

No. _____

IN THE
SUPREME COURT OF THE
UNITED STATES

CHARLES KINNEY,
Petitioner,

v.

MICHELLE R. CLARK,
Respondent,

On Petition For Writ Of Certiorari To The
California Supreme Court

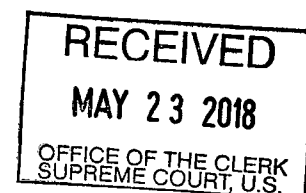
Cal. Supreme Court #S246379 (2/14/18
En Banc)

Calif. Court of Appeal, #B272408 and
#B276290 (11/30/17 Sanctions Order)

Calif. Superior Court, Case #BC354136

PETITION AND APPENDIX FOR A
WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Federal Rights - When will this Court address Kinney's 42 U.S.C. Secs. 1983 and 1985 claims against state court judges who for years have acted as "*prosecutors*" under color of authority to deny Kinney his federal civil rights (all without subject matter jurisdiction due to Clark's 2010 Chapter 7 bankruptcy/2012 discharge)?
2. Bankruptcy Fraud - When will this Court put a stop to ongoing bankruptcy fraud by discharged 2010 Chapter 7 debtor Michele Clark and her own unsecured creditor attorneys Marcus et al (and by state court judges who enable this fraud); and start enforcing 18 U.S.C. Secs. 152 [false oath or account] and 157 [false representation]?
3. Enablers - When will this Court put a stop to state court judges who have been for years enabling a scheme whereby any "difficult" attorney or litigant is punished [e.g. by making them lose all cases or appeals; by labeling them as a vexatious litigant or as the "puppet" of a vexatious litigant; by disbarring them if they are attorneys; by creating false charges to get them sanctioned; and/or by awarding attorney's fees against them based on now unenforceable pre-petition contracts] as more fully described in *In re Kinney*, 201 Cal.App.4th 951 (Cal. 2011) and/or *Kinney v. Clark*, 12 Cal.App.5th 724 (Cal. 2017)?

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are those specified and appearing in the caption to this petition.

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And The Method and Application of This Opinion
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Kinney requests a “writ of certiorari” issue to review the “final” judgment (i.e. denial of review) by the Cal. Supreme Court in No. S246379 on 2/14/18 [App. A]. That ruling denied review of the 11/30/17 “order re sanctions” issued by the Cal. Court of Appeal, Second Appellate District, Division One (“COA”) [App. B].

These same COA justices wrote *Kinney v. Clark*, 12 Cal.App.5th 724 [App. B, 3-6]; wrote the Nov. 1, 2017 decision; and then wrote the Nov. 30, 2017 sanction order. The 2017 rulings were no surprise, but each add more insight into the “dirty little secret” (“DLS”) which started 10 years ago.

By now, the DLS is not so “little”, and not so “secret”. The 2017 ruling(s) continue to violate bankruptcy law **and** are part of ongoing efforts by the courts to prosecute Kinney and his attorneys.

Many “dirty” scandals have plagued sports, politics, and the film industry, but the state and federal judiciary should be “clean”. Here, it is not.

When will this Court put a stop to it?

In all matters judicial, “the buck stops here” in this Court. This Court has tools to clean up “abuse-of-power” problems. These may get worse as more details emerge (compare Weinstein, Nasser, Cosby, Spacey, Scalia and Kozinski).

Given the immediate access to news and a video recorder (aka smart phone) in everyone’s pocket, many “secrets” don’t last very long.

Here, the events are similar and all involve an “abuse of power under color of authority”. If other courts were **not also** abusing power, Kinney could have continued with his civil rights claims under 42 U.S.C. Secs. 1983 etc, but federal courts have precluded Kinney’s use of that statute(s).

For example, 3 Circuit Judges of the Ninth Circuit (Wallace, Silverman and Bybee) suddenly and without justification *dismissed* 8 of Kinney's pending appeals (e.g. for violations of bankruptcy law; for 42 U.S.C. Sec. 1983 claims) on the same day (Dec. 28, 2017), a few days after Ninth Circuit Judge Alex Kozinski suddenly retired.

This global dismissal violated Kinney's civil rights and gives rise to *Bivens* claim(s). Some of these appeals involved certain claims which could only be filed in US district court (e.g. 42 U.S.C. Sec. 1983 claims; bankruptcy law violations).

The preclusion of Kinney's access to state and federal courts is an *abuse of power* and is a violation of Kinney's First Amendment rights.

