18-No. 1138

IN THE
SUPREME COURT OF THE
UNITED STATES

CHARLES KINNEY, *Petitioner,*
v.

SUPERIOR COURT OF LOS ANGELES COUNTY, *Respondent,*

MICHELE R. CLARK,
Real Party in Interest,

On Petition For Writ Of Certiorari To The California Supreme Court

Calif. Supreme Court #S252067 (11/26/18 denial of petition for writ of mandate)
Calif. Court of Appeal, #B292864
Calif. Superior Court, Case #BC354136

PETITION AND APPENDIX FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Cal. vexatious litigant law is unconstitutionally vague on its face. The language is *unclear* as to: (a) what is "litigation"; (b) what has or doesn't have "merit"; (c) what are "reasonable expenses" that must be posted for "security"; (d) what can be counted as 5 losses; (e) how far back is 7 years; **and** (f) which "presiding" justice can rule.

The Cal. statute, CCP Secs. 391 etc only applies to plaintiffs "in *propria persona*", but it has been applied to Kinney as a non-party, as a defendant, and as the attorney for defendants by judges and justices who ruled that Kinney was a "vexatious litigant" ("VL") *in each of those* non-pro-per *roles.*

Their rulings were used to justify their violations of Kinney's civil and constitutional rights, to prevent him from challenging "void" orders, to retaliate against him, and to levy excessive fines.

At the same time, they also ignored bankruptcy law at 11 U.S.C. Sec. 524(a)(1) which "voids" any order by any court that decides or implies that a discharged Chapter 7 "no asset" debtor still has "personal liability" to a listed creditor (e.g. for post-petition legal work by that creditor based on pre-petition contracts). That has occurred here.

Bankruptcy law at 11 U.S.C. Sec. 524(a)(2) stops motions by a listed creditor which decides or implies that a discharged Chapter 7 "no asset" debtor still has "personal liability" to that listed creditor. That law is being ignored here.

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are those specified and appearing in the caption to this petition.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Kinney requests a "writ of certiorari" issue to review the "final" judgment by the California Supreme Court in No. **S252067** on Nov. 26, 2018 which denied Kinney's petition for writ of mandate (without explanation) [App. A].

That ruling precluded any review of the Oct. 4, 2018 *unilateral* denial by Admin. Pres. Justice Elwood Lui of the Cal. Court of Appeal, Second Appellate District ("COA2"), by Kinney of a 2018 post-petition attorney's fee "cost" award order issued by Los Angeles County Superior Court Judge Barbara Scheper even though that "cost" order was "void" under 11 U.S.C. Sec. 524(a)(1), **and** even though Clark's listed-creditor attorneys David Marcus et were prohibited by 11 U.S.C. Sec. 524(a)(2) from filing the motion which resulted in Judge Scheper's Aug. 7, 2018 attorney's fee award "cost" order; see COA2, **B292864** [App. B].

The Oct. 4, 2018 denial was made under Cal. Code of Civil Procedure Secs. 391-391.8 which is known as the Cal. vexatious litigant ("VL") law. That denial ignored ongoing bankruptcy law violations.

The bankruptcy law being violated [11 U.S.C. Sec. 524(a)] was created: (1) to enjoin the *exact activity* that has been pursued by the listed-unsecured-creditor attorneys David Marcus etc. who continue to file motions on Clark's behalf for their post-petition legal work; and (2) to "void" any resulting state or federal court attorney's fee awards or orders which imply that debtor Clark is still

"personally liable" to her attorney Marcus. The state and federal courts have refused to follow that law for the last 8 years; see Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017) for examples.

The VL law is being used against Kinney as *justification* for allowing listed-creditors Marcus etc to continue to violate bankruptcy law against listed-creditors Kinney and his co-buyer Kim Kempton (now deceased); to compel silence upon them; **and** to deny them any right to redress of grievances (e.g. by denying the right to appeal).

The VL law is also being used by the state and federal courts to impose excessive fines on Kinney contrary to the 8th Amendment (see US Supreme Court decision in the *Timbs* case decided 2/20/19).

Vexatious Litigant Laws

The Cal. VL law allows a California court to make a person a VL when a federal court has made that person a VL, but without safeguards to keep a VL order from being ***overbroad.*** State Univ. of New York v. Fox, 492 U.S. 469, 482-486 (1989). In contrast to the "narrow" federal VL orders, all Cal. VL orders are "broadly" applied.

The federal VL law arises from the All Writ Act (28 U.S.C. Sec. 1651) and under federal law all VL orders must be "narrowly tailored" in scope. De Long v. Hennessey, 912 F.2d 1144, 1146-1149 (9th Cir. 1990). However, in Kinney's situation, the federal VL orders against him are being "broadly" applied" to all of his federal cases (e.g. to his Clean Water Act citizen-lawsuit cases).

The VL law has been challenged before. Wolfe v. George, 486 F.3d 1120 (9th Cir. 2007) did consider the Cal. VL law, but that was not a *facial* challenge, and that VL law has been substantially changed (e.g. to allow a Court of Appeal Presiding Justice to decide whether an appeal has merit).

In 2014, the constitutional framework of VL laws was extensively clarified in Ringgold-Lockhart v. County of LA, 761 F.3d 1057, 1060-1067 (9th Cir. 2014). Based on this case, the Cal. VL law does not satisfy the clarified constitutional standards.

Since substantial changes have occurred to Cal. VL laws after the 2007 *Wolfe* decision (e.g. in 2011), and since the *Ringgold-Lockhart* decision explains some issues of the VL law that the *Wolfe* decision never considered, the 2007 *Wolfe* decision is no longer controlling as to the current VL law.

No court has yet to consider the unconstitutional vagueness of the current Cal. VL law. Johnson v. United States, 135 S.Ct. 2551, 2557-2563 (2015).

