No.

IN THE

Supreme Court of the United States

AL-HAROON B. HUSAIN, PETITIONER

v.

PATRICK S. LAYNG

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether permanent disbarment of an attorney, with no prior violations, for a violation that did not harm his clients, the court or benefit the attorney in any manner, was such a disproportional punishment that it shocks the conscience of a reasonable person and thus, violate substantive due process.

Whether an attorney's due process right is violated when a court finds him liable, without being charged, or having a fair opportunity to prepare for trial, and whether the court lacked subject matter jurisdiction to rule on other violations.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Al-Haroon B. Husain, an Attorney at Law, respectfully petitions this Court for a writ of certiorari to review a decision of the United States Court of Appeals for the Seventh Circuit in this case.

OPINION BELOW

The Seventh Circuit Court of Appeals, decision, App. 1, denied petitioner's appeal from a bankruptcy court's decision to permanently disbar petitioner for a violation that did not harm his clients, the court and did not benefit petitioner in any manner. The violation was signing his clients' names *with* their permission. The bankruptcy court also found petitioner liable for other violations that petitioner was never charged with or had an opportunity to prepare for trial. The bankruptcy court never had subject matter jurisdiction to rule on the other violations because it was functioning under a local rule that required petitioner to be charged and have opportunity to prepare for trial.

JURISDICTION

The Seventh Circuit decision was on 2017, and petitioner's *en banc* hearing was denied on September 7, 2017, App. 4. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on writ of certiorari.

RELEVANT PROVISIONS INVOLVED

Fifth Amendment to the US Constitution states: that no person shall "be deprived of life, liberty, or property, without due process of law." Petitioner was denied substantive due process because his punishment was grossly disproportional to his violation. With respect to other violations found, Petitioner procedural due process right was violated because he did not receive notice and a fair opportunity to present his case.

Bankruptcy Court, for the Northern District of Illinois, Local Rule 9029-4(B)(1), Complaint of Misconduct: "the complaint must state with particularity the nature of the alleged misconduct and must identify the Local Rule of the district court that has been violated."

Bankruptcy Court, for the Northern District of Illinois, Local Rule 9029-4(B)(4), Statement of Charges: "the bankruptcy court must issue a statement of charges against the attorney. The statement of charges must set forth the alleged misconduct..."

STATEMENT

The panel's decision affirming the bankruptcy court's decision, to permanently disbar petitioner for a violation that did not harm his clients, the court and did not benefit Petitioner in any manner. The violation was signing his clients' names *with* their permission. Bankruptcy court Judge Cox found Petitioner liable for other violations that he was never charged with or had an opportunity to prepare for trial. The bankruptcy court never had subject matter jurisdiction to rule on these violations because court was functioning under local rules that required Petitioner to be charged and have opportunity to prepare for trial.

The violation of signing his clients' signature, with their consent, was found against the Petitioner Attorney Al-Haroon B. Husain ("Petitioner"), but it did not result in the Petitioner benefiting financially. The violation was not intended to gain any benefit, financial or otherwise. Signing his clients' signatures, with their permission on forms that did not need to be signed, is not a violation that requires the punishment of permanent disbarment of an Attorney who had no prior violations. This decision violates substantive due process because it shocks the conscience of a reasonable person.

There were other violations found that the Petitioner "lied on the stand," or "under oath," which clearly violate procedural due process because there were no charges made, pursuant to local rules, and no evidentiary hearing was held to give the Petitioner a fair opportunity to defend himself. The bankruptcy court judge, as a matter of law, cannot render a decision against the Petitioner, without first having him charged with the crimes and then giving him a fair opportunity to defend himself in an evidentiary hearing.

REASONS FOR GRANTING THE PETITION

I. Permanent disbarment of an attorney, with no prior violations, for a violation that did not harm his clients, the court or benefit the attorney in any manner, was such a disproportional punishment that it shocks the conscience of a reasonable person and thus, violate substantive due process.

