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ORIGINAL

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Petitioner, Pro Se

SUPREME COURT

UNITED STATES OF AMERICA

DANIEL EVERETT

Petitioner.

No.

9th Cir No. 20-16502

Petition for Writ of Certiorari

DATE:
TIME:
DEPT:
Judge:
Court:

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES, PETITIONER, DANIEL EVERETT, HEREBY SUBMITS THE FOLLOWING PETITION FOR WRIT OF CERTIORARI FOR CONSIDERATION.

Dated: June 14, 2021, at San Francisco, CA.

Respectfully Submitted

/s/Daniel Everett

DANIEL EVERETT, Pro Per.

Questions Presented

This case asks whether the Younger abstention doctrine applies to a challenge against California State Bar rules which allow that agency to place licensees with physical or mental disabilities on involuntary inactive status without requiring that an evidentiary hearing ever be afforded.

California Business and Professions Code (BPC) § 6007(b)(3), as promulgated by the Rules of Procedure of the State Bar of California (Rules), 5.190-5.212, allow the State Bar to move licensees with disabilities to involuntary inactive status without affording a predeprivation evidentiary hearing on the merits nor a postdeprivation evidentiary hearing to determine whether the initial move to disability inactive status was warranted. California Business & Professions Code § 6053 has been used by State Bar Court Judges, i.e., administrative law judges, to order licensees subject to § 6007(b)(3) proceedings to undergo physical and mental examinations. Lack of compliance may be used as evidence in determining whether the attorney should be moved to involuntary inactive status pursuant to BPC § 6007(b)(3), despite no hearing on the merits having been afforded.

As a prerequisite to being moved back to active status, an affected licensee must sign a release allowing the Bar to copy medical and hospital records related to the licensee's alleged disability and the licensee's current medical state. Even then, the State Bar rules still do not require that a hearing on the merits ever be afforded.

The following questions are presented:

1. Is Younger abstention appropriate to defer to purely administrative proceedings occurring in State Bar Court, and where the Bar proceedings do not afford licensees a hearing on the merits before being placed on involuntary inactive status because of alleged disability?

2. Is Younger abstention appropriate the state court proceeding is purely administrative in character versus disciplinary and where the proceeding is akin to a dispute between labor union and member or employer and employee, versus a proceeding between and defendant and the state?

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

LIST OF PARTIES

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APPENDIX

STATEMENT OF BASIS OF JURISDICTION

This request is for review of a decision of the 9th Circuit Court of appeal issued January 15, 2021, summarily upholding an July 7, 2020, ruling by the US district court, Northern District of California, ordering Everett's case dismissed and declining to hear the merits of that case based entirely upon the district court's application of the Younger abstention doctrine. App. A1, A2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions are integral to this case.

5th Amendment, United States Constitution, as applied to the States by the 14th Amendment:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

California Bus. Prof. Code 6007(b)(3):

> (3). After notice and opportunity to be heard before the State Bar Court, the State Bar Court finds that the licensee, because of mental infirmity or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without substantial threat of harm to the interests of his or her clients or the public. No proceeding pursuant to this paragraph shall be instituted unless the State Bar Court finds, after preliminary investigation, or during the course of a disciplinary proceeding, that probable cause exists therefor. The determination of probable cause is administrative in character and no notice or hearing is required.
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> In the case of an enrollment pursuant to this subdivision, the State Bar Court shall terminate the enrollment upon proof that the facts found as to the licensee's disability no longer exist and on payment of all fees required.

