

No. 24-411

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IN THE UNITED STATES  
SUPREME COURT

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JEFFREY G. THOMAS,

*Petitioner,*

v.

STATE BAR OF NEVADA

*Respondent.*

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On Appeal from the Order of Disbarment and Denial of  
Motion to Reopen Disbarment  
Supreme Court of the State of Nevada  
Case No. 87346

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RESPONSE IN OPPOSITION TO WRIT OF  
CERTIORARI

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### **Additional Involved Statutes**

**Nevada Supreme Court Rule 42.1.** Practice of attorneys admitted in Nevada but not maintaining Nevada offices.

1. Application of rule. This rule applies to an attorney who is admitted to practice in Nevada but who does not maintain an office in Nevada. A post office box or mail drop location shall not constitute an office under this rule.

2. Association or designation for service. Upon filing any pleadings or other papers in the courts of this state, an attorney who is subject to this rule shall either associate a licensed Nevada attorney maintaining an office in Nevada or designate a licensed Nevada attorney maintaining an office in the county wherein the pleading or paper is filed, upon whom all papers, process, or pleadings required to be

served upon the attorney may be so served, including service by hand-delivery or facsimile transmission. The name and office address of the associated or designated attorney shall be endorsed upon the pleadings or papers filed in the courts of this state, and service upon the associated or designated attorney shall be deemed to be service upon the attorney filing the pleading or other paper.

3. The requirements of this rule are in addition to any rules of practice of the courts of this state.

### **Supplemental Statement of the Case**

On September 26, 2023, the State Bar of Nevada filed a petition seeking reciprocal discipline of Petitioner. App. A1-A7. The petition detailed the disbarment order from the California Supreme Court and the basis for reciprocal discipline. App. A2-A4. The petition also provided the Nevada Supreme Court with Nevada Rules of Professional Conduct that corresponded to the violated California provisions, rules, and statutes. App. A4-A5. Finally, the petition analyzed the appropriate sanction given Nevada's reliance on the ABA Standards for Imposing Lawyer Sanctions. App. A6.

This petition provided Petitioner with notice of the charges that the Nevada Supreme Court would consider.

**Nevada reasonably restricts the right to practice law.**

Petitioner argues that suspension of his Nevada license to practice law deprives him of a fundamental right granted by the Constitution. This Court has found that a person cannot be denied permission to practice law absent valid reasons. In *Schwartz v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 239 (1957) this Court validated that “[a] state can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar. The Court limited the state’s qualifications to those with a rational connection with the applicant’s fitness or capacity to practice law. *Id.*

It is reasonable for Nevada to exclude those who are suspended by another jurisdiction from practicing law in its jurisdiction. It is rational to conclude that a

lawyer who has engaged in misconduct in one jurisdiction would lack the morale character necessary to be trusted to represent clients in another jurisdiction. Further, as discussed below, Nevada affords the lawyer an opportunity to explain why the other jurisdiction's discipline should not be reciprocated. Thus, Nevada's restrictions on the right to practice law in its state are reasonable.

**Nevada provided Petitioner sufficient due process in the reciprocal discipline matter.**

There must be procedural due process if a lawyer is to be punished or penalized in an effort to protect the public. *In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1226 (1968). This due process requires that "notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defence." *Id.*



The State Bar of Nevada provided Petitioner with notice of the petition for reciprocal discipline, which included identification of the California disbarment order and an analysis of how Petitioner's conduct related to the Nevada Rules of Professional Conduct. App. A1-A113. The petition also provided an analysis of appropriate discipline. App. A4-6.

The Nevada Supreme Court, following SCR 114, afforded Petitioner an opportunity to respond to the petition. As referenced in Petitioner's brief, on or about October 31, 2023, Petitioner responded to the State Bar' request for reciprocal discipline by filing a 25-page answering brief with five volumes of appendices. The Nevada Supreme Court acknowledged Petitioner's arguments and addressed them in its order suspending him from the practice of law in Nevada for five years and one day.

In addition, Nevada allows for issue preclusion when issues were actually and necessarily litigated and on which there was final decision on the merits. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055 (2008).

In *Five Star*, the Nevada Supreme Court found the following factors must be met to apply issue preclusion:

- 1) The issue decided in the prior litigation must be identical to the issue presented in the current action;
- 2) The initial ruling must have been on the merits and have been final;
- 3) The party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and
- 4) The issue was actually and necessarily litigated.

