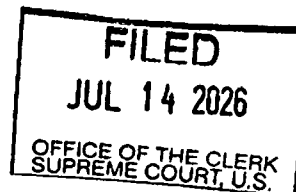


26-5214
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



IN RE JAMES R. CAPUTO, M.D.

PETITIONER

v.

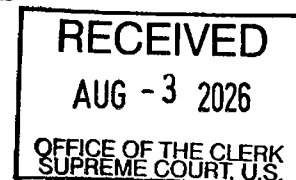
RICHARD S. TUBIOLO, ESQ.
BRYAN S. KORNFIELD, ESQ.
HIRSCH AND TUBIOLO, PC

RESPONDENTS

*ON PETITION FOR A WRIT OF MANDAMUS
TO THE NEW YORK STATE SUPREME COURT,
APPELLATE DIVISION: FOURTH DEPARTMENT*

PETITION FOR WRIT OF MANDAMUS

James R. Caputo, M.D.
Petitioner, pro se
4278 Lafayette Road
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QUESTIONS PRESENTED

Question 1: How is the Monroe County, NY Supreme Court legally permitted to: 1) undermine its own citation of controlling case law; 2) contradict its own factual determinations; 3) cite zero supporting evidence; and 4) completely ignore the American Bar Association standards, the extensive opposing legal argument and the material proof from Plaintiff, when reaching the unsubstantiated legal conclusion that an attorney-client relationship *did not* exist between Petitioner and the Respondents on the date of negligence in this legal malpractice lawsuit?

Question 2: How is the New York Appellate Division: Fourth Department permitted to remain silent on the issue of attorney-client relationship in this legal malpractice lawsuit after: 1) the trial court manifestly evaded the evidence presented by Petitioner which unmistakably established this attorney-client relationship (and duty) on the date of negligence; and 2) the Appellate Division was specifically petitioned to answer what the lower court ignored after presenting five independently incontestable proofs confirming the existence of this pivotal fact?

Question 3: After Petitioner sustained: 1) the trial court's manifest disregard of the material facts and applicable law; 2) the Appellate Division's unpermitted silence and intentional misuse of NY CPLR § 5712; 3) The New York State Court of Appeals' indifference and silence to these obvious adjudicatory and Constitutional transgressions; and 4) the outright rejection by the United States Supreme Court after distinct Constitutional Due Process violations were handed to them on a silver platter, why is this representative hierarchy of Courts running cover for these (proven) guilty Defendants, at the expense of the truth, justice, jurisprudence, the judicial code of ethics and of the esteemed Institution of Law?

Question 4: What recourse does a United States citizen have after the entirety of the Court system has demonstrated itself to be compromised through the repeated and inexcusable failure of duty to the clearly identifiable facts, law and material evidence proving his civil lawsuit?

LIST OF PARTIES

Petitioner, James R. Caputo, M.D. ("Petitioner"), is a New York resident, not a corporation, proceeding *pro se* and *in forma pauperis* and is the Plaintiff, Plaintiff-Appellant, and Appellant in the cases listed below.

Respondents Richard S. Tubiolo, Esq., ("Tubiolo"), Bryan S. Kornfield, Esq., ("Kornfield") and Hirsch and Tubiolo, PC ("HT, PC") are New York residents and a New York Corporation, respectively, and are the Defendants, Defendant-Respondents, and the Respondents in the cases listed below.

RELATED CASES

1. **Court :** Supreme Court of the State of New York: Monroe County

Docket # : I2017005512

Caption : James R. Caputo, M.D. v Richard S. Tubiolo, Esq.,
Bryan S. Kornfield, Esq., Hirsch and Tubiolo P.C.

Judgment Date of Entry : July 21, 2023

RELATED CASES - continued

2. **Court :** Supreme Court of the State of New York,
Appellate Division: Fourth Department
Docket # : CA 23-01338
Caption : James R. Caputo, M.D. v Richard S. Tubiolo, Esq.,
Bryan S. Kornfield, Esq., Hirsch and Tubiolo P.C.
Judgment Date of Entry : March 14, 2025

3. **Court :** State of New York Court of Appeals
Motion # : 2025-302
Caption : James R. Caputo, &c., v. Richard S. Tubiolo, &c., et al.
Judgment Date of Entry : October 21, 2025

4. **Court :** United States Supreme Court - Petition for
Writ of Certiorari
Case # : 25-6673
Caption : James R. Caputo, &c., v. Richard S. Tubiolo, &c., et al.
Judgment Date of Entry : March 23, 2026

5. **Court :** United States Supreme Court - Petition for Rehearing
Case # : 25-6673
Caption : James R. Caputo, &c., v. Richard S. Tubiolo, &c., et al.
Judgment Date of Entry : May 18, 2026

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

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully petitions for a writ of mandamus to the United States Supreme Court for the case to be remanded to the New York State Supreme Court, Appellate Division: Fourth Department to perform its duty owed to Petitioner.

