Appeal No. 14-4003

United States Court of Appeals

For the Tenth Circuit

Mr. Riggs, Mrs. Singer, Mrs. Lyman, and Mrs. Valdez

Appellant/Plaintiffs,

v.

San Juan County et al

Appellees/ Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT
BRUCE S. JENKINS
D.C. NO. 2:00CV0584

APPELLANT'S OPENING BRIEF

Respectfully submitted,

Susan Rose (Bar no. 7985)
Counsel for the Appellant/Plaintiffs
9553 S. Indian Ridge Drive
Sandy, Utah 84092
(801) 674-9304
susan_rose@comcast.net

ORAL ARGUMENT IS RESPECTULLY REQUESTED

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Cases

Table of Authorities

X.STATEMENT OF PRIOR RELATED APPEALS

I. RELIEF SOUGHT IN DISTRICT COURT AND HERE IS BASED ON NEW INFORMATION AND ANALYSIS

The relief sought in this case in U.S. District Court, 2:00cv0584, was injunctive and declaratory relief and any other relief the Court found to be fair in equity and just under the law. (Aplt. App. 506A). If the Court's panel is predisposed as to how it will rule, Plaintiffs' respectfully request the Judges place those predispositions aside. This is a new day. New evidence, new controlling Supreme Court case law, new facts, newly discovered case law, all going to subject matter jurisdiction, warrants an objective view with a new eye. Evidence and reason, now shows how the Plaintiffs' and the welfare of the Court system and public are at risk of a wave of new monumental irreparable harms.

Plaintiffs well understand how federal courts avoid conflicts with states. But this appeal is not about just one attorney. Now it is a *new* developing trend. Plaintiffs humbly submit to this Court, *one of the most extensive examinations of Court attorney regulation jurisdiction* anywhere. And the law and facts and evidence are, to this date, without contradiction. Judge Bruce S. Jenkins stated,

> "Should extraordinary circumstances arise, this court may stay or enjoin State court proceedings to prevent the re-litigation of matters that have gone to judgment in this court, *i.e.*, "to protect or effectuate its judgments." 28 U.S.C. § 2283 (2006 ed.); *see* Charles A. Wright & Mary K. Kane, *Law of Federal Courts* § 47 (6th ed. 2002). Unless and until such circumstances do arise, this court must deny counsel the extraordinary relief she now seeks."

(Aplt. App. 164)

Federal statute 28 U.S.C. §2283 appears particularly well suited for these Plaintiffs and their attorney to seek enforcement of the original District Court's and this Court's attorney regulatory judgments. (Addendum attached).

Respect between sovereigns should go both ways without attorneys caught in the middle of conflicts, losing their licenses. This Court for other attorneys has already ruled it to be so. We ask for the same protection here.

Minimally, if the Court is immediately prone to denying the appeal, by applying the federal abstention *Rose* cases, Plaintiffs vigorously assert that to protect federal courts and jurisdiction and the Plaintiffs and the public, that *Sprint* should allow them a remand for a federal *preemption* analysis before federal abstention be applied again without the *Sprint* analysis. All issues here go to subject matter jurisdiction that can be raised at any time, and must be raised even *sua sponte* at all points of litigation. *Freytag, infra.*

A. Standard of Review

The district court's decision to grant the motion to dismiss for lack of standing de novo. *Hackford v. Babbitt, 14 F.3d 1457*, 1465 (10th Cir.1994) De novo review applies to a district court's decision to abstain pursuant to *Younger. Amanatullah v. Colo. Bd. of Med. Exam'rs,* 187 F.3d 1160, 1163 (10th Cir.1999).

II. RESPONSE TO THE DEFENDANTS AND THESE PERSONS' MOTIONS FOR SANCTIONS AND THE COURT'S POSSIBLE SUMMARY DISMISSAL OF THIS APPEAL

This Court ordered this attorney to respond to the opponents' motions for sanctions. This attorney acting in her own behalf, separate from these parties, asked for injunctive relief in *other* federal courts from the alleged 'state'court relitigation of issues ruled on in *this* case. *Rose v. State of Utah, No. 10-4000, 2010 WL 4146222 (10th Cir., decided Oct. 22, 2010).* This Court identified that if this attorney sought relief again, sanctions could issue. *Rose v. Utah* 2012.

a. Simple Background

This case resulted in prolonged litigation with multiple courts denying the defendants sanctions motions against the Plaintiffs and their attorney. See, *MacArthur et al v. San Juan County et al,* 1227 (10th Cir. 2002) (*MacArthur* 2002) (remanding case to U.S. District court for further analysis identifying these defendants were not 'state employees' fn. 15, dismissing Truck and defendants' Navajo attorney as parties); *Macarthur v. San Juan County*, 391 F.Supp.2d 895, 942 (D. Utah, 2005)(*MacArthur* 2005)(applied this Court's ordered analysis, and found to the Plaintiffs' benefit, "*Montana*" Indian jurisdiction doctrine should not apply); *Macarthur v. San Juan County*, 497 F.3d 1057 (10th Cir., 2007) (*MacArthur* 2007) (suddenly found without 'facts' or evidence that the defendants

were 'state employees' outside Navajo jurisdiction) and *Dickson v. San Juan County*, No. 08-4148 (10th Cir. 12/10/2009)(doing a review of all prior *MacArthur* cases and denied the defendants' motion for sanctions as not warranted).

b. Why Sanctions Should Not Apply

Here is why sanctions should not apply. A 'Snippets' state court trial of litigation actions in two Federal question Navajo Court- rooted cases are the basis for these person's 'relitigation' of this attorneys 'in court' conduct-- already regulated by the original judges without discipline. See 'Bar' complaint (Aplt. Ap. 239A) "OPC matter" for this case, and "Smith matter" (Aplt. Ap. 249A) for a Navajo Court Indian Child Welfare Act (ICWA) 'state' case. In the "OPC" matter, Navajo Court orders were sought to be enforced in Federal court. Aplt. Ap. 239A. In the "Smith matter", Navajo Court orders were sought to be enforced to extricate a Navajo mother and child from a state court action brought by non Indian alleged grandparents. All were domiciled within the Navajo reservation. Aplt. App. 249A.

At the time this attorney initially sought relief from the "Bar's" prosecution, in 2008, it was fairly said to be a case of first impression. Until a pattern evolved and new evidence was obtained, these Plaintiffs/defendants' interests in these person's prosecution could not be fairly foreseen. Now that pattern can be seen.

The federal *abstention* doctrine that was applied in the *Rose* cases, do not involve these Plaintiffs' as parties who face irreparable harms by the readily predicted disbarment state court prosecution based on a default order. Aplt. App. 316A on charges their claims were unsupported by fact and law. i.e. lying that will be used in the media to destroy all they have built for the public *in direct economic competition with the defendants.* Aplt. App. 237A. The *Rose* courts relied on doing a simple federal abstention analysis, not a federal preemption analysis. And not a *Middlesex* exception analysis.

Unlike those cases, the key issue here, is we are asking 1) the original judge to enforce his own orders, against persons who are acting in behalf of the defendants, based on this original case, and 2) to effectuate federal jurisdiction over defining Navajo Court jurisdiction on issues of Indian law this original judge has already ruled on in this case.

Middlesex and Younger [[1]*]* never involved 'relitigation' of the way original judges first regulated an attorney's conduct. And it analyzed the rules of New Jersey to see if they were unconstitutional and if there was a direct appeal to the state's supreme court of challenges before disbarment. Not available here. (Aplt. App. 301A). These people are using Bar rule 14-511(a) to invade Judges inherent

[1] *Younger* v. *Harris,* 401 U. S. 37 (1971); *Middlesex County Ethics Comm.* v. *Garden State Bar Assn.,* 457 U. S. 423, 432 (1982)

and statutory authority to regulate the practice of law, and they are invading the Navajo Court's jurisdiction Congress prohibits to states.

Rule 14-511. Proceedings subsequent to finding of probable cause.

> "(a) Commencement of action. If the screening panel finds probable cause to believe that there are grounds for public discipline and that a formal complaint is merited, OPC counsel shall prepare and file with the district court a formal complaint setting forth in plain and concise language the facts upon which the charge of unprofessional conduct is based and the applicable provisions of the Rules of Professional Conduct. The formal complaint shall be signed by the Committee chair or, in the chair's absence, by the Committee vice chair or a screening panel chair designated by the Committee chair."

"Probable cause" in a Bar rule 501(c) "civil" context and in rule 14-510 addendum, is undefined. This attorney's survey of public prosecutions in state court finds nearly all, are solo and small firm attorneys.

Without question, the United State Supreme Court mandates that *all* judges have the exclusive inherent, indivisible authority to regulate the practice of law of attorneys for litigation issues arising in their Courts.

Beyond this, Congress and the U.S. Supreme Courts provide a plan for attorney discipline involving federal litigation. And Utah's legislature provides an attorney regulation plan for state litigation issues.

These legislative bodies have carved out an exception to Bars regulating the attorney's practice of law for attorneys 'acting as advocate' actions.

Further, there are about five reasons why this case is back before this Court now.

First, in 2011, the U.S. District court appeared to least leave open the possibility of returning to enforce his own orders and effectuate federal court jurisdiction.

> "Should extraordinary circumstances arise, this court may stay or enjoin State court proceedings to prevent the re-litigation of matters that have gone to judgment in this court, *i.e.*, "to protect or effectuate its judgments." 28 U.S.C. § 2283 (2006 ed.); *see* Charles A. Wright & Mary K. Kane, *Law of Federal Courts* § 47 (6th ed. 2002). Unless and until such circumstances do arise, this court must deny counsel the extraordinary relief she now seeks."

(Aplt. App. 164)

Second, Judge Jenkins found that these person's actions of prosecuting attorneys in a state tribunal for what was done in federal court, raises "important considerations of judicial power and federalism" (Aplt. App. 162A)… All going to subject matter jurisdiction and federal supremacy. So as the state proceedings progressed, and new evidence arose, this attorney sought relief at each stage. *Freytag v. Commissioner*, 501 U.S. 868, 896 (1991)(J. Scalia concurrence) identifying subject matter jurisdiction issues must be raised,

> "not, however, because the error was structural, but because, whether structural or not, it deprived the federal court of its requisite subject matter jurisdiction. Such an error may be raised by a party, and indeed must be noticed *sua sponte* by a court, at **all** points in the litigation."

Id. emphasis added.

Third, horrific irreparable harms based now on new evidence. if there is a danger to the Court itself that has been discovered, this attorney has an unflagging duty by her oath to report it. Having now a pattern of similar prosecutions to draw

from, a) the immediate danger to the Plaintiffs from any post disbarment prosecution, b) the chilling of rights of minority and Indian persons, and c) most of all, dangers to the Court itself, appeared of overriding importance.

Danger to the public. No attorneys will enforce laws when they facing the 'right' law firms who can secure the Bar's disbarment of them, and render any orders or judgments in their behalf, a complete fiction. Disbarment is scheduled for March 12 and 13. Aplt. Ap. 333A

This Court- in this original case- stated that if there is some basis in fact and law of a party then sanctions will not issue. *Dickson v. San Juan County*, No. 08-4148 (10th Cir. 12/10/2009). Aplt. Ap. 205A.

All the *Rose* cases depended solely on a federal *abstention* analysis. NEW LAW: *Sprint Communications v. Jacobs*, 570 U.S. __ (Dec. 10, 2013) identifies a federal '***preemption***' analysis, and a *Middlesex/Younger* factual and Constitutional analysis, should be done before federal 'abstention' applies. New evidence showing the prosecution was to invade the attorney client privileges (Aplt. App. 273A, 309A), and newly discovered law showing federal preemption applies, effecting subject matter jurisdiction, should warrant against the application of sanctions or summary disposition here.

A 'snippets' 'trial' relitigating in 'state' court, the same issues, adjuged by original case judges, unconstitutionally deprives the accused of the Due Process

they received from the original judges- *in the first instance*. *Hamdi v. Rumsfeld, 542 U.S. 507, 533 (2004).* By a process Judge Jenkins identifies 'invites error'. Aplt. App. 163A. Plaintiffs are not a party to the state court proceeding.

While not controlling, at least persuasive, the 8th Circuit Court identifies some of the harms to the federal judiciary and federal supremacy.

SDDS, Inc., In re, 97 F.3d 1030, 1036 (C.A.8, 1996).

> "The question presented is therefore whether the Defendants, who had been properly sued for declaratory relief in a prior suit, can now assert Eleventh Amendment immunity from *this suit for prospective injunctive relief which seeks only to effectuate our earlier judgment.* An affirmative answer would allow these Defendants, and all future state defendants, **to effectively ignore judgments rendered in the federal courts, generating needless relitigation in the state courts, and rendering our judgments largely nugatory and advisory.** [6] This is an intolerable result, and one which is not, we believe, mandated by the Eleventh Amendment. **We therefore hold that the Eleventh Amendment does not bar a suit in the federal court for injunctive relief to prohibit a state defendant from relitigating in a state court issues previously decided in a federal court.** [7]
>
> ….
>
> Included in the Anti-Injunction Act are specific, enumerated exceptions. These exceptions, which "are designed to ensure the effectiveness and supremacy of federal law," *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146, 108 S.Ct. 1684 1689, 100 L.Ed.2d 127 (1988), **include the relitigation exception**. This exception was designed to **permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court.** It is founded in the well-recognized concepts of res judicata and collateral estoppel.".

Id. emphasis added.

See orders previously regulating attorney conduct these persons are 'relitigating' post hac in a state court without removal orders. App. 198A, 201A, 203A. This Court's Dickson, 205A (denial @ 216A), for the "Smith matter" a

Navajo Judgment, ICWA says is entitled to full faith and credit, 218A, a Utah Court of Appeals ruling showing the state had no jurisdiction over this attorney's clients. 232A and a final dismissal with prejudice without discipline. 234A.

This entire Appellant Opening Brief, all facts and all law, some discovered after the Appeal was filed, respond to the sanctions motion.

III. FURTHER RELIEF SOUGHT HERE

(1) Plaintiffs seek enforcement of the U. S. District Court orders (Aplt. App 198A-203A) and *Dickson (*Aplt. App. 205A, and a Navajo Court and state court orders (Aplt. Ap. 218A and 234A).

(2) Plaintiffs seek a remand order for further analysis under this Court's ruling in *Colorado I, infra*, *Sprint, Middlesex*, and the Anti Injunction act, if necessary.

(3) Plaintiffs also ask the Court to certify questions to the United States Supreme Court under its rule 19, that will resolve all issues here.

IV. STATEMENT OF JURISDICTION

Almost all the key issues here fall within the jurisdiction statement.

Filing times: The District Court issued its order denying relief January 8, 2014. The Plaintiffs timely appealed January 9, 2014.

Finality: This case was closed, however, parallel litigation starting after this court took jurisdiction has been relitigating the same issue in state court. Under

Chambers and the Court's inherent authority and power to enforce its own orders, the Plaintiffs sought relief. It is a final order for all issues.

(A)FEDERAL JURISDICTION LIES IN PROTECTING JUDGES' INHERENT AUTHORITY

Enforcing Navajo and State or Federal Court's judgments regarding attorney conduct in Indian law is a 28 U.S.C. 1331 federal question. Congress and Utah's legislature have carved out an exception to state Bars' authority to regulate attorneys' practice of law. That exception recognizes the statutorily separate inherent Judges' exclusive, undividable authority to regulate the practice of law of the attorneys in the court before them. *Taylor v. Kentucky State Bar Association*, 424 F.2d 478 (6th Cir., 1970). *United States* v. *Hudson,* 11 U.S. (7 Cranch) 32, 34 (1812) to 1991's *Chambers* v. *NASCO,* 501U.S. 32, 43-47 (1991) identifies the Court's inherent powers essential to Judges regulating the practice of law in their courts and litigation, for all courts that are undividable, and exclusive. *Ex parte Bradley*, 74 U.S. 364, 375 19 L.Ed. 214, 7 Wall. 364 (1868)(one court has no jurisdiction to try an attorney for alleged contempts in an original court). [1] Also, *Michaelson v. United States Chicago, St Ry Co Sandefur v. Canoe Creek Coal Co*, 266 U.S. 42, 66, 45 S.Ct. 18, 69 L.Ed. 162, 35 A. L. R. 451 (1924) holds that *universally*, for all our nation's judges, a judge's power is 'exclusive', 'essential' to all others, that cannot be 'abrogated', or divided or given away.

This case presents the federal question, that with or without any statutes, these persons relying on Bar rule 14-511(a) cannot retry the way Judges have regulated this attorney, in an area of law reserved from Utah by Congress, discussed below.

U.S. statutory attorney regulatory law. Congress and the U.S. Supreme Court have defined the way Federal Courts regulate the practice of law through a specific design that excludes all other law …that necessarily excludes State Bar's relitigation of the way the original judges regulate attorneys' practice of law. U.S. Constitution's Article III, Article VI supremacy clause, addendum, the Judiciary Act of 1798, the rule Enabling act 28 U.S.C. §§ 2071 and 2072, 28 U.S.C. Appendix Federal Rule of Civil Procedure at 83, and local rules 83.1.5 et seq. See fn. 2 in Judge Jenkins order. Aplt. App.

28 U.S.C. §2072 reads:

> **"(a)** The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
> **(b)** Such rules shall not abridge, enlarge or modify any substantive right. **All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.**
> **(c)** Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title."

Id.

"All laws in conflict with such rules shall be of no further force or effect" seems very definite regarding a lack of 'state' authority.

DUCivR 83-1.5.1 general provisions, authorized by FRCP 83, absorbs Utah rules of professional conduct into the local federal rules.

> **"(a) Standards of Professional Conduct.**
>
> All attorneys practicing before this court, either as members of the bar of this court by pro hac vice admission, must comply with the rules of practice **adopted by this court** and with the Utah Rules of Professional Conduct as revised, amended, and **interpreted** by this court."

Federal absorption of state rules, transform them into federal law, leaving no state interest. This Court, along with the 1st and 3rd Circuits have ruled that when state Bar rules are absorbed into federal rules, they become federal statutory law, outside of any *Middlesex* 'state interest' and federal 'preemption', declaratory and injunctive relief can issue. See, the 1st, 3rd, and 10th Circuits, *Whitehouse v. U.S. Dist. Court for Dist. of Rhode Island*, 53 F.3d 1349, 1354 (C.A.1 (N.H. 1994) (upholding the reasoning of *U.S. v. Klubock, 832 F.2d 649 (C.A.1 (Mass.), 1986)(Klubock I)*) and *Baylson v. Disciplinary Bd. of Supreme Court of Pennsylvania*, 975 F.2d 102 (C.A.3 (Pa.), 1992)(state Bar was disciplining public prosecutors using state rule at variance with federal rule); *U.S. v. Colorado Supreme Court*, 87 F.3d 1161 (C.A.10 (Colo.), 1996), (*Colorado I*)(remanding case for further analysis when federal abstention was applied denying declaratory relief) and *USA v. Colorado Supreme Court,* 189 F.3d 1281 (10th Cir., 1999)(*Colorado II*).

Utah's state codification of Judge's exclusive authority. Utah Code 78A-2-201, 78A-2-218 (Addendum attached) restrict the Bar. These codes make attorney 'in court' regulation the exclusive *duty* of '*every* court' and '*every* judicial officer', not of 'every court and the Bar'. Not of 'every district court unless another district court disagrees'. The state legislature might have said, "all courts" or "all judicial officers" but it wanted to say, "every" meaning "each" and 'every' individual court, "each judicial officer" of which these persons are not. Appellate jurisdiction is not found for District courts to retry the regulation of attorneys already done by the original judge so as *to de facto* alter their final judgments to include disbarment. *Bradley* and *Michaelson* and these statutes exclusivity for judges are consistent. Bar rule 14-511a (addendum) cannot trump these legislative restrictions on the judicial branch. See, notes to the Anti Injunction Act, addendum. *State v. Nielsen*, 522 P.2d 1366 (1974)

> "We are of the opinion that until such time as the statutes above referred to are modified or repealed by the legislature this court would be without power to provide for discovery proceedings by court rule."

Id. (examining a rule of civil procedure vs. a statute)

Basis for Federal jurisdiction in Indian law: These persons challenge this attorneys' and clients reliance on Navajo Court orders Aplt. App. and ICWA judgments. Congress is given plenary and exclusive authority over Indian Nations under the Indian Commerce Clause Article 1, Section 8, Clause 3 and Article VI

supremacy clause of the U.S. Constitution and by the Navajo Treaty of 1849 (addendum 4A). In 25 U.S.C. 1301-1326 Indian Civil Rights Act and 1901 et seq. Indian Child Welfare Act ("ICWA") Congress explicitly bars state's involvement in Navajo Court affairs, unless a state constitution is reformed and the Indians affected by state control vote for having state control, not applicable here.

> "State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply."

McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973).

MacArthur 2005, at 938-939, *infra*.

> "Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians."

Santa Clara Pueblo v. Martinez, 436 U.S. 49, 65 (1978).