The *abuse of power* (aka abuse of discretion) can be done by "overt act" or by "omission". Here, COA overtly acted by issuing the Nov. 30, 2017

sanction order which was contrary to state and federal law. Then, the Cal. Supreme Court acted by omission by refusing to grant review.

The *abuse of power* in state court is shown by: (1) the myth that Kinney was not a “creditor” in Clark’s 2010 bankruptcy [when Clark specially listed Kinney as a creditor in her schedules]; (2) the myth that Kinney has had his “day in court” [when the COA has made directly-inconsistent rulings from 2008 onward with contrary facts and misapplied law in favor of Clark which they refuse to correct]; and (3) the continuing prosecution of Kinney [e.g. to rescue the career of LASC Judge Elizabeth Grimes from 2007 to 2010, and protect her 2010 promotion to the Cal. Court of Appeal].

The *abuse of power* in federal court is shown by refusals to allow civil rights claims to proceed and to rule on bankruptcy counter-claims.

Clean-up tools exist. 42 U.S.C. Secs. 1983 and 1985 apply here, but Kinney has been denied that remedy for years. The *Consumers Union* case applies when judges act as *prosecutors*, but that case has never been cited for Kinney's benefit (and the US district courts and Ninth Circuit ignore it).

All state courts have had their share of scandals [e.g. the *Murphy* case with bribes paid by "miracle worker" attorneys; and the *Zarcone* case about abusing an outside coffee vendor].

Here, this *abuse* is different because: (1) anyone can fact check the history [e.g. online with a Pacer account], **and** (2) it has some unique elements [e.g. ongoing bankruptcy violations after Clark's 2010 Ch. 7 bankruptcy; ongoing violations of the CWA in Laguna Beach; ongoing violations of ADA law in LA; **and** ongoing judicial expansion of vexatious litigant law to include attorneys].

Here, Kinney was forced to protect his real and personal property rights, so he had no choice but to become a whistleblower. Unlike other scandals [e.g. WikiLeaks], Kinney has broken no laws, but he cannot be silent when state and federal law gets ignored, misused or abused (and his property keeps being taken or devalued).

In this *abuse-of-power* situation, *Kinney v. Clark* provides several clear admissions of guilt by the state courts, and a few false facts. That case is cited by the COA [App. B, 3-6]. That case does not fully explain the “how” or “why” (or who is the kingmaker), but that will be known soon.

Everyone knows that a bankruptcy results in unenforceable prepetition contracts; that *debts* will be discharged; and that creditors get listed by the debtor. They might not know that *obligations* under prepetition contracts are eliminated (which

means a prevailing-party-gets-attorney-fee clause in a prepetition 2005 real estate purchase contract between “seller” Clark and “buyer” Kinney cannot be enforced), but a judge should know.

Here, the state courts don’t want to admit Kinney was listed as a “creditor” by Clark, but Kinney’s status as a “listed” bankruptcy creditor can never be changed [e.g. by the US Bankruptcy Court’s 10/18/12 abandonment order issued after Clark’s 8/13/12 discharge]. [App. B, 3-6]

This is part of a *pattern of abuse* by the state courts. For example, *In re Kinney*, 201 Cal.App.4th 951 (Cal. 2011) was also a prosecution of Kinney even though he was only the attorney for appellant Kempton. That Dec. 2011 opinion was issued after the state trial court’s Oct. 2011 refusal to follow the law of the case in *Kempton and Kinney v. City of Los Angeles*, 165 Cal.App.4th

1344 (Cal. 2008) about obstructing rights of way. In addition, the Cal. Court of Appeal transferred the “second” appeal of that case (with the Aug. 2008 opinion by Division 4) to Division 3, contrary to its Internal Operating Procedures (aka Local Rules); and the Cal. Supreme Court ignored the writ which challenged that unauthorized transfer.

The Aug. 2008 opinion embarrassed LASC Judge Elizabeth Grimes (and other LASC Judges) who ignored that neighbors of Kinney could not obstruct public rights-of-way with their fences or trees; and that any such obstruction was a *public nuisance per se*. By Oct. 2008, the state court had embarked on the *abuse* of Kinney by: (1) making him a vexatious litigant; (2) dismissing all of his appeals; (3) issuing directly-inconsistent rulings as to seller Clark and neighbor Cooper; and (4) awarding fees based on unenforceable contracts.

All of this was an *abuse of power* because it penalized Kinney for things he had never done. Kinney was a sole practitioner with a decades-long discipline-free record who was in the wrong place at the wrong time (e.g. since Judge Grimes wanted a promotion and was assigned his case).

