ORIGINAL

No.: 20 19-8270

FILED
APR 08 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the

Supreme Court of the United States

EARL MAYBERRY JOHNSON JR.,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

On Petition to the
Florida Supreme Court

PETITION FOR WRIT OF CERTIORARI

Earl Mayberry Johnson Jr., J.D.
Petitioner, Pro Se
525 3rd Street North, #305
Jacksonville Beach, Florida 32250
(904) 525-2479
EarlMayberryJohnson@gmail.com

April 8, 2020

QUESTIONS PRESENTED

1.Whether the State of Florida violated the Petitioner's 14th Amendment due process and equal protection rights when it summarily disbarred the Petitioner in a contempt, without notice and an opportunity to be heard, contrary to this Court's holdings in *In Re Ruffalo*, 390 U.S. 544, 550-51 (1961) and *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 102 (1963).

2.Whether the State of Florida violated the Petitioner's 14th Amendment due process and equal protection rights when it summarily denied the Petitioner's timely motion for rehearing the contempt/disbarment order, entered without notice or an opportunity to be heard, contrary to this Court's holdings in *In Re Ruffalo*, 390 U.S. 544, 550-51 (1961) and *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 102 (1963).

3.Whether the State of Florida violated the Petitioner's Confrontation Clause rights when it summarily denied the Petitioner's timely motion for rehearing the contempt/disbarment order, entered without notice or an opportunity to be heard, contrary to this Court's holdings in *In Re Ruffalo*, 390 U.S. 544, 550-51 (1961) and *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 102 (1963).

4.Whether the State of Florida's Rule on Service of Process for Attorney Discipline actions is unconstitutional as applied, in contrary to this Court's holdings in *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985) and *generally Bush v. Gore*, 531 U.S. 98 (2000).

PARTIES INVOLVED

The style of the case identifies the parties involved. Petitioner Earl Mayberry Johnson Jr. is an individual Florida resident who is a person formerly licensed to practice law in Florida (member number 6040), admitted in July 1994 and disbarred November 2019. Respondent, The Florida Bar, is empowered by the judicial branch of the State of Florida government to receive, investigate and, where indicated, prosecute complaints for professional misconduct against Florida attorneys, ultimately adjudicated by the Florida Supreme Court.

RELATED CASES

The consolidated case of *The Florida Bar v. Earl Mayberry Johnson Jr.*, SC18-32 & SC18-1168, in the Florida Supreme Court, unreported.

TABLE OF CONTENTS

TABLE OF CONTENTS - Continued

Page

TABLE OF CONTENTS - Continued

TABLE OF CONTENTS - Continued

TABLE OF CONTENTS - Continued

Page

TABLE OF CONTENTS - Continued

APPENDIX TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS - Continued

APPENDIX TABLE OF CONTENTS-Continued

page

TABLE OF AUTHORITIES

CASES **Page**

TABLE OF AUTHORITIES-continued

page

TABLE OF AUTHORITIES-continued

page

TABLE OF AUTHORITIES-continued

page

CONSTITUTIONAL PROVISIONS

STATUTES

JUDICIAL RULES

TABLE OF AUTHORITIES-continued

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Earl Mayberry Johnson Jr., respectfully petitions for a writ of certiorari to review the judgment of the Florida Supreme Court in this case.

OPINIONS BELOW

The July 11, 2019 order of the Florida Supreme Court (App. 1a), suspending the Petitioner for one year, is not reported. *The Florida Bar v. Earl Mayberry Johnson Jr.,* Case Nos. SC18-32/SC18-1168.

The October 7, 2019 order of the Florida Supreme Court (App. 19a), to show cause on the Respondent's Petition for contempt of court in the combined case above, is not reported. *The Florida Bar v. Earl Mayberry Johnson Jr.,* Case Nos. SC19-1695.

The November 18, 2019 order of contempt of the Florida Supreme Court (App. 28a), summarily disbarring the Petitioner, is not reported. *The Florida Bar v. Earl Mayberry Johnson Jr.,* Case Nos. SC19-1695.

The January 10, 2020 order of the Florida Supreme Court (App. 39a), summarily denying the Petitioner's motion for rehearing (amended), is not reported. *The Florida Bar v. Earl Mayberry Johnson Jr.*, Case Nos. SC19-1695.

JURISDICTION

On January 10, 2020, the Florida Supreme Court entered its order summarily denying Petitioner's timely motion for rehearing (amended). (App. 39a). The issue presented is justiciable, since the claim of present right to remain a practicing member of a Bar of a State and the denial of that right is a controversy. *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 102 (1963). This Court has jurisdiction to review the decision of the Florida Supreme Court pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISION INVOLVED

- U.S. Const. amend. XIV, § 1

"[N]or shall any state deprive any person of life, liberty, or property, without due process of law ... "

STATEMENT OF THE CASE

In this case, on August 12, 2019, the Petitioner began a concurrent 1-year suspension from the practice of law in the consolidated case of *The Florida Bar v. Earl Mayberry Johnson Jr.*, SC18-32 & SC18-1168. (App. 1a). The order of suspension sets out a 30 day "winddown" period, during which the Petitioner is obligated to notify courts, clients and counsel of the suspension. (App. 1a).