*Id.* This “prevents the re-litigation of a specific issue that was decided in a previous suit.” *Id.* In *Parklane Hosiery Co., Inc. V. Shore*, 439 U.S. 322,330-331

(1979), this Court analyzed the offensive use of collateral estoppel by a party that was not involved in the prior litigation. This Court found offensive collateral estoppel would be appropriate unless (i) the current “plaintiff could have easily joined in the earlier action,” (ii) the defendant had little incentive to defend vigorously in the first suit, (iii) the judgment relied upon is inconsistent with other previous judgments, or (iv) the current action affords the defendant procedural opportunities unavailable in the earlier action. *Id.*

The issue in this disciplinary matter is whether Petitioner should be disciplined for his misconduct. It is identical to the prior matter, was necessarily litigated in California, and involves the same responding party. The original discipline is also final;

this Court denied Petitioner's Writ of Certiorari for that matter on May 30, 2023.<sup>1</sup>

Further, Petitioner had a strong incentive to defend vigorously in the California disciplinary matter, and, in fact did vigorously defend himself. Petitioner was afforded all procedural opportunities in the earlier action, which involved a full evidentiary hearing, and the Nevada Supreme Court could not have been involved in the California proceeding. Thus, there is no reason to preclude offensive collateral estoppel in this case.

Petitioner received all the due process required and the Nevada Supreme Court's decision should not be further analyzed.

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<sup>1</sup> See U.S. Supreme Court Docket No. 22-1056.

**The Discipline Imposed is Appropriate.**

Nevada Supreme Court Rule 114(4) (2024) provides that:

[T]he supreme court shall impose the identical discipline unless the attorney demonstrates, or the supreme court finds, that on the face of the record upon which the discipline is predicated it clearly appears:

(a) That the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(b) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept the decision of the other jurisdiction as fairly reached;

(c) That the misconduct established warrants substantially different discipline in this state; or

(d) That the misconduct established does not constitute misconduct under any Nevada Rule of Professional Conduct.

If the court determines that any of the preceding factors exist, it shall enter an appropriate order.

In this instance, the Nevada Supreme Court considered Petitioner's extensively briefed argument against the issuance of discipline. It rejected his argument that (i) "the sanctions were not due to willful misconduct" and (ii) "the California disciplinary proceedings deprived him of due process of law." Petitioner's Appendix A7-A8. The Court also found that Petitioner's constitutional arguments did "not warrant imposing substantially different discipline." Petitioner's Appendix A8 (citation omitted).

Nonetheless, the Nevada Supreme Court did not reciprocally disbarred Petitioner in Nevada. Instead, the court suspended Petitioner for five years and one day because this term of suspension was closer to true reciprocity than Nevada's permanent disbarment. Petitioner's Appendix A9-A11.

Nevada reasonably sanctioned Petitioner with a five-year-and-one-day suspension. Nevada Supreme Court Rule 116 provides that a suspension of more than five years requires a lawyer to petition for reinstatement and pass the Nevada bar exam before being reinstated to the active practice of law. This is equivalent to a disbarment sanction in California.

Nevada's substantial suspension of Petitioner's ability to practice law in Nevada is appropriate given the misconduct.

**Petitioner's ability to travel to Nevada is irrelevant to the disciplinary matter.**

Petitioner argues that the Nevada Supreme Court's suspension of his license to practice law in Nevada violated his constitutional right to travel. In support of this argument, Petitioner states that he must travel to practice law in Nevada. This is a red herring. In fact, a Nevada-licensed attorney can

engage in the practice of law from anywhere so long as he complies with Nevada Supreme Court Rule 42.1 (Practice of attorneys admitted in Nevada but not maintaining Nevada offices). A Nevada-licensed attorney that resides outside the state only has to associate with a Nevada-based attorney or designate a Nevada-based attorney “upon whom papers, process or pleadings required to be served [ ] may be so served, including by hand-delivery.” *Id.* Presence in Nevada is not required to practice in Nevada; thus, no travel is necessary.

In addition, whether Petitioner can practice law in Nevada does not affect whether he can travel there. The Nevada Supreme Court’s suspension of his license to practice law is irrelevant to his ability to travel interstate.

**There is no compelled government speech.**

This Court previously declined to entertain



Petitioner's argument that the disciplinary matters are compelled government speech and should continue to do so now.<sup>2</sup>

In this matter, Petitioner asserts that Nevada's disciplinary order was the state government compelling his speech. He further argues that there is no compelling state interest in "allowing California to dictate qualifications of attorneys at law to Nevada." Finally, Petitioner analogizes the California court "ignor[ing] all of Petitioner's rebuttal evidence to the charges, his legal argument against the theories of "willful' misconduct, [ ] his affirmative defenses, [and] all credibility of Petitioner's evidence" to prohibitions on particular statements in lawyer advertising. Petition at pgs. 55-57.

