No.

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 2017

ROBERT P. TUERK,
Petitioner

v.

THE DISCIPLINARY BOARD OF THE SUPREME
COURT OF PENNSYLVANIA,
Respondent

On Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Robert P. Tuerk
50 N Front Street, #501
Philadelphia, PA 19106
(215) 778-3004
bobtuerk@comcast.net
Petitioner

QUESTIONS PRESENTED

1. Whether the reciprocal upon reciprocal discipline of disbarment of an attorney by his home state that originally disciplined him for one (1) year and a day, which fails multiple elements of a single-element fail constitutionality test that was set by this Honorable Court, is unconstitutional?

2. Whether the reciprocal upon reciprocal discipline of disbarment of an attorney by his home state that originally disciplined him for one (1) year and a day, whereby the reciprocal discipline of the foreign jurisdiction was unjust, excessive, disproportionate, assessed with infirm facts, a lack of procedural and substantive due process, a lack of equal protection of the law, which violates the Cruel and Unusual Punishment, Equal Protection, and Due Process Clauses, is unconstitutional?

3. Whether there is an unconstitutional prior restraint upon the constitutional right of Freedom to Travel between the states when reciprocal upon reciprocal discipline of disbarment of an attorney by his home state that had originally disciplined him for one (1) year and a day is unfairly instituted without proper due process?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution

Statutes

Treatises

PETITION FOR A WRIT OF CERTIORARI

Robert Philip Tuerk, the Petitioner herein, respectfully requests that a Writ of Certiorari issue to review the order of the Supreme Court of Pennsylvania entered in the above-entitled case on February 12, 2018 (In the Matter of Robert Philip Tuerk, No. 2424 Disciplinary Docket No. 3 (Pa. 2017)), and the final order issued therein on April 18, 2018.

OPINIONS BELOW

The February 12, 2018 order and the April 18, 2018 final order of the Pennsylvania Supreme Court, whose order is herein sought to be reviewed, is reprinted in the Appendix to this Petition on page 60.

JURISDICTION

On April 18, 2018, the Supreme Court of Pennsylvania issued its final order upon Petitioner's petition for reargument, and this Petition has been timely

filed within ninety (90) days of that order. Jurisdiction of this Honorable Court is invoked under 28 U.S.C.A. § 1257(a), and under general constitutional authority under U.S. Const. art. III, § 2, cl. 2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. Article IV, Section 2, Clause 1, of the United States Constitution states, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, §2, cl. 1.

II. The Fifth Amendment of the United States Constitution states {in pertinent part}, " No person shall...be deprived of life, liberty, or property, without due process of law;..." U.S. Const. amend. V.

III. The Eighth Amendment of the United States Constitution states {in pertinent part}, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and

unusual punishments inflicted." U.S. Const. amend. VIII., §1.

IV. The Ninth Amendment of the United States Constitution states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. amend. IX.

V. The Fourteenth Amendment of the United States Constitution states {in pertinent part}, "...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV., §1.

STATEMENT OF THE CASE

Petitioner has practiced law for approximately twenty (20) years; has been an Arbitrator for the Court of Common Pleas of Philadelphia County (2000-2015); has

served as a board member for non-profits; reactivated and chaired the Philadelphia Bar Association's Traffic / Vehicular Law Committee (2006-2008); has run for public office; has handled international business matters; has represented high profile clients; and has successfully handled an extensive amount of pro bono and reduced-fee cases for hundreds of people, including legal volunteer work for hurricane victims and various community groups. He continues to be an active volunteer in his community with various groups and efforts.

Petitioner is a good-natured, honest, nature-loving, decent person with a strong sense of justice. He's an upstanding citizen that gives back to his community; has a good reputation in the legal and general community; has diligently and competently represented a broad base of clients; and has received accolades from clients and colleagues alike.

Petitioner has not engaged in any egregious ethical violations; over Petitioner's 55 years he has been entrusted with monies and valuable property of friends, relatives, employers, and clients, and he hasn't misused or converted the same whether it was as a paperboy with collections, busboy with tips, college student collecting the weekly soda vending machine cash at his work-study job, handling the banking and deposits for a major stock brokerage when he was a bond broker, etc.

Petitioner was initially suspended by the Pennsylvania Supreme Court for one (1) year and a day on October 15, 2015 (effective November 15, 2015). Petitioner timely filed his Compliance Affidavit on November 17, 2015 with the Respondent confirming that he informed all legal clients of his suspension. This filed affidavit, which would include any possible FL clients, but there wasn't any then or thereafter.

Thereafter, Petitioner informed The FL Bar of said suspension, and after a telephonic hearing thereon Petitioner consented to a one (1) year FL reciprocal suspension of his FL attorneys license on March 3, 2016 (FL SC15-2253). The FL Bar's Certificate of Service and even the Referee's Case Management Order and his Report in that matter clearly indicates that the proper email address for Petitioner is bobtuerk@comcast.net, thereafter The FL Bar failed to use this primary contact information in the supplemental proceedings to the extreme detriment of Petitioner. During the FL reciprocal process, the FL Bar's representatives, the Referee, and the Referee's representatives communicated with Petitioner via his primary: 1) email, 2) fax, 3) phone, and 4) postal mail home address.

Apparently, several months later, the FL Bar stopped communicating with Petitioner as indicated in 1)

through 4) above. Instead, the FL Bar, without notice, attempted to communicate with Petitioner via Petitioner's mostly abandoned and problematic law office postal box and his abandoned former law practice email address (attorneytuerk@comcast.net). The FL Bar's unannounced withdrawal from the lines of communication with Petitioner, coupled with Petitioner's despondency, resulted in a communication breakdown between Petitioner and the FL Bar.

