

**FILED**  
**APR 17 2026**  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**No. 25-6673**

---

---

**IN THE  
SUPREME COURT OF THE UNITED STATES**

---

---

**James R. Caputo, M.D.  
PETITIONER**

**VS.**

**Richard S. Tubiolo, Esq.  
Bryan S. Kornfield, Esq.  
Hirsch and Tubiolo, PC  
RESPONDENTS**

---

**On Petition for a Writ of Certiorari to  
The New York State Supreme Court,  
Appellate Division: Fourth Department.**

---

**PETITION FOR REHEARING**

---

**James R. Caputo, M.D.  
Petitioner, pro se  
4278 Lafayette Road  
Jamesville, N.Y. 13078  
(315) 382-8778  
jrcaputo@yahoo.com**

**RECEIVED**  
**APR 21 2026**  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**TABLE OF CONTENTS**

Page

TABLE OF AUTHORITIES ..... ii

PETITION FOR REHEARING ..... 1

REASONS FOR GRANTING REHEARING ..... 1

*Denial Unclear*.....1

INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR  
CONTROLLING EFFECT.....4

*Hidden Nepotism and Judicial Conduct*.....4

*New York Attorney General Has Not Yet Weighed In*.....7

OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED.....7

*Clearly Erroneous Ruling*.....7

*Merits of the Case/"Right for Any Reason"*.....8

CONCLUSION .....9

TABLE OF AUTHORITIES

Page(s)

CASES

*Caputo v. Holt et al* (Docket No: 76).....3

*Williams v. Pennsylvania*, 579 U.S. \_\_\_\_ (2016).....6

*Liteky v. United States*, 510 U.S. 540 (1994).....6

STATUTES

1. CPLR 3212(b).....1, 3

2. CPLR 4312(b).....1, 3

3. CPLR 5712(b) and (c).....1, 2, 3, 4

4. Federal Circuit Rule 36.....2

5. Federal Rule of Civil Procedure 52(a).....7

6. Supreme Court Rule 44.2.....1, 10

## PETITION FOR REHEARING

Petitioner pro se, James R. Caputo, M.D. respectfully petitions for rehearing of this Court's March 23, 2026 Order rejecting his petition for a writ of certiorari.

### REASONS FOR GRANTING REHEARING

Rule 44.2 authorizes a petition for rehearing to be filed within 25 days after the date of the order of denial...*"but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."*

#### *Denial Unclear*

Petitioner's original *petition* and *brief in reply* explained why this Court's review was warranted in the first instance—namely, the existence of unambiguous and repeated (constitutional and SCOTUS level) abuses of NY CPLR 4312(b) and CPLR 5712(b) and (c) by the Monroe County (NY) Supreme Court and the NY Appellate Division: Fourth Department, (respectively), to outright deny justice in a legal malpractice lawsuit, and how each of these statutes is wholly out of line with their Federal counterparts, thereby making them susceptible to the very misuse documented in this matter.

The trial court exploited both CPLR 4312(b) and CPLR 3212(b) (for summary judgment motions) by purposely cherry picking and spinning selected facts of the case in favor of the defendants (who are fellow attorneys and colleagues), while manifestly omitting other more substantial facts and evidence proving petitioner's case. Over

and against considerable material evidence to the contrary, the lower court summarily dismissed the legal malpractice lawsuit citing no attorney-client relationship existing on the date of alleged negligence, when this was patently incorrect and wholly unsupported by anything in the record. The fact that this relationship did indeed exist on the date in question (May 19, 2014) is the lynch pin fact that needed to be directly undermined by the court to deny justice. All other components required for legal malpractice were clearly established and equally unimpeachable, leaving no escape for the defendants.

Yet, despite plaintiff providing five separate proofs based upon material evidence and the law, where each example individually established the existence of the attorney-client relationship on the date in question, the Appellate Division chose to rubberstamp the lower court's clearly erroneous ruling without having to answer a single argument from appellate papers that completely invalidated the entire decision being challenged. This body of appellate judges unanimously remained silent against unbeatable (plaintiff-appellant) argument, against the law, against the record, against the facts and against justice, all because the abominable CPLR 5712(b) and (c) allows them to, with their motives being anything but upright and honorable. If the appellate division was held to the federal standard seen in *Federal Circuit Rule 36*, then it would have been impossible for them to have pulled off this dupe, at the behest of whoever or whatever.