For example, given how the Cal. courts tally up losses under the Cal. VL law and given that Cal. requires an appeal within 60 days of whenever a defendant is dismissed, a plaintiff can become labeled as a VL in one case with 6 defendants by "losing" against 5 defendants, but still "win" the case against the 6th defendant. Fink v. Shemtov, 180 Cal.App.4th 1160, 1170 (Cal. 2010). Cal. VL law also changes who is actually the defendant into a plaintiff. Ogunsalu v. Superior Court, 12 Cal.App.5th 107 (Cal. 2017).

As for ***facial*** challenges to the Cal. VL law, Kinney contends every application of that VL law is unconstitutional because it is hopelessly vague (e.g. as to VL wording such as "litigation", "finally determined against", "reasonable expenses" for security; "merit", "presiding justice"); **and** because an "ongoing chill upon speech that is beyond all doubt protected makes it necessary in this case to invoke the earlier precedents that a statute which chills speech can and must be invalidated where its facial invalidity has been demonstrated". Citizens United v. Federal Election Commission, 558 U.S. 310, 331 (2010). There is no doubt that this law, and the acts by judges and justices using this law, are chilling Kinney's protected speech.

As for ***as-applied*** (factual) challenges to the Cal. VL law, Kinney contends the law was and is misapplied to him, contrary to specific language and criteria of the statute (e.g. because in Nov. 2008 Kinney was not a party and, as an *in pro se* plaintiff, did not have 5 out of 7 losses in the last 7 years; **and** because Kinney was not a party in Dec. 2011 when *In re Kinney*, 201 Cal.App.4th 951, was issued by a COA2 "presiding justice" who did not have subject matter jurisdiction to do so).

Bankruptcy Law Violations

As for the ***ongoing*** violations of 11 U.S.C. Sec. 524, it is rare for a federal statute to say it "voids" a court judgment, but that is ***exactly*** what 11 U.S.C. Sec. 524(a)(1) does. If a ruling decides that a 2010 Chapter 7 "no asset" discharged-debtor still has "personal liability" to a listed-unsecured creditor (e.g. her attorney Marcus), that judgment,

order or sanction is "void" regardless of the rationale used to justify the ruling.

To repeat, Sec. 524(a)(1) "voids" any decision by any court that decides a discharged-debtor is still "personally liable" to a creditor. As to a "void" order, a collateral attack or an appeal (*de facto* or not) is unnecessary; and the *Rooker-Feldman* doctrine does not apply. Orner v. Shalala, 30 F.3d 1307, 1309-1310 (10th Cir. 1994).

On the other side of the coin, 11 U.S.C. Sec. 524(a)(2) prohibits listed unsecured-creditors from employing any means to obtain any judgment, order or sanction that determines (e.g. implies) a discharged Chapter 7 "no asset" debtor still has "personal liability" to any creditor. In re McLean, 794 F.3d 1313, 1321-1325 (11th Cir. 2015). Sec. 524(a)(2) is known as the *discharge injunction*; it has different consequences than Sec. 524(a)(1).

For 8+ years, listed unsecured-creditor attorneys Marcus etc have filed 13+ attorney fee motions on behalf of a client, discharged Chapter 7 "no asset" debtor Clark, based on pre-petition contracts, with help from contract attorney Chomsky. Their ***goal*** was to ***shift*** over $500,000 of pre- and post-petition attorney's fees incurred by debtor Clark ***onto*** listed unsecured-creditors Kinney and Kim Kempton, the co-buyers of Clark's house in 2005, but Sec. 524(a)(2) *prohibits* those motions. In re Marino, 577 B.R. 772, 782-784 (9th Cir. 2017).

The dockets from cases in state and federal courts show that the courts continue to issue decisions

that ***concede*** discharged-debtor Michele Clark is ***still personally liable*** to her unsecured-creditor attorneys David Marcus etc for their legal work.

When attorney Marcus files an attorney's fee "cost" motion to shift Clark's legal bills onto Kinney, creditor Marcus ***concedes (admits)*** that his client, discharged-debtor Clark, still has "personal liability" to him for his legal work. Cal. Civil Code Sec. 1717; Cal. Code of Civil Procedure Sec. 1033.5(a)(10); Cen-Pen Corp. v. Hanson, 58 F.3d 89, 92-94 (4th Cir. 1995); Johnson v. Home State Bank, 501 U.S. 78, 84 (1991); Trope v. Katz, 11 Cal.4th 274, 279-289 (Cal. 1995); PLCM Group, Inc. v. Drexler, 22 Cal.4th 1084, 1092-1094 (Cal. 2000); Reynolds Metals Co. v. Alperson, 25 Cal.3d 124, 127-129 (Cal. 1979).

Those 13+ attorney fee "cost" orders were issued ***after*** Clark's 2010 bankruptcy; and those orders resulted in over $500,000 in attorney's fees owed by Kinney to Clark. By issuing those 13+ orders, the state courts have engaged in ***willful judicial misconduct***. Dodds v. Commission on Judicial Performance, 12 Cal.4th 163, 166-172 (Cal. 1994); Broadman v. Comm. on Judicial Performance, 18 Cal.4th 1079, 1091-1113 (Cal. 1998).

Kinney is challenging all "void" orders that were issued contrary to 11 U.S.C. Sec. 524(a) [which have resulted in a "taking" of Kinney's property via excessive fines], so Kinney's grievance cannot be a *defacto* appeal of a valid order because no appeal is ever necessary from a "void" order, **and**

because full faith and credit *cannot* be given to a "void" order. 28 U.S.C. Sec. 1739.