On or around January 31, 2017, Petitioner received a telephone call from his former Pennsylvania counsel informing him that FL had increased his FL suspension to three (3) years. Petitioner did not know what was occurring in FL, and quickly investigated the matter further. Apparently, after Petitioner's stipulated reciprocal suspension in FL in March 2016, unbeknownst to Petitioner, and a few months later in July 2016, the FL Bar

allegedly requested from Petitioner the same type of affidavit as the Pennsylvania affidavit that was already submitted in November 2015. Petitioner has never had a FL law office (virtual or actual) or law office phone number, never advertised legal services within FL, and hadn't entered an appearance in any matter in FL since his admission to the FL Bar in 2002.

The FL Bar made no attempts to contact Petitioner via his proper and primary contacts to inform Petitioner of The FL Bar's alleged request. The FL Bar instead filed for supplemental discipline that remained unbeknownst to Petitioner until January 31, 2017.

On January 31, 2017, Petitioner quickly filed a Reply to the disbarment Rule to meet the next day deadline, and submitted the outstanding one (1) page FL checkbox form affidavit to once again indicate that there were no clients to

inform. This had previously been done on November 17, 2015 in Pennsylvania pursuant to his initial suspension.

Prior to January 31, 2017, Petitioner didn't know that the FL Bar had stopped communicating with him at his email to which they were communicating with him during the consensual discipline matter; the FL Bar didn't fax him at the fax number they had or the telephone number they had, although they had both his fax and telephone numbers, and they actually had communicated with Petitioner via telephone during the consensual discipline matter; but, unexplainably, the FL Bar did not mail anything to Petitioner's home address either in their supplemental proceedings.

In Petitioner 's same day response, he stated in a few paragraphs that he "did not have or receive notice that the referenced affidavit was outstanding until today," of course, because at that time he didn't know what was occurring in

FL. To this day, the FL Bar's mail sent to Petitioner's abandoned law office PO Box has been preserved, it's still unopened, and available for inspection. The concept of not having notice obviously wasn't definitive of never receiving mail. The FL Bar responded that they had sent mail to Petitioner's former law office PO Box. Petitioner had not opened such mail due to his actual despondency caused by his loss of his profession and his concomitant unemployment, health concerns, financial concerns, etc., and the fact that the vast majority of mail he received at the abandoned PO Box was junk mail. Petitioner was not cognizant of mail that was received, which was hidden within piles of junk mail, and not in plain sight.

After the FL Bar indicated that a mail receipt was received from Petitioner, Petitioner looked for the same among the hidden piles of junk mail. He found unopened mail from the FL Bar amongst the piles of mail that

included other unopened mail that was mostly junk mail. The fact that Petitioner did not open his postal mail was corroborated by his FL counsel and via an affidavit of a third party, which was supplied to the FL court as an exhibit attachment to Petitioner's Response to the second Rule. Contrary to The FL Bar's allegation, Petitioner did not definitively blame postal mail delivery issues as the reason for him not having notice, but merely alluded to that as a possibility as that former law office PO Box had been an issue numerous times before.

It wasn't until January 31, 2017 that Petitioner became noticed (knowledgeable) of The FL Bar's redundant affidavit request and the FL supplemental proceedings ((FL SC16-983 (supplemental three (3) year suspension by default) and FL SC17-62 (supplemental disbarment)). He was shocked and completely unhinged as he was anticipating Reinstatement in his home state of

Pennsylvania. There was no explanation or evidence put forth by the FL Bar as to what the receipt was attached to, therefore, the FL Bar has not proven what was sent to Petitioner. Petitioner doesn't know either as Petitioner is preserving the same within its unopened envelope. The FL Bar has failed to offer proof of the contents of the same, and there can be no speculation or inference as to what was contained therein.

Petitioner filed a Reply on February 21, 2017 with further relevant explanation to The FL Bar's Response, but the FL Supreme Court struck it on February 27, 2017 as "unauthorized." The FL Bar then filed a notice of Petitioner's Compliance on March 7, 2017, and the Rule should have been extinguished, but astonishingly, the FL Court issued yet another Rule for disbarment. The Rule was replied to by Petitioner's counsel. Thereafter, the FL Supreme Court ordered disbarment with no briefings,

hearings, introduction of evidence or discussion on July 20, 2017. Petitioner filed a timely Motion for Rehearing which included a third party's affidavit corroborating the facts, and even though the FL Bar did not respond to the Motion for Rehearing, the FL Court issued its final order on October 12, 2017.

Thereafter, on February 12, 2018 the Pennsylvania Supreme Court ordered reciprocal disbarment upon FL's reciprocal disbarment of the Pennsylvania original matter of one (1) year and a day, which said suspension time period had already expired. Petitioner objected to said disbarment via pleadings, but no opportunity for the production of evidence (i.e. unopened FL letters, 3rd party witness corroborative testimony, etc.) was afforded Petitioner.

Petitioner's PA Reinstatement Hearing that was scheduled for February 14, 2018 was discontinued by Respondent.

Petitioner has been assessed with thousands of dollars of costs by both FL and PA, including costs for a PA Reinstatement Hearing that didn't occur as explained above.

REASONS FOR GRANTING THE WRIT

The order of the Pennsylvania Supreme Court should be reversed by this Honorable Court, because the decision below, if permitted to stand, would likely result in additional people vocationally or professionally licensed in more than one state to lose their valuable property rights to practice their vocations or professions without due process as there is an apparent history by FL of not giving due process to attorneys.

