

67 F.3d 708

67 F.3d 708, 95 Cal. Daily Op. Serv. 7070, 95 Daily Journal D.A.R. 12,089

(Cite as: 67 F.3d 708)

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Hirsh v. Justices of Supreme Court of State of California
C.A.9 (Cal.), 1995.

United States Court of Appeals, Ninth Circuit.

Stuart H. HIRSH, Plaintiff-Appellant,

v.

JUSTICES OF the SUPREME COURT OF the STATE OF CALIFORNIA: Malcolm L. Lucas; Edward Panelli; Joyce Kennard; Armand Arabian; Marvin Baxter; Ronald M. George; and Dan Lungren, State Attorney General & acting personally for his private appointee's financial gain; State Bar of California; Ellen R. Peck, Employee of the State Bar as a claimed Judge; David C. Carr, Employee Prosecutor of State Bar Association, Defendants-Appellees.

Ralph F. SERVER, Plaintiff-Appellant,

v.

SUPREME COURT OF the STATE OF CALIFORNIA; State Bar of California, Defendants-Appellees.

Harold Lenard PERRY, Plaintiff-Appellant,

v.

JUSTICES OF the SUPREME COURT OF the STATE OF CALIFORNIA: Malcolm Lucas, Chief; Edward Panelli; Stanley Mosk; Joyce Kennard; Armand Arabian; Marvin Baxter; Ronald George; and Dan Lungren; Lise Perlman, et al., Defendants-Appellees.

Edmundo B. ESPINOZA, Plaintiff-Appellant,

v.

Malcolm LUCAS; Honorable Justices of the Supreme Court of the State of California; Kathryn Mickle; Stanley Mosk; Joyce Kennard; Armand Arabian; Marvin Baxter; Ronald George; and Dan Lungren, State Attorney General, Defendants-Appellees.

Nos. 94-55240, 94-55250, 94-55507 and 94-56335.

Argued and Submitted March 7, 1995.

Memorandum March 29, 1995.

Order and Opinion Sept. 7, 1995.

Attorneys facing pending disciplinary proceedings in California state court brought civil rights actions in federal court, seeking injunctive and declaratory relief. The United States District Court for the Southern District of California, Marilyn L. Huff, J., dismissed suits on abstention grounds, and attorneys

appealed. The Court of Appeals held that: (1) abstention in favor of state proceedings was required; (2) attorneys did not demonstrate bias exception to abstention; (3) attorneys did not demonstrate exception to abstention for patently unconstitutional violations; (4) all defendants were immune from liability for monetary damages; and (5) district court judge properly denied motion for recusal.

Affirmed.

West Headnotes

[1] Federal Courts 170B ↗ 51

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk47 Particular Cases and Subjects, Abstention

170Bk51 k. Declaratory Judgment in General. Most Cited Cases

Federal Courts 170B ↗ 54

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk47 Particular Cases and Subjects, Abstention

170Bk54 k. Injunctions in General. Most Cited Cases

Supreme Court's *Younger* decision and its progeny generally direct federal courts to abstain from granting injunctive or declaratory relief that would interfere with pending state judicial proceedings.

[2] Federal Courts 170B ↗ 46

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk46 k. Constitutional and Federal Questions, Abstention. Most Cited Cases

Absent extraordinary circumstances, abstention in favor of state judicial proceedings is required if the state proceedings are ongoing, implicate important state interests, and provide plaintiff adequate

opportunity to litigate federal claims.

[3] Federal Courts 170B \rightsquigarrow 55

170B Federal Courts

- 170BI Jurisdiction and Powers in General
- 170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
- 170Bk47 Particular Cases and Subjects, Abstention

170Bk55 k. License and Regulation of Occupations. Most Cited Cases
For abstention purposes, attorneys' ongoing disciplinary proceedings in California's State Bar Court were judicial in character; under state's discipline system, Hearing Department conducted formal hearing and made findings, Review Department conducted *de novo* review of those findings, and Supreme Court retained inherent jurisdiction over the proceedings, including power to review the Bar Court's findings.

[4] Federal Courts 170B \rightsquigarrow 55

170B Federal Courts

- 170BI Jurisdiction and Powers in General
- 170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
- 170Bk47 Particular Cases and Subjects, Abstention

170Bk55 k. License and Regulation of Occupations. Most Cited Cases
For abstention purposes, California's attorney disciplinary proceedings implicate important state interests.

