No.__________

In the

Supreme Court of the United States

In the Matter of Leon R. Koziol
a Suspended Attorney

Petitioner

vs

Attorney Grievance Committee
of the
Third Judicial Department

Respondent,

PETITION FOR A WRIT OF CERTIORARI
to the New York State Court of Appeals

LEON R. KOZIOL, Petitioner
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QUESTIONS PRESENTED

1) Does the First Amendment protect a judicial whistleblower from state retributions upon his law licenses and parent-child relationships?

2) Can Fourteenth Amendment rights of due process and equal protection be set aside in attorney regulatory proceedings to achieve retaliation for public speech critical of divorce and family courts?

3) Is petitioner entitled to have all attorney disciplinary and license reinstatement proceedings opened to the public as a matter of practice or request at any time?

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OPINIONS BELOW

The final order of the New York Court of Appeals dismissing petitioner's appeal as of right was entered on October 12, 2017. It is not a reported opinion and is reproduced in the Appendix at 1-a

The memorandum decision and order of the court of first instance in an attorney reinstatement case was entered by the New York Appellate Division, Third Department on April 13, 2017 and published at Matter of Koziol, 2017 NY Slip Op 02874. It is reproduced in the Appendix at 8-a.

JURISDICTION

The order of the New York Court of Appeals was entered on October 12, 2017. Jurisdiction is invoked pursuant to 28 USC 1257 regarding a final decision of a state's highest court. Because the originating decision of the Appellate Division court was deemed nonfinal in that order, a motion for leave to appeal under New York CPLR 5602 was made unavailable for exhaustion purposes.

A writ of certiorari is proper under a futility exception to the finality requirement and, alternatively, a final ruling on the narrow questions of First and Fourteenth Amendment violations, Cox Broadcasting v Cohn, 420 US 469 (1975). All relief sought below was based on the federal constitution, including a request for ongoing disciplinary proceedings to be made public. The state's high court refused to rule on it.

Continued retribution for petitioner's exercise of First Amendment rights by the respondent grievance committee remains at the core of petitioner's civil rights claims below. Reinstatement to the practice of law is being protracted to evade timely review. It has become a bad faith process with a six month "extant" license suspension completed in 2013 converted into a life term disbarment without due process.

CONSTITUTION AND STATUTES

The First Amendment provides that "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."

The Fourteenth Amendment provides in relevant part that "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 the equal protection of the laws."

Section 90 of the New York Judiciary Law provides in relevant part: "Admission to and removal from practice by appellate division; character committees (2) The supreme court shall have power and control over attorneys and counselors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counselor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice..."

Section 90(10) of the New York Judiciary Law provides in relevant part: "Any statute or rule to the contrary notwithstanding, all papers, records and documents... upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and deemed private and confidential. However, upon good cause being shown, the justices of the appellate division having jurisdiction are empowered, in their discretion, by written order, to permit to be divulged all or any part of such papers, records and documents."

Section 1-102 of the New York Code of Professional Responsibility, 22 NYCRR 1200.3, provides in pertinent part: Misconduct (defined): (A) A lawyer or law firm shall not... (3) Engage in conduct that is prejudicial to the administration of justice; (4) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; ... (7) Engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

STATEMENT OF THE CASE

This petition features a judicial whistleblower, model parent and civil rights attorney persecuted for exposing judicial corruption and seeking overdue reforms to New York's child custody and support laws. The first of forty assigned trial jurists to his originally uncontested divorce refused to hear constitutional challenges to these laws in violation of duties under New York Executive Law, Section 71, Koziol v Hawse-Koziol, 60 AD3d 155 (4th Dept 2009).

Petitioner therefore exercised the rights of self-governance repeatedly guaranteed to him by this Court. He did so by exposing a dysfunctional family court and lobbying for reforms. This then morphed into systemic retributions from various members of the bench and bar leading to a human rights holocaust. The retributions ultimately resulted in the seizures of petitioner's children, law licenses and liberties.

This submission must be read in conjunction with six prior petitions for writ denied by this Court, see Matter of Koziol, 70 AD3d 1516 (3rd Dept. 2010), lv dismissed 16 NY3d 853 (2011), cert denied ___ US ___, 132 S. Ct. 455 (2011)("Koziol I"); Parent (Koziol) v New York, 786 F. Supp. 2d 516 (NDNY 2011); 2012 WL 2213658 (2nd Cir. 2013), cert denied (November, 2012)("Koziol II"); Koziol v Hood, 92 AD3d 1161

(2012)(cert denied 2013))("Koziol III"); In re Koziol, 107 AD3d 1137 (3rd Dept 2013), appeal denied 21 NY3d 1056 (2014), cert denied ___ US ___ 134 S. Ct. 1038 (2014)(Koziol IV"); Koziol v United States District Court, No.15-1519 (2016)(mandamus cert denied)("Koziol V"); Koziol v King, No. 15-512 (2017)(cert denied)("Koziol VI").

In these and other cases, petitioner sought relief for unlawful retaliation by the respondent lawyer grievance committee, child support enforcement authorities, and state agents targeting his reform and whistleblower activities. He raised his First and Fourteenth Amendment rights in every case, but key precedent of this Court cited repeatedly in support of his federal claims was never mentioned in any decision, federal or state, to the present day. The orders and decisions here reflect that pattern, 1-a, 8-a to 9-a.

A. Unwarranted Federal Abstention

In the courts below, petitioner asserted that select adverse treatment has made a mockery of federal court abstention policies, 16-a to 18-a. It has also foreclosed proper decisions on the merits of petitioner's constitutional claims for over ten years after a consensual childrearing arrangement was converted into a war zone by unethical lawyers and federal support mandates. Denials of certiorari over that period have only elevated retributions on a pretense of propriety.

