Supreme Court Case No. S282275
State Bar Court Case No. SBC-22-O-30217

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of Respondent C.C.
A Licensee of the State Bar

After a Published Decision by the
State Bar Court of California
Review Department

ANSWER OF RESPONDENT C.C. TO CALIFORNIA STATE BAR'S OFFICE OF CHIEF TRIAL COUNSEL'S PETITION FOR REVIEW OF THE DECISION OF THE STATE BAR OF CALIFORNIA REVIEW DEPARTMENT

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I. INTRODUCTION

After Respondent Attorney ("C.C.") has spent nearly two (2) full years in LAP ("Lawyers Assistance Program"), and after having been found suitable for same by four separate judges who've passed on the matter, the State Bar ("State Bar") now seeks interlocutory review of the State Bar Review Department's 16-page, published opinion affirming the Hearing Court's decision allowing C.C. to enroll in LAP, arguing that both previous courts got wrong the language "disbarment is warranted" contained within the statute which sets out the requirements for admission to LAP. (*See* CRC 5.382(C)(1).)

The State Bar's Petition should respectfully be denied. The issue at bench does *not* involve an important question of law (*see* CRC 9.16; *see also* CRC 8.500(b) (review allowed in cases raising important questions of law)), and the State Bar's two substantive arguments, set out at pages 22-33 of their brief, are also respectfully incorrect.

Indeed, the State Bar, during initial litigation in this case, entered into stipulated findings of fact and conclusions of law which would allow, and *did* allow, the Hearing Court (Justice Roland) ultimately to decide that CC was suitable for admission to LAP (which decision was then affirmed by all three justices in the State Bar Review Department,

brooking no dissents.) ((*See* Review Department Decision, October 2, 2023 (Ex. A, appended to State Bar's Petition for Review, at Bates 35-51) ("… the parties filed a Stipulation Regarding Facts and Conclusions of Law." (Bates 36).)

While this Honorable Court reviews this matter independently, there are two other things which should be brought to the Court's attention: (1) The State Bar never sought a stay of the proceedings in either of the Courts below;[1] and (2) the upshot of the State Bar's request – that the matter be remanded with orders to take CC off the LAP track and route him towards either disbarment or suspension – would invoke the doctrine of *laches*, particularly regarding nearly two (2) full years spent in the program; his performance in the program; CC's rehabilitation generally; and the thousands of dollars and hundreds of hours spent on complying with the extensive terms of his LAP Contract. (*See* RESTAT. 3RD OF THE LAW GOVERNING LAWYERS, § *Scope*, "Process of Professional Regulation," (Bender, *et al*, eds., Lexis-Nexis 2023 & Supp.) ("Beyond

[1] Nor has the State Bar, at any step of the way, sought an order depublishing the Review Department's lengthy and trenchant Opinion. (*See* C.R.C. 8.1125 (rule allowing depublication.)) The State Bar, in its PFR, speculates about the negative effects of what *might* happen if the matter were left published, but at no point have they filed papers, *in any court* (let alone in this one), seeking that the Opinion below be unpublished.

discovery, proceedings are governed by the rules of procedure and evidence applied in civil litigation.")) This case involves the judgment calls of four separate judges below, and it would be unfair to take away from CC what he has been working on for upwards of 20 months.

Again, CC would respectfully urge the Honorable Court to deny the State Bar's Petition for Review.

II. STATEMENT OF FACTS

The factual background of this case is fairly summarized in the Hearing and Review Department Orders, all of which have been lodged with the Honorable Court, paying particular note to the Review Department's published decision, which the State Bar attached to its Petition for Review as Exhibit A (Bates 35-51.)

III. RELEVANT PROCEDURAL HISTORY

As pertains to this case, the relevant procedural history is set out on pages 1 and 2 of the Review Department's Published Opinion. (*See* Ex. A., at Bates 35-36.))

The State Bar Review Court issued its opinion and order on October 2, 2023. Writing for the majority, Justice McGill concluded the order as follows:

> Therefore, upon consideration of the evidence provided in the record, along with the applicable case law, we conclude that the ADP Stipulation, including aggravating circumstances, does not require respondent's disbarment, despite mitigating circumstances. We do not find that respondent is ineligible to participate in the ADP under rule 5.382(C)(l) or (C)(3). Consequently, we affirm the Hearing Department's order accepting respondent into the ADP and deny the relief requested in OCTC's petition.