Here, LASC Judge Grimes made directly-inconsistent rulings against Kinney in favor of seller Clark and next-door neighbor Cooper from 2007-2008 by misapplying the *Evans* case.

Next, the COA justices created a no-win situation by affirming those directly-inconsistent rulings by Judge Grimes from 2008 to 2010. That was done so the “win/loss” record of Judge Grimes would improve, and then she could be promoted to the COA. [Judge Grimes is now Justice Grimes.]

In the 2017 opinion, this inconsistency was vaguely noted. Kinney was unable to pursue lack-

of-merchantable-title claims against seller Clark and unable to stop neighbor Cooper's encroaching fence due to an unrecorded lease by Clark to Cooper. This is a blatant misapplication of Evans v. Fraught, 231 Cal.App.2d 698, 705 (Cal. 1965).

This inconsistency was explained during the oral argument, but the COA already knew it existed. The COA declined to resolve it [App. B, 4 and fn. 2 at 8-9] even though they were supposed to do that, and even though they had done that same thing for other inconsistent rulings that they had previously made. Moore v. Kaufman, 189 Cal.App.4th 604, 612-614 (Cal. 2010); Greenfield v. Mather, 32 Cal.2d 23, 25-35 (Cal. 1948).

In the 2017 opinion, the COA admits they affirmed a July 10, 2012 attorney fee order even though, under bankruptcy law, that was improper because only the trustee could request attorney's

fees for debtor Clark before her Aug. 2012 discharge. Bostanian v. Liberty Savings Bank, 52 Cal.App.4th 1075, 1078-1087 (Cal. 1997).

Some of the history on this can be found in a complaint filed by one of Kinney's attorneys in US District Court, Central District of Calif., Case No. 2:18-cv-02136. The punishment of Kinney was being done because Kinney was "difficult" and "embarrassing" to LASC Judge Grimes (even though Kinney had a right to appeal since the *Evans* case held exactly what Kinney had argued).

All of this was known by the Cal. Supreme Court since as early as late 2011, but they have refused to stop the ongoing and unjustified "abuse of power under color of authority" as to Kinney.

The facts and law that apply have been mentioned to this Court in several prior petitions, so those will be briefly mentioned here.

Kinney bought a house from Clark in 2005. During contract negotiations, Clark intentionally concealed material facts. Once Cooper had cross-complained for more of Kinney's land, Clark was sued for: (1) lack-of-merchantable-title because Clark had given Cooper an unrecorded lease to keep Cooper's encroaching fence: and (2) fraud-in-the-inducement as to the concealed development restrictions on the detached garage and house.

The former was part of the inconsistent COA decisions from 2008 to 2010 [e.g. see COA appeals Nos. B200893 and B208493].

The later was precluded by a vexatious litigant ("VL") order by Judge Luis Lavin (now a Justice) when Kinney was not a party in LASC BC374938; by Justice Roger Boren's unilateral dismissal of Kinney's 2009 appeal of that 2008 VL order; and by Clark's 2010 Chapter 7 bankruptcy.

Contrary to the COA's sanction order [App. B, 7], Kinney has never had his "day in court" as to the lack-of-merchantable-title from Clark; the fraud-in-the-inducement by seller Clark; the right to appeal VL orders issued by LASC Judge Lavin, COA Justice Boren, and others; and his rights as a "listed" creditor in Clark's 2010 bankruptcy.

Clark's 2010 Chapter 7 bankruptcy case is U.S. Bankruptcy Court, Case No. 2:10-bk-41323-RN (Judge Richard Neiter) in which Kinney and co-buyer Kempton are clearly listed as "creditors".

Since Kinney would not go away, COA Adm. Pres. Justice Boren issued *In re Kinney*, 201 Cal.App.4th 951 (Cal. 2011) when Kinney was only the attorney. Justice Boren repeated language used by LASC Judge Grimes in 2007.

Still Kinney would not go away, so US Bankruptcy Court Judge Richard Neiter issued

the Oct. 18, 2012 abandonment order [at Marcus' request] to *revoke* Kinney's status as a "listed" creditor, but it cannot be done in that manner.

Still Kinney would not go away, so from 2013 to 2016 US District Court Judge Philip S. Gutierrez started to issue *sua sponte* remands of Kinney's removals of Clark's state court motions for more fees; he refused-to-rule on Kinney's counterclaim and third-party complaint as to bankruptcy protections for a "listed" creditor; and in 2016 he made Kinney a vexatious litigant in federal court subject to a pre-filing order.

