No. 24-36

In the Supreme Court of the United States





SPENCER F. SMITH, PETITIONER,

*v.*

THE STATE BAR OF CALIFORNIA,
RESPONDENT.

*ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA*

# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

In February of 2016, Petitioner Spencer Freeman Smith, a civil rights and whistleblower attorney, was suspended without a hearing by the State Bar of California pursuant to California's Business and Professions Code Section 6102. Petitioner was not given a post-suspension hearing until September of 2020.

Business and Professions Code Section 6102 did not ensure a prompt hearing or resolution of issues, and after the hearing, the State Bar took an additional three years to make its final decision on discipline. Petitioner challenges the constitutionality of his prolonged four-year pre-hearing suspension, the State Bar's subsequent three-year delay in rendering its final decision, the State Bar's use of *ex parte* hearsay statements to support its final discipline ruling, and the State Bar's failure to provide notice of the facts and circumstances supporting the State Bar's theory of discipline prior to Petitioner's post-suspension hearing.

The questions presented are:

I. Whether it is unconstitutional under the Due Process Clause for the State Bar of California to place an attorney on suspension without a hearing for four years before conducting a post-suspension hearing. *Barry v. Barchi*, 443 U.S. 55 (1979)?

III. Whether it is unconstitutional under the Due Process Clause for the State Bar of California to publicly recommend an attorney be disbarred and then wait three years to submit its final recommendation for discipline. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 549 (1985)?

III. Whether it is unconstitutional under the Due Process Clause for the State Bar of California, to base its disbarment recommendation upon the *ex parte* statements of witnesses whom the accused attorney had not been afforded an opportunity to cross-examine. *Willner v. Committee on Character*, 373 U.S. 96, 103 (1963); *Goldberg v. Kelly*, 397 U.S. 254, 269, (1970)?

IV. Did the State Bar fail to provide Petitioner with adequate notice of the facts and circumstances supporting disbarment? *In re Ruffalo,* 390 U.S. 544 (1968).

## PARTIES TO THE PROCEEDING

Petitioner Spencer F. Smith was Petitioner-appellant in the state supreme court.

Respondent State Bar of California was Respondent-appellee in the state supreme court.

A corporate disclosure statement is not required because Petitioner Smith is not a corporation. See Sup. Ct. R. 29.6.

## STATEMENT OF RELATED CASES

Petitioner is aware of no directly related proceedings arising from the same State Bar case as this case other than those proceedings appealed here.

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## PETITION FOR WRIT OF CERTIORARI

Pursuant to long standing Supreme Court precedent due process mandates the notice of the scheduling of a prompt post-suspension hearing once a professional license is suspended to avoid unconstitutional deprivation of property. (*See In re Ruffalo,* 390 U.S. 544 (1968); *Barry v. Barchi*, 443 U.S. 55, 67 (1979); *Cleveland Board of Education v. Loudermill*, 470 U.S. 532. (1985); *Willner v. Committee on Character*, 373 U.S. 96; *Goldberg v. Kelly*, 397 U.S. 254, 269, (1970)). Petitioner was suspended from the practice of law without a hearing in February of 2016, pursuant to California's Business and Professions Code Section 6102. Petitioner was not provided a post-suspension hearing until September of 2020.

At the time of Petitioner's post-suspension hearing, he was not notified of the specific facts or circumstances supporting discipline. The State of California's failure to provide timely notice of the specific facts and circumstances supporting potential discipline, combined with a four-year delay in conducting the post-suspension hearing and a subseqent three-year delay in rendering the final decision, deprived the Petitioner of his law license and ability to earn a living, in violation of the Due Process Clause of the Fourteenth Amendment.

The post-suspension procedure authorized by California's Business and Professions Code Section 6102 is unconstitutional on its face, as it does not specify a timeframe for a post-suspension hearing.

(*See Barry v. Barchi,* 443 U.S. 55, 67, [15 days pre-hearing suspension held unconstitutional where "the provision for an administrative hearing, neither on its face nor as applied in this case, assured a prompt proceeding and prompt disposition of the outstanding issues."]. Business and Professions Code Section 6102 as applied in this case, did not assure a prompt proceeding as the State maintained an unconstitutional four-year suspension against the Petitioner before he was granted a post-suspension hearing.

The post-suspension procedure authorized by California's Business and Professions Code Section 6102 is also unconstitutional on its face, as it does not specify a timeframe for the State Bar or the State Supreme Court to render their final decision after the State Bar conducts a post-suspension hearing. This omission led to unconstitutional delays, in the instant action. (*See Cleveland Board of Education v. Loudermill,* 470 U.S. 532. (1985), [recognizing that delay in providing a post-hearing decision would become a constitutional violation "at some point"]). Here, the State Bar unconstitutionally delayed issuing its final decision for three years after the Petitioner's post-suspension hearing, thereby unconstitutionally delaying the final decision of the state supreme court.

Furthermore, the post-suspension procedure authorized by California's Business and Professions Code Section 6102 is unconstitutional on its face, as it does not require the State Bar to identify the specific facts and circumstances supporting discipline prior to conducting a post-suspension hearing. (See *In re Ruffalo,* 390 U.S. 544 (1968)).

As Justice Thurgood Marshall stated over 50 years ago, "it is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law." *(citation omitted).*[1]

"And Mr. Justice Frankfurter has said that "[t]he history of American freedom is, in no small measure, the history of procedure." *Malinski* v. *New York*, 324 U.S. 401, 414 (1945) (separate opinion). With respect to occupations controlled by the government, one lower court has said that "[t]he public has the right to expect its officers . . . to make adjudications on the basis of merit. The first step toward insuring that these expectations are realized is to require adherence to the standards of due process; absolute and uncontrolled discretion invites abuse [citation omitted]."[2]

Furthermore, as the Supreme Court has recognized where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. (*See Goldberg v. Kelly*, 397 U.S. 254, (1970)). As the Supreme Court explained:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously

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[1] Dissenting Opinion of Justice Thurgood Marshall in *Board of Regents v. Roth*, 408 U.S. 564, 589-90 (1972).

[2] Id.

> injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots.