This pretense has severely chilled the efforts of petitioner and fathers similarly situated to secure fair treatment in our nation's domestic relations courts. Judicial notice of this can be taken by the dearth of news items and organizing activity while the Census Bureau continues to report that nearly 85% of all child support obligors are men. Petitioner sponsored parent conventions, lobbied Congress for father equality and traveled across the country seeking reforms that were severely discredited by the retributions here.

The present fact pattern reflects an escalation of that suppression by pertinent family court judges, licensing authorities, and more particularly the Third and Fourth Department (middle level) appeals courts in the Appellate Division of New York's Supreme Court.[1] Federal courts have continued to exercise deference to disciplinary and investigatory practices of ethics counsel and departmental committees targeting petitioner's public criticisms of bench and bar practices in domestic relations litigation.

Younger abstention, Rooker-Feldman doctrine, domestic relations exception, preclusion rules and judicial or sovereign immunity comprise the principal devices being employed to insulate the misconduct of attorneys, judges and disciplinary agents engaged in the suppression of these criticisms. Petitioner's protected activities have never risen to contemptuous behavior, and prior to his reform efforts, he enjoyed an unblemished reputation as a civil rights attorney over a period of nearly a quarter century.

B. Omnibus Motion for Relief

With this backdrop, petitioner filed a motion in New York's Third Department on February 27, 2017 seeking, inter alia, an order lifting the confidentiality of attorney disciplinary proceedings, an order restraining bad faith prosecutions by the respondent committee, a reconciliation of treatment by conflicting appeals/licensing courts, due process challenges to a substandard ethics process, and an order vacating two license suspension orders with immediate reinstatement to the practice of law after ten years of abuse. It was based, in part, on new (exonerating) facts regarding petitioner as a crime victim in his former law office, Appendix 10-a to 12-a.

[1] Unlike states which commit attorney regulation to their high courts, New York has distributed this authority among four middle level appeals courts. The First and Second Departments are located in Brooklyn and Manhattan with the Third and Fourth upstate in Albany and Rochester, respectively. A motion for transfer to either downstate department was previously denied.

That crime victim status could not be confirmed until the 2016 conviction and incarceration of a sociopathic ex-secretary after petitioner fired her in 2009. She had been influenced to tamper with office mail and court calendars while pilfering well over $100,000 from office accounts. Petitioner was being so scrutinized on "dishonesty" and other nebulous grounds that he could not risk timely disclosures until the criminal process had taken its course.

Nevertheless, when exonerating information was capable of disclosure, it was ignored in both decisions below, 20-a to 21-a. Meanwhile, petitioner was referred to civil recourse by local police, but with his assistance, this sociopath was arrested in another county and convicted locally only for crimes upon later lawyers. Here, she orchestrated ethics issues against petitioner as a diversionary tactic, 38-a.

Circumstantial proof shows that this ex-secretary acted under some form of local prosecutorial immunity intended to "pile on" in this witch hunt, 20-a. She was either a major or exclusive cause for all three license suspensions, to wit: a willful support violation on February 5, 2010 (Koziol II"), a disciplinary suspension on September 23, 2010 ("Koziol I") and a six month license suspension on June 6, 2013 ("Koziol IV"). However, because he was deprived of discovery in all litigation to date, petitioner has been unable to properly defend against the serial ethics charges which resulted.

Petitioner remains a long established public advocate for minorities, whistleblowers and government abuse victims, <u>Patterson v City of Utica</u>, 370 F3d 322 (2nd Cir. 2004)(civil rights case argued before a Justice of this Court); <u>Koziol v Hanna</u>, 107 F. Supp. 2d 170 (NDNY 2000)(sacrificial stance as corporation counsel taken against gag order upon city employees); <u>Oneida Nation v Oneida County</u>, 132 F. Supp. 2d 71 (NDNY 2000)(judgment invalidating billion dollar casino operation for landowners); <u>Currie v Kowalewski</u>, 842 F. Supp. 31 (NDNY 1994)(workplace sexual harassment).

C. Substantive Due Process

Taken as a whole, petitioner continues to assert overriding claims of substantive due process violations based on a "totality" of circumstances originating with an uncontested divorce in 2006, 18-a. A cooperative parenting environment was upended by an unethical divorce lawyer seated on a Fourth Department ethics committee. Since then, this divorce has exploded into multi-tiered proceedings before 40 trial level jurists, over 100 appealable orders and serial human rights violations, a judicial record by most accounts.

After three years of escalating conflict, the original divorce judge ruled after trial on October 8, 2008 that the parent agreements of 2004 and 2005 were just and proper under the federal support standards act. But by then, lucrative, recurring and endless proceedings before multiple tribunals had been triggered to discredit petitioner's reform message, a shared parenting law to replace custody classifications. [2]

When the first assigned divorce judge refused to entertain constitutional claims in 2007, an appeal was brought before a Fourth Department judge in Syracuse (John Centra). Opposing counsel was shown to be exemplary of the corrupt process which included a protection order issued against his law office for exploiting sensitive litigant information for his personal benefit. It was not known at the time that the same court, in its regulatory capacity, had appointed this same attorney to its district ethics (grievance) committee.

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[2] New York is renowned as having the most complex trial court structure in the United States. Its own state bar association has issued reports to reform this structure, noting that eleven different trial courts here compare with one in California, see NYSBA 2017 Report and Recommendations Concerning Whether New Yorkers Should Approve Ballot for Constitutional Convention. It also noted that a divorce litigant in New York could be subjected to three of these distinct trial courts. In petitioner's case, that number became five.

On the same day as the appellate arguments of January 9, 2008, a first time ethics prosecution was opened against petitioner after decades of unblemished practice. It is believed that Judge Centra who heard the domestic appeal arguments improperly and discreetly influenced this action. It was based on stale grievances including six subsequently dismissed as meritless. Again, all discovery was denied to show prosecutorial misconduct and unlawful retaliation.

