

20-1795

Supreme Court, U.S.
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In the Supreme Court for the United States

Gregory M. Haynes, Petitioner

v.

Supreme Court of the State of California, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

Questions Presented

I

Does the California Reciprocal attorney discipline statute—Business and profession code 6049.1 – violate the standard set forth in Selling v Radford, 243 U. S. 46, 51 (1917) because it does not provide for a review of the discipline imposed by another jurisdiction for insufficiency of proof or for some other reason which would make the imposition of discipline unjust, where Selling v Radford, 243 U. S. 46, 51 (1917) requires infirmity of prove and any other reason that would make the imposition unjust as well as due process considerations .

II

Is the California Supreme Court's imposition of reciprocal discipline in In RE Haynes in violation of Selling v Radford, 243 U. S. 46, 49 (1917) because the it imposed discipline base on a foreign jurisdiction imposition of discipline where the foreign jurisdiction—the United States District Court for the Northern District of California-- based its determination of discipline on a summary judgment record, as opposed to an evidentiary hearing, in violation of its local rules, which requires a findings of fact, and used a preponderance of the evidence standard where both the district court and California Court required a clear and convincing standard. Anderson v. Liberty lobby, Inc 477 U.S.242,257, (1986); Tolan v. Cotton, 572 U.S. 650, 656 (2014) (per curiam)

Parties

The parties to this action the Supreme Court of the State of California and petitioner Gregory M. Haynes

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Statutes and Rules

California Statute

CA Bus & Prof Code § 6049.1

(a) In any disciplinary proceeding under this chapter, a certified copy of a final order made by any court of record or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys, of the United States or of any state or territory of the United States or of the District of Columbia, determining that a member of the State Bar committed professional misconduct in such other jurisdiction shall be conclusive evidence that the member is culpable of professional misconduct in this state, subject only to the exceptions set forth in subdivision (b).

(b) The board may provide by rule for procedures for the conduct of an expedited disciplinary proceeding against a member of the State Bar upon receipt by the State Bar of a certified copy of a final order determining that

the member has been found culpable of professional misconduct in a proceeding in another jurisdiction conducted as specified in subdivision (a). The issues in the expedited proceeding shall be limited to the following:

(1) The degree of discipline to impose.

(2) Whether, as a matter of law, the member's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of California under the laws or rules binding upon members of the State Bar at the time the member committed misconduct in such other jurisdiction, as determined by the proceedings specified in subdivision (a).

(3) Whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

The member of the State Bar subject to the proceeding under this section shall bear the burden of establishing that the issues in paragraphs (2) and (3) do not warrant the imposition of discipline in this state.

(c) In proceedings conducted under subdivision (b), the parties need not be afforded an opportunity for discovery unless the State Bar Court department or panel having jurisdiction so orders upon a showing of good cause.

(d) In any proceedings conducted under this chapter, a duly certified copy of any portion of the record of disciplinary proceedings of another jurisdiction conducted as specified in subdivision (a) may be received in evidence.

Supreme Court Authorities

Selling v Radford, 243 U. S. 46, (1917)

Anderson v. Liberty lobby, Inc 477 U.S.242,257, (1986)

In the Supreme Court for the United States

PETITION FOR A WRIT OF CERTIORARI

Petitioner prays that a writ of certiorari issue to review the judgment below.

1

Opinions Below

The California State Bar Review Opinion, dated Feb 11, 2020. Index, exhibit a; The California Supreme Court denial of Review of the Opinion, Dated 10-14-20, index, exhibit b; and denial of petition for rehearing dated 12-9-20., index, exhibit c

2

Jurisdiction

The Supreme Court of California denied the petition for rehearing on 12-9-20. The U.S Supreme Court provided a 150 day period to file the petition.

3

California Statute and Supreme Court Authority Involved

CA Bus & Prof Code § 6049.1

(a) In any disciplinary proceeding under this chapter, a certified copy of a final order made by any court of record or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys, of the United States or of any state or territory of the United States or of the District of Columbia, determining that a member of the State Bar committed

professional misconduct in such other jurisdiction shall be conclusive evidence that the member is culpable of professional misconduct in this state, subject only to the exceptions set forth in subdivision (b).

(b) The board may provide by rule for procedures for the conduct of an expedited disciplinary proceeding against a member of the State Bar upon receipt by the State Bar of a certified copy of a final order determining that the member has been found culpable of professional misconduct in a proceeding in another jurisdiction conducted as specified in subdivision (a). The issues in the expedited proceeding shall be limited to the following:

(1) The degree of discipline to impose.