[5] Attorney and Client 45 \rightsquigarrow 47.1

45 Attorney and Client

- 45I The Office of Attorney
- 45I(C) Discipline
- 45k47 Proceedings
- 45k47.1 k. In General. Most Cited Cases
California Constitution precludes the State Bar Court from considering federal constitutional claims, although such claims may be raised in judicial review of the Bar Court's decision. West's Ann.Cal. Const. Art. 3, § 3.5.

[6] Federal Courts 170B \rightsquigarrow 55

170B Federal Courts

- 170BI Jurisdiction and Powers in General
- 170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
- 170Bk47 Particular Cases and Subjects, Abstention
- 170Bk55 k. License and Regulation of Occupations. Most Cited Cases
Opportunity for attorney subject to disciplinary proceedings to raise federal constitutional claims on judicial review of California State Bar Court's decision satisfies third *Younger* abstention requirement, that the state proceeding provide plaintiff adequate opportunity to litigate federal claims.

[7] Federal Courts 170B \rightsquigarrow 46

170B Federal Courts

- 170BI Jurisdiction and Powers in General
- 170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
- 170Bk46 k. Constitutional and Federal Questions, Abstention. Most Cited Cases
Judicial review is inadequate for abstention purposes only when state procedural law bars presentation of the federal claims.

[8] Federal Courts 170B \rightsquigarrow 55

170B Federal Courts

- 170BI Jurisdiction and Powers in General
- 170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
- 170Bk47 Particular Cases and Subjects, Abstention

170Bk55 k. License and Regulation of Occupations. Most Cited Cases
Where attorneys challenged California's attorney disciplinary system, fact that review of Bar Court's decisions was discretionary under state procedural law did not bar presentation of plaintiffs' federal claims for abstention purposes, as plaintiffs could raise the claims in petition for review.

[9] Constitutional Law 92 \rightsquigarrow 961

92 Constitutional Law

- 92VI Enforcement of Constitutional Provisions
- 92VI(C) Determination of Constitutional Questions
- 92VI(C)1 In General

92k960 Judicial Authority and Duty in General

92k961 k. In General. Most Cited Cases

(Formerly 92k44.1)

Argument that California Supreme Court will not adequately safeguard federal constitutional rights has been squarely rejected by the United States Supreme Court.

[10] Federal Courts 170B 41

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk41 k. Nature and Grounds in General. Most Cited Cases

Although federal court is normally required to abstain if the three prongs of the Supreme Court's *Younger* test are satisfied, abstention is inappropriate in the extraordinary circumstance that the state tribunal is incompetent by reason of bias.

[11] Federal Courts 170B 65

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk65 k. Procedure as to Abstention; Reserving or Retaining Jurisdiction. Most Cited Cases

In seeking to establish bias exception to abstention, attorneys challenging California's attorney disciplinary system failed to overcome presumption of honesty and integrity in those serving as adjudicators within the system; attorneys offered no evidence that state Supreme Court justices and Bar Court judges had direct and substantial financial interest in the outcome of disciplinary hearings and offered only conjecture to support claim that Supreme Court justices were impermissibly biased because they appoint Bar Court judges.

[12] United States Magistrates 394 24.1

394 United States Magistrates

394k24 Review and Supervision by District Court

394k24.1 k. In General. Most Cited Cases

District court judges are not deemed incompetent to

review the findings of magistrate judges whom they participate in appointing.

[13] Federal Courts 170B 55

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk47 Particular Cases and Subjects, Abstention

170Bk55 k. License and Regulation of Occupations. Most Cited Cases

Where attorneys challenged California's attorney disciplinary system, absence of mandatory statutory recusal mechanism applicable to justices of the California Supreme Court did not make showing of actual bias unnecessary for establishment of exception to abstention.

[14] Administrative Law and Procedure 15A 445

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(D) Hearings and Adjudications

15Ak445 k. Separation of Functions of Officers. Most Cited Cases

Decisionmakers who possess both investigative and adjudicative functions are still entitled to presumption of honesty and integrity when serving as adjudicators.

