

No. S214058

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PATRICIA J. BARRY

Plaintiff and Appellant,

v.

THE STATE BAR OF CALIFORNIA,

Defendant and Respondent.

SUPREME COURT
LODGED EXHIBITS

OCT 22 2013

Deputy

After a Published Decision by the Court of Appeal Second Appellate District, Division Two Case No. B242054, Reversing a Judgment Entered by the Superior Court for the County of Los Angeles, Case No. BC452239, The Honorable Dierdre Hill presiding

REQUEST FOR JUDICIAL NOTICE

Volume II of IV

Exhibits J-W

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Attorneys for Defendant and Respondent
THE STATE BAR OF CALIFORNIA

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Attorneys for Defendant and Respondent
THE STATE BAR OF CALIFORNIA

REQUEST FOR JUDICIAL NOTICE

Pursuant to rule 8.54 of the California Rules of Court, Evidence Code section 452, subdivision (d), and Evidence Code section 459, Petitioner The State Bar of California (“State Bar”) moves for judicial notice of the following Superior Court actions, all of which were brought against the State Bar, its officials or employees:

1. *Alexander, Jon v. State Bar, et al*, San Francisco Sup. Ct., Case No. CGC-12-525073, filed October 12, 2012 (Exs. A-B).
2. *Brown, James Earl v. Guitierrez, et al.*, Los Angeles Sup. Ct., Case No. BC369840, filed April 23, 2007 (Exs. C-D).
3. *Chavarela, Nicholas v. State Bar et al.*, Orange County Sup. Ct. Case No. 30-2009-00311346, filed October 4, 2009, Fourth Dist. Ct. of App. Case No. G043727 (Exs. E-F).
4. *Dickson, Lorraine v. State Bar, Board of Governors, Streeter, Kim, et al.*, Los Angeles Sup. Ct., Case No. BC470523, filed September 28, 2011(Exs. G-H).
5. *Dydzak, Daniel v. Dunn, Joseph, et al.*, Orange County Sup. Ct., Case No 30-2012-00558031, filed May 2, 2012 (Exs. I-J).
6. *Fletcher, Michael v. State Bar et al.*, Los Angeles Sup. Ct., Case No. BS129414, filed November 24, 2010 (Exs. K-L).
7. *Foley, Natalia v. State Bar, B. Rodriguez*, Los Angeles Sup. Ct., Case No. BC445288, filed September 9, 2010 (Exs. M-N).
8. *Gjerde, Sean v. State Bar, et al.*, Sacramento Co. Sup. Ct., Case No. 34-2012-00134070, filed October 19, 2012 (Exs. O-P).
9. *Gottshalk, Ronald v. Public Defender et al*, Orange County Sup. Ct., Case No. 30-2010-00359752-CU-NP-CJC, filed April 5, 2010 (Exs. Q-R).
10. *Henschel, Bradford v. State Bar, et al.*, Los Angeles Sup. Ct., Case No. BC379051, filed December 4, 2007, Second Dist. Ct. of App., Case Nos. B206984, B213595 (Exs. S-T).

11. *Joseph, Joel v. the State Bar of California*, Los Angeles Sup. Ct., Case No. SC103749, filed June 26, 2009, Second Dist. Ct. of App., Case No. B221236 (Exs. U-V).
12. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-10-496869, filed February 16, 2010, First Dist. Ct. of App., Case No. A129515, Cal. Supreme Court Case No. S198578 (Exs. W-X).
13. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-10-502372, filed August 6, 2010, First Dist. Ct. of App., Case Nos. A132643, A134111, A137989 (Exs. Y-Z).
14. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-11-510717, filed May 4, 2011, First Dist. Ct. of App., Case Nos. A134205, A137989 (Exs. AA-BB).
15. *Kay, Philip E., Robin Kay, Chris Enos v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-11-514255, filed September 4, 2011 (Exs. CC-DD).
16. *Missud, Patrick v. State Bar of California*, San Francisco Sup. Ct., Case No. CGC-13-533811, filed September 3, 2013 (Ex. EE).
17. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC-06-450766, filed November 29, 2006 (Exs. FF-GG).
18. *Morris, Gregory A. v. State Bar of California, et al.* San Francisco Sup. Ct., Case No. CGC-08-471504 (Exs. HH-II).
19. *Morrowatti, Nasrin v. State Bar of California*, Los Angeles Sup. Ct., Case No. BC 347921, filed February 23, 2006, Second Dist. Ct. of App., Case No. B196392 (Exs. JJ-KK).
20. *Oxman, Brian v. Chang, Alec, et al.*, Los Angeles Sup. Ct., Case No. BC516601, filed July 29, 2013 (Ex. LL).
21. *Scurrah, Robert v. State Bar et al.*, Orange County Sup. Ct., Case No. 30-2012-00595756, filed September 5, 2012 (Exs. MM-NN).
22. *Spadaro, Charlotte v. Phyllis Williams, The State Bar of California*, San Bernardino Co. Sup. Ct. , Case No. CIVRS1203310, filed April 30, 2012 (Ex. OO-PP).
23. *Taylor, Swazi v. State Bar*, Los Angeles Sup. Ct., Case No. BC476842, filed January 18, 2012 (Exs. QQ-RR).

24. *Viriyapanthu, Paul v. The State Bar of California, Viveros*, Orange County Sup. Ct., Case No. 30-2010-00418393, filed October 15, 2010 (Exs. SS-TT).

DATED: October 21, 2013

KERR & WAGSTAFFE LLP

By



MICHAEL VON LOEWENFELDT
Attorneys for Respondent
The State Bar of California

MEMORANDUM OF POINTS AND AUTHORITIES

This request seeks judicial notice of all of the cases in which Petitioner and its officials, agents and employees have been sued in superior court regarding the attorney admissions and discipline process despite an absence of jurisdiction. Pursuant to California Rules of Court, rule 8.252(a)(2)(A), these lawsuits are relevant because they demonstrate that the State Bar has been sued numerous times in superior court regarding attorney admissions and discipline despite a lack of jurisdiction. The volume of these cases demonstrate the corresponding time and effort the State Bar has had to expend in order to get these cases dismissed.

As required under California Rules of Court, rule 8.252(a)(2)(B), Petitioner avers that these documents were not the subject of judicial notice at either the trial court or the appellate court level because the merits of the trial court's order granting the State Bar's special motion to strike were not at issue. See Declaration of Danielle Lee, attached hereto.

Judicial notice is the appropriate procedure for bringing these lawsuits before this court. (California Rules of Court, rule 8.252(a)(2)(C); see Evid. Code, §452, subd. (d); *Szetelea v. Discover Bank* (2002) 97 Cal.App.4th 1094, 1098; *Taus v. Loftus* (2007) 40 Cal.4th 683, 726 (records from other state court proceedings involving plaintiff relevant to discredit plaintiff's present intrusion-into-private-matters lawsuit);

Based on the foregoing legal authority, and for the foregoing reasons, the State Bar respectfully requests this court to grant the motion for judicial notice.

DATED: October 2, 2013

Respectfully submitted,

KERR & WAGSTAFFE LLP

By



Michael von Loewenfeldt

Attorneys for Respondent
THE STATE BAR OF CALIFORNIA

DECLARATION OF DANIELLE LEE

I, Danielle Lee, hereby declare:

1. I am an attorney licensed to practice before all federal and state courts in the State of California, and am an attorney in the Office of the General Counsel of The State Bar of California, one of the attorneys of record for the State Bar of California. I have personal knowledge of the facts stated herein, and, if called as a witness, could and would competently testify to them under oath.


2. I was counsel of record in this matter for The State Bar of California when this matter was in Los Angeles Superior Court, Case number BC452239. I did not request judicial notice of the other cases to which the State Bar, its officials, agents and employees have been a party because the trial court had already granted that the State Bar's special motion to strike pursuant to Code of Civil Procedure section 425.16. The only issue for the hearing on the State Bar's motion for attorney's fees was the reasonableness of the State Bar's fee request.

3. I was counsel of record for the State Bar at the time Ms. Barry appealed the attorney fees award, Second District Court of Appeal, Case number B242054. Because Ms. Barry admitted that she was not appealing the order granting the State Bar's special motion to strike, and was only appealing the order granting the State Bar attorney fees, I did not

request judicial notice of the other cases to which the State Bar, its officials, agents and employees.

4. The State Bar's Office of General Counsel was counsel in each of the cases referenced in this Motion for Judicial Notice. The documents attached hereto are all true and correct copies from the court files in those cases.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 18, 2013, at San Francisco, California.



DANIELLE LEE

PROOF OF SERVICE

I, Lisa Ramon, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 100 Spear Street, 18th Floor, San Francisco, California 94105.

On October 21, 2013, I served the following document(s):

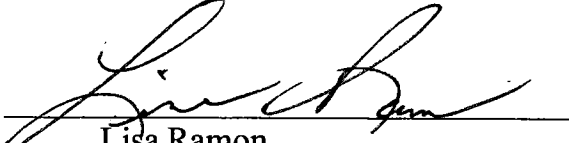
- **REQUEST FOR JUDICIAL NOTICE, VOLUME II OF IV, EXHIBITS J-W**

on the parties listed below as follows:

Patricia J. Barry 634 Spring Street, #823 Los Angeles, CA 90014	Los Angeles Superior Court Stanley Mosk Courthouse 111 North Hill St. Los Angeles, CA 90012
California Court of Appeal 2nd Appellate District, Division 2 Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013 <i>Via Electronic Submission to California Court of Appeal (Petition for Review only)</i>	

By first class mail by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and placing the envelope in the firm's daily mail processing center for mailing in the United States mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 21, 2013 at San Francisco, California.



Lisa Ramon

TABLE OF CASES

Exhibit	Case
A.	<i>Alexander, Jon v. State Bar, et al.</i> , San Francisco Sup. Ct., Case No. CGC-12-525073, Complaint filed October 12, 2012.
B.	<i>Alexander, Jon v. State Bar, et al.</i> , San Francisco Sup. Ct., Case No. CGC-12-525073, dismissal filed November 16, 2012.
C.	<i>Brown, James Earl v. Guitierrez, et al.</i> , Los Angeles Sup. Ct., Case No. BC369840, Complaint filed April 23, 2007.
D.	<i>Brown, James Earl v. Guitierrez, et al.</i> , Los Angeles Sup. Ct., Case No. BC369840, dismissal of action filed September 16, 2008.
E.	<i>Chavarela, Nicholas v. State Bar et al.</i> , Orange County Sup. Ct. Case No. 30-2009-00311346, Fourth Dist. Ct. of App. Case No. G043727, Complaint filed October 4, 2009.
F.	<i>Chavarela, Nicholas v. State Bar et al.</i> , Orange County Sup. Ct. Case No. 30-2009-00311346, Fourth Dist. Ct. of App. Case No. G043727, order granting special motion to strike filed April 29, 2010.
G.	<i>Dickson, Lorraine v. State Bar, Board of Governors, Streeter, Kim, et al.</i> , Los Angeles Sup. Ct., Case No. BC470523, Complaint filed September 28, 2011.
H.	<i>Dickson, Lorraine v. State Bar, Board of Governors, Streeter, Kim, et al.</i> , Los Angeles Sup. Ct., Case No. BC470523, judgment of dismissal filed April 10, 2012.
I.	<i>Dydzak, Daniel v. Dunn, Joseph, et al.</i> , Orange County Sup. Ct., Case No 30-2012-00558031, First Amended Complaint filed May 2, 2012.
J.	<i>Dydzak, Daniel v. Dunn, Joseph, et al.</i> , Orange County Sup. Ct., Case No 30-2012-00558031, voluntary request for dismissal filed October 9, 2012.
K.	<i>Fletcher, Michael v. State Bar et al.</i> , Los Angeles Sup. Ct., Case No. BS129414, petition for writ of mandate filed November 24, 2010.

- L. *Fletcher, Michael v. State Bar et al.*, Los Angeles Sup. Ct., Case No. BS129414, dismissal minute order filed March 29, 2011.
- M. *Foley, Natalia v. State Bar, B. Rodriguez*, Los Angeles Sup. Ct., Case No. BC445288, Complaint filed September 9, 2010.
- N. *Foley, Natalia v. State Bar, B. Rodriguez*, Los Angeles Sup. Ct., Case No. BC445288, voluntary dismissal filed December 28, 2010, and minute order following voluntary dismissal filed February 14, 2011.
- O. *Gjerde, Sean v. State Bar, et al.*, Sacramento Co. Sup. Ct., Case No. 34-2012-00134070, Complaint filed October 19, 2012.
- P. *Gjerde, Sean v. State Bar, et al.*, Sacramento Co. Sup. Ct., Case No. 34-2012-00134070, Judgment of Dismissal following granting of special motion to strike filed April 11, 2013.
- Q. *Gottshalk, Ronald v. Daniels et al.*, Orange County Sup. Ct., Case No. 30-2010-00359752-CU-NP-CJC, Complaint filed April 5, 2010.
- R. *Gottshalk, Ronald v. Daniels et al.*, Orange County Sup. Ct., Case No. 30-2010-00359752-CU-NP-CJC, Notice of Dismissal filed August 22, 2011.
- S. *Henschel, Bradford v. State Bar, et al.*, Los Angeles Sup. Ct., Case No. BC379051, Second Dist. Ct. of App., Case Nos. B206984, B213595, Complaint filed December 4, 2007.
- T. *Henschel, Bradford v. State Bar, et al.*, Los Angeles Sup. Ct., Case No. BC379051, filed December 4, 2007, Second Dist. Ct. of App., Case Nos. B206984, B213595, order granting special motion to strike filed January 17, 2008.
- U. *Joseph, Joel v. the State Bar of California*, Los Angeles Sup. Ct., Case No. SC103749, Second Dist. Ct. of App., Case No. B221236, Complaint filed June 26, 2009.
- V. *Joseph, Joel v. the State Bar of California*, Los Angeles Sup. Ct., Case No. SC103749, Second Dist. Ct. of App., Case No. B221236 2009, Order sustaining demurrer without leave to amend October 27, 2009.

- W. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct, Case No. CGC-10-496869, First Dist. Ct. of Appeal, Case No. A129515, California Supreme Court, Case No. S198578, Complaint filed February 16, 2010.
- X. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct, Case No. CGC-10-496869, First Dist. Ct. of Appeal, Case No. A129515, California Supreme Court, Case No. S198578, order sustaining demurrer and taking special motion to strike off calendar filed July 29, 2010.
- Y. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CV 10-502372, First Dist. Ct. Appeal, Case Nos. A132643, A134111, A137989, Complaint filed August 6, 2010.
- Z. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CV 10-502372, First Dist. Ct. Appeal, Case Nos. A132643, A134111, A137989, order sustaining demurrer filed September 20, 2011.
- AA. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-11-510717, First Dist. Ct. Appeal, Case Nos. A134205, A137989, Complaint filed May 4, 2011.
- BB. *Kay, Philip E. v. State Bar, et al.*, San Francisco Sup. Ct., Case No. CGC-11-510717, First Dist. Ct. Appeal, Case Nos. A134205, A137989, order sustaining demur filed August 5, 2011.
- CC. *Kay, Philip E., Robin Kay, Chris Enos v. State Bar et al.*, San Francisco Sup. Ct., Case No. CGC-11-514255, Complaint filed September 14, 2011.
- DD. *Kay, Philip E., Robin Kay, Chris Enos v. State Bar et al.*, San Francisco Sup. Ct. , Case No. CGC-11-514255, voluntary dismissal filed February 17, 2012.
- EE. *Missud, Patrick v State Bar of California*, San Francisco Sup. Ct., Case No. CGC-13-533811, First Amended Complaint filed September 3, 2013.
- FF. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC 06-450766, fifth Amended Complaint filed

October 9, 2009.

- GG. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC 06-450766, order sustaining demurrer filed May 18, 2010.
- HH. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC 08-471504, Complaint filed January 29, 2008.
- II. *Morris, Gregory A. v. State Bar of California, et al.*, San Francisco Sup. Ct., Case No. CGC 08-471504, order dismissing entire action filed January 12, 2009.
- JJ. *Morrowatti, Nasrin v. State Bar of California, et al.*, Los Angeles Sup. Ct., Case No. BC 347921, Second Dist. Ct. Appeal, Case No. B196392, Complaint filed February 23, 2006.
- KK. *Morrowatti, Nasrin v. State Bar of California, et al.*, Los Angeles Sup. Ct., Case No. BC 347921, Second Dist. Ct. Appeal, Case No. B196392, minute order sustaining demurrer filed November 17, 2006.
- LL. *Oxman, Brian v. Chang, Alec, et al.*, Los Angeles Sup. Ct., Case No. BC516601, Complaint filed July 29, 2013.
- MM. *Scurrah, Robert v. State Bar et al.*, Orange County Sup. Ct., Case No. 30-2012-00595756, Complaint filed September 5, 2012.
- NN. *Scurrah, Robert v. State Bar et al.*, Orange County Sup. Ct. , Case No. 30-2012-00595756, Minute order sustaining demurrer filed August 27, 2013.
- OO. *Spadaro, Charlotte v. Phyllis Williams, The State Bar of California*, San Bernardino Co. Sup. Ct., Case No. CIVRS1203310, Complaint filed April 30, 2012.
- PP. *Spadaro, Charlotte v. Phyllis Williams, The State Bar of California*, San Bernardino Co. Sup. Ct., Case No. CIVRS1203310, order sustaining demurrer filed October 3, 2013.
- QQ. *Taylor, Swazi v. State Bar*, Los Angeles Sup. Ct., Case No. BC476842, Complaint filed January 18, 2012.

- RR. *Taylor, Swazi v. State Bar*, Los Angeles Sup. Ct., Case No. BC476842, judgment of dismissal filed August 23, 2012.
- SS. *Viriyapanthu, Paul v. The State Bar of California, Viveros*, Orange County Sup. Ct., Case No. 30-2010-00418393, Complaint filed October 15, 2010.
- TT. *Viriyapanthu, Paul v. The State Bar of California, Viveros*, Orange County Sup. Ct., request for dismissal filed April 1, 2011.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, title, number, and address):

DANIEL D. DYDZAK
PLAINTIFF IN PRO PER
4265 MARINA CITY DRIVE, SUITE 407W
MARINA DEL REY, CA 90292
TELEPHONE NO.: (310) 867-1289 FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): PLAINTIFF IN PRO PER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 WEST BROADWAY
MAILING ADDRESS: SAN DIEGO, CA 92101
CITY AND ZIP CODE: SAME
BRANCH NAME: CENTRAL

PLAINTIFF/PETITIONER: DANIEL D. DYDZAK

DEFENDANT/RESPONDENT: JOSEPH LAWRENCE DUNN et al.

REQUEST FOR DISMISSAL

- Personal Injury, Property Damage, or Wrongful Death
- Motor Vehicle Other
- Family Law Eminent Domain
- Other (specify): Declaratory Relief, RICO

CASE NUMBER:
30-2012-00558031

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

FOR COURT USE ONLY

FILED
Clerk of the Superior Court

OCT - 9 2012

By: J. Browder, Deputy

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) With prejudice (2) Without prejudice
- b. (1) Complaint (2) Petition
- (3) Cross-complaint filed by (name):
- (4) Cross-complaint filed by (name):
- (5) Entire action of all parties and all causes of action
- (6) Other (specify):*

on (date):
on (date):

2. (Complete in all cases except family law cases.)

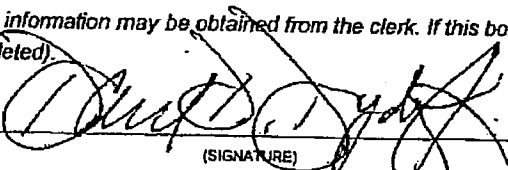
Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date: October 4, 2012

DANIEL D. DYDZAK

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.


(SIGNATURE)

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (f) or (g).

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

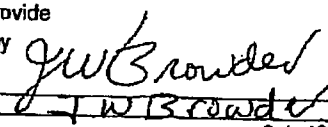
(To be completed by clerk)

- 4. Dismissal entered as requested on (date): 10/9/12
- 5. Dismissal entered on (date): as to only (name):
- 6. Dismissal not entered as requested for the following reasons (specify):

- 7. a. Attorney or party without attorney notified on (date): 10/9/12
- b. Attorney or party without attorney not notified. Filing party failed to provide a copy to be conformed means to return conformed copy

Date: 10/9/12

Clerk, by


J. Browder

Deputy

F I L E D
Clerk of the Superior Court

OCT - 9 2012

By: J. Browder, Deputy

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of
4 California. I am over the age of 18 and not a party to the
5 within action. My service address is 4265 Marina City Drive,
6 Suite 407W, Marina del Rey, California 90292. On October 4,
7 2012, I served the following:

6 **REQUEST FOR DISMISSAL**

7 on the following interested parties by placing a true copy
8 thereof in a sealed envelope to each such party or his/her
9 counsel of record:

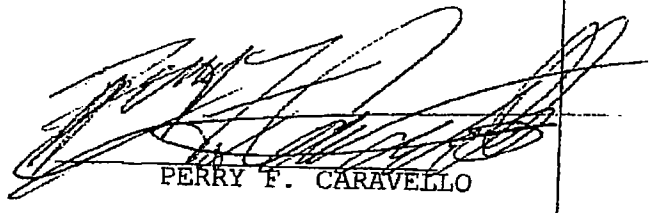
9 See Attached Service List

10 [X] (BY MAIL) I am readily familiar with the business'
11 practice for collection and processing of correspondence for
12 mailing with the United States Postal Service, pursuant to which
13 practice correspondence will be deposited with the United States
14 Postal Service this same day in the ordinary course of business.
15 That with postage thereon fully prepaid, the envelope was either
16 deposited in the United States Postal Service or placed for
17 collection and mailing on the above date following the ordinary
18 business practices.

15 [] (BY FAX) I faxed a copy of the above-entitled document
16 to the interested parties.

17 [X] (State of California) I declare under penalty of
18 perjury under the laws of the State of California that the above
19 is true and correct.

19 Executed on October 4, 2012, at Marina del Rey,
20 California.

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22
23
24 
PERRY F. CARAVELLO

FILED
Los Angeles Superior Court

NOV 24 2010

John A. Glavin, Executive Officer/Clerk
By *[Signature]* Deputy
DOROTHY SWAIN

AB005
90803

MICHAEL R. FLETCHER, PRO SE
5655 EAST THE TOLEDO
LONG BEACH, CA 90803
(562) 433-9638
(562) 434 6395 (fax)

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-UNLIMITED

MICHAEL R. FLETCHER,
Plaintiff,

vs.

STATE BAR OF CALIFORNIA and THE
STATE OF CALIFORNIA,
Defendants.

) Case No.:

) *BS129414*

) *Petition For Writ*
) *of Mandate*

Michael R. Fletcher, Im Pro Per, 5655 E. The Toledo, Long Beach,
California 80803, Telephone: (562) 433-9638, Facsimile:
(562) 434-6395; email: mrletcher@thefletcherfirm.com.

Date: November 15, 2010
Time: 9:30 a.m.
Dept.: PJ
Action Filed: September 23, 2010
Court: Hon. Charles W. McCoy, Jr.

CITY/CASE: BS129414 LEA/DEF#;
RECEIPT #: CCH18782050
DATE PAID: 11/24/10 12:25:08 PM
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James A. Chelver

11/24/10

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

On September of 2008 Petitioner Michael R. Fletcher filed his Application for Determination of Good Moral Character (hereinafter "the Application or his Application") with the Committee of Bar Examiners of the State Bar of California.

On January 28, 2009, Ms. Dawnita H. Franklin of the Office of Admissions for the State Bar of California advised Petitioner that his Application had been summarily "administratively withdrawn" because Petitioner had been suspended by the Federal District Court for the Western District for Missouri ("WDMO") for three (3) years in May of 2004.

The suspension imposed by the WDMO was without condition, therefore Mr. Fletcher's suspension ended by operation of law in May of 2007.

Petitioner has at all times contested the factual and legal basis for the WDMO suspension because:

- 1). He was not allowed to conduct discovery of any type prior to the one and only "hearing" which occurred in January of 2004 and which remains the only hearing for which there is any transcript or proof that a hearing actually was convened;

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11/24/08

1 2). The two federal judges who initiated the investigation
2 against Petitioner also directed the investigator in
3 her fifteen month long investigation;

4 3). After directing the investigator that the two federal
5 judges had also hired, the same two federal judges
6 then participated in the "en banc" decision by the
7 WDMO to "suspend" Mr. Fletcher's law license for an
8 "unprecedented" three years for allegedly;

9 a) "Misquoting" deposition testimony in a series of
10 law suits filed by two attorneys with whom Mr.
11 Fletcher's firm worked,
12

13 b) Allegedly leaving an "angry" voice mail albeit
14 with no yelling or profanity with a person he
15 believed to be an attorney wherein he threatened
16 to "sue" the attorney,
17

18 c) Refusing to settle a case in mediation for the
19 amount offered and
20

21 d) Asking a party to a law suit whether he knew that
22 he "could be personally liable" in \$1983 cause
23 of action;

24 4). At the one and only "hearing" that he was allowed to
25 attend in January of 2004, Petitioner was not allowed
26 to:

11-24-08
2:28:08

- a) Call witnesses;
- b) Serve an interrogatory;
- c) Serve a single request for production;
- d) A request for admission;
- e) Interview any witness;
- f) Know the identity of the person or persons who had made allegations against him; and
- g) Was ordered that he could not make "legal arguments" during this one hearing in 2004;

11 5). Petitioner has NEVER been allowed to attend any
12 hearing or given notice of concerning his petitions
13 for reinstatement that he filed in 2007, 2008, 2009 or
14 2010 with the WDMO or with the state of Missouri.

15 6). Six months BEFORE these two judges launched this
16 unprecedented investigation, Michael Fletcher filed a
17 Motion to Disqualify the exact judge who caused
18 Fletcher to be investigated because Fletcher believed
19 the judge racially discriminated against African
20 Americans. The Motion filed by Petitioner was granted
21 and the judge DISQUALIFIED from hearing any case
22 involving Michael Fletcher.

23 7). Despite having been disqualified from hearing cases
24 involving Mr. Fletcher, this same judge five months
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1 later ordered the investigation which gave rise to
2 this "unprecedented" suspension. [Exhibit D].

3 In their letter advising Petitioner that his first
4 Application for certification had been withdrawn without notice
5 or hearing, Respondents advised him that he could "petition the
6 Committee of Bar Examiners to waive the requirement" that the
7 previous Missouri discipline be resolved. [Exhibit A].
8

9 This response proved that the State Bar had violated
10 Michael Fletcher's fundamental right to Due Process and Fair
11 Procedure.

12 Under the California common law right to fair procedure,
13 the state must actually read an applicant's application and
14 thereafter base their decision on whether to certify the
15 applicant's good moral character based only on the merits of the
16 application.
17

18 Despite this basic tenet of fairness and propriety, the
19 State Bar of California rejected Michael Fletcher's Application
20 without even reading it!
21

22 We know the State Bar denied Mr. Fletcher Due Process of
23 Law and right to fair procedures prior to rejecting his first
24 Application because the state Bar Committee's suggestion that he
25 "petition the Committee to waive" this requirement had already
26 occurred.
27
28

1 In response to being told his Application had been
2 summarily denied without even the pretence of notice or hearing
3 and being told that the Committee could "waive the requirement,"
4 Michael Fletcher pointed out to Respondents that he had MORE
5 THAN ONE YEAR prior to Respondents' denial, as part of his
6 original Application filed his "Petition and Suggestions in
7 Support of Petitioner's Request that the Bar Committee Disregard
8 the Suspension and Denial of Reinstatement of Petition in the
9 Federal Court in the State of Missouri." [Exhibit C].
10

11 Despite the State Bar having in its possession THE
12 UNCONTROVERTED LETTERS AND CORRESPONDENCE from ten (10) judges-
13 whom Michael Fletcher had tried more than 30 jury trials,
14 including the trial judge who Mr. Fletcher tried his very first
15 and as it turned out, his last case; nine (9) lawyers-including
16 nationally prominent attorneys who served in leadership roles on
17 the American Bar Association who have known Michael Fletcher
18 throughout his entire legal career; the Chairman of the Black
19 Legislative Caucus of the United States Congress-a person who
20 had known Michael Fletcher for 25 years; the Bishop responsible
21 for the entire country of Canada-a Bishop who has known Michael
22 Fletcher for 25 years; the representative of over 100 African
23 American churches-the State Bar refused to even consider that
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1 Michael Fletcher possessed the requisite legal ability and moral
2 character to be admitted to practice law.

3 Because the summary denial by the State Bar stands in
4 direct contrast to California precedent that dates back over 80
5 years, the fact that the State Bar ignored the testimony of so
6 many highly qualified judges, attorneys and national leaders and
7 because it is uncontroverted that the federal and state judges
8 in this case are so personally involved in this matter that they
9 are willing to engage in ex parte communication, it appears that
10 this committee of the State Bar has also engaged in similar ex
11 parte communications which explains the State Bar's second
12 parte communications which explains the State Bar's second
13 summary denial of Fletcher's Application—after the State Bar's
14 actions had proved they had not read his first application,
15 hence the suggestion that he filed a motion that he had already
16 filed.
17

18 Assuming the Respondents have not based their decision to
19 ignore binding state and federal precedent, an erroneous
20 interpretation of legal or factual issues can be corrected by
21 this Court through the issuance of this Peremptory Writ of
22 Mandate.
23

24 **II. ARGUMENT**

25 **A. Mandamus Is Appropriate Here Because The State Bar Of
26 California Violated Michael Fletcher's Right To Procedural Due
Process And Fair Procedure By Summarily Withdrawing his**

26
11/24/88

1 Application For A Determination Of Good Moral Character Without
2 Providing Him The Opportunity To Be Heard.

3 1. An applicant for admission to the State Bar of California
4 is fundamentally entitled to due process of law and fair
5 procedures. Kwasnik, 50 Cal.3d at 1065-1068; ABA Model Rules
6 for Lawyer Disciplinary Enforcement, Rule 18, Commentary; Cal.
7 Sat Bar rules of Proc., 681.

8
9 The United States Supreme Court confirmed the importance of
10 procedural due process in Hamdi v. Rumsfeld, 542 U.S. 507, 532-
11 533 (2004), stating that an essential principle of due process
12 is that a deprivation of life, liberty or property must be
13 preceded by notice and an opportunity to be heard. Id. at 532-
14 533.

15
16 California courts have consistently held that an applicant
17 seeking admission to the State Bar of California has a
18 fundamental right to fair procedure prior to being denied
19 admission to the State Bar of California. In re Leardo, 53
20 Cal.3d at 20; Matter of Mudge, 1993 WL 377729, pg. 3.

21
22 Because the Due Process Clause of the United States
23 Constitution and the California common law right of "fair
24 procedure" fundamentally require notice and hearing prior to any
25 licensing organization's denial of a professional license,
26 mandamus is appropriate here because the California State Bar
11/24/00

1 twice summarily withdrew Michael Fletcher's Application for
2 Determination of Good Moral Character without affording Mr.
3 Fletcher notice or affording him an opportunity to be heard.
4 Id. at pg. 3; Schware v. Board of Bar Exam., 353 U.S. 232
5 (1957) ("a state cannot exclude a person from the practice of law
6 in a manner . . .that contravenes the Due Process or Equal
7 Protection Clause"); Anton v. San Antonio Comm. Hosp., 19 Cal.3d
8 802, 822-823 (1977) (mandamus is the appropriate mechanism to
9 reinstate physician's hospital rights and privileges); Salkin
10 v. California Dental Assoc. (1986), 176 Cal. App.3d 1118, 1119
11 (mandamus appropriate where provider was denied due process in a
12 disciplinary hearing); Westlake Comm. Hosp. v. Superior Court
13 (Los Angeles), 17 Cal.3d 465, 482-483 (1976) (mandamus is
14 appropriate where hospital denies physician staff privileges
15 without informing physician of reason for exclusion and also
16 provide a right to respond).

17
18
19
20 In Mudge, an attorney sought certification by the
21 California Bar as a specialist in probate, estate planning, and
22 trust law. Based solely on the fact that the attorney had been
23 suspended almost fifteen years previously, the State Bar issued
24 a "summary denial" of the attorney's application without
25 affording the applicant notice or hearing regarding his prior
26 discipline.

1 In reversing the State Bar's summary denial, the Court made
2 clear that the California Bar is prohibited from denying an
3 application for certification or admission based "solely" on a
4 prior disciplinary finding particularly where, as is the case
5 here, the applicant was denied notice and hearing to contest the
6 Bar's conclusion.
7

8 "[w]e conclude that the BLS [a division of the State
9 Bar] violated its own rules and **applicant's common law**
10 **right to fair procedure by summarily rejecting his**
11 **application and denying him a meaningful right to be**
12 **heard in his defense."**

13 Mudge, 1993 WL 377729, pg. 6 (emphasis added).

14 A "basic ingredient" of fair procedure required under the
15 common law is that an individual who will be adversely affected
16 by a decision be afforded some meaningful opportunity to be
17 heard in his defense. Pinsker v. Pacific Coast Soc. Of
18 Orthodontists (1974), 12 Cal.3d 541, 545, 555. Moreover,
19 "everyone of the numerous common law precedents in the area
20 establishes that this element is indispensable to a fair
21 procedure." Mudge, 1993 WL 377729, pg. 6.
22

23 Here, on January 28, 2009, Respondent State Bar of
24 California unilaterally conducted an ex parte proceeding
25 concerning Petitioner's moral character application wherein Mr.
26 Fletcher's substantive and constitutionally recognized interest
27

1 in the ability to practice law in the State of California were
2 expressly addressed. [Exhibit A and B].

3
4 **B. The State Bar Denied Michael Fletcher Fair Procedures.**

5 At this ex parte proceeding, a proceeding for which
6 Petitioner was never given notice or afforded the opportunity to
7 attend, the State Bar ignored Petitioner's seventy-six page
8 motion [Exhibit C] wherein he recited California precedent that
9 expressly prohibits the State Bar from relying solely on an
10 irregular or "unfair" disciplinary proceeding in denying an
11 applicant admission to the State Bar. Id.; Martin B., 33 Cal.3d
12 at 723.
13
14

15 After intentionally or negligently ignoring Petitioner's
16 motion and brief, Respondent State Bar of California determined
17 that Mr. Fletcher's "moral character application" would be
18 "administratively withdrawn" based solely on the federal
19 district court for the Western District of Missouri's
20 unconstitutional three year suspension that was imposed in May
21 of 2004 and which ended on May of 2007. [Exhibit B].
22
23

24 This conclusion was reached without affording Michael
25 Fletcher any opportunity to show for example that 1) nationally
26 acclaimed Stanford School of Law Professor Jeffrey Fisher opined
27 that the Missouri suspension was "unprecedented" and
28

911/24/09

1 "unconstitutional;" 2) that Mr. Fletcher was not allowed to
2 conduct any discovery, interview any witness, prohibited from
3 calling witnesses and denied the right to "make legal arguments"
4 at his one and only hearing in 2004; and 3) despite his
5 suspension having ended in 2007 that Mr. Fletcher's petitions
6 for reinstatement had all been "summarily denied" without notice
7 or hearing. [Declaration of Michael Fletcher; Exhibit D].
8

9
10 This denial of the most basic elements of due process and
11 fair procedure is even more outrageous today because the public
12 record now reflects that Michael Fletcher's "three year
13 suspension" was carried out based on an "arbitrary and unwritten
14 rule" imposed by two Caucasian federal judges who have been
15 "discriminating against black people for years." Id.
16

17 This "arbitrary and unwritten rule" was discovered in
18 October of 2009 when former Missouri Supreme Court Justice
19 Ronnie White, the only African American to have ever served on
20 Missouri's Supreme Court, called Michael Fletcher at his
21 California home.
22

23
24 During this call, Justice White admitted that the only
25 reason Michael Fletcher had been suspended and the only reason
26 he had not be reinstated was because members of the Missouri
27 Supreme Court and of the WDMO agreed that they would "fuck"
28

1 Fletcher by "applying an arbitrary and unwritten rule" to deny
2 him reinstatement. Justice White also stated that these same
3 judges "had been discriminated against black people for years."
4 Id.

5
6 Based on Justice White's admissions and the fact that
7 Michael Fletcher, as of November 2010, has NEVER received a
8 hearing in Missouri and has NEVER been afforded notice or an
9 opportunity to be heard regarding his multiple petitions for
10 reinstatement filed in the WDMO, in February of 2010 Mr.
11 Fletcher brought a section 1983 and Bivens claim against members
12 of the WDMO and the individual judges who Justice White
13 identified in the partially recorded October phone conversation
14 with Mr. Fletcher.
15

16
17 In this federal litigation no judge from Missouri, from
18 Missouri state or federal court, has denied that they conspired
19 to "apply an arbitrary and unwritten rule" to punish Michael
20 Fletcher. Nor has any judge from Missouri suggested, inferred
21 or argued that Justice White was lying, mislead or mistaken when
22 he called Michael Fletcher and admitted this conspiracy amongst
23 judges to "fuck" the only African American attorney to have ever
24 tried a case in federal court in Missouri. Id.
25

26 11/24/88
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The State Bar—Again—Denies Michael Fletcher Fair Procedure.

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Despite California law being abundantly clear that an applicant to the California Bar is entitled to "fair procedures" and due process, after the State Bar was advised that it failed to consider his waiver request, on March 23, 2009, the State Bar of California advised Michael Fletcher that they had now "considered" his waiver request but were still denying him notice or hearing to contest their administratively withdrawing his application for moral determination. [Exhibit D].

On top of denying him notice and hearing, the State Bar went one unconstitutional step further and advised Michael Fletcher that there was nothing else he could do to obtain even a review of their ex parte decision because their decision "is not subject to further administrative review." Id.

Therefore, the uncontroverted record in this case shows that despite being fundamentally required to provide each and every applicant to the California bar notice and hearing prior to denying, limiting or in any way negatively impacting an applicant's constitutionally recognized right to enter into the practice of law, the State Bar of California not once but twice conducted ex parte proceedings and "administratively" withdrew Michael Fletcher's application for determination of moral

1 character without determining whether a proceeding in which a
2 party was denied discovery, forbidden from calling witnesses and
3 expressly ordered that he could not make "legal arguments"
4 satisfied California's common law right to fair procedures.
5 Pinsker, 12 Cal.3d at 545; Mudge, 1993 WL 377729, pg. 6; Martin
6 B., 33 Cal.3d at 723 (the California Bar may not consider
7 "unfair" prior disciplinary in deciding whether an applicant
8 should be admitted).
9

10
11 Because a "summary denial" of an application for membership
12 to the California Bar is forbidden under California law without
13 first affording the applicant notice and hearing and ensuring
14 that the common law doctrine of "fair procedures" has been
15 satisfied, this Court must issue a writ of mandate ordering that
16 Respondents comply with California's requirement of due process
17 and fair procedures. Pinsker, 12 Cal.3d at 545; Mudge, 1993 WL
18 377729, pg. 6; Martin B., 33 Cal.3d at 723.
19
20

21 Adequate notice of charges and a reasonable opportunity to
22 respond are basic to both due process and fair procedure. Here,
23 the State Bar of California did not afford Petitioner notice of
24 charges and did not afford him a reasonable opportunity to
25 respond to the allegation that the irregular Missouri proceeding
26 failed to satisfy California's requirement of due process and
27 fair procedure. Martin B., 33 Cal.3d at 723.
28

1 It is a well established canon of U.S. and California law
2 that "a person who seeks to enter upon the occupation of a
3 lawyer comes clothed with the protections of the Fourteenth
4 Amendment." Raffaelli v. Comm. of Bar Examiners of Cal. (1972),
5 496 P.2d 1264, 1268. Thus the California Supreme Court in
6 Raffaelli, citing the U.S. Supreme Court's holding Schware v.
7 Brd. Of Bar Examiners (1957), 353 U.S. 232 stated:

9 "A state cannot exclude a person from the practice of
10 law or from any other occupation **in a manner or for**
11 **reasons that contravene the Due Process or Equal**
12 **protection Clause** of the Fourteenth Amendment."

13 Raffaelli, 496 P.2d at 1268 (emphasis added).

14 Thus according to the California Supreme Court, just as an
15 applicant for admission to the California Bar cannot be
16 "excluded merely because he was a Republican or a Negro or a
17 member of a particular church" the state is also prohibited from
18 excluding an applicant where "**there is no basis for their**
19 **finding that he fails to meet [arbitrary] standards.**" Id.
20 (emphasis added).

21 Therefore although it is important that a state be allowed
22 to select membership to its bar "it is equally important that
23 the State not exercise this power in an arbitrary or
24 discriminatory manner." Konigsberg v. State Bar of California
25 (1957), 353 U.S. 252, 77 S.Ct. 722, 733.

1 In addition to the protections afforded an applicant for
2 admission to the California Bar guaranteed under the Due Process
3 and Equal Protection Clauses of the 14th Amendment, a California
4 bar applicant is also fundamentally entitled to California's
5 common law right of "fair procedure." Mudge, 1993 WL 377729,
6 pg. 3; Martin B., 33 Cal.3d at 723.

7
8 Because it is inconceivable that Respondents would argue
9 that they satisfied the requirements of procedural Due Process,
10 Equal Protection or California's common law requirement of "fair
11 procedures" when they (during ex parte proceedings) twice
12 summarily denied Michael Fletcher's application for
13 determination of moral character, their actions must have been
14 based on ignorance of the law.

15
16 The Court in Mudge directly and concisely reaffirmed the
17 California common law right of fair procedure relative to an
18 applicant for admission or certification by the California Bar:

19
20 **"California courts have long recognized a common law**
21 **right to fair procedure** protecting individuals from
22 arbitrary exclusion or expulsion from private
23 organizations which control important economic
24 interest."

25 Mudge, 1993 WL 377729, pg. 6 (emphasis added).

26 This common law right of fair procedure has been repeatedly
relied upon by California courts in correcting the
constitutional missteps of the California Bar where the Bar

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208

1 improperly denies an applicant admission. Martin B., 33 Cal.3d
2 at 723.

3
4 In Martin B., a petitioner challenged the refusal of the
5 State Bar to certify him to the Supreme Court of California for
6 admission to practice law. The State Bar's refusal to certify
7 petitioner was predicated on findings of fact following a
8 "retrial" by the State Bar on two rape charges that had been
9 dismissed against the petitioner ten years prior.
10

11 While acknowledging that the committee of the State Bar was
12 entitled to review the prior allegations against the petitioner
13 in conducting the investigation, the Court reasoned that it was
14 imperative that "the committee maintain a certain degree of
15 integrity." Where the integrity of the proceeding is lacking as
16 a result of the applicant not being **"afforded a fair and
17 reasonable opportunity to defend himself against the charges
18 being investigated"** the findings and "any conclusions therefore
19 **must be disregarded."** Martin B., 33 Cal.3d at 723 (emphasis
20 added).
21
22
23

24 In reviewing the procedures or lack of procedures imposed
25 by the State Bar, the California Supreme Court held "the lack of
26 vital records, the passage of time and the unavailability of
certain witnesses caused the proceedings to be fundamentally

1 unfair to petitioner." Moreover, this lack of evidence meant
2 that petitioner had not been allowed to meaningfully defend his
3 position" against the allegations of misconduct because
4 witnesses could not be "properly impeached" and "he could not
5 properly cross-examine the complaining witnesses." Id. at 721.
6

7 In this case, the State Bar never allowed Michael Fletcher
8 the opportunity to present even a single witness.
9

10 The State Bar ignored the uncontroverted letters of support
11 from esteemed and highly reputable members of the California
12 judiciary like the Hon. Joan Comparet-Cassani who wrote not only
13 that Mr. Fletcher represented his client "ably and competently"
14 during the special circumstances murder trial on which he
15 donated seven weeks of pro-bono time, but also that Michael
16 Fletcher "was a perfect gentleman throughout the proceedings."
17 [Exhibit C, pg. 34:8].
18
19

20 The State Bar ignored the words of now Los Angeles Superior
21 Court Judge the Hon. Pat Connelly who while serving as an
22 Assistant Los Angeles County Prosecutor had worked against
23 Petitioner in two separate felony cases, including a special
24 circumstances murder trial. According to Judge Connelly,
25 "Michael Fletcher acted professionally . . . he was courteous
26 and engaging during the trials." Id.
27

1 As the remaining testimonials from the eight other judges;
2 members of the criminal and civil defense bar; plaintiff's bar;
3 the now Chairman of the Black Legislative Caucus, Congressman
4 Emanuel Cleaver; the Bishop who oversees the entire country of
5 Canada and who has know Mr. Fletcher for over twenty years
6 attests, Michael Fletcher is not only an extremely competent and
7 successful trial attorney but also those with whom he has worked
8 and socialized with his entire career, hold him in the highest
9 moral regard. [Exhibit C].
10

11
12 The significance of these individuals' testimony concerning
13 Petitioner's legal ability and high moral standing—testimonials
14 that have NEVER been disputed or even questioned by the State
15 Bar of California, absolutely prove that the State Bar's
16 "summary denial" of Michael Fletcher's applications for a
17 determination of good moral character violated California's
18 common law requirement of due process and fair procedure. In re
19 McCue, 211 Cal. 57 at 64 (uncontroverted letters of support from
20 legal community mandate admission "**unless it was counteracted by**
21 **adverse evidence**"); Warbasse, 219 Cal. at 571 (state bar may not
22 deny admission to applicant based "solely" on foreign
23 disciplinary proceeding where testimonials attest to moral
24 fitness); Kwasnik, 50 Cal.3d at 1070 (state bar's contention
25 that a prior disciplinary proceeding in a foreign jurisdiction
26

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1 supported denial of applicant's admission was "greatly
2 diminished by the passage of time and by the absence of similar,
3 more recent misconduct"; Martin B., 33 Cal.3d at 723 ("any
4 conclusion" from a prior disciplinary proceeding in a foreign
5 jurisdiction where the applicant was not "afforded a fair and
6 reasonable opportunity to defend himself against the charges
7 being investigated . . . must be disregarded"; In re Leardo, 53
8 Cal.3d at 20 (an applicant currently suspended in a foreign
9 jurisdiction may nonetheless be reinstated in California where
10 foreign proceedings failed to satisfy California's requirement
11 of fair procedures.)

12
13
14 **C. The State Bar Of California May Not Refuse To Certify**
15 **Petitioner's Good Moral Character Based Solely On An Irregular**
16 **Foreign Proceeding.**

17 Since 1932 the California Supreme Court has expressly
18 forbade the State Bar of California from denying an applicant to
19 the State Bar admission based solely on a foreign jurisdiction's
20 irregular proceedings. In re McCue, 211 Cal. 57 at 64;
21 Warbasse, 219 Cal. at 571; Kwasnik, 50 Cal.3d at 1070.

22
23 In Warbasse, a New York attorney who had been previously
24 suspended in New York sought admission to the California Bar but
25 the California State Bar denied his application for
26 certification of good moral character based solely on his prior
27 suspension in New York.
28

1 The California Supreme Court rejected the California State
2 Bar's denial of the applicant-petitioner's application for
3 certification to the California Bar based solely on a
4 disciplinary proceeding in New York.

5
6 "[W]e may go behind the action of the court in that
7 [New York] particular case to determine for ourselves
8 from the record presented whether or not he is
9 eligible to admission to practice law in this state."

10 Warbasse, 219 Cal. at 570 (emphasis added).

11 An identical result was reached in In re McCue, 211 Cal. at
12 64, where a previously disbarred Montana attorney sought
13 certification of his good moral character—just as Petitioner
14 has. Despite the Montana attorney producing letters from judges
15 and attorneys who were familiar with his good character, "the
16 State Bar denied his application for admission to the California
17 Bar based, again, solely on the prior disbarment. Id.

18
19 In reviewing the petitioner's evidence of moral fitness
20 which consisted largely of letters from judges and lawyers who
21 had practiced with Petitioner, the California Supreme Court
22 enunciated a bright line test as to the adequacy of proof of
23 moral fitness where an attorney has been previously disciplined
24 in a foreign jurisdiction and now seeks admission to the
25 California Bar.
26

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27
28

1 **"There can be no question** but that the showing made by
2 applicant in respect to his good moral character **was**
3 **sufficient unless it was counteracted by adverse**
4 **evidence as to character."**

5 Id. at 62 (emphasis added).

6 Therefore based on its holding in Warbasse wherein the
7 Court instructed that in reviewing a foreign jurisdiction
8 disciplinary action, a California court may **"go behind the**
9 **action of the court in that particular case to determine for**
10 **ourselves,"** the California Supreme Court again found that the
11 State Bar had violated the applicant's right to Due Process and
12 Fair Procedure when the State Bar's denial of certification was
13 based solely on "adverse evidence [that] consisted of charges
14 against" petitioner from an irregular foreign proceeding. Id.
15 at 64. As is mandated here, the Supreme Court reversed the
16 State Bar refusal to certify the applicant and ordered that he
17 be immediately admitted. Id.

18 More recently, the California Supreme Court in Kwasnik
19 again reiterated that the State Bar could not refuse to certify
20 an attorney for admission to the California Bar based solely on
21 a foreign jurisdiction's imposition of discipline where the
22 applicant has presented "a strong prima facie case that he is of
23 sufficiently good moral character to be admitted to the practice
24 of law in California." Kwasnik, 50 Cal.3d at 1070.
25
26

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2:24:08

1 In rejecting the State Bar's argument that it may rely
2 solely on a foreign jurisdiction's prior disciplinary proceeding
3 in rejecting an application for admission to the California Bar,
4 the Supreme Court again reiterated that where an applicant has
5 produced letters from lawyers and judges who were "aware of the
6 circumstances that prompted the inquiry into the applicant's
7 moral character," the applicant has "presented a prima facie
8 case that he is presently of good moral character and should be
9 admitted absent the state rebutting the letters of support. Id.
10 at 1070.
11

12
13 The Kwasnik Court also enunciated an additional basis for
14 the admission of an attorney who was previously disciplined in a
15 foreign jurisdiction who subsequently seeks admission to the
16 California Bar. In Kwasnik, the Supreme Court instructed that
17 "the evidentiary significance of an applicant's misconduct is
18 **greatly diminished by the passage of time and by the absence of**
19 **similar, more recent misconduct.**" Id. (emphasis added).
20
21

22 Here it is uncontroverted that Michael Fletcher submitted
23 written letters of support from ten (10) judges, two of whom are
24 from California; nine (9) lawyers, two of whom are nationally
25 prominent; a the Chairman of the Black Legislative Caucus who
26 has known Mr. Fletcher for almost twenty-five years; a bishop
and multiple members of the African American clergy.

1 It is uncontroverted that Michael Fletcher, prior to this
2 "unprecedented" three year suspension which ended in 2007 but
3 for which the federal court in Missouri continues to refuse to
4 grant Michael Fletcher a hearing in which he could seek
5 reinstatement, had NEVER been disciplined, NEVER been sanctioned
6 and NEVER had a client complaint—Despite trying over thirty jury
7 trials and having represented hundreds and hundreds of clients.
8

9 It is also uncontroverted that the sole basis for
10 "administratively withdrawing" Michael Fletcher's application
11 for determination of good moral character was the "suspension .
12 . . in Missouri" which occurred almost seven years ago.
13 [Exhibit A].
14

15
16 **D. The State Bar's Refusal To Afford Petitioner A Hearing Is A**
17 **De Facto Permanent Bar From Admission To The California Bar**
18 **Which The California Bar May Not Order.**

19 California law mandates that the State Bar must not suspend
20 or discipline an attorney if the suspension would impose
21 discipline that "could deprive respondent of his right to
22 practice for more years than he might be removed for
23 **disbarment.**" In re Stamper, 1 Cal.State Bar Ct. Rptr. 96; In re
24 Respondent M., 2 Cal.State Bar Ct. Rptr. 465.
25

26 Moreover, the State Bar may not deny any attorney, no
matter how severe his or her misconduct, reinstatement or

1 admission "provided he can demonstrate a sufficient passage of
2 time and rehabilitation." Matter of Miller, 2 Cal. State Bar
3 Ct. Rptr. 423.

4
5 Assuming for the sake of argument that Petitioner had been
6 properly suspended in 2004 for three years for ostensibly
7 "misquoting" deposition testimony, an allegation that he has
8 always denied, almost seven years have passed since the sentence
9 was imposed.

10
11 Because Respondents have denied him his common law right of
12 fair procedure thus precluding him from admission to the
13 California Bar until some future arbitrary date, the State Bar
14 has issued a de facto permanent denial from ever being admitted
15 to practice law in California. Id.; Kwasnik, 50 Cal.3d at 1070.

16
17
18 Such a decision by Respondents is fundamentally wrong and
19 contrary to California law.

20
21 **E. The Remedy For The Respondents' Denial Of Fair Procedure Is
22 Immediate Admission Pending A Proper Hearing.**

23 The remedy for a licensing entity's denial of fair
24 procedures in licensing is the "immediate" admission of the
25 applicant "pending a proper hearing." Hackethal v. Loma Linda
26 Comm. Hospital Corp., 91 Cal.App.3d 59, 67; Anton v. San Antonio
27 comm.. Hosp., 19 Cal.3d 802; Westlake Comm. Hosp. v. Superior

1 Court, 17 Cal.3d 464; Woodbury v. Mckinnon, 447 F.2d 839, 842
2 (5th Cir. 1971); Klinge v. Lutheran Charities Ass'n of St. Louis,
3 523 F.2d 56, 61 (8th Cir. 1975).

4
5 Since Michael Fletcher has now been "suspended" for almost
6 seven years, has taken and passed the California Bar and has
7 more than proved his high moral character, a "proper hearing"
8 would only result in an additional unwarranted delay in his
9 admission to the California Bar. Justice and propriety demand
10 that Petitioner, at minimum, be immediately admitted pending
11 whatever frivolous and harassing action Respondents may seek to
12 initiate.
13

14
15 IV. CONCLUSION

16
17 California law is absolutely clear that this Missouri
18 suspension which was obtained at what can only be described as
19 an "irregular proceeding," does not support the "summary denial"
20 of Petitioner's application for admission wherein Mr. Fletcher
21 included correspondence from over twenty individuals including
22 judges, lawyers, a bishop, a congressman and numerous members of
23 the clergy. Warbasse, 219 Cal. at 570.
24

25
26 The impropriety of the State Bar's action is even more
27 tragic given that Mr. Fletcher's "three year" Missouri
28 suspension which ended in May of 2007 has ostensibly been
29

1 converted into a permanent disbarment without notice or hearing
2 because the WDMO and the state of Missouri have imposed this
3 "arbitrary and unwritten rule" to deny Petitioner reinstatement
4 for no reason other than racial bias and personal animus.
5 Kwasnik, 50 Cal.3d at 1061; Martin B., 33 Cal.3d 717, 723.
6

7 The unconstitutional actions of the State Bar have not only
8 denied Michael Fletcher the protections for which he is
9 fundamentally entitled under California's common law right to
10 fair procedure, but they have also undermined this State's
11 absolute commitment to ensuring the rights of all people
12 irrespective of race. Raffaelli, 496 P.2d at 1268.
13
14

15 There is simply no legal or factual basis under which
16 Respondents could constitutionally withdraw Michael Fletcher's
17 Application for a determination of his good moral character
18 without first satisfying California's requirement for fair
19 procedures.
20

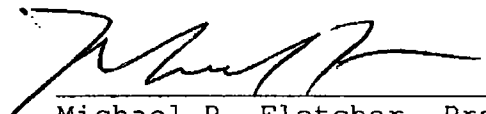
21 The California common law right of fair procedure entitles
22 an applicant to the California Bar to, at minimum, notice of the
23 State Bar's basis for denying him certification, the right to
24 confront or rebut the evidence offered against his certification
25 and an opportunity to be heard in his defense. In re McCue, 211
26 Cal. at 64; Kwasnik, 50 Cal.3d at 1070; In re Leardo, 53 Cal.3d
27

1 at 19; In the matter of Applicant B., 2004 WL 2750378 (State
2 Bar's "actions in considering his application were designed to
3 avoid meeting with [the] applicant so that he was denied a
4 reasonable or meaningful opportunity to explain the nature of
5 his prior discipline and the mitigating factors involved.").

6
7 Here the State Bar of California violated Mr. Fletcher's
8 right to fair procedure by 1) denying him notice of the basis
9 for withdrawing his application; 2) denying him an opportunity
10 to present evidence in his defense; 3) denying him the right to
11 confront any witness or evidence the State believed supported
12 its unconstitutional action and 4) the right offer evidence of
13 mitigation.
14

15
16 Therefore, this Court is constitutionally required to order
17 Mr. Fletcher admitted pending a "proper hearing."
18
19
20

21
22 **DATED:** November 15, 2010


Michael R. Fletcher, Pro Se
5655 E. The Toledo
Long Beach, CA 90803
(562) 433-9638
(562) 434-6395 (FAX)

26
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THE STATE BAR OF CALIFORNIA
OFFICE OF ADMISSIONS

180 HOWARD STREET • SAN FRANCISCO, CALIFORNIA 94105-1639 • (415) 538-2303
1149 SOUTH HILL STREET • LOS ANGELES, CALIFORNIA 90015-2299 • (213) 765-1500

PERSONAL & CONFIDENTIAL

January 28, 2009

MICHAEL R FLETCHER
5655 E THE TOLEDO
LONG BEACH CA 90803

Re: **Moral Character Application**
371336

Dear Mr. Fletcher:

An initial review of your moral character application is complete. According to your moral character application, you were admitted to practice law in Missouri where you practiced law until 2004 when you were suspended from the practice of law due to acts of misconduct.

Title 4, Division 1, Chapter 4, Rule 4.41(A) of the *Rules of the State Bar of California (Admissions Rules)* stipulate:

An attorney who is suspended, disbarred, or otherwise not in good standing in any jurisdiction may not submit (a moral character) application.