Still Kinney would not go away, so COA Justices Frances Rothschild, Victoria Chaney and Jeffrey Johnson then issued *Kinney v. Clark*, 12 Cal.App.5th 724 (Cal. 2017) with their own admissions against interest (e.g. admissions of blatant violations of bankruptcy law).

Kinney would not go away, so these same COA justices issued the Nov. 1, 2017 decision which rewarded discharged debtor Clark (and again violated bankruptcy law).

Kinney would not go away, so these same COA justices issued the Nov. 30, 2017 sanction order against Kinney and his attorney [App. B] which rewarded discharged debtor Clark and her attorneys (and again violated bankruptcy law).

The Cal. Supreme Court refused to grant review [App. A], so this petition is being filed.

On Dec. 28, 2017, the Ninth Circuit joined into the fray (possibly due to Kozinski's sudden "retirement") by summarily dismissing 8 appeals by Kinney involving "*abuses of power under color of authority*" [e.g. violations of bankruptcy law; denial of honest services, RICO extortion; refusal to assign an appellate number in state court].

Then, 22 days later on Jan. 19, 2018, the Ninth Circuit issued a prefilng order against Kinney in the Ninth Circuit [see #17-80256].

Clark's 2010 bankruptcy eliminated all her 2005 purchase contract *obligations*, so she cannot get attorneys fees from Kinney. Cal. Civil Code Sec. 1717 [valid contract required before recovery of attorney fees as "costs" via Cal. Code of Civil Procedure Sec. 1033.5(a)(10) can occur]; Cen-Pen Corp. v. Hanson, 58 F.3d 89, 92-94 (4th Cir. 1995); Johnson v. Home State Bank, 501 U.S. 78, 84 (1991); Trope v. Katz, 11 Cal.4th 274, 279-289 (Cal. 1995); PLCM Group, Inc. v. Drexler, 22 Cal.4th 1084, 1092-1094 (Cal. 2000); Reynolds Metals Co. v. Alperson, 25 Cal.3d 124, 127-129 (Cal. 1979).

The *state courts* (e.g. LASC, COA and Cal. Supreme Court) cannot act as prosecutors of Kinney under color of authority (e.g. contrary to

his rights as a “listed” creditor in a bankruptcy; by making directly-inconsistent rulings in the same case) without creating federal civil rights claims. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 24 (1st Cir. 1982); United States v. Murphy, 768 F.2d 1518, 1523-1539 (7th Cir. 1985); Zarcone v. Perry, 572 F.2d 52, 54-57 (2nd Cir. 1978).

The *federal courts* (e.g. district courts, Ninth Circuit, and Bankruptcy Court) cannot act as prosecutors of Kinney under color of authority (e.g. contrary to Kinney’s rights as a “listed” creditor in Clark’s bankruptcy) without giving rise to federal tort claims [e.g. similar to a 42 U.S.C. Sec. 1983 claim against state actors, but against federal actors under the authority in Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971)].

OPINIONS BELOW

The final decision(s) sought to be reviewed (in reverse chronological order) are the:

1. Feb. 14, 2018 “final” decision by the Cal. Supreme Court denying Kinney’s petition for review of the Nov. 30, 2017 sanction order in Cal. Court of Appeal Nos. B272408 and B276290 [e.g. appeal of attorney’s fee “cost” order based on unenforceable pre-petition contracts in favor of debtor Michele Clark for Kempton v. Clark, Los Angeles County Superior Court No. BC354136 after Clark’s Chapter 7 bankruptcy in 2010 and discharge [Appendix A, page 1]¹. and

2. Nov. 30, 2017 order re sanctions by the Justices of the Calif. Court of Appeal, Second Appellate District, Division One, after it had

¹ Citation method is Appendix (“App.”), exhibit letter, and sequential page number.

dismissed Kinney's appeal and had improperly expanded the vexatious litigant law [e.g. to include Kinney's attorney], which is contrary to Cal. CCP Secs. 391 et seq. and to Cal. Supreme Court decisions; and contrary to discharged debtor Clark's 2010 Chapter 7 bankruptcy and her now-extinguished contractual obligations under now-unenforceable pre-petition contracts (e.g. the 2005 real estate purchase contract between seller Clark and buyers Kinney/Kempton) [App. B, 2].

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code ["U.S.C."], Secs. 1254(1), 1257(a), and/or 2101(c).

The COA improperly sanctioned Kinney and his attorney Rubendall (after dismissing Kinney's state court appeals) [App. B, 2].