Rules of Procedure of the State Bar of California; Rules governing promulgation of California Business & Professions Code § 6007(b)(3):[1]

> Rule 5.190 Nature of Proceeding These rules apply to proceedings that involve, or may involve, an attorney's transfer to inactive enrollment under Business and Professions Code § 6007(b)(3).
>
> Rule 5.191 Beginning Proceeding (A) Probable Cause Required. To begin a proceeding, the Court must determine that there is probable cause and issue a notice to show cause. ***Because the determination is administrative in character, no notice or hearing is required.***
>
> (B) Motion to Show Cause. (1) The Court may determine on its own motion, without notice or hearing, that probable cause exists to issue a notice to show cause; or (2) Any party may file a motion asking the Court to issue a notice to show cause. The motion must be served on all opposing parties under rule 5.25. Unless ordered by the court, no response to the motion may be filed. (C) Probable Cause Hearing. The Court may order a hearing to determine whether a notice to show cause should issue if, in the Court's opinion, it will materially contribute to determining whether probable cause exists. ***All hearings will be informal. Later proceedings will not be invalidated or otherwise prejudiced if a hearing is not held.*** (D) Notice to Show Cause. When a notice to show cause is issued under this rule: (1) the Court will promptly appoint counsel under rule 5.192 if the attorney is not represented by counsel; (2) the Clerk will promptly serve the notice to show cause on all parties under rule 5.25; (3) each party will file and serve a response to the notice to show cause within 20 days from the later of: (a) the date that the notice to show cause is served, or (b) the date that the order appointing counsel is served (if counsel is appointed). (E) Judicial Disqualification. Except as provided under rule 5.46, the judge who conducts the probable cause hearing will not be disqualified from conducting the hearing on the merits.
>
> 5.192 Representation by Counsel (A) Appointment of Counsel. An attorney must be represented by counsel by the issuance date of the notice to show cause. If the attorney is not represented, the Court must appoint counsel without cost to the attorney. By court order, appointed counsel will be compensated for

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[11] For a full listing of the applicable rules, see appendix, A30, A34.

reasonable expenses and fees for work done on matters before the Court or for seeking review from the California Supreme Court of a Review Department decision ordering or upholding an order of inactive enrollment. Compensation will be at an hourly rate fixed by the Executive Committee. The Court will determine the reasonableness of counsel's fees and expenses. (B) Copies of Record. An appointed counsel may ask the Clerk to prepare and furnish, free of charge, copies of tapes or transcripts of all or any part of any relevant State Bar Court proceeding involving the attorney, including any hearing held under rule 5.191(C).

Rule 5.193 Failure to Comply with Order for Physical or Mental Examination (A) Failure as Probable Cause. ***If an attorney fails to obey an order for physical or mental examination issued under Business and Professions Code § 6053 and rule 5.68 of these rules, that fact may constitute probable cause to issue a notice to show cause.*** (B) Failure as Evidence. After the Court issues a notice to show cause, if the attorney fails without good cause to obey an order of the Court for the attorney to undergo a physical or mental examination issued under Cal. Bus. Prof Code § 6053 and rule 5.68 of these rules, that ***failure may be considered as evidence in determining whether the attorney should be transferred to inactive enrollment. But the failure does not in itself warrant a transfer.***

Hearing on Merits (A) Time of Hearing. If a hearing is ordered, it will be held as soon as practicable after the notice to show cause is issued. Time will be allowed to appoint counsel, to prepare a defense, and to complete appropriate discovery or a physical or a mental examination. (B) Notice. The Clerk must serve notice of the hearing on the attorney, the attorney's counsel, and the deputy trial counsel at least 30 days before the hearing date. (C) Exhibits and Testimony. Exhibits and testimony from the probable cause hearing will be admissible in the hearing on the merits if they are relevant and material to the issues. But: (1) any portion of an exhibit or testimony that would be inadmissible if offered for the first time at the hearing on the merits may be objected to; and (2) if prior testimony is offered, the party offering the testimony must make the witness available to testify at the hearing on the merits. Either party may elicit additional direct testimony to supplement the prior testimony. The witness may be cross-examined by the opposing party.

Rule 5.205 Petition for Transfer to Active Enrollment An attorney who was transferred to inactive enrollment under Cal.