However, during the "winddown" period, the Petitioner suffers severe herniation and spinal impingement, and undergoes emergency spinal discectomy at Mayo Clinic on July 31, 2019. On August 5, 2019, after a period of heavy sedation, the Petitioner *pro se* files an emergency motion, in the Florida Supreme Court consolidated case to extend the winddown period based the temporary medical incapacity; the neurosurgeon's August 2, 2019, letter attached to the motion "is to certify that Earl

Johnson may not return to work until seen at his post operative appointment in 3 weeks. He has had recent surgery and this will interfere with his daily activities at work." (App. 3a). The emergency motion is denied. (App. 10a).

Unbeknownst to the Petitioner, three (3) weeks later, on or about October 4, 2019, the Respondent files a new disciplinary petition, *Bar v. Johnson*, Case No. SC19-1695, against the Petitioner, for an order to show cause why the Petitioner should not be held in contempt of court in the consolidated case SC18-32/SC18-1168. (App. 11a).

In "count I," the petition for contempt alleges that the Petitioner's suspension began August 12, 2019 and, that same day, the Petitioner filed a "Motion for Relief from August 9, 2019 Order Based Upon the Undersigned' [sic] Emergency Surgery and Temporary Medical Incapacitation Under Oath" in an unrelated Florida state court family law case. (App. 12a). The Respondent further

claims in the petition that Petitioner failed to ever inform a family court of the 1-year suspension. (App. 12a).[1] In counts II and III, the petition for contempt alleges that the Petitioner has not provided the Respondent an affidavit of persons and entities notified by the Petitioner of the suspension and is therefore "unaware" of whether the Petitioner has done so. (Apps. 13a-16a).

---

[1] Discussed *supra*, the allegations of the Respondent's petition were not worthy of a required "willful and deliberate" finding. Within the listing of clients, counsel and courts notified of Petitioner's the 1-year suspension, and provided multiple times to Respondent, are "Daniel Woolfork ... " and "Judge Blechman 2003DR017887." (Apps. 20a, 24a, 26a). Thus contrary to the count I allegations of the Respondent's petition to show cause, the Petitioner provided the Orange County family law court notice of the 1-year suspension. (Apps. 24a, 26a). Further a hearing a would have revealed counts II and III to be just as weak as the Respondent in fact received a listing of courts, clients and counsel notified of the 1-year suspension and failed to inform the Florida Supreme Court of that fact.

On October 7, 2019, the Florida Supreme Court issued an unentitled one (1) paragraph order: "The Florida Bar having filed its Petition for Contempt and Order to Show Cause, this is to command you, Earl Mayberry Johnson, Jr., to show cause on or before October 22, 2019, why you should not be held in contempt of this Court or other discipline imposed for the reasons set forth in The Florida Bar's Petition. The Florida Bar may serve its reply on or before November 1, 2019." (App. 19a).

At the time, the Petitioner is unaware of the Respondent's petition for contempt in case SC19-1695, its erroneous allegations, or the order to show cause. As a result, Petitioner did not respond to the October 7, 2019 order. (Apps. 28a & 40a).

Rather, the following day, on October 8, 2019, the Petitioner provides the Respondent proof of compliance with the suspension notice requirements and a listing of courts, counsel and clients noticed on the 1-year suspension, and files a notice of compliance in the Florida Supreme Court consolidated case SC18-32/SC18-1168, stating that "the undersigned has provided notice of

suspension to clients and courts, also providing copies of the Order of July 11, 2019." (Apps. 24a & 26a).

The Florida Supreme Court never acknowledged the Petitioner's notice of compliance, filed in the consolidated case SC18-32/SC18-1168 and served on counsel for the Respondent, Carlos Leon, one (1) day after the order to show cause was issued in the new case. Neither did the Respondent inform the Florida Supreme Court that it received the Petitioner's notice of compliance and a listing of clients, courts and counsel that had been notified of the 1-year suspension. (Apps. 24a & 26a).

Moreover, in keeping with previous conduct described *supra* the Respondent' counsel did not inform the Florida Supreme Court that the new petition meant to be served upon the Petitioner had been returned to him unserved. (Apps. 48a, 49a). In its petition, the Respondent's counsel certified that he served the Petitioner *via* United States Postal Service, certified mail, tracking number 70171450000078210070. (App. 17a). However, the tracking history shows that the disciplinary petition arrived at the Jacksonville Florida USPS

distribution center on October 5, 2019, but that it departed Jacksonville just over one day later, on October 7, 2019, at 2:57 am, without being delivered to the Petitioner, returning to the Respondent on or about October 10, 2019. (App. 40a).[2] Thus, the Respondent understood the Petitioner was never served pursuant to the State's rules, but failed to inform the disciplinary body of that fact.[3] Rather, the Respondent sat on Petitioner's rights without informing the disciplining body, resulting in summary disbarment without a hearing or an opportunity to be heard. [4]

---

[2] Though according to the USPS the Respondent received the returned petition in Tallahassee on or about October 10, 2019, Respondent never informed the Florida Supreme Court that the Petitioner had not been properly served. (Apps. 40a, 41a).

[3] Florida Rule of Civil Procedure 1.070 (i)(2)(B), 48.031, *Fla. Stat.*, and Rule 3-7.11, Regulating the Florida Bar, all govern service of disciplinary actions upon attorneys and require that petitions be served upon the responding attorney by certified mail. *Id.*

[4] In the consolidated case below, the Petitioner's former counsel accused the Respondent's counsel, Carlos Leon, of violating "known principles of ethics, decorum, practice and professionalism ... ,"

The Respondent never filed any proof of service of the petition or order to show cause upon the Petitioner in the contempt case (SC19-1695).

