

No. \_\_\_\_\_

---

In the

**SUPREME COURT OF THE UNITED STATES**

KEVIN B. MCBURNEY-Pro Se  
*Petitioner*

Vs.

DAVID CURTIN, in his capacity as  
The Chief Disciplinary Counsel for  
The State of Rhode Island  
*Respondent*

---

On Petition for Certiorari to the Supreme Court  
Of the State of Rhode Island

---

**PETITION FOR A WRIT OF CERTIORARI**

---

Kevin McBurney

Providence, RI 02903

[kevinmcburney@yahoo.com](mailto:kevinmcburney@yahoo.com)

---

(1) KEVIN B. MCBURNEY-Pro Se  
*Petitioner*

(2) DAVID CURTIN, in his capacity as  
The Chief Disciplinary Counsel for  
The State of Rhode Island  
*Respondent*

**OPINIONS BELOW**

-The Order (final) and opinion of the Rhode Island Supreme Court In The Matter of Kevin B. McBurney-No. 2011-25-M.P. and dated 2/23/11 (App.A).

- The Decision and Recommendation of the Disciplinary Board of the RI Supreme Court-In The Matter of Kevin B. McBurney (Curtin-DSC No. 2009-15 and filed with the RI Supreme Court on 12/13/10. (App. B)

- The Petition for Disciplinary Action was filed on 12/13/09 by David Curtin In the Matter of Kevin B. McBurney-DSC 09-15 (App C).

- The 4/16/09 Order of the RI Supreme Court in Appeal No. 07-364-A, Muna Ahmed, Individually & Adm. Estate of Malek Ahmed vs.St. Josephs Health Services et als(App D)

- The 1/29/09 Order of the RI Supreme Court in Appeal No. 07-364A (App. E)

- The 10/10/07 letter/directive from David Curtin, Chief Disciplinary Counsel and addressed to Muna Ahmed as pertaining to her 2007 Disciplinary Complaint-Ahmed vs. Paula Kelly. based upon what Kelly did to cause the dismissal of action. No case number assigned as it was dismissed by Curtin immediately after filing (App. F).

- The 8/29/07 Written Order drafted by defense counsel in the RI Superior Court C.A. No 05-280.-Muna Ahmed et als. Vs. St. Josephs Health Services, et als-(App G)

- Two Supreme Court decisions involving Kevin McBurney- In Re McBurney Law Services. 798A2d. 877(Petitioners family litigation dispute against his brother and sister- J. Goldberg wrote the decision against him and Alice S. Peszke et als vs.Belkis Florentino et als (Kevin MCBurney)-No.09-155J. Indeglia. Both decisions denote gross improprieties (App.H,I) in court proceedings reflecting discrimination/bias towards Kevin McBurney. Both Judges were involved with the decision and order in the present circumstance

**TABLE OF CONTENTS**

LIST OF PARTIES ..... i

QUESTIONS PRESENTED ..... ii- (1-3)

TABLE OF CONTENTS .....iii

TABLE OF AUTHORITIES .....iv

OPINIONS BELOW .....1

JURISDICTION .....2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....2

STATEMENT OF THE CASE .....3

**A. Facts Giving Rise To This Case(No. 11-25 MP/ DCS No. 09-15 .....3**

**B. RI State Supreme Court Proceedings (Ahmed) No. 07-364A ..... 5**

**C. RI State Superior (trial) Court-PC C.A. No. 05-280 ..... 7**

**D. McBurney Family-all lawyers-(dysfunctionality) and judicial impropriety. ....10**

REASONS WHY CERTIORARI SHOULD BE GRANTED ..... 12

I Review is warranted-Petitioners-14<sup>th</sup> constitutional due process rights violated.....12

II Review is warranted-RPC 8.3 supercedes any issue relative to RPC 8.4 (d) .....14

III Review is warranted-there is an strong indication of judicial impropriety .....16

CONCLUSION ..... 17

**INDEX TO APPENDICES**

APPENDIX A February 23, 2011-Order of RI Supreme Court(11-25 MP)...

APPENDIX B December 13, 2010 Disciplinary Bd. Decision (09-15DSC)..

APPENDIX C December 13, 2009 Petition for Disciplinary Complaint (09-15)

APPENDIX D April 16, 2009 Order of the RI Supreme Court (07-364A)....

APPENDIX E January 29, 2009 Order of RI Supreme Court (07-364A) ....

APPENDIX F October 10, 2007 David Curtin letter to Muna Ahmed (07DSC)

APPENDIX G August 29, 2007 drafted order of RI S.Ct. hearing (05-280PC)

APPENDIX H May 21, 2002 RI Supreme Court Decision (01-159 MP) ....

APPENDIX I October 30, 2010 RI (09-155)RI Supreme Court Decision  
(Florentino vs. Peszke)

## **JURISDICTION**

The Rhode Island Supreme Court entered judgment In The Matter of Kevin McBurney on February 23, 2011. The Disciplinary Petition was filed by Respondent against Petitioner on December 13, 2009. The hearing was convened before the disciplinary board (three members) on September 2, 2010. The decision against Petitioner and the recommendation of the board was filed with RI Supreme Court on December 13, 2010. A subsequent chambers conference scheduled with the members of the RI Supreme Court was convened on January 6, 2011 with final judgment rendered-against Petitioner with disciplinary action , sanctions and widespread media, TV and radio coverage to remonstrate Petitioner thereafter . As there are substantial federal and constitutional claims and issues presented then this Court has subject matter jurisdiction to review this matter under 28 U.S.C. Section 1257 (a) and 28 U.S.C. Section 2101 et seq.

