

5/8/24

NO. 24-423

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**IN THE SUPREME COURT OF THE UNITED  
STATES**

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**GATEWOOD A. WALDEN,**

**Petitioner,**

**v.**

**THE DISCIPLINARY BOARD OF THE ALABAMA  
STATE BAR ASSOCIATION, A STATE  
REGULATORY AGENCY OF THE STATE OF  
ALABAMA**

**Respondent.**

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**On Petition for Writ of Certiorari to the Alabama  
Supreme Court**

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**GATEWOOD A. WALDEN, Pro se  
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Montgomery, Alabama 36116  
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## QUESTIONS PRESENTED

Whether, in Petitioner's appeal, the Alabama Supreme Court justices violated his rights under the equal protection clause of the Eighth Amendment to the U. S. Constitution by failing to follow the appellate court's binding precedent which had previously reversed a lower court's ruling that found the Disciplinary Hearing Officer did not comply with Rule 4.2 (b) (6), Ala. Rules Dis. P. in his Report and Order.

### II.

Whether, by affirming a lower court's decision, the Alabama Supreme Court justices violated Petitioner's rights under the Eighth Amendment to the U. S. Constitution since a state regulatory agency's decision revoking his business license was unlawful or void for the reason that the Disciplinary Hearing Officer failed to comply with the requirements of Rule 4.2 (b)(6), Ala. Rules Dis. P. and Alabama Supreme Court precedent in Cooner v. Ala. State Bar Assoc., (2013) 109044, 1111340, 59 So.3d 37) by omitting to make specific findings of fact and conclusions of law?

### III.

Whether, the Alabama Supreme Court justices erred and violated Petitioner's rights under the Eighth Amendment to the U. S. Constitution when (after forty-six (46) years of exemplary personal and professional conduct, a life-long law abiding citizen, twenty-eight years of honorable military service, and no prior ethics complaints or violations) the justices affirmed a state regulatory agency decision to permanently revoked Petitioner's business license for allegedly violating three benign ethics rules, ethic's rules not involving immorality, corruption, dishonesty, or criminality?

#### IV.

Whether, in Petitioner's appeal, the Alabama Supreme Court justices violated his rights under the Sixth Amendment to the U. S. Constitution by affirming a state regulatory agency decision revoking his law license even though the Disciplinary Hearing Officer's Report and Order failed to include finding of facts of specific or clearly defined personal misbehavior or professional misconduct that he had purportedly engaged in?

#### V.

Whether, in Petitioner's appeal, the Alabama Supreme Court justices violated his rights under the Eighth and Sixth Amendments to the U. S. Constitution by affirming a state regulatory agency decision to revoke Petitioner's law license in spite of the fact that it had lost jurisdiction of the disciplinary proceeding thirty (30) days after entry of its original final judgment which prevented it from replacing the prior final judgment with an out-of-time second judgment permanently revoking his business license? See Rule 59 (e), Rules of Civil Procedure.

#### VI.

Whether, in Petitioner's appeal, the Alabama Supreme Court justices violated his due process and equal protection rights by affirming the state regulatory agency decision refusing to docket and rule on his duly submitted Rule 60 (b) (4) motion to vacate the Disciplinary Board's unlawful and untimely summary judgment?

#### **PARTIES TO THE PROCEEDINGS**

Petitioner, Gatewood A. Walden, a life-long, law abiding citizen of the City of Montgomery, practiced law in the State of Alabama for more than forty-six (46) years during which time he incurred no infractions of

the A. R. Prof. Cond. Concurrently, he served honorably in the U.S. Navy Reserve as a Judge Advocate General for twenty-eighth (28) years achieving the rank of Full Commander.

Respondent, the State Bar Association, a state regulatory agency, is empowered to oversee lawyers' personal and professional conduct and to impose sanctions on those who fail to adhere to high ethical and moral standards.

## **SIGNIFICANT RELATED PROCEEDINGS**

Cooner v. Ala. State Bar, (2013) 59 So. 3d 37

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## Appendix D

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## INTRODUCTION

Petitioner respectfully requests this court to issue a writ of certiorari to review the Alabama Supreme Court's February 9, 2024, no-opinion affirmance judgment of its December 8, 2023, judgment affirming a lower court's unlawful decision, and to resolve whether the Alabama Supreme Court justices violated his due process and equal protection rights when they revoked his very valuable and irreplaceable business license without just cause and contrary to well-settled, binding, appellate court precedent?

**"One's employment, trade, or calling is a property right, and any wrongful interference therewith is actionable, *Alabama Federation of Labor v. McAdory*, 245 Ala. 1, 18 So. 2d 810 (1944), cert. dismissed 325 U.S. 450. **Indeed, the right to work is an inherent constitutional right that the State may not interfere with unjustly.**" (emphasis added)**

Petitioner also respectfully requests this court to issue a writ of certiorari to adjudicate whether a state regulatory agency's decision to revoke his business license is void as a matter of law since the agency's Disciplinary Hearing Officer failed in his

Report and Order (final judgment) to make written FINDINGS OF FACTS and CONCLUSIONS OF LAW as mandated by Rule 4.2 (b)(6), Ala. R. Dis. P. or as instructed in Cooner v. Ala. State Bar, 59 So. 3d 37, *et al.*