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<sup>2</sup> See U.S. Supreme Court Docket No. 22-1056, wherein the Court denied Petitioner's Writ of Certiorari regarding the California disciplinary order.

“Compelled government speech” is when a governmental agency forces, or compels, an individual to speak or refrain from speaking. *See generally, McClendon v. Long*, 22 F.4th 1330, 1338 (11th Cir. 2022). The First Amendment of the United States Constitution protects “the right of freedom of thought against state action includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714, 97 S. Ct. 1428, 1435 (1977). This Court applies “the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content. Laws that compel speakers to utter or distribute speech bearing a particular message are subject to the same rigorous scrutiny.” *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 642, 114 S. Ct. 2445, 2459 (1994) (*citations omitted*). “Thus, to be valid under the First Amendment, [any prescribed or proscribed

speech] must be a narrowly tailored means of serving a compelling state interest.” *McClendon, supra*, 22 F.4th 1330 at 1338.

Petitioner’s arguments do not invoke the doctrine of compelled government speech. First, Petitioner admits that he was able to present evidence, arguments, and affirmative defenses to the California courts. *See generally*, Petitioner’s Appendix A68-A180. Similarly, he provided those to the Nevada court in his answer to the State Bar of Nevada’s request for reciprocal discipline. *See id.* There is no argument that the government compelled Petitioner to exhibit or participate in any particular speech.

Petitioner might be arguing that the California and/or Nevada Supreme Court’s decision to suspend his ability to practice law in Nevada prevented him from engaging in particular speech because he could not continue to represent his clients in the Federal

Court matter. However, Petitioner's conduct in the Federal Court matter was impacted by that court's holdings long before the Nevada Supreme Court restricted his ability to practice law in Nevada. The disciplinary action in this instance is narrowly tailored to serve the compelling state interest of protecting the Nevadans from a lawyer that engaged in misconduct.

Petitioner's compelled government speech argument is another red herring; there is no forced speech or undue restriction on his ability to speech because of the Nevada disciplinary order.

## **Conclusion**

The Nevada Supreme Court afforded Petitioner sufficient opportunity to respond to the request for reciprocal discipline. It considered the arguments and evidence he presented. It appropriately precluded Petitioner from re-litigating the underlying issues and reasonably restricted Petitioner from practicing law in

Nevada for five years and one day. There were no violations of Petitioner's due process in the Nevada disciplinary matter.

The Nevada Supreme Court's decision did not affect Petitioner's ability to travel, nor did it compel him to engage in particular speech. To the extent that Petitioner might want to represent a Nevadan, the Nevada Supreme Court's decision was narrowly tailored to prohibit Petitioner from engaging in speech that would expose a Nevadan to a lawyer that has engaged in misconduct. There are no violations of Petitioner's other constitutional rights in the Nevada disciplinary matter.

Therefore, the State Bar of Nevada respectfully requests that Petitioner's Petition for the Writ of Certiorari be denied.

Dated: December 31, 2024.

STATE BAR OF NEVADA

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By:   
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CERTIFICATE OF COMPLIANCE

No. 24-4111

**JEFFREY G. THOMAS,**

*Petitioner*

v.

**STATE BAR OF NEVADA,**

*Respondent.*

As required by Supreme Court Rule 33.1(h), I certify that the response to the petition for writ of certiorari contains 2,248 words, excluding the parts of the response that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 31, 2024.

A handwritten signature in black ink, appearing to read "Kait Flocchini", written over a horizontal line.

Rachel Flocchini

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No. 24-4111

**JEFFREY G. THOMAS,**

*Petitioner*

**v.**

**STATE BAR OF NEVADA,**

*Respondent.*

<b>No.</b>	<b>Date</b>	<b>Title</b>	<b>Page No.</b>
1	9/26/23	Petition for Reciprocal Discipline (without exhibits)	A1





1           1.       Respondent was admitted to practice law  
2 in Nevada on September 29, 2000, is currently on  
3 inactive status, and is therefore subject to the  
4 jurisdiction of this Court. Respondent was also  
5 admitted to practice law in California on November  
6 29, 1978, under bar number 83076.

7           2.       On June 9, 2023, attorney Hugh John  
8 Gibson reported Respondent's disbarment in  
9 California to the Office of Bar Counsel. Respondent  
10 did not self-report his discipline to the Office of Bar  
11 Counsel. *See* SCR 114(1).