These domestic and disciplinary events formed a major cause for petitioner's first 2009 federal action in Koziol II (Parent v New York, supra). A large number of jurists, lawyers and state agents was now involved in raising petitioner's children despite no findings of unfit behavior. On April 28, 2010, the Fourth Department disqualified itself, sua sponte, while referencing petitioner's earlier recusal motion "denied without prejudice." It transferred all legal matters involving petitioner to the Third Department.

Although the willful support violation was lifted by the Fourth Department in 2012 and domestic appeals resumed, the Third Department continued to hold reinstatement hostage with protracted inquiries based on anonymous complaints and frivolous accusations. For example, the latest one here involved a law office account created to insulate client funds from a 2008 unlawful seizure by the state's robotic support collection unit (later restored), 27-a.

The split Department treatment has never been explained, but it is believed that petitioner was targeted during unrecorded discourse between presiding judges as referenced in their transfer orders. The first time ethics prosecution influenced by Judge Centra resulted in a one year license suspension by the Third Department on September 23, 2010 despite a clear showing of a false finding of material fact by the court appointed referee and his refusal to hear evidence relating to added "discrepancy" charges concocted from petitioner's defense submissions.

A request for Department reconciliation was one of the branches of petitioner's current motion disregarded by both the middle level and high courts of New York, 29-a, 1-a, 8-a. Hence the persecution and reinstatement process continue in perpetuity already one year beyond the seven year period in New York for felony disbarments. Petitioner has never been accused of any crime and his treatment contrasts sharply with other lawyers in disciplinary cases.

In his motion affidavit, petitioner cited lawyers committing felonious acts, i.e. his child attorney, William Koslosky, who falsified sworn statements to appeals/licensing courts that harmed his clients and their support needs, 40-a to 42-a; a partnership admitting to misappropriation of six figures in client funds (John and Lori Petrone), another local attorney serving a jail sentence for tax evasion on $2 million in unreported income (Robert Sossen), and ethics lawyers in the witch hunt against petitioner who were allowed to resign after an inspector general discovered their falsified time sheets (Torncello, Zayas, Devane). There was no disruption to their ability to continue practicing law, 26-a.

D. First Amendment Violations

Throughout the omnibus motion and proceedings in federal and state courts over the years, petitioner has endeavored to obtain answers to questions of first impression, including whether a family or disciplinary judge can orchestrate outcomes to harm a public critic of their proceedings in the face of First Amendment prohibitions. No mention of them has been made to date despite their brazen nature.

In that motion, petitioner maintained that his historic protection of the public from government abuse has now been reversed to protect the government from public criticism. In the decisions below, the licensing authorities asserted that they were acting "to protect the public, deter similar misconduct and preserve the reputation of the bar" when they entered back-to-back suspensions of petitioner's law license, the last one a six month term satisfied in 2013.

A sampling of news articles in the ten year record here tells a more accurate picture of petitioner's decades of service to the public prior to the licensing retributions sustained contemporaneous with these public criticisms. Feature articles in the New York Times, Syracuse Post Standard and Utica Observer Dispatch are found among applications for review of constitutional issues filed before New York's high court. Petitioner's activity earned him an interview on the CBS program 60 Minutes in 1999 and participation in a United Nations Family Rights Conference in 2016.

Civil rights victims continue to seek petitioner's legal representation even after nearly eight years of combined license suspensions, a year longer than a felony disbarment period without so much as a criminal charge or finding of unfit parenting. There is a profound void in civil rights lawyer availability in petitioner's Utica-Rome metropolitan area. Hence the respondent here was challenged for its hypocrisy in the genuine regulation of attorney misconduct.

With each public criticism, a corresponding adverse event followed from bench and bar adversaries. And with each reinstatement effort, petitioner was required to complete a bar ethics exam which he did well beyond the passing scores. There have been at least five such petitions or motions since 2011 including the one here. The pretext for denials has never been acknowledged despite overwhelming proof due to the union of bench and bar interests.

In prior client litigation, petitioner was able to rely upon circumstantial inference, or that "temporal nexus" between protected activity and adverse government action, to successfully assert a case of unlawful free speech retaliation against various public and private entities. However such practices incurred a disappearing act when members of the bench and bar were implicated. Since 2013, New York's disciplinary agents responded with an indefinite (four year extant) suspension of petitioner's state law license which, in turn, caused an automatic and effectively permanent removal from the federal district and circuit court bars through reciprocity.[3]

That extant period commenced within weeks of petitioner's testimony before the New York Moreland Commission on Public Corruption on September 17, 2013 at Pace University. Speakers included federal prosecutor Preet Bharara who condemned a culture of corruption in New York's government and later secured the convictions of top legislative leaders. Another speaker was Loretta Lynch prior to her appointment as United States Attorney General by then president Barack Obama.

Petitioner focused his testimony on New York's judiciary and self-regulated legal profession. Among other things, he cited fictitious college degrees in family court findings used to elevate his child support obligations for punitive (willful violation) incarceration purposes, 19-a, 25-a. The testimony was publicized on Commission and viral websites and featured on the one maintained by petitioner since 2010.

That feature and testimony were also cited in respondent's April 8, 2014 opposition report to a 2013 reinstatement application, 23-a. No claim of inaccuracy or specification of

[3] The earliest impairments of petitioner's law license occurred twice in the same year in two different Departments. The first, by the Fourth Department, was imposed on February 5, 2010 pursuant to New York Judiciary Law sec. 90 (1-a) for an alleged "willful child support" violation. It was triggered by a violation order of October 1, 2009 by State Judge Michael Daley, then a party to petitioner's first civil rights action. As set forth in both federal and state pleadings, this judge committed himself on a May 26, 2009 opening transcript to a hearing on recusal issues raised by the attorney-father consistent with prior recusals of the same judge among client cases. Instead of honoring that commitment, Daley surreptitiously issued the violation order which was then insulated from review by the automatic language of the said Judiciary Law.

ethics violation was contained in that report. It was sealed from public inspection under the stated Judiciary Law. At least one prior opposition report was secreted from petitioner as well, 23-a. It has not been revealed to this day.