In addition, Petitioner respectfully requests the issuance of a writ of certiorari because the state regulatory agency's decision to revoke his business license was unquestionably unlawful because the agency's Disciplinary Hearing Officer failed in his Report and Order to demonstrate or articulate findings of facts showing that Petitioner had engaged in explicit personal or professional misconduct or misbehavior, and because he also failed to identify or articulate specific conclusions of law applicable to each allegation of professional misconduct as Rule 4.2 (b)(6), Ala. R. Dis. P. mandates

Petitioner respectfully request the issuance of a writ of certiorari because the right to practice law in the State of Alabama is constitutionally protected as a valuable property right, and no lawyer can be deprived of that right except by due process of law and upon the presentation of **clear and convincing evidence** of professional misconduct or unfitness to practice law

due to an infirmity, none of which was shown at the disciplinary hearing.<sup>1</sup>

Finally, Petitioner respectfully requests the issuance of a writ of certiorari because the state regulatory agency that revoked his business license has never refuted or denied the truth and applicability of the relevant, uncontested facts and the existence of binding precedential law in this matter.

### **OPINIONS BELOW**

The Disciplinary Hearing Officer's Report and Order (final judgment) dated June 14, 2012, revoking Petitioner's business license.

The decision of the Montgomery Circuit Court affirming the Disciplinary Hearing Officer's Report and Order dated June 14, 2012, revoking Petitioner's business license.

The decision of the Ala. Sup. Ct. dated December 8, 2023, SC-2023-0507 affirming the Montgomery Circuit Court's decision affirming the state regulatory agency's decision to revoke Petitioner's business license.

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<sup>1</sup> *Worley v. Ala. State Bar*, 572 So.2d 1239 (Ala.190); *Huckaby v. Ala. State Bar*, 631 So.2d 855 (1993); *Hayes v. Ala. State Bar*, 719 So.2s 787 (1998). *Cleveland Bd. Of Educ. V. Loudermilk*, 470 U.S. 532, 105 Sc.D. 1487, 84 L.Ed.2d 494 (1985).

The no-opinion decision of the Ala. Sup. Ct. dated February 9, 2024, denying a Petition for Rehearing of its December 8, 2023, decision affirming the state regulatory agency's decision to revoke Petitioner's business license.

### **STATEMENT OF JURISDICTION**

- (I) Date of judgment reviewed: December 8, 2023.
- (II) Date of rehearing: Petition for Rehearing denied February 8, 2023.
- (III) The Court's jurisdiction is based on 28 U.S.C. §1257(a) and Constitutional grounds.
- (IV) This court has jurisdiction pursuant to 28 U.S.C. §1257 (a) to review the egregiously erroneous judgment of the state's highest appellate court when it is alleged that the justices knowingly and willfully violated a citizen's due process and equal protection rights under the U.S. Constitution.
- (V) This court has jurisdiction to exercise its supervisory power when a state's highest appellate court justices have entered a decision that has departed so far from the accepted and usual course of judicial proceedings or sanctioned such a departure



by a lower court as to call for granting a Petition for a Writ of Certiorari.

(VI) This court has jurisdiction when it is irrefutable that the state's highest appellate court has egregiously and in bad faith (the settled law and the undisputed facts being uncontested) violated a U.S. citizen's inalienable, constitutional rights to due process of law, equal protection of the law, and protection from cruel and unusual punishment, in which case the U.S. Supreme Court has jurisdiction, the power, and the duty to vacate that state court's unlawful and unconstitutional decision.

(VII) This court has jurisdiction pursuant to 28 U.S.C. §1651(a) which relates that the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principals of law.

### **STATEMENT OF THE CASE**

An employee of a state regulatory agency, i.e. the State Bar Association, instituted a formal complaint alleging Petitioner committed three

infractions of the Alabama Rules of Professional Conduct: (1) engaging in conduct prejudicial to the administration of justice (2) inducing another lawyer to violate an ethics rule, and (3) instituting a civil lawsuit merely to maliciously injure the defendant in the case.

According to disciplinary procedure, every ethics complaint must be supported by an affidavit demonstrating facts of lawyer misconduct personally known to affiant. In this regard the regulatory agency lawyer's affidavit failed categorically. It contained only amorphous accusations of rules infractions but identified no particular facts of explicit professional misconduct in support of the alleged rules infractions, and certainly none personally known to the state regulatory agency lawyer. Therefore, because the affidavit failed in its purpose and was legally insufficient the regulatory agency never obtained subject matter jurisdiction of the disciplinary matter.

Noteworthy is the fact that not one of the alleged infractions, even if proved to be true, involved moral turpitude, corruptness, depravity, or any other type of misconduct that would shock the moral conscience. Furthermore, neither of the infractions, even if proved to be true, offends the high moral

standards required of Alabama lawyers rather they are mere technical infractions. And, neither, even if proved to be true, suggests that Petitioner was unprincipled, unethical, dishonest, or of low moral character. Indeed, had the alleged infractions occurred, which neither did, they would have been comparable to a misdemeanor or a traffic offence such as running a stop sign or illegal parking and would not have been so serious or grave as to have warranted revocation of Petitioner's business license.

It is important to point out that the aforesaid alleged infractions are only those Petitioner has ever been accused of in more than forty-six (46) years in the practice of law. Indeed, his lifelong personal and professional conduct and behavior has always been that of an honorable, principled, and upright lawyer.