OPINIONS BELOW

The opinions of the United States Supreme Court, in its Orders rejecting Petitioner's Petition for Writ of Certiorari and Petition for Rehearing, appear at Appendix: Volumes 1 and 2 to this petition and is reported at <https://www.supremecourt.gov/search.aspx?filename=/docket/DocketFiles/html/Public/25-6673.html>

The opinion of the highest state court to review the merits, [the New York State Court of Appeals (No. 2025-302)], in its Order denying Petitioner's Motion for Leave to Appeal, appears at Appendix: Volume 3 to this petition and is reported at <https://www.nycourts.gov/ctapps/Decisions/2025/Oct25/DecisionList102125.pdf>.

The opinion of the Supreme Court of the State of New York, Appellate Division: Fourth Department (CA 23-01338) in its Memorandum and Order denying Petitioner's Appeal, appears at Appendix: Volume 3 and is reported at: <https://www.nycourts.gov/courts/ad4/Clerk/decisions/2025/0314T1500/pdf/0800.pdf>

The opinion of the Supreme Court of the State of New York, Monroe County (I2017005512) in its Decision, Order and Judgment granting Respondents' summary judgment dismissing Petitioner's complaint for legal malpractice appears at Appendix: Volume 4 to this petition and is reported at:

https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=_PLUS_Q7vYqQLA0Xuc6UCLCgPvw==

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a) as there are no other adequate remedies or legal avenues available to compel the mandatory duty owed to Petitioner by the Courts.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The All Writs Act, 28 U.S.C. § 1651(a), provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."
2. Article VI and the 14th Amendment, Section I of the U.S. Constitution
3. Federal Statute FRCP 52(a) – Findings and Conclusions by the Court
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CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED – continued

6. ABA Model Code of Judicial Conduct:

CANON 1

Rule 1.1 : Compliance with the Law

Rule 1.2 : Promoting Confidence in the Judiciary

Rule 1.3 : Avoiding Abuse of the Prestige of Judicial Office

CANON 2

Rule 2.2 : Impartiality and Fairness

Rule 2.3 : Bias, Prejudice, and Harassment

Rule 2.4 : External Influences on Judicial Conduct

Rule 2.6 : Ensuring the Right to Be Heard

Rule 2.15 : Responding to Judicial and Lawyer Misconduct

7. ABA Model Rules of Professional Conduct:

Rule 1.1 – Competence

Rule 1.2 – Scope of Representation & Allocation of Authority Between
Client & Lawyer

Rule 1.3 – Diligence

Rule 1.4 – Communications

Rule 1.16 – Declining or Terminating Representation

Rule 1.18 – Duties to Prospective Client

Rule 8.3 – Reporting Professional Misconduct

Rule 8.4 – Misconduct

INTRODUCTION

This Petition for Writ of Mandamus concerns a still pending and unsettled legal malpractice lawsuit between Petitioner, a medical doctor, and Respondents, the two attorneys (along with their firm) who negligently represented the doctor back in May of 2014 against professional misconduct charges, thereby costing him his medical license and livelihood. This case is a true and dishonorable example of what can happen when a pro se litigant is eventually able to unequivocally prove legal malpractice with special circumstances of professional misconduct and ethics violations against two attorneys, only to see compromised courts at all levels run cover for these offenders through misuse of the court's adjudicatory directives and by furtively leveraging the complexity of the legal system itself against a pro se litigant who they perceived as oblivious to such schemes, while being presumed incapable of further navigating the law and courts. In other words, the evidence proves that the courts weaponized the judicial process against a self-representing civil litigant to stifle the truth, protect the guilty and deny justice. (with emphasis)

At the supreme court level, the judge was clearly driven to protect these Respondents at all costs and was willing to violate the rules of evidence, make up new laws, ignore clear legal standards, contradict their own case law citations, cherry-pick the facts, misuse substandard statutes directing court decisions and violate multiple provisions of the judicial code of conduct when she ruled in such a way as to think Petitioner wouldn't see it all.

Then, when an unimpeachable appeal sustaining Petitioner's entire case was

made to the Appellate Division, where this court was compelled to answer a core question regarding the establishment of the attorney-client relationship which was spoiled by the trial court, the Appellate Division also chose to misuse the statutes directing its own decisions by remaining deafeningly silent as it affirmed the lower court's neglectful Judgment when it was legally compelled to verbally rule on this question. The Appellate Division is not permitted to remain silent on this level of issue directly asked of it. This court could not even acknowledge the question whatsoever because there was no way of running cover for the Respondents once the issue was formally brought into the light. There is no other explanation given the blatancy of the dereliction of duty that has occurred here.