The targeting has now magnified to a level where ethics lawyers have openly declared in court that they would oppose petitioner's reinstatement to his law practice as long as his criticisms and filings continue.[4] In this case, the public criticisms and filings were not arbitrary or sweeping upon the whole of a profession. To the contrary, they were narrowly tailored to state domestic relations courts.

Petitioner's targeted public message focused on children who are exploited for profit and parents structured under federal law to war against one another for "support" and "custody" awards. It is a well preserved enclave that is harming an entire nation. In the record below, petitioner repeatedly maintained these positions while asserting that our rights are most impaired when those with whom they are entrusted lack the fortitude to take overdue action.[5]

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[4] This statement was made by Third Department ethics counsel, Steven Zayas, on May 22, 2013 in response to presiding Justice Rose who questioned why petitioner's reinstatement was being opposed. This hearing was not recorded and no authority exists under New York law for transcription. Both Zayas and his chief counsel resigned weeks later as standard bearers for attorney ethics after coming under investigation by the state Inspector General for falsifying time sheets, see NY Law Journal, 7/10/13 and Michael Steinberg, When the Foxes Watching the Fox House get Caught, www.nylawsuitreform.com.

[5] Thurgood Marshall is widely recognized as the attorney, denied admission to law school on grounds of race, who made <u>Brown v Board of Education</u> possible. However a lesser known architect, Earl Warren, was appointed to the Supreme Court in 1953 when a writ was granted among the consolidated <u>Brown</u> cases. By the time decision was issued the following year, Justice Warren had managed to convince eight associates to join him in a bold unanimous opinion.

REASONS FOR GRANTING WRIT

Petitioner is a civil rights advocate who after 23 years of unblemished practice was suspended from practice when he sought to reform abusive bench and bar practices in domestic relations litigation. Because state and lawyer revenues were directly implicated, the disciplinary process was tailored to achieve a punitive outcome through an abuse of vague and irreconcilable code provisions.

A mere preponderance standard of proof was applied to a prosecution which this court has repeatedly defined as criminal in nature, In re Ruffalo, 390 US 544, 551 (1968); Middlesex v Garden State Bar Association, 457 US 423 (1982). In the end, New York's disciplinary authorities managed to prevail where the same prosecution would have failed had the father-attorney been advocating for victims in Tennessee, Florida, Louisiana and other states where a higher "clear and convincing" standard is properly applied.

Lawyers all across our nation are regularly called upon by the People to challenge abuses of government power. Fearless advocacy is not only a hallmark of the legal profession, it is critical to the maintenance of a free society. But what happens if an unrestrained body of government is able to invidiously suppress such advocacy when the critical argument is directed against it? Do our rights continue to have substance in communities large and small? Do all people benefit the same from safeguards that our military and civilian personnel strive each day to preserve? Is not the whole of a profession called to task?

This case seeks to answer such questions. Throughout our history as leaders of the free world, American lawyers have risked their livelihoods in the quest to assure that our most precious rights are not systematically eroded. Without the unique liberties exercised by our "architects of justice", it is likely that "separate but equal" doctrine would still be alive and well in our public schools and transportation systems. Countless innocent people might be imprisoned each day out of a lawyer's fear of state disciplinary retributions.

A civil rights attorney in upstate New York is now asking this Court to review a disciplinary process which harmed his livelihood and parent-child relations simply because he represented minority groups and boldly championed unpopular causes. His ordeal has been compared to that of Nobel Prize candidate Gao Zhisheng, the Chinese lawyer stripped of his law license and denied contact with his children due to his representation of minority groups and criticisms of a communist government. The cause in this case is not garden variety, parental equality remains the final frontier of civil rights reform in America.

Literally, an innocent man was convicted of fabricated misconduct for endeavoring to bring equal rights to a courtroom where children are exploited for money and fathers are being extinguished from the family equation. This conclusion is easily demonstrated below by the proximate exercise of rights and adverse state action. Without the necessary protection for our protectors, any lawyer can fall victim simply by excelling in his or her work at the wrong place and the wrong time.

In 1984 this Court granted writ to hear a disciplinary case involving a lawyer who sharply criticized a fee process of an assigned counsel program, In re Snyder, 472 US 634 (1985). A federal appeals judge suspended his law license for six months due to his refusal to apologize for a harsh letter he sent to a court secretary. First and Fourteenth Amendment issues were considered final but not addressed in an opinion focused exclusively on the lack of grounds for the ethical violation. The suspension was removed under facts which pale in comparison to the widespread human rights violations raised in this Petition. A writ of certiorari here is crucial to the functioning of both bench and bar nationwide.

POINT ONE

The First Amendment has co-equal application to our third branch of government.

The power to issue and revoke licenses by government authorities is a profound one. It is an effective vehicle for controlling human behavior and liberty. It has been abused to suppress advertising in the legal profession, Supreme Court of Virginia v Consumers Union, 446 US 719 (1980) free expression in the literary profession, City of Lakewood v Plain Dealer Publishing, 486 US 750 (1988); Bantam Books, Inc. v Sullivan, 372 US 58 (1963) and the filing of complaints critical of a regulatory authority in the health profession, Beechwood Restorative Care Center v Leeds, 436 F. 3d 147 (CA 2, 2006).

In the Westboro Baptist Church case, Chief Justice Roberts defended the rights of protesters at the funeral of a fallen soldier by reiterating that "debate on public issues should be robust, uninhibited and wide open...(it) occupies the highest rung of the hierarchy of First Amendment values", Snyder v Phelps, 562 US ___ (2011), citing New York Times v Sullivan, 376 US 254 (1964). In the concluding part of the opinion, speech was described as a powerful force that can move people in profound ways.