Given your current suspension from the practice of law in Missouri, you are not eligible to file a moral character application. Consequently, your moral character application has been administratively withdrawn.

In order to file a moral character application, you must resolve the disciplinary matter in Missouri to comply with the *Admissions Rules*. Or, you may petition the Committee of Bar Examiners to waive the requirement imposed by Title 4, Division 1, Chapter 4, Rule 4.41(A) of the *Admissions Rules*. You may submit the petition to:

Cheryl Waters
Office of Admissions
State Bar of California
1149 S. Hill St.
Los Angeles, CA. 90015

Michael R. Fletcher
Moral Character Application
January 28, 2009
Page 2

Please feel free to contact this office if you should have any questions pertaining to this matter.

Sincerely yours,



Dawnita H. Franklin
Moral Character Analyst
(213) 765-1522

11/24/19

cc: Cheryl Waters

11/24/10

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI


: Disciplinary Matter of Michael Robert Fletcher

No. 03-0272-D

ORDER

Respondent Michael Robert Fletcher's motions filed with this Court on
February 6, 2004, are ruled as follows.

1. Motion for leave to serve interrogatories is hereby denied.
2. Motion to serve request for admissions is hereby denied.
3. Motion for leave to serve request for production of documents is hereby denied.
4. Motion for leave to allow respondent to show file and investigative material to witnesses or potential witness is provisionally denied. Respondent needs to provide a list of proposed witnesses and how their testimony will be relevant to the hearing of March 8, 2004.


FERNANDO J. GAITAN, JR.
United States District Judge
Chairman of Three-Judge Panel

dated: February 10, 2004

11/24/19

1 Michael R. Fletcher, In Pro Per
2 5655 E. The Toledo
3 Long Beach, CA 90803

4 The State Bar of California

5 Michael Robert Fletcher,

6 Petitioner,

7 vs.

8 Committee of Bar Examiners,

9 Respondent.

) Case No.:

) SUGGESTIONS IN SUPPORT OF
) PETITIONER'S REQUEST THAT THE
) BAR COMMITTEE DISREGARD THE
) SUSPENSION AND DENIAL OF
) REINSTATEMENT OF PETITIONER IN
) THE FEDERAL COURT IN THE STATE
) OF MISSOURI

10 Dated this September 8, 2008

11 5655 E. The Toledo
12 Long Beach, CA 90803
13 (562) 856-2130
14 (562) 433-9638

15 Michael R. Fletcher,

16 PETITION AND SUGGESTIONS IN SUPPORT OF PETITIONER'S
17 REQUEST THAT THE BAR COMMITTEE DISREGARD THE SUSPENSION
AND DENIAL OF REINSTATEMENT OF PETITIONER IN THE FEDERAL
COURT IN THE STATE OF MISSOURI

18 Even though the human resources manager tried to wiggle off
19 the hook after he had testified in his deposition that "nigger
20 bitch" could be a "term of affection," Petitioner believed the
21 jury would know exactly what the witness meant or, did not mean,
22 when they saw the videotape of the deposition. [Exhibit 8,
23 pgs., 4-5]. Therefore, Petitioner included the quote in several
24 additional law suits filed against the same defendant following
25 the federal court's denial of Petitioner's attempt to join 17
26 plaintiffs in a single suit.
27
28

11/24/18

1 In these subsequent suits, Petitioner's associate cited the
2 quote by line and page number and attached the deposition
3 transcript to the individual law suits as an exhibit.

4 However, according to the federal district court in
5 Missouri, the inclusion of this quote in the subsequently filed
6 law suits warranted an investigation into whether the human
7 resource manager was "misquoted."
8

9 While the accuracy of the deposition testimony was being
10 "investigated", the federal court also ordered a private
11 attorney to investigate "any other conduct or allegations that
12 may come to her attention during the course of her
13 investigation" of Petitioner. [Exhibit 8, pg. 7].
14

15 What followed next was an unprecedented 10 month
16 investigation of Petitioner's seven (7) year legal career and
17 his entire adult life.
18

19 In an attempt to prepare a defense against the allegations
20 raised by the investigation, Petitioner believed that the Due
21 Process and Equal Protection guarantees of the Constitution
22 entitled him to conduct discovery concerning the allegation
23 against him. He therefore served discovery requests seeking to
24 know what it was the government was alleging would warrant
25 professional discipline. The federal court's response to these
26 basic requests set the tone for what was to come:
27
28

11/24/18

1 "Respondent Michael Robert Fletcher's motions filed
2 with this Court on Friday, February 6, 2004, are ruled
as follows.

- 3 1. Motion for leave to serve interrogatories is
4 hereby denied.
- 5 2. Motion for leave to serve request for admissions
6 is hereby denied.
- 7 3. Motion for leave to serve request for production
8 of documents id hereby denied.
- 9 4. Motion for leave to allow respondent to show file
10 and investigative material to witnesses or
11 potential witnesses is provisionally denied. . .
12 "

13 [Exhibit 4] (emphasis added).

14 COMES NOW Petitioner Michael Robert Fletcher and as part of
15 his Application for Determination of Moral Character hereby
16 requests that the Committee of Bar Examiners of the State Bar of
17 California (the "Committee") disregard the Order [Exhibit 1] and
18 any conclusions pertaining to this unconstitutional finding of
19 the U.S. Federal District Court for the Western District of
20 Missouri's wherein the federal district court in Missouri denied
21 Petitioner's Petition for Reinstatement which sought to end
22 Petitioner's unprecedented three (3) year suspension which, as
23 of the filing of this petition, has lasted over four and one
24 half years (4 ½) with no indication of when or how this
25 "suspension" will ever end.
26

27 A partial basis for Petitioner's request that the federal
28 court's denial of reinstatement be disregarded includes the fact

1 that: (1) in direct contravention of federal and state laws
2 regarding Due Process and Equal Protection, Petitioner was never
3 notified that a hearing was to be conducted regarding his
4 Petition for Reinstatement; (2) in direct contravention of
5 federal and state laws regarding Due Process and Equal
6 Protection, Petitioner was never apprised of the allegations the
7 federal court claimed supported a denial of his Petition for
8 Reinstatement; (3) in direct contravention of federal and state
9 laws regarding Due Process and Equal Protection, Petitioner was
10 never presented with a list or any compilation of evidence which
11 would indicate a basis for denying his Petition for
12 Reinstatement; (4) in direct contravention of federal and state
13 laws regarding Due Process and Equal Protection, Petitioner was
14 never provided any statement or statements from any witnesses or
15 witnesses that would support a denial of his reinstatement; (5)
16 in direct contravention of federal and state laws regarding Due
17 Process and Equal Protection, Petitioner has never been provided
18 any evidence that was presented with regard to his reinstatement
19 which was adverse to Petitioner's reinstatement; (6) there is no
20 public record indicating that a hearing was ever conducted prior
21 to the denial of Petitioner's Petition for Reinstatement; (7)
22 there is no transcript, trial note, findings of fact,
23 conclusions of law, summary of evidence--no piece of paper which
24 the federal court can show that demonstrates why Petitioner's
25
26
27
28

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1 Petition for Reinstatement was denied; (8) there is no evidence
2 that any portion of the correspondence by any of the nine (9)
3 judges who wrote on behalf of Petitioner's reinstatement was
4 rebutted; (10) there is no evidence that any of the ten (10)
5 lawyers who wrote on behalf of Petitioner's reinstatement was
6 rebutted (11) there is no evidence that any portion of the
7 correspondence from a sitting United States Congressman who
8 wrote on behalf of Petitioner's reinstatement was rebutted; (12)
9 there is no evidence that any portion of the correspondence from
10 the Bishop who wrote on behalf of Petitioner's reinstatement was
11 rebutted; (13) in direct contravention of federal and state laws
12 regarding Due Process and Equal Protection, the federal district
13 court does not deny that the two federal judges, who initiated
14 the investigation of Petitioner also met with the two private
15 attorneys (who were appointed and paid by the federal court)
16 oversaw and directed the 10 month investigation of Petitioner,
17 and they then voted on the discipline of Petitioner in
18 contravention of state and federal law; (14) the federal
19 district court does not dispute the newspaper article that
20 reported the court spent half a million dollars (\$500,000.00)
21 [Exhibit 2] conducting this investigation of the only African
22 American attorney to have ever tried a civil case in the federal
23 district court in Missouri; and (15) the federal district court
24 in Missouri does not deny that prior to this 10 month long,
25
26
27
28

11/24/18

1 \$500,000.00 investigation which lead to Petitioner's suspension,
2 that Petitioner had NEVER been the recipient of a single client
3 complaint, NEVER been accused of misconduct by any lawyer or
4 judge and had NEVER been the subject of professional discipline
5 despite trying almost thirty (30) jury trials and having
6 represented hundreds of clients.
7

8 Nor does the federal district court deny that in the
9 proceedings pertaining to the original order in which Petitioner
10 became the first lawyer in America to be subjected to a three
11 year suspension based on conduct the federal court admitted "may
12 not constitute a separate ethical violation," [Exhibit 3, pg. 5]
13 (emphasis added) that Petitioner was not allowed to depose a
14 single witness; was not allowed to serve a single written
15 interrogatory, was not allowed to serve a single request for
16 admission, was not allowed to serve a single request for
17 production and was not even allowed to show the allegations
18 leveled against him to a single witness, potential witness or to
19 anybody other than his lawyer. [Exhibit 4].
20
21

22 These conclusions are not merely those of Petitioner. The
23 Honorable Robert Russell, one of Petitioner's Missouri lawyers,
24 who is also a former judge, who has practiced law nobly for five
25 decades, described these Missouri pleadings this way:
26

27 "I have been a practicing lawyer and circuit court
28 judge in Missouri for forty-five years . . . I have
represented numerous attorneys and judges in

11/24/18

1 disciplinary proceedings . . . I can tell you that Mr.
2 Fletcher's case is unique in my experience. What
3 began as a case involving alleged improper pleadings
4 expanded into an investigation of Mr. Fletcher's
5 conduct that exceeded the bounds of anything I have
6 ever seen . . . In my judgment Mr. Fletcher has not
7 been treated fairly."

8 [Exhibit 5, pg. 3].

9 Another attorney with intimate knowledge of the irregular
10 procedures employed by the federal court in Missouri is an
11 attorney named Jeffrey Fisher. Attorney Jeffrey L. Fisher is
12 one of the top constitutional attorneys in America. Fisher was
13 a law clerk for Judge Stephen Reinhardt of the U.S. Court of
14 Appeals for the 9th Circuit, clerked for Justice John Paul
15 Stevens of the Supreme Court of the United States, is the co-
16 director of the Stanford law School Supreme Court Litigation
17 Clinic and an associate professor of Law at Stanford University.
18 Fisher has argued several cases before the U.S. Supreme Court
19 including Kennedy v. Louisiana, Burton v. Waddington, U.S. v.
20 Gonzalez-Lopez, Davis v. Washington, Blakely v. Washington and
21 Crawford v. Washington.

22 It was attorney Jeffrey L. Fisher who successfully briefed
23 and argued what the national media and law professionals have
24 described as the most significant constitutional case handed
25 down by the United States Supreme Court in the last 40 years,
26 Crawford v. Washington, 776 F.2d 1046.
27
28

11/24/18

1 When an attorney like Jeffrey Fisher agrees to represent an
2 individual, it is because important fundamental constitutional
3 issues are at risk. Jeffrey Fisher was Petitioner's appellate
4 attorney. In Fisher's briefing filed on behalf of Petitioner,
5 after fully investigating the procedures employed by the two
6 attorneys who were appointed by the federal district court and
7 the extent of involvement by the judges of the federal court,
8 Professor Fisher did not mince words regarding the federal
9 court's actions regarding Petitioner.
10

11 "It is now clear that the investigation and basis for
12 discipline here are unprecedented. Appointed Counsel
13 is unable to point to a single case in which a
14 "special prosecutor" has been allowed to investigate
15 and bring disciplinary charges based on an attorney's
16 entire career. Nor is she able to point to a single
17 case in which judges that commenced a disciplinary
18 investigation sat in judgment of the attorney who they
19 initially accused. Nor, as a substantive matter, is
20 Appointed Counsel able to point to a single case in
21 which an attorney has been disciplined for what she
22 calls "the central violation here--allegedly quoting
23 witness testimony 'out of context'--much less a case in
24 which discipline was imposed when the attorney
25 intended to prove in the litigation that the
26 quotations' allegedly misleading implications were in
27 fact the truth. Finally . . . she is unable to point
28 to any comparable case in which an attorney received
as harsh a sanction as Fletcher did here."

23 [Exhibit 7, pg. 1] (emphasis added).

24 It is important to note the investigation by the special
25 prosecutor discussed by Professor Fisher related to the
26 underlying "hearing" and three year suspension of Petitioner in
27 which Petitioner was not allowed to depose any witness, serve
28

1 interrogatories, serve request for production, or show the
2 allegations against him to a single witness. [Exhibit 4].

3 Because Petitioner recognized the futility of appealing his
4 denial of reinstatement even though he was, again, denied any
5 discovery, any "hearing" and no order delineating why the nine
6 judges, ten lawyers, U.S. Congressman and the Bishop were wrong
7 in their assessment of Petitioner's moral fitness, the Committee
8 does not have Prof. Fisher's views of the January 18, 2008,
9 denial of reinstatement, however, given our Supreme Court's
10 holdings in In re Leardo (1991), 53 Cal.3d 1; Martin B. v. Comm.
11 Of Bar Examiners of California (1983), 65 Cal.2d 447; 55
12 Cal.Rptr. 228; Warbasse v. State Bar of California
13 (California1930), 219 Cal. 566, 570; and In re McCue (California
14 1930), 211 Cal. 57, 63, the Committee does have controlling
15 precedent with respect to how California treats a foreign
16 jurisdiction's denial of basic fairness in a disciplinary
17 hearing involving an attorney's reinstatement.
18
19
20

21 Petitioner is requesting that this Committee adhere to the
22 well established laws of California, whereby an attorney's
23 suspension from the practice of law may not be extended or a
24 denial of his certification as possessing the requisite good
25 moral character cannot be based on findings that were conducted
26 without the attorney having had "notice and an opportunity to be
27 heard, to present a defense, to engage in discovery, and to
28

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1 present evidence prior to imposition of discipline." In re
2 Strick, (1983), 34 Cal.3d 891.

3 Petitioner sat for the California Bar in July of 2008, and
4 although he would like to believe this effort was successful,
5 Petitioner, prior to incurring the additional costs of bar
6 review courses, is requesting the Committee not sanction the
7 violations of fundamental fairness and due process that
8 Petitioner references below. Petitioner is not asking that the
9 Committee forgo its investigatory procedure, rather, Petitioner
10 invites a review of his career and life because he believes he
11 has the requisite good moral character necessary to be admitted
12 to the practice of law in California should he pass the
13 California Bar.
14
15

16 A DENIAL OF AN ATTORNEY'S PETITION FOR REINSATMENT
17 BY A ANY JURISDICTION (FOREIGN OR DOMESTIC) MUST BE
18 DISREGARDED WHERE THE JURISDICTION DOES NOT ADHERE TO
19 FUNDAMENTAL CONCEPTS OF FAIRNESS AND DUE PROCESS

20 It is a well established canon of California and United
21 States constitutional law that "a person who seeks to enter upon
22 the occupation of a lawyer comes clothed with the protections of
23 the Fourteenth Amendment." Raffaelli v. Comm. Of Bar Examiners
24 of California (1972), 496 P.2d 1264, 1268. Thus, the
25 California Supreme Court in Raffaelli, citing the United States
26 Supreme Court holding in Schwartz v. Board of Bar Examiners
27 (1957), 353 U.S. 232, stated:
28

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1 "A State cannot exclude a person from the practice of
2 law or from any other occupation in a manner or for
3 reasons that contravene the Due Process or Equal
4 Protection Clause of the Fourteenth Amendment."

5 Raffaelli, 496 P.2d at 1268.

6 Thus, according to the California Supreme Court, just as an
7 applicant for admission to the California Bar could not be
8 "excluded merely because he was a Republican or a Negro or a
9 member of a particular church," the state is also prohibited
10 from excluding an applicant where "there is no basis for their
11 finding that he fails to meet [arbitrary] standards." Id.

12 Therefore, although it is important that a state be
13 allowed to select membership to its bar, "it is equally
14 important that the State not exercise this power in an arbitrary
15 or discriminatory manner." Konigsberg v. State Bar of
16 California (1957) 353 U.S. 252, 77 S.Ct. 722. 733.

17 In addition to the protections afforded an applicant for
18 admission to the California bar guaranteed under the Due Process
19 and Equal Protection Clauses of the 14th Amendment, a California
20 bar applicant is also fundamentally entitled to a common law
21 right of "fair procedure." In the Matter of Mudge, 2 Cal. State
22 Bar Ct. Rptr. 536.

23 Thus, the court in Mudge stated:

24 "California courts have long recognized a common law
25 right to fair procedure protecting individuals from
26 arbitrary exclusion or expulsion from private
27
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1 organizations which control important economic
2 interest."

3 Id (emphasis added).

4 This "fair procedure" required under California common law,
5 at minimum, requires "that an individual who will be adversely
6 affected by a decision be afforded a meaningful opportunity to
7 be heard in his defense." In fact, the Court in Mudge held that
8 this opportunity to be heard in his or her defense was
9 "indispensable to a fair procedure." Id.; In re Strick (1983),
10 34 Cal.3d 891.
11

12 Because Petitioner's initial suspension and the denial of
13 Petitioner's Petition for Reinstatement by the Missouri federal
14 court serve as the only possible basis for this Committee
15 refusing to certify Petitioner's good moral character, and the
16 injustice that would inure to Petitioner if he is required to
17 appeal such a denial, Petitioner respectfully cites the
18 Committee to the California Supreme Court holding in In re
19 Strick. In Strick, our Supreme Court expressly delineated the
20 procedure to which an attorney facing professional discipline is
21 entitled BEFORE the Committee of Bar Examiners can impair an
22 attorney's ability to practice law in California.
23
24

25 In In re Strick, an attorney had unfortunately become
26 addicted to drugs, had plead guilty to forging prescriptions,
27 and was convicted of manslaughter and assault with a deadly
28

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1 weapon arising out of the attorney having killed a man.

2 Following a conviction for manslaughter, the State Bar Committee
3 sought to disbar the attorney. At the disbarment hearing, the
4 attorney chose to maintain his silence. Following the hearing,
5 the Committee recommended disbarment based, in part, on certain
6 conclusions of the Committee which appeared to have been reached
7 based on the attorney's decision to exercise his
8 constitutionally guaranteed right to remain silent.
9

10 In reversing the Committee's recommendation, the Supreme
11 Court of California, pursuant to its "duty to independently
12 examine the record, reweight the evidence and pass on its
13 sufficiency," held that where an attorney's ability to practice
14 law is threatened, the attorney "is entitled to procedural due
15 process in proceedings which contemplate the deprivation of his
16 license to practice his profession." Additionally, the
17 California Supreme Court expressly and forcefully delineated the
18 exact procedures which must be afforded an attorney in a
19 disciplinary proceeding BEFORE he or she can be denied
20 certification to practice law in California:
21
22

23 "Both the statutes and the Stat Bar Rules of procedure
24 guarantee notice and an opportunity to be heard, to
25 present a defense, to engage in discovery, and to
26 present evidence prior to imposition of discipline."

27 In re Strick, 34 Cal.3d at 899 (emphasis added).
28

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1 Additionally, the American Bar Association (the "ABA") has
2 propounded procedures to which an attorney who has been
3 suspended, and is now seeking reinstatement, is fundamentally
4 entitled. The ABA, the Courts of California and the California
5 legislature unanimously agree that the Constitutional guarantees
6 of Due Process and Equal Protection, the California common law
7 and the statutory provisions of the California Code mandate
8 procedures that must be followed before an attorney's license is
9 to be subject to discipline. The ABA Model Rules for Lawyer
10 Disciplinary Enforcement succinctly summarize these procedures:
11

12 "[A law] license must not be arbitrarily taken away
13 and the holder is entitled to procedural due process
14 in any proceeding relating to such conduct. Such due
15 process rights include fair notice of the charges,
16 right to counsel, right to cross-examine witnesses,
17 right to present arguments to the adjudicators, right
18 of appeal; and right to subpoena and discovery."

19 ABA Model Rules for Lawyer Disciplinary Enforcement, Rule 18;
20 Commentary; see also, Ca. State Bar Rules of Proc., 681; In the
21 Matter of Luis, 4 Cal. State Bar Ct. Rptr. 737 ("[p]rocedures
22 should be established to allow a suspended lawyer to apply for
23 reinstatement,").

24 These guaranteed protections of due process, equal
25 protection and fair procedure to which an attorney seeking
26 reinstatement following a suspension have been repeatedly
27 reaffirmed under the common law of California. Martin B. v.
28 Comm. Of Bar Examiners of California (1983), 65 Cal.2d 447; 55
Cal.Rptr. 228; Hallinan v. Comm. Of Bar Examiners of California

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1 (1966), 65 Cal.2d 447, 452; 55 Cal.Rptr. 228; Lubetsky v. State
2 Bar of California (1991), 54 Cal.3d 717, 721; 190 Cal.Rptr. 610.

3 Thus, under the ABA's Model Rules, "which serve as advisory
4 guidelines for discipline," Snyder v. State Bar of Ca. (1990),
5 49 Cal.3d 1302, once an attorney has filed his or her
6 application for reinstatement the reviewing board or
7 disciplinary counsel "shall":
8

9 F. Within [ninety] days after receiving a lawyer's
10 petition for reinstatement or readmission,
11 disciplinary counsel shall either: (1) advise the
12 lawyer and the [board] court that disciplinary counsel
13 will stipulate to the lawyer's reinstatement or
14 readmission, or (2) advise the lawyer and the [board]
15 court that disciplinary counsel opposes reinstatement
16 or readmission and request the [board] court to set a
17 hearing.

18 G. Hearing; Report. Upon receipt of disciplinary
19 counsel's request for a hearing, the [board] court
20 shall promptly refer the matter to a hearing
21 committee. Within [ninety] days of the request, the
22 hearing committee shall conduct a hearing at which the
23 lawyer shall have the burden of demonstrating by clear
24 and convincing evidence that he or she has met each of
25 the criteria in paragraph E or, if not, that there is
26 good and sufficient reason why the lawyer should
27 nevertheless be reinstated or readmitted. . . .

28 H. Decision as to Reinstatement or Readmission. The
29 court shall review the report filed by the [hearing
30 committee] [board] . . . ; if the court denies
31 reinstatement or readmission, the court shall issue a
32 written opinion setting for the ground for its
33 decision and shall identify the period after which the
34 lawyer may reapply. . . .

35 J. Reciprocal Reinstatement or Readmission. Where
36 the court has imposed a suspension or disbarment
37 solely on the basis of imposition of discipline in
38

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1 another jurisdiction . . . , the court shall
2 determine whether the lawyer shall be reinstated or
3 readmitted. Unless disciplinary counsel presents
4 evidence demonstrating procedural irregularities in
5 the other jurisdiction's proceeding or presents other
6 compelling reasons, the court shall reinstate or
7 readmit a lawyer who has been reinstated or readmitted
8 in the jurisdiction where the misconduct occurred.

9 (Emphasis added).

10 Therefore, an attorney seeking reinstatement after a
11 suspension of more than six months is entitled to have his or
12 her petition ruled on within ninety days of having filed the
13 petition with the board or disciplinary counsel. If the board
14 or counsel opposes reinstatement, the applicant is entitled to a
15 "hearing" where he or she is entitled to prove his or her
16 fitness and rehabilitation and if the applicant is denied, he or
17 she is fundamentally entitled "to a written opinion setting
18 forth the ground" for the committee or board's denial within
19 ninety days of the hearing.

20 Where the only evidence adverse to an applicant seeking
21 certification with the State Bar are the prior findings of a
22 foreign jurisdiction, especially where the foreign proceedings
23 did not comport with California's notions of "fair procedure"
24 and "Due Process and Equal Protection," the Bar Committee may
25 not deny certification of the applicant's good moral character
26 where "counsel presents evidence demonstrating procedural
27 irregularities in the other jurisdiction's proceedings. In re
28

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1 Leardo, 53 Cal.3d 1 at 20 (an attorney who is suspended in a
2 foreign jurisdiction is entitled to separate hearing and
3 certification in California); see also, Warbasse v. State Bar of
4 California (California 1933), 219 Cal. 566, 570 ("we may go
5 behind the action of that court . . . to determine for ourselves
6 from the record presented whether or not he is eligible to
7 admission to practice law in this state."); In re McCue
8 (California 1930), 211 Cal. 57, 63 (foreign judgment in
9 disbarment proceeding is not binding on California determination
10 as to fitness of applicant for admission to the California bar);
11 and Kwasnik v. State Bar of California (California 1990), 50
12 Cal.3d 1061 Moreover, if the prior disciplinary proceedings are
13 deemed "unfair" any findings or conclusions which are based on
14 that prior unfair proceeding "must be disregarded." Martin B.
15 33 Cal.3d at 723 (emphasis added).
16
17

18 The Committee of Bar Examiners May
19 Not Engage in Suspect Proceedings

20 In Martin B., a petitioner challenged the refusal of the
21 Committee of Bar Examiners to certify him to the Supreme Court
22 for admission to practice law. The Committee's refusal to
23 certify petitioner was predicated on findings of fact following
24 a "retrial" by the Committee on two rape charges previously
25 dismissed against petitioner ten years prior to the "retrial."
26
27
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1 While acknowledging that the committee was entitled to
2 review the prior allegations against petitioner in conducting
3 the investigation, it was imperative that "the Committee
4 maintain a certain degree of integrity." Where the integrity of
5 the proceeding is lacking as a result of the applicant not being
6 "afforded a fair and reasonable opportunity to defend himself
7 against the charges being investigated," the findings and "any
8 conclusions therefrom must be disregarded." Martin B, 33
9 Cal.3d 717 at 723 (emphasis added).
10

11 In reviewing the procedure, or lack of procedure, imposed
12 by the Committee, the Supreme Court held that "the lack of vital
13 records, the passage of time and the unavailability of certain
14 witnesses caused the proceedings to be fundamentally unfair to
15 petitioner." This lack of evidence meant that petitioner had
16 not been allowed to "meaningfully defend his position" against
17 the allegations of misconduct because witnesses could not be
18 "properly impeached" and "he could not properly cross-examine
19 the complaining witnesses." Id. at 721.
20
21

22 Although the Court chose to invalidate the bar Committee's
23 proceedings and any conclusions predicated on the "retrial"
24 pursuant to its "supervisory power over the Committee," the
25 California Supreme Court left little, or no, doubt that the
26 Committee had violated petitioner's constitutional rights to Due
27 Process when it refused to certify petitioner for admission to
28

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1 the bar because petitioner's defense against the claims of the
2 Committee was limited.

3 "We recognize that the facts of this case may well
4 border on a violation of due process, and that a
5 person cannot be excluded from the practice of law on
6 grounds violating this constitutional protection."

7 Martin B., 33 Cal.3d at 723 (emphasis added).

8 The California Committee of Bar Examiners
9 May not Refuse to Certify Petitioner
10 Based Solely on the Missouri Proceedings

11 The prohibition against the Committee refusing to certify
12 an attorney's application for admission to the California bar
13 predicated on the findings of a foreign jurisdiction's irregular
14 proceedings, which include proceedings in which the petitioner's
15 ability to defend him or herself against allegations of
16 misconduct, was first enunciated by the California Supreme Court
17 in Warbasse v. State Bar of California and In re McCue.

18 In Warbasse, a New York attorney who had previously
19 practiced in the State of New York and who had since become a
20 resident of California sought admission to practice law in
21 California. As part of his application filed with the Committee
22 of Bar Examiners of California, the attorney filed his "Petition
23 to Review Decision of Board of the Bar Examiners [of New York]"
24 which had previously suspended the attorney for "ambulance
25 chasing" for two years. The only evidence adverse to
26 petitioner's application to be admitted to practice law in
27
28

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1 California was the transcript of the hearing regarding
2 petitioner's two year suspension in New York, whereas the
3 petitioner presented several letters from judges and attorneys
4 with whom petitioner had practiced law while in New York. These
5 letters attested to petitioner's moral fitness and contradicted
6 the basis of the New York suspension.
7

8 Based solely upon the state of New York's earlier
9 suspension of petitioner, and despite the letters from the
10 judges and attorneys who practiced and observed petitioner in
11 the practice of law in New York, the California Committee of Law
12 Examiners denied petitioner's application based on its belief
13 the "applicant failed to show he is possessed of the requisite
14 good moral character. . . ."
15

16 In reversing the Committee's denial, the California Supreme
17 Court rejected any contention or suggestion that California was
18 forbidden from reviewing the previous findings of the State of
19 New York, wherein petitioner had been suspended for two years.
20

21 Citing its prior holding in In re McCue, the Supreme Court held:

22 "we may go behind the action of the court in that [New
23 York] particular case to determine for ourselves from
24 the record presented whether or not he is eligible to
admission to practice law in this state."

25 219 Cal. 566 at 570 (emphasis added).

26 After reviewing the evidence presented against petitioner
27 by the State of New York, when New York initially suspended
28

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1 petitioner, the California Supreme Court reached an entirely
2 different conclusion concerning whether petitioner was aware of
3 the "ambulance chasing" that had served as the basis for
4 petitioner's suspension in New York. In rejecting New York's
5 finding, the California Supreme Court rejected not only the
6 conclusions of the state of New York, but also New York's
7 reasoning which supported its finding.
8

9 "we believe that the opinion of those who have had
10 ample opportunity to know his character and to observe
11 his conduct over a long period of years is entitled to
12 a great deal of weight. There has been filed by
13 petitioner letters of recommendation from judges,
14 attorneys, and business men. . . . Although the number
15 of letters is not unduly large, they are from persons
16 whose positions indicate that they possess a real
17 sense of responsibility for the integrity of the legal
18 profession, and who, therefore, would not be induced
19 by reasons of friendship, or any reason other than a
20 sincere belief in his honesty and integrity, to
21 recommend him for admission to our bar."

22 Warbasse, 219 Cal. 566 at 571 (emphasis added).
23

24 Therefore, it was the opinion of the California Supreme
25 Court that where an applicant for admission to the California
26 bar has provided letters from judges and attorneys who had
27 practiced or observed the petitioner in the practice of law, the
28 California Committee of Bar Examiners could not deny the
application based on a two year suspension in a foreign
jurisdiction based on that suspension but, rather, the attorney
should be admitted to practice law in California.

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1 "In view of . . . the letters of high recommendation
2 of petitioner by the justices of the courts of New
3 York before whom he practiced over a long period of
4 years, and a total absence of any letters or testimony
5 derogatory to petitioner's character, we are of the
6 opinion that he should be admitted to practice law in
7 this state."

8 Id. at 571-572 (emphasis added).

9 As stated previously, the California Supreme Court's
10 holding in Warbasse was mandated by its prior legal precedent
11 which recognizes that the State of California will not sanction
12 a foreign jurisdiction's legal or factual conclusions that do
13 not comport with this California's long history of ensuring that
14 people, even lawyers, are treated fairly, particularly where a
15 person is confronted with the impairment of his or her ability
16 to practice their chosen profession.

17 Thus, in In re McCue a Montana attorney, who had been
18 disbarred in Montana but was subsequently reinstated in that
19 state, filed an application with the California Committee of Bar
20 Examiners seeking certification of his moral fitness for
21 admission to the California bar. Accompanying his California
22 application were letters from attorneys and judges from Montana
23 and some from persons occupying "high positions in our state,"
24 all of which confirmed that petitioner was a man of good moral
25 character. Similar to Warbasse, the only adverse evidence
26 presented against petitioner's certification by the Committee
27 "consisted of charges which were made against the applicant at
28

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1 the Supreme Court of Montana." Following a hearing in Montana
2 and a review of the findings, petitioner was disbarred even
3 though he was not present at the hearing.

4 Based solely on this Montana disbarment, the California
5 Committee of Bar Examiners denied petitioner's application for
6 certification to the California Bar.
7

8 In reversing the California Committee of Bar Examiners'
9 refusal to certify petitioner, the Supreme Court of California
10 rejected any argument that California was precluded from re-
11 litigating the earlier rulings of the Montana Court concerning
12 the petitioner's moral fitness, "we have the power to go behind
13 said judgment and examine and consider the evidenced offered in
14 support of the charges." In re McCue, 211 Cal. 57 at 64.
15

16 In reviewing petitioner's evidence of moral fitness, which
17 consisted largely of letters from judges and lawyers who had
18 practiced with Petitioner, the California Supreme Court
19 enunciated a bright line test as to the adequacy of proof of
20 moral fitness where an attorney who has been previously
21 disciplined in a foreign jurisdiction seeks certification in
22 California.
23

24 "There can be no question but that the showing made by
25 applicant in respect to his good moral character was
26 sufficient unless it was counteracted by adverse
evidence as to character."
27

28 Id. at 62 (emphasis added).

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1 This bright line test of sufficiency was further refined
2 where, as was the case in Warbasse, the only "adverse evidence
3 consisted of charges against" petitioner in the foreign
4 jurisdiction. Id. at 64.

5 Therefore, our Supreme Court determined that petitioner's
6 production of letters from judges and attorneys who were
7 familiar with his good character as compared to the fact that
8 the Bar Committee produced "no original evidence" adverse to
9 petitioner's moral fitness, proved petitioner did possess the
10 requisite moral character to be admitted to practice law in the
11 State of California.
12

13 More recently, the California Supreme Court in Kwasnik
14 reiterated its prior precedent that a committee of the bar may
15 not refuse to certify an attorney for admission to the
16 California bar based solely on a foreign jurisdiction's
17 imposition of discipline where the applicant has presented "a
18 strong prima facie case that he is of sufficiently good moral
19 character to be admitted to the practice of law in California."
20
21

22 In Kwasnik, an attorney sought review of the Review
23 Department of the State Bar's refusal to certify him to the
24 Supreme Court on the ground that he lacked the requisite good
25 moral character. In refusing to certify the attorney this
26 committee relied exclusively on the findings of a Florida
27 committee of the bar that held the attorney lacked good moral
28

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1 character primarily for refusing to satisfy a wrongful death
2 judgment that had been obtained against him arising out of a
3 death caused while he was driving while intoxicated.

4 In holding that the California applicant did possess the
5 requisite good moral character and rejecting the committee's
6 sole reliance on the Florida findings, the California Supreme
7 Court held that the letters from the lawyers and judges who
8 wrote on behalf of the attorney, many of which were "aware of
9 the circumstances that prompted the inquiry into the applicant's
10 moral character," and his "unblemished record" prior to the
11 wrongful death judgment, "presented a prima facie case that he
12 is presently of good moral character" and ordered the applicant
13 certified.
14
15

16 As part of its analysis, the California Supreme Court
17 reiterated an additional factor upon which an applicant who has
18 been disciplined can rely to show his or her good moral
19 character, which is that the "evidentiary significance of an
20 applicant's misconduct is greatly diminished by the passage of
21 time and by the absence of similar, more recent misconduct."
22
23 Kwasnik, 50 Cal.3d 1061 at 1070 (emphasis added); Pachecho, 43
24 Cal.3d at 1051.
25

26 As additional evidence that California is not bound to
27 accept, let alone refuse to review the findings or procedures
28 concerning a foreign jurisdiction's treatment of an attorney's

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1 attempt to be reinstated following a suspension, is Rule 26 of
2 the Model Rules for Lawyer Disciplinary Enforcement, which
3 although not binding authority, do "serve as advisory guidelines
4 for discipline," Snyder v. State Bar of Ca. (1990), 49 Cal.3d
5 1302, under California law.

6 Rule 26 provides in relevant part:

7
8 "Where the court has imposed conditions in an order of
9 discipline or in an order of reinstatement . . . the
10 lawyer may request of the court an order of abatement
11 discharging the lawyer from the obligation to comply
12 with the conditions. The lawyer may so request either
13 prior to or as part of lawyer's petition for
14 reinstatement or readmission. The court may grant the
15 request if the lawyer shows by clear and convincing
16 evidence that the lawyer has made a timely, good faith
17 effort to meet the condition(s) but it is impossible
18 to fulfill the condition(s)."

19 Thus, an attorney who is seeking reinstatement may seek to
20 avoid a condition that he or she cannot meet or that is
21 impossible.

22 The Committee May Not Continue a Suspension
23 Where the Suspension Would Result in
24 a Sentence Greater Than Disbarment

25 California courts are clear that the Bar Committee must not
26 suspend an attorney if the suspension would impose discipline
27 that "could deprive respondent of his right to practice for more
28 years than he might be removed for disbarment" particularly
where, as the case is here, an applicant for reinstatement chose
to exercise his right to contest the allegations against him.

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1 In re Stamper, 1 Cal.State Bar Ct. Rptr. 96; In re Respondent
2 M., 2 Cal.State Bar Ct. Rptr. 465.

3 In Respondent M., an attorney with no prior record of
4 discipline was "interimly suspended" based on his conviction for
5 driving under the influence and causing injury, which was a
6 felony. In rejecting the Bar Committee's request that the
7 attorney be placed on interim suspension, the Court held that
8 "interim suspension would impose a degree of discipline far more
9 severe than the final discipline in this case is likely to be in
10 light of precedent." In re Respondent M., 2 Cal.State Bar Ct.
11 Rptr 465.

12
13
14 Therefore, California law is clear that where an action of
15 the Bar Committee will result in a suspension or discipline
16 longer than that which precedent indicates an attorney could
17 receive, the attorney should not be suspended. Id.

18
19 An Attorney While Suspended in a Foreign
20 Jurisdiction Is Not Precluded From
21 Being Certified to Practice in California

22 In In re Leardo, an attorney who was licensed in the Virgin
23 Islands and California, but who had practiced almost exclusively
24 in the Virgin Islands, was suspended from the practice of law in
25 the Virgin Islands based on his pleading guilty to two counts of
26 possession with intent to distribute heroin and cocaine and the
27 fact he had become an addict while practicing law in the Virgin
28 Islands. Following his Virgin Islands' guilty plea in the

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1 criminal court and suspension by the Virgin Islands' bar, the
2 attorney notified the California State Bar of his addiction,
3 convictions and suspension and was placed on interim suspension
4 here in California.

5 While still seeking reinstatement following his suspension
6 by the Virgin Islands' bar, the attorney concurrently sought
7 reinstatement in California.
8

9 In holding that the attorney was entitled to return to the
10 practice of law in California (even though there was a "pending
11 petition for reinstatement" in the Virgin Islands) the
12 California Supreme Court rejected the State Bar's contention
13 that his reinstatement would undermine "public confidence in the
14 legal profession." In re Leardo, 53 Cal.3d at 14, 18, and 19.
15

16 It was the State Bar's contention that despite the evidence
17 of "significant mitigation", petitioner should be disbarred in
18 order to protect "public confidence in the legal profession."
19 However, the California Supreme Court determined "the protection
20 of the public, the courts, and the legal profession does not
21 require disbarment." Moreover, the Supreme Court rejected the
22 State Bar's contention that disbarment was the appropriate
23 penalty where the petitioner had already served a lengthy
24 "interim suspension," citing the oft used rule of attorney
25 discipline:
26
27
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1 "Whether a suspension be called interim or actual, of
2 course, the effect on the attorney is the same-he is
3 denied the right to practice his profession for the
4 duration of the suspension."

5 Id. at 18.

6 PROCEDURAL HISTORY

7 Following a three year suspension from the practice of law
8 by the federal district court in Missouri, which began on May
9 18, 2004, and was supposed to have ended on May 18, 2007,
10 Petitioner submitted the attached Motion for Reinstatement
11 [Exhibit 11] in which he put forth the following evidence of
12 moral fitness and rehabilitation: the testimony from nine (9)
13 judges (eight from Missouri and one from California); judges who
14 had interacted with Petitioner over his entire legal career; one
15 judge- elect; ten (10) attorneys, two of whom are nationally
16 prominent, the remaining eight of whom are widely respected and
17 who knew and practiced with Petitioner over his legal career; a
18 licensed psychologist; the representative and spokesperson for
19 an organization that speaks on behalf of over 100 ministers; the
20 fact that Petitioner has abstained from drinking alcohol for the
21 last five years; married; relocated to California to begin a new
22 life; the testimony of a United States Congressman and minister
23 who has known Petitioner for over 15 years; and the testimony of
24 a Bishop who has know Petitioner for almost twenty years-The

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1 entirety of which clearly support Petitioner's rehabilitation
2 and good moral character.

3 On January 18, 2008, and despite such apparent and
4 overwhelming proof of moral and legal fitness, the federal
5 district court in Missouri denied Petitioner's petition for
6 reinstatement.
7

8 In denying this motion, the federal district court did not
9 rebut a single judge who wrote on behalf of Petitioner; did not
10 contradict a single member of the bar who wrote on behalf of
11 Petitioner's reinstatement; did not rebut the U.S. Congressman
12 or the Bishop who wrote on behalf of Petitioner.
13

14 In fact, the Missouri court did not cite a single reason or
15 provide any rationale for extending Petitioner's three year
16 suspension—which, as of the date of this filing, is now in its
17 5th year. Despite federal and state Due Process guarantees that
18 prohibit the arbitrary denial of an attorney's right to be
19 reinstated to the practice of law, this Missouri federal
20 district court refuses to provide any legal or factual basis for
21 denying Petitioner, who is a lawful resident of the State of
22 California, the ability to return to the practice of law.
23
24

25 EVIDENCE OF PETITIONER'S GOOD MORAL CHARACTER

26 On May 18, 2004, Petitioner Michael Robert Fletcher was
27 suspended from practicing law in the U.S. District Court for the
28

1 Western District of Missouri for a period of three years. The
2 Order suspending Petitioner did not specify any action required
3 of Petitioner to be reinstated other than serving the three year
4 suspension and referenced that the four acts of misconduct did
5 not individually constitute misconduct. [Exhibit 3, pg. 5].
6

7 Prior to this suspension, Petitioner had never been the
8 subject of any professional discipline or even a complaint of
9 unprofessional conduct. Prior to this suspension, no client had
10 ever filed a complaint against Petitioner; prior to this
11 suspension, no attorney had ever alleged that Petitioner had
12 engaged in any unethical behavior. Perhaps most importantly,
13 with the exception of a single fine that was levied against
14 eleven lawyers (of which Petitioner was the youngest, the least
15 experienced and was the lowest person on the totem pole in 1991)
16 arising out of a discovery dispute in a class action law suit,
17 no judge had ever alleged that Petitioner had engaged in
18 improper conduct, sanctioned or threatened to sanction
19 Petitioner, disciplined or threatened to discipline Petitioner--
20
21 Despite the fact that Petitioner tried approximately thirty (30)
22 jury trials from the date he was admitted to practice law in
23 1996 through this suspension in 2006.
24
25

26 As a person who grew up in severe poverty in Lynwood,
27 California, and after having obtained a modicum of success as a
28 trial attorney in Kansas City, Missouri, Petitioner did not turn

1 his back on his community nor on his obligation to serve others
2 who were less fortunate.

3 Congressman Emanuel Cleaver, who has known Petitioner since
4 1990, wrote in support of Petitioner's Petition for
5 Reinstatement-- "[l]ike African American attorneys of days past,
6 Michael Fletcher developed a reputation as an available ear to
7 those that believe they have been a victim of discrimination."
8
9 Congressman Cleaver also pointed out that Petitioner's support
10 was not limited to providing legal assistance. According to
11 Rev. Cleaver, Petitioner also made "bulky [financial] donations
12 to youth organizations, civil rights groups and churches."
13
14 [Exhibit 6, pg. 1].

15 Bishop Mark C. Tolbert, who has known Petitioner for almost
16 twenty years, was steadfast in his support of Petitioner's
17 reinstatement. His praise of Petitioner and Petitioner's
18 commitment to helping others is extremely compelling.

19
20 "Michael has always been willing to carry the torch
21 that led the fight for justice. While some told him
22 he should mind his own business, I applauded him for
23 not forgetting his roots. It is sad that Michael has
24 been threatened, ostracized and forsaken . . . The
25 African-American community now lacks legal
26 representation on the tough cases, the politically
27 difficult cases and the cases that other lawyers are
28 afraid to take . . . Michael is an ethical person, an
honest person and should be reinstated." [Exhibit 6,
pg. 2].

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27 That Petitioner possesses the present moral standing to
28 return to the practice of law is also supported by the

1 correspondence of Rev. Eric D. Williams, who as the President of
2 the Concerned Clergy Coalition which represents over 100
3 ministers, states "[w]e support reinstatement of his license
4 because this community needs legal representation that we can
5 trust and rely upon." [Exhibit 6, pg. 3].
6

7 EVIDENCE OF PETITIONER'S FITNESS FOR
8 THE PRACTICE OF LAW

9 In addition to the correspondence of the United States
10 Congressman, the Bishop and the representative of over 100
11 African American ministers, as part of his Petition for
12 Reinstatement, Petitioner also included the letters of several
13 judges who Petitioner had practiced before in Missouri and in
14 California, all total eight (8) judges from the trial courts of
15 Missouri and one, and possibly two, trial judges from here in
16 California wrote in defense of the allegations against
17 Petitioner or in support of his reinstatement.
18

19 The State of California trial court judge who wrote in
20 response to the federal district court's investigator's inquiry
21 as to Petitioner's conduct in two criminal trials conducted in
22 California, and in which Petitioner participated, was the Hon.
23 Joan Comparet-Cassani. Although, not yet elected, Assistant
24 Deputy District Attorney Patrick Connelly (who was the top vote
25 recipient in California's recent primary judicial election)
26 advised the federal court in Missouri that he worked against
27
28

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1 Petitioner on two different criminal cases. Connelly advised
2 that "[a]lthough each of these cases was serious in nature and
3 at times very contentious, Michael Fletcher acted professionally
4 . . . he was courteous and engaging during the trials."

5 [Exhibit 6, pg. 4].

6 Portions of these letters in support of Petitioners
7 reinstatement are excerpted below.

8
9 The Hon. Joan Comparet-Cassani, an extremely well regarded,
10 no-nonsense, California criminal trial judge wrote and opined as
11 to Petitioner's professional ability and demeanor. Prior to his
12 suspension, Petitioner agreed to provide jury selection, juror
13 profiling and other juror consultation services, legal briefing
14 and research and any other assistance that was required to try
15 to help a defendant whose murder case was being tried before
16 Judge Cassani. Because Petitioner resided in the State of
17 Missouri, he was required to be away from his wife and daughter
18 and live in a hotel for almost seven (7) weeks. Because neither
19 the defendant nor his family had sufficient resources,
20 Petitioner provided all of his services on a pro bono basis. In
21 addition to the hundreds of hours of legal and consulting fees
22 he provided on a pro bono basis, Petitioner's law firm also
23 incurred approximately \$20,000.00 in unreimbursed expenses.
24
25
26

27 According to the Hon. Joan Cassani, despite the
28 difficulties inherent in a special circumstances murder trial,

1 "Mr. Michael Fletcher worked ably and competently in that
2 pursuit and was a perfect gentleman throughout the proceedings."

3 [Exhibit 6, pg. 6].

4 The Hon. Thomas C. Clark provided a sworn statement in
5 support of Petitioner's reinstatement. In his statement, Judge
6 Clark described a wrongful death trial which Petitioner had
7 conducted before the court wherein, despite "the intensity and
8 emotional stress throughout these proceedings . . . to, frankly,
9 Mr. Fletcher's credit the case was tried without incident."
10 Additionally Judge Clark testified that "he [Petitioner] was
11 very proficient. He was courteous to the court and respectful
12 to witnesses and opposing counsel and other persons present and
13 I thought he did a very commendable job." Judge Clark did,
14 however, recite one situation involving Petitioner that was so
15 extreme that, in his 20 years of sitting as a judge, he had
16 never experienced such similar conduct by any attorney:

17 "On one occasion, I made a ruling against him
18 [Petitioner] and I'm not sure whether it was in the
19 jury case or on a motion argument, but he didn't like
20 the ruling. He accepted it with - you know, with
21 professionalism and, in fact came back two weeks later
22 and said to me, candidly, he said, you know you were
23 right. That was the correct ruling in the case, and
24 frankly, I've never had that happen in the 20 years
25 and 11 months I've been on the bench except on that
26 one instance." [Exhibit 6, pg. 7].

27 The Hon. Jay A. Daugherty wrote of Petitioner's legal
28 ability and interactions with counsel and the Court.

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1 "Mr. Fletcher provided excellent legal representation
2 for is client and conducted himself appropriately
3 throughout the trial without incident. More
4 specifically, during the trial, Mr. Fletcher treated
5 the Court, opposing counsel, the jury and other court
6 personnel in an appropriate and ethical manner."

7 [Exhibit 6, pg. 18].

8 The Hon. Justine E. Del Muro wrote of Petitioners conduct
9 in a police brutality case conducted before her court, "Mr.
10 Fletcher conducted himself within the confines of our rules of
11 ethics. The trial was completed without incident." [Exhibit 6,
12 pg. 19].

13 The Hon. Michael W. Manners wrote of Petitioner that over
14 the course of two "hotly contested" civil trials that "featured
15 zealous advocacy by both sides . . . I can honestly say he did
16 not cross the line in either trial (This was despite the fact
17 that he was frequently provoked during the trial." [Exhibit 6,
18 pg. 20].

19 The Hon. John I. Moran wrote of Petitioner that while "Mr.
20 Fletcher was quite aggressive in his presentation, he never went
21 beyond the bounds of propriety . . . And as I recall, even
22 during the post-verdict motion stage, Mr. Fletcher and the
23 opposing lawyers remained friendly and professional in their
24 dealings with each other. As you and I know, such is not always
25 the case." [Exhibit 6, pg. 10].
26
27
28

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1 Also, the Hon. Lee E. Wells, the trial court in front of
2 whom Petitioner tried his very first jury trial, wrote,

3 "in my court room and professional experience with
4 Michael, I found him to be at all times respectful to
5 the court and, although aggressive, always within
6 appropriate bounds when examining witnesses. I have
7 never heard anything which would impugn Michael's
8 moral character. In my dealings with Michael he has
9 always been a man of his word. Based on my
10 considerable experience and dealings with Michael I
11 know of no impediment to his fitness to practice law."
12 [Exhibit 6, pg. 22].

13 The Hon. John Torrance wrote that although he had "an
14 occasional desire to jump over the bench and strangle Mr.
15 Fletcher," the fact remained that "he always represented his
16 clients with passion and determination" and even "though he
17 sometimes acted like a bull in a china shop, he fundamentally
18 did a good job . . . and deserves a second chance." Judge
19 Torrance simply believed that the three year suspension which
20 had now seemingly become an "indefinite denial of reinstatement
21 is disproportionately harsh." [Exhibit 6, pg. 23].

22 Finally, the Hon. Charles E. Atwell wrote on behalf of
23 Petitioners reinstatement.

24 "Michael Fletcher has appeared in front of me on a
25 number of occasions. While he is an aggressive
26 advocate for his clients, he has always treated me
27 with dignity and respect and has done the same with my
28 staff. I truly do believe that Mr. Fletcher possesses
compassion for his clients and cares about the little
guy." [Exhibit 6, pg. 24].

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1 Members of the Bar. In addition to the esteemed members of
2 the California and Missouri judiciary who, between them possess
3 hundreds of years of judicial and legal experience, and who have
4 undoubtedly judged the rehabilitation of thousands of
5 individuals. Petitioner's reinstatement was also supported by
6 seven (7) highly prominent Missouri attorneys, some of whom are
7 nationally recognized within the legal profession. These
8 attorneys include members of the defense bar and plaintiff's
9 bar.
10

11 Attorney R. Lawrence Ward. In the State of Missouri and in
12 the United States, there are very few attorneys who are more
13 highly regarded, more well thought of or more respected than R.
14 Lawrence Ward. Nationally, "Larry" Ward has held positions with
15 the American Bar Association; he is a Fellow of the American Bar
16 Foundation; he is a Fellow of the American College of Trial
17 lawyers; he was selected by the National Law Journal as one of
18 the top ten trial lawyers in America in 2008; and he was
19 recognized in Chambers U.S.A. Client's Guide to America's
20 Leadings Business Lawyers as the leading individual trial lawyer
21 in general commercial litigation, and he has been listed in the
22 Best Lawyers in American in four different areas of legal
23 expertise. In the State of Missouri, Larry Ward has received
24 numerous awards for trial ability and collegiality, including
25 Practitioner of the Year, President of the Kansas City
26
27
28

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1 Metropolitan Bar Association, Law Foundation President and
2 served on the Appellate Judicial Commission for the State of
3 Missouri which is responsible for selecting candidates for
4 Missouri's Courts of Appeal.

5 According to Larry Ward who had worked with Petitioner on
6 two cases (one a putative class action the other involving
7 numerous plaintiffs and attorneys) wrote in support of
8 Petitioner's reinstatement, "I found Michael Fletcher to be very
9 trustworthy in our dealings . . . Mr. Fletcher always dealt with
10 me in a truthful and straightforward manner. When he told me we
11 had an agreement he always fulfilled that obligation based on a
12 handshake." [Exhibit 6, pg. 26].

13
14
15 Attorney Steve Garner is another trial attorney who is
16 prominent in the state of Missouri and nationally. Nationally,
17 Steve Garner has held positions with the American Bar
18 Association; the American Trial Lawyers Association; the
19 International Academy of Trial Attorneys; the American Board of
20 Trial Advocates. In the State of Missouri he is a member of the
21 Executive Committee of the Missouri Board of Governors; the
22 Missouri Association of Trial Attorneys and is a member of the
23 Appellate Judicial Commission which is responsible for selecting
24 candidates for Missouri's Courts of Appeal.
25
26

27 Mr. Garner has known and practiced with Petitioner for
28 almost ten years. Against this background of personal and

1 professional interaction with Petitioner, Mr. Garner's opinions
2 concerning Petitioner's ability and good moral character are
3 extremely probative under California precedent regarding
4 reinstatement of an attorney has been suspended. Despite
5 Petitioner's relative level of success and the number of civil
6 trials (approximately 30) he had tried at the time of his
7 suspension, Petitioner had only been licensed for ten years.
8 Therefore, Petitioner regularly relied on the thoughts and
9 opinions of attorneys who were more knowledgeable and
10 experienced than he was when Petitioner was representing a
11 client. This seeking of advice from more experienced trial
12 attorneys is how Mr. Garner was introduced to Petitioner.
13
14

15 Mr. Garner first came into contact with Petitioner when
16 Petitioner contacted him several years ago to ask Mr. Garner's
17 opinion on how Petitioner could better represent his client.
18 Mr. Garner wrote, "[i]t was obvious from the fact that he called
19 and the nature of his questions, that he [Petitioner] was
20 committed to making sure the client got the best representation
21 he could provide." [Exhibit 6, pg. 28].
22

23 Steve Garner also found another characteristic of
24 Petitioner's approach to the practice of law fairly unique.
25 "Never once in any of the conversations did he discuss his fee
26 or expected fee or gripe about the money that he had invested in
27
28

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1 a case. I can assure you, through the years when speaking with
2 other lawyers, I have heard such comments."

3 Petitioner's commitment to doing what was in his client's
4 best interest also included a willingness to shine the light of
5 potential success on an attorney other than himself where
6 Petitioner's client's case could benefit from a better known or
7 more established attorney.
8

9 "Approximately a year ago, Michael called me [Mr.
10 Garner] and asked if I would assist him in a trial.
11 It was a very difficult personal injury trial
12 involving difficult legal concepts and a difficult
13 factual situation. Knowing that Michael had achieved
14 great success in court, my obvious question was, why
15 would he need or want me, and his answer was that he
16 wanted to give the client the best chance of justice
17 that he could."

18 Attorney Walter R. Simpson has known and practiced law with
19 Petitioner since 1997, approximately one year after Petitioner
20 began the practice of law. There is no lawyer who practiced
21 with Petitioner longer or who has observed Petitioner's
22 interactions with clients and with the trial courts before which
23 Petitioner has appeared longer than Mr. Simpson. Petitioner and
24 Mr. Simpson have jointly worked on and/or tried over fifty (50)
25 civil cases.
26

27 Walter Simpson who, although not nationally known, within
28 the Kansas City, Missouri legal community is highly respected as
a trial attorney, a mediator and as a member of numerous legal
boards. Mr. Simpson is an American Bar Association Delegate for

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1 the State of Missouri; he is a past President of the Kansas City
2 Missouri Metropolitan Bar Association; he was also a member of
3 the Appellate Judicial Commission which is responsible for
4 selecting judicial candidates for the State Circuit Court in
5 Missouri; and Mr. Simpson has tried over 200 civil trials over
6 his forty-plus year legal career. Mr. Simpson first met
7 Petitioner when Petitioner joined the firm of Sanders & Simpson
8 as an of-counsel associate in 1997, where Petitioner
9 subsequently became a partner in 1999.
10

11 "Thus I have had the opportunity to observe him in the
12 practice of law on a daily basis for about seven
13 years. He has impressed me with his work ethic, his
14 passion for representing individuals and his
15 innovative approach to trial. More important to your
16 decision, I have observed his dealings with clients.
17 Never has there been a question of dishonesty, a
18 breach of trust or any other moral issue raised by a
19 client." [Exhibit 6, pg. 31].

20 Attorney Gene P. Graham, Jr. has known Petitioner "since
21 the day he began practicing law" and wrote in support of
22 Petitioner's reinstatement. In his letter, attorney Graham
23 reminded the Missouri federal district court that Petitioner's
24 three year suspension "was devastating on a personal level" to
25 Petitioner but that Petitioner remained a "person possessed of
26 unique and considerable abilities as a trial lawyer" and that
27 Petitioner "is a thoughtful and polite human being who I am
28 proud to call my friend and colleague." [Exhibit 6, pg. 33].