## **CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE**

### **Fourteenth Amendment to the United States Constitution**

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.

### **1<sup>ST</sup> Amendment-applied to states by 14<sup>th</sup> amendment-freedom of expression speech-**

(States) shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble

### **42 USC Section 1983**

Every person who, under the color of state law ,statute, ordinance, regulation, or usage ... subjects or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges and immunities secured by the constitution and the laws, shall be liable to the party injured in an action at law...

**TABLE OF AUTHORITIES**

**RULE OF PROFESSIONAL CONDUCT-RHODE ISLAND**

RPC 8.4 (D)-’The Administration of Justice.....

RPC 8.3-’Reporting the Professional Misconduct of another Attorney .....

**CASES**

In Re Almonte

678 A.2d 457 .....

Flanagan vs. Blair-litany of cases Rhode Island Rule of Civil Procedure 37 (a) (2)

687 A.2d 437 .....

Persistent refusal to comply discovery-bad faith intent to delay discovery process requires finding of abuse discretion to overturn decision of pre-trial dismissal of case.

**STATUTES**

Rhode Island General laws-Section 10-7-1, 10-7-1 .....

(Minimum recovery for claimant is \$250,000-irrespective of economic expert disclosure)

28 U,S,C, Section 1257 (a) .....

28 U,S,C, Section 2102 .....

**QUESTIONS PRESENTED**

1. Whether or not under 28 USC 1257 and the Rooker-Feldman doctrine this Court still has jurisdiction to review the disciplinary action taken against the Petitioner even though the 42 USC Section 1983 action might be void in the lower Federal Courts.

A) Does it matter that Petitioner has alleged that the State Court disciplinary proceedings were tainted and unduly affected by certain improprieties occurring which rendered to cause the RI Supreme Court to issue its order against Petitioner that is ’legally wrong’. See below-Question 7,Statement of Case D, Reasons III.

2 Whether the Rhode Island Supreme Court erred by its 2/23/11 Order to discipline and sanction Attorney Kevin McBurney based upon Rule of Professional Conduct 8.4 (d)-’engaging in conduct prejudicial to the administration of justice’ ... as this Rule of Professional Conduct does not correlate to or even apply to any of the conduct alleged and attributed to Attorney Kevin MCBurney during the course of his representation of his client and filing of pleadings during the Ahmed Appeal (RI- No. 07-364A). Does the application of this rule, in error, and his resulting private censure,

constitute a violation of his 14<sup>th</sup> amendment constitutional right to due process.

3. Whether the Rhode Island Supreme Court erred by its 2/23/11 Order to discipline and sanction Kevin McBurney in a disciplinary proceeding based upon RPC 8.4 (d)- by characterizing and describing the language contained in McBurneys 10 pleadings filed in this appeal beginning 2007-2009 as “inappropriate and offensive”, “abrasive“, “uncivil” , “hostile” or “obstructive ...”(“outrageous statements“)and other colorful but subjective adjectives that were recited in support thereof to uphold this disciplinary action When there was never articulated ***at any time during any of the disciplinary proceedings against McBurney (the disciplinary petition, the Board hearing or the Supreme Court review)*** any reference to Which particular pleadings filed and containing What exact statements, words, or language that are being so characterized and described by the Supreme Court as set forth and forming the basis to find a violation of RPC 8.4 (d). Did the Court also commit error by not providing explanation or reason as to Why the same characterizations and descriptions were so ‘inappropriate-offensive, etc. or exactly How the (alleged) “outrageous statements” impugned the character of the opposing attorney who has been accused of committing a violation of the rules of professional conduct based upon RPC 8.3.
  - A) Does this action to so ‘characterize and describe’ in this manner constitute a violation of Petitioners constitutional right to due process fair hearing under the 14<sup>th</sup> amendment in order to provide him full and fair opportunity to defend with specific knowledge as to which of his statements, words and conduct in his pleadings are being used against him coupled with exact reason(s) why they are being so ‘characterized-described’ as inappropriate and offensive. What basis.
  - B) Does this action to so ‘characterize and describe’ in this manner also constitute a violation of petitioners constitutional right under the 14<sup>th</sup> amendment based upon the constitutional principle of vagueness and ambiguity by which the RI Supreme Court has arbitrarily and discriminatorily applied the principle of RPC 8.4 (d) to the Petitioners statements, words and conduct in his pleadings during the Ahmed Appeal in order to punish him in the disciplinary action undertaken. According to this constitutional rule of law, would not the Petitioner be entitled to know explicitly and definitely what conduct of his is deemed punishable and why he was disciplined by public censuring.
4. Whether the Rhode Island Supreme Court erred by its decision to discipline and sanction Attorney Kevin McBurney based upon Rule of Professional Conduct 8.4 (d)- and the proscribed conduct , words, and statements attributed to him as contained in his pleadings filed in the RI Appeal No. 07-364 to thereby violate his constitutionally protected freedom of speech and expression under 14<sup>th</sup> amendment. Does this same action by the RI Supreme Court violate the Overbreadth Doctrine because if its overbroad subjective standards applied and would be an unreasonable curtailment of an attorneys right of free speech.
5. Whether the Rhode Island Supreme Court erred upon its decision to discipline and sanction Attorney Kevin McBurney in this manner upon its ‘characterization’ made of