Nevertheless, on November 18, 2019, the Florida Supreme Court enters an order finding the Petitioner in contempt of court in the new case (SC19-1695), and summarily disbarring the Petitioner, though he was never served the new case and filed a notice of compliance in the consolidated case the day after the order to show cause was issued. (App. 28a).

On December 4, 2019, through former counsel Rumberger Kirk & Caldwell PA, Petitioner filed a timely motion for rehearing (amended), pursuant to Florida Rule of Appellate Procedure 9.330 (a), arguing that the lower court had "overlooked or misapprehended several points in reaching this decision [of disbarment]." (App. 30a).

---

indicating that "I have been practicing nearly 30 years and have never seen any lawyer do this-let alone bar counsel." (App. 48a). Likewise, the Petitioner previously complained to no avail of the Respondent's counsel's altering and withholding of evidence in the consolidated case. (App. 49a).

Among other things, the motion for rehearing attaches the October 8, 2019 Notice of Compliance filed by the Petitioner in the consolidated case, setting forth that the Petitioner provided notices "of suspension to clients and courts and [] copies of the Order of July 11, 2019. On the same date, Respondent sent an email to Carlos Leon, bar counsel, providing a 'listing of clients and courts that have been provided a copy of the order of suspension.'" (Apps. 30a-34a).

Salient to the Respondent's allegations in the show cause petition, within the listing of courts, clients and cases notified of Petitioner's 1-year suspension are "Daniel Woolfork ... " and "Judge Blechman 2003DR017887." (Apps. 20a, 24a, 26a). Thus contrary to the count I allegations of Respondent's petition to show cause, the Petitioner informed the Orange County family law court of the 1-year suspension. (App. 12a).

In the interim, by agreement between then-counsel for the Petitioner and counsel for the Respondent, on December 23, 2019, Petitioner submitted an affidavit to the Respondent, attesting to Petitioner's compliance with

suspension notice requirements and attaching the listing of clients and courts provided such notice, originally sent to the Respondent on October 8, 2019. (Apps. 35a-38a). Notably the Petitioner's affidavit addresses and negates most all the allegations of the Respondent's show cause petitioner. However, the Respondent never files the affidavit and fails to otherwise inform the Florida Supreme Court that all the allegations had been mooted.

Acting in relative darkness and disregarding a chance to afford the Petitioner due process in the contempt proceeding, on January 10, 2020, the Florida Supreme Court summarily denied the motion for rehearing without a hearing, stating simply that the motion is "hereby denied." (App. 39a).

REASONS FOR GRANTING THE WRIT

"Attorney disciplinary proceedings are subject to due process scrutiny." *In re Bithoney*, 486 F.2d 319, 323 (1st Cir. 1973)(*citing In re Ruffalo*, 390 U.S. 544 (1968)). "[I]n view of the gravity of the punishment which may be meted out ... which includes stiff fines, or even suspension or disbarment with all the consequential damage which that

entails, the test which must be employed as to the constitutionality of the disciplinary machinery to be used must be a very severe one." *Id.* Disbarment is "the ultimate penalty" in bar disciplinary matters. *See The Florida Bar v. McIver*, 606 So. 2d 1159, 1160 (Fla. 1992). "[Due process] is a rule of natural justice and is applicable to cases where a proceeding is taken to reach the right of an attorney to practice his profession ..." *Bradley v. Fisher*, 80 U.S. 335 (1871).

This Court recognized in *Ruffalo* that "disbarment, designed to protect the public ... [and] is a punishment or penalty imposed on the lawyer ..." *Ruffalo*, 390 U.S. at 550-51. It does not protect the public where an attorney is summarily disbarred upon a show cause order for contempt on a petition, without proper notice or any hearing on the petition or order.

A. The State of Florida Violated the Due Process Provisions and Equal Protection Clause of the United States Constitution When It Summarily Disbarred the Petitioner Upon a Show Cause Order, Without Notice and An Opportunity to Be Heard

"A State cannot exclude a person from the practice of law or from any other occupation ... for reasons that

contravene the Due Process or Equal Protection Clause[s] of the Fourteenth Amendment." *Schware v. Bd. Of Bar Exam'rs*, 353 U.S. 232, 238-39 (1957). Here, the lack of notice and an opportunity to be heard on the petition and order to show cause resulting in summary disbarment violate the Petitioner's due process and Equal Protection rights.

1. The State Failed to Apply the Correct Florida Civil Contempt Standard of "Willful and Deliberate" Conduct Which Violates Due Process and Equal Protection

Normally to satisfy the requirements of procedural due process, factual allegations against the attorney in a disciplinary proceeding must be proved by "clear and convincing" evidence, "where particularly important individual interests or rights are at stake," *Herman & MacLean v. Huddleston*, 9 U.S. 375,389-90 (1983), such as attorney disciplinary proceedings. *Florida Bar v. Rayman*, 238 So.2d 594 (Fla. 1970); *State ex. Rel. Florida Bar v. Bass*, 106 So.2d 77 (Fla. 1958).