*Greene v. McElroy*, 360 U.S. 474, 496, (1959). (*See also*, *Jenkins* v. *McKeithen*, 395 U.S. 411, 423-429 (1969); *Willner* v. *Committee on Character*, 373 U.S., at 103; *Goldberg v. Kelly*, 397 U.S. 254, 269. ["a person should not be deprived of his livelihood "in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination."")].

Where the grant or denial of a license has been involved, and the "right" to engage in business has been legitimately limited by the interest of the State in protecting its citizens from inexpert or unfit performance, the decision of the State to grant or deny a license has been subject to a hearing requirement with proper notice of the facts to support the State's case. (*In re Ruffalo*, 390 U.S. 544 (1968) and *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96 (1963) (admission to the bar)).

The Supreme Court has put particular stress on the fact that the absence of proper notice and the holding of a post-suspension hearing would allow the State to be arbitrary in its grant or denial, and to make judgments on grounds other than the fitness of a particular person to pursue his chosen profession. In the context of admission to the bar, the Supreme Court has stated:

> Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. [3]

*Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 239 (1957). In the instant action prior to the State Bar of California's September of 2020, post-suspension hearing, Petitioner had not received "fair notice" of the specific facts and circumstances that would possibly support disbarment. (*In re Ruffalo* (1968) 390 U.S. 544, 550).

At the September 2020, post-suspension hearing, 48 of the 50 witnesses identified by the State Bar in its pre-hearing filings, who were purportedly

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[3]Petitioner is African American and during the pendency of Petitioner's eight-year State Bar disciplinary process, the State Bar of California recognized that there is a disparity in discipline for African American male attorneys in California. For example, for attorneys facing disbarment, the disbarment/resignation rate for Black male attorneys was 3.9% while that for White male attorneys it was 1.0%.

going to support the State Bar's theory of discipline, did not appear at the post-suspension hearing. The State Bar then relied exclusively on the testimony of a witness not identified by the State Bar in its pre-hearing witness list to purportedly summarize the findings of the other 48 witnesses who refused to endorse the State Bar's theory of discipline. This resulted in unconstitutional prejudice, effectively denying the Petitioner the opportunity to assess whether the 48 identified witnesses supported the State Bar's theory of discipline and to test the weight and credibility of their testimony. (*See Alford v. United States* 282 U.S. 687, 692 (1931)).

Petitioner was unable to effectively cross-examine the three witnesses produced by the State Bar in the present case, because Petitioner had no prior notice of the specific facts and circumstances which supported the State Bar's theory of discipline. "Such procedural violation of due process would never pass muster in any normal civil or criminal litigation. *In re Ruffalo*, 390 U.S. 544, 551 (1968).

These are adversary proceedings of a quasi-criminal nature. Cf. *In re Gault*, 387 U.S. 1, 33 (1967). The facts and circumstances supporting a potential discipline must be known before a post-suspension hearing commences. *In re Ruffalo*, 390 U.S. 544, 551 (1968). If the facts and circumstances are unknown, they become a trap when, the final decision is drafted after testimony of the accused and the witnesses at the post-suspension hearing is completed. Id. In these circumstances, the accused attorney can be given no opportunity to expunge the earlier statements and start afresh. Id.

"How the facts and circumstances supporting discipline in this matter would have been met had it been originally included in those leveled against Petitioner by the [State Bar Bar] no one knows." Id. at 552. "This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process." Id.

## OPINIONS BELOW

The State Bar's recommendation for disbarment is reproduced at App. 3a. Petitioner promptly called that decision to the attention of the State Supreme Court.

## JURISDICTION

On April 10, 2024, the state supreme court denied Petitioner's writ without opinion. App. 1a. Petitioner Smith timely filed this petition on July 3, 2024. This Court has jurisdiction under 28 U.S.C. § 1257.

## STATUTORY PROVISION INVOLVED

The relevant statutory provision is at App. 36a.

## STATEMENT

Petitioner Spencer Freeman Smith is an attorney and cancer survivor who lost his right eye as a child due to cancer. His mono-vision limits his field of vision but does not prevent him from operating a

motor vehicle. On May 15, 2012, at approximately 10:30 pm, Petitioner drove about 50 miles from San Francisco, where his office was located, to his home near Dublin, California.

Bo Hu, a non-US citizen allegedly visiting America from China and unknown to anyone in the local community, became intoxicated and wandered onto a dark, desolate thoroughfare with little or no lighting. There are no witnesses who can account for Hu's whereabouts on the day he was found dead on the roadway. According to investigating police officers, Smith caused Hu's death in violation of California Vehicle Code § 22350, the Basic Speed Law, and accused Petitioner of "Gross Negligence."

On June 26, 2012, Petitioner was charged with a felony violation of Vehicle Code section 20001, subdivision (a) (leaving the scene of an accident resulting in injury or death, "hit-and-run"), and a misdemeanor violation of Penal Code section 192, subdivision (c)(2) (vehicular manslaughter). Petitioner entered a not guilty plea as he knew the allegations of violating basic speed laws and "gross negligence" were objectively false.

Subsequent to Petitioner's 2012, indictment, no preliminary hearing was conducted, and no police officers ever testified before the trial court about their findings related to the facts or circumstances of the charges against Petitioner. Between 2012 and 2016, the State Bar of California allowed Petitioner to continue practicing law uninterrupted.

In December of 2013, over one year after Petitioner's indictment, Petitioner's criminal matter was assigned to the Honorable Kevin R. Murphy of the Alameda County Superior Court. On August 18,

2014, Petitioner's counsel filed a Motion to Suppress Evidence to Traverse the Search Warrant. On August 25, 2014, Judge Murphy continued the Petitioner's case pending the outcome of Petitioner's Motion to Suppress. The District Attorney's Office never opposed the motion. In November of 2014, Petitioner was informed by his counsel that if he agreed to an "open plea" with the Court, he would be given a misdemeanor and allowed to continue to practice law uninterrupted.