Kinney's grievances become a "***federal claim alleging a prior injury*** **[caused by the listed-creditors David Marcus etc]** ***that a state court failed to remedy"*** [e.g. based on 11 U.S.C. Sec. 524(a); **and** the "taking" of Kinney's property without due process]. Fowler v. Guerin, 899 F.3d 1112, 1118-1119 (9th Cir. 2018); Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005); Long v. Shorebank Development Corp., 182 F.3d 548, 554-561 (7th Cir. 1999); In re Schwartz, 954 F.2d 569, 572 (9th Cir. 1992).

Kinney's grievances are **not** appeals of legal wrongs committed by a state court. Rather, Kinney's grievance is about ***a legal wrong committed by Michele Clark (adverse party) and/or committed by Clark's listed creditor attorneys David Marcus etc (a non-party)*** with or without client Clark's understanding as to what is prohibited by the bankruptcy law. Kougasian v. TMSL, Inc., 359 F.3d 1136, 1141 (9th Cir. 2004); 11 U.S.C. Sec. 524(a).

Under bankruptcy law, all legal work performed by listed-creditor attorneys Marcus etc for debtor Clark is **deemed to be** ***fully-discharged pre-petition debt*** in Clark's Chapter 7 "no asset" case, and cannot be shifted onto another creditor such as Kinney. In re Castellino Villas, A.K.F. LLC, 836 F.3d 1028, 1033-1037 (9th Cir. 2016).

State courts have ***never*** accepted the 11 U.S.C. Sec. 524(a) restraints; and have ignored that bankruptcy law completely preempts state law. In re Gruntz, 202 F.3d 1074, 1078-1084 (9th Cir. 2000). State courts have issued "final" attorney fee orders, but those "final" orders are still an ***automatically*** "void" under Sec. 524(a)(1).

"Void" orders cannot be "inextricably intertwined" with any valid state decisions because a void order is not accorded any dignity in the judicial system, **and** "void" orders can be attacked at any time without violating the *Rooker-Feldman* doctrine. Sinochem Intern. Co. v. Malaysia Intern. Shipping Corp., 549 U.S. 422, 430-431 (2007); Kalb v. Feuerstein, 308 U.S. 433, 438, 60 S.Ct. 343, 345-46, 84 L.Ed. 370 (1940); Kougasian v. TMSL, Inc., 359 F.3d 1136, 1141 (9th Cir. 2004); 30A American Jurisprudence, Judgments, Secs. 43, 44, 45 (1958).

The *Rooker-Feldman* doctrine and preclusionary rules do **not** apply to a *facial* challenge of the Cal. VL law. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-488 (1983).

Some courts have argued that Kinney cannot go to federal court to challenge "void" state court orders [which violate 11 U.S.C. Sec. 524(a)]. 28 U.S.C. Secs. 1331, 1343, 1441, 1443, and/or 1452. That is an incorrect argument.

Some courts have argued that Kinney's VL and bankruptcy issues are "inextricably intertwined" with "final" state court decisions [which violate 11 USC Sec. 524(a)]. That is an incorrect argument.

Since all state court attorney fee awards in favor of Clark were "***void***" after July 2010 [e.g. because those decisions had to presume that discharged-debtor Clark was still "personally liable" to her own listed unsecured-creditor attorney Marcus], ***nothing*** could be "inextricably intertwined" with those "void" orders. Pennzoil v. Texaco, Inc., 481 U.S. 1, 8-17 (1987). No valid order ever existed.

Some courts have argued that Kinney's VL status was due to his frivolous actions that had no merit, but those are vague terms that are being applied to Kinney without taking any testimony under oath and allowing cross-examination to determine the actual facts [see Smith v. Robbins, 528 U.S. 259, 269-276 (2000) as to the terms "frivolous" and without "merit", and how those are determined].

In April, 2018, attorneys Marcus etc filed a motion for more attorney's fees in LASC BC354136 on behalf of Chapter 7 discharged-debtor Clark.

On May 22, 2018, Kinney filed a removal of that motion under 28 U.S.C. Sec. 1452; filed a motion to reopen Clark's bankruptcy; and filed a counter-claim and third-party complaint. Levin Metals v. Parr-Richm. Term., 799 F.2d 1312, 1315-16 (9th Cir. 1986). On June 6, 2018, US Bankruptcy Judge Barry Russell dismissed the 3 filings by Kinney.

On Aug. 1, 2018, Kinney filed 3 appeals to the Ninth Circuit for those 3 dismissal orders. [The Ninth Circuit dismissed all 3 appeals because Kinney was allegedly subject to a Ninth Circuit

pre-filing order for new appeals; *see* Ninth Circuit order in #17-80256 issued Jan. 19, 2018.]

On Aug. 7, 2018, Los Angeles County Superior Court Judge Barbara Scheper issued an attorney fee "cost" order against listed-creditor Kinney and in favor of discharged-debtor Clark for $2,985 [***even though*** 11 U.S.C. Sec. 524(a)(1) voided her order automatically; ***even though*** 11 U.S.C. Sec. 524(a)(2) prohibited that motion for fees as filed by listed-unsecured-creditor attorneys Marcus etc; and ***even though*** attorneys Marcus etc had never complied with the *Mojtahedi* case in state court].

On Sept. 13, 2018, Kinney filed a timely request for permission to file an appeal with the COA2 because Kinney was listed as a VL in 2008 and in 2011 (as shown by the Cal. Judicial Council's VL "List"); that request became B292864.

On Oct. 4, 2018, COA2 Administrative Presiding Justice Elwood Lui denied Kinney's request for permission to appeal the "void" 2018 attorney's fee "cost" order as issued by Judge Scheper in favor of discharged-debtor Michele R. Clark [App. B, 2.] There was no explanation for that denial.