> "The other Titles of the ICRA also manifest a congressional purpose to protect tribal sovereignty from undue interference. For instance, Title III, 25 U.S.C. §§ 1321-1326, hailed by some of the ICRA's supporters as the most important part of the Act,[15] provides that States may not assume civil or criminal jurisdiction over "Indian country" without the prior consent of the tribe, thereby abrogating prior law to the contrary.[16] Other Titles of the ICRA provide for strengthening certain tribal courts through training of Indian judges,[17] and for minimizing interference by the Federal Bureau of Indian Affairs in tribal litigation."

Santa Clara at 63-64.

Indian Child Welfare Act 25 U.S.C. 1901 et seq.

> "The Indian Child Welfare Act of 1978, Pub.L. No. 95-608, 92 Stat. 3069 (1978), *codified at* 25 U.S.C.A. §§ 1901 *et. seq.* (2001), emphatically reaffirmed Indian tribal jurisdiction over child custody, adoption and child welfare issues, including the primary role of tribal courts in the exercise of tribal jurisdiction over the children of tribal

> members. *See* 25 U.S.C.A. § 1911. Congress further afforded tribal judicial proceedings involving Indian child custody "full faith and credit" to the same extent that federal and state entities "give full faith and credit to the public acts, records, and judicial proceedings of any other entity." 25 U.S.C.A. § 1911(d) (2001)."

MacArthur 2005 at 942.

The Congress could not be more explicit than in §1911

> "25 U.S.C. § 1911. Indian tribe jurisdiction over Indian child custody proceedings
> (a) Exclusive jurisdiction
> An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child."

Id.

Utah's legislature agrees with the federal ICWA. For these persons "Smith matter"; Utah code 78B-13-104[2], 78B-13-109 (immunity from personal jurisdiction) (attached), *supra,* upholds and verifies the Indian Child Welfare Act and the immunity of the attorney's clients from any personal

---

[2] **78B-13-104. Application to Indian tribes.**

"(1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901 et seq., is **not subject to this chapter** to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state **shall** treat a tribe as a state of the United States for purposes of Part 1, General Provisions, and Part 2, Jurisdiction….."

jurisdiction. *MacArthur* 2005, at 942 already ruled on this jurisdiction issue citing to *Santa Clara*.

Basis for jurisdiction of the U.S. District Court. All the *MacArthur* cases found they had 28 U.S.C. §1331 jurisdiction. Under all the foregoing law, and 28 U.S.C. §2283, it has jurisdiction to enforce its own orders, and enforce exclusive federal question jurisdiction over Indian issues. *SDDS, supra*. The *Rose* cases, based only on a federal *abstention*, not federal *preemption*, analysis, found none.

Basis for this Court's jurisdiction: This Court under the Supremacy clause and its own inherent powers and the foregoing law, and 28 U.S.C. §1291, and 28 U.S.C. §2283, have all the authority it needs to address this case and this issue, and grant all or any of the relief these Plaintiffs are requesting.

(B) FEDERAL ANTI INJUNCTION ACT JURISDICTION

Aside and in addition to the foregoing, the this Tenth Circuit Court determined that where the underlying issues involved in a state proceeding had been previously ruled upon by a U.S. District Court, the District Court erred in dismissing the parties' claims. *Weyerhaeuser Co. v. Wyatt*, 505 F.3d 1104, 1107-1108 (10th Cir., 2007)(for effectuating orders) held,

> "The Anti-Injunction Act provides that a federal court "may not grant an injunction to stay proceedings in a State court" except in three circumstances: "as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. This case concerns the scope of the third circumstance, commonly known as the relitigation exception."

Id.

The anti-injunction act reads as follows:

> **"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. "**

28 U.S.C. §2283, Anti Injunction Act.

The notes to this federal statute convey clearly Congress' intent.

> "The exceptions specifically include the words 'to protect or effectuate its judgments,' for lack of which the Supreme Court held that the Federal courts are without power to enjoin **relitigation** of cases and controversies fully adjudicated by such courts. (See Toucey v. New York Life Insurance Co., 62 S.Ct. 139, 314 U.S. 118, 86 L.Ed. 100. A vigorous dissenting opinion (62 S.Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change). **Therefore the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision.**" Id. notes to the Anti injunction Act. "

Emphasis added.

The issues here are the same as in state court identified above, to "step in" to "bring order" to it, to limit costs to the insurance company protected defendants ---who might lose the federal court case, to protect those taxpayers' fisc? Aplt. App.

This Court also addressed the anti injunction acts' 'jurisdictional' preclusion of parallel state proceedings in *Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 2010 WL 354353 (10th Cir., 2010).

> "In addition to express preemption, the Supremacy Clause prohibits states from enacting laws that make compliance with both federal and state law a physical impossibility or that "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.". [citation omitted] Even when federal and state statutes serve the same ultimate goal, "[t]he fact of a common end hardly neutralizes conflicting means." [citation omitted]"

Id. at 766-767

It is physically impossible for any attorney comply with conflicting standards, where Judges rule for them, and party litigants with the Bar see it opposite. Attorneys prosecuted opposite how Judges regulate them have no 'notice' of disbar able misconduct.

Jurisdiction is expressly enforceable for both OPC and Smith matters. The issue of state courts involved in Indian law cases has been decided for both of the underlying prosecution's cases in *MacArthur* 2005, and in *Santa Clara Pueblo*, cited therein. *Edmonson* held,

> "Because that outcome would undermine Congress' decision …. the state… suit was impliedly preempted; it "would have stood as an obstacle to the accomplishment and execution of the important means-related federal objectives."

Id. at 779

Further, unconstitutional laws are never exempt from preemption. *Young, infra.*

Based on the foregoing, and *Edmonson,*

> "Oklahoma [here, Utah] does not have an interest in enforcing a law that is likely constitutionally infirm. Moreover, "the public interest will perforce be served by enjoining the enforcement of the invalid provisions of state law."[citations omitted]"

Id. at 771.

Proof it is the *same* issues. The complaint itself (Aplt app), using excerpts of Judge's statements, out of context, demonstrates the Judges were aware of any alleged misconduct issues, the "same" issues. Also, they said they were 'stepping in' to this case. Aplt. App.

(C) SPRINT'S MIDDLESEX FEDERAL PREEMPTION JURISDICTION

Middlesex never involved relitigation of attorney regulation. All the Courts' applying it here, erred. If *Middlesex* would still be argued, Sprint says a Court must do an analysis as *Sprint* itself did of *Middlesex* components. The Court below and all other Rose courts failed to do this analysis. The new *Sprint* decision at page 5 (addendum) went on to explain why *Middlesex* would support federal abstention in four ways not applicable here, as a matter of law, while *presuming* 'preemption'. None of the *Rose* Courts did this analysis upon which the District Court relies.

Sprint observed in *Middlesex*, (1) there were quasi criminal proceedings (here civil); (2) a state initiating the action with proof of wrong doing (here opposing party litigants through these persons who admit they have no evidence (Aplt. Ap. 264A); (3) with investigations (here, they admit they do no independent investigations)(Aplt. App. 355A; (4) acting with state authority (here acting in violation of state and federal jurisdictional laws).

First, *Sprint* observes that in *Middlesex*,

> "Our decisions applying Younger to instances of civil enforcement have generally concerned state proceedings "akin to a criminal prosecution" in "important respects." Huffman, 420 U. S., at 604. See also Middlesex, 457 U. S., at 432 (Younger abstention appropriate where "noncriminal proceedings bear a close relationship to proceedings criminal in nature").

Id. at pg. 5

1) Here, Utah has a totally 'civil' proceeding by way of their rules. Utah Bar rule 14-501 (c) [3] 'civil proceeding', using a Bar rule 14-517 (b) [4] preponderance of evidence' standard. Attorneys can not obtain access to their entire prosecution file, Aplt. App. , that would normally include witness statements, exculpatory evidence going to motives of the prosecution, etc.

2) And *Middlesex* was not a parallel proceeding. *Middlesex* was *not* about the New Jersey Bar *relitigating* the regulation of an attorney's 'in court' speech already regulated by judges. *Middlesex* dealt with out of court speech, not as here, prior Judge- regulated 'in court' speech, filings, pleadings. b) *Middlesex* did *not* deal with regulating how an attorney argues Indian Court jurisdictional law explicitly reserved to

---

[3] Bar rule 501 (c) "Formal disciplinary and disability proceedings are civil in nature."

[4] Bar Rule 517 (b) "Standard of proof. Formal complaints of misconduct, petitions for reinstatement and readmission, and petitions for transfer to and from disability status shall be established by a preponderance of the evidence."

the Indian Nation first, and then to federal court. (*Santa Clara supra*), c) based upon an unnotarized complaint (Aplt. App. 386A) d) by Insurance paid counsel (Aplt. App. 375A); e) for the admitted purpose of regulating federal court litigation (Aplt. App. 299A) to limit federal court damages to 'public' corporations who can sue and be sued, f) without state sovereign immunity [5]. *MacArthur* 2002 fn. 15.

Second *Sprint* observes that in *Middlesex*,

> "Such enforcement actions are characteristically initiated to sanction the federal plaintiff, i.e., the party challenging the state action, for some wrongful act. See, e.g., Middlesex, 457 U. S., at 433–434 (state-initiated disciplinary proceedings against lawyer for violation of state ethics rules). "

Id.

How can there be proof of a 'wrongful act' if Judges have not issued discipline orders, and these persons admit no evidence, and there is none in the state court record now, 10 years after the 2004 informal complaint? Here, we have an opposing party litigant initiating the process in behalf of opposing parties, with (Aplt. Ap. 386A) default orders issued (Aplt. App. 306A, 316A,) because (1) this attorney did in fact respond to the OPC/defendant collusive process of discovery by protecting her clients' privileges, (Aplt.

[5] *Cook County v. United States ex rel. Chandler* - 538 U.S. 119, 126 (2003) *("…..* that municipal corporations and private ones were simply two species of "body politic and corporate," treated alike in terms of their legal status as persons capable of suing and being sued.").

App. 369A), opposite the Court finding a lack of cooperation in discovery, and (2) there is no evidence, as these persons admitted they don't even know the names of these Plaintiffs and are 'stymied' as to how to proceed, and can't prevail in state court without a default. Aplt. App. 290A The first default (Aplt. App. 306A) also arbitrarily and by surprise, without prior charges being made anywhere, found this attorney, and presumably her clients who are not a party, obtained evidence unethically, thus waiving their privileges.

Third, *Sprint* observes that in *Middlesex*,

> "investigations are commonly involved, often culminating in the filing of a formal complaint or charges."

Id.

Here, we know now 1) that these persons do not do their own independent investigations. (Aplt. App. 355A). 2) Here these persons rely on what the complainant gives them. (Aplt. App. 355A); 3) Under the guise of regulating the practice of law, the prosecutions are used to effect federal court litigation. Aplt. App. 359A, 361A, 299A) The 'one hour' screening panels do not 'investigate' , at that time, 7 year litigation (Aplt. App. 373A). An agency transforming a party's story into a 'state' record of 'facts' out of the context of the entirety. Judge Jenkins observed to be error. (aplt. App 163A.)

Fourth, in *Middlesex* the 'state' action was filed by state authority, observed by the U.S. District court, and Supreme Court, that were *not* in violation of

state law or federal Constitutional law. *Middlesex* observes that New Jersey attorneys can directly challenge the constitutionality of New Jersey rules prior to any discipline action against them. A legal fact the U.S. Supreme Court most definitely observed. Not applicable in Utah. This attorney is expressly prohibited from doing so. Aplt. App. An analysis of New Jersey rules was done.

(D) FEDERAL COURT JURISDICTION IS FOUND IN *MIDDLESEX*'S FLAGRANTLY AND PATENTLY UNCONSTITUTIONAL EXCEPTION TO ABSTENTION- NEVER PREVIOUSLY ANALYZED

District Court and this Court have jurisdiction under the 14th and 5th Amendments to the United States Constitution. *Middlesex* was never intended to say that federal courts should *never* enforce the federal constitution for lawyers. *Middlesex* intentionally ruled out federal abstention when the state rules or process was 'flagrantly an patently' unconstitutional. These persons' processes and the Utah Bar Rules are flagrantly and patently unconstitutional as applied and facially.

Unlike *Middlesex*, here we have a 'civil,' not quasi criminal, not criminal, proceeding. Utah Rule of Judicial Administration ("Bar Rule") 14-501 (c) [6] 'civil proceeding', using a Bar rule 14-517 (b) [7] 'preponderance of evidence'

---

6 Bar rule 501 (c) "Formal disciplinary and disability proceedings are **civil** in nature."

7 Bar Rule 517 (b) "Standard of proof. Formal complaints of misconduct, petitions for reinstatement and readmission, and petitions for transfer to and from disability status **shall be established by a preponderance of the evidence**."

standard. These standards are directly contrary to the U.S. Supreme Court rulings in *In re Ruffalo,* 390 U.S. 544 (1968) ("These are adversary proceedings of a quasi-criminal nature. Cf. *In re Gault*, 387 U.S. 1, 33, 87 S.Ct. 1428 1446, 18 L.Ed.2d 527.") *Gault* requires the state to meet a quasi criminal 'clear and convincing' standard of proof.

(i) There are minimally seven more reasons why the Utah rules and process are flagrantly unconstitutional for all Utah attorneys.

First, the original judge is the impartial trier --in the first instance. *Hamdi, supra*. A state's relitigation deprives the attorney of this *initial* triers' final judgments without discipline, or denying, or dissolving discipline, rendering those judgments and exclusive federal jurisdiction protections of the attorney, a nullity. *SDDS, supra*.

Second, we now have their own admissions that screening panels are limited by an inflexible, or virtually inflexible*, 1 hour time limit per case* (Aplt. Ap.) that eliminates the ability of attorneys to call all or 'any witnesses' allowed by Bar rule 14-510. And Utah rules of civil procedure 63 (b)(1)(C) ….No party may file more than one motion to disqualify *in an action*." *Goss v. Lopez* 419 U.S. 565, 578 (1975)(" '(t)he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.'") *Hamdi v. Rumsfeld, 542 U.S. 507, 533 (2004)* holds that an impartial trier is absolutely

mandatory for all U.S. Citizens' *in the first instance, citing to Ward v. Village of Monroeville*, 409 U.S. 57 (1972)(holding a trial *de novo* is insufficient to protect Due Process that is a right and entitlement *in the first instance*.").

Third, a 'Snippets trial' cannot be impartial. It is impossible for a 'one hour' screening panel, in cases like this one, to be impartial, because the panel cannot know all the facts, in the context of the entirety when it comes to litigation re-trials. Judge Jenkins agrees. Aplt. App. 163A The record complied by the Office of Professional conduct, and the original Courts, must be reviewed "in its entirety, including all evidence that `fairly detracts from the substantiality of the evidence.'" *Consol. Bearings Co. v. United States,* 412 F.3d 1266, 1269 (Fed.Cir.2005) (citations omitted); *see also Gerald Metals, Inc. v. United States,* 132 F.3d 716, 720 (Fed.Cir.1997) ("[T]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight." (citations omitted)).

Fourth, these persons are transforming a party litigant's 'collage of snippets', a pro hac version of a case, into a 'state' public record, here without evidence to support their claims, so as to control federal court processes. Aplt. App. What 'snippets' have any validity depends on 'another judge' admitting or denying evidence. In this case, the state court striking as 'scandalous' 'meritless'

and 'frivolous', (Aplt. App. 333A,341A), all of the Navajo, Federal and prior State Court orders and judgments issued without discipline.

> "The snippets extracted from various opinions and orders in the *MacArthur* litigation—all of them seemingly critical of plaintiffs' counsel and all of them lacking essential context—now collected in various pleadings and memoranda (copies of which were furnished in response to this court's recent query), obviously are not the entire record. Opinions and orders decide issues specific to the particular case. An attorney's competence in disagreeing with Justice Scalia's view of federal common law cannot be weighed in isolation from the underlying controversy. How many motions are "too many" can only be determined in the full context of the case in which they were filed. Any **State** court examination of an attorney's handling of **federal** court litigation without benefit of the essential context of the complete record invites error."

Judge Jenkins' August 15, 2011 order, ex. 2, upon which his January 8, 2014 order relies. (Aplt. App 157A, 160A.)

Fifth, the pattern is chilling. We see now how post disbarment/suspension proceedings also attack the parties (Aplt. App. 147A, 151A) and the whisteblowers (Aplt. App. 147A) who were not parties to the state's relitigation. Here, all the judgments for these parties have been now stricken from the state record, all going to subject matter jurisdiction, as so offensive they are immaterial, and scandalous. (Aplt. App. 333A, 341A).

Ask yourself, after reading Lisa Aubuchon's affidavit (Aplt. App. 147A), after seeing the media exposure to Mr. Larsen by his federal court opposing

counsel Trentadue (Aplt. App. 359A), after seeing this case, would you, as an attorney sue any county, where the Insurance funded opposing counsel's office secures bar prosecutions against whistleblower and minority rights advocates?

Sixth, Mrs. Fox denies this attorney her entire prosecution file, witness statements, letters, faxes, emails, so the attorney can examine all the same information these persons are relying upon, to discern any error. Mrs. Fox says that is not to be. (Aplt. App. 303A). All this information in a quasi criminal context would have been readily available. Has any Court besides Utah's 3rd District Court heard of disbarment by 'default' because the Bar says it has no evidence (Aplt. App. 264A)? A 'snippets' re trial, based on lack of evidence to support the claims, where the entire prosecution file is forbidden to the accused, provides no way the state trier can have all information in the entirety upon which to try the case, leaving it to rely on the bald assertions of these persons, as was done for default orders #1, and #2. Aplt. App. 306A, 316A .

Declaratory Judgment relief for this Court, and the District Courts' jurisdiction, is found in 28 U.S.C. §§2201 and 2202 where that Bar v. court conflict was remanded. *Colorado I, supra*.

V. STATEMENT OF THE ISSUES PRESENTED

1. Did the Tenth Circuit Courts in the *Rose v. Utah State Bar*, and the U.S. District Court commit reversible error by denying enforcement of its orders, and enforcement of exclusive federal jurisdiction over (i) attorney regulation, and (b) Indian Nation jurisdictional law, and (iii) Constitutional Supremacy,
    a. without doing a *Sprint Comm'n*'s federal 'preemption' analysis?
    b. Without doing a factual *Middlesex* analysis?
    c. Without doing an Anti-Injunction analysis as to if the Court's judgments or jurisdiction are being rendered a nullity?
2. Have the components for injunctive and declaratory relief, if applicable, been met now?

VI. STATEMENT OF THE CASE

A. Nature of the Case, course of the proceedings, and disposition below.

This section's facts are found in the foregoing response to the sanctions motions section. These persons' prosecution began as a parallel case to this case's federal litigation, starting in 2004 (Aplt. App. 237A-238A), and throughout this case's appeal processes. This attorney was forced to fight on two fronts, and could not obtain other work due to the public 'badge of infamy' given to her in the complaint, standing alone. Judges regulating her practice of law in Navajo, (aplt. App. 167A), federal *MacArthur*, *Dickson, supra*, and state courts (aplt. App 232A, 234A.), never found discipline-warranting attorney professional

misconduct. In the Smith matter, this attorney was not appearing before the Navajo Court. (Aplt. App. 218A).

The Plaintiffs sought to have the District Court and now this Court, enforce federal court orders denying the defendants' sanctions' motions. See Aplt. App. 506A, Orders, 198A-204A, and *Dickson, supra*, (Aplt. App. 205A). And to enforce the Navajo Court judgment (Aplt. App. 218A) in the *Smith* matter, *as well as*, the state judge's final judgment as to all issues and all claims, Aplt. Ap. 234A.

Injunctive and declaratory relief was sought. Aplt. Ap. 506A The District Court denied the relief based on a *Middlesex/Younger* analysis, and the 2010 *Rose* case, first in 2011 (Aplt. App. 160A) and then in 2014. (Aplt. Ap. 157A).

The *Rose* cases brought separately from these Plaintiffs' case here, did a federal abstention application, without doing a federal preemption analysis, just as the now reversed 8th Circuit court did in *Sprint,* with virtually identical language for abstention. As new evidence developed for preemption, at each point of state litigation, this attorney sought federal court relief from these persons' prosecution, under federal preemption. *Freytag, supra,* and the Constitution seemed to dictate that be the case. The U.S. Supreme Court in *Sprint* now agrees.

B. Facts and Proceedings Below

(i) These Persons' OPC matter, this case

In about 1999, this particular case began in the Navajo Nation based on acts perpetrated by primarily *non* Indian defendants, occurring within the exterior borders of the Navajo Nation in San Juan County, Utah. See, *MacArthur* 2005 for greater factual descriptions. These Plaintiffs' and their attorney did not lie or abuse this Court or any court by bringing unfounded facts and claims.(Aplt. App.). The entire oral and Navajo Court records were put into the United States District Court, docket no. 4, 28, 105, and entry on 9-17-2002.