Notwithstanding Petitioner's exemplary, lifelong, professional, and personal history, a state regulatory agency employee instituted an ethic's complaint against him which led to the summary suspension of his business license on the spurious grounds that he "posed an imminent danger of serious injury to the public or to his client." This allegation was proved to be complete nonsense because revocation of Petitioner's business license was

unsupported by any expression of specific or precise personal misbehavior, or professional misconduct, and certainly none that could have been construed as “conduct that posed an imminent threat to either the public or to a client. And since the affidavit failed to demonstrate any such specific or explicit *misbehavior the regulatory agency lacked subject matter jurisdiction right from the start.*

Furthermore, the affidavit indicates clearly that the state employee had **no personal knowledge** of any alleged misconduct or misbehavior on Petitioner’s part. To be precise, he did not demonstrate facts personally known to him showing that Petitioner was likely to cause immediate and serious injury to his client or to the public. In short, his affidavit failed in its purpose. Rule 20, Ala. R. Dis. P. (a) states in part:

“Grounds for Suspension. A lawyer’s law license may be suspended] on petition supported by affidavit demonstrating facts personally known to affiant, showing that his conduct is **likely** to cause immediate and serious injury to a client or to the public. (paraphrased)

The truth is the state employee’s affidavit contained no allegations of facts personally known to him from which a rational person could have concluded that Petitioner engaged in conduct

prejudicial to the administration of justice, or that he induced another lawyer to violate an ethics rule, or that that his conduct was likely to cause immediate and serious injury to a client or to the public. Indeed, whatever knowledge of alleged misconduct the state employee possessed was based on rank hearsay or his own imagination.

Furthermore, the nature, character, or type of personal or professional misconduct that might have been prejudicial, or might have posed imminent danger to a client, or to the public was neither specified, identified, nor explained. Consequently, the state regulatory agency lacked the authority or power to interimly suspend Petitioner's business license. In short, the state employee's affidavit was at best ineffectual and at worst perjurious, but clearly formed no basis for the summary suspension of Petitioner's business license.

Even so, based on vague, indeterminate, and amorphous accusations of rules infractions rather than actual concrete incriminating facts or evidence, the state employee summarily suspended Petitioner's business license. Consequently, Petitioner was abruptly put out of business with no income to support himself and his family. Additionally, he and his family

were embarrassed, humiliated, and publicly disgraced, and his personal reputation was forever ruined. And none of that should ever have occurred, not ever. Not only that, but Petitioner was also left in limbo and out-of-business for almost a year before he was afforded a hearing on the bogus charges against him.

Eleven months later, the state regulatory agency's Disciplinary Board belatedly conducted an evidentiary hearing during which not a single witness testified to having observed Petitioner engaging in any unethical, wrongful, or criminal conduct whatsoever. The Board relied, not on witness testimony, but solely on the unsubstantiated accusations and argument of the regulatory agency's lawyer.

Moreover, explicit professional misconduct or the type or nature of the professional misconduct was neither identified nor explained, and not a single witness testified at the disciplinary hearing that Petitioner had engaged in any explicit or particularized misbehavior or specific professional misconduct. Consequently, there was no concrete evidence before the Disciplinary Board from which it could have or might have made findings of facts and conclusions of law. Therefore, it is not at all surprising that the Disciplinary Hearing Officer's Report and

Order contained no concrete evidence demonstrating professional misconduct. None was proven.

At that point, the proceedings should have been dismissed for lack of standing or subject matter jurisdiction, but regrettably they were not.

Following the conclusion of the shamefully belated disciplinary hearing, the Disciplinary Hearing Officer announced that the Disciplinary Board had decided that Petitioner had committed three infractions of the ethics rules, and that his business license would be suspended for a period of six (6) months.

Notwithstanding the constraints of civil procedure, i.e. Rule 59 (e), however, more than sixty (60) days later the Board, without considering any other evidence, abruptly vacated its initial judgment, and unlawfully entered a second judgment permanently revoking Petitioner's business license. Petitioner contends that the judgment permanently revoking his business license was untimely and unlawful since it was summarily entered more than sixty (60) days after the initial judgment suspending his business license. The procedural rule is unambiguous and well known. Rule 59 (e), Rules of Civil Procedure states:

“A motion to alter, amend, or vacate the judgment shall be filed not later than thirty (30) days after entry of the judgment.”

In addition, the court is respectfully reminded that the standard of proof required in lawyer disciplinary proceedings in the State of Alabama is clear and convincing evidence of attorney misconduct. Petitioner avers that no evidence whatsoever, let alone clear and convincing evidence of attorney misconduct, was presented at the hearing that would have justified the revocation of his business license.

“The standard of review applicable to an appeal from an order of the Disciplinary Board is “that the order will be affirmed unless it is not supported by **clear and convincing evidence** or misapplies the **law to the facts.**” *Noojin v. Alabama State Bar*, 577 So.2d 420, 423 (Ala.1990), citing *Hunt v. Disciplinary Board of the Alabama State Bar*, 381 So.2d 52 (Ala.1980) see also *Davis v. Alabama State Bar*, 676 So.2d 306, 308 (Ala.1996), *Cooner I*, 59 So.3d at 37, and *Cooner v. Ala. State Bar*, 145 So. 3d 1, 2 (Ala. 2013).