In a similar vein, speech critical of a state's divorce and family courts can move their beneficiaries to extreme retributions. However, offended lawyers and judges will not openly concede their instigation or participation in unlawful retaliation. Instead they will act or refuse to act off the record, behind the scenes and in highly discreet and sophisticated ways. In this case, they facilitated and promoted false, embellished and excessive charges of ethics violations to suppress such speech and complaints.

In the record below, the petitioner sought diverse relief in the proper form of an omnibus motion directed to ongoing unconstitutional practices in his recurring and extant ten year disciplinary process. He cited offensive reform activity for abuses he experienced in two important capacities in the divorce and family court system of New York State.

When retributions upon his livelihood and parenting rights became clear, he sought to hold a growing number of judges and ethics lawyers accountable. In emphasizing the public benefit behind his reform efforts, petitioner related judicial misconduct in formal complaints and website publications which would easily lead to retaliation and systemic bias.

One of petitioner's formal complaints before the New York Commission on Judicial Conduct contained a summary of judicial abuses catalogued during his organizing and reform activity over a period of many years. It was published on his public website concededly monitored by the respondent.[6]

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[6] One excerpt published on April 23, 2013 states: "A violator of our supreme laws should not be able to gain infallibility simply by having his or her name added to a judicial panel. Indeed, the former chief judge of our state's highest court panel in Albany was convicted of multiple federal crimes during the nineties... As relevant here, the ex-chief justice directed paid court staff to investigate a New Jersey lawyer for purposes of harming his licensing interests in this state simply because the lawyer obtained a close relationship with the judge's mistress...

Much of the misconduct described in this Complaint and the preceding ones involve judges with offices in the Syracuse Onondaga County Courthouse. The chief administrative judge there was among the named defendants in yet another civil rights action brought by the chief clerk alleging improper political influence directed against a competing (handicapped) judge of the Family Court. It resulted in a $600,000 recovery and extensive taxpayer liability, Morin v Tormey, 626 F.3d 40 (2nd Cir 2010). As stated, my case is insulated from similar recourse by arbitrary status."

Only ten days after this publicly released complaint, a Syracuse support magistrate fabricated a PhD among petitioner's credentials to impose an unsustainable child support order during petitioner's four years of license Suspension at the time. One month later, ethics lawyers conceded their objections to such public statements with a commitment to continue their opposition to petitioner's reinstatement as a direct consequence.

There was no specificity or charge connected with this commitment made in open Court, and the presiding panel refused to hear petitioner's First Amendment claims. Two weeks after that, it imposed the current six month (extant) suspension. Absent certiorari by this Court, this bad faith treatment will continue as a life term disbarment based on petitioner's status as a crime victim. Meanwhile convicted lawyers in petitioner's region, including one who served a jail term, suffered no loss of licensing privileges.

This is unquestionably an extraordinary case without legal precedent. Regardless, the goal was simple: to coerce an abandonment of First Amendment rights through invidious and protracted deliberations in petitioner's inextricably entwined domestic and disciplinary matters. One member of the Third Department panel remarked that petitioner showed no remorse. But how can a crime victim show it when the same panel was forced to discharge its own ethics lawyers (targeting petitioner) for falsifying time sheets?

Is petitioner's refusal to apologize any less worthy than the attorney in Snyder who was simply advancing his fee interests? This comparable leads to a framework of analysis based on analogous opinions of this Court. Petitioner's rights were relegated to non-existent status. Depending on what the circumstances called for, a select review of the facts was applied or the misconduct of ethics lawyers was disregarded to reach a predetermined outcome. In short, there remains no protection for judicial whistleblowers.

Accordingly, a hybrid analysis is required which draws upon two lines of reasoning applied to public employers and licensing agencies generally. Two principal cases decided the same year in each context are properly merged here: Garcetti v Ceballos, 547 US 410 (2006) and Beechwood Care Center v Leeds, 436 F.3d 147 (2nd Cir. 2006).

In the first case, a supervising deputy district attorney claimed disciplinary retaliation arising from an offensive memo which was made public. Unlike the teacher in Pickering v Board of Education, 391 US 563 (1968) who was speaking at a school board meeting, this Court explained that the attorney in Garcetti was acting strictly in an internal capacity. Therefore, public interest weighed against any First Amendment protection.

The salient events here do not involve any employment relationship. However, the first case is necessarily cited because the violators have been treating petitioner in material respects as an employee using their supervisory power over licensed attorneys. Petitioner's case also does not feature any internal memo or important employer interest. Instead, more than the Pickering case, it is filled with vital public interests presented in multiple forums.

This brings us to the second case where a federal appeals court found that circumstantial proof was sufficient to show retaliation by a regulatory agency over professionals in the health care field (the second alternate context). Key excerpts from the Beechwood case show striking analogies to the facts in this case:

> "Appellants principally claim that DOH, in retaliation for Brook Chambery's many complaints, protests, and lawsuits, conducted repeated nit-picking surveys of Beechwood, trumped up allegations of deficiencies, and enlisted the help of

> HCFA officials, all culminating in the revocation of the Chamberys' operating certificate; and that this violated Appellants' right against retaliation for speech protected by the First and Fourteenth Amendments... This is evidence from which a jury could reasonably find that the DOH was campaigning against the partnership as retaliation for the exercise of First Amendment rights. We therefore vacate and remand as to the First Amendment claim."

Applying this authority, a prima facie case of unlawful retaliation exists in attorney regulation matters by:

> 1) showing that an individual spoke on matters of public concern (or attempted to access any court or agency for recourse), Friedl v New York, 210 F.3d 79 (2nd Cir. 2000), and
>
> 2) that he was therefore treated adversely from other members of the general public (or profession) by the entity being criticized, Koziol v Hanna, 107 F. Supp 2d 170 (2000).

By maintaining needless jurisdiction over petitioner's parent-child relationships, destroying livelihood through undue impairment of law and driving licenses, and keeping scrutiny over critical statements at public assemblies, the violators have conducted themselves no differently than the school board and regulatory agencies did in Pickering and Beechwood. Worse than anything implicated in those cases, the victim here was and remains subject to threats of contempt for "child support" deficiencies orchestrated over many years of unrestrained misconduct.