However, the matter here was a *contempt proceeding*. (Apps. 12a, 21a, 30a). Under Florida law, due process in contempt proceedings requires an allegation and

determination that the Petitioner was in "willful non-compliance [with a court order]" that the non-compliance was "deliberate," and that the Petitioner had "the present ability to comply."[5] *Leo v. Leo*, 4D10-5127, p. 2 (Fla. 4th DCA, Feb. 8, 2012); *Voight v. Voight*, 505 So. 2d 626 (Fla. 3d DCA 1987); *Whitby v. Infinity Radio, Inc.*, 961 So. 2d 349, 355 (Fla. 4th DCA 2007).

Nowhere in the Respondent's petition for a contempt show cause order does it allege that Petitioner was in "willful non-compliance," that the non-compliance was "deliberate," and that the Petitioner had "the present ability to comply." (App. 11a). Rather, in the subject petition for contempt, the Respondent claims the "Florida Bar is **unaware** whether respondent notified any clients, opposing counsel and tribunals of his suspension pursuant to Rule 3-5.1 (h)." (App. 16a ; emphasis added).[6]

---

[5] Here "compliance" relates to the 1-year suspension winddown period notice requirements of the combined related cases. (App. 1a).

[6] On the contrary, by October 8, 2019, the Respondent was well aware that Petitioner had notified all clients, courts and opposing counsel for the 1-year suspension, having been served with the Petitioner' s notice of compliance, filed in the related combined case on October 8, 2019, served upon the Respondent's counsel and emailed to the Respondent's counsel on October 8, 2019. (Apps. 24a, 26a).

Likewise, and moreover, the November 18 2019 order, finding the Petitioner in contempt of court on the 1-year suspension order in the combined cases and summarily disbarring the Petitioner for same, makes no finding of "willful non-compliance," that the non-compliance was "deliberate," or that the Petitioner had "the present ability to comply," as required. (App. 28a). *Leo v. Leo*, 4D10-5127, p. 2 (Fla. 4th DCA, Feb. 8, 2012); *Voight v. Voight*, 505 So. 2d 626 (Fla. 3d DCA 1987); *Whitby v. Infinity Radio, Inc.*, 961 So. 2d 349, 355 (Fla. 4th DCA 2007).

The State thus failed to apply the contempt of court "willful and deliberate" standard in summarily disbarring the Petitioner. Accordingly the Petitioner's due process and Equal Protection rights are violated.

2. The Petitioner Had No Notice of the New Disciplinary Petition Seeking Contempt for Failing to Comply with the Winddown Notice Requirements

In this case, at the beginning of the Petitioner's 1-year suspension in the combined case, the Respondent filed a new disciplinary petition seeking contempt in the Florida Supreme Court, resulting in Petitioner's disbarment upon

a show cause order. However Respondent never served it or the show cause order upon the Petitioner.

This seminal nature of due process was strongly expressed by Mr. Justice Jackson, dissenting in *Shaughnessy v. Mezei*, 345 U.S. 206, 224 (1953):

"[p]rocedural fairness, if not all that originally was meant by due process of law, is at least what it most uncompromisingly requires. Procedural due process is more elemental and less flexible than substantive due process. It yields less to the times, varies less with conditions, and defers much less to legislative judgment. Insofar as it is technical law, it must be a specialized responsibility within the competence of the judiciary on which they do not bend before political branches of the Government, as they should on matters of policy which comprise substantive law...Only the untaught layman or the charlatan lawyer can answer that procedures matter not. Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied. Indeed, if put to the choice, one might well prefer to live under Soviet substantive law applied in good faith by our common-law procedures than under our substantive law enforced by Soviet procedural practice."

This Court instructs that due process must be met when removing or excluding an attorney from the practice of law. *Willner,* 373 U.S. at 102 . In *Willner* this Court held a "State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection

Clause of the Fourteenth Amendment," *citing Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-39 (1957).

Furthermore " ... courts ... have a special obligation to respect, the demands of due process." *Willner*, 373 U.S. at 106 (1963)(Goldberg, J., concurring); *see also Schware v. Bd. of Bar Exam'rs*, 353 U.S. 232, 238-39 (1957)("A State cannot exclude a person from the practice of law or from any other occupation . . . for reasons that contravene the Due Process or Equal Protection Clause[s] of the Fourteenth Amendment.").

This Court "first stated that the opportunity to practice law is a 'fundamental' right within the meaning of *Baldwin v. Montana Fish & Game Comm'n*, 436 U.S. 371 (1978)." *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985).

Attorney disciplinary cases are "adversary proceedings of a quasi-criminal nature" thus there is a particular emphasis on due process. *In re Ruffalo*, 390 U.S. 544, 550-51 (1961). As this Court long ago made clear, "before a judgment disbarring an attorney is rendered he should have notice of the grounds of complaint against him

and ample opportunity of explanation and defence" (sic). *Ex parte Robinson*, 86 U.S. 505, 512 (1873). "This is a rule of natural justice, and should be equally followed when proceedings are taken to deprive him of his right to practice his profession, as when they are taken to reach his real or personal property." *Id.*

The principle that there must be proper notice before judgment, and hearing or opportunity of being heard before judgment, is essential to the safety of all private rights. Without its observance no one would be safe from oppression wherever power may be lodged. *Id.*

Here, notice requirements under due process are not met because the Petitioner was not served as mandated by Florida Rule. Florida Rule of Civil Procedure 1.070 (i)(2)(B), 48.031, *Fla. Stat.*, and Rule 3-7.11, Regulating the Florida Bar, all govern service of disciplinary actions upon attorneys and require that petitions be served upon the responding attorney by certified mail. *Id.*

In its petition, the Respondent certified that it served Petitioner via United States Postal Service, certified mail, tracking number 70171450000078210070. (App.

