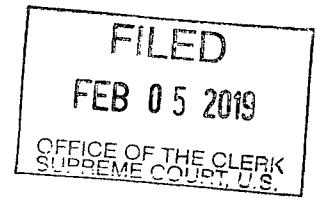


ORIGINAL

NO. 18-7911



IN THE  
SUPREME COURT OF THE UNITED STATES

ALBERT MIKLOS KUN,  
Petitioner,

v.

STATE BAR OF CALIFORNIA,  
Respondent.

On Petition for Writ of Certiorari to the State Bar  
Court of California Review Department.

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,  
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In Pro Se

QUESTIONS PRESENTED

I. Question: Whether California waived its sovereign immunity to the Bankruptcy Clause.

II. Question: Whether the California Supreme Court may order payment of a debt that has been discharged in Bankruptcy.

III. Question: Whether petitioner's right to protection by the Equal Protection Clause of the Fourteenth Amendment were violated.

IV. Question: Whether petitioner's rights protected by the Due Process Clause of the Fourteenth Amendment were violated.

PARTIES TO THE PROCEEDING

ALBERT MIKLOS KUN, Petitioner In Pro Se, and

STATE BAR OF CALIFORNIA, Respondent.

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PRAAYER

Petitioner Albert M. Kun prays that a writ of certiorari be granted to review the opinion of the State Bar of Court of California issued on September 21, 2018.

OPINIONS BELOW

The decision of the State Bar Court of California—Review Department, is attached as APPENDIX “A”. The State Bar Court—Hearing Department, is attached as APPENDIX “B”. The Order of the California Supreme Court Denying Review is attached as APPENDIX “C”.

JURISDICTION

On December 12, 2018 the Supreme Court of California denied Discretionary Review. This petition is timely filed within 90 days of that order.

BASIS FOR JURISDICTION OF THE CALIFORNIA SUPREME COURT

The independent State Bar Court hears the charges and has the power to recommend that the California Supreme Court suspend or disbar attorneys found to have committed acts of professional misconduct. The California Constitution precludes the State Bar Court from considering Federal laws and Federal Constitutional claims. The basis for jurisdiction of the California Supreme Court is the Constitution of the State of California.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

California Constitution, Article III, Section 3.5:

“An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

*(Sec. 3.5 added June 6, 1978, by Prop. 5. Res. Ch. 48, 1977.)*

Fourteenth Amendment, Section 1, states:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.”

## STATEMENT OF THE CASE

On November 5, 2015 petitioner filed for Chapter 11 Bankruptcy protection to prevent his and his co-tenants' eviction from a San Francisco office where he had practiced law for thirty (30) years. This was a necessary step in “eviction-crazed” San Francisco. The case was filed in San Francisco Bankruptcy Court as Case No. 15-31382. Fulton Connor and the State Bar are listed as creditors of the estate.

On October 2, 2015 the State Bar of California filed its Case No. 14-0-05418 against petitioner (which eventually became the basis for Case No. 17-6693 in this court), requesting that the State Bar Court disbar petitioner.

On March 29, 2018 the Bankruptcy case was converted to Chapter 7. On June 30, 2018 all debts were discharged. Neither Fulton Connor, who was represented by counsel, nor the State Bar objected to the discharge. The Chapter 7 case closed on June 30, 2018.

The State Bar, evidently dissatisfied with its inability to disbar petitioner in Case No. 14-0-05418 (U.S. Sup. Court Case No. 17-6693), then commenced two (2) new cases against petitioner: Case No. 15-0-14554 and Case No. 16-0-12726.

The Hearing Department of the State Bar Court dismissed Case No. 16-0-12726 after trial with prejudice (see APPENDIX "B" p. 27, line 14), which left Case No. 15-0-14554, which is the basis for this petition to this court.

The State Bar's action was greatly prejudicial to petitioner because all the events on which Case No. 15-0-14554 is based occurred considerably before the events in Case No. 14-0-05418—some of them going back as far as 2012. Had the State Bar charged Case No. 15-0-14554 together with 14-0-05418, even with the same result, there would not have been enough charges to disbar petitioner. Petitioner's 2-year suspension in Case No. 14-0-05418 expires on September 29, 2019.

The Review Department failed to correct even the most glaring conclusions, whether legal or constitutional. Petitioner requested a review by the California Supreme Court which was summarily denied on December 12, 2018.

#### REASONS FOR GRANTING THE PETITION

This court originally granted and subsequently denied review of Case No. 17-6693. Petitioner then requested reconsideration, which likewise was denied. These two cases taken together show substantial violations on the part of the State Bar that potentially could affect some 240,000 members.

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#### THE ORDER OF THE CALIFORNIA SUPREME COURT CLEARLY VIOLATES FEDERAL BANKRUPTCY LAW

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The error commenced with the clearly erroneous conclusion of the Hearing Department (see APPENDIX "B", p.21, line 4). The Hearing Department concludes:

" . . . while Respondent's bankruptcy, filed in November 2015, may have operated to stay the enforcement of the order at that time, that stay was not retroactive" [emphasis added]. The sanction order is dated May 27, 2015 and was payable only to Fulton Connor, a private party (see APPENDIX "B", p.13, line 20). It is hornbook law in Bankruptcy that all prior debts are stayed upon the filing of the Bankruptcy petition. This stay continued to the conversion to Chapter 7 on March 29, 2018 and was discharged on June 30, 2018. Both the State Bar and Fulton Connor were represented by counsel, and neither objected to the discharge.