12           3.       The California Office of Chief Trial  
13 Counsel charged Respondent with ethical violations  
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1 relating to his pursuit of unjust and frivolous actions  
2 in two civil matters.<sup>1</sup>

3         4.       On April 22, 2020, the State Bar Court of  
4 California ordered Respondent be enrolled an  
5 involuntarily inactive based on the reasonable  
6 probability that Respondent will be disbarred in the  
7 disciplinary matter. *See* Decision and Order Granting  
8 Application for Involuntary Inactive Enrollment,  
9 attached hereto as **Exhibit 1**.

10       5.       On May 25, 2021, a hearing judge for the  
11 State Bar Court of California found Respondent  
12 culpable on five counts of misconduct, including failing  
13 to obey a court order (two counts), failing to report  
14 judicial sanctions, threatening charges to gain an

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16 <sup>1</sup> Mr. Gibson was opposing counsel in the underlying  
17 civil matters.

1 advantage in a civil suit, and maintaining unjust  
2 actions. *See* Decision and Order of Involuntary  
3 Inactive Enrollment, attached hereto as **Exhibit 2**.

4         6. The hearing judge found Respondent's  
5 pattern of misconduct, repeated pursuit of  
6 unsupported claims, disregard of court orders, and  
7 abuse of the justice system between 2013 and 2021  
8 warranted substantial consideration. *See id.* at 25-26.

9         7. The hearing judge also found that  
10 Respondent's misconduct caused significant harm to  
11 the public and the administration of justice because it  
12 unjustifiably burdened the individuals involved in his  
13 frivolous suits and clogged the court system for  
14 manifestly improper purposes. *See id.* at 26-27.

15         8. Finally, the hearing judge found that  
16 Respondent showed a gross lack of insight as to the  
17 wrongfulness of his actions, which "went beyond

1 | tenacity to truculence,” and showed indifference to the  
2 | consequences of his conduct. *Id.* at 28.

3 |         9.       The hearing judge found disbarment was  
4 | the appropriate baseline discipline for Respondent’s  
5 | misconduct because no lesser sanction would prevent  
6 | Respondent’s misconduct. *Id.* at 34.

7 |         10.      Respondent appealed to the State Bar  
8 | Court Review Department. *See* Opinion and Order,  
9 | dated August 26, 2022, attached hereto as **Exhibit 3**.

10 |        11.      On August 26, 2022, the State Bar Court  
11 | Review Department affirmed the hearing judge’s  
12 | culpability determinations and rejected Respondent’s  
13 | various constitutional arguments and collateral  
14 | attacks. The Review Department agreed with the  
15 | hearing judge on discipline and recommended that  
16 | Respondent be disbarred due to the seriousness of his  
17 | multiple violations, the harm caused, and his inability

1 | to recognize the wrongfulness of his misconduct. *See*  
2 | **Exhibit 3.**

3 |       12.    On January 25, 2023, the Supreme Court  
4 | of California filed its Order in Case S276773  
5 | disbarring Respondent and striking his name from the  
6 | roll of attorneys. *See* **Exhibit 4.**

7 |       13.    On April 1, 2021, the United States  
8 | District Court, Central District of California ordered  
9 | Respondent disbarred from practicing law in that  
10 | court, based on the April 2020 Order and its  
11 | independent review of the State Bar record. *See* Civil  
12 | Minutes- General from the United State District

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1 Court, Central District of California, attached hereto  
2 as **Exhibit 5**.<sup>2</sup>

3 14. On September 20, 2021, the United  
4 States Court of Appeals for the Ninth Circuit removed  
5 Respondent as counsel of record in its pending matter  
6 based on the disbarment order of the United States  
7 District Court, Central District California. *See* Order,  
8 attached hereto as **Exhibit 6**.

9 15. A final adjudication in another  
10 jurisdiction that an attorney has engaged in  
11 misconduct conclusively establishes the misconduct  
12 for purposes of this instant Petition. SCR 114(5).

13  
14 \_\_\_\_\_  
15 <sup>2</sup> The federal district court's disbarment was not  
16 permanent and Respondent could request  
17 reinstatement with proof of reinstatement by the  
State Bar of California. *Id.*

1        **B. NRPC Counterparts to the rules violated.**

2        16. Respondent willfully violated section  
3 6103 of the Business and Professional Code [Failure to  
4 Obey Court Orders] because he failed to comply with  
5 the following orders to pay sanctions: (1) the Court of  
6 Appeal's April 27, 2015, sanction order in the first  
7 matter; (2) the Los Angeles Superior Court's August  
8 24, 2016, sanction order in the first matter; (3) the Los  
9 Angeles Superior Court's November 30, 2017, sanction  
10 order in a second matter; and (4) the Court of Appeal's  
11 December 13, 2018, sanction order in the second  
12 matter. Section 6103 is equivalent to Nevada Rule of  
13 Professional Conduct 3.4(c) (Knowingly disobey an  
14 obligation under the rules of a tribunal except for an  
15 open refusal based on an assertion that no valid  
16 obligation exists.).