pleadings filed by McBurney during the appeal by failing to review and consider the implications of Rule of Professional Conduct 8.3-('A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct ...shall inform the appropriate authority')- as weighed against the actions and conduct of McBurney-2007-2009 while acting as attorney for the appellants during the appeal of Ahmed et als. Vs. St. Josephs et als. Does the RI Supreme Courts failure to do so violate petitioners constitutional right to due process fair hearing under the 14<sup>th</sup> amendment in order to provide him full and fair opportunity to prove the truth of this accusation upon disciplinary hearing against him. What is the 'inter-relationship' between RPC 8.4 (d) and RPC 8.3 in this kind of situation.

- A) Suppose the Petitioners accusations against the offending other attorney are shown to be correct and his actions and conduct are deemed in compliance with RPC 8.3 then would not such a circumstance vitiate or mitigate against any violation of RPC 8.4 (d) or any disciplinary finding by the RI Supreme Court
6. Whether there is error committed in so far as the RI Supreme Courts findings and conclusions reached on or about April 16, 2009-*as an afterthought*- that Petitioners pleadings filed in the Ahmed appeal-No. 07-364A were 'inappropriate and offensive', etc. to then retroactively order stricken all pleadings filed by Petitioner since the 2007 filing date and also order an investigation by the Disciplinary Counsel when this very same court had, by its own admission, "carefully reviewed and examined" these same pleadings of Petitioner filed from 2007 until January 29, 2009 and found there to be no objection, no order to strike, no cause for disciplinary action and certainly no inappropriate and offensive language contained therein any of the 9 pleadings filed at that juncture-nothing wrong-as they were all 'carefully reviewed and examined'.
- A) Does it matter that Petitioner filed on 2/7/09 a 'very direct' Appellants Supplemental Memorandum with commentary after receiving the RI Supreme Courts 1/29/09 Order to set this down for 'Show Cause'-which is essentially a 'kiss of death' or the foregone conclusion of the dismissal of the appeal. There would be no investigation of the accusations raised against the defense attorney in the civil action or review of the RPC 8.3 issue. Swept aside
- (1). There has never been any attempt by Rhode Island to reconcile the fact that the 8/29/07 Superior Court transcript in the Ahmed case does NOT indicate that trial judge Hurst had specifically ordered the plaintiff to respond to Interrogatory 24 or to provide economic expert disclosure as part of her conditional order to dismiss and therefore does not correlate to the 8/29/07 drafted order as prepared and presented by Attorney Kelly which contains the false language.
- (2) There has never been any mention by the Supreme Court that the RI Wrongful Death Act-RIGL- Section 10-7-2 sets forth a minimum recovery so there would be no need to provide economic expert disclosure as it would be waived
- (3). ***Above everything else-*** there has been no discussion or consideration of the evidence produced that the 9/14/07 date stamped envelope sent from Kellys office and addressed to Kevin McBurney, Esq., Providence,

RI 02903 was received by Kevin McBurney on 9/17/07 and it contained the 8/29/07 order with false language recited and it also denoted the false certification of September 5, 2007. On August 29, 2007, trial judge Hurst set forth the date of September 12, 2007 as the deadline for plaintiffs response upon the conditional dismissal. Petitioner has accused that the 8/29/07 was Deliberately mailed after the deadline so that the petitioner would not be able to react in time to the false language contained in the drafted 8/29/07 order-with its false certification The original envelope, acknowledged by Kelly as sent by her, remains with the RI Supreme Court but they have avoided all discussion or reference to this evidence. As far as Petitioner is concerned-it is the 'smoking gun' of Attorney Kellys culpability.

7. Whether there have been undertaken certain gross improprieties in the court proceedings of the petitioners disciplinary case and reflecting discrimination and bias towards Kevin McBurney. Whether there are also indications of political influence and conflict of interest considerations with possible judicial misconduct involved during these proceedings in Rhode Island as well
  - A) Does it matter that Petitioner has suffered for the past 20 years in the Rhode Island system whereby he has been discriminated with bias held towards him as a result of many, MANY other instances of gross improprieties as carried out against him and immediate family affiliates by legal professionals in Rhode Island

## **STATEMENT OF THE CASE**

### **A. Facts Giving Rise To This Case**

In The Matter of Kevin B. McBurney- DSC No\_2011-25 and dated 2/23/11,the Petitioner was disciplined and censured by the RI Supreme Court-order (APP.A). Prior thereto on 1/8/11, there was an unrecorded conference convened with all parties present and held in the Supreme Court chambers conference room-250 Benefit Street in Providence. Petitioner was represented by counsel-Mark Smith. All Supreme Court Justices were present except Judge Flaherty who had recused himself from participating for unstated reasons. After and during the discussion by the attorneys, Judge Goldberg would ,invariably, interject always with invective, derogative and castigating remarks against the Petitioner-same as she has for many years and involving different cases of Petitioner where he has been either party in interest or the attorney representing his client.