As painstakingly outlined in petitioner's papers before SCOTUS, both New York courts violated petitioner's Constitutionally protected due process rights of

equal protection of the laws, the right to be heard and the right to an impartial tribunal and committed judicial misconduct in doing so. These were not mere mistakes but flagrant and deliberate acts by multiple officers of the Court who willfully and collectively chose to breach and ignore everything possible within their power to deny justice.

These were not isolated acts either. In his *brief in reply* to SCOTUS, petitioner disclosed a second (ongoing) civil lawsuit (NY E2024000703 / CA 24-01298) involving a real-property transaction and the deeds of another scheming attorney against this petitioner who (again) possessed a royal flush level legal action only to witness these same two courts engage in the exact same misapplication of CPLR's 4312(b), 3212(b) and 5712(b) and (c) to utterly deny justice.

How these courts behaved with the facts and the law on two separate occasions is likened to a physician listening to an earnest, eager and even desperate patient lay out their entire history of illness only for that doctor to then pick out the portions that enable him/her to *intentionally* deny the patient a rightful cure, (while making it look good on paper for those who wouldn't know better), when he/she possessed the knowledge and skill the whole time to grant the sought after relief. Repugnant is too good a word for what these courts intentionally did to a respectful party seeking deserved justice, let alone to the Constitution itself. This whole matter (on these presented issues alone) is well within the wheelhouse of SCOTUS to have granted the petition for writ of certiorari.

## INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR CONTROLLING EFFECT.

### *Hidden Nepotism and Judicial Conduct*

After the appellate division once again used CPLR 5712(b) and (c) to deny justice a second time, a motion for reargument was made in that case where the question of motive had to be addressed. This powerful paper was an index document in petitioner's *brief in reply* to SCOTUS as a direct tie-in to the Constitutional abuses being named in this petition. The question that still begs to be answered is this. What would compel two separate trial court judges, two separate (five justice) appellate division panels (and even the Court of Appeals) to so brazenly ignore and rule against the obvious facts, law and evidence in two winning cases?

Certain unseemly facts were required to be disclosed in that motion for reargument for the fullness of both matters to be known and for justice to ultimately be served. Of them is the current Deputy Chief Administrative Judge for all New York Courts Outside of New York City. This man has been present as an administrative judge in the background of every single court appearance and engagement for this petitioner, including these two cases as well as nearly forty appearances in family court since 2012, where petitioner had his fatherly rights to his five children violently removed from him over the course of several years, (much to his distress and incredulity). It wasn't until petitioner learned in 2021, (after nine years of outright abuse by Family Court to the level of impoverishment and homelessness), that this prevailing administrative judge (with supervisory power

over all judges and magistrates) in every single instance was his venomous ex-wife's first cousin – someone petitioner had never met.

You cannot get two courts on four occasions with twelve judges to unanimously and unprofessionally rule against the facts and law at the expense of justice (and at the risk of misconduct) for any old reason. There had to be a concerted effort for this to happen. In reargument papers on that matter, involving the very same courts and ill-begotten deeds associated with this present matter, a list of theoretical reasons was laid out including but not limited to judges bailing out fellow attorneys/colleagues (for a host of reasons) to the court's history of disdain for pro se litigants to undue influence by a source outside of the case itself.

When you have two slam dunk civil cases and forty family court appearance go south over and against the blatantly obvious facts and law, then the first cousin of your life's adversary being the literal boss of each court (where you've encountered flagrant misconduct and injustice) begins to make sense. The reargument in that second case demanded that any justice who was unduly influenced by this man must therefore recuse themselves from any further involvement in the case.

As of today, that motion for reargument, filed on March 3, 2026, remains pending. Additionally, the New York State Commission on Judicial Conduct has launched an investigation into the matter under file numbers 2026/R-0112, 0113, 0114. The judicial impropriety in these two cases has direct application to SCOTUS and further establishes why this petition should be granted on rehearing.

In *Williams v. Pennsylvania*, 579 U.S. \_\_\_\_ (2016), The Court held that a judge's failure to recuse themselves when they had prior significant personal or professional involvement in the case violates the Due Process Clause. While this involved a state supreme court justice, the principle applies to any adjudicator with a conflict of interest, including those at the appellate level and beyond. This case established that if an administrative judge is under pressure from their agency to rule in a certain way, it creates a "constitutionally unacceptable potential for bias".

