In The

Supreme Court of the United States

LESLIE VALERIE MATLAW
(*d/b/a* LESLIE V. MATLAW, P.C.),
Petitioner,

versus

U.S. MAGISTRATE JUDGE JEFFREY COLE
(NORTHERN DISTRICT OF ILLINOIS),
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

LESLIE V. MATLAW, P.C.
28 East Jackson
Tenth Floor, #M-995
Chicago, IL 60604-2263
(312) 804-3527
Counsel for Petitioner

**N.b.*, Petitioner proceeds herein *pro se;* presently, she seeks both admission to this Court's Bar and already-admitted Counsel
*** Counsel of Record***

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QUESTIONS PRESENTED

Petitioner is an attorney licensed to practice before all state Courts of Illinois, the General and Trial Bars of the United States District Court for Northern District of Illinois, and before the Seventh Circuit Court of Appeals. In representing a Fair Housing Act Plaintiff, Petitioner was found to have engaged in misconduct, as set forth in published Orders of the District Court (which nevertheless imposed no monetary sanctions). On appeal to the Seventh Circuit, jurisdiction was found to be lacking under 28 U.S.C. §1291 for Petitioner's claims of injury, consistent with its previous rulings in *Bolte v. Home Insurance Co.,* 744 F.2d 572 (7th Cir. 1984) and *Clark Equipment Co. v. Lift Parts Manufacturing Co.,* 972 F.2d 817 (7th Cir. 1992). The Seventh Circuit is the only federal Court of Appeals to maintain that jurisdiction over such claims is never conferred by 28 U.S.C. §1291; to date, every other Circuit which has construed this issue allows attorneys to appeal published findings of wrongdoing, either always or under certain enumerated circumstances, such as those presented here.

Thus, in this context, this Petition presents the following questions: may an attorney appeal on her own behalf a District Court ruling which explicitly finds misconduct and harms her professional reputation, even though no monetary sanctions were imposed, and if so, under what circumstances?

LIST OF PARTIES

Petitioner is Leslie Valerie Matlaw, a Chicago attorney in solo practice doing business as Leslie V. Matlaw, P.C.

Respondent herein is The Honorable Magistrate Judge Jeffrey Cole of the United States District Court for the Northern District of Illinois, Eastern Division.

CORPORATE DISCLOSURE STATEMENT

Pursuant to *Supreme Court Rule 29.6*, Petitioner provides her corporate disclosure statement: LESLIE V. MATLAW, P.C. is a (solo law practice) professional services corporation which is 100% owned by its principal, Petitioner herein, LESLIE VALERIE MATLAW. Incorporated within the State of Illinois in early-2004 for the sole purpose of providing legal services and advocacy, no parent company exists, no shares have ever been issued, and no other natural person or corporation owns any interest in or portion of LESLIE V. MATLAW, P.C.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Leslie Valerie Matlaw prays that a Writ of *Certiorari* may issue to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The Opinion of the Court of Appeals below is reported as *Seymour v. Hug (Appeal of Matlaw),* 485 F.3d 926 (7th Cir. 2007), and has been reprinted as Appendix A to this Petition. Other dispositive orders below are also appended, as set forth in the Table of Appendices, *supra.*

STATEMENT OF JURISDICTION

The Seventh Circuit Court of Appeals entered Judgment on May 3, 2007. This Court has Jurisdiction to entertain the instant Petition for *Certiorari* under 28 U.S.C. §1254(1).

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED

This case involves the United States Constitution's Article III, Amendment XIV to the United States Constitution, and 28 U.S.C. §1291.

U.S. CONSTITUTION, ARTICLE III, §2, CLAUSE 1

The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -- to all Cases affecting Ambassadors, other public Ministers and Consuls; -- to all Cases of admiralty and maritime Jurisdiction; -- to Controversies to which the United States shall be a Party; -- to Controversies between two or more States; -- between a State and Citizens of another State; -- between Citizens of different States; -- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. CONSTITUTION, AMENDMENT XIV, §1

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

28 U.S.C. §1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

STATEMENT OF THE CASE

Petitioner herein, LESLIE VALERIE MATLAW (*d/b/a* LESLIE V. MATLAW, P.C.) asks this Court to reverse the Seventh Circuit of Appeals' May 3, 2007 Decision, which will permit the entry of a District Court Order providing direction and relief to the true Parties in Interest[1] herein.

A. STATEMENT OF FACTS

Plaintiff Donna Seymour, an African-American Illinois-licensed real estate agent and mother of two, sought to buy a home in the greater-suburban Chicago area in April and May of 2001. After substantial negotiations, Plaintiff's offer was rejected in favor of another offer from a white purchaser. Plaintiff believed this and other acts to be due to racial discrimination by Defendants below[2].

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[1] The True Parties in Interest herein are the Petitioner (the only one of Plaintiff's attorneys to have appealed the published Orders making findings of fact which impugned her veracity and conduct) and the District Court Magistrate Judge whose Orders created the injury at bar. This *Certiorari* Petition does not name any of the fully-released Parties below (see, footnote 2) or their attorneys, *e.g.,* Paige Donaldson, of Record for the law firm of Sanchez and Daniels, LLC (on behalf of the Seller Defendants), or Mark David Howard, *d/b/a* The Law Offices of Mark D. Howard (on behalf of the Realtor Defendants).

[2] All Parties were named in the federal court action below: Plaintiff Donna L. Seymour versus Defendants Carol Hug & Roger Hug (*d/b/a* ReMax Team 2000 or H & H Realty), and Agent Patricia Brown Wyrick ["Realtor Defendants"] *and* Cendant Mobility Corporation and Curtis Castle & Carol Castle ["Seller Defendants"]. *Seymour v. Hug et al.,* 465 F. Supp. 2d 910 (Appendix H hereto).

Plaintiff filed an administrative complaint of housing discrimination with the U.S. Department of HUD one day after she learned of the conduct at issue; in the administrative phase of Plaintiff's case, she engaged as Counsel Petitioner Leslie V. Matlaw, who at that time served as Staff Attorney for The Leadership Council for Metropolitan Open Communities, Inc., one of the nation's first fair housing advocacy groups which has since ceased operations.

On the advice of Counsel, Plaintiff withdrew her complaint at HUD and filed a civil action under the Fair Housing Act in the Northern District of Illinois. Also representing Plaintiff as Co-Counsel in the lawsuit was The John Marshall Law School Fair Housing Legal Clinic, with Professor F. Willis Caruso serving as Lead Counsel.