The multiple justices on this court were (likewise) willing to forgo the material evidence and established legal standards, and to also violate multiple provisions of the judicial code of conduct in order to further protect these defendants and stifle justice. After the statutes abused by these two courts were identified and the matter presented to the New York State Court of Appeals, a one-word negative decision was all they could muster as the top court in the State upon being asked to correct the manifest error from these two lower courts.

The case was then brought before the United States Supreme Court as the adjudicatory body of last resort. The argument and Constitutional application for Petitioner's case was sharpened further and submitted in unimpeachable form only to be rejected twice after an unassailable Petition for Rehearing was also submitted.

As far as the form and function of the U.S. Supreme Court is concerned, its utter rejection of this matter is a failure of duty. The indecorous reasons why and the undignified connections involved are readily discerned but essentially irrelevant. This paper is what results when all courts up the chain of jurisprudential command unmistakably fail to perform what they are appointed to do, (for whatever purpose), to the detriment of the facts, the law, truth, justice and the one litigant with clean hands.

STATEMENT OF THE CASE

A. *Legal Malpractice and Professional Misconduct is Clear*

The Respondents are attorneys who specialize in defending medical doctors against (both) malpractice and charges from the New York State Office of Professional Medical Conduct (OPMC), who operate under Public Health Law (PHL) § 230. Prior to meeting Petitioner in May of 2014, these respondents had decades of experience with this law and State agency, the latter of whom have been long accused of operating outside of certain Constitutional due process protections when prosecuting NY physicians with impunity.

On May 16, 2014, Petitioner called and spoke with Respondent Richard Tubiolo, Esq. on the phone in the late afternoon for no less than twenty minutes. During this conversation, Petitioner explained that he had been subjected to twelve years of unrelenting investigation and malicious prosecution by OPMC against his pristine practice history, (all at the hands of unscrupulous men in his hospital department with direct connections to the Department of Health), and with just six months left to serve on a three-year tolled probationary term from a dubious 2008

conviction, (illustrating how onerous these terms were to satisfy), this agency was once again prosecuting him on an aggressive timetable with an upcoming hearing on a new set of disingenuous charges scheduled for May 29, 2014.

Petitioner explained that after twelve years of being immersed in the OPMC prosecutorial world, he had initially hoped to defend himself against this latest OPMC ruse. However, after a pre-hearing conference was held the day earlier on May 15, 2014, where Petitioner was treated with incredible hostility by the ALJ overseeing the proceeding, and after learning on May 16, 2014 through his malpractice insurance carrier that his defense fund could only be accessed by an attorney, he had no other choice but to retain a lawyer. Petitioner asked for a list of affiliated counsel, which contained the firm he was now calling. Petitioner explained to Respondent Tubiolo that he had compiled a complete set of documents which were to be used as part of his defense.

Tubiolo agreed to take the case, disclosed his email and asked that Petitioner forward all his documents along with the statement of charges. Because it was late Friday afternoon, he would have to call on Monday morning as to when an in-person meeting was possible, given his schedule.

On late Sunday, May 18, 2014, Petitioner emailed Respondent Tubiolo all his privileged documents and made mention of having his Answer to the charges almost complete with plans on submitting it the next day, pending his input.

On Monday morning, May 19, 2014, Respondent Tubiolo emailed Petitioner stating that his documents were forwarded to a few other attorneys seeking their

input and that an in-person appointment was possible the next day on May 20, 2019. Just before 1pm on May 19, 2014, Petitioner responded to Respondent Tubiolo where he specifically asked about the Answer and stated that the hearing was ten days away. Tubiolo directed Petitioner to keep working on the Answer and bring everything to the meeting on the 20th. Petitioner trusted that he know what he was doing but still, at 4:30pm on May 19th, Petitioner emailed Respondent Tubiolo a draft copy of his Answer to the charges.

On the afternoon of May 20, 2014, Petitioner met with both Respondents at their firm in Rochester, NY, having driven seventy miles from where he lived in Syracuse. There was also another attorney there from outside the firm who had been recruited to assist in the defense. There was no retainer agreement or formal engagement document signed or entered into that day regarding legal representation since it had already been established prior to this meeting.

Knowing that the hearing was nine days away, there was extensive discussion about defense strategy with the absolute objective of retaining Petitioner's medical license against this latest administrative assault. Petitioner's documents contained previous and definitive responses to OPMC regarding the two cases being used in their prosecution, while multiple other mitigating documents and directly applicable factors all pointed towards Petitioner realistically obtaining this objective. Petitioner left this meeting upbeat at the prospect of having found a defense team with the right experience, skills and motivation to finally prevail against this agency who had broken every possible rule and caused multiple

precedents to be set through their baseless prosecution of Petitioner.