Plaintiffs Riggs and Singer had nowhere else to go for Due Process since their injuries arose within the Navajo Nation. Congress says that for injuries occurring within the Navajo Nation, the Navajo Nation District court is the only Court where Plaintiffs' Riggs and Singer could obtain their Due Process. Federal courts only have been given limited Habeas power, 25 U.S.C. 1303, and states have NO power whatsoever, 25 U.S.C. §§1301- 1326, and §§1901 et seq, particularly §1911. Addendum. Likewise, the executive branch does so by executive agreements for judicial services pursuant to Navajo treaties of 1849 (Addendum 4A) and 1868.

Nine months after a Navajo Court lifted a TRO, there was 19 hour injunction evidentiary hearing, aplt. App. 184A, (oral record in the federal district court (docket no. 4, 28, 105, and entry on 9-17-2002,) with Navajo Court counsel on both sides, all evidence submitted, live in-court witnesses, examination and

cross examinations. The Navajo Nation Court issued injunctive and permanent orders with the harms described in detail. see Aplt. App. 167A , describing how the Truck funded defendants harmed the Court and the Plaintiffs' name and reputation. See also, affidavit of Mr. Maryboy, a defendant named in his official capacity only, who in his personal capacity was at direct odds with the defendants, and never had any relationship whatsoever with Mr. Trentadue who stated he represented him in federal court. Apt. ap. 397A.

The Insurance companies for the defendants told him that his litigation coverage depended on what he said in federal court. Aplt. App. 384A, 405A.

Upon receiving orders showing substantial harms to the Navajo Court, the Plaintiffs Riggs and Singer sought their enforcement in federal court, joining with them Plaintiffs Lyman and Valdez and several others, in *MacArthur,* and *Dickson* rulings. That is this case, 2:00cv0584. After the federal court began these Plaintiffs' enforcement proceedings, the Truck Insurance paid counsel Carolyn Cox (Aplt. App. 375A) initiated a complaint to Billy Walker, unnotarized, in secret, (Aplt. App 386A.), that resulted in a 2004 informal Bar complaint against these Plaintiffs' counsel that mirrors the formal complaint. Aplt. App. 237A They brought it in the OPC's name only, as it is in the formal complaint (Aplt. App. 239A), without telling the attorney about their connection with the defendants from 2004 until 2007…*after* the two one hour screening panel 'hearings'. Secret

informants. Thus, the informal complaint, that by Bar rule 14-510 would have been given to the complainant, Truck, Mrs. Cox, and to her clients, and Mr. Trentadue who was being paid through her office. Without this attorney's knowledge, it was available to be dispensed to any other court without anyone having any idea that 'these persons' would actually collusively work with party litigants to effect the financial and other outcomes of these Plaintiffs' federal case. But, you see, this is exactly what they admitted they did, and to this Court. Aplt. App. 299A

They characterized the underlying federal litigation the way the defendants told them, without any further investigation (Aplt. Ap. 355A), based on a one hour rule "hearing" (Aplt. App 373A.), so they could 'step in' and 'bring order back to the [federal court] process, Aplt. App. 299A, in the name of protecting the public, i.e. San Juan County. Aplt. App. 299A

About one year later, opposing counsel filed an unnotarized complaint with Mr. Walker. In 2004, after the case was remanded from this Court in *MacArthur* 2002, and motions for summary disposition by defendants' failed, the OPC, in the OPC's name alone, initiated a now ten year prosecution with an informal complaint based on this case.

(ii) The Smith matter Navajo ICWA case

In about 2005, they 'piled on' the 'Smith matter' Navajo rooted case (Aplt. App. 249A) where this attorney was arguing the ICWA dictated that the Navajo Court proceedings were conclusive, and there was no state court subject matter jurisdiction over a state grandparent visitation action. The defendant Navajo mother and son, and non- Indian plaintiff alleged grandparents (no proof of that relationship was fostered) were domiciled within the Navajo borders. (Aplt. Ap. 222-223A). The abuse suffered by the mother and child was documented. Aplt. App. 228A-229A while living with the alleged grandparents years before. Here, the state judge would not relinquish jurisdiction readily wishing to make the residency of the mother a state court issue for personal jurisdiction purposes. Something even Utah code 78B-13-109 addendum prevents. Utah's Court of Appeals, agreeing with this attorney, opined that the state district court had no subject matter jurisdiction. (Aplt. Ap. 232A) The state court then dismissed the entire case with prejudice, upon motion and order submitted by opposing counsel and OPC complainant, Joyce Smith. "Smith matter". Aplt. App. 249A. The OPC began its prosecution in their behalf, challenging how that case was litigated in a *void ab initio* state court, where the mother and son were, by statute, protected from personal jurisdiction.

No personal relationship with Utah's judiciary. It may be a 'legal fiction' but in both the OPC (exclusive Navajo/federal matter) and Smith matter

(exclusively ICWA Navajo matter), this attorney, though licensed by Utah, was not practicing law *in Utah's* judicial system.

These persons admit that the prosecution was to protect the 'public' i.e. San Juan County et al, by limiting these plaintiffs' damages in litigation, recharcterizing the *MacArthur* litigation as defendants saw it, so as to control the federal court's litigation. Aplt. App. 299A. This is currently occurring for another Utah attorney suing Davis county in federal court. (Aplt. App. 361A).

While this Court case was going through its 2004 settlement, and then later appeals, resulting in *MacArthur* 2007, there were pressures for this solo attorney on two fronts. After the spring 2004 informal complaint issued---opposite the seriousness given to this case by the *MacArthur* 2002 judgment, and the 2005 *MacArthur* judgment--- the fall 2004 settlement judge and then this Court's 2007 *MacArthur* panel, saw these Plaintiffs' claims as virtually worthless, not worthy of the only relief that Congress says they had. The MacArthur 2007 wrote of their claims easily by sua sponte finding these municipal corporations were 'state employees', reversing the 2002 panel finding they were not. Such accusations, brought in the "OPC's" name alone, would be highly convincing to Judges that these Plaintiffs' and their counsel and the Navajo Court judges were again *de facto*, in reality, "bold faced liars" and their claims worthless as against non Indian

'officials'. They would make the same presumptions as the original Navajo Court. Judge Jenkins had the original oral and written record.

His judgment, 2005 *MacArthur* taking 2.5 years to write, the single most exhaustive historical analysis of Indian and Navajo jurisdiction ever to issue by any Court in the world, is not one he would render to anyone who had not given his court facts and law upon which to base it. That judgment was stricken from the state court record as 'scandalous' and 'immaterial' to the OPC matter's charges. Aplt. App. 333A, 341A.

At each point, with new evidence, relief was sought. The District court relied on *Rose*, and *Middlesex*, but stated that he was open to enforcing his own order or federal court jurisdiction under the proper circumstances, citing to the language of the Anti Injunction act. Aplt. App. 164A

So, what is different now? Since the appeal was filed, there is now found,

(1) NEW CASE LAW: *Sprint Communications v. Jacobs*, U.S. Supreme Court, Dec. 10, 2013, exemplifies how the U.S. Supreme Court now mandates a federal abstention analysis standing alone, like the 8th Circuit's Sprint, and thus, like *Rose* here. *Sprint* did and exemplified how courts are to do 1) a federal preemption analysis, 2) a factual *Middlesex* analysis (as Sprint did itself) showing why federal abstention applied to that particular attorney prosecution. 3) the anti injunction act analysis.

NEW LAW. Also, just February 25, 2014, in *Walden v. Fiore*, 12-574 (2014), the U.S. Supreme Court identified that the "forum State cannot be "decisive in determining whether the defendant's due process rights are violated," [citation omitted]." The *Fiore* Court identifies the necessity of doing a factual jurisdictional inquiry "focuse[d] on 'the relationship among the defendant [here this state court defendant attorney], the forum, and the litigation.'" upon which she is being charged. *Fiore, supra*. The *Rose* cases did not go beyond the fact the attorney held a Utah Bar license. Additional analysis would show for both the OPC and Smith matter, her clients were not in Utah. See 28B-13-209. Addendum. Analysis No state subject matter jurisdiction.

(2) NEW EVIDENCE: New evidence showing all federal and state original court judgments are *de facto* nullified.

A) The State 3rd District court's default order #1 issued a) because it is the only way 'these persons' said they could prevail, b) and because this attorney refused to violate her clients' and her own privileges, Aplt. Ap. 306A; c) basing the default on *surprise* findings that she and her clients procured evidence unethically, without a charge ever made, and without a shred of evidence anywhere in the record, that has been upheld by Default order #2. Aplt. App. 316A. Then the state court has now struck from the record all the certified

Navajo and federal and state court final judgments without discipline orders in agreement with these persons that they are immaterial and scandalous. Aplt. App. 333A and 341A.

B) Also, a pattern of other attorney prosecutions evidence the harms to the public, the Courts, and these Plaintiffs if the U.S. District Court's denial of injunctive relief is not reversed and the case remanded. There are significant similarities between this case and those of Arizona's Lisa Aubuchon (Aplt. App. 347A) Andrew Thomas, Rachel Alexander, Dr. Jane O. Ross, (Aplt. App. 351A) and Utah's Tyler Larsen. Aplt. Ap. 361A. This Plaintiffs' lawyer's research shows all these attorneys; (1) met all of the qualifications of their state's Bar and became licensed attorneys, (2) have a heavily vested property and liberty interest in their names, reputations, honor, and licenses (Aplt. App. 347A, 351A), (3) had no prior misconduct history in the state disbarring them, (4) represented whistleblowing claims, (5) supported politically unpopular claims (for this attorney, pro Navajo claims), (6) had insurance company-covered opposing parties (except for Dr. Ross and this attorney's OPC's 'Smith' matter) (7) who profited politically or personally and economically through their Bars' discipline procedures acting as courts of appeal for ethics issues already decided by the original judges in litigation activities, without discipline orders (8) were subjected to a private

"screening", "hearing" or "meeting of the Probable Cause Committee, or otherwise denied a pre-public adversarial hearing affording them due process (Aplt. App. 303A, 347A, 351A 373A) of knowing all potential witnesses the OPC contacted and what the witnesses would testify to, (9) were not informed of the charges against them *with specificity*, (10) were denied examination or cross examination of witness, and (11) were denied access to their *entire* prosecutorial file, including all witness statements, communications with experts, or other law firms, (12) in Utah, the 'hearing' had an inflexible limitation of one hour per case, and only two hours for Mr. Larsen's three OPC underlying cases, (Aplt. App. 373A) with anything over an hour considered an 'abuse of process'; (13) received public 'state' declared badges of infamy that permanently damaged their abilities to use their licenses, names and reputations prior to their disbarments or suspensions, (Aplt. App. 351A, 347A, 359A), (14) were subjected to discipline based on 'snippets' or 'outtakes' of the original litigation wherein ethical issues already were adjudicated by the original judges applying the same rules of professional conduct considered to invite error by Judge Jenkins. (Aplt. App. 163A).

C) that these persons do not do their own independent research, but rely on what the complainants give them, (Aplt. App. 355A), making the complainants' 'record' the regulatory bodies own *pro hac* piecemeal record**;**

D) that besides this attorney's word for it, we now have evidence of 'these persons' admissions they only allow a 'one hour' hearings per case (this attorney only had two one hour hearings to explain Navajo court jurisdiction justifications to bring her suits);

E) This attorney did a survey of the past now five years of public charged attorneys in Utah state courts, and found or heard of less than half a dozen attorneys from large firms, virtually all public charged attorneys were from small or solo firms, similar to Dr. Ross in Arizona;

F) The media will be used to decimate this attorney but even more importantly her clients' reputations, upon which one of the finest rural medical delivery systems has been built, in competition with the County funded and operated system (Aplt app. 347A, 351A, 359A).

G) The entire prosecution file, as would be in quasi criminal proceedings, evidence, witness statements, expert opinions, outside law office communications, communications with the complainants, etc. is not voluntarily provided to the Utah attorneys. (Aplt. App. 303A)

H) Irreparable harms arise from the public charges alone, Aplt. App., 347A, 351A, 359A, and for clients of the attorney and their family and children as well.

(3) NEWLY DISCOVED LAW: prohibiting state 'Bar' intrusion into attorney client, work product, and other privileges. *See, Colorado I and II, Whitehouse, Klubock, Baylson, supra.* Utah Code 78-24-8. Addendum.

VII. SUMMARY OF THE ARGUMENT

Immediate harms to the Plaintiffs based upon a 'state' court outcome for their attorney can be monumentally damaging to them, the public they serve, and this attorney, and the Courts. "Snippet" trials that retry judges' regulation of attorneys in their original Courts are illegal and unconstitutional. Here, all the similar situated attorneys were tried by the Bar taking 'snippets' from their litigation, making a collage, and taking the collage into another state court, to relitigate it with a different outcome. All the *Rose* cases, based solely on federal abstention, and this cases' District Court holdings should be vacated based upon new case law, new evidence, and newly discovered case law. The Tenth Circuit Courts in the *Rose v. Utah State Bar* cases, and the U.S. District Court in denying enforcement of its orders, and exclusive federal jurisdiction over (i) attorney regulation, and (ii) Indian Nation jurisdictional law, and (iii) Constitutional Supremacy, err in denying Plaintiffs' and their attorney's application for Injunctive and Declaratory relief, based upon federal 'abstention',

a. without doing a *Sprint Comm'n*'s federal 'preemption' analysis;

b. Without doing a *Sprint* style *Middlesex* analysis.

c. Without doing an Anti-Injunction 'relitigation' 'parallel litigation' analysis as to if the Court's judgments or jurisdiction are being rendered a nullity.

And, here, all components for injunctive and declaratory judgment relief, designated by Rule 8 are met.

VIII. ARGUMENT

(i) Immediate Harms to these Plaintiffs and To Public if Federal Abstention is Applied Again

The prosecution of this attorney, based on relitigation of "in court" "acting as advocate" activities, is a *de facto* prosecution of her clients, *in abstentia.* These Plaintiffs have built one of the finest health delivery systems in the entire Nation, Blue Mountain Health Care and Utah Navajo Health Systems.

http://www.healthleadersmedia.com/page-1/COM-239822/With-Its-New-Hospital-Rural-Utah-Gets-A-Fancy-EMR-And-A-Sacred-Hogan

These plaintiffs sacrificed time, names, honor, family time, so as to successfully financially compete against the county run system, and provide top care for Indian and non Indian alike. Mrs. Lyman is a popular provider, but also is an instructor now at the local college. Mr. Riggs is a bilingual care contract provider, who has been a branch president in his church at least three times. Headlines screaming a state court found these plaintiffs lied, i.e. filed frivolous and meritless cases----will be ruinous to their lives 1) in retaliation for them

courageously presenting official wrongdoing to Navajo and federal courts; 2) to defendants economic advantage by destroying a competitor in medical delivery systems in San Juan county, and 3) will chill any lawyer or whistleblower from reporting official misconduct. Details of the "Smith matter" may well harm the child involved with false records of that family matter that will remain forever on computer files. (aplt. App. 151A).

These Plaintiffs and the public, the Courts themselves, and this attorney, will suffer irreparable harms if their attorney is disbarred/suspended. Particularly so, based on charges that the claims filed, in both underlying Navajo Court cases, based on this attorney's clients' affidavits, and evidence, being found by a state court to be without a basis in fact and law, and on evidence procured unethically. Post disbarment/suspension litigation will spin off possible perjury or grand jury processes brought by defendant county attorney Craig Halls will easily be sought, just as for Lisa Aubuchon, Andrew Thomas, Rachel Alexander, Dr. Ross, based on the state court rulings, (Aplt. Ap. 147A, 151A), and as *SDDS, supra*, identifies, wholly displacing the finality of the final judgments of the original judges' rulings, these plaintiffs and their attorney seek to have fully enforced against these persons.

Under new case law, under new evidence, under newly discovered case law, the *Rose* cases should be vacated. Alternatively, minimally, these Navajo Court jurisdiction cases, should be remanded to the Navajo Supreme Court for

exhaustion, as the Ninth Circuit did [8], or back to this federal original district court for further enforcement and analysis under *Sprint*.

(1) THE SPRINT FEDERAL PREEMPTION TEST

The U.S. Supreme Court in *Sprint Communications v. Jacobs*, 571 U.S. ____, Dec. 10, 2013, at pg. 4 identified (like unto this case's District Court and the *Rose* cases).

> "The Eighth Circuit read this Court's precedent to require Younger abstention whenever "an ongoing state judicial proceeding . . . implicates important state interests, and . . . the state proceedings provide adequate opportunity to raise [federal] challenges." 690 F. 3d, at 867 (citing *Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U. S. 423, 432 (1982))"

Id.

See, Aplt. App. , U.S. District Court's August 15, 2011 order denying relief, upon which the appealed 1-8-14 order (Aplt. App. 157A, 160)(both attached) is based. *Sprint* at 6 identified that the Eighth Circuit could not rely upon solely on these particular federal abstention elements. Federal preemption analysis is mandatory. Something no prior *Rose* court or this Court has done.

---

[8] 9th Circuit Court's *Ford Motor Co. v. Todecheene*, 488 F.3d 1215 (9th Cir., 2007) *sua sponte* vacated after this sound federal policy was found in *MacArthur* 2005 fn. 153's observation of this Court's past history.

Looking to *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U. S. 350, 364 (1989) (NOPSI) the *Sprint* court identified only three exceptions to federal 'preemption'.

> "First, Younger precluded federal intrusion into ongoing state criminal prosecutions. See ibid. Second, certain "civil enforcement proceedings" warranted abstention. Ibid. (citing, e.g., Huffman, 420 U. S., at 604). Finally, federal courts refrained from interfering with pending "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions."

Id.

Here, *first,* there is no 'criminal proceeding' or even quasi criminal proceeding, see Bar rules 501, and 517 *infra*. *Second*, ***opposite*** *Sprint's* cited-to *Huffman*, we have original jurisdiction in *this* case *federal* law – (defendants) opposing parties, 're litigating' what has already been litigated in federal court, in a state court. *Third,* these persons have admitted the purpose of the litigation was to regulate a federal court to "bring order" "back to [a federal court] process" for the financial advantage of 'public' municipal corporations with the ability to sue and be sued, (Aplt. App. 299A). Proof that these persons did not create or draft their complaint, (aplt. App. 237) is found in their admission they did not know these clients' names. Aplt. Ap. 273A Anyone preparing a complaint based on snippets taken from a record, would have to be selectively blind, not to see the clients' names on the first

pages of the dockets or documents themselves. And they admit as much in other attorney's matters. Aplt. App. 355A

a. State Law Violations Eliminate Sprint's "State Interests"

These persons claim jurisdictional authority under Bar rule 14-511(a) . . No less than a military court, or tax court, or copyright case, state OPC and courts have no jurisdiction, save reciprocally only. Bar rule 14-522.[9] Utah Code 78-2-24 (Aplt. App.) statutorily prohibits asking attorneys any questions regarding attorney client privileges. That is precisely why there is a default order issued. (Aplt. AP. 306A, 310A-311A) The State Court is ratifying these persons' statute violations by *sua sponte* declaring that this attorney procured her evidence unethically. (Aplt.. App. 311A) Contrary to the Courts' order, this attorney did respond to discovery requests, individually to each request. Aplt app. 469A. No charges, no evidence in the record anywhere, where a state court says a trial on the merits is impossible because this attorney refused to make their case for them.

---

9 "**Rule 14-522. Reciprocal discipline.**
(a) Duty to notify OPC counsel of discipline. Upon being publicly disciplined by ***another*** court, ***another*** jurisdiction, or a regulatory body having disciplinary jurisdiction, a lawyer admitted to practice in Utah shall within 30 days inform the OPC of the discipline.. …
(e) Conclusiveness of adjudication in ***other*** jurisdictions. Except as provided in paragraphs (c) and (d) above, a final adjudication of the other court, jurisdiction or regulatory body that a respondent has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in Utah."

Aplt. App. 314A. These persons are violating78-24-8 confidential communications. These persons are violating Title 78A-2-201, 218, *supra that places attorney regulation in courts and tribunals in the* judges exclusive authority. These persons are violating the protections against personal jurisdiction in title 78B chapter 13, *supra*, for ICWA cases. The state courts certified orders in the Smith matter were also stricken at these persons' request to the state court. Title 78A and 78B trump any Bar rule 14-510. *Nielsen, supra.* Giving full faith and credit to the state judge's and ICWA judgments to preserve federal Indian law question jurisdiction, is not barred by *Middlesex.*

There is no 'state interest' authorizing persons using their office to violate state statutes. *Young, Hamdi, supra*.

b. Utah Bar Rule Violations Eliminate 'state' "OPC Interests"

Officials violating their own governing rules are operating 'off the reservation' so to speak, without authority. And when those rules go to procedural due process, they are void, facially or as applied. *Hamdi, supra.* Utah Bar rule 14-510(a)(3)[10] says they "shall" do an 'investigation'. They define 'investigation' as whatever the complainant gives them. (Aplt. App.)

[10] Rule 14-501 " (a)(3) Initial investigation. Upon the filing of an informal complaint, OPC counsel **shall conduct a preliminary investigation** to ascertain whether the informal complaint is **sufficiently** clear as to its allegations…."