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1 Attorney Clyde G. Meise is one of the most senior
2 practicing attorneys in the State of Missouri who has practiced
3 trial work in Missouri for almost 50 years and also wrote on
4 behalf of Petitioner's reinstatement. Attorney Meise has known
5 Petitioner "since 1993 when he was a law student." Mr. Meise's
6 opinion of Petitioner and his reinstatement was: "Michael, in my
7 relationship with him, has always been most respectful and
8 courteous. He is a highly intelligent, hard working young
9 lawyer and deserving to be reinstated to active membership in
10 the Bar." [Exhibit 6, pg. 34].
11

12 Several other attorneys wrote on behalf of Petitioner's
13 reinstatement including Attorney James C. Morrow, who wrote of
14 his trial against Petitioner that "[t]hroughout the pendency of
15 that trial, and, quite frankly, throughout the entire discovery
16 process, I believe that Michael Fletcher conducted himself with
17 professionalism and in a gentlemanly fashion . . . Quite
18 frankly, I believe that Michael Fletcher possesses admirable
19 trial skills and did a nice job of trying the case." [Exhibit 6,
20 pg. 35]; Attorney James Jarrow wrote that during his involvement
21 with Petitioner in a civil trial that the case was "processed
22 and tried without incident." [Exhibit 6, pg. 36]; Attorney
23 Sylvester James wrote of his willingness to serve as a mentor to
24 Petitioner [Exhibit 6, pg. 37] as did Attorney James P.
25 Frickleton. [Exhibit 6, pg. 38]; finally Attorney David R.
26
27
28

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1 Smith, who was Petitioner's former law partner but was also
2 Petitioner's conduit to Alcoholics Anonymous, which Petitioner
3 attended regularly over five years ago when Petitioner stopped
4 consuming alcohol, wrote on behalf of Petitioner. [Exhibit 6,
5 pg. 39].
6

7 REHABILITATION

8 Because the "law favors rehabilitation, and even egregious
9 past misconduct does not preclude reinstatement," Petitioner
10 submitted evidence, uncontroverted evidence, that despite the
11 fairly amorphous accusations upon which the Missouri federal
12 district court relied on in suspending him, that Petitioner's
13 life had fundamentally changed since his suspension and showed
14 Petitioner was "rehabilitated."
15
16

17 Although no allegations leveled against Petitioner involved
18 the consumption of alcohol, following the initiation of the
19 investigation against him, Petitioner ceased the use of alcohol
20 in January of 2004. That Petitioner ceased all use of alcohol
21 was supported by letters from the attorneys cited previously
22 including Steve Garner, Walter Simpson, James Morrow and David
23 Smith. Petitioner attended AA and has not consumed a single
24 drop of alcohol in over four (4) years.
25

26
27 Petitioner's personal life also changed in the time since
28 his suspension. In June of 2005, he married Lia Berquist and

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1 they are together raising their young daughter, Cressida
2 Fletcher. Cressida is an honor student and will be entering the
3 5th grade in Long Beach, California where Petitioner, his wife
4 and daughter have resided since June of 2006, and where they are
5 awaiting the birth of their youngest daughter, Callista, who
6 will join the family in October.
7

8 As part of his application for reinstatement, Petitioner
9 also included correspondence from Dr. Allan Schmidt, PhD who is
10 a licensed psychologist in the states of Missouri and Kansas and
11 from whom Petitioner sought counseling for anger management.
12 According to Dr. Schmidt, he is "not aware of any behavior
13 problems or mental health issues that should prohibit Mr.
14 Fletcher from the practice of law." [Exhibit 6, pg. 41].
15

16 Petition for Reinstatement

17 On June 13, 2007, Petitioner filed a petition for
18 reinstatement with the federal district court for the Western
19 District of Missouri. As the attached brief filed on behalf of
20 Petitioner by Jeffrey Fisher [Exhibit 8, pg. 20, 21, 29, 31]
21 indicates, Mr. Fletcher's three year suspension was
22 unprecedented for many reasons, not the least of which was the
23 two federal justices who initiated the investigation,
24 participated in directing the investigation and then
25 participated in issuing the punishment to Fletcher. Petitioner
26 was also expressly prohibited from showing the allegations
27
28

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1 against him to any person other than his attorney. Thus, in
2 preparation for the 4 ½ hours of time Petitioner was allotted
3 for his entire defense, Petitioner was not permitted to question
4 witnesses whether they had made a specific allegation; whether,
5 in their opinion, certain conduct constituted misconduct
6 (Fletcher had retained two expert witnesses, who the district
7 court refused to allow Fletcher to call or disclose the
8 allegations against him) or whether an allegation attributed to
9 the witness even occurred.
10

11 Finally, Petitioner's request to take depositions, serve
12 interrogatories, serve request for admissions or to serve
13 request for production were all denied without explanation,
14 although the district court did allow Petitioner to obtain those
15 materials that appointed counsel chose to turnover. [Exhibit
16 4].
17

18 Despite the procedural issues raised above, Respondent's
19 appeals were denied and he thereafter served his three year
20 suspension in the federal district court. During this
21 suspension Respondent continued to practice law in the state
22 court of Missouri. In August of 2006, Respondent's license was
23 suspended by the State of Missouri under the reciprocal
24 provisions of the Missouri Constitution. Since August of 2006,
25 Respondent has not practiced law in any jurisdiction.
26
27
28

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Denial of Petition for Reinstatement

1
2 Although, Petitioner's suspension was without condition,
3 meaning the Missouri court did not attach any condition
4 precedent to his being readmitted other than serving the three
5 year suspension, the district court's denial of Petitioner's
6 Petition for Reinstatement suggests that Petitioner has failed
7 to show that he has the necessary integrity, moral qualification
8 and competency for readmission. Petitioner acknowledges that it
9 is his obligation to prove his fitness and competency by a
10 preponderance of the evidence. However, Petitioner also
11 acknowledges that a reviewing court is not allowed to
12 arbitrarily reject an application for reinstatement.
13
14

15 Currently, Petitioner and his family are living off their
16 savings and a home equity line of credit. Petitioner also
17 supplements his family's income as a jury consultant. Once
18 Petitioner's wife delivers their second child in October, she
19 will return to work as an interior designer of commercial
20 facilities.
21

22 On January 18, 2008, Petitioner's Petition for
23 Reinstatement was denied by the federal district "Court en
24 Banc." The district court's denial did not state the reason or
25 reasons why Petitioner's petition was denied, nor did it provide
26 any guidelines to indicate what Petitioner would have to do, or
27 prove, in the future to be reinstated. Petitioner does not know
28

1 whether the federal court conducted a hearing prior to this
2 denial but does know he was not allowed to present evidence,
3 cross examine any witness or even to know what, if anything, he
4 was alleged to have done during his suspension to warrant a
5 denial of his Petition for Reinstatement.

6
7 The legal and factual basis for the federal court in
8 Missouri's denial of Petitioner's Petition for Reinstatement
9 provided—in its totality—

10 "On June 13, 2007, Mr. Fletcher filed a petition for
11 reinstatement. Upon consideration by the Court en Banc, this
12 petition is denied."

13 [Exhibit 1] (Emphasis added).
14

15 Aside from the apparent disregard for Due Process and Equal
16 Protection that is exemplified by this Order, another disturbing
17 fact is the manner in which this federal court simply chose to
18 not abide by the procedures designed to insure some level of
19 fairness within the federal attorney disciplinary court system.
20

21 Therefore, unless the federal court in Missouri has adopted
22 a different definition for "en Banc," which is defined in
23 Black's Law Dictionary as where "the entire membership of the
24 court [participates] in the decision," Black's Law Dictionary
25 526 (6th ed. 1990), this federal court reached this conclusion in
26 direct contravention of its own Local Rules which expressly
27 provide:
28

1 "4. Petitions for Reinstatement. . . . If the
2 original disbarment or suspension resulted from the
3 complaint of a judge of this Court, the petition for
4 reinstatement shall be assigned to a judge or judges
5 other than the complaining judge."

6 Local Rule 83(g)4. [Exhibit 9] (Emphasis added).

7 Because the first, and only, complaint of professional
8 misconduct ever raised against Petitioner was by Judge Ortrie
9 Smith and Gary Fenner (whom Petitioner has never met, appeared
10 before or even talked with) and because both are members of the
11 Western District of Missouri, absent applying a different
12 definition to "en Banc," these judges participated in denying
13 Petitioner's Petition for Reinstatement in contravention of
14 their own Local Rules.

15 In addition to violating its own Local Rule, the federal
16 court also violated the Federal Circuit Attorney Discipline
17 Rules, Rule 8(1) which provides:

18 "Except as provided below, an attorney shall be
19 afforded an opportunity to inspect and copy at his or
20 her expense all documents that the panel has obtained
21 concerning the matter. Information will be withheld
22 from an attorney only in extraordinary circumstances,
23 e.g., for national security or criminal investigation
24 reasons."

25 [Exhibit 10, pg. 137] (emphasis added).

26 ARGUMENT

27 An attorney who is contesting his or her suspension in a
28 foreign jurisdiction is not precluded from concurrently or
separately seeking certification of his or her good moral

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1 character in California as a condition precedent to be admitted
2 to the California bar. In re Leardo, 53 Cal.3d at 19.

3 Thus, in In re Leardo where an attorney who had been
4 suspended in a foreign jurisdiction sought to have his license
5 reinstated in California, the attorney was not prevented by the
6 Committee of Bar Examiners or by the California Supreme Court
7 from obtaining an independent review by the State of California
8 of his qualification to practice law because the foreign
9 jurisdiction had not yet resolved the underlying suspension in
10 that jurisdiction. Id.

11
12 In fact, when the attorney asked the Supreme Court of
13 California to take "judicial notice of the transcript of a
14 recent hearing in the [federal] District Court of the Virgin
15 Islands" our Supreme Court denied the request because the
16 transcript "is largely cumulative of the evidence in the record
17 before us, . . ."

18
19 Therefore, under In re Leardo, a concurrent disciplinary
20 proceeding in a foreign jurisdiction does not deprive an
21 applicant to the California bar from proving his or her fitness
22 and moral character pursuant to an application for moral
23 determination in California.
24

25
26 Here, Petitioner's is seeking certification to the
27 California bar because he and his family have lived in
28 California since 2006. Petitioner has taken the California bar

1 and, if he is successful, wishes to practice law in California.
2 However, as the foregoing deprivation of Due Process, Equal
3 Protection and Fair Procedure indicate, Petitioner would be
4 foolish to expect that his Constitutional rights can or will be
5 protected in Missouri when and if he is required to file another
6 Petition for Reinstatement in the Missouri courts.
7

8 Therefore, Petitioner is entitled to have the Committee
9 determine whether he has the requisite good moral character to
10 be certified to the California Supreme Court, rather than engage
11 in reinstatement proceeding in a state in which he does not
12 live, nor ever wishes to return, and where he has undoubtedly
13 been denied due process and equal protection of the law.
14

15 Before an attorney can be admitted to the practice of law
16 in California, his or her qualifications must have been
17 certified by the Committee of Bar Examiners. To qualify, an
18 applicant must, among other things, demonstrate he or she is
19 possessed of "good moral character." In re Menna, 11 Cal.4th
20 975, 983. California courts have defined "good moral
21 character" as the absence of conduct imbued with elements of
22 moral turpitude. As the California Supreme Court enunciated in
23 Menna, good character includes:
24
25

26 "qualities of honesty, fairness, candor,
27 trustworthiness, observance of fiduciary
28 responsibility, respect for and obedience to the laws
of the state and the nation and respect for the rights
of others and for the judicial process."

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1 In re Menna, 11 Cal.4th at 983

2 In a moral character proceeding, an applicant to the bar
3 must first establish a prima facie case that he or she possesses
4 good moral character. Once the applicant has come forth with
5 requisite evidence of good moral character, the State Bar may
6 rebut that showing with evidence of bad moral character. If it
7 does so, the burden then shifts back to the applicant to
8 demonstrate his or her rehabilitation. The fundamental question
9 in a moral character proceeding is "whether [the applicant] has
10 committed or is likely to continue to commit acts of moral
11 turpitude." Hallinan v. Committee of Bar Examiners (1966) 65
12 Cal.2d 447; March v. Committee of Bar Examiners (1967) 67 Cal.2d
13 718.

14 An applicant who has been suspended must demonstrate his or
15 her rehabilitation prior to being readmitted. Moreover, the law
16 "favors rehabilitation, and even egregious past misconduct does
17 not preclude reinstatement." In re Salyer, 2005 WL 1389225
18 (Cal.Bar Ct.).

19 In determining rehabilitation, testimonials from
20 acquaintances, friends and employers with reference to their
21 observation of the daily conduct of an attorney are "entitled to
22 great weight," as are statements from attorneys and judges.
23 Hippard v. State Bar, 49 Cal.3d 1084. Thus, the California

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1 Supreme Court enunciated in Warbasse, "[w]e give particular
2 credence to such statements by attorneys, based on the notion
3 that such persons possess a keen sense of responsibility for the
4 integrity of the legal profession." Warbasse, 219 Cal. at 571.
5 Favorable testimony from members of the public held in high
6 regard is entitled to considerable weight. Courts give
7 significant weight to the testimony of judges because these
8 witnesses have a strong interest in maintaining the honest
9 administration of justice. Pacheco v. State Bar (1987) 43
10 Cal.3d 1041.
11

12 Here, Petitioner presented to the Missouri federal court
13 and presents to this Committee an extraordinary amount of
14 testimony in the form of letters and a sworn statement from
15 judges and attorneys from Missouri and California who have known
16 and worked with him over his entire career. [Exhibit 6]. The
17 Hon. Lee Wells, before whom Petitioner tried his very first
18 case, said that he knew Petitioner to have "always been a man of
19 his word," and who had, from his first trial been "at all times
20 respectful to the court." Judge Michael Manners, before whom
21 Petitioner tried his last case prior to moving to California,
22 said that Petitioner despite being "frequently provoked" by
23 opposing counsel over the course of two "hotly contested" civil
24 trials, Petitioner "never crossed the line." That Petitioner
25 treats attorneys and judges with respect and kindness, and has
26
27
28

1 always done so, is supported by the words of California Judge
2 Joan Cassani who described Petitioner as a "perfect gentleman
3 throughout the proceedings" before her court.

4 The record indicates the only extraordinary act that
5 Petitioner engaged in before any court was his calling the Hon.
6 Thomas Clark to tell Clark that he, Judge Clark, was correct on
7 the law when he had ruled weeks previously and that Petitioner
8 had been wrong. An act of accountability Judge Clark had NEVER
9 experienced in over twenty years on the bench.
10

11 In his petition for reinstatement with the federal court,
12 Petitioner never claimed to be perfect. He included the letter
13 of the Hon. John Torrance who made clear that at times
14 Petitioner tried his patient and lacked finesse, but still
15 believed Petitioner's indefinite suspension was unwarranted.
16

17 Despite his shortcomings, the judges who have known and
18 witnessed Petitioner's work in the courtroom were unanimous in
19 the belief that he was a talented attorney who worked extremely
20 hard for his clients and treated attorneys and the court well.
21 Perhaps the words of Judge Charles E. Atwell summed up
22 Petitioner's history before the courts best when Judge Atwell
23 wrote, "I truly believe that Mr. Fletcher possesses compassion
24 for his clients and cares about the little guy."
25

26
27 In denying Petitioner's Petition for Reinstatement, there
28 is not a single shred of evidence wherein a single word of the

1 testimony from the judges, lawyers, Congressman or Bishop was
2 rebutted, contradicted or, in anyway shown to be inaccurate.

3 [Exhibit 1].

4 Thus, since as the California courts held in Hippard,
5 Warbasse, Pachecho and in Menna, the testimony of judges and
6 members of the bar "are entitled to great weight" and because
7 the federal court has not produced or is there any contrary
8 evidence that would call into questions the accuracy or veracity
9 of these esteemed members of the bench who wrote on Petitioner's
10 behalf, Petitioner has met his burden of proving his good moral
11 character.
12

13
14 The California Supreme Court in Pachecho also made clear
15 that testimony from members of the public who are "held in high
16 regard is [also] entitled to considerable weight." In this
17 regard, Petitioner submitted the testimony of Congressman
18 Emanuel Cleaver and Bishop Mark C. Tolbert. It would seem that
19 a U.S. Congressman and a Bishop would constitute people who are
20 "held in high regard" and, according to these two individuals,
21 Petitioner is a man of high moral character who has provided
22 legal assistance to those in need and provided financial
23 assistance to churches and civil rights groups and youth
24 organizations. According to Bishop Tolbert, Petitioner proved a
25 willingness to take cases that "other lawyers are afraid to
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1 take" and is an "ethical person, an honest person and should be
2 reinstated."

3 Because the federal district court in Missouri will not
4 provide any evidence which was or was not presented at the
5 hearing that it may or may not have conducted prior to denying
6 Petitioner's motion for reinstatement, and because we know
7 Petitioner was never apprised of any allegations or facts that
8 support his denial, we do know that, barring secret proceedings
9 or findings, Bishop Tolbert and Congressman Cleaver's testimony
10 was not rebutted and as such, under Pachecho, Petitioner has
11 carried his burden of proving his good moral character.
12

13
14 Because the district court produced no evidence that a
15 hearing was conducted concerning Petitioner's Petition for
16 Reinstatement, the testimony from the judges; the lawyers; the
17 Congressman or the Bishop who all wrote in support of
18 Petitioner's reinstatement was not contradicted. Therefore,
19 under numerous California authorities, there is no evidence
20 rebutting Petitioner's good moral character and this committee
21 should hold that Petitioner has therefore carried his burden of
22 proof as to his good moral character.
23

24 As stated previously, the only possible evidence that could
25 be used against Petitioner to deny his good moral character is
26 the Missouri suspension and the subsequent denial of his
27 reinstatement.
28

1 However, the California Supreme Court has made absolutely
2 clear first in McCue, and then in Warbasse, and then in Kwasnik,
3 that a foreign jurisdiction's prior disciplinary proceedings are
4 not binding on an attorney seeking admission in California
5 because the California court must "go behind the action" of the
6 foreign court to "determine for ourselves from the record
7 presented whether or not he is eligible to admission to practice
8 law in this state." McCue, 219 Cal. 566 at 570; Kwasnik, 50
9 Cal.3d 1061; In re Leardo, 53 Cal.3d 1, 19.

11 The reason California is not bound by the proceedings in
12 another jurisdiction or by irregular proceedings by the Bar
13 Committee relates almost exclusively to the due process and
14 equal protection guarantees of the Fourteenth Amendment and
15 California common law which abhors arbitrary treatment and
16 procedures. Martin B., 65 Cal.3d 1302; In re Strick, 34 Cal.3d
17 891, 899.

19 Thus, it is an undeniable point of law in California that
20 where an attorney's ability to practice his profession is at
21 risk that "both the statutes and the State Bar Rules of
22 procedure guarantee notice and an opportunity to be heard, to
23 present a defense, to engage in discovery, and to present
24 evidence prior to imposition of discipline." In re Strick, 34
25 Cal.3d 891 at 899. Moreover, pursuant to the Court's holding in
26 Martin B., where the proceedings involving attorney discipline
27
28

1 suffer from irregularities, such as an inability to present or
2 limitations were placed on an attorney presenting his or he
3 defense, the adverse findings of the Committee must be
4 "disregarded." Martin B., 33 Cal.3d 717, 721.

5 If the California Supreme Court in Martin B. recognized
6 that the attorney's due process rights "may well" have been
7 violated because the Bar Committee "hearing" was conducted
8 without the attorney having access to certain evidence and some
9 witnesses having been unavailable, is there any doubt how the
10 California Supreme Court would view the findings or
11 recommendations in this case which are predicated on the
12 Missouri procedures, which must be viewed as exceedingly
13 arbitrary.
14
15

16 At least in Martin B., the attorney received a "hearing,"
17 was afforded some discovery and was allowed to cross-examine a
18 witness. In Petitioner's suspension hearing he was not allowed
19 to depose a single witness; was denied interrogatories; and his
20 request to serve request for production was denied. He was not
21 allowed to discuss the allegations against him with ANY witness,
22 and was given 4 ½ hours to defend himself against allegations
23 that went as far back as when he was 19 years old.
24
25

26 As to the denial of reinstatement--there was no hearing.
27 There was no evidence presented, no cross examination of any
28 witness, no anything--not even an Order indicating why

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1 Petitioner's three year suspension had, for all intents and
2 purposes, been converted into a permanent disbarment. There was
3 not one word to contradict the nine judges, the ten lawyers, the
4 U.S. Congressman or the Bishop who wrote on behalf of
5 Petitioner.

6
7 If the California Supreme Court in In re Strick reversed
8 the California Bar Committee's recommendation that an attorney
9 who admitted to being a drug addict, was convicted of forging
10 prescriptions to feed his drug addiction, who had shot and
11 killed a human being and been convicted of manslaughter because
12 he had not received proper due process during his hearing prior
13 to suspension, how can it be argued that Petitioner, who has not
14 consumed a drop of alcohol in four years, who provided a home
15 and tutoring to a wayward teenager, who has given tens of
16 thousands of dollars to charity, who had never been disciplined
17 prior to this "unprecedented investigation," and who in the
18 words of a Bishop, who has known him and his work for almost
19 twenty years says, "Michael is an ethical person, an honest
20 person and should be reinstated,"—is not entitled to the same
21 due process guarantee.
22
23

24
25 Moreover, the fundamental question in a moral character
26 proceeding is "whether the applicant has committed or is likely
27 to continue to commits acts of moral turpitude" and is not
28 intended to punish the attorney. Hallinan, 65 Cal.2d 447, 452.

1 Even if this Committee were to disregard Petitioner's denial of
2 due process and equal protection prior to his suspension, the
3 four allegations of misconduct, allegations the federal court
4 admitted do not "constitute a separate ethical violation,"
5 [Exhibit 3, pg. 5] there is no case in California that would
6 come close to a conclusion that leaving an "angry message," one
7 without profanity or yelling and was directed at someone
8 Petitioner believed to be an attorney, constitutes moral
9 turpitude. There is no case that would find that quoting a
10 Human Resource manager in a racial discrimination suit (who DID
11 testify that "nigger bitch could be a term of affection") by
12 line and page number and attaching the transcript constitutes
13 moral turpitude. The same is true for an allegation that, in
14 mediation before a former federal magistrate, an attorney saying
15 he will disclose the elements of his cause of actions in open
16 court constitutes an act of moral turpitude--particularly where
17 the acts have already been alleged in open court. And finally,
18 there is no court that has ever held, no body that has found,
19 that an attorney could lose his license for 4 ½ years (and
20 counting) for asking a witness whether he knew he could be
21 personally liable in a law suit where the witness had been named
22 personally.

23
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26
27 If this Committee can identify a single case in America
28 where an attorney has been treated as poorly, as arbitrarily,

1 and as disingenuously as Petitioner, it will have succeeded in
2 finding a case that eluded one of the top constitutional
3 scholars in America who was searching for such cases when he
4 wrote the following:

5 "[w]e are unaware of any attorney disciplinary
6 proceedings in which these remedial and prosecutorial
7 consideration were so thoroughly disregarded as in
8 Fletcher's proceeding."

9 [Exhibit 8, pg. 20] (emphasis added).

10 It is fundamental under the laws of California, that an
11 attorney must be provided an opportunity to defend him or
12 herself against allegations of misconduct. Part and parcel to
13 this right of due process and fair procedure is the right of
14 discovery, full and fair discovery. Martin B., 33 Cal.3d 717,
15 721. Remember, in Martin B. and in Strick and in McCue, the
16 disciplined attorneys were allowed to attend the hearing in
17 which evidence was presented against them and they were allowed
18 to cross examine witnesses. Despite being advised of the
19 hearing against them, being allowed some discovery and the
20 ability to cross examine witnesses the California Supreme Court
21 still invalidated the findings of the Committee because the
22 attorneys' defense in the foreign jurisdictions were compromised
23 by discovery issues.

24 Here, despite federal laws that mandate that an attorney be
25 allowed access to all records in possession of the entity

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1 alleging misconduct, Petitioner was then, and continues to be
2 denied access to the records pertaining to his case

3 These rules were violated during the initial
4 "investigation" of Petitioner where Petitioner sought production
5 of all records obtained and the billing records of the two
6 private attorneys who spent over 10 months investigating
7 Petitioner. They were again violated during the investigation
8 of his Petition for Reinstatement and following the Order issued
9 by the federal court when Petitioner's attorney, the Hon. Robert
10 Russell, made repeated requests for the file or report
11 concerning his Petition for Reinstatement, as well as a Freedom
12 of Information Request, all of which were summarily denied.
13

14 [Exhibit 4, 5].

15
16 The information regarding these investigations, especially
17 the correspondence between these two federal judges who
18 initiated the proceeding and who apparently directed the private
19 attorneys' investigation of Petitioner is highly relevant,
20 particularly because the two judges then voted on the discipline
21 of Petitioner in violation of the Missouri federal court's own
22 rule that prohibits a judge who has initiated a disciplinary
23 action from ruling on its resolution. [Exhibit 9].
24

25
26 American jurisprudence has never contemplated that a
27 person's ability to provide for his or her family could be
28 deprived by two judges who believe our Constitution would allow

1 them to act as accuser, judge and jury of the accused--and yet,
2 this is exactly what has happened in this Missouri court.

3 As disturbing as an accuser being allowed to serve as judge
4 and jury at to the validity of his or her own accusations is,
5 imagine if the same accuser was allowed to spend \$500,000
6 [Exhibit 2] to prove his own accusations against the accused--
7 which it must be remembered, was an allegation that Petitioner
8 misquoted testimony contained in a federal law suit where the
9 alleged misquoted testimony was attached as an exhibit to the
10 law suit!
11

12 Petitioner has at all times maintained that he had been
13 targeted for an investigation perhaps because of his race, or
14 his politics, but certainly not because he had ever violated any
15 law--civil, criminal or ethical. If the evidence showed that
16 the same two federal judges who initiated the first ever
17 investigation of an attorney's entire career and adult life
18 (which it did), also showed these same two judges spent, let's
19 just say, \$200,000 investigating an attorney, who happened to be
20 the only African American attorney to have tried a civil case in
21 a particular court--ever, wouldn't the correspondence from these
22 judges directing the private attorneys' investigation combined
23 with evidence the private attorneys were paid hundreds of
24 thousands of dollars indicate some "irregularity" in the
25 proceeding? In California we know the answer.
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1 In In re Yagman, where a California attorney had been
2 sanctioned for conduct that occurred over a two year period in a
3 single case, the 9th Circuit rejected any sanction against the
4 attorney based on the two year period as being unfair and held
5 further that such a sanction "would [send] shivers through the
6 bar." In re Yagman, 796 F.2d 1165 (9th Cir. 1986).
7

8 In comparing the sanction rejected by the California
9 federal court in Yagman with Petitioner's, Professor Jeffrey L.
10 Fisher wrote:

11 "If upholding the entire-litigation sanction in Yagman
12 would [have sent] shivers through the bar, upholding
13 the entire-career investigation and sanction here
14 would trigger outright tremors."

15 [Exhibit 8, pg. 20].

16 Perhaps the district court in Missouri recognized the
17 potential arguments that could be raised by Petitioner if he
18 were "afforded an opportunity to inspect and copy at his or her
19 expense all documents that the panel has obtained concerning the
20 matter" as mandated by Federal Circuit Attorney Discipline Rules
21 and decided to disregard this rule. Maybe, the federal court in
22 Missouri realized that its failure to put this contract for
23 legal services out for public bid as appears to be mandated
24 under the Competition in Contracting Act, 41 U.S.C. or the
25 Federal Property and Administrative Services Act of 1949, 40
26 U.S.C. sections 471-514, may support Petitioner's contention
27
28

1 that these judges were targeting Petitioner and again decided to
2 deny Petitioner this defense.

3 Whatever the reason the federal court in Missouri has
4 chosen to deny access to these records, this Committee should
5 not join in this on-going violation of Petitioner's Due Process
6 and Equal Protection guarantees, particularly where such a
7 denial so clearly impacts Petitioner' "opportunity to be heard
8 in his defense."

9
10 Perhaps Petitioner's suspicions are wrong. Maybe the
11 federal district court has information--evidence that is so
12 damaging to Petitioner's good moral character that it
13 contradicts all the judges, all the lawyers, the Congressman and
14 the Bishop's opinions regarding Petitioner. Pursuant to its
15 investigatory powers, this Committee could subpoena "all
16 documents including emails and notes regarding conversations or
17 discussions between members of the federal district court in
18 Missouri and appointed counsel, Theresa Levings, Elizabeth
19 Badger and the law firm of Badger and Levings, regarding Michael
20 Robert Fletcher from January 2002 through the present, including
21 all billing records submitted by appointed counsel and copies of
22 all checks issued by the district court or any other entity to
23 appointed counsel pertaining to Petitioner."
24
25

26
27 Such a request would show whether the federal court in
28 Missouri and its individual members, after initiating this

1 investigation, also directed the investigation and then sat in
2 judgment of the person they caused to be investigated. It would
3 also show how much money the federal district court was willing
4 to spend to determine whether an associate at Petitioner's firm
5 had "taken out of context" the deposition testimony of a witness
6 who HAD WITHOUT QUESTION "testified that . . . [r]eferring to an
7 African-American as a nigger 'could be a term of affection in
8 our culture.'" (which is the quote Petitioner is alleged to
9 have taken out of context despite the fact the quote was cited
10 by line and page number and the transcript was attached as an
11 exhibit to the federal petition.) [Exhibit 8, pg. 4-5]
12
13 (emphasis added).
14

15 Putting aside the very real possibility that the federal
16 court spent hundreds of thousands of dollars to investigate the
17 accuracy of a quote, and putting aside the refusal of the court
18 to follow the law—its own laws—thereby depriving Petitioner of
19 the ability to defend himself against the federal court's
20 allegations, the responsibility of this Committee, in deciding
21 whether to certify an applicant who has been previously
22 suspended, is to determine "whether the applicant for admission
23 or the attorney sought to be disciplined is a fit and proper
24 person to be permitted to practice law, and that usually turns
25 upon whether he has committed or is likely to continue to commit
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1 acts of moral turpitude." Kwasnik v. State Bar of California,
2 50 Cal.3d 1061, 1070.

3 Neither Petitioner nor his previous attorney Jeffrey L.
4 Fisher can find a single case in America where an attorney was
5 suspended for three years for conduct that does not involve ANY
6 client complaint, ANY client injury, ANY allegation of an
7 illegal act or ANY financial harm to anybody.
8

9 The four acts of misconduct which the federal district
10 court admitted "may not constitute a separate ethical violation"
11 consisted of the allegation that Petitioner (1) "left an angry
12 message" with a party he believed was an attorney, advised her
13 that she had "violated every ethics law pertaining to a client"
14 and advised that he was going to "sue her and her employer" for
15 "tortuous interference with business" because she contacted his
16 client directly and got the client to settle his case without
17 the consent or advice of counsel (the message did not involve
18 profanity or yelling but was "angry"); (2) allowed two associate
19 attorneys to improperly cite the testimony of two witnesses in a
20 race discrimination complaint when the associates directly
21 quoted the testimony of a witness who said "nigger bitch could
22 be a term of affection," (despite the fact the associate
23 attorneys cited the quote by line and page number and attached
24 the transcript of the witness' testimony); (3) in a law suit
25 against a medical provider, the federal court held that
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1 Petitioner threatened to disclose "dosage errors" absent
2 settlement of the claims. (The federal court disregarded the
3 fact these "dosage errors" were discussed in the underlying law
4 suit which was filed and obviously in the public record wherein
5 these errors were alleged in a "whistle blowing count" for these
6 dosage errors and that they were contained in the EEOC report
7 and file. More importantly, the demands for payment were in a
8 mediation with a federal mediator who did not report any
9 impropriety); and (4) Petitioner's suggestion in a deposition
10 that a witness was personally liable in a suit where the
11 Petitioner's associate had simply filed the amended complaint in
12 the wrong court, in Kansas City, Missouri instead of Kansas
13 City, Kansas two courts that are approximately one mile apart.

16 In determining whether it is "likely [Petitioner will]
17 continue to commit acts of moral turpitude" the admission by the
18 federal court in Missouri, that "[w]hile each and every action
19 by Mr. Fletcher which has been proven by clear and convincing
20 evidence may not constitute a separate ethical violation"
21 [Exhibit 13, pg. 5]—clearly demonstrate the potential of
22 Petitioner now engaging in moral turpitude is nonexistent. This
23 admission, that these individual acts, alleged to have occurred
24 five years ago, were not found to constitute misconduct,
25 combined with the California Supreme Court's holding in Kwasnik,
26 which declares that the "evidentiary significance of an
27
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1 applicant's misconduct is greatly diminished by the passage of
2 time and by the absence of similar, more recent misconduct,"
3 Kwasnik, 50 Cal.3d 1061 at 1070, surely indicate that Petitioner
4 has been punished long enough and that he will not engage in any
5 improper act in the future. In re Leardo, 53 Cal.3d 1.

6
7 Petitioner humbly and respectfully requests that this
8 Committee put an end to this nightmare which is well into its
9 fifth (5th) year.

10 Beyond the Due Process, Equal Protection and fundamental
11 fairness issues raised above, it is relevant for this Committee
12 to know how this process was initiated. On January 9, 2003,
13 Petitioner received a letter from the federal district court in
14 Missouri that advised him that two federal judges, one of whom
15 Petitioner had never met in his life, had initiated an
16 investigation against him because he had allegedly misquoted a
17 man who testified that "nigger bitch could be a term of
18 affection" during a deposition in a racial discrimination suit.
19 [Exhibit 8, pg. 4-5].

20
21
22 This letter also said the federal court had appointed two
23 private attorneys to investigate this pleading issue (which had
24 already been addressed in a Rule 11 motion without any penalty)
25 but more disturbingly, it instructed the private attorney to
26 investigate "any other conduct or allegations that may come to
27 her attention during the course of her investigation." [Id.].
28

1 Petitioner hired a lawyer who advised the federal court
2 that Petitioner had not written the petition that included the
3 quote and pointed out that the quote was accurate, attributed by
4 line and page number and the transcript of the testimony had
5 been attached as an exhibit.

6 The federal court advised Petitioner's attorney, the Hon.
7 Robert Russell, that it "didn't matter" because they were going
8 to "investigate him anyway."
9

10 The appointed counsel sent letters to every attorney whom
11 Petitioner had tried a case against; they interviewed waitresses
12 at a bar Petitioner frequently with his rugby team; they took
13 portions of the legal file of the mother of Petitioner's
14 daughter from her attorney without a subpoena or permission.
15 The judges who initiated the investigation directed the
16 appointed counsel's investigation and then voted on the
17 punishment. These two federal judges spent at least \$500,000 to
18 investigate the only African American attorney to have ever
19 tried a civil case in the district court in Missouri.
20
21

22 After their ten month investigation--after all the letters
23 had been sent, his reputation destroyed, his name dragged
24 through the mud, and after destroying his belief that being a
25 lawyer was noble and important, the federal district court
26 offered Petitioner a deal. Their deal was that if Petitioner
27 would "resign" from the federal court, the federal court would
28

1 "suspend" their "investigation and he could keep his state
2 license." Petitioner advised the federal magistrate, who was
3 appointed to mediate the settlement, that he would need to
4 "think about it."

5 The next morning Petitioner drove his daughter to school
6 and went to his office where his attorney, Judge Russell, and
7 his law partner, Walter Simpson, awaited his answer. It was the
8 opinion of Judge Russell and Mr. Simpson that Petitioner must
9 accept the "offer" because if he didn't, the federal judges
10 would find him "guilty" and then take his state license.
11 According to Mr. Simpson and Judge Russell, accepting this deal
12 was the "smart thing to do" because everyone knew Petitioner had
13 been targeted and everyone knew that Petitioner "never had a
14 chance" to win against these judges.
15
16

17 In response to the offer to keep his state license, the
18 prestige that came with being a trial lawyer and the financial
19 security of a practice that generated substantial revenue,
20 Petitioner denied the federal court offer because:
21

22 "I told them, that what these federal judges do is
23 they come after people who don't work for big law
24 firms, minorities-- black guys, Hispanics, women,
25 people who didn't go to the best schools, who had to
26 go to law school part-time. They come after us and if
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1 they can't find anything, they then say, "resign from
2 our court and we'll let you keep your license."

3 I then said they spent 10 months investigating me,
4 calling me names, disparaging everything I'd ever done
5 and then they say, "oh well, no big deal, we just
6 trashed a man's reputation, ran him down, told people
7 horrible things, oh and it turns out, we can't find a
8 single client to complain about him, not a single
9 allegation that he stole anything, tried to steal
10 anything, just that I left an "angry" message and now
11 every black kid, every poor kid that used to look up
12 to me and say, "he can do it so can I" is now going to
13 hear, another black attorney punished, indicted.

14 So I said no. I have done nothing wrong and their own
15 investigation proved it.

16 My lawyer then said well "they are going to take your
17 state license."

18 To which I said that that was probably true but how am
19 I going to tell my daughter that God wants us to do
20 the right thing, he wants us to stand up and help, he
21 wants us to care, and then walk in here and say I did
22 something that I didn't do, just so I can keep making
23 money. I told him that I'm not going to take their
24 deal because even if they disbar me, I can at least
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1 know, I can tell my daughter that I stood up for the
2 things I believe lawyers are supposed to stand up for
3 and I can tell her that when she reads the material
4 the federal court gave to the press, all the lies, the
5 distortions, I can tell her that that her Dad stood up
6 against what was wrong.
7

8 California courts have long recognized that an attorney who
9 chooses to stand on principle, should not be punished for acting
10 in an manner he or she believes is appropriate. Thus, the
11 California Supreme Court in Hightower v. State Bar of California
12 held in a case where an attorney chose to fight the allegations
13 against him rather than accept wrongdoing for an act he did not
14 commit:
15

16 "We therefore question the wisdom of denying an
17 applicant admission to the bar if that denial rests on
18 the applicant's choosing to assert his innocence
19 regarding prior charges rather than to acquiesce in a
20 pragmatic confession of guilt, and conclude that [he]
21 should not be denied the opportunity to practice law
22 because he is unwilling to perform an artificial act
23 of contrition."

24 Hightower, 34 Cal.3d 150, 157.

25 Had Petitioner simply chosen to do the "smart thing" and
26 accept an offer of a two year suspension without any
27 ramifications regarding his state license, he could have avoided
28 spending hundreds of thousands of dollars in attorney fees,
public ridicule and embarrassment. Instead, Petitioner chose to

1 stand up and fight. He chose to fight what he believed to be an
2 outrageous assault on our Constitution but also chose to fight
3 for, as Judge Atwell attested, "the little guy."

4 This Committee can end this nightmare by simply adhering to
5 the sound and wise legal precedent of the California Supreme
6 Court which provides:

7
8 "A State cannot exclude a person from the practice of
9 law or from any other occupation in a manner or for
10 reasons that contravene the Due Process or Equal
11 Protection Clause of the Fourteenth Amendment."

12 Raffaelli, 496 P.2d at 1268.

13 In In re Leardo, the Supreme Court of California rejected
14 the State Bar's contention that disbarment was "necessary to
15 preserve public confidence in the legal profession."

16 Given the uncontroverted nature of certain facts, deeply
17 disturbing facts like Petitioner having been suspended for three
18 years without being able to serve interrogatories; without being
19 able to take a single deposition; serve a request for
20 production; serve a request for admission; Petitioner not being
21 allowed to show the allegations against him to a single witness
22 in preparation for his defense; the fact Petitioner's Petition
23 for Reinstatement was denied without a hearing; the fact that
24 this federal court refuses to provide a legal or factual basis
25 for its actions—how can the public have confidence in the legal
26 profession.
27
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1 What does it say about the "legal profession" to an
2 average, ordinary person who thought judges and lawyers were
3 suppose to make sure people are not treated unfairly but then
4 they read a legal document like Exhibit 4:

5 "Respondent Michael Robert Fletcher's motions filed
6 with this Court on Friday, February 6, 2004, are ruled
7 as follows.


- 8 1. Motion for leave to serve interrogatories is
9 hereby denied.
- 10 2. Motion for leave to serve request for admissions
11 is hereby denied.
- 12 3. Motion for leave to serve request for production
13 of documents id hereby denied.
- 14 4. Motion for leave to allow respondent to show file
15 and investigative material to witnesses or
16 potential witnesses is provisionally denied."

17 What does it say about the "legal profession" when the only
18 African American attorney practicing in an entire jurisdiction
19 literally loses everything he ever earned, his law license; his
20 law office; his law practice; his name and reputation—all
21 because he did not agree that "nigger bitch" is a term of
22 "affection."

23 What it would say about the "legal profession" if this
24 Committee were to accept the words of all the judges, all the
25 lawyers, the Congressman and the Bishop who attest to
26 Petitioner's good moral character is that this nightmare is
27 finally over.
28

1 WHEREFORE, Petitioner respectfully requests that this
2 Committee disregard the Order of the federal district court
3 denying Petitioner's Petition for Reinstatement; the findings
4 and conclusions arising from his initial suspension and certify
5 Petitioner Michael Robert Fletcher to the Supreme Court of
6 California as qualified to be admitted to the practice of law
7 once he has successfully taken and passed the California Bar.
8

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11
12 DATED: September 9, 2008



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11/24/19

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THE COMMITTEE OF BAR EXAMINERS OF
THE STATE BAR OF CALIFORNIA
OFFICE OF ADMISSIONS

1149 SOUTH HILL STREET • LOS ANGELES, CALIFORNIA 90015-2299 • (213) 765-1500

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March 23, 2009

Michael R. Fletcher
5655 E. The Toledo
Long Beach, CA 90803

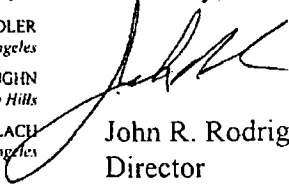
Petition K (1)
File# 371336

Dear Michael R. Fletcher:

During its meeting on March 20, 2009, the Committee of Bar Examiners (Committee) considered your request for a waiver of the requirement imposed by Title 4, Division 1, Chapter 4, Rule 4.41 (A) of the Admissions Rules which states that an attorney who has been suspended may not submit a moral character determination application. The Committee carefully reviewed your correspondence with the Office of Admissions and denied your request in accordance with the Admissions Rules instructing that you be advised you must resolve the disciplinary matter in Missouri prior to being permitted to file a moral character determination application.

This is the Committee's final decision on this matter, and it is not subject to further administrative review.

Sincerely,


John R. Rodriguez
Director
Operations & Management

1/24/18

11/24/19

DECLARATION OF MICHAEL FLETCHER

1. My name is Michael Fletcher and I hereby declare the following statements are true.
2. Gary Fenner and Ortrie Smith initiated the legal proceeding against me on or about January of 2003 based on the false allegation that I filed complaints against Honeywell that contained "misquoted" testimony. The testimony was accurately cited but I did not file any complaint against Honeywell.
3. Former Supreme Court Justice Ronnie White advised me in October of 2009 that defendants had agreed to "apply an arbitrary and unwritten rule to fuck" me. Justice White also admitted that these actions were discriminatory because "they have been discriminating against black people for years." Justice White also stated that the actions of the federal judges were "personal" and that "everyone knew they were personal." If Justice White denies making these admissions, I have independent proof as to the exact words and admissions that he made.
4. Additionally U.S. Congressman Emanuel Cleaver told me and three other individuals including Kansas City, Missouri City Councilman Terry Riley and the City Manager of Kansas City, Missouri Wayne Cauthen that "Judge Gaitan [Fernando Gaitan] said" that "two judges were out to get you" and that "it wasn't because you have done anything wrong, it is personal because they don't like you."

Dated: June 6, 2010



Michael R. Fletcher

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Michael Fletcher, Esq. Pro Ver
 5655 E. The Toledo, Long Beach, CA 90803
 TELEPHONE NO: (562) 433-9638 FAX NO: (562) 434-6395
 ATTORNEY FOR (Name):

FOR COURT USE ONLY
FILED
 Los Angeles Superior Court
 NOV 24 2010
 By **John A. Sletten, Executive Officer/Clerk**
DOROTHY SWAIN, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
 STREET ADDRESS:
 MAILING ADDRESS:
 CITY AND ZIP CODE:
 BRANCH NAME:

CASE NAME:

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)
 Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **BS129414**
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/DP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/DP/DWD (23) Non-PI/DP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/DP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input checked="" type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify):

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **11-24-10**
Michael Fletcher
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

11/24/10

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
Asbestos (04)	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Asbestos Property Damage	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos Personal Injury	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Wrongful Death	Collection Case—Seller Plaintiff	Enforcement of Judgment
Product Liability (not asbestos or toxic/environmental) (24)	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Medical Malpractice (45)	Insurance Coverage (not provisionally complex) (18)	Abstract of Judgment (Out of County)
Medical Malpractice—Physicians & Surgeons	Auto Subrogation	Confession of Judgment (non-domestic relations)
Other Professional Health Care Malpractice	Other Coverage	Sister State Judgment
Other PI/PD/WD (23)	Other Contract (37)	Administrative Agency Award (not unpaid taxes)
Premises Liability (e.g., slip and fall)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Other Contract Dispute	Other Enforcement of Judgment Case
Intentional Infliction of Emotional Distress	Real Property	Miscellaneous Civil Complaint
Negligent Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Other PI/PD/WD	Wrongful Eviction (33)	Other Complaint (not specified above) (42)
Non-PI/PD/WD (Other) Tort	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Business Tort/Unfair Business Practice (07)	Writ of Possession of Real Property	Injunctive Relief Only (non-harassment)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Mortgage Foreclosure	Mechanics Lien
Defamation (e.g., slander, libel) (13)	Quiet Title	Other Commercial Complaint Case (non-tort/non-complex)
Fraud (16)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Civil Complaint (non-tort/non-complex)
Intellectual Property (19)	Unlawful Detainer	Miscellaneous Civil Petition
Professional Negligence (25)	Commercial (31)	Partnership and Corporate Governance (21)
Legal Malpractice	Residential (32)	Other Petition (not specified above) (43)
Other Professional Malpractice (not medical or legal)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Civil Harassment
Other Non-PI/PD/WD Tort (35)	Judicial Review	Workplace Violence
Employment	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Wrongful Termination (36)	Petition Re: Arbitration Award (11)	Election Contest
Other Employment (15)	Writ of Mandate (02)	Petition for Name Change
	Writ—Administrative Mandamus	Petition for Relief From Late Claim
	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

SHORT TITLE: <i>Fletcher v. CA. State Bar, et. al</i>	CASE NUMBER <i>BS129414</i>
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 4 HOURS/ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|--|--|
| 1. Class Actions must be filed in the Stanley Mosk Courthouse, Central District. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office. |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1., 2., 3.	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1., 2., 4.	
Non-Personal Injury/Property	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input checked="" type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/
 Wrongful Death Tort (Cont'd.)
 Employment
 Contract
 Real Property
 Judicial Review Unlawful Detainer

SHORT TITLE:	CASE NUMBER
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/Warranty (06) (not insurance)	<input checked="" type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input checked="" type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE:	CASE NUMBER
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Judicial Review (Cont'd.)

 Provisionally Complex Litigation

 Enforcement of Judgment

 Miscellaneous Civil Complaints

 Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input checked="" type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.


SHORT TITLE: <u>Fletcher v. CIA - State Bar</u>	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			ADDRESS: <u>5655 E. The Toledo, Long Beach, CA 90803</u>
CITY: <u>Long Beach</u>	STATE: <u>CA</u>	ZIP CODE: <u>90803</u>	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the _____ courthouse in the _____ District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: 11-24-10


(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LASC Approved CIV 109 (Rev. 01/07).
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/29/11

DEPT. 85

HONORABLE JAMES C. CHALFANT

JUDGE

A. FAJARDO

DEPUTY CLERK

HONORABLE #5

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. HERNAND, C.A.

Deputy Sheriff

J. CAMPBELL, CSR #11859

Reporter

9:30 am

BS129414

Plaintiff

MICHAEL R FLETCHER

Counsel

NO APPEARANCES

VS

Defendant

Counsel

STATE BAR OF CALIFORNIA ET AL

NATURE OF PROCEEDINGS:

TRIAL SETTING CONFERENCE

ORDER TO SHOW CAUSE RE: DISMISSAL FOR THE PARTIES
FAILURE TO APPEAR ON 3/3/11

The matters are called for hearing.

There are no appearances.

The Court therefore dismisses the entire action
pursuant to GC 68608b.

It is so ordered:

JAMES C. CHALFANT

James C. Chalfant
Judge of the Superior Court

The Petitioner is to give notice.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the
above-entitled court, do hereby certify that I am not
a party to the cause herein, and that this date I
served Notice of Entry of the above minute order of
3/29/11 upon each party or counsel named below by
depositing in the United States mail at the courthouse

MINUTES ENTERED
03/29/11
COUNTY CLERK

11/28/10

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/29/11

DEPT. 85

HONORABLE JAMES C. CHALFANT

JUDGE

A. FAJARDO

DEPUTY CLERK

HONORABLE
#5

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. HERNAND, C.A.

Deputy Sheriff

J. CAMPBELL, CSR #11859

Reporter

9:30 am

BS129414

Plaintiff

Counsel

MICHAEL R FLETCHER

NO APPEARANCES

Defendant

Counsel

VS

STATE BAR OF CALIFORNIA ET AL

NATURE OF PROCEEDINGS:

in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 3/29/11

John A. Clarke, Executive Officer/Clerk

By: _____

A. Fajardo
A. Fajardo

MICHAEL R. FLETCHER
5655 East The Toledo
Long Beach, CA 90803

04/04/11

<p align="center">MINUTES ENTERED 03/29/11 COUNTY CLERK</p>
--

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Natalia Foley 914 S.Wilton pl # 118 Los Angeles CA 90019 TELEPHONE NO: 323 898 7997 FAX NO. (Optional): 310 626 9632 E-MAIL ADDRESS (Optional): publisher235@hotmail.com ATTORNEY FOR (Name): IN PRO PER	FOR COURT USE ONLY CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court SEP 09 2010 John A. Clarke, Executive Officer/Clerk By <i>(Signature)</i> Deputy SHAUNYA WESLEY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill St MAILING ADDRESS: same CITY AND ZIP CODE: Los Angeles CA 90012 BRANCH NAME: central	
PLAINTIFF: Natalia Foley DEFENDANT: CALIFORNIA BAR, CA public corporation; B.Rodriguez <input checked="" type="checkbox"/> DOES 1 TO <u>100</u>	
<p style="text-align: center;">CONTRACT</p> <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Number): <input type="checkbox"/> CROSS-COMPLAINT <input type="checkbox"/> AMENDED CROSS-COMPLAINT (Number):	
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	CASE NUMBER: <div style="font-size: 2em; text-align: center;">BC 44 528 8</div>

1. **Plaintiff* (name or names):**
 Natalia Foley
 alleges causes of action against **defendant* (name or names):**
 California Bar, CA public corporation; B.Rodriguez
2. This pleading, including attachments and exhibits, consists of the following number of pages:
3. a. Each plaintiff named above is a competent adult
 except plaintiff (name):
 (1) a corporation qualified to do business in California
 (2) an unincorporated entity (describe):
 (3) other (specify):

 b. Plaintiff (name):
 a. has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

 b. has complied with all licensing requirements as a licensed (specify):
 c. Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.
4. a. Each defendant named above is a natural person
 except defendant (name): **California Bar** except defendant (name):
 (1) a business organization, form unknown (1) a business organization, form unknown
 (2) a corporation (2) a corporation
 (3) an unincorporated entity (describe): (3) an unincorporated entity (describe):
 (4) a public entity (describe): (4) a public entity (describe):
 CA public corporation
 (5) other (specify): (5) other (specify):

SHORT TITLE: Natalia Foley v. California Bar	CASE NUMBER:
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4. (Continued)

- b. The true names of defendants sued as Does are unknown to plaintiff.
 - (1) Doe defendants (specify Doe numbers): 1-100 were the agents or employees of the named defendants and acted within the scope of that agency or employment.
 - (2) Doe defendants (specify Doe numbers): _____ are persons whose capacities are unknown to plaintiff.
- c. Information about additional defendants who are not natural persons is contained in Attachment 4c.
- d. Defendants who are joined under Code of Civil Procedure section 382 are (names):

- 5. Plaintiff is required to comply with a claims statute, and
 - a. has complied with applicable claims statutes, or
 - b. is excused from complying because (specify):

- 6. This action is subject to Civil Code section 1812.10 Civil Code section 2984.4.

- 7. This court is the proper court because
 - a. a defendant entered into the contract here.
 - b. a defendant lived here when the contract was entered into.
 - c. a defendant lives here now.
 - d. the contract was to be performed here.
 - e. a defendant is a corporation or unincorporated association and its principal place of business is here.
 - f. real property that is the subject of this action is located here.
 - g. other (specify):

- 8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):
 - Breach of Contract
 - Common Counts
 - Other (specify):
fraud, defamation, racial discrimination, emotional distress (intentional) (negligent), negligent hiring

- 9. Other allegations:

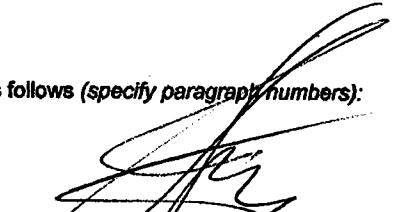
- 10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for
 - a. damages of: \$ 1,500,000.00
 - b. interest on the damages
 - (1) according to proof
 - (2) at the rate of (specify): _____ percent per year from (date):
 - c. attorney's fees
 - (1) of: \$
 - (2) according to proof.
 - d. other (specify):
declaratory relief, injunctive relief

- 11. The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date: 09/09/2010

Natalia Foley

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

SHORT TITLE:

Natalia Foley v. California Bar et al

CASE NUMBER:

01 CAUSE OF ACTION—Breach of Contract

(number)

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): Natalia Foley

alleges that on or about (date): January 2009

a written oral other (specify):

agreement was made between (name parties to agreement):

Natalia Foley and California Bar

A copy of the agreement is attached as Exhibit A, or

The essential terms of the agreement are stated in Attachment BC-1 are as follows (specify):

Parties entered into a written agreement on the following terms: 1) Plaintiff pays fees of \$453 to process her application for moral character determination within 180 days; 2) plaintiff provides complete, truthful information regarding her self; 3) bar process the application in a timely manner within 180 days; 4) bar conducts diligent, unbiased investigation; 5) bar guarantees that its analysts are qualified; 6) bar renders its decision within a reasonable time.

BC-2. On or about (dates):

defendant breached the agreement by the acts specified in Attachment BC-2 the following acts (specify):

1) bar failed to process an application within 180 days; 2) bar failed to render ANY decision within a reasonable time (over 500 days); 3) bar failed to conduct diligent unbiased investigation; 4) bar failed to hire a qualified analyst; 5) bar refused to communicate with the plaintiff . Defendants' non-performance of the agreement was neither excused nor discharged.

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

as stated in Attachment BC-4 as follows (specify):

1) loss of all fees paid to bar from 2000, including membership, bar exam and moral character determination application; 2) loss of all invested into the law degree tuition expenses; 3) loss of anticipated income for years to come is in excess of \$1,500,000.00. Total amount of damages is subject to prove at trial

BC-5. Plaintiff is entitled to attorney fees by an agreement or a statute

of \$

according to proof.

BC-6. Other:

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02 **CAUSE OF ACTION—Common Counts**
(number)

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name): **Natalia Foley**

alleges that defendant (name): **California Bar**

became indebted to plaintiff other (name):

- a. within the last four years
 - (1) on an open book account for money due.
 - (2) because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.

- b. within the last two years four years
 - (1) for money had and received by defendant for the use and benefit of plaintiff.
 - (2) for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff.
 - the sum of \$
 - the reasonable value.
 - (3) for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff
 - the sum of \$
 - the reasonable value.
 - (4) for money lent by plaintiff to defendant at defendant's request.
 - (5) for money paid, laid out, and expended to or for defendant at defendant's special instance and request.
 - (6) other (specify):

CC-2. \$ _____, which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest according to proof at the rate of _____ percent per year from (date):

CC-3. Plaintiff is entitled to attorney fees by an agreement or a statute of \$ _____ according to proof.

CC-4. Other:

SHORT TITLE: Natalia Foley v. California Bar	CASE NUMBER:
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03 **CAUSE OF ACTION—Fraud**
(number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR- 1. Plaintiff (name): **Natalia Foley**

alleges that defendant (name): **B.Rodriguez**

on or about (date): _____ defrauded plaintiff as follows:

FR-2. **Intentional or Negligent Misrepresentation**

a. Defendant made representations of material fact as stated in Attachment FR-2.a as follows:

On or about September 2009 B.Rodriguez intentional and falsely alleged that (1) Plaintiff was using a fake document to confirm her bachelor level degree; (2) Plaintiff conducted an act of unauthorized practice of law while was a law school student. When the defendant made these representations he knew them to be false, and these representations were made by defendant with the intent to use this fraudulent arguments to deny Plaintiff's application for moral character determination in furtherance of his personal discriminatory agenda against Plaintiff and to defraud plaintiff out of her fees paid for the application

b. These representations were in fact false. The truth was as stated in Attachment FR-2.b as follows:

1) Plaintiff never possessed any fake documents of any kind; 2) Plaintiff never used any fake documents to confirm her educational level; 3) Plaintiff provided to the bar dully confirmed prove of her bachelor degree; 4) Plaintiff never committed any act of unauthorized practice law; 5) at all relevant time Plaintiff was certified by the Bar as certified law school student and was duly performing her duty under the supervision of licensed attorneys

c. When defendant made the representations,

defendant knew they were false, or

defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FIR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3. **Concealment**

a. Defendant concealed or suppressed material facts as stated in Attachment FR-3.a as follows:

1) that Plaintiff provided truthful and duly confirmed documents supporting her bachelor degree; 2) that Plaintiff was a certified law school student at relevant time

b. Defendant concealed or suppressed material facts

defendant was bound to disclose.

by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item IFIR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

SHORT TITLE:
Natalia Foley v. California Bar

CASE NUMBER:

03

(number)

CAUSE OF ACTION—FraudFR-4. **Promise Without Intent to Perform**

a. Defendant made a promise about a material matter without any intention of performing it as stated in Attachment FR-4.a as follows:

Defendant promised to conduct unbiased investigation of Plaintiff's background based on a truthful verifiable information, not on rumors, not on personally fabricated facts and not in furtherance of a personal bias against plaintiff

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act as stated in Attachment FR-5 as follows:

1) plaintiff invested into the law degree; 2) plaintiff invested into the bar exam (fees); 3) plaintiff paid \$453

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged as stated in Attachment FR-6 as follows:

1) loss of all fees paid to bar from 2000, including membership, bar exam and moral character determination application; 2) loss of all invested into the law degree tuition expenses; 3) loss of anticipated income for years to come is in excess of \$1,500,000.00. Total amount of damages is subject to prove at trial

FIR - 7. Other:

SHORT TITLE: NATALIA FOLEY v. CALIFORNIA BAR	CASE NUMBER:
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____04____ CAUSE OF ACTION – **DEFAMATION**

Page__01__

ATTACHMENT TO Complaint Cross-Complaint

Plaintiff (name): NATALIA FOLEY

Alleges that defendant (name): CALIFORNIA BAR, B.RODRIGUEZ

1) Plaintiff incorporates by reference all of the allegations contained in this complaint inclusive.