The Cal. Supreme Court acted as “enablers” by refusing to grant review [App. A, 1].

As shown by prior petitions to this Court, the state courts have not followed and are still not following established law as to Kinney [e.g. see petitions 15-1035, 15-5260, 15-6896, 15-6897, 15-6916, 15-7133, 16-252, 16-606, 16-1182, and 17-219]. Bosse v. Oklahoma, 580 U.S. ___, 137 S.Ct. 1, 196 L.Ed.2d 1 (2016).

Thus, the state courts made rulings that violated Kinney’s federal constitutional rights (e.g. First Amendment) *and* civil rights under color of authority or official right (e.g. 42 U.S.C. Sec. 1983), so all judicial immunity is eliminated. Fitzpatrick v. Bitzer, 427 U.S. 445, 448 (1976); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 102-106, 123 n. 34 (1984); Patrick v. Burget, 486 U.S. 94, 101-104 (1988); Pennsylvania

v. Union Gas Co., 491 U.S. 1, 57 (1989); F.T.C. v. Ticor Title Ins. Co., 504 U.S. 621, 631-638 (1992).

COA's Nov. 30, 2017 sanction order is void because bankruptcy law completely preempted all state court cases filed prior to July 2010 [e.g. LASC BC354136 and BC374938]. Maritime Electric Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1203-1204 (3rd Cir. 1991); In re Hamilton, 540 F.3d 367, 370-376 (6th Cir. 2008); In re Miles, 430 F.3d 1083, 1087-1089 (9th Cir. 2005); In re Gonzales, 830 F.2d 1033, 1034-1036 (9th Cir. 1987); Hawaii ex rel Louie v. HSBC Bank Nevada, N.A., 761 F.3d 1027, 1033-1034 (9th Cir. 2014).

The COA justices should have vacated the "cost" order in favor of discharged debtor Clark, but didn't. Young v. Tri-City Healthcare Dist., 210 Cal.App.4th 35, 41-42 and 49-53 (Cal. 2010); Plaza Hollister Ltd. Pts. v. Cty. of San Benito, 72

Cal.App.4th 1, 13-22 (Cal. 1999); Giset v. Fair Pol. Pract. Comm., 25 Cal.App.4th 658, 701 (Cal. 2001).

Once Clark declared Chapter 7 bankruptcy in July 2010, she could not “list” attorney fees owed to her attorneys Marcus in her schedules because they never proved their 2007 hourly-fee retainer or lien were valid, so Clark was not obligated to pay those bills. Clark could not “list” new state court attorney fee orders in amended schedules since Marcus never proved their lien was valid (e.g. they all had unclean hands). 11 U.S.C. Secs. 506; U.S. v. Ron Pair Enterprises, Inc., 489 U.S. 235, 238-240 (1989); Mojtahedi v. Vargas, 228 Cal.App.4th 974, 976-980 (Cal. 2014); Saltarelli & Steponovich v. Douglas, 40 Cal.App.4th 1, 3-7 (Cal. 1995); Hawkins v. KPMG LLP, 423 F.Supp.2d 1038, 1052 (N.D. Cal. 2006); Fladeboe v. American Isuzu Motors, 150 CalApp.4th 42, 56 (Cal. 2007).

Thus, the Cal. Supreme Court's denial of Kinney's petition was an abuse of discretion as to that "void" 2017 sanction order [App. B, 2]. Olson v. Cory, 35 Cal.3d 390, 400-401 (Cal. 1983).

The Cal. Supreme Court's denial of review also violated Kinney's First Amendment rights. United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967) [one of "the most precious of the liberties safeguarded by the Bill of Rights"]; Moy v. United States, 906 F.2d 467, 470 (9th Cir. 1990); Thomas v. Collins, 323 U.S. 516, 530 (1945).

Any issues regarding Clark's bankruptcy or her discharge are still controlled by bankruptcy law, and all state courts must follow that law. American Railway Express Co. v. Levee, 263 U.S. 19, 20-21 (1923); Cohen v. California, 403 U.S. 15, 17-18 (1971); Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 159-161 (1954).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

When Kinney's federal rights are violated by state court judges acting as prosecutors under color of authority, Kinney has claims against them under 42 U.S.C. Secs. 1983 and 1985.

The powers of the state appellate court are limited by explicit limitations in state statutes, explicit limitations found in state supreme court decisions, and/or by the civil and constitutional rights of represented appellants. Canatella v. State of California, 304 F.3d 843, 847-854 and n.6 and 14 (9th Cir. 2001).