Utah Bar Rule 14-503(f)[11] says the screening panel will 'investigate'. They don't --aside from the 'one hour' hearing and any documents given them. (Aplt. App.).

Utah Bar rule 14-510(b)(2)[12] says the respondent may call 'any witnesses'. This is not true. The one hour limitation on panel hearings, violates this 'right' and disallows any 'investigation'. (Aplt. App.)

Utah Bar rule 14-503(d)[13] the panel for this attorney was illegally constituted. The OPC prosecutor as executive assistant for the panel only called three persons, not eight. This attorney polled dozens of publicly charged attorneys prior to about 2010, all only had a three person panel, not an eight person panel. This year Utah seems to have corrected this problem.

(c) Sprint Holds Parallel Proceedings

---

[11] Rule 14-503" (f) Responsibilities. Informal complaints shall be randomly assigned to screening panels. The screening panels **shall review, investigate**, and hear all informal complaints charging unethical and/or unprofessional conduct against members of the Bar. **After such review, investigation**, hearing and analysis, the screening panels shall determine ….."

[12] Rule 14-510 (b)(2)"…Respondent and **any witnesses** called by the respondent may testify, and respondent may present oral argument with respect to the informal complaint…"

[13] Rule 14-503"(d) Screening panels, quorums. The Committee members, except for the Committee chair and Committee vice chairs, **shall** be divided into four screening panel sections of **six** members of the Bar and **two** public members. The Supreme Court shall name a screening panel chair from each screening panel, who shall preside over the screening panel. In the absence of the screening panel chair, a screening panel vice chair designated by the screening panel shall preside. **Two members of the Bar plus one public member shall constitute a quorum of a screening panel.** …."

Do Not Limit Federal Courts Duty to Do
A Federal Preemption Analysis

Federal pre-emption can be expressed or implied, and "is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Jones v. Roth Packing Co.*, 430 U.S. 519, 525, (1977); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95, (1983); *Fidelity Federal Savings & Loan Assn. v. De la Cuesta*, 458 U.S. 141, 152-153 (1982). Absent explicit pre-emptive language, there are at least two types of implied pre-emption: (1) field pre-emption, where the design and plan of federal regulation is " 'so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,' " id., at 153, (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)), and (2) conflict pre-emption, where "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Felder v. Casey*, 487 U.S. 131, 138 (1988); *Perez v. Campbell*, 402 U.S. 637, 649 (1971).

(d) Five Foundations for Federal Preemption
Any One of Which Eliminates
Any Utah Middlesex Abstention "State interest"

There is 'no state court proceeding' and 'no state interest' if **1)** the attorney client and work product privileges are being invaded [14]; **2)** if the original judges, exercising their exclusive inherent powers, regulating the practice of law of attorneys in the Courts before them, do not issue discipline orders against the attorney[15] **3)** when a federal court absorbs into its rules the state rules of professional conduct [16] transforming them into federal law that states have no interest in regulating (fn. 17 *supra*); **4)** if the underlying field of law that is subject to the state proceeding is expressly forbidden to states, here, attacking the way this attorney argued the superiority of Navajo Court jurisdictional definitions in behalf of her clients in both the underlying cases these persons rely upon.[17] 5) no direct *Middlesex* appeal to challenge the constitutionality of the rules is available. No appeal in Utah's Supreme Court is available, at least for this attorney, Aplt. App.

---

[14] *Whitehouse, Klubock, Colorado I and II, Baylson, supra*.

[15] *Taylor, Hudson, Chambers, Ex parte Bradley*, *Michaelson supra,*

[16] U.S. Constitution's Article III, the Judiciary Act of 1798, the rule making act 28 U.S.C. §§ 2071 and 2072, 28 U.S.C. Appendix Federal Rule of Civil Procedure at 83, and local rules 83.1.5 et seq.

[17] 25 U.S.C. 1301-1326 *MacArthur* 2005, at 938-939. *Santa Clara, supra, 25* U.S.C. 1901 et seq, already ruled on in *MacArthur* 2005 at 942, *supra*. The Navajo Treaties of 1849 addendum 4A..

To summarize, ***first,*** attorney client privileges being invaded by Bar processes, without evidence of fraud or crime equal no state interest. *Colorado I*, and *Klubock, supra*. No state interest. *See*, Default order #1

Second, exclusivity of all Judges powers to regulate attorneys eliminates state interests and jurisdiction to retry or reregulate the attorney. Is discussed in the Jurisdicition section. *Ex Parte Bradley, supra*, squarely says one court lacks subject matter jurisdiction to try an attorney for alleged contempt in another original court where allegations arose. *Michaelson* at 65-66, *supra*, says,

> ” That the power to punish for contempts is inherent in all courts has been many times decided, and may be regarded as settled law. It is essential to the administration of justice…. [T]he attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.”

Id.

Third, where Bar rules have been absorbed into local federal district court rules, they become federal law, and there is no state interest in a separate interpretation. *Colorado I and II,Baylson, Klubock,Whitehouse, supra*.

Fourth, where the field of a) attorney regulation, b) Indian law, as discussed in the jurisdiction section, are prohibited to these persons. Utah’s Bar rule 14-511(a) simply can’t trump these sources of law to cloak these officials with any ‘state’ ‘authority’.

(2) PLAINTIFFS' AND THEIR ATTORNEY HAVE STANDING WITHOUT WAITING FOR DISBARMENT

When federal prosecutors faced the possibility of state bar prosecutions, due to a conflict between federal and state court rules, this Court held opposite those prosecutors' U.S. District Court's finding of no harm unless disbarment actually occurs. *U.S. v. Colorado Supreme Court*, 87 F.3d 1161 (C.A.10 (Colo.), 1996), (*Colorado I*) *supra*. The U.S. District Court here, reasoned similarly to the U.S. District Court of Colorado that this Court remanded a Bar case back to for further analysis.

> "In its opinion, the district court suggested that the United States could establish standing *only by alleging that disciplinary actions had been taken against a federal prosecutor who had violated the rules*. This is incorrect. Under the Declaratory Judgment Act, 28 U.S.C. § 2201, a plaintiff may seek declaratory relief before actual harm occurs if she has a reasonable apprehension of that harm occurring. …,
> Parties need not ... await the imposition of penalties under an unconstitutional enactment in order to assert their constitutional claim for an injunction in federal court. **Once the gun has been cocked and aimed and the finger is on the trigger, it is not necessary to wait until the bullet strikes to invoke the Declaratory Judgment Act…. Thus federal prosecutors need not risk disbarment by violating the Colorado Rules in order to challenge those rules in federal court**."

Colorado, at 1167 emphasis added.

If the Utah State District Court's prosecution is without subject matter or personal jurisdiction, in a field reserved expressly for the Navajo Court and/or for federal courts, and expressly not for state courts, the state district courts are without jurisdiction. *Crump v. Crump*, 821 P.2d 1172,

1178(Utah App., 1991)(no modification of out of state judgment); *State v. Vijil*, 784 P.2d 1130 (Utah 1989) (Utah agency uses the wrong statute no jurisdiction). Flagrantly unconstitutional, void, *World-Wide Volkwagen Corp. v. Woodson,* 444 U.S. 286, 291 (1980)

The attorney in *Taylor*'s 6th Circuit case need no wait for disbarment to hold no state interest was involved, and the Kentucky Bar could be enjoined.

Ex Parte Young, 209 U.S. 123 (1908) identifies the privilege and purposes of federal judges is to prevent injuries of persons using their office to violate the U.S. Constitution.

In 2011, the United States Supreme Court in *Virginia Office for Prot. & Advocacy v. Stewart*, 131 S.Ct. 1632, 179 L.Ed.2d 675 (2011) held,

> "We do not doubt, of course, that there are limits on the Federal Government's power to affect the internal operations of a State. [citation omitted] But those limits must be found in some textual provision or structural premise of the Constitution. *Additional limits cannot be smuggled in under the Eleventh Amendment by barring a suit in federal court that does not violate the State's sovereign immunity*. "

Id. at 14 emphasis added.

Sprint also refers to *Colorado River Water Conserv. Dist. v. United States,* 424 U.S. 800 (1976). *Colorado River* identifies all the various elements to be reviewed when concurrent jurisdiction over the same property, here this attorney's license, are claimed by the federal and state attorney

discipline plan. Opposite *Colorado River*, we have here a federal attorney discipline plan, to effectuate uniformity of standards in all federal courts. We have extensive U.S. Indian law excluding states. Here, Plaintiffs are not making claims against the Utah state treasury in the original case or this action of enjoining these persons. Here, we have no immediate redress available in the Utah Supreme Court by order, (aplt. App. 301A), for Indian law issues Utah's Supreme Court cannot define. *McClanahan, supra*. Here, Utah rules of civil procedure 41 mandates all records of another tribunal be certified. And who could afford to do this case's entire file at 50 cents a page certification rates, if the state judge would allow it.

(5) ALL ELEMENTS FOR INJUNCTIVE RELIEF ARE MET

This Court demands that four elements be met for injunctive relief,

> " (1) the moving party will suffer irreparable injury unless the injunction issues; (2) the threatened injury to the moving party outweighs whatever damage the proposed injunction may cause the opposing party; (3) the injunction, if issued, would not be adverse to the public interest; and (4) there is a substantial likelihood that the moving party will eventually prevail on the merits. Lundgrin v. Claytor, 619 F.2d 61, 63 (10th Cir.1980)."

Tri-State Generation and Transmission Ass'n, Inc. v. Shoshone River Power, Inc., 805 F.2d 351, 354 (C.A.10 (Wyo.), 1986)

Irreparable harms. (1) Based upon the foregoing, Plaintiffs will suffer irreparable harms, and their counsel also. (2) The threatened injuries outweighs any harms to these persons violating state statutes and rules and

federal Constitutional and statutory prohibitions, acting outside their 'state' area of the law, in an area reserved by Treaty of 1849 away from state intrusion. (3) An injunction protects the public. Further, here is a real harm to the public. And there is no personal accusations involved. The net effect of federal abstention is this. Law firms who can secure Bar prosecution of opposing counsel for "acting as advocate" in parallel litigation, secretly, will be in very high demand.

The Public's perceptions of the fairness of Courts will be extinct in such a 'pay as you go' judicial system.

It is at least notable, the attorney Mr. Trentadue of Suitter & Axeland, is representing San Juan county in this case. These persons admit they are using their prosecution to regulate the federal court's litigation in his clients behalf due to the expense of litigation. Aplt. App. 299A . A matter specifically ruled on in *Dickson* denying the county and other defendants' sanctions, where these Plaintiffs can get no one to enforce. Apt. app. 205a, 216A

He is also representing Davis County in Utah attorney Tyler Larsen's federal district court case. He publicly says these person's prosecution of Mr. Larsen in state court on his license, should effect his federal district court

outcomes. (Aplt. App. 359A). The "OPC" is suing him, with assistance of the federal court Davis county attorney defendant, for what Attorney Larsen said and did in three prior state cases. Mr. Trentadue points this out to Mr. Larsen's federal court. Aplt. App. 361A. Mr. Larsen's original judges, with inherent and statutory authority to regulate the practice of law, did not issue discipline orders. Snippet trials are like shooting fish in a barrel. Especially if the state court strikes all prior judgments regulating the attorney. Aplt. App. 333A. Further abstention here, will pave the way for further 'Bar' destruction.

And further, Mr. Trentadue in representing a Utah Duchene county is trying to have a state court define Ute Nation jurisdiction. See, currently, Utah United States District Court case 2:75 cv 00408, filed in 1992, based on the earlier 1981 Ute case, that is still alive and well in Judge Jenkins' court due to interfering use of a state court. Should Judge Jenkins abstain there?

Now this Court must ask. If you were an insurer of counties or other public corporations being sued in federal court, who would you hire to limit damages? If you are an attorney, you bring suit against anyone, and Suitter & Axeland shows up, will you be wary of being sued by the OPC? Whether Suitter & Axeland intended this result is irrelevant. It is the net effect of federal abstention, here and now, and for these Plaintiffs' and their attorney.

Likelihood of success should be high. Federal judges have already regulated this attorney's practice to the displeasure of the opponents who are using the OPC as an appellate court, wholly violating the federal authority of 28 U.S.C. 1291. If litigants are displeased with a Judge's ruling Congress provides relief in the Appeal Courts in the context of the entirety. *Dickson, supra,* did it. As much as the plaintiffs, the attorney should have protections of the original orders and judgments also.

There is no harm to the public by enjoining persons from violating Congressional mandates, and Constitutional and statutory mandates.

There are no harms to the State of Utah's regulation of the practice of law, since the foregoing abstention required "state interest" in either the OPC or Smith matters is entirely missing. Regulating an attorney in Utah for military law tribunal conduct under military law, where the judge issued no discipline, is no different than this case.

An injunction maintains the *status quo*. A declaratory judgment protects and enforces the *Sprint*'s 'unflagging' duty to effectuate orders and jurisdiction, legitimately obtained by the Plaintiffs and their attorney.

IX. CONCLUSION

For all the foregoing reasons, pursuant to the foregoing law, the Plaintiffs request first declaratory judgment relief, or in the alternative, a remand for further analysis. And sanctions motions be denied.

The Plaintiffs' and their attorney's ask this Court to issue a Declaratory Judgment, similar to as it did for attorneys in Colorado I and II, that

First, by U.S. Constitution's Article VI Supremacy Clause, and federal statutes, and every judge's inherent powers, the federal Judges have the *exclusive* authority to regulate the practice of law in federal courts, and due to the absorption of state rules of professional conduct into the federal court's local rules, there are no state interests for state Bars to prosecute attorneys for practice of law issues arising in federal courts.

Second, declare that state Bar's under the guise of regulating an attorney's practice of law, cannot 'smuggle in' state authority to avoid express federal prohibitions regarding Indian Nation jurisdiction cases.

Third, declare that Judge's inherent authority to regulate attorneys' practice of law, universally, by U.S. Supreme Court and Constitutional Due Process provisions of the 5th and 14th Amendments, is exclusive of any outside Bar's or other Courts, save only proper Appeal Courts.

Fourth, declare Utah's rules of professional conduct to be flagrantly and patently unconstitutional.

Or, in the alternative, issue an order remanding this case of relative first impression back to the original District Court as it did in Colorado I.

And they ask for all other relief that is fair in equity and just under the law for themselves, their attorney and the public and Courts' interests.

ORAL HEARING REQUESTED: The issues of one sovereign reaching in and taking over attorney regulation in another, is as Judge Jenkins said, fully aware of the abstention rulings in *Rose*, raise important questions of federalism. He would like these issues resolved. Their importance to the Courts and public warrant the Court's time in an oral hearing.

Before suffering grievous loss to names and property, the Plaintiffs and their attorney, fairness suggests an oral hearing. These issues involve interplay between three jurisdictions' law. It is suggested that oral presentations will assist the Court resolving misunderstandings and avoiding the temptations to rest on past presumptions.

Respectfully submitted, March 7, 2014

/s/Susan Rose

CERTIFICATIONS

COMPLIANCE

I certify that the fore going opening brief, comports with the 10th circuit rules using Times New Romans 14 pt. font and contains 13, 993 words using a msword counting program. . s/Susan Rose 3/7/14

VIRUS PROTECTION
I certify the document has been scanned this March 7, 2014 by Microsoft security essentials and has no problems. s/ Susan Rose.

PRIVAC REDACTION
I certify all privacy redactions have been made. /s/ Susan Rose

IDENTICAL COPIES
I certify that if any paper copies of the documents submitted electronically are served, they are identical to the electronic copy. s/Susan Rose.

CERTIFICATE OF SERVICE

I, Susan Rose, certify to this Court that this OPENING BRIEF, was served on

the parties and persons listed below, through the Court's electronic mailing

system.

Notice will be electronically mailed to:

Mr. Robert Randolph Harrison: intakeclerk@scmlaw.com
Mr. Michael W. Homer: mhomer@sautah.com, arromney@sautah.com
Mr. Jesse Carl Trentadue: jesse32@sautah.com, sallred@sautah.com, aromney@sautah.com
Mr. Blaine J. Benard: bjbenard@hollandhart.com, phowell@hollandhart.com, intaketeam@hollandhart.com, slclitdocket@hollandhart.com
Mrs. Susan Rose: susan_rose@comcast.net
Mr. Gregory J. Sanders: gjsanders@kippandchristian.com, cbrowning@kippandchristian.com
Ms. Christine T. Greenwood: greenwood@mgpclaw.com
Mr. Noah Madison Hoagland: nhoagland@sautah.com, arromney@sautah.com
Mr. Patrick C. Burt: pburt@kippandchristian.com, cbrowning@kippandchristian.com
Date: March 7, 2014 /s/ Susan Rose

And further, 7 paper copies are mailed to this Court by overnight mail,

March 8, 2014. And two copies of the Appendix are mailed to the Court

March 8, 2014. And, TWO paper copies of the foregoing OPENING BRIEF and ONE Appendix, are to be mailed overnight to the following persons at the addresses as stated below.

Further, a courtesy copy of the OPENING BRIEF is being electronically filed in the Utah 3rd District Court, case 07092445.

3/7/2014.

/S/Susan Rose

Mr. Gregory Sanders
Representative for Utah State Bar, Office of Professional Conduct, Mr. Walker, Mrs. Townsend, Mr. Goldberg, Mrs. Fox
Kipp and Christian
10 E. Exchange Pl. Fourth floor
Salt Lake City, Utah 84111

Mr. Jesse Trentadue
Counsel for San Juan County et al
Suitter & Axeland
8 E. Broadway # 200
Salt Lake City, Utah 84111

CERTIFICATIONS

COMPLIANCE

I certify that the fore going opening brief, comports with the 10th circuit rules using Times New Romans 14 pt. font and contains 13, 945 words using a msword program. . s/Susan Rose 3/7/14

VIRUS PROTECTION
I certify the document has been scanned this March 7, 2014 by Microsoft security essentials and has no problems. s/ Susan Rose.

PRIVAC REDACTION
I certify all privacy redactions have been made. /s/ Susan Rose

IDENTICAL COPIES
I certify that if any paper copies of the documents submitted electronically are served, they are identical to the electronic copy. s/Susan Rose.

CERTIFICATE OF SERVICE

I, Susan Rose, certify to this Court that this OPENING BRIEF, was served on

the parties and persons listed below, through the Court's electronic mailing

system.

Notice will be electronically mailed to:

Mr. Robert Randolph Harrison: intakeclerk@scmlaw.com
Mr. Michael W. Homer: mhomer@sautah.com, arromney@sautah.com
Mr. Jesse Carl Trentadue: jesse32@sautah.com, sallred@sautah.com, aromney@sautah.com
Mr. Blaine J. Benard: bjbenard@hollandhart.com, phowell@hollandhart.com, intaketeam@hollandhart.com, slclitdocket@hollandhart.com
Mrs. Susan Rose: susan_rose@comcast.net
Mr. Gregory J. Sanders: gjsanders@kippandchristian.com, cbrowning@kippandchristian.com
Ms. Christine T. Greenwood: greenwood@mgpclaw.com
Mr. Noah Madison Hoagland: nhoagland@sautah.com, arromney@sautah.com

Mr. Patrick C. Burt: pburt@kippandchristian.com,
cbrowning@kippandchristian.com
Date: March 7, 2014 /s/ Susan Rose

And further, 7 paper copies are mailed to this Court by overnight mail, March 8, 2014. And two copies of the Appendix are mailed to the Court March 8, 2014. And, TWO paper copies of the foregoing OPENING BRIEF and ONE Appendix, are to be mailed overnight to the following persons at the addresses as stated below.

Further, a courtesy copy of the OPENING BRIEF is being electronically filed in the Utah 3rd District Court, case 07092445.

3/7/2014.

/S/Susan Rose

Mr. Gregory Sanders
Representative for Utah State Bar, Office of Professional Conduct, Mr. Walker, Mrs. Townsend, Mr. Goldberg, Mrs. Fox
Kipp and Christian
10 E. Exchange Pl. Fourth floor
Salt Lake City, Utah 84111

Mr. Jesse Trentadue
Counsel for San Juan County et al
Suitter & Axeland
8 E. Broadway # 200
Salt Lake City, Utah 84111

ADDENDUM ATTACHED TO ALL BRIEFS

NEW U.S. SUPREME COURT JUDGMENT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

* * * * * * * * *

DR. STEVEN MACARTHUR, et al.,

Plaintiffs,

vs.

SAN JUAN COUNTY, et al.,

Defendants.

Civil No. 2:00-CV-584BSJ

ORDER

* * * * * * * * *

On December 24, 2013, Susan Rose, Attorney for Plaintiffs filed a Verified Motion and Memorandum for Immediate Rule 65, TRO, Preliminary and Permanent Injunction and Other Relief.

On December 30, 2013, Susan Rose, Attorney for Plaintiffs filed a Motion for a Supplemental Proceeding, or, Motion to Supplement the Complaint, or Motion for Relief from Judgment, or, Grant Relief to the Plaintiffs Pursuant to the Court's Inherent Powers, or Grant Relief in any Combination of Relief Requested.