However, immediately after this initial meeting, and without any knowledge of Petitioner, Respondent Tubiolo made a direct phone call to the prosecuting attorney for OPMC, where they engaged in a conversation resulting in this prosecutor sending forth a draft for Petitioner's medical license surrender the next morning, while simultaneously filing a motion with the ALJ for Petitioner having defaulted on his Answer to the charges. Respondent Tubiolo did not forward Petitioner's Answer draft to OPMC on May 19th when it was sent but sent the exact same draft document at 5pm on the 20th, after his phone call setting up his client's surrender without his client's awareness.

Petitioner was never told about any of this by his attorneys, particularly the default on the Answer. He assumed that his new defense team was zealously advocating for him after taking the time to learn of his horrendous experience in the twelve years prior and supported by his outline of documents. Instead, in a most dishonest, sickening and shameful manner, these attorneys betrayed their client immediately after leaving their office.

Respondent Kornfield did write two separate responses to the ALJ as part of the obligatory defense to the motion for default. Yet, each response was written in such a way that they passed the proverbial buck of responsibility to Petitioner as one acting independently as his own counsel on the day which the Answer was due. They knew this was not true, (the emails prove it), on top of Petitioner specifically asking about the Answer three separate times in documented communications

(including sending a copy of Answer itself) all prior to when the Answer officially defaulted. These letters to the ALJ are in evidence and noticeably absent of any copy being sent to Petitioner, their client, about whom they were written.

Then, on May 27, 2014, after it was clear that this new team was putting forth a lousy effort (not privy to their already having sold him out to an impending license surrender and Answer default), and after having endured over a dozen years of multiple "professionals" holding lofty positions all behaving with utter dishonesty and criminal level neglect of the truth, law and medical science, Petitioner wrote a scathing letter to OPMC demanding that some semblance of law and order be instilled into these proceedings for once, since it had become apparent that the hearing would not be averted after the feeble efforts from his defense to that point.

On May 28, 2014, while driving again to Rochester for the final defense meeting before the hearing on the 29th, Petitioner was informed that the ALJ had declared his Answer *late* and in default and therefore the hearing will be penalty phase only, as the charges were deemed admitted. This was first time Petitioner had any idea that this was an issue, though it had been pending for eight days.

What was supposed to be a final defense strategy meeting to decisively defeat this lying, deceitful agency turned into a sell-job where Petitioner's new attorneys acted all dumbfounded as to how this could have transpired. Respondent Tubiolo then actually stated that despite the Answer default and the potential for hundreds of thousands of dollars in fines and possible felony charges, (which Petitioner would eventually learn were all bogus threats), the OPMC prosecutor was "*kind enough*"

to offer an option for license surrender, which he just so happened to have a draft copy for Petitioner to review right then and there. Petitioner was told that license surrender preserved the potential to be able to practice medicine in other states.

The blindsided nature of the Answer default combined with license surrender and serious threats otherwise, (while his attorneys had no other solutions), left Petitioner with little choice but to accept this surrender deal. It wasn't learned until after it was all over that the notion of preserving future practice opportunities in other states was simply untrue. In fact, Petitioner would learn that everything told to him and represented by these Respondent attorneys was untrue, unsavory and contrived to work against him from the minute he walked out the door of the first meeting and even the day prior..

All of what has just been described is wholly supported by the material record and became fully understood and appreciated by Petitioner upon discovery. In addition to the negligence of defaulting on the Answer for their client (and even for any prospective client, which these Respondents absolutely cannot elude) as the proximate cause of Petitioner losing his right to successfully defend the 2014 charges leading to the loss of his livelihood, these Respondents violated Rules 1.1, 1.2, 1.3, 1.4, 1.16, 1.18 and 8.4 of the ABA Model Rules of Professional Conduct when betraying their client by colluding with his adversary to his hurt and then covering up the rotten fruit of their (seemingly intentional) negligence. These are not mere suppositions but proven facts that have never been rebutted or refuted by the Respondents with anything but unsubstantiated words, if at all.

B. Courts Illicitly Protecting Guilty Defendants

Petitioner knew early on that something improper had occurred concerning the events and legal representation leading to the loss of his professional career after relentlessly fighting this lying agency for twelve years. Therefore, he decided to sue for legal malpractice as a pro se litigant in 2017, with every intention of proceeding via an adaptive proficiency regarding proper form and process within the courts to eventually prove his case through discovery and deposition testimony.

The case stagnated for a while after initial interrogatories and discovery documents were exchanged. Petitioner was still figuring out how the law, courts, papers, inquiries, evidence and legal arguments all interplayed. In 2021, Respondents petitioned the Court to step in and set a timetable for the case, thereby accelerating all components towards depositions. It was during preparation for deposition in April of 2022 when Petitioner discerned that Respondent Tubiolo had specifically withheld certain incriminatory emails from discovery that were immensely relevant to the eventual Answer default that cost him his medical license. Petitioner had finally uncovered the central component to the legal malpractice he had experienced and why these Respondents had so poorly represented him when he pleaded their utter lack of zealous advocacy as a cause of action in the lawsuit.