The Review Department recognized but misinterpreted petitioner's argument that *In Re Scheer* (9<sup>th</sup> Circuit 2016) 819 F.3d 1206 was applicable to the case (see APPENDIX "A". p.7, line 17).

The court states (see APPENDIX "A", p.8, footnote 12): "We note that the hearing judge found only that Kun filed for bankruptcy protection, not that he received an order of discharge from the bankruptcy court."

Petitioner's Bankruptcy Petition was in evidence, and the trial court was aware that it was a Chapter 11 petition that continued until its conversion, and that the discharge occurred on June 30, 2018—prior to the Review Department Opinion and Order on September 21, 2018.

Both the Review Department and the California Supreme Court failed to consider footnote 4 of the 9th Circuit Court opinion in *In Re Scheer*, *id.*, which states:

"The Eleventh Amendment does not bar us from determining that Scheer's debt was discharged. See *Cent. Virginia County Coll. v. Katz* 346 U.S. 356, 373-78 (2006). ('In ratifying the Bankruptcy Clause, the State acquiesced in a subordination of whatever sovereign immunity they might otherwise have asserted in proceedings necessary to effectuate the *in rem* jurisdiction of the bankruptcy courts')."

[Emphasis in original.]

The Review Department erred in its conclusion, at APPENDIX "A", p.7, line 14, that:

"As to count Seven, the hearing judge found that Kun violated a court order by not paying the \$3000 sanction. Kun argues that his bankruptcy discharged his duty to pay the sanction and, thus, he cannot be disciplined for failing to comply with the order. Kun's argument is based on *In Re Scheer* (9<sup>th</sup> Cir. 2016) 819 F.3d 1206 which is inapplicable here for two reasons discussed in count 5 and 6: he appealed the sanction only on behalf

of his client Stone, and his deadline to comply occurred well before he even filed for bankruptcy. We affirm that the judge's culpability finding on this as supported by the facts."

The Review Department finding is clearly incorrect, and this was pointed out to the California Supreme Court. The bankruptcy stay went into effect on Nov. 5, 2015 when the Chapter 11 was filed, and remained in effect until the Chapter 7 was discharged on June 30, 2018. The sanction was added to the creditors list with notice both to the State Bar and to Fulton Connor with no objection from either one, each of whom were represented by counsel at all times.

The California Supreme Court dismissed the Petition with a comment:

"Albert Miklos Kun must make payment to Fulton Connor of the sanction award of \$3000 issued on August 14, 2015 by the Superior Court of San Mateo County in case number CIV-477401, plus ten percent interest per year from October 1, 2015" (see APPENDIX "C").

This order is a clear violation of the Bankruptcy Code, 11 U.S.C. 362.

Yet the violation of petitioner's rights under Federal laws still continue. Petitioner has provided both this court, the California Supreme Court, and the State Bar with financial statements, and all were granted In Forma Pauperis and/or Exemption from filing fees. Petitioner's sole income is from Social Security. All Social Security income is exempt under 42 U.S.C. 407(a) as causing petitioner "ongoing harm."

## THE STATE BAR'S ACTIONS VIOLATE PETITIONER'S RIGHTS UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

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The 9<sup>th</sup> Circuit in *Scheer v. Kelly* (2016) 817 F.3d 1183 recognized that California's regulation of its lawyers may violate the Equal Protection clause of the Fourteenth Amendment. At the last paragraph of the Opinion, the court states:

“Scheer may be right that the regulation of lawyers in California is unlike California's regulation of any other professionals, but she has not demonstrated that this regulatory scheme violates Equal Protection.”

Petitioner here will demonstrate that specific sections of the Rules of Professional Conduct unduly burden the Equal Protection clause of the Fourteenth Amendment.

Compared to the way in which the State disciplines its physicians, automobile dealers, building contractors, and real estate brokers, an undue burden is placed on attorneys in meeting even the threshold requirement for success in a State Bar Court proceeding. In administrative proceedings involving physicians, real estate brokers, and others, Federal laws are admissible and the written rulings of the administrative law judge can be appealed. The Court of Appeals always provides a written order providing the written findings and conclusion, and a written ruling regarding the federal statutory or constitutional issue(s).

The State Bar Court is prohibited by the California Constitution to admit or to challenge Federal laws or the U.S. Constitution, and the only judiciary action permitted is by the California Supreme Court, which is almost always a summary denial. Federal statutory or Constitutional protection for California attorneys

seems to be nonexistent. One only hopes or prays that maybe once, every 20 years, this court will take up a case.

If this is a case *sui generis*, or in some way unique, then it is a pitiful “uniqueness” deal for attorneys.

