

No. 17A756

In The
Supreme Court Of The United States

ZBIGNIEW S. ROZBICKI,
Petitioner,

v.

CHIEF DISCIPLINARY COUNSEL,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
FOR THE CONNECTICUT SUPREME COURT

**PETITION FOR WRIT OF CERTIORARI
WITH APPENDIX**

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QUESTION PRESENTED

This Petition arises from the Conn. Supreme Court's affirmation of the trial court's decision suspending the Petitioner for four years for accusing two judges of bias and prejudice in Motions for their disqualification. The Statewide Grievance Committee, the Superior Court, and the Conn. Supreme Court refused to acknowledge, consider, or rule on the Petitioner's constitutional free speech and due process defenses raised throughout the grievance proceedings, trial and appeal, citing this Court's reliance on New York Times v. Sullivan, 376 U.S. 254(1964), Garrison v. Louisiana, 379 U.S. 64 (1964), Landmark Communications v. Virginia, 435 U.S. 829 (1978), and their prodigies.

The question presented is whether the Conn. Supreme Court's uncompromising rejection of this Court's rulings in the cited cases, intended to protect attorney's free speech under the First Amendment, has become such an accepted excuse among state and federal judges to punish attorney criticism of judges that it has reached such an oppressive level of abuse that it calls for this Court's curative supervision, intervention, and review?

PARTIES TO THE PROCEEDINGS

The Petitioner appearing pro se, is Zbigniew S. Rozbicki, a trial and appellate attorney whose fifty plus year career began in Connecticut in 1967.

The Respondent is the Conn. Statewide Grievance Committee appearing through its Assistant Disciplinary Counsel, Leanne M. Larson. Disciplinary counsel is appointed by judges of the Superior Court and is assigned to the Chief Court Administrator of the Judicial Branch. There are no corporations involved in these proceedings and thus no corporate disclosure under Rule 29.6 of the Supreme Court Rules is required.

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CITATION OF OPINIONS BELOW

CHIEF DISCIPLINARY COUNSEL V. ROZBICKI (S.C. 19796)	167 A.3D 351(2017) 326 Conn. 686
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CHIEF DISCIPLINARY COUNSEL V. ROZBICKI	HHD-CV-13-6046975
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J. MICHAEL SCONYERS V. ZBIGNIEW S. ROZBICKI	GRIEVANCE COMPLAINT NO. 12-0029 JUDICIAL WEBSITE GRIEVANCE DECISIONS
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JURISDICTION

The Conn. Supreme Court issued its Decision on September 5, 2017 cited in 326 Conn. 686, 167 A.3d 351(2017). The Petitioner filed a Motion for Reargument and Motion for Stay on pending the adjudication of the Petition for Certiorari. Both Motions were denied on October 25, 2017 but the Conn. Supreme Court's notice of the denial of the Motion for Reargument was not sent to the Petitioner until its denial was communicated by the Clerk, upon the Petitioner's inquiry, on December 13, 2017.

The appeal from the Superior Court was originally filed and briefed in the Appellate Court, entitled Chief Disciplinary Counsel v. Zbigniew S. Rozbicki, Docket No. A.C. 38392. The case was transferred to the Supreme Court by its order and docketed as S.C. 19796.

Justice Ginsburg granted the Petitioner an extension of time to file this Petition to and including March 26, 2018.

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

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

UNITED STATES CONSTITUTION

AMENDMENT [I.]

Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT [V.]

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT [XIV.]

§1 Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT [IX.]

Construction of enumerated rights

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

CONNECTICUT CONSTITUTION

Article 1, § 1. Equality of rights

Sec. 1. All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community.

Article 1, § 4. Liberty of speech and the press

Sec. 4. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

CODE OF JUDICIAL RULES

Section 64-1. Statement of Decision by Trial Court; When Required; How Stated; Contents

(a) The Court shall state its decision either orally or in writing, in all of the following: (1) in rendering

judgments in trials to the court in civil and criminal matters, including rulings regarding motions for stay of executions, (2) in ruling on aggravating and mitigating factors in capital penalty hearings conducted to the court, (3) in ruling on motions to dismiss under Section 41-8. (4) in ruling on motions to suppress under Section 41-12, (5) in granting a motion to set aside a verdict under Section 16-35, and (6) in making any other rulings that constitute a final judgment for purposes of appeal under Section 61-1, including those that do not terminate the proceedings. The court's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor. If oral, the decision shall be recorded by a court reporter, and, if there is an appeal, the trial court shall create a memorandum of decision for use in the appeal by ordering a transcript of the portion of the proceedings of the decision for use in the appeal by ordering a transcript of the portion of the proceedings in which it stated its oral decision. The transcript of the decision shall be signed by the trial judge and filed in the trial court clerk's office. This section does not apply in small claims actions and to matters listed in Section 64-2.

Section 6-1. Statement of Decision; When Required

(a) The judicial authority shall state its decision either orally or in writing, in all of the following: (1) in rendering judgments in trials to the court in civil and criminal matters, including rulings regarding motions for stay of execution, (2) in ruling on aggravating and mitigating factors in capital penalty hearings conducted to the court, (3) in ruling on motions to dismiss under Sections 41-8 under Sections 41-12 through 41-17, (5) in granting a motion to set aside a verdict under Sections 16-35

through 16-38, and (6) in making any other rulings that constitute a final judgment for purposes of appeal under General Statutes §52-263, including those that do not terminate the proceedings. The judicial authority's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor. If oral, the decision shall be recorded by a court reporter and, if there is an appeal, the trial judge shall create a memorandum of decision for use in the appeal by ordering a transcript of the portion of the proceedings in which it stated its oral decision. The transcript of the decision shall be signed by the trial judge and filed in the trial court clerk's office.