On December 31, 2013, Jesse C. Trentadue and Michael W. Homer, Attorneys for San Juan County, former San Juan County Commissioners J. Tyron Lewis, Lynn Stevens and Bill Redd, San Juan County Attorney Craig Halls, and San Juan County Administrator Richard Bailey filed a Memorandum Opposing Plaintiffs' Latest but not Last Motion for TRO and Motion for Relief from Judgment.

On January 2, 2014, Gregory J. Sanders and Patrick C. Burt, Attorneys for Utah State Bar and Office of Professional Conduct, Walker, Townsend, Berger and Fox filed a Memorandum in

Opposition to Verified Motion and Memorandum for an Immediate Rule 65 TRO, Preliminary and Permanent Injunction and Other Relief.

For reasons previously stated in the ongoing history of this case and particularly the Order filed on August 15, 2011,

> To date, as Ms. Rose acknowledges, the State court has imposed no sanction or disciplinary punishment upon her based upon her handling of this case. Counsel for the Bar assures this court that the State court has not yet held an evidentiary hearing on the merits of the Bar's complaint against Ms. Rose on any of the grounds alleged; that it is clearly an ongoing State judicial proceeding;[3] and that Ms. Rose will be afforded a full opportunity to present her defense on those merits before sanction or discipline, if any, is imposed by the State court. It also appears that the State court remains structurally capable of resolving—either at the district level or on appeal—the constitutional, legal and jurisdictional questions that Ms. Rose persists in raising in both her State and federal proceedings.[4] That being so, the State court should be afforded the opportunity to do so without preemptive interference by this court. *See Rose v. State of Utah*, No. 10-4000, 2010 WL 4146222 (10th Cir., decided Oct. 22, 2010) (affirming federal district court's abstention from interfering with State court attorney disciplinary proceeding).

---

[3]As Bar counsel suggests, the Utah Constitution grants the power to govern the practice of law to the Utah Supreme Court, *see* Utah Const., art. VIII, § 4, and the proceedings against Ms. Rose pending in Third District Court are judicial in nature, with an appeal by either side to be heard by the Utah Supreme Court. There appears to be no question that the regulation of attorneys involves important State interests.

[4]From the information now furnished to this court, it appears that currently there is more at issue before the State court than counsel's conduct before this court in the above-captioned action. The Bar's allegations also pertain to counsel's conduct in other State court proceedings and her conduct away from the courthouse. Even excluding her conduct of the *MacArthur* litigation, there are matters pending before the State court over which it may clearly exercise jurisdiction.

Thus, the Motions filed by Susan Rose on December 24, 2013 and December 30, 2013 are hereby DENIED.

DATED this 8th day of January, 2014.

BY THE COURT:

BRUCE S. JENKINS
United States Senior District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

* * * * * * * * *

DR. STEVEN MACARTHUR, et al.,

Plaintiffs,

vs.

SAN JUAN COUNTY, et al.,

Defendants.

Civil No. 2:00-CV-584BSJ

ORDER RE: PLAINTIFFS' MOTIONS FOR AN ORDER TO SHOW CAUSE, ETC.

* * * * * * * * *

Plaintiffs' counsel once again seeks to invoke the judicial power of this court in an effort to pre-empt further action in an attorney disciplinary proceeding being prosecuted against her by the Utah State Bar in the Third District Court for Salt Lake County, State of Utah, namely *Utah State Bar v. Rose*, Case No. 070917445 (3d Dist. Ct., filed Dec. 12, 2007). Counsel has sought similar relief in independent civil actions filed with this court, the most recent of which, *Rose v. Utah State Bar*, Civil No. 2:10-CV-1001WPJ (D. Utah), is currently on appeal to the Tenth Circuit. *See Rose v. Utah State Bar*, Case No. 11-4095 (10th Cir., filed May 9, 2011). She now seeks an order to show cause why the Utah State Bar, Bar counsel, the Third District Court judge and one complainant should not be held in contempt for attempting to undermine the finality of judgments and orders entered by this court in the above-captioned action, by going forward with a disciplinary proceeding in the state court that is premised at least in part on counsel's conduct of this case before this court. (*See* Plaintiffs' Motion for an Order to Show Cause, etc., filed April 18, 2011 (dkt. no. 1037); *see also* Plaintiffs' Motion for an Order to Show Cause, etc., filed April 18, 2011 (dkt. no. 1039); Plaintiffs' Motion for an Order to Show Cause, etc., filed April

18, 2011 (dkt. no. 1042).)[1] More recently, she also filed a motion for temporary restraining order and/or 28 U.S.C. § 1651 "special writ," seeking to "temporarily, preliminarily and permanently enjoin the [respondents] from appearing in any further attorney discipline prosecution actions . . . as against Plaintiffs' counsel Susan Rose, under the Bar's prosecuting document" previously filed in the pending state court proceeding. (Plaintiffs' Rule 65 Motion for a TRO, etc., filed August 3, 2011 (dkt. no. 1066).)

On June 27, 2011, the above-captioned action came before this court for a Status Report and Scheduling Conference concerning the recently filed motions. Susan Rose appeared as counsel for the plaintiffs; Jesse C. Trentadue and Blaine J. Benard appeared on behalf of the named defendants; Gregory J. Sanders appeared specially on behalf of the Utah State Bar respondents and John A. Bluth appeared specially on behalf of respondent Carolyn Cox.

At that time, this court raised the question whether in the context of a pending State bar disciplinary proceeding, a State court may examine anew an attorney's conduct in past civil proceedings before this court—conduct for which sanctions had been requested both in this court and the court of appeals by opposing parties pursuant to the applicable statutes and rules, but for which sanctions had in fact been denied by both tribunals.[2] This question whether the State court may second-guess this court's evaluation of the propriety of attorney conduct *before this*

---

[1]Plaintiffs' counsel simultaneously filed motions to join the named OSC respondents as parties to the above-captioned action "for purposes of declaratory relief," and to consolidate the claims asserted in her separate civil action, *Rose v. Utah State Bar*, Civil No. 2:10-CV-1001WPJ, with this action as well. (*See* Motion for Joinder of Parties, filed April 18, 2011 (dkt. no. 1033); Motion for Joinder of Claims, filed April 18, 2011 (dkt. no. 1035); Motion for Joinder of Judge Vernice Trease, filed April 20, 2011 (dkt. no. 1044).)

[2]This court's disciplinary mechanism addressing the conduct of members of the bar of this court in proceedings before this court, *see* DUCivR 83-1.5.1 through 83-1.5.8, was available at all times pertinent to the conduct apparently at issue, but that process has not been invoked.

court appeared to raise important considerations of judicial power and federalism. The court requested counsel for the Utah State Bar to address that question by written memorandum, and afforded plaintiffs' counsel an opportunity to file a response. Counsel did so, and the matter was heard on August 8, 2011.

Counsel for the Utah State Bar posits that as an arm of the Supreme Court of Utah, the Bar has independent authority to address the fitness and competency of those attorneys who are licensed to practice law in the State of Utah, and to bring disciplinary proceedings before the State court where questions of attorney fitness and competency may properly be determined under State laws and rules of professional conduct, even where those questions touch upon the specific conduct of attorneys when appearing before the federal courts. Plaintiffs' counsel submits that the State court lacks subject-matter jurisdiction to consider the propriety of her professional conduct in the context of litigation conducted before this court, and that sanctions having previously been denied in this court, a State court proceeding revisiting the question of the propriety of her conduct would intrude upon this court's processes and the finality of this court's judgments and orders that brought that litigation to a conclusion.

As this court has previously pointed out, absent a showing of bad faith, harassment, or some other extraordinary circumstance, the propriety of a State bar disciplinary proceeding before a State tribunal is not an appropriate subject for federal court interference as to subject, scope and evidence. *See Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431-37 (1982). At the same time, grounding a State Bar disciplinary complaint filed in State court upon an attorney's conduct of civil litigation in the *federal* court burdens the State tribunal with a daunting task: evaluating an attorney's professional conduct in the *essential context* of a case heard and decided by another court. Absent proof of some discrete instance of

egregious misconduct on the part of counsel, fairness and accuracy would ordinarily require that the State court's consideration of this essential context encompass *the entire record* in the federal case.

How else can the soundness of counsel's professional judgment be measured?

The snippets extracted from various opinions and orders in the *MacArthur* litigation—all of them seemingly critical of plaintiffs' counsel and all of them lacking essential context—now collected in various pleadings and memoranda (copies of which were furnished in response to this court's recent query), obviously are not the entire record. Opinions and orders decide issues specific to the particular case. An attorney's competence in disagreeing with Justice Scalia's view of federal common law cannot be weighed in isolation from the underlying controversy. How many motions are "too many" can only be determined in the full context of the case in which they were filed.

Any State court examination of an attorney's handling of federal court litigation without benefit of the essential context of the complete record invites error.

Having reviewed and considered the memoranda and exhibits submitted by counsel, and having heard and considered the arguments of counsel presented at the hearing, this court ruled that the motions recently filed by plaintiffs' counsel seeking to preclude further action by the respondents in the pending disciplinary proceeding in State court are denied as premature.

To date, as Ms. Rose acknowledges, the State court has imposed no sanction or disciplinary punishment upon her based upon her handling of this case. Counsel for the Bar assures this court that the State court has not yet held an evidentiary hearing on the merits of the Bar's complaint against Ms. Rose on any of the grounds alleged; that it is clearly an ongoing

State judicial proceeding;[3] and that Ms. Rose will be afforded a full opportunity to present her defense on those merits before sanction or discipline, if any, is imposed by the State court. It also appears that the State court remains structurally capable of resolving—either at the district level or on appeal—the constitutional, legal and jurisdictional questions that Ms. Rose persists in raising in both her State and federal proceedings.[4] That being so, the State court should be afforded the opportunity to do so without preemptive interference by this court. *See Rose v. State of Utah*, No. 10-4000, 2010 WL 4146222 (10th Cir., decided Oct. 22, 2010) (affirming federal district court's abstention from interfering with State court attorney disciplinary proceeding).

Should extraordinary circumstances arise, this court may stay or enjoin State court proceedings to prevent the relitigation of matters that have gone to judgment in this court, *i.e.*, "to protect or effectuate its judgments." 28 U.S.C. § 2283 (2006 ed.); *see* Charles A. Wright & Mary K. Kane, *Law of Federal Courts* § 47 (6th ed. 2002). Unless and until such circumstances do arise, this court must deny counsel the extraordinary relief she now seeks.

Therefore,

IT IS ORDERED that the pending motions for an order to show cause (dkt. nos. 1037,

---

[3]As Bar counsel suggests, the Utah Constitution grants the power to govern the practice of law to the Utah Supreme Court, *see* Utah Const., art. VIII, § 4, and the proceedings against Ms. Rose pending in Third District Court are judicial in nature, with an appeal by either side to be heard by the Utah Supreme Court. There appears to be no question that the regulation of attorneys involves important State interests.

[4]From the information now furnished to this court, it appears that currently there is more at issue before the State court than counsel's conduct before this court in the above-captioned action. The Bar's allegations also pertain to counsel's conduct in other State court proceedings and her conduct away from the courthouse. Even excluding her conduct of the *MacArthur* litigation, there are matters pending before the State court over which it may clearly exercise jurisdiction.

1039 & 1042) are hereby DENIED as premature;

IT IS FURTHER ORDERED that the pending motion for a temporary restraining order and other relief (dkt. no. 1066), is also DENIED as premature;

IT IS FURTHER ORDERED that the pending motions for joinder of parties and claims (dkt. nos. 1033, 1035 & 1044) are DENIED; and

IT IS FURTHER ORDERED that the pending motion for summary ruling on the preceding motions pursuant to DUCivR 7-1 (dkt. no. 1047), is DENIED AS MOOT.

DATED this 15th day of August, 2011.

BY THE COURT:

BRUCE S. JENKINS
United States Senior District Judge

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Hon. Bruce S. Jenkins

COURT REPORTER: Reeve Butler
COURTROOM DEPUTY: Michael R. Weiler
INTERPRETER: None

CASE NO. 00-C-584 BSJ

MacArthur, et al v. San Juan Cnty, et al

Approved By:_____

APPEARANCE OF COUNSEL

Pla Susan Rose
Dft Carolyn Cox
Dft Jesse C. Trentadue

DATE: October 25, 2005, 1:19 PM

MATTER SET: Motions Hearing re: to disqualify judge & vacate all orders & jgmts (**#745**); to lift/vacate protective order (**#747**); to restrain SJHSD from destroying records (**#751**); for hearing & to clarify the record (**#781**); for certification of Issue/Question to State Supreme Court (**#791**); for contempt & sanctions (**#754**); status re: motion for relief under Rule 60(b) (**#758**); motion for miscellaneous relief re: to amend & suppl cmplt (**#716**); for reconsideration of order & to file 2nd Amended Cmplt (**#790**); for appt of special master (**#793**); for protective order (**#820**).

DOCKET ENTRY:

Argument & discussion heard. Crt rules:

- Denies, motion for disqualification & vacate all orders & jgms (**#745**).

Sidebar on the record (sealed by the Crt).

- Denies, motion to lift/vacate protective order (**#747**).
- Grants, motion to restrain SJHSD from destroying records. All parties to maintain & hold onto records (**#751**).
- Denies, motion for hearing & to clarify the record (**#781**).
- Withdraws, motion for certification of Issue/Question to State Supreme Court (**#791**).
- Denies, motion for contempt & sanctions (**#754**) & motion to strike (**#786**).
- Denies (rendered moot), motion for miscellaneous relief (**#711**).

Further, argument & discussion heard. Crt rules:

- Denies, motion to amend/suppl cmplt (**#716**).
- Denies, motion for relief under Rule 60(b) (**#758**).
- Denies, motion to reconsider order & to file 2nd Amended Cmplt (**#790**).
- Denies, motion for appt of special master (**#793**).
- Denies, motion for TRO/preliminary injunction (**#798**).

Ms. Cox withdraws motion for protective order (**#820**).

Clerk's Office to provide copy of October 12th Memorandum Opinion & Order (**#837**), directly to Ms. Rose. Crt notes that are no matters remaining in this case.

United States District Court

CENTRAL DISTRICT OF UTAH

EXHIBIT AND WITNESS LIST

MacArthur, et al v. San Juan Cnty, et al **CASE NUMBER: 2:00-cv-584 BSJ**

PRESIDING JUDGE	PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
Bruce S. Jenkins	**Susan Rose**	**Carolyn Cox, et al**
TRIAL DATE(S)	COURT REPORTER	COURTROOM DEPUTY
October 25, 2005	**Reeve Butler**	**Michael Weiler**

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES
1		10/25/2005	X	X	Timeline for Continued Discrimination, Retaliation, Defamation, RICO, Anti-Trust Claims of Michele Lyman

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

* * * * * * * * *

DR. STEVEN MACARTHUR, et al.,

Plaintiffs,

vs.

SAN JUAN COUNTY, et al.,

Defendants.

Civil No. 2:00-CV-584BSJ

ORDER RE: PLAINTIFF LYMAN & VALDEZ' RULE 60(b) MOTION AND THE HEALTH DISTRICT DEFENDANTS' MOTION FOR SANCTIONS

* * * * * * * * *

On September 8, 2006, while their direct appeal from this court's judgment was pending before the court of appeals, plaintiffs Michelle Lyman and Helen Valdez[1] filed a motion pursuant to Fed. R. Civ. P. 60(b) asking this court "to issue an order of willingness to accept this case on remand from the Tenth circuit court," and to declare this court's "judgments and orders void, as inconsistent with traditional notions of fair play and justice, procured by fraud and mistake, and find that the Plaintiffs' claims remain intact, ..." ("Plaintiffs Rule 60 Motion," filed September 8, 2006 (dkt. no. 907) ("Pltfs' 60(b) Mem."), at 2, 10.) Plaintiffs' moving papers rehearsed the litany of alleged discovery and litigation abuses that the plaintiffs had previously asserted at various times (*see id.* at 2-9 & nn.3-15), and argued that the defendants' conduct in this case amounted to a fraud on this court, resulting in rulings adverse to these plaintiffs's claims. Lyman

[1]The court was advised that Dr. Steven MacArthur had opted out of further participation in this case.

of a fraud upon this court perpetrated by counsel for the defendants.

Nor is this court persuaded that sanctions should be awarded against these plaintiffs for filing their Rule 60(b) motion under all of the circumstances of this case.

For the foregoing reasons,

IT IS ORDERED that Plaintiffs' Rule 60(b) Motion (dkt. no. 906) filed September 8, 2006 (dkt. no. 906), is DENIED; and

IT IS FURTHER ORDERED that the Health District Defendants' Motion for Sanctions, filed September 22, 2006 (dkt. no. 914), is DENIED.

DATED this 27 day of September, 2007.

BY THE COURT:

BRUCE S. JENKINS
United States Senior District Judge

I hereby certify that the annexed is a true and correct copy of a document or an electronic docket entry on file at the United States District court for the District of Utah.
# of pages 5
Date: 7/26/13
D. MARK JONES, Clerk
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

* * * * * * * * *

DR. STEVEN MACARTHUR, et al.,	)	Civil No. 2:00-CV-584BSJ
Plaintiffs,	)	**MEMORANDUM OPINION & ORDER RE: POST-MANDATE MOTIONS**
vs.	)	
SAN JUAN COUNTY, et al.,	)	
Defendants.	)	

* * * * * * * * *

On July 18, 2007, the United States Court of Appeals for the Tenth Circuit decided the parties' appeals from this court's October 12, 2005 Memorandum Opinion and Order denying federal court enforcement of certain interlocutory orders entered by the Navajo tribal court in favor of plaintiffs Singer, Riggs and Dickson, as well as this court's December 16, 2005 Memorandum Opinion & Order denying their motion for reconsideration or relief from judgment. The clerk of this court received the court of appeals' mandate on August 27, 2007. On February 19, 2008, the United States Supreme Court denied the petition of Singer, Riggs and Dickson for a writ of certiorari. *See MacArthur v. San Juan County*, 391 F. Supp. 2d 895 (D. Utah), *reconsideration denied*, 405 F. Supp. 2d 1302 (D. Utah 2005), *judgment reversed in part, vacated in part, affirmed in part*, 497 F.3d 1057 (10th Cir. 2007), *cert. denied*, 128 S. Ct. 1229 (2008).

IT IS FURTHER ORDERED that plaintiffs' motion for a more definite statement (dkt. no. 962), "Plaintiffs' motion to dismiss the Defendants' motion for an Order to Show Cause and strike For Mootness" (dkt. no. 967), and Plaintiffs' Rule 60 Motion (dkt. no. 981), are hereby DENIED;

IT IS FURTHER ORDERED that plaintiffs' motions for an extension of time (dkt. nos. 969, 998), are hereby DENIED AS MOOT; and

IT IS FURTHER ORDERED that plaintiffs' Motion for Further Briefing in Light of *Prairie Commerce Bank v. Long Family Land & Cattle Co.* (dkt. no. 1002), and "Plaintiffs' Motion to Strike Mrs. Cox's (994) and Mr. Harrison's (995) Responses to Plaintiffs' Objection to the Proposed Order to Enjoin and for Sanctions" (dkt. no. 1007), are DENIED.

DATED this 1st day of July, 2008.

BY THE COURT:

BRUCE S. JENKINS
United States Senior District Judge

I hereby certify that the annexed is a true and correct copy of a document or an electronic docket entry on file at the United States District court for the District of Utah.
# of pages 23
Date: 7/26/13
D. MARK JONES, Clerk
By: _____
Deputy Clerk

FILED
United States Court of Appeals
Tenth Circuit

December 10, 2009

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ALISON DICKSON; DONNA SINGER; FRED RIGGS,

Plaintiffs-Appellants,

and

MICHELLE LYMAN; HELEN VALDEZ; STEVEN MACARTHUR; NATHANIEL PENN; CANDACE LAWS; LINDA CACAPARDO; SUE BURTON; AMY TERLAAK; CANDACE HOLIDAY; NICOLE ROBERTS,

Plaintiffs,

v.

SAN JUAN COUNTY; SAN JUAN HEALTH SERVICES DISTRICT; J. TYRON LEWIS, Commissioner; BILL REDD, Commissioner; CRAIG HALLS; REID M. WOOD; CLEAL BRADFORD; ROGER ATCITTY; JOHN LEWIS; JOHN HOUSEKEEPER; KAREN ADAMS; PATSY SHUMWAY; JAMES D. REDD; L. VAL JONES; MANFRED R. NELSON; RICHARD BAILEY; MARILEE BAILEY; ORA LEE BLACK; GARY HOLLADAY; LORI WALLACE; CARLA GRIMSHAW; GLORIA YANITO; JULIE BRONSON; LAURIE SCHAFER;

No. 08-4148
(D.C. No. 2:00-CV-00584-BSJ)
(D. Utah)

LYN STEVENS, San Juan County Commissioner,

Defendants-Appellees.

ORDER AND JUDGMENT*

Before **TACHA**, **ANDERSON**, and **EBEL**, Circuit Judges.