See Ex. A, at Bates 51 (emphasis added.) Presiding Justice Honn and Justice Ribas concurred in the decision; there were no dissenting opinions.

On October 17, 2023, the State Bar filed the instant Petition, a request for judicial notice, and a majority of the Exhibits.

On October 18, 2023, the State Bar lodged Exhibit 5, which was placed under seal.

On January 10, 2023, the Honorable Court directed Respondent CC to respond to the State Bar's PFR.

On January 10 and January 16, 2024, respectively, undersigned counsel substituted into the case on behalf of Respondent and received an extension of time to file this answer on or before February 14, 2024.

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IV. LEGAL ARGUMENT

A. Petitioner Does Not Raise an Important Question of Law Such that Review is Necessary

Respondent CC will not reinvent the wheel here, for this Court certainly knows the statutory requirements which are brought to bear in granting or denying a Petition for Review. In the State Bar context, the language indicates that review will be granted when, among other things, it is "*necessary to settle important questions of law*." (*See* CRC 9.16(a)(1) (emphasis added.)) Undersigned counsel could find no published cases which specifically define what this language means, but the closest and most obvious analogue is CRC 8.500(b)(1) (emphasis added): "The Supreme Court may order review of a Court of Appeal decision:…(1) When *necessary* to secure uniformity of decision or *to settle an important question of law*."

And this is where the State Bar's Petition misses the mark. In the Issues Presented for Review section of their brief (at pp. 9-10), the Honorable Court will see that: (1) the State Bar wants the Court to second guess the decision of four previous judges *vis a vis* their statutory interpretation of the language "… disbarment is warranted" (*see* CRC 5.382(C)(1)); and (2) in a sort of competing vein—although it is not terribly

clear – the State Bar takes issue with the Review Department's decision to publish its decision.

To begin with, *how* four competent and capable justices *sub judice* interpreted *and applied* said language is most assuredly *not* a question of law "important" enough such that it is "necessary" for this Honorable Court to issue what would ultimately be the third opinion on the matter (making it 11 justices, in total, who've passed on the questions raised by the State Bar.)

Except that none of the State Bar's issues, as will be seen below, concern, for example, federal or state constitutional rights; the balance of power within California's government; the bedrock principle of judicial review; the maintenance of our State's public school system; nor, finally, does the State Bar present the type of hot-button social issues which this Honorable Court occasionally sees fit to pass on—*viz*., gay marriage; matters of faith and worship; matters involving self-defense and the right to bear arms; fundamental rights which inure to our State's criminal justice system; or, in the end, procedural and substantive fairness relative to the death penalty.

The previous four judges who've weighed in on the issues simply see things differently than the State Bar; this is of course what happens in

litigation. It is axiomatic that litigants nearly always have a different view of the issues, but certainly as it pertains to statutory interpretation, the same can certainly be said of our State's bench officers. And so it is here. The Review Department's decision isn't some grievous error which, to hear the State Bar tell it, will allow (an undefined amount of) lawyers in the future to escape, by only a hair's breadth, the jaws of suspension or disbarment.

And the State Bar's "Why Review Should Be Granted" portion of their Petition, set out at pages 10-11, is unpersuasive.

First, the State Bar cites CRC9.13(c), saying it pertains to interlocutory petitions by state Bar licensees. This is a curious reference since the use of licensees in that statute refers not to the State Bar but to its members. The State Bar would be the licensor.

Second, the State Bar then states the operative rule, CRC 9.16(a)—and simply nothing else.

Lastly, the State Bar turns its attention not to the more substantive issue of statutory interpretation but to its disagreement that the Review Department's opinion has been published. And not only this, but in doing so, the State Bar resorts not to numbers or statistics but to the often-logically fallacious slippery slope. (I.e., *If something isn't done—and soon—*

more 'bad' things will happen.) (*See*, e.g, *Strauss v. Horton* (2009) 46 Cal.4th 346, 451 (rebutting arguments of Prop. 8 supporters in favor of heterosexual marriage only; "The 'slippery slope' mode of analysis… finds no support in any of the numerous prior California decisions that have considered the question…")

The State Bar's Petition for Review should respectfully be denied, and the published opinion of the State Bar Review Department should be affirmed.