On August 19, 2004, all Parties below agreed to proceed before the Honorable Magistrate Judge Ian Levin (now retired). The Parties, who had first attempted settlement during HUD's proceedings, renewed their attempts with greater vigor. By Thanksgiving of 2004, the parties were extremely close on the monetary term. Other key settlement terms continued to be discussed, but as of March 14, 2005 (as memorialized in faxes, e-mails, and attachments thereto (72a) which later became the subject of Opinions and Orders of the Court below), Counsel for the Parties believed they had a deal despite two outstanding disputed issues. (53-57a)

Defendants were very concerned with confidentiality, and continued to negotiate as to its details, which were fully resolved by Defendant's April 28, 2005 reiteration of the settlement. (62a) What proved to be even more divisive, however, was the issue of apportioning some part of Plaintiff's settlement to her teenaged children, who were already wards of the New York Surrogate's Court (hereafter, "NYSC"), pursuant to a sizeable bequest from their recently-deceased father. (55a)

Defendants believed that New York law required that some portion of the settlement proceeds be dedicated to the minors and that this term was part of the settlement. (67-69a) Plaintiff's Counsel, by contrast, agreed that the NYSC's approval of the settlement was required, but neither thought apportionment to be necessary[3], nor did they view it as a condition of settlement. (69a) The case was re-assigned to The Honorable Magistrate Judge Jeffrey Cole by the Court's Executive Committee on May 11, 2005. (46a) Just after Counsel for the federal-action Parties filed the Joint Status Report (and unbeknownst to them, *see* 49a, 63a, 66a), on May 20, 2005, Plaintiff herself secured an Order from the NYSC approving a variant of the last-iterated[4] settlement agreement, which contained no apportionment term. (60-61a) On May 23, 2005, Plaintiff faxed the Order and her signed Release to her Chicago Counsel of record, which they in turn forwarded to Defense Counsel. (63a, 67a)

On June 20, 2005, Mark Howard, Counsel for the Realtor Defendants, stood in Open Court and reported the case as fully-settled, requiring only certain signatures, so Judge Cole dismissed the case with leave to reinstate. (47a) The next day, the Seller Defendants' Counsel e-mailed Plaintiff's Counsel with concerns about confidentiality and stating that "no one at [my firm], counsel for the 'owner defendants' had finally approved or consented to the language in the draft release attached to the [NYSC] orders" but by the end of that day, Defendants had accepted that language. (67-68a)

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[3] The apportionment term was first excised by Plaintiff in a draft forwarded by e-mail on April 1, 2005 to Defense Counsel. (61a) Mr. Howard's own comprehensively-rewritten April 28, 2005 version did not contain any apportionment term, either. (60-62a)

[4] Petitioner herself made one subsequent change to Defendants' April 28, 2005 iteration: "the claims of the children" was changed to "any claims of the children." (66a)

Then, on June 27, 2005, after having reviewed the Petitions presented to the NYSC, Seller Defendants' Counsel asserted they did not conform to the settlement agreement, alleged breach, and demanded that Plaintiff submit amended Petitions to the NYSC providing apportionment details. (68-69a) On June 29, 2005, Plaintiff moved to enforce the settlement, vacate the Dismissal, reinstate the case, and enter Judgment on the agreement. (48a) On July 15, 2005, Defendants filed their Joint Response thereto and a Cross-Motion seeking the same relief, also requesting their Attorneys' Fees for enforcement (48a); Briefs and Exhibits thereto were filed in support of the Parties' Cross-Motions.

Defendants moved for a hearing on their Motion to Enforce on November 2, 2005; that motion was denied two days later, and the Court issued a 37-page Memorandum Opinion and Order on November 8, 2005 (followed on November 9, 2005 by an Order denying Plaintiff's Request for Reconsideration, both published at 465 F. Supp. 2d 910 and reproduced as Appendix H hereto. There, the Judge denied Plaintiff's Motion to Enforce the April 28 Agreement, granted Defendants' Motion to Enforce its March 14 iteration, and found Plaintiff and her Counsel's intent and actions[5] to be materially deceptive. (48a, 63a, 73-74a, 76a, 78a, 83a, 86a)

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[5] Judge Cole gave no advance notice of his intention to issue an outcome-determinative ruling; his findings were based solely upon his review of the materials submitted by the Parties up to that point. "Application of these fundamental principles leads to the conclusion that by virtue of the exchange of emails, a binding contract arose on March 14, 2005." (72a) Petitioner does not seek *Certiorari* for the substantive issues on appeal before the Seventh Circuit (*e.g.*, her argument therein that the District Court abused its discretion in subjecting her to a summary adjudication of fraud and summary enforcement of a disputed settlement agreement). This Petition raises *only* the issue of whether attorneys have standing to appeal non-monetary sanctions.

Judge Cole found that "although the word 'fraud' does not appear in Defendants' briefing, the allegation of fraud is beyond debate;" his Order contained numerous findings of fact about Plaintiff's Counsel's conduct, professionalism, and ethics. (48a) For example, regarding Plaintiff's confidential e-mail to Petitioner of March 30, 2005 in which she indicated she would not accept apportionment, Judge Cole said:

> Ms. Seymour's lawyers never told defense counsel of this email or Ms. Seymour's position. Instead they embarked on what the evidence compellingly suggests is a pattern of deception designed to gull not only the defendants' lawyers, but the Surrogate's Court in New York as well.

Similarly, regarding Petitioner's modifying the phrase, "any claims" to "all claims," Judge Cole found this change

> would not have been [made] unless it had been intended to have some effect" . . . upon Judge Siebert . . . . [which] seems obvious: the phrase "the claims of the minor children" connotes the existence of actual concrete claims, while the phrase, "any claims of the minor children," suggests the kind of hypothetical, non-existent claims that are often the subject of releases because of lawyers' excessive (but quite proper) caution.

(66a) (quoting *Schenck v. U.S.*, 249 U.S. 47, 48 (1919) (Holmes, J.). Judge Cole then Ordered Plaintiff to re-Petition the NYSC, "set[ting] forth accurately the allegations that were made in the complaint and the amended complaints regarding her children and the facts and circumstances of her Fair Housing Act claim as set forth in those pleadings and in her deposition," and to submit a Settlement Agreement

providing a reasonable allocation[6] of the $40,000 settlement to be applied to her children's claims, and otherwise comply with applicable New York law. (85a) The Order retained jurisdiction to ensure these requirements were met. (85a)

Plaintiff Moved for Reconsideration the next day; this request was denied and the Judge urged Counsel for the Parties to resolve Defendants' attorneys' fee claims (24a, 28a); they did so immediately. In a separate settlement ("Side Agreement"), Counsel for the Plaintiff agreed to pay over to Defense Counsel $14,916 (the total of Plaintiff's Counsel's earned attorneys' fees and litigation costs which had not yet been reimbursed). (24-25a) The Side Agreement held Plaintiff harmless for Defendants' attorneys' fees which they requested in their Cross-Motion for Enforcement. (25a)