Also, the decision below squarely conflicts with this court's decisions; there is injustice and unfairness; and a violation of numerous constitutional rights. This is of general importance to other vocationally and professional licensed Americans, and certiorari should be granted.

On February 12, 2018, two (2) days before Petitioner's Reinstatement Hearing scheduled for February 14, 2018, The Pennsylvania Supreme Court assessed reciprocal upon reciprocal disbarment against Petitioner upon FL's supplemental reciprocal disbarment emanating from Pennsylvania's initial expired 2015 discipline of Petitioner. This is a gross injustice that needs correction.

Petitioner has received accolades from judges, colleagues, and clients, and society would be losing a valuable legal mind, and a champion of the oppressed and down-trodden. Disbarment should not be the punishment for a clerical delay in the submission of a single page

checkbox form due to a concomitance of a communication breakdown and despair.

SUMMARY OF ARGUMENT

The lower court's order fails the test espoused by this Honorable Court as it relates to reciprocal discipline of attorneys.

The foreign jurisdiction order upon which the lower court relies was unjust in that the foreign court mischaracterized the facts; wrongfully trumped up a groundless claim of contempt; violated the constitutional proscription against cruel and unusual punishment; and violated Petitioner's equal protection, substantive due process, and procedural due process constitutional rights.

In addition, the foreign jurisdiction's court's order had an infirm proof of facts, and violated the principles of right and justice, which calls for a reversal of the lower court.

Respondent through the actions of the foreign jurisdiction (FL) wrongfully, arbitrarily, groundlessly, and excessively punished Petitioner based only upon pleadings, and without proof, evidence, briefs, or hearing thereon.

Petitioner's reciprocal upon reciprocal disbarment upon which Respondent based its reciprocal upon reciprocal disbarment upon Petitioner was unconstitutional (denial of due process and equal protection, and excessive punishment) pursuant to U.S. Const. amend. V, VII, and XIV §1, in that the foreign jurisdiction's (FL) reciprocally based disbarment of Petitioner included: a) mischaracterizations of corroborated facts in a Kafkaesque manner, b) no notice (knowledge) of the FL outstanding affidavit, the supplemental proceedings, or any orders after Petitioner had stipulated to reciprocal discipline on March 3, 2016; c) misconstrued conjecture; d) no hearing and none of the accompanying rights thereto; e) denied Petitioner an

opportunity to present material and relevant probative and mitigating testimony and real evidence; f) treated Petitioner differently than other disciplined attorneys without justification; g) alleged contempt of unbeknownst orders was purged upon notice (knowledge); h) no harm was suffered by The FL Bar; i) ignored mitigating factors delineated by the Honorable Referee; and j) denied Petitioner due process in contravention of this Honorable Court's precedent.

There is a prior restraint of the right to travel between these United States when a vocationally or professionally licensed American risks having their licensure being summarily taken from them, and their life and livelihood put into complete jeopardy, if they seek licensure in a state that arbitrarily and unconstitutionally extinguishes their licensure without due process.

ARGUMENT

Reciprocal Discipline Constitutionality Test

In Selling v. Radford, 243 U.S. 46 (1917) this Honorable Court said that it will not reciprocate discipline if "upon intrinsic consideration of the state record, this Court shall (1) find that the state procedure was wanting in due process, (2) come to a clear conviction that the proof of facts relied on by the state court to establish want of fair character was so infirm that acceptance of the state court's conclusion thereon as a finality would be inconsistent with this Court's duty, or (3) discover some other grave and sufficient reason why this Court could not disbar consistently with its duty not to take that action unless constrained under the principles of right and justice to do so." The Fourteenth Amendment mandates that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law."

Wanting of Due Process

The liberty and property rights to practice one's professional occupation (license to practice law), pursue happiness, and maintain one's reputation are all protected fundamental rights under the U.S. Constitution.

Long-term suspensions and disbarments obviously implicate these fundamental rights. A law, policy, or action that infringes upon a person's fundamental constitutional rights must pass the strict scrutiny test. This was first referenced in United States v. Carolene Products Company, 304 U.S. 144 (1938), and first used in Korematsu v. United States, 323 U.S. 214 (1944). The elements of the strict scrutiny test that must be met are that the law, policy, or action: 1) must be justified by a compelling government interest, 2) must be narrowly tailored to achieve that goal or interest, and 3) must be the least restrictive means for achieving that interest. No elements have been met here.

This Honorable Court spoke to the apparent catch 22 scenario in which FL wrongfully, without grounds, instituted reciprocal disbarment against. In In re Ruffalo, 390 U.S. 544 (1968), an attorney was charged with twelve counts of misconduct. During his testimony at his disciplinary hearing, the attorney made a statement resulting in the tribunal adding a thirteenth charge. This Honorable Court held that there was a lack of notice to the attorney as to "the reach of the grievance procedure and the precise nature of the charges" that deprived the attorney of procedural due process. Id. at 552. This Honorable Court stated that:

> The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh. Id. at 551.

Similarly, here Petitioner apparently purged the initial Rule in FL, and then another Rule was filed in FL

after Petitioner's initial filing, because somehow a subsequent filing was misconstrued as being contrary to Petitioner's initial filing when it was only expounding upon the facts that were unknown initially during the first filing, and became known after further inquest by Petitioner as explained herein. Such a groundless punitive sanction in these circumstances was a violation of Petitioner's procedural due process rights too.

Pennsylvania has recognized that a license to practice law is a protected property interest under the Fourteenth Amendment of the United States Constitution. Montgomery County Bar Association v. Rinalducci, 329 Pa. 296 (Pa. 1938). Further, a lawyer has a "property" interest in his license to practice law. Barry v. Barchi, 443 U.S. 55, 64 (1979). Disbarment without a hearing is basically a taking without due process.