Petitioner's criticisms of New York's divorce and family courts were also set out extensively in pleadings and motions in those same courts since 2006. In the record, petitioner cited his ex-spouse's divorce lawyer as a prime example of abuse. Citations were made to a protection order necessarily issued by the first assigned divorce judge against his entire law office to prohibit unethical disclosures and communications with outside parties. This same attorney was a recently seated member of the relevant attorney ethics committee when the first prosecution against petitioner was commenced in 2008.

This raises a further distinct right of access to our courts under the same First Amendment. The debate at issue was directed squarely at the judicial branch of government. Retaliation is therefore established in the same manner as disciplinary civil rights cases are litigated on behalf prisoner clients convicted of heinous crimes, Friedl, supra; Franco v Kelly, 855 F.2d 584 (2d Cir. 1988). New York courts cannot exceed their authority under our Constitution using a rule of necessity in pay raise litigation any more than they can suppress the petitioner in his criticisms of that litigation through contemporaneous disciplinary action, Maron v Silver, 58 AD3d 103 (Third Dept 2008).

The father-attorney was singled out not only because of his critical statements to the media and public gatherings regarding parenting rights but more insidiously in discreet reactions to offensive material discovered in appeal filings. Unlike the bar of the State of Virginia which sought refuge behind a consumers group in the vindication of First Amendment lawyer advertising protections, this victim placed himself personally under fire in the vindication of rights far more precious to the People under the same Constitution, see Supreme Court of Virginia, supra.

The latter case has particular application here because this Court made it clear that Virginia's courts possessed authority to initiate disciplinary complaints against those who violated advertising prohibitions. In this capacity, they enjoyed no absolute immunity. In New York, the same authority is found in 22 NYCRR 100.3B(3)(courts generally) and 22 NYCRR 1022.19(b)(1)(grievance referrals).

As all civil rights lawyers know, whistleblower and retaliation claims are commonly shown through proximate circumstantial inference, Beechwood Care Center, supra. This proceeds on the logic that a state actor will not concede back room tactics which suppress complaints and public expression. Here, such logic was set aside through the confined structure of disciplinary processes and gross limitations upon petitioner's capacity for asserting a meaningful defense. He was prevented from securing crucial discovery in both his domestic and disciplinary matters interacting upon his most precious joint liberties.

In Konigsberg v State Bar of California, 353 US 252, 273 (1957), this Court emphasized the importance "both to society and the bar itself that lawyers be unintimidated-free to think, speak and act as members of an independent bar". In New York, this freedom is subject to purposely vague regulations that can be made to encompass offensive criticisms of the profession in fee generating industries such as domestic relations. Such overbroad rules can easily be exploited to punish or expel members of the bar who deviate from an unwritten norm, i.e. In re Snyder, 472 US 634, 645 (1985)("As officers of the court, members of the bar may appropriately express criticisms" regarding fee documentation, invalidating a six month suspension).

The overbroad rules reprinted earlier are key examples. They were employed to delay reinstatement indefinitely through inquiries and admonitions. Respondent was thereby able to secure excessive punishment. Virtually any conduct can come within the reach of these rules, making them little different than the harassment and disorderly conduct laws found to be unconstitutional in Gooden v Wilson, 405 US 518 (1972) and City of Houston v Hill, 482 US 451 (1987), see also U.S v Stevens, 559 US 460 (2010);

United States v Wunsch, 84 F. 3d 1110, 1117-1119 (CA 9, 1999)(declaring unconstitutional a rule required attorneys to "abstain from an offensive personality").

In this sense, attorney codes are enforced contrary to an express purpose for protecting the public, In re Singer, 738 NYS2d 38, 40 (AD 1, 2002). It is this public commitment which enables disciplinary authorities to circumvent due process protections normally accorded to comparable prosecutions, Id. However, when the public purpose is subsumed by an ulterior motive, a double impact is visited upon an unsuspecting practitioner. He or she is suppressed in protected activity and simultaneously impaired by the dilution of procedural safeguards, Koziol v Hanna, 107 F. Supp. 2d 170 (NDNY 2000).

First Amendment rights do not incur a disappearing act on the steps of a state courthouse simply because an aspect of judicial power and lawyer ethics is being challenged in matters of parent-child relations. Its doors are there to be opened to petitions and expressions which do not usurp the conduct of proceedings. In this case, there was no contempt implications or warnings associated with the expressions.

Moreover, there was no rush to judgment. The retaliation claimed against Appellate Division Justices became increasingly plain as disciplinary processes took on a bizarre countenance that yielded no other explanation. A relevant excerpt from this Court's opinion in Spevack v Klein, 385 US 511, 516 (1967) is on point:

> The threat of disbarment or the loss of professional standing, professional reputation and of livelihood are powerful forms of compulsion to make a lawyer relinquish (a constitutionally protected) privilege. That threat is indeed as powerful an instrument of compulsion as 'the use of legal process to force from the lips of the accused individual the evidence

necessary to convict him...', United States v White, 322 US 694, 698; Miranda v Arizona, 384 US 436, 461. Lawyers are not excepted from the word 'person' as found in the Constitution. "Like the school teacher in Slochower v Bd of Education, 350 US 551 and the policeman in Garrity v New Jersey, 385 US 493, lawyers also enjoy first class citizenship".

POINT TWO:

Fourteenth Amendment rights cannot be set aside to suppress protected activity of a civil rights attorney.

In the disciplinary processes at issue here, a series of defects rendered the successive suspensions of petitioner's law license unconstitutional. Procedural and substantive analyses under the Fourteenth Amendment are at play throughout this petition. To begin with, the process was inherently flawed at the onset by the combined nature of prosecution, judge and jury. They were all directly controlled by the same Third and Fourth Department Justices, In re Murchison, 349 US 133 (1955).