Plaintiffs-Appellants Dickson, Riggs and Singer (hereafter "Appellants") appeal from the district court's order denying their motion for relief from this court's final judgment. The district court ruled that the law-of-the-case doctrine prohibited it from considering Appellants' new legal theories that a Navajo Nation tribal court had subject-matter jurisdiction over defendants, notwithstanding this court's decision to the contrary. The court's order also granted defendants' motion to enjoin Appellants from initiating any further proceedings against them. We affirm.

Background. The factual background of this case is undisputed and is thoroughly set forth in this court's prior decision. *MacArthur v. San Juan*

---

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

County, 497 F.3d 1057, 1060-1064 (10th Cir. 2007) (hereafter, "*MacArthur III*"). Thus, we set forth only the procedural background necessary to resolve this appeal.[1] Appellants and other plaintiffs filed a complaint in the Navajo Nation tribal court against defendants San Juan County; San Juan Health Services District ("SJHSD"); and numerous county officials, trustees and employees of those entities (hereafter "Defendants"). Plaintiffs' claims pertained to their employment at the Montezuma Creek Health Clinic, operated by the SJHSD and located in San Juan County, Utah, within the exterior boundaries of the Navajo Nation. Some, but not all, of the plaintiffs were members of the Navajo Nation. Only one of the Defendants, Mr. Atcitty, was a tribal member. In December 1999, the Navajo tribal court entered a sweeping preliminary injunction against the Defendants.[2]

---

[1] Even this procedural recitation is streamlined. For example, in prior related actions, Appellants and other plaintiffs brought numerous state and federal law claims against the same defendants in federal court. In a 112-page decision, the district court dismissed the majority of the claims under Federal Rule 16 and declined to exercise supplemental jurisdiction over the remaining claims. *MacArthur v. San Juan County*, 416 F. Supp. 2d 1098, 1208-10 (D. Utah 2005). This court dismissed the appeal as frivolous. *MacArthur v. San Juan County*, 495 F.3d 1157, 1158 (10th Cir. 2007).

[2] The tribal court ordered Defendants to reinstate Ms. Singer and Mr. Riggs to their employment positions; offer Ms. Dickson full time employment; expunge plaintiffs' disciplinary record; refrain from requiring physician assistants to maintain time cards; and pay all of plaintiffs' attorney fees and expenses. *MacArthur III*, 497 F.3d at 1062. It further prohibited Defendants from eliminating or interfering with certain medical services provided by the health clinic. *Id.*

– *MacArthur I and II*. Plaintiffs sought to enforce the tribal court's injunction and related tribal court orders by filing suit in federal district court, seeking a declaratory judgment and a preliminary injunction. But the district court ruled that it was prohibited from enforcing the tribal court orders because Defendants enjoyed sovereign immunity from suit in tribal court, and it dismissed plaintiffs' complaint. On appeal, we remanded the matter to the district court, directing it to conduct an analysis of the tribal court's adjudicative authority over Defendants in accordance with *Montana v. United States*, 450 U.S. 544 (1981), before it addressed the sovereign immunity issue. *MacArthur v. San Juan County*, 309 F.3d 1216, 1227 (10th Cir. 2002) (hereafter "*MacArthur I*"). The district court did so, and ultimately again granted judgment in favor of Defendants. *MacArthur v. San Juan County*, 391 F. Supp. 2d 895, 1056-57 (D. Utah 2005) (hereafter "*MacArthur II*").

– *MacArthur III*. On appeal, a panel of this court ruled that the federal courts must not recognize the tribal court orders because the Navajo tribal "court lacked subject matter jurisdiction (i.e. adjudicatory authority) over nearly all of Defendants' activities." *MacArthur III*, 497 F.3d at 1067. We first rejected plaintiffs' argument that the federal court lacked authority to do anything but enforce the tribal court orders. We ruled that the question of whether a tribal court has regulatory and adjudicatory authority, and thus whether a federal court

can enforce a tribal court order, is a matter of federal law giving rise to subject-matter jurisdiction under 28 U.S.C. § 1331. *Id.* at 1066.

We then began our analysis of the merits with *Montana*, 450 U.S. 544, "the pathmarking case concerning tribal civil authority over nonmembers." *Strate v. A-1 Contractors*, 520 U.S. 438, 445 (1997). *Montana* held that, as a general rule, "'the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.'" *MacArthur III,* 497 F.3d at 1068 (quoting *Montana*, 450 U.S. at 565). *Montana* recognized two "narrow exceptions" to that general presumption: (1) a "'tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements'"; and (2) a "'tribe may . . . exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.'" *Id.* (quoting *Montana*, 450 U.S. at 565-66).

Applying *Montana's* general rule and two exceptions to the facts relevant to each plaintiff and each defendant, this court ultimately ruled that *Montana's* general presumption against tribal civil jurisdiction applied to all Defendants except one, Mr. Atcitty. Consequently, we held that Defendants' employment activities were beyond the regulatory and, therefore, adjudicative, authority of the

Navajo Nation. *MacArthur III*, 497 F.3d 1070-1076.[3] The Supreme Court denied certiorari review. *MacArthur v. San Juan County*, 128 S.Ct. 1229 (2008).

Rule 60(b) Motion. Following *MacArthur III*, Appellants filed numerous motions in federal and tribal court seeking to avoid the *MacArthur III* decision. At issue in this appeal is Appellants' Federal Rule of Civil Procedure 60(b) motion asking the district court to alter the holding of *MacArthur III*, particularly its reliance on the legal precedents set forth in *Montana*. In a detailed and scholarly published decision, the district court denied the Rule 60(b) motion. *MacArthur v. San Juan County*, 566 F. Supp. 2d 1239, 1251 (D. Utah 2008) (hereafter "*MacArthur IV*"). It discussed Appellants' new legal theories, but held it was prohibited under the law-of-the-case doctrine from reconsidering the issues answered by *MacArthur III*. It also granted a permanent injunction against Appellants and their attorneys from proceeding in any forum to relitigate the questions of jurisdiction, immunity and enforceability of tribal court orders already decided by the Tenth Circuit in *MacArthur III*. *Id*.

In their Rule 60(b) motion, Appellants "canvasse[d] the treaties and statutes defining the legal relationship between the United States and the Navajo Nation" and argued that there is no express legal basis supporting *Montana's* presumption that tribal courts generally lack civil jurisdiction over nonmembers. *MacArthur*

---

[3] We exercised our discretion to refuse to enforce the tribal court judgment as to those claims asserted against defendant Atcitty, over which the tribal court arguably had subject-matter jurisdiction. *MacArthur III*, 497 F.3d at 1076.

IV, 566 F. Supp. 2d at 1242. Appellants also argued that the federal courts lack authority to decide the Navajo Nation's jurisdiction in the first place. They further asserted that the federal courts could not decide the question of the Navajo Nation's adjudicatory authority in this case because the Navajo Nation was not a party to the litigation. Further, they argued that because the Navajo Nation had entered into a contract with the Bureau of Indian Affairs (BIA) concerning its judicial programs, pursuant to *Medellin v. Texas*, 129 S.Ct. 360 (2008), its tribal courts were "executive agreement claims settlement courts whose acts are entitled to full force and effect in the courts of the United States." *MacArthur IV*, 566 F. Supp. 2d at 1247 (quotation marks omitted).

In its exhaustive decision, the district court recited the history of the relevant legislation and Supreme Court decisions preceding and culminating in *Montana's* holding that tribal courts have very limited civil authority over nonmembers and nonmember activities within tribal boundaries. *Id.* at 1242-44. It acknowledged that scholars and even some members of the Supreme Court dispute the rule and reasoning of the *Montana* decision. *Id.* at 1249. Nonetheless, it ruled that the Supreme Court's decision in *Montana*, which continues to be followed by the Court, is binding on all lower federal courts, including it and the Tenth Circuit. *Id.* at 1245. The district court further ruled that the Navajo Nation was not a necessary party to the determination of the jurisdictional issues in this case, distinguishing cases relied upon by Appellants in

which the litigation was against the tribe itself. *Id.* at 1245-46. The court explained that, by bringing an action in federal court seeking enforcement of the tribal orders, Appellants had invoked the federal court's jurisdiction under § 1331, including its authority to decide the tribal court's subject-matter jurisdiction over the Defendants. *Id.* at 1246-47. Finally, it ruled that the Navajo Nation's contract with the BIA was nothing more than a contract to provide financial assistance, and it did not alter or supercede any of the relevant legislation or judicial precedent concerning tribal civil authority over nonmembers. *Id.* at 1247-48. Ultimately, the district court ruled that Appellants' arguments as to the tribal court's jurisdiction and the federal court's authority to resolve those issues had been answered by *MacArthur III,* and, thus, under the law-of-the-case doctrine, the district court lacked any authority to deviate from the Tenth Circuit's mandate. *Id.* at 1250-51.

Analysis. Appellants argue on appeal, as they did before the district court, that "[t]his case presents an opportunity . . . to eliminate the *Montana* doctrine from application to the Navajo Nation and . . . mak[e] Navajo law the 'Supreme Law of the Land[,]' binding on all Courts domestically." Opening Br. at 5. They contend that (1) all of the federal court decisions in this case were in excess of their constitutional Article III authority and, therefore, are void; (2) Congress and the Executive Branch have entered into treaties with the Navajo Nation, such that all Navajo Nation tribal court actions are binding on the federal courts, pursuant

to *Medellin*, 129 S.Ct. 360; and (3) they were denied due process by not being allowed to litigate the applicability of the *Montana* doctrine before it was mandatorily applied by the Tenth Circuit in *MacArthur I*.

Appellants' lengthy and novel legal theories set forth in their Rule 60(b) motion and their opening brief all seek, quite simply, to relitigate the very same questions already addressed by this court in *MacArthur III*: namely, did the tribal court have subject matter jurisdiction over the nonmember Defendants in this matter, and do the federal courts have jurisdiction to answer this question. This court has answered both questions, ruling that the tribal court *did not* have jurisdiction over the nonmember Defendants and that the federal courts *do* have jurisdiction to determine that issue.

Appellants are simply arguing that the *Montana* and *MacArthur III* decisions were error. *Montana* has not been overruled, *see Plains Commerce Bank v. Long Family Land and Cattle Co. Inc.*, 128 S.Ct. 2709, 2719-20 (2008), and *MacArthur III* is both a published decision of this court and the final decision in this case. "[T]his panel is bound to follow the decisions of the Supreme Court and the published decisions of this court." *Tootle v. USDB Commandant*, 390 F.3d 1280, 1283 (10th Cir. 2004). More specifically, the district court and this panel are precluded by the law-of-the-case doctrine from revisiting the issues decided in *MacArthur III*.

Under the law-of-the-case doctrine, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Arizona v. California*, 460 U.S. 605, 618 (1983). Under this doctrine, "both district courts and appellate courts are generally bound by a prior appellate decision in the same case." *Alphamed, Inc. v. B. Braun Medical, Inc.*, 367 F.3d 1280, 1285-86 (11th Cir. 2004). "It is a rule based on sound public policy that litigation should come to an end . . . by preventing continued re-argument of issues already decided." *Gage v. Gen. Motors Corp.*, 796 F.2d 345, 349 (10th Cir. 1986) (internal citations omitted). If it were not for the law-of-the-case doctrine, "there would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions, or speculate of chances from changes in its members." *Roberts v. Cooper*, 61 U.S. 467, 481 (1857).

We cannot find anywhere in Appellants' sixty-two page opening brief or fifty-three page reply brief where they even contend the district court erred in denying their Rule 60(b) claims under the law-of-the-case doctrine. The only time Appellants even acknowledge this doctrine is in an argument in their reply brief headed, "The Law of the Case Being Navajo Law Supports These Plaintiffs." Reply Br. at 20. There, Appellants simply make the circular argument that one aspect of the holding of *MacArthur I*–remanding the case to the district court to address the *Montana* doctrine in the first instance–should be

deemed the law of the case, ostensibly in an erroneous belief this would enable them to continue challenging the *Montana* doctrine.

The law of the case as determined in *MacArthur III* continues to control this matter. Thus, the district court did not err in following the rulings of this court that *Montana* controls the legal analysis of the jurisdictional issues and, applying *Montana*, that the tribal court lacked subject-matter jurisdiction to exercise civil authority over the conduct of the nonmember Defendants. Accordingly, we affirm the district court's denial of Appellants' Rule 60(b) motion.

Injunction. In its order, the district court granted Defendants' motion to permanently enjoin Appellants Singer, Riggs and Dickson, individually and through their counsel of record, from seeking to enforce certain orders issued by the Navajo tribal court in any judicial proceeding before any court as against any of the Defendants, and it permanently enjoined these Appellants from prosecuting any claim for damages or other relief in tribal court against the Defendants over whom the *MacArthur III* decision determined the tribal court lacked subject-matter jurisdiction. *MacArthur IV*, 566 F. Supp. 2d at 1251. We cannot find any place in Appellants' opening brief or even their reply brief where they challenge that ruling. "Issues not raised in the opening brief are deemed abandoned or waived." *Coleman v. B-G. Maint. Mgmt. of Colorado*, 108 F.3d

1199, 1205 (10th Cir. 1997). Accordingly, the district court's injunction against Appellants is affirmed.

Defendants' Rule 38 Request. Defendants request that we find Appellants' appeal to be frivolous and to award damages to the Defendants pursuant to Fed. R. App. P. 38. Rule 38 empowers this court to "award just damages and single or double costs to the appellee" if we determine that an appeal is frivolous.

We are very mindful of the extreme expense and time imposed on the Defendants by Appellants' repeated arguments challenging the same issues already litigated in *MacArthur III*. There is a strong argument for the imposition of Rule 38 damages against Appellants for their endless attempts to relitigate the same matters previously decided by this court. Nonetheless, we also note that the district court spent considerable time and effort to address Appellants' arguments, and in so doing, concluded that, while barred by the law-of-the-case doctrine, at least some aspects of their arguments were not frivolous. *See MacArthur IV*, 566 F. Supp. 2d at 1245 n.2. We respect the district court's opinion in this matter, and we greatly appreciate the patient and laborious effort undertaken by the district court in issuing such a thorough decision. We therefore deny the Defendants' request for damages

Nonetheless, we cannot emphasize to Appellants strongly enough that this matter is at an end. We caution Appellants that if they file any future appeal or other motion or filing in this court seeking to relitigate any issue in this case, the

filing may be summarily dismissed and Appellants may be subject to the imposition of sanctions, including damages and filing restrictions, if the filing is found to be frivolous.

The district court's denial of Appellants' Rule 60(b) motion and its permanent injunction issued in *MacArthur IV* are AFFIRMED. Appellants' motion to certify to the Supreme Court the question of the binding effect of the Navajo Nation's tribal court's orders is DENIED. Defendants' requests for damages under Rule 38 are DENIED. Defendants' combined motion to dismiss this appeal under Federal Rule of Appellate Procedure 27 and Tenth Circuit Rule 27.2, is DENIED as moot.

Entered for the Court

Stephen H. Anderson
Circuit Judge

IN THE SUPREME COURT OF THE STATE OF UTAH

----oo0oo----

Susan Rose,

Petitioner,

v. Case No. 20101015-SC

The Honorable Vernice S. Trease,

Respondent;

The Office of Professional Conduct
of the Utah State Bar,

Real Party in Interest.

ORDER

This matter is before the Court on Petition for Extraordinary Relief. Petitioner has filed three prior petitions pursuant to rule 19 of the Rules of Appellate Procedure and one prior petition pursuant to rule 5 of the Rules of Appellate Procedure. In response to those requests for discretionary appellate

review, the Court has declined to interrupt the pending disciplinary proceedings. This Court again denies the request for relief prior to entry of the final judgment below. Petitioner is entitled to file a direct appeal after the final judgment. Prior to the timely filing of a direct appeal of right, the Court will not entertain another request for discretionary appellate review. With respect to this petition, the sole issue remaining to be decided is the Office of Professional Conduct's request for sanctions. Resolution of that issue will be deferred. If a timely direct appeal is filed after entry of judgment in the disciplinary proceedings, the issue of sanctions will be consolidated with the appeal for decision after plenary review. Otherwise, the request for sanctions will be addressed in due course. The Office of Professional Conduct is requested to notify the Court if any circumstances or events transpire that would preclude an appeal.

FOR THE COURT:

March 15, 2011
Date

Jill N. Parrish
Justice

ARTICLE VI U.S. CONSTITUTION

"All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States."

The Judiciary Act of 1789

September 24, 1789.

1 Stat. 73.

CHAP. XX. – *An Act to establish the Judicial Courts of the United States*.

SEC. 17. *And be it further enacted*, That all the said courts of the United States shall have power **to grant new trials**, in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law; and shall have power to impose and administer all necessary oaths or affirmations, and **to punish** by fine or imprisonment, at the discretion of said courts, **all contempts of authority** in any cause or hearing before the same; and to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States.

SEC. 19. *And be it further enacted*, That it shall be the duty of circuit courts, **in causes in equity** and of admiralty and maritime jurisdiction, to cause the facts on which they found their sentence or decree, **fully to appear upon the record either from the pleadings and decree itself**, or a state of the case agreed by the parties, or their counsel, or if they disagree by a stating of the case by the court.

SEC. 34. *And be it further enacted*, **That the laws of the several states**, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded **as rules of decision in trials at common law in the courts of the United States in cases where they apply.**

APPROVED , September 24, 1789.

28 U.S. Code § 2283 - Stay of State court proceedings

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Source
(June 25, 1948, ch. 646, 62 Stat. 968.)
Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., § 379 (Mar. 3, 1911, ch. 231, § 265,36 Stat. 1162).
An exception as to acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.
The phrase "in aid of its jurisdiction" was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.
The exceptions specifically include the words "to protect or "effectuate its judgments," for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See Toucey v. New York Life Insurance Co., 62 S.Ct. 139, 314 U.S. 118, 86 L.Ed. 100. A vigorous dissenting opinion (62 S.Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts, of the **United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change**). Therefore the revised section **restores the basic law** as generally understood and interpreted prior to the Toucey decision.
Changes were made in phraseology."

TREATY WITH THE NAVAJO, 1849.

Sept. 9, 1849. | 9 Stat., 974. | Ratified Sept. 9, 1850. | Proclaimed Sept. 24, 1850.

"THE following acknowledgements, declarations, and stipulations have been duly considered, and are now solemnly adopted and proclaimed by the undersigned; that is to say, John M. Washington, governor of New Mexico, and lieutenant-colonel commanding the troops of the United States in New Mexico, and James S. Calhoun, Indian agent, residing at Santa Fé, in New Mexico, representing the United States of America, and Mariano Martinez, head chief, and Chapitone, second chief, on the part of the Navajo tribe of Indians:

ARTICLE 1.

The said Indians do hereby acknowledge that, by virtue of a treaty entered into by the United States of America and the United Mexican States, signed on the second day of February, in the year of our Lord eighteen hundred and forty-eight, at the city of Guadalupe Hidalgo, by N. P. Trist, of the first part, and Luis G. Cuevas, Bernardo Couto, and Mgl Atristain, of the second part, the said tribe was lawfully placed under the **exclusive jurisdiction and protection of the Government of the said United States**, and that they are **now, and will forever remain, under the aforesaid jurisdiction and protection."**

25 U.S. Code § 1911 - Indian tribe jurisdiction over Indian child custody proceedings

" (a) **Exclusive jurisdiction**
An Indian tribe shall have jurisdiction **exclusive** as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.
(b) **Transfer of proceedings; declination by tribal court**
In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.
(c) **State court proceedings; intervention**
In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.
(d) **Full faith and credit to public acts, records, and judicial proceedings of Indian tribes**
The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities **give full faith and credit** to the public acts, records, and judicial proceedings of any other entity. "

Rule 14-510. Prosecution and appeals.

(a) Informal complaint of unprofessional conduct.

(a)(1) Filing. A disciplinary proceeding may be initiated against any member of the Bar by any person, OPC counsel or the Committee, by filing with the Bar, in writing, an informal complaint in ordinary, plain and concise language setting forth the acts or omissions claimed to constitute unprofessional conduct. Upon filing, an informal complaint shall be processed in accordance with this article.

(a)(2) Form of informal complaint. The informal complaint need not be in any particular form or style and may be by letter or other informal writing, although a form may be provided by the OPC to standardize the informal complaint format. It is unnecessary that the informal complaint recite disciplinary rules, ethical canons or a prayer requesting specific disciplinary action. The informal complaint shall be signed by the complainant and shall set forth the complainant's address, and may list the names and addresses of other witnesses. The informal complaint shall be notarized and contain a verification attesting to the accuracy of the information contained in the complaint. In accordance with Rule 14-504(b), complaints filed by OPC are not required to contain a verification. The substance of the informal complaint shall prevail over the form.

(a)(3) Initial investigation. Upon the filing of an informal complaint, OPC counsel shall conduct a preliminary investigation to ascertain whether the informal complaint is sufficiently clear as to its allegations. If it is not, OPC counsel shall seek additional facts from the complainant; additional facts shall also be submitted in writing and signed by the complainant.