RULES OF APPELLATE PROCEDURE

Rule 2.15. Responding to Judicial and Lawyer Misconduct

(a) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall take appropriate action including informing the appropriate authority.

(b) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall take appropriate action including informing the appropriate authority.

(c) A judge who receives information indicating a substantial likelihood that another

judge has committee a violation of this Code shall take appropriate action.

(d) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

STATEMENT OF THE CASE MATERIAL TO THE QUESTION PRESENTED

This Petition challenges the Conn. Statewide Grievance Procedure, its administrative bodies, including the Local Grievance Panels, the Statewide Grievance Committee, the Superior Courts and the Conn. Supreme Court's refusal to apply the U.S. Constitution core principles of the First Amendment which guarantees a lawyer, free speech rights to impugn judicial integrity.

The Petitioner raised fundamental constitutional defenses to an attorney's free speech claims, critical of judicial bias in grievance proceedings for filing motion to disqualify two Conn. state judges. The Petitioner cited in his defense this Court's reliance on the First and Fourteenth Amendments of the U.S. Constitution in decisions which repeatedly recognized core constitutional protection to attorneys for speech critical of the judiciary as reported in N.Y. Times v. Sullivan, 376 U.S. 254 (1964), Garrison v. Louisiana, 379 U.S. 64 (1964), Landmark Communications v. Virginia, 435 U.S. 829 (1978), and their prodigies.

In disregard of the Petitioner's reliance on the U.S. Constitutional protection to free speech and due process, which were raised throughout the grievance proceedings, the Superior Court and before the Conn. Supreme Court, the constitutional defenses were completely ignored and rejected in the Petitioner's defense. The Conn. Supreme Court affirmed the Superior Court's violation of the Petitioner's constitutional defenses and ignored the most fundamental principles of law applicable to due process and a fair trial. It also affirmed the most egregious errors committed by the Conn. Superior Court and the Statewide Grievance Committee, thus

affecting every lawyer in the State of Connecticut who becomes exposed to judicial misconduct and criticism of judges.

The subject of this Petition does not involve the argument on the Conn. Supreme Court's rationale for justifying a denial of the First Amendment's protection of free speech to the Petitioner... The Court simply ignored without comment the constitutional protection claims which were repeatedly raised by the Petitioner at all levels of the disciplinary proceedings.

This Petition illustrates the extremes of "distraction" which the Conn. courts have manipulated in their influence to carve out an exception to the free speech principles guaranteed by the First Amendment, in attorney discipline cases. The Conn. Supreme Court ignored the First Amendment issues in their decisions, by creating a diversionary fabrication of facts, not supported by the record, and by ignoring applicable principles of law, State and Federal, to protect its public image.

The judgment of misconduct, which the Supreme Court affirmed, included violation of the following Rules of Professional Conduct:

---Rule 3.1 Asserting an issue for which there was no basis in law and fact for doing so thus making such assertions frivolous and;

---Rule 8.2 Making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge and;

---Rule 8.4(4) By engaging in conduct that is prejudicial to the administration of justice.

The essential facts relevant to this Petition, the proceedings before the Conn. Statewide Grievance Committee, the Conn. Superior Court,

and the Conn. Supreme Court, are essentially undisputed, including the following:

(a) Neither of the judges, whose bias, prejudice, and partiality were challenged in Motions for their Disqualification, were ever called to testify before the Local Grievance Committee, the Statewide Grievance Committee, or in the Superior Court presentment trial and no depositions of their testimony was taken or sought.

(b) No testimony or evidence was ever presented from any person, lawyer, or court personnel that the allegations of bias, prejudice, and partiality claimed in the Motions for Disqualification, were known by the Petitioner to be false or that they were made with reckless disregard as to its truth or falsity concerning the qualification or integrity of any judge.

(c) No testimony or evidence was ever presented from any person, lawyer, judge, or court personnel that the Petitioner engaged in any conduct disruptive or otherwise offensive to the administration of justice in any of the proceedings at issue. The Motions were denied pro forma in the typical courtroom atmosphere.

(d) From the time accusations of bias, prejudice, or partiality arose against Judge Danaher in the Lichaj litigation during 2009-2010, and throughout approximately the next three years during which the Motions for Disqualification were decided, neither of the judges whose disqualification was sought, made any accusations against the Petitioner of misconduct and did not report any accusations of misconduct to the grievance authorities.

The grievance which was filed by Attorney J. Michael Sconyers, relevant to these proceedings, on January 10, 2012, complained that the Petitioner

filed a series of motions challenging the integrity of Judges John A. Danaher and Vincent Roche, in Motions for the Disqualification of the two Judges based on claims of “bias, prejudice and partiality,” in related civil actions. Although Sconyers made other claims of unethical conduct against the Petitioner, only the referenced issues survived the scrutiny of the Statewide Grievance Committee. (Ex. 3).

The history involving the basis for Sconyers’ grievance involved litigation in a series of civil actions officiated before Judge Danaher, in which Sconyers was counsel of record, beginning with a civil action entitled Welles, et al v. Lichaj, et al, brought by Sconyers against the Lichajs on March 24, 2009, whom the Petitioner represented.