[15] Federal Courts 170B 55

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk47 Particular Cases and Subjects, Abstention

170Bk55 k. License and Regulation of Occupations. Most Cited Cases

Patent unconstitutionality exception to abstention was inapplicable where attorneys challenged California's attorney disciplinary system, as the pertinent statutes were not flagrantly and patently violative of express constitutional prohibitions.

[16] Federal Courts 170B 269

170B Federal Courts

170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on

170BIV(A) In General

170Bk268 What Are Suits Against States

170Bk269 k. State Officers or Agencies, Actions Against. Most Cited Cases

In civil rights action challenging California's attorney disciplinary system, Eleventh Amendment's grant of sovereign immunity barred monetary relief from state agencies such as state's Bar Association and Bar Court and extended to the individual members of those agencies acting in their official capacities. U.S.C.A. Const. Amend. 11.

[17] Civil Rights 78 ⇝ 1376(8)

78 Civil Rights

78III Federal Remedies in General

78k1372 Privilege or Immunity; Good Faith and Probable Cause

78k1376 Government Agencies and Officers

78k1376(8) k. Judges, Courts, and Judicial Officers. Most Cited Cases

(Formerly 78k214(8))

In civil rights action challenging California's attorney disciplinary system, justices of state Supreme Court were immune from liability for monetary damages in their individual capacities; justices had absolute immunity for their role in reviewing recommendations of the Bar Court and absolute legislative immunity for actions relating to the promulgation of disciplinary rules.

[18] Civil Rights 78 ⇝ 1376(8)

78 Civil Rights

78III Federal Remedies in General

78k1372 Privilege or Immunity; Good Faith and Probable Cause

78k1376 Government Agencies and Officers

78k1376(8) k. Judges, Courts, and Judicial Officers. Most Cited Cases

(Formerly 78k214(8))

Civil Rights 78 ⇝ 1376(9)

78 Civil Rights

78III Federal Remedies in General

78k1372 Privilege or Immunity; Good Faith

and Probable Cause

78k1376 Government Agencies and Officers

78k1376(9) k. Attorney General and Prosecuting Attorneys. Most Cited Cases

(Formerly 78k214(9))

In civil rights action challenging California's attorney disciplinary system, Bar Court judges and prosecutors had quasi-judicial immunity from liability for monetary damages in their individual capacities.

[19] District and Prosecuting Attorneys 131 ⇝ 10

131 District and Prosecuting Attorneys

131k10 k. Liabilities for Official Acts, Negligence, or Misconduct. Most Cited Cases

Judges 227 ⇝ 36

227 Judges

227III Rights, Powers, Duties, and Liabilities

227k36 k. Liabilities for Official Acts. Most Cited Cases

Administrative law judges and agency prosecuting attorneys are entitled to quasi-judicial immunity so long as they perform functions similar to judges and prosecutors in setting like that of court.

[20] Civil Rights 78 ⇝ 1376(9)

78 Civil Rights

78III Federal Remedies in General

78k1372 Privilege or Immunity; Good Faith and Probable Cause

78k1376 Government Agencies and Officers

78k1376(9) k. Attorney General and Prosecuting Attorneys. Most Cited Cases

(Formerly 78k214(9))

In civil rights action challenging California's attorney disciplinary system, state Attorney General was entitled to absolute prosecutorial immunity from liability for monetary damages for his limited role in the disciplinary system.

[21] Judges 227 ⇝ 51(4)

227 Judges

227IV Disqualification to Act

227k51 Objections to Judge, and Proceedings Thereon

227k51(4) k. Determination of Objections. Most Cited Cases

District court judge did not abuse her discretion by denying motion for recusal in civil rights action challenging California's attorney disciplinary system; judge was not member of State Bar and, although she occasionally participated in State Bar activities, she was not paid except for reimbursement of expenses.

*711 Stuart H. Hirsh and Ralph F. Server, Beverly Hills, CA, Harold L. Perry, Oakland, CA, and Edmundo Espinoza, San Diego, CA, in pro per, for plaintiffs-appellants.

Robert M. Sweet, Marina Del Rey, CA (argued), and Mark Torres-Gil, Office of General Counsel, State Bar of California, San Francisco, CA, for defendants-appellees.

Damon M. Connolly, Deputy Attorney General, Sacramento, CA, for defendants-appellees Justices of the California Supreme Court and Attorney General Daniel E. Lungren.

Appeal from the United States District Court for the Southern District of California.