Due process precludes disbarment without notice and a hearing. Eash v. Riggins Trucking Inc., 757 F.2d 557, 2 Fed. R. Serv. 3d 628, 77 A.L.R. Fed. 751 (3d Cir. 1985). Pennsylvania has held that to condemn without a hearing is repugnant to the due process clause. Nat'l Auto. Serv. Corp. of Pa. v. Barford, 137 A. 601, 602, 289 Pa. 307 (Pa. 1927).

In addition, a lawyer has a liberty interest in engaging in one of the common occupations of life. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 572 (1972). Petitioner has a heightened "liberty" interest where, as is the circumstance here, his "good name, reputation, honor, or integrity is at stake because of what the government is doing to him." Paul v. Davis, 424 U.S. 693, 708 (1976).

The fundamental requisite of due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S.

385, 394 (1914). This applies no less to lawyers. Ex parte Garland, 4 Wall. 333, 378 (1866).

A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in court - are basic in our system of jurisprudence. Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626, 671 (1985) (Brennan, J., concurring in part, dissenting in part), quoting In re Oliver, 333 U.S. 257, 273 (1948).

The PA Supreme Court has previously declined to impose reciprocal discipline against other attorneys licensed to practice law within the Commonwealth. One case involved a situation whereby an attorney, Kevin Kilduff, failed to file a federal tax return one year and filed several years of tax returns late, presumable without extensions. He also was suspended by the Massachusetts Supreme Court for not registering and paying his biennial

registration dues. Ironically, Kilduff actually was previously employed by the IRS. He also was afforded a hearing before an administrative judge in response to the ethical complaint brought by the IRS, and he was suspended for four (4) years from practicing in the IRS Court by the IRS Appellate Authority. This Honorable Court decided that the imposition of the identical or comparable discipline in this Commonwealth would be Unwarranted and declined to impose reciprocal discipline and instead ordered public censure. In re Kilduff, No. 1764 Disciplinary Docket No. 3, 2012 Pa. LEXIS 553 (Pa. 2012)

Ironically, in Respondent's In Office of Disciplinary Counsel v. Anonymous, 96 D.B. 2005, Disciplinary Docket (Pa. March 2, 2007), Respondent refused to recommend reciprocal discipline of an attorney, because the foreign jurisdiction did not afford the

disciplined attorney a hearing and the accompanying rights thereto stating,

> The JAG made its determination on only written submissions. This is substantially less than what a respondent-attorney is entitled to in Pennsylvania. Our system is specifically designed to give a respondent the opportunity, at every step in the proceedings, to fully respond to the charges brought against him or her. This means not only the chance to answer the charges contained in a petition for discipline, but to testify, present mitigating evidence, present character witnesses and cross examine disciplinary counsel's witnesses. There is opportunity to take exception to the Hearing Committee's recommendation and for oral argument before the Board, as well as the opportunity to request oral argument before the Supreme Court. The resultant JAG order of indefinite suspension was determined without an equivalent process. Consequently, the Board is reluctant to fully rely on the indefinite suspension order as a benchmark to impose sanction on Respondent in our jurisdiction. The Board recommends unanimously, after a review of the record, that no reciprocal discipline be imposed on Respondent.

Similarly, Respondent wrongfully, arbitrarily, groundlessly, and excessively reciprocally upon reciprocally punished Petitioner based upon only upon written

submissions in the foreign jurisdiction and within Pennsylvania – all without briefs, introduction evidence, testimony, etc. This is insufficient process, and not in keeping with the constitutional protections against arbitrary excessive sanctions in the usurpation of Petitioner's constitutional rights of due process, equal protection, liberty, and property.

The right to work and its concomitant opportunity to achieve economic security and stability are essential to the pursuit of life, liberty and happiness. As early as 1915, the United States Supreme Court declared that: ". . . the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment [Fourteenth] to secure." Truax v. Raich, 239 U.S. 33, 41, (1915).

In disbarment, there is no basis for an expectation by the disbarred attorney of the right to resume practice at some future point in time. Khan v. State Bd. of Auctioneer Examiners, 577 Pa. 166 (2004).

Disbarment should not be the punishment for a breakdown in communication. "In Commonwealth v. 1997 Chevrolet and Contents Seized from Young, the Pennsylvania Supreme Court has expounded further on the appropriate considerations attendant a determination of whether a sanction constituting Eighth Amendment punishment, there, civil forfeiture of instrumentalities of crime, is grossly disproportionate to the related crime. Specifically, noting that the United States Supreme Court has largely left it to lower courts to further develop the intricacies of the gross disproportionality inquiry, we catalogued myriad factors relevant to determining the harshness of a particular

penalty, including, inter alia, the objective and subjective value of the property forfeited to the owner and third parties, such as whether forfeiture would deprive the property owner of his livelihood, as well as factors salient in determining the gravity of an offense, including, inter alia, the nature of the offense, the offender's sentence as compared to the maximum available sentence for the offense, the regularity of the defendant's criminal conduct, and any actual harm arising from the offense other than a generalized harm to society." Shoul v. DOT, Bureau of Driver Licensing, 2017 Pa. LEXIS 3192 (Pa. 2017). In taking the elements delineated in Shoul, 1) Petitioner's happiness and the pecuniary value of his law license; 2) there was no offense; 3) emergency written response; 4) maximum assessed (also see the "D'Ambrosio case herein); 5) no regularity (besides 8 years ago in 2012 and the initial matter over 28 years ago in 1990); and 6) no harm to

society. The 14th Amendment has a procedural and substantive component that protects persons against arbitrary and unjust proceedings. Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

In Pennsylvania, a driver's license is only a privilege, but yet before a Pennsylvania driver's license can be reciprocally suspended due to a suspension from another state, but the licensed Pennsylvania driver is afforded a hearing of record in the Court of Common Pleas of one's county of residence to dispute the institution of such a reciprocal suspension. So, why isn't Petitioner afforded a hearing to dispute a reciprocal upon reciprocal suspension from his home state for his professional license for which he has constitutional property and liberty rights?