In *Liteky v. United States*, 510 U.S. 540 (1994), The Court held that the "extrajudicial source" doctrine is key in deciding recusal cases. A judge's bias must stem from an outside source rather than from the proceedings themselves. This is significant because if a supervisory judge's influence over a lower court judge is based on facts outside the case record or personal animus, it would be a basis for recusal or reversal. And with there being zero facts, evidence or applicable laws to have directed these courts on two separate occasions to develop a jurisprudential bias for adjudication against this petitioner, then their bias must have been external. And with a negative external influence the magnitude of the Deputy Chief Administrative Judge for the Courts Outside New York City bearing down with a purpose to deny this particular litigant justice, you have a meritorious recipe for SCOTUS to step in and get involved because of this very substantial circumstance having a direct and controlling effect on this case at bar.

## ***New York Attorney General Has Not Yet Weighed In***

Additionally, because this petition before The United States Supreme Court involves the derelict application of state statutes inclined to abuse, along with the statutes themselves being utterly disparate from their equivalent Federal Standards, the New York State Attorney General was apprised of these issues. However, there has been no response to the otherwise serious deficiencies involved with these statutes which were then artfully abused by these Courts. Someone within the Court system has a responsibility to address these statutory shortcomings and how they were intentionally used to improperly deny justice in two separate provable instances. This too proves to be a meritorious reason for The Supreme Court to grant the petition on rehearing.

## **OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED**

### ***Clearly Erroneous Ruling***

As established by every legal standard and all material evidence presented proving petitioner's case(s), the decision by these courts to rule otherwise was *clearly erroneous* under Federal Rule of Civil Procedure 52(a), meeting every standard for SCOTUS to grant the petition and overrule on this one issue alone.

1. *Lack of Substantial Evidence:* The findings of the trial court in the present matter specific to the attorney-client relationship establishment date, and the summary affirmance by the appellate division are both unsupported by substantial, credible evidence in the record. Other than the defendants saying

so, there is absolutely nothing else. There is no retainer agreement or notice of engagement or anything for the court to have rested their conclusion on.

2. *Implausibility:* The trial court's finding and appellate division's affirmation of no attorney-client relationship on the date of alleged negligence is illogical and implausible in light of the record as a whole. Further, the material-based arguments presented to each court firmly established the existence of the attorney-client relationship, all of which they chose to ignore as if it (too) did not exist. What standard is this and is it suitable to The U.S. Supreme Court?
3. *Misapprehension of Evidence:* For whatever reason or motivation, one thing is clear. The lower court fundamentally misunderstood the effect or significance of the evidence presented regarding the establishment of the attorney-client relationship on or before May 19, 2014. Five independent proofs presented by petitioner prove this point.
4. *Definite Conviction of Mistake:* The Supreme Court has been provided all facts, evidence and law to be firmly convinced that the trial judge and the appellate justices made a mistake in this matter.

### ***Merits of the Case/"Right for Any Reason"***

The U.S. Supreme Court can rule on the merits of a case alone if lower courts erred on facts, evidence, and law. SCOTUS can correct legal errors *de novo* and may overturn rulings when they rest on faulty reasoning or ignored evidence. Such is the case here. Under these auspices, the Supreme Court takes on several potential roles.


1. *Appellate Review Scope*: While SCOTUS primarily reviews questions of law, it can review lower court factual findings, especially if they are "clearly erroneous". As presented, this standard has been met.
2. *Reversing Lower Courts*: If a lower court misinterpreted the law, applied the wrong legal standard, or disregarded evidence, The U.S. Supreme Court can reverse the judgment based on these errors alone.
3. *"Right for Any Reason"*: Appellate courts, including SCOTUS, can affirm a lower court decision for different reasons than those given by the lower court, but they can also reverse if they believe *the entire lower decision was fundamentally wrong*. There can never be a more fundamentally wrong case or decision than this one. Equally, maybe, but never more.

## CONCLUSION

For the foregoing reasons, and those stated in the petition for a writ of certiorari, the Court should grant the petition upon rehearing, review the judgment below and finally render justice. Missing on this one defeats the whole purpose for why any individual citizen in this great nation is afforded the opportunity to be heard by the highest Court in the land when they have been wronged to such a level.

April 17, 2026

Respectfully submitted,

  
James R. Caputo, M.D.  
Petitioner pro se  
4278 Lafayette Road.  
Jamesville, NY 13078  
(315) 382-8778

**CERTIFICATE OF PETITIONER**

Pursuant to Rule 44.2, I, James R. Caputo, petitioner pro se, hereby certify that the petition for rehearing is restricted to the grounds specified in Rule 44.2. I further certify that the petition for rehearing is presented in good faith and not for delay.

April 17, 2026



---

James R. Caputo, M.D.

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