A. Substantive due process

The Due Process Clause includes a substantive component that "bar[s] certain [arbitrary wrongful] government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986); see also Gregory P. Magarian, Substantive Due Process as a Source of Constitutional Protection for Nonpolitical Speech, 90 MINN. L. REV. 247, 281–82 (2005) ("Although substantive due process doctrine lacks a straightforward foundation in the constitutional text, its resilience over time testifies to our legal system's deeply rooted insight that a constitutional culture of individual rights must accommodate substantive protections of essential human activities.").

The hallmark of a successful substantive due process claim is a lack of proportionality test, where the punishment is so disproportionate to the violation that it shocks the conscience of a reasonable person. *County of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998). *Dunn & McCullough v. Fairfield Community High School District No. 225*, 158 F.3d 962, 964 (7th Cir. 1998). The substantive component of the Due Process Clause provides heightened protection against governmental interference of fundamental rights. *Id.* at 966. In *Dunn*, a substantive due process claim was not found because the student's right to an education was not a fundamental right, but in this case the Attorney's license to practice law is a fundamental right. The right to practice law is a "fundamental" right within the meaning of *Baldwin v. Montana Fish & Game Comm'n*, 436 U.S. 371 (1978).

The Supreme Court of the United States has adopted a "gross disproportionality" test to determine whether a fine is "excessive" for purposes of the Excessive Fines Clause. See *United States v. Bajakajian*, 524 U.S. 321, 118 S.Ct. 2028, 2036, 141 L.Ed.2d 314 (1998). The Court explained that "[t]he amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish" and held that "a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Id.* In *Bajakajian*, the defendant pleaded guilty to failing to report that he was transporting more than $10,000 in currency out of the country. The district court found the entire amount of the currency-$357,144-subject to forfeiture under 18 U.S.C. § 982(a)(1). In applying the gross disproportionality standard to the facts of Bajakajian's case, the Supreme Court considered several factors: □that the defendant was guilty of only a reporting offense, that the violation was unrelated to any other illegal activities (such as drug dealing, money laundering, or tax evasion), that the maximum criminal sentence would have been six months and the maximum fine $5,000, and that the offense caused only minimal harm. Based on these considerations, the Supreme Court determined that the forfeiture of $357,144 was grossly disproportional to the gravity of Bajakajian's offense. *id.* at 2038-39.

Hudson v. United States, 522 U.S. 93, 118 S.Ct. 488, 495, 139 L.Ed.2d 450 (1997) (stating that "[t]he Eighth Amendment protects against excessive civil fines, including forfeitures"); Austin v. United States, 509 U.S. 602, 609, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993) (concluding that the civil forfeiture of property used in a drug crime constituted punishment and was therefore subject to the Excessive Fines Clause). In Austin, the Supreme Court stated that the Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" Id. at 609-10, 113 S.Ct. 2801 (quoting Browning-Ferris Indus. v. Kelco Disposal, Inc., 492 U.S. 257, 265, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989)). The Court then explained that civil sanctions can constitute punishment, and therefore are subject to the limitations of the Excessive Fines Clause, if they serve, at least in part, retributive or deterrent purposes. See id. at 610, 113 S.Ct. 2801. The Court ultimately concluded that the civil forfeiture under 21 U.S.C. § 881(a) of a mobile home and an autobody shop that were used in a drug crime constituted a "payment to a sovereign as punishment for some offense" and was thus subject to the limitations of the Excessive Fines Clause. Id. at 622, 113 S.Ct. 2801.

In comparison to other cases, the conclusion by the panel is even more extreme. One other individual who went through a disciplinary in the Bankruptcy Court in Northern District of Illinois was *In Re Timothy Liou*, 503 BR 56 (2013). In the *Liou* matter, Liou was a prolific bankruptcy attorney who had filed thousands of bankruptcies. However, Liou's practice came into question no less than four (4) times by the Court. As such he was sanctioned each time (though never through a disciplinary hearing). After the fourth violation, Lou was sent to the bankruptcy court for a disciplinary hearing.