On Oct. 19, 2018, Kinney filed a petition for writ of mandate with the Cal. Supreme Court; that petition became S252067.

On Nov. 26, 2018, the Cal. Supreme Court denied Kinney's petition for writ of mandate [App. A, 1]. There was no explanation for that denial.

Given these events, it is clear the judges and justices are operating on a collaborative basis with respect to punishing Kinney, so Kinney has been unable to determine which judges and justices should be disqualified. Williams v. Pennsylvania, __ U.S. __, 136 S.Ct. 1899 (2016); 14th Amendment. As a result, Kinney is unable to obtain an impartial judge in any court.

The courts are punishing Kinney for conducting litigation, and imposing penalties on him, ***simply*** because he is exercising his federal rights under the Fifth Amendment which a federal court itself does **not** penalize. Donovan v. City of Dallas, 377 U.S. 408, 412-414 (1964). That violates the Supremacy Clause. U.S. Const. Art. VI, Sec. 2.

Kinney's grievances arise from the intentional acts of a **non-party**, to wit: the attorneys Marcus who have represented Clark from 2007 onward, and who were specifically listed as unsecured creditors in Clark's 2010 Chapter 7 "no asset" bankruptcy.

Each time listed-unsecured-creditor attorneys Marcus etc file a motion for attorney's fees on behalf of discharged-debtor Clark, they *admit (e.g. concede)* that 11 U.S.C. Sec. 524(a)(2) is being violated ***because they have to affirm or declare, as part of their motion,*** that Clark still has "personal liability" to them under a 2007 hourly-fee retainer and has obligations under a 2005 real estate purchase contract with buyer Kinney and his co-buyer Kempton (now deceased). Cal. Civil Code Sec. 1717; CCP Sec. 1033.5(a)(10).

Of course, Clark has no obligations to any listed creditor (e.g. attorneys Marcus etc) since she is a discharged Chapter 7 "no asset" debtor. Thus, 11 U.S.C. Sec. 524(a)(2) applies to any motions by attorneys Marcus etc to get more attorney's fees.

Each time a state or federal court awards attorneys fees to Clark and her listed-creditor attorneys Marcus etc, that court **admits** (e.g. concedes) that 11 U.S.C. Sec. 524(a)(1) applies to the order because debtor Clark must still have "personal liability" to attorneys Marcus under the 2007 hourly-fee retainer as a *prerequisite* to the granting of that attorney's fee "cost" order. Cal. Civil Code Sec. 1717; Cal. CCP Sec. 1033.5(a)(10).

Each time a state or federal court awards attorneys fees to Clark and her listed creditor attorneys Marcus etc, they **admit** (e.g. concede) that STATE law is being violated by the long-time attorneys Marcus etc because those attorneys never proved the validity of their 2007 hourly-fee retainer that contained an attorney's or charging lien. Goncalves v. Rady Children's Hospital San Diego, 865 F.3d 1237, 1255 fn. 5 (9th Cir. 2017) [citing "*Mojtahedi v. Vargas*, 228 Cal.App.4th 974, 176 Cal.Rptr.3d 313, 316 (2014)"].

State and federal judges and justices, and state officers and federal officers, who have issued, affirmed and/or ignored orders, judgments or sanctions against Kinney or co-buyer Kempton ***that were known to be "void"***, or known to be based on "void" orders, under **FEDERAL law**

[e.g. 11 USC Sec. 524(a)(1) and (2)] include but are not limited to:

(a) Los Angeles County Superior Court Judge Barbara Scheper in #BC354136 [Clark's lack of title vs. her unrecorded, secret easement given to neighbor Cooper] and Judge Steven Kleifield in #BC374938 [Clark's fraud and non-disclosure];

(b) Calif. Court of Appeal, Second Appellate District, Justices Roger Boren, Frances Rothschild, Victoria Cheney, and Jeffrey Johnson [and others as shown by dockets];

(c) Alameda County Superior Court Judge Delbert Gee in Kimberly Kempton's estate #RP13686482 [e.g. by allowing Clark's claim];

(d) former Cal. Attorney General Kamala Harris and current Cal. Attorney General Xavier Becerra [by ignoring letters from Kinney];

(e) US Trustee, Central District of California (Los Angeles), Peter C. Anderson [whose has the job of uncovering bankruptcy fraud and abuse];

(f) US Bankruptcy Court, Central Dist. of Cal., Judges Richard Neiter and Barry Russell;

(g) US District Court Judges Philip S. Gutierrez, Edward Chen, and Vince Chhabria [and others as shown by dockets];

(f) Ninth Circuit Judges Bea, Bybee, Gould, Levy, Owens, Paez, Silverman, Thomas, and Wallace [and others as shown by dockets]; and

(h) the Justices of this Court [due to inaction].

Likewise, these same state and federal judges and justices, and same state officers and federal officers, have issued, affirmed or ignored orders, judgments or sanctions against co-buyers Kinney or Kempton ***that were known to be "void"***, or

based on "void" orders, under **STATE law** due to the ***ongoing failures*** of Clark's attorneys David Marcus etc to comply with the *Goncalves* and *Mojtahedi* cases as to proving that their April 2007 hourly-fee retainer and its automatic-conflict-of-interest attorney's lien (aka charging lien) were valid and enforceable as of Dec. 2008 onward **before** those attorneys could recover attorney's fees from their client Clark AND **before** those attorneys could shift attorney's fees on to the co-buyers Kinney and Kempton via a 2005 purchase contract.

COA Justice Jeffrey Johnson is the same Justice who was named in a 1/4/19 Calif. Comm. on Jud. Performance's Notice of Formal Proceedings (and the same Justice who concurred with *Kinney v. Clark* in 2017), but his harassment has occurred for 1+ decades and is well documented for 1+ decades, but only now is it being made public. The Justice's Answer was filed 1/22/19.