To fully comply with the November, 2005 Orders, Plaintiff turned over to the NYSC for its review essentially everything remotely touching upon her minor children. (24a) On March 30, 2006, after reviewing the Recommendations of the Minors' Guardian *Ad Litem*[7], the NYSC approved the settlement as modified. (39-42a) Judge Cole issued his Final Settlement Order on April 11, 2005 (retaining jurisdiction for enforcement for 90 days from its April 14, 2005 date of entry). (25a, 35a)

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[6] As amended, the NYSC-approved Settlement Agreement approved by the NYSC apportioned $1,000 to each of Plaintiff's per children. (37-38a, 43-44a)

[7] The appointed Guardian *Ad Litem* reported to the NYSC, "[I]n my opinion, New York law does not require that the infants receive any portion of this settlement unless they were parties to this action. Furthermore, it is difficult to understand how they would have any viable claims in said action . . . . [nevertheless] as guardian ad litem for said [wards], I cannot decline the offer to [them] of $1,000.00 no matter how it was it was obtained." (39-42a) Petitioner's appeal below argued that the NYSC exonerated her from Judge Cole's findings of fraud upon that Court.

Petitioner concluded that the NYSC documents (which became available and were submitted to the District Court just days before its Final Settlement Order) raised a fair question as to whether the Parties and Court fundamentally misapprehended whether Defendants ever faced any liability to the Minors under New York law (and, if not, as the NYSC documents suggested, whether uniform mistake rendered the Side Agreement to settle Defendants' attorneys' fees claims substantively suspect, along with the November, 2005 Orders prompting that Side Agreement). All Parties having been fully released by the Final Settlement Order, Petitioner believed that now she could properly challenge the factual findings of fraud and misconduct without prejudicing her Client. On her own behalf, Petitioner raised these issues in a series of pleadings in the District Court and Seventh Circuit.

B. BASIS FOR FEDERAL JURISDICTION BELOW

The Final Settlement Order having been entered on April 14, 2006, Petitioner filed timely Objections thereto (her "Rule 72 Motion") on April 26, 2006, before the Presiding Judge, who ruled in his Order of May 19, 2006 that he could not entertain that Motion (due to the Parties having submitted the case to the Magistrate for all purposes). (31-32a) Petitioner argued that her timely-filed Motion was converted by operation of law into a Rule 59 Motion[8]. The Seventh Circuit and District Court, however, styled her post-judgment pleadings as having been filed under FRCP 60. (6a)

Petitioner prematurely filed her Notice of Appeal on May 26, 2006 (post-judgment proceedings still pended before the District Court); when Judge Cole denied Petitioner's

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[8] The Seventh Circuit follows a bright-line test requiring courts to construe all substantive motions served within 10 days of judgment as Rule 59(e) motions, regardless of how they are styled. *Russell v. Delco-Remy,* 51 F.3d 746, 749 (7th Cir. 1995); *compare, Borrero v. City of Chicago,* 46 F.3d 698, 699, 701 (7th Cir. 2006).

post-judgment Motion on August 3, 2006, jurisdiction vested in the Court of Appeals[9], which decided in its Order of May 3, 2007 that, pursuant to its prior decisions construing 28 U.S.C. §1291, jurisdiction was lacking. (7-8a) The Seventh Circuit declined to award sanctions, leaving that issue for the District Court on remand. (8a) On May 7, 2007, the Parties below appeared before Judge Cole; Defendants withdrew their motion for sanctions in the District Court and it issued its Final Order terminating the case on May 7, 2007. (11-12a)

INTRODUCTION

The decision for which *Certiorari* is now being sought found that an attorney subjected to allegations of grave misconduct, upon whom no formal monetary sanctions were imposed by the District Court, may not appeal a Final Order effectuating those harms. (7-8a) There, the Seventh Circuit stated, "Judge Cole has not imposed a monetary sanction on Ms. Matlaw in this case, and therefore she cannot base her appeal on the alleged damage to her professional reputation regardless of how harmful Judge Cole's comments might have been." *Seymour v. Hug (Appeal of Matlaw),* 485 F.3d 926 (7th Cir. 2007) (citing *Crews & Assoc., Inc. v. U.S.,* 438 F.3d 674, 677 (7th Cir. 2006); *Clark Equipment Co. v. Lift Parts Mf'g Co.,* 972 F.2d 817, 820 (7th Cir. 1992) and *Bolte v. Home Ins. Co.,* 744 F.2d 572, 573 (7th Cir. 1984)).

There are two kinds of cases in which an attorney faces reputational injury without having to pay monetary sanctions. "Settled Sanction" cases are those where monetary

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[9] *See,* Commentary to the 1993 Amendments to FRAP 4 (Notice of Appeal need not be re-filed if docketed prior to the disposition of [listed post-trial motions]; the unripe Notice of Appeal is suspended and jurisdiction in the Court of Appeals arises anew upon disposition of the last-pending District Court Motion).

sanctions have been imposed upon the attorney (in addition to findings of misconduct) but they have either been vacated or settled by the parties, leaving only the damaging language intact. The second type of case is where no formal[10] monetary sanctions have been ordered, but the attorney continues to suffer from adverse findings and injurious language of the District Court. Functionally, however (and for the purposes of this Petition), they are identical and are referred to herein as "discrediting sanctions."

I. THE SEVENTH CIRCUIT'S ANALYSIS UNDER *BOLTE* AND ITS PROGENY ELEVATES PRUDENTIAL CONCERNS OVER DUE PROCESS.

Bolte and later decisions of the Seventh Circuit construing the same issue uniformly hold that appellate courts lack jurisdiction under 28 U.S.C. §1291 to hear attorneys' appeals of non-monetary sanctions. *Bolte* acknowledged, however, that damage done to a lawyer's reputation from a federal judge's findings of "reprehensible" conduct may result in injury sufficient to satisfy Article III standing[11]. *Cf., In re Smith,* 964 F.2d 636, 673 (7th Cir. 1992), also written by Judge Posner, which found the "case or controversy" requirement of Article III necessitates a tangible interest "such as money or reputation or liberty").

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[10] The attorney may have sustained other monetary injury, as Petitioner did here. The Seventh Circuit requires monetary loss to be pled under *Clark*; absent this venue-specific threshold issue, Petitioner would not have raised it below. *Clark, supra,* at 820. Petitioner seeks review only of issues having significant public importance; her loss of litigation costs and earned attorney's fees was preserved below, and she declines to address this issue or seek any ruling thereon from This Court.

[11] *Bolte* at 573, *citing Analytica, Inc. v. NPD Research, Inc.,* 708 F.2d 1263, 1266 (7th Cir. 1983) (Posner, J. *writing for a unanimous panel*).