17a). However, the tracking history shows that the disciplinary petition arrived at the Jacksonville Florida USPS distribution center on October 5, 2019, but that it departed Jacksonville just over one day later, on October 7, 2019, at 2:57 am, without being delivered to the Petitioner, returning to the Respondent on October 10, 2019. (App. 40a).[7] Thus, Respondent Petitioner was never served pursuant to the Respondent's own rules.

The lack of service of the Respondent's disciplinary petition to show cause, resulting in summary contempt/disbarment without notice or hearing, is an unavoidable deprivation of Petitioner's due process rights and Equal Protection rights. *Ex parte Robinson*, 86 U.S. 505, 512 (1873).

Likewise, Petitioner was not served a copy of the order to show case as required by Florida Rule of Civil Procedure 1.070 (i)(2)(B) and Rule 3-7.11, Rules Regulating the Florida Bar. Respondent did not forward the order to Petitioner or inform the lower court, though it was aware

[7] Though according to the USPS the Respondent received the returned petition in Tallahassee on October 10, 2019, Respondent never informed the Florida Supreme Court that the Petitioner had not been properly served. (App. 40a).

that Petitioner had not been properly served because it had received the returned petition on or about October 10, 2019. (App. 41a). Thus due process is abrogated as to notice of the order to show cause. Attorney disciplinary cases are "adversary proceedings of a quasi-criminal nature" thus there is a particular emphasis on due process. *In re Ruffalo*, 390 U.S. 544, 550-51 (1961).

3. Reviewing the Order After-the-Fact, It Does Not Provide Due Process Notice that It Is An Order to Show Cause of the Court or that Disbarment was a Potential Outcome

The subject order to show cause provides inadequate notice that it is an order to show cause of the court or that summary disbarment was a potential outcome, and therefore it violates the Petitioner's due process rights.

On the matter of due process notice of potential disbarment as an outcome to a disciplinary proceeding, Justice Harlan, concurring in the result in *Raffalo*, wrote:

> I see no need to decide whether the notice given petitioner of the charge that formed the basis of his subsequent federal disbarment was adequate to afford him constitutional due process in the state proceedings. For I think that *Theard v. United States,* 354 U. S. 278, leaves us free to hold, as I would, that such notice should not be accepted as adequate for the purposes of disbarment

> from a federal court. On that basis, I concur in the judgment of the Court.

Ruffalo, 390 U.S. at 552.

Here the order is unentitled with no heading. It bears the name of no Florida justice. Nor does the subject order indicate that disbarment is an intention of the lower court or even a potentially. (App. 19a).

Rather the order reads: "on or before October 22, 2019, why you should not be held in contempt of this Court or other discipline imposed for the reasons set forth in The Florida Bar's Petition ..." (App. 19a). Without more, the Petitioner was disbarred approximately 45 days later for failing to respond to the order. Hence the order to show cause is ambiguous as it sets forth no fair indication that disbarment (much less summary disbarment) was a potential outcome, and for that reason alone is contrary to Petitioner's due process and Equal Protection rights. Thus absence of the *reach* of the disciplinary action via notice, is also a violation of due process. *Ruffalo, infra.*

On notice of potential disciplinary sanctions, this Court held in *Ruffalo*, "petitioner had no notice that his

[alleged conduct] would be considered a disbarment offense." *Id.*, 390 U.S. at 550. Just as in *Ruffalo*, the subject order to show cause is devoid of any reasonable indication that summary disbarment without a hearing was a potential sanction. Thus the reach the order to show cause is not properly noticed to meet due process requirements. *Id.*

4. Petitioner was Provided No Hearing or Even Opportunity to Be Heard on the Resulting Show Cause Order Nor the Penalties Thereunder

Further there was utterly no hearing or opportunity to heard in the lower court, either as to: 1) the order to show cause; or 2) the penalties thereunder.

Even though the Respondent had received the returned petition meant for Petitioner on October 10, 2019 (App. 44a), Respondent failed to inform the Florida Supreme Court that Petition had not been served. Nor did Respondent otherwise forward a copy of the order to show cause to the Petitioner.

To obey due process requirements, a hearing must be held "at a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976).

"A hearing is not meaningful if a[n] [accused] is given inadequate information about the basis of the charges against him." *Taylor v. Rodriguez*, 238 F.3d 188, 193 (2d. Cir. 2001). Put another way, for a hearing to be meaningful, "the charge must be known before the proceedings commence" so the accused has a reasonable opportunity to prepare his defense. *Ruffalo*, 390 U.S. at 550-51 (emphasis added).

Further, Petitioner's due process rights afford a hearing on *the punishment*. Just as a defendant in a criminal matter is entitled to a full evidentiary hearing on punishment, "[t]hese are adversary proceedings of a *quasi*-criminal nature. *Cf. In re Gault,* 387 U. S. 1, 387 U. S. 33." *Ruffalo*, 390 U.S. at 551. Here the order of contempt and the order imposing the sanctions of disbarment are one in the same. (App. 30a). Thus arguendo, even where the Petitioner failed to respond to the order to show cause *after proper notice*, the Petitioner was nonetheless entitled to a hearing on sanctions to comply with due process.