Before: BROWNING and ROBERT R. BEEZER, Circuit Judges, and HAGGERTY, FN*District Judge.

FN* Honorable Aancer L. Haggerty, District Judge, United States District Court for the District of Oregon, sitting by designation.

The memorandum disposition filed March 29, 1995, is redesignated as a per curiam opinion.

PER CURIAM:

Facing pending attorney disciplinary proceedings in California, each appellant filed suit in federal court under 42 U.S.C. § 1983, alleging deprivation of various constitutional rights. The district court granted the government's motions to dismiss. We affirm.

I. Background

A. The California Attorney Disciplinary System

Under California law, attorney disciplinary matters are handled by the State Bar Court ("Bar Court"), an administrative agency affiliated with the California

State Bar Association ("State Bar"). Calif. Bus. & Prof. Code § 6086.5. The Bar Court is divided into a Hearing Department and a Review Department. *Id.* §§ 6079.1, 6086.65. Disciplinary proceedings are commenced by serving the accused attorney with a Notice to Show Cause. The Hearing Department then conducts a formal adversarial hearing during which the accused attorney and a State Bar prosecutor present evidence before a Bar Court judge. The Hearing Department makes findings and a recommendation regarding appropriate discipline. The attorney may appeal to the Review Department, which reviews the Hearing Department's findings *de novo* and makes its own recommendation. The attorney may then file a petition for *712 review with the California Supreme Court. FN1 *Id.* § 6082. The Supreme Court either grants review and issues a final order or denies review, in which case the Bar Court's recommendation is filed as an order of the Supreme Court. *Id.* § 6084; Calif. Court Rule 954. Throughout this process, the Supreme Court retains inherent jurisdiction over attorney disciplinary matters. *Id.* 951(g).

FN1. If no petition for review is filed, the Bar Court's recommendation becomes a final order of the California Supreme Court, although the Supreme Court may review the recommendation on its own motion. *Id.* § 6084; Calif. Court Rule 953(b).

B. The Federal Suits

Each of the suits named as defendants the Justices of the California Supreme Court, the State Attorney General, the State Bar, the Bar Court, and the respective Bar Court judges and prosecutors involved. The appellants sought an injunction to stop the pending disciplinary proceedings, a declaratory judgment that the disciplinary system is unconstitutional, and monetary damages based on alleged deprivations of state and federal constitutional rights. The complaints allege that the disciplinary system deprives appellants of various constitutional rights, including due process, equal protection, the right to vote, and the right to court access. The district court dismissed each case on the ground that *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), required abstention.

II. Abstention from Granting Injunctive and

Declaratory Relief

A. Requirements for Abstention

[1][2] *Younger* and its progeny generally direct federal courts to abstain from granting injunctive or declaratory relief that would interfere with pending state judicial proceedings. *Id.* at 40-41, 91 S.Ct. at 748-49; *Samuels v. Mackell*, 401 U.S. 66, 73, 91 S.Ct. 764, 768, 27 L.Ed.2d 688 (1971) (extending *Younger* to declaratory judgments). Absent "extraordinary circumstances", abstention in favor of state judicial proceedings is required if the state proceedings (1) are ongoing, (2) implicate important state interests, and (3) provide the plaintiff an adequate opportunity to litigate federal claims. *See Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S.Ct. 2515, 2521, 73 L.Ed.2d 116 (1982). Each prerequisite is satisfied in each of these cases.

1. Ongoing State Proceedings

Each appellant faced ongoing disciplinary proceedings when he brought suit in federal court. *See Beltran v. State of California*, 871 F.2d 777, 782 (9th Cir.1988) (stating that abstention requires proceedings to be ongoing at the time plaintiff initiates federal proceedings). Notices to Show Cause had been directed to Hirsh and Espinoza, and the California Supreme Court had not yet filed an order regarding the Bar Court's recommendations with respect to Perry and Server. *See Flangas v. State Bar of Nevada*, 655 F.2d 946, 949 (9th Cir.1981) (holding proceedings were ongoing where state Board of Bar Governors had recommended discipline but final binding action had yet to be taken by the Nevada Supreme Court).