2) Defendants published, distributed and/or arranged for the publication and distribution of a defamatory statements about Plaintiff.

3) Defendants falsely claimed that Plaintiff (a) represented herself as an attorney while Plaintiff in fact was and still is an attorney in a foreign jurisdiction; (b) provided fake document confirming her bachelor degree while Plaintiff in fact has her duly confirmed and absolutely legitimate document confirming her bachelor degree earned in foreign jurisdiction, ; (c) committed act of unauthorized practice of law while in fact Plaintiff was acting within the status of certified law student and in full compliance of the applicable rules of the California State Bar.

4) Defendants' false statements have harmed Plaintiffs' reputations and are defamatory per se.

5) None of Defendants' statements were made under any privilege.

6) Defendants were negligent in making false statements because Defendants knew or should have known that such statements were false.

7) Alternatively, Defendants acted with actual malice in making false statements because Defendants knew that their statements about the Plaintiffs were false and distributed or made their statements about the Plaintiffs with reckless disregard concerning the falsity of such statements.

Page__07__

SHORT TITLE: NATALIA FOLEY v. CALIFORNIA BAR	CASE NUMBER:
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_____04_____ CAUSE OF ACTION – **DEFAMATION**

Page_ 02_

8) As the direct and proximate result of these Defendants' false and defamatory statements Plaintiff has suffered damages to her personal reputation, as well as financial damages.

9) Plaintiff is likely to succeed on the merits of their defamation claims against the Defendants.

Page __08__

SHORT TITLE: NATALIA FOLEY v. CALIFORNIA BAR	CASE NUMBER:
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____05____ CAUSE OF ACTION – Page_01__
NEGLIGENT HIRING AND RETENTION

ATTACHMENT TO Complaint Cross-Complaint

Plaintiff (name): NATALIA FOLEY

Alleges that defendant (name): CALIFORNIA BAR

1) Plaintiff incorporates by reference all of the allegations contained in this complaint inclusive.

2) Plaintiff is informed and believes and based on such beliefs alleges that at all times mentioned herein the individuals mentioned herein are employees, agents and/or servants of Defendant, hired in their individual supervisory capacities. In doing the things herein alleged, said individuals are incompetent to or unfit to perform the duties they were hired to do because the conduct alleged here is likely to cause harm to others. As herein alleged, the conduct of Defendants did in fact harm the Plaintiff.

3) Plaintiff is informed and believe based on such belief alleges that at all times herein mentioned, Defendant knew, or should have known that the conduct of the individual mentioned, as herein alleged makes the individual Defendants named herein unfit and/or incompetent to perform their supervisory role.

4) As a direct and proximate result of the incompetence and/or unfitness of the named individual Defendants, Plaintiff had been damaged to her detriment in an amount that can be proven at trail.

SHORT TITLE: NATALIA FOLEY v. CALIFORNIA BAR	CASE NUMBER:
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___06___ CAUSE OF ACTION – Page __01__
**INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS**

ATTACHMENT TO Complaint Cross-Complaint

Plaintiff (name): NATALIA FOLEY

Alleges that defendant (name): CALIFORNIA BAR

1) Plaintiff incorporates by reference all of the allegations contained in this complaint inclusive.

2) Plaintiff is informed and believes, and on such belief alleges that in failing to protect plaintiff from the continuing discriminatory acts, and other offensive conduct by the Defendants as described herein; Defendants, and each of them abused their special position as Plaintiff's superiors, which vested them with substantial power to control Plaintiff's life, job and destiny and to damage her interests and well-being.

3) Through their conduct described above, Defendants and each of them intended to cause, or had reckless disregard of the probability of causing, emotional distress to the plaintiff. The conduct of Defendants, and each of them was outrageous and malicious done with the intent to cause sever emotional and physical distress, humiliation, mental anguish.

4) As a direct, foreseeable, and proximate result of defendants' acts and conduct as described above, plaintiff has suffered and continues to suffer bodily injury, humiliation, embarrassment, and severe mental and emotional distress, all to her damages, the precise amount of which will be proven at trial.

Page _10_

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___07___ CAUSE OF ACTION – Page __01__
**NEGLIGENT INFLECTION OF EMOTIONAL
DISTRESS**

ATTACHMENT TO Complaint Cross-Complaint

Plaintiff (name): NATALIA FOLEY

Alleges that defendant (name): CALIFORNIA BAR

1) Plaintiff incorporates by reference all of the allegations contained in this complaint inclusive.

2) At all times herein mentioned, Plaintiff was member of the California State bar, complied with the Bar rules and was under the supervision of Defendants agents. These Defendants engaged in a pattern of discriminatory acts against Plaintiff because of Plaintiff's nation of origin, Russian accent and Russian ethnic background. Under the said allegations, Plaintiff was denied her right to practice law without explanation, without the exhaustion of administrative remedies in violation of BAR policy.

3) In failing to protect Plaintiff from the continuing racial discrimination and other offensive conduct, Defendants abused their special position as Plaintiff's superiors which vested them with substantial power to control Plaintiff's life, job, destiny and to damage Plaintiff's interest, reputation and well-being.

4) Plaintiff is informed and believes and based on such belief alleges that Defendants and each of them owed Plaintiff a duty of care and because of the conduct herein alleged, Defendants and each of them breach their duty of care to the Plaintiff.

SHORT TITLE: NATALIA FOLEY v. CALIFORNIA BAR	CASE NUMBER:
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____07____ CAUSE OF ACTION – Page_01__
**NEGLIGENT INFLICTION OF EMOTIONAL
DISTRESS**

5) Defendants and each of them knew or should have known that their failure to exercise due care would cause Plaintiff to suffer sever emotional distress.

6) As a direct, foreseeable, and proximate result of defendants conduct of humiliating, embarrassing and infliction of sever emotional distress, Plaintiff has suffered damages, the precise amount of which can be proven at trial.

SHORT TITLE: NATALIA FOLEY v. CALIFORNIA BAR	CASE NUMBER:
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___08___ CAUSE OF ACTION – Page_01_
**NEGLIGENT INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE**

ATTACHMENT TO Complaint Cross-Complaint

Plaintiff (name): NATALIA FOLEY

Alleges that defendant (name): CALIFORNIA BAR

1) Plaintiff incorporates by reference all of the allegations contained in this complaint inclusive.

2) Defendants and all of them knew at all time relevant herein of the business relationship existed between Plaintiff and this party which contained reasonably probable future economic benefit or advantage to plaintiff.

3) Defendants and all of them all time relevant herein were aware or should have been aware that if they did not act with due care their actions would interfere with this relationship and cause plaintiffs to lose in whole or in part probable future economic benefit or advantage of relationship.

4) Defendants were negligent; and such negligence caused damage to plaintiff in that relationship was actually interfered with and/or disrupted and plaintiff lost in whole economic benefits or advantage reasonably expected from relationship.

5) As a direct and proximate result of the negligent conduct by Defendants, Plaintiffs are suffered damages and entitled to damages in amounts to be proven at trial which are not currently ascertainable.

SHORT TITLE: NATALIA FOLEY v. CALIFORNIA BAR	CASE NUMBER:
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____ 09 ____ CAUSE OF ACTION – Page_01__
**RACIAL DISCRIMINATION BASED
ON THE NATION OF ORIGIN**

ATTACHMENT TO Complaint Cross-Complaint

Plaintiff (name): NATALIA FOLEY

Alleges that defendant (name): CALIFORNIA BAR

- 1) Plaintiff incorporates by reference all of the allegations contained in this complaint inclusive.
- 2) Defendants and all of them, at all relevant time, were government actors, acting within their scope of their duty, official authority and employment, while subjecting plaintiff to racial discrimination based on her nation of origin.
- 3) Plaintiff at all relevant time was, still is and continue to be a member of a protected group of nation of origin based on her birth place in Russia, Moscow and based on her ethnic Russian origin.
- 4) Plaintiff had a reasonable expectation to be treated equally as all other Bar applicants.
- 5) Plaintiff is aware and believes that all BAR applicants similarly situated but not born in Russia are treated fairly and equally.
- 6) Plaintiff is aware and believes that she was denied equal treatment and was treated less favorably in evaluation of her moral character because of her birth place, her accent and her particular Russian ethnic background.
- 7) Plaintiff is aware and believes that she is completely fit to practice law in the State of California in full compliance with the rules of the state Bar.

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09 CAUSE OF ACTION –
**RACIAL DISCRIMINATION BASED
ON THE NATION OF ORIGIN**

Page 02

8) Plaintiff is aware and believes that despite of her full compliance with all applicable Bar' rules, she was denied without explanation her right to practice law in California in furtherance of adverse racial discrimination action against her.

9) Plaintiff is aware and believes that all other applicants similarly situated under the same or similar circumstances but outside of her protected class were invariably given permission to practice law in the state of California

10) As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law, and therefore Plaintiff requests to enjoin Defendants, and all of them, from denying Plaintiff's lawful right to practice law in the state of California.

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SHORT TITLE: NATALIA FOLEY v. CALIFORNIA BAR	CASE NUMBER:
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_____ PRAYER FOR RELIEF

Page __01__

ATTACHMENT TO Complaint Cross-Complaint

WHEREFORE, Plaintiff prays for judgment against all Defendants and against all of its affiliates, agents, servants, employees, partners and all persons in active concert or participation with it, for the following relief:

(1) permanent injunctive relief enjoining all Defendants and all of its employees, officers, directors, agents, servants, affiliates, attorneys, successors and assigns, and all those acting directly or indirectly in concert or participation with any of them, from violating Plaintiffs' constitutional rights for equal treatment ;

(2) An award to Plaintiff of damages she has sustained or will sustain by reason of Defendants' wrongful acts;

(3) declaratory relief confirming Plaintiff's right to practice law in the state of California;

(4) Plaintiffs' costs and reasonable attorneys' fees;

(5) any other relief deemed at time of trial to be just, fair, and appropriate.

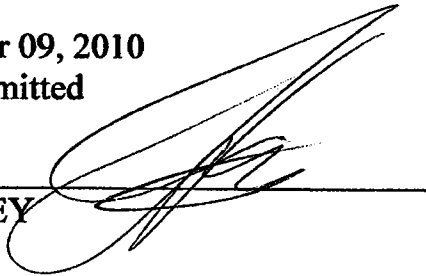
JURY DEMAND

Plaintiff hereby demands a trial by jury

Dated: September 09, 2010

Respectfully submitted

NATALIA FOLEY
Plaintiff In Pro Se



Page __16__

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/14/11

DEPT. 52

HONORABLE SUSAN BRYANT-DEASON

JUDGE

E. LOPEZ

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. ISUNZA, CA

Deputy Sheriff

NONE

Reporter

BC445288

Plaintiff

Counsel

NATALIA FOLEY

NO APPEARANCES

VS

Defendant

CALIFORNIA BAR ET AL

Counsel

NATURE OF PROCEEDINGS:

NON-APPEARANCE CASE REVIEW

Pursuant to the "REQUEST FOR DISMISSAL," without prejudice as to B. Rodriguez filed on November 10, 2010 and as to California Bar on December 29, 2010 the hearings set for February 16, 2011 are advanced to this date and taken OFF CALENDAR.

No jury fees on deposit posted on PRD.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 02/14/2011 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: February 15, 2011

John A. Clarke, Executive Officer/Clerk

<p align="center">MINUTES ENTERED 02/14/11 COUNTY CLERK</p>
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02/15/11

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/14/11

DEPT. 52

HONORABLE SUSAN BRYANT-DEASON

JUDGE

E. LOPEZ

DEPUTY CLERK

HONORABLE

JUDGE PRO-TEM

ELECTRONIC RECORDING MONITOR

T. ISUNZA, CA

Deputy Sheriff

NONE

Reporter

BC445288

Plaintiff

Counsel

NATALIA FOLEY

NO APPEARANCES

VS

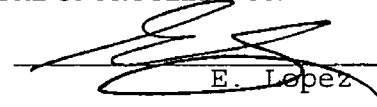
Defendant

CALIFORNIA BAR ET AL

Counsel

NATURE OF PROCEEDINGS:

By:


E. Lopez

NATALIA FOLEY
914 S. WILTON PL. #118
LOS ANGELES, CA 90019

02/15/11

MINUTES ENTERED
02/14/11
COUNTY CLERK

952

2/16

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Natalia Foley 914 S. Wilton pl # 118 Los Angeles CA 90019 TELEPHONE NO.: 323 898 7997 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): In Pro Per		FOR COURT USE ONLY FILED LOS ANGELES SUPERIOR COURT DEC 28 2010 BY <u>Tony Isenza</u> TONY ISENZA, DEPUTY RECEIVED DEC 28 2010 FILING WINDOW
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill St, MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles CA 90012 BRANCH NAME:		
PLAINTIFF/PETITIONER: Natalia Foley DEFENDANT/RESPONDENT: California Bar et al		CASE NUMBER: BC445288
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify) : contract		
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -		

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) With prejudice (2) Without prejudice
 - b. (1) Complaint (2) Petition
 - (3) Cross-complaint filed by (name): on (date):
 - (4) Cross-complaint filed by (name): on (date):
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):* against defendant California Bar

2. (Complete in all cases except family law cases.)
 Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date: 12/28/2010
 Natalia Foley

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)
 *If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)
 Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**
 Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)
 ** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(SIGNATURE)
 Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

(To be completed by clerk)
 4. Dismissal entered as requested on (date):
 5. Dismissal entered on (date): 12/28/10 as to only (name): As to above
 6. Dismissal not entered as requested for the following reasons (specify):

7. a. Attorney or party without attorney notified on (date):
 b. Attorney or party without attorney not notified. Filing party failed to provide
 a copy to be conformed means to return conformed copy

Date: 12/29/10

Clerk, by John A. Clarke

JOHN A. CLARKE, CLERK
 TONY ISENZA, Deputy
 Page 1 of 2

PLAINTIFF/PETITIONER: Natalia Foley	CASE NUMBER:
DEFENDANT/RESPONDENT: California Bar et al	BC445288

Declaration Concerning Waived Court Fees

The court has a statutory lien for waived fees and costs on any recovery of \$10,000 or more in value by settlement, compromise, arbitration award, mediation settlement, or other recovery. The court's lien must be paid before the court will dismiss the case.

1. The court waived fees and costs in this action for *(name)*:
2. The person in item 1 *(check one)*:
 - a. is not recovering anything of value by this action.
 - b. is recovering less than \$10,000 in value by this action.
 - c. is recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. All court fees and costs that were waived in this action have been paid to the court *(check one)*: Yes No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)



(SIGNATURE)

13 1/2 x 5 1/2

**CALIFORNIA SUPERIOR COURT
COUNTY OF LOS ANGELES**

PROOF OF SERVICE

NATALIA FOLEY
914 South Wilton Place, # 118
Los Angeles, CA 90019-2131
Telephone: (323) 898 7997
Facsimile: (310) 626 9632
publisher235@hotmail.com

CASE No. BC445288

PLAINTIFF IN PRO PER

NATALIA FOLEY vs. CALIFORNIA
BAR et al

I, Rinat Khamitov, am a resident of the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3200 Wilshire Blvd., Suite 1630, Los Angeles, CA 90010

On December 28, 2010, I served the foregoing document: 1) Plaintiff's request for dismissal of California Bar without prejudice, on the interested parties in this action by placing a true copy thereof enclosed in sealed envelope addressed as follows:

STARR BABCOCK
LAWRENCE C. YEE
TRACEY L. McCORMICK
OFFICE OF GENERAL COUNSEL
THE STATE BAR OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO CA 94105

I caused such envelopes with postage thereon for mail fully prepaid to be placed in the United States mail at Los Angeles County, California by certified mail, with return receipt requested. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles County, California, in the ordinary course of business. I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on December 28, 2010, at Los Angeles County, California.

Signed:



RINAT KHAMITOV

PROOF OF SERVICE

1 Sean Gjerde
2 P.O. Box 236
3 Wilton, CA 95624
4 407-494-5134

5 Attorney for Non-Party Sean P. Gjerde

FILED
Superior Court Of California,
Sacramento
10/19/2012
cleurgans
By _____, Deputy
Case Number:
34-2012-00134070

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 SEAN GJERDE,)

11 Plaintiff,)

12 vs.)

13 CALIFORNIA STATE BAR, ESTHER
14 ROGERS, MARIA OROPEZA, DIANE
15 CURTIS, MICHAEL MAACKS, THE
16 MCLATCHY COMPANY,
17 DOES 1-100)

18 Defendants.)

Case No.)

COMPLAINT FOR DAMAGES FOR)

- 1. DEFEMATION BY LIBEL)
- 2. FALSE LIGHT INVASION OF)
- PRIVACY)
- 3. DEFEMATION BY SLANDER)
- 4. MISAPPROPRIATION OF IMAGE)
- AND LIKENESS (CIV. CODE § 3344))
- 5. INVASION OF PRIVACY)
- 6. FALSE EXTRAJUDICIAL)
- STATEMENT (B & P §6068(d)))

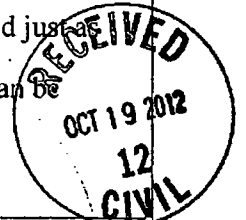
DEPARTMENT
ASSIGNMENTS

Case Management 44
Law and Motion 53
Minors Compromise 45

19 **PLAINTIFF SEAN GJERDE ALLEGES THE FOLLOWING:**

20 **INTRODUCTION**

- 21 1. Freedom of the press is a valuable right but it is not a license to tar and feather innocent
22 citizens and destroy their reputations. Given the nearly instantaneous and world-wide
23 availability of on-line and print articles, one would expect more rigorous standards to be
24 imposed on those who report news, particular where such "news" involves disclosing very
25 personal and private details of the lives of non-public figures. These days, the harm in
26 getting the details wrong is exponentially greater as it is virtual certainty that the inaccuracies
27 will be re-published across the globe within minutes of the initial publication. And just as
28 quickly, particular where those details are salacious and scandalous, reputations can be



1 ruined, relationships undermined and lives turned upside down as time, energy and money is
2 spent trying to undo or minimize the damage done by reckless and shoddy journalism. Once
3 unleashed on the on-line community, a story reporting scandal spreads like wildfire and
4 much damage is done before it can be contained. So it is here.

5
6 **THE PARTIES**

- 7
- 8 1. Plaintiff Sean Gjerde is and at all times is a resident of Elk Grove, California and so resided
9 at all times pertinent to the facts and circumstances alleged in this complaint.
 - 10 2. Starting in 2001 Plaintiff Sean Gjerde started his work as an attorney in California. Due to
11 the actions by Defendant's Plaintiff Gjerde has lost his practice in due in most part from the
12 defamatory statements made by Defendants.
 - 13 3. Defendant STATE BAR OF CALIFORNIA (hereafter "Bar") is a unknown state identity
14 domiciled in the State of California, city and county of San Francisco. It's business address
15 is 180 Howard St. San Francisco, CA 94105
 - 16 4. Defendant ESTHER ROGERS (hereafter "Rogers") is a natural person domiciled in the State
17 of California, who works in the county of San Francisco. Her business address is 180
18 Howard St. San Francisco, CA 94105.
 - 19 5. Defendant MARIA OROPEZA (hereafter "Oropeza") is a natural person domiciled
20 in the State of California, who works in the county of San Francisco. Her business address is
21 180 Howard St. San Francisco, CA 94105.
 - 22 6. Defendant DIANE CURTIS (hereafter "Curtis") is a natural person domiciled in the State of
23 California, who works in the county of San Francisco. Her business address is 180 Howard
24 St. San Francisco, CA 94105.
 - 25 7. Defendant MICHAEL MAACKS (hereafter "Maacks") is a natural person domiciled in the
26 State of California, who works in the county of San Francisco. His business address is 180
27 Howard St. San Francisco, CA 94105.
- 28

1 8. Upon information and belief Plaintiff alleges that Defendant McClatchy Company, owner of
2 the Sacramento bee which is the major newspaper for the Sacramento area.

3
4 **THE SEPTEMBER 12, 2012 PRESS RELEASE AND ARTICLE AND FALSE**
5 **STATEMENTS**
6

7 9. On September 12, 2012, the California State Bar issued a knowingly false press release. This
8 was further published on the California State Bar website and through the California State
9 Bar journal.

10 10. In the press release issued by the Defendant California State Bar it makes mention of a Renee
11 Wheeler and states that Plaintiff stole money from Ms. Wheeler. Not only is this
12 categorically false, but was denied by Renee Wheeler in numerous written declarations filed
13 with different courts or non-governmental administrative bodies.

14 11. Further allegations accuse Plaintiff of stealing money from a Quina Alvarez. This is despite
15 the fact that Plaintiff confirmed up an agreement with Ms. Alvarez and produced a noted
16 handwriting expert to confirm such agreement. Defendant Bar knew this was categorically
17 false.

18 12. Defendant Bar disseminating this false information by way of press release issued on
19 September 12, 2012.

20 13. Defendant Esther Rogers, Defendant Maria Oropeza, Defendant Diane Curtis all conspired
21 and worked to release the defamatory press release and are named as Defendants herein.

22 14. The facts were restated in Defendant California State Bar's publication California Bar
23 Journal, which also used without permission a photograph of Plaintiff that was his property
24 and without permission of Plaintiff.

25 15. On September 12, 2012, the Sacramento Bee essentially reorganized and reissued the same
26 press release in their newspaper and online edition. Theoretically this publication through
27 the World Wide Web reaches potentially reaches over 2 billion people.
28

- 1 16. Given the speed of the Sacramento Bee in republishing the press release by the Sacramento
2 Bee it is clear that they lacked the time necessary to do their own background fact check on
3 the article. The fact that it was published after 5:00pm in the evening of September 12, 2012
4 means that the Plaintiff could not be reached for comment and this was a piece without any
5 factual basis.
- 6 17. In fact local Channel 13, a CBS affiliate owned by CBS local media conducted their own
7 investigation the evening of September 12, 2012 and chooses wisely not to run any news
8 regarding this press release. No other local news organization other than the Defendant
9 California State Bar ran this press release likely due to its factual inaccuracies.
- 10 18. The press release issued by Defendant California State Bar and used with tomfoolery by
11 California Bar Journal and the article, which was little more than a restatement of the press
12 release issued by Defendant California State Bar made by Defendant McClatchy constitute
13 false Statements.
- 14 19. California Bar Journal never attempted to make contact with Plaintiff in regards to the press
15 release, nor did the California Bar Journal attempt to get Plaintiff's permission to use his
16 photograph. California Bar Journal is a for profit publication which includes a website and
17 has in it various advertisements directed to attorneys and the public at large.
- 18 20. Plaintiff has requested retractions from Defendant Bar and Defendant McClatchy with no
19 success. Plaintiff Gjerde went so far as to draft his own press release and gave it to
20 Defendant McClatchy who claimed only a few days after the story had run that they were no
21 longer interested in the story.
- 22 21. Defendant Bar through Defendant Oropeza attempted to bring an action with the non-
23 governmental administrative agency euphemistically known as the California State Bar Court
24 (which in reality is not a court at all). The findings of that body found that there was a lack
25 of evidence against Plaintiff Gjerde in regards to the Renee Wheeler matter or the Quina
26 Alvarez matter.

27
28 **FIRST CAUSE OF ACTION**

1 [For Libel]

2 [Against Defendants California State Bar, Esther Rogers, Diane Curtis, Maria Oropeza,
3 McClatchy News Group]

4 22. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 21
5 , inclusive, as though fully set forth herein.

6 23. The press release by Defendant California State Bar and Defendant McClatchy each contain
7 statements and impressions that are false.

8 24. Both the press release by Defendant Bar and the article by Defendant McClatchy each
9 contain statements and their impressions are defamatory on their face of Plaintiff and expose
10 him to hatred, contempt, ridicule, loss of business and obloquy and/or caused him to be
11 shunned and avoided.

12 25. Upon information and belief, plaintiff alleges that the press release by Defendant Bar and the
13 article by Defendant McClatchy were made by each Defendant in a grossly irresponsible
14 manner and negligently with want of due care.

15 26. Plaintiff alleges that Defendants are not protected under or subject to the provisions of
16 California Civil Code Section 48(a). Nevertheless and without conceding the application of
17 that statute to these Defendants or this publication, Plaintiff alleges that a demand for a
18 retraction of the press release and the article and each of the statements and their implications
19 and impressions was made to each of the defendants.

20 27. As a direct and proximate result of the above-described conduct by Defendant's, plaintiff has
21 suffered general and special damages in an amount to be determined at trial.

22 28. The conduct of the Defendants as described above was made with malice and intent to injure
23 plaintiff's reputation and with substantial certainty that the publications would irreparably
24 cause injury to plaintiff's reputation. Defendants published the false statements in the pursuit
25 to injure Plaintiff's legal practice and for tabloid profits. As such punitive damages should
26 be awarded to against the defendants to deter future wrongdoing and to deter future
27 misconduct by said defendants and other potential wrongdoers who would engage in such
28

1 intentional, malicious and reckless journalism, injuring the reputation of an innocent private
2 figure.

3 29. Upon information and belief, plaintiff alleges that, unless enjoined and restrained by the
4 Court, Defendants will republish, repeat and continue to disseminate the Articles and
5 Statements and their implications and impressions, all to the continuing injury of Plaintiff;
6 that such continued republication, repetition and dissemination of the defamatory and
7 offensive falsehoods will cause irreparable harm to Plaintiff by damaging his reputation and
8 adversely affecting his career, business efforts as well as his personal relationships. Upon
9 information and belief, Plaintiff alleges that he lacks an adequate remedy at law insofar as
10 damages will be very difficult to calculate for such on-going injuries. By reason of the
11 foregoing, Plaintiff is entitled to permanent injunction enjoining and restraining Defendants,
12 and each of them, and all persons acting in concert with them, from republishing, repeating,
13 distributing or otherwise disseminating the press release and the article, the Statements or any
14 of their implications and impressions to the extent such are found in this press release and
15 article to be false.

16
17 **SECOND CAUSE OF ACTION**

18 **[For False Light Invasion of Privacy]**

19 **[Against Defendants California State Bar, Esther Rogers, Diane Curtis, Maria Oropeza,**
20 **McClatchy News Group]**

21 30. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 29
22 , inclusive, as though fully set forth herein.

23 31. The press release by Defendant Bar and the article by Defendant McClatchy as a whole and
24 each of the statements and their implications and impressions were widely publicized by the
25 Defendants.

26 32. The press release and the article as a whole and each of the statements and their implications
27 and impressions are false.

1 33. The articles as a whole and each of the statements and their implications and impressions are
2 of a concerning each of the plaintiff's and persons who read the press release and article
3 reasonably understood the references therein to Plaintiff.

4 34. To the extent that all or any part of the press release and article as a whole or any of the
5 statements, their implications and impressions are found not to be defamatory of the
6 Plaintiffs, the press release, the article and their statements and implications and impressions
7 were understood in such a way as to place the Plaintiff in a false light which would be highly
8 offensive to a reasonable person.

9 35. Upon information and belief, Plaintiffs allege that the press release and the article as a whole
10 and each of the Statement sand their implications and impressions were made by each of the
11 Defendants with knowledge of their falsity or with reckless disregard for their truth or falsity.

12 36. Upon information and belief, Plaintiffs allege the press release and article as a whole and
13 each of the statements and their implications and impressions were made by each of the
14 Defendants in a grossly irresponsible manner and negligently, with want of due care.

15 37. Plaintiff alleges that the Defendants are not protected under or subject to the provisions of
16 California Civil Code §48(a). Nevertheless, and without conceding the application of that
17 statute to these Defendants or this publication, Plaintiffs allege that a demand for a retraction
18 of the article and the press release was made to each of the Defendants.

19 38. As a direct and proximate result of the above-described conduct by Defendants, Plaintiff has
20 suffered general and special damages in an amount to be determined at trial.

21 39. The conduct of the Defendants as described above was made with malice and intent to injure
22 plaintiff's reputation and with substantial certainty that the publications would irreparably
23 cause injury to plaintiff's reputation. Defendants published the false statements in the pursuit
24 to injure Plaintiff's legal practice and for tabloid profits. As such punitive damages should
25 be awarded to against the defendants to deter future wrongdoing and to deter future
26 misconduct by said defendants and other potential wrongdoers who would engage in such
27 intentional, malicious and reckless journalism, injuring the reputation of an innocent private
28 figure.

1 40. Upon information and belief, plaintiff alleges that, unless enjoined and restrained by the
2 Court, Defendants will republish, repeat and continue to disseminate the Articles and
3 Statements and their implications and impressions, all to the continuing injury of Plaintiff;
4 that such continued republication, repetition and dissemination of the defamatory and
5 offensive falsehoods will cause irreparable harm to Plaintiff by damaging his reputation and
6 adversely affecting his career, business efforts as well as his personal relationships. Upon
7 information and belief, Plaintiff alleges that he lacks an adequate remedy at law insofar as
8 damages will be very difficult to calculate for such on-going injuries. By reason of the
9 foregoing, Plaintiff is entitled to permanent injunction enjoining and restraining Defendants,
10 and each of them, and all persons acting in concert with them, from republishing, repeating,
11 distributing or otherwise disseminating the press release and the article, the Statements or any
12 of their implications and impressions to the extent such are found in this press release and
13 article to be false.

14
15 **THIRD CAUSE OF ACTION**

16 **[For Slander]**

17 **[Against Defendants California State Bar, Esther Rogers, Diane Curtis, Maria Oropeza,**
18 **Michael Maacks, McClatchy News Group]**

19 41. Plaintiff's repeat and reallege each and every allegation contained in paragraphs 1 through
20 40 , inclusive, as though fully set forth herein.

21 42. The article and press release as a whole and each of the statements and their implications and
22 impressions are false.

23 43. The articles as a whole and each of the Statements and their implications and impressions are
24 of and concerning the Plaintiff and persons who read the press release and the article
25 reasonably understood the references therein to Plaintiff.

26 44. The press release and the article as a whole and each of the statements and their implications
27 and impressions are defamatory on their face of the plaintiff and expose him to hatred,
28 contempt ridicule, business loss and obloquy, and /or cause him harm.

1 45. The result of the press release and of the article who the repeating of that information by way
2 of spoken word. All the Defendants with the exception of Defendant McClatchy and
3 Defendant Bar in one form or another spoke the same mistruths and defamatory statements to
4 others as to cause harm to Plaintiff. Further Defendant Maacks spoke defamatory statements
5 to Ms. Wheeler in order to attempt to entice her to lie for Defendant Bar.

6 46. The conduct of the Defendants as described above was made with malice and intent to injure
7 plaintiff's reputation and with substantial certainty that the publications would irreparably
8 cause injury to plaintiff's reputation. Defendants published the false statements in the pursuit
9 to injure Plaintiff's legal practice and for tabloid profits. As such punitive damages should
10 be awarded to against the defendants to deter future wrongdoing and to deter future
11 misconduct by said defendants and other potential wrongdoers who would engage in such
12 intentional, malicious and reckless journalism, injuring the reputation of an innocent private
13 figure.

14 47. Upon information and belief, plaintiff alleges that, unless enjoined and restrained by the
15 Court, Defendants will republish, repeat and continue to disseminate the Articles and
16 Statements and their implications and impressions, all to the continuing injury of Plaintiff;
17 that such continued republication, repetition and dissemination of the defamatory and
18 offensive falsehoods will cause irreparable harm to Plaintiff by damaging his reputation and
19 adversely affecting his career, business efforts as well as his personal relationships. Upon
20 information and belief, Plaintiff alleges that he lacks an adequate remedy at law insofar as
21 damages will be very difficult to calculate for such on-going injuries. By reason of the
22 foregoing, Plaintiff is entitled to permanent injunction enjoining and restraining Defendants,
23 and each of them, and all persons acting in concert with them, from republishing, repeating,
24 distributing or otherwise disseminating the press release and the article, the Statements or any
25 of their implications and impressions to the extent such are found in this press release and
26 article to be false.

27
28 **FOURTH CAUSE OF ACTION**

1 **[For Misappropriation of Image and Likeness (Civ. Code §3344)]**

2 **[Against Defendants California State Bar, Esther Rogers, Diane Curtis, Maria Oropeza,**
3 **McClatchy News Group]**

4 48. Plaintiff repeats and realleges each and every allegation contained in paragraph 1 though, 47
5 inclusive, as though fully set forth herein.

6 49. As set forth above, the Defendants and each of them, used plaintiff's name, likeness and
7 identities and their photograph without their permission or consent and such use was false
8 and misleading. The unauthorized use of the names an likeness of plaintiffs in the sale,
9 distribution and dismmentaion of the subject publications were in violation of Civil Code
10 §3344.

11 50. Defendants and each of them profited from and gain commercial benefit by using plaintiff's
12 name, likeness, and identity and photo graph for the purpose of promoting, marketing,
13 advertising or selling their publications.

14 51. As a direct and proximate result of the above-described conduct by Defendants, plaintiff has
15 suffered general and special damages in an amount to be determined at trial.

16 52. The privacy interests of plaintiff outweighed any public interest in the subject matter.

17 53. Upon information and belief, plaintiff alleges that each Defendant's conduct was done with
18 oppression, fraud and malice and that, therefore, the conduct of each Defendant justifies an
19 award of punitive and exemplary damages.

20 54. The conduct of the Defendants as described above was made with malice and intent to injure
21 plaintiff's reputation and with substantial certainty that the publications would irreparably
22 cause injury to plaintiff's reputation. Defendants published the false statements in the pursuit
23 to injure Plaintiff's legal practice and for tabloid profits. As such punitive damages should
24 be awarded to against the defendants to deter future wrongdoing and to deter future
25 misconduct by said defendants and other potential wrongdoers who would engage in such
26 intentional, malicious and reckless journalism, injuring the reputation of an innocent private
27 figure.

1 55. Upon information and belief, plaintiff alleges that, unless enjoined and restrained by the
2 Court, Defendants will republish, repeat and continue to disseminate the Articles and
3 Statements and their implications and impressions, all to the continuing injury of Plaintiff;
4 that such continued republication, repetition and dissemination of the defamatory and
5 offensive falsehoods will cause irreparable harm to Plaintiff by damaging his reputation and
6 adversely affecting his career, business efforts as well as his personal relationships. Upon
7 information and belief, Plaintiff alleges that he lacks an adequate remedy at law insofar as
8 damages will be very difficult to calculate for such on-going injuries. By reason of the
9 foregoing, Plaintiff is entitled to permanent injunction enjoining and restraining Defendants,
10 and each of them, and all persons acting in concert with them, from republishing, repeating,
11 distributing or otherwise disseminating the press release and the article, the Statements or any
12 of their implications and impressions to the extent such are found in this press release and
13 article to be false.

14
15 **FIFTH CAUSE OF ACTION**

16 **[For Invasion of Privacy]**

17 **[Against Defendants California State Bar, Esther Rogers, Diane Curtis, Maria Oropeza,**
18 **McClatchy News Group]**

19 56. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through
20 55, inclusive, as though fully set forth herein.

21 57. Defendants, and each of them, have published false statements claiming that plaintiff had
22 stolen money from Renee Wheeler, further Defendant's allege Renee to be incompetent and
23 elderly, both of which she is not.

24 58. Plaintiff had a reasonable expectation of privacy regarding the false statement and their
25 private images.

26 59. The intrusion of Defendants, and each of them into the private affairs between an attorney
27 and is client would be highly offensive to a reasonable person.
28

1 60. As a direct and proximate result of the above-described conduct by Defendants, Plaintiff has
2 suffered general and special damages in an amount to be determined at trial.

3 61. Upon information and belief, plaintiff alleges that each Defendant's conduct was done with
4 oppression, fraud and malice and that, therefore, the conduct of each Defendant justifies an
5 award of punitive and exemplary damages.

6 62. The conduct of the Defendants as described above was made with malice and intent to injure
7 plaintiff's reputation and with substantial certainty that the publications would irreparably
8 cause injury to plaintiff's reputation. Defendants published the false statements in the pursuit
9 to injure Plaintiff's legal practice and for tabloid profits. As such punitive damages should
10 be awarded to against the defendants to deter future wrongdoing and to deter future
11 misconduct by said defendants and other potential wrongdoers who would engage in such
12 intentional, malicious and reckless journalism, injuring the reputation of an innocent private
13 figure.

14 63. Upon information and belief, plaintiff alleges that, unless enjoined and restrained by the
15 Court, Defendants will republish, repeat and continue to disseminate the Articles and
16 Statements and their implications and impressions, all to the continuing injury of Plaintiff;
17 that such continued republication, repetition and dissemination of the defamatory and
18 offensive falsehoods will cause irreparable harm to Plaintiff by damaging his reputation and
19 adversely affecting his career, business efforts as well as his personal relationships. Upon
20 information and belief, Plaintiff alleges that he lacks an adequate remedy at law insofar as
21 damages will be very difficult to calculate for such on-going injuries. By reason of the
22 foregoing, Plaintiff is entitled to permanent injunction enjoining and restraining Defendants,
23 and each of them, and all persons acting in concert with them, from republishing, repeating,
24 distributing or otherwise disseminating the press release and the article, the Statements or any
25 of their implications and impressions to the extent such are found in this press release and
26 article to be false.

27
28 **SIXTH CAUSE OF ACTION**

1 **[False Extrajudicial Statement]**

2 **[Against Defendants California State Bar, Esther Rogers, Diane Curtis, Maria**
3 **Oropeza]**

4 64. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 63
5 inclusive, as though fully set forth herein.

6 65. That as part of its ongoing action against Plaintiff Gjerde. Defendant Bar along with the
7 other Defendants except Defendant McClatchy violated Business and Professions Code
8 Section 6068 by releasing the knowingly false press release.

9 66. Defendants except Defendant McClatchy prior to the press release issued on September 12,
10 2012 had in their possession several documents done by Renee Wheeler who expressed not
11 only did she not support Defendant's Bar actions against Plaintiff but that what they were
12 alleging was false. Defendants except for Defendant McClatchy ignored this and issued a
13 knowing false and harmful press release against Plaintiff Gjerde.

14 67. The purpose behind the release of this press release was to harm Plaintiff Gjerde and to
15 further harm Gjerde in any legal matter he had currently pending with any court.

16 68. As a direct and proximate result of the above-described conduct by Defendants, Plaintiff has
17 suffered general and special damages in an amount to be determined at trial.

18 69. Upon information and belief, plaintiff alleges that each Defendant's conduct was done with
19 oppression, fraud and malice and that, therefore, the conduct of each Defendant justifies an
20 award of punitive and exemplary damages.

21 70. The conduct of the Defendants as described above was made with malice and intent to injure
22 plaintiff's reputation and with substantial certainty that the publications would irreparably
23 cause injury to plaintiff's reputation. Defendants published the false statements in the pursuit
24 to injure Plaintiff's legal practice and for tabloid profits. As such punitive damages should
25 be awarded to against the defendants to deter future wrongdoing and to deter future
26 misconduct by said defendants and other potential wrongdoers who would engage in such
27 intentional, malicious and reckless journalism, injuring the reputation of an innocent private
28 figure.

1 71. Upon information and belief, plaintiff alleges that, unless enjoined and restrained by the
2 Court, Defendants will republish, repeat and continue to disseminate the Articles and
3 Statements and their implications and impressions, all to the continuing injury of Plaintiff;
4 that such continued republication, repetition and dissemination of the defamatory and
5 offensive falsehoods will cause irreparable harm to Plaintiff by damaging his reputation and
6 adversely affecting his career, business efforts as well as his personal relationships. Upon
7 information and belief, Plaintiff alleges that he lacks an adequate remedy at law insofar as
8 damages will be very difficult to calculate for such on-going injuries. By reason of the
9 foregoing, Plaintiff is entitled to permanent injunction enjoining and restraining Defendants,
10 and each of them, and all persons acting in concert with them, from republishing, repeating,
11 distributing or otherwise disseminating the press release and the article, the Statements or any
12 of their implications and impressions to the extent such are found in this press release and
13 article to be false.

14
15 **PRAYER**

16 WHEREFORE, Plaintiff prays for judgment as follows:

17 AS TO THE FIRST AND THIRD CAUSES OF ACTION FOR LIBEL AND SLANDER:

- 18 1. For actual and compensatory damages in an amount to be determined at the trial of this
19 action, which plaintiff believes to be in excess of \$6 million dollars;
20 2. For exemplary and punitive damages to be determined at the time of trial
21 3. For a permanent injunction

22 AS TO THE SECOND CAUSE OF ACTION FOR FALSE LIGHT INVSION OF
23 PRIVACY:

- 24 4. For actual and compensatory damages in an amount to be determined at the trial of this
25 action, which plaintiff believes to be in excess of \$6 million dollars;
26 5. For exemplary and punitive damages to be determined at time of trial
27 6. For a permanent injunction.

28 AS TO THE FIFTH CAUSE OF ACTION FOR INVASION OF PRIVACY

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- 7. For actual and compensatory damages in an amount to be determined at the trial of this action, which plaintiff believes to be in excess of \$6 million dollars;
- 8. For exemplary and punitive damages to be determined at time of trial
- 9. For a permanent injunction.

AS TO THE FOURTH CAUSE OF ACTION FOR MISAPPROPRIATION OF IMAGE AND LIKENESS

- 10. For actual and compensatory damages in an amount to be determined at the trial of this action, which plaintiff believes to be in excess of \$6 million dollars;
- 11. For exemplary and punitive damages to be determined at time of trial
- 12. For a permanent injunction.

AS FOR THE SIXTH CAUSE OF ACTION FOR FALSE EXTRAJUDICIAL STATEMENT


- 13. For actual and compensatory damages in an amount to be determined at the trial of this action, which plaintiff believes to be in excess of \$6 million dollars;
- 14. For exemplary and punitive damages to be determined at time of trial
- 15. For a permanent injunction.

AS TO ALL CLAIMS AND CAUSES OF ACTION:

- 16. For exemplary and punitive damages to be determined at the time of trial.
- 17. For interest on any monetary award to Plaintiff at the legal rate;
- 18. For such other and further relief as this court may deem just and proper.

Date: October 19, 2012

Respectfully submitted,



Sean Gjerde

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DECLARATION AND VERIFICATION OF SEAN P. GJERDE

I, Sean P. Gjerde, declare as follows:

1. I am the plaintiff in this matter.
2. That factual allegation is true to the best of my knowledge in the body of the complaint.
3. Defendant was found in a ruling by Judge Amaradariz with the California State Bar on April 18, 2012 to have insufficient facts and lack of evidence in regards to allegations made by Defendant against Plaintiff and that she would not prevail in their complaint.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of October 2012 at Wilton, California.



SEAN P. GJERDE

~~FILED~~
~~ENDORSED~~ *AP*

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SACRAMENTO COURTS
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STARR BABCOCK (63473)
LAWRENCE C. YEE (84208)
DANIELLE A. LEE (223675)
OFFICE OF GENERAL COUNSEL
THE STATE BAR OF CALIFORNIA
180 Howard Street
San Francisco, CA 94105-1639
Tel: (415) 538-2000
Fax: (415) 538-2321
danielle.lee@calbar.ca.gov

Attorneys for Defendants
THE STATE BAR OF CALIFORNIA,¹ ESTHER
ROGERS, MARIA OROPEZA, DIANE CURTIS,
MICHAEL MAACKS,

Exempt from Filing Fees Pursuant to Government
Code Section 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

BY FAX

SEAN PATRICK GJERDE,
Plaintiff,

v.

CALIFORNIA STATE BAR, ESTHER ROGERS,
MARIA OROPEZA, DIANE CURTIS, MICHAEL
MAACKS, THE MCLATCHY COMPANY, DOES
1-100
Defendants.

Case No. 34-2012-00134070

~~PROPOSED~~ JUDGMENT OF
DISMISSAL AS TO DEFENDANTS
THE STATE BAR OF
CALIFORNIA, MARIA OROPEZA,
DIANE CURTIS, and MICHAEL
MAACKS

(Costs Posted - JUL 10 2013)

DATE: April 2, 2013
TIME: 9:00 a.m.
DEPT: 54
Hon. Raymond Cadei


¹ Erroneously sued as the "California State Bar."

[PROPOSED JUDGMENT OF DISMISSAL AS TO DEFENDANTS THE STATE BAR OF CALIFORNIA,
MARIA OROPEZA, DIANE CURTIS, and MICHAEL MAACKS

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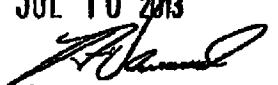
The special motion to strike pursuant to Code of Civil Procedure section 425.16 of
Defendants THE STATE BAR OF CALIFORNIA, ESTHER ROGERS, MARIA OROPEZA,
DIANE CURTIS, MICHAEL MAACKS, having granted, , this action is hereby DISMISSED AS
TO Defendants THE STATE BAR OF CALIFORNIA, ESTHER ROGERS, MARIA OROPEZA,
DIANE CURTIS, and MICHAEL MAACKS, and JUDGMENT in this matter is hereby entered
on behalf of Defendants THE STATE BAR OF CALIFORNIA, ESTHER ROGERS, MARIA
OROPEZA, DIANE CURTIS, and MICHAEL MAACKS. *Costs = \$3,857.⁰²*

DATED: 6-11-13


RAYMOND M. CADEI
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

SEAN PATRICK GJERDE, PLAINTIFF PRO SE

JUL 10 2013

A. WOODWARD
Memo of Costs Clerk

DATED



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

Danielle A. Lee
Assistant General Counsel

TEL (415) 338-2517 • FAX (415) 338-2321

April 2, 2013

Via Express Mail

Sean Gjerde
P.O. Box 236
Wilton, CA 95693

Re: *Gjerde, v. California State Bar, et al* Sacramento Superior Court Case No. 34-2012-00134070

Dear Mr. Gjerde:

Please find enclosed the proposed order after hearing granting State Bar Defendants' special motion to strike pursuant to Code of Civil Procedure 425.16 and proposed judgment of dismissal. Pursuant to California Rules of Court, rule 3.1312(a), please indicate your approval as to form, if you so approve, and return to me, or communicate your objections.

If I have not heard from you, after five days, I will submit the proposed order to the court.

Sincerely yours,

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

Danielle Lee
Assistant General Counsel

DAL/dal
Encl. (2)



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

Danielle A. Lee
Assistant General Counsel

TEL (415) 538-2517 • FAX (415) 538-2321

April 9, 2013

Via Certified Mail

Clerk of the Court
ATTN: Honorable Raymond Cadeci
Superior Court of California, Sacramento County
800 9th Street
Sacramento, CA 95814

Re: *Gjerde v. California State Bar et al*, No. 34-2012-00134070;
Proposed Judgment of Dismissal Regarding State Bar Defendants

To the Clerk of the Court:

Enclosed is a [Proposed] Judgment of Dismissal in the above-captioned matter. Pursuant to California Rules of Court, rule 3.1312(a), on April 02, 2013 I mailed Plaintiff Gjerde [in pro per] a copy of the [Proposed] Judgment of Dismissal. Also enclosed is a copy of the cover letter I sent to him at that time. I have not received a reply from Mr. Gjerde regarding any objections to the form of Judgment. Accordingly, I am transmitting the [Proposed] Judgment of Dismissal as to Defendants The State Bar of California, Maria Oropeza, Diane Curtis, and Michael Maacks for Judge Cadeci's signature.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Danielle Lee".

Danielle Lee
Assistant General Counsel.

BY FAX

DAL/tls
Enclosures

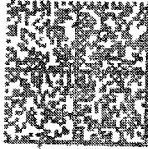
cc:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
CIVIL DIVISION
720 5th Street, Room 102
Sacramento, CA 95814-1311



RETURN SERVICE
REQUESTED

FIRST CLASS



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MAILED FROM ZIP CODE 95814

*Danielle A. Lee
130 Howard Street,
San Francisco, CA 94105*

RECEIVED
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OFFICE OF OGC

FEES WAIVED \$ 555 GOV CODE 68511.3

1 RONALD N. GOTTSCHALK
2 1160 S. Golden West Avenue, Suite #3
3 Arcadia, California 91007
4 TEL: (310) 476-3197
5 FAX: (626) 371-0459

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 05 2010

ALAN CARLSON, Clerk of the Court

BY E. VELOZ

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF ORANGE**

10 **30-2010**

11 **RONALD GOTTSCHALK,**

CASE NO. **00359752**

12 **Plaintiff,**

COMPLAINT FOR DAMAGES AND
OTHER RELIEF FOR:

13 **v.**

(1) CONSPIRACY TO DEFRAUD;
(2) CONSPIRACY TO BREACH
FIDUCIARY DUTIES;

14 **DENISE DANIELS, PUBLIC DEFENDER'S**
15 **OFFICE OF THE COUNTY OF LOS**
16 **ANGELES, THE COUNTY OF LOS**
17 **ANGELES, JOHN NOONEN, AND DOES 1-**
18 **300 INCLUSIVE,**

(3) CONSTRUCTIVE FRAUD;
(4) CONSPIRACY TO ENGAGE IN
MALICIOUS PROSECUTION;
(5) FAILURE TO SUPERVISE DEPUTY
PUBLIC DEFENDER DANIELS; AND
(6) FOR DISQUALIFICATION OF DENISE
DANIELS AND THE OFFICE OF THE
PUBLIC DEFENDER AND TO TURN
OVER TO PLAINTIFF THE BRADY
EVIDENCE AND OTHER MATERIALS
THAT WERE WITHHELD FROM
PLAINTIFF AND STANLEY AROUTY,
ESQ., BY DEFENDANTS.

19 **Defendants.**

JUDGE KIRK H. NAKAMURA
DEPT. C4

20
21
22
23
24 **Plaintiff RONALD GOTTSCHALK (hereinafter referred to as "Plaintiff") as and for**
25 **causes of action alleges as follows:**

26 **FIRST CAUSE OF ACTION**

27 **(Conspiracy to Commit Fraud and Deceit Against Plaintiff by Defendants Denise Daniels,**

28 **John Noonan and DOES 1-300)**

1 1. Plaintiff RONALD GOTTSCHALK resides in the County of Los Angeles, State of
2 California.

3 2. Defendant DENISE DANIELS, (hereinafter referred to as "Ms. Daniels") is
4 engaged in the practice of law, and was appointed by the court for Plaintiff for legal matters.
5 Plaintiff is informed and believes that Daniels resides in Orange County, California. Defendant
6 JOHN NOONEN is an unlicensed investigator, who is the chief complainant in the pending
7 criminal case against Plaintiff. Noonen resides in Orange County, California

8 3. Plaintiff does not know the true names and capacities of Defendants sued herein as
9 DOES 1 through 300, inclusive, and therefore sues DOE defendants by such fictitious names.
10 Plaintiff will amend the Complaint to allege their true names and capacities when ascertained.
11 Plaintiff is informed and believed and thereon alleges that each of the fictitiously named
12 Defendants is legally responsible in some manner for the occurrences herein alleged, and that
13 Plaintiff's losses as herein alleged were proximately caused by such wrongful acts.

14 4. At all times herein mentioned, each of the named Defendants and DOES 1 through
15 300 were the agent, representative, employee, and/or partner, and/or conspirator, and/or joint-
16 venturer of each of the remaining Defendants, and in doing the things herein alleged, was acting
17 within the purpose, scope, and course of such agency, partnership, and/or employment, and/or
18 conspiracy, and/or joint-venture.

19 5. On/or about October 12, 2009, Defendant Ms. Daniels and the Office of the Public
20 Defender of the County of Los Angeles was appointed to render legal services to Plaintiff. The
21 Public Defender's Office appointed Denise Daniels to represent Plaintiff for all matters until the
22 conclusion of the preliminary hearing.

23 6. Defendant, Denise Daniels, accepted the representation of Plaintiff with
24 knowledge that she was engaged in actual conflicts of interest adverse to the Plaintiff, including
25 seeking to subvert her fiduciary duties to Plaintiff in concert with adverse parties, including the
26 Defendant John Noonen, who was the Complainant against Plaintiff.

27 7. Defendant Ms. Daniels, as the attorney for Plaintiff, owed Plaintiff fiduciary duties
28 of loyalty, good faith, fidelity, integrity, and, by virtue of Plaintiff having placed his trust and
confidence in the fidelity and integrity of Defendant Daniels, a confidential relationship existed at

1 all times between Plaintiff, Defendant Daniels, and the Office of the Public Defender. By virtue
2 of said attorney/client relationship, Plaintiff placed his trust and confidence in Defendant Daniels
3 to make full, fair, and prompt disclosure of all matters within the scope and course of said
4 attorney/client relationship. Defendant Daniels despite having engaged in the aforesaid
5 attorney/client relationship, in violation of this fiduciary relationship and confidence, abused the
6 trust and confidence by agreeing to defraud Plaintiff and to breach her fiduciary duties to Plaintiff
7 by doing the acts hereinafter alleged in concert with DOES 1-300, without limitation. Defendant
8 Daniels also suppressed and concealed material facts while under a duty to disclose them or to
9 give information or facts that Defendant Daniels knew would likely mislead the Plaintiff for want
10 of the suppressed material facts. Defendant Daniels did the acts with intent to actually deceive
11 Plaintiff and to induce reliance by Plaintiff in the continuing fidelity of Defendant Daniels.

12 8. Defendant Daniels made material misrepresentations to induce Plaintiff to engage
13 Defendant Daniels and to rely on the continuing fidelity and loyalty of Defendant Daniels. Those
14 material misrepresentations are, without limitation, as follows:

- 15 a. Defendant Daniels would make full disclosure of all material facts in
16 connection with her representation of Plaintiff.
- 17 b. Defendant Daniels would act as a fiduciary to Plaintiff.
- 18 c. Defendant Daniels was not engaged in conflicts of interest.
- 19 d. Defendant Daniels would not materially assist parties adverse to Plaintiff.
- 20 e. Defendant Daniels would bring a bail reduction motion and speedily have
21 Plaintiff released from incarceration.
- 22 f. Defendant Daniels would have Plaintiff transferred to the County U.S.C.
23 Hospital for treatment of a traumatic head injury sustained during his incarceration.
- 24 g. Defendant Daniels would provide to Plaintiff the Brady exculpatory evidence
25 and other evidence turned over by the prosecution to Daniels and would seek additional
26 Brady evidence from the prosecutors prior to the preliminary hearing.
- 27 h. Defendant Daniels would obtain certified copies of all of the court files in
28 Plaintiff's underlying cases to be utilized at the preliminary hearing for the affirmative
defenses of Plaintiff, including the court files in the Los Angeles County and San Diego

1 County Superior Courts.

2 i. Defendant Daniels would not aid and abet parties adverse to Plaintiff.

3 j. Defendant Daniels stated that she had not received any Brady evidence or any
4 other documents from the prosecutor.

5 k. Defendant Daniels stated that she would obtain the tape recordings made
6 between Plaintiff and Stanley Arouty, Esq. that had been illegally recorded at the Twin
7 Towers Correctional Facility by the Sheriff's Department in violation of the
8 attorney/client privilege.

9 l. Defendant Daniels stated that she would obtain all of the audio and video
10 tapes of Plaintiff's incarceration, more than 60 tapes, that had been made by the Sheriff's
11 Department and that none of the tapes had been turned over to her.

12 9. Defendant Daniels actively concealed and suppressed the following material facts
13 from Plaintiff, without limitation:

14 a. Defendant Daniels was engaged in actual conflicts of interest adverse to
15 Plaintiff and was acting in concert with Complainant John Noonan and others.

16 b. Defendant Daniels intended to falsely charge Plaintiff with criminal contempt
17 to attempt to revoke his bail, acting in concert with John Noonan and others.

18 c. Defendant Daniels was breaching her fiduciary duties to Plaintiff.

19 d. Defendant Daniels was materially assisting adverse parties.

20 e. Defendant Daniels had received Brady exculpatory evidence and agreed not to
21 disclose it to Plaintiff.

22 f. Defendant Daniels agreed to withhold Brady exculpatory evidence that she had
23 received from the prosecution and did not turn over to Plaintiff's successor counsel.

24 g. Defendant Daniels agreed with DOES 1-300 and John Noonan to seek
25 collateral advantage over Plaintiff.

26 h. Defendant Daniels, John Noonan, and DOES 1-300 conspired to have
27 portions of the transcripts of court proceedings edited and withheld from Plaintiff to
28 obstruct the orderly administration of justice and requested the court reporter to edit and
withhold portions of the court transcripts.