It was also in and around this time that Petitioner learned that he could motion the Court to modify his pleadings to best conform to the evidence, (even if newly discovered), which, in this case, clearly established the Answer default as the

central act of negligence necessary for legal malpractice. Petitioner would go on to learn of other deceitful actions by these defendants which were deliberate, engineered, and directly harmful to Petitioner's defense. This led Petitioner to further understand the criteria required for punitive damages to be sought and imposed by the court for the wanton dishonesty he would discover by these men.

Following all depositions, a Note of Issue was eventually filed in September of 2022. The Respondents then filed an extensive motion for summary judgment seeking dismissal of the case on December 30, 2022, with seven supporting affidavits and over eighty exhibits. Petitioner was given six weeks to respond to this massive document dump. On the deadline date of February 15, 2023, Petitioner uploaded to NYSCEF his memorandum of law in opposition and a cross-motion for summary judgment granting his original complaint and amended pleadings, along with 103 exhibits. An email with all documents was sent to the Respondents, who then filed a letter with the court seeking additional time given the volume of Petitioner's filing, making mention of the 103 exhibits. All components required for Petitioner indisputably proving legal malpractice on motion for summary judgment to the prima facie standard of entitlement were openly addressed and proven with material evidence in the record.

On July 21, 2023 the Monroe County Supreme Court granted the defendants' summary judgment and dismissed the case on the primary basis that an attorney-client relationship did not exist on the date of alleged negligence, which would have been May 19, 2014, and therefore, the amended pleadings were also rejected. The

judge cited no basis for her decision and completely disregarded the multiple ABA guidelines cited by Petitioner in his Memorandum for how this relationship is defined and was unequivocally established on May 19, 2014, not to mention the inescapable duty owed to Petitioner as a *prospective client*. Additionally, this judge's summary dismissal under the principle of "*no triable issue of fact*" was despite Petitioner introducing the Respondents' Professional Services Billing Statement which detailed 5.5 billing hours for the dates of May 16, 2014 and May 19, 2014, as the glaring evidence prohibiting such a ruling specific to the attorney-client relationship. This proof has never been rebutted or even addressed in any paper submitted by Respondents.

The judge also ruled Petitioner's cross-motion for summary judgment as untimely (dismissing altogether that it was also an opposition paper) and therefore rejected it without citing a single statute or relevant case law as her basis. The lower court's entire Decision relied on the feeble New York statute CPLR § 4312(b) to cherry pick the facts the court "*deemed essential*", (without any duty to the law), to suit the predetermined end of running cover for these defendants, instead of being held to the Federal Standard found in FRCP 52(a) where "*the court must find the facts specially and state its conclusions of law separately.*" The lower court's disregard of Petitioner's overabundance of prima facie evidence proving his case also sustains the fact that this court intentionally misused the nebulous language found in CPLR § 3212(b) (where the court relies on facts and law supposedly contained in each party's papers without having to cite them) to so effortlessly

dismiss the case rather than the State Supreme Court being held to the Federal Standard for summary judgments found in FRCP 56(a), which says "*the court should state on the record the reasons for granting or denying the motion.*"

To add insult to injury, there was an inexplicable failure of Petitioner's 103 exhibits to upload to NYSCEF despite being done in separate batches, which went unknown to Petitioner until settling the record on appeal. The court knew of and patently ignored their absence despite being mentioned over 340 times in submitted papers and the Respondents writing the court that they had possession of them. Notwithstanding all the lofty case law cited by the court in its Decision that speak to the court's utter duty to protect the interests of the non-moving party in a summary judgment motion, the court unashamedly flouted these very principles with how it treated an abundance of material proof still in evidence which prohibited it from dismissing the case under CPLR § 3212.

In summary, the Monroe County Supreme Court demonstrated a manifest disregard to the facts, law and truth, and by doing so, violated multiple components of Canons I and II of the ABA Model Code of Judicial Conduct, found also under 22 NYCRR §100.1, §100.2(A), §100.2(B), §100.2(C), §100.3(B)(1), §100.3(B)(4), §100.3(B)(6), §100.3(B)(7). The evidence is clear and convincing.

This matter was then appealed to the Appellate Division: Fourth Department where the core component of attorney-client relationship was front and center. Since the lower court refused to answer and outright ignored the multiple ABA guidelines establishing the relationship in this matter when it ruled otherwise, the

Appellate Division was asked to settle the issue. This is their duty. In addition to proving the existence of an attorney-client relationship on the date in question, Petitioner laid out the complete case for legal malpractice, dismantling any contention that he would not have prevailed in his 2014 OPMC Hearing to the extent of retaining his license but for the Respondents' negligence and professional misconduct as the proximate cause.

