

NO. _____

IN THE

Supreme Court of the United States

LENORE L. ALBERT-SHERIDAN, DBA Law Offices of Lenore Albert,
Petitioner,

v.

STATE BAR OF CALIFORNIA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Petitioner, pro se

QUESTIONS PRESENTED

Whether 11 U.S.C. § 523(a)(7) bars a debtor from obtaining a discharge of State Bar disciplinary costs under Chapter 7.

Whether the equal protection clause is violated when the aggregate suspension of a lawyer or other professional's license exceeds the maximum period fixed for the suspension and results directly from an involuntary nonpayment of a disciplinary fine or court costs.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Additional parties in the case appear below:

Respondents, Maricruz Farfan, Brandon Tady, Alex Hackert, Yvette Roland, and Paul Bernardino.

Petitioner is not a corporation, so a corporate disclosure statement is not required by Supreme Court Rule 29.6.

RELATED PROCEEDINGS

Lenore Albert v California State Bar, 20-ap-1095-SC U.S. Bankr. Ct. for the Central District of California (Order staying pending petition for Cert. to the U.S. Supreme Court) July 24, 2020.

State Bar of California v Lenore Albert, 20-N-00044, 20-O-00045, Cal. State Bar court, Hearing Dept. (granting Lenore Albert's motion to abate pending petition for Cert. to the U.S. Supreme Court) August 26, 2020.

State Bar of California v Lenore Albert, Albert on Discipline, 2017 Cal. LEXIS 9745 (Dec. 13, 2017), Cal. Supreme court, S243927, (15-O-11311, 15-O-11708, 15-O-12260 (30-day suspension plus \$18,714.00 State Bar costs), Dec. 13, 2017. (U.S. Supreme Court rev. denied 17-9047, Oct. 1, 2018).

State Bar of California v Lenore Albert, S254967, Cal. Supreme court, (Case 16-O-10548, 16-O-12958, and 16-P-10548, 6-month suspension plus \$18,841.90 State Bar costs), July 10, 2019. (U.S. Supreme court rev. denied 19-6813, Jan. 13, 2020).

In re Lenore L. Albert, Esq., 18-80051, Ninth Circuit, (reciprocal suspension with Cal. State Bar, except for Noble appeal), December 19, 2018.

In the Disciplinary Matter of Lenore Albert, 18-ad-00094-VAP, United States Dist. Court, for the Central District of California, (reciprocal suspension with Cal. State Bar), June 7, 2019.

In the Disciplinary Matter of Lenore Albert, 19-mc-00126, United States Dist. Court, for the Southern District of California, (reciprocal suspension with Cal. State Bar), August 22, 2019.

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STATE BAR OF CALIFORNIA; MARICRUZ FARFAN; BRANDON TADY; ALEX
HACKERT; YVETTE ROLAND; PAUL BERNARDINO,

Respondents.

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For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The published portion of the Ninth Circuit's opinion is cited as, *Albert-Sheridan v. State Bar of Cal.* 960 F. 3d. 1188 (9th Cir. 2020). (App. A). The unpublished portion of the Ninth Circuit's memorandum is cited as *Lenore L. Albert-Sheridan, DBA Law Offices of Lenore Albert v. State Bar* (In re Albert-Sheridan), 808 Fed. Appx. 565, 2020 U.S. App. LEXIS 18369 (9th Cir., June 10, 2020). (App. B) The order denying rehearing is unpublished. (App. F).

The opinion of the Ninth Circuit BAP is cited as, *Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)*, 2019 Bankr. LEXIS 1187, 2019 WL 1594012 (9th Cir. BAP 2019) (unpublished). (App. C).

The bankruptcy orders denying a preliminary injunction and granting the State Bar's motion to dismiss the adversary proceeding were originally appealed from the United States Bankruptcy Court for the Central District of California. Bk. No. 8:18-bk-10548-ES, Adv. No. 8:18-ap-01065-SC. Honorable Scott C. Clarkson, Bankruptcy Judge, Presiding and is unpublished. (App. D, E). The reasons were stated on the record. (App. G).

JURISDICTION

Petitioner appeals an opinion and memorandum filed on June 10, 2020 in the Ninth Circuit. Petition for Rehearing was denied on July 17, 2020. (App. A, B, F). This Court has jurisdiction under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case are set out in the Appendix. (App. R-BB)

STATEMENT OF THE CASE

A. Legal Framework

The purpose of Chapter 7 bankruptcy protection is to give the Debtor a fresh start. *Burkart v. Coleman* (In re Tippett), 542 F.3d 684, 689 (2008).

