

No. 23-940

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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
IN THE MATTER OF KENNETH JAMES  
ROSSELLINI 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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## **QUESTIONS PRESENTED**

1) Can an attorney can be suspended from the practice of law in a state attorney ethics proceeding by the state's highest court 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, and the state's highest court fails to cite any rule, case or legal basis for the suspension in its order/opinion?

## **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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## OPINIONS BELOW

The Order of the Supreme Court of New Jersey, filed on November 16, 2023, reprinted in the Appendix hereto at Appendix A, pp. 1a-2a, In the Matter of Kenneth Rosellini an Attorney at Law, Case No.: 088666. This Ordered that Kenneth James Rosellini an Attorney at Law be suspended from the practice of law in the State of New Jersey. In issuing the order the Supreme Court of the State of New Jersey cited no rule, case, or legal basis for the suspension. Petitioner had been previously 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) in the related ethics proceeding which is currently under appeal with the United States Supreme Court Case Number 23-784; for refusing to satisfy sanctions against him issued in the state family court proceeding of Doblin v. Doblin. The two page order of temporary suspension, unsupported by any opinion or discussion of the facts, or of the applicable principles of Constitutional Law, or of the Rules of Ethics Governing the Courts of the State of New Jersey cited by the New Jersey Office of Attorney Ethics [New Jersey Court Rules 1:20-3(g) Investigation (4) Failure to Cooperate, and 1:20-11 (suspension warranted where attorney “poses a substantial threat of serious harm to an attorney, a client or the public”). The Order fails to set forth any facts or legal opinion because the facts and law do not support a suspension under the cited rules or applicable Constitutional principles.

The New Jersey Supreme Court's simultaneous denied Kenneth James Rosellini's cross-motion for a stay of the motion for suspension pending Respondent's appeal to the United States Supreme Court of the finding of ethics Censure against Respondent in the underlying matter, which was also unsupported by any legal opinion or factual discussion of any kind (the Order of the Supreme Court of New Jersey, filed on November 16, 2023, reprinted in the Appendix hereto at Appendix B, pp. 3a).

### **JURISDICTION**

The date on which the Supreme Court of the State of New Jersey issued its Orders suspending Kenneth James Rosellini from the practice of law and denying a stay were filed on November 16, 2023, a copy of these orders appears at Appendix A and B.

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.

Kenneth James Rosellini (who has actively practiced in New Jersey (admitted in 1998) and New York (admitted in 1999) state and federal courts, including bankruptcy courts, federal courts of appeals, and appeared *pro hac vice* in jurisdictions including Wyoming state court and federal district court in Illinois and South Carolina, without ever receiving an ethics sanction of any kind) continues to assert that his conduct is both ethical and Constitutional, as this matter stems from a New Jersey Attorney Ethics proceeding brought 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”, and Respondent continues to assert that no valid obligation exists.

The New Jersey Office of Attorney Ethics cited New Jersey Court Rule 1:20-3(g) Investigation (4) Failure to Cooperate, but there was no ethics investigation in which Kenneth James Rosellini was failing to cooperate. The New Jersey Office of Attorney Ethics cited New Jersey Court Rule 1:20-11 (suspension warranted where attorney “poses a substantial threat of serious harm to an attorney, a client or the public”), yet the allegations are that Respondent has failed or refused to pay attorney’s

fees sanctions of \$12,287 stemming a 2016 Order issued by a Superior Court judge (now under his own ethics investigation ACJC Complaint – In the Matter of Gary N. Wilcox, Judge of the Superior Court | NJ Courts <https://www.njcourts.gov/press-releases/2023/07/acjc-complaint-matter-of-gary-n-wilcox-judge-of-superior-court>) denying one motion to vacate New Jersey Superior Court, Chancery Division, Family Part Orders, which Respondent filed *pro bono* on behalf of his client Linda Doblin (who died in July of 2022), and there is no legal or factual basis that the failure or refusal to satisfy a seven year old attorney’s fees sanction “poses a substantial threat of serious harm to an attorney, a client or the public”.

By continuing to refuse or fail to pay the subject attorney’s fees Petitioner keeps this matter an active case and controversy under Article III of the Constitution for the United States of America, and Petitioner is continuing to assert his Constitutional rights and a finding of declaratory judgment on principles of Constitutional law in United States District Court (currently an amended complaint for a §1983 action against the attorney that obtained the subject attorney’s fees sanctions against the Petitioner, *Rosellini v. Wilcox*, 2:20-cv-20101-MCA-JRA, and in the United States Court of Appeals for the Third Circuit (Docket No. 22-2610, Petitioner’s federal action for declaratory relief was dismissed under the Younger Abstention Doctrine, and appealed as an immediate appeal under the collateral order doctrine, and sought to Petition the

United States Supreme Court, United States Supreme Court Case Number 23-784 (Brief of which is incorporated by reference here).

## **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. *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 Shammass v. Shammass*, 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); *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. 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 improperly applied the rule to bar lower tribunals in attorney ethics proceedings from applying the United States Constitution in Petitioner’s case. 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: February 14, 2024

Respectfully submitted,



KENNETH ROSELLINI, ESQ.