Infirm Proof of Facts

There was a manufactured misinterpretation of conjecture by the FL Court in ordering reciprocal disbarment upon which Respondent relies in instituting the reciprocal upon reciprocal disbarment of Petitioner.

The FL Supreme Court arbitrarily ordered disbarment of Petitioner without a hearing or a factual basis. The Court erroneously manufactured that somehow Petitioner's conjecture in a portion of his initial Reply to the initial Rule, in that he did not "receive notice," which was taken out of context by the FL Bar. After Petitioner sorted through piles of mostly junk mail, he found and then admitted to receiving some of Petitioner's postal mail in Petitioner's Response to the second Rule, but the newly discovered mail was unopened and remains unopened to date, and was misplaced among other mail that was placed within piles of junk mail, therefore, Petitioner wasn't

cognizant of the same. In addition, Petitioner had been trying to cope with a despondent state of mind due to his suspension, which was further compounded by health and financial concerns, among other personal stressors.

Petitioner's words were mischaracterized, misconstrued, and taken out of context, and "notice" wasn't literal as to receipt, but meant knowledge of the FL supplemental matters. There was no knowledge of these matters, because the forgotten hidden mail remained unopened. In the first sentence of the Reply to the first Rule, Petitioner uses the words "first notice Respondent [Petitioner] received," and in closing the words "noticed today" were used in the WHEREFORE Paragraph indicating the meaning of notice to be knowledge of or aware of – not receipt of mail, rather as to the knowledge of the supplemental matters occurring. In reference to "noticed today," Petitioner was actually telephonically informed of

what was occurring in FL for the first time during a live telephone call with his Pennsylvania attorney on January 31, 2017. His attorney was contacted by Respondent who was inquiring into a matter that was unbeknownst to Petitioner or his lawyer, specifically that Petitioner's consent suspension was somehow increased to three (3) years. In the first Paragraph of Petitioner's Reply Petitioner indicates that he was communicating with the FL Bar in August 2015 via email, which was via his email bobtuerk@comcast.net, yet the FL Bar sent no notice of the outstanding affidavit via email to this email address to which Petitioner and the FL Bar had been regularly corresponding with each other and to which the FL Bar was serving pleadings to Petitioner in the primary matter (FL SC15-2253), which is the consent discipline matter that is the initial subject of the Rules to Show Cause. Petitioner also used the words "made aware, became aware, wasn't aware, unaware, unawareness,

unbeknownst, and communication breakdown" throughout his Reply to indicate lack of notice to mean lack of knowledge – not receipt of postal mail. All of these words, taken as a whole, offer context that Petitioner's alluding to not receiving notice to mean knowledge – not receipt of mail, although he was including that as a possibility, because at the time of his initial emergency reply, he wasn't cognizant of the hidden unopened mail.

Petitioner was merely engaging in conjecture when he referenced that he has had problems with his closed postal box, which historically was an issue. Prior to officially closing the box in October 2016, he had mail that was returned to senders, lost, misdelivered, etc. The postal box was mostly filled with junk mail, and most of Petitioner's personal business is done online and paperless and/or via text and email – not by postal mail.

On February 7, 2017, the FL Bar Replied to Petitioner's Response to the FL Bar's Petition for Contempt and Rule to Show Cause, and attached as an Exhibit a USPS certified mail return receipt addressed to Petitioner's former postal box. There was no explanation or evidence put forth by the FL Bar as to what the receipt was attached to, therefore, the FL Bar has not proven what was sent to Petitioner. Petitioner doesn't know either as Petitioner is preserving the same within its unopened envelope. The FL Bar has failed to offer proof of the contents of the same, and there can be no speculation or inference as to what was contained therein.

After the FL Bar indicated that a mail receipt was received, Petitioner looked for the same among the hidden piles of junk mail. The fact that Petitioner did not open his postal mail was corroborated by a third party, whose Affidavit was supplied to the FL Court as an exhibit

attachment to Petitioner's Response to the second Rule. Contrary to the FL Bar's allegation, Petitioner did not definitively blame postal mail delivery issues as the reason for him not having notice, but merely alluded to that as a possibility as the postal box mail had been an issue numerous times before.

Up to January 31, 2017 Petitioner had no notice (knowledge) of FL SC16-983 or FL SC17-62 up to this time, and he was merely reacting to astonishing news, and did not have a clear picture of what was occurring.

Troublingly, the FL Bar did not attempt to notify Petitioner via this primary email address (bobtuerk@comast.net) through which the parties communicated, so that Petitioner would be informed of the outstanding affidavit, and so he could obligedly reconfirm that he had no legal clients as he had already done in Pennsylvania. Petitioner sent several emails to the FL

Bar's offices, and to several representatives of the FL Bar, and in pertinent part: pleadings of the FL Bar, the Referee's Case Management Order, and the Referee's Report all indicating Petitioner's proper email: bobtuerk@comcast.net.