(a)(4) Potential Referral to Professionalism Counseling Board. In connection with any conduct that comes to their attention, whether by means of an informal complaint, a preliminary investigation, or any other means, OPC counsel may, at its discretion, refer any matter to the Professionalism Counseling Board established pursuant to the Supreme Court’s Standing Order No. 7. Such referral may be in addition to or in lieu of any further proceedings related to the subject matter of the referral. Such referral should be in writing and, at the discretion of OPC counsel, may include any or all information included in an informal complaint or additional facts submitted by a complainant.

(a)(5) Notice of informal complaint. Upon completion of the preliminary investigation, OPC counsel shall determine whether the informal complaint can be resolved in the public interest, the respondent's interest and the complainant's interest. OPC counsel and/or the screening panel may use their efforts to resolve the informal complaint. If the informal complaint cannot be so resolved or if it sets forth facts which, by their very nature, should be brought before the screening panel, or if good cause otherwise exists to bring the matter before the screening panel, OPC counsel shall cause to be served a NOIC by regular mail upon the respondent at the address reflected in the records of the Bar. The NOIC shall have attached a true copy of the signed informal complaint against the respondent and shall identify with particularity the possible violation(s) of the Rules of Professional Conduct raised by the informal complaint as preliminarily determined by OPC counsel.

(a)(6) Answer to informal complaint. Within 20 days after service of the NOIC on the respondent, the respondent shall file with OPC counsel a written and signed answer setting forth in full an explanation of the facts surrounding the informal complaint, together with all defenses and responses to the claims of possible misconduct. For good cause shown, OPC counsel may extend the time for the filing of an answer by the respondent not to exceed an additional 30 days. Upon the answer having been filed or if the respondent fails to respond, OPC counsel shall refer the case to a screening panel for investigation, consideration and determination or recommendation. OPC counsel shall forward a copy of the answer to the complainant.

(a)(7) Dismissal of informal complaint. An informal complaint which, upon consideration of all factors, is determined by OPC counsel to be frivolous, unintelligible, barred by the statute of limitations, more adequately addressed in another forum, unsupported by fact or which does not raise probable cause of any unprofessional conduct, or which OPC declines to prosecute may be dismissed by OPC counsel without hearing by a screening panel. OPC counsel shall notify the complainant of such dismissal stating the reasons therefor. The complainant may appeal a dismissal by OPC counsel to the Committee chair within 15 days after notification of the dismissal is mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file, either affirm the dismissal or require OPC counsel to prepare a NOIC, and set the matter for hearing by a screening panel. In the event of the chair's recusal, the chair shall appoint the vice chair or one of the screening panel chairs to review and determine the appeal.

(b) Proceedings before Committee and screening panels.

(b)(1) Review and investigation. A screening panel shall review all informal complaints referred to it by OPC counsel, including all the facts developed by the informal complaint, answer, investigation and hearing, and the recommendations of OPC counsel. In cases where a judicial officer has not addressed or reported a respondent’s alleged misconduct, the screening panel should not consider this inaction to be evidence either that misconduct has occurred or has not occurred.

(b)(2) Respondent's appearance. Before any action is taken that may result in the recommendation of an admonition or public reprimand or the filing of a formal complaint, the screening panel shall, upon at least 30 days’ notice, afford the respondent an opportunity to appear before the screening panel. Respondent and any witnesses called by the respondent may testify, and respondent may present oral argument with respect to the informal complaint. Respondent may also submit a written brief to the screening panel at least 10 days prior to the hearing, which shall not exceed 10 pages in length unless permission for enlargement is extended by the chair or the chair's delegate for good cause shown. A copy of the brief shall be forwarded by OPC counsel to the complainant.

(b)(3) Complainant's appearance. A complainant shall have the right to appear before the screening panel personally and, together with any witnesses called by the complainant, may testify.

(b)(4) Right to hear evidence; cross-examination. The complainant and the respondent shall have the right to be present during the presentation of the evidence unless excluded by the screening panel chair for good cause shown. Respondent may be represented by counsel, and

complainant may be represented by counsel or some other representative. Either complainant or respondent may seek responses from the other party at the hearing by posing questions or areas of inquiry to be asked by the panel chair. Direct cross-examination will ordinarily not be permitted except, upon request, when the panel chair deems that it would materially assist the panel in its deliberations.

(b)(5) Hearing Record. The proceedings of any hearing before a screening panel under this subsection (b) shall be recorded at a level of audio quality that permits an accurate transcription of the proceedings. Pursuant to its function as secretary to the Committee under Rule 14-503(h)(1), OPC shall be responsible for the assembly of the complete record of the proceedings, to be delivered to the chair of the Committee upon the rendering of the panel's determination or recommendation to the Committee chair. The record of the proceedings before the panel shall be preserved for not less than one year following delivery of the panel's determination or recommendation to the chair of the Committee and for such additional period as any further proceedings on the matter are pending or might be instituted under this section.

(b)(6) Screening panel determination or recommendation. Upon review of all the facts developed by the informal complaint, answer, investigation and hearing, the screening panel shall make one of the following determinations or recommendations:

(b)(6)(A) The preponderance of evidence presented does not establish that the respondent was engaged in unprofessional conduct, in which case the informal complaint shall be dismissed. OPC counsel shall promptly give notice of such dismissal by regular mail to the complainant and the respondent. A letter of caution may also be issued with the dismissal. The letter shall be signed by OPC counsel or the screening panel chair and shall serve as a guide for the future conduct of the respondent. The complainant shall also be confidentially notified of the caution;

(b)(6)(B) The informal complaint shall be referred to the Diversion Committee for diversion. In this case, the specific material terms of the Diversion Contract agreed to by the respondent are to be recorded as a part of the screening panel record, along with any comments by the complainant. The screening panel shall have no further involvement in processing the diversion. The Diversion Committee shall process the diversion in accordance with Rule 14-533.

(b)(6)(C) The informal complaint shall be referred to the Professionalism Counseling Board established pursuant to the Supreme Court's Standing Order No. 7;

(b)(6)(D) The informal complaint shall be referred to the Committee chair with an accompanying screening panel recommendation that the respondent be admonished;

(b)(6)(E) The informal complaint shall be referred to the Committee chair with an accompanying screening panel recommendation that the respondent receive a public reprimand; or

(b)(6)(F) A formal complaint shall be filed against the respondent pursuant to Rule 14-511.

(b)(7) Recommendation of admonition or public reprimand. A screening panel recommendation that the respondent should be disciplined under subsection (b)(6)(C) or (b)(6)(D) shall be in writing and shall state the substance and nature of the informal complaint and defenses and the basis upon which the screening panel has concluded, by a preponderance of the evidence, that the respondent should be admonished or publicly reprimanded. A copy of such screening panel recommendation shall be delivered to the Committee chair and a copy served upon the respondent.

(b)(8) Determination of appropriate sanction. In determining an appropriate sanction and only after having found unethical conduct, the screening panel may consider any admonitions or greater discipline imposed upon the respondent within the five years immediately preceding the alleged offense.

(b)(9) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in abeyance by the Committee prior to the filing of a formal complaint when the allegations or the informal complaint contain matters of substantial similarity to the material allegations of pending criminal or civil litigation in which the respondent is involved.

(c) Exceptions to screening panel determinations and recommendations. Within 30 days after the date of the determination of the screening panel of a dismissal, dismissal with letter of caution, a referral to the Diversion Committee, a referral to the Professionalism Counseling Board, or the recommendation of an admonition, or the recommendation of a public reprimand, OPC may file with the Committee chair exceptions to the determination or recommendation and may request a hearing. Within 30 days after service by OPC of the recommendation of an admonition or public reprimand on respondent, the respondent may file with the Committee chair exceptions to the recommendation and may request a hearing. No exception may be filed to a screening panel determination that a formal complaint shall be filed against a respondent pursuant to Rule 14-511. All exceptions shall include a memorandum, not to exceed 20 pages, stating the grounds for review, the relief requested and the bases in law or in fact for the exceptions.

(d) Procedure on exceptions.

(d)(1) Hearing not requested. If no hearing is requested, the Committee chair will review the record compiled before the screening panel.

(d)(2) Hearing requested. If a request for a hearing is made, the Committee chair or a screening panel chair designated by the Committee chair shall serve as the Exceptions Officer and hear the matter in an expeditious manner, with OPC counsel and the respondent having the opportunity to be present and give an oral presentation. The complainant need not appear personally. However, upon motion to the Exceptions Officer and for good cause shown, OPC or respondent may seek to augment the record before the screening panel or the original brief on exceptions, including:

(d)(2)(A) A request to call complainant as an adverse witness for purposes of cross-examination if complainant was not subject to direct cross-examination before the screening panel, and

(d)(2)(B) A request for time to obtain a transcript of the screening panel proceedings to support respondent's exceptions, the cost of such transcript to be borne by the party requesting it. If a transcript is requested, OPC will provide the Committee chair with the transcript as transcribed by a court reporting service, together with an affidavit establishing the chain of custody of the record.

(d)(3) Burden of proof. The party who files exceptions under subsection (c) shall have the burden of showing that the determination or recommendation of the screening panel is unsupported by substantial evidence or is arbitrary, capricious, legally insufficient or otherwise clearly erroneous.

(d)(4) Response. The party opposing the exception may file a written response within the time allowed by the Exceptions Officer.

(d)(5) Record on exceptions. The proceedings of any hearing on exceptions under this subsection (d) shall be recorded at a level of audio quality that permits an accurate transcription of the proceedings.

(e) Final Committee disposition. Either upon the completion of the exceptions procedure under subsection (d) or if no exceptions have been filed under subsection (c), the Committee chair shall issue a final, written determination that either sustains, dismisses, or modifies the determination or recommendation of the screening panel. No final written determination is needed by the Committee chair to a screening panel determination to a dismissal, a dismissal with a letter of caution, or a referral to the Diversion Committee if no exception is filed.

(f) Appeal of a final Committee determination.

(f)(1) Within 30 days after the date of a final, written determination of the Committee chair under (c), OPC may file a request for review by the Supreme Court seeking reversal or modification of the final determination of the Committee. Within 30 days after service by OPC of a final, written determination of the Committee chair under subsection (c), the respondent may file a request for review with the Supreme Court seeking reversal or modification of the final determination by the Committee. A request for review under this subsection shall only be available in cases where exceptions have been filed under subsection (c). Dissemination of disciplinary information pursuant to Rules 14-504(b)(13) or 14-516 shall be automatically stayed during the period within which a request for review may be filed under this subsection. If a timely request for review is filed, the stay shall remain in place pending resolution by the Supreme Court unless the Court otherwise orders.

(f)(2) A request for review under this subsection (f) will be subject to the procedures set forth in Title III of the Utah Rules of Appellate Procedure.

(f)(3) A party requesting a transcription of the record below shall bear the costs. OPC will provide the Court with the transcript as transcribed by a court reporting service, together with an affidavit establishing the chain of custody of the record.

(f)(4) The Supreme Court shall conduct a review of the matter on the record.

(f)(5) The party requesting review shall have the burden of demonstrating that the Committee action was:

(f)(5)(A) Based on a determination of fact that is not supported by substantial evidence when viewed in light of the whole record before the Court;

(f)(5)(B) An abuse of discretion;

(f)(5)(C) Arbitrary or capricious; or

(f)(5)(D) Contrary to Articles 5 and 6 of Chapter 14 of the Rules of Professional Practice of the Supreme Court.

(g) General procedures.

(g)(1) Testimony. All testimony given before a screening panel or the Exceptions Officer shall be under oath.

(g)(2) Service. To the extent applicable, service or filing of documents under this Rule is to be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and 6(a).

(g)(3) Form of Documents. Documents submitted under this Rule shall conform to the requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure, except it is not required to bind documents along the left margin.

CHAPTER 45
H. B. No. 145
Passed February 1, 1990
Approved March 7, 1990
Effective April 23, 1990

PRIVILEGED COMMUNICATIONS AMENDMENTS

By Nolan E. Karras

AN ACT RELATING TO THE JUDICIAL CODE; AMENDING PRIVILEGED COMMUNICATIONS BETWEEN SPOUSES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
78-24-8, AS LAST AMENDED BY CHAPTER 103, LAWS OF UTAH 1989

Be it enacted by the Legislature of the state of Utah:

Section 1. Section Amended.

Section 78-24-8, Utah Code Annotated 1953, as last amended by Chapter 103, Laws of Utah 1989, is amended to read:

78-24-8. Privileged communications.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

(1) (a) [A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can] Neither a wife nor a husband may either during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage[; but this].

(b) This exception does not apply:

(i) to a civil action or proceeding by one spouse against the other[, nor];

(ii) to a criminal action or proceeding for a crime committed by one spouse against the other[, nor for];

(iii) to the crime of deserting or neglecting to support a spouse or child[, nor where it is otherwise specially];

(iv) to any civil or criminal proceeding for abuse or neglect committed against the child of either spouse; or

(v) if otherwise specifically provided by law.

(2) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him[,] or his advice given [therein,] regarding the communication in the course of his professional employment[; nor can an]. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of his employer, concerning any fact, the knowledge of which has been acquired in [such] his capacity as an employee.

(3) A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

(4) A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. However, this privilege shall be deemed to be waived by the patient in an action in which the patient places his medical condition at issue as an element or factor of his claim or defense. Under those circumstances, a physician or surgeon who has prescribed for or treated that patient for the medical condition at issue may provide information, interviews, reports, records, statements, memoranda, or other data relating to the patient's medical condition and treatment which are placed at issue.

(5) A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

(6) A sexual assault counselor as defined in Section 78-3c-3 cannot, without the consent of the victim, be examined in a civil or criminal proceeding as to any confidential communication as defined in Section 78-3c-3 made by the victim.

78A-2-201. Powers of every court.

Every court has authority to:

(1) preserve and enforce order in its immediate presence;

(2) enforce order in the proceedings before it, or before a person authorized to conduct a judicial investigation under its authority;

(3) provide for the orderly conduct of proceedings before it or its officers;

(4) compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in a pending action or proceeding;

(5) control in furtherance of justice the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it in every matter;

(6) compel the attendance of persons to testify in a pending action or proceeding, as provided by law;

(7) administer oaths in a pending action or proceeding, and in all other cases where necessary in the exercise of its authority and duties;

(8) amend and control its process and orders to conform to law and justice;

(9) devise and make new process and forms of proceedings, consistent with law, necessary to carry into effect its authority and jurisdiction; and

(10) enforce rules of the Supreme Court and Judicial Council.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-2-218. Powers of every judicial officer -- Contempt.

Every judicial officer has power:

(1) to preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;

(2) to compel obedience to his lawful orders as provided by law;

(3) to compel the attendance of persons to testify in a proceeding before him in the cases and manner provided by law;

(4) to administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and duties; and

(5) punish for contempt as provided by law to enforce compliance with Subsections (1) through (4).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-13-109. Appearance and limited immunity.

(1) A party to a child custody proceeding who is not subject to personal jurisdiction in this state and is a responding party under Part 2, Jurisdiction, a party in a proceeding to modify a child custody determination under Part 2, Jurisdiction, or a petitioner in a proceeding to enforce or register a child custody determination under Part 3, Enforcement, may appear and participate in the proceeding without submitting to personal jurisdiction over the party for another proceeding or purpose.

(2) A party is not subject to personal jurisdiction in this state solely by being physically present for the purpose of participating in a proceeding under this chapter. If a party is subject to personal jurisdiction in this state on a basis other than physical presence, the party may be served with process in this state. If a party present in this state is subject to the jurisdiction of another state, service of process allowable under the laws of that state may be accomplished in this state.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

Renumbered and Amended by Chapter 3, 2008 General Session

SPRINT COMMUNICATIONS, INC., PETITIONER
v.
ELIZABETH S. JACOBS ET AL.

No. 12-815

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2013
Argued November 5, 2013
Decided December 10, 2013

Summaries:

Source: Justia

Sprint, a national telecommunications company, declined to pay intercarrier access fees imposed by Windstream, an Iowa telecommunications carrier, for long distance Voice over Internet Protocol (VoIP) calls, concluding that the Telecommunications Act of 1996 (TCA) preempted intrastate regulation of VoIP traffic. Windstream threatened to block Sprint customer calls; Sprint sought an injunction from the Iowa Utilities Board (IUB). Windstream retracted its threat, and Sprint sought to withdraw its complaint. Concerned that the dispute would recur, IUB continued the proceedings, ruling that intrastate fees applied to VoIP calls. Sprint sought a declaration that the TCA preempted the IUB decision. Sprint also sought review in Iowa state court. Invoking Younger v. Harris, the district court abstained from adjudicating Sprint's complaint in deference to the state-court proceeding. The Eighth Circuit affirmed, concluding that Younger abstention was required because the state-court review concerned Iowa's important interest in regulating and enforcing state utility rates. The Supreme Court reversed. The case does not fall within any of the classes of exceptional cases for which Younger abstention is appropriate to avoid federal intrusion into ongoing state criminal prosecutions; interfering with pending "civil proceedings . . . uniquely in furtherance of the state courts' ability to perform their judicial functions;" and certain civil enforcement proceedings. IUB's proceeding was not criminal and did not touch on a state court's ability to perform its judicial function. Nor is the IUB order an act of civil enforcement of the kind to which Younger has been extended; the proceeding is not "akin to a criminal prosecution," nor was it initiated by "the State in its sovereign capacity," to sanction a wrongful act. The court rejected an argument that once Sprint withdrew its complaint the proceedings became, essentially, a civil enforcement action. IUB's authority was invoked to settle a civil dispute between private parties.

(Slip Opinion)

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the

Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

Syllabus

SPRINT COMMUNICATIONS, INC. *v.* JACOBS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR

THE EIGHTH CIRCUIT

No. 12-815.

Sprint Communications, Inc. (Sprint), a national telecommunications service provider, withheld payment of intercarrier access fees imposed by Windstream Iowa Communications, Inc. (Windstream), a local telecommunications carrier, for long distance Voice over Internet Protocol (VoIP) calls, after concluding that the Telecommunications Act of 1996 preempted intrastate regulation of VoIP traffic. Windstream responded by threatening to block all Sprint customer calls, which led Sprint to ask the Iowa Utilities Board (IUB) to enjoin Windstream from discontinuing service to Sprint. Windstream retracted its threat, and Sprint moved to withdraw its complaint. Concerned that the dispute would recur, the IUB continued the proceedings in order to resolve the question whether VoIP calls are subject to intrastate regulation. Rejecting Sprint's argument that this question was governed by federal law, the IUB ruled that intrastate fees applied to VoIP calls.

Sprint sued respondents, IUB members (collectively IUB), in Federal District Court, seeking a declaration that the Telecommunications Act of 1996 preempted the IUB's decision. As relief, Sprint sought an injunction against enforcement of the IUB's order. Sprint also sought review of the IUB's order in Iowa state court, reiterating the preemption argument made in Sprint's federal-court complaint and asserting several other claims. Invoking *Younger* v. *Harris,* 401 U. S. 37, the Federal District Court abstained from adjudicating Sprint's complaint in deference to the parallel state-court proceeding. The Eighth Circuit affirmed the District Court's abstention decision, concluding that *Younger* abstention was required because the ongoing state-court review concerned Iowa's important interest in regulating and enforcing state utility rates.

Page 2

Held: This case does not fall within any of the three classes of exceptional cases for which *Younger* abstention is appropriate. Pp. 6-12.

(a) The District Court had jurisdiction to decide whether federal law preempted the IUB's decision, see *Verizon Md. Inc.* v. *Public Serv. Comm'n of Md.,* 535 U. S. 635, 642, and thus had a "virtually unflagging obligation" to hear and decide the case, *Colorado River Water Conservation Dist.* v. *United States,* 424 U. S. 800, 817. In *Younger,* this Court recognized an exception to that obligation for cases in which there is a parallel, pending state criminal proceeding. This Court has extended *Younger* abstention to particular

state civil proceedings that are akin to criminal prosecutions, see *Huffman* v. *Pursue, Ltd.,* 420 U. S. 592, or that implicate a State's interest in enforcing the orders and judgments of its courts, see *Pennzoil Co.* v. *Texaco Inc.,* 481 U. S. 1, but has reaffirmed that "only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States," *New Orleans Public Service, Inc.* v. *Council of City of New Orleans,* 491 U. S. 350, 368 (*NOPSI*). *NOPSI* identified three such "exceptional circumstances." First, *Younger* precludes federal intrusion into ongoing state criminal prosecutions. See 491 U. S., at 368. Second, certain "civil enforcement proceedings" warrant *Younger* abstention. *Ibid.* Finally, federal courts should refrain from interfering with pending "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *Ibid.* This Court has not applied *Younger* outside these three "exceptional" categories, and rules, in accord with *NOPSI,* that they define *Younger's* scope. Pp. 6-8.