Chapter 7 debtors are supposed to be given a “new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of

preexisting debt. *Pennsylvania v. Davenport*, 495 U.S. 552, 561, 110 S.Ct. 2126, 109 L.Ed.2d 588 (1990)

Bankruptcy discharge rules should be uniform. The Bankruptcy Code was not created to have Debtors treated differently under 11 U.S.C. § 523(a)(7) based on the Circuit they happen to reside in or differing designations by state legislatures. *Perez v Campbell* 402 U.S. 637 (1971).

There are several exceptions to discharge laid out in 11 U.S.C. § 523. 11 U.S.C. § 523(a)(7) does not allow a Chapter 7 debtor to discharge debts “to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty.” Id.

Subsection (a)(7), was meant to prevent convicted criminals from having the portion of their sentence that included victim restitution awards discharged, thus invalidating the results of the criminal proceeding. *Kelly v. Robinson*, 479 U.S. 36, 51, n. 13, 93 L. Ed. 2d 216, 107 S. Ct. 353 (1986).

To find a debt is excepted from discharge under 11 U.S.C. § 523(a)(7), the creditor must prove that the debt is (1) a fine, penalty, or forfeiture; (2) payable to and for the benefit of a governmental unit; and (3) does not constitute compensation for actual pecuniary costs. Id.

This Court is not bound by the State’s characterization if the State Bar is a governmental unit or not when it is an essential determination of a federal

question. *Keller v. State Bar of Cal.*, 496 U.S. 1, 11, 110 S. Ct. 2228, 2234-2235, 110 L. Ed. 2d 1, 12-13 (1990).

Exceptions to discharge under 11 U.S.C. § 523 "are to be [construed] strictly against a creditor and liberally in favor of the debtor." *Goldberg Sec., Inc. v. Scarlata*, 979 F.2d 521, 524 (7th Cir. 1992).

Several circuits have found that this exception to discharge does not apply to a professional's disciplinary costs mandated by a State Board. *Schaffer v. Louisiana State Bd. of Dentistry (In re Schaffer)*, 515 F.3d 424 (5th Cir. 2008) The Ninth Circuit is not one of them. *State Bar of Cal. v. Findley (In re Findley)*, 593 F.3d 1048, 1050 (9th Cir. 2010). The First, Ninth and Eleventh Circuit generally hold such costs are nondischargeable. Whereas the Fourth, Fifth and Sixth Circuits have published bankruptcy cases holding mandatory professional disciplinary costs are dischargeable.

In those circuits where attorney disciplinary costs are dischargeable, debtors may invoke 11 U.S.C. § 525(a) to force the State Bar to reinstate their license to ensure that the State Bar does not discriminate against the debtor who lacks the wealth to regain their license to practice in their chosen profession. It also gives bankruptcy court the footing to enjoin the state agency from further prosecutions of the attorney under 11 U.S.C. § 105. *In re Stasson*, 472 B.B 748 (Bankr. E.D. Mich 2012)

Although, "the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the

defendant is indigent and cannot forthwith pay the fine in full," (*Tate v. Short*, 401 U.S. 395, 398, 91 S. Ct. 668, 671, 28 L. Ed. 2d 130, 133 (1971)); without dischargeability, attorneys, and other professionals, are cut off from their right to have their license practice in their chosen profession reinstated based on their lack of wealth. Such outcomes violate the First, Eighth and Fourteenth Amendments. I Amend. U.S. Const., VIII Amend. U.S. Const., XIV Amend. U.S. Const.

The California State Bar has approximately 270,000 living members with 190,000 still actively practicing law. Membership is mandatory in order to practice in the state of California.

In its disciplinary proceedings it has two costs statutes. One is mandatory and the other is discretionary. The mandatory cost provision is laid out in Cal. Bus. & Prof. Code § 6086.10." (App. Y). The type of costs assessed to lawyers under this section are mandatory and compensatory in nature. California State Bar also has the discretion to add monetary sanctions as a disciplinary cost under Cal. Bus. & Prof. Code § 6086.13. (App. Z). That latter statute is not at issue. California has another statute, Cal. Bus. & Prof. Code § 6140.7 which conditions payment of the costs upon reinstatement by adding the costs to the attorney's annual dues.