[3] The ongoing proceedings were judicial in character. Under California's discipline system, the Hearing Department conducts a formal hearing and makes findings, the Review Department conducts a de novo review of those findings, and the Supreme Court retains inherent jurisdiction over the proceedings, including power to review the Bar Court's findings. Appellants point to no relevant distinction between this procedure and that held to be judicial in nature in *Middlesex*, 457 U.S. at 433-34, 102 S.Ct. at 2522; *see also Partington v. Gedan*, 880 F.2d 116, 122 (9th Cir.1989) (attorney disciplinary proceedings conducted by an ethics

committee or its equivalent under the auspices of the state supreme court are judicial for purposes of *Younger*).

2. Important State Interests

[4] California's attorney disciplinary proceedings implicate important state interests. *See Middlesex*, 457 U.S. at 434, 102 S.Ct. at 2522 ("The State ... has an extremely important interest in maintaining and assuring *713 the professional conduct of the attorneys it licenses.").

3. Opportunity to Present Federal Claims

[5][6] The California Constitution precludes the Bar Court from considering federal constitutional claims. *See Calif. Const. art. III, § 3.5*. However, such claims may be raised in judicial review of the Bar Court's decision. This opportunity satisfies the third requirement of *Younger*. *See Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 629, 106 S.Ct. 2718, 2723-2724, 91 L.Ed.2d 512 (1986); *Kenneally v. Lungren*, 967 F.2d 329, 332 (9th Cir.1992).

[7][8] Appellants contend their opportunity for judicial review is inadequate because it is wholly discretionary.FN2 Judicial review is inadequate only when state procedural law *bars* presentation of the federal claims. *See Partington*, 880 F.2d at 123; *accord Moore v. Sims*, 442 U.S. 415, 430 & n. 12, 99 S.Ct. 2371, 2381 n. 12, 60 L.Ed.2d 994 (1979) (finding abstention appropriate because state law did not impose procedural barriers to raising constitutional claims). The fact that review is discretionary does not bar presentation of appellants' federal claims-appellants can raise the claims in a petition for review. *See Beltran*, 871 F.2d at 781, 783 (opportunity to present federal claims in a petition for writ of review is sufficient to trigger *Younger* abstention, even though the court of appeal simply "denied the petition without elaboration"); *Martori Bros. Distrib. v. James-Massengale*, 781 F.2d 1349, 1352, 1354 (9th Cir.), *amended on other grounds*, 791 F.2d 799 (9th Cir.1986) (opportunity to raise federal claims in petition for review satisfied the requirements of *Younger* even though a reviewing court could deny the petition summarily); *Fresh Int'l Corp. v. ALRB*, 805 F.2d 1353, 1362 (9th Cir.1986) (finding abstention applicable because plaintiff "could have presented

[its federal claim] to the court of appeal in its petition for review").

FN2. Hirsh also argues that the California Supreme Court's summary denial of his interim motion precluded judicial review of his federal claims. This contention is meritless-Hirsh can raise those claims in his petition for review following the conclusion of disciplinary proceedings in the Bar Court and has stated his intention to do so. *See Mason v. Departmental Disciplinary Comm.*, 894 F.2d 512, 515 (2nd Cir.1990) (a state court's "refusal to halt the [attorney disciplinary] inquiry at its incipient stage provides no basis for believing that [the court] will be reluctant to entertain any legitimate objections [the attorney] may have in the event that disciplinary sanctions are improperly imposed").

[9] The California Supreme Court's rules state that Bar Court decisions will be reviewed "when it appears ... necessary to settle important questions of law." Calif.Court Rule 954(a). The court has considered federal constitutional challenges to the attorney disciplinary procedure. *See, e.g., Lebbos v. State Bar*, 53 Cal.3d 37, 48, 278 Cal.Rptr. 845, 806 P.2d 317 (1991). Refusing to abstain would require presuming that the California Supreme Court will not adequately safeguard federal constitutional rights, a presumption the U.S. Supreme Court squarely rejected in *Middlesex*, 457 U.S. at 431, 102 S.Ct. at 2520-2521. Accordingly, the third requirement for *Younger* abstention test was satisfied.

B. Applicability of Exceptions to Abstention

1. Bias

[10][11][12][13][14] Although a federal court is normally required to abstain if the three prongs of the *Younger* test are satisfied, abstention is inappropriate in the "extraordinary circumstance" that the state tribunal is incompetent by reason of bias. *See Gibson v. Berryhill*, 411 U.S. 564, 577-79, 93 S.Ct. 1689, 1697-1698, 36 L.Ed.2d 488 (1973). However, "one who alleges bias 'must overcome a presumption of honesty and integrity in those serving as adjudicators.'" *Kenneally*, 967 F.2d at 333 (quoting *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 1464-1465, 43 L.Ed.2d 712 (1975)). Appellants failed to overcome this

presumption.