1 i. Defendant Daniels received audio and video tapes from the prosecution that
2 constitute Brady evidence and did not turn them over to Plaintiff or his successor counsel
3 and falsely asserted that she did not receive any of those tapes when, in fact, she had.

4 j. Defendant Daniels received other Brady evidence and materials that she did
5 not turn over to successor counsel and intentionally withheld from Plaintiff's successor
6 counsel.

7 10. The representations made by Defendant Daniels to Plaintiff to induce Plaintiff to
8 engage Defendant Daniels on behalf of herself and the Office of the Public Defender and to rely
9 on the continuing fidelity and loyalty of Defendant Daniels were false. The true facts are, without
10 limitation, as follows:

11 a. Defendant Daniels did not make full disclosure of all material facts in
12 connection with her representation of Plaintiff.

13 b. Defendant Daniels did not act as a fiduciary to Plaintiff and instead breached
14 fiduciary duties to Plaintiff.

15 c. Defendant Daniels was engaged in actual conflicts of interest adverse to
16 Plaintiff.

17 d. Defendant Daniels did assist parties adverse to Plaintiff, including John
18 Noonan.

19 e. Defendant Daniels agreed not to disclose exculpatory evidence to Plaintiff and
20 successor counsel that was in the possession of Defendant Daniels and not to turn it over
21 to successor counsel.

22 f. Defendant Daniels agreed not to use the Brady exculpatory evidence in
23 connection with the preliminary hearing and to inform Plaintiff that no Brady material had
24 been turned over.

25 g. Defendant Daniels agreed not to disclose the existence of the Brady
26 exculpatory evidence to Plaintiff to be turned over by the prosecution and/or the State Bar
27 of California.

28 h. Defendant Daniels agreed not to subpoena material witnesses at the
preliminary hearing on behalf of Plaintiff and to limit the preliminary hearing in violation

1 of Plaintiff's constitutional rights.

2 i. Defendant Daniels agreed not to obtain the certified court files on behalf of
3 Plaintiff that would show that the elements of the criminal charges were subject to
4 affirmative defenses, including court orders and other court documents.

5 j. Defendant Daniels agreed to seek collateral advantage over the Plaintiff in
6 concert with DOES 1-300 and John Noonan to bring false criminal charges against
7 Plaintiff to seek to have the Plaintiff's bail revoked while acting as counsel for Plaintiff.

8 k. Defendant Daniels agreed not to enforce the court order to have Plaintiff
9 transferred to the County U.S.C. Hospital for treatment of a traumatic head injury
10 sustained while incarcerated.

11 l. Defendant Daniels agreed not to turn over exculpatory evidence to Plaintiff's
12 successor counsel.

13 m. Defendant Daniels agreed to maliciously bring false charges against Plaintiff
14 to seek a contempt citation against Plaintiff, even though she was representing Plaintiff at
15 the same time.

16 n. Defendant Daniels refused to allow appointed counsel from the Alternative
17 Public Defender's Office to represent Plaintiff in connection with Defendant's false
18 charges, as set forth in "m" above.

19 o. Defendant Daniels and the Office of the Public Defender had an actual conflict
20 of interest adverse to Plaintiff and could not actively assist the prosecution's chief
21 complainant, John Noonan, adverse to Plaintiff to gain collateral advantage over Plaintiff.

22 p. With knowledge of these actual conflicts of interest, Defendant Daniels refused
23 to permit Plaintiff to obtain the services of the alternative public defender or other
24 appointed counsel in connection with the criminal contempt proceedings and the pending
25 criminal proceedings and actively fought same to conceal and suppress her breaches of
26 fiduciary duties to Plaintiff.

27 q. Defendant Daniels agreed to keep Plaintiff incarcerated as long as possible in
28 concert with John Noonan and DOES 1-300 and not to seek a bail reduction hearing.

r. Defendant Daniels had agreed not to disclose the Brady exculpatory evidence

1 turned over by the prosecution to Plaintiff and his successor counsel.

2 s. Defendant Daniels intentionally withheld Brady exculpatory evidence and
3 other evidence from Plaintiff and his successor counsel.

4 t. Defendant Daniels agreed to suppress and conceal evidence of investigational
5 misconduct by Defendant John Noonon and others from Plaintiff.

6 u. Defendant Daniels and the Office of the Public Defender had a duty to disclose
7 to the court the actual conflicts of interest, so that the court would appoint replacement
8 counsel for Plaintiff, such as the alternative public defender or panel counsel, and to
9 represent Plaintiff in connection with the criminal contempt proceedings and all other
10 proceedings.

11 v. Defendant Daniels and Defendant John Noonon conspired with others to have
12 the court reporters edit transcripts and to withhold portions of transcripts that were
13 damaging to Daniels, Noonon, and others. The transcripts were edited at the direction of
14 Defendant Daniels, Noonon, and others adverse to Plaintiff to obstruct the administration
15 of justice.

16 w. Defendant Daniels agreed not to prove Plaintiff's affirmative defenses at the
17 preliminary hearing and to limit the preliminary hearing in violation of Plaintiff's
18 constitutional rights.

19 11. Plaintiff, at the time of these failures to disclose and at the time the suppression of
20 material facts occurred, was ignorant of the existence of material facts which Defendants
21 suppressed, failed to disclose, and misrepresented, as herein above set forth. If Plaintiff had been
22 aware of the facts not disclosed, suppressed, and misrepresented by Defendant Daniels, Plaintiff
23 would have received the alternative public defender and/or panel counsel, as a matter of law, and
24 an actual conflict declared by the court in favor of Plaintiff against the Office of the Public
25 Defender and Defendant Denise Daniels, Esq. from the outset of said representation.

26 12. Plaintiff placed confidence and reliance in Defendant Daniels, as a fiduciary, to
27 timely and completely inform Plaintiff of the full nature of Defendant Daniels' acts, conduct,
28 conflicts of interest, including acting in concert with John Noonon and others adverse to Plaintiff.

13. Defendant Daniels, John Noonon and DOES 1-300, and each of them, created and

1 formed among themselves a conspiracy and agreement to defraud, cheat, breach fiduciary duties,
2 and to otherwise harm and damage Plaintiff, as set forth herein. Each of the Defendants and
3 DOES 1-300 has, by performance of the acts alleged against them, taken an active part in the
4 furtherance of such conspiracy and agreement to defraud Plaintiff. In furtherance of the
5 conspiracy and agreement, Defendant Daniels withheld Brady exculpatory evidence and withheld
6 a portion of the Brady exculpatory evidence from Plaintiff's successor counsel at the direct
7 request of John Noonan and DOES 1-300. Defendant John Noonan withheld more than 6 ½
8 banker's boxes of Brady material and other exculpatory evidence from Plaintiff and his successor
9 counsel. Defendant Daniels knew from John Noonan and/or the prosecutors of Plaintiff of the
10 existence of this voluminous exculpatory evidence that was withheld by John Noonan and did not
11 disclose it to Plaintiff or his successor counsel, Mr. Arouty. Additionally, Defendant Daniels
12 sought to revoke Plaintiff's bail and unlawfully charged him with criminal contempt while she
13 was representing Plaintiff, in furtherance of the conspiracy with John Noonan and DOES 1-300.
14 Defendant Daniels also prevented Plaintiff from receiving the assistance of appointed counsel
15 other than Daniels to represent him in connection with the criminal contempt proceedings and the
16 misconduct of Ms. Daniels before the court adverse to her client, Plaintiff. The criminal contempt
17 charge brought by Defendant Daniels was dismissed with prejudice in favor of Plaintiff, who was
18 the prevailing party after a three day hearing. Defendant Daniels misrepresentations that Plaintiff
19 had withheld more than 3500 pages of documents from Defendant Daniels was shown to be false
20 and was maliciously invented by Defendant Daniels and others to gain collateral advantage over
21 Plaintiff, as more fully stated in this complaint. The prosecution conceded that they never turned
22 over to Daniels the alleged missing 3500 pages of documents that Daniels falsely claimed to Mr.
23 Arouty and others had been intentionally withheld by Plaintiff.

24 14. Defendant Daniels knew from the Brady material and other exculpatory evidence
25 that Plaintiff was innocent of the charges made against him by the prosecution and by Defendant
26 John Noonan as the sole complainant and withheld her services and that of the Office of the
27 Public Defender to benefit Defendant John Noonan, other adverse parties, and DOES 1-300
28 pursuant to a conspiracy and an agreement to defraud, cheat, and breach fiduciary duties to
Plaintiff. In furtherance of the conspiracy and agreement between Defendant Daniels, Defendant

1 John Noonan, and DOES 1-300, and each of them, Defendant Daniels did the afore mentioned
2 acts, including failing to apprise Plaintiff of the Brady material and other exculpatory evidence
3 that Daniels and the Office of the Public Defender had received and spoliated a portion of the
4 Brady material and exculpatory evidence, in breach of the fiduciary duties owed to Plaintiff and
5 failed to surrender same to Plaintiff's successor counsel, Mr. Arouty. Defendant Daniels
6 intentionally failed to prepare Plaintiff's defenses for the preliminary hearing, to prove Plaintiff's
7 multiple affirmative defenses, and to obtain a dismissal with prejudice of the counts against
8 Plaintiff. Defendant Daniels, acting in concert with Defendant John Noonan and DOES 1-300
9 intentionally withheld from the Plaintiff and from Mr. Arouty, Plaintiff's successor counsel, that
10 she had received multiple secretly recorded tapes from the District Attorney's Office to support
11 the innocence of Plaintiff and which constituted Brady evidence for use at the preliminary
12 hearing. Defendant Daniels, Defendant John Noonan, and DOES 1-300 further agreed, pursuant
13 to the conspiracy and agreement, not to disclose to Plaintiff and to Mr. Arouty the existence of the
14 secretly recorded tapes made by the District Attorney's Office and to restrict the length of the
15 preliminary hearing, the presentation of Plaintiff's defenses, the right of cross examination of
16 witnesses, and to obtain additional Brady evidence for use at the preliminary hearing to deprive
17 Plaintiff of his constitutional rights.

18 15. As a direct and proximate of the frauds herein above alleged, Plaintiff has incurred
19 damages in excess of \$10 million, but in an amount presently unascertainable. At trial, Plaintiff
20 will seek leave of court to amend his damage prayer herein to conform to proof. Plaintiff has
21 complied with his obligations, if any, under the California Governmental Tort Claims Act and
22 any other statutes applicable to the claims in this lawsuit.

23 16. Defendant Daniels, Defendant John Noonan, and DOES 1-300 have acted
24 willfully, with oppression, fraud, and malice and that they have participated in said plan, scheme,
25 artifice, and conspiracy with the intent to defraud Plaintiff, despite the fact that Defendant
26 Daniels, as set forth above, owed fiduciary duties to Plaintiff and Plaintiff is entitled to punitive
27 damages in an amount of not less than \$10 million against Defendant Daniels, Defendant John
28 Noonan, and DOES 1-300, jointly and severally. Defendants Daniels' and Noonan's actions and
DOES 1-300 were further egregious, oppressive, fraudulent, and malicious in that the afore

1 mentioned scheme of misrepresentations, outright falsehoods, concealment, and suppression of
2 material facts, spoliation and/or withholding of portions of court transcripts and Brady evidence
3 was practiced on Plaintiff, with the intent to defraud Plaintiff, to aid and abet Plaintiff's
4 adversaries for the pecuniary financial gains of Defendants and DOES 1-300. The afore
5 mentioned representation in conjunction with these concealments and suppression of material
6 facts by Defendants and DOES 1-300, in violation, subversion, and breach of Daniels fiduciary
7 duties to Plaintiff constitutes the obtaining of an advantage by said Defendants over the
8 beneficiary by concealment, in violation of Section 2228 of the California Civil Code.
9 Accordingly, Plaintiff is entitled to exemplary damages, as above alleged. Additionally, Plaintiff
10 seeks indemnification and to be held free and harmless by Defendants and DOES 1-300 for all of
11 Plaintiff's damages alleged under this complaint and in connection with his underlying cases
12 against the remaining complainants. Plaintiff further seeks an order that the withheld Brady
13 evidence that was in the possession of Defendant Daniels, the 6 ½ banker's boxes of Brady
14 evidence and other exculpatory evidence in the possession of John Noonan, as investigator, and
15 his supervisors, be turned over, at the expense of Defendants or their employers, to Plaintiff and
16 to Mr. Arouty, forthwith, together with the entire 8 banker's boxes of documents that they now
17 admit comprise a portion of the files pertaining to Plaintiff that Defendants have in their
18 possession or subject to their possession and were never turned over to Plaintiff or Mr. Arouty.

SECOND CAUSE OF ACTION

(Conspiracy to Breach Fiduciary Duties against Denise Daniels, John Noonan and DOES 1-300)

21 17. Plaintiff re-alleges and re-incorporates by reference as though fully set forth herein
22 paragraphs 1-16.

23 18. Defendant Denise Daniels, despite having been engaged by Plaintiff, and thereby
24 accepting the trust and confidence reposed in Defendant Daniels by Plaintiff with regard to his
25 legal matters, in violation of this fiduciary relationship of trust and confidence, abused the trust
26 and confidence of Plaintiff by doing the acts alleged in paragraphs 8, 9 and 10, herein, with intent
27 to induce reliance by Plaintiff in the integrity and continuing fidelity of Defendant Daniels and
28 the Office of the Public Defender.

1 19. Defendant Daniels failed to reveal material facts, suppressed the material facts,
2 and made material misrepresentations of fact as set forth in paragraphs 8, 9, and 10, which
3 Defendant Daniels knew were likely to, and in fact did, mislead Plaintiff concerning the
4 continuing loyalty, good faith, fidelity, integrity, and confidential relationship between Plaintiff,
5 Defendant Daniels, and the Office of the Public Defender.

6 20. The representations and failure to disclose material facts and the suppression of
7 material facts herein were made with the intent to induce Plaintiff to act in the manner alleged in
8 paragraphs 11 and 12, in reliance thereof.

9 21. As a proximate and direct result of the conspiracy to breach fiduciary duties
10 alleged herein against Defendant Daniels, acting in concert with Defendant John Noonan and
11 DOES 1-300, Plaintiff has incurred damages in excess of \$10 million, but in an amount presently
12 unascertainable. At trial Plaintiff will seek leave of court to amend the damage prayer to conform
13 to proof.

14 22. Said punitive damages as alleged in paragraph 16 are re-alleged and reincorporated
15 herein.

16 **THIRD CAUSE OF ACTION**

17 **(Constructive Fraud Against Defendant Denise Daniels)**

18 23. Plaintiff re-alleges and reincorporates herein by reference paragraphs 1-22, as if
19 fully set forth herein.

20 24. Defendant Daniels failed to reveal and suppressed the material facts alleged in
21 paragraphs 8, 9, and 10, which Defendant Daniels knew were likely to, and in fact did, mislead
22 Plaintiff concerning the continuing loyalty, good faith, fidelity, integrity, and confidential
23 relationship between Plaintiff and Defendant Daniels.

24 **FOURTH CAUSE OF ACTION**

25 **(Conspiracy to Engage in Malicious Prosecution)**

26 25. Plaintiff re-alleges and reincorporates herein by reference paragraphs 1-22, as if
27 set forth herein at length.

28 26. Defendant Daniels, Defendant John Noonan and DOES 1-300, and each of them,
created and formed among themselves a conspiracy and agreement to maliciously procure

1 criminal contempt proceedings against Plaintiff on/or about December 7-10, 2009. Each of the
2 Defendants and DOES 1-300 has, by performance of the acts alleged against them, taken an
3 active part in the furtherance of such conspiracy and agreement to maliciously prosecute Plaintiff
4 in connection with the criminal contempt proceeding.

5 27. The criminal contempt proceeding initiated by Defendant Daniels was terminated
6 in favor of the Plaintiff.

7 28. Defendant Daniels, Defendant John Noonon and DOES 1-300 acted without
8 probable cause and knew that the charges made by Defendant Daniels on behalf of herself and the
9 Office of the Public Defender were fabricated against Plaintiff. Defendant Daniels knew that
10 Defendant John Noonon had instituted prior criminal contempt proceedings and other proceedings
11 against Plaintiff that were maliciously brought without probable cause and were dismissed with
12 prejudice. Defendant Daniels knew that Defendant John Noonon was withholding from Plaintiff
13 and Mr. Arouty more than 6 ½ banker's boxes of Brady materials and other exculpatory evidence
14 and the secretly recorded tapes referred to above, and other tape recordings.

15 29. Defendant Denise Daniels, acting in concert with Defendant John Noonon and
16 DOES 1-300, procured such criminal contempt proceedings against Plaintiff while she was
17 representing Plaintiff as his attorney. Defendant Daniels and the Office of Public Defender
18 refused to declare a conflict of interest to allow Plaintiff to be represented at that criminal
19 contempt proceeding by appointed counsel other than Denise Daniels and the Office of the Public
20 Defender. Defendant Daniels acted against Plaintiff, in violation of her fiduciary duties to
21 Plaintiff, with knowledge that the charges brought by her were maliciously fabricated by
22 Defendant Daniels acting in concert with Defendant John Noonon and DOES 1-300.

23 30. The primary purpose of Defendant Daniels, Defendant John Noonon and DOES 1-
24 300 in initiating, continuing, and procuring the criminal proceedings was other than securing a
25 proper adjudication of a claim and was maliciously brought. Defendant Daniels, Defendant John
26 Noonon and DOES 1-300 intended to vex, annoy, or injure Plaintiff. Defendant Daniels,
27 Defendant John Noonon and DOES 1-300 committed the aforesaid acts for an improper purpose
28 and a wrongful motive to unjustly enrich and benefit themselves. Defendant Daniels, Defendant
John Noonon and DOES 1-300 had ill will towards Plaintiff and intended to cause Daniels to

1 breach her fiduciary and ethical obligations to Plaintiff. Defendant Daniels, Defendant John
2 Noonen and DOES 1-300 and the Office of Public Defender knew that Plaintiff was entitled to
3 appointed counsel to represent him at the criminal contempt hearing and refused to declare a
4 conflict of interest to obtain said appointed counsel in order to gain collateral damage over
5 Plaintiff. The Office of the Public Defender should have disqualified itself in connection with all
6 of the Criminal Court proceedings, including the criminal contempt proceeding, the preliminary
7 hearing, and all other matters relating to Plaintiff, and should now be deemed disqualified.

8 31. Plaintiff sustained special injury or damage because of the criminal proceedings,
9 including the loss of moneys due Plaintiff in pending litigation, when Plaintiff was required by
10 the Criminal Court to defend the criminal contempt proceedings in Los Angeles instead of
11 attending a hearing in San Diego, California, where the issues of the rights of Plaintiff and
12 Medicare were before the San Diego Superior Court. As a result of the criminal contempt
13 proceedings, Plaintiff was unable to prosecute his claims in the San Diego Superior Court for
14 sums in excess of \$75,000.00 and incurred other damages.

15 32. Plaintiff sustained special injury or damage because of the criminal proceedings
16 when Plaintiff was required by the Criminal Court to personally attend a 3 day Brady evidentiary
17 hearing in Los Angeles, pertaining to the withholding of Brady exculpatory evidence by John
18 Noonen and others, instead of attending a trial in Los Angeles in the State Bar Court, where the
19 rights of Plaintiff to practice law and to be found free of ethical violations were pending before
20 the State Bar Court. The proceedings in the State Bar Court and the Criminal Court were parallel
21 proceedings and were scheduled to take place at the same time by fraud and collusion in order to
22 attempt to default Plaintiff in the State Bar Court. As the result of the collusion and agreements
23 between Defendant Daniels, Defendant John Noonen and DOES 1-300, Plaintiff sustained special
24 injury and damages because of the 6 ½ boxes of Brady evidence and other exculpatory evidence
25 was not turned over to Plaintiff by Defendant John Noonen and Plaintiff was defaulted in the
26 State Bar Court proceedings when he was ordered by the Criminal Court to attend and participate
27 in the proceedings in the Criminal Court, together with Mr. Arouty, on the same day and time as
the State Bar Court proceeding.

28 33. As a direct and proximate result of the malicious criminal prosecutions herein

1 above alleged, Plaintiff has incurred damages in excess of \$10 million, but in an amount presently
2 unascertainable. At trial, Plaintiff will seek leave of court to amend his damage prayer herein to
3 conform to proof.

4 34. Defendant Daniels, Defendant John Noonan and DOES 1-300 have acted willfully,
5 with oppression, fraud, and malice in that they participated in said plan, scheme, artifice, and
6 conspiracy with the intent to procure criminal contempt proceedings and other criminal
7 proceedings by other than securing a proper adjudication of the claim and to afford Plaintiff his
8 constitutional rights to Brady evidence and to appointed counsel who was not conflicted. As a
9 result of Defendants' actions, Plaintiff is entitled to punitive damages against Defendant Daniels,
10 Defendant John Noonan and DOES 1-300 in an amount not less than \$10 million.

11 FIFTH CAUSE OF ACTION

12 **(Failure to Supervise Defendant Denise Daniels Against the Office of Public Defender and** 13 **the County of Los Angeles)**

14 35. Plaintiff re-alleges and reincorporates by reference as though fully set forth herein
15 paragraphs 1-34. The County of Los Angeles funds the Office of the Public Defender and
16 through such funding has substantial control over the activities of the Public Defender's office.

17 36. The Office of the Public Defender and the County of Los Angeles Board of
18 Supervisors knew that Plaintiff had a substantial claim against the County of Los Angeles arising
19 from his traumatic head injury sustained while he was incarcerated in the County correctional
20 facility and the failure of Defendant Denise Daniels to enforce the court order for transfer of
21 Plaintiff to the County U.S.C. Hospital for immediate treatment, thereby creating an actual
22 conflict of interest mandating that the Office of the Public Defender be disqualified for
23 representing Plaintiff in any criminal proceedings.

24 37. The Office of the Public Defender and the County Counsel's Office of Los
25 Angeles County also knew that Defendant Denise Daniels was ethically precluded from initiating,
26 continuing, or procuring criminal contempt proceedings against Plaintiff while she was
27 representing Plaintiff and that Plaintiff was entitled to a separate appointed counsel from the
28 Alternative Public Defender's Office and/or other appointed counsel instead of the Public
Defender's Office in defending Plaintiff. The Office of the Public Defender failed to supervise

1 Defendant Denise Daniels and to declare a conflict of interest, especially after Defendant Denise
2 Daniels became personally embroiled against Plaintiff, together with Defendant John Noonan and
3 DOES 1-300, to unjustly enrich themselves.

4 38. The Office of the Public Defender also knew that Defendant Denise Daniels was
5 ethically precluded from withholding Brady material and other exculpatory evidence from
6 Plaintiff and Mr. Arouty and from engaging in the other acts of misconduct alleged herein by
7 Defendant Daniels against Plaintiff. The Office of the Public Defender failed to supervise
8 Defendant Denise Daniels and to declare a conflict of interest, especially after the Office of the
9 Public Defender was placed on notice of the personal embroilment by Defendant Denise Daniels
10 against Plaintiff and her ineffective assistance of counsel. At the time, the Office of the Public
11 Defender knew or should have known that Defendant Daniels was withholding all of the Brady
12 material and other exculpatory evidence from Plaintiff and Mr. Arouty and was engaging in the
13 other acts of misconduct and breaches of fiduciary conduct alleged herein.

14 39. As a proximate and direct result of the failure by the Office of the Public Defender
15 and the County of Los Angeles to fund programs and to fund supervisors that would properly
16 supervise Defendant Denise Daniels in carrying out her fiduciary duties to Plaintiff, Plaintiff has
17 incurred damages in excess of \$10 million, but in an amount presently unascertainable. At trial,
18 Plaintiff will seek leave of court to amend the damage prayer according to proof. Plaintiff further
19 seeks the disqualification of Defendant Denise Daniels and the Office of the Public Defender
20 based on the actual conflicts of interest in concert with the County of Los Angeles and its
21 correctional facility adverse to Plaintiff, and as a result of the breaches of fiduciary duty by
22 Defendant Daniels acting in concert with others against Plaintiff, as alleged in this complaint.
23 Additionally, the court should order the County of Los Angeles to properly fund the Public
24 Defender's Office, including to supervise the conduct of deputy public defenders in connection
25 with the obtaining of Brady material and other exculpatory evidence from prosecutors and
26 investigators and to prevent the withholding of such Brady evidence from their clients without
probable cause, including, but not limited to, Plaintiff.

27 //
28 //

1 WHEREFORE, Plaintiff prays herein as follows:

2 1. For compensatory damages against Defendant Denise Daniels, Defendant John
3 Noonen and DOES 1-300 according to proof at trial with interest at the legal rate per
4 anum from the date of filing of this action.

5 2. For exemplary damages against Defendant Denise Daniels, Defendant John
6 Noonen and DOES 1-300.

7 3. For compensatory damages against the Office of the Public Defender and the
8 County of Los Angeles according to proof at trial.

9 4. The Office of the Public Defender and Defendant Denise Daniels be disqualified
10 from the representation of Plaintiff based on actual conflicts of interest and Defendant
11 Daniels' seeking to maliciously criminally prosecute Plaintiff while representing Plaintiff,
12 without probable cause and with intended malice.

13 5. For recovery of the withheld Brady materials and other exculpatory documents
14 that were in the possession of Defendant Denise Daniels and for which the Office of the
15 Public Defender and Defendant Denise Daniels have failed to turn over to Plaintiff and
16 Mr. Arouty and which constitutes exculpatory evidence, in favor of Plaintiff, that he is
17 entitled to as a matter of constitutional right.

18 6. For recovery of the withheld Brady materials and other exculpatory documents
19 that were in the possession of Defendant John Noonan, which comprise more than 6 ½
20 banker's boxes of documents and which constitutes exculpatory evidence, in favor of
21 Plaintiff, that he is entitled to as a matter of constitutional right.

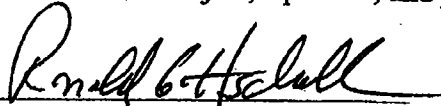
22 7. That the County of Los Angeles Board of Supervisors be ordered to fund the
23 Office of the Public Defender for programs to properly supervise deputy public defenders,
24 including Defendant Denise Daniels, to prevent the breach of fiduciary duties to their
25 clients, as occurred to Plaintiff, including by the withholding of Brady evidence from
26 Plaintiff and Mr. Arouty and to unlawfully seek the criminal prosecution of Plaintiff
27 without probable cause, in violation of their ethical duties to their clients, and without
28 obtaining the consent of the managing attorneys of the Public Defender's Office and to
 have appointed counsel represent Plaintiff adverse to the Public Defender's Office and the

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prosecutor in connection with the criminal contempt, the preliminary hearing, and all other proceedings.

8. For such other and further relief as the court deems just, equitable, and proper.

Dated: April 5, 2010



Ronald Gottschalk, Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 W. Civic Center DRIVE MAILING ADDRESS: P.O. Box 22014 CITY AND ZIP CODE: Santa Ana 92702 BRANCH NAME: Central Justice Center	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">FILED</p> <p style="text-align: center;"><i>SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE</i></p> <p style="text-align: center;">Aug 22, 2011</p> <p style="text-align: center;"><small>ALAN CARLSON, Clerk of the Court By: Chris White, Deputy</small></p>
PLAINTIFF: Ronald Gottschalk	
DEFENDANT: The Los Angeles County Board of Supervisors et.al.	
SHORT TITLE: GOTTSCHALK VS. DENISE DANIELS, PUBLIC DEFENDERS OFFICE OF THE COUNTY OF LOS ANGELES	CASE NUMBER: 30-2010-00359752-CU-NP-CJC
NOTICE OF DISMISSAL	

Date: 08/19/2011

Judicial Officer: Kirk Nakamura

On the Court's own motion, case dismissed pursuant to the Superior Court of California, County of Orange local rules.

Jury fees may be forfeited within 20 days of this notice. Section 631.3 of the California Code of Civil Procedure.

Clerk of the Court

Dated: 08/22/2011

By Chris White Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center DRIVE
Santa Ana 92702

SHORT TITLE: GOTTSCHALK VS. DENISE DANIELS, PUBLIC DEFENDERS OFFICE OF THE COUNTY OF LOS ANGELES

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
30-2010-00359752-CU-NP-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above NOTICE OF DISMISSAL has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practices and addressed as indicated below. The certification occurred at Santa Ana, California on 08/22/2011. The mailing occurred at Sacramento, California on 08/23/2011.

Clerk of the Court, by: Chris White, Deputy

RONALD GOTTSCHALK
1160 S GOLDEN WEST AVENUE
ARCADIA, CA 91007

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
BRADFORD E. HENSCHEL, IN PRO PER

965 NORTH VIGNES STREET, SUITE #11

LOS ANGELES, CALIFORNIA 90012

TELEPHONE NO: (310) 963-2537 FAX NO. (Optional): (323) 298-0619

E-MAIL ADDRESS (Optional): crusaderjd@yahoo.com

ATTORNEY FOR (Name): Plaintiff in Pro Per

FILED FOR COURT USE ONLY
LOS ANGELES SUPERIOR COURT

DEC 04 2007

JOHN A. CLARKE, CLERK

M. Brumby
BY M. BRISONG, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

STREET ADDRESS: 111 N. HILL STREET

MAILING ADDRESS:

CITY AND ZIP CODE: LOS ANGELES, CALIFORNIA 90012

BRANCH NAME: CENTRAL JUDICIAL DISTRICT

PLAINTIFF: BRADFORD E. HENSCHEL, J.D.

DEFENDANT: STATE BAR OF CALIFORNIA, DONALD F. MILES, Joann M. Remke, Judith A. Epstein, Madge S. Watai, Richard A. Honn, Pat E. McElroy, Richard A. Plate, Lucy Armendari, Scott J. Drexel,
X DOES IT TO 100

COMPLAINT—Personal Injury, Property Damage, Wrongful Death
AMENDED (Number):

Type (check all that apply):

- MOTOR VEHICLE
- Property Damage
- Personal Injury
- OTHER (specify): CCP 1060
- Wrongful Death
- Other Damages (specify):

Assigned to Judge *John P. Shook*

D53

Jurisdiction (check all that apply):

- ACTION IS A LIMITED CIVIL CASE
- Amount demanded does not exceed \$10,000
- exceeds \$10,000, but does not exceed \$25,000
- ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)
- ACTION IS RECLASSIFIED by this amended complaint
- from limited to unlimited
- from unlimited to limited

CASE NUMBER: BC379051

07K12755

1. Plaintiff (name or names): BRADFORD E. HENSCHEL, JD

alleges causes of action against defendant (name or names): STATE BAR OF CALIFORNIA, Donald F. Miles, Scott J. Drexel, Joann M. Remke, Judith A. Epstein, Madge Watai, Richard Honn et.al.

2. This pleading, including attachments and exhibits, consists of the following number of pages:

3. Each plaintiff named above is a competent adult

a. except plaintiff (name):

- (1) a corporation qualified to do business in California
- (2) an unincorporated entity (describe):
- (3) a public entity (describe):
- (4) a minor an adult
 - (a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) other (specify):
- (5) other (specify):

JUL 20 ENT'D *le*

b. except plaintiff (name):

- (1) a corporation qualified to do business in California
- (2) an unincorporated entity (describe):
- (3) a public entity (describe):
- (4) a minor an adult
 - (a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) other (specify):
- (5) other (specify):

Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE: HENSCHEL vs. THE STATE BAR OF CALIFORNIA.

CASE NUMBER:

4. Plaintiff (name):
 is doing business under the fictitious name (specify):

 and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person
 a. except defendant (name): THE STATE BAR OF CALIFORNIA

- (1) a business organization, form unknown
- (2) a corporation
- (3) an unincorporated entity (describe):

- (4) a public entity (describe): A PUBLIC CORPORATION IN THE JUDICIAL BRANCH
- (5) other (specify):

- (1) a business organization, form unknown
- (2) a corporation
- (3) an unincorporated entity (describe):

- (4) a public entity (describe):
- (5) other (specify):

b. except defendant (name):

- (1) a business organization, form unknown
- (2) a corporation
- (3) an unincorporated entity (describe):

- (4) a public entity (describe):
- (5) other (specify):

d. except defendant (name):

- (1) a business organization, form unknown
- (2) a corporation
- (3) an unincorporated entity (describe):

- (4) a public entity (describe):
- (5) other (specify):

Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. Doe defendants (specify Doe numbers): _____ were the agents or employees of other named defendants and acted within the scope of that agency or employment.

b. Doe defendants (specify Doe numbers): _____ are persons whose capacities are unknown to plaintiff.

7. Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

- a. at least one defendant now resides in its jurisdictional area.
- b. the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
- c. injury to person or damage to personal property occurred in its jurisdictional area.
- d. other (specify):

9. Plaintiff is required to comply with a claims statute, and

- a. has complied with applicable claims statutes, or
- b. is excused from complying because (specify): THE CAUSE OF ACTION IS A DECLARATORY JUDGEMENT INVOLVING SUBORDINATE JUDICIAL OFFICERS ACTING IN EXCESS OF THEIR SUBJECT MATTER AND IN PERSONAM JURISDICTION IN AN EXISTING CONTROVERSY - SEE CCP 1060 and Filarsky v. Superior Court (City of Manhattan Beach) (2002) 28 Cal.4th 419 [121 Cal.Rptr.2d 844; 49 P.3d 194]

SHORT TITLE: HENSCHEL vs. THE STATE BAR OF CALIFORNIA

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. Motor Vehicle
- b. General Negligence
- c. Intentional Tort
- d. Products Liability
- e. Premises Liability
- f. Other (specify): REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTION OF SUBORDINATE JUDICIAL OFFICERS ACTING IN EXCESS OF THEIR SUBJECT MATTER AND IN PERSONAM JURISDICTION,

11. Plaintiff has suffered

- a. wage loss
- b. loss of use of property
- c. hospital and medical expenses
- d. general damage
- e. property damage
- f. loss of earning capacity
- g. other damage (specify): INJURY TO GUARANTEED STATE CONSTITUTIONAL RIGHTS UNDER B&P 6079.4, 6085(e), Article VI sec. 9, 21-22, Subordinate Judicial Officers acting in excess of their Subject Matter and In personam jurisdiction, which can result in a money judgment enforced by the Los Angeles Superior Court. B&P 6086.10(e); Benninghoff v. State Bar 136 CA4th 61; Foosadas 130 CA4th 649

12. The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. listed in Attachment 12.
- b. as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) compensatory damages
 - (2) punitive damages
- The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):
- (1) according to proof
 - (2) Other proper and just relief.

15. The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: JULY 19, 2007

BRADFORD E. HENSCHEL, J.D., PRO PER
(TYPE OR PRINT NAME)

B.E. Henschel
(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: HENSCHEL vs. STATE BAR, DONALD F. MILES,
et al.

CASE NUMBER:

FIRST CAUSE OF ACTION - DECLARATORY JUDGMENT CCP 1060

1. There is an actual controversy involving justiciable questions relating to the rights and obligations between the parties.
2. Plaintiff is suspended from membership in the State Bar of California and has not been a member of the State Bar since January of 2003.
3. Defendants are acting in excess of both their subject matter jurisdiction and their in personam jurisdiction.
4. CCP 1060 allows plaintiff to obtain a declaration of "...rights or duties with respect to another...in cases of an actual controversy relating to the legal rights and duties of the respective parties...[to] bring an original action...in the superior court...and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time." CCP 1060
5. The plaintiff has a fundamental Constitutional right to an impartial Judicial officer who is not a member of the State Bar without the consent of the plaintiff. Art. VI Sec. 9, 17, 21-22; B&P 6079.4, 6085(e).
6. The State Bar, in case number 06-O-13322, which they joined with case number 06-O-13322 has refused and denied the parties to those cases, which includes the plaintiff, the California Constitutional right to a Judicial officer who is not a State Bar member, where the State Bar is a party and pays the salaries of the subordinate Judicial officers and where the plaintiff did not consent to the use of Subordinate Judicial Officers.
7. The State Bar Act does not authorize or give jurisdiction to the State Bar over matters in Federal Court. B&P 6000 et. seq.; Benninghoff, supra at 74., Sperry v. Florida, (1963) 373 U.S. 379.

(Required for verified pleading) The items on this page stated on information and belief (specify item numbers, not line numbers):

This page may be used with any Judicial Council form or any other paper filed with this court.

Page 4

8. Plaintiff is not a member of the State Bar of California, but the defendants assert in legal pleadings in case number 06-O-13322 that plaintiff is a member of the State Bar and has the duties of an Attorney at Law under B&P 6086(a), 6106 and 6126(b) by plaintiff saying he is a member of the State Bar of California.

9. Plaintiff requests the following declaratory judgment to issue from the Superior Court to the defendants:

A. The plaintiff has a fundamental constitutional right to have, and the defendants have a duty to provide plaintiff, a Judicial Officer who is neither a member of the State Bar, nor one who is paid by the State Bar, nor one who is not a subordinate judicial officer acting without the consent of the plaintiff pursuant to B&P 6085(e) and California Constitution Art. VI sec. 9, 17, 21-22; Foosadas v. Sup. Ct., (2005) 130 CA4th 649, 652, 654.

B. There are only two types of members of the State Bar, (1) Active or (2) Inactive. Since plaintiff is neither an active nor inactive member of the State Bar plaintiff is not a member of the State Bar. B&P 6003-6005; Rule 9.5(1) Calif. Rules of Court.

C. The State Bar Court does not have jurisdiction over parties who are not members of the State Bar of California or who are not Lawyers as defined by section 950 of the California evidence code.

D. The State Bar by alleging in legal pleadings that plaintiff was a member of the State Bar of California, without the plaintiff being either an active or inactive member of the State Bar made a deceptive statement to the State Bar Court and the plaintiff, as a party in that action as deception is used in B&P 6128.

(Required for verified pleading) The items on this page stated on information and belief (specify item numbers, not line numbers):

This page may be used with any Judicial Council form or any other paper filed with this court. Page 5

TITLE: HENSCHEL vs. STATE BAR & MILES, et al.

CASE NUMBER:

E. STATE BAR COURT JUDGES, WHICH ARE DEFENDANTS IN THIS CASE, ARE ALL MEMBERS OF THE STATE BAR, ARE REFEREES AND ARE THEREFORE SUBORDINATE JUDICIAL OFFICERS SUBJECT TO ART. VI, SEC. 22.

F. Referees are subordinate Judicial Officers. [Rule 10.703(b)(1); Art. I §22; Canon 6 of the Code of Judicial ethics "A. Anyone who is an officer of the State Judicial system and who performs judicial functions, including...referee...judge of the State Bar Court...is a judge...[who] shall comply with this Code...".

G. State Bar Court Judges are referees. [B&P sec. 6079(c) - "...the presiding referee of the State Bar Court...shall assign a referee to hear the matter. The referee shall be compensated for his or her services.]"

H. That the State Bar cannot induce the breach of, or use the breach of an Attorneys duty of confidentiality or the Attorney-client privilege as evidence in State Bar Court. Rule 1-120 of the Rules of Prof. Conduct.

I. State Bar Court Judges, as members of the State Bar, are subject to discipline by the State Bar for violations of the Rules of Professional conduct. B&P 6076, 6077, 6078, Rule 1-110 of the Rules of Prof. Conduct; Rule 956 of the California Rules of Court.

J. That the State Bar of California is a party in every case heard by State Bar Court Judges, as well as plaintiff's case, 06-0-13322.

K. That the State Bar of California pays the State Bar Court Judges from the State Bar's general fund.

L. That the cost money ordered by State Bar Court judges goes into the State Bar's general fund.

M. Judges cannot have any financial interest in a case. CCP 170.1(a)(3)

(Required for verified pleading) The items on this page stated on information and belief (specify item numbers, not line numbers):

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Page 6

N. Whether the State Bar violated plaintiff's rights and deceived both the State Bar court and plaintiff by writing, and submitting false declarations to Bar Court Judge Talcott in case number 04-V-12725?

O. Whether State Bar Court Judge and defendant Madge S. Watai violated the Canons of judicial conduct, Rules of court, and CCP 170.1 by hearing an appeal of a matter in which she was the hearing judge in case number 04-V-12725? Canon 3E(f) of the Calif. Code of Judicial Ethics.

P. Whether the State Bar induced Gregory L. Rickard to reveal confidential client information without the client's consent?

Q. Whether in the underlying matter, case number 06-O-13322 and People v. Devault, Devault's former Attorney provided privileged and confidential information without Mr. Devault's consent, to the State Bar of California?

R. Whether Gregory L. Rickard was Lamont Devault's Attorney for the Direct appeal and refused to draft or file a writ because the Appeals Court that appointed him decides if appointed attorneys will get paid and when they will not get paid for drafting a writ during appointed representation?

S. Whether Gregory L. Rickard filed a false bar complaint to interfere with his former client's representation by Frank H. Williams, Jr. in Federal Court after Rickard learned his ineffectiveness might be alleged in a Writ?

T. Whether Gregory L. Rickard knew that Plaintiff was suspended and working for, and under the direction and supervision of Attorney Frank H. Williams in the Devault Federal Writ, as Attorney Williams paralegal?

U. Whether Paralegals are legally authorized to perform substantial legal work under the direction and supervision of an Attorney? B&P 6450-6456.

(Required for verified pleading) The items on this page stated on information and belief (specify item numbers, not line numbers).

This page may be used with any Judicial Council form or any other paper filed with this court.

Page 7

TITLE: HENSCHEL vs. STATE BAR, DONALD F. MILES, et

CASE NUMBER:

V. Whether B&P sec. 6086.10 and Rule 280 of the Rules of Procedure of the State Bar, which authorizes State Bar Court Judges to impose disciplinary costs as a court enforceable judgement, without a hearing to determine the costs, without the consent of both parties in violation of B&P 6085(e) and California Constitution Art. VI sec. 21-22, are unconstitutional denials of those rights, due process rights under both State and Federal Constitutions?

W. Whether the State Bar, a party, improperly influences, the State Bar Judge defendants, who must follow all State Bar Procedure Rules?

X. Since discipline proceedings are not criminal, whether the State Bar Court has jurisdiction, constitutionally to determine criminal liability without a prior arrest, prior criminal proceeding, prior criminal conviction, or even with a prior acquittal, pursuant to B&P 6068 and 6126(b), and without reference to B&P 6101, 6102, and/or 6103? [Ring v. State Bar, (1933) 218 Cal. 747; (Schullman v. State Bar, (1973) 10 Cal.3d 526. Neblett v. State Bar, (1941) 17 Cal.2d 77.]

Y. Whether B&P 6086.10 authorizing a State Bar Court cost assessment is a judicial function which becomes an enforceable judgment in a Superior Court?

Z. Whether the California Supreme Court has declared that State Bar Court Judges exercise no judicial power? In re Rose, (2000)22 C4th 430, 448.

AA. Whether defendant State Bar Court Judges perform judicial functions? CCP 170.1; Rule 106 of the Rules of Procedure of the State Bar; Canon 6(A).

BB. Whether defendant State Bar Court Judges are unconstitutionally exercising Judicial power by the authority of B&P 6086.10, which makes their cost assessments enforceable judgments in a Superior Court? Rose, Supra 448

(Required for verified pleading) The items on this page stated on information and belief (specify item numbers, not line numbers):

This page may be used with any Judicial Council form or any other paper filed with this court.

Page 8

PERSON OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 BRADFORD E. HENSCHEL, IN PRO PER
 NORTH VIGNES STREET, SUITE #11
 LOS ANGELES, CALIFORNIA 90012
 TELEPHONE NO.: (310) 963-2537 FAX NO. (Optional): (323) 298-0619
 E-MAIL ADDRESS (Optional): crusaderjd@yahoo.com
 ATTORNEY FOR (Name): Plaintiff in Pro Per

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
 STREET ADDRESS: 111 N. HILL STREET
 MAILING ADDRESS:
 CITY AND ZIP CODE: LOS ANGELES, CALIFORNIA 90012
 BRANCH NAME: CENTRAL JUDICIAL DISTRICT

PLAINTIFF/PETITIONER: BRADFORD E. HENSCHEL, JD
 DEFENDANT/RESPONDENT: State Bar of California, Donald Miles

CASE NUMBER:

Ref. No. or File No.:

PROOF OF SERVICE OF SUMMONS

(Separate proof of service is required for each party served.)

At the time of service I was at least 18 years of age and not a party to this action.

I served copies of:

- a. summons
- b. complaint
- c. Alternative Dispute Resolution (ADR) package
- d. Civil Case Cover Sheet (served in complex cases only)
- e. cross-complaint
- f. other (specify documents):

3. a. Party served (specify name of party as shown on documents served):

b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):

4. Address where the party was served:

5. I served the party (check proper box)

- a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): _____ (2) at (time): _____
- b. **by substituted service.** On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3): _____

- (1) **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (2) **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (3) **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or a declaration of mailing is attached.
- (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: BRADFORD E. HENSCHL, JD

CASE NUMBER:

DEFENDANT/RESPONDENT: State Bar of California, Donald F. Miles

by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

- (1) on (date): _____ (2) from (city): _____
- (3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant:
- b. as the person sued under the fictitious name of (specify):
- c. as occupant.
- d. On behalf of (specify):

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: _____ |

7. Person who served papers

- a. Name:
- b. Address:
- c. Telephone number:
- d. The fee for service was: \$
- e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) registered California process server:
 - (i) owner employee independent contractor.
 - (ii) Registration No.:
 - (iii) County:

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)

4/25/2013 10:00 AM



**THE STATE BAR
OF CALIFORNIA**

OFFICE OF GENERAL COUNSEL

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

TELEPHONE: (415) 538-2339 / FAX: (415) 538-2321

July 5, 2007

Bradford E. Henschel
P.O. Box 86976
Los Angeles, CA 90086-0976

RE: **Bradford E. Henschel Membership Record**

Dear Mr. Henschel:

Your letter dated June 27, 2007 and addressed to the Director, State Bar Membership Office, has been referred to this office for response.

There are two classes of membership: active and inactive. From a review of your record, you are a member of the State Bar of California. However, you are not entitled to practice law because of your disciplinary suspension.

Individuals who are not members of the State Bar include those who were never admitted to the State Bar of California, and attorneys who resigned from the practice of law or who were disbarred.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Richard J. Zanassi
Chief Assistant General Counsel

cc: **Kath Lambert**
Senior Administrative Assistant, Member Services

EX-141

FILED

JUL 18 2007

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

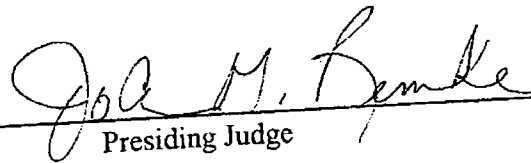
REVIEW DEPARTMENT OF THE STATE BAR COURT

Matter of
DORIS E. HENSCH,
Member of the State Bar.

06-O-13322

ORDER

No valid basis having been shown, respondent's motion to disqualify Judge Madge Watai on July 3, 2007, is denied. In reaching this determination, judicial notice was taken of official State Bar Court records in case number 94-O-13116, including the amended order granting motion to continue filed September 16, 1996. Respondent's additional requests for judicial notice are denied.


Presiding Judge

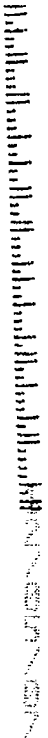


19408/SCC
 STATE BAR COURT OF CALIFORNIA
 1149 South Hill Street, 5th Floor
 Los Angeles, California 90015-2299

PERSONAL AND CONFIDENTIAL

Bradford E. Henschel
 P. O. Box 86976
 Los Angeles, CA 90086-0976

900860976 B021



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): BRADFORD E. HENSCHEL, IN PRO PER 965 NORTH VIGNES STREET, SUITE #11 LOS ANGELES, CALIFORNIA 90012 TELEPHONE NO.: (310) 963-2537 FAX NO.: (323) 298-0619 ATTORNEY FOR (Name): <u>Plaintiff in Pro Per</u>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. HILL STREET MAILING ADDRESS: CITY AND ZIP CODE: LOS ANGELES, CALIFORNIA 90012 BRANCH NAME: CENTRAL JUDICIAL DISTRICT	
CASE NAME: BRADFORD E. HENSCHEL vs. STATE BAR OF CALIFORNIA, DONALD F. MILES, et al.	
CIVIL CASE COVER SHEET Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input checked="" type="checkbox"/>	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) Non-PI/PD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input checked="" type="checkbox"/> Other petition (not specified above) (43)
--	--	---

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): (1)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: JULY 19, 2007

BRADFORD E. HENSCHEL, IN PRO PER (TYPE OR PRINT NAME) ▶ B. E. Henschel (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (not asbestos or toxic/environmental) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
- Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (not medical or legal)
- Other Non-PI/PD/WD Tort (35)
- Employment
 - Wrongful Termination (36)
 - Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
- Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (not provisionally complex) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (non-domestic relations)
 - Sister State Judgment
 - Administrative Agency Award (not unpaid taxes)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (not specified above) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (non-harassment)
 - Mechanics Lien
- Other Commercial Complaint Case (non-tort/non-complex)
- Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (not specified above) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief from Late Claim
 - Other Civil Petition

SHORT TITLE: HENSchel vs State Bar et al.	CASE NUMBER
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 2 HOURS / DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Class Actions must be filed in the Stanley Mosk Courthouse, Central District. 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). 3. Location where cause of action arose. 4. Location where bodily injury, death or damage occurred. 5. Location where performance required or defendant resides. | <ol style="list-style-type: none"> 6. Location of property or permanently garaged vehicle. 7. Location where petitioner resides. 8. Location wherein defendant/respondent functions wholly. 9. Location where one or more of the parties reside. 10. Location of Labor Commissioner Office. |
|---|--|

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
Non-Personal Injury/Property	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review Unlawful Detainer

SHORT TITLE:	CASE NUMBER
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> * A6017 Legal Malpractice <input type="checkbox"/> * A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> * A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	•• <input checked="" type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) •• <input checked="" type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> * A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: HENSCHEL v. State Bar et. al	CASE NUMBER
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Judicial Review (Cont'd.)

 Provisionally Complex Litigation

 Enforcement of Judgment

 Miscellaneous Civil Complaints

 Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input checked="" type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: <u>HENSCHEL V State Bar et al.</u>	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: <u>1149 S. Hill St.</u>
<input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input checked="" type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		
CITY: <u>L.A.</u>	STATE: <u>CA</u>	ZIP CODE: <u>90015-2299</u>

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Central courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: July 19, 2007

B. S. Henschel
(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LASC Approved CIV 109 (Rev. 01/07).
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - LIMITED CIVIL CASE

BC 379051

Case Number _____
Your case is assigned for all purposes to the judicial officer indicated below.

07K12755

ASSIGNED JUDGE	DEPT.	ROOM
Hon. Carol Boas Goodson	75	736
Hon. Ray L. Hart	10	631
Hon. Richard E. Rico	76	734
Hon. Barbara A. Meiers	12	636
Hon. Yvette M. Palazuelos	73	733
Hon. Rex Heeseaman	81	635
Hon. Marlene Kristovich	80	633

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____

JOHN A. CLARKE, Executive Officer/Clerk

By _____, Deputy Clerk

INSTRUCTIONS FOR HANDLING LIMITED CIVIL CASES

The following critical provisions, as applicable in the Central District are cited for your information.

PRIORITY OVER OTHER RULES: The priority of Chapter Seven of the LASC Local Rules over other inconsistent Local Rules is set forth in Rule 7.2(c) thereof.

CHALLENGE TO ASSIGNED JUDGE: To the extent set forth therein, Government Code section 68616(i) and Local Rule 7.5 control the timing of Code of Civil Procedure section 170.6 challenges.

TIME STANDARDS:

The time standards may be extended by the court only upon a showing of good cause. (Cal. Rules of Court, rule 3.110).
Failure to meet time standards may result in the imposition of sanctions. (Local Rule 7.13).

Cases assigned to the Individual Calendar Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served and the proof of service filed within 60 days after filing of the complaint.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints against parties new to the action must be served and the proof of service filed within 30 days after the filing of the cross-complaint. A cross-complaint against a party who has already appeared in the action must be accompanied by proof of service of the cross-complaint at the time it is filed. (Code Civ. Proc., § 428.50).

CASE MANAGEMENT REVIEW: A Case Management Review will be scheduled by the Court for no later than 180 days after the filing of the complaint. (Local Rule 7.9(a)(2)).

Pursuant to California Rules of Court, rules 3.720-3.730, no later than 15 calendar days before the date set for Case Management Review/Conference, each party (individually or jointly) must file and serve a Case Management Statement using the mandatory Judicial Council form No. CM-110.

DEFAULTS (Chapter Nine, LASC Local Rules): If a responsive pleading is not served within the time to respond and no extension of time has been granted, the plaintiff must file a Request for Entry of Default within 10 days after the time for service has elapsed. Failure to timely file the Request for Entry of Default may result in an Order to Show Cause being issued as to why sanctions should not be imposed. The plaintiff must request default judgment on the defaulting defendants within 40 days after entry of default.

NOTICED MOTIONS: All regularly noticed motions will be calendared through the assigned department. Each motion date must be separately reserved and filed with appropriate fees for each motion. Motions for Summary Judgment must be identified at the time of reservation. Tentative rulings, if available, may be obtained by calling the appropriate courtroom after 3:00 p.m. on the day before the hearing. All motions should be filed in Room 118.

EX PARTE MATTERS: All ex parte applications should be noticed for the courtroom. Ex parte appearance applications for direct set courtrooms must be filed by 8:30 a.m. daily in Room 102 on the day of the hearing. Ex parte appearance matters set in Department 94 (i.e., all unlawful detainers where possession is still at issue) must be noticed for Department 94, but filed at Counter 9, Room 118, no later than 1:00 p.m. on the day of the hearing.

UNINSURED MOTORISTS CLAIMS: Delay Reduction Rules do not apply to uninsured motorist claims. The plaintiff must file a Notice of Designation with the Court, identifying the case as an uninsured motorist claim under Insurance Code section 11580.2.

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

STATE BAR OF CALIFORNIA, DONALD F. MILES, Joann M. Remke, Judith A. Epstein, Madge S. Watai, Richard A. Honn, Patrice E. McElroy, Richard A. Platel, Lucy Armendariz, Scott J. Drexel,

AND DOES 1 - 100

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRADFORD E. HENSCHEL, J.D.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
JUL 10 2005
BY NANCY A. MARIKZ, DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

LOS ANGELES SUPERIOR COURT
111 N. HILL STREET

CASE NUMBER:
(Número del Caso):

BC379051

07K12755

LOS ANGELES, CALIFORNIA 90012
CENTRAL JUDICIAL DISTRICT

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

BRADFORD E. HENSCHEL, IN PRO PER

(323) 298-0619

965 NORTH VIGNES STREET, SUITE #11
LOS ANGELES, CALIFORNIA 90012

DATE:

(Fecha)

Clerk, by _____

(Secretario)

Deputy _____

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date):

Page 1 of 1

1 MARIE M. MOFFAT (62167)
2 LAWRENCE C. YEE (84208)
3 TRACEY L. McCORMICK (172667)
4 **OFFICE OF GENERAL COUNSEL**
5 **THE STATE BAR OF CALIFORNIA**
6 180 Howard Street
7 San Francisco, CA 94105-1639
8 Tel: (415) 538-2000
9 Fax: (415) 538-2321
10 E-mail: tracey.mccormick@calbar.ca.gov

11 Attorneys for Defendants
12 THE STATE BAR OF CALIFORNIA,
13 DONALD F. MILES, JOANN M. REMKE,
14 JUDITH A. EPSTEIN, MADGE S. WATAI,
15 RICHARD A. HONN, PATRICE E.
16 McELROY, RICHARD A. PATEL, LUCY
17 ARMENDARIZ, SCOTT J. DREXEL

ORIGINAL FILED
Dept. 53
JAN 17 2008
LOS ANGELES
SUPERIOR COURT

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

14 BRADFORD E. HENSCHEL,

15 Plaintiff,

16 v.

17 THE STATE BAR OF CALIFORNIA,
18 DONALD F. MILES, JOANN M. REMKE,
19 JUDITH A. EPSTEIN, MADGE S.
20 WATAI, RICHARD A. HONN, PATRICE
21 E. McELROY, RICHARD A. PATEL,
22 LUCY ARMENDARIZ, SCOTT J.
23 DREXEL,

24 Defendants.

Case No. BC379051

**[PROPOSED] ORDER GRANTING
DEFENDANTS' SPECIAL MOTION
TO STRIKE PLAINTIFF'S
COMPLAINT**

DATE: January 17, 2008

TIME: 8:30 AM

DEPT: 53

JUDGE: Hon. John P. Shook

25 The Special Motion to Strike of THE STATE BAR OF CALIFORNIA, DONALD
26 F. MILES, JOANN M. REMKE, JUDITH A. EPSTEIN, MADGE S. WATAI,
27 RICHARD A. HONN, PATRICE E. McELROY, RICHARD A. PATEL, LUCY
28

1 ARMENDARIZ, SCOTT J. DREXEL came on for hearing in Department 53 of the
2 above-entitled Court on January 17, 2008. Bradford E. Henschel appeared *in pro per*/did
3 not appear. Tracey L. McCormick appeared on behalf of Defendants THE STATE BAR
4 OF CALIFORNIA, DONALD F. MILES, JOANN M. REMKE, JUDITH A. EPSTEIN,
5 MADGE S. WATAI, RICHARD A. HONN, PATRICE E. McELROY, RICHARD A.
6 PATEL, LUCY ARMENDARIZ, SCOTT J. DREXEL.
7

8 Having read and considered the Motion, the Points and Authorities, the opposition
9 thereto and the Declarations and Requests for Judicial Notice filed by the parties, and
10 having heard argument of counsel, the Court ordered as follows:
11

12 **IT IS ORDERED THAT** the Special Motion to Strike of Defendants THE
13 STATE BAR OF CALIFORNIA, DONALD F. MILES, JOANN M. REMKE, JUDITH
14 A. EPSTEIN, MADGE S. WATAI, RICHARD A. HONN, PATRICE E. McELROY,
15 RICHARD A. PATEL, LUCY ARMENDARIZ, SCOTT J. DREXEL is hereby granted.
16

17 ~~IT IS FURTHER ORDERED THAT the issue of attorneys fees be heard on~~
18 ~~_____ , 2008 at _____ in this Department.~~
19

20
21 DATED: JAN 17 2008

JOHN P. SHOOK

22 Judge of the Superior Court
23
24
25
26
27
28

1 JOEL D. JOSEPH
2 PRO PER
3 9935 S. Santa Monica Blvd.
4 Santa Monica, California 90401
5 (310) 922-1856

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
JUN 26 2009
John A. Clarke, Executive Officer/Clerk
By D. McKinley, Deputy

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF LOS ANGELES

8 JOEL D. JOSEPH,
9 Plaintiff
10 v.
11 STATE BAR OF CALIFORNIA,
12 Defendant

CASE NO: **SC103749**
COMPLAINT FOR:
1. Denial of Due Process of Law
2. Breach of Contract
3. Denial of Equal Protection of the Laws
4. Abuse of Discretion
5. Denial of Privileges and Immunities
6. Defamation

CASE MANAGEMENT CONFERENCE
OCT 14 2009 *Dept B*
Date *8:30 AM*

LOS ANGELES COUNTY
SHERIFF'S DEPARTMENT
2009 JUN 6 PM 3:45
COURT CLERK
SANTA MONICA DIVISION

JOEL D. JOSEPH
9935 S. Santa Monica Blvd.
Beverly Hills, California 90212

21 Joel D. Joseph hereby files a complaint against the State Bar of California as follows:

22 I. Factual Background

- 23 1. Plaintiff Joel D. Joseph is currently 61 years of age.
24 2. Plaintiff graduated with a B.A. degree in economics from Northwestern University
25 in 1970.
26

1 3. Plaintiff graduated from Georgetown University Law Center in 1973 with a Juris
2 Doctorate degree.