5. The State's Failure to Conduct an Evidentiary Hearing in the Contempt Proceeding Violates

Petitioner's Due Process and Equal Protection Rights

In addition to the standard of proof, Florida has a heightened due process standard in civil contempt proceedings that requires the Petitioner have been afforded an *evidentiary* hearing. Here, the State violated its own due process standards related to contempt of court sanctions. In *Voight v. Voight*, 505 So. 2d 626 (Fla. 3d DCA 1987), the court reversed an order of contempt where trial court failed to conduct evidentiary hearing. *Id.* "A person facing civil contempt sanctions is entitled to notice and an opportunity to be heard." *Whitby v. Infinity Radio, Inc.*, 961 So. 2d 349, 355 (Fla. 4th DCA 2007).

Here not only was a hearing required to satisfy due process and Equal Protection standards, under Florida law a full evidentiary hearing was mandated to determine whether the Petitioner was in contempt. *Voight; Whitby.* The State's failure to do so is a violation of Florida's heightened civil contempt due process standards met to be standardly applied throughout state civil litigation. *See generally, Bush v. Gore*, 531 U.S. 98 (2000), wherein this

Court ruled that Florida's use of different standards of counting ballots in different counties violated the Equal Protection Clause. Here, failure to provide the evidentiary hearing mandated for all Florida civil litigants violates the Equal Protection Clause. *Id.*

B. The State of Florida Violated the Due Process and Equal Protection Provisions of the United States Constitution When It Summarily Denied the Petitioner's Timely-Motion for Rehearing of the Order of Contempt/Disbarment

Disregarding the chance to afford the Petitioner due process, after the entry of the summary order of contempt/disbarment without notice or hearing, the Florida Supreme Court instead summarily denied the Petitioner's timely-motion for rehearing (amended).

On December 4, 2019, through former counsel Rumberger Kirk & Caldwell PA, the Petitioner filed a timely motion for rehearing, pursuant to Florida Rule of Appellate Procedure 9.330 (a), arguing that the lower court had "overlooked or misapprehended several points in reaching this decision [of disbarment upon the show cause order]." (Apps. 30a, 31a).

Among other things, the motion for rehearing attaches the October 8, 2019 notice of compliance filed by the Petitioner in the related combined disciplinary cases, one day after the order to show cause was issued in the case here, and setting forth that the Petitioner provided notices "of [the 1-year] suspension to clients and courts and [] copies of the Order of July 11, 2019. On the same date, Respondent [Petitioner at bar] sent an email to Carlos Leon, bar counsel, providing a 'listing of clients and courts that have been provided a copy of the order of suspension.'" (Apps. 30a, 31a).

Petitioner's October 8, 2019 Notice of Compliance (App. 24a), filed1 day following the show cause order, should have been considered by the Florida Supreme Court, as a response (albeit filed in the related consolidated case SC18-32 &SC18-1168) to the order to show cause. Instead, without hearing or even proof of service or actual notice, the lower court summarily entered the order of contempt with the sanction of disbarment; and likewise, summarily denied the timely motion for rehearing although the grounds were well-taken.

More, the Petitioner's failure to respond to the petition or show cause order is akin to a default for not responding to a petition or complaint. Well-settled policy of Florida *stare decisisa* is to adjudicate disputes on their merits in such a case. *Coggin v. Barfield,* 8 So. 2d 9 (Fla. 1942):

> The true purpose of the entry of a default is to speed the cause thereby preventing a dilatory or procrastinating defendant from impeding the plaintiff in the establishment of his claim. It is not procedure intended to furnish an advantage to the plaintiff so that a defense may be defeated or a judgment reached without the difficulty that arises from a contest by the defendant.

Id. at 11. *See also North Shore Hosp., Inc. v. Barber,* 143 So. 2d 849 (Fla. 1962)(if there is any reasonable doubt in the court's discretion whether to set aside a default judgment, the court should err on the side of letting the matter go forward on the merits. *Id.* at 853 (*cited in Hanft v. Church*, 671 So.2d 249, 250 (Fla. 3d DCA 1996); *Ole, Inc. v. Yariv*, 566 So. 2d 812 (Fla. 3d DCA 1990); *Florida Aviation Academy v. Charter Air Center, Inc.,* 449 So. 2d 350, 352-53 (Fla. 1st DCA 1984); *County Nat'l Bank v. Sheridan, Inc.,*

403 So. 2d 502 (Fla. 4th DCA 1981); Edwards v. City of Fort Walton Beach, 271 So. 2d 136 (Fla.1972); *Doane v. O'Donnell,* 467 So. 2d 424 (Fla. 4th DCA 1985); *Broward County v. Perdue,* 432 So.2d 742 (Fla. 4th DCA 1983). Florida courts universally recognize the liberality of setting aside defaults if there is excusable neglect and a meritorious defense. *Cinkat Transp., Inc. v. Maryland Cas. Co.,* 596 So.2d 746, 747 (Fla. 3d DCA 1992); *Gulf Maintenance & Supply, Inc. v. Barnett Bank of Tallahassee,* 543 So. 2d 813 (Fla. 1st DCA 1989); *EGF Tampa Assocs. v. Edgar V. Bohlem,* 532 So. 2d 1318 (Fla. 2d DCA 1988); *Reicheinbach v. Southeast Bank, N.A.,* 462 So. 2d 611 (Fla. 3d DCA 1985). *See also* H. Trawick, *Florida Practice & Procedure.* § 25-2, 25-3 (1985). The First District Court of Appeal addressed a similar scenario in *Gulf Maintenance,* 543 So. 2d at 813. The court, quoting *Coggin v. Barfield,* 8 So. 2d 9, 11 (Fla. 1942), reiterated that the "true purpose of the entry of a default is to speed the cause . . . not . . . to furnish an advantage to the plaintiff so that a defense may be defeated or a judgment reached without the difficulty that arises from a contest by the defendant." *Id.* at 816.