In 2014 and 2015, two separate Alameda County Superior Court judges indicated to Petitioner's counsel that the court was inclined to offer a remedy that would allow Petitioner to continue his legal practice uninterrupted in exchange for an open plea to the court in "name only."[4] While attempting to take Petitioner's conditional plea in November 2014, the District Attorney, the Alameda Superior Court and Petitioner's counsel all agreed several times on the record that there was a pre-plea off the record agreement for a probation disposition of the case.

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[4] On February 11, 2016, the second Alameda County Superior Court judge assigned to Petitioner's criminal case, Judge Michael Gaffey unequivocally admitted on the record "in this case, it's a plea bargain between the accused and the court."

The ABA's Professional Ethics Committee has ruled, "A judge should not be a party to advance arrangements for the determination of sentence, whether as a result of a guilty plea or a finding of guilty based on proof.'" The rule is aimed at ensuring that no defendant is coerced into pleading guilty, to protect the integrity of the courts, and to preserve the judge's impartiality after plea negotiations are completed.

During the process of finalizing the terms of the judicial plea bargain with the trial court, significant shortcomings regarding the State's case came to light. For example, during the three years while the criminal case was pending, the District Attorney's office did not conduct an independent investigation of the motor vehicle accident.

At the September 11, 2015, plea hearing, the court accepted Petitioner's conditional plea admittedly without comprehensive knowledge of the facts related to the case. Judge Gaffey acknowledged, "Although I haven't read all the documents, I will find Mr. Smith guilty of counts 1 and 2." He then expressed concern about the facts supporting a plea to Count 2, which required that Petitioner was engaged in a misdemeanor, an infraction, or a lawful act in an unlawful manner at the time of causing the victim's death.

District Attorney Matthew Gaidos then suggested that Petitioner was using his cell phone at the time of the accident[5], thus abandoning the police department's theory that Smith had violated the Vehicle Code by engaging in "Gross Negligence."[6]

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[5] The cell phone theory would later be abandoned by the District Attorney's office and is further evidence that the District Attorney had not investigated the matter when making factual representations to the trial court.

[6] Misconduct on the part of police officers was commonplace in Alameda County over the past 15 years. Between 2015-2019, 41 lawsuits against the Alameda County Sheriff's Office cost the County $15.5 million for civil rights violations that include a string of in-custody deaths and abuse of prisoners. In 2015, the Superior Court in Alameda County, California, quietly destroyed the criminal case files for three former Oakland police officers, known as "the Riders," who stood trial for beating, falsely arresting, and framing dozens of African American men in the

This was the first of many indications that the District Attorney recognized that the investigating Alameda County Sherriff officers had made several critical errors in erroneously concluding that the Petitioner engaged in criminal recklessness by failing to see an intoxicated pedestrian meandering on the roadway.

The Court then informed the parties that he would further investigate the case over the next two weeks and requested that the District Attorney and Petitioner's counsel submit stipulated facts at a later date. However, due to the lack of an independent investigation by the District Attorney's office, no stipulated facts were ever presented to the trial court.

During the trial court's post-plea probation process, Jonathan Cherney, a detective with over 20 years of experience and the team leader of his department's M.A.I.T. (Major Accident Investigation Team) division, provided an expert opinion to the court and explained the errors in the police officers' factual findings:

> The [Dublin Police Department][7] did not conduct any type of vehicle vs.

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late 1990s and early 2000s. In January 2023 a new sheriff and new district attorney were sworn in by Alameda County both with promises of addressing police officer misconduct.

[7] The Dublin Police Services in Dublin, CA, is provided by the Alameda County Sheriff's Office. The City of Dublin does not have its own independent police force but contracts with the Alameda County Sheriff's Office to provide law enforcement services. This arrangement allows deputies from the Alameda County Sheriff's Office to serve as police officers for Dublin, ensuring that the city has comprehensive law enforcement coverage without maintaining a separate municipal police department.

pedestrian collision reconstruction analysis, time & distance analysis, lighting study or in any way, attempt to determine the speed of the [Mr. Smith's vehicle] at the time of the collision.

This is one of the most important parts of the investigation for it is used to assist in determining fault. Neither, Deputy Castelluccio nor Detective McNaughton indicated the speed of Smith's vehicle in their conclusions, however Detective McNaughton found Smith in violation of California Vehicle Code§ 22350, the Basic Speed Law, and emphasized he violated it with "Gross Negligence." He did not elaborate at all why he believed the driver acted with such negligence. There is absolutely no evidence whatsoever in the DPS reports to suggest the driver of Smith's vehicle had been traveling at an unsafe speed at the time of the collision. Furthermore, an involved party in a traffic collision, cannot be found in violation of California Penal Code §192(c)(2), Misdemeanor Vehicular Manslaughter, unless it has been determined the driver was driving in the commission of an unlawful act or driving in an unlawful manner. Neither has been established by the DPS.

Without a proper lighting study, there is no way DPS can conclude that an approaching driver should have been able to see Hu in the roadway and avoid

a collision at the posted speed limit of 45 miles per hour.

Cherney provided additional expert information to the trial Court during the post-plea probation process that Mr. Hu should have been found in violation: (1) of Vehicle Code§ 21956(a) for unlawfully walking in the roadway; (2) and California Penal Code § 647(f) for Public Intoxication. Human Factors expert Jason Droll, Ph.D. also provided an expert opinion to the trial court and stated that "the majority of drivers in Mr. Smith's situation would not be expected to respond to the presence of Mr. Hu before collision."

Essential pieces of evidence, including crime scene photos, videos, contemporaneous recordings or images of the Petitioner's vehicle, photos of Hu, and/or dashcam footage of officers approaching the crime scene, which could corroborate or refute the findings of the officers, were never obtained by the District Attorney's office nor provided to the trial court.

In September 2015, the trial court entered into a judicial plea bargain agreement with Petitioner, designed to allow the Petitioner to continue practicing law without interruption. Specifically, the trial court granted Petitioner probation and suspended the imposition of sentence, The trial court attributed the "accident" to Petitioner "being blind in his right eye" and ultimately concluded, "there was certainly nothing intentional on Mr. Smith's part, other than not seeing Mr. Hu."