Rather than stepping up and acting as the superior judicial body, the Appellate Division resorted to the same base level performance as the lower court and decided to remain silent on core matters of fact, law and justice. They too misused the feeble New York Statute that directs Appellate Division Decisions, particularly if they are choosing to affirm a lower court without having to say a word as to why. And when that lower court decision is a corrupted one, and there is an agenda up the chain of courts to continue to run cover for these Respondents, then what better rule of civil procedure could the Appellate Division have available to allow them to wordlessly affirm the ongoing concealment (especially against a pro se litigant) than CPLR § 5712(b) and (c), which are linguistic abominations when compared to the sincere and uncomplicated legal directives in the Federal statutory equivalent, Federal Circuit Rule 36, which reigns supreme pursuant to Article VI of the Constitution. The Appellate Division chose to remain silent on a core legal issue for the case after the lower court did the same, thereby refusing to answer the Questions posed it. They too stand in violation of each ethical standard for judicial conduct as that of the trial court judge.

The case was then brought before the New York State Court of Appeals where the Constitutionality of these three NY statutes abused by the courts was addressed. It was at this time that another hidden but substantial factor was disclosed in this matter. This would be the constant presence of a certain high-ranking administrative judge in the background of all court matters involving Petitioner where there would be a motivation on his part to negatively influence any outcome. This would be the first cousin of Petitioner's ex-wife, the latter of whom inexplicably commanded the family court system from 2010-2021 with "mysterious expertise" through dozens of appearances to methodically deprive Petitioner of his fatherly rights to their five children, while burying him in unwarranted debt. This was until this cousin's rank in the courts was discovered in 2021 and Petitioner was able to turn impossible tables in Family Court upon exposure of this relationship. The one-word denial of Petitioner's appeal to the NY Court of Appeals just proves that there is no interest in justice when it comes to certain players infecting the process in the background and/or to certain defendants having rank enough somewhere for even the highest court in the State to hold serve on their behalf.

This matter then found its way to The United States Supreme Court where each of these New York Statutes was undone against their federal counterparts and exposed for how all were used by the New York courts to violate Constitutionally protected due process rights. In other words, these statutes enable the courts to cheat and the courts did indeed cheat thereby.

Every possible angle and argument was made to The United States Supreme Court regarding the Constitutional repugnancy of these laws, the illicit behavior of all three New York Courts to deny justice, this background administrative judge, as well as asking The Court to rule on the matter de novo, which falls within its duty. After a compelling *Petition for Writ of Certiorari* and an even more persuasive *Petition for Rehearing*, where the enormity of what this case represents as far as jurisprudential impropriety was laid bare, the likes of which SCOTUS was ordained to rule upon, not one judge found these unmistakable violations meritorious for correction. Is The United States Supreme Court too running cover for these Respondents? What other explanation is there? And what unifying factor could amalgamate all these parties to clearly act against the facts, law, Constitution and thus, justice? Do lawyers and/or judges really flagrantly violate their respective duties and expose themselves to outright misconduct in order to protect one of their own? Doctors don't do this when another is a shame upon the profession. Is this a lawyer thing? Or is it a lodge thing? For sure it is an unlawful and dishonorable thing.

"*We the people*" means any and every United States citizen, including Petitioner, and is not restricted to corporations only; nor did the District of Columbia Organic Act of 1871 secretly alter, diminish, or rewrite the Constitutional rights of individual citizens. Petitioner is therefore afforded and owed the same protections as any litigant appearing before this or any Court.

REASONS FOR GRANTING THE WRIT

A. *No Other Adequate Alternative Remedy Available.*

The legal malpractice case was proven to the prima facie standard of entitlement before the Monroe County Supreme Court, only to see this court abandon its duty to the material facts and to the law when it baselessly declared there to be no attorney-client relationship on May 19, 2014, over and against the extensive legal standards presented which state otherwise. When this reversible error was appealed to the Appellate Division and addressed in the Question/Answer format required by the Court, these same applicable legal standards establishing the attorney-client relationship were therefore posed to them for a definitive ruling and explanation. Yet, the Appellate Division also chose to abandon their duty to Petitioner's basic legal argument regarding the lower court's manifest error of declaring no attorney-client relationship since this was clearly the lynch pin behind these courts running cover for the Respondents. And with compelling petitions for writ of certiorari and rehearing being snubbed by SCOTUS, there is no other adequate alternative remedy than this petition for extraordinary writ of mandamus.