Liou was charged, and found guilty of stealing money from his clients by intentionally creating false creditors. These creditors would then receive funds through a chapter 13 disbursement (many of whom should not have been in a Chapter 13 in the first place, but Liou coerced them), and would then re-route said funds to Liou. In addition, during the process of investigation, Liou destroyed items in his office that were requested by him through subpoenas in Liou's disciplinary hearing.

Liou had been doing such illegal practices for years. He benefited by receiving over $600,000.00, where Petitioner herein did not benefit financially and there was no intention to benefit financially or otherwise. Yet the Court essentially passed him four (4) times before sending Liou to a disciplinary hearing. In comparison, Petitioner had never been sanctioned by the Bankruptcy Court; Petitioner never was accused to stealing clients' funds; Petitioner never fabricated creditors; and Appellant never destroyed evidence; Petitioner never had any prior violations. *Yet Petitioner received the same discipline as Liou***.** The level between the two attorneys are simply not comparable.

In a forced bankruptcy case, *In re Michael J. Meltzer*, 13 B 31151, United States Bankruptcy Court, ND Illinois Eastern Division (2015) (Published August 25, 2015), the attorney in question, Howard Leventhal, habitually bullied opponents into involuntary bankruptcy. The attorney did this as a forceful tactic to intimidate individuals. In this particular instance, the attorney did so because the debtor whom he forced into bankruptcy was having a dispute with the attorney's secretary.

The Court recognized the tactics of the attorney, abusing the bankruptcy system as to his own gain, even when the debtor in question had no need to file bankruptcy. In recognizing this abuse, the Court ordered the attorney to repay fees to the harmed debtor in the amount of $240,894.03. What is striking is that the Court *still allowed for this attorney to file bankruptcies* (with court permission).

In this case, the Petitioner's actions are minute by comparison. All of the Attorney's clients, as debtors seeking a discharge, were discharged and none of the discharge orders were vacated as a result of Judge Cox's ruling; all debtors were satisfied with the amount they paid Petitioner; all debtors all happy and satisfied with the result of their bankruptcy case. None of the inaccurate amounts of the debtors' assets resulted in any gain for the Petitioner or his clients. The essence of deception is to try to hide assets so as to deceive the court from acquiring the asset to pay creditors. There was no such finding in this case.

B. Petitioner's violation

The following are the violations that the panel listed in its attached decision, but as you read through them keep in mind two questions: 1) what was the intention in committing these violations and 2) what benefit did Attorney or his clients received from these violations:

- "Signed clients' names to documents that the debtors must verify under penalty of perjury" (However, the clients gave permission to do so and the documents were not required to be signed because of the Declaration of Electronic Filing Form)

- "Copied and reused clients' signature" (but again with clients' permission and on documents that did not need to be signed)
- "Applied these forged or copied signatures to documents that did not reveal all of the debtors' assets, and which the debtors would not have signed," but they revealed approximate assets and were still exempt, in that, it did not cheat the creditors. Moreover, none of the discharge orders were vacated after Judge Cox's ruling.
- "Submitted petitions and other documents on behalf of ineligible debtors," but the ineligibility was not for either the Petitioner or his client to gain any financial benefit. The ineligibility concerned venue.
- "Submitted documents that through statistical improbability could not have been honest." The approximation of the value of assets was inconsequential, in that, whether the cash the debtor had was $200 or $400, or the value of his or her household goods were $600 or $1,200, would not have resulted in any financial benefit to the Petitioner or his clients. Keep in mind, all the bankruptcy petitions were granted and not one discharge order was vacated as a result of Judge Cox's findings.
- "Submitted documents that omitted material assets." In this one case, the Baigs case, even if it is true,[1] whether Baigs told Attorney of these as-

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[1] The examination of Mr. and Mrs. Baig, as well as the testimony of the Baigs themselves in the hearing (see Appellant's **Appendix J**

sets is one person's word against another. The Attorney filed two hundred fifteen (215) bankruptcies over an approximately eight (8) year-period. Out of these, the Trustee's office found only six (6) instances where Petitioner signed anything on behalf of Attorney's client. Such a lack of pattern is *not routine*. In fact, that would indicate that Attorney did NOT sign on behalf of his clients **99.3%** of the time. Seen from this perspective, it shows that no patterned existed, and that any signing were clearly an anomaly.