That shows a "culture of silence" exists in COA2. Due to 9+ years of inaction by the Calif. Comm. on Jud. Perf., there were numerous clerks, staff and others who were harassed by Justice Johnson when that should have been stopped long ago.

Likewise, Ninth Circuit Judge Alex Kozinski had been harassing staff and others for 3+ decades, and it was well documented for 3+ decades (and ignored by the Third and Ninth Circuits), but only recently was it made public. In response, Judge Kozinski retired in Dec. 2018.

That shows a "culture of silence" exists in the Ninth Circuit. This is probably why the investigation by Supreme Court Justice John Roberts turned up no "official" complaints [even though 480 former judicial clerks and 83 current clerks had complained in a letter about how misbehavior complaints against judges were being processed and handled].

As noted in Kinney's other petitions to this Court, Calif. Court of Appeal, Second Appellate District, Division One Justices Frances Rothschild, Victoria Cheney and Jeffrey Johnson have willfully and consistently ignored the application of 11 U.S.C. Sec. 524(a)(1) and (2) in all matters involving listed-creditor Charles Kinney with respect to 2010 Chapter 7 "no asset" discharged debtor Michele Clark and her listed unsecured creditor attorneys David Marcus etc.

As one of the best examples, these Justices decided an appeal in 2017 against Kinney (and in favor of Clark) which clearly shows in the text of the published opinion that they and others were and still are ignoring the ongoing violations of 11 U.S.C. Sec. 524(a); see Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017) [e.g. refer to the text about an attorney fee order that was issued in July 2012 in favor of Clark based on a motion for pre-petition fees filed by attorneys Marcus when the bankruptcy trustee had the ***sole authority*** to seek such fees because Clark's Chapter 7 discharge didn't occur until Aug. 2012 (see pgs. 728-731), contrary to Bostanian v. Liberty Savings Bank, 52 Cal.App.4th 1075, 1078-1087 (Cal. 1997)].

OPINIONS BELOW

The final decision(s) sought to be reviewed (in reverse chronological order) are the:

1. Nov. 26, 2018 "final" decision by the Calif. Supreme Court denying Kinney's petition for writ of mandate as to the Oct. 4, 2018 denial by Calif. Court of Appeal, Second Appellate District, Adm. Pres. Justice Elwood Lui to allow Kinney to proceed with his appeal of a 2018 post-petition attorney's fee award (aka appeal of the 2018 attorney's fee "cost" order in favor of debtor Michele Clark) in Kempton v. Clark, Los Angeles County Superior Court No. BC354136 even though Clark's 2010 Chapter 7 "no asset" bankruptcy and her 2012 discharge prohibited any motion for such a ruling, and any such ruling was ***automatically*** void]; see Cal. Supreme Court No. S252067. [Appendix A, page 1][1]. and

2. Oct. 4, 2018 *unilateral* denial by Cal. Court of Appeal, Second Appellate District, Adm. Pres. Justice Elwood Lui to allow Kinney to proceed with his appeal of a 2018 post-petition attorney's fee "cost" order (i.e. an appeal of attorney's fee award in favor of debtor Michele Clark) in Kempton v. Clark, Los Angeles County Superior Court No. BC354136, which was contrary to Cal. Supreme Court decisions; **and** to 11 U.S.C. Sec. 524(a) due to discharged-debtor Michele Clark's 2010 Chapter 7 "no asset"

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[1] Citation method is Appendix ("App."), exhibit letter, and sequential page number.

bankruptcy (e.g. because all obligations to her attorney were extinguished under pre-petition contracts) and her 2012 discharge. [App. B, 2].

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code ["U.S.C."], Secs. 1254(1), 1257(a), and/or 2101(c).

The Presiding Justice of COA2 improperly denied Kinney's request to file an appeal [App. B, 2].

The Cal. Supreme Court acted as "enablers" or "prosecutors" by refusing to grant Kinney's petition for writ of mandate [App. A, 1].

As shown by prior petitions to this Court, the state courts have not followed **and** are still not following bankruptcy law and/or state law as to Kinney [e.g. see Kinney's petitions 18-906, 18-908, 17-219, 16-252, 16-606, 16-1182, 15-1035, 15-5260, 15-6896, 15-6897, 15-6916, and 15-7133, to name a few]. Bosse v. Oklahoma, 580 U.S. ___, 137 S.Ct. 1, 196 L.Ed.2d 1 (2016).

In that manner, they made rulings that violated Kinney's federal constitutional rights (e.g. First Amendment) and federal civil rights under color of authority or official right (e.g. 42 U.S.C. Sec. 1983), so their judicial immunity and/or sovereign immunity was eliminated (e.g. for ***prospective*** injunctive relief). Fitzpatrick v. Bitzer, 427 U.S. 445, 448 (1976); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 102-106, 123 n. 34

(1984); Patrick v. Burget, 486 U.S. 94, 101-104 (1988); Pennsylvania v. Union Gas Co., 491 U.S. 1, 57 (1989); F.T.C. v. Ticor Title Ins. Co., 504 U.S. 621, 631-638 (1992).

The ruling that Kinney was attempting to appeal is "void" under bankruptcy law which completely preempted all state court cases filed prior to July 2010 [e.g. LASC BC354136 and BC374938]. Maritime Electric Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1203-1204 (3rd Cir. 1991); In re Hamilton, 540 F.3d 367, 370-376 (6th Cir. 2008); In re Miles, 430 F.3d 1083, 1087-1089 (9th Cir. 2005); In re Gonzales, 830 F.2d 1033, 1034-1036 (9th Cir. 1987); Hawaii ex rel Louie v. HSBC Bank Nevada, N.A., 761 F.3d 1027, 1033-1034 (9th Cir. 2014).