Bolte further recognized that explicit statutory limitations on appellate court jurisdiction do not preclude discrediting-sanctions challenges. *Id.* at 573[12]. Rather, *Bolte* found that Congress could not have intended them to be judiciable, anticipating a "breathtaking expansion in appellate jurisdiction;" and because such appeals would usually present an appellant but no appellee, they would be "particularly unmanageable." *Id.* The *Bolte* Court opined that the attorney "ha[d] nothing either to gain or to lose" if it were to reverse or affirm the district court's finding of misconduct. *Id.*

Unable to find any direct support for its conclusion that discrediting sanctions are unappealable under §1291, the *Bolte* Court instead looked to five cases delineating general limitations upon appellate jurisdiction:

- *U.S. Steel Corp. v. Fraternal Ass'n of Steel Haulers,* 601 F.2d 1269, 1273 (3d Cir. 1979) (Civil contempt is appealable only if contemnor refuses to comply with remedial order and court has exercised its authority to punish or coerce compliance);

- *Phillips v. Cheltenham Township,* 575 F.2d 72 (3d Cir. 1978) (*per curiam*) (police officer's complaint that insurer's

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[12] Querying whether Congress intended 28 U.S.C. §1291 to allow non-parties, including lawyers, to appeal "wounding or critical or even palpably injurious comment or finding[s]," Judge Posner concluded that "in a purely verbal sense, it would be possible to argue [§1291 confers jurisdiction over such claims because by issuing a] finding of reprehensible conduct, the district judge in effect began a disciplinary proceeding against the lawyers, which ended with his [non-interlocutory] order. And although sanctions in the usual sense were not imposed, the judge's refusal to vacate his earlier findings of misconduct imposed or confirmed a sanction of sorts, in a realistic though not formal sense, on the lawyers."

having paid on his behalf a post-judgment civil rights settlement was not reviewable by Court of Appeals where police officer failed to claim any specific injury from the finding of liability; case was moot despite the fact that officer's having settled the case made it impossible for him to seek vindication of his good name).

- *Major v. Orthopedic Equip't Co.,* 561 F.2d 1112, 1115 (4th Cir. 1977) (District Court's Order which did not dispose of the underlying case but simply clarified a prior injunction which found that nonmoving party had violated injunction and underlying contract, yet did not hold nonmoving party in contempt or impose any sanction, was not "final" for purposes of appeal);

- *Rosenfeldt v. Comprehensive Accounting Serv. Corp.,* 514 F.2d 607, 611 (7th Cir. 1975) (Order finding party in contempt and imposing a fine and jail sentence was, in effect, totally superseded by subsequent Order vacating jail sentence; thus, fine was not appealable);

- *River Valley, Inc. v. Dubuque County,* 507 F.2d 582, 584-85 (8th Cir. 1974) (*per curiam*) (Show-Cause Order to Director of U.S. Courts' Administrative Office [as to why he should not be held in contempt for refusing to authorize payment of certain fees in civil proceeding on appeal] was interlocutory and thus not a final appealable order).

Notably, one Appellate Court had ruled directly on point before *Bolte*. Since it went unmentioned, we cannot know why the Seventh Circuit apparently found it unpersuasive or otherwise inapplicable. *Sullivan v. U.S. Dist. Ct. Comm. on Admissions and Grievances,* 395 F.2d 954, 956 (D.C. Cir. 1967) (Burger, J., *writing for unanimous panel*) (where district court determination reflected adversely on attorney's professional reputation, he had standing to appeal, even

though monetary sanctions were not imposed).

Bolte's logic thus appears to be based not upon Article III standing, explicit statutory limitations, or appellate precedent (however meager at that time). Rather, it was decided by application of the doctrine of prudential mootness[13], but the Seventh Circuit's definition is considerably more expansive than that traditionally employed by federal Courts of Appeal.

Generally, prudential mootness is invoked where Courts cannot grant "any effectual relief[14]" or where the remedy being requested would be too "attenuated and remote[15]" to pursue. *First Indiana Fed. Sav. Bank v. FDIC,* 964 F.2d 503, 507 (5th Cir. 1992).

Yet these results demonstrably do not obtain in discrediting sanctions cases. Effectual relief that is neither attenuated nor remote is readily-capable of being granted, since appellate courts are empowered to provide a lawyer subject to discrediting sanctions precisely what she asks for: the chance to defend her reputation on appeal. The mere filing of the appeal constitutes an immediate remedy: while legal research circa 1984 was the secret province of the few, technological innovations have greatly increased both the potential and actual damage created by judges' written reprimands. In this day and age, even "unpublished"

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[13] Charles A. Wright, Arthur R. Miller, and Edward H. Cooper, 13A *Federal Practice and Procedure* (hereafter, "Wright") §3533.1 at 215, 225-226 (West, 2d ed. (1984) *and* 2007 Supp. at 371-72) (As a prudential matter, "the court is free to consider the merits – and even decide them – as part of the determination whether equitable concerns outweigh the importance of an actual ruling on the merits").

[14] *Adams v. Resolution Trust Corp.,* 927 F.2d 348, 354 (8th Cir. 1991).

[15] *U.S. v. Street,* 933 F.2d 1010 at *2 (6th Cir. 1991) (*unpub'd;* full disposition reported at 1991 U.S. App. LEXIS 11463).

opinions are immediately available not just to those with the specialized access, training and incentive formerly needed to query computerized databases such as *Westlaw*© or Lexis™ – they can be accessed by anyone possessed of even the most rudimentary familiarity with the Internet – basically, everyone in the world.

The scope of the harm created by discrediting sanctions is further compounded by many attorneys' reliance upon the Internet to generate business, as well as the increasingly-common practice of "Googling" opposing Counsel and all potential Parties in every engaged case. A *Google*™ search of an attorney subject to a discrediting sanctions order reveals both her website and a link to the damaging decision. An appellate decision (reversing, vacating, or even examining but ultimately affirming that order) would likewise be generated in that web search, thus completing the circle and effectually rendering precisely the relief sought.

The Seventh Circuit's formulation of the prudential mootness doctrine reaches beyond "attorney standing" cases. In *Air Line Pilots Ass'n Intl. v UAL Corp.*, 897 F.2d 1394 (7th Cir. 1990), Judge Posner declared:

> Unless the plaintiff has died and his cause of action has not survived (as would be true if the cause of action were for defamation), it is usually possible to conjure up a set of facts under which the relief sought would make a difference to the parties. But if it would be a very little difference, then to economize on judicial resources as well as to give expression to policies thought inherent in Article III, the case will be declared moot and relief withheld.

Id. at 1396-1397. Thus, in the Seventh Circuit's view, the importance of an appeal to the parties may be weighed against its "cost" to the court. Comparing the "speculative"

injury to an attorney's reputation against "congested appellate dockets and . . . the difficulty in assuring an adversarial contest[16]" described in *Bolte*, the Seventh Circuit ruled that its own prudential interests trumped the attorney's appellate rights[17]. The Seventh Circuit has received no more challenges to Bolte and *Clark* for the last fifteen years, apart from *Crews*[18] and the precursor to the instant Petition[19].