California State Bar disciplinary costs are mandatory under Cal. Bus. & Prof. Code § 6086.10 and used to defray the State Bar costs of operating their disciplinary system. Cal. Bus. & Prof. Code § 6086.10(b)(3) provides:

The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State Bar in the preparation or hearing of disciplinary

proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the Client Security Fund.

Id. (App. Y).

Cal. Bus. & Prof Code § 6140.7 grants the State Bar power to withhold the attorney ‘s license beyond the period of suspension until the State Bar disciplinary costs are paid in full. If the costs are not paid within 2 years, then the lawyer must go through the long and rigorous process of rehabilitation proceedings which can take years.

Prior to 2010, the Ninth Circuit held State Bar disciplinary costs under § 6086.10 were dischargeable. *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001).

The California legislature amended Cal. Bus. & Prof. Code § 6086.10 by adding subsection (e) which designated the compensatory costs as “fines.” The legislative analysis showed that the State Bar had gone broke due to inflated salaries and benefits. As such, subsection (e) was added so that the State Bar could record their cost awards as judgments in state court. (AB 1708 Bill Analysis). However, State Bar employee Mark Doyle told the Ninth Circuit that the legislature added subsection (e) to overrule *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001) when deciding *Findley*. Based on his representations, the Ninth Circuit published *Findley*. Now the Ninth Circuit has two published opinions finding the opposite result.

Some circuits rely on *Findley* to find that State Bar costs are not dischargeable. Other circuits rely on *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001) to find that State Bar costs are dischargeable.

The State Bar mandatory disciplinary costs now exceed \$21,000.00 under Cal. Bus. & Prof. Code § 6086.10.

State laws that frustrate the full effectiveness of federal law are rendered invalid by the Supremacy Clause. *Perez v Campbell* 402 U.S. 637, 652 (1971).

The issue in Kelly v. Robinson, 479 U.S. 36, 51, n. 13, 93 L. Ed. 2d 216, 107 S. Ct. 353 (1986) may have been resolved by the Mandatory Victims Restitution Act. (18 U.S.C. § 3663A) but licensed professionals who have been targeted by their State Board, rightly or wrongly, have been left in disarray.

“The Court's approach in *Kelly*—to untether statutory interpretation from the statutory language—has gone the way of NutraSweet and other relics of the 1980s and led to considerable confusion among federal courts and practitioners about section 523(a)(7)'s scope.” *Scheer v. State Bar* (In re Scheer), 819 F.3d 1206, 1210 (9th Cir. 2016).

Further percolation of this issue amongst the circuits is not likely to yield a cohesive result.

B. Facts and Procedural History

As the Ninth Circuit noted, petitioner, “Lenore Albert-Sheridan had practiced as an attorney in California since December 2000 with no disciplinary record. She served as a consumer-advocate attorney, often representing homeowners in

residential housing and mortgage disputes. By her own account, Albert stopped over 1,000 foreclosure sales in one case alone.” (App. A).

After substituting into an unlawful detainer case in 2012, Petitioner and her client, a victim of a fraudulent foreclosure, were met with \$5,737.50 in discovery sanctions which were void. On December 13, 2017, the California Supreme Court denied review of the State Bar’s recommendation to suspend petitioner for one year, stayed, 30 days actual suspension for failure to pay opposing counsel the \$5,737.50 in discovery sanctions. (App. H). It also ordered petitioner to pay the State Bar \$18,714.00 in costs pursuant to “6086.10(b)(3).” (App. O). This Court denied petition for review of that California Supreme Court order on October 1, 2018 (No. 17-9047).

On February 20, 2018, Petitioner filed for Chapter 13 bankruptcy protection and put the State Bar costs in her plan to repay over time but her license was not reinstated.¹ She filed an adversary proceeding against the State Bar and sought an order to reinstate her right to practice law but it was denied. (App. I). She also requested reinstatement and waiver of payment of the State Bar costs to the State

¹ The State Bar did reinstate her license on June 1, 2018 and backdated the reinstatement to March 16, 2018. Then it suspended her license again 27 days later after the bankruptcy court converted her case to Chapter 7 because she did not have regular income for the past three months while her license was suspended. (App.

Bar at every level, including the California Supreme Court, but petitioner came out empty-handed. (App. J, K, L, M).