Kinney's appeal should have been allowed and the justices should have vacated the "cost" order in favor of discharged debtor Clark. Young v. Tri-City Healthcare Dist., 210 Cal.App.4th 35, 41-42 and 49-53 (Cal. 2010); Plaza Hollister Ltd. Ptsp. v. County of San Benito, 72 Cal.App.4th 1, 13-22 (Cal. 1999); Giset v. Fair Political Practices Comm., 25 Cal.App.4th 658, 701 (Cal. 2001).

Once Clark declared Chapter 7 bankruptcy in July 2010, she was no longer obligated for any attorney's fee owed to attorneys Marcus

Listed-unsecured-creditor attorneys Marcus etc never proved their lien was valid in any court. 11 U.S.C. Secs. 506; FRBP 3001, 3002 and 6009; U.S. v. Ron Pair Enterprises, Inc., 489 U.S. 235, 238-240 (1989); Saltarelli & Steponovich v. Douglas, 40

Cal.App.4th 1, 3-7 (Cal. 1995); Mojtahedi v. Vargas, 228 Cal.App.4th 974, 976-980 (Cal. 2014).

The rulings by COA2 and Cal. Supreme Court were abuses of discretion as to a "void" 2018 decision by LASC Judge Scheper. Olson v. Cory, 35 Cal.3d 390, 400-401 (Cal. 1983).

The Cal. Supreme Court's denial of Kinney's writ of mandate also violated Kinney's First Amendment rights. United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967); Moy v. United States, 906 F.2d 467, 470 (9th Cir. 1990); Thomas v. Collins, 323 U.S. 516, 530 (1945).

Any issues regarding Clark's bankruptcy or her discharge are still controlled by bankruptcy law, and all state courts must follow that law. American Railway Express Co. v. Levee, 263 U.S. 19, 20-21 (1923); Cohen v. California, 403 U.S. 15, 17-18 (1971); Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 159-161 (1954).

The powers of the state appellate court are limited by explicit limitations in state statutes, explicit limitations found in state supreme court decisions, and/or by the civil and constitutional rights of represented appellants. Canatella v. State of California, 304 F.3d 843, 847-854 and n.6 and 14 (9th Cir. 2001).

The state courts have again denied Kinney's First Amendment rights with respect to bankruptcy law violations and to overbroad applications of VL

laws (e.g. by denying his right to appeal). Boddie v. Connecticut, 401 U.S. 371, 382-383 (1971).

The acts described herein violate 18 U.S.C. Secs. 1346 and/or 1951, and create new civil rights and RICO claims (e.g. since listed-creditor attorney Marcus and contract-attorney Chomsky operate an "enterprise"). *See* United States v. Inzunza, 638 F.3d 1006 (9th Cir. 2009); United States v. Frega, 179 F.3d 793 (9th Cir. 1999); United States v. Carbo, 572 F.3d 112 (3rd Cir. 2009); United States v. Stephenson, 895 F.2d 867 (2nd Cir. 1990); United States v. Burkhart, 682 F.2d 589 (6th Cir. 1982); United States v. Frazier, 560 F.2d 884 (8th Cir. 1977); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 24 (1st Cir. 1982); Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980).

The acts described herein are damaging Kinney's ongoing interstate mineral business in Colorado. Keith v. Kinney, 961 P.2d 516 (Colo. App. 1997); Kinney v. Keith, 128 P.3d 297 (Colo. App. 2005); Keith v. Kinney, 140 P.3d 141 (Colo. App. 2006).

The courts have been compelling ***silence*** on Kinney, **and** acting as ***prosecutors*** of Kinney under color of official right, which has resulted in losses to Kinney's interstate commerce businesses and his property, and resulted in the loss of "honest services" from state and federal courts. American Railway Express Co. v. Levee, 263 U.S. 19, 20-21 (1923); Cohen v. California, 403 U.S. 15, 17-18 (1971); Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 159-161 (1954).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Court has jurisdiction to address violations of state and federal law by the state judicial courts (e.g. Cal. Court of Appeal and Cal. Supreme Court), by the U.S. District Courts, and/or by the Ninth Circuit.

The federal courts have exclusive and original jurisdiction under 28 U.S.C. Sec. 1331, 1343, 1441, 1443 and 1452, and under 42 U.S.C. Sec. 1983 etc, to consider violations of federal *constitutional* rights (e.g. 1st Amendment rights) **and** consider violations of other federal laws [e.g. violations of the Commerce Clause; of the "honest services" law; of the Hobbs Act; of 11 U.S.C. Sec. 524(a)(1) and (2); and/or of bankruptcy fraud which is a crime under 18 U.S.C. Secs. 152 etc]. However, the federal courts are ignoring that.

Here, as has been done in the past, the state courts are again willfully ignoring all of the issues being presented by Kinney as to violations of state and federal law.

STATEMENT OF THE CASE

This petition involves the state courts who have summarily denied Kinney's attempts to appeal lower court orders that use overbroad VL laws against Kinney and violate bankruptcy law.

The state courts are compelling *silence* on Kinney as to bankruptcy law violations since Kinney was

a "listed" bankruptcy creditor who has now been made liable for $500,000+ in ***deemed discharged debts*** via pre- and post-petition attorney's fee awards (based on pre-petition contracts) in favor of Chapter 7 "no asset" discharged-debtor Clark.

SUMMARY OF LOWER COURT PROCEEDINGS

On Aug. 7, 2018, Los Angeles County Superior Court Judge Barbara Scheper issued an attorney fee "cost" order against listed-creditor Kinney and in favor of discharged-debtor Clark for $2,985 [***even though*** 11 U.S.C. Sec. 524(a)(1) made her order "void" and Sec. 524(a)(2) prohibited that motion for fees filed by listed-unsecured-creditor attorneys David Marcus etc; **and** ***even though*** attorneys Marcus etc had never complied with the *Goncalves* and *Mojtahedi* cases in state court].