All throughout this proceeding with the adverse decisions resulting, there has never been any discussion or reference in any order as to any of Petitioners particular pleadings filed in the Appeal nor has there been referenced any specific language, statements, or words as cited to illustrate that such language was “inappropriate and offensive commentary” and thus violated Rule of Professional Conduct (RPC) 8.4 (d) Also, there was never provided in this order an explanation as to why the language was construed as such nor any reasons given to support the finding that such language was ‘inappropriate and offensive commentary’ so as to violate RPC 8.4 (d). This order , as it reads with its ruling was merely a ‘broad sweep of the brush’ as painted by the RI Supreme Court to find and determine against Petitioner that he violated RPC 8.4 (d) and that he should be sanctioned and disciplined.

Likewise,- The Decision and Recommendation of the Disciplinary Board of the RI Supreme Court-based upon the Disciplinary hearing taking place on 9/5/10-In The Matter Of Kevin B. McBurney (Curitm DSC No. 2009-15) filed with the RI Supreme Court on 12/13/10(App B)cites no discussion or reference to any of petitioners particular pleadings or specific language, phrases or words as cited to illustrate that such language was inappropriate and offensive commentary and violated RPC 8.4 (d). Also, there was never provided in the Board’s decision an explanation as to why the language was construed as such nor any reasons given to support the finding that such language was ‘inappropriate and offensive commentary’ so as to violate RPC 8.4 (d). The Boards decision amounts to being a rambling discussion to disparage Petitioner without stating/suggesting exactly what he said-as referenced in any of his pleadings that was construed as ‘inappropriate and offensive commentary’ and why it would be deemed as such. Another broad sweep.

Lastly, the Petition for Disciplinary Action was filed on 12/13/09 by David Curtin In The Matter of Kevin B. McBurney-DSC 09-15 (App.C). Again, there has never been cited without discussion or reference to any of Petitioners particular pleadings or specific language, phrases or words as cited to illustrate that such language was inappropriate and offensive commentary and violated RPC 8.4 (d).

The State of Rhode Island can not just discipline, sanction and censure an attorney and resulting in the complete loss of his livelihood without exactly telling him what specific wrongdoing that he is accused of as cited in any of his pleadings filed with an explanation as to why any of such would be deemed as violating RPC 8.4 (d). There are constitutional safeguards and guarantees present to protect Petitioners rights at stake-14<sup>th</sup> amendment-

Due Process considerations-which explains why this Petition is now filed 90 days hence.

**B. RI State Supreme Court Proceedings-Ahmed et als vs. St. Josephs et als.  
(RI Appeal No. 07-364A)**

On 4/16/09 by order of the RI Supreme Court in Appeal No. 07-364-A, Muna Ahmed Individually and Adm. of Estate of Malek Ahmed v. St. Josephs Health Services RI et als.

‘that all of the pleadings filed by Kevin McBurney, as counsel for appellant, shall be stricken and that he re-file (another) Rule 12 A Pre-Briefing Statement in this appeal’- which he did. Petitioner had already filed these very same nine (9) such pleadings with the Supreme Courts clerks office over a two year time span and nary once was there ever any objection, complaint or motion to strike presented-even though each of them was ”carefully reviewed and examined”. Furthermore, there was no discussion or reference in the 4/16/07 Order as to any of the pleadings filed and the exact language, statements or words used by Petitioner that were referenced in same pleadings. This Order recited vague innuendo re: ’criticisms’, ’demeaning, disrespectful’ and ’accusations’ against opposing

counsel in that matter”. Kevin McBurney has *always* stood by these same accusations-to this very day-without apology as there has never been an investigation conducted in accordance with RPC 8.3-Reporting of Professional Misconduct. If a lay-person/client or other interested party (non-lawyer) makes the same accusation(s) against the same attorney in the form of a disciplinary complaint filed then no sanction or disciplinary action shall be undertaken against that person-irrespective of the result . In fact, a full investigation is conducted. However, there is a contradictory result for the Petitioner as an attorney articulating the same complaint accusation stated in order to comply with his ethical obligation to do so as set forth by RPC 8.3. The result is that the attorney is sanctioned and disciplined. There seems to be a 14<sup>th</sup> amendment Equal Protection issue.

On 1/29/09 and by order of the RI Supreme Court after convening in conference before a single Judge of the Court (conducted on 1/9/09), *and after same Judge carefully examined all pre-briefing statements (filed since 2007)...* then issued a ‘Show Cause Calendar’ mandate with permission granted to the parties to file supplemental statements (App. E). Since the time that the appeal was filed in 2007, Petitioner had filed 9 separate pleadings with the RI Supreme Court-all essentially saying the same thing and making the same accusations. During the same two year time period there would be no objections, no motions to strike and no admonitions filed by the Supreme Court-“*who examined all pre-briefing statements-pleadings carefully*’... The RI Supreme Court-‘Show Cause Calendar’ is a commonly accepted parlance or code phrase among RI seasoned Practitioners in the trade to certainly suggest that the Appeal will be dismissed. It . conveys the distinct impression of defeat for the Appellant-like a ‘kiss of death’. Although it was not necessary-really redundant-Kevin McBurney filed his Supplemental Statement

for Appellant (Ex. 7)-while believing that RI Supreme Court already made up its mind and would not bother to consider to investigate the accusation of the other attorneys misconduct as raised by him in accord with RPC 8.3-The duty of an attorney to Report Misconduct of another Attorney. Upon 'Show Cause', all allegations with strong proof to support would be 'swept under the rug'. This is the only pleading that he regrets filing even though he stands by it 100% as there has never been any explanation or reason given as to why it violates RPC 8.4 (d). Since 2007 when the appeal was filed-there were many pleadings filed by McBurney without objection or concern but after supplemental was filed then the problems began-April 16, 2009 (App D). Oral Argument in the appeal took place on 3/30/11 as to whether the trial judge abused her discretion by dismissing C.A. 05-280.