The Welles’ case became the spark of contention between the Petitioner, Judge Danaher, and Attorney Sconyers, fueled by Judge Danaher’s dismissal of the Welles, et al v. Lichaj, et al case from the jury trial list and the dismissal of the Lichajs’ counterclaim for damages against the Welleses. Judge Danaher, who was a recent appointee to the bench, then proceeded to try the case without a jury. The trial became very adversarial because of Judge Danaher’s ruling on the evidence and the law, resulting in a judgment which was reversed in the Lichajs’ favor by the Appellate Court. The Appellate Court set aside the judgment rendered by Judge Danaher and restored the Lichajs’ counterclaim and rights to a jury trial. The permanent injunction against the Lichajs, prohibiting them from plowing and maintaining the right of way to their residence, was also set aside because of Judge Danaher’s erroneous rulings on the law and the evidence. The Welleses’ Petition for Writ of Certiorari to the Conn. Supreme Court was denied and the Petitioner’s clients prevailed on all of the

issues. *Welles, et al v. Lichaj, et al*, 136 Conn. App. 347; 46 A.3d 246 (2012).

The Petitioner's first allegations criticizing Judge Danaher's partiality, were raised and articulated on November 9, 2010 in a Motion for Mistrial and in the Petitioner's Motion for Arrest of Judgment for Extrinsic Causes and Motion for a New Trial in the Welles-Lichaj litigation on December 15, 2010. The Motions were summarily denied by Judge Danaher without allowing for a hearing on said motions. (Ex. 7)

Judge Danaher continued to officiate over cases unrelated to Welles-Lichaj in which the Petitioner either represented clients or appeared pro-se. A Motion for the Disqualification of Judge Danaher was filed on April 28, 2011 in Zbigniew S. Rozbicki v. Eugene M. Gisselbrecht, Executor, et al, pursuant to §1-23 of the Conn. Rules of Practice with a five page supporting affidavit. (App. A) The affidavit described the adversarial history between Judge Danaher, the Petitioner, and Attorney Sconyers, who also was counsel of record for Eugene M. Gisselbrecht, the defendant Executor. The Petitioner describes the facts detailed in his affidavit which he "reasonably believes" brought in serious question the judge's impartiality and that Judge Danaher had a personal bias and prejudice concerning the Petitioner within the meaning and application of Rule 2.2 and Rule 2.3 of the Code of Judicial Conduct.

The Petitioner described a series of events accusing Judge Danaher of failing to conduct an inquiry raised by the Petitioner, wherein Attorney Sconyers had a conflict of interest and should not have been allowed to represent the defendants, by denying the Petitioner an opportunity to respond to Sconyers' arguments, and by preventing the

Petitioner from presenting relevant and material evidence at said hearing.

The claims of "bias, prejudice, and partiality" which were documented in the Welles-Lichaj filings were not included in Sconyers' grievance complaint and were otherwise not disputed in said litigation as unethical. The pattern of accusation of bias and prejudice against Judge Danaher reached a climax in an unrelated civil case entitled, Rozbicki v. Gisselbrecht, et al on May 28, 2013. The Petitioner protested Judge Danaher's decision on Motions before him based on the Petitioner's observation that Judge Danaher did not read the Petitioner's filings before acting on the Motions, leading to the dialogue described in the transcript of proceedings on May 28, 2013, when the Petitioner attempted to state on the record what he and everyone in the courtroom, including the clerk, had observed. In the heated exchange which followed, Judge Danaher stated on the record, that the Petitioner's accusation of not having read the Petitioner's submission, before acting on the matter before him, "was false" and ordered the Petitioner to leave the courtroom. (Ex.6)

Although the Petitioner sought to disqualify Judge Danaher from acting in any matter in the above entitled in which he was a pro se party, as well as in his capacity as an attorney and in any and all cases assigned to be adjudicated before Judge Danaher, the Petitioner filed successive Motions for Disqualifications, renewed at each proceeding, in order to counter the effects of waiver, if disqualification is not sought at each proceeding under Conn. law.

All of the Motions for Disqualification of Judge Danaher were decided and denied by Judge Danaher without an evidentiary hearing and over

the Petitioner's objection that the Motions should be assigned to another judge for determination.

All of the Motions for Disqualification were respectfully worded and beyond the claims of bias, prejudice and partiality, as defined in Rules 2.2, Rule 2.3(a)(b)(c) and Rule 2.11 of the Code of Judicial Conduct.

After denying the Petitioner's Motion to Disqualify Judge Danaher, before the clerk could hand the Motion to the Judge, Judge Danaher again denied the Motion in the ensuing dialogue between Judge Danaher and the Petitioner.

Then, after the clerk handed the judge the Motion for Disqualification and approximately eighteen (18) pages of documents, Judge Danaher visually placed the papers on his bench without turning a single page before again denying the Motion to Disqualify and before granting the Motion for Contempt without reading the Petitioner's Memorandum of Law in Opposition to the Motion for Contempt or any of the documents. The Petitioner attempted to state on the record to describe what he observed, with the following results:

MR. ROZBICKI: I know you have ruled, but I just want to put on the record something very important I observed you, you did not read the affidavit in support of the motion to disqualify, you did not read the memorandum. As I watched you, from the time I handed you the motion in opposition to the motion for contempt you have not looked at it. I have handed you—you claim that you considered the motion for

contempt in my opposition to the motion for contempt and my memorandum of law. You haven't looked at that.

THE COURT: Those statements are false, counsel, and the record will reflect that. I read each of the documents you provided to me.

MR. ROZBICKI: Well, if your Honor—

THE COURT: The matter is concluded, remove yourself. (Matter concluded.)