On Sept. 13, 2018, Kinney filed a timely request for permission to file an appeal with the COA2 because Kinney was listed as a VL in 2008 and in 2011 (as shown by the Cal. Judicial Council's VL "List"); that request became B292864.

On Oct. 4, 2018, COA2 Administrative Presiding Justice Elwood Lui denied Kinney's request for permission to appeal the "void" 2018 attorney's fee "cost" order as issued by Judge Scheper in favor of discharged-debtor Michele R. Clark [App. B, 2.] There was no explanation for that denial.

On Oct. 19, 2018, Kinney filed a petition for writ of mandate with the Cal. Supreme Court; that petition became S252067.

On Nov. 26, 2018, the Cal. Supreme Court denied Kinney's petition for writ of mandate [App. A, 1]. There was no explanation for that denial.

Here, Kinney's petition addresses the: (1) ongoing retaliation against him by *forcing his silence* **and** (2) ongoing federal law violations to his detriment as a listed-creditor by "taking" his property [e.g. over $500,000 to date]; by damaging his existing interstate commerce businesses; and by ignoring his rights as a specifically-named creditor in Clark's 2010 Chapter 7 "no asset" bankruptcy.

STATEMENT OF FACTS

The state courts may not exercise jurisdiction inconsistent with the Constitution of the United States, the Calif. Constitution, or applicable statutes under state or federal law.

In July 2010, seller Michele Clark filed a Chapter 7 "no asset" bankruptcy petition, and listed both Kinney and Marcus as creditors. As a result, all pre-petition contracts (e.g. the 2005 real estate purchase contract between seller Clark and buyers Kinney etc; and 2007 hourly-fee retainer between client Clark and attorneys Marcus) were unenforceable. State courts have ignored the facts and law, **but** conceded in *Kinney v. Clark* that violations of 11 U.S.C. Sec. 524(a) ***have occurred*** by describing them in the text of the opinion.

As ***admitted*** in that 2017 state court opinion, after Clark's bankruptcy in 2010 and discharge in 2012, the state courts continue to grant attorney's

fee "cost" award orders in favor of discharged-debtor Clark (and against listed-creditor Kinney) based on pre-petition contracts for post-petition legal work by attorney Marcus, which are *automatically void* under 11 U.S.C. Sec. 524(a)(1).

Discharged-debtor Michele Clark and her listed-unsecured creditor attorneys David Marcus etc continue to file state court motions for fees based on pre-petition contracts that are *prohibited* by 11 U.S.C. Sec. 524(a)(2).

On Nov. 26, 2018, Kinney's petition for writ of mandate was denied by the Cal. Supreme Court [App. A, 1].

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari Should Be Granted Because Both State and Federal Courts Continue to Ignore Federal and State Law Which Violates Kinney's First Amendment Rights; And The Method and Application of "Alleged" Due Process By The Courts Severely Impairs Meaningful Review of Important Questions of Federal Law, And Severely Impairs Rights Guaranteed Under The First, Fourth, Fifth, Eighth And Fourteenth Amendments; And Is In Conflict With Decisions Of This Court And Other United States Court Of Appeals.

The state courts are *compelling silence* upon Kinney in direct violation of the *Janus, NIFLA* and *Riley* decisions **and** in direct violation of

bankruptcy law given Kinney's status as a "listed" creditor. [App. A, 1; App. B, 3; App. C, 5] Janus v. American Federation of State, County and Municipal Employees, Council 31, 585 U.S. __ (2018); National Institute of Family and Life Advocates v. Becerra, 585 U.S. ___ (2018); Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781, 796-797 (1988).

These state court judges and justices have acted as *prosecutors* of Kinney, **not** as *neutral arbitrators* of disputes, when they denied his appeal rights. The state courts have also violated Kinney's federal constitutional and civil rights, the "honest services" law, and the Hobbs Act. [App. A, 1; App. B, 3; App. C, 5] Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980); Hafer v. Melo, 502 U.S. 21, 25-31 (1991); Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001); Canatella v. State of California, 304 F.3d 843, 847-854, n. 6 and 14 (9th Cir. 2002); Bauer v. Texas, 341 F.3d 352, 356-360 (5th Cir. 2003); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 24 (1st Cir. 1982); United States v. Murphy, 768 F.2d 1518, 1523-1539 (7th Cir. 1985); Zarcone v. Perry, 572 F.2d 52, 54-57 (2nd Cir. 1978).

The denials by the state courts were retaliation against Kinney (and similar to the *In re Kinney* and *Kinney v. Clark* decisions). That caused irreparable injury to Kinney, and to his property, interstate businesses, cases, appeals, and clients. 42 U.S.C. Sec. 1983; Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017).

The acts by the state courts were done to restrict Kinney's First Amendment rights (e.g. as to his appeals), to restrict his fair access to the courts, **and** to retaliate against him. Hooten v. H Jenne III, 786 F.2d 692 (5th Cir. 1986); United States v. Hooten, 693 F.2d 857, 858 (9th Cir. 1982); Sloman v. Tadlock, 21 F.3d 1462, 1470 (9th Cir. 1994); Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1313-1320 (9th Cir. 1989); Lacey v. Maricopa County, 693 F.3d 896, 916 (9th Cir. 2012).

Kinney has the right "to petition the Government for a redress of grievances" including a right to a review by appeal which is being consistently denied to Kinney without just cause in both state and federal courts. That First Amendment Right is "one of the most precious of the liberties safeguarded by the Bill of Rights". BE & K Constr. Co. v. NLRB, 536 U.S. 516, 524 (2002) [quoting United Mine Workers v. Illinois Bar Assn., 389 U.S. 217, 222 (1967)].