## I. THE HEARING DEPARTMENT PROCEEDINGS

On April 3, 2015, the State Bar Court rejected a formal request from the State Bar staff attorneys to classify any plea pursuant to Petitioner's criminal charges as moral turpitude per se. Accordingly, the State Bar was notifying the Petitioner and the State Bar staff attorneys that a plea alone would not suffice to establish moral turpitude as a matter of law. Furthermore, the State Bar was notifying the Petitioner and the State Bar staff attorneys that moral turpitude would need to be proven at a hearing and must be based on "special circumstances which are not necessarily present whenever the offense is committed." (*In re Rohan*, 21 Cal.3d 195, 200 (Cal. 1978)). However, rather than investigate the matter, the State Bar staff attorneys continued to press forward over the next five years without developing proof of special circumstances surrounding the facts of the criminal charges.

In February of 2016, the State Bar of California invoked its Business and Professions Code §6102 authority to suspend the Petitioner without a hearing, pending the trial court's final judgment on the judicial plea agreement. At that time, the Petitioner was under the impression that the State Bar was investigating the facts and circumstances surrounding the motor vehicle accident and he would be provided notice of any facts and circumstances supporting discipline prior to a post-suspension hearing.

However, at no time would anyone from the State Bar ever initiate an independent investigation

into the facts and circumstances of the motor vehicle accident. Later in February of 2016, Petitioner filed an appeal regarding the trial court's inappropriate assurances that a judicial plea agreement with the trial court would, purportedly permit the Petitioner to continue his legal practice without interruption.

In June of 2018, while Petitioner's appeal was pending, Petitioner requested that his pre-hearing suspension be vacated. Petitioner's counsel informed the State Bar, that the trial court determined that Petitioner did not engage in an act of moral turpitude and granted Petitioner probation so he could continue to work as an attorney. Petitioner's counsel further informed the State Bar that the State did not contest the factual findings of the Court that Mr. Smith did not engage in any act of moral turpitude regarding his involvement in the underlying accident. No one at the State Bar disputed these representations.

Petitioner's counsel further informed the State Bar, that the trial court found that Petitioner was a lawyer, had a business, a wife, young children, enjoyed respect in the community, was very cooperative with the Court and the police department as Petitioner did not destroy any evidence, voluntarily showed his car to the police when they came to his home, admitted to being involved in an accident, civilly settled the matter with the family, and the trial court did not conduct a preliminary hearing. No one at the State Bar contested these representations.

Finally, Petitioner's counsel informed the State Bar that historically, relief from interim suspension has been granted for felony convictions involving moral turpitude per se. (*In the Matter of DeMassa* 1 Cal. State Bar Ct. Rptr. 737 (1991), conviction for

harboring a felon; *In re Kristovich* 18 Cal. 3d 468 (1976) – conviction for perjury and preparation of false documentary evidence). Petitioner's counsel informed the State Bar that when determining whether interim suspension is warranted, or should be vacated, prior to a hearing on the merits of the conviction depends on the nature of the crime, its relationship to the practice of law, the undisputed surrounding factual circumstances, and the likely range of final discipline (*See In the Matter of Respondent M.* 2 Cal. State Bar Rptr. 465 (Rev. Dept. - 1993)). On July 11, 2018, the State Bar Review Department denied the Petitioner's request to vacate his suspension without a hearing and reiterated that he would not have a post-suspension hearing until his case was final.

On August 29, 2018, the California Court of Appeals, vacated the trial court's unlawful and unauthorized probation process and remanded the matter with instructions for the trial court to develop the record further. The Court of Appeal specifically, found during the trial court's post plea probation process, that the trial court "acted in excess of jurisdiction" and its acts were "unauthorized by law."

After the Court of Appeal's remand, the Petitioner renewed his request that his suspension without a hearing be vacated. On October 9, 2018, State Bar Senior Attorney Kevin Taylor confirmed in an email to the Petitioner's counsel that the State Bar "was still awaiting finality on the conviction" and that the Petitioner's pre-hearing suspension would not be vacated.

More than a year following the Court of Appeal's remand, the trial court had not commenced

its examination of the remittitur. However, on May 7, 2020, as the global pandemic escalated to forced shelter-in-place orders, the State Bar seized what it deemed an appropriate moment to initiate an evidentiary disciplinary hearing to scrutinize the evidence presented as part of the trial court's "unauthorized" probation process.

The scheduling of the hearing by the Review Department was predicated on the inaccurate assertion made by State Bar Staff Attorney Kevin Taylor, who, on April 9, 2020, amidst the peak of COVID-19's shelter-in-place orders, wrongfully claimed that the "trail [sic] court had completed its review of remittitur between November 13, 2018, and November 8, 2019, and that the [Petitioner] was resentenced on January 25, 2019." All courts in California were ordered closed at this time and no one at the State Bar could confirm Taylor's representations.

However, Taylor's assertion was irrefutably false, as the Petitioner's probation had not been revoked, and he had not been sentenced on January 25, 2019. It is undisputed that jurisdiction over the Petitioner's criminal case remained with the trial court until August 13, 2021, when the trial court confirmed Petitioner's successful completion of probation.

With the courts closed for Covid-19, the State Bar exploited the shelter-in-place orders by scheduling the Petitioner's hearing for September 1, 2020. At this time State Bar had not investigated the facts and circumstances of the motor vehicle accident and therefore failed to give Petitioner notice of the

facts and circumstances supporting a potential discipline.

In late August 2020, the State Bar requested the Petitioner agree to a continuance of his post-suspension hearing because no one at the State Bar had the opportunity to review the Police Department's and District Attorney's files regarding the facts and circumstances surrounding the accident.[8] The Petitioner agreed to the continuance to allow for such a review, in exchange for having his suspension vacated. The State Bar refused to vacate Petitioner's suspension and proceeded with the hearing on September 1, 2020. The State commenced the hearing without proper notice to Petitioner regarding the facts and circumstances supporting discipline and without anyone at the State Bar reviewing the Police Department's and the District Attorney's files.

The State Bar post-suspension hearing commenced prior to Petitioner's criminal case being final and three weeks prior to the Petitioner successfully completing his five-year probation. At the evidentiary hearing, District Attorney Matthew Gaidos testified that the Petitioner had in fact not been sentenced on January 25, 2019.