**C. Rhode Island Superior (trial) Court-Muna Ahmed et als vs. St. Josephs et al (Providence Sc. Civil Action No. 05-280)**

Petitioner was the plaintiffs attorney on behalf of Muna Ahmed and the estate of her deceased husband, Malek Ahmed-Muslim-Arab US citizens in the Wrongful Death civil action filed in 2005. This cause of action alleges that due to the negligence (malpractice) of the attending hospitals had resulted in the wrongful death of Muna Ahmed's deceased Husband. During the course of litigation there was an order entered after hearing before the motion trial Judge Patricia Hurst on August 29, 2007 on the defendant-hospitals motion to dismiss (App G). This order was a conditional order of dismissal whereby the plaintiff was ordered to produce to defendants their '*Medical expert disclosure report*' of their expert witness doctor-Saleh Musleh from Dearborn, Michigan by deadline of *September 12, 2007* and with review date set for September 19, 2007. This specialist in the field was previously disclosed as the plaintiffs expert to defendants by name and address on July 21, 2007 as required under the '**Scheduling Order**'-implemented by the J.

Hurst on 4/5/07 (Ex. 1a). 'Scheduling Orders' are an administrative mandate utilized by Superior Court to monitor all discovery issues for medical malpractice cases-only(Ex. 1b) However, this was a wrongful death case. Nevertheless, Plaintiffs produced to defendants-seven (7) page medical disclosure report by Dr. Musleh on September 11, 2007-and it's a good one! (Ex. 1). It also must have had the same impact upon the defendant-St. Josephs attorney- Paula Kelly, because she had sent her only communication to Kevin McBurney during this time by mail (at his disclosed mailing address-38 Maple-Providence) and ***date-stamped Sept. 14, 2007***. McBurney did not receive envelope until 9/17/07 (Ex.2). The envelope contained a copy of the executed 8/29/07 order as prepared and drafted by Kelly and it recited language in its text that did NOT accurately reflect what J. Hurst had actually ordered on same date. It also stated by certification that it was sent to McBurney on 9/5/07. It was not sent on same date as falsely represented. Hence, it is not disputed-admitted and acknowledged by all parties-that an attorneys office envelope was mailed, sent or otherwise emanated from Attorney Kellys office and addressed to Kevin MCBurney-38 Maple Street in Providence and is postmarked September 14, 2007-***has never been properly investigated or explained at any time or in any RI proceeding!***

This false order, with false certification and provided for the first time after the deadline imposed, materially changes to misrepresent what was actually ordered by the trial judge. Plaintiff then had to respond to discovery requests (long abandoned in 2006) to provide ***economic expert disclosure*** as part of the 8/29/07 conditional order of J. Hurst. However, it was not received until ***after the 9/12/07 deadline imposed!*** Instead of sending the order to opposing counsel (Kevin McBurney)-before the deadline-as a proposal for stipulated agreement as rule of procedure and protocol requires, Attorney Kelly mailed the order to

McBurney (received on 9/17/07) well after the certification date (9/5/07) and two days before final judgment of dismissal was granted by the trial judge on 9/19/07. If this same, (albeit false) order had been sent (received) by McBurney before 9/12/07 then McBurney could have easily responded-‘None’ and also ‘waive’ any claim to economic damages in favor of accepting RIGL 10-7-2 statutory minimum-\$250,000. This is the deceitful action-‘trickery’ that has been attributed to Attorney Kelly by Kevin MCBurney who then dutifully reported her professional misconduct to the appropriate authorities in accord with RPC 8.3 (App F). On 9/19/07, Hurst based her decision to dismiss by final judgment and relying upon the false language contained in the 8/29/07 submitted order. It seems Kelly was attempting to subvert McBurneys awareness of this false order-which he promptly objected(Ex. 3)

***Throughout every proceeding convened during the disciplinary matter, the issue of the September 14, 2007 envelope always surfaced but was never discussed always disregarded. If it is acknowledged as a fact that the 9/14/07 envelope contained the 8/29/07 false order then Atty. Kelly is guilty as accused by McBurney-end of story.*** The RI Supreme Court, Disciplinary Bd, David Curtin, Judge. Hurst and Kelly herself have all been silent about this issue. There are many other questions and issues left unanswered in other cases/claims of Kevin McBurney (all defeats)-so much that there is now in this case cause to wonder whether there is another ‘hidden agenda’.

For purpose of notice, Petitioner does not append a copy of either transcripts of the 8/29/07 or the 9/19/07 hearings where final judgment of dismissal was entered because Asst. Disciplinary Counsel Barbara Margolis conceded that J. Hurst never actually or ‘specifically’ ordered by her words that discovery Interrogatories 18,19 and 24 were to be responded by plaintiff by 9/12/07 deadline as the 8/29/07 written order reads-so why was this language permitted to stay on the 8/29/07 order as prepared by Atty Kelly. Same transcripts can be produced if requested.