B. *The Appellate Division Has a Clear Duty to Perform the Act in Question.*

The Appellant's Brief established that the lower court was clearly erroneous regarding numerous aspects of its ruling, namely the attorney-client relationship. The Federal Standard through Federal Circuit Rule 36 on wordless affirmances makes clear that such rulings cannot be rendered when there is clear error in the trial court. The Appellate Division cannot ignore a central component of the lawsuit

that was ignored by the lower court. They are required to answer the questions posed it, particularly when the argument is unimpeachable, as is the case here. They cannot ignore the issue altogether as a means of avoiding its duty. But a court running cover for guilty defendants would most definitely ignore this issue since acknowledging it would paint them in a corner of not being able to explain it away. It matters not the motives behind these Courts, including SCOTUS, as to why there has been a wholesale avoidance of doing what they are commissioned to do. The duty persists regardless of the compromised individuals currently appointed to uphold the duty.

C. Petitioner Has a Clear and Indisputable right to the relief.

The entire case history above is not only true but has been materially proven in all papers, only to see every court up the chain of command flagrantly disregard the facts, the law and their antecedent court's malfeasance. Petitioner has spent an ungodly amount of time repeatedly trying to convince each of these courts to simply do their jobs, only to see them all mockingly blaspheme their respective duties.

When this case is thoroughly examined, every defense offered by the Respondents was completely void of any proof and/or completely defeated as having been disingenuously offered. An example of the latter involves every single "expert" affidavit introduced by the defense where each had pertinent documents withheld from their purview which would have precluded them from being able to honestly tender the same conclusion. The entire defense has repetitiously claimed no attorney-client relationship over and against the independent examples proffered by

Petitioner, while never once addressing any of it or producing any retainer or material evidence to overcome the multiple proofs against this position. Nor have the Respondents ever refuted the Professional Services Invoice to Petitioner's malpractice insurance company for their work on his case which reveals a combined 5.5 billing hours for May 16, 2014 and May 19, 2014 where the described services included review of the statement of charges against Petitioner in 2014. On page 2 of the statement of charges, it cites PHL § 230(10)(c), which directs an Answer to the charges be submitted no less than ten days prior to the start of the hearing. The Respondents did not need this statutory reminder as attorneys steeped in familiarity with this law. They knew full well that the Answer was due on May 19, 2014 and permitted the default to happen.

Petitioner has more than proven attorney-client relationship, negligence, proximate cause, and the actuality of a far better outcome in May of 2014, all while the Respondents have remained silent about all of it, yet able to still prevail via the violations spelled out in this (and every previous) paper by the courts involved with this matter. If the courts choose to remain silent to the questions asked of them, then they must not have an answer. Petitioner has clean hands and has nothing more to prove.

EQUITY LAW AND DEFAULT VICTORY

A. Fiduciary Compact

By each of the courts in this matter behaving outside of their designated duties to purposely deny justice, they did so at the expense of Petitioner's

Constitutional due process rights to be heard by an impartial tribunal and his right to equal protection of the laws. The Constitution is a fiduciary compact. It is a document that creates a trust relationship between the government and the people. In Equity Law, the oldest law on the books, it says this, *"If you don't have your own private trust established, you default. You become the unmanaged ward, the property sitting inside the public trust waiting to be administered."*

Petitioner is hereby establishing a properly structured private express trust between all parties in this matter, including the courts themselves, based on faith, trust, truth and honor. And given these standards, each court is in default of this trust relationship.

Petitioner presented and verified with material evidence on the record, to the prima facie standard of entitlement, the following decisive components to his claim of legal malpractice with special circumstances for professional misconduct, all of which went unanswered and ignored by all courts *and* the Respondents. To reiterate, all nine of the following essential evidences that prove Petitioner's legal malpractice case have never been confronted or rebutted by the Respondents, while being ignored by the courts, despite it all being before them (with emphasis):

1. Four independent proofs using the American Bar Association standards which establish the attorney-client relationship on May 19, 2014, combined with the utter lack of any retainer or written agreement stating otherwise.

2. The full knowledge by these Respondents of Petitioner's May 19, 2014 Answer deadline by email queries and their billable hours reviewing the statement of charges and by their professional experience with the governing statute.
3. The negligence per se of Respondents upon their client (and to even a prospective client) for not having ensured or advised the Answer to be timely filed after three separate queries by Petitioner, especially when the Answer draft was in their possession *before* the default.
4. The deliberate betrayal of Petitioner by the Respondents when calling the OPMC prosecutor minutes after their in-person meeting to set their client up for a backdoor Answer default and eventual license surrender.
5. The deliberate withholding from their client the motion for default made by the OPMC prosecutor and Petitioner's complete exclusion from the process of addressing the ALJ.
6. The clear fact that but for the negligence of the Respondents, Petitioner would have had his day in court and would have successfully defended the charges to the extent of retaining his medical license.
7. To this effect, Petitioner indisputably proved that there was absolutely zero demonstrable misconduct with his management of the first clinical case used in the 2014 prosecution, with a successful outcome, a clean hospital QA analysis and agreement in the medical records from the patient's follow-up sub-specialist.