The State Bar post-suspension hearing was marred by uncertainty and the submission of unreliable evidence. This unreliability was underscored by the State Bar's last-minute request

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[8] On August 26, 2020, the State Bar filed a formal motion for a continuance wherein it admitted that no one from the State Bar had the opportunity to review the Police Department's and District Attorney's files regarding the facts and circumstances surrounding the accident.

for a continuance, citing concerns about proceeding with the hearing prior to the State Bar conducting an independent review of relevant evidence, including photographs and reports from the police and the District Attorney.

Without conducting its own investigation into the facts and circumstances of the 2012 accident, the State Bar stated it would prove its uninvestigated theory of discipline by relying on the testimony of 50 third-party witnesses. At the evidentiary hearing, 48 of the 50 witnesses identified by the State Bar, who were expected to testify in support of the State Bar's uninvestigated theory of discipline, refused to come forward.

When the State Bar realized it had no witnesses to support its uninvestigated theory of discipline, the State Bar announced on the first day of the post-suspension hearing, that any police officer who ever worked on the case, even if not identified by the State Bar in discovery or in the State Bar's pre-hearing filings, would be allowed to testify, as they were considered vessels for the same information.

This decision enabled the State Bar to call Officer Daniel McNaughton as a witness, although he was not identified in the State Bar's pre-hearing filings, in violation of State Bar Rule 5.65(F). The State Bar relied exclusively on Officer McNaughton to summarize narrative reports contained in documents produced as part of the trial courts unauthorized post-plea probation process in 2015. The narrative reports produced as part of the trial court's probation process consisted almost entirely of evidence that would have been inadmissible at the trial.

At the State Bar post-suspension hearing, Officer McNaughton testified about hearsay statements made over eight years ago by 20 police officers who allegedly investigated the facts of the motor vehicle accident. It is undisputed that Officer McNaughton, nor any other officer, ever appeared before the trial court prior to the Petitioner being granted probation or afterwards.

Furthermore, Officer McNaughton was intentionally not identified in OCTC's discovery and pre-hearing filings as a witness with relevant evidence because his factual conclusions had already been proven false and misleading by police practices expert Jonathan Cherney, five years earlier during the trial court's post-plea probation process.

During the post-plea probation process, a human factors expert, and a police practice expert reviewed the police officers' findings and found several prejudicial errors made by the investigating police officers. The experts concluded that a reasonable and prudent person in Petitioner's position even without a vision disability, would not have seen a pedestrian in the roadway on the night in question. The experts also found that the pedestrian Mr. Hu should have been found in violation: (1) of Vehicle Code§ 21956(a) for unlawfully walking in the roadway; (2) and California Penal Code § 647(f) for Public Intoxication. The State Bar never referenced or explained why it believed the conclusions of the human factors, and police practices experts' findings which contradicted McNaughton's testimony, were improper.

The police department's files reviewed by the experts during the trial court's 2015 post-plea

probation process contained no crime scene photos, no contemporaneous photos of the Petitioner's vehicle, no photos of Mr. Hu, and no dashcam video of officers approaching the accident scene. These crucial pieces of evidence were never presented to the trial court or the State Bar. The absence of these essential pieces evidence has raised a significant, lingering question since the case began in 2012: Do these critical pieces of evidence actually exist?

These evidentiary gaps significantly compromised the integrity and fairness of the disciplinary process, highlighting due process violations intended to ensure that disbarment recommendations are based on a comprehensive and incontrovertible evidentiary foundation. According to Supreme Court's holdings in *Willner v. Committee on Character* (1963) 373 U.S. 96, 103-105, and *Goldberg v. Kelly*, 397 U.S. 254, 269, (1970) an attorney cannot be denied his license on the basis of *ex parte* statements of others whom he had not been afforded an opportunity to cross-examine.

On November 2, 2020, the State Bar Hearing Department recommended that the Petitioner be disbarred without presenting evidence of moral turpitude at the hearing.

## II. THE REVIEW DEPARTMENT PROCEEDINGS

On November 30, 2020, the Petitioner timely appealed the November 2, 2020, disbarment recommendation issued by the State Bar Hearing Department. In May of 2021, Petitioner's State Bar administrative process had reached six years and

Petitioner could no longer afford his private counsel. At this time Petitioner unsuccessfully requested that the State Bar appoint him replacement counsel or preclude his attorney from substituting out of the case.

Over the next two-and-a-half-years Petitioner was forced to proceed in pro per. Rather than rendering its final decision, the Review Department chose to abate Petitioner's appeal, over the objections of both the Petitioner and the State Ba's staff attorneys. The State Bar indicated it would delay its final decision while it awaited finality of Petitioner's criminal case. Again, no judgment of conviction was ever entered against Petitioner. This decision effectively ensured that the Petitioner would continue to suffer under the stigma of the Hearing Department's disbarment order for the next three years.

The Review Department's delay in deciding the Petitioner's appeal was unconstitutionally prejudicial and frustrated the Petitioner's desire for an expeditious resolution of this matter after being branded with the stigma of disbarment.

## III. THE STATE SUPREME COURT PROCEEDINGS

On February 29, 2024, Petitioner filed a petition for review to the Supreme Court of California. The State Bar did not respond substantively to Petitioner's petition for review.

On April 10, 2024, the state supreme court denied Petitioner's writ without opinion. App. 1a. Petitioner Smith timely filed this petition on July 2,

2024. This Court has jurisdiction under 28 U.S.C. § 1257.

## REASONS FOR GRANTING THE PETITION

The State of California has no authority to delegate to the State Bar of California the ability to interfere with an attorney's constitutionally protected license, without adequate due process. By doing so, the State of California and the State Bar have misinterpreted and misapplied the text of the Fourteenth Amendment of the Constitution of the United States.

### I. THE ISSUES PRESENTED IN THIS PETITION ARE OF EXCEPTIONAL IMPORTANCE AND URGENTLY REQUIRE THIS COURT'S PROMPT RESOLUTION

The questions presented in this petition are of utmost importance. The Petitioner was suspended without a hearing for four years. The Petitioner was ultimately disbarred for circumstances of which he was not properly notified, and which were never independently investigated by the State Bar.