The State Bar doubled down with more disciplinary proceedings and an additional \$18,841.90 in State Bar costs to award itself. (App. N, Q). It even conditioned the right to appellate review upon payment of \$2,100.00 for a reporter's transcript. (App. P).

Because she no longer had her license, she could not continue in her law practice she had since 2001 to generate income to pay the State Bar costs and was forced into a Chapter 7 case.

On July 25, 2018 the California Supreme Court refused to reinstate Debtor's license based on economic hardship or waive the costs under Cal Bus & Prof Code 6086.10(c) knowing she was in Chapter 7 bankruptcy and unable to pay the costs. (App. M).

The Bankruptcy court, with hands tied, granted the State Bar's dismissal of the adversary complaint on the grounds the Ninth Circuit had ruled State Bar costs were nondischargeable in the case of *State Bar of Cal. v. Findley* (In re Findley), 593 F.3d 1048, 1050 (9th Cir. 2010). (App. E, G).

The State Bar has continued Petitioner's 30-day suspension through to the present - over two years later.

The Ninth Circuit Court of Appeals held that it must find the State Bar could condition reinstatement of Petitioner's law license upon payment of the \$18,714.00 disciplinary costs because it was excepted from discharge under 11 U.S.C. §

523(a)(7).² It was dead on arrival because the Panel was constrained to follow *Findley* “regardless of how wrong the earlier panel decision may seem to be.” (App. A).

Since there was no discharge due to 11 U.S.C. § 523(a)(7), Petitioner’s claims invoking the Court’s injunctive powers under 11 U.S.C. § 105 or 11 U.S.C. § 525 necessarily failed. Her claims of constitutional violations died with the ruling, too, only leaving the dischargeability determination on the discovery sanctions as her sole win.³ (App. A, B, O, Y, FF).

If petitioner’s issue had been heard in the Fourth, Fifth or Sixth Circuit, the outcome would have been different.

REASONS FOR GRANTING THE PETITION

A. The Circuits are Divided on Applying 11 U.S.C. § 523(a)(7)

The federal courts of appeals are divided on the question presented.

² On appeal, the Ninth Circuit partially found in petitioner’s favor; holding the three civil discovery sanctions totaling \$5,738.00 plus interest payable to 10675 S. Orange Park Blvd, LLC/attorney Phil Green, were dischargeable in petitioner’s Chapter 7 bankruptcy case. Appellant does not dispute or petition for review. (App. A, Slip Opn. P. 5).

³ The bankruptcy court had federal jurisdiction under 28 U.S.C. § 157 and 28 U.S.C. § 1334(b).

The First and Eleventh Circuit Courts of Appeals held that the State Bar disciplinary costs in their jurisdiction were nondischargeable. *Richmond v. N.H. Supreme Court Comm. on Prof'l Conduct, (In re Richmond)*, 542 F.3d 913, 918 (1st Cir. 2008), and *Disciplinary Bd. of the Supreme Court of Pa. v. Feingold (In re Feingold)*, 730 F.3d 1268, 1273-75 (11th Cir. 2013).

The Fourth, Fifth and Sixth Circuit bankruptcy courts have ruled in opposite fashion. State Bar disciplinary costs were either not found to be a penalty or fine or they were found to be compensatory making 11 U.S.C. § 523(a)(7) inapplicable.

For example, State Bar disciplinary costs of \$4,477.56 were discharged in the U.S. Bankruptcy court sitting in Michigan, *In re Stasson*, 472 B.B 748 (Bankr. E.D. Mich 2012), (\$4,477.56 in State Bar costs discharged).

In *Love v. Scott (In re Love)*, 442 B.R. 868, 871 (Bankr.M.D.Tenn.2011), the U.S. Bankruptcy Court sitting in the Sixth Circuit found that \$24,693.66 for attorney disciplinary costs could not be excepted from discharge under 11 U.S.C. § 523(a)(7), either.

The Tennessee Supreme Court likewise found that \$8,723.88 in attorney disciplinary costs were dischargeable. *In re Luftkin v Bd of Prof'l Responsibility*, 336 S.W. 3d 223 (Tenn 2011) (\$8,723.88 in attorney disciplinary costs discharged).