If the FL Bar continued to communicate in good faith with Petitioner via his email, bobtuerk@comcast.net, as the FL Bar customarily had done during and subsequent to the consent discipline, we wouldn't be involved in this discourse and situation. The FL Bar neglected to communicate via these accepted modes of communication, and suddenly without notice discontinued this email communication channel to which Petitioner relied, without any regard and to the detriment of Petitioner.

Petitioner abandoned the use of his law practice email (attorneytuerk@comcast.net) in November 2015. He wasn't accessing it or reading emails in it, so as to not to

even get close to appearing to be practicing law during his suspension. Petitioner communicated with the FL Bar via the email bobtuerk@comcast.net to avoid any chance of being accused of breaching any possible ethical duty relating to the use of his former law practice email that indicates him as practicing law.

Generally, to hold a person in contempt for violating an order, that person must have knowledge or notice of the order. 17 Am. Jur. 2d Contempt § 119. In order to hold a person in contempt, there must have been "specific and definite" order of court that person violated, and person must have had actual knowledge of that order. In re Abt, 2 B.R. 323, 57 A.L.R. Fed. 922 (Bankr. E.D. Pa. 1980). Petitioner had no notice (knowledge) of the outstanding affidavit, the supplemental proceedings, or any orders in these matters, and knowledge of an order is a presumed root element of contempt.

Petitioner was merely conjecturing in a portion of his January 31, 2017 Reply. He wasn't apprised of the unopened mail that was out of sight and out of mind in piles of junk mail. He didn't know what had happened. His FL attorney suggested that he look for old postal mail, which Petitioner did, and up until that point he wasn't cognizant of the actual reason(s) for not having notice (knowledge).

It's not a contradiction when one, such as Petitioner, merely alludes to a possible explanation, without the facts, as to why one didn't have actual notice until unopened postal mail is discovered Petitioner wasn't stating a definitive reason, rather he was merely trying to make sense out of this totally astonishing and bewildering turn of events. He was given less than one (1) day to figure out what had happened as the Rule had to be answered the

next day. He was trying to make sense out of things, and couldn't understand what was occurring.

To be held in contempt of a court order, a party must have willfully refused to comply. Hokenstrom v. Environ Towers I Condominium Ass'n, Inc., 127 So. 3d 798 (Fla. 4th DCA 2013). Any intimation that Petitioner intentionally violated any order would be completely antithetical to his continued cooperativeness over the course of these proceedings. He has been completely cooperative with the FL process, and the Referee noted this fact in his Report in FL SC15-2253 in which he noted numerous mitigating factors of Petitioner.

The hallmark of civil contempt is a purge provision allowing the contemnor to avoid the sanction imposed by complying with the court order. Parisi v. Broward County, 769 So. 2d 359 (Fla. 2000). Regardless of the sanction, the court must provide the contemnor with the ability to purge

the contempt. Chetram v. Singh, 937 So. 2d 716 (Fla. 5th DCA 2006). Petitioner purged the contempt the same day (January 31, 2017) that he received notice (knowledge) of what was occurring.

The imposition of sanctions for civil contempt must have some bearing upon the harm suffered by the injured party. Menke v. Wendell, 188 So. 3d 869 (Fla. 2d DCA 2015). Although Petitioner complied immediately on January 31, 2017, the FL Bar didn't inform the FL Supreme Court of Petitioner's compliance until March 7, 2017. Petitioner's immediate compliance should have purged the Rules without any further action thereon. There apparently was no harm suffered by the FL Bar.

Unlike a criminal contempt sanction, civil contempt is not intended to punish. D.H. v. T.N.L., 191 So. 3d 943 (Fla. 4th DCA 2016). Any further sanctions seemingly are unwarranted punishment towards Petitioner.

Contempt power should always be exercised with judicial restraint. Emanuel v. State, 601 So.2d 1273, 1274 (Fla. 4th DCA 1992). Petitioner should not be judged as being in contempt for the reasons stated herein and Petitioner's other pleadings.

Petitioner previously complied in November 2015 in his Statement of Compliance filing with Respondent. He would have been required to notice all active clients wherever they may be, including FL. During the approximate fifteen (15) years of Petitioner being a member of the FL Bar, he never maintained any type of office in FL, never advertised within FL, never had a FL address or contact number, and never entered his appearance in FL during that time period.

The root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing before he is deprived of any significant property

interest. Boddie v. Connecticut, 401 U. S. 371, 379 (1971). The Court apparently overlooked Petitioner's argument that there was a lack of Due Process in this matter. For instance, the unopened postal mail envelopes of Petitioner's are available for inspection, which requires an actual viewing of the unopened envelopes at a hearing to actually prove that there is no knowledge of what is contained within those postal mailings. This was corroborated by Petitioner's roommate in his Affidavit, and by Petitioner's FL counsel.

Petitioner was fully cooperative in the FL underlying consensual reciprocal suspension matter, and the FL Referee noted this fact in his Report in FL SC15-2253 in which he noted the following mitigating factors of Petitioner: "Timely good faith effort to make restitution or to rectify consequences of misconduct; Full and free disclosure to disciplinary board or cooperative attitude

toward proceedings; Interim rehabilitation; Imposition of other penalties or sanctions, and Remorse"

Petitioner had and has no motivation or intent to violate any order or to not cooperate, and would have promptly completed another affidavit that he didn't have any legal clients, which was already indicated in November 2015 in his Commonwealth of Pennsylvania Statement of Compliance, had he been noticed (actually informed) of the same.

The contents of the unopened letters are still a mystery as such evidence was never produced in FL SC17-62. The unopened envelopes, which was corroborated by Petitioner's FL counsel and a third party are available for view.