The Eleventh Circuit also recognizes a strong policy of determining cases on their merits and defaults are viewed with disfavor. *In re Worldwide Web Systems, Inc.,* 328 F.3d 1291, 1295 (11th Cir. 2003) (citations omitted); *African Methodist Episcopal Church, Inc. v. Ward*, 185 F.3d 1201 (11th Cir.1999). This Court has also so confirmed. Under Rule 60(b)(1), Fed.R.Civ.P., "excusable neglect is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence." *Cheney v. Anchor Glass Container Corp.,* 71 F.3d 848, 850 (11th Cir. 1996) (*quoting Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 394 (1993)). And whether a party's neglect of a deadline may be excused is an equitable decision turning on "all relevant circumstances surrounding the party's omission." *Pioneer Investment*, 507 U.S. at 395.

Here, argued *infra*, the petition was at the Jacksonville regional USPS for just over 1 day before it was returned to Respondent undelivered; Petitioner filed a notice of compliance in the related consolidated case and served it upon counsel for Respondent, along with an email

attaching the listing of cases and courts notified of the 1-year suspension, 1 day after the entry of the order to show cause; Petitioner's well-taken timely-motion for rehearing was denied without hearing; Respondent failed to submit to the lower court, the Petitioner's December 23, 2019 affidavit of compliance with the notice requirements complained of in the petition (executed by agreement of the parties); and, Respondent's allegations fail against the record. (Apps. 24a, 26a, 30a, 40a).

Had the matter been adjudicated on the merits, the allegations of Respondent's petition would have been proven meritless. Within the listing of clients and cases notified of Petitioner's 1-year suspension, and provided multiple times to the Respondent,[8] are "Daniel Woolfork ... " and "Judge Blechman 2003DR017887." (Apps. 12a, 20a, 24a). Thus contrary to the count I allegations of Respondent's petition to show cause, the Petitioner

[8] On October 8, 2019 Petitioner emailed the Respondent the listing of courts, counsel and clients noticed of the 1-year suspension, along with the notice of compliance with the suspension order. (Apps. 26a & 24a).

informed the Orange County family law court of the then-suspension. (App. 20a).

The Petitioner's due process and equal protection rights however mandated that the State grant the Petitioner's motion for rehearing and conduct an evidentiary hearing on the matter, applying the willful and deliberate standard. *See generally In re Ruffalo*, 390 U.S. 544, 550-51 (1961); *Leo v. Leo*, 4D10-5127, p. 2 (Fla. 4th DCA, Feb. 8, 2012); *Voight v. Voight*, 505 So. 2d 626 (Fla. 3d DCA 1987); *Whitby v. Infinity Radio, Inc.*, 961 So. 2d 349, 355 (Fla. 4th DCA 2007).

C. The State of Florida Violated the Confrontation Clause of the United States Constitution By Summarily Disbarring Petitioner Upon an Order to Show Cause Without Notice or Hearing, and Thereafter Summarily Denying the Petitioner's Timely-Motion for Rehearing

As argued *infra*, this Court likened attorney disciplinary proceedings, such as the contempt proceeding here, to criminal proceedings. *In re Ruffalo*, 390 U.S. 544, 550-51 (1961) (attorney disciplinary cases are "adversary proceedings of a quasi-criminal nature"), thus there is a

particular emphasis on due process and fair trial considerations under the 6th Amendment. *Id.*

This Court has long enforced the basic goal of confronting the accuser as an essential element of procedural due process in various settings, including attorney disciplinary actions. *Ruffalo*; *Willner*; *Greene v. McElroy*, 360 U.S. 474 (1959) (revocation of security clearance); *In re Oliver*, 333 U.S. 257 (1948) (state contempt proceeding); *Bridges v. Wixon*, 326 U.S. 135 (1945) (deportation proceeding). In 1965, this Court rested any question of the applicability of the Confrontation Clause to the states in *Pointer v. Texas*, 380 U.S. 400 (1965), confirming that the Sixth Amendment requirement was incorporated into the 14th Amendment. *Id.*

Here, the utter failure to allow the Petitioner to confront the accuser, namely the Respondent,[9] led to the finding of contempt of court and "death sentence" to a 25 year legal career, based upon erroneous and flimsy allegations that are refuted in this record. The resulting

[9] As a petition for contempt for failing to comply with pre-suspension notice procedures in the related combined case, there was no underlying complaining client or other source. Rather the Respondent, through its counsel Carlos Leon, is the accusing witness.

injustice underscores the absolute necessity to defend against the abridgement of the Confrontation Clause where any fundamental right is at stake. Without this most basic of due processes, one is essentially convicted upon an indictment in the mail without a hearing to confront the accuser.