### **SUMMARY OF THE ARGUMENT**

*Cooner v. Ala. State Bar*, 59 So.3d 37 (Ala.2010).  
*Cooner v. Ala. State Bar*, 145 So. 3d 1, 2 (Ala. 2013),



and *Cooner Ala. State Bar*, 145 So.3d (2010) are landmark Alabama Supreme Court cases and are binding precedent. For no good or discernable reason or any explanation whatsoever, however, the court refused to follow precedent in Petitioner's disciplinary case, and therefore violated his constitutional right to due process and equal protection of the law.

Judicial precedent ('stare decisis') is the legal principle whereby courts follow the rulings in previous cases with similar facts and issues, ensuring consistency and predictability in the law. This doctrine ensures consistency, predictability, and stability in the law by obliging courts to apply the same reasoning or legal principles as earlier courts have when deciding cases with similar circumstances.

Precedent refers to a court decision that is considered an authority for deciding subsequent cases involving identical or similar facts, or similar legal issues. Precedent is incorporated into the doctrine of stare decisis and requires courts to apply the law in the same manner to cases with the same facts. Precedent ensures that individuals in similar situations are treated alike instead of based on a particular judge's personal views or biases, and it is important in promoting stability and evenhandedness.

Generally, precedent is established by a series of decisions although sometimes a single decision can create precedent. Precedent was due to be followed in this matter.

### **COONER V ALABAMA STATE BAR**

In three Cooner cases the Alabama Supreme Court held that the Disciplinary Board's order disbarring Cooner did not satisfy the requirements of Rule 4.2, Ala. R. Disc. P., because it did not include findings of fact as to each allegation of misconduct adequate for the Court to conduct a meaningful review to determine whether or not the Board's conclusion that Cooner had violated Rules 1.7(b), 8.4(a), 8.4(c), and 8.4(g), Ala. R. Prof. Cond., was supported by clear and convincing evidence.

### **INORDINATE PROSECUTORIAL DELAY**

Petitioner further contends that the Disciplinary Board's failure to comply with Rule 4.2, Ala. R. Disc. P., in its December 8, 2023, and its February 8, 2023, orders frustrated his right to appellate review pursuant to Rule 12 (f), Ala. R. Disc. P., that the Board's "inordinate, and unexplained delay frustrated, Petitioner's right to appellate review of the Board's conclusions of infractions of the ethic's rules.

Hence, the Board violated his due-process and equal-protection rights thus punishing him without having to prove his guilt by clear and convincing evidence. Rule 14, Ala. R. Disc. P. For this reason alone, the charges against Petitioner were due to be dismissed, and the judgment permanently revoking his business license was due to be vacated.

### **THE SUPREMACY CLAUSE**

As is shown herein, the Alabama Supreme Court violated Petitioner's due process and equal protections rights under the Constitution, and the court also violated his rights under the Eighth Amendment.

"The Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land, and the judges in every state of the land shall be bound thereby, anything in the Constitution or the laws of any State to the contrary notwithstanding."

### **RULE 59(e) RULES OF CIVIL PROCEDURE**

The official court record of the Disciplinary Board is undisputed, unchallenged, and clearly shows that the Board violated Petitioner's due process and equal protection rights by failing to comply with the Alabama Rules of Civil Procedure.

After more than sixty (60) days the Board abruptly vacated its final judgment suspending Petitioner's business license for six months, and unlawfully entered a second judgment permanently revoking his business license. The point is that the Board's second judgment was untimely and unlawful. The procedural rule is unambiguous and well known. Rule 59 (e), Rules of Civil Procedure mandates:

"A motion to alter, amend, or vacate the judgment shall be filed not later than thirty (30) days after entry of the judgment."

Clearly the second judgment violated Rule 59 (e) and was void.

### **BACKGROUND**

Petitioner obtained a business license from the State of Alabama and opened a law office in the city of Montgomery in September 1966. He practiced law full time in Montgomery for more than forty-six (46) years during which time his personal and business reputation was blemish free, no complaints, no incidents of personal or professional misconduct or misbehavior whatsoever, not even a traffic ticket.

Concurrently, Petitioner served in the U. S. Navy Reserve as a Judge Advocate General for twenty-eight (28) years retiring as a Full Commander. At one

point in his military career, Petitioner held a Top-Secret clearance and worked in the Pentagon. As a retired veteran, he receives a government pension.

In 2012, an employee of a state regulatory agency, the State Bar Association, summarily and without notice or an opportunity for Petitioner to be heard or object, suspended Petitioner's business license and ordered him to immediately discontinue his law practice on the spurious grounds that he posed an imminent and serious threat of injury or harm to the public or to his client. That accusation was categorically false, and unsupported by any direct or circumstantial evidence whatsoever.

The false and baseless accusation of extremely serious professional misconduct was nothing more than a groundless expression of one misguided state employee's speculative imagination. Before that time Petitioner had never in more than forty-six (46) years in the private practice of law even once been accused of any type of personal or professional misconduct or misbehavior whatsoever. His reputation was excellent.

After that, the misguided and ill-informed state employee filed a formal ethics complaint along with an, albeit flawed, verified affidavit alleging that Petitioner had violated three ethics rules. Without a

smidgen of factual evidence personally known to him, he nevertheless accused Petitioner of (1) conduct prejudicial to the administration of justice (2) inducing another lawyer to violate an ethics rule, and (3) instituting a civil lawsuit for the sole purpose of harassing or injuring the defendant in the case.