Bus. & Prof. Code § 6007(b) may petition to terminate the inactive order, with or without interim remedies. The petition must be verified and must state the facts alleged to warrant the termination of the order. The petition must be addressed to the Hearing Department, filed with the Clerk, and served on the Office of Chief Trial Counsel under rule 5.25. Eff. January 1, 2011; Revised: January 25, 2019.

Rule 5.206 Medical and Hospital Records The attorney must authorize the State Bar to examine and copy medical, hospital, and related records relevant to the attorney's original mental infirmity, illness, or addiction, and related to the attorney's present condition. The authorizations must be written and attached to the petition.

Rule 5.208 Hearing on Petition (A) Requesting Hearing. If the attorney seeks a hearing on the petition, the petition must include a request for a hearing. Whether or not the attorney has requested a hearing, the deputy trial counsel may request a hearing; such request must be filed within 20 days after service of the petition.

(B) Order for Hearing. ***The Court may order a hearing if it will materially contribute to the Court's determining whether a basis for the attorney's involuntary inactive enrollment still exists.*** The hearing will be held assoon as practicable. (

C) Notice. The Clerk must serve notice of the hearing on the attorney, the attorney's counsel (if any), and the deputy trial counsel at least 20 days before the hearing date, unless a continuance is granted for good cause shown.

STATEMENT OF THE CASE

Petitioner, Daniel Everett, is a Black-American attorney admitted to the State Bar of California in February 2010. In May 2019, Proceedings were instituted against Everett pursuant to Cal. Bus. Prof. Code § 6007(b)(3) by the issuance of a Notice to Show Cause. App. A20-23. The State Bar Court Hearing Judge ordered that Everett undergo a gastrointestinal examination and a psychological examination. App. A23-24. Everett objected and argued that the then proposed examinations, including an invasive gastrointestinal examination, would be a clear violation of his right to privacy and his right to make his own medical decisions. App. A23-25.

Everett requested a hearing but the State Bar Court Judge overruled the request and indicated that she would decide the matter on written submissions alone; and the State Bar Rules of Procedure do not require that an evidentiary hearing on the merits before enrolling a licensee on disability inactive status. App. A49-54. See Rule 5.195(A).[1]

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[1] Rule 5.195 Hearing on Merits (A) Time of Hearing. **If a hearing is ordered,** it will be held as soon as practicable after the notice to show cause is issued. Time will be allowed to appoint counsel, to prepare a defense, and to complete appropriate discovery or a physical or a mental examination.

On November 27, 2019, the State Bar court issued an order enrolling Petitioner on involuntary inactive status in case number 19-TT-30212. The order was amended on December 2, 2019. The order became effective on November 30, 2019. App. A2-19.

On or about May 8, 2020, Petitioner filed a petition for Review with the California Supreme Court - alleging that BPC § 6007(b)(3), as promulgated through rules 5.190-5.212, constituted a per-se violation of constitutional due process because licensees were not afforded a predeprivation evidentiary hearing on the merits, nor postdeprivation evidentiary hearing on the merits; and licensees enrolled involuntary inactive under these rules are permanently deprived of their license unless and until they submit to medical examinations and release of medical information. See Rule 5.206.[2]

On or about May 5, 2020, Petitioner filed a Complaint for Declaratory and injunctive relief with the US District Court. On or about July 7, 2020, the district court denied the application, citing Younger abstention. On or about January 15, 2021, the 9th Circuit Court of appeals denied review.

Everett has remained on involuntary inactive enrollment despite never having been afforded a hearing on the merits, and despite never having been found culpable in any discipline proceeding - ever.

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[2] Rule 5.206 Medical and Hospital Records: The attorney must authorize the State Bar to examine and copy medical, hospital, and related records relevant to the attorney's original mental infirmity, illness, or addiction & rattorney's present condition.