In 2015, the trial court granted Petitioner probation because the court attributed the "accident" to the Petitioner "being blind in his right eye" and ultimately found "there was certainly nothing intentional on Mr. Smith's part, other than not seeing Mr. Hu." Despite these findings, the State Bar suspended the Petitioner without a hearing as it ostensibly contemplated what discipline was

appropriate for Petitioner's operating a motor vehicle with a vision impairment and not seeing what he hit.

The State Bar deemed it fit to suspend the Petitioner indefinitely until is criminal case became final. However, no judgment of conviction was ever rendered in the underlying criminal case, resulting in unconstitutional delays.

The Supreme Court has held, that a State, in regulating eligibility for a type of professional employment, cannot foreclose a range of opportunities "in a manner . . . that contravene[s] . . . Due Process." *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 238 (1957). Specifically, the Supreme Court of the United States has made it clear that when the state deprives an individual of a professional license without a hearing it must assure a "prompt [postdeprivation] proceeding *and prompt disposition* of the outstanding issues between [the individual] and the [s]tate." *Barry v. Barchi,* 443 U.S. 55, 66. (emphasis added).

The State Bar's unreasonable and egregiously lengthy administrative process took eight years to resolve. During this timeframe, the State Bar conducted no investigation into the circumstances surrounding the accident and repeatedly denied the Petitioner's request to vacate his pre-hearing suspension. Thus, if allowed to stand, the State Bar of California's post-suspension procedure would permit the State Bar to indefinitely interfere with an attorney's right to earn a livelihood, without due process.

## II. CALIFORNIA'S BUSINESS AND PROFESSIONS CODE SECTION 6102 IS UNCONSTITUTIONAL AS IT DOES NOT PROVIDE FOR PROMPT POST-SUSPENSION HEARINGS

California's Business and Professions Code Section 6102 grants the California Supreme Court and/or the California State Bar the emergency power to suspend an attorney convicted of a crime from the practice of law without a full adverserial hearing.[9] California's Business and Professions Code Section 6102(e) provides that for crimes that may or may not involve moral turpitude the post-suspension adverserial hearing will be had once "the judgement of conviction as become final." Petitioner contends that the rule is unconstitutional because it does not require a *prompt post* deprivation dispositional hearing.

In *Barchi, supra*, the Supreme Court construed a New York statute which defined the disciplinary powers of the state harness racing commission. Under the statutory scheme, the commission was empowered, in the event that a post-race urinalysis indicated that a horse had been drugged, to summarily suspend the trainer of that horse who held his license from the state. The statute entitled the suspended licensee to a postsuspension hearing, but further provided that "[p]ending such hearing and

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[9] See Rule of Court 9.10(a) which delegates authority for pre-hearing suspension after conviction to the State Bar of California.

final determination thereon, the action of the [Board] in . . . suspending a license . . . shall remain in full force and effect." The statute provided no time in which the hearing must be held, and afforded the licensing authority as long as thirty days after the conclusion of the hearing in which to issue a final order adjudicating a case. After rejecting the licensee's contention that he was entitled to a presuspension hearing, the Court concluded that the statute was nevertheless unconstitutional because it failed to assure the licensee a prompt final disposition of the charges. The Court concluded:

> That the State's presuspension procedures were satisfactory, however, still leaves unresolved how and when the adequacy of the grounds for suspension is ultimately to be determined. As the District Court found, the consequences to a trainer of even a temporary suspension can be severe; and we have held that the opportunity to be heard must be "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545, 552, (1965). Here, the provision for an administrative hearing, neither on its face nor as applied in this case, assured a prompt proceeding and prompt disposition of the outstanding issues between Barchi and the State. . . . Once suspension has been imposed, the trainer's interest in a speedy resolution of the controversy becomes paramount, it seems to us. We also discern little or

> no state interest, and the State has suggested none, in an appreciable delay in going forward with a full hearing. On the contrary, it would seem as much in the State's interest as Barchi's to have an early and reliable determination with respect to the integrity of those participating in state-supervised horse racing.
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> In these circumstances, it was necessary that Barchi be assured a prompt postsuspension hearing, one that would proceed and be concluded without appreciable delay. Because the statute as applied in this case was deficient in this respect, Barchi's suspension was constitutionally infirm under the Due Process Clause of the Fourteenth Amendment.

*Barchi, supra,* 443 U.S. at 66. (*See also Parratt v. Taylor,* 451 U.S. 527, 540, (1981)*; Mackey v. Montrym,* 443 U.S. 1, 12, (1979)*; Fusari v. Steinberg,* 419 U.S. 379, 389, (1975) (prompt and adequate administrative review is a significant factor in assessing the sufficiency of the entire process)).

In the present case, there is no difference between the statute construed in *Barchi* and Business and Professions Code 6102. Both statutes provide for emergency suspension pending a full hearing. However, neither statute specifies a time frame nor provides any means for calculating the time within which the hearing must be held. Consequently, the provision for an administrative hearing in Business and Professions Code Section 6102, both on its face

and as applied in this case, did not assure a prompt proceeding and prompt resolution of the outstanding issues between Smith and the State.

Once the suspension of an attorney's professional license has been imposed, the attorney's interest in a speedy resolution of the controversy becomes paramount. Even a temporary suspension can irreparably damage an attorney's livelihood. An attorney not only loses income during the suspension but is also likely to lose clients accumulated over his career. Thus, even a brief temporary suspension threatens to inflict substantial and irreparable harm.

A final full hearing and determination eight years after the Petitioner had been barred from the practice of law and had lost his clients becomes an "exercise in futility," and would certainly not qualify as a "meaningful opportunity to be heard at a meaningful time." To be meaningful, an opportunity for a full hearing and determination must be afforded at a time when the potentially irreparable and substantial harm caused by a suspension can still be avoided — i.e., either before or immediately after the suspension. *Barchi, supra,* 443 U.S. at 73-74, (Brennan, J., concurring in part).