Much empirical data has been generated since *Bolte* and *Clark* were decided, allowing an objective assessment of the Seventh Circuit's prudential concerns' validity. In those Circuits which allow appeals of discrediting sanctions, the anticipated avalanche of cases simply has not materialized. Nor has the absence of an appellee rendered those cases "particularly unmanageable," as *Bolte* predicted, *id.* at 573.

While it is difficult to say definitively how many cases having appellate potential have arisen, courts must always establish their own jurisdiction; binding precedent is necessarily used in that determination. Review of such decisions through July 1, 2007 demonstrates that only a handful of appellate courts have construed the precise issue presented herein, as follows:

The D.C. Circuit decided *Sullivan* in 1967; after forty years, only one case has fully agreed that reputational

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[16] As the Seventh Circuit pointed out in *Clark*, when the underlying lawsuit has been settled (Defendants there also sought *vacatur* of injurious language in an Order), the only remaining true Respondent in Interest for discrediting sanctions cases would be the District Court Judge making the remarks. *Clark* at 819-820.

[17] *Clark* at 819-820.

[18] *Crews & Assoc. Inc. v. U.S.*, 458 F.3d 674 (7th Cir. 2006) (finding no jurisdiction present since the District Court imposed no monetary sanctions on a later-disbarred lawyer for his in-court conduct).

[19] *Seymour v. Hug (Appeal of Matlaw)*, 485 F.3d 926 (7th Cir. 2007).

injury alone confers standing (*Foretich v. U.S.*, 351 F.3d 1198, 1214 (D.C. Cir. 2003). Similarly, after the Fifth Circuit decided *Walker*[20] in 1997, only one more case arose (*Dailey v. Vought Aircraft, Inc.*, 141 F.3d 224, 232 (5th Cir. 1998) (Smith, J. *dissenting*). The Tenth Circuit modified its prior "no standing" rule announced in *U.S. v. Gonzales*, 344 F.3d 1036 (10th Cir. 1999) in deciding *Butler*[21]; even so, only four cases arose following that 2003 re-examination:

- *In re Bello,* 2007 WL 1821034 at *2 (10th Cir. *slip op.* of June 26, 2007)
- *In re Martin,* 400 F.3d 836, 840-841 (10th Cir. 2005)
- *Montgomery v. City of Ardmore,* 365 F.3d 926, 943 (10th Cir. 2004)
- *Rios v. Village of Hatch ex rel. Hatch Police Dept.,* 86 Fed. Appx. 366, 370-371 (10th Cir. 2003)

The Federal Circuit (which decided *Precision Specialty Metals,* also in 2003) has only construed one case on the issue (*Retamal v. U.S. Customs and Border Protection, Dept. of Homeland Sec.,* 439 F.3d 1372, 1376 (Fed. Cir. 2006)). The Third Circuit just decided, as a matter of first impression, that discrediting sanctions confer appellate jurisdiction, *Bowers v. NCAA,* 475 F.3d 524, 542-544 (3d Cir. 2007), but has not yet had occasion in the past four months to revisit that holding. These figures would suggest that congested dockets are affected very little by discrediting sanctions appeals.

This is hardly surprising in light of the abuse-of-discretion standard to be applied, along with the fact that a sanctioned attorney must pay out-of-pocket and opportunity costs to challenge the ruling below – in addition to facing the very

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[20] *Walker v. City of Mesquite,* 129 F.3d 831, 832 (5th Cir. 1997).

[21] *Butler v. Biocore Medical Technologies, Inc.,* 348 F.3d 1163, 1168-1169 (10th Cir. 2003).

real risk that the Court of Appeals will find the sanction justified. *See, e.g., Williams v. U.S.,* 158 F.3d 50, 51 (1st Cir. 1998) (Lynch, J., *dissenting from denial of reh'g en banc*) (appellate court's affirmance of a sanctions order gives greater force to the administered discipline than it would have had as a merely persuasive decision whose terms remained unendorsed on review). No rational lawyer subjected to published censure would further jeopardize her career unless her immediately-imperiled interest was coupled with a significant chance of prevailing on appeal.

In hindsight, the anticipated "lack of an appellee" has not created much of a problem either. Even the *Clark* Court acknowledged that an attorney may always appeal a sanction payable to the court. *Clark* at 818-819. If the lack of an adversary does not bar appeals of monetary sanctions, it should not bar appeals of non-monetary sanctions. And since alleged misconduct occurs before the trial court, fully-developed and readily-available records provide a firm basis for appellate court review; little adversarial assistance is needed to re-construct the facts behind the alleged wrongdoing. 13A *Wright* at §3533.10 at 424. *Accord, Butler* at 1169:

> [T]he concern over the lack of an adversarial appeal in such cases is assuaged by the fact that, on appeal, we review the district court's order – detailing the reasons for any finding of attorney misconduct – in addition to the appellant's brief. Thus we will not "hear only one side of the story" (*citing dissent* of Rosenn, J., *In re Williams,* 156 F.3d 86 at 97).

In sum, *Bolte* and *Clark* have not proven out over time and their holdings conflict with every other Circuit which has construed appellate jurisdiction for discrediting sanctions. The Federal Circuit opined that the Seventh Circuit may just

have been behind the times[22]. The Fifth Circuit "rejected [*Bolte's* logic] out of hand[23]" as did the Tenth Circuit (in its comprehensive analysis of the formulations used by every Circuit which had spoken to the issue presented in *Butler*[24]).

The analytical flaw recognized by those courts had been apparent for years, however. Shortly after *Clark's* issuance, The University of Chicago Law Review turned the Seventh Circuit's prudential argument on its head, suggesting that denying lawyers the right to appeal non-monetary sanctions actually contributes to courts' burdens:

> Clearly, the judicial system suffers when lawyers, as officers of the court, prevent clients from achieving their goals. More concretely, the judicial system incurs substantial costs in creating, monitoring, and enforcing regulations designed to ensure that lawyers serve clients. The bar associations' disciplinary systems bear substantial costs in policing lawyers. Federal courts and agencies also monitor the lawyers practicing before them and hear cases brought against lawyers.

David Scharf, *The Settled Sanction: Post-Settlement Appeal and Vacatur of Attorney Sanctions Payable to an Opponent,* 61 U. Chi. L. R. 1627 (1994) at 1650, *citing* the American Bar Association Commission on Evaluation of Disciplinary Enforcement's *Report to the House of Delegates* at 49 n. 15

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[22] "[The *Clark* and *Bolte* Courts] did not have the benefit of the analysis of the subsequent cases from other circuits." *Precision Specialty Metals, Inc. v. U.S.,* 315 F.3d 1346, 1352 (Fed. Cir. 2003). A fair reading of this language might suggest that the Tenth Circuit was offering a palliative reproach to the effect of, "the next time the Seventh Circuit has a chance to review this issue, we're sure it will change its mind").