Principles of Right and Justice

Petitioner has overcome many adversities over his lifetime to attain his college and law degrees, and he has

been practicing law for approximately 20 years without issue, and has successfully represented hundreds of clients

Petitioner wasn't afforded reciprocity in admission to FL, so why should there be reciprocity in unwarranted arbitrary supplemental reciprocal discipline caused by a breakdown in communication? In fact, FL required Petitioner to twice pass the full FL multistate and state bar exam, which Petitioner accomplished, so that he could be admitted into FL.

There was a breakdown in communication in FL. There are no facts that support the FL reciprocal disbarment, therefore, there would be no lowering of the integrity of the bar nor the public trust in reversing Respondent's reciprocal upon reciprocal disbarment of Petitioner.

When determining the extent of final discipline to be imposed for attorney misconduct, the Pennsylvania

Supreme Court bears in mind that the primary function of the attorney disciplinary system is not punitive in nature Office of Disciplinary Counsel v. Preski, 134 A.3d 1027 (Pa. 2016). Reciprocal discipline upon reciprocal discipline is akin to hearsay within hearsay, and an absurdity without a hearing so that one may put forth evidence in one's defense, cross-examine, put forth character expert and witnesses, etc., in a meaningful and fair hearing therein.

Respondent's reciprocal upon reciprocal disbarment of Petitioner seems to be wrongfully punitive, because the Respondent offered Petitioner's former attorney a deal to not request reciprocal upon reciprocal disbarment of Petitioner, if Petitioner withdrew his Reinstatement proceedings. When Petitioner refused, soon thereafter Respondent filed for reciprocal upon reciprocal disbarment of Petitioner.

Petitioner was suspended for one (1) year and a day by the Pennsylvania Supreme Court in November 2015. He applied for Reinstatement in November 2016, and his Reinstatement Hearing was scheduled for February 14, 2018. He has paid approximately $4,000 in costs, completed his CLE requirements, has increased his volunteer activities, and was ready to be Reinstated.

Petitioner has helped many disadvantaged people with pro bono or reduced-fee legal services. He is a valuable resource to society as an attorney.

Petitioner was already punished for his lapse in judgment in relying upon a legal colleague sponsor and a District Court's Admission's Manager's advice and directives on a Local Rule regarding admissions. He took full responsibility for the lapse, by admitting the disciplinary counts that were brought against him in that matter for which he was suspended on October 15, 2015.

Petitioner didn't know that the FL Bar had stopped communicating with him as they had previously done during the consensual FL reciprocal process that included communications with the FL Bar's representatives, the Referee, and the Referee's representatives communicated with Petitioner via Petitioner's primary: 1) email, 2) fax, 3) phone, and 4) postal mail home address.

In attorney disciplinary cases, disbarment is a sanction that is reserved for only the most egregious ethical violations. since it terminates the license to practice law without a promise of its restoration at any future time. Office of Disciplinary Counsel v. Preski, 134 A.3d 1027 (Pa. 2016). Termination of a lawyer's right to exercise his property right to practice his profession is a drastic and desperate remedy which should be employed only when no other course is possible.

Pennsylvania is not mandated to automatically impose identical disciplinary measures; in fact, there remains within the Supreme Court of Pennsylvania the discretion to impose greater, lesser, or no reciprocal discipline. In re Iulo, 564 Pa. 205, 766 A.2d 335 (2001). FL shares the same opinion. Ironically, the FL court has held that it is not obliged to recognize or enforce a foreign judgment of disbarment. See The Florida Bar v. Wilkes, 179 So. 2d 195 (Fla. 1965), cert. denied, 390 U.S. 983 (1968). In addition, there is no reciprocity for admission to the bar between FL or Pennsylvania.

There are also numerous instances whereby the federal courts have refused to order reciprocal discipline based upon state discipline, especially when as here, the attorney has completed the requirements for Reinstatement. See In re Fisher, 794 F. Supp. 2d 314 (D. Mass. 2011).

The Pennsylvania Supreme Court has in the past refused to issue reciprocal discipline. See Office of Disciplinary Counsel v. Pileggi, 570 F.2d 480, at 482, 1978 U.S. App. LEXIS 12734 (1978).

Petitioner has a good reputation within the legal community, amongst clients, and has integrity and good moral character, and he shouldn't be disbarred.

Cruel and Unusual Punishment

The Eighth Amendment states that, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

Another objective of a hearing, that Respondent (and FL) denied Petitioner in this matter, would be to show that the form of discipline proposed is inappropriate or too harsh in relation to the supposed offense. For example, Petitioner could have shown that he is a good lawyer and person; he did

not intend to cause harm, danger or disruption by his unknowingness; and his willingness to participate in programs or services to remedy the breakdown in communication.

Disbarment is inappropriate and too harsh for which something Petitioner is wrongfully being accused, FL twisted his explanation into something it was not, and disbarred him without a hearing, therefore, FL violated his constitutional right to due process, and their action was arbitrary and capricious.

Disbarment is unconstitutional unless it can be proven that a complete deprivation of the property right is the narrowest means available to achieve whatever it is Respondent is trying to accomplish on February 12, 2018 with a reciprocal upon reciprocal disbarment two (2) days before Petitioner's February 14, 2018 scheduled Reinstatement Hearing that was discontinued by

Respondent. Respondent then sent Petitioner a notice for payment of thousands of dollars in costs for a Reinstatement that did not occur. Here, it's punitive with unnarrow means.