Appellants contend California Supreme Court justices and Bar Court judges have a direct and substantial financial interest in the outcome of disciplinary hearings. *See Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 824-25, 106 S.Ct. 1580, 1586-87, 89 L.Ed.2d 823 *714 (1986). However, appellants offer no evidence that the justices or judges receive improper payments to influence attorney disciplinary proceedings or that they are competitors who might have a financial interest in seeing appellants disbarred. *See Gibson*, 411 U.S. at 577-79, 93 S.Ct. at 1697-98 (optometrists who sat on licensing board were biased because of their financial interest in the outcome of hearings to revoke the licenses of optometrists with whom they competed).

The fact that fines imposed in attorney disciplinary proceedings are paid to the treasury of the State Bar does not establish an impermissible financial interest. Although the State Bar pays the salaries of the Bar Court judges, the salaries are set by statute, *see Cal. Bus. & Prof. Code § 6079(d)*, and no evidence suggests that they are in any way dependent on the amount of fines collected or that the State Bar would be unable to pay the salaries of Bar Court judges without the money collected in disciplinary proceedings, which totals less than 1% of the State Bar's revenues.FN3

FN3. This fact distinguishes the present case from *In the Matter of Ross*, 99 Nev. 1, 656 P.2d 832 (1983), in which the Nevada attorney disciplinary system was deemed to violate due process in part because disciplinary fines were a crucial source of revenues for the State Bar. *Id.* 656 P.2d at 836. Moreover, the adjudicators under the Nevada system were the State Bar Board of Governors, who were also responsible for the financial integrity of the bar. *Id.* No such commingling of functions exists under the California disciplinary system.

Appellants offer only conjecture in support of their claim that Supreme Court justices are impermissibly biased because they appoint Bar Court judges. As the district court noted, district court judges are not deemed incompetent to review the findings of magistrate judges whom they participate in appointing. *Compare Vanelli v. Reynolds Sch. Dist. No. 7*, 667 F.2d 773, 779-80 & n. 10 (9th

Cir.1982) (school board reviewing *its own* prior decision was not impermissibly biased).

The absence of a mandatory statutory recusal mechanism applicable to justices of the California Supreme Court does not make a showing of bias unnecessary. The case upon which the appellants rely, *Flangas v. State Bar of Nevada*, 655 F.2d 946 (9th Cir.1981), held only that the court would not consider the bias exception to *Younger* because the plaintiff had not exhausted his state court remedies by invoking the available statutory recusal procedure. *See id.* at 950. *Flangas* did not imply that the absence of a particular recusal mechanism made it unnecessary to consider whether bias existed in fact.

Finally, appellants suggest the disciplinary process is tainted by bias because the State Bar has both investigative and adjudicative functions. However, the Supreme Court has rejected the contention that such a combination necessarily creates an unacceptable risk of bias. Such decisionmakers are still entitled to a presumption of honesty and integrity when serving as adjudicators. *See Withrow*, 421 U.S. at 47, 95 S.Ct. at 1464-65. Appellants offer no evidence to rebut this presumption.

2. Patent Unconstitutionality

[15] We reject appellants' contention that abstention is inapplicable because the California disciplinary system allegedly involves an unconstitutional delegation of power, violates separation of powers, and deprives appellants of a right to vote.FN4 The California Supreme Court has previously rejected similar constitutional challenges on the ground the Bar Court functions as an administrative arm of the Court, which maintains final authority over discipline. *See Lebbos v. State Bar*, 53 Cal.3d 37, 48, 278 Cal.Rptr. 845, 806 P.2d 317 (1991). In any case, regardless of the ultimate merits of these claims, the pertinent statutes are not " 'flagrantly and patently violative of express constitutional prohibitions in every clause, sentence, and paragraph, and in whatever manner and against whomever an effort might be made to apply it.' " *Younger*, 401 U.S. at 53-54, 91 S.Ct. at 755 (quoting *Watson v. Buck*, 313 U.S. 387, 402, 61 S.Ct. 962, 967, 85 L.Ed. 1416 (1941)). *715 Accordingly, any violation would not justify refusal

to abstain.