(Transcript of Proceeding on May 28, 2013, pp. 11 & 12; App. p. ____)

In the opening comment of its September 5, 2017 Decision, the Supreme Court acknowledged that the defendant raised a multitude of claims, "including," but identified only four. It excluded from its Decision any reference to the multitude of claims omitted, including the First Amendment of the U.S. Constitution claim to free speech, with supporting citations, the rejection of undisputed exculpatory evidence and claims of applicable law justifying the dismissal of the Presentment, including its refusal to act on the Motion to Dismiss, Motion in Limine, and objections to inadmissible evidence, prior to, or during the trial. The trial court gave no notice of its intended ruling on said Motions or order during the trial or after the trial. It articulated no rulings on the issues raised in the Motions in its Corrected Memorandum of Decision. A denial of the Motions can only be assumed from the findings of misconduct in the Court's Corrected Memorandum but its failure to state its decision in writing on rulings for

purposes of appeal which encompass its conclusion as to each claim of law raised by the parties and the factual basis therefore, mandated by Section 6-1 of the Conn. Practice Book, was ignored by the Conn. Supreme Court.

The Supreme Court also ignored the trial court's refusal to act on the Disciplinary Counsel's "Thirty-Nine" Exhibits to which the Petitioner objected throughout the trial, as extrinsic, inadmissible, and prejudicial. The basis of the Petitioner's Objections was briefed and articulated in his Motion to Dismiss. However, like ignoring the trial court's failure to act on the Motion in Limine and Motion to Dismiss, the Supreme Court ignored the trial court's failure to rule on the Thirty-Nine Objections to the Thirty-Nine Exhibits, during the trial. The Court's rulings on the Objections could only be implied from its Memorandum of Decision, without any prior notice of the trial court's intended rulings. The trial court's failure to rule on the Motions and Objections was reasoned by the Court that it would take the Petitioner's Objections under advisement.

The Supreme Court ignored the most fundamental requirements of due process on the issues raised in the Appeal which allowed extraneous and prejudicial evidence offered by the Chief Disciplinary Counsel and claimed by the Petitioner to be inadmissible as articulated in the Petitioner's Motion to Dismiss. The Court admitted the evidence, subject to its ruling on the Motion in Limine, which it also reserved for determination at some time in the trial. However, whatever determination the Court made in its Decision on the admissibility of the objected evidence, was neither disclosed to the parties during the trial, nor

articulated in its Decision. It was admitted by innuendo.

The Petitioner's objections to the extraneous and inadmissible evidence upon which the trial court relied in its Memorandum of Decision, were inconsistent with the Statewide Grievance Committee's limited findings narrowing the issues in its determination to the Motions For Disqualification, and no other. Disciplinary counsel, in response to the Petitioner's objection to the admission of the extrinsic evidence, and consistent with the Petitioner's objections and the Statewide Grievance Committee's Decision, stated "your honor, we are only here to discuss the Motions that Attorney Rozbicki had filed that will form the basis of determination of misconduct," thus limiting the issues which the trial court disregarded.

The Supreme Court also ignored the following defenses raised in the trial court and in the Appeal, without any comment: issue preclusion based on prior pending action doctrine, doctrine of judicial estoppel, absolute immunity of parties in judicial proceedings, double jeopardy for applying prior grievance sanctions, and the First and Fourteenth Amendments free speech and due process issues.

**SPECIFICATION OF THE STAGE IN
THE PROCEEDINGS WHEN THE
FEDERAL QUESTIONS SOUGHT TO BE
REVIEWED, WERE RAISED**

**ISSUES RAISED BEFORE THE STATEWIDE
GRIEVANCE COMMITTEE:**

Federal questions, including the First and Fourteenth Amendments to free speech and due process, with reference to the New York Times v.

Sullivan case were raised in the Statement in Opposition to the Grievance Complaint, Respondent's Post Trial Brief of February 25, 2013, Statement in Opposition to the Sub-Committee's proposed Decision and Supplement to Respondent's Statement in Opposition to Sub-Committee's Proposed Decision.

The Statewide Grievance Committee ignored all the U.S. Constitution issues raised during the proceedings without comment or discussion. (Ex. 3)

ISSUES RAISED BEFORE THE SUPERIOR COURT

Federal questions sought to be reviewed, raised in the Superior Court, included claims to free speech under the First and Fourteenth Amendments and the Fifth Amendment to the U.S. Constitution, with reference to the on New York Times v. Sullivan decision, constitutional claims to due process, access to the courts, to a fair trial, and double jeopardy, were raised in: Motion in Limine of October 20, 2014; Motion to Dismiss, Trial Brief, Post Trial Memorandum of Law on Presentment Complaint and in Support of Motion to Dismiss of January 21, 2015, including Motion to Reargue Court's decision on July 21, 2015.

Disposition of Motions: The Motion in Limine was argued but the court chose not to rule on the Motion. The Motions to Dismiss were argued but the court chose not to rule on the Motions until after the trial without issuing its memoranda of decisions on the Motions. There was no order issued, just an entry on the Judicial Website that the Motion was denied.

The Federal issues raised in the Post Trial Memorandum of January 21, 2015, were ignored and

the Motion to Reargue of July 2, 2015 was denied on August 13, 2015.

ISSUES RAISED BEFORE THE CONN. SUPREME COURT

All of the federal questions raised in this Petition were raised before the Conn. Supreme Court, beginning with the Preliminary Statement of Issues dated September 22, 2015 and raised in the Petitioner's Appellant Brief with Appendix, as well as in the Petitioner's Motion for Reargument.

