right "to interrupt a judicial proceeding with their questions or musings." Maj. Op. at 5. However, I do not share the view that an attorney is simply another trial participant or that an attorney's filing of motions seeking the dismissal of

criminal charges against his or her client is somehow akin to "interruptions" by "jurors, court reporters, bailiffs, or spectators." Maj. Op. at 5. An attorney's primary role is to serve as his or her client's representative and advocate in the judicial process, and it is for this very reason that an attorney's First Amendment rights in the courtroom must be zealously guarded. 3 The Supreme Court has long recognized that parties often need the assistance of a trained, professional advocate who will represent their interests throughout the judicial process. *See Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 546, 149 L. Ed. 2d 63, 121 S. Ct. 1043 (2001) . . . .

However, the ability and willingness of persons to serve as advocates for their clients, particularly in matters adverse to the government, will be severely hampered if persons acting under color of state law are permitted to retaliate with impunity against attorneys who exercise their First Amendment rights on behalf of their clients. . . . .

*See Mezibov v. Allen*, 411 F.3d 712, 723-26 (6th Cir.

2005) (dissenting opinion) (emphasis added).

## II. Fourteenth Amendment Due Process requires that a Motion to Vacate a Judgment based upon Fraud Upon the Court may not be denied under the Doctrine of Res Judicata

It is unconstitutional for an attorney to be sanctioned in an ethics proceeding, as the New Jersey Supreme Court has done, for failure to obey the rules of a tribunal when he is openly asserting that no valid obligation exists, because the orders are unconstitutional under the First and Fourteenth Amendments, and were issued when the state court found Res Judicata as grounds to deny a motion to vacate orders based upon fraud upon the court, when Res Judicata is not a valid basis to deny a motion to vacate an order based upon fraud upon the court, under the Fourteenth Amendment.

*Res Judicata*, is completely inapplicable to an application to vacate or void orders based upon fraud on the court.

[W]hen the controversy has been terminated by a judgment, its freedom from fraud may always be the subject of further judicial inquiry; and the general rule that courts do not set aside their judgments after the term at which they rendered has no application.

*See Root Ref. Co. v. Universal Oil Prod. Co.*, 169 F.2d 514, 521-22 (3d Cir. 1948).

... as a matter of policy, a court should be particularly cautious about making subjective judgments which aid the conspirators in giving effect to their fraud and as a practical matter

**ratify the fraud.** *See Restatement of Judgments*, Section 121, comment a (1942).

*See Shamma v. Shamma*, 9 N.J. 321, 330, 88 A.2d 204, 209 (1952). The United States Supreme Court has declared Res Judicata violative of due process in other contexts, and should declare it unconstitutional as a basis to deny a motion to vacate a judgment based upon fraud upon the court. *See Southwest Airlines Co. v. Texas Intern Airlines*, 546 F.2d 84, 95 (5th Cir. 1977) [“Because res judicata denies a non-party his day in court, the due process clauses prevent preclusion when the relationship between the party and non-party becomes too attenuated. *Hansberry v. Lee*, 1940, 311 U.S. 32, 61 S.Ct. 115, 85 L.Ed. 22; cited with approval, *Blonder-Tongue Laboratories v. University of Illinois Foundation*, 1971, 402 U.S. 313, 329, 91 S.Ct. 1434, 28 L.Ed.2d 788.”].

### **III. A State may not Prohibit a Tribunal in an Ethics Proceeding from Considering a Claim that the Rules which they are Enforcing Violate Federal Constitutional Guarantees**

As a matter of due process under the Fourteenth Amendment, Rule 1:20-15(h) of the Rules Governing the Courts of the State of New Jersey violates the due process clause of the Fourteenth Amendment, both on its face and as applied to the Plaintiff, because it instructs persons to take actions regardless of whether those actions violate the Constitution for the United States of America. Rule 1:20-15(h) of the New Jersey Court Rules states in pertinent part that, “Constitutional challenges to the

proceedings raised before the trier of fact shall be preserved, without Board action, for Supreme Court consideration as a part of its review of the matter on the merits . . .”

This Rule was reviewed previously by the United States Supreme Court in *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 437 (1982) (abstaining under the Younger doctrine because the attorney-respondent had an “opportunity to raise and have timely decided by a competent state tribunal the federal issues involved” under New Jersey’s Court Rules) (quoting *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973)).” The New Jersey Supreme Court has improperly applied the rule to bar lower tribunals in attorney ethics proceedings from applying the United States Constitution. This was clearly not what the United States Supreme Court believed was the intent of the rule when it issues its opinion in *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*. [the petitioner cites “nothing existing at the time the complaint was brought by the local Committee to indicate that the members of the Ethics Committee, the majority of whom are lawyers, would have refused to consider a claim that the rules which they were enforcing violated federal constitutional guarantees.” *Middlesex Ethics Comm. v. Garden State Bar Assn*, 457 U.S. 423, 435 (1982)]

## CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted under Rule 10 of the Rules of the Supreme Court of the United States.

Dated: October 19, 2023

Respectfully submitted,



KENNETH ROSELLINI, ESQ.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**