FN4. It is unclear whether any of these claims state a violation of a federal, as opposed to a state, constitutional guarantee. We need not reach that issue.

III. Dismissal of Claims for Monetary Relief

[16] All of the defendants are immune from liability for monetary damages.FN5 The Eleventh Amendment's grant of sovereign immunity bars monetary relief from state agencies such as California's Bar Association and Bar Court. *See Lupert v. California State Bar*, 761 F.2d 1325, 1327 (9th Cir.1985). This immunity extends to the individual defendants acting in their official capacities. *See Pena v. Gardner*, 976 F.2d 469, 472 (9th Cir.1992); *see also Hafer v. Melo*, 502 U.S. 21, 24-25, 112 S.Ct. 358, 361-62, 116 L.Ed.2d 301 (1991) (holding that a defendant official acting in his official capacity receives the same immunity as the government agency to which he belongs).

FN5. The district court relied on *Younger* abstention as its basis for dismissing the monetary claims. However, the applicability of *Younger* abstention to appellants' monetary claims is unclear. *Compare Mann v. Jett*, 781 F.2d 1448, 1449 (9th Cir.1986) (abstaining in a § 1983 action because "such an action would have had a substantially disruptive effect upon ongoing state [] proceedings") with *Lebbos v. Judges of the Superior Court*, 883 F.2d 810, 816-17 (9th Cir.1989) (suggesting that abstention is inappropriate where ongoing state proceeding afforded no opportunity for the plaintiffs to receive monetary relief); *see also Deakins v. Monaghan*, 484 U.S. 193, 202, 108 S.Ct. 523, 529-30, 98 L.Ed.2d 529 (1988) ("[T]he District Court has no discretion to dismiss rather than to stay claims for monetary relief that cannot be redressed in the state proceeding."). We decline to address the issue here.

[17] The individual defendants are also immune in their individual capacities. The justices of the California Supreme Court have absolute immunity for their role in reviewing the recommendations of the Bar Court. *See Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561, 565-66 (9th Cir.1990). They are also entitled to absolute

legislative immunity for actions relating to the promulgation of disciplinary rules. *See Supreme Court of Virginia v. Consumers Union of the United States, Inc.*, 446 U.S. 719, 734, 100 S.Ct. 1967, 1975-76, 64 L.Ed.2d 641 (1980).

[18][19] The Bar Court judges and prosecutors have quasi-judicial immunity from monetary damages. Administrative law judges and agency prosecuting attorneys are entitled to quasi-judicial immunity so long as they perform functions similar to judges and prosecutors in a setting like that of a court. *Butz v. Economou*, 438 U.S. 478, 511-17, 98 S.Ct. 2894, 2913-16, 57 L.Ed.2d 895 (1978). The factors cited by the *Butz* Court apply equally to the personnel of the Bar Court-hearings are adversarial, errors are correctable on appeal, the judges make factual findings and perform other adjudicatory functions, and Bar Court decisions are controversial enough to stimulate harassing damage actions against the adjudicators, as this case illustrates. *See id.* Thus, the Bar Court judges and prosecutors are immune from damages. *See Clark v. State of Washington* 366 F.2d 678, 681 (9th Cir.1966) (holding that Bar Association prosecuting attorney was entitled to immunity).

[20] Finally, the California Attorney General is entitled to absolute prosecutorial immunity for his limited role in the disciplinary system. *See Imbler v. Pachtman*, 424 U.S. 409, 427, 96 S.Ct. 984, 993, 47 L.Ed.2d 128 (1976).

IV. *Espinoza's Recusal Motion*

[21] Judge Huff did not abuse her discretion by denying the motion for recusal. She is not a member of the State Bar and noted that the California Constitution forbids such membership. Cal. Const. art. VI, § 9. Although Judge Huff occasionally participated in State Bar activities, she was not paid, except for reimbursement of expenses. We reject Espinoza's contention that, "a reasonable person with knowledge of all the facts would conclude that [Judge Huff's] impartiality might reasonably be questioned." *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir.1993).

AFFIRMED.

C.A.9 (Cal.),1995.
Hirsh v. Justices of Supreme Court of State of Cal.

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