(b) The initial IUB proceeding does not fall within any of *NOPSI's* three exceptional categories and therefore does not trigger *Younger* abstention. The first and third categories plainly do not accommodate the IUB's proceeding, which was civil, not criminal in character, and which did not touch on a state court's ability to perform its judicial function. Nor is the IUB's order an act of civil enforcement of the kind to which *Younger* has been extended. The IUB proceeding is not "akin to a criminal prosecution." *Huffman,* 420 U. S., at 604. Nor was it initiated by "the State in its sovereign capacity," *Trainor* v. *Hernandez,* 431 U. S. 434, 444, to sanction Sprint for some wrongful act, see, *e.g., Middlesex County Ethics Comm.* v. *Garden State Bar Assn.,* 457 U. S. 423, 433-434. Rather, the action was initiated by Sprint, a private corporation. No state authority conducted an investigation into Sprint's activities or lodged a formal complaint against Sprint.

Once Sprint withdrew the complaint that commenced administrative proceedings, the IUB argues, those proceedings became, essentially, a civil enforcement action. However, the IUB's adjudicative

authority was invoked to settle a civil dispute between two private parties, not to sanction Sprint for a wrongful act.

In holding that abstention was the proper course, the Eighth Circuit misinterpreted this Court's decision in *Middlesex* to mean that *Younger* abstention is warranted whenever there is (1) "an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) . . . provide[s] an adequate opportunity to raise [federal] challenges." In *Middlesex,* the Court invoked *Younger* to bar a federal court from entertaining a lawyer's challenge to a state ethics committee's pending investigation of the lawyer. Unlike the IUB's proceeding, however, the state ethics committee's hearing in *Middlesex* was plainly "akin to a criminal proceeding": An investigation and formal complaint preceded the hearing, an agency of the State's Supreme Court initiated the hearing, and the hearing's purpose was to determine whether the lawyer should be disciplined for failing to meet the State's professional conduct standards. 457 U. S., at 433-435. The three Middlesex conditions invoked by the Court of Appeals were therefore not dispositive; they were, instead, *additional* factors appropriately considered by the federal court before invoking *Younger. Younger* extends to the three "exceptional circumstances" identified in *NOPSI,* but no further. Pp. 8-11.

690 F. 3d 864, reversed.

GINSBURG, J., delivered the opinion for a unanimous Court.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF

APPEALS FOR THE EIGHTH CIRCUIT

JUSTICE GINSBURG delivered the opinion of the Court.

This case involves two proceedings, one pending in state court, the other in federal court. Each seeks review of an Iowa Utilities Board (IUB or Board) order. And each presents the question whether Windstream Iowa Communications, Inc. (Windstream), a local telecommunications carrier, may impose on Sprint Communications, Inc. (Sprint), intrastate access charges for telephone calls transported via the Internet. Federal-court jurisdiction over controversies of this kind was confirmed in *Verizon Md. Inc.* v. *Public Serv. Comm'n of Md.,* 535 U. S. 635 (2002). Invoking *Younger* v. *Harris,* 401 U. S. 37 (1971), the U. S. District Court for the Southern District of Iowa abstained from adjudicating Sprint's complaint in deference to the parallel state-court proceeding, and the Court of Appeals for the Eighth Circuit affirmed the District Court's abstention decision.

We reverse the judgment of the Court of Appeals. In the main, federal courts are obliged to decide cases within the scope of federal jurisdiction. Abstention is not in order simply because a pending state-court proceeding involves

Page 5

the same subject matter. *New Orleans Public Service, Inc.* v. *Council of City of New Orleans,* 491 U. S. 350, 373 (1989) (*NOPSI*) ("[T]here is no doctrine that . . . pendency of state judicial proceedings excludes the federal courts."). This Court has recognized, however, certain instances in which the prospect of undue interference with state proceedings counsels against federal relief. See *id.,* at 368.

Younger exemplifies one class of cases in which federal-court abstention is required: When there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution. This Court has extended *Younger* abstention to particular state civil proceedings that are akin to criminal prosecutions, see *Huffman* v. *Pursue, Ltd.,* 420 U. S. 592 (1975), or that implicate a State's interest in enforcing the orders and judgments of its courts, see *Pennzoil Co.* v. *Texaco Inc.,* 481 U. S. 1 (1987). We have cautioned, however, that federal courts ordinarily should entertain and resolve on the merits an action within the scope of a jurisdictional grant, and should not "refus[e] to decide a case in deference to the States." *NOPSI,* 491 U. S., at 368.

Circumstances fitting within the *Younger* doctrine, we have stressed, are "exceptional"; they include, as catalogued in *NOPSI,* "state criminal prosecutions," "civil enforcement proceedings," and "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Id.,* at 367-368. Because this case presents none of the circumstances the Court has ranked as "exceptional," the general rule governs: "[T]he pendency of an action in [a] state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction."

Colorado River Water Conservation Dist. v. *United States,* 424 U. S. 800, 817 (1976) (quoting *McClellan* v. *Carland,* 217 U. S. 268, 282 (1910)).

Page 6

I

Sprint, a national telecommunications service provider, has long paid intercarrier access fees to the Iowa communications company Windstream (formerly Iowa Telecom) for certain long distance calls placed by Sprint customers to Windstream's in-state customers. In 2009, however, Sprint decided to withhold payment for a subset of those calls, classified as Voice over Internet Protocol (VoIP), after concluding that the Telecommunications Act of 1996 preempted intrastate regulation of VoIP traffic.[1] In response, Windstream threatened to block all calls to and from Sprint customers.

Sprint filed a complaint against Windstream with the IUB asking the Board to enjoin Windstream from discontinuing service to Sprint. In Sprint's view, Iowa law entitled it to withhold payment while it contested the access charges and prohibited Windstream from carrying out its disconnection threat. In answer to Sprint's complaint, Windstream retracted its threat to discontinue serving Sprint, and Sprint moved, successfully, to withdraw its complaint. Because the conflict between Sprint and Windstream over VoIP calls was "likely to recur," however, the IUB decided to continue the proceedings to resolve the underlying legal question, *i.e.,* whether VoIP calls are subject to intrastate regulation. Order in *Sprint Communications Co.* v. *Iowa Telecommunications Servs., Inc.,* No. FCU-2010-0001 (IUB, Feb. 1, 2010), p. 6 (IUB Order). The question retained by the IUB, Sprint argued, was governed by federal law, and was not within the IUB's adjudicative jurisdiction. The IUB disagreed, ruling that

Page 7

the intrastate fees applied to VoIP calls.[2]

Seeking to overturn the Board's ruling, Sprint commenced two lawsuits. First, Sprint sued the members of the IUB (respondents here)[3] in their official capacities in the United States District Court for the Southern District of Iowa. In its federal-court complaint, Sprint sought a declaration that the Telecommunications Act of 1996 preempted the IUB's decision; as relief, Sprint requested an injunction against enforcement of the IUB's order. Second, Sprint petitioned for review of the IUB's order in Iowa state court. The state petition reiterated the preemption argument Sprint made in its federal-court complaint; in addition, Sprint asserted state law and procedural due process claims. Because Eighth Circuit precedent effectively required a plaintiff to exhaust state remedies before proceeding to federal court, see *Alleghany Corp.* v. *McCartney,* 896 F. 2d 1138 (1990), Sprint urges that it filed the state suit as a protective measure. Failing to do so, Sprint explains, risked losing the opportunity to obtain any review, federal or state, should the federal court decide to abstain after the expiration of the Iowa statute of limitations. See Brief for Petitioner 7-8.[4]

As Sprint anticipated, the IUB filed a motion asking the Federal District Court to abstain in light of the state suit, citing *Younger* v. *Harris,* 401 U. S. 37 (1971). The District Court granted the IUB's motion and dismissed the suit.

Page 8

The IUB's decision, and the pending state-court review of it, the District Court said, composed one "uninterruptible process" implicating important state interests. On that ground, the court ruled, *Younger* abstention was in order. *Sprint Communications Co.* v. *Berntsen,* No. 4:11-cv-00183-JAJ (SD Iowa, Aug. 1, 2011), App. to Pet. for Cert. 24a.

For the most part, the Eighth Circuit agreed with the District Court's judgment. The Court of Appeals rejected the argument, accepted by several of its sister courts, that *Younger* abstention is appropriate only when the parallel state proceedings are "coercive," rather than "remedial," in nature. 690 F. 3d 864, 868 (2012); cf. *Guillemard-Ginorio* v. *Contreras-Gómez,* 585 F. 3d 508, 522 (CA1 2009) ("[P]roceedings must be coercive, and in most cases, state-initiated, in order to warrant abstention."). Instead, the Eighth Circuit read this Court's precedent to require *Younger* abstention whenever "an ongoing state judicial proceeding . . . implicates important state interests, and . . . the state proceedings provide adequate opportunity to raise [federal] challenges." 690 F. 3d, at 867 (citing *Middlesex County Ethics Comm.* v. *Garden State Bar Assn.,* 457 U. S. 423, 432 (1982)). Those criteria were satisfied here, the appeals court held, because the ongoing state-court review of the IUB's decision concerned Iowa's "important state interest in regulating and enforcing its intrastate utility rates." 690 F. 3d, at 868. Recognizing the "possibility that the parties [might] return to federal court," however, the Court of Appeals vacated the judgment dismissing Sprint's complaint. In lieu of dismissal, the Eighth Circuit remanded the case, instructing the District Court to enter a stay during the pendency of the state-court action. *Id.,* at 869.

We granted certiorari to decide whether, consistent with our delineation of cases encompassed by the *Younger* doctrine, abstention was appropriate here. 569 U. S. ___

Page 9

(2013).[5]

II

A

Neither party has questioned the District Court's jurisdiction to decide whether federal law preempted the IUB's decision, and rightly so. In *Verizon Md. Inc.* v. *Public Serv. Comm'n of Md.,* 535 U. S. 635 (2002), we reviewed a similar federal-court challenge to a state administrative adjudication. In that case, as here, the party seeking federal-court review of a state agency's decision urged that the Telecommunications Act of 1996 preempted the state action. We had "no doubt that federal courts ha[d federal question] jurisdiction under [28 U. S. C.] §1331 to entertain such a suit," *id.,* at 642, and nothing in the Telecommunications Act detracted from that conclusion, see *id.,* at 643.

Federal courts, it was early and famously said, have "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens* v. *Virginia,* 6 Wheat. 264, 404 (1821). Jurisdiction existing, this Court has cautioned, a federal court's "obligation" to hear and decide a case is "virtually unflagging." *Colorado River Water Conservation Dist.* v. *United States,* 424 U. S. 800, 817 (1976). Parallel state-court proceedings do not detract from that obligation. See *ibid.*

In *Younger,* we recognized a "far-from-novel" exception to this general rule. *New Orleans Public Service, Inc.* v. *Council of City of New Orleans,* 491 U. S. 350, 364 (1989) (*NOPSI*). The plaintiff in *Younger* sought federal-court adjudication of the constitutionality of the California

Page 10

Criminal Syndicalism Act. Requesting an injunction against the Act's enforcement, the federal-court plaintiff was at the time the defendant in a pending state criminal prosecution under the Act. In those circumstances, we said, the federal court should decline to enjoin the prosecution, absent bad faith, harassment, or a patently invalid state statute. See 401 U. S., at 53-54. Abstention was in order, we explained, under "the basic doctrine of equity jurisprudence that courts of equity should not act . . . to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparably injury if denied equitable relief." *Id.,* at 43-44. "[R]estraining equity jurisdiction within narrow limits," the Court observed, would "prevent erosion of the role of the jury and avoid a duplication of legal proceedings and legal sanctions." *Id.,* at 44. We explained as well that this doctrine was "reinforced" by the notion of "'comity,' that is, a proper respect for state functions." *Ibid.*

We have since applied *Younger* to bar federal relief in certain civil actions. *Huffman* v. *Pursue, Ltd.,* 420 U. S. 592 (1975), is the pathmarking decision. There, Ohio officials brought a civil action in state court to abate the showing of obscene movies in Pursue's theater. Because the State was a party and the proceeding was "in aid of and closely related to [the State's] criminal statutes," the Court held *Younger* abstention appropriate. *Id.,* at 604.

More recently, in *NOPSI,* 491 U. S., at 368, the Court had occasion to review and restate our *Younger* jurisprudence. *NOPSI* addressed and rejected an argument that a federal court should refuse to exercise jurisdiction to review a state council's ratemaking decision. "[O]nly exceptional circumstances," we reaffirmed, "justify a federal court's refusal to decide a case in deference to the States." *Ibid.* Those "exceptional circumstances" exist, the Court determined after surveying prior decisions, in three types of proceedings. First, *Younger* precluded

Page 11

federal intrusion into ongoing state criminal prosecutions. See *ibid.* Second, certain "civil enforcement proceedings" warranted abstention. *Ibid.* (citing, *e.g., Huffman,* 420 U. S., at 604). Finally, federal courts refrained from interfering with pending "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." 491 U. S., at 368 (citing *Juidice* v. *Vail,* 430 U. S. 327, 336, n. 12 (1977), and *Pennzoil Co.* v. *Texaco Inc.,* 481 U. S. 1, 13 (1987)). We have not applied *Younger* outside these three "exceptional" categories, and today hold, in accord with *NOPSI,* that they define *Younger*'s scope.

B

The IUB does not assert that the Iowa state court's review of the Board decision, considered alone, implicates *Younger.* Rather, the initial administrative proceeding justifies staying any action in federal court, the IUB contends, until the state review process has concluded. The same argument was advanced in *NOPSI.* 491 U. S., at 368. We will assume without deciding, as the Court did in *NOPSI,* that an administrative adjudication and the subsequent state court's review of it count as a "unitary process"

for *Younger* purposes. *Id.,* at 369. The question remains, however, whether the initial IUB proceeding is of the "sort . . . entitled to *Younger* treatment." *Ibid.*

The IUB proceeding, we conclude, does not fall within any of the three exceptional categories described in *NOPSI* and therefore does not trigger *Younger* abstention. The first and third categories plainly do not accommodate the IUB's proceeding. That proceeding was civil, not criminal in character, and it did not touch on a state court's ability to perform its judicial function. Cf. *Juidice,* 430 U. S., at 336, n. 12 (civil contempt order); *Pennzoil,* 481 U. S., at 13 (requirement for posting bond pending appeal).

Nor does the IUB's order rank as an act of civil enforce-

Page 12

ment of the kind to which *Younger* has been extended. Our decisions applying *Younger* to instances of civil enforcement have generally concerned state proceedings "akin to a criminal prosecution" in "important respects." *Huffman,* 420 U. S., at 604. See also *Middlesex,* 457 U. S., at 432 (*Younger* abstention appropriate where "noncriminal proceedings bear a close relationship to proceedings criminal in nature"). Such enforcement actions are characteristically initiated to sanction the federal plaintiff, *i.e.,* the party challenging the state action, for some wrongful act. See, *e.g., Middlesex,* 457 U. S., at 433-434 (state-initiated disciplinary proceedings against lawyer for violation of state ethics rules). In cases of this genre, a state actor is routinely a party to the state proceeding and often initiates the action. See, *e.g., Ohio Civil Rights Comm'n* v. *Dayton Christian Schools, Inc.,* 477 U. S. 619 (1986) (state-initiated administrative proceedings to enforce state civil rights laws); *Moore* v. *Sims,* 442 U. S. 415, 419-420 (1979) (state-initiated proceeding to gain custody of children allegedly abused by their parents); *Trainor* v. *Hernandez,* 431 U. S. 434, 444 (1977) (civil proceeding "brought by the State in its sovereign capacity" to recover welfare payments defendants had allegedly obtained by fraud); *Huffman,* 420 U. S., at 598 (state-initiated proceeding to enforce obscenity laws). Investigations are commonly involved, often culminating in the filing of a formal complaint or charges. See, *e.g., Dayton,* 477 U. S., at 624 (noting preliminary investigation and complaint); *Middlesex,* 457 U. S., at 433 (same).

The IUB proceeding does not resemble the state enforcement actions this Court has found appropriate for *Younger* abstention. It is not "akin to a criminal prosecution." *Huffman,* 420 U. S., at 604. Nor was it initiated by "the State in its sovereign capacity." *Trainor,* 431 U. S., at 444. A private corporation, Sprint, initiated the action. No state authority conducted an investigation into Sprint's

Page 13

activities, and no state actor lodged a formal complaint against Sprint.

In its brief, the IUB emphasizes Sprint's decision to withdraw the complaint that commenced proceedings before the Board. At that point, the IUB argues, Sprint was no longer a willing participant, and the proceedings became, essentially, a civil enforcement action. See Brief for Respondents 31.[6] The IUB's adjudicative authority, however, was invoked to settle a civil dispute between two private parties, not to sanction Sprint for commission of a wrongful act. Although Sprint withdrew its complaint, administrative efficiency, not misconduct by Sprint, prompted the IUB to answer the underlying federal question. By determining the intercarrier compensation regime applicable to VoIP calls, the IUB sought to avoid renewed litigation of the parties' dispute. Because the underlying legal question remained unsettled, the Board observed, the controversy was "likely to recur." IUB Order 6. Nothing here suggests

that the IUB proceeding was "more akin to a criminal prosecution than are most civil cases." *Huffman,* 420 U. S., at 604.

In holding that abstention was the proper course, the Eighth Circuit relied heavily on this Court's decision in *Middlesex. Younger* abstention was warranted, the Court of Appeals read *Middlesex* to say, whenever three conditions are met: There is (1) "an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) . . . provide[s] an adequate opportunity to raise

Page 14

[federal] challenges." 690 F. 3d, at 867 (citing *Middlesex,* 457 U. S., at 432). Before this Court, the IUB has endorsed the Eighth Circuit's approach. Brief for Respondents 13.

The Court of Appeals and the IUB attribute to this Court's decision in *Middlesex* extraordinary breadth. We invoked *Younger* in *Middlesex* to bar a federal court from entertaining a lawyer's challenge to a New Jersey state ethics committee's pending investigation of the lawyer. Unlike the IUB proceeding here, the state ethics committee's hearing in *Middlesex* was indeed "akin to a criminal proceeding." As we noted, an investigation and formal complaint preceded the hearing, an agency of the State's Supreme Court initiated the hearing, and the purpose of the hearing was to determine whether the lawyer should be disciplined for his failure to meet the State's standards of professional conduct. 457 U. S., at 433-435. See also *id.,* at 438 (Brennan, J., concurring in judgment) (noting the "quasi-criminal nature of bar disciplinary proceedings"). The three *Middlesex* conditions recited above were not dispositive; they were, instead, *additional* factors appropriately considered by the federal court before invoking *Younger.*

Divorced from their quasi-criminal context, the three *Middlesex* conditions would extend *Younger* to virtually all parallel state and federal proceedings, at least where a party could identify a plausibly important state interest. See Tr. of Oral Arg. 35-36. That result is irreconcilable with our dominant instruction that, even in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the "exception, not the rule." *Hawaii Housing Authority* v. *Midkiff,* 467 U. S. 229, 236 (1984) (quoting *Colorado River,* 424 U. S., at 813). In short, to guide other federal courts, we today clarify and affirm that *Younger* extends to the three "exceptional circumstances" identified in *NOPSI,* but no further.

Page 15

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Eighth Circuit is

Reversed.

Notes:

[1.] The Federal Communications Commission has yet to provide its view on whether the Telecommunications Act categorically preempts intrastate access charges for VoIP calls. See *In re*

Connect America Fund, 26 FCC Rcd. 17663, 18002, ¶934 (2011) (reserving the question whether all VoIP calls "must be subject exclusively to federal regulation").

[2.] At the conclusion of the IUB proceedings, Sprint paid Windstream all contested fees.

[3.] For convenience, we refer to respondents collectively as the IUB.

[4.] Since we granted certiorari, the Iowa state court issued an opinion rejecting Sprint's preemption claim on the merits. *Sprint Communications Co.* v. *Iowa Utils. Bd.,* No. CV-8638, App. to Joint Supp. Brief 20a-36a (Iowa Dist. Ct., Sept. 16, 2013). The Iowa court decision does not, in the parties' view, moot this case, see Joint Supp. Brief 1, and we agree. Because Sprint intends to appeal the state-court decision, the "controversy . . . remains live." *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.,* 544 U. S. 280, 291, n. 7 (2005).

[5.] The IUB agrees with Sprint that our decision in *Burford* v. *Sun Oil Co.,* 319 U. S. 315 (1943), cannot independently sustain the Eighth Circuit's abstention analysis. See Brief for Respondents 9; cf. *New Orleans Public Service, Inc.* v. *Council of City of New Orleans,* 491 U. S. 350, 359 (1989).

[6.] To determine whether a state proceeding is an enforcement action under *Younger,* several Courts of Appeals, as noted, see *supra,* at 5, inquire whether the underlying state proceeding is "coercive" rather than "remedial." See, *e.g., Devlin* v. *Kalm,* 594 F. 3d 893, 895 (CA6 2010). Though we referenced this dichotomy once in a footnote, see *Ohio Civil Rights Comm'n* v. *Dayton Christian Schools, Inc.,* 477 U. S. 619, 627, n. 2 (1986), we do not find the inquiry necessary or inevitably helpful, given the susceptibility of the designations to manipulation.