A standard of strict scrutiny should be applied to procedural barriers made by rule or statute, as applied in appellate courts, which chill or penalize the exercise of First Amendment rights, and act to limit direct review by a higher court. "The consideration of asserted constitutional rights may not be thwarted by simple recitation that there has not been observance of a procedural rule with which there has been compliance in both substance and form, in every real sense." NAACP v. Alabama ex rel. Flowers, 377 U.S. 288, 297 (1964).

Fundamental to the 14th Amendment's right to due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394 (1914).

When a person is deprived of his rights in a manner contrary to the basic tenets of due process, the slate must be wiped clean in order to restore the petitioner to a position he would have occupied if due process had been accorded to him in the first place. Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80, 86-87 (1988).

Although a particular state is not required to provide a right to appellate review, procedures which adversely affect access to the appellate review process, which the state has chosen to provide, requires close judicial scrutiny. Griffin v. Illinois, 351 U.S. 12 (1956). This applies to the state courts in California.

An appeal cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the federal Equal Protection Clause. Smith v. Bennett, 365 U.S. 708 (1961).

Certiorari should be granted to provide guidance on the method and manner in which the federal and state courts apply, restrict or summarily deny the right of access to the courts and force silence on "difficult" attorneys and *pro se* litigants.

As to the acts of the state courts, an appearance of impropriety, whether such impropriety is actually present or proven, weakens our system of justice. "A fair trial in a fair tribunal is a basic

requirement of due process. In re Murchison, 349 U.S. 133, 136 (1955).

While claims of bias generally are resolved by common law, statute, or professional standards of the bench and bar, the Due Process Clause of the 14th Amendment "establishes a constitutional floor" which has not been met here. Bracy v. Gramley, 520 U.S. 899, 904 (1997).

The state courts ignored that prior fee award orders were all "void" (e.g. 11 U.S.C. 524); and "void" orders cannot support subsequent decisions. Sinochem Intl. Co. v. Malaysia Intl. Ship Corp., 549 U.S. 422, 430 (2007); Plaza Hollister Ltd. Ptsp v. Cty of San Benito,72 Cal.App.4th 1, 13-22 (Cal. 1999); Airlines Reporting Corp. v. Renda, 177 Cal.App.4th 14, 19-23 (Cal. 2009).

By their acts, the state courts have ***ignored*** the: (1) adverse impacts on Kinney as a listed-creditor in debtor Clark's 2010 Chapter 7 "no asset" bankruptcy; (2) the 11 U.S.C. Sec. 524 violations by listed-creditor Marcus; (3) the adverse impacts on Kinney's interstate commerce businesses; **and** (4) Kinney's right to be free from retaliation, all of which is subject to review by federal courts who have the obligation to determine the issues. In re Isaacs, 895 F.3d 904, 910-911 (6th Cir. 2018) [*Rooker-Feldman* doctrine does not apply when "a state court interprets the discharge order incorrectly"; that state court order is "void *ab initio*"]; In re McLean, 794 F.3d 1313, 1321-1325 (11th Cir. 2015) [discharge injunction can be violated by creditor]; Bulloch v. United States, 763

F.2d 1115, 1121-1122 (10th Cir. 1994) ["fraud on the court" can occur because of false statements]; McCarthy v. Madigan, 503 U.S. 140, 146 (1992); Colorado River Water Conservation District v. United States, 424 U.S. 800, 817-818 (1976) [courts must exercise the jurisdiction given to them];

The *Bosse* decision requires all courts to follow the law, but no court has done that for the last 8+ years as to listed-creditor Kinney. Bosse v. Oklahoma, 580 U.S. __, 137 S.Ct. 1 (2016); Orner v. Shalala, 30 F.3d 1307, 1309-1310 (10th Cir. 1994) ["relief is not a discretionary matter; it is mandatory"].

CONCLUSION

This petition and all of the relief requested below should be granted.

This Court should also "void" all of the orders, judgments and sanctions issued from July 28, 2010 onward in favor of Chapter 7 "no asset" discharged-debtor Michele Clark, listed unsecured-creditor attorneys David Marcus etc, and/or their contract attorney Eric Chomsky with respect to listed-creditors Charles Kinney and/or Kimberly Kempton (his business partner and co-buyer of Clark's property in 2005) pursuant to 11 U.S.C. Sec. 524(a)(1).

This Court should declare that listed unsecured-creditor attorneys David Marcus etc, and/or contract attorney Eric Chomsky have been violating 11 U.S.C. Sec. 524(a)(2) by repeatedly

filing more motions for attorney's fees after Clark filed a petition for a "no asset" Chapter 7 bankruptcy on July 28, 2010.

This Court should refer this to the US Attorney's Office and/or the FBI via 18 U.S.C. Sec. 158 to investigate whether "crimes" under Secs. 152 and/or 157 have occurred due to the pre- and post-petition acts of listed unsecured-creditor attorneys David Marcus etc and/or their contract-attorney Eric Chomsky.

Here, the "crimes" could include willful acts by creditor Marcus and Chomsky with respect to: (i) making false oaths under 18 U.S.C. Sec. 152(2); (ii) making false declarations under 18 U.S.C. Sec. 152(3); (iii) presenting false claims under 18 U.S.C. Sec. 152(4); (iv) receiving material property from debtor Clark under 18 U.S.C. Sec. 152(5); **and/or** (v) repeatedly making false or fraudulent representations under 18 U.S.C. Sec. 157(3). All these "crimes" occurred here.

Dated: 2/22/19 By:___/s/_____
Charles Kinney, in pro se