(2) Whether, as a matter of law, the member's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of California under the laws or rules binding upon members of the State Bar at the time the member committed misconduct in such other jurisdiction, as determined by the proceedings specified in subdivision (a).

(3) Whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

The member of the State Bar subject to the proceeding under this section shall bear the burden of establishing that the issues in paragraphs (2) and (3) do not warrant the imposition of discipline in this state.

(c) In proceedings conducted under subdivision (b), the parties need not be afforded an opportunity for discovery unless the State Bar Court department or panel having jurisdiction so orders upon a showing of good cause.

(d) In any proceedings conducted under this chapter, a duly certified copy of any portion of the record of disciplinary proceedings of another jurisdiction conducted as specified in subdivision (a) may be received in evidence.

Supreme Court Authority Violated

Selling v Radford, 243 U. S. 46, 49 (1917)

Statement of the Case

The California Supreme Court imposed reciprocal discipline upon petitioner Gregory M. Haynes, a California attorney based on the California reciprocal statutes, Business and Profession Code 6049.1 which is in violation of the standard set forth in Selling v Radford, 243 U. S. 46, 49 (1917)

The California Supreme Court imposed reciprocal discipline (see index, exhibit c) based on a summary judgment order imposing discipline by the United States District Court for the Northern District of California. (summary judgment order, page 1, page 59:21-62:7, page 62:8 to 66:12, index, exhibit d)

The California attorney reciprocal statutes is in violation of Selling v Radford, 243 U. S. 46, 49 (1917 because it does not allow for the California court to consider 1) whether the foreign jurisdiction's basis for discipline is infirm or 2) whether there are any other reasons that would make the imposition of discipline unjust.

In addition, the California Supreme Court imposed applied the statute in a manner that violates Selling v Radford, 243 U. S. 46, 49 (1917) as the California Supreme Court relied on the summary judgment record of the District Court which was in violation of the district court's local rules, imposing discipline were the record was factually infirm.

Business and Profession Code 6049.1 (a) provides that a final order finding an attorney of professional misconduct is conclusive evidence of culpability for professional misconduct in California, except for section 6049.1 (b) (2) and (b) 3

Section (b)(2) provides that the conclusive presumption is not applied provided:

“ Whether, as a matter of law, the member's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of California under the laws or rules binding upon members of the State Bar at the time the member committed misconduct in such other jurisdiction, as determined by the proceedings specified in subdivision (a).”

Thus, under (b)(2), culpability for professional misconduct is conclusive evidence of culpability in California provided the same misconduct is culpable under California rules and law binding on California attorneys.

Under section 6049.1 (b)(3), the conclusive presumption does not apply if the other jurisdiction failed to provide fundamental constitutional protections.

The attorney is not permitted to challenged or “relitigate” whether the factual basis for the finding of culpability or whether the factual basis culpability is infirm. See Review Department Opinion, at page 6 (index, exhibit a)

The statute does not test whether the evidence in the other jurisdiction that determined culpability is insufficient or infirm, or whether other factors may make the imposition of discipline unjust. It only test whether the

culpability as found in the other jurisdiction, would also support culpability in California and whether the other jurisdiction lacked fundamental constitutional protections.

As a result of the statute allowing the conclusive presumption of culpability to be found, discipline was imposed under the statute based on an insufficient record in the other jurisdiction. The other jurisdiction—the United States District Court for the Northern District of California—based its determination of culpability on a disputed summary judgment record, where the court noted that it would not to make “many credibility decisions.” (page 62:3-7 of summary judgment order, index exhibit d) (and 59:21 to 66:12 generally)

Further, while the attorney discipline standard in the Ninth Circuit requires clear and convincing evidence [In Re Crayton 192 B.R. 970,975 (9th Cir B.A. P. 1996)], the District Court used the lower preponderance of the evidence standard. Anderson v. Liberty lobby, Inc 477 U.S.242,257, (1986)

Thus, due to the failure of the statute to allow an independent review as required by Selling v Radford, 243 U. S. 46, 49 (1917), the California Supreme Court imposed the conclusive presumption of culpability, and imposed reciprocal discipline.