3 4. Plaintiff passed the bar examination in the District of Columbia in 1973 on his first
4 attempt. This examination included the multistate bar examination.

5 5. Plaintiff passed the lawyer's bar examination in Maryland in 1981 on his first
6 attempt. This examination was a true lawyer's examination, focusing on the differences between
7 Maryland practice and practice in general, emphasizing procedure.

8 6. Plaintiff taught public interest litigation at George Washington University Law
9 School, Washington, D.C., during the 1973-1974 academic year.

10 7. Plaintiff practiced law continuously for the past 35 years, and has practiced in
11 many courts pro hac vice over those years, including approximately six cases in California, and in
12 a total of approximately 25 states.

13 8. Mr. Joseph was admitted to practice before the United States District Court for the
14 District of Columbia on January 7, 1974.

15 9. Mr. Joseph was admitted to practice before the United States District Court for the
16 District of Maryland on August 28, 1981.

17 10. Mr. Joseph was admitted to practice before the United States District Court for the
18 Northern District of Ohio on November 5, 1980.

19 11. Mr. Joseph was admitted to practice before the United States District Court for the
20 District of Colorado on September 26, 2003.

21 12. Mr. Joseph was admitted to the Maryland Bar on April 1, 1981.

22 13. Mr. Joseph was admitted to practice before the United States Supreme Court on
23 April 28, 1978.

24 14. Mr. Joseph was admitted to practice before the United States Court of Appeals for
25 the D.C. Circuit on January 22, 1974.
26
27

JOEL D. JOSEPH
9835 South Santa Monica Blvd
Beverly Hills, California 90212

1 15. Mr. Joseph was admitted to practice before United States Court of Appeals for the
2 Federal Circuit on October 1, 1982.

3 16. Mr. Joseph was admitted to practice before United States Court of Appeals for the
4 1st Circuit on August 14, 2003.

5 17. Mr. Joseph was admitted to practice before the United States Court of Appeals for
6 the 2d Circuit on February 28, 2001.

7 18. Mr. Joseph was admitted to practice before United States Court of Appeals for the
8 4th Circuit on May 18, 1989.

9 19. Mr. Joseph was admitted to practice before United States Court of Appeals for the
10 6th Circuit on January 20, 2004.

11 20. Mr. Joseph was admitted to practice before United States Court of Appeals for the
12 7th Circuit on October 7, 2003.

13 21. Mr. Joseph was admitted to practice before United States Court of Appeals for the
14 9th Circuit on January 24, 2006.

15 22. Mr. Joseph was admitted to practice before United States Court of Appeals for the
16 10th Circuit on October 15, 2004.

17 23. Mr. Joseph was admitted to practice before United States Court of Appeals for the
18 11th Circuit on September 13, 1999.

19 24. Mr. Joseph is the author of many books and articles on the law. He is author of
20 the following books: *Black Mondays: Worst Decisions of the Supreme Court*, with a foreword
21 by Justice Thurgood Marshall, in 1987 (Second Edition, 1988; Third Edition, 2008), *Employees'*
22 *Rights in Plain English* in 1985, *How to Fight City Hall* in 1983 and *Legal Agreements in Plain*
23 *English* in 1982.

24 25. Mr. Joseph took the California Bar Examination in February and July, 2008 and in
25 February, 2009. For the February, 2009 examination, Mr. Joseph took the three-day examination.
26
27

1 26. Mr. Joseph's score on the Multistate Bar Examination (MBE) was 136 raw, 1,513
2 scaled. The Multistate Bar Examination is an objective, multiple choice test used in 46 states.

3 Mr. Joseph's score on the MBE exceeded the passing score in every state.

4 27. Mr. Joseph was scored 585 for the essay questions. This score is false. Plaintiff
5 actually passed the essay portion of the examination.

6 28. The score of 585 translates into an average of 58.5 for each essay and performance
7 test.

8 29. Mr. Joseph's total score on the examination was 1,385.

9 30. This total score is false. Mr. Joseph actually passed the examination and should
10 have received a raw score of no less than 700 on the subjective portions of the exam. A raw
11 score of 700 would have translated into a scaled score of 1,582. Averaged with his MBE score,
12 Joseph's total scaled score would have been 1,557.85, far above the passing score of 1,440.

13 31. The Bar automatically re-reads examinations with score of 1,390.

14 32. The passing score on the California Bar Examination is 1440.

15 33. Mr. Joseph requested that the Bar re-read his examination, but was refused.

16 34. Mr. Joseph paid \$166 to register with the bar and \$769 to take the examination, a
17 total of \$935, plus a laptop fee, for each examination. Non-lawyers, recent law school graduates,
18 taking the same examination pay only \$92 to register with the bar and \$529 to take the
19 examination, or a total of \$621, or \$314 less than those who are admitted in other jurisdictions.

20 35. Mr. Joseph received his examination back with no markings or explanation of the
21 scoring. Mr. Joseph's examination was read one time, if it was read at all.

22 36. Mr. Joseph was informed by the State Bar of California that there is no review of
23 examination results, and no reconsideration of the scoring.

24 37. Bar exam graders in California can have as little as one year of experience in
25 practicing law. Bar exam graders receive approximately \$3.00 for each essay answer graded.
26
27

JOEL D. JOSEPH
9335 South Santa Monica Blvd
Beverly Hills, California 90212

1 38. Other exceptionally experienced and qualified attorneys have failed the California
2 Bar Examination, including former Stanford University Law School Dean, Kathleen Sullivan,
3 who failed the examination in 2005.

4 39. The State Bar of California has designed the grading of the bar examination in
5 order to deprive many practicing lawyers, who have practiced in other states for many years, of
6 the right to practice law in California.

7 40. The pass rates for out-of-state lawyers taking the bar examination was as follows:
8 45% in February, 2009, 43.6% in July, 2008, 39.6% in February, 2008, 56.1% in July, 2007 and
9 36.8% in February, 2007.

10 41. The pass rate for law students and those ineligible to take the lawyer's bar
11 examination in July, 2008 was 61.7%.

12 42. The defendant's system of grading discriminates against out-of-state lawyers and
13 is arbitrary, unreasonable and does not relate to a legitimate governmental interest.

14
15
16 **III. First Cause of Action: Denial of Due Process of Law**

17 43. Plaintiff incorporates herein by reference paragraphs one through 42, inclusive.

18 44. The failure of the State Bar of California to provide a system for review of the
19 grading of bar examinations constitutes a deprivation of property without due process of law in
20 violation of the California and United States Constitutions.

21 45. Section 7 of the Declaration of Rights in the California Constitution provides:

22 a) A person may not be deprived of life, liberty, or
23 property without due process of law or denied equal protection of
24 the laws

25 46. The Fifth Amendment to the United States Constitution provides in part:

26 No person shall . . . be deprived of life, liberty, or property, without
27 due process of law; nor shall private property be taken for public
use, without just compensation.

JOEL D. JOSEPH
9935 South Santa Monica Blvd
Beverly Hills, California 90212

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47. In order to preserve and protect plaintiff's property rights, the bar examination should have been graded and marked with comments concerning errors and omissions.

48. In order to protect plaintiff's property rights, the State Bar of California should have a procedure for review of grading and an appeal process.

49. The State Bar of California formerly had such a system, but abandoned it several years ago.

50. The State Bar of California has deprived plaintiff of the due process right to have his examination reviewed to determine if the grade was appropriate.

IV. Second Cause of Action: Breach of Contract

51. Plaintiff incorporates herein by reference paragraphs one through 50, inclusive.

52. Plaintiff's contract with defendant was in part implied: that defendant would score the exam fairly and accurately.

53. Defendant failed to score the examination fairly and accurately, by not having it read by more than one scorer, by hiring unqualified scorers and by paying them less than reasonable compensation.

V. Third Cause of Action: Denial of Equal Protection of the Laws

54. Plaintiff incorporates herein by reference paragraphs one through 53, inclusive.

55. Charging those who take the "Lawyer's Examination" \$314 more than those taking the law student examination constitutes a denial of equal protection of the laws under the California and United States constitutions.

JOEL D. JOSEPH
9995 South Santa Monica Blvd
Beverly Hills, California 90212

1 56. Failing a higher percentage of those qualified to practice law in other states than
2 law students, is a denial of equal protection of the laws.

3
4 57. The defendant's system of scoring discriminates against out-of-state lawyers,
5 arbitrarily and unreasonably and does not relate to a legitimate governmental interest.

6 **VI. Fourth Cause of Action: Abuse of Discretion**

7 58. Plaintiff incorporates herein by reference paragraphs one through 57, inclusive.

8 59. The defendant has abused its discretion by discriminating against out of state
9 attorneys through its grading system.

10 60. The defendant has abused its discretion by not regrading plaintiff's examination.

11 **VII. Fifth Cause of Action: Denial of Privileges and Immunities**

12 61. Plaintiff incorporates herein by reference paragraphs one through 60, inclusive.

13 62. Article IV of the United States Constitution provides in part:

14
15 Section 2. The citizens of each state shall be entitled to all
16 privileges and immunities of citizens in the several states.

17 63. The Fourteenth Amendment provides in part:

18 No state shall make or enforce any law which shall abridge the
19 privileges or immunities of citizens of the United States; nor shall
20 any state deprive any person of life, liberty, or property, without
21 due process of law; nor deny to any person within its jurisdiction
22 the equal protection of the laws.

23 64. The United States Supreme Court ruled that the privileges and immunities clause
24 of Article IV applies to admission to state bars. *New Hampshire v. Piper*, 470 U.S. 274 (1985).

25 65. The defendant has violated the privileges and immunities clauses in both Article
26 IV and the Fourteenth Amendment by depriving plaintiff of the privilege of practicing law, and
27 discriminated against plaintiff in the grading plaintiff's bar exam essays and fees, in the State of
California, without a substantial reason for the difference in treatment.

JOEL D. JOSEPH
9935 South Santa Monica Blvd
Beverly Hills, California 90212

VIII. Sixth Cause of Action: Defamation

66. Plaintiff incorporates by reference paragraphs one through 65, inclusive.

67. Defendant libeled plaintiff by declaring him unqualified to practice law in California.

68. In fact, plaintiff is qualified to practice law in California and did in fact pass the bar examination.

69. Defendant published the fact that plaintiff did not pass the bar to the general public and to people known to plaintiff via its website.

70. Defendant's publication constitutes libel *per se*.

71. Plaintiff was damaged as a direct and proximate result of defendant's libelous actions.

IX. Request for Relief

Plaintiff requests that this court order the State Bar of California to review plaintiff's examination and grade, or in the alternative, to mandate that the State Bar of California admit plaintiff to the Bar of California, or that this court admit petitioner *sua sponte*, and that the State Bar of California be ordered to admit plaintiff to the Bar of California.

Plaintiff seeks one million dollars as actual damages and one million dollars as punitive damages.


JOEL D. JOSEPH

Pro Per
9935 S. Santa Monica Blvd.
Beverly Hills, CA 90212
(310) 922-1856

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 MARIA RADWICK (253780)
 7 KERR & WAGSTAFFE LLP
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 8 San Francisco, CA 94105-1528
 Telephone: (415) 371-8500
 9 Fax: (415) 371-0500

Exempt from Filing Fees
Pursuant to Government
Code Section 6103

JUNE 20 11 00 AM
 OF ORIGINAL FILED
 Los Angeles Superior Court
 OCT 27 2009
 John A. Clarke, Executive Officer/Clerk
 Deputy

10
 11 Attorneys for Defendant
 State Bar of California

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 FOR THE COUNTY OF LOS ANGELES
 15 WEST DISTRICT

16 JOEL D. JOSEPH,
 17 Plaintiff,
 18 v.
 19 STATE BAR OF CALIFORNIA,
 20 Defendant.
 21

Case No. SC103749
**~~PROPOSED~~ ORDER SUSTAINING
 DEFENDANT STATE BAR'S
 DEMURRER WITHOUT LEAVE TO
 AMEND**

1 The demurrer of Defendant State Bar of California came on for hearing in Department B
2 of this Court on October 27, 2009. Having reviewed the papers submitted in connection with the
3 demurrer and considered the arguments of counsel, the Court **HEREBY ORDERS THAT:**

4 Defendant's request for judicial notice is granted. Evid. Code § 452(d).

5 The demurrer is sustained without leave to amend. CCP § 430.10(a).

6 The court declines to rule on the special motion to strike, given that the "Supreme Court
7 has 'sole original jurisdiction' over the attorney admissions process" (*Smith v. State Bar* (1989)
8 212 Cal.App.3d 971, 976; see *In re Rose* (2000) 22 Cal.4th 430, 443-444) and because in the
9 absence of subject matter jurisdiction, this trial court has no power "to hear or determine [the]
10 case" (see *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196).

11 The first basis for demurrer listed in the operative statute is that the "court has no
12 jurisdiction of the subject of the cause of action alleged in the pleadings." Plaintiff alleges that he
13 took and failed the California Bar Examination in February 2008, July 2008, and February 2009,
14 claiming that his failing score is "false." *Id.*, ¶¶ 25-30. Plaintiff alleges that he requested a re-
15 read of his examination, but was refused. *Id.*, ¶ 33. Plaintiff alleges that he received his
16 examination back with no markings or explanation of the scoring, and that the State Bar later
17 informed him that "there is no review of examination results, and no reconsideration of the
18 scoring." *Id.*, ¶ 36. Plaintiff alleges that "The State Bar of California has designed the grading of
19 the bar examination in order to deprive many practicing lawyers, who have practiced in other
20 states for many years, of the right to practice law in California" as evidenced by the fact that the
21 pass rate for law students and those ineligible to take the lawyer's bar examination in July 2008
22 was 61.7%, which contrasts with the pass rate for out of state lawyers taking the exam, which
23 was 45% in February 2009, 43.6% in July 2008, 39.6% in February 2008, 56.1% in July 2007,
24 and 36.8% in February 2007. *Id.*, ¶¶ 39-41. Plaintiff alleges causes of action for: (1) denial of
25 due process of law for the Bar's failure to "provide a system for review of the grading of the bar
26 examination"; (2) breach of the implied contract to score the exam fairly and accurately; (3)
27 denial of equal protection by charging those taking the "Lawyer's Examination" \$314 more than
28 those taking the law student examination; (4) "abuse of discretion" by "discriminating against

1 out of state attorneys through the grading system, and (5) denial of privileges and immunities for
2 the discriminatory grading of exams and charging of additional exam fees. *Id.*, ¶¶ 44, 52, 55, 59,
3 65. Plaintiff adds a sixth cause of action for defamation by publishing a pass list which
4 presumably did not include his name and therefore declared him “unqualified to practice law in
5 California” when he in fact did pass. *Id.*, ¶¶ 67-69. Plaintiff seeks an order requiring the State
6 Bar of California to review plaintiff’s examination and grade, or in the alternative, to “mandate
7 that the State Bar of California admit plaintiff to the Bar of California, or that this court admit
8 petitioner sua sponte, and that the State Bar of California be ordered to admit plaintiff to the Bar
9 of California” in addition to \$1 million in damages and an additional \$1 million in exemplary
10 Damages. *Id.*, 8:17-23.

11 The State Bar is a public corporation created by the article in the California Constitution
12 that concerns the judicial branch. *In re Atty. Discipline Sys.* (1998) 19 Cal.4th 582, 598. The
13 Supreme Court retains the power to disbar or discipline members of the bar as this power existed
14 prior to the enactment of the State Bar Act, although the Supreme Court may by rule authorize
15 the State Bar to take any action otherwise reserved to the Supreme Court in any matter arising
16 under this chapter or initiated by the Supreme Court; provided, that any action by the State Bar
17 shall be reviewable by the Supreme Court pursuant to such rules as the Supreme Court may
18 prescribe. *Id.*, at 598-99. The bar is “a public corporation created . . . as an administrative arm of
19 this court for the purpose of assisting in matters of admission and discipline of attorneys.” *Id.*, at
20 599-600. Although the legislature may pass regulations “related to the admission and discipline
21 of attorneys” such is neither exclusive nor final, since they are, “at best, but minimum standards
22 unless the courts themselves are satisfied that such qualifications as are prescribed by legislative
23 enactment are sufficient. . . . *In other words, the courts in the exercise of their inherent power*
24 *may demand more than the legislature has required.”* *Id.*, at 602 (emphasis in original, citation
25 omitted). Further, “legislative enactments relating to admission to practice law are valid only to
26 the extent they do not conflict with rules for admission adopted or approved by the judiciary.
27 When conflict exists, the legislative enactment must give way.” *Ibid.* When “the matter at issue
28 involves minimum standards for engaging in the practice of law, *it is this court and not the*

1 *Legislature which is [the] final policy maker.” Ibid. (emphasis in original). The “State Bar is not*
2 *an entity created solely by the Legislature or within the Legislature’s exclusive control, but*
3 *rather is a constitutional entity subject to this court’s expressly reserved, primary, inherent*
4 *authority over admission and discipline.” Id., at 607.*

5 The court acknowledges that in *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 575, the
6 Supreme Court held “that individual CSF [Client Security Fund (Bus. & Prof. Code, § 6140.5)]
7 decisions in the future may be reviewed by mandamus (Code Civ. Proc., § 1094.5) in the
8 superior courts in the first instance because such decisions are not an integral part of this court’s
9 regulatory jurisdiction over the bar.” The instant case, however, does not deal with Client
10 Security Fund reimbursements. This is plaintiff’s complaint that the bar examination
11 discriminates against out of state attorneys in grading and in fees, and improperly published a
12 pass list without his name on it. *See* Complaint, ¶¶ 44, 52, 55, 59, 65. It concerns a part of the
13 Supreme Court’s regulatory jurisdiction over admission and discipline of bar members. *See In re*
14 *Atty. Discipline Sys.*, 19 Cal.4th at 607; *cf. Saleeby*, 39 Cal.3d at 575 (unlike the admissions
15 process, the CSF was created at the State Bar’s request, not by the Supreme Court under its
16 inherent power to control admissions and discipline); *see also Smith v. State Bar* (1989) 212
17 Cal.App.3d 971, 978 (“admission fee challenges should be initiated in the Supreme Court under
18 its inherent power and original jurisdiction over the admissions process” – thus, “Smith’s action
19 properly was dismissed because his challenge to the State Bar’s admissions fees policies should
20 have been by original petition to the Supreme Court”).

21 It is not too far a stretch to apply the foregoing to find that the State Bar’s examination
22 fees and scoring is also encompassed within the Supreme Court’s inherent power to control
23 admissions. Indeed, “[a]ny person refused certification to the Supreme Court for admission to
24 practice may have the action of the board, or of any committee authorized by the board to make a
25 determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme
26 Court, in accordance with the procedure prescribed by the court.” Bus. & Prof. Code § 6066.
27 CRC, rule 9.13(d) provides:

28

1 (d) Review of other decisions A petition to the Supreme Court to review any other
2 decision of the State Bar Court or action of the Board of Governors of the State
3 Bar, or of any board or committee appointed by it and authorized to make a
4 determination under the provisions of the State Bar Act, or of the chief executive
5 officer of the State Bar or the designee of the chief executive officer authorized to
6 make a determination under article 10 of the State Bar Act or these rules of court,
7 must be filed within 60 days after written notice of the action complained of is
8 mailed to the petitioner and to his or her counsel of record, if any, at their
9 respective addresses under section 6002.1. Within 15 days after service of the
10 petition, the State Bar may serve and file an answer and brief. Within 5 days after
11 service of the answer and brief, the petitioner may serve and file a reply. If review
12 is ordered by the Supreme Court, the State Bar, within 45 days after filing of the
13 order, may serve and file a supplemental brief. Within 15 days after service of the
14 supplemental brief, the petitioner may file a reply brief.

15 The Supreme Court has held that challenges to the admissions process "should be
16 initiated in the Supreme Court under its inherent power and original jurisdiction over the
17 admissions process" and affirmed a dismissal of an action because the challenge to the State
18 Bar's admissions fees policies should have been by original petition to the Supreme Court.
19 *Smith*, 212 Cal.App.3d at 978. Indeed, with regard to claims seeking review of the State Bar's
20 decision not to certify someone to practice law by the Committee of Bar Examiners, "the
21 California Supreme Court exercises original jurisdiction and is not restricted to the limited
22 review made by an appellate court" – indeed, the "final determination . . . rests with [the
23 Supreme C]ourt, and its powers in that regard are plenary and its judgment conclusive." *In re*
24 *Rose* (2000) 22 Cal.4th 430, 443-444. Under the foregoing authorities, if plaintiff is entitled to
25 any relief, he must obtain it by original petition to the California Supreme Court. The demurrer is
26 sustained to the entire complaint without leave to amend. CCP § 430.10(a).

27 **IT IS SO ORDERED.**

28 Dated: October 27, 2009

15/ Norman P. Tarle
HON. NORMAN P. TARLE
JUDGE OF THE SUPERIOR COURT



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In Pro Per

**ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO**
FER 16, 2010
GORDON PARK-LI, Clerk
BY: PARAMATT
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
CASE MANAGEMENT CONFERENCE SET

JUL 16 2010 9⁰⁰ AM
DEPARTMENT 212

PHILIP E. KAY,

Plaintiff,

vs.

STATE BAR OF CALIFORNIA, THE
BOARD OF GOVERNORS OF THE
STATE BAR OF CALIFORNIA,
OFFICE OF CHIEF COUNSEL, LUCY
ARMENDARIZ, in her official capacity,
SCOTT J. DREXEL, ALLEN
BLUMENTHAL, JEFF DAL CERRO
individually and in official capacity, and
DOES 1 - 50,

Defendants.

Case No. CGC - 10 - 496869
COMPLAINT
(Verified)
DECLARATORY AND INJUNCTIVE
RELIEF - VIOLATIONS OF U.S.C.
§1983
[Code of Civil Procedure §1060, 1065,
1068 & 1102]
VIOLATION OF 42 U.S.C. §1983
(PROCEDURAL DUE PROCESS)
VIOLATION OF 42 U.S.C. §1983
(FREE SPEECH)
VIOLATION OF 42 U.S.C. § 1983
(SUBSTANTIVE DUE PROCESS)
VIOLATION OF 42 U.S.C. § 1983
(EQUAL PROTECTION)

Exhibits and Request for Judicial Notice

Ex Parte Application and Motion for
Temporary Restraining Order and
Preliminary Injunction Filed Herewith

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6 In Pro Per

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN FRANCISCO
9

10 PHILIP E. KAY,

11 Plaintiff,

12 vs.

13 STATE BAR OF CALIFORNIA, THE
14 BOARD OF GOVERNORS OF THE
15 STATE BAR OF CALIFORNIA,
16 OFFICE OF CHIEF COUNSEL, LUCY
17 ARMENDARIZ, in her official capacity,
18 SCOTT J. DREXEL, ALLEN
19 BLUMENTHAL, JEFF DAL CERRO
20 individually and in official capacity, and
21 DOES 1 - 50,

22 Defendants.

) Case No.

) COMPLAINT
(Verified)

) DECLARATORY AND INJUNCTIVE
) RELIEF - VIOLATIONS OF U.S.C.
) §1983

) [Code of Civil Procedure §1060, 1065,
) 1068 & 1102]

) VIOLATION OF 42 U.S.C. §1983
) (PROCEDURAL DUE PROCESS)

) VIOLATION OF 42 U.S.C. §1983
) (FREE SPEECH)

) VIOLATION OF 42 U.S.C. § 1983
) (SUBSTANTIVE DUE PROCESS)

) VIOLATION OF 42 U.S.C. § 1983
) (EQUAL PROTECTION)

Exhibits and Request for Judicial Notice

Ex Parte Application and Motion for
Temporary Restraining Order and
Preliminary Injunction Filed Herewith

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1 **I. INTRODUCTION**

2 1. Plaintiff is Philip E. Kay ("Kay"). This Complaint is brought to challenge illegal
3 and void (*ultra vires*) actions taken against Kay by the State Bar of California defendants
4 collectively ("State Bar"), which will cause irreparable harm to Kay and his clients. State
5 Bar has violated Kay's rights as a licensed attorney in the State of California and illegally
6 seeks to deny him of his property interest in the right to practice law through the Decision
7 recommending discipline to the Supreme Court. (Exhibit 1, Decision.) See *Neblett v.*
8 *State Bar* (1941) 17 Cal.2d 77, 81 [". . . the right to practice law is a valuable one which
9 should not be taken away or cancelled under circumstances that have even the slightest
10 tendency to suggest any possible unfairness or disadvantage therein to the attorney whose
11 right to remain in his profession is challenged."]; *Woodard v. State Bar* (1940) 16 Cal.2d
12 755, 758 ["(t)he right to practice law is a valuable one which should be suspended or
13 revoked only on charges alleged and proved and as to which full notice and opportunity to
14 defend have been accorded."].

15 Kay seeks declaratory and injunctive relief, including a temporary restraining order
16 and preliminary injunction, pursuant to the *ex parte* application and motion filed
17 herewith, to prevent the State Bar from taking away his law license and issuing a criminal
18 fine without any due process. See *Kruetzer v. San Diego County* (1984) 153 Cal.App.3d
19 62, 71-72:

20 "The Fourteenth Amendment protects individuals from being deprived of life,
21 liberty and property without due process of law. The Fourteenth Amendment's
22 requirement of due process applies to the revocation or suspension of licenses (see
23 *Rios v. Cozens* (1972) 7 Cal.3d 792, 795 [103 Cal.Rptr. 299, 499 P.2d 979],
24 reinstated at 9 Cal.3d 454, 455 [107 Cal.Rptr. 784, 509 P.2d 696] [driver's license];
25 *Slaughter v. Edwards* (1970) 11 Cal.App.3d 285, 295 [90 Cal.Rptr. 144] [real
26 estate broker's license]; *Angelopoulos v. Bottorff* (1926) 76 Cal.App. 621, 625 [245
27 P. 447] [restaurant license]).

28 Violations of procedural due process may be redressed under section 1983 (Carey

1 v. Piphus (1978) 435 U.S. 247 [55 L.Ed.2d 252, 98 S.Ct. 1042]). The right to
2 procedural due process is 'absolute' in that it does not depend upon the merits of
3 the underlying substantive allegations (id.. at p. 266 [55 L.Ed.2d at pp. 266-267]).
4 Rigorous procedural rules are particularly important when First Amendment rights
5 are implicated (Southeastern Promotions, Ltd. v. Conrad (1975) 420 U.S. 546, 561
6 [43 L.Ed.2d 448, 460-461, 95 S.Ct. 1239, 1247-1248]).”¹

7 The Court, **without a trial**, has recommended that Kay be suspended for three years,
8 serve five years probation and pay the State Bar’s costs, which renders the Decision ultra
9 vires [absurd²]. In addition, State Bar costs have been determined to be a criminal fine
10 (punishment) and non-dischargeable in bankruptcy. (See *Findley v. State Bar of*
11 *California*, No. 08-60024, BAP Nos. NC-07-01187 KJuMk, 06-4180-LT, a copy of
12 which is attached hereto as Exhibit 29.) Thus, Kay will lose his law license and be fined
13 (criminally punished) without any due process. The State Bar has charged and found Kay
14 guilty of criminal contempt and imposed a criminal and non-dischargeable fine by **default**
15 . The State Bar proceeding is so deeply flawed and corrupt – it shocks the conscience and
16 represents an extreme miscarriage of justice and renders the Decision absurd, *ultra vires*
17 and thus, void.

18 2. The State Bar is seeking three years suspension, five years probation and payment
19 of a criminal fine without any underlying orders from the Superior Court of contempt,
20 sanctions or new trial, which means this is not a “reportable action” for the State Bar
21 Court (“Court”) to recommend the very discipline to be imposed against Kay. (See
22 Business & Professions Code §6086.7.) With the Answer on file and Kay having
23

24
25 ¹ See *Greene v. Zank* (1986) 158 Cal.App.3d 497, in which the Court held that the federal claims
alleged herein prevent the granting of a demurrer.

26 ² The trial court abuses its discretion where it is shown to be exercised in a manner that is "arbitrary,
27 capricious, or patently absurd" resulting in a "manifest miscarriage of justice." (*People v. Rodrigues*
28 (*1994*) 8 Cal.4th 1060, 1124; *Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, 1434;
Boeken v. Philip Morris Inc. (2005) 127 Cal.App.4th 1640, 1685.

1 appeared and testified for two weeks, the State Bar Court entered an illegal, void and
2 incurable default. Then, after entering the default, the Court struck his Answer. After the
3 entry of default, the OCTC (Office of Chief Trial Counsel) sought additional punishment
4 based on matters not charged in the NDC (Notice of Disciplinary Charges) and the Court
5 granted the requests, made findings and recommended discipline for these uncharged
6 matters. This results in an amendment of the NDC, which vitiates the default , requires
7 service of the NDC with the new charges and affords Kay the right to answer and contest
8 the NDC. (See, e.g., *Jackson v. Bank of America* (1986) 188 Cal.App.3d 375, 387;
9 *Engebretson & Company, Inc. v. Harrison* (1981) 125 Cal.App.3d 426, 443.) A default
10 judgment for greater relief or a different form of relief than demanded in the complaint is
11 beyond the court's jurisdiction. (See *Marriage of Lippel* (1990) 51 Cal.3d 1160, 1167,
12 276 Cal.Rptr. 290, 293; *Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th
13 1161, 1176.) A default judgment for an amount in excess of the *prima facie* evidence
14 produced at the default hearing is likewise beyond the Court's jurisdiction. (*Johnson v.*
15 *Stanhiser* (1999) 72 Cal.App.4th 357, 361-362.) The Decision seeks to impose a money
16 judgment through a default, without any claim for damages in the NDC. When
17 recovering damages by a default judgment, the plaintiff is limited to the damages
18 specified in the complaint. In addition, service of a statement of damages in an action not
19 involving personal injury or wrongful death does not satisfy Code of Civil Procedure
20 §580 and the default judgment is void. (*Sole Energy Co. v. Hodges* (2005) 128
21 Cal.App.4th 199, 206; fn. 4:

22 Plaintiffs' attempt to correct the first amended complaint's lack of any claim for
23 damages through service of a statement of damages provides an alternate ground
24 for reversal. Statements of damages are used only in personal injury and wrongful
25 death cases, in which the plaintiff may not state the damages sought in the
26 complaint. (Code Civ. Proc., § 425.11.) In all other cases, when recovering
27 damages in a default judgment, the plaintiff is limited to the damages specified in
28 the complaint. (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1167, 276
Cal.Rptr. 290, 801 P.2d 1041; *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857,
864-865, 121 Cal.Rptr.2d 695.)

Here, plaintiffs' first amended complaint did not specify any amount of damages. If
plaintiffs could remedy that failure through service of a statement of damages after
entry of default , the statement of damages would serve as the functional

1 equivalent of an amendment to the complaint, which would open the default s. (Cole v. Roebling Construction Co. (1909) 156 Cal. 443, 446, 105 P. 255; Ostling
2 v. Loring (1994) 27 Cal.App.4th 1731, 1743, 33 Cal.Rptr.2d 391.)”

3 See also, *Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161,
4 1176-1177; *Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1137.) The default, which
5 resulted in the Decision, is void and can be collaterally attacked. See *Levine v. Smith*,
6 *supra*, 145 Cal.App.4th at 1137, citing to the Supreme Court’s decision of *Greenup v.*
7 *Rodman* (1986) 42 Cal.3d 822:

8 The Santa Barbara Superior Court did not err in setting aside the default
9 judgment as void. “Our Supreme Court has held that ‘a default judgment
10 greater than the amount specifically demanded [in the complaint] is void as
11 beyond the court’s jurisdiction. Where no amount of damages is demanded
12 any amount awarded is by definition greater than the amount demanded.’ ” (*Falahati v. Kondo*, *supra*, 127 Cal.App.4th at pp. 830-831, 26 Cal.Rptr.3d 104,
13 *fn. omitted*, quoting *Greenup v. Rodman*, *supra*, 42 Cal.3d at p. 826, 726 P.2d
14 1295.) (Emphasis.)

15 Kay properly objected to providing answers and testimony in response to a succession of
16 questions seeking privileged and confidential client and work production information. In
17 response, the Court entered a default, then subsequently struck his Answer a month later.
18 These *ultra vires* acts were carried out to punish Kay in violation of his constitutional and
19 statutory rights of due process³ for refusing to answer questions and provide further
20 testimony in response to questions and rulings, which required him to violate his duties
21 not to disclose privileged and confidential client information and for asserting his 5th
22 Amendment rights in a proceeding conducted in the State Bar, which can only be
23 considered criminal contempt, and can only be determined, by an Article VI Superior
24 Court The Court then declared all of the charges against him as having been proved by
25 “clear and convincing” evidence. Thus, Kay will lose his law license and be criminally
26 fined without any due process.

27 _____
28 ³ See Business & Professions Code §6068(i).

1 **II. JURISDICTION AND VENUE**

2 3. This is an action brought pursuant to the laws of the State of California under
3 Code of Civil Procedure §1060, 1065, 1068 & 1102 and 42 U.S.C. 1983. The Court has
4 recommended to take away Kay's property interest in the right to practice law based on
5 the entry of illegal void and incurable default resulting in terminating sanctions. By
6 refusing to follow the procedure in established in the State Bar Act (Business &
7 Professions Code §§6050 & 6051) affirmed by the Supreme Court in *Jacobs v. State Bar*
8 (1977) 20 Cal.3d 191, the State Bar Court usurped the authority and jurisdiction of this
9 Court, by entering a default, which is rendered void, [ultra vires]. Additional judicial
10 resources will be wasted in vacating an unenforceable void default Judgment, in the event
11 the Supreme Court adopts the recommended discipline of the State Bar Court, which is an
12 inferior tribunal and is subject to the orders of this Court. (See *Hoffman v. State*
13 *Bar*(2003) 113 Cal.App.4th 630, 639 [writ of mandate may be issued from the Superior
14 Court to the State Bar regarding voting and candidacy rights under the State Bar Act,
15 which was denied on the merits – not jurisdictional grounds].)

16 "The State Bar is an inferior corporation (tribunal). Were Hoffman correct in his
17 claims of unconstitutional deprivation of the right to vote and run for office, the
18 State Bar could be compelled to discontinue its adherence to the election and
19 candidacy scheme set forth in sections 6015 and 6018 and fashion a remedy to
20 allow Hoffman to exercise his purported rights."

21 The default entered by the State Bar Court is subject to the equitable relief sought in this
22 proceeding. See *Olivera v. Grace* (1942) Cal.2d 570, 575:

23 "Equity's jurisdiction to interfere with final judgments is based upon the absence of
24 a fair, adversary trial in the original action. 'It was a settled doctrine of the
25 equitable jurisdiction-and is still the subsisting doctrine except where it has been
26 modified or abrogated by statute ... that where the legal judgment was obtained or
27 entered through fraud, mistake, or accident, or where the defendant in the action,
28 having a valid legal defense on the merits, was prevented in any manner from

1 maintaining it by fraud, mistake, or accident, and there had been no negligence,
2 laches, or other fault on his part, or on the part of his agents, then a court of equity
3 will interfere at his suit, and restrain proceedings on the judgment which cannot be
4 conscientiously enforced. ... The ground for the exercise of this jurisdiction is that
5 there has been no fair adversary trial at law.' (5 Pomeroy, Equity Jurisprudence
6 (Equitable Remedies [2d ed.]), pp. 4671, 4672.) Typical of the situations in which
7 equity has interfered with final judgments are the cases where the lack of a fair
8 adversary hearing in the original action is attributable to matters outside the issues
9 adjudicated therein which prevented one party from presenting his case to the
10 court, as for example, where there is extrinsic fraud (*Caldwell v. Taylor*, 218 Cal.
11 471 [23 Pac. (2d) 758, 88 A. L. R. 1194]; *McGuinness v. Superior Court*, 196 Cal.
12 222 [237 Pac. 42, 40 A. L. R. 1110]; (1921) 9 Cal. L. Rev. 156; (1934) 23 Cal. L.
13 Rev. 79; 15 Cal. Jur. 14, et. seq.; 3 Freeman, Judgments [5th ed.], p. 2562, et. seq.)
14 or extrinsic mistake. (*Bacon v. Bacon*, 150 Cal. 477 [89 Pac. 317]; *Sullivan v.*
15 *Lumsden*, 118 Cal. 664 [50 Pac. 777]; *Antonsen v. Pacific Container Co.*, 48 Cal.
16 App. (2d) 535 [120 Pac. (2d) 148]; 15 Cal. Jur. 23; 3 Freeman, Judgments [5th
17 ed.], 2593, et. seq.)”

18 (See also *Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 290-291.)

19 4. Venue is proper in this Court because the harm was caused to Kay in this County
20 and the State Bar maintains corporate headquarters in this County.

21
22 **III. PARTIES**

23 5. Kay is, and at all times mentioned herein was, a citizen and resident of the State of
24 California, residing in this County. He is licensed to practice law in the State of
25 California and has been an active member of the State Bar of California since 1981. He
26 has no disciplinary record with the State Bar.

27 6. Defendant State Bar of California is a public corporation in the judicial branch of
28 the State of California, incorporated under the laws of the State of California with its

1 principal place of business in the State of California. The State Bar acts through the
2 Board of Governors of the State Bar of California. The Board of Governors makes rules,
3 regulates and operates the State Bar, which is **not** empowered to reverse the final orders
4 and decisions of the Article VI courts, as it has done here. (See, e.g., Business &
5 Professions Code §§ 6101, 6040⁴.) See *Lady v. Worthingham* (1943) 61 Cal.App.2d 780,
6 782:

7 “So far as the Decisions of this Court and the Supreme Court are concerned, it is
8 utterly immaterial what conclusion the, or any investigating committee thereof,
9 may have reached relative to a judgment of this Court or of the Supreme
10 Court. **The Decisions and judgments of the District Court of Appeal and the**
11 **Supreme Court are not subject to review by the State Bar or a committee**
12 **thereof.**” (Emphasis.)

13 7. The State Bar Court is the adjudicative tribunal acting as an administrative arm of
14 the California Supreme Court to hear and decide attorney disciplinary and regulatory
15 proceedings and to make recommendations to the Supreme Court regarding those matters.
16 Judge Lucy Armendariz is the State Bar Court judge assigned to preside over the trial of
17 the disciplinary proceedings brought against Kay and who issued the Decision based on
18 the default. Judge Armendariz is being sued in her official capacity.

19 8. Defendant Scott J. Drexel was Chief Trial Counsel of the Office of the Chief Trial
20 Counsel, the office within the State Bar, which is the prosecutorial arm of the State Bar in
21 attorney discipline and regulatory matters. The Office of the Chief Trial Counsel
22 functions under the direction of the Chief Trial Counsel. Defendants Allen Blumenthal
23 and Jeff Dal Cerro are Deputy Trial Counsel of the Office of Chief Trial Counsel.
24 Messrs. Drexel, Blumenthal and Dal Cerro are being sued in their individual and official
25

26 ⁴ Sections 6010 (Powers) & 6040 (Jurisdiction of administrative committees) - Notes of Decisions:
27 The decisions and judgments of the district court of appeal and the supreme court are not subject to
28 review by the state bar or a committee thereof. *Lady v. Worthingham* (App. 2 Dist. 1943) 61
Cal.App.2d 780, 143 P.2d 1000.

1 capacities.

2 9. The true names and capacities of Defendants named herein as Does I through 50,
3 inclusive, whether individual, corporate, associate, or otherwise, are unknown to plaintiff,
4 who therefore sues such defendants by such fictitious names. Plaintiff will amend this
5 Complaint to show true names and capacities when they have been determined.

6
7 **IV. ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

8 10. Most of the charges in the State Bar proceeding arise from alleged conduct,
9 which occurred in civil trials many years ago and are barred by the statute of limitations,
10 pursuant to Rule 51 of the State Bar Rules of Procedure. The *gravamen* of these charges
11 is "criminal contempt of court," which denied the civil defendants fair trials. The State
12 Bar does not have jurisdiction to charge and adjudicate criminal contempt. The State Bar
13 does not have jurisdiction to adjudicate whether civil defendants were denied fair trials.
14 Rather, these issues are adjudicated in the Article VI courts where the alleged conduct
15 took place. Moreover, the Article VI judges and justices, by a lower standard of proof
16 ("preponderance"), rejected these charges and are final. The charges in the NDC are
17 lifted from the losing civil defendants' new trial motions. In *City of Los Angeles v.*
18 *Decker* (1977) 18 Cal.3d 860, 872, the Supreme Court defined attorney misconduct
19 resulting in prejudice such that it is "reasonably probable that the jury would have arrived
20 at a different verdict in the absence of the [attorney misconduct] . . ." In *Simmons v.*
21 *Southern Pac. Transp. Co.* 1976) 62 Cal.App.3d 341, 351 the Court of Appeal stated:
22 "(t)he ultimate determination of this issue (misconduct) rests upon this court's 'view of
23 the overall record, taking into account such factors, inter alia, as the nature and
24 seriousness of the remarks and misconduct, the general atmosphere, including the judge's
25 control, of the trial, the likelihood of prejudicing the jury, and the efficacy of objection or
26 admonition under all the circumstances.' (citations)." Where a new trial is ordered as a
27 result of misconduct by the adverse party or counsel, the court has both the power and
28 inherent *duty* to impose monetary sanctions in an amount sufficient to cover all the costs

1 incurred, including attorney's fees, "in going through a trial which must now be redone."
2 (See *Sherman v. Kinetic Concepts, Inc.* (1998) 67 Cal.App.4th 1152, 1155.) The law of
3 the case doctrine applies exclusively to issues of law, and not those of fact. (*Cooper v.*
4 *County of Los Angeles* (1977) 69 Cal.App.3d 529, 536.) This doctrine applies following
5 a general remand. (*Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 312.) See
6 Witkin, *Procedure* 4th Ed., *Trial*, sec. 223, pp. 255-256 - regarding the legal definition of
7 "misconduct."

8 In the Article VI courts, all claims of misconduct that Kay interfered with the civil
9 defendants receiving a fair trial were rejected. To the contrary, Kay was awarded his full
10 attorney's fees and costs by a neutral trial court judge in *Gober v. Ralphs* who reviewed
11 all his trial work in the case. It is *res judicata* that Kay did not engage in *contemptuous*
12 misconduct. See *In re: Applicant A* (1995) 3 Cal. State Bar Ct. 318, p.5, fn.7:

13 "Certain narrow civil issues resolved in prior proceedings have previously been
14 recognized in State Bar proceedings as binding between the parties to the prior
15 proceeding. (See, e.g., *Lee v. State Bar, supra*, 2 Cal.3d at p. 941 [civil decision
16 deemed a conclusive legal determination that attorney gave no consideration for a
promissory note]; *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State
Bar Ct. Rptr. 716, 729 [[[arbitration award deemed *res judicata* between the
parties thereto on the issue of offset for costs].)" (Emphasis.)

17 The elements of *res judicata* are: 1) a final judgment; 2) identity of parties; and 3) identity
18 of a primary right. *Windsor Square Homeowners Association v. Citation Homes* (1997)
19 54 Cal.App.4th 547, 550. As stated in *Amin v. Khazindar* (2003) 112 Cal.App.4th 582,
20 "If the matter was within the scope of the action, related to the subject matter and
21 relevant to the issues, so that it could have been raised, the judgment is conclusive on it
22 despite the fact that it was not in fact expressly pleaded or otherwise urged.... The reason
23 for this is manifest. A party cannot by negligence or design withhold issues and litigate
24 them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on
25 matters which were raised or could have been raised, on matters litigated or litigable.
26 [Citations.]' [Citation.]" *Id.* at 589-590. Thus, the issues determined in an appealable
27 judgment or order from which no timely appeal was taken are *res judicata*. See *In re*
28 *Matthew C.* (1993) 6 Cal.4th 386, 393; *Law Offices of Stanley J. Bell v. Shine, Browne &*

1 *Diamond* (1995) 36 Cal.App.4th 1011, 1023-1026; *In re Cicely L.* (1994) 28 Cal.App.4th
2 1697, 1705. The doctrine of *res judicata* "is not a matter of practice or procedure
3 inherited from a more technical time than ours. It is a rule of fundamental and substantial
4 justice, of public policy and of private peace, which should be cordially regarded and
5 enforced by the courts. . ." *Federated Dep't. Stores v. Moitie* (1981) 452 U.S. 394, 401
6 (quoting, *Hart Steel Co. v. R.R. Supply Co.* (1917) 244 U.S. 294, 299. See *Lady v.*
7 *Worthingham, supra*, 61 Cal.App.2d at 782.

8 11. The State Bar, without standing and jurisdiction⁵, has charged, found and
9 recommended
10 discipline for Kay for engaging in serial criminal contempt of court during three trials,
11 which were the subject of six appeals, without one order, sanction or finding issuing from
12 the trial or appellate courts, who are exclusively empowered to maintain respect in their
13 courts as part of their duties and authority as Article VI court judges. The State Bar is not
14 empowered to carry out this judicial function on their behalf. The State Bar Court issued
15 the Decision⁶ (Exhibit 1⁷) imposing recommended discipline, which is based on the entry
16 of an illegal, void and incurable⁸ default (Exhibit 4) without and in excess of the Court's
17 jurisdiction. The default declared all of the charges in the NDC (Exhibit 2B) to be
18 admitted as true. The Decision subsequently declared all of the charges were proven by
19 "clear and convincing" evidence, without any due process afforded to Kay to present his
20

21 ⁵ See *Townsend v. State Bar* (1930) 210 Cal. 362, 365: "inasmuch as petitioner was not required to
22 meet a charge under these rules, we must hold that such contention is not appropriate in this
23 proceeding."

24 ⁶ Decision of the State Bar Hearing Department (Hon. Lucy Armendariz, 180 Howard Street, 6th
25 Floor, San Francisco, CA 94105, 415-538-2050) issued on December 15, 2009.

26 ⁷ All referenced Exhibits are identified and attached to the Request and Motion to take judicial notice
27 filed with this Complaint.

28 ⁸ Code of Civil Procedure § 473(b): "The court is empowered to relieve a party "upon such terms
as may be just . . . from a judgment, dismissal, order or other proceeding taken against him or her
through his or her mistake, inadvertence, surprise or excusable neglect."

1 defense, cross-examine witnesses, present direct-examination, call witnesses, file motions
2 and briefs or other semblance of due process to oppose the prosecution's presentation of
3 evidence, motions and briefs in violation of Sections 6085(a), (b), (d) & (e) of the
4 Business & Professions Code. (See *Giddens v. State Bar* (1981) 28 Cal.3d 730, 735:

5 **"The circumstances of this case underscore the fact that a fair hearing did not**
6 **take place. Petitioner was not afforded the right to "defend against the charge**
7 **by the introduction of evidence."** (Bus. & Prof.Code, s 6085, subd. (a).)

8 Although petitioner challenged the veracity of the complainants' testimony, he
9 never had an opportunity to cross-examine those witnesses. Since petitioner
10 participated in the very meetings those witnesses discussed, his presence at the
11 hearing might well have ensured the full and fair presentation of all the facts.

12 Additionally, since he was not present to testify, the hearing officers could not
13 evaluate his demeanor and credibility. The issue before the bar was petitioner's
14 continued suitability for legal practice. **Without any representation of**
15 **petitioner's views, a fair hearing was not possible."** (Emphasis.)

16 12. The State Bar is seeking to deny Kay his property interest in the right to practice
17 law for asserting his rights in violation of Business & Professions Code §6068(i)⁹ to
18 protect the the underlying record, final verdict, and his clients. See also Section 6079.4 of
19 the Business & Professions Code ["The exercise by an attorney of his or her privilege
20 under the Fifth Amendment to the Constitution of the United States, or of any other
21 constitutional or statutory privileges shall not be deemed a failure to cooperate within the
22 meaning of subdivision (i) of Section 6068."]. Thus, in response to Kay asserting his
23 constitutional and statutory rights, he was stripped of them, which itself is

24
25 _____
26 ⁹ HISTORICAL AND STATUTORY NOTES for Section 6068:

27 Stats.1999, c. 221, rewrote subd. (i), which read:

28 "(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary
proceeding pending against the attorney. However, this subdivision shall not be construed to deprive
an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United
States or any other constitutional or statutory privileges."

1 unconstitutional in violation of Art. III, § 3.5 of the California Constitution. This has
2 resulted in the State Bar Court engaging in Sophistry by claiming it has made findings of
3 fact and credibility in an uncontested proceeding, which has unlawfully taken away's
4 Kay's property interest in the right to practice law. See *Conway v. State Bar* (1989) 47
5 Cal.3d 1107, 1113:

6 **"We note at the outset that petitioner plainly has a property interest in the**
7 **right to practice his profession that cannot be taken from him without due**
8 **process.** (Barry v. Barchi (1979) 443 U.S. 55, 64, 99 S.Ct. 2642, 2649, 61 L.Ed.2d
9 365; Civil Service Assn. v. City and County of San Francisco (1978) 22 Cal.3d
10 552, 560, 150 Cal.Rptr. 129, 586 P.2d 162; see also Giddens v. State Bar (1981) 28
11 Cal.3d 730, 735, 170 Cal.Rptr. 812, 621 P.2d 851.)" (Emphasis.)

12 13. Because there are **no** underlying trial court orders finding **any** misconduct, the
13 NDC is based on incompetent and inadmissible hearsay. Moreover, to prove the charges,
14 Kay was ordered to divulge privileged and confidential attorney client and work product
15 information¹⁰, which he refused to do, pursuant to Rule of Professional Conduct 3-110
16 and Business & Professions Code §6068(e)(1). Thus, Kay will be punished for adhering
17 to his duty of confidentiality, which obligates him to preserve client secrets "at every
18 peril;" and therefore, he invoked his rights under Business & Professions Code §6068(i),
19 because he was **compelled** to challenge the court's orders overruling the claims of
20 privilege on behalf of his clients. (Business & Profession Code §6068(e)(1); *Commercial*
21 *Standard Title Co. v. Sup.Ct. (Smith)* (1979) 92 Cal.App.3d 934, 945; ABA Form.Opn.
22 155 (1931)--"it is the duty of an attorney to maintain the confidence and preserve
23 inviolate the secrets of his client"; ABA Form.Opn. 94-385--lawyer has duty to seek to
24 limit court order for attorney's client files on any legitimate grounds.) See also, 1 Witkin,
25 *Cal. Proc.* (5th ed., 2008), *Attorneys*, §498, p.619:

26 "Refusal of an attorney to testify in a judicial investigation into unethical practices,
27

28 ¹⁰ For example, OCTC sought client communications, client fee agreements and repeatedly inquired
of Kay as to why he carried out his duties as a trial lawyer.

1 under a claim of the Fifth Amendment privilege, cannot be the basis of disciplinary
2 action. (See *Spevack v. Klein* (1967) 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574, 2
3 Cal. Evidence (4th), Witnesses, §363, overruling *Cohen v. Hurley* (1961) 366 U.S.
4 117, 81 S.Ct. 954, 6 L.Ed.2d 156.”

5 The State Bar Court entered the default based on the erroneous and specious rationale that
6 he was depriving the OCTC of evidence, which he controlled, when in fact it is the clients
7 who control the privilege, which the clients never waived.^{11 12} Moreover, the Court made
8 findings of contempt in excess of the Court’s standing, authority and subject matter
9 jurisdiction based on Kay’s assertion of the privileges on behalf of his clients and himself
10 in response to the Court’s relentless violation of their rights through instruction to provide
11 answers to questions seeking privileged and confidential communications and
12 information. However, there are no findings that Kay violated his duties to his clients.
13 Rather, the Decision at page 1 states that Kay “fought hard for his clients in several noted
14 sexual harassment cases and won huge awards on their behalf.” Thus, OCTC, which
15 never obtained consent from the clients, was not entitled to seek privileged and
16 confidential attorney-client and work product information from Kay. Kay was aware that
17 the State Bar Court and OCTC were working with the losing defendants and the
18 disqualified judges (reversed on appeal in the underlying cases) -- passing on information
19 obtained in the investigation stage and trial to these losing defendants and disqualified
20 judges to undermine the lawfully obtained verdicts and have the Court of Appeal and the
21 Supreme Court overturn them by disparaging successful plaintiffs’ counsel Kay. Thus,
22 Kay knew that anything that was discovered regarding attorney-client or work product
23 information would be passed to losing counsel and the disqualified judges in an attempt to
24 vacate final judgments via writs of coram vobis or nobis and used to harm his clients.
25 Kay was under the good faith belief that he was required to assert the attorney-client and

26 _____
27 ¹¹ State Bar never sought or obtained a waiver of the privileges from any of Kay’s clients.

28 ¹² Evidence Code §953(a) -- the "holder" of the attorney-client privilege is the client or their
authorized representative (guardian or conservator) – not the attorney.

1 work product privileges, which lead directly to his default, when he refused to provide
2 further testimony, because the Court refused to instruct OCTC to desist from asking the
3 questions, the Court ordered the disclosure of the privileged information, when Kay
4 refused to answer the questions and requested that the rulings be tested under the threat of
5 contempt, the State Bar Court began admitting the unanswered questions as admissions
6 of culpability. Moreover, the Court demanded that Kay waive his objections based on
7 constitutional and statutory privileges to cure the default. Thus, in refusing to allow Kay
8 to cure the default, unless he waived his rights, the Court violated Business & Professions
9 Code §6088:

10 **“Admission of facts upon failure to answer, appear, or deny; rules**

11 The board may provide by rule that alleged facts in a proceeding are admitted upon
12 failure to answer, failure to appear at formal hearing, or failure to deny matters
13 specified in a request for admissions; the party in whose favor the facts are
14 admitted shall not be required to otherwise prove any facts so admitted. **However,**
15 **the rules shall provide a fair opportunity for the party against whom facts are**
16 **admitted to be relieved of the admission upon a satisfactory showing, made**
17 **within 30 days of notice that facts are admitted, that (a) the admissions were**
18 **the result of mistake or excusable neglect, and (b) the admitted facts are**
19 **actually denied by the party. (Emphasis.)**

20 Thus, Kay was denied the right to claim mistake and demonstrate the admitted facts are
21 false. (See also 1 Witkin, *Cal. Proc.* 5th (2008) *Attys*, §591, p. 718 - Notice and failure to
22 appear.)

23 14. At no time did Kay’s clients complain to the State Bar. Thus, State Bar Rules of
24 Procedure, rule 2406 states that a “client or former client who complains against a
25 member thereby waives the attorney-client privilege and any other applicable privilege, as
26 between the complainant and the member, to the extent necessary for the investigation
27 and prosecution of the allegations,” does not apply here. There has never been any
28 waiver of the attorney client and/or work product privileges. Rather, Kay asserted the

1 privileges in discovery and OCTC never moved to compel; thus, it knew prior to trial that
2 Kay would not waive the privileges. Moreover, to defend against the NDC charges that
3 Kay failed to keep his clients informed in the *Weeks* case, Kay would have been required
4 to divulge client confidences, attorney-client and work product privileged matters, not
5 limited to but including the fee agreements and client communications regarding the very
6 matters alleged in the NDC. (See Business & Professions Code §6149 ["A written fee
7 contract shall be deemed to be a confidential communication within the meaning of
8 subdivision (e) of Section 6068 and of Section 952 of the Evidence Code."])

9 In such cases, the case must be dismissed. As stated in *Solin v. O'Melveny & Meyers,*
10 *LLP* (2001) 89 Cal.App.4th 451, 467, *citing, General Dynamics Corp. v. Superior Court*
11 (1994) 7 Cal.4th 1164, 1190:

12 "In sum, there can be no balancing of the attorney-client privilege against the right
13 to prosecute a lawsuit to redress a legal wrong. Consequently, as . . . "*General*
14 *Dynamics* " teaches, unless a statutory provision removes the protection afforded
15 by the attorney-client privilege to confidential communications between attorney
16 and client, an attorney plaintiff may not prosecute a lawsuit if in doing so client
17 confidences would be disclosed."