Given the serious stigma, damage to livelihood and criminal nature of such proceedings, a jury right was implicated, Ruffalo, Middlesex, supra. This is especially true where, as here, a systemic or institutional bias is evident by the financial interests of competing Committee members impacted by petitioner's protected activity, see Gibson v Berryhill, 411 US 564 (1973)(actual prejudice irrelevant to optician disciplinary process because it was inherently biased due to a likelihood of prejudice by decision making colleagues); Turner v Rogers, 564 US __ (2011); Caperton v A.T. Massey Coal, 556 US 868 (2009).

Petitioner is seeking review pursuant to this Court's supervisory authority over attorneys, reciprocal treatment regarding federal licenses, and our national interest in civil rights advocacy. He is also seeking review under a category of equal protection cases established by this Court in Village of Willowbrook v Olech, 528 US 562 (2000)("class of one" equal protection violations based on select enforcement of local codes raised and ignored below). The attorney disciplinary code and rules here were manipulated strictly to harm petitioner unlike other attorneys who did not engage in public criticisms of bench and bar practices.

Further defects lie in the combined aspect of defense and mitigation at a single confirmation hearing before the Third Department court which is at odds with one another, see 22 NYCRR 1022.20(c) and(d). In this case, the father-attorney was at all times subject to conflicting presumptions of guilt and innocence insofar as the accused in these proceedings are often punished simply for not yielding to mitigation. Both cannot occur simultaneously. There is no statute of limitations or laches, Matter of Dondi, 63 NY 2d 331 (1984), and this elevates the risk of wrongful conviction occurring here. Other defects are addressed in preceding sections.

Supplementing the defects in due process is the aspect of evidentiary standards as a distinct basis for vacating the orders of suspension. All the suspensions over eight years and continuing were obtained by evidence evaluated under a standard of proof less than "clear and convincing", Matter of Capoccia, 59 NY2d 549 (1983). The suspension of a law license is a matter at least as serious as a fraud action, removal proceeding or punitive damage claim, Wilner v Committee on Character and Fitness, 373 US 96 (1963).

In more than 40 states, the District of Columbia and most federal courts, attorney disciplinary matters are governed by the heightened standard made uniform by this Court in parental termination cases, Santosky v Kramer, 455 US 745 (1982), see i.e. In re Batista, 846 So. 2d 479 (Fla. 2003); In re Phelps, 953 So. 2d 45 (2007); In re Thalheim, 853 F.2d

383, 389 (5th Cir. 1988). The time has long passed for a similar uniform protection for our architects of justice, see David M. Appel, Note, Attorney Disbarment Proceedings and the Standard of Proof, 24 Hofstra L. Rev. 275 (1995); Addington v Texas, 441 US 418 (1979).

In contrast, lawyer reinstatement in New York's Third Department is granted only upon the higher standard of "clear and convincing evidence." This is opposite of the standards employed in federal and state courts elsewhere in this country. Such a low and high standard of review is ideal for targeting a lawyer's offensive speech outside the court room on a pretext of protecting the public.

On the substantive end, the process applied here must be evaluated for its combined impacts upon petitioner. For example, in Rochin v California, 342 US 165 (1953), this Court recognized that a seizure of evidence from the digestive system of a suspect which was later used to convict him on a drug charge was consistent with existing procedures. However when considered as a whole, they nevertheless shocked the conscience of a civilized society.

In similar vein, when viewing the arbitrary, egregious and discreet means used by judicial disciplinary authorities to convict this civil rights attorney of life impacting ethics charges on a preponderance standard of evidence, the process here shocks the same conscience. Such assessments are typically made upon a "totality of circumstances", see Lassitur v DSS, 452 US 18, 24 (1981)("substantive due process, for all its consequences... has never been, and perhaps can never be, precisely defined", see also Joyner v Dumpson, 712 F2d 770, 777 (CA 2, 1977); Sacramento v Lewis, 523 US 833, 845 (1998); Washington v Glucksberg, 521 US 702 (1997); Daniels v Williams, 474 US 327 (1986).

The speech and filings which are being targeted concern matters of vital public importance. It is not a case of flag burning or funeral protest which this Court found to be protected under the Constitution, i.e. Snyder v Phelps, supra. It features the rights of parents to raise children in separated contexts without undue infringement by the state in our nation's domestic relations courts. Through unethical, lawyer-generated controversy, moms and dads are forced needlessly to fight over their own offspring. A fee generating industry has resulted, harming children much like the tobacco industry does with its profit motive.

This is also not an isolated instance of protected speech such as a prosecutor criticizing a judge during a criminal trial, Garrison v Louisiana, 379 US 64 (1964). Neither is it a case where a lawyer published statements in a national magazine describing New York Appellate Division Justices as "madams and whores," Erdmann v Stevens, 458 F.2d 1205 (2nd Cir. 1972)(related ethics charges were ultimately vacated).

This is a case focused on petitioner's role as a public interest advocate who sacrificed himself time and again to promote the civil rights of landowners, racial minorities, women administrators and government workers, among others, see i.e. Oneida Indian Nation v Oneida County, 132 F. Supp.2d 71 (NDNY 2000); Patterson v City of Utica, 370 F.3d 322 (2nd Cir., 2004); Currie v Kowalewski, 842 F.Supp. 57 (NDNY, 1994) and Koziol v Hanna, supra.

In pursuing such civil rights cases, petitioner has employed proof methodology which has never been extended to attorney disciplinary matters. For decades now, our courts have reiterated that "most discrimination or retaliation is not carried out so openly as to provide direct proof of it, accordingly an aggrieved party can use circumstantial evidence to prove a prima facie case," Sanders v NYC Human Resource Admin, 361 F.3d 749 (2nd Cir. 2004).