Under these circumstances, it was essential that the Petitioner was assured a prompt post-suspension hearing, one that would proceed and conclude without appreciable delay. Because the statute, as applied in this case, was deficient in this respect, the Petitioner's suspension was constitutionally infirm under the Due Process Clause of the Fourteenth Amendment.

## III. CALIFORNIA'S BUSINESS AND PROFESSIONS CODE SECTION 6102 IS UNCONSTITUTIONAL AS IT DOES NOT SPECIFY A TIME FOR FINAL DECISION

The Due Process Clause requires not only a prompt hearing before the State Bar but also a prompt final disposition by the California Supreme Court. See *Board of Education v. Loudermill*, *supra* 470 U.S. at 532. Agan this is because the Due Process Clause mandates a "meaningful" opportunity to be heard. As previously noted, on November 2, 2020, following a 4-day hearing, the State Bar's Hearing Department recommended the Petitioner be disbarred for his role in the 2012, motor vehicle accident. It then took the State Bar Review Department three years to act upon this recommendation, during which time the Petitioner suffered under the stigma of disbarment.

The Petitioner's post-suspension process was pending before the State Bar from 2016 to 2024, an exorbitantly long period of time. There is no plausible due process explanation for this delay. As stated above, the consequences for an attorney of even a temporary suspension can be severe; thus, the opportunity to be heard must occur "at a meaningful time and in a meaningful manner," as established in *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Accordingly, California's Business and Professions Code §6102 is unconstitutional under the Due Process Clause, as it allowed the State to irreparably sanction an attorney without a resolution of the post-suspension hearing, violating the plaintiff's right to due process.

In conclusion, the Petitioner was not afforded the due process protections to which he was entitled, as he was forced to endure a three-year delay before the Review Department rendered its final decision, despite his repeated objections. This substantial delay in the adjudication of his case undermines the principles of fairness and justice that are foundational to the due process rights guaranteed by the Constitution. Such protracted delays in the resolution of disciplinary actions not only compromise the integrity of the legal profession but also inflict lasting damage on the careers and lives of those awaiting resolution.

## IV. THE STATE BAR DID NOT MEET ITS BURDEN OF PRESENTING COMPETENT EVIDENCE THAT THE CRIME FOR WHICH THE PETITIONER WAS GRANTED PROBATION INVOLVED MORAL TURPITUDE, OR THE CIRCUMSTANCES OF ITS COMMISSION, INVOLVED MORAL TURPITUDE

The State asserts that this case presents an issue of first impression, and "that no recent relevant case law exists that is substantially comparable to this case." However, California courts have classified a conviction for vehicular manslaughter while visually impaired as a crime that does not inherently involve moral turpitude. (*See In re: Alkow* 64 Cal.2d 838, 840-841(1966)). Similarly, the California State Bar has held stated that a misdemeanor hit-and-run conviction is not categorically a crime involving moral

turpitude. (See *In the Matter of Dana H Anderson*, State Bar Court, case no. 03-C-03843; *In the Matter of Richard DiStefano*, State Bar Court, case no. 03-C-02338.)

Furthermore, and more importantly, there are no State Bar or California Supreme Court disciplinary opinions where an attorney was required to wait four years for a post-suspension hearing. Additionally, there are no disciplinary opinions from either the State Bar or the California Supreme Court where the State Bar recommended discipline without conducting its own independent investigation of the facts and circumstances of the disciplinary matter. Moreover, there are no disciplinary opinions wherein the Review Department took three years to decide an appeal of a Hearing Department's disciplinary recommendation. Finally, there are no State Bar or Supreme Court disciplinary opinions that permit the disbarment of an attorney for conduct unrelated to the practice of law based on unreliable hearsay testimony of a witness not identified by State Bar in its pre-hearing filings.

The Supreme Court has specifically required the right to cross-examination of adverse witnesses as a part of due process in hearings to determine fitness for admission to the bar. (*Willner v. Committee on Character*, 373 U.S. 96). As the Court explained in *Goldberg v. Kelly*, 397 U.S. 254, 269, "in almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." (*E.g., ICC* v. *Louisville N.R. Co.*, 227 U.S. 88, 93-94 (1913); *Willner* v. *Committee on Character Fitness*, 373 U.S. 96, 103-104.).

What the Supreme court said in *Greene* v. *McElroy*, 360 U.S. 474, 496-497 (1959), is particularly pertinent here:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment. . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny.

The attorney whose professional license is challenged has as much at stake as the defendant in many a criminal prosecution and should be similarly

protected in the trial of serious charges. (1 Witkin Cal. Procedure (2d ed. 1970) Attorneys, § 252, at p. 260. The right to practice one's profession, which is at stake in disciplinary proceedings, has long been deemed sufficiently fundamental to surround it with a panoply of procedural safeguards. (*See Emslie v. State Bar* 11 Cal. 3d 210, 226, 229 (CAL 1974); *Endler v. Schutzbank*, 68 Cal. 2d 162, 169-173 (CAL 1968); *Brecheen v. Riley*, 187 Cal. 121, 124-125 (CAL 1921)).

Pursuant to California law, an attorney may not be stripped of his privileges except on competent and legal evidence. *In re Richardson*, 209 Cal. 492, (CAL.1930), the Court held that it is not so much a matter of procedural rules, as it is the kind of evidence that is necessary and sufficient to deprive an attorney of his right to practice. In that decision, in holding that hearsay evidence is not competent for the purpose, it was said at page 499:

> Legal evidence alone should be required to deprive a duly admitted attorney of the vitally important and valuable right to practice his profession, and to impose upon him the stigma of disbarment. The court can be asked in such review only to consider the sufficiency of legal evidence. We are of the view, therefore, that only legal evidence, as that term is understood among lawyers, should receive the consideration of the Board of Governors and committees of The State Bar in the exercise of the disciplinary features of the Bar Act.