STATEMENT OF THE CASE

This petition involves the "*abuse of power under color of authority*" by the state courts against Kinney, violating his federal civil rights.

SUMMARY OF LOWER COURT PROCEEDINGS

See 12 Cal.App.5th 724 and above.

STATEMENT OF FACTS

A. Summary Of Statutory Provisions

The state courts may not exercise any jurisdiction inconsistent with the Constitution of the United States, the Calif. Constitution, or applicable statutes under state or federal law.

Here, the LASC and COA exceeded their jurisdiction and acted as prosecutors or enforcers (rather than neutral arbitrators) against Kinney by: (1) dismissing Kinney's appeals B272408 and B276290; (2) expanding state vexatious litigant law to include Kinney and his attorney; and (3) sanctioning Kinney and his attorney Rubendall [App. B, 2] (e.g. all based on 12 Cal.App.5th 724).

The Cal. Supreme Court refused to grant review, so it also acted as a prosecutor [App. A, 1]

That is not allowed under the law.

This is a matter of public concern because the state courts acted in violation of bankruptcy law, and acted as prosecutors, to deny Kinney his First Amendment and civil rights.

B. Brief Statement of the Facts

See 12 Cal.App.5th 724 and above.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari Should Be Granted Because the State Courts Will Continue to Act As Prosecutors Under Color of Authority To Deny Kinney All of His Federal Civil And Constitutional Rights; And The Method and Application of This Opinion Severely Impairs Meaningful Review of Important Questions of Law; And Severely Impairs Petitioner's Rights Guaranteed Under the First, Fifth, and Fourteenth Amendments; and Is In conflict with the Decisions of This

Court and Other United States Court Of Appeals.

The 2017 sanction order was precluded by state law and by federal law [App. B, 2].

The 2017 sanction order penalized Kinney and his attorney contrary to state law. Cal. Civil Code Sec. 1717; CCP Sec. 1033.5(a)(10); Hooten v. H Jenne III, 786 F.2d 692 (5th Cir. 1986).

The 2017 sanction order retaliated against Kinney and his attorney (e.g. so no attorney would represent Kinney), giving rise to new federal claims. Sloman v. Tadlock, 21 F.3d 1462, 1470 (9th Cir. 1994); Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1313-1320 (9th Cir. 1989); Lacey v. Maricopa County, 693 F.3d 896, 916 (9th Cir. 2012).

Kinney has the right "to petition the Government for a redress of grievances" which includes a right to review by appeal. That First

Amendment Right is “one of the most precious of the liberties safeguarded by the Bill of Rights”. BE & K Constr. Co. v. NLRB, 536 U.S. 516, 524 (2002) [quoting United Mine Workers v. Illinois Bar Assn., 389 U.S. 217, 222 (1967)]. The dismissals and sanctions denied that right.

Unquestionably, appellate review of institutional factors that operate in the state courts which bar the right to an appeal of an adverse decision, relating to one’s status as a present and future litigant (with or without counsel) is of national importance.

A standard of strict scrutiny should be applied to procedural barriers made by rule or statute, as applied in the state appellate courts, which chill or penalize the exercise of First Amendment rights, and act to limit direct review by a higher court. “The consideration of asserted

constitutional rights may not be thwarted by simple recitation that there has not been observance of a procedural rule with which there has been compliance in both substance and form, in every real sense.” NAACP v. Alabama ex rel. Flowers, 377 U.S. 288, 297 (1964).

There is no question that fundamental to the Fourteenth Amendment’s right to due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394 (1914).

When a person is deprived of his rights in a manner contrary to basic tenets of due process, the slate must be wiped clean in order to restore the petitioner to a position he would have occupied if due process had been accorded to him in the first place. Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 86-87 (1988). .

Although a state is not required to provide a right to appellate review, procedures that adversely affect access to that process which the state has chosen to provide, requires close judicial scrutiny. Griffin v. Illinois, 351 U.S. 12 (1956).

An appeal in state court cannot be granted to some litigants and capriciously or arbitrarily denied to others (like Kinney) without violating the federal Equal Protection Clause. Smith v. Bennett, 365 U.S. 708 (1961). “A fair trial in a fair tribunal is a basic requirement of due process. In re Murchison, 349 U.S. 133, 136 (1955).

This order violated Kinney’s federal rights.

CONCLUSION

This petition should be granted.

Dated: May 14, 2018

By: /s/ Charles Kinney, in pro se