Similarly, the Fifth Circuit, held \$217,852.13 in disciplinary costs assessed against a dentist (although discretionary) were dischargeable notwithstanding 11 U.S.C. § 523(a)(7). *Schaffer v. Louisiana State Bd. of Dentistry (In re Schaffer)*, 515

F.3d 424 (5th Cir.2008) (\$217,852.13 in disciplinary costs discharged). The disciplinary costs statute at issue provided:

The fine shall not be less than five hundred dollars nor more than five thousand dollars for each offense. In addition, the unlicensed person, the licensed dentist, or licensed dental hygienist shall pay, not later than the thirtieth day after the day the decision is made by the committee, all costs of the committee proceedings, including but not limited to stenographer fees, attorney fees, investigative fees and expenses, and witness fees and expenses, and the per diem and expenses of the committee members. If, for any reason, the money portion of the committee's decision is not paid ... within thirty days, then legal interest shall be charged and added thereto as calculated in Civil Code Article 2924(B), until said sum is paid in full.

La.Rev.Stat. Ann. § 37:780(B)2.

California's State Bar disciplinary Cost statute is similar. It provides:

The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State Bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the Client Security Fund.

Cal. Bus. & Prof. Code § 6086.10(b)(3). (App. Y).

Contrary to the Fifth Circuit, the Ninth Circuit held that petitioner's \$18,714.00 in disciplinary costs under 6086.10(b)(3) are nondischargeable fines under 11 U.S.C. § 523(a)(7) following *State Bar of Cal. v. Findley* (In re Findley), 593 F.3d 1048, 1050 (9th Cir. 2010). (App. A, O & Y).

"[G]iven that disciplinary proceeding costs are based on the amount of time the State Bar expends, not on the attorney's underlying conduct- which fits more

with compensation rather than punishment,” review should be granted. *Albert-Sheridan v. State Bar of Cal.* 960 F. 3d. 1188 (9th Cir. 2020) (App. A, O & Y).

If petitioner were in Louisiana instead of California, her disciplinary costs would have been discharged notwithstanding 11 U.S.C. § 523(a)(7).

The Ninth Circuit used to be in alignment with these cases. It was cited by *Love v. Scott (In re Love)*, 442 B.R. 868, 871 (Bankr.M.D.Tenn.2011) as the “maverick” when *State Bar v. Taggart (In re Taggart)*, 249 F.3d 987 (9th Cir. 2001) was still good law. However, California added subsection “e” to Cal. Bus. & Prof. Code § 6086.10 reciting that the mandatory costs were a “penalty.” Id. State Bar of Cal. v. Findley (In re Findley), 593 F.3d 1048, 1050 (9th Cir. 2010) considered this amendment to mean that the costs were no longer dischargeable pursuant to 11 U.S.C. § 523(a)(7).

The determination of whether a disciplinary costs awarded under this statute is a “fine, penalty, or forfeiture” within the meaning of 11 U.S.C. § 523(a)(7) is a question of federal law; a state statute’s designation of a monetary award as a one of these three types is non-determinative, but may be persuasive.

But this Court has never determined whether 11 U.S.C. § 523(a)(7) should apply to disciplinary costs for lawyers or other professionals at all, much less are akin to a “fine, penalty, or forfeiture” under 11 U.S.C. § 523(a)(7).

This Court only discussed the meaning of 11 U.S.C. § 523(a)(7) in *Kelly v. Robinson*, 479 U.S. 36 (1986) which was a criminal restitution case and has arguably been superseded by the Mandatory Victims Restitution Act. (18 U.S.C. §

3663A). Yet, the Circuits have expanded it and now are trying to contract it, but it is only this Court that can reconcile the split between the various Circuits, and the inside split within the Ninth Circuit where over 190,000 licensed professionals practicing law are affected by it. (*State Bar of Cal. v. Findley* (In re Findley), 593 F.3d 1048, 1050 (9th Cir. 2010) finding attorney disciplinary costs nondischargeable and *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001) finding the same disciplinary costs dischargeable.).

Application of 11 U.S.C. § 523(a)(7) is supposed to be uniform making this an issue of national importance. Where a debtor happens to reside substantially affects the application of 11 U.S.C. § 523(a)(7) in which there is an overriding need for national uniformity. The conflict is an appropriate ground for granting review.