Likewise, Petitioner does not append to this petition any of the 10 pleadings filed in the Supreme Court-which were deemed ‘inappropriate and offensive’ for the same reason.

#### **D. The McBurney Family Breakdown (all lawyers)-resulting in political influencing and judicial impropriety**

In Rhode Island, the name McBurney is synonymous to a very unique but sadly tragic Family break-up-6 baby boom generation children mostly lawyers with their father, John, also a lawyer since 1949 (22 grandchildren who have inherited the sad tragedy) . The eldest son, John (Jack), a lawyer who also has been a RI State Senator from Pawtucket since 1974-the father John also serving as Senator in the same seat from 1950 until 1974. Before that time, surrogate uncle-Harry Curvin had been Speaker of the RI House with near total control of all state political functions since the 1930's through to the early 70's with father John serving as his direct protégé.

Kevin McBurney has been a direct adversary against his brother Senator John (Jack) who has been aligned with his sister Attorney Christene McBurney. There has been extensive litigation in the RI Superior Court and the Supreme Court between these adversaries concerning the family law business and other matters. See In Re McBurney Law Services, Inc. MP 01-159 and reported as 798 A2d 877. This was a severe defeat for Kevin MCBurney and a victory for his brother and sister, his adversaries who were able to retain sole control and ownership of the McBurney family business Law firm-which was not the original intention of the parents-John and Ann McBurney. There were other family lawsuits with the same result. See Alice Peszke et als vs.Belkis Florentino et als

**Getting to the point** of relevancy herein this matter is that RI Supreme Court Justice Goldberg is married to former RI State Senator and current state political lobbyist Robert Goldberg. Goldberg is closely associated with Kevin's brother and sister-through politics, RI Bar Association as well as being near neighbors with their law offices both located on Cottage Street in Pawtucket, RI. Goldberg and Jack McBurney were also Senators on the

RI Judiciary Committee involved with the appointments of Judgeships- particularly during the time when Goldbergs wife was appointed to the Superior Court (later appointed to the Supreme Court). Through the many years, Goldberg has received extensive amounts of money payments from McBurney Law Services (always under Christene and Jacks control). One particular payment was in the amount of Seventy-six thousand and seven hundred and sixty two dollars and 50 cents. (\$76,762.50) see Ex.6-cancelled check).

It is unknown the exact reason for the payment but certainly not as a legal fee-no matter the inscription on the ledger. There were many other payments-estimated total near 7 figures. There were also political favors and influence peddling-children and relatives hired for full time/ tenured court and state employment (nepotism), political-voting favors, etc.

The exact point of note herein is that Judge Goldberg has been the Supreme Judge who decided against Kevin MCBurney in this Disciplinary matter at issue herein. She even had cast insulting aspersions against him during the 1/8/11 disciplinary conference. She has reacted similarly against Kevin MCBurney in other cases when he has appeared before her. See Belkis Florentino cited above. Her tone has always been demeaning and hostile to Kevin McBurney every time. In this disciplinary matter, she has, in essence, led the attack against Kevin MCBurney to make sure that the disciplinary finding is against him. The exact point referenced is NOT whether McBurney has paid Goldberg money (irrelevant) but rather that Goldberg has received money from McBurney and thereafter has interacted in cases involving Kevin MCBurney and has, in fact, ruled against him. This would entail the appearance of impropriety which would require recusal because of the clear-cut Conflict of Interest. Instead, Goldberg does the opposite and actively participates in same matters before her and in fact leads the attack (wrongly and improperly) against Kevin McBurney each and every time to find and determine against him. How does this certain

fact circumstance coincide with, correlate to, or be connected to what issues are presented to this Court in this petition. In no uncertain terms, it is alleged there is improper influence within the RI judiciary that impacts upon decision-making process and affecting Petitioner.

## **REASONS WHY CERTIORARI SHOULD BE GRANTED**

### **I**

#### **Review is warranted as Petitioners 14<sup>th</sup> amendment constitutional due process rights have been violated**

Petitioner, to this present day, has not received any notice from any Rhode Island State agency at any time as to exactly and precisely what statements, phrases or words that are contained in any, some, or all of his 10 pleadings filed during the course of the RI Supreme Court Appeal-07-364A were deemed to be inappropriate and offensive, etc. Nor was he provided explanation why any of same would be deemed as such. Since 4/16/0 Petitioner has no knowledge as to what language is attributed to him and why it is so.

As such, Petitioner has received a very public notoriety censuring; and he has been deprived of his life, liberty and personal livelihood without the essential due process consideration of notice as to exactly what he was being disciplined for. This is not an 'obscenity'-know it when you see it'- situation. Interpretation of language is very subjective and susceptible to many different and varying interpretations and meanings- particularly in the context of the proceeding by which the language has been articulated ( An RPC 8.3 Reporting of Professional Misconduct). Because of such, Petitioner is entitled to know what exactly he is being accused of and why before he can be disciplined or have his livelihood adversely affected as it has been-because he is now impoverished. RI has brushed a broad stroke in order to punish petitioner-with ulterior motivation behind it.