The state employee's perfidious affidavit was legally deficient, however, because it contained no allegations of specific facts of professional misconduct personally known to him or when and where that misconduct allegedly occurred. Moreover, it contained no facts or evidence from which a reasonable person could have concluded that Petitioner had engaged in clearly identifiable professional misconduct or misbehavior. Indeed, the affidavit contained no expression from which a reasonable person could have concluded with a reasonable degree of certainty that Petitioner had engaged in any identifiable personal or professional misconduct or unethical behavior or when or where it allegedly occurred.

Additionally, the class or type of alleged professional misconduct that could have or might have been prejudicial to the administration of justice was neither identified nor explained in the affidavit. Also, no particularized language demonstrated, clearly and

convincingly the actual occurrence of any type of inappropriate, criminal, unlawful, dishonest, or unprofessional behavior, or demonstrated how or why such behavior constituted a violation of a particular ethics rule. And no specific language explained how, by what method, or in what manner Petitioner prejudiced or adversely impacted the administration of justice, or to what degree he prejudiced the administration of justice, if any at all.

Furthermore, the Rules of Professional Conduct contain no such rule of which Petitioner is aware prohibiting one lawyer from inducing another lawyer to violate an ethics rule. This was simply an ethics rule invented in the mind of a misguided state employee.

The infirmity of the state employee's affidavit will continue to be shown throughout these proceedings.

Just the same, Petitioner found himself out of business and in limbo for almost a year before he was afforded a hearing on the charges against him. At the disciplinary hearing not one witness testified to having observed Petitioner engaging in any, definitive, unethical, wrongful, or criminal behavior conduct. The truth of this assertion is confirmed by what does not

appear in the Disciplinary Hearing Officer's Report and Order. The Report and Order contained no findings of facts or any concrete evidence, but simply opined that Petitioner had violated three ethics rules.

For this reason, the Disciplinary Hearing Officer's Report and Order is the Achilles heel of this litigation. Why? Because it does not even remotely comply with Rule 4.2, Ala. R. Disc. P. and *Cooner, supra*. In a word, the Report and Order is legally defective. Thus, the charges against Petitioner are invalid and unenforceable.

Obviously, a bald-faced, unsubstantiated statement that Petitioner violated three ethic's rules is not a legally sufficient substitute for a clear and plain expression of the specific wrongful conduct that Petitioner engaged in as required by Rule 4.2 of the Rules of Disciplinary Procedure. Rule 4.2 (b) (6) requires that the Disciplinary Hearing Officer articulate in his Report and Order specific findings of facts and identifiable conclusions of law as to each allegation of professional misconduct. Consequently, the Report and Order must contain language such as "the board makes a finding of the following fact" or "the board finds this fact to be true...." Otherwise, the Report and Order is invalid or void.



## **STANDARDS FOR IMPOSING LAWYER DISCIPLINE**

Lastly but by no means of less importance, Rule 4.2 requires that the Report and Order reference the Alabama Standards for Imposing Lawyer Discipline.

Section I: These standards adopt a model that requires the Disciplinary Board to answer each of the following questions: (emphasis added)

What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?)

What was the lawyer's mental state? Did the lawyer act intentionally, knowingly, or negligently? What was the extent of the actual or potential injury caused by the lawyer's misconduct? And are there any aggravating or mitigating circumstances?

Rule 4.2, Section C of the standards requires:

"(iii) A finding as to the discipline to be imposed, with reference, where appropriate, to the Alabama Standards for Imposing Lawyer Discipline. . . ."

"In imposing a sanction after a finding of lawyer misconduct the Board should consider the following factors:

The duty violated:

The lawyer's mental state:

The actual or potential injury caused by the lawyer's conduct, and

The existence of aggravating or mitigating factors.

The Alabama Standards for Imposing Lawyer Discipline are complex and sometimes obscure or subject to interpretation. For example, the sanction to be imposed upon a lawyer for professional misconduct can range from slight, moderate, or severe, and requires careful analysis. Yet this type of analysis required by the standards is completely lacking anywhere in Petitioner's disciplinary proceedings.

Section II A, 1.3 (3) advises that the standards are designed to promote, among other things, consistency in the imposition of discipline for the same or similar circumstances.

The point is because the Report and Order failed to comply with any of these requirements it was void and unenforceable.

## **ARGUMENT**

Petitioner has shown explicitly and hopefully with clarity the procedural requirements of Rule 4.2, Ala. R. Disc. P. in lawyer disciplinary proceedings. Now he will now show how and why the Disciplinary

Hearing Officer's Report & Order failed to comply with those procedural requirements.

Firstly, Rule 4.2. requires that the Disciplinary Hearing Officer make a Report and Order demonstrating actual facts and conclusions of law, secondly, that the report be captioned Report and Order, and thirdly that the Report and Order contain certain specific information and language. These requirements are not discretionary; rather they are imperative. Consequently, the failure of a Report and Order to contain the required information and language is fatal to the prosecution's case.

As to the charge that Petitioner engaged in conduct prejudicial to the administration of justice, the Report & Order failed to show or demonstrate precisely what particularized professional misconduct Petitioner allegedly engaged in that was or might have been prejudicial or harmful to the administration of justice. Or when it occurred. Or who observed it. Or where it occurred.

Other questions were not answered either. Over what period of time did the alleged prejudicial or harmful misconduct occur? Was it oral or was it in writing? Did it occur once, or did it occur multiple times? Was it coercive, or merely strongly suggestive,

physical, or verbal, illegal, or prohibitive, slightly harmful, or impactful, or minimally harmful and impactful, or extremely harmful and prejudicial? Who observed the prejudicial and harmful misconduct? The Report and Order did not answer these questions. Furthermore, it did not contain any specific findings of facts relating to these questions. Thus, the Disciplinary Hearing Officer's Report and Order failed to comply with the requirements of Rule 4.2.