18 The charges against Kay cannot be defended based on his duty to maintain confidential
19 client information, attorney-client communications and/or work product privileged
20 matters. Moreover, the OCTC tacitly acknowledged as much, when it refused to
21 investigate Arthur Chambers' malfeasance in the *Weeks* case on the following grounds:

22 "The client did not initiate this complaint. Inquiry by the State Bar into your
23 allegations could interfere with the attorney-client relationship. If the client has an
24 allegation to make with regard to the attorney's representation, the client can make
25 such a complaint. **Only then may the State Bar require a full response from**
26 **the attorney.**" (Emphasis) (Exhibit 26, State Bar/OCTC letter to Kay.)

27 Thus, OCTC applied a double standard in selectively pursuing charges and seeking
28 privileged information from Kay, who caused no harm to the clients, while refusing to

1 even investigate Mr. Chambers' malfeasance.¹³

2 15. In response, the State Bar Court threatened aggravation and punishment and
3 then began admitting unanswered questions as admissions of culpability. (Exhibit 11,
4 State Bar trial transcripts.) Kay was compelled to assert his constitutional and statutory
5 rights to refuse provide any further testimony, which is an alleged contempt.

6 **The State Bar circumvented the procedural due process required by the**
7 **SUPREME COURT.**

8 16. The OCTC claimed entitlement to privileged and confidential attorney-client and
9 work product information and sought to compel enforcement of the subpoena, but failed
10 to follow the sole required procedure of seeking an order from the Superior Court to
11 obtain the privileged information from Kay, pursuant to B& P Code 6050 and 6051,
12 which spells out the only procedures available, and would require a showing as to why the
13 privileges did not apply, pursuant to this Court's holding in *Jacobs v. State Bar* (1977) 20
14 Cal.3d 191, 195:

15 "The State Bar and its local committees have the statutory power to "[c]ompel, by
16 subpoena, the attendance of witnesses and the production of books, papers and
17 documents pertaining to the [disciplinary] proceedings." (§ 6049, subd. (c).) A
18 person under subpoena who fails to appear or to produce documents is deemed to
19 be in contempt. (§ 6050.) To enforce the subpoena against such person, the local

21 ¹³ Government attorneys, like other members of the bar, are subject to the California Rules of
22 Professional Conduct and State Bar Act. (California Rule of Professional Conduct Rule 1-100; *Price*
23 *v. State Bar* (1982) 30 Cal.3d 537, 546-550.) In fact, prosecuting attorneys owe a special duty to see
24 that the accused receives a fair and impartial trial. As representatives of the government, *prosecutors*
25 *have discretionary power to decide what crimes are to be charged and how they are to be*
26 *prosecuted*. The government's interest in a criminal case is to see that justice is done. Thus, it is the
27 prosecutor's duty to seek justice, not merely to convict. (*Berger v. United States* (1935) 295 U.S. 78,
28 88; *United States v. LaPage* (9th Cir. 2000) 231 Fed.3d 488, 492. The duty to see that justice is done
may restrict the behavior of government attorneys as advocates in certain cases. Prosecutors are held
to a higher standard than other attorneys. (*People v. Espinoza* (1992) 3 Cal.4th 806, 820--"(a)
prosecutor is held to a standard higher than that imposed on other attorneys because of the unique
function he or she performs in representing the interests, and in exercising the sovereign power, of
the State."

1 committee "shall report the fact" of the contumacious behavior to the appropriate
2 superior court which may issue either an "attachment" of the person, directed to
3 the county sheriff, or an order to show cause. (§ 6051.) In either case, **the**
4 **subpoenaed party has an opportunity to purge himself of contempt or**
5 **otherwise to defend the failure to obey the subpoena. (*Id.*)**" (Emphasis.)

6 Thus, in *Jacobs*, the Supreme Court reaffirmed the statutory procedure for OCTC to
7 obtain the information at trial, thereby protecting procedural due process for Kay when he
8 asserted the privileges,. In addition OCTC never even made a showing regarding why the
9 privileges do not apply and relevancy to obtain the information. Moreover, the Court
10 never issued an order stating why the privileges do not apply and relevancy entitling
11 OCTC to the information. Moreover, the *Jacobs* decision clearly states that OCTC can
12 only "enforce its subpoena" through a referral to the Superior Court.

13 ". . . we hold that, unless and until the State Bar seeks to **enforce its subpoena**,
14 superior courts have no jurisdiction to review the validity thereof. The rules of
15 procedure contain substantial procedural safeguards in disciplinary actions.
16 (*Emslie v. State Bar*, supra, 11 Cal.3d 210, 226.) These safeguards, coupled with
17 the opportunity to have State Bar decisions reviewed by us, provide, in our view,
18 sufficient means by which the rights of attorneys under investigation can be amply
19 protected." *Id.*, at 199.

20 OCTC and the Court are not authorized to *circumvent* the only allowable required
21 procedure by inventing unauthorized [*ultra vires*] terminating sanctions through the
22 request and entry of a default. However, pursuant to the statute and *Jacobs*, there is no
23 other instrument for enforcing a subpoena other than contempt. Therefore the State Bar
24 waived the claim to "compel" this evidence. The Court further disregards the controlling
25 State Bar case of *Matter of Frazier* (Rev.Dept. 1991) 1 Cal. State Bar Ct.Rptr. 676, 696,
26 which held that the court cannot enter terminating sanctions for refusing to testify in a
27 State Bar proceeding. *Frazier* states in pertinent part:

28 "in our view, the referee had no authority to [strike respondent's answer and deem
the allegations at issue to have been admitted by default as a matter of law] as a
sanction for failure to testify at the hearing. Therefore, we disagree with the
referee's striking of respondent's answer to count five of the notice to show cause

1 and find instead that respondent has not admitted the allegations therein."

2 (Emphasis.)

3 *Frazier* further establishes that the Court improperly sought to coerce Kay to testify by
4 threatening to strike his Answer. (See also, *Shippy v. Peninsula Rapid Transit Co.* (1925)
5 197 Cal. 290, 295; *Pratt v. Pratt* (1903) 141 Cal. 247, 250.) Thus, the State Bar Court
6 usurped the authority of this Court by refusing to follow the procedure established by the
7 Supreme Court in the *Jacobs* case, and granted itself new powers, of which no court in
8 this state is authorized; rather, they are prohibited by Business & Profession Code §6050.

9 17. The State Bar Court entered the default with the Answer on file and Kay
10 having appeared for trial and testified, which no court in California can do, let alone an
11 administrative court. See *Wilson v. Goldman* (1969) 274 Cal.App.2d 573, 576-578
12 [where answer filed, default order based on failure to appear at trial is "void on its face"
13 and thus subject to direct or collateral attack at any time]. Moreover, after taking the void
14 default, the Court further refused Kay the right to participate and failed to require OCTC
15 to prove the contested charges.

16 "Where a defendant has filed an answer, neither the clerk nor the court has the
17 power to enter a default based upon the defendant's failure to appear at trial, and a
18 default entered after the answer has been filed is void (*Warden v. Lamb*, *Supra*,
19 741, 277 P. 867; *Barbaria v. Independent Elevator Co.*, *Supra*, 133 Cal.App.2d 657,
20 659, 285 P.2d 91; *Miller v. Cortese*, 110 Cal.App.2d 101, 104-105, 242 P.2d 84),
21 and is subject to expungement at any time either by motion made pursuant to Code
22 of Civil Procedure, section 473 or by virtue of the court's inherent power to vacate
23 a judgment or order void on its face. (*Potts v. Whitson*, 52 Cal.App.2d 199, 125
24 P.2d 947; *Reher v. Reed*, 166 Cal. 525, 528, 137 P. 263; *Baird v. Smith*, 216 Cal.
25 408, 409-411, 14 P.2d 749.) Here the plaintiffs did not proceed to trial on the date
26 set and for which notice of trial had been served. Instead they obtained an entry of
27 defendant's default beyond the power and authority of the court to grant. Such a
28 void 'entry of default' cannot excuse compliance with Code of Civil Procedure,

1 section 594, subd. 1. Defendant's answer placed in issue factual questions
2 concerning liability and damages. When the trial of those matters actually took
3 place at plaintiffs' instance on October 16, 1967, some 5 months after the trial date,
4 defendant was not in default and was entitled to notice of the hearing as provided
5 in the code section. No such notice was given. A judgment made after a trial held
6 without the notice prescribed by Code of Civil Procedure, section 594, subd. 1 is
7 not merely error; **it is an act in excess of the court's jurisdiction.** (Perini v.
8 Perini, 225 Cal.App.2d 399, 37 Cal.Rptr. 354.)” (Emphasis.) (*Id.*, at 577.)
9 See also *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 864, citing to *Wilson* [“(w)here
10 a defendant has filed an answer, neither the clerk nor the court has the power to enter a
11 default based upon the defendant's failure to appear at trial, and a default entered after the
12 answer has been filed is **void .**” (Emphasis.)].

13 “Since *Wilson*, the legislature has expanded the law pertaining to default, which
14 now specifically allows an answer to be stricken and a default entered as a sanction
15 for the **defendant's extreme misuse of the discovery process.** (§ 2023,
16 subdivision (b)(4); see, e.g., *Greenup v. Rodman* (1986) 42 Cal.3d 822, 231
17 Cal.Rptr. 220, 726 P.2d 1295.) However, that provision has no application to the
18 situation where defendant simply fails to appear at trial. Moreover, even if the
19 default here could otherwise be properly characterized as a "sanction," analogous
20 to the discovery sanctions, it could not be sustained. Section 2023 specifically
21 requires notice to the affected party and an opportunity to be heard before
22 imposition of any sanction. (§ 2023, subdivisions (b) and (c).)” (Emphasis) (*Id.*)

23 Following the entry of the default, Kay briefed the Court on the illegality and
24 voidness of the default, which the Court rejected. Then, Kay moved to cure the default
25 by agreeing to provide further testimony; however, the court denied this relief. Thus,
26 once the default was entered, it became irrevocable terminating sanctions. Moreover, the
27 Court further exceeded its authority by finding culpability and applying aggravating
28 discipline for uncharged matters. However, evidence of uncharged facts cannot be

1 considered in aggravation in a default matter because the attorney has not been "fairly
2 apprised of the fact that additional uncharged facts will be used against him." (See
3 *Matter of Johnston* (Rev.Dept. 1997) 3 Cal. State Bar Ct.Rptr. 585, 589.) Thus, the
4 Court created a one-time only special default, which is not authorized in the State Bar
5 Act, State Bar Rules of Procedure and State Bar Rules of Practice. This special default
6 applies only to Kay, which is further evidence of selective prosecution, denial of due
7 process and violation of equal protection under the law. Moreover, this special default
8 is like no other, because it cannot be cured. Kay could not cure the special default in the
9 approved manner by demonstrating excusable neglect for failing to file an answer or
10 appear for trial, because he did those things. Rather, he briefed the Court regarding its
11 legal error in entering the void default and when the Court denied that relief, he agreed to
12 resume testifying; however, the Court denied this relief as well. Thus, once the special
13 default was entered, it became irrevocable terminating sanctions.

14 18. These *ultra vires* acts were carried out by the State Bar without and in excess
15 of its jurisdiction and in violation of constitutional and statutory rights. The Court further
16 exceeded its authority by later *sua sponte* striking¹⁴ the Answer, but after it heard only the
17 limited evidence it would allow, which resulted in dismissal of co-respondent John
18 Dalton, because the evidence did not support the charges. Moreover, the default has done
19 away with the attorney client, work product and 5th Amendment privileges and the right to
20 have an Article VI court determination and writ of *habeas corpus* in alleged contempt
21 proceedings, required by State Bar Rules of Procedure, rules 152(b) & 187; Business &
22 Profession Code §§6050, 6051, 6068(i), Code of Civil Procedure §1991 and, in which a
23 timely claim of privilege furnishes an automatic ground for exclusion or non-disclosure of

24
25 ¹⁴ The Court has the limited power either on motion of a party or *sua sponte* to "correct clerical
26 mistakes in its judgment . . . so as to conform to the judgment . . . directed." (Emphasis.) Code of
27 Civil Procedure § 473(d); *APRI Insurance Co. v. Superior Court (Schatteman)* (1999) 76
28 Cal.App.4th 176, 185. "Clerical error" refers to inadvertent errors in entering or recording the
judgment rather than in rendering the judgment (judicial error). (*In re Candelario* (1970) 3 Cal.3d
702, 705. Code of Civil Procedure §1008 governing reconsideration allows courts to act *sua sponte*
to enter a different order only **where there has been a change in the law**, which did not occur here.

1 the privileged information unless and until an Article VI court overrules the claims of
2 privilege and orders disclosure. See Evidence Code §914(b):

3 **No person may be held in contempt for failure to disclose information claimed**
4 **to be privileged unless he has failed to comply with an order of a court that he**
5 **disclose such information.** This subdivision does not apply to any governmental
6 agency that has constitutional contempt power, nor does it apply to hearings and
7 investigations of the Industrial Accident Commission, nor does it impliedly repeal
8 Chapter 4 (commencing with Section 9400) of Part 1 of Division 2 of Title 2 of the
9 Government Code. **If no other statutory procedure is applicable, the procedure**
10 **prescribed by Section 1991 of the Code of Civil Procedure shall be followed in**
11 **seeking an order of a court that the person disclose the information claimed to**
12 **be privileged.**

13 COMMENT--ASSEMBLY COMMITTEE ON JUDICIARY:

14 Subdivision (b) is needed to protect persons claiming privileges in nonjudicial
15 proceedings. **Because such proceedings are often conducted by persons**
16 **untrained in law**¹⁵, it is desirable to have a judicial determination of whether a
17 person is required to disclose information claimed to be privileged before he can
18 be held in contempt for failing to disclose such information. **What is**
19 **contemplated is that, if a claim of privilege is made in a nonjudicial**
20 **proceeding and is overruled, application must be made to a court for an order**
21 **compelling the witness to answer. Only if such order is made and is disobeyed**
22 **may a witness be held in contempt. That the determination of privilege in a**
23 **judicial proceeding is a question for the judge is well-established California**
24 **law.** See, e.g., *Holm v. Superior Court*, 42 Cal.2d 500, 507, 267 P.2d 1025, 1029
25 (1954) (Emphasis .)

26 Moreover, Rule 152 does not grant super powers to the court and OCTC to rewrite the
27 Business & Professions Code, Code of Civil Procedure and Evidence Code. If that were

28 _____
¹⁵ The court here is the ideal for which the Legislature intended this statutory construction.

1 the case, then a witness or party could be compelled to attend trial and testify without the
2 necessity of a subpoena or notice and without any determination of contempt, which is
3 not the case. (See *In re Abrams, supra*, 108 Cal.App.3d at 687.) In addition, an Article
4 VI court contempt order is subject to review by extraordinary writ (certiorari if only a fine
5 is imposed, or *habeas corpus* if the contemnor is imprisoned). (*In re Buckley, supra*, 10
6 Cal.3d at 240 (*habeas corpus*); *Miller v. Municipal Court* (1967) 249 Cal.App.2d 531,
7 532 (certiorari).) The default wrongly determined that attorney Kay - not the clients -
8 control whether he can divulge privileged and confidential communications and work
9 product information, which the court refers to as the evidence, which OCTC never moved
10 to compel in discovery.¹⁶ Kay adhered to his duty of confidentiality, which obligates him
11 to preserve client secrets "at every peril;" thus, he invoked his rights under Business &
12 Professions Code §6068(i), because he was **compelled** to challenge the court's orders
13 overruling the claims of privilege on behalf of his clients. (Business & Profession Code
14 §6068(e)(1); *Commercial Standard Title Co. v. Sup.Ct. (Smith)* (1979) 92 Cal.App.3d
15 934, 945; ABA Form.Opn. 155 (1931)--"it is the duty of an attorney to maintain the
16 confidence and preserve inviolate the secrets of his client"; ABA Form.Opn.
17 94-385--lawyer has duty to seek to limit court order for attorney's client files on any
18 legitimate grounds.) (See also, 1 Witkin, *Cal. Proc.* (5th ed., 2008), *Attorneys*, §498,
19 p.619 - "(r)efusal of an attorney to testify in a judicial investigation into unethical
20 practices, under a claim of the Fifth Amendment privilege, cannot be the basis of
21 disciplinary action. *Spevack v. Klein* (1967) 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574,
22 2 Cal. Evidence (4th), Witnesses, §363, overruling *Cohen v. Hurley* (1961) 366 U.S. 117,

23
24 ¹⁶ The Court fails to distinguish the standards for disclosure in discovery (calculated to lead to the
25 discovery of evidence) and trial (relevancy). Section 2016(b) of the Code of Civil Procedure,
26 provides for discovery, among other matters, of 'the identity and location of persons having
27 knowledge of relevant facts.' It expressly does not limit discovery to testimony that would be
28 inadmissible at a trial, for it states: 'It is not ground for objection that the testimony will be
inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery
of admissible evidence.'

1 81 S.Ct. 954, 6 L.Ed.2d 156.”) Regardless, the court entered the default based on the
2 erroneous and specious rationale that he was depriving OCTC of evidence, which he
3 controlled, when in fact it is the clients who control the evidence through the privilege,
4 which the clients¹⁷ never waived¹⁸ or Kay was entitled to assert the 5th Amendment
5 privilege. All the while knowing that the default will be used to harm Kay’s clients,
6 because it makes findings in contradiction of the orders in the underlying cases, of which
7 the State Bar has no jurisdiction to review or reverse. See *Lady v. Worthingham, supra*.

8 19. The State Bar lacked subject matter jurisdiction, because there are no
9 underlying orders finding any misconduct establishing the State Bar proceeding as a
10 reportable action, pursuant to Business & Professions Code §6086.7. The State Bar,
11 without and in excess of jurisdiction, has charged and found Kay guilty/culpable of the
12 crime of “significantly obstructed the orderly administration of justice,” which is criminal
13 contempt of court, for which Kay was never charged, tried or convicted in any Article VI
14 court having jurisdiction at the time and where the alleged contempt took place. Thus,
15 without any due process, the State Bar has *criminalized* legitimate advocacy (speech) and
16 found “moral turpitude,” resulting from winning and using advocacy in the trial and
17 appellate courts, that was never found to be improper.

18 20. The State Bar has conducted this unauthorized - *ultra vires* contempt proceeding
19 by adding the language of contempt found in the penal code regarding criminal contempt
20 (Penal Code §166) to “disrespect to the court,” under Section 6068(b) of the Business &
21 Professions Code, which it cannot do. See *People v. Woodhead* (1987) 43 Cal.3d 1002,
22 1010:

23 “It is a settled axiom of statutory construction that significance should be attributed
24 to every word and phrase of a statute, and a construction making some words
25 surplusage should be avoided. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973)

26 _____
27 ¹⁷ OCTC never sought or obtained a waiver of the privilege from any of Kay’s clients.

28 ¹⁸ Evidence Code §953(a) -- the "holder" of the attorney-client privilege is the client or their
authorized representative (guardian or conservator) – not the attorney.

1 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].) (8) **It is an equally**
2 **settled axiom that when the drafters of a statute have employed a term in one**
3 **place and omitted it in another, it should not be inferred where it has been**
4 **excluded. (Ford Motor Co. v. County of Tulare (1983) 145 Cal.App.3d 688,**
5 **691 [193 Cal.Rptr. 511].)”** (Emphasis.)

6 However, there is no civil equivalent of contempt. In any prosecution for direct or
7 indirect contempt, the court must strictly adhere to the due process to be afforded to
8 alleged contemnors, which has been denied here. Worse, the State Bar has gone beyond
9 the punishment afforded in a contempt proceeding, which can only result in the
10 incarceration or sanctioning of the contemnor to coerce their cooperation in the judicial
11 proceeding.

12 21. OCTC’s briefing throughout the State Bar proceeding cite exclusively to
13 contempt cases and describe the alleged misconduct as “grounds for contempt,”
14 “contemptuous on its face,” “contemptuous, that is disrespectful,” “contempt of the
15 authority of the court,” “constitutes contempt, thus disrespect,” etc. (Exhibit 2, OCTC’s
16 Pretrial Statement.) This admission in OCTC’s briefing establishes the *ultra vires* nature
17 of these proceedings, which for all intents and purposes, have been carried out as a
18 contempt prosecution in the State Bar, which has no authority (standing or jurisdiction) to
19 charge (cite) or prosecute a contempt. There is no civil equivalent for contempt, which is
20 a criminal proceeding. (*Wilde v. Superior Court of San Diego* (1942) 53 Cal.App.2d 168,
21 177.) Rather, the alleged contempt can only be cited and prosecuted in the underlying
22 trial courts, where the conduct took place, where jurisdiction existed and where due
23 process must be afforded, in which alleged contemnors are innocent of such conduct until
24 proven guilty “beyond a reasonable doubt.” (*Id.*) Here, the Court demanded that Kay
25 waive privileges to prove his innocence and found culpability by a lesser standard of
26 proof. The State Bar cannot charge or seek to have an attorney charged with alleged
27 contempt, under the guise of “disrespect to the court,” occurring in Article VI courts,
28 which entered no such orders. See, e.g., the Supreme Court’s decision in *State Bar of*

1 *California v. Superior Court in and for Los Angeles County* (1935) 4 Cal.2d 86, 87-88,
2 which rejected the State Bar writ of mandate to have the Superior Court determine a
3 contempt.

4 22. Kay is a successful civil rights attorney, who represent the rights of discrimination
5 and harassment victims and whistle-blowers before the superior and appellate courts of
6 the State of California and United States District Courts. Kay, on behalf of his clients,
7 frequently takes positions in courtroom advocacy that are not consistent with those
8 espoused by corporate defense attorneys or their clients, all of whom have clear financial
9 and ideological interests adverse to the claims of Kay.

10 23. Kay is a solo practitioner who has spent the majority of his career fighting to
11 advance the rights of women, minorities, whistle-blowers, gays, lesbians, physically
12 handicapped and the disenfranchised in the workplace, acting as lead counsel in
13 numerous civil rights trials which have resulted in the largest non-class action sex
14 harassment verdicts in the United States and four of the largest sex harassment verdicts in
15 California, including the landmark case of *Weeks v. Baker & McKenzie*. Kay has been
16 acknowledged by numerous trial judges for his outstanding advocacy in orders awarding
17 him attorneys' fees at the upper hourly rate for attorneys with a similar level of
18 experience.

19 24. For the 28 years Kay has been litigating and trying cases, he has never been cited
20 for contempt or fined for engaging in attorney misconduct by any court; nor has he
21 previously been the subject of any State Bar complaint by a judge. Moreover, in
22 challenging the neutrality of a judge, Kay has not committed a chargeable offense; rather,
23 it is required of a competent advocate. See *In re Bernard* (1994) 31 Fed.3d 842, 847:

24 "Counsel for a party who believes a judge's impartiality is reasonably subject to
25 question has not only a professional duty to his client to raise the matter, but an
26 independent responsibility as an officer of the court. Judges are not omniscient
27 and, despite all safeguards, may overlook a conflict of interest. A lawyer who
28 reasonably believes that the judge before whom he is appearing should not sit must

1 raise the issue so it may be confronted and put to rest. Any other course would risk
2 undermining public confidence in our judicial system.”

3 See also *Matter of Anderson* (Rev.Dept. 1997) 3 Cal. State Bar Ct.Rptr. 775, 785,

4 “The identification of dishonest judges and their prompt removal from office
5 promotes a justified public confidence in the judicial system.”

6 Mr. Dalton had filed a Code of Civil Procedure §170.6 peremptory challenge and three
7 Code of Civil §170.1 challenges based on Judge Anello’s attempt to hold Kay and Mr.
8 Dalton in contempt and have them removed as counsel in the Gober case prior to the
9 retrial, based on a **void** order by Judge Anello, to which Judge Anello ultimately
10 admitted. [Kay has been found vicariously culpable for Mr. Dalton’s conduct in filing
11 these challenges.] Following the trial, appellate counsel Charles Bird filed a motion to
12 disqualify Judge Anello, pursuant to Code of Civil Procedure §170.1(c) and Kay filed a
13 complaint with the Commission on Judicial Performance (CJP) based in part on Judge
14 Anello’s improper *ex parte* communications with disqualified Judge Weber during the
15 *Gober* punitive damages retrial. (See *Christie v. City of El Centro* (2003) 135
16 Cal.App.4th 767, 776.) Thus, the OCTC was aware that Judge Weber was discussing the
17 ongoing proceedings with Judge Anello at the time she was disqualified. Judge Anello
18 was using the State Bar to *coerce* an “apology” in lieu of discipline, from Kay to be used
19 to defeat the lawful motions to disqualify sitting in the Court of Appeal, and complaint to
20 the CJP. See Exhibit 30, memo of OCTC prosecutor Alan Konig, which states on page 2:

21 “I (Konig) was more interested in having him (Kay) admit responsibility as that
22 would serve as an apology to Judge Anello and that I would consider entirely
23 stayed suspension if that occurred. . . I told them if he wants the benefit lenient
24 stipulation that he needs to stop the baseless attacks and accept responsibility.”

25 Because Kay refused the offer to clear Judge Anello of the charges of judicial
26 misconduct, the OCTC moved forward with this malicious prosecution.

27 25. On June 11, 2008, the State Bar of California, Office of the Chief Trial Counsel
28

1 ("OCTC"), led by Drexel, Dal Cerro and Blumenthal, issued the charges¹⁹ in the NDC
2 against Kay and his co-counsel Mr. Dalton. The charges relate primarily to three lawsuits
3 litigated by Kay and DALTON for allegedly improper conduct during trials in *Gober v.*
4 *Ralphs* and *Marcisz v. UltraStar* and against Kay for allegedly improper conduct with
5 respect to the division of attorneys' fees after a successful result in *Weeks v. Baker &*
6 *McKenzie*.

7 26. None of the charges or allegations in the NDC were initiated by any former or
8 current clients of Kay. No harm has been caused to any client, party or institution in any
9 of the cases that are the subject of the NDC. The charges in the NDC are not supported in
10 the law and facts (record) in the underlying *Gober* and *Marcisz* cases. Regardless, the
11 State Bar Court Hearing Department has recommended a lengthy suspension and
12 probation upon a lawyer, who has been a path-breaking advocate for victims of sex
13 harassment, based on conduct, which in no way adversely affected his clients or the
14 underlying trial and appellate courts, who issued no orders or findings of contempt or
15 sanctions for asking improper questions, making improper objections or argument,
16 pursuing frivolous trial motions and pursuing frivolous appeals for which Kay has been
17 found culpable in direct contradiction of the findings of the Court of Appeal and Supreme
18 Court, which found the losing defendants were afforded fair trials.

19 Based on the entry of the default, Kay has been denied *de novo* review to the
20 Review Department, under Rule 301 of State Bar Rules of Procedure. (Exhibit 3, State
21 Bar Clerk's Notice denying filing for review in the Review Department of the State Bar.)
22 Thus, the due process to be afforded through a *de novo* review, pursuant to Business &
23 Professions Code §6086.65, has been denied to Kay. See *Obrien v. Jones* (2000) 23
24 Cal.4th 40, 44-45:

25 "In 1988, the Legislature directed the board to establish a State Bar Court that
26

27 ¹⁹ The NDC uses misleading ellipses and out-of-context hearsay statements from trial transcripts
28 instead of competent evidence, in **violation** of the Uniform Standards Charging Manual
requirements, which are supposed to be adhered to in the State Bar.

1 would assume the board's disciplinary functions. (§ 6086.5.) The State Bar Court
2 includes a Hearing Department and a **Review Department**. (§§ 6079.1, 6086.65.)
3 Pursuant to rules promulgated by the bar, hearing judges conduct evidentiary
4 hearings on the merits in disciplinary matters and render written decisions
5 recommending whether attorneys should be disciplined. (Rose, supra, 22 Cal.4th at
6 p. 439, 93 Cal.Rptr.2d 298, 993 P.2d 956.) A decision of the Hearing Department
7 is reviewable by the Review Department at the request of the disciplined attorney
8 or the State Bar. (Ibid.) The **Review Department independently reviews the**
9 **record and may adopt findings, conclusions, and a decision or**
10 **recommendation at variance with those of the hearing judge.** (Cal. Rules of
11 Court, rule 951.5, adopted Feb. 28, 2000; FN2 see § 6086.65, subd. (d) [specifying
12 an alternative standard of review "[u]nless otherwise provided by a rule of practice
13 or procedure approved by the Supreme Court"].) (Emphasis.)

14 Moreover, Kay is being disciplined by a judge who has no trial experience and does not
15 know what is required of a competent trial lawyer to avoid waiver and preserve the record
16 for appeal on behalf of his clients. (See, e.g., Evidence Code §353(a); *Horn v. Atchison,*
17 *Topeka & S.F. Ry.* (1964) 61 Cal.2d 602, 610-611.) It is not the duty of a trial lawyer to
18 be popular with judges; rather, it is his duty to do what is necessary to protect his clients'
19 rights and interests, within the Rules of Professional Conduct, which is what transpired in
20 the underlying trials.

21 27. As a result on the entry of the default, the Court adopted all of the NDC charges as
22 having been proved by "clear and convincing" evidence, without any evidence, while
23 denying Kay a defense, in which he was not allowed to present his own direct testimony,
24 cross-examine witnesses, call defense witnesses, file motions and briefs or any other
25 semblance of due process to oppose OCTC's presentation of evidence, motions and
26 briefs in violation of Sections 6085(a), (b), (d) & (e) of the Business & Professions Code.
27 (See *Giddens v. State Bar, supra.*) The Decision recommends that Kay be suspended for
28 three years from the practice of law and placed on five years probation. Mr. Dalton,

1 who was charged with the same allegations of misconduct, was **dismissed without any**
2 **discipline.**

3 28. The State Bar is not empowered to step in years after trials are final on appeal and
4 discipline lawyers for conduct (thoroughly examined, vetted and approved in the trial and
5 appellate courts) for reasons having nothing to do with protecting the public and the legal
6 profession. To accomplish this illegitimate outcome, the State Bar had to engage in
7 illegal and void conduct, resulting in the denial of due process and equal protection,
8 which included the falsifying of the record.

9 29. The Court entered an illegal, void and incurable default, resulting in terminating
10 sanctions against Kay (with the Answer²⁰ on file and having appeared for trial and
11 testified), which no court in California can do, let alone an administrative court.

12 30. The Court further exceeded its authority and later *sua sponte* struck²¹ the Answer,
13 but after she heard only the limited evidence she would allow, which resulted in dismissal
14 of co-respondent Mr. Dalton, because the evidence did not support the charges. Thus, the
15 Court did not like even the carefully crafted record and testimony before her, because it
16 proved that the OCTC falsely reported the underlying record and falsely charged the
17 respondents Kay and Mr. Dalton. Moreover, if dismissal of the charges against Mr.
18 Dalton is warranted, then they should be dismissed as to Kay, along with the reporting of
19

20 ²⁰ See *Wilson v. Goldman* (1969) 274 Cal.App.2d 573, 576-578 [where answer filed, default order
21 based on failure to appear at trial is void and thus subject to direct or collateral attack]. When Kay
22 moved to cure the default by agreeing to provide further testimony, the State Bar Court denied this
relief. Thus, this default is like no other, because it cannot be cured.

23 ²¹ The Court has the limited power either on motion of a party or *sua sponte* to "correct **clerical**
24 **mistakes** in its judgment . . . so as to conform to the judgment . . . directed." (Emphasis.) Code of
25 Civil Procedure § 473(d); *APRI Insurance Co. v. Superior Court (Schatteman)* (1999) 76
26 Cal.App.4th 176, 185. "Clerical error" refers to inadvertent errors in entering or recording the
27 judgment rather than in rendering the judgment (judicial error). (*In re Candelario* (1970) 3 Cal.3d
702, 705. Code of Civil Procedure §1008 governing reconsideration allows courts to act *sua sponte*
to enter a different order only **where there has been a change in the law**, which did not occur here.

1 the OCTC for filing false charges.

2 31. The Decision **admits** Kay appeared at trial and testified before refusing to
3 provide further testimony, pursuant to Business & Professions Code §6068(i), based on
4 the Court denying Kay the right to assert any privileges and admitting unanswered
5 questions as admissions against Kay. (See, e.g., BAJI 1.02 and Rutter, Civil Trial &
6 Evidence, §8:202, *et seq.*) However, Rule 214 of the State Bar Rules of Procedure, states
7 in part, ". . . no error in admitting or excluding evidence shall invalidate a finding of fact,
8 Decision or determination, unless the error resulted in a denial of a fair hearing." Thus,
9 when the Court began admitting unanswered questions as admissions of culpability, while
10 refusing to refer this matter to an Article VI court for determination, Kay was left with no
11 choice but not to participate any further in the proceeding to protect his rights under
12 §6068(i)²² and protect the the underlying record, final verdict, and his clients. In other
13 words, prior to the entry of the default, Kay was being defaulted one question at time.
14 (See also Section 6079.4 of the Business & Professions Code ["The exercise by an
15 attorney of his or her privilege under the Fifth Amendment to the Constitution of the
16 United States, or of any other constitutional or statutory privileges shall not be deemed a
17 failure to cooperate within the meaning of subdivision (i) of Section 6068."]; Section
18 6085(e) of the Business & Professions Code ["To exercise any right guaranteed by the
19 California Constitution or the United States Constitution, including the right against
20 self-incrimination."].) Considering the criminal contempt finding and the State Bar's
21 duty to report criminal conduct, pursuant to Section 6044.5 of the Business & Professions
22 Code, the assertion constitutional and statutory rights were clearly proper and not grounds

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24

²² HISTORICAL AND STATUTORY NOTES for Section 6068:

25 Stats.1999, c. 221, rewrote subd. (i), which read:

26 "(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary
27 proceeding pending against the attorney. However, this subdivision shall not be construed to deprive
28 an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United
States or any other constitutional or statutory privileges."

1 to enter terminating sanctions.

2 32. As stated, the rationale for entering these terminating sanctions is OCTC needed
3 *privileged* and confidential information from Kay regarding attorney-client
4 communications and work product to find him culpable, which is an admission that the
5 charges never should have been brought. Moreover, there has never been a determination
6 by an Article VI court that the information, which is clearly subject to attorney-client and
7 work product privileges, must be provided. Rather, the Court summarily ruled and found
8 Kay in contempt without jurisdiction to do so. The State Bar does not have jurisdiction of
9 this subject matter. The State Bar court ruled on these matters without the requisite
10 affidavits or written orders, which is an additional ground as to why there is no subject
11 matter jurisdiction. If there has been affidavits or orders, only an Article VI court would
12 have had subject matter jurisdiction.

13 33. The refusal to answer questions and further testify is an alleged contempt, as set
14 forth in the State Bar Rules of Procedure and the Business & Professions Code §§6000, *et*
15 *seq.* (State Bar Act), Code of Civil Procedure, Evidence Code and decisions of the Court
16 of Appeal and Supreme Court; all of which establish that alleged (undetermined)
17 contempt is not grounds to enter terminating sanctions through the Default .

18 34. Based on the default being entered while OCTC was putting on its case, Kay
19 was denied a defense, in which he was not allowed to present his own direct testimony,
20 cross-examine witnesses, call defense witnesses, file motions and briefs or any other
21 semblance of due process to oppose OCTC's presentation of evidence, motions and briefs
22 in violation of Sections 6085(a), (b), (d) & (e) of the Business & Professions Code. (See
23 *Giddens v. State Bar, supra.*)

24 35. Without any underlying orders finding misconduct establishing the State Bar
25 proceeding as a reportable action, pursuant to Business & Professions Code §6086.7 and
26 without any due process, the State Bar has *criminalized* legitimate advocacy (speech) and
27 found "moral turpitude," in the Decision resulting from winning advocacy in the trial and

1 appellate courts, which was never found to be improper.. The Court, without jurisdiction
2 in this subject matter, has convicted Kay of the crime of “significantly obstructed the
3 orderly administration of justice,” which is criminal contempt of State Bar Court, for
4 which Kay was never charged, tried or convicted in any Article VI court having sole
5 jurisdiction over this matter. No court can now claim an alleged contempt took place, let
6 alone an inferior tribunal or the State Bar, which has no jurisdiction to review or reverse
7 the proceedings of the Court of Appeal. See *Lady v. Worthingham, supra*. However, in
8 any prosecution for direct or indirect contempt, the court must strictly adhere to the due
9 process to be afforded to alleged contemnors, which has been denied in the State Bar
10 proceeding. In addition, the State Bar does not have jurisdiction to hold hearings on this
11 subject matter.

12 36. OCTC’s briefs throughout the State Bar proceeding cite exclusively to
13 contempt cases and describe the alleged misconduct as “grounds for contempt,”
14 “contemptuous on its face,” “contemptuous, that is disrespectful,” “contempt of the
15 authority of the State Bar Court,” “constitutes contempt, thus disrespect,” etc. (Exhibit 2,
16 OCTC’s Pretrial Statement.) This admission establishes the unauthorized - *ultra vires*
17 nature of these proceedings. The State Bar has no authority (jurisdiction) to charge (cite)
18 or prosecute a contempt. There is no civil equivalent for contempt. Rather, the alleged
19 *contemptuous* misconduct can only be cited and prosecuted in the underlying trial courts,
20 where the conduct took place, where jurisdiction existed and where due process must be
21 afforded, in which alleged contemnors are innocent of such conduct and charges until
22 proven guilty “beyond a reasonable doubt.”

23 37. In the State Bar proceeding, the OCTC and the Court have falsely reported the
24 record in the underlying trials and appeals to *fabricate* non-existent trial court orders and
25 appellate court findings of contempt. This is criminal contempt. (Penal Code §166(a)(7):
26 “The publication of a false or grossly inaccurate report of the proceedings of any court.”)
27 The Court further allowed disqualified and embroiled judges (reversed on appeal) to

1 falsely testify in the State Bar trial regarding their personal opinions, which were never
2 reduced to written orders, to augment the record and create imaginary new orders, which
3 conflict with their orders and statements on the record, when they were qualified jurists.

4 38. OCTC has charged and the Court has found Kay vicariously culpable for the
5 alleged contemptuous misconduct of other lawyers²³, while refusing to charge or
6 discipline these lawyers for this conduct. In addition, the Court dismissed the very same
7 charges against Kay's co-counsel Mr. Dalton²⁴, without any discipline whatsoever, which
8 OCTC described in its Pretrial Statement, at page 2-3:

9 "This case stems from three separate civil matters in which **respondents Philip**
10 **Kay and John Dalton** have demonstrated that **they** are unwilling or unable to
11 comport their conduct to that which is required of attorneys in this state. **They**
12 bully, mislead and refuse to act as officers of the State Bar Court are required to
13 do. As charged in the NDC, **they** show disrespect to the State Bar Courts . . . **they**
14 fail to comply with State Bar Court orders; **they** make frivolous (sic) and false
15 accusations against judges; **they** repeatedly attempt to get inadmissible and
16 improper information to juries; and **they** repeatedly accuse opposing counsel of
17 misconduct . . . **Both respondents** also repeatedly file frivolous and repetitive
18 motions, including motions to disqualify a judge, even though they are identical or
19 similar to previous motions. **Respondent Dalton** also made misrepresentations in
20 his motions and statements to disqualify Judge Michael Anello in the *Gober v.*
21 *Ralphs Grocery Co.* remand matter. **Respondents** also improperly provided a letter
22 to jurors in the *Gober* matter informing them of evidence excluded by the State
23 Bar Court and advising them that they did not need to talk to opposing counselor
24 or the judge . . .

25 **Respondents' misconduct harmed their clients and abused the judicial**
26 **system.**" (Emphasis.)

27 The selective prosecution and discipline of Kay is an unconstitutional denial of due
28 process and equal protection under the law. (See, e.g., *Freeman v. City of Santa Ana*, 68
F.3d 1180, 1187 (1995):

29 "To establish impermissible selective prosecution, [Freeman] must show that
30 others similarly situated have not been prosecuted and that the prosecution is based
31 on an impermissible ground."

32 ²³ Kay has been found *vicariously* culpable for the alleged conduct of his co-counsel, appellate
33 counsel, opposing defense counsel and his own counsel in the State Bar proceeding. (See 7 Witkin
34 Procedure (4th ed.) Trial § 187, p.215, citing *Cantillon v. Superior Court* (1957) 150 Cal.App.2d
35 184,190.)

36 ²⁴ (Exhibit 2B, OCTC's Motion dismissing charges against John Dalton, with no discipline.)

1 on an impermissible motive.” United States v. Lee, 786 F.2d 951, 957 (9th
2 Cir.1986). See United States v. Bourgeois, 964 F.2d 935, 938 (9th Cir.), cert.
denied, 506 U.S. 901, 113 S.Ct. 290, 121 L.Ed.2d 215 (1992).]

3 The bias arises from State Bar acting as a proxy for the complainant (Hon. Michael
4 Anello) to regain his “public” reputation following his disqualification and reversal by the
5 Court of Appeal, in which the Court re-writes the record to claim that Judge Anello and
6 his colleagues (judges Hon. Joan Weber and Hon. John Meyer) should not have been
7 disqualified and they committed no legal error.

8 Further exposing the political nature of this vendetta, the sole complaint in this
9 matter was made by disqualified Judge Anello, who delayed more than a *year* in pursuing
10 his complaint for alleged “contemptuous misconduct” against Kay. (Exhibit ___ Judge
11 Anello Complaint.) Judge Anello’s Complaint (filed on October 29, 2002) includes
12 allegations against Kay occurring during the *Gober* punitive damages retrial *in limine*
13 motions hearings held in **August, 2001**. Moreover, at the conclusion of the hearings,
14 Judge Anello, stated Kay’s conduct was exemplary, as he did throughout the *Gober*
15 retrial.

16 “YOU’VE (MR. Kay AND DEFENSE COUNSEL) BRIEFED THESE ISSUES
17 EXCEEDINGLY WELL. YOU’VE ARGUED THEM WELL.”

18 (Exhibit ___, *Gober* 2 RT *In limine* hearing transcript p. 215:1-3.)

19 There was no commentary by Judge Anello that Kay engaged in any misconduct, nor was
20 he cited or sanctioned by Judge Anello for any alleged contemptuous misconduct during
21 the *in limine* hearings, which includes Kay’s description of Judge Anello’s conflicting
22 rulings – not Judge Anello -- under the *Weeks* decision, excluding the *Gober* Plaintiffs’
23 evidence, as “intellectually dishonest,” which is an argument expressly found by appellate
24 courts to be within the bounds of proper advocacy.²⁵ Moreover, the majority of the
25

26 ²⁵) See *Standing Committee v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1441.) Such statements of
27 opinion are a form of advocacy protected by the First Amendment, and judges should not expect
28 rules of professional conduct to shield them from “unpleasant or offensive criticism.” (*Id.* at p.

1 charges for which Kay has been found culpable arise in the first *Gober* trial before Judge
2 Weber, who did not file a complaint with the State Bar.

3 In the *Marcisz* case, there is no complaint; nor is there any order establishing a
4 reportable action. Rather, OCTC opened the investigation in 2005 in the midst of its
5 investigation of the *Gober* case and began combing through the *Marcisz* trial transcripts,
6 as it had been doing in the *Gober* case outside it's jurisdiction to review court matters.
7 See *Lady v. Worthingham, supra*. Moreover, OCTC was assisting and sharing
8 confidential information with defense trial and appellate counsel in the *Gober* and
9 *Marcisz* cases during the appeals and currently to the detriment and harm of Kay's clients.
10 (Exhibit 28, OCTC notes/memos re: communications with trial and defense counsel in
11 the *Gober* and *Marcisz* cases.)

12 The Court engages in character attacks in the Decision; "he (Kay) lost it, not the
13 cases, but his integrity, professional decorum, credibility, and respect of the court."
14 OCTC states in its closing brief that Kay is a "menace to society." These attacks do not
15 match Kay's record, in which as a civil rights attorney, his work has resulted in
16 progressive published case law and the vindication of the rights of his many clients in
17 harassment, discrimination and whistle blower cases regarding the rights of women,
18 minorities, gays, lesbians and physically challenged citizens. Prior to this work, Kay
19 worked as a San Francisco Firefighter, while attending law school. Kay did not engage in
20 the "*ad hominem*" attacks leveled against him; rather, his statements were always made
21 within the *context* of legitimate argument, objections and questions during hard fought
22 civil rights trials, in which opposing counsel aggressively defended their large corporate
23 clients and at times, engaged in misconduct, which required Kay to make a record for

24 _____
25 1437.) As the Ninth Circuit points out, even accusations of "intellectual dishonesty" against a
26 judge's rulings are not attorney misconduct: "[i]ntellectual dishonesty is a label lawyers frequently
27 attach to decisions with which they disagree. An allegation that a judge is intellectually dishonest,
28 however, cannot be proved true or false by reference to a core of objective evidence." (*Yagman*, 55
F.3d at p. 1441 [footnote and internal quotation marks omitted].)

1 appeal.

2 39. Based on the entry of the default, Kay was denied *de novo* review to the Review
3 Department in this matter, under Rule 301 of State Bar Rules of Procedure. (Exhibit 3,
4 State Bar Clerk's Notice denying filing for review in the Review Department of the State
5 Bar.) Thus, he was denied review of the Decision recommending suspension for three
6 years and requiring five years of probation, with no history of discipline and client
7 complaints and who is not the subject of a "reportable action" by the trial and appellate
8 courts in this matter or any other in his 28 years of practice and 25 years as a trial
9 lawyer.²⁶

10 40. Since the Supreme Court issued its *In re Rose* decision, petitions for review
11 by respondent attorneys to the Supreme Court regarding matters decided in the Hearing
12 and Review Departments are nearly if not always denied. In the rare case in which
13 review is granted, the Supreme Court either defers to the State Bar Court's decision or
14 increases the discipline on the respondents (See *In re Silvertown* (2005) 36 Cal.4th 81²⁷.)
15 Thus, attorneys' petitions for review of State Bar matters are rarely if ever reviewed by
16 the Supreme Court, in which a respondent attorney was granted affirmative relief that
17 improved his situation. Moreover, the disciplinary system established by the Supreme
18 Court appears to be a joint venture between the State Bar Court and OCTC, including
19 *ex-parte* communications regarding matters, which significantly affect accused attorneys.
20 For example, in defense of the *Konig v. Dal Cerro, et al.* case (discussed below), the State
21 Bar retained Charlotte Addington to investigate Mr. Konig's many complaints against
22 State Bar prosecutors and judges. Among the matters discussed in the Addington Report
23 are findings that *ex parte* communications occurred between the prosecutors and judges.

24

25 ²⁶ Kay's first jury trial was in 1985.

26

27 ²⁷ This is the only known in which the Supreme Court took up a State Bar matter after its decision
28 of *In re Rose*.

1 (Exhibit 25, Addington Report.) Page 47 of the report states:

2 "(State Bar prosecutor) Mr. Dal Cerro occasionally has informal meetings with the
3 State Bar Court judges to discuss matters relating to procedure and practice. At
4 one such meeting, the judges spoke about the tendency of the OCTC to overcharge
5 when preparing the initial NDC, which often causes problems later in the case."

6 *Ex parte* meetings between State Bar prosecutors and judges is a gross violation of
7 Judicial Canons and prosecutorial misconduct. Thus, the possibility of obtaining a
8 meaningful review by the Supreme Court appears to be theoretical, and it would be a
9 mistake for a respondent to place any reliance upon the belief that he will receive a
10 thoughtful or objective review in that Court. This conclusion, that "opportunity" for
11 review is illusory, is supported by former Supreme Court Justice Janice Brown's dissent in
12 the case of *In re Rose*, 22 Cal.4th 430, 466-470 (2000). Many of the negative
13 consequences "antithetical to the constitutional design" discussed in Justice Brown's
14 dissent, have come to pass under the current disciplinary system, in which attorneys are,
15 among other things, being denied their right to genuine and impartial judicial review,
16 potentially with far-reaching and deleterious consequences on an attorney's right to pursue
17 a livelihood. Moreover, the State Bar prosecutor's office (OCTC) is generally far more
18 inclined to prosecute charges against solo or small firm practitioners than it is large firms
19 representing corporate interests, at least in part because the State Bar appears to accord
20 greater credibility to the explanations and assertions of attorneys from large firms, which
21 is the case here. Thus, this case presents a clear example of this lack of due process and
22 application of this double standard. This lack of oversight is antithetical to the due
23 process the Supreme Court promises in its *In re Rose* decision and accounts for the brazen
24 conduct by the State Bar, which is the subject of this Complaint.

25 41. Contrary to the NDC charges adopted in the Decision, the *Gober* punitive damages
26 awards were remanded based on a change in the law (by the Supreme Court) regarding
27 the constitutional limits of punitive damages, pursuant to its holding in *Simon v. San*

1 *Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159 – not attorney misconduct. (See
2 *Gober* published Opinion, *infra*). In *Marcisz*, the Court of Appeal expressly rejected any
3 claim of attorney misconduct or that UltraStar was denied a fair trial. Rather, the Court of
4 Appeal upheld the liability findings and reversed the trial court’s rulings and reinstated
5 the compensatory damages. The State Bar Court has *imagined* (falsely reported) mistrial
6 motions, new trial motions, appellate court remands and violations of court orders. These
7 falsely reported findings are easily debunked by reviewing the underlying trial and
8 appellate record.²⁸ (Exhibit 5, *Gober* Court of Appeal Opinions; Exhibit 6, *Marcisz*
9 Court of Appeal Opinion; Exhibit 7, State Bar Court trial (exhibit 4- *Gober* 1 trial minute
10 orders).)

11 42. The Decision falsely reports the *Gober* punitive damages retrial and *Marcisz* jury
12 verdict damages awards were influenced or swayed by juror “passion and prejudice,”
13 which is **juror misconduct**, pursuant to Code of Civil Procedure §657(2)) – NOT
14 attorney misconduct, pursuant to §657(1) – “Irregularity in the proceedings of the court,
15 jury or adverse party, or any order of the court or abuse of discretion by which either party
16 was prevented from having a fair trial.” Thus, the State Bar Court does not know and
17 cannot distinguish the difference, while finding attorney misconduct arising from juror
18 misconduct, which exemplifies the illegality and voidness of the State Bar proceeding.
19 This underscores the holding that the review of the orders of the Supreme Court are not
20 subject of jurisdiction of the State Bar. (See *Lady v. Worthingham, supra.*) For if the
21 OCTC and Court do not possess the most elementary understanding of trial or appellate
22 law, it stands to reason that they shouldn’t be allowed to review said matters.

23 _____
24 ²⁸ "Where a decision upon appeal has been rendered by a District Court of Appeal and the case is
25 returned upon a reversal, and a second appeal comes to this Court directly or intermediately, for
26 reasons of policy and convenience, (the) Court generally will not inquire into the merits of said first
27 decision, but will regard it as the law of the case." (*Searle v. Allstate Life Ins. Co.* (1985) 38 Cal.3d
28 425, 434.)

Gober v. Ralphs Grocery Company

1
2 43. In each of the four *Gober* appeals, without having appealed the issue of attorney
3 misconduct, the losing defendant Ralphs raised the same allegations of misconduct denied
4 in their new trial motions, which the Court of Appeal and the Supreme Court rejected.
5 However, the State Bar resurrected the very same claims that losing defense counsel
6 argued and lost in the trial and appellate courts; thereby, making the State Bar a proxy for
7 losing defense counsel and their corporate clients.

8 44. In the first *Gober* Opinion, the Court of Appeal affirmed the Judgment, as that was
9 the only issue before the Court, which involved an appeal from the denial of a Judgment
10 Notwithstanding the Verdict (JNOV). Judge Weber remanded the amount of punitive
11 damages without any mention of attorney misconduct. (See Exhibit 31, First *Gober* trial
12 New Trial Order.) Ralphs appealed Judge Weber's order denying the JNOV and lost.
13 Regardless, the Decision finds Kay responsible for the delay of the appeal and vicariously
14 culpable for Ralphs' exercising its right in appealing the JNOV, which the Court of
15 Appeal denied and remanded the punitive damages for retrial – affirming the *Gober*
16 Plaintiffs' Judgments. In addition grounds for a JNOV do not include attorney
17 misconduct. Moreover, a judgment cannot be affirmed in the face of attorney misconduct
18 (§657(1)). Rather, an entire new trial would have taken place. Instead, there was only a
19 retrial of Phase 2 regarding the amount of punitive damages.

20 45. In the second *Gober* Opinion, the new trial motion was granted by Judge Anello
21 solely on the ground of **excessive damages** (§657(5) – not juror misconduct (§657(2)), in
22 which two of the *Gober* Plaintiffs accepted the *remittitur* of the trial court. Thus, in the
23 case of the *Gober* Plaintiffs who accepted *remittitur*, the new trial motion is considered a
24 complete denial. [When damages are determined to be "excessive," as here, the court
25 may grant a new trial conditionally: i.e., upon condition that **the motion for new trial**
26 **will be denied** if plaintiff consents to a reduction (a "*remittitur*") of damages in an
27 amount determined by the court. (§662.5(b).)] In addition, *affidavits* of which there are

1 none, are required to establish juror misconduct. As for the other four Gober Plaintiffs,
2 the New Trial Order never became effective, because of the grant of the JNOV.
3 However, grounds for new trial are asserted in the event a JNOV is denied. If both
4 motions are granted, the new trial order operates as a "backup" to the JNOV: ". . . the
5 order granting the new trial shall be effective only if, on appeal, the judgment
6 notwithstanding the verdict is reversed . . ." (§629).

7 46. Judge Anello engaged in criminal conduct to "reclaim [his] reputation publicly"
8 and punish Kay and Mr. Dalton by barring them from ever entering another court room²⁹
9 as his Complaint to the State Bar. (Exhibit 18, Judge Anello Complaint, p. 21). Judge
10 Anello's screed against Kay and Mr. Dalton conflicts with the trial record discussed
11 herein and his failures to find them in contempt or sanction them. As stated, the Court of
12 Appeal reviewed Judge Anello's Complaint, in the motion to disqualify Judge Anello.
13 The result was that the Court of Appeal disqualified him in the "interests of justice" and
14 did not refer Kay to the State Bar for discipline. Regardless, years after Kay appeared in
15 his courtroom, Judge Anello was still pursuing Kay – making inquiries and false and
16 malicious (criminal) statements to the State Bar -- seeking his disbarment. [Judge Anello
17 also wrote to the Rutter Group to have Kay removed from a seminar panel.] In a June 5,
18 2007 letter (Exhibit 18B) from Judge Anello to Chief Trial Counsel, Scott Drexel, Judge
19 Anello **falsely** stated that he granted a new trial based on attorney misconduct. However,
20 as discussed, Judge Anello granted a conditional new trial (a remittitur as to damages
21 only), which was based solely on the ground of excessive damages (§657(5)), and denied
22 on all other grounds, including §657(1). Judge Anello's false complaint to the State Bar

24 ²⁹ "Mr. Kay and Mr. Dalton have absolutely no respect for the judiciary, and no understanding of
25 the professional obligations imposed upon them by membership in the State Bar of California. They
26 are by far the most disrespectful and contemptuous attorneys I have ever encountered in over 30
27 years of combined experience as a practicing attorney and a judge. It is respectfully suggested that,
28 absent a significant and demonstrated change in behavior, they should **never be allowed to set foot
in a California courtroom again.**" (Emphasis)

1 constitutes a misdemeanor, pursuant to Business & Professions Code §6043.5(a) ["[e]very
2 person who reports to the State Bar or causes a complaint to be filed with the State Bar
3 that an attorney has engaged in professional misconduct, knowing the report or complaint
4 to be false and malicious, is guilty of a misdemeanor"].) Moreover, when Judge Anello
5 made this false statement, he was no longer a judge in the *Gober* case, having been
6 disqualified by the Court of Appeal "in the interest of justice"; thus, he did so without
7 immunity. Thus, Mr. Anello committed criminal contempt by falsely reporting the
8 underlying record in the *Gober* case. (Penal Code §166(a)(7).)

9 47. The third **published** *Gober* Opinion superseded [replaced] the prior unpublished
10 Opinions. (See *Gober v. Ralphs Grocery Company* (2006) 137 Cal.App.4th 204.) The
11 third *Gober* Opinion deals exclusively with a JNOV. Contrary to the Decision, no delay
12 was caused to any of the clients receiving their awards resulting from any of the appeals
13 handled by appellate counsel for which Kay has been found vicariously culpable. (See
14 *Gober v. Ralphs Grocery Company, supra*, 137 Cal.App.4th at 207.) In addition,
15 appellate counsel Charles Bird executed and filed the successful §170.1(c) motion,
16 resulting in Judge Anello's disqualification by the Court of Appeal, for which the
17 Decision finds Kay vicariously culpable.

18 48. There was a fourth appeal in *Gober* limited solely to the issue of the trial court
19 award of **attorney's fees**, which denied the *Gober* Plaintiffs' lawyers a multiplier, which
20 the Court of Appeal affirmed. There was a fifth appeal sought by one plaintiff Peggy
21 Noland. However, Ralphs did not appeal from the award of the "lodestar" fees
22 determined by the trial Court (Hon. Jacqueline Stern³⁰), who awarded Kay \$560 an hour
23 for all of his trial work. (Exhibit 8, *Gober* trial court (Hon. Jacqueline Stern's) Order
24 **awarding attorney's fees**.) The *Gober* trial court (qualified Judge Stern) reviewed the
25 record in relation to the charges of misconduct raised once again by Ralphs in awarding

26
27 ³⁰ The State Bar court denied respondents Kay and Dalton's request to call Judge Stern as a witness
28 in the State Bar proceeding.

1 Kay \$560 per hour for all of his trial court work.³¹ Moreover, the third *Gober* Opinion
2 sets forth the procedural history of the case, which is completely at odds with the Court
3 's Decision here. (*Gober v. Ralphs Grocery Company, supra*, 137 Cal.App.4th at 209-
4 210.)