Furthermore, RPC 8.4 (d) is vague and ambiguous-on its face-upon its application to the charges against the Petitioner. RPC 8.4 (d) has been interpreted to regulate only actual dishonesty, false or improper action as exhibited by attorneys-not the meaning of words. In re Spikes, 881 A.2d 1118. See also In Re Almonte 678 A.3d 457

There is also the consideration of an attorneys right of free speech to assertively represent the interests of his client(s). This issue remains a very controversial issue at present because the nature of the legal profession with its self-regulatory restrictions and curtailments conflict with the constitutional right of free speech and expression. There was made every attempt to Report the Professional Misconduct of another attorney through other channels. A disciplinary complaint was filed against the accused attorney-which was summarily dismissed without even a glance-APP F. An appeal was timely filed and providing numerous pleadings that were reviewed by the RI Supreme Court- for two years-2007-2009- and alleging same allegations of misconduct by the accused attorney which had caused a legitimate civil case to be dismissed. No action was taken pursuant to RPC 8.3. Thereafter the 1/8/09 conference and discussion of same issues with the single justice and still the allegations fell upon deaf ears-no inquiry as to the accusations made (but never any complaint or objection to language, words or statements plead by Petitioner). Once the 1/29/09 Show Cause notice with the expected dismissal of the appeal and the Petitioners reaction thereto by filing Supplemental Memorandum (with commentary-Ex.7 ) then the 'tables were turned' against Petitioner and this disciplinary matter began. So, in the context of these facts, RPC 8.4 (d) would be an improper rule of professional conduct to be utilized to discipline the Petitioner when he had made every good faith effort for two years to bring it all to the forefront in this manner when he had

been brushed aside with every effort undertaken to fulfill his obligations according to RPC 8.3. Rhode Island Supreme Court can not punish the 'Whistle-Blower' in this fashion.

## II

### **Review is warranted-RPC 8.3 supercedes any issue relative to RPC 8.4 (d)**

Reporting the Professional Misconduct of an attorney according to RPC 8.3 is an affirmative ethical duty of each Rhode Island attorney. Yet, there seems to be no procedural mechanism in Rhode Island as to how to go about fulfilling this same obligation when there is such misconduct of an attorney that is to be reported. That was the dilemma that Petitioner faced after September 17, 2007 and through the initial stages of the 07-364A appeal (when the transcripts were requested and presented). Petitioner then put the pieces together to solve the mystery as to why the Providence Superior Court civil action was dismissed by J. Hurst (who abused her discretion) on 9/19/07 for no sensible basis whatsoever. RI Case law sets the state standard that there must be shown 'persistent refusal to comply with discovery'; bad faith defiance. Rule 37 (a) (2) in order to sustain a pre-trial dismissal of a civil action. Flanagan vs. Blair, 882 A.2d. 569-multiple cases. This is a standard that simply was not met and dismissal was unwarranted<sup>7</sup>. Besides The April 5, 2007 Ad Order 05-20 that was implemented by Judge Hurst suspended or held in abeyance the 2006 discovery order-if there was any discovery outstanding. There were so many other odd occurrences and other revealing facts that had taken place in C.A. No 05-280 that a RPC 8.3 inquiry should have superceded any perceived violation or conflict with RPC 8.4 (d). There have always been two major questions lingering throughout the RI Supreme Courts involvement with the 07-364A appeal that have never been addressed-left unanswered:

1. Why is there a statement with words contained on the 8/29/07 written court order

where it has been conceded by all parties that Hurst did not actually order such-6A

2. What was contained in the September 14, date stamped envelope from the defendants attorney in C.A. No. 05-280. The answer is-the 8/29/07 order that was certified as being mailed to Petitioner on 9/5/07 which would be *before* the 9/12/07 deadline. But nobody wants to acknowledge this certain truth

### III

#### **Review is warranted-there is an strong indication of judicial impropriety**

Without restating the obvious point raised in 'Statement of the Case-section D, the Petitioner has had to endure many years of professional and personal abuse in Rhode Island upon his representation of clients and his own personal interests. Petitioner has always believed that there have been ulterior reasons and motivations behind all of such adverse decisions against him-innumerable instances during the past 20 years since his rupture and disharmony with his brother and sister. Petitioner believes that there is a connection between the obvious political forces that exist in such a small, concentrated state like Rhode Island and all the defeats that Petitioner always suffers. Petitioners father among other ('knowledgeable') insiders who befriend Petitioner and always remind him-"You are going to get F\_\_\_ed" with any case or claim that you (those close to him ) bring". There have been many RI lawyers in cases involving Petitioners interests whereby the opposing attorney or even attorneys (supposedly) representing Petitioners interests commit wrongful acts of misconduct and then bold-facedly insinuate that RI courts will protect if Petitioner complains-which occurs. He always suffers abuse & mistreatment.

The Ahmed case and this disciplinary petition are the culmination of 20 yrs of deceit in RI. Petitioner has reached point of: 'the straw that ...broke the back'. Now, he reacts.

No. \_\_\_\_\_

---

In the

**SUPREME COURT OF THE UNITED STATES**

KEVIN B. MCBURNEY-Pro Se  
*Petitioner*

Vs.