The federal questions and issues raised and argued therein, included the U.S. Constitution claims to free speech, due process, access to the courts, fair trials, protection against double jeopardy under the First, Fifth, Ninth, and Fourteenth Amendments and cases cited therein, in support of the Constitution as well as citations of the State Statutes and State Decisions supporting the Federal Constitutional questions.

CONN. SUPREME COURT'S MANNER OF RESOLUTION

The Conn. Supreme Court ignored and did not respond to the First Amendment Free Speech Claim without any discussion. It ignored, by and large the due process and fair trial issues raised, and ignored completely the double jeopardy and access to the court's arguments, both in its decision of September 5, 2017 and in its denial of the Motion for Reargument on October 25, 2017.

ARGUMENT

I.

THE FIRST AMENDMENT ISSUE

The considerations governing this Court's review of the Conn. Supreme Court's decision are overwhelming. On an undisputed record that it had reviewed a history of the case beginning with the Statewide Grievance Committee which ignored the Petitioner's First Amendment defense to free speech. The Superior Court likewise ignored the First Amendment on an issue which was raised repeatedly throughout the trial and appeal, as well as, this Court's monumental decisions in N.Y. Times v. Sullivan, Garrison v. Louisiana, Landmark Communications v. Virginia, cited herein. The Conn. Supreme Court followed suit and for the third time in the Petitioner's disciplinary proceedings, it again ignored Free Speech as a defense for lawyers.

This Court has reviewed many cases involving free speech as a defense in grievance proceedings, against lawyers who were punished for criticizing judges. Those cases typically involved attempts by the grievance authorities claiming that the First Amendment did not apply to lawyers because the constitutional defenses were waived by lawyers as a condition of their admission to the bar. Some state courts simply found that the State's interest to protect the integrity of the judiciary, justified denial of the First Amendment defenses to lawyers for criticizing judges.

The Conn. Statewide Grievance Committee, the Superior Court, and the Conn. Supreme Court sought no refuge under any theory to avoid the protection of the Fifth Amendment. They simply ignored the Fifth Amendment as if it did not exist

and its binding effect on the States, by the Fourteenth Amendment, made no difference.

To ignore a constitutional provision which has been a cornerstone of our democracy and defended by this Court's decision, throughout the grievance proceedings, was not done in ignorance or by oversight. The Superior Court and the Supreme Court also ignored Rules of Practice which they established and are duly bound to enforce. Section 6-1 of the Conn. Practice Book and Section 64-1 of the Rules of Appellate Procedure requires judges "in making any rulings that constitute a final judgment for purposes of appeal, to encompass its conclusions as to each claim of law raised by the parties and the factual basis therefor."

The Conn. Supreme Court also ignored their State Constitution which guarantees free speech, in Article 1, Section 4. "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty" and Article 1, Section 1.... "All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community." "All men" includes judges, governors, and legislators, and the people they serve.

"The widespread decision of judiciaries to carve out an exception to Sullivan and Garrison for statements regarding themselves is nothing less than shocking. In the context of attorney discipline, courts act as judge and jury, and, where the speech regards the judiciary, the courts are also the victim. Yet, courts have abused this position and have imposed extreme punishment on attorneys and their clients to preserve their own reputation and suppress further disparagement." *Margaret C. Tarkington, Professor of Law & Dean's Fellow,*

Indiana University Robert H. McKinney School of Law, "The Truth Be Damned: The First Amendment, Attorney Speech, and Judicial Reputation" (Sept. 18, 2008). The Conn. court's imposition of a four year suspension for allegations of bias and prejudice in motions to disqualify judges for bias and prejudice, exemplifies this abuse. Rather than addressing the numerous procedural and substantive abuses of the trial court, as documented in this Petition, the Supreme Court ignored the judicial abuses while punishing attorney speech aimed at exposing such abuses.

The Conn. Superior Court and the Supreme Court could not discredit the constitutional standard set forth in Sullivan and Garrison which was binding on the States by the Fourteenth Amendment in attorney disciplinary proceedings for speech impugning judicial integrity. Completely ignoring the First Amendment issue raised at every level of the disciplinary proceedings, and punishing the Petitioner against overwhelming evidence which absolved the Petitioner, of unethical conduct, the Supreme Court protected the public image of its judiciary.

When issues claimed before the trial court and the Supreme Court involve fundamental rights, the burden of proof is always on the party seeking to interfere with such rights. In re Juvenile Appeal (83-CED), 189 Conn. 295 (1983). No such burden of proof was undertaken.

The only reference in the trial court's Decision to the Constitutional defenses, raised and ignored by the Conn. Supreme Court, is the following: "Finally, the rules are not suspended by the exercise of a constitutional right or privilege under the circumstances presented here," with a footnote, referring to criminal matter; which is unresponsive

to the N.Y. Times v. Sullivan and its prodigies. (Ex. 2)

II.