To give an example to this court, petitioner cited as one of his defenses California Business & Professions Code Section 6069(a), which states:

(a) Every member of the State Bar shall be deemed by operation of this law to have irrevocably authorized the disclosure to the State Bar and the Supreme Court pursuant to Section 7473 of the Government Code of any and all financial records held by financial institutions as defined in subdivisions (a) and (b) of Section 7465 of the Government Code pertaining to accounts which the member must maintain in accordance with the Rules of Professional Conduct; provided that no such financial records shall be disclosed to the State Bar without a subpoena therefor having been issued pursuant to Section 6049 of this code, and further provided that the board of trustees shall by rule provide notice to the member similar to that notice provided for in subdivision (d) of Section 7473 of the Government Code. Such notice may be sent by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar.

[Emphasis added.]

“The State Bar shall, by mail addressed to the member's current office or other address for the State Bar purposes as shown on the member's registration records of the State Bar, notify its members annually of the provisions of this subdivision.”

[Emphasis added.]

The State Bar admitted that none of the required notices were sent to petitioner or anyone else. Nevertheless it argued, without authority, that a valid subpoena cannot be ignored because of procedural deficiencies.

Petitioner argued extensively before the State Bar Court, the California Supreme Court, and this court (in Case No. 17-6693) that the subpoena was

invalid on statutory and Constitutional grounds. No court has held that the subpoena was valid.

There is no other licensed profession in California where the mere assertion of a Deputy Attorney General is accepted as a rule carved in stone.

#### **THE STATE BAR VIOLATED PETITIONER'S RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT**

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As has been pointed out, the California Constitution prohibits the State Bar Court from considering Federal Constitutional claims. (See California Constitution, Article III, Section 3.5); however, such claims may be raised in a judicial review before the California Supreme Court. Petitioner raised these claims before that court, but a summary dismissal by that court ended the review.

In the State Bar proceeding, it was undisputed that all the charged and governing facts in this case had occurred in 2012 and 2013, and some as early as 2008. The State Bar could have filed those charges in Case No. 14-0-05418 (U.S. Supreme Court Case No. 17-6693), which would have made this Case No. 3 for petitioner—which does not require disbarment, and his suspension expires September 17, 2019.

It was likewise undisputed by the State Bar that complainant was an adverse party in a civil case against petitioner's client. The plaintiff in the civil case testified for petitioner at the State Bar proceeding. There is no precedent in California jurisdiction for such an action.

However, the Ninth Circuit held that due process also requires a fair, adequate and reasonable judicial review (see *Scheer v. Kelly* 9<sup>th</sup> Circuit 2017; 817 F.3d 183).

There can be no fair judicial review if the State Bar is allowed to indiscriminately "chain charge" and "cherry-pick" cases; or if it is allowed to "pick sides," assuming the role of the judiciary rather than serving the public.

In petitioner's case one should note that the State Bar admittedly on the record wished to disbar petitioner. When the Trial Judge sentenced petitioner to one-year's actual suspension, the State Bar appealed and again requested disbarment despite the fact that the actual amount in dispute had been reduced from \$2460 to \$460.

When the Review Department raised the actual suspension to two (2) years, the State Bar filed two (2) new cases—15-0-14554 and 16-0-12726—written literally days after the conclusion of Case No. 14-0-6548, while the Petition for Certiorari was still pending in this court in Case No. 17-6693.

The Trial Judge dismissed Case No. 16-0-12726 after trial with prejudice. That left Case No. 15-0-14554, the present one, which was originally filed more than 10 years ago. Such indiscriminate charging by the State Bar not only violates due process but creates extra work for this court.

In Case No. 15-0-14554 the complainant against petitioner was not the State Bar, but Fulton Connor, a private adverse party to petitioner's client. There is a procedure for the State Bar to become a complainant against an attorney, but that was not applicable in this case. The \$3000-sanction was purely compensation for attorney's fees to said private party against petitioner and his client.

As the 9<sup>th</sup> Circuit Court explained in *In Re Scheer*, private debts are dischargeable; furthermore, the Chapter 11 filed on November 5, 2015 stayed the collection of the \$3000-sanction until March 29, 2018 when it was converted to Chapter 7. The sanction-claimant was listed as a creditor in the Chapter 7 and the debt was discharged with all other debts on June 30, 2018.

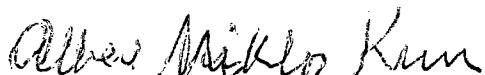
In its September 20, 2017 Decision and Order, the Hearing Department did not even recommend that petitioner pay the sanction (see APPENDIX "B", pp.37-38). It was the Review Department in its September 21, 2018 Opinion and Order that recommended payment of the sanction. However, by that time the sanction had been discharged as of June 30, 2018. The Bankruptcy Court has in rem jurisdiction (11 U.S.C. 362), and there is no provision for "recommendation of repayment of debt" that has already been discharged.

#### CONCLUSION

Petitioner requests the court to consider its ruling in Case No. 17-6693 in connection with reviewing this case, and to grant petitioner the chance to further explain this case.

San Francisco, California  
January 30, 2019

Respectfully submitted,



Albert Miklos Kun  
In Pro Se