D. Alternatively, The State's Rule on Service of Process for Attorney Disciplinary Actions is Unconstitutional as Applied

The method by which the State of Florida allows for service of attorney disciplinary complaints, by mail, is unique in Florida law. Other service of process of court actions in Florida are controlled by 48.031, *Fla. Stat.* requiring actual personal service of the petition upon the respondent, designee or spouse; service by mail requires a specific waiver by the responding party.[10] Further the Florida Rules Civil Procedure require that the person

---

[10] Service of process generally; service of witness subpoenas.—

(1)(a) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode

...

(b) An employer, when contacted by an individual authorized to serve process, shall allow the authorized individual to serve an employee in

serving the complaint, petition or subpoena be a sworn officer or otherwise appointed by the court to do so.[11]

---

a private area designated by the employer. An employer who fails to comply with this paragraph commits a noncriminal violation, punishable by a fine of up to $1,000.

(2)(a) Substituted service on the spouse of the person to be served may be made at any place in a county by an individual authorized under s. 48.021 or s. 48.27 to serve process in that county, if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests such service or the spouse is also a party to the action, and if the spouse and person to be served reside together in the same dwelling, regardless of whether such dwelling is located in the county where substituted service is made.

(b) Substituted service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two attempts to serve the owner are made at the place of business.

48.031, Fla. Stat.

[11] 1.070 Process:
(a) Summons; Issuance. Upon the commencement of the action, summons or other process authorized by law shall be issued forthwith by the clerk or judge under the clerk's or the judge's signature and the seal of the court and delivered for service without praecipe.

(b) Service; By Whom Made. Service of process may be made by an officer authorized by law to serve process, but the court may appoint any competent person not interested in the action to serve the process. When so appointed, the person serving process shall make proof of service by affidavit promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service shall not affect the validity of the service. When any process is returned not executed or returned improperly executed for any defendant, the party causing its issuance shall be entitled to such additional process against the unserved party as is required to effect service.

Fla.R.Civ.P. 1.070.

A failure of proper service under these Florida rules is a routine basis to set aside defaults and judgments. "Because of the fundamental constitutional implications of service of process, 'statutes governing service of process are to be strictly construed and enforced.'" *McDaniel v. FirstBank Puerto Rico*, 96 So.3d 926, 928 (Fla. 2d DCA2012) (*quoting Shurman v. Atlantic Mortg. & Inv. Corp.*, 795 So.2d 952, 954 (Fla.2001)).

On the other hand, service of disciplinary actions against Florida attorneys is allowed by certified mail, with no requirement of an affidavit of service.[12] As shown here,

---

[12]RULE 3-7.11 GENERAL RULE OF PROCEDURE

...

(b) Process. Every member of The Florida Bar must notify The Florida Bar of any change of mailing address, e-mail address (unless the lawyer has been excused by The Florida Bar or the Supreme Court of Florida from e-filing and e-service), and military status. The Florida Bar may serve notice of formal complaints in bar proceedings by certified U.S. Postal Service mail return receipt requested to the bar member's record bar address unless the Supreme Court of Florida directs other service. Every lawyer of another state who is admitted pro hac vice in a specific case before a court of record in Florida may be served by certified U.S. Postal Service mail return receipt requested addressed to the lawyer in care of the Florida lawyer who was associated or appeared with the lawyer admitted pro hac vice or addressed to the Florida lawyer at any address listed by the lawyer in the pleadings in the case. Service of process and notices must be directed to counsel whenever a person is represented by counsel. (c) Notice in Lieu of Process. Every member of The Florida Bar is within the jurisdiction of the Supreme Court of Florida and its agencies under these rules, and service of process is not required to obtain jurisdiction

this method of notice to an attorney of a pending disciplinary action is woefully insufficient to assure the requisite due process.

Nor does the rule for service of disciplinary actions upon Florida attorneys meet a rational-relation test, in that service of process *via* a sworn officer and an affidavit of service or praecipe (as provided to every other Florida litigant) is the obviously preferred method of service. *See generally Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985)(state bar rule unconstitutional as violating Commerce Clause); *Bush v. Gore*, 531 U.S. 98 (2000)(Florida ballot recount unconstitutional where different methods employed in different counties).

As applied here, Rule 3-7.11 Regulating the Florida Bar is unconstitutional, because it denies to the Petitioner and all Florida attorneys, "within its jurisdiction the equal

---

over respondents in disciplinary proceedings. The Florida Bar will serve the complaint on the respondent by certified U.S. Postal Service mail return receipt ...
Rules Regulating the Florida Bar.

protection of the laws.", afforded to all other Florida civil litigants. The Equal Protection Clause, U.S. Constitution.

CONCLUSION

For the reasons set forth herein, this Court should **GRANT** certiorari, vacate the order of contempt/disbarment (App. 28a), vacate the order denying rehearing (amended) (App. 39a), reinstate the Petitioner to The Florida Bar, and remand this case to the Florida Supreme Court for further proceedings consistent with this Court's rulings.

Respectfully submitted,

Earl Mayberry Johnson Jr., J.D.
Petitioner, Pro Se
525 3rd Street North, #305
Jacksonville Beach, FL 32250
(904) 525-2479
EarlMayberryJohnson@gmail.com

April 8, 2020