DAVID CURTIN, in his capacity as  
The Chief Disciplinary Counsel for  
The State of Rhode Island  
*Respondent*

---

On Petition for Certiorari to the Supreme Court  
Of the State of Rhode Island

---

**APPENDIX OF PETITIONER UPON WRIT OF CERTIORARI**

---

Kevin McBurney

Providence, RI 02903

[kevinmcburney@yahoo.com](mailto:kevinmcburney@yahoo.com)

## PETITIONERS LIST OF EXHIBITS

<u>Ex No.</u>	<u>Description</u>	<u>Page</u>
1.	Plaintiffs expert medical disclosure report- C.A. No. 05-280 1A-B 4/5/07 Scheduling Order by J. Hurst in PC C.A. No. 05-280 and Ad Order-05-20 and 7/21/07 notice of compliance with scheduling order-no discussion of any objection.	7
2.	Copy of original September 14, 2007 envelope (held presently-RI Supreme Court)	7
3.	Plaintiffs Objection to 8/29/07 order as presented in C.A. No. 05-280	9
4.	Notice of Public Censure of Kevin McBurney, Esq.	9
5.	Pro Jo newspaper article of disciplinary action taken against Kevin McBurney	9
6.	Copy of cancelled check payable to Robert Goldberg from John MCBurney	11
7.	Appellants Supplemental Memorandum-RI Appeal- No. 07-364A	14

Judge Hurst Amended Administrative Order re: dispositive motions not complied with:  
Hearing date scheduled improperly and supporting memorandum filed contrary to this Ad Order..

Ms.Margolis, a decent person by Petitioners estimation, had acknowledged by written communication that J. Hurst had never expressly ordered such 'on the record' on 8/29/07 so the transcripts would not be necessary to be appended to this Writ-unless this Court deems otherwise. Ms. Margolis believes that it does not matter that the Judge did not actually state this language by her recited order from the bench-as the Supreme Court and Disciplinary Board agreed. Is such a 'broad sweep of the brush' proper during discovery practice. It sets a dangerous precedent if discovery now becomes a 'guessing-game'.

During the entire disciplinary process (disciplinary petition to board hearing to Supreme Court) there was not one pleading referenced nor was there any particular statement-word quoted in any way. All participants seemingly took a Justice Potter-( 'know it when see it') approach as to the 'inappropriate and offensive' language in the pleadings without disclosing what pleadings and language that they were looking at and why they saw it that way. Kevin McBurney has had to suffer the indignity of seeing his disciplinary sanction cited in the newspapers (Ex 4 )with full blown coverage through the media-TV and Radio (Ex.5). The average RI citizen does not distinguish between censure or disbarment-all the same to that person-just another corrupt lawyer who bites the dust. Kevin McBurney is now damaged goods not to be hired. RI never articulated what language they reviewed nor explained why language was improper.

Ann and John wanted all their children to share and enjoy the benefits of the family business- Equally! However, Jack and Christene thwarted their wishes as they plundered and 'converted'

all the family business assets for themselves. Jack and Christene had 'inside' political and judicial assistance in order to accomplish their illicit goals. Ann is the only true hero in the McBurney family that deserves sympathy and respect for all the struggles that she has endured with her children 'fighting each other' and her marriage for so many years-the bleeding cannot be stopped. Christene and Jack are regarded as the true cause of the dysfunctional ruination of the McBurney family and its complete break-up and have been essentially isolated-but they had help.

Kevin has promised his mother that he would never again be involved with litigation against his brother or sister no matter how much more harm and grief that they continue to cause the McBurney Family

Supreme Court Judge Flaherty recused himself from participating in any proceeding involving Kevin McBurney for ostensibly similar reasons. He did so of his own volition and choice. Why didn't Goldberg

Might explain why it has taken 4 years on appeal (an unusually lengthy period of time... for a 'cut and dry' discovery issue). Perhaps there is dilemma as to how to sustain J. Hurst's decision to dismiss without drastically changing the nature of civil procedure discovery practice-to return it back to 'trial by ambush'. Maybe also explains why there has been no decision by the RI Supreme Court in the Ahmed appeal-to the present day- when argument was heard on 3/30/11. Petitioners 90-day window to file Writ ends 5/24/11.

7 During 2007, no statement or word was ever discussed by Judge Hurst in C.A. No-05-280 about economic expert disclosure-always only medical expert disclosure. Discovery orders have to be specific and clearly stated in order to sustain pre-trial dismissal based upon R37 (a) (2)-not guess-work. The 8/29/07 Order was anything but clear and specific-hence no bad faith. It may be argued that 'interrogatory numbers' were discussed by defense counsel on 8/29/07 or recited in paperwork (mis-numbered) but this is misleading again because the discussion only concerned medical expert disclosure never economic and numbers were discussed-only in that context. Plus, there was never any discussion among the parties about the \$250,000 minimum recovery under the Wrongful Death Statute and the waiver of economic damages-always there was silence on these issues-which would by now leads to the conclusion that there was 'willful avoidance'.

8 In Florentino v. Peszke, Attorney 'C' representing petitioners 'wife' brazenly takes \$7500 from Florentino and does nothing-case is soon to be lost. Another attorney 'C' Malpractice-C.A. No.04-1684, Attorney P-outrageous acts of misconduct and fraud-same case and resulting appeal- .Denise Thurber (petitioners friend-client) C.A. 06-1132-Thurbers money 'wrongfully converted' from the registry of the court by attorneys, Muna Ahmed et als. R.James ,Roszkowski et als., Vales and Babcock (a multitude of acts of misconduct-always given a 'free-pass'), Rioles-family court during the early 90's and a slew of others. Does NOT include all the many other frivolous (ridiculous) disciplinary complaints filed vs. Petitioner over the years by adversaries in retaliation because he Reports Professional Misconduct.