B. The Ninth Circuit Cannot Overrule Itself – Even When it Wants to Bring About National Uniformity

In this case, a unanimous Ninth Circuit panel affirmed the bankruptcy court's finding that Debtor's California State Bar disciplinary costs were a "fine, penalty, or forfeiture" under 11 U.S.C. § 523(a)(7) on the sole ground it was constrained to follow *In re Findley*, 593 F.3d 1048 (9th Cir. 2010), "**regardless of how wrong the earlier panel decision may seem to be.**" *Albert-Sheridan v. State Bar of Cal.* 960 F. 3d. 1188 (9th Cir. 2020) (citing *Hart v. Massanari*, 266 F.3d 1155, 1172 (9th Cir. 2001).)⁴ (bold added). (App. A).

⁴ Two out of the three Judges who sat on the *Findley* panel have since deceased, so the original panel cannot revisit the issue. The remaining Judge is now the Chief

The California Legislature never intended to overrule *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001). (App. BB).

1. Doyle's Misrepresentation to the Ninth Circuit

Reading *Findley*, it's apparent the Ninth Circuit was tricked by Bar employee Mark Doyle's declaration into believing the Legislature amended Bus & Prof Code §6086.10 to overrule *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001). The employee misrepresented the legislative history of Cal Bus & Prof Code §6086.10 by asserting the Legislative intent was to overrule *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001).

The Ninth Circuit panel in *Findley* relied on Doyle's representation that the state Legislature implemented subdivision (e) to overrule *Taggart*.

Contrary to *Findley*, the Legislature implemented subdivision (e) for the sole purpose of allowing the Bar to file a judgment in state Court and collect on the judgment because the Bar had gone broke a few years prior. The bill analysis on April 29, 2003 actually explained "As a result, this bill would also permit the Bar to pursue these costs as money judgments against the disciplined attorney in an effort to better able the Bar to recover its costs." (App. BB)

http://leginfo.Legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040AB1708

Justice presiding over the Ninth Circuit.

Nowhere in the Bill Analysis is *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001) mentioned. The Bill analysis also noted that these wounds were “self-inflicted” by the Bar employees who had recently increased their salary by 2% after they had given themselves a generous 40% raise a few years earlier. It considered the Bar salary and fringe benefit increases “enviable.” The Bar represented to the Legislature it was amending to “enhance its ability to obtain reimbursement of its disciplinary costs and recovery of payments from the Client Security Fund.” AB 1708 pg. 13 (Asm. Judiciary Committee). (App. BB).

“AB 1708 would authorize the Bar to seek money judgments against disciplined attorneys for any ordered costs, and to pursue judgments against errant attorneys for payments made to their clients from the Client Security Fund. The Bar asserts that this new enforcement tool will be far more effective than the current process of simply adding those costs to the attorney's fee bill or making payment of them a condition of reinstatement because "very few attorneys who have incurred disciplinary costs - let alone those who have been disbarred - are willing to re-join the ranks of attorneys at those costs.” AB 1708 pg. 14 (Asm. Judiciary Committee) [emphasis added]

http://leginfo.Legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040AB1708

This bill authorizes the Bar to seek Court judgment to (1) collect disciplinary costs assessed upon disciplined attorneys, and (2) recover from errant attorneys' monies paid to their wronged clients from the Client Security Fund. Bill No: AB 1708 7/23/02 p 21 Senate Bill Analysis author: Assembly Judiciary Committee

http://leginfo.Legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040AB1708

Consequently, *Findley*'s holding that the Legislature wanted to overrule *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001) and create a sanction was incorrect and it should be abandoned.⁵

Equally, the state Legislature did not have the *power* to legislate around federal law. *Perez v Campbell* 402 U.S. 637 (1971), 648 (where Arizona was not allowed to suspend a resident's license per state law which was in conflict with U.S. Bankruptcy laws.)

On the other hand, if what Doyle professed was true, then the state's amendment to Bus & Prof Code § 6086.10 was unconstitutional as applied because it conflicts with federal law and the sole purpose was to evade it. *Perez v Campbell* 402 U.S. 637 (1971), 648.

In either case, the Circuits are divided warranting this Court's review.

C. Equal Protection Rights Issue Continually Evades Review

Equal protection rights cannot co-exist by allowing State Bar to deny reinstatement after suspension has ended solely on an inability to pay mandatory costs (which are excessive). Yet, this issue continually evades review because the attorney ends up disbarred before they can get their matter heard.