Accordingly, the State Bar cannot recommend disbarment based upon hearsay testimony. This right

has been held binding upon the States under the due process clause of the Fourteenth Amendment. *Willner v. Committee on Character and Fitness*, 373 U.S. 96, (1963) (disbarment); *In re Gault*, 387 U.S. 1, (1967) (juvenile proceeding) *Goldberg v. Kelly*, supra 397 U.S. 254, (1970) (termination of welfare benefits), *Greene v. McElroy*, 360 U.S. 474, (1959) (Security Clearance), *Jay v. Boyd*, 351 U.S. 345, (1956) (selective service proceedings).

In *Willner v. Committee on Character Fitness,* for example, the Supreme Court struck down a state committee's denial of a certificate to practice law where the plaintiff had no opportunity to confront and cross-examine the witnesses whose character testimony led to his denial. The Court found that in such situations, the opportunity for confrontation is a necessary element of due process. *Willner supra,* 373 U.S. at 104.

At Petitioner's post-suspension hearing, 48 of the 50 witnesses identified by the State Bar did not appear, and Officer McNaughton was called to testify on their behalf. Although the Petitioner did cross-examine Officer McNaughton, who was not identified as a witness by the State Bar, many of the accusations made by McNaughton were not within his personal knowledge and were founded entirely on hearsay and double hearsay.

As a result, much of the cross-examination turned into a meaningless exercise. All Officer McNaughton could do was repeat what he had been told by others or what was written in documents. There was no opportunity to confront those supplying allegedly incriminating accusations, no chance to cross-examine their stories, and no possibility of

assessing their demeanor and credibility. If the Sixth Amendment right to confrontation allows such a procedure when a man's property right is at stake, it guarantees very little indeed. *Douglas v. Alabama*, 380 U.S. 415, 418, (1965).

In the instant action, the hearsay statements utilized by the State Bar to establish discipline were produced to the trial court for the first time as part of the trial court's post-plea probation process. During this process, the trial court found that the circumstances clearly demonstrated that the Petitioner was involved in an unfortunate "accident" due to his vision impairment, specifically "being blind in his right eye," and ultimately concluded that "there [was] certainly nothing intentional on Mr. Smith's part, other than not seeing Mr. Hu." Furthermore, expert reports were provided to the Court which determined the police officers made several erroneous findings and no person in Smith's position would have seen or reacted to a drunk pedestrian in the roadway. No new evidence was submitted to the State Bar to contradict the trial court's and the experts' findings that this was merely an accident.

Furthermore, administrative bodies in California may not take judicial notice of factual allegations in probation reports in court records because such matters are reasonably subject to dispute and therefore require formal proof.'" (*Kilroy v. State of California,* 119 Cal.App.4th 140, 145 (Cal. Ct. App. 2004), *People v. Thoma*, 150 Cal.App.4th 1096 (Cal. Ct. App. 2007), *People v. Trujillo,* 40 Cal.4th 165, 178 (CAL 2006), [excerpts from a probation report inadmissible as outside of any exception to the

hearsay rule]; *People v. Reed* 13 Cal.4th 217, 230–231 (CAL 1996).)

More importantly, the United States Supreme Court has stated that police reports are inadmissible hearsay evidence. Under *Crawford v. Washington*, 541 U.S. 36 (2004), and its progeny, as an officer's observations, as reflected in his report, will ordinarily be treated as testimonial evidence and, regardless of a state's hearsay exceptions, will be inadmissible unless the officer testifies. As the Ninth Circuit recognized in *U.S. v. Pena-Gutierrez*, 222 F.3d 1080, 1086–87 (9th Cir. 2000), police reports, particularly when they concern on-the-scene investigations, are considered less reliable than records prepared by other public officials because of the adversarial nature of the confrontation between the police and the defendant in criminal cases and the likelihood of the report's use in litigation.

It cannot be reasonably disputed that Petitioner when appearing before the State Bar did not receive the robust procedural safeguards similar to a Defendant in a criminal case. Based on the foregoing and the arguments herein, Petitioner was irreparably prejudiced by the State Bar's due process violations in considering hearsay statements provided to the trial court during its post-plea probation process.

## V. THE STATE BAR DID NOT PROVIDE ADEQEAUTE NOTICE OF THE FACTS AND CIRCUMSTANCES SUPPORTING DISCIPLINE IN THE INSTANT ACTION

In the present case Petitioner had no notice of what specific facts and circumstances surrounding his judicial plea agreement that would possibly warrant discipline. "Such procedural violation of due process would never pass muster in any normal civil or criminal litigation. *In re Ruffalo*, 390 U.S. 544, 551 (1968).

The State Bar found that "disbarment is the presumed sanction for a criminal conviction in which the surrounding "*facts and circumstances* involve moral turpitude." AA. 3a. The State Bar further stated, "a hearing judge found that the *facts and circumstances* surrounding Smith's convictions involved moral turpitude." AA. 3a. Finally, the State Bar stated, "upon our independent review" we "find that the *facts and circumstances* surrounding Smith's crimes involve moral turpitude, and the mitigation is not predominating or compelling." AA. 3a. It cannot be reasonably disputed that the Petitioner had no notice of the specific facts and circumstances surrounding his judicial plea agreement that could support disbarment.

In the instant action, the Petitioner had no notice of what specific facts and circumstances that could possibly support grounds for disbarment until after his post-suspension hearing and when the State Bar issued its final decision. Such a procedural due process violation would not be acceptable in normal

civil or criminal litigation. *In re Ruffalo*, 390 U.S. 544, 551 (1968).

"These are adversary proceedings of a quasi-criminal nature. Cf. *In re Gault*, 387 U.S. 1, 33. The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh." *In re Ruffalo*, 390 U.S. 544, 551 (1968).

Here the State Bar found that "Smith lacked candor in dealing with the police in the aftermath of the collision, and he further disregarded his probation conditions." Smith had no previous knowledge before the post-suspension hearing commenced that he faced possible discipline for his alleged lack candor in dealing with the police in the aftermath of the collision, and/or for disregarding his probation conditions

How the specific facts and circumstances supporting disbarment would have been met had they been originally included in those leveled against Petitioner by the State Bar no one knows. Id. at 552. "This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process." Id.

## CONCLUSION

The petition for writ of certiorari should be granted and the decision of the California Supreme Court summarily reversed.

Respectfully submitted.

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