Turning now to the charge of inducing another lawyer to violate the ethics rules, the Report and Order does not even bother to identify the alleged induced lawyer. Who was he or she? Was he or she, young or old, black, or white, or some other ethnicity? What was the method of inducement? Was it accomplished by threats, bribery, or by other nefarious means? Who witnessed the inducement? Did one or more than one individual witness the inducement? Who corroborated the fact that the inducement actually occurred. When did it occur? Where did it occur? Was it oral or was it in writing? And is inducing a lawyer to engage in unprofessional conduct an actual infraction of the ethics rules?

Still, the fundamental question is whether a lawyer who induces another lawyer to engage in

unprofessional conduct is guilty of professional misconduct? The question is: which ethics rule was implicated? Petitioner is unaware of any such rule, and the Report and Order referenced no such rule. If no such ethics rule exists, and it does not, then no basis exists for finding Petitioner had violated the rule.

Petitioner now turns to the third ethics charge: instituting a civil lawsuit merely to harass or maliciously injure the defendant in the case. The Disciplinary Hearing Officer's Report and Order did not demonstrate who the defendant was, or whether the defendant was injured, or which lawsuit was implicated, or what conduct constituted harassment or an what conduct constituted an intent to maliciously injure. Nor did it identify what particularized conduct constituted malice, or what conduct demonstrated an intent to harass or injure. Lastly, the Report and Order did not explain the reason the alleged unlawful conduct constituted an infraction of an ethics rule, nor which rule, nor did it contain conclusions of law as to each allegation of such conduct.

Given the fact that it was self-evident that the Disciplinary Hearing Officer's Report and Order failed to comply with Rule 4.2 and was void, the

appellate court's "no opinion affirmance" was clear and inexcusable error, and flagrantly violated Petitioner's constitutional right to due process and equal protection of the law. It was therefore clearly due to be vacated.

Lastly, although specifically required by procedural law the Report and Order did not include a summary of the specific conduct the Board allegedly found to be an infraction of the ethics rules. Furthermore, it failed to include conclusions of law as to each allegation of professional misconduct. In addition, it failed to include any explanation or reason as to why such alleged misconduct constituted a violation of a particular ethics rule. Hence, the Report and Order failed completely in its purpose.

#### **ALABAMA SUPREME COURT PRECEDENT**

The precepts contained in Cooner v. Ala. State Bar Assoc, 59 So. 3d 29, (Ala.2010) and Cooner v. Ala. State Bar Assoc, 59 So. 3d 37, (Ala.2013) are consistent and compelling:

"On October 8, 2010, the Alabama Supreme Court held that the Disciplinary Board's order disbarring Cooner and revoking his law license did not satisfy the requirements of Rule 4.2, Ala. R. Disc. P., because it did not include findings of fact as to each

allegation of misconduct adequate for this Court to conduct a meaningful review to determine whether the Disciplinary Board's conclusion that Cooner had violated Rules 1.7(b), 8.4(a), 8.4(c), and 8.4(g), Ala. R. Prof. Cond., was supported by clear and convincing evidence. Cooner v. Alabama State Bar, 59 So.3d 29 (Ala.2010) ("Cooner I").<sup>1</sup> Accordingly, this Court reversed the Disciplinary Board's judgment as to those infractions.

"In the conclusions of law, the Board did not include a summary of the specific conduct it found that constituted a violation of each Rule of Professional Conduct Cooner was charged with violating, and it did not include any explanation as to why such conduct constituted a violation of any particular rule. Rather, the Board merely cited a laundry list of various paragraphs included in the "Findings of Fact." "But references to paragraph numbers alone do not constitute findings of fact as to each allegation of misconduct." (emphasis added)

"However, this Court has previously held that that general recitation of facts alone was not sufficient to comply with Rule 4.2, Ala. R. Disc. P. See Cooner I, 59 So.3d at 39; Cooner II, supra. There have been two problems all along with the purported findings of fact in this case. First, as explained in both Cooner I and Cooner II, there have not been actual findings of fact by the Board as opposed to general recitations of

evidence heard by the Board. The main opinion in the present case states that “this Court has previously held that that general recitation of facts alone was not sufficient to comply with Rule 4 .2, Ala. R. Disc. P.” \_\_\_\_\_ So.3d at \_\_\_\_\_ (emphasis added).”

“In point of fact, what we said in our previous opinions in this case is that a general recitation of “evidence” is not sufficient to constitute the requisite findings of “facts.” As we said in Cooner I: The second problem all along has been the failure of the Board to align different factual findings with different conclusions of misconduct.” (emphasis added).

A general recitation of “evidence” is exactly what the Disciplinary Hearing Officer’s Report and Order contains and nothing more and certainly no requisite findings of “facts.”

## VOID JUDGMENTS

Petitioner asserts that he has firmly established by any measure that the Disciplinary Hearing Officer’s Report and Order fails as a matter of law. Because the Report and Order is void it would be a judicial travesty and breach of duty for this court to refuse to grant the issuance of a writ of certiorari and vacate the unjust and legally insufficient judgment of the Disciplinary Board of the State Bar Association. Indeed, recent case law dictates that a court has a clear duty to vacate a



void judgment whenever it is brought to the court's attention.