DUE PROCESS AND PRINCIPLES OF PRODECURE

The Supreme Court's finding claiming that Judges Danaher and Roche "declined to take further action, despite their authority to do so," when the misconduct occurred before the court, was clearly erroneous. Its reliance on Ansell v. S.G.C., 376 384 (2005), 87 Conn. App. 376,384 (2008) which gave the trial court discretion to exercise or not to exercise their inherent authority to adjudicate a lawyer's misconduct which occurred before the court, was no longer authoritative because Rule 2.15 was changed. There was absolutely no evidence presented that either judge declined to take further action. Judge Danaher was identified by Sconyers as a witness to Sconyers' grievance but neither he nor Judge Roche were ever called to testify whether they had or had not complied with the provisions of Rule 2.15 sub sec (a) & (d) of the Code of Judicial Conduct. The Rule had changed since the Ansell decision, which now made it mandatory for a judge to take appropriate action, informing the appropriate authority upon having knowledge that a lawyer had committed a violation of the Rules of Professional Conduct which raised a substantial question regarding the lawyer's honesty, trustworthiness, or fitness.

Neither Judge Danaher nor Judge Roche accused the Petitioner of misconduct relating to the Motions for Disqualification, or that the Petitioner engaged in conduct that was prejudicial to the administration of justice. Except for the trial court's editorialized conclusion without a single reference to

any evidence of acts or omissions which prejudiced the orderly administration of justice in the proceedings to disqualify the two judges, there was absolutely no evidence for either the trial court or the Supreme Court, to affirm such a finding under the "clear and convincing evidence" standard of proof.

The most fundamental principle to due process and a fair trial is that.... "The fact finding function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties, which is not fully reflected in the cold, printed record, which is available to us." "Appellate review of a factual finding, therefore, is limited both as a practical matter and as a matter of the fundamental difference between the role of the trial court and an appellate court." "A factual finding may not be rejected on appeal merely because the reviewing judges personally disagree with the conclusions or would have found differently had they been sitting as the fact finder." Kaplan v. Kaplan, 186 Conn. 387, 391(1982). The presentment court lacked the unique opportunity to view the evidence presented in a totality of circumstances or to evaluate credibility of witnesses. Its function was in effect that of appellate review an editorial criticism after the fact.

Judges Danaher and Roche had this "unique opportunity, over an extended period of time, to view the evidence presented in a totality of circumstances because they tried the cases. The presentment court did not try the cases and its overview of the case as a critic, does not meet the fundamental principles of due process and a fair trial.

The same rules apply to appeals from the adjudication of a grievance as in appeals from Superior Court judgments. The role which the presentment court assumed was that of appellate review of the issues already tried to conclusion by the judges who officiated at their disqualification proceedings.

The Superior Court trial judges who adjudicated the Motions for Disqualification, made no factual findings indicating that the Petitioner had violated any Rules of Professional Conduct. A contrary conclusion of the trial presentment court cannot stand if an erroneous legal standard or rule of law was applied which was inconsistent with the facts and principles of law applied and determined by Judges Danaher and Roche. Phillipe v. Thomas, 3 Conn. 471, 476 (1985)

“Collateral estoppel is that aspect of res judicata which is concerned with the effect of a final judgment on the subsequent litigation of a different cause of action involving some of the issues determined in a former action between the parties.” Connecticut Light & Power Co. v. Tax Commissioner, 169 Conn. 58, 62 (1975)

Applicable to the proceeding at issue, raised by the Petitioner and ignored by the trial court and Supreme Court, the Connecticut Supreme Court adopted the Doctrine of Judicial Estoppel on August 31, 2010 in Association Resources, Inc. v. Wall, 298 Conn. 145, 169 (2010). Judicial estoppel serves interests different from those served by equitable estoppel, which is designed to ensure fairness in the relationship between parties The courts invoke judicial estoppels as a means to preserve the sanctity of the oath or to protect judicial integrity by avoiding the risk of inconsistent results in two proceedings. Judicial estoppels “protects the integrity of the

judicial process . . . by prohibiting parties from deliberating changing positions according to the exigencies of the moment." Supra, p. 170

Judicial estoppel is applicable to the proceedings initiated by the Statewide Grievance Committee and by the Presentment Court on matters considered and adjudicated by the judges whose disqualification was sought without a finding of misconduct and on matters alleged by disciplinary counsel which have already been adjudicated in the suspension proceedings.

The above principles must be considered under the Statewide Grievance Committee's burden of proof by the clear and convincing evidence standard, the same evidentiary standard as applicable to judicial misconduct. In motions for disqualification however, the evidentiary standard as is by a preponderance of the evidence. Accordingly, a denial of the motions for recusal cannot be a stepping stone for a finding of misconduct under the clear and convincing evidentiary standard. Otherwise, every lawyer whose motion for recusal was denied would be subject to disciplinary proceedings.

Not only is disciplinary counsel barred by civil law principles of preclusion but also by the 5th amendment of the U.S. Constitution which prohibits a person from being subjected for the same offense to be twice put in jeopardy of life or limb because disciplinary proceedings are "adversary proceedings of a quasi-criminal nature." Statewide Grievance Committee v. Botwick, 226 Conn. 299 (1993).

The defenses raised throughout the grievance proceedings and in the presentment trial, res judicata, collateral estoppel, judicial estoppels, double jeopardy, immunity, privilege, access to the court and violation of due process, involve

fundamental constitutional rights and the burden of proof is always on the party seeking to interfere with such rights. In re Juvenile Appeal (83-CD), 189 Conn. 295 (1983)). Presentment court and counsel made no effort to satisfy this burden, and ignored each constitutional defense.

III.

UNDISPUTED CLAIMS FOR DISMISSAL OF PRESENTMENT

One of the issues in this appeal is whether there was clear and convincing evidence in the record for the Statewide Grievance Committee, the Superior Court and the Supreme Court to have found that the Petitioner violated the specific rules cited in their decision and to support the presentment trial court's decision on the evidence presented.