Such wisdom is even more compelling in sophisticated work environments where petitioner has made his living, see generally Morris v Landau, 196 F.3d 102 (2nd Cir 1998). It has long been established that "circumstantial evidence is not only sufficient and persuasive but may be more certain and satisfying than direct evidence of intentional discrimination", Rogers v Missouri Pacific R. Co. 352 US 500, 508 (1957). Hence, the "onerous" proof burdens historically placed upon civil rights victims, i.e. McDonnell Douglas v Green, 411 US 792 (1973); Texas D.C.A. v Burdine, 450 US 248, 252 (1981) may be obviated by showing common-sense cause and effect.

Indeed this was the very position advanced in Lopez v Metropolitan Life, 930 F.2d 157, 162 (2nd Cir. 1991) when petitioner, representing a minority employee, compared the evidentiary framework created by the courts to an effective repeal of a congressional act. Ironically, well ahead of its time, this position was later embraced by lawmakers when the Civil Rights Act of 1991 was passed. Burdens were then relaxed by this Court in Desert Place v Costa, 539 US 90, 99 (2003). Mixed motive cases are now evaluated in a victim's favor when the improper factor alone, i.e. public criticism, is inferred from all the facts. Peculiar treatment petitioner over many years is certainly a strong inference.

This case features not only the serious impacts of business closure, license suspension, child deprivation, unlawful seizure and contempt threats, but also a constant barrage of libel and slander which can best be summarized as psychological torture over so long a period. As one federal appeals court emphasized, "our precedent allows a combination of seemingly minor incidents to form the basis for a constitutional retaliation claim once they reach a critical mass", Phillips v Bowen, 278 F.3d 103, 109 (2nd Cir. 2002). A prima facie case is therefore shown here by undisputed facts surrounding offensive speech and filings followed timely by peculiar processes and adverse events.

POINT THREE

<u>Government transparency dictates that the proceedings below should have been opened to the public.</u>

As it stands before this Court, the attorney disciplinary and reinstatement process in New York's Third Department will remain secret. By all standards of logic, the orders of both the originating and high courts of New York are final for purposes of a confidentiality ruling. The record cannot be denied in that regard. The First and Fourteenth Amendment claims then become necessary components of this finality since they are inextricably connected.

The secrecy of this process comprises yet another tactic for punishing petitioner's speech. So egregious has it become that the latest anonymous complaint of respondent, stale since first presented in June, 2016, caused petitioner to seek court review of his nearly completed book manuscript entitled, *Killing Courts: Corruption and Carnage in America's Divorce Industry*, 12-a, 44-a.

Like everything else raised by petitioner, this request seeking to avoid another contempt by ambush was denied "in its entirety" without public explanation. This has compelled petitioner to revise that manuscript to exclude "guesswork" violations of practice prohibitions and ethics rules under a test publication entitled, *Satan's Docket* (featured in full page newspaper promotions).

This practice of disregarding petitioner's constitutional claims and making no mention of them in any decision to date elevates the attack on petitioner's public credibility and reform message. Censorship is magnified many times over. The only matter finally released to the public is the outcome and by that time, accountability fades quickly if it occurs at all during the process leading up to that outcome.

It must be emphasized that any realistic presentment of this case in any court or disciplinary case will be tested by the chaotic nature of proceedings maliciously inflicted upon petitioner. It is not the responsibility of a victimized citizen who pursued proper channels to explain why these absurd proceedings occurred. Unlawful retaliation is easily inferred by their unprecedented conduct.

This was an elementary circumstance which escaped the learned skills of a federal judge who dismissed petitioner's last civil rights action. Judge Gary Sharpe did so with extreme bias after a recusal motion was filed based on United States v Cossey, 632 F.3d 82 (2nd Cir. 2010). There a federal appeals court removed this judge from a case due to his claim of a human gene to govern decisions that would not be found by scientists for "another fifty years." An erosion of public confidence in our judiciary was the reason. Here he ultimately dismissed on Younger abstention policy and deferred petitioner's federal claims to the courts below.

There is nothing significant to distinguish lawyer accountability proceedings from other categories of litigation. Indeed the doctor (employer) who was initially cleared of sexual harassment claims in a case prosecuted by petitioner early in his career was not favored with such confidentiality. Nor was he benefitted when that dismissal was reversed unanimously by the Second Circuit and later found liable on the same trial record, Currie v Kowalewski, 810 F. Supp. 31 (NDNY 1993)("Kowalewski I"); Currie v Kowalewski, 842 F. Supp. 57 (1994) ("Kowalewski II").

Beginning on February 1, 2015, this Court's attorney disciplinary proceedings were made public. It reversed the presumption of secrecy behind such proceedings which previously had been the rule and required participants to show cause for making them confidential. The justifications for that reversal in procedure are the same here with the additional one that a major public interest is at stake.

That justification can be supported by a 2015 disciplinary prosecution brought by the same respondent featuring a documentary video produced by an independent public interest group known as Divorce Corp. In the interview, petitioner's name was presented on the screen with the words "Civil Rights Attorney." The producer knew all about petitioner's suspension but was not subject to the relevant prohibition in the now eight year extant suspension order.

Petitioner was nevertheless made subject to confidential proceedings and an outcome which bear upon the omnibus motion now before this Court. In another prosecution the same year, petitioner was able to have a hearing made public with Divorce Corp videotaping it before a Third Department panel.

The petition of charges was summarily dismissed retroactively despite an adverse finding of a hearing officer. This occurred in a confidential order after petitioner explained to the presiding justice that his ethical duty of supervision over a sociopathic secretary was no different than its own ethical duties over appointed ethics lawyers allowed to resign for falsifying their time sheets. They were never publicly prosecuted criminally or ethically. This Court recently ruled that a litigant is entitled to discovery when circumstances of such compelling nature infer judge bias, Rippo v Baker, 580 US ___ (2017).

CONCLUSION

Based on the foregoing, petitioner respectfully asks this Court to grant his Petition for Writ of Certiorari to the New York Court of Appeals,

January 6, 2018 Respectfully submitted,

Leon R. Koziol