"A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, a valid adjudication. Indeed, a void judgment need not be recognized by anyone but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it." 46 Am. Jur.2d 347, Judgements.

"A 'final' but void judgment [order] is, in legal effect, no judgment. By it, no rights are divested. From it no rights can be obtained. Being worthless, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. Bennett v. Wilson, (1898) 122 Cal. 509, 513-514, 55 P. 390." Rochin v. Pat Johnson Mfg. Co., 79 Cal.Rptr.2d 719, 67 Cal.App.4th 1228 (Cal. App. 2 Dist. 1998.)

"A void judgment will not support an appeal." See Tidwell v. State Ethics Comm'n, 599 So. 2d 12, 12 (Ala. 1992). "The appellate court has no jurisdiction to consider the merits of an appeal from a void judgment." Ins. Co. of Pa. v. Martinez, 18 S.W.3d 844, 847 (Tex. App.-El Paso 2000, no pet.); Dallas County Appraisal Dist. v. Funds Recovery, Inc., 887 S.W.2d 465, 468 (Tex. App.-Dallas 1994, writ denied).

"Lapse of time cannot cure [a] decree void on [the] face of [the] record." Loyd v. Director, Dept. of Public Safety, 480 So.2d 577; "Lapse of time

cannot cure decree void on face of record.” Anthony v. Anthony, 128 So. 440, 221 Ala. 221 (Ala. 1930); “A void judgment may be challenged at any time and must be vacated upon request.” (emphasis added); Cummings v. Bean, 853 A.2d 221, 2004 ME 93 (Me. 2004). 46 Am Jur 2d § 14.

“Because jurisdiction is fundamental, it may be raised for the first time on appeal without the usual requirements for preservation of error or assignment of error.” Nichia v. Woodruff, 956 S.W.2d 612, 616 (Tex. App.-Houston [14th Dist.] 1997, pet. denied). Ex parte Citizens Bank, 879 So.2d 535, 540 (Ala.2003) (holding that a judgment entered without subject-matter jurisdiction is void and that an appeal from a void judgment must be dismissed). A void judgment cannot be *res judicata*, as a matter of common sense.”

“All courts seem to agree that a void judgment can never be converted into a valid judgment with the passage of time. In other words, a void judgment can never morph into a valid judgment.” [T]he passage of time, however great, does not affect the validity of a judgment; it cannot render a void judgment valid.’

“Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A. 1257; U.S.C.A. Const. Amend. 5 – Klugh v. U.S., 620 SUPP. 892 (D.S.C. 1985).”

## **THE REPORT AND ORDER FAILS AS A MATTER OF LAW**

At the conclusion of a lawyer disciplinary proceedings, the Disciplinary Hearing Officer announces the Disciplinary Board's decision and is responsible for preparing a written Report and Order (the final judgment) setting forth specific findings of facts and conclusions of law. This task is not discretionary; it is imperative.

Notwithstanding these requirements, the Disciplinary Hearing Officer's Report & Order in this case contained no explicit facts or conclusions of law. Why? Because no evidence of misconduct was presented at the hearing from which such a report could or might have been prepared. Thus, the Report and Order failed to conform with Rule 4.2 of the Rules of Disciplinary Procedure.

With respect, the importance of this point must be emphasized. **Rule 4.2 mandates** that the Report and Order contain both findings of facts and conclusions of law **as to each allegation of professional misconduct** contained in the complaint, and an explanation as to why such professional misconduct constituted a violation of a particular ethics rule. Consequently, the Report and

Order, not conforming to Rule 42, was invalid as a matter of law and thus unenforceable.

The Alabama Supreme Court dealt at length with the requirements of a Disciplinary Hearing Officer's Report and Order in *Cooner I*, *Cooner II*, and *Cooner III*. In those landmark cases the court plainly and emphatically held that a Report and Order that did not comply with procedural Rule 4.2 was due to be vacated. Rule 4.2(b)(6), Ala. R. Disc. P. states:

"The Disciplinary Hearing Officer shall make written findings of fact and conclusions of law as directed by the Disciplinary Board, which shall be captioned 'Report and Order.' The decision of the Disciplinary Board may be announced immediately after the conclusion of the proceedings. (emphasis added)

". . . .

"(C) The Report and Order shall contain:

"(I) A finding of fact and conclusion of law as to each allegation of misconduct, which, upon acceptance by the Disciplinary Board, shall enjoy the same presumption of correctness as the judgment of a trier of fact in a nonjury civil proceeding in which evidence has

been presented ore tenues. (emphasis added)

"(ii) A finding as to whether the respondent attorney is guilty or not guilty of the misconduct charged; [and]

"(iii) A finding as to the discipline to be imposed, with reference, where appropriate, to the Alabama Standards for Imposing Lawyer Discipline. . ."

Equally important, Rule 4.2 mandates that the Report and Order set forth its conclusions of law. The Report and Order does not comply with this aspect of the rule either. Rule 4.2 (6) states in part:

"The Disciplinary Hearing Officer **shall** make written findings of fact and conclusions of law . . . "

"The Report and Order **shall** contain: (I) a finding of fact as to each allegation of misconduct . . ."

"The complaint **shall** contain an explanation as to why such conduct constituted a violation of the particular rule. (emphasis added)

The Disciplinary Hearing Officer's Report & Order in Petitioner's case contained no conclusions of law.