The standard of proof in a grievance proceeding determining whether an attorney has violated the Rules of Professional Conduct is by clear and convincing evidence The burden is on the Statewide Grievance Committee to establish the occurrence of an ethics violation by clear and convincing proof. Sheldon v. S.G.C., 85 Conn. 440, 444 (2004). Neither the Statewide Grievance Committee nor disciplinary counsel presented any witnesses or documentary proof to satisfy this standard.

Our Supreme Court has stated that the clear and convincing standard is a demanding standard that "should operate as a weighty caution upon the minds of all judges, and it forbids relief whenever the evidence is loose, equivocal or contradictory."

Miller v. Commissioner of Corrections, 242 Conn. 745, 795 (1997).

The presentment court's editorialized conclusions that the Petitioner's accusations "show a pattern of accusation, insult and disparagement against the court." "The sweeping, unfounded and/or repeated accusations alleging judicial misconduct, judicial bias, judicial prejudice, judicial harassment. Lacking good faith and such violate Rule 3.1 of the Rules".... are conclusions that are not supported by any evidence and is a systematic attempt to "prune the tree" of uncontroverted evidence which the court intentionally and systematically ignored to support its conclusions.

Of the thirty one paragraphs in the Presentment upon which the court relied and which the Petitioner sought to strike, contained the same issues and basis for discipline which counsel alleged and raised in Chief Disciplinary Counsel v. Rozbicki, Docket No. LLI-CV-11-6004519-S, previously adjudicated suspending the Petitioner for two years.

Section 1-22 C.P.B. which provides for the disqualification of judicial authority "pursuant to Rule 2.11 of the Code of Judicial Conduct and Section 1-23 requires an affidavit setting forth the facts relied on. Rule 2.11, directs a judge to disqualify himself if his impartiality might reasonably be questioned, including, but not limited to, the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or party's lawyer.

All of the Petitioner's Motions allege accusations of bias, prejudice, and partiality with supporting facts recited in the affidavits. None of the examples of "derogatory language" referred to in the Supreme Court's footnote (No. 17) in Notopoulos v. S.G.C., 277 Conn. 218, 237 (2006) were present in

the Motions or Affidavits filed by the Petitioner, such as "state courts were incompetent and sometimes downright crooked", "an attorney calling judge lying incompetent ass-hole" which may not take refuge under the First Amendment.

There were absolutely no demeaning, derogatory, or abusive comments in any of the disqualification documents and there were no accusations criticizing the judges' abilities, qualifications or competency to be judges under Rule 8.2(a), as qualified candidates for their office.

Starting with its accusation of "sweeping, unfounded, and judicial harassment" the court completely ignored a certified transcript of the proceedings before Danaher, J. on May 28, 2013 when the Petitioner stated what he observed, in front of a courtroom full of lawyers, that Judge Danaher did not look at the Memorandum of Law and documents handed to Judge Danaher before ruling on the matter. In response to the Petitioner's observation, witnessed by many lawyers. Judge Danaher's response was that the Petitioner "lied" and ordered the Petitioner angrily out of the courtroom.

If the courts are concerned with the erosion of public confidence in the judiciary under the uncontroverted facts in the May 28, 2013 proceedings before the Hon. Danaher, J., what could be more erosive than what occurred in open court at short calendar in front of a packed courtroom, as described herein.

The official Comment to Rule 2.15 of the Code of Judicial Conduct, cannot be more explicit
"Comment: (1) Taking appropriate action under the circumstances to address known misconduct is a judge's obligation." Sub sec (d) of Rule 2.15 applies to misconduct occurring before the court and provides:

“(d) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.” “Shall” is mandatory, not precatory, in view of the seriousness of allegations of misconduct to a lawyer’s reputation, and because “ignoring or denying known misconduct among one’s judicial colleagues or members of the legal professional undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system.” (Comment 1 to Rule 2.15) *Horton & Knox, The Conn. Superior Court Civil Rules, Vol. 1, pp. 195-196.*

Since a violation of “any canon of judicial ethics” is grounds for a judge’s removal, suspension and censure as provided under §§51-51i C.G.S., it must thus be inferred, that a judge’s compliance with the mandate of Rule 2.15 (b) & (d), is unavoidable and must be presumed. It must also be presumed and inferred that by not taking any appropriate action, neither of the judges in whose presence the proceedings were conducted, found any violation of the Rules of Professional Conduct, including the commission of conduct claimed to be prejudicial to the administration of justice.

“It is presumed, unless the contrary appears, that judicial acts and duties have been duly and regularly performed, the presumption of regularity attending the acts of public officers being applicable to judges and courts and their officers The general rule that a judgment, rendered by a court with jurisdiction, is presumed to be valid and not clearly erroneous until so demonstrated raises a presumption that the rendering court acted only after due consideration, in conformity with the law and in accordance with its duty.” Rosenblatt v. Danaher, 206 Conn. 125, 134 (1988). “Nothing to the

contrary" was found by the presentment court, nor the Statewide Grievance Committee, to the presumption that both Judge Danaher and Judge Roche complied with sub sec (b) & (d) of Rule 2.15. Without any evidence to rebut the conclusive presumption that the judges complied with their responsibility as dictated by the Rule, is pure speculation under the authorities cited herein. The facts which furnish the foundation of the presumption in question are entitled to count as evidence. O'Dea v. Amodeo, 118 Conn. 62 (1934).

Rule 2.16 of the Code of Judicial Conduct also provides that a judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies. The unavoidable presumption is that both judges were mindful of such responsibility but finding no violation of ethical rules, they did not report any violations to the disciplinary agencies.