On page 2 of the unpublished memorandum, the Ninth Circuit wrote "Albert has not alleged any reason to depart from this general view. Her allegations are predicated on a mistaken belief that the State Bar impermissibly suspended her law

⁵ A case was mentioned in the legislative history, but it was not *State Bar v. Taggart* (In re Taggart), 249 F.3d 987 (9th Cir. 2001). It was *Keller v State Bar*.

license due to a dischargeable debt. Under California law, the State Bar and its employees may condition the reinstatement of Albert's law license on payment of those costs. Cal. Bus. & Prof. Code § 6140.7." *Lenore L. Albert-Sheridan, DBA Law Offices of Lenore Albert v. State Bar* (In re Albert-Sheridan), 808 Fed. Appx. 565, 2020 U.S. App. LEXIS 18369 (9th Cir., June 10, 2020) (App. B)

In *Williams v Ill.*, the U.S. Supreme Court held "when the aggregate imprisonment exceeds the maximum period fixed by the statute and results directly from an involuntary nonpayment of a fine or court costs we are confronted with an impermissible discrimination that rests on ability to pay, and accordingly, we vacate the judgment below." *Williams v Ill, Id.* At 240-241.

Additionally, in a criminal case, "the court is required to consider the defendant's financial resources, assets, projected income, and financial obligations, based on an affidavit supplied by the defendant." *United States v. Dubose*, 146 F.3d 1141, 1143-1144 (9th Cir. 1998). Excessive fines violate a convicted criminal's rights under the Eighth Amendment. *Timbs v. Indiana*, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019), (VIII Amend. U.S. Const.).

True. Attorneys are not convicted criminals. But the Ninth Circuit's decision – Petitioner's last hope - has led to the result of allowing the State Bar to keep an attorney's license suspended beyond the maximum time period of suspension due to her involuntary nonpayment of State Bar costs because she has no ability to pay.

If the equal protection clause is violated when a person is subjected to harsher punishment due to their lack of wealth in the criminal context, then the

same rights should apply to licensed professionals who are doing nothing more than trying to make a living and practice in their chosen profession. See, *Williams v. Ill.*, 399 U.S. 235, 236, 90 S. Ct. 2018, 2020, 26 L. Ed. 2d 586, 590 (1970)

By continuing the suspension of an attorney's license beyond the 30 days for failure to pay the State Bar costs, the State parlayed attorney's suspension into a longer term of suspension, accomplishing indirectly that which it could not have done directly when making its ruling.

This Court should review whether the equal protection clause is violated when the aggregate suspension of a lawyer or other professional's license exceeds the maximum period fixed for the suspension and results directly from an involuntary nonpayment of a disciplinary fine or court costs as Chapter 7 debtors. See, *Bearden v. Georgia*, 461 U.S. 660, 667-68, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983); and, (*Tate v. Short*, 401 U.S. 395, 28 L. Ed. 2d 130, 91 S. Ct. 668 (1971);).

Shackling an attorney's license to debts so excessive to hinder the person's ability to support themselves offend the Constitution. (VIII Amend. U.S. Const., XIV Amend. U.S. Const.)

Finally, by determining 11 U.S.C. §523(a)(7) was not applied correctly in the Ninth Circuit, petitioner's claims for injunctive relief under 11 U.S.C. § 105 and 11 U.S.C. § 525 along with her constitutional claims will be revived.

For example, Petitioner challenged Cal. Bus. & Prof. Code §§ 6086.10(e) and 6140.7 as unconstitutional because they violate an attorney's First, Eighth and Fourteenth Amendment rights due to their direct conflict with 11 U.S.C. § 525a

which bars agencies from discriminating against those who lack wealth from obtaining their licenses. “A state statute that coerces a debtor to reaffirm a discharged debt contravenes the purpose of the federal bankruptcy laws, thus violating the supremacy clause of the United States Constitution.” *Hippard v Bar* 49 Cal.3d 1084, 1103 (1989) The anti-discriminatory purpose of 11 U.S.C. §525(a) was evaded. (App. H p. 138).

For all of the foregoing reasons, these evading issues of national concern that affect many licensed professionals who find themselves in bankruptcy or practicing on the wrong side of their licensing agency’s balance sheet (App. FF), this Court should take up this issue.

CONCLUSION

The Court should grant the petition.⁶

Dated: October 15, 2020

Respectfully Submitted,

/s/ Lenore Albert
LENORE L. ALBERT
Petitioner, pro se

⁶ It is anticipated the State Bar will file their Petition for Cert. as to the Discovery order in this matter as they represented in their motion before the Ninth Circuit.