[23] *Walker,* 129 F.3d at 832 (5th Cir. 1997).

[24] *Butler,* 348 F.3d 1163, 1167-1169 (10th Cir. 2003).

(1991) (disclosing that in 1988, $74.4 million was spent on attorney disciplinary matters). *Accord*, 15A *Wright* §3902.1 at 130-132 & n.54 (2d ed. 1992), roundly criticizing the Seventh Circuit's conclusion that an appellate court's prudential concerns should bar review of reputational sanctions ("Standing may also be denied on more dubious grounds such as . . . lack of concern with injury of the nature alleged"). Indeed, the only appellate court which Petitioner has found to still agree with the Seventh Circuit on this issue is the Oklahoma Supreme Court[25].

II. THE JUDICIAL SYSTEM AS A WHOLE IS INJURED BY THE MINORITY VIEW.

A lawyer's professional reputation is her stock in trade and her "most precious asset." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 at 413 (1990) (Stevens, J. *concurring in part and dissenting in part*). *Accord, Walker v. City of Mesquite,* 129 F.3d 831, 832 (5th Cir. 1997) ("professional reputation is a lawyer's most important and valuable asset"). Counsel's "reputation for integrity, thoroughness, and competence is his or her bread and butter," *FDIC v. Tefken Constr. & Install'n Co.,* 847 F.2d 440, 444 (7th Cir. 1988), so criticism delivered from the bench can grievously damage a lawyer's reputation and career. *Thomas v. Capital Security Services,* Inc., 836 F.2d 866, 878 (5th Cir. 1988). Publicly criticizing attorneys' conduct creates an immediate, legally-cognizable injury. *U.S. v. Isgro,* 974 F.2d 1091, 1099 (9th Cir. 1992) (published chastisement is "a serious sanction").

Courts are in almost-complete agreement that an order rising to the level of a public reprimand is a sanction. *See, Bank of Nova Scotia v. U.S.,* 487 U.S. 250, 263 (1988). Every court examining the issue has acknowledged that District Court findings which cast aspersions upon an

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[25] *Cities Service Co. v. Gulf Oil Corp.*, 976 P.2d 546, 549 (Ok. 1999).

attorney's integrity or competence constitute at least "a form of sanction," whether or not a monetary penalty is imposed[26]. Reprimands which call into question an attorney's ethics and competence are sanctions, whether or not they are so termed. *See, Butler,* 348 F.3d 1163, decrying "form over substance" in its detailed analysis of the still-current Circuit split over the issue presented herein. *Id.* at 1167-1169.

Whether or not such sanctions are appealable is a separate question, however, upon which the Circuits are split. Several Petitions for Writs of *Certiorari* have been filed before This Court previously[27], each of which has presented variants of the precise questions raised herein.

Disagreement among the Circuits has only deepened following This Court's denial of *Certiorari* in *English v. Vazquez.* With profound respect to This Court's prior determinations, the Third and Tenth[28] Circuits' recent and definitive rulings in *Bowers v. NCAA* and *Butler v. Biocore,* respectively, construed in light of the Eight and Sixth Circuits' declining to rule in *Baker*[29] and *In re Harris*[30],

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[26] *See, e.g., Bolte,* decided on September 17, 1984, at 573 (refusal to vacate earlier finding of misconduct imposed or confirmed a sanction of sorts, in a realistic though not formal sense, on the lawyers). *Accord, Walker v. City of Mesquite,* 129 F.3d 831, 832-833; *U.S. v. Talao,* 222 F.3d 1133, 1138 (9th Cir. 2000).

[27] *See,* Petition for *Certiorari* filed in *English v. Vazquez, cert. denied* 540 U.S. 1150 (2004)), 2003 WL 22812425 (U.S.) at *2.

[28] The Tenth Circuit (which has experienced a comparative flurry of activity on this issue), announced its most recent explication just one month prior to the filing of this Petition. *In re Bello,* 2007 WL 1821034 (10th Cir. *slip op.* June 26, 2007)).

[29] *The Baker Group, L.C. v. Burlington Northern and Santa Fe Railway Co.,* 451 F.3d 484 (8th Cir. 2006)

[30] *In re Harris,* 51 Fed. Appx. 952 (*unpub'd,* 6th Cir. 2002)

respectively[31], Petitioner avers that a re-examination of the appealability of discrediting sanctions seems more ripe than ever, with now-extant jurisprudence having made more manifest the grave resulting impacts from case to case.

The deepening Circuit split is compounded by recent state court rulings which look to the federal Circuits for guidance; they too arrive at differing conclusions. The Oklahoma Supreme Court has ruled that discrediting sanctions are never appealable[32]. By contrast, Connecticut's Supreme Court announced the opposite rule in a detailed analysis. *State v. Perez,* 885 A.2d 178, 187-190 (Conn. 2005) (*citing Walker* at 832-833, *U.S. v. Talao* at 1138, *and Sullivan* at 956).

A fundamental inequity results where the rule of law differs depends purely upon which court is consulted. Due Process[33] requires that reputational injuries to attorneys be adjudicated under the same standards, regardless of where they may practice. Whatever harm may be done to attorneys by the imposition of discrediting sanctions, however, it pales in importance to the damage done to the judicial process.

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[31] *N.b.,* those cases both suggested that discrediting sanctions must specifically make findings of ethical violations before appealability could even be examined. *Baker* at 491-492 and *Harris* at 955-956.

[32] *Cities Service Co. v. Gulf Oil Corp.,* 976 P.2d at 549.

[33] Petitioner contends herein that lawyers are denied Due Process if discrediting sanctions cannot be appealed, but she also argued below that their issuance also denied her Due Process (*sua sponte* findings of fraud and breach). Individuals subject to such findings must be given notice of the Court's intention to rule dispositively and an opportunity to defend. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249 (1986). *Compare, U.S. v. Gonzales,* 344 F.3d 1036 (10th Cir. 1999), *cert. denied* 540 U.S. 1150 (2004) (Assistant U.S. Attorney English was precluded from addressing the trial Court's misconduct findings on the front end [*see,* Petition, 2003 WL 22812425 at *6] nor could he appeal them).