Reason Why the Court should Grant Review

This case should be granted because the California attorney reciprocal discipline statute in violation of Selling v Radford, 243 U. S. 46, 51 (1917). As such, effects all attorneys in California who are the subject of discipline in a jurisdiction outside of California.

Where Selling v Radford, requires an independent review of record to determine with the evidence of culpability is infirm as well as other factors which may make the imposition of discipline unfair and whether due process was provided in the other jurisdiction, the California statute only provides for an independent review for whether due process was provided. BPC 6049.1 (b)(3)

Instead of providing for whether the evidence is infirm or whether other factors may make the imposition of reciprocal discipline unfair, the California statute imposes the conclusive presumption of culpability for professional misconduct of section 6049.1 (a) upon the attorney, subject only to whether the culpability found in the other jurisdiction is also a basis for discipline in California as set forth in section 6049.1 (b).

As it is a conclusive presumption as to culpability , no review of the record for infirmity of the evidence can be considered or other factors that may make the imposition unfair.

Thus, review should be granted to ensure that California attorneys are not subject to unwarranted discipline based on infirm evidence or other factors that may make the imposition unfair.

Further, this case shows how the statute can be unfairly applied. While both the California jurisdiction under State Bar (Rule 5.103 and the other jurisdiction under In Re Crayton 192 B.R. 970,975 (9th Cir B.A. P. 1996) required a clear and convincing standard of proof based on a evidendary hearing, the California jurisdiction imposed discipline based on the conclusive presumption of culpability where the other jurisdiction based its determination of culpability upon a summary judgment record which used the prepondance of negligence standard and did not view the evidence in the light most favorable to the non-moving party. (summary judgment order page 59:21 to 66:12, index exhibit d) Anderson v. Liberty lobby,Inc 477 U.S.242,257, (1986)

Indicative of the obpressive nature of the statute, the Trial Counsel the State Bar of Califonira and prosecuting attorney noted that the reciprocal discipline was automatic based on the final order of the district court rulling (page 6:21-24 , index exhibit f) ; and subsequently developed evidence-- which showed the attorney who filed the complaint in the district court (page 7, review department opinion, index exhibit a) was the chief trial attorney for the Office of the San Francisco City attorney, who according to the City Attorney had a pattern of vilifying opposing attorney and their clients (page 28:23-24 page 135:23-25 , index exhibit g)

Indeed, while the attorney filed the same complaint in both the District Court and with the District Court, the State Bar Court dismissed the complaint only to then stay the complaint until the final conclusion in the District Court, whereupon it applied for the automatic reciprocal discipline

based on the summary judgment record which used the lower standard of proof. (Indeed, as noted by the Hearing Department, "the issue not whether culpability has been proved' but whether that misconduct also supports culpability under California law and rules. (Page 4, lines 2 to 7, index exhibit f) Thus, the state bar court simply determines whether the misconduct as found in the district court—supported by a conclusive presumption—is misconduct in California)

Finally, a recent study by the California State Bar shows that minority attorneys are subject to discipline at a rate 4 times higher than non-minority attorneys. Thus, the incident of unwarranted reciprocal discipline based on BPC 6049.1 has a potential of harming minority attorneys at a rate of 4 times that of non-minority attorneys. (page 2, index exhibit e)

Thus, because the statute subjects all California attorneys to reciprocal discipline in violation of Selling v Radford, 243 U. S. 46, 51 (1917), including minority attorney at disproportionate rate, this court should grant review in this matter.

Thus court should accept review for both questions as to whether the BPC 6049.1 is in violation of Selling v Radford, 243 U. S. 46, 51 (1917) and as applied.


Conclusion

Under California Business and Profession Code 6049.1 when considering reciprocal discipline, the statute does not address whether the evidence of the other jurisdiction so insufficient or infirm—or whether some other factor makes finding of culpability unjust. It address only whether 1) the culpability found in the other jurisdiction is also a basis for culpability in California and 2) whether there was a lack of constitutional protection.

Because Selling v Radford, 243 U. S. 46, 51 (1917) requires a court considering reciprocal discipline to determine whether the evidence is sufficient to warrant culpability, and hence discipline, as well as any other factor that makes the imposition of discipline unjust, as well as whether due process was afforded the attorney in the other jurisdiction, Business and Profession Code 6049.1 violates Selling v Radford, supra.

Therefore, this court should grant this petition for writ of certiorari

DATED: MAY 10, 2021



Gregory M. Haynes
In Pro Per