## **THE EIGHTH AMENDMENT IMPLICATED**

The hallmark of the American system of justice is fair play. To be sure, fair play is the beating heart of the American judicial system. And the concept of fair play extends to the stage in any proceeding that calls for the imposition of punishment for the violation of a rule, the commission of an offense, or criminal behavior. The concept of fairness is enshrined in the Constitution by the Eighth Amendment and is a fundamental value of most Americans.

The Eighth Amendment **mandates** that cruel and unusual punishment should not be imposed on a person for the violation of a rule, a law, or any other offense. The prohibition applies to both federal and state governments. When it becomes obvious that a state government has imposed a patently unfair or cruel punishment on one of its citizens it is incumbent upon the federal judiciary to take corrective action. The federal judiciary is called upon in this case to reign in a regulatory agency of the state of Alabama and set aside the agency's decision revoking Petitioner's business license and his ability to earn a living for himself and his family. No reasonable person would come to believe that the maximum punishment for a doubtful benign infraction of a rule of

professional conduct is fair. Hence, if a punishment is manifestly unfair it must be vacated.

Petitioner asserts that the harsh punishment imposed upon him by an element of a state regulatory agency was unwarranted and unjustified. When a state government, through one of its regulatory agencies such as a Bar Association, willfully violates the Eighth Amendment it is incumbent upon the federal judiciary to take corrective action.

#### **DISCIPLINARY BOARD COMPRISED OF LAWYERS**

Members of the Disciplinary Board are all but one practicing lawyers with extensive experience in their profession. Furthermore, some have served on the Board for extended periods of time, so it is reasonable to assume they would have been familiar with the Rules of Professional Conduct, the Rules of Disciplinary Procedure, and the Standards for Imposing Lawyer Discipline. It is also reasonable to assume that they would have applied those rules in other cases that have come before them. These lawyers would also have been expected to keep current with appellate court caselaw dealing with disciplinary matters, and especially landmark decisions such as *Cooner I*, *Cooner II*, and *Cooner III* wherein the Board's decision to sanction a lawyer was reversed and the

sanction imposed on the lawyer vacated. After all, appellate court case law is intended to be instructional, and the failure of the members of the Disciplinary Board to know and apply the instructions in *Cooner, supra* in future cases would be attorney malpractice.

It should now be clear that the lawyers on the Disciplinary Board in Petitioner's disciplinary case failed to comply with the instructions in the *Cooner* cases, and that is inexcusable and unforgivable. Indeed, it is malpractice at best, and corruption at worst. Whichever the case, the sanction imposed upon Petitioner is due to be vacated and without delay.

#### **REASONS FOR GRANTING THE WRIT**

A writ of certiorari is due to be granted by this court when a state's highest appellate court acts corruptly by willfully failing to apply binding appellate court case law (precedent) in a serious case involving one of its citizens.

A writ of certiorari is due to be granted by this court when a state regulatory agency violates a citizen's Sixth Amendment rights by revoking his business license even though it failed to comply with the Rules of Disciplinary Procedure which requires the agency's Disciplinary Hearing Officer to include in his



Report and Order findings of facts and conclusions of law as to each allegation of professional misconduct that the lawyer allegedly had engaged in.

A writ of certiorari is due to be granted by this court when, in violation of the Eighth Amendment, a state regulatory agency imposes a punishment on a lawyer for a first alleged infraction of the Rules of Professional Conduct after a forty-six (46) year blemish free career, and when the punishment imposed is patently disproportionate to or bears no relationship to the infraction of a benign rule of professional conduct.

A writ of certiorari is due to be granted by this court when the facts and the applicable principles of law are not in dispute nor in conflict, in which case its sole and highest duty is to correctly apply the law to the facts and render a lawful decision.

A writ of certiorari is due to be granted by this court when the facts and the relevant applicable principles of law are set out in a Petition for Reconsideration, and are not challenged or disputed, and when the state's highest appellate court renders an erroneous, no-opinion affirmance of the lower court's likewise erroneous decision.

A writ of certiorari is due to be granted when a state's highest appellate court in bad faith violates the constitutional rights of one of its citizens, in which case the U.S. Supreme Court has the authority and indeed it has the heavy duty to correct the injustice.

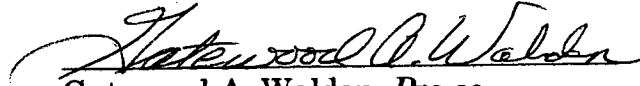
### CONCLUSION

Petitioner earnestly believes that he has shown by irrefutable evidence and rock-solid logic that the state regulatory agency's Report and Order revoking his business license is void, unenforceable, and due to be vacated by this court. Indeed, because it is void it would be a travesty for this court to refuse to grant certiorari to vacate the Report and Order. This court is respectfully reminded that whenever a void judgment is brought to the attention of a court that that court has a common law duty to vacate the void judgment. That being true, Petitioner respectfully contends that the refusal or failure of this court to vacate the void Disciplinary Hearing Officer's Report and Order would be a dereliction of its judicial duty.

In conclusion, Petitioner earnestly asserts that to this day he has absolutely no idea of the particularized or actual misbehavior or professional misconduct he is alleged to have engaged in that

resulted in the revocation of his business license, his disgrace, and the ruination of his family name.

Dated this the 27<sup>th</sup> day of September 2024.

  
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