REASONS FOR GRANTING PETITION

The scope of Younger abstention[1] is limited to only three exceptional circumstances: (1) federal intrusion in ongoing state criminal prosecutions, (2) certain civil enforcement proceedings, and (3) civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions. Assuming that the board's administrative adjudication and subsequent state court review counted as a unitary process for Younger purposes, the initial board proceeding did not fall within any of the three exceptional categories, and thus, did not trigger Younger abstention. Specifically, the proceeding was not akin to a criminal prosecution, was not initiated by the state in its sovereign capacity. In essence, the Bar's adjudicative authority was invoked to settle a civil dispute between two private parties. This is especially apparent in that no predeprivation nor postdeprivation hearing is required to determine if licensees should be moved to involuntary inactive status because of alleged disability, and because an attorney is appointed on behalf of the Bar, a public corporation, to represent licensees subject to proceedings pursuant to Rule 5.190-5.212 - making the proceedings akin to an employer attempting to determine if an employee is fit for work, or a labor union attempting to determine if a member meets union work fitness requirements, i.e., a dispute between private parties.

Moreover, this Court in *Barry v. Barchi*, 443 U.S. 55, 99 S. Ct. 2642 (1979), held that the due process clause of the United States

[1] Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746 (1971)

Constitution, Amend. V, XIV, is not violated by the temporary deprivation of a protected property interest, and without affording a predeprivation hearing on the merits, where thereis a reasonably prompt postdeprivation means of challenging the allegations that gave rise to the initial deprivation.[3]

Here, § 6007(b)(3), as promulgated, constitutes a per se violation of constitutional due process because a predeprivation evidentiary hearing on the merits is not required before enrolling a licensee on inactive status, nor is a postdeprivation evidentiary hearing on the merits required to allow for licensees to contest the initial deprivation. *Barry v. Barchi*, 443 U.S. 55, 99 S. Ct. 2642 (1979).[4]

In *Barry*, the postdeprivation hearing on the merits was guaranteed at some point. No such guarantee exists under the State Bar rules at issue here.

Once deemed to have a disability pursuant to BPC § 6007(b)(3), the licensee may only shed that designation by surrendering their right to otherwise sensitive medical and hospital records - and even then, the rules do not require that a hearing on the merits ever take

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4 The rules clearly do not mandate that a hearing on the merits occur before a licensee is enrolled as involuntary inactive. See Rule 5.195(aHearing on Merits
(A) Time of Hearing. **If a hearing is ordered, it will be held as soon as practicable after the notice to show cause is issued.**
5 Petitioner has been on involuntary inactive status for nearly two years without being afforded a hearing on the merits, and Section 6007(b)(3), as promulgated, does not require that a hearing ever take place.

place to determine if the initial, or continual, involuntary inactive enrollment is warranted.

Thus, there is quite literally no guarantee whatsoever that a hearing will ever take place to determine if the allegationsthat led to the involuntary inactive enrollment have merit.[8]

In this manner, the proceedings at issue did not fall under the Younger abstention doctrine as they certainly did not provide any of the traditional safeguards of a criminal prosecution, and given their administrative character, where far more akin to a private dispute between union and member or employer and employee.

Therefore, Younger abstention was wholly inappropriate and the district court erred in not deciding the issues on the merits.

CONCLUSION

Based on the foregoing, Petitioner hereby requests that the Writ of Certiorari be granted, and or, that the matter be remanded to the 9th Circuit with instructions to have the district court decide the matter pursuant to any related instructions or direction by this Court.

JUNE 14, 2021: at SAN FRANCISCO, CA

Respectfully Submitted,

/S/Daniel Everett

Daniel Everett, Esq.

WORD COUNT: 2725

[8] Everett only challenged the allegations in the order for inactive enrollment to the extent that he requested a hearing on the merits, and otherwise averred that all allegations were related to requests for disability accommodations that were the result of a gastrointestinal condition, and where the requests for accommodations were valid requests made to provide Everett court access.

DECLARATION

I, Daniel Everett, am representing myself in this action and hereby declare that all statements made here are true and correct and this pleading is being presented for a just and lawful purpose. Signed under penalty of perjury of the laws of the United States.

6.14.21
/s/Daniel Everett
DANIEL EVERETT, Pro Per.