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1           17.   Respondent willfully violated (previous)  
2 California Rule of Professional Conduct 5-100(A)  
3 [Threatening Charges to Gain Advantage in Civil  
4 Suit] because he threatened criminal charges against  
5 an opposing party's attorneys to gain a civil advantage  
6 in the second matter. Nevada has no direct equivalent  
7 to Rule 5-100(A) relating to threats. However, the  
8 State Bar Court Review Department stated in its  
9 August 26, 2022 Opinion and Order:

10           In the letter, Thomas expressly  
11 threatened the recipients that they  
12 would be criminally indicted, found  
13 guilty, sentenced, and sent to prison if  
14 they did not take specific actions  
15 regarding their demurrers to the  
16 complaint in the [second] matter. The  
17 judge concluded the letter conveyed the  
message that Thomas would report  
Gibson and Howard for alleged  
criminal violations and that the letter  
was sent to intimidate and harass

1       opposing counsel to gain an advantage  
2       in [that] litigation.

3       This conduct implicates Nevada Rule of Professional  
4       Conduct 3.1 (Meritorious Claims and Contentions)  
5       and 4.4 (Respect for Rights of Third Persons) as the  
6       threats asserted an issue that lacked a non-frivolous  
7       “basis in law and fact” and had “no substantial  
8       purpose other than to embarrass, delay, or burden a  
9       third person, or use methods of obtaining evidence  
10      that violate the legal rights of such a person,”  
11      respectively.

12       18.   Respondent willfully violated Section  
13      6068, subd. (c) [Maintaining Unjust Actions,  
14      Proceedings, or Defenses] as follows: (1) filing and  
15      failing to withdraw an untimely motion to vacate in  
16      the first matter; (2) filing and pursuing a frivolous  
17      appeal with the Court of Appeal in the first matter; (3)

1 filing and failing to withdraw an improper motion for  
2 reconsideration in the second matter; and (4) filing  
3 and pursuing a frivolous and improper appeal with the  
4 Court of Appeal in the second matter. Section 6068,  
5 subd. (c) is equivalent to Nevada Rules of Professional  
6 Conduct 3.1 (Meritorious Claims and Contentions)  
7 and 8.4(d) (Misconduct- prejudicial to the  
8 administration of justice).

9 **C. SCR Counterpart to the California**  
10 **discipline imposed.**

11 19. Pursuant to CBRP 5.442, disbarment in  
12 California prohibits a lawyer from seeking  
13 reinstatement for five years after the effective date of  
14 the disbarment order or imposition of suspension if it  
15 occurred prior to the disbarment order. Further, if a  
16 lawyer has been disbarred twice, then the lawyer  
17 cannot ever seek reinstatement. This rule is, in part,

1 substantially similar to SCR 116, which provides that  
2 a lawyer may petition for reinstatement after five  
3 years, which reinstatement will require the lawyer to  
4 pass the bar exam again. The second part of CBRP  
5 5.442 mirrors Nevada's imposition of irrevocable  
6 disbarment pursuant to SCR 102(1).

7         20. Standard 7.1 of the ABA Standards for  
8 Imposing Lawyer Sanctions provides that  
9 "[d]isbarment is generally appropriate when a lawyer  
10 knowingly engages in conduct that is a violation of a  
11 duty owed as a professional with the intent to obtain  
12 a benefit for the lawyer or another, and cause serious  
13 or potentially serious injury to a client, the public of  
14 the legal system."

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21. WHEREFORE, Bar Counsel moves this Court to impose reciprocal discipline of disbarment in accordance with SCR 114.

DATED this 25th day of September 2023.

STATE BAR OF NEVADA  
Daniel M. Hooge, Bar Counsel

By: \_\_\_\_\_//s//\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies a true and correct copy of the attached **PETITION FOR RECIPROCAL DISCIPLINE** was deposited in the United States mail at Reno, Nevada, postage fully pre-paid thereon for certified mail addressed to:

Jeffrey Gray Thomas, Esq.  
20 Wilshire Blvd., Fl. 2  
Santa Monica, CA 90401-1219

Dated this 26th day of September 2023.

\_\_\_\_//s//\_\_\_\_  
Laura Peters, an Employee  
of the State Bar of Nevada