Petitioner was already punished for his lapse in judgment in relying upon a legal colleague sponsor's and a Federal District Court's Admission's Manager's advice and directives regarding a Local Rule of admission to the Federal District Court for the Eastern District of Pennsylvania. He took full responsibility for the lapse, by admitting the disciplinary counts that were brought against him in that matter. He has served more than the time that was given him in that matter, which was one (1) year and a day, which expired on or around October 16, 2016. It has been approaching three (3) year now that he has been separated from his profession, which is his life and his primary source of income.

When Petitioner discusses this matter with his attorney colleagues, former clients, and other interested upstanding citizens, they shake their heads and react in astonishment with what is occurring to Petitioner and agree that this matter is wrong, unfair, Kafkaesque, and unconstitutional.

As this Honorable Court explained in Atkins v. Virginia, 536 U. S. 304 (2002), the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions.

Equal Protection

In Footnote 13 of Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726 (1972), the U.S. Supreme Court notes that the concept of cruel and unusual punishment in the U.S. Constitution has its origins from a "defrocking" of a minister. Footnote 13 of Justice Marshall's concurrence in Furman at Page 318 states:

> There is increasing recognition of the fact that the basic theme of equal protection is implicit in 'cruel and unusual' punishments. 'A penalty . . . should be considered 'unusually' imposed if it is administered arbitrarily or discriminatorily.

The Equal Protection Clause of the Constitution requires that Congress treat similarly situated persons similarly, not that it engage in gestures of superficial equality. Rostker v. Goldberg, 453 U.S. 57, 101 S. Ct. 2646 (1981). In The Florida Bar v. D'Ambrosio, 946 So.2d 977 (Fla. 2006) the FL Court reversed a disbarment recommendation by a referee, and instead ordered a one (1) year suspension for an attorney's egregious misconduct.

Here, Petitioner did not have any legal clients, and this Court is changing a consent suspension of Petitioner from one (1) year to three (3) years, and then to disbarment. In addition, the attorney in D'Ambrosio was uncooperative, unremorseful, failed to notice clients of his suspension, swindled money from a client, among other wrongs, and he

had a recommended disbarment by a referee changed to a one (1) year suspension by the court. How is that proportional or equal treatment for Petitioner under the U.S. (U.S. Const., amend. XIV, §1) in the light of the facts, law, and circumstances in the FL matter?

Petitioner has not engaged in any egregious ethical violations. Over Petitioner's 55 years he has been entrusted with monies and valuable property of friends, relatives, employers, and clients, and he hasn't and still won't misuse or convert the same whether it was as a paperboy with collections, busboy with tips, college student collecting the weekly soda vending machine cash at his work-study job, handling the banking and deposits for a major stock brokerage when he was bond broker, etc. He also has held several positions as an officer and board member of various clubs, organizations, and non-profits. He will never violate any trusts associated with the same.

So, FL increased a consensual one (1) year reciprocal suspension into a disbarment without due process, although Petitioner was despondent during a tough stretch of his professional and personal life that included financial and health concerns.

It is cruel and unusual punishment to increase a consensual reciprocal one (1) year suspension, which has expired in Petitioner's home state, to a groundless disbarment, and without a hearing thereon.

The action of the Court of Appeals of another circuit in suspending attorneys indefinitely from the practice of law before that court for filing a brief therein containing scandalous and insulting matter is not alone sufficient ground for their disbarment by a Circuit Court. In re Watt & Dohan, 149 F. 1009, (E.D. Pa. 1907).

In Selling v. Radford, 243 U.S. 46 at 51 (1917), this Honorable Court noted that Ex parte Tillinghast, 4 Pet.

108, 7 L. ed. 798, was still good law in that a mere punishment for contempt by an inferior Federal court was not a sufficient ground for preventing admission to the Bar of This Honorable Court. So, why is a groundless manufactured claim of contempt by one state court (FL) sitting in reciprocal disbarment of Petitioner, grounds for reciprocal upon reciprocal disbarment in the originating state (PA) of the initial discipline? This redundant disproportionate punishment is basically quadruple jeopardy. Besides being a violation of the constitutional protections mentioned herein, there also is a possible violation of the protections afforded under the Ninth Amendment too.

Prior Restraint of the Constitutional Right to Freedom to Travel

The Privileges and Immunities Clause provides important protections for non-residents who enter a state

whether to obtain employment, to procure medical services, or even to engage in a commercial enterprise. See Sáenz v. Roe, 526 U.S. 489 (1999). The penalization of this migration right is usually done in an indirect manner by the state. See Id. at 903.

> "Although the Articles of Confederation provided that "the people of each State shall have free ingress and regress to and from any other State, "that right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution." United States v. Guest, 383 U.S. 745 (1966).

If the order below is permitted to stand, it will also have a prior restraint and chilling effect upon the Right to Travel (U.S. Const. Article IV, § 2; amend. XIV §1; amend IX.), and result in additional vocationally or professionally licensed Americans risking the summary loss of their liberty and property rights to practice their vocations and

professions, which would cause these licensed Americans to hesitate to travel to and from and/or be licensed in other states.

CONCLUSION

The lower court did not hold hearings or allow for Petitioner to produce witnesses, including expert witnesses on his behalf, instead it instituted reciprocal upon reciprocal discipline without hearings thereon, which is unjust and unconstitutional in light of the facts and law.

WHEREFORE, Petitioner respectfully requests that this Petition for a Writ of Certiorari be Granted to prevent injustice to Petitioner and to future vocationally and/or professionally licensed Americans.

Respectfully submitted,
/s/ Robert Tuerk
Robert P. Tuerk
50 N Front Street, #501
Philadelphia, PA 19106
(215) 778-3004
bobtuerk@comcast.net