B. Petitioner's First Substantive Argument – that the Review Department Misapprehended the Language "Disbarment is Warranted" – is Respectfully Incorrect

The State Bar first argues that interlocutory review should be granted because the Review Department interpreted the phraseology "disbarment is warranted" to mean "disbarment is required," thus erroneously giving the disputed language a more conservative—or restrictive—bent than intended. (*See* CRC 5.382(C)(1).)

The State Bar's argument lacks merit.

This is, at best, an argument over semantic ambiguity. Whatever it is, it is not enough to trigger review by the Honorable Court. Indeed, the use of "warranted" could just as easily be interpreted to imply a stronger sense of necessity or requirement.

And the intent behind the Rule's language may not be as restrictive as the State Bar would suggest. The Board of Trustees' goal could have just as easily been to provide flexibility in determining eligibility for ADP, allowing for disbarment even in cases where it is not strictly required but still deemed warranted.

The State Bar also offers a prospective argument – if this Court doesn't reverse, other lawyers (*who knows how many?*) could skirt consequences by horning their way into the ADP. In this respect, the four previous judges who've passed on the matter could be of the mind (and this is not so far-fetched) that "is warranted" means, or *could* reasonably mean, "is required," which would align with the gravity of the Review Court's 17-page decision *and* the need to ensure the integrity of the legal profession.

There's also a practical problem with what the State Bar wants this Court to do. And here Respondent would offer his own "Parade of Horribles": The Bar's disagreement with the Review Department's interpretation could set in motion a cadre of attorneys applying to the ADP who potentially *do* warrant disbarment—to everyone detriment. In other words, and running with the Bar's logic, *stricter* eligibility criteria *are* necessary to maintain the program's effectiveness in addressing serious misconduct and maintaining public trust in the legal profession.

So much of this, of course, is based on things which haven't happened yet, *and which may never happen.* The State Bar's line of reasoning should not be well taken, and the Petition for Review should respectfully be denied.

C. Petitioner's Second Substantive Argument – that the Review Department Erred by Stating that the Standards for Attorney Sanctions Should Not be Considered – is also Respectfully Incorrect

The State's Bar second argument can be handled with dispatch. The State Bar is conflating how it wants Respondent to be disciplined (disbarment) with two things: (1) the fact that CRC 5.382 sets out standards for screening; and (2) the fact that, in any event, the Standards are prescriptive rather than proscriptive. (*See* Standard 1.1 (stating that disciplinary standards are a "means for determining the appropriate disciplinary sanction in a particular case.")) In fact, the Review Department notes the distinction straightaway: "While using the Standards would be appropriate in determining potential dispositions for discipline by the Program Judge pursuant to rule 5.384, *an evaluation by the Program Judge does not, in itself, result in a disciplinary sanction.*" (*See* RD at Bates 44-45 (emphasis added.)) Nor does Rule 5.382 explicitly *mandate* consideration of the Standards in determining eligibility.

V. CONCLUSION

Respondent CC would respectfully request that the Honorable Court deny the State Bar's Petition for Review and affirm the Review Department's decision.

Dated: February 14, 2024

Respectfully submitted,

LAW OFFICES OF MARK MCBRIDE, P.C.

BY: _____/s Mark McBride_____
MARK MCBRIDE
ATTORNEY FOR
RESPONDENT CC

WORD COUNT CERTIFICATE PURSUANT TO CALIFORNIA RULE OF COURT 8.520(C)(l)

Pursuant to rule 8.520(c)(l) of the California Rules of Court, I hereby certify that this brief contains 2,439 words. I have relied on the word count of the computer program used to prepare the brief.

Dated: February 14, 2024

_____/s Mark McBride_____
Mark McBride
Attorney at Law

PROOF OF SERVICE

I, Mark McBride, hereby certify that I electronically filed and served the attached **RESPONDENT CC'S ANSWER TO PETITION OF THE OFFICE OF CHIEF TRIAL COUNSEL OF THE STATE BAR OF CALIFORNIA FOR REVIEW OF THE DECISION OF THE STATE BAR COURT** with the Clerk of the California Supreme Court and to my client, CC, at Ghidalgo1984@yahoo.com) by transmitting a true copy via this Court's TrueFiling system on February 14, 2024.

I also served copies of this document electronically upon the Clerk of the State Bar Court (michelle.cramton@calbar.ca.gov).

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed in Beverly Hills, California this 14th day of February, 2024.

_____/s Mark McBride_____
MARK MCBRIDE

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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