JUSTIA

Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991)

Syllabus Case

U.S. Supreme Court

Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991)

Gentile v. State Bar of Nevada

No. 89-1836

Argued April 15, 1991

Decided June 27, 1991

501 U.S. 1030

Syllabus

Petitioner Gentile, an attorney, held a press conference the day after his client, Sanders, was indicted on criminal charges under Nevada law. Six months later, a jury acquitted Sanders. Subsequently, respondent State Bar of Nevada filed a complaint against Gentile, alleging that statements he made during the press conference violated Nevada Supreme Court Rule 177, which prohibits a lawyer from making extrajudicial statements to the press that he knows or reasonably should know will have a "substantial likelihood of materially prejudicing" an adjudicative proceeding, 177(1), which lists a number of statements that are "ordinarily . . . likely" to result in material prejudice, 177(2), and which provides that a lawyer "may state without elaboration . . . the general nature of the . . . defense" "[n]otwithstanding subsection 1 and 2 (a-f)," 177(3). The Disciplinary Board found that Gentile violated the Rule and recommended that he be privately reprimanded. The State Supreme Court affirmed, rejecting his contention that the Rule violated his right to free speech.

Held: The judgment is reversed.

106 Nev. 60, 787 P.2d 386, reversed.

JUSTICE KENNEDY delivered the opinion of the Court with respect to Parts III and VI, concluding that, as interpreted by the Nevada Supreme Court, Rule 177 is void for vagueness. Its safe harbor provision, Rule 177(3), misled Gentile into thinking that he could give his press conference without fear of discipline. Given the Rule's grammatical structure and the absence of a clarifying interpretation by the state court, the Rule fails to provide fair notice to those to whom it is directed, and is so imprecise that discriminatory enforcement is a real possibility. By necessary operation of the word "notwithstanding," the Rule contemplates that a lawyer describing the "general" nature of the defense without "elaboration" need fear no discipline even if he knows or reasonably should know that his statement will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Both "general" and "elaboration" are classic terms of degree which, in this context, have no settled usage or tradition of interpretation in law, and thus a lawyer has no principle for determining when his remarks pass from the permissible to the forbidden. A review of the press conference -- where Gentile made only a brief opening statement and declined to answer reporters'

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questions seeking more detailed comments -- supports his claim that he thought his statements were protected. That he was found in violation of the Rules after studying them and making a conscious effort at compliance shows that Rule 177 creates a trap for the wary as well as the unwary. Pp. 501 U. S. 1048-1051.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Parts I and II, concluding that the "substantial likelihood of material prejudice" test applied by Nevada and most other States satisfies the First Amendment. Pp. 501 U. S. 1065-1076.

(a) The speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than the "clear and present danger" of actual prejudice or imminent threat standard established for regulation of the press during pending proceedings. *See, e.g., Nebraska Press Assn. v. Stuart,* 427 U. S. 539. A lawyer's right to free speech is extremely circumscribed in the courtroom, *see, e.g., Sacher v. United States,* 343 U. S. 1, 343 U. S. 8, and, in a pending case, is limited outside the courtroom as well, *see, e.g., Sheppard v. Maxwell,* 384 U. S. 333, 384 U. S. 363. *Cf. Seattle Times Co. v. Rhinehart,* 467 U. S. 20. Moreover, this Court's decisions dealing with a lawyer's First Amendment right to solicit business and advertise have not suggested that lawyers are protected to the same extent as those engaged in other businesses, but have balanced the State's interest in regulating a specialized profession against a lawyer's First Amendment interest in the kind of speech at issue. *See, e.g., Bates v. State Bar of Arizona,* 433 U. S. 350. Pp. 501 U. S. 1065-1075.

(b) The "substantial likelihood of material prejudice" standard is a constitutionally permissible balance between the First Amendment rights of attorneys in pending cases and the State's interest in fair trials. Lawyers in such cases are key participants in the criminal justice system, and the State may demand some adherence to that system's precepts in regulating their speech and conduct. Their extrajudicial statements pose a threat to a pending proceeding's fairness, since they have special access to information through discovery and client communication, and since their statements are likely to be received as especially

authoritative. The standard is designed to protect the integrity and fairness of a State's judicial system and imposes only narrow and necessary limitations on lawyers' speech. Those limitations are aimed at comments that are likely to influence a trial's outcome or prejudice the jury venire, even if an untainted panel is ultimately found. Few interests under the Constitution are more fundamental than the right to a fair trial by impartial jurors, and the State has a substantial interest in preventing officers of the court from imposing costs on the judicial system and litigants arising from measures, such as a change of venue, to ensure

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a fair trial. The restraint on speech is narrowly tailored to achieve these objectives, since it applies only to speech that is substantially likely to have a materially prejudicial effect, is neutral to points of view, and merely postpones the lawyer's comments until after the trial. Pp. 501 U. S. 1075-1076.

KENNEDY, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts III and VI, in which MARSHALL, BLACKMUN, STEVENS, and O'CONNOR, JJ., joined, and an opinion with respect to Parts I, II, IV, and V, in which MARSHALL, BLACKMUN, and STEVENS, JJ., joined. REHNQUIST, C.J., delivered the opinion of the Court with respect to Parts I and II, in which WHITE, O'CONNOR, SCALIA, and SOUTER, JJ., joined, and a dissenting opinion with respect to Part III, in which WHITE, SCALIA, and SOUTER, JJ., joined, *post,* p. 501 U. S. 1062. O'CONNOR, J., filed a concurring opinion, *post,* p. 501 U. S. 1081.

Oral Argument - April 15, 1991

Opinion Announcement - June 27, 1991

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