A. DISCREDITING SANCTIONS CHILL ZEALOUS ADVOCACY

Restricting the right of appellate review necessarily limits how vigorously any attorney will represent a Client once the representation has been secured. It is not difficult to imagine situations where a district court judge (who may possess an ideological affinity or aversion toward divisive issues[34] in a particular case), is confronted by a zealous advocate – and the sparks begin to fly. "The possibility of appellate review is a proper check in those rare instances where a federal court is too willing to issue an idle reprimand." *U.S. v. Gonzales* at 1047 (Baldock, J. *dissenting*). *Accord*, the following analysis:

> The trial judge's self-generated prudence is now the law's sole gauge of the sanction's correctness. Destroying a lawyer's access to appellate review of non-pecuniary sanctions grants first-instance judges (as well as administrative adjudicators) . . . . *absolute impunity* [to] restrain any legal practitioner's in-trial conduct.

Cities Service Co. v. Gulf Oil Corp., 976 P.2d 545, 551 (Ok. 1999) (Opala, J. *dissenting, emphasis supplied*). *Compare, Williams v. U.S,* 158 F.3d 50, 50 (1st Cir. 1998) (Lynch, J. *dissenting from denial of reh'g en banc*) ("[T]here are few checks on what judges say about counsel other than the judge's own prudence. A lawyer attempting to pursue the client's interest zealously may, if faced with an arbitrary judge or a judge who has an erroneous view of the facts, end up with a blot on his or her record that will never be erased – unless an appeal is possible to correct the problem").

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[34] *E.g.*, cases filed on either side of the ongoing tobacco litigation, First Amendment challenges, abortion cases, or prosecutions and defense of U.S. Patriot Act cases.

The inherent tension between zealous advocacy and the threat of sanctions seriously undermines the Attorney-Client relationship and can force Counsel to violate ethical rules[35], even if she takes no action at all, because the conflict of interest is created once a discrediting sanction has issued.

Where Appellate Courts deny review for attorneys' challenges to non-monetary sanctions, the judicial process suffers. Attorneys and Clients facing a joint sanction both own an interest in the underlying lawsuit, a situation which has been aptly-described as "dual-agency involvement." Geoffrey Miller, *Some Agency Problems in Settlement,* 17 Journal of Legal Studies 189 (1987). A Client is essentially unaffected by commentary about her Counsel, but once a Court derides the attorney's conduct in a published opinion, her interests immediately and necessarily diverge from (and soon become adverse to) those of her Client, who wants the case to end NOW. Vesting absolute settlement authority in the Client cannot resolve this conflict, because the attorney's own interest necessarily shapes the settlement outcome[36].

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[35] *E.g.,* Rule 1.7 American Bar Ass'n Model Rules of Professional Conduct (5th ed. 2002) (Conflict of Interest: Current Clients) and former Rule 1.11 (2004 Annotation: Appearance of Impropriety).

[36] *Cheng v. GAF Corp.,* 713 F.2d 886, 889-90 (2d Cir. 1983) (*criticized on other grounds* [interlocutory appeal]) ("If the fee issue is linked to the settlement negotiations, Appellant's lawyer may be placed in an ethical dilemma; his view of any settlement proposal would almost certainly be colored by its handling of the attorneys' fee issue"). Likewise, in "Settled Sanction" cases, the immediate issue is the attorney's reputation, not her pocketbook.

B. COUNSEL WHO PROPERLY MAINTAIN THE ATTORNEY-CLIENT RELATIONSHIP ARE ENTRAMMELED

Petitioner experienced the perfect storm in this case below, demonstrating what real-life ramifications can flow from the "dual agency" conflict. In this particular instance, where both the Plaintiff and her Counsel were, without prior notice, summarily adjudged to have breached a settlement agreement and to have intentionally defrauded Defendants, the District Court issuing the ruling at bar, and another (state) Court, what choices were available to Petitioner?

1. **Counsel puts her own interests above her Client's:** Petitioner severs from the Client, refuses to settle with Defendants' Counsel, and is immediately subjected to sanctions from the Magistrate (*n.b.,* in so doing, Counsel creates her own Seventh-Circuit standing; in the instant case, what Petitioner asserts was a summary adjudication of fraud and summary enforcement of a disputed Settlement would then have been ripe for the Court's abuse-of-discretion review). Under this scenario, the newly-*pro se* Client[37] (at least in the near term, for what

[37] Plaintiff was also represented by the John Marshall Law School Fair Housing Legal Clinic which declined to contest the findings of fraud and misconduct or to appeal. The Clinic drafted the Final Settlement Order which made no mention of Petitioner, a fact upon which the Seventh Circuit relied (8a) in finding a lack of standing (despite the Judge's same-day narrative Order clearly identifying that both of Plaintiff's lawyers had surrendered – and reimbursed her for – all earned fees and litigation costs in the Side Agreement between the Parties' Counsel resolving Defendants' attorneys' fee claims. (24-25a). Thus, even if Petitioner had abandoned this particular Plaintiff, she was still represented, albeit under considerable restraint from the District Court. It seems a fair statement that similarly-situated Clients (Scenario #1) would be hard-pressed to find substitute counsel.

lawyer would engage a sanctioned Party?) will almost certainly lose any opportunity for settlement, since as a practical matter, no rational Defendant will enter into anything but a global settlement.

2 **Counsel puts her Client's interest on par with her own:** To address negative remarks directed at both the Client and her Counsel, Petitioner attempts to convince the Client to authorize an interlocutory appeal[38] despite neither of them having been subjected to monetary sanctions. If the Client is willing to underwrite the costs of such an appeal "on principle," Counsel gains an opportunity to challenge the discrediting sanctions. Under this scenario, even if it succeeds, very little benefit would inure to the Client, who incurs attorneys' fees far above and beyond what she agreed to for the original representation, but at least she would be put in *status quo ante* as to her costs of appeal[39]. By contrast, if the appeal is unsuccessful, the Client is subject to both substantial out-of-pocket costs and significant personal liability for monetary sanctions in both the lower and appellate courts. And a disciplinary complaint filed by the Client against her Counsel at this point would have essentially no possibility of righting the Client's harms – even symbolically.

3. **Counsel puts the Client's interests above her own:** Petitioner absorbs the discrediting sanctions' significant

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[38] This course of action was in fact suggested by the Magistrate Judge in his Order of August 3, 2006 (28a), and by Counsel for the fully-released Defendants, who insisted that Petitioner "should have convinced her Client not to settle." Appellees' Joint Brief in Response at 45.

[39] *Cf.*, if the Client will not agree to an appeal, by proceeding further on her own behalf, her Counsel must surrender the true out-of-pocket and opportunity costs of clearing her reputation.

monetary and stigmatic cost so as to remedy, to the fullest degree possible, any negative ramifications to her Client. Under this Scenario, the Client gets essentially the deal she bargained for[40] and her primary interest – concluding the case with finality – is served. But by falling on her sword to avoid the conflict, Counsel "forfeits" her right to appeal the discrediting sanction (*n.b.*, only if the case arises within the Seventh Circuit or in the State of Oklahoma).