8. Petitioner also proved without question that the exaggerated claims of forgery and fraud pertaining to the second patient's medical record were merely an office charting error that was corrected in a manner that enabled OPMC's accusatory mindset to try and claim misconduct. When the before and after documents are examined side by side, (after having been subpoenaed from OPMC by the Respondents themselves) there is zero doubt that the original triage notes were simply recopied to provide room for a doctor's note, which was not possible by how the nurse originally mis-charted these entries.
9. And finally, Petitioner unequivocally proved that the nominal and unintentional probation violations he admitted to would have resulted in no more than an additional six months added to his probation. Both the Caselnova and Bakalov cases cited by both sides prove that minimal probation violations, (as committed by Petitioner), when the violator has otherwise been fully compliant with OPMC probationary guidelines and requirements, has precedence where six months of additional probation was the penalty imposed for violations which even exceeded that of Petitioner. The failure of Respondents' arguments using these cases lie in the fact that each of these men, who eventually lost their licenses, were egregious offenders of their probationary terms and requirements and therefore forfeited their access to minimal punishment. Such was not the case with Petitioner, who had not only complied with everything asked of

him, but also had thirty months of practice monitor reports to the State where every single patient encounter was reviewed and zero mistakes or errors were noted or reported. Only incompetent attorneys would have failed to defend their client on these unassailable arguments had a hearing on the charges transpired.

B. Undefeatable Proofs

Therefore, by having repeatedly proven all components necessary to claim victory in this matter for legal malpractice with special circumstances of professional misconduct warranting punitive damages, in the face of multiple courts simply forsaking their respective obligations to the facts and law, the following stipulation is set forth as conclusive to outcome.

Unless the United States Supreme Court can definitively answer or refute all nine proofs of victory above, or after rightfully remanding the matter back to the NY State Appellate Division: Fourth Department, unless the Appellate Division can answer or refute all nine proofs of victory above using the case record and applicable law, *and* the Respondents do the same themselves, all parties are therefore in default, where their respective previous decisions are null and void and victory for Petitioner is adjudged and secured. Much like failing to answer a statement of charges results in a default and the charges resultingly being admitted, these parties, (all courts included) have therefore equally defaulted on their obligation to answer these proofs by choosing to outright ignore them, thus resulting in an admission to the proofs and victory for Petitioner.

To be frank, four courts have chosen to cheat justice on behalf of the Respondents leaving this Petitioner with little choice but to invalidate their role and contribution in this matter by the Laws of Equity, which prioritize true intent and fairness. If this Court refuses to address this matter in the manner it deserves by either defeating the nine victorious proofs or remanding it back to the Appellate Division for same, or if after remand to the Appellate Division they too refuse to answer the proofs and the Respondents also continue to refuse to defeat the proofs of their malpractice and misconduct, any number of legal avenues available to Petitioner will be undertaken to collect damages incurred by Petitioner for lost income and a (conservative) 1x in additional monies for punitive damages.

C. *Damages Being Claimed*

Using a *fitting* lost annual average income of \$330,000 (which is less than what Petitioner was making before any of this invasion into his life and less than the median income for an Ob/Gyn) over a twenty-year period (Petitioner age 47-67) commencing in 2014, this equals \$6.6M. Adding a 1x punitive penalty for actions far exceeding the standard necessary for wanton deceit and dishonesty under JUD § 487, the total liability to these Respondents has become \$13.2M. This number might well be a justified monetary award for what Petitioner had done to him by these Respondents and then by the courts protecting them. It will never, however, erase the everlasting consequences put upon his family and children.

Any expected legal challenge to Petitioner's right to seek collections against the Respondents could result in one or more of the Courts involved with this matter

being subpoenaed to testify as to why they forfeited their duties to the facts and law by abusing the aforementioned statutes and by ignoring the obvious proof against the Respondents, which was expressly asked of them to rule on. Petitioner is through with expecting any court involved with this matter to act according to faith, trust, truth and honor, which is what this present trust relationship for Petitioner is founded on. Equity Law states, "He who shows up with clean hands and a lawful claim controls the outcome." This is where we are at. The outcome is clear. Victory is hereby claimed by Petitioner in the absence of legitimate jurisprudence and valid legal argument against what the record, facts and law have undeniably proven in all papers submitted by Petitioner, including this Petition for Writ of Mandamus.

CONCLUSION

Therefore, for the reasons, arguments and relevant law cited, this Petition for Writ of Mandamus should be granted and the Appellate Division compelled to answer the charges/proofs in this paper or answer the original Appellant's Brief and Reply Brief for the matter to be rightfully adjudicated and justice served in favor of Petitioner as all evidence and law command it to be and not by default, which is where this is headed should all parties continued to spurn the truth and their duty.

Date: July 25, 2026

Respectfully submitted,


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