& K), demonstrate that they clearly contradict each other. Mr. Baig states that they own several properties, while Mrs. Baig state that they own none. Furthermore, after said examination with the US Trustee (which was before a 341 meeting for the Baigs was held) the US Trustee stated to Attorney that they wished for this matter to be dismissed, which Attorney agreed and did not object to. The Baigs, simply put, could not cite their assets correctly, and so an accurate bankruptcy application could be followed through, which Attorney agreed. Husain also wished for this matter to be dismissed because of the Baigs' actions. Judge Cox erred because she saw the Baigs contradicting each other, and yet still found them to be credible (a logical impossibility).

II. An attorney's due process right is violated when a court finds him liable, without being charged, or having a fair opportunity to prepare for trial, and whether the court lacks subject matter jurisdiction to rule on such violations.

The panel found that the Petitioner:

> Lied on the stand during the hearing (the judge five times wrote that [Attorney] was "incredible," once that he was "not credible," and once that he made a "false statement"). Under oath, [Attorney] denied many of the facts described above; the judge did not believe him, and documentary evidence strongly shows that [Attorney] was lying to the court.

However, Judge Cox did not find that the Petitioner "lied on the stand," or "under oath," or that he committed perjury. But even if she did, such an adjudication would require an evidentiary hearing, with a fair opportunity for the Attorney to defend himself. Procedural due process requires that the Attorney be given an opportunity to prepare a defense, as required by the Local Rules and procedural due process, Judge Cox cannot make such findings because they violate Petitioner's procedural due process rights, by denying the Petitioner notice and a fair opportunity to present his defenses. *Hickman v. Taylor*, 329 U.S. 495, 507 (1947).); *Herbert v. Lando*, 441 U.S. 153, 177 (1979) (citing *Schlagenhauf v. Holder*, 379 U.S. 104, 114-115 (1964); *Oppenheimer Fund, Incorporated. v. Sanders*, 437 U.S. 340, 351-352 (1978) ; *Northwestern Memorial Hospital v. Ashcroft*, 362 F.3d 923, 930 (7th Cir. 2004).

The panel should have only considered whether Judge Cox's finding that Petitioner violated any rules or law with respect to what he was charged with; procedural due process requires a separate hearing, with a fair opportunity to prepare a defense to the charge that Petitioner "lied on the stand," or "under oath." Local Bankruptcy Court Rule 9029-4(B)(1) & (4), as well as procedural due process, requires that the Petitioner to be given notice of the charges against him and be given reasonable time to prepare his defense.

There were no charges made that the Petitioner "lied on the stand" or "under oath," as is required by Local Bankruptcy Court Rule 9029-4(B)(1), Complaint of Misconduct: "the complaint must state with particularity the nature of the alleged misconduct and must identify the Local Rule of the district court that has been violated." Rule 9029-4(B)(4), Statement of Charges: "the bankruptcy court must issue a statement of charges against the Petitioner. The statement of charges must set forth the alleged misconduct..."

All other matters that the Petitioner *was not charged with* were NOT properly before Judge Cox; she lacked *subject matter jurisdiction to hear them* and to rule on them because what gave Judge Cox authority to hear and rule on these violations was the Local Rules, Rule 9029-4(B)(1)&(4). These findings should have been dismissed for lack of subject matter jurisdiction by the bankruptcy court.

Moreover, the Local Panel Rules are consistent with the fundamental requirements of procedural due process for notice and a fair hearing, together with a reasonable opportunity to present a defense to the charges. Procedural due process requires notice and a meaningful opportunity to be heard. *Gimbel v. Commodity Futures Trading Comm'n*, 872 F.2d 196, 200

(7th Cir. 1989) (citing *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970)). The Petitioner was deprived of his procedural due process and substantive due process rights.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision of the Seventh Circuit Court of Appeals.

Respectfully submitted,

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