To protect her Client and avert the conflict, Petitioner chose "Door Number Three" – a trick-bag[41] peculiar to the Seventh Circuit and state of Oklahoma – thereby risking a forfeit of substantive review of the sanctions' propriety.

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[40] Plaintiff below had to engage local counsel for the additional NYSC proceedings; partial reimbursement of attorneys' fees and filing costs reduced her attendant monetary losses. Few private citizens gracefully tolerate being pilloried in the press ("Woman Ordered to Play Fair with Fair Housing Settlement," 151 *Chicago Daily Law Bulletin* No. 225 [11/16/05]), but Ms. Seymour's avid pursuit of her own claims was both readily-understood by outside observers and fully-appealable protected activity. While lawyers may become "inured" to scorn, they cannot shrug off the livelihood-destroying fallout from discrediting sanctions: state disciplinary and federal rule-based limitations upon the practice of law.

[41] [Petitioner's note] Trick-Bag: colloquialism for a situation from which no safe egress is possible; also, title and theme of numerous blues songs, including the late Earl (née Johnson) King's classic, *Trick-Bag*: ("We had a fight, then you got mad / Got on the telephone, called your Mom and Dad / Dad said, "She's my daughter and I'm her Pa / But you ain't nothin' but a son-in-law . . . / You done put me in a trick bag"). *Compare*, Oxford English Dictionary, 2d ed. 1989 (definition #3 and internal citations thereto), *Trick* (noun): 3. A clever or adroit expedient, device, or contrivance; . . . . bag of tricks ("Making . . . a trick of what ought to be simple." *Jane Austen*, Emma xvi (1815); "A hocus-pocus loaf out of a conjuror's trick-bag." 665 The Nation 1 (22 Jan. 1910)).

Adhering to its minority position, the Court suggested Petitioner might seek *mandamus* (her only venue-specific, conceivably-available right) (9a), but filing such a Petition would have offered no real possibility of that extraordinary remedy and would have compounded the likelihood of further sanctions. *Compare*, what Judge Cole deemed the "luminously clear" admonishment (12a) of the Seventh Circuit's closing sentence (9a) ("We also note our view that it is in the best interests of all involved that this case be at an end") *with* another Circuit's view of *mandamus'* [in]utility:

> [T]he district court had no duty to lift the sanctions . . . . [its] order is appealable, [so] appellants have an adequate remedy . . . . [the district court never determined the monetary value of the sanctions and the opposing party withdrew their request therefor, but] compelling policy reasons [exist] for exercising jurisdiction over this appeal. If an attorney is unable to appeal a sanction order after the underlying case has been settled, [she] is left with no avenue of challenging the sanction order . . . . [Attorneys] must be free to settle cases when settlement is in the client's best interest. The refusal to grant jurisdiction over an appeal of sanctions . . . thrusts a personal conflict upon the attorney[.]

Perkins v. General Motors Corp., Inc., 965 F.2d 597, 599-600 (8th Cir. 1992), citing *Cheng, supra*, at 889-90.

The true impact of discrediting sanctions is manifest. In *English v. Vazquez, cert. denied* 504 U.S. 1150 (2004), *Amici* NAAUSA argued that discrediting remarks from the bench effectively end Justice Department attorneys' careers[42]. As a practical matter, however, the judicial process is damaged in

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[42] Brief of *Amici* National Association of Assistant United States Attorneys in support of the Petition, 2003 WL 23146427, at *7-8; *compare id.* at *2 ("more than a personal miscarriage of justice . . . [denial of appellate standing is a nightmare] feared by all attorneys practicing before federal courts").

every kind of case. Parties need not press unpopular positions (*see, e.g.,* fn. 34) to become ensnared in published criticism of any attorney[43] of Record.

Other Courts and unrelated parties suffer the sanctions' consequences as well. Perhaps if the fallout was limited only to cases where discrediting sanctions actually issue, the harm to the judicial system could be rationalized away. But other Courts are bound and must act upon findings of misconduct, as took place in *Emily Gathe v. Housing Authority of the City of Lafayette,* No. 06-CV-1455 (W.D. La.; *unpub'd*). There, Petitioner's Motion to try Plaintiff's case *pro hac vice* was postponed until the Seventh Circuit and Illinois Supreme Court's Attorney Registration and Disciplinary Commission ("ARDC") ruled upon the *sua sponte* findings of Petitioner's alleged fraud and breach. (20a) Petitioner asked the Court of Appeals to Expedite Decisionmaking; that Motion was denied (14a), but the Seventh Circuit Ordered Oral Argument (15a), thus partially granting the requested relief (it also ruled rapidly). But the ARDC case still pends; Ms. Gathe died in the interim which has freed the Housing Authority to conduct "business as usual" (HUD has since instituted a Voluntary Compliance Agreement to address its widespread civil rights abuses, such as refusing to accommodate disabled tenants like Ms. Gathe).

As succinctly put by the Honorable Tucker Melançon,

> Substantively, admission to a state bar creates a presumption of good moral character that cannot be overcome merely by the whims of the District Court . . . . [If the court has evidence of behavior that it believes justifies a denial of admission pro hac vice,] the court must provide the attorney with adequate notice of all

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[43] Discrediting sanctions can chill the vigor of opposing counsel's advocacy, thus creating another conflict of interest which burdens every Party to the case. Alternatively, opposing counsel may be emboldened to seek magnification of the harms already imposed.

> alleged misbehavior or unethical behavior that will be charged against him and the court must set a hearing on the issue. Specific allegations must be made; general accusations about an attorney's demeanor are insufficient. The hearing must be on the record and present the attorney with adequate opportunity to defend himself and his professional reputation. *In re Evans,* 524 F.2d 1004, 1008 (5th Cir. 1975) . . . . An applicant for admission pro hac vice . . . may not be denied the privilege except on a showing that in *any* legal matter, . . . he has been guilty of unethical conduct of such a nature as to justify disbarment[.]

(19a) (*emphasis added; additional citation omitted*). The *Seymour* case illustrates that the entire federal judiciary is held captive by unaddressable discrediting sanctions.

In sum, no Client may rely upon her Counsel, and no Attorney may rely upon the judicial system, where non-monetary sanctions cannot be appealed.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that a Writ of *Certiorari* issue to review the judgment of the Seventh Circuit Court of Appeals. On review, the judgment of that Court should be reversed, and the case remanded for further proceedings.

Respectfully Submitted, Leslie Valerie Matlaw
(*pro se*), *d/b/a* Leslie V. Matlaw, P.C., *of Counsel**

LESLIE VALERIE MATLAW, P.C.
28 E. Jackson, 10th Floor, #M-995, Chicago, IL 60604-2263

* Petitioner's admission to the Bar of This Court is now being sought along with previously-admitted Counsel.