The Statewide Grievance Committee's investigation, which led to the issuance of the Presentment Complaint and, throughout the proceedings, sought no evidence from Judge Danaher or Judge Roche why they took no action under the mandatory provision of Rule 2.15 of the Code, or whether they took no action because no misconduct was found.

"Where the circumstances involved in an issue are peculiarly within the knowledge of one party (Statewide Grievance Committee) and his power to bring them before the court, in certain instances the law deems it fit that he should have the burden not merely of offering some substantial countervailing evidence but of proving such circumstances." O'Dea v. Amodeo, 118 Conn. 58, 63 (1934).

The Statewide Grievance Committee, under the clear and convincing standard, had a duty to

investigate the circumstances under which the trial judges who adjudicated the Motions for Disqualification, found no ethical violations and took no "appropriate action including their failure to inform the appropriate authority."

The trial court and the Supreme Court ignored the most fundamental principle of law governing grievances involving the disqualification of a trial judge. The disqualification of a trial judge is not dependent on proof of actual bias, which the Statewide Grievance Committee, the trial court and the Supreme Court found lacking. The appearance of partiality is sufficient under Conn. law for the disqualification. "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned..." Code of Judicial Conduct 3.C.(1)..."Disqualification of a trial judge is not dependent on proof of actual bias. The appearance and existence of impartiality are both essential elements of a fair trial." State v. Santangelo, 205 Conn. 578, 602 (1987).

The Statewide Grievance Committee, the trial judge and the Supreme Court, in criticizing the Petitioner's repeated motions for disqualification also ignored the petitioner's justification for the repetition of the motions at each proceeding and the applicable law cited in his briefs. "A motion for disqualification must be asserted seasonably at each proceeding or it will be deemed to have been waived. No more elementary statement concerning the judiciary can be made than that the conduct of the trial judge must be characterized by the highest degree of impartiality. If he departs from the standard, he casts serious reflection upon the system of which he is a part." However, once he declares that he believes a party or a witness has been deceitful, as in the present case when Judge

Danaher accused the Petitioner of falsely accusing him of not reading the Motions handed the judge, he cannot continue to preside in his role of impartial arbiter. Cameron v. Cameron, 187 Conn. 163, 168, 170, 171 (1982).

Findings of my misconduct, claiming that the Petitioner's criticism of judges in his Motions to disqualify was a violation of Rule 8.4(4) "Engaged in conduct that is prejudicial to the administration of justice," has been another common way by courts to get around the express wording of Rule 8.2 and the Sullivan standard.

The reliance by the courts, as in the present case on a different "catch-all" professional conduct rule (prejudicial to the administration of justice) cannot avoid the First Amendment requirements merely by charging discipline under another rule. Because the First Amendment jealously protects speech regarding public officials, including the judiciary, Sullivan applies regardless of the specific rule employed.

If there were any witnesses to give testimony on what the Petitioner did to prejudice the administration of justice, it would have been the two named judges who officiated in the proceedings, if there was any evidence that the Petitioner engaged in conduct that was prejudicial to the administration of justice. There was no such evidence! Neither of the judges, and no witnesses or evidence was presented to prove this accusation before the Statewide Grievance Committee or before the trial court. Conclusions without evidence do not satisfy the "evidentiary standard of clear and convincing evidence required in attorney grievance proceedings.

This Court's decisions, in New York Times v. Sullivan, 376. U.S. 254 and Garrison v. Louisiana, 379 U.S. 64, holding that the Constitution limits

state power in a civil action brought by a public official for criticism of his official conduct, and also limits state power to impose criminal sanctions for criticism of the official conduct of public officials (state court judges), the Constitutional standards established therein, have not been harmoniously accepted, when the court's own integrity is questioned by attorneys in court proceedings.

Nevertheless, and in contradiction to the Sullivan subjective standard, and its progeny, attorneys facing discipline for impugning judicial integrity, as in the present case, have been required to show that their statements were objectively reasonable in order to obtain constitutional protection. How the "objective standard" case can be justified in disciplinary matters which are quasi-criminal in nature and which must be proven by clear and convincing burden of proof, is an illusion which the courts have failed to justify.

The Connecticut courts have adopted Rule 8.2 of the Model Rules of Professional Conduct ("MPRC") which expressly adopts the Sullivan standard and thus only prohibits statements, under which discipline or sanctions are generally imposed and thus only prohibits statements "that the lawyer knows to be false" or that are made "with reckless disregard as to its truth or falsity, concerning the qualifications or integrity of a judge." More importantly, the Sullivan standard examines the speaker's subjective intent—thus punishment is forbidden unless the speaker subjectively knew the statements were false or "in fact entertained serious doubts as to the truth of his publication."

CONCLUSION

The gravity of the Conn. Courts affirmation of the described Constitutional abuses is a death wish to every lawyer who attempts to disqualify a judge for cause. If lawyers are prohibited from criticizing judges for cause, who will be left to assume such unforgiving responsibility at the risk of being suspended and losing one's livelihood?

The Conn. Supreme Court's decision not only is a warning to Conn. lawyers but to lawyers throughout the country in jurisdictions in which the principles of the First Amendment are ignored.

A public left unguarded from an uncontrolled judiciary, is the victim for whom the First Amendment was adopted to protect.

CLAIM FOR RELIEF

For the foregoing reasons, the Petitioner respectfully moves the Court to grant the Petition.

Respectfully submitted,

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