5 *Marcisz v. UltraStar Cinemas*

6 49. Following, the *Marcisz* trial, UltraStar moved for a new trial, which was
7 granted in part and denied in part. Judge Meyer upheld the jury's verdict of liability,
8 including punitive liability, but threw out the compensatory and punitive damages ruling
9 the amounts were excessive. (§657(5).) Moreover, UltraStar's Motion for New Trial
10 included the ground of attorney misconduct, §657(1) – "irregularities in the proceedings
11 of the Court ." However, as stated, the sole basis for the new trial was "excessive
12 damages" under §657(5) and denying all other grounds. In addition, Judge Meyer
13 expressly rejected the claim of attorney misconduct at oral argument..

14 Counsel for UltraStar:

15 "... this Court has not ruled on or has not based its ruling for new trial
16 specifically only on attorney misconduct .. MTEG while it agrees strongly with
17 the Court 's conclusions regarding the excessiveness of damages, also would urge
18 that the other alternative basis for new trial contained in its motion are
19 meritorious."

18 Judge Meyer: **"I've thought about that, and I respectfully disagree."** (Exhibit
19 10, *Marcisz* RT 7181:10-28.)

19 Then again, later in the proceeding:

20 Mr. Kay:

21 ... Ms. Houlahan misspoke, she said that you granted the motion based on
22 attorney misconduct, it isn't, it was granted –

22 THE Court : **"No, I don't think she said that and if she did, she did
23 misspeak."** (*Id.*, *Marcisz* RT 7183:21-25.)

24 ³¹ The Court of Appeal stated: "In a three-page tentative ruling, the trial court indicated that it had
25 'carefully reviewed' all declarations submitted in connection with the motion. In determining the
26 lodestar, the trial court awarded the 2006 fee rates requested by Plaintiffs' counsel for all work
27 performed since 1996 even though Plaintiffs had failed to submit evidence that the rates were
28 reasonable for San Diego. . . and calculated the lodestar amount at \$6,759,249.77 for merits work
... ." (Exhibit 9, *Gober* Court of Appeal attorney's fees Opinion.)

1 The Court of Appeal rejected UltraStar's claim that Kay engaged in misconduct
2 and its claim that Ultrastar did not receive a fair trial:

3 "In its motion UltraStar argued, among other things, that the misconduct of
4 Plaintiffs' counsel necessitated a new trial, but the trial Court reected this
5 argument by not granting a new trial on this ground and it noted at oral argument
6 that this, and the other grounds argued by UltraStar as a basis for a new trial, **were
7 not meritorious.**

8 * * * * *

9 As a threshold matter, the parties presented no juror declarations and the trial
10 Court cited no evidence to support its statements that the jury may have
11 improperly awarded compensatory damages based on the conduct of Plaintiffs'
12 counsel . . . The trial Court's statements amount to improper speculation
13 regarding the subjective reasoning processes of the jury. (See Evid. Code, § 1150
14 [evidence concerning the mental processes of the jury is inadmissible].) Moreover,
15 "[a]bsent some contrary indication in the record, we presume the jury follows its
16 instructions [citations] and that its verdict reflects the legal limitations those
17 instructions imposed.' [Citation.]" (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th
18 780, 803-804.)"

19 (Exhibit 6, *Marcisz* Opinion, at p. 11.)

20 [The *Marcisz* case is scheduled for retrial regarding the amount of punitive damages. The
21 attorney's fees motion has not yet been held.]

22 50. The *Marcisz* Court analysis applies to the conflation that non-existent juror
23 "passion and prejudice" resulted in attorney misconduct in the *Gober* punitive damages
24 retrial. This is the record in *Gober* and *Marcisz*, which the Court here has re-written. The
25 State Bar Court [an inferior tribunal] does not have the jurisdiction to review Court of
26 Appeal opinions, let alone reverse them. (See *Lady v. Worthingham, supra.*)

27 51. In the *Gober* and *Marcisz* cases, the defendants spewed out the same allegations
28 in the NDC (lifted from defendants' losing post-trial motions), which plaintiffs' counsel
addressed at that time and resulted in no orders finding misconduct. The defendants did
not appeal from the denials of their motions for new trial based on attorney misconduct.
Despite not appealing the issue of misconduct, the defendants, without standing, spewed
out the same allegations on appeal in the Court of Appeal and Supreme Court, which
appellate counsel for the plaintiffs addressed once again, and resulted in no findings of
misconduct in the Court of Appeal or this Court. See *Dolley v. Ragon* (1924) 68

1 Cal.App.2d 223, 228):

2 "Where a man has been a recognized, active, and honorable member of the bar for
3 a long series of years, and someone, whether in good faith or otherwise, puts on
4 record a charge of misconduct, the person so charged is entitled to a careful
5 examination of the charges. **And unless there is something to sustain the
6 charges, he is entitled to a full and distinct vindication.**" (Emphasis.)

5 52. In *Marcisz*, the Court of Appeal unpacked these same allegations of misconduct
6 and expressly rejected them, while debunking the State Bar Court 's conflation of juror
7 "passion and prejudice," which is juror misconduct – into attorney misconduct.
8 Moreover, any of the justices of the Court of Appeal in *Gober* or *Marcisz* could have
9 reported Kay to the State Bar, having the entire record before them, but did not. In other
10 words, the charges of attorney misconduct were fully vetted in the trial and appellate
11 court s in three new trial motions and six appeals and review to the Supreme Court and
12 there were no findings of misconduct. The lack of any such findings in the underlying
13 trial and appellate court s and the finding of criminal contempt by the State Bar Court
14 cannot be based on the same record. Such divergent and diametrically opposed results
15 cannot both be true and coexist in the same universe, because it is not possible that all of
16 the Article VI trial court judges and appellate justices failed to issue any orders finding
17 contemptuous misconduct or issuing any sanctions, but the State Bar Court here has
18 found criminal contempt on the same record. Rather, the State Bar has itself committed
19 criminal contempt by falsely reporting the underlying record. (Penal Code §166(a)(7):
20 "The publication of a false or grossly inaccurate report of the proceedings of any Court
21 .") This is also evidence that the State Bar has become a venue and proxy for disqualified
22 and embroiled judges (reversed on appeal) and losing corporate defendants to re-litigate
23 these matters in the wrong forum and without procedural due process. (See *Lady v.*
24 *Worthingham, supra.*)

25 53. The Decision rests precariously, like a house of cards, on the findings that Kay
26 violated Business & Professions Code §§6068(b), 6103 & 6106 based on **oral** (non-final
27 and non-binding) *pronouncements* from the bench in response to questions, objections

28

1 and argument; all of which is hearsay colloquy between counsel and the trial court. The
2 State Bar Court failed throughout to adhere to State Bar Rules of Procedure, rule 214,
3 which requires adherence to the Evidence Code. Rather, the State Bar Court admitted
4 hearsay from trial transcripts, while allowing OCTC to lead all their of witnesses.
5 (Exhibit 11, State Bar trial transcripts.)

6 54. Sometimes, the Court admitted this incompetent hearsay with a limiting instruction
7 that it was “not admitted for the truth of the matter” and other times on *unspecified*
8 grounds. However, in the Decision, the State Bar Court considered all of the hearsay
9 statements for the truth of the matter, which means that Judge Armendariz engaged in
10 deceit when she stated the incompetent hearsay was admitted under a limiting instruction.
11 Regardless, these hearsay oral pronouncements from the underlying trial court bench do
12 not amount to valid written (final and binding) orders entered into the minutes or record
13 of the trial court.

14 See 2 Witkin, *Cal. Proc. 5th* (2008) *Courts*, § 364, p. 464:

15 “The clerk must keep the minutes and records of the court, and enter all orders,
16 judgments, and decrees that are required to be entered. Entry must be made
17 ‘within the time specified by law, or forthwith if no time is specified,’ but failure
18 in this respect does not affect the entry’s validity or effectiveness. (Govt.C. 69844;
see *Cox v. Tyrone Power Enterprises* (1942) 49 C.A.2d 383, 394 [making minute
entries and filing written orders]; *Deshrow v. Rhodes* (1969) 1 C.A.3d 733, 738,
infra, §365.”

19 There are three elements essential to the process and entry of an order in the permanent
20 minutes of a court: (1) preparation of a written minute order (2) recordation of the date
21 and substance of the order in a permanent record and (3) delivery of the order to the
22 custodian of records; each element is indispensable to the making of a permanent record
23 of the order and each remains essential to the process of entry in the permanent minutes.
24 (*Deshrow v. Rhodes*, 1 Cal. App. 3d 733 (2d Dist. 1969) (disapproved of on other
25 grounds by, *Brunzell Constr. Co. v. Wagner*, 2 Cal. 3d 545 (1970)) and (disapproved of
26 on other grounds by, *Hollister Convalescent Hosp., Inc. v. Rico*, 15 Cal. 3d 660 (1975)).
27 For example, in a new trial motion, a minute order is effective upon entry although it

28

1 directs that a written order be prepared, signed and filed at some future date. (Code of
2 Civil Procedure §660 (last para.); *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d
3 892, 901-902 & fn. 3.)

4 55. This proceeding was brought and is based on the personal opinions of disqualified
5 and embroiled judges (reversed on appeal), who while they were qualified professional
6 jurists, never reduced any of these opinions to written orders finding any misconduct. If
7 they had, then their voluminous reversible error would have been reviewed along with
8 defense counsel's misconduct, which Kay preserved during trial for appellate review.
9 These judges refused to admit relevant evidence on behalf of the plaintiffs, pursuant to
10 the holdings in *Weeks v. Bake & McKenzie* (1998) 63 Cal.4th 1128, 1158-1162 and *Beyda*
11 *v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 519. Defense counsel (over objection
12 and with the tacit approval of these judges), were allowed to violate the rape shield laws
13 (Evidence Code §1106) and engage in untoward character assassination of the plaintiffs³²
14 and their witnesses. Moreover, in *Marcisz*, the judge required the plaintiffs to prove that
15 they suffered harm under the requirements of "intentional infliction of emotional
16 distress," in violation of *Harris v. Forklift Systems, Inc.* 510 U.S. 17, 23 (1993). In these
17 underlying sex harassment cases, the women, some of whom were minors at the time,
18 suffered physical abuse, assault and battery, stalking and knives held to their throats. The
19 Court of Appeal, being briefed on the full context of what transpired in these trials, found
20 no grounds to sustain a finding of attorney misconduct sought by the defendants.

21 56. All three judges (Weber, Anello and Meyer) were disqualified and determined
22 unfit to have any further involvement in the cases under statutory authority, which is the
23 public policy of California, as set forth in Code of Civil Procedure §§ 170, *et seq.* &
24 §170.4. A decade after the trials, the disqualified judges are not allowed to create orders

26 ³² Sex harassment victims suffer vicious character attacks, in which the defense seeks to prey on the
27 gender bias of jurors by falsely portraying them as "nuts" or "sluts" or "golddingers."

1 or *affidavits* and place them in the minutes and record of cases that have long been final
2 on appeal. Regardless, the Decision cites to the incompetent opinion testimony of these
3 judges never reduced to any written orders (impeaching and rebuking) their written orders
4 in the minutes and statements on the record.

5 57. It has also long been held that such oral opinions are meaningless, and unless a
6 judge commits an opinion to a written order, it is as if the opinion were “unuttered.” (See
7 *Lapique v. Superior Court* (1914) 24 Cal.App. 313, 314):

8 “What the judge said from the bench, since it did not constitute the order of the
9 Court, was immaterial. We have repeatedly held that the opinion of a judge filed
10 in a case, where inconsistent with the findings or other action of the Court, is not
11 part of the record or entitled to consideration in determining questions brought up
on appeal. So here, until the order was, in fact, made, there was no action on the
part of the Court, and the expressed views of the judge were as much subject to
change as though they had remained unuttered.”

12 (See *La Manna v. Stewart* (1975) 13 Cal.3d 413, 423, in which the Supreme Court
13 rejected the notion that an oral statement of reasons is a sufficient new trial order to allow
14 appellate review, which is cited for this proposition in *Steinhart v. South Coast Area*
15 *Transit* (1986) 183 C.A.3d 770, 774:

16 “Nevertheless, words can easily trip off the tongue, whereas to write them down,
17 to pin them to the page so they are permanent and not an evanescent utterance,
18 requires more time, deliberation, and labor. “Reading maketh a full man,
conference a ready man, and writing an exact man.” (Bacon, *Of Studies*, in *The*
19 *Essays, or Counsels, Civil and Moral* (1625).) Perhaps that is why the Legislature
20 required that the judge, not counsel, state the grounds and reasons in writing for
granting a motion for a new trial. He will thus not be faced with the dilemma of
King Claudius: “My words fly up, my thoughts remain below: Words without
thoughts never to heaven go.” (Shakespeare, *Hamlet*, act III, scene iii.)”

21 Regardless, the State Bar Court allowed these judges to offer their opinions, without
22 cross-examination on behalf of Kay’s defense and then found their testimony to be
23 credible. Either they were untruthful in their trial court orders and statements and failed
24 in their duties under the Judicial Canons to ensure fair trials for the defendants; or they
25 were untruthful in their State Bar trial testimony. The judges and the State Bar Court can’t
26 have it both ways. The Decision further fails to consider the effect of their
27 disqualifications, reversal on appeal and Kay’s complaints to the Commission on Judicial

1 Performance regarding their judicial misconduct.

2 **Judge Weber**

3 58. Judge Weber testified to the following in the State Bar trial regarding
4 her trial Court orders:

5 11 Q. And if a lawyer is violating your lawful Court
6 12 orders, in order to maintain order and decorum in your
7 13 Court room, you would have to issue contempt citations to
8 14 correct those abuses; right?

9 15 A. In the abstract, yes.

10 16 Q. And in the abstract, you would also have to
11 17 issue sanctions to get that order under control; correct?

12 18 A. Depending on the circumstances, yes.

13 19 Q. You never issued any sanctions against
14 20 Mr. Dalton or me, did you?

15 21 A. No.

16 22 Q. And you would also have to make sure that the
17 23 defendant was getting a fair trial in the face of this
18 24 misconduct that you have testified to; correct?

19 25 A. Defendant and plaintiffs, yes.

20 1 Q. You made no finding that defendant Ralphs was
21 2 denied a fair trial based on attorney misconduct;
22 3 correct?

23 4 A. I think when we looked at it, I ruled that it
24 5 was a very close call, but that I was not going to grant
25 6 a new trial on that basis.

26 7 Q. On a preponderance standard; right?

27 8 A. Right. (Exhibit 11, State Bar trial transcripts.)³³

28 59. In jury trials, each party in fact has two hearings, one before the jury and the other
before the Court as "a thirteenth juror." (*Norden v. Hartman* (1952) 111 Cal.App.2d 751,
758.) "In weighing and evaluating the evidence, the Court is a trier-of-fact and is not

³³ Prior to the trial proceedings in the State Bar, the Court arbitrarily denied Kay's request to transcribe the proceedings by certified Court reporter, in violation of Business & Professions Code §6081.1. (Exhibit 12, Request to Transcribe State Bar Trial Proceedings and Order denying Request.) Kay has provided certain transcription cites from the State Bar trial, which were produced by certified court reporter from some of the electronic-recordings of the trial, which Kay had transcribed.

1 bound by factual resolutions made by the jury. The Court may grant a new trial even
2 though there be sufficient evidence to sustain the jury's verdict on appeal, so long as the
3 Court determines the weight of the evidence is against the verdict." (*Candido v. Huitt*
4 (1984) 151 Cal.App.3d 918, 923.) It is not only the right, but the duty of the trial judge to
5 grant a new trial when he or she believes the weight of the evidence to be contrary to the
6 finding of the jury. (*Tice v. Kaiser Co.* (1951) 102 Cal.App.2d 44, 46.) Appellate cases
7 rarely "second guess" the trial judge's determination as to the weight of the evidence. If
8 any appreciable conflict exists in the evidence, the trial Court's action will not be
9 disturbed on appeal. *Id.* This is particularly true where the Court's discretion has been
10 exercised in favor of granting a new trial. (*Candido v. Huitt, supra*, 151 Cal.App.3d at
11 923.) In addition, the trial court need not wait for objection by opposing counsel when
12 confronted with potentially prejudicial misconduct; rather, the Court may intercede on
13 its own initiative to admonish the offending lawyer and jury. (*Sabella v. Southern Pac.*
14 *Co.* (1969) 70 Cal.2d 311, 321.) This did not happen either. All of these judges (Weber,
15 Anello and Meyer) had both the unfettered discretion and duty to hold in contempt,
16 sanction and/or grant a new trial based on attorney misconduct; all of which they refused
17 to do. Had they issued such rulings in written orders, as required, they would have been
18 subject to review by the Court of Appeal – not the State Bar.

19 **Judge Anello**

20 60. Judge Anello testified in the trial that Kay engaged in misconduct during the *in*
21 *limine* motion hearings and throughout the second *Gober* (punitive damages retrial),
22 which is adopted in the Decision as finding. However, at that time, Judge Anello stated:

23 "YOU'VE (ALL COUNSEL) BRIEFED THESE ISSUES EXCEEDINGLY WELL.
24 YOU'VE ARGUED THEM WELL. THERE COMES A TIME IN EVERY
25 CASE TO MAKE A Decision, AND THAT'S WHAT I'M DOING, BECAUSE I
26 THINK THE SOONER, THE BETTER FOR YOU, EVEN IF IT'S WRONG."

26 In fact, there were no findings of contemptuous or sanctionable misconduct by Judge
27 Anello during the *in limine* hearings. (Exhibit 13, *Gober 2 RT In limine hearing*

1 transcript p. 215:1-5.)

2 61. Judge Anello stated at the conclusion of opening statement Kay had done
3 nothing warranting contempt, sanctions or referral to the :

4 **“THE COURT DOES NOT INTEND TENTATIVELY TO CONDUCT ANY**
5 **CONTEMPT PROCEEDINGS, ISSUE ANY CONTEMPT SANCTIONS, OR**
6 **REPORT ANYBODY TO THE AS A RESULT OF WHAT’S TRANSPIRED**
7 **THUS FAR.”** (*Gober 2 RT 915:5-7*)

8 Then, Judge Anello stated directly to Kay that he had done nothing even warranting
9 “criticism”, much less contempt.

10 “THERE WAS NO STATEMENT BY ME CRITICIZING ANYTHING YOU
11 (MR. Kay) DID.” (*Id., Gober 2 RT 922:23-24.*)

12 Judge Anello later stated:

13 “IN TERMS OF MR. Kay, WE’VE HAD OUR DIFFERENCES,
14 BUT I FRANKLY RESPECT MR. Kay. I HAVE A LOT OF REGARD FOR HIS
15 TALENT. I THINK IN OTHER CIRCUMSTANCES, WE’D PROBABLY BE
16 FRIENDS.” (*Id., Gober 2 RT 980:15-18.*)

17 Thus, throughout the *Gober* punitive damages retrial, Kay had received positive feedback
18 and guidance from Judge Anello, which is far cry from Judge Anello’s trial testimony,
19 cited in the Decision. Moreover, the Court of Appeal reviewed Judge Anello’s
20 Complaint, in the motion to disqualify Judge Anello. The result was that the Court of
21 Appeal disqualified him in the “interests of justice” and did not refer Kay to the State Bar
22 for discipline.

23 **Judge Meyer**

24 62. Judge Meyer, as referenced above, denied defendant UltraStar’s motion for new
25 trial based on the ground of attorney misconduct after careful consideration. However,
26 following his reversal by the Court of Appeal and disqualification, at the State Bar trial,
27 Judge Meyer testified that opening any volume and reviewing any page of the trial
28 transcript would reveal misconduct by Kay. Both cannot be true?

63. In the State Bar trial, Judge Meyer testified the Court of Appeal got it wrong,
while proclaiming he would commit the same reversible error again and again. Judge

1 Meyer further testified that it is now “debatable” whether he granted a new trial based on
2 attorney misconduct; thereby, impeaching himself. This absurd testimony was cited by
3 the State Bar Court in the Decision to support its findings of misconduct and to proclaim
4 Kay falsely accused Judge Meyer of judicial error. (Exhibit 11, State Bar trial transcripts.)
5 The Court of Appeal states that Judge Meyer committed reversible error, and as a result
6 reinstated the compensatory damages. In addition it admonished Judge Meyers for his
7 improper speculation regarding his critique of the jury without any evidence.

8 64. In addition to the testimony of disqualified judges, the State Bar Court
9 admitted the underlying trial transcripts into evidence, which cannot be admitted in
10 disciplinary proceedings, unless given in a contested civil action or special proceeding in
11 which the “person complained against **is a party**, or in **whose behalf the action or**
12 **proceeding is prosecuted** or defended.” (Business and Professions Code §6049.2.)

13 The trial transcripts from the *Gober* and *Marcisz* trials are inadmissible as respondents
14 Kay and Mr. Dalton were neither (1) parties” to those action and (2) are not a person in
15 whose behalf the action was prosecuted. (See also *In re Kittrell* (2000) 4 Cal. Ct. Rptr.
16 195, 206; *Rosenthal v.* (1987) 43 Cal.3d 612, 662, fn. 11, 633-634, citing *Caldwell v.*
17 (1975) 13 Cal.3d 488, 496-497; *Yokozeki v.* (1974) 11 Cal.3d 436, 444.) There is *no*
18 *exception* to this rule of exclusion. (See *People v. Surety Ins. Co.* (1982) 136 Cal.App.3d
19 556, 563-564.) Colloquy does not rise to the level of testimony in any circumstance. See
20 also *In re Carr* (1992) 2 Cal. State Bar Ct. Rptr. 244, 254:

21 “Taking judicial notice of court records does not mean noticing the existence of
22 facts asserted in the documents in the court file; a court cannot take judicial notice
23 of the truth of **hearsay** just because it is part of a court record. (citations.)”

24 Thus, admitting hearsay evidence and/or taking judicial notice of any transcripts,
25 pleadings or orders from the *Gober* or *Marcisz* cases is both prejudicial and reversible
26 error.

27 65. Judge Anello’s complaint and testimony are driven by the clearly stated personal
28

1 goals of a lay person and not a qualified judge. Judge Anello was disqualified, pursuant to
2 Code of Civil Procedure §170.1(c) (“in the interests of justice”) by the Court of
3 Appeal³⁴, which clearly colored his testimony. An electronic mail from former OCTC
4 Prosecutor Alan Konig³⁵ to Jeff Dal Cerro, Assistant Chief Trial Counsel assigned to
5 Kay’s matter, indicates Judge Anello’s (the complaining witness) desire to “reclaim his
6 reputation publicly,” following adverse publicity in national print and electronic media³⁶,
7 along with his disqualification, underscores ’s acquiescence to Judge Anello’s insistence
8 that the NDC be filed and vigorously prosecuted against Kay. (Exhibit 14, Konig email
9 re: Judge Anello.) Mr. Konig, in this same e-mail, states that with each decision to delay
10 the filing of the NDC against Kay, Konig “lose[s] credibility with Judge Anello.” *Id.*
11 Mr. Dal Cerro became concerned that Konig’s embroiled relationship with Judge Anello -
12 - acting as an adjunct prosecutor with ³⁷, had compromised Judge Anello as a witness in
13 this matter. (Exhibit 15, Dal Cerro declaration, filed in the *Konig v. Dal Cerro, et al.*
14 federal action and exhibits.) OCTC withheld the Dal Cerro declaration³⁸ and the other
15 exculpatory evidence regarding Judge Anello’s status as the complaining witness from
16 Kay in violation of Section 6085(b) of the Business & Professions Code, which requires

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18 ³⁴ The disqualification motion in the Court of Appeal, which alleged the same bias and unfitness
19 against Judge Anello as the Verified Statements executed and filed by Mr. Dalton, was filed by
20 appellate counsel in the *Gober* case. No charges of misconduct have been brought against any of
the appellate lawyers.

21 ³⁵ Mr. Konig was terminated by the State Bar and subsequently filed a federal action for retaliation
22 and constructive wrongful termination. (*Konig v. Dal Cerro, et al.* Case No. C-04-221 0 MJJ).

23 ³⁶ Judge Anello was criticized for his rulings in the *Gober* punitive damage retrial, for which the
24 Court of Appeal reversed him, in the National Law Journal and ABC Prime Time stories.

25 ³⁷ Judge Anello was provided with the OCTC’S work product and was directly involved in the
26 review and drafting of key documents, including the NDC.

27 ³⁸ Kay was forced to move to unseal the Dal Cerro declaration in the federal action, because the
28 Court here refused him the right to conduct discovery regarding the issues of the complainant and
Rule 51 statute of limitation.

1 OCTC to provide respondents with all "exculpatory evidence from the State Bar after the
2 initiation of a disciplinary proceeding and thereafter, when this evidence is discovered
3 and available." The prosecutor must make timely disclosure to the defense of any
4 available evidence known to the prosecutor that may negate guilt, mitigate the degree of
5 the offense, or reduce the appropriate punishment, which is known as "Brady evidence."
6 (See *Brady v. Maryland* (1963) 373 U.S. 83, 87; see also *In re Lessard* (1965) 62 Cal.2d
7 497, 508-509 ["(I)n some circumstances, the prosecution must, without request, disclose
8 substantial material evidence favorable to the accused"].)

9 66. Mr. Konig admits in an email to Mr. Dal Cerro (attached to his declaration -
10 Exhibit 15) that, without the assistance of Kay's (losing) opposing defense counsel, who
11 were in the midst of several appeals, and Judge Anello, the record from the *Gober* case
12 does not readily provide grounds to prosecute. (Exhibit 15, email from Konig to Dal
13 Cerro, November 10, 2003.) This serves as a further evidence that The State Bar is
14 acting as a proxy and forum for disqualified and embroiled judges and losing corporate
15 defendant to re-litigate matters long ago settled.

16 67. The Decision finds Kay culpable for questions, objections, argument, frivolous
17 trial motions and frivolous appeals; which no trial or appellate court ever found and
18 reduced to written order. Moreover, Kay is being disciplined for conduct required of a
19 competent trial lawyer to avoid waiver and preserve the record for appeal on behalf of his
20 clients. (See, e.g., Evidence Code §353(a); *Horn v. Atchison, Topeka & S.F. Ry., supra*,
21 61 Cal.2d at 610-611.) It is not the duty of a trial lawyer to be popular with judges;
22 rather, it is his duty to do what is necessary to protect his clients' rights and interests,
23 within the Rules of Professional Conduct, which is what transpired in the underlying
24 trials. The harsh punishment meted out here will chill, if not destroy, legitimate advocacy
25 (speech) with no corresponding benefit to the profession. Judges have ample authority³⁹

26 ³⁹ (See, e.g., Code of Procedure §128(a)(3); *In re Buckley* (1973) 10 Cal.3d 237, 247.)
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1 to ensure the decorum of proceedings, which the trial court judges and justices in question
2 were unable or unwilling to impose in the underlying trials and appeals before them. The
3 State Bar is not empowered to step in years after trials are final on appeal and discipline
4 lawyers for conduct (thoroughly examined, vetted and approved in the trial and appellate
5 courts). Moreover, the State Bar cannot claim that the public was harmed, when at the
6 same time attorneys fees were awarded to Kay, pursuant to Government Code §12965(b)
7 under the Fair Employment and Housing Act, for enforcing civil rights in the work place.
8 Thus, the public benefitted from the very cases being prosecuted as misconduct to protect
9 the public, which shows the absurdity of the State Bar proceeding. To accomplish this
10 illegitimate outcome, the State Bar had to engage in illegal and void conduct itself
11 denying due process and equal protection. However, the State Bar does not get to make
12 up its own rules and facts to discipline a lawyer for conduct, which does not violate the
13 Rules of Professional Conduct. The United States Supreme Court in *New York Times v.*
14 *Sullivan* (1964) 376 U.S. 254, 272-73 declared, "(w)here judicial officers are involved,
15 this Court has held that concern for the dignity and reputation of the courts does not
16 justify the punishment as **criminal contempt** of criticism of the judge or his decision."
17 (Emphasis.) The Court explained that "judges are to be treated as 'men of fortitude, able
18 to thrive in a hardy climate.'" The highest Court, and many others, have upheld the right
19 of citizens, and lawyers, to be critical -- even harshly critical -- of judges. (See also,
20 *Standing Committee on Discipline of U.S. Dist. Ct. for Cent. Dist. of Calif. v. Yagman*
21 (9th Cir. 1995) 55 Fed.3d 1430, 1438 ["(A)ttorneys may be sanctioned for impugning the
22 integrity of a judge or the court only if their statements are false; truth is an absolute
23 defense."].) The Decision does not identify the majority of the alleged hearsay⁴⁰
24 disrespectful statements (none of which were ever identified in a trial court written order

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26 ⁴⁰ The alleged statements are colloquy between the trial court and petitioner, questions, objections
27 or argument; all of which are inadmissible and incompetent hearsay in a State Bar proceeding. (See
28 discussion below.)

1 of contempt, sanctions or new trial), state what is not true in the statements, or engage in
2 the required analysis to demonstrate that the statements were both false and knowingly
3 false (reckless disregard of the truth). Moreover, the Decision improperly resurrects the
4 charge of "offensive personality," (former Business & Profession Code §6068(f)), which
5 was stricken on constitutional grounds. (See *U.S. v. Wunsch* (9th Cir.1996) 84 F.3d 1110,
6 1119, as cited in *Matter of Anderson* (Rev.Dept. 1997) 3 Cal. State Bar Ct.Rptr. 775,
7 785):

8 "In *U.S. v. Wunsch* (9th Cir.1996) 84 F.3d 1110, 1119 (*Wunsch*), decided more
9 than a year after the hearing judge filed his modified decision, the Ninth Circuit
10 held that section 6068, subdivision (f) is unconstitutionally vague. Because the
11 term " 'offensive personality' could refer to any number of behaviors that many
attorneys regularly engage in during the course of their zealous representation of
their clients' interests, it would be impossible to know when such behavior would
be offensive enough to invoke the statute." . . .

12 The Board of Governors of the State Bar ultimately determined not to seek en banc
13 review of the Ninth Circuit's opinion in *Wunsch* or to file a petition for writ of
certiorari in the United States Supreme Court. Moreover, OCTC subsequently
14 moved to dismiss section 6068, subdivision (f) charges in virtually all of its
pending cases.

15 As indicated above, there is no evidence in the record of this proceeding that the
16 statements which impugned the honesty and integrity of the Orange County
Superior Court and its judges and which were made by respondent in various
17 pleadings filed in pending civil actions adversely affected the administration of
justice or denied the litigants a fair trial in those cases. Thus, under the State Bar's
own enforcement policy, respondent's conduct has not been shown to violate
section 6068, subdivision (f).

18 Additionally, in light of OCTC's dismissal of section 6068, subdivision (f) charges
19 in other pending proceedings, the failure to also dismiss those charges in this case
could give rise to an implication of discriminatory enforcement. (*Id.*, at p. 1119;
citing *Gentile v. State Bar of Nevada*, supra, 501 U.S. at p. 1051.)

20 Therefore, we dismiss with prejudice the section 6068, subdivision (f) charges
against respondent."

21 In addition, the Decision shifts the burden of proof from OCTC regarding having to prove
22 that petitioner's statements are false, pursuant to *Matter of Anderson*, supra, to petitioner
23 having to prove the statements were supported by the record. Moreover, *Matter of*
24 *Anderson* requires "clear and convincing evidence" to establish that petitioner's
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1 statements (not those of other lawyers⁴¹), when made, were false, knowingly false and not
2 the expression of an opinion based on the record; but rather a declarative statement
3 maligning the integrity of the court, which should then be the subject of a written trial
4 court order specifying why the statements violated the Rules of Professional Conduct.
5 Having done away with these due process requirements, the State Bar has resurrected so-
6 called "offensive personality," which is unconstitutional.

7 [HISTORICAL AND STATUTORY NOTES for Section 6068 of the Business &
8 Professions Code: "The Legislature hereby finds and declares that the provision
9 imposing the duty on an attorney to abstain from having an offensive personality,
10 which is codified in subdivision (f) of Section 6068 of the Business and
Professions Code, has been held to be unconstitutionally void for vagueness by the
United States Court of Appeals, Ninth Circuit (U.S.A. v. Wunsch (9th Cir. 1996)
84 F.3d 1110.)"]

11 The Court has ignored these First Amendment - Constitutional and procedural due
12 process principles by imposing a lengthy suspension and probation upon a lawyer, who
13 has been a path-breaking advocate for victims of sex harassment, based on conduct,
14 which in no way adversely affected his clients or the underlying trial and appellate courts,
15 who issued no orders or findings of contempt, sanctions or new trial to support the
16 findings in the Decision.

17 RULES OF PROFESSIONAL CONDUCT, RULES 1-120, 2-200 & 3-500

18 68. Further evidencing the bad faith in the State Bar proceeding is that OCTC had
19 determined there was no merit to the charges regarding these alleged violations of Rules
20 1-120, 2-200 and 3-500. (Exhibit 27, Notes of OCTC prosecutor Drogonzky.) Then after
21 Judge Anello filed his Complaint, the OCTC resurrected these specious charges. The
22 Decision finds contrary to the law and facts that Kay attempted and then divided a fee
23 without the client's written consent [Rules of Professional Conduct, rules 1-120 & 2-200]
24 and failed to notify his clients of the developments in the case [Rules of Professional

25 ⁴¹ Petitioner (Philip E. "Kay") has been found *vicariously* culpable for the alleged conduct of his co-
26 counsel, appellate counsel, opposing defense counsel and his own counsel in the State Bar
27 proceeding. (See 7 Witkin Procedure (4th ed.) Trial § 187, p.215, citing *Cantillon v. Superior Court*
(1957) 150 Cal.App.2d 184,190.)

1 Conduct, rule 3-500]. *Weeks v. Baker & McKenzie*, a case filed in 1992, which also
2 involved claims of sex harassment, failure to prevent harassment and punitive damages.
3 None of the charges were initiated by Kay's clients and no harm has been caused to any
4 party opponent in the *Weeks v. Baker & McKenzie* case. [It is important to note that the
5 subject charge admittedly stems from acts allegedly committed in 1993, which is well
6 past the statute of limitations, as admitted by OCTC, in the discussion below.] There is
7 no evidence that Kay failed to keep his clients "reasonably informed about significant
8 developments relating to the employment or representation." Moreover, Kay cannot
9 defend against these charges without breaching the attorney-client privilege owed to the
10 clients, requiring dismissal. (See, *Solin v. O'Melveny & Meyers, LLP* (2001) 89
11 Cal.App.4th 451, 467.)

12 69. The Supreme Court, in *Chambers v. Kay*, 29 Cal.4th 142 (2002), held that Kay **did**
13 **not violate Rule 2-200**, because there was no sharing of a contingency fee; thus, the Rule
14 2-200 finding and charges are without merit and should have never been filed. See also
15 *Margolin v. Shemaria* (2000) 85 Cal.App.4th 891, (899, fn.4); *Mink v. Maccabe* (2004)
16 121 Cal. App. 4th 835, 838 - holding that an agreement to share fees is not a violation of
17 Rule 2-200. Under *Margolin*, Rule 2-200 is not violated **unless and until the fee is**
18 **actually divided**, which never occurred here. *Mink* states:

19 "The rule requires that the client's written consent be obtained **prior to any**
20 **division** of fees. This simple dictate cannot reasonably be read to require the
21 client's written consent prior to the lawyers' entering into a fee-splitting
22 arrangement, or prior to the commencement of work, or at any time other than
23 prior to any division of fees. And Rule 2-200 certainly cannot be read, as *Mink*
24 would have us do, to include a requirement nowhere appearing therein, that the
25 fee-splitting agreement between the attorneys must be in writing. Thus, while we
26 agree with *Mink* that written agreements are preferable to oral ones, and that
27 written consents obtained early in the process are preferable to those obtained after
28 the fact, those preferences are not contained in Rule 2-200, and therefore cannot
invalidate a written consent which complies in all respects with the plain language
of the rule." (Emphasis).

25 Likewise, no authority exists for the finding of attempting to divide a contingency fee,
26 which is also subject to the holding in *Margolin* and *Mink*. Rather, the fee split must

1 occur for the rule to be violated. Thus, Rule 1-120 cannot apply. The charge for
2 violation of Rule 1-120 is without merit, because to violate 2-200, there must be an actual
3 division of the fees, which did not occur here. Thus, despite the Court having been made
4 aware of these facts and legal decisions, Kay has been found culpable of these charges.

5 70. There is no evidence that Kay divided a fee with former co-counsel Alan Exelrod,
6 which the State Bar Court finds out of thin air by adopting the NDC charges. In *Weeks v.*
7 *Baker & McKenzie, supra*, 63 Cal.4th at pp.1169-1170.) Kay, Exelrod and appellate and
8 fees counsel Sanford Rosen⁴² of Rosen, Bien & Asaro were awarded attorney's fees paid,
9 under Government Code §12965(b) by the losing defendant Baker & McKenzie, which
10 belong to the attorney "who labored to earn them" and not the client, according to the
11 Supreme Court. (See *Flannery v. Prentice* (2001) 26 Cal.4th 572, 586-587.) The
12 statutory award of attorney's fees is based on *quantum meruit*. A *quantum meruit*
13 recovery between the attorneys involves no apportionment of the fees the client pays or
14 has agreed to pay, and thus, is not a division of fees within Rule 2-200's contemplation;
15 nor would it defeat the purpose of Rule 2-200. (*Huskinson & Brown, LLP v. Wolf* (2004)
16 32 Cal.4th 453, 459.) The attorney fees award in *Weeks v. Baker & McKenzie, supra*, at
17 pp.1169-1170, was a statutorily awarded attorney fee paid by the losing defendant, as set
18 forth in Government Code §12965(b). Since such statutorily awarded attorney's fees are
19 *quantum meruit* fees, which are the separate property of the "attorneys who labored to
20 earn them" and are not monies received by the client, which are paid to the attorney for
21 services rendered as in the case of a normal percentage contingent fee arrangement, Rule
22 2-200 does not apply. Therefore, there is no requirement to obtain client approval
23 regarding the payment and sharing of statutorily awarded attorney's fees. Rule 2-200 is
24 silent regarding the payment of costs. However, Rules of Professional Conduct, rule
25 4-210A(3) states:

26 _____
27 ⁴² Mr. Rosen has not been charged violations of Rules 1-120 and 2-200.

1 (A) A member shall not directly or indirectly pay or agree to pay, guarantee,
2 represent, or sanction a representation that the member or member's law firm will
3 pay the personal or business expenses of a prospective or existing client, except
4 that this rule shall not prohibit a member:

5 (3) From advancing the costs of prosecuting or defending a claim or action or
6 otherwise protecting or promoting the client's interests, the repayment of which
7 may be contingent on the outcome of the matter. Such costs within the meaning of
8 this subparagraph (3) shall be limited to all reasonable expenses of litigation or
9 reasonable expenses in preparation for litigation or in providing any legal services
10 to the client.

11 Therefore, there is no requirement to obtain client approval regarding the payment and
12 sharing of costs. Finally, Rule 2-200 does not prohibit attorneys from making or
13 accepting client referrals, from agreeing to divide work on a client's case or from working
14 on cases with lawyers from other firms. (*Huskinson & Brown, LLP v. Wolf, supra*, 32
15 Cal.4th at 463.)

16 RULE 5-320 - POST TRIAL JUROR LETTER

17 71. Following the first *Gober* trial, Judge Weber inquired about the juror letter and
18 made no findings of misconduct, which is contrary to her testimony eleven years later in
19 the State Bar trial. Lawyers are free to communicate with jurors regarding the case after
20 trial has concluded. So long as there is no attempt to harass or embarrass former jurors or
21 discourage their future jury service, attorneys may contact them to determine whether
22 there is a basis for challenging the jury verdict (e.g., outside influences on jury panel,
23 concealed bias of any juror, chance or quotient verdict, etc.). Other proper purposes
24 include statistical research and evaluation of effectiveness of the evidence, arguments
25 presented and courtroom demeanor. (See *Lind v. Medevac, Inc.* (1990) 219 Cal.App.3d
26 516, 520 [attorney who loses trial has right to contact jurors after trial and develop facts
27 to impeach jury verdict].) Here, there is no evidence of an improper purpose in the post
28 trial juror letter. Moreover, the very language set forth in the juror letter, which the State
Bar Court finds to be misconduct is approved almost word for word in the *Lind* case.

72. During the first *Gober* trial, Judge Weber engaged in improper *ex parte*
communications with the jurors prior to their being dismissed by submitting juror

1 questionnaires to the jury while they were deliberating. (Exhibit 16, *Gober* 1 Juror
2 Questionnaires⁴³.) The juror questionnaires sought improper information – the thoughts
3 and impressions of the jurors regarding the case and counsel while the jurors were
4 empaneled to deliberate. Of note, the juror questionnaires establish that it was defense
5 counsel who were “unprofessional” and plaintiffs’ counsel were “professional.” Judge
6 Meyer provided similar questionnaires to the jury during deliberations in the *Marcisz* trial
7 without any notice to the parties. Moreover, Judge Meyer failed to retain the juror
8 questionnaires in the court file in violation of California Rule of Court 2.1030(a).⁴⁴

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22 ⁴³ The last juror questionnaire counsel mistakenly refers to plaintiffs’ counsel as defense counsel.

23 ⁴⁴ Rule 2.1030. Communications from or with jury

24 (a) Preservation of written jury communications

25 The trial judge must preserve and deliver to the clerk for inclusion in the record all written
26 communications, formal or informal, received from the jury or from individual jurors or sent by the
27 judge to the jury or individual jurors, from the time the jury is sworn until it is discharged.

(Subd (a) amended and lettered effective January 1, 2007; adopted as part of unlettered subd
effective January 1, 1990.)

1 OCTC'S ADMITTED DOUBLE STANDARDS AND SELECTIVE
2 PROSECUTION

3 73. The State Bar has singled Kay out for "selective prosecution" through the
4 application of "double standards": (1) not prosecuting the misconduct of opposing
5 defense counsel in the *Gober* and *Marcisz* cases, for which in some instances Kay was
6 held vicariously culpable in mistaken findings, in which the State Bar Court attributes
7 conduct by defense counsel to Kay; (2) dismissal of the same charges against co-
8 respondent Mr. Dalton, without any discipline, while finding Kay vicariously culpable for
9 Mr. Dalton's conduct (executing and filing Verified Statements) to which Mr. Dalton
10 testified extensively in the trial; (3) not prosecuting the conduct of co-counsel Larry
11 Organ (citing to the *Bole* case in a brief and involvement in a hallway "altercation"
12 incident with opposing counsel) in the *Gober* case, while finding Kay vicariously
13 culpable; (4) not prosecuting the conduct of appellate counsel Rosen, Bien & Asaro and
14 Luce Forward (executing and filing appeals and motion to disqualify Judge Anello) in the
15 *Gober* case, while finding Kay vicariously culpable; (5) not prosecuting Arthur Chambers
16 for his malfeasance in the *Weeks v. Baker & McKenzie* case; (6) not enacting any
17 discipline against Mr. Chambers, Alan Exelrod and Mr. Rosen for alleged violations of
18 Rules 1-120 and 2-200 of the Rules of Professional Conduct, while finding Kay culpable
19 and (7) finding Kay vicariously culpable for the State Bar trial conduct (objections and
20 argument) of his attorney Jason Oliver, who has not been charged with engaging in
21 misconduct. However, Kay cannot be found culpable for alleged contemptuous
22 misconduct for actions carried out by other lawyers. (See 7 Witkin *Procedure* (4th ed.)
23 *Trial* § 187, p.215, citing *Cantillon v. Superior Court*, *supra*, 150 Cal.App.2d at 190.)

24 74. In response to complaints against defense counsel in the very same underlying
25 cases, OCTC refused to open an investigation – citing the very defenses raised by Kay –
26 not a reportable action and statute of limitations. (Exhibit 17, Erin Joyce letter, which
27 states in part):

1 " . . . it is clear that the trial Court s in both cases did not make any finding that
2 any of the attorneys intentionally violated the Court s' in limine orders warranting
3 censure by the Court or discipline by the . The trial Court s did not make any
4 findings against any of the attorneys sufficient to warrant a Investigation. The
5 trial Court s are in the best position to determine if an attorney has committed a
6 violation of Business & Professions Code section 6103, or if an attorney has
7 provided false testimony in violation of Business & Professions Code section
8 6068(d). **There appears to be no basis for the State Bar to investigate your
9 allegations absent such findings by the Court s in question.**
10 As for your complaint against Mr. Chambers, it is **barred by the statute of
11 limitations. . .**" (Emphasis.)

12 Ms. Joyce's letter speaks for itself.

13 **The State Bar Proceeding Does Not Involve a Reportable Action**

14 75. OCTC has falsely claimed the State Bar proceeding involves a reportable
15 action based on the false charge of the complaining witness Judge Anello (Exhibit 18,
16 Judge Anello State Bar Complaint) that he granted a partial grant of new trial, resulting
17 from "juror passion and prejudice," which the Court has adopted and expanded upon in
18 its Decision. However, in its unopposed closing brief to the State Bar Court, OCTC
19 admits this proceeding is not a reportable action involving any trial court findings of
20 contempt, sanctions or an order granting a new trial, based on attorney misconduct.
21 (Business & Professions Code §6086.7.) (Exhibit 19, OCTC prosecutor Allen
22 Blumenthal's declaration in support of OCTC's closing brief, paragraph 7:

23 "7. The files show that on October 30, 2002, the received Judge Anello's October
24 29, 2002 letter and that, on or about November 1, 2002, the opened an
25 investigation into Mr. Kay's conduct in the *Gober v. Ralphs* matter as a SBI. (A
26 true and correct copy of a memo by William W. Davis, then the Special Assistant
27 to the Chief Trial Counsel, requesting that a SBI investigation be opened is
28 attached hereto as Exhibit 221.) This investigation is Case Number 02-0-15326.
While it was not identified by the Intake Department as a reportable action, it
was identified as a SBI⁴⁵." (Emphasis.)

As stated, The State Bar acts through the Board of Governors of the State Bar of
California. The Board of Governors makes rules, regulates and operates the State Bar,
which is **not** empowered to reverse the final orders and decisions of the Article VI courts,

⁴⁵ All investigations opened up by the State Bar are labeled SBI's, there is no such thing as
a "complainant" investigation.

1 as it has done here. (Business & Professions Code §§ 6101, 6040⁴⁶.)

2 76. Following opening statement in the *Gober* punitive damages retrial, Judge Anello
3 stated on the record that Ralphs defense counsel Helene Wasserman had "**trampled**
4 **upon**" the court's *in limine* orders. (Exhibit 13, *Gober* 2 RT 646:6.) Judge Anello
5 further found that Ms. Wasserman had been "deceptive" in her opening statement, in
6 which she repeatedly attempted to introduce excluded matters. (*Id.*, *Gober* 2 RT
7 982:14-20; 983:12-18; 985:18-986:1.)

8 "IT APPEARS TO THE Court THAT THE DEFENSE COUNSEL'S (MS.
9 WASSERMAN) OPENING STATEMENT ON OCCASION DID APPEAR TO
10 GO MAYBE BEYOND THE SPIRIT IN SOME CASES, EVEN THE LETTER
OF SOME OF THE RULINGS ON THE MOTIONS . . ." (*Id.*, *Gober* 2 RT
11 913:17-20.)

11 These violations of *in limine* orders by Ms. Wasserman and her co-counsel John Golper
12 continued throughout the *Gober* punitive damages retrial, which resulted in additional
13 admonishments and curing instructions by Judge Anello.

14 "I understand Mr. Kay's frustration, and I think I probably do now have to
15 give some sort of a curative instruction to the Jury. . ." (*Id.*, *Gober* 2-RT
3290:1-2.)

16 ". . . It's more than frustrating for Mr. Kay and it's becoming frustrating for the
17 Court . Why would you stand up and say something directly contrary? I mean,
18 directly contrary to what has been noted or approved, for whatever legal effect it
19 might have, by the Court of Appeal, knowing that what we're trying to do here is
trying to put this Jury in the same position, but trying to have them bound by
what's already been decided? Why would you stand up and say something like
that? (*Id.*, *Gober* 2-RT 3699:19-27.)

20 "I see his (Mr. Kay's) concern, I see the reason for the (mistrial) motion. I think
21 we're playing a little fast and loose here. Unfortunately, maybe I've been a little
slow getting involved . . ." (*Id.*, *Gober* 2-RT 3711:8-10.)

22 Thus, based on defense counsel Ms. Wasserman's continuing misconduct, Judge Anello
23 was forced to give the jury yet another curative instruction to correct the false impressions
24 created by her through the use of deceptive exhibits, which the court minutes reflect as

25 ⁴⁶ Sections 6010 (Powers) & 6040 (Jurisdiction of administrative committees) - Notes of Decisions:
26 The decisions and judgments of the district court of appeal and the supreme court are not subject to
27 review by the state bar or a committee thereof. *Lady v. Worthingham* (App. 2 Dist. 1943) 61
28 Cal.App.2d 780, 143 P.2d 1000.

1 an admonishment at that time. (Id., *Gober* 2 RT 3722:26-27.)

2 77. No such findings were made that Kay violated any *in limine* orders by the trial
3 court . However; the State Bar Court invented a non-existent *in limine* order regarding
4 customer complaints in the first *Gober* trial. The *in limine* minute orders, which were
5 provided to the State Bar Court, establish that **no such order excluding customer**
6 **complaints exists**. Rather, such complaints were clearly admitted into evidence and were
7 part of the record upholding the findings of liability and punitive damages by the Court
8 of Appeal in the *Gober* Opinions. (Exhibit 7, trial exhibit 4 (*Gober* 1 trial minute
9 orders), Exhibit 5, *Gober* Court of Appeal Opinions.) Thus, the Court imagined (falsely
10 reported) this non-existent order and then found Kay culpable for its violation.

11 78. Judge Anello sent his written (secret⁴⁷) complaint to the on October 29, 2002⁴⁸,
12 which was a 21 page document entitled “State Bar Complaint Submitted by Judge
13 Michael M. Anello San Diego Superior Court .” (Exhibit 18, Judge Anello State Bar
14 Complaint.) In addition, OCTC identified Judge Anello as the “complaining witness” in
15 memoranda and correspondence. Assistant Chief Trial Counsel Jeff Dal Cerro executed a
16 declaration in the *Konig v. Dal Cerro, et al.* federal action -- expressly stating and
17 establishing Judge Anello’s status as the “complaining witness” in this matter, which
18 would result in the application of the Rules of Procedure, rule 51 - statute of limitations.
19 (Exhibit 15, Dal Cerro declaration and exhibits.) Regardless, OCTC denied these facts
20 under oath in a declaration filed in support of OCTC’s Opposition to Kay’s Motion to
21 Dismiss, which was filed at the outset of these proceedings in response to the NDC,
22 pursuant to Rule 262 of the Rules of Procedure, based on the Rule 51 - statute of
23 limitations, demonstrating the lengths (perjury) to which OCTC has gone to maintain this

24 _____
25 ⁴⁷ Judge Anello did not inform respondents Kay or Mr. Dalton about the Complaint, while he
continued to preside in the *Gober* case and OCTC hid his identity as the complainant.

26 ⁴⁸ The NDC was filed in June 2008, which is between 6 and 15 years after the majority of the
27 allegations in the NDC.

1 malicious prosecution.

2 79. The Court stated it would rule on the Rule 51 statute of limitations issue at the
3 conclusion of the trial; however, the Decision does not address this jurisdictional issue of
4 whether the NDC charges are time-barred. Regardless of the default, the Rule 51
5 limitations defense was raised timely in conformance with the Rules of Procedure, before
6 Kay filed his Answer; thus, the refused and failed to issue a ruling on this jurisdictional
7 issue, which would have barred the majority of the NDC charges adopted as findings in
8 the Decision.

9 "A prosecutor's . . . intemperate behavior violates the federal Constitution when it
10 comprises a pattern of conduct so egregious that it infects the trial with such
unfairness as to make the conviction a denial of due process."

11 (See, e.g., *People v. Hill* (1998) 17 Cal.4th 800, 819 [criminal conviction reversed due to
12 cumulative prejudice flowing from prosecutorial misconduct and trial errors].)

13 80. Judge Weber communicated her untoward and hyperbolic *animus* to judges
14 Anello and Meyer after she was disqualified in violation of the Judicial Canons. In
15 *Gober*, a sex harassment case, Judge Weber applied a landlord tenant Court of Appeal
16 decision to exclude the *Gober* Plaintiffs' witnesses and later expressly refused to follow
17 the holding in the *Weeks v. Baker & McKenzie*, because the Supreme Court had not yet
18 denied review. Judge Anello adopted all of Judge Weber's erroneous rulings during
19 which time they were engaging in improper *ex parte* communications. The *Gober*
20 Plaintiffs moved to admit this erroneously excluded evidence again in Phase 2 (punitive
21 damages) of the *Gober* 1 trial regarding the issue of reprehensibility, which Judge Weber
22 denied again, and then moved for a mistrial -- citing 22 separate grounds of her legal
23 error. (Exhibit 13, *Gober* 1 RT 4439:6-21; 4565-4669.) Contrary to the Decision, Judge
24 Weber's response to the mistrial motion was "denied." She saved her upbraiding of Kay
25 for the new trial motion hearing, which apparently the State Bar Court here cannot
26 distinguish between a mistrial motion and post-trial motion. However, at the conclusion
27 of the new trial motion, Judge Weber stated:

1 “LOOKING AT THE OVERALL PROCEEDINGS, I DO NOT FEEL THAT
2 **OVERALL THE DEFENSE WAS DEPRIVED OF A FAIR TRIAL, TAKING**
3 **INTO ACCOUNT THE Court 'S RULINGS AND ADMONITIONS TO THE**
4 **JURY AND THE WAIVER ISSUES THAT ARE DETAILED IN PLAINTIFFS'**
5 **RESPONSE.”** (Emphasis.) (Id., *Gober* 1 RT 5521:19-23)

6 This does not square with the State Bar Court’s finding hat Kay, “significantly obstructed
7 the orderly administration of justice.” Ralphs – the only party with standing to pursue the
8 issue - did not appeal; thus, the issue was finally resolved as of 1998, when Judge Weber
9 denied Ralphs’ motion for new trial, which Ralphs did not appeal.

10 81. Kay was required not to follow the State Bar Court’s (Judge Armendariz) (illegal
11 and void) rulings to disclose attorney client and work product privileged matters, pursuant
12 to Rules of Professional Conduct, rule 3-100 and §6068(i). The Court’s revamped
13 interpretation of the the State Bar Rules of Procedure enacted by the Board of Governors
14 is unauthorized under Section 6086.5 of the Business & Professions Code and does not
15 supersede the law of the State of California enacted by the Legislature and interpreted by
16 Article VI courts of general jurisdiction, which are set forth in the State Bar Act in
17 Business & Profession Code §§6000, *et seq.*, setting for the State Bar Court’s enumerated
18 powers, authority and procedure to be followed. In conformance with the State Bar Act,
19 Kay repeatedly requested the court to refer the matter of his alleged contempt in the State
20 Bar to an Article VI court; however, without ever stating any reasons, the court simply
21 ignored these requests – never issuing any written orders regarding is evidentiary rulings
22 to be adjudicated by an Article VI court. (See *Levy v. Superior Court* (1925) 74 Cal.App.
23 171, 178.)

24 82. As referenced, the Supreme Court held in *Jacobs v. State Bar, supra*, if the OCTC
25 seeks to enforce a subpoena, jurisdiction is transferred to an Article VI court. OCTC
26 never moved to compel disclosure of this privileged information in discovery. Then at
27 trial, OCTC never moved to compel the information under the required procedure to
28 enforce the trial subpoena. Rather, OCTC sought an unauthorized - *ultra vires* default.
29 rather, it sought Kay’s default. However, OCTC is not allowed to invoke a non-existent

1 remedy to seek a default. Nor is the State Bar Court allowed to usurp the authority and
2 jurisdiction of the Superior Court to determine these matters. Nor is the Court allowed to
3 ignore the most basic tenets of rules of evidence; e.g., questions are not evidence. Only
4 Article VI courts of inherent authority can adjudicate such matters in a contempt
5 proceeding.

6 83. The Court admits the default is punishment in violation of section 6068(i), because
7 it results in Kay being sanctioned and disciplined in response to asserting his rights.
8 (Exhibit 4, State Bar Default, p.6: "Such an issue sanction is at least the equivalent of
9 entering Kay's default and arguably more onerous in some ways.") Moreover, the
10 default is not an issue sanction; rather, it is an ultimate terminating sanction.

11 84. Respondents Kay and Mr. Dalton filed mistrial motions in advance of the entry of
12 the default to preserve the voluminous legal error of the State Bar Court. (Exhibit 21,
13 Respondents' Motions for mistrial based on the cumulative and prejudicial rulings of the
14 trial court - Hon. Lucy Armendariz.) [Following the entry of default, respondents filed
15 additional motions regarding the court's legal error and OCTC's prosecutorial misconduct
16 (withholding exculpatory evidence), which the court returned on the grounds that Kay
17 could not file any motions.] The mistrial motions raised many of the issues discussed in
18 this Petition regarding the denial of fundamental due process rights.

19 85. The State Bar Court refused to rule on or consider these motions by entering
20 the default, which was expedited to prevent the mistrial motions from being heard.
21 Moreover, without having ruled on the mistrial motions, the State Bar Court found that the
22 mistrial motions were "frivolous."

23 86. The Supreme Court referred another matter involving the State Bar Court's (Judge
24 Armendariz) refusal to adhere to the law and record in another matter to the Court of
25 Appeal. (See *Robinson v. Charlton*, Not Reported in Cal.Rptr.3d, 2009 WL 2243782
26 (Cal.App. 1 Dist.) arising from the *Matter of Kim Marie Robinson*, case no. 03-O-0402-
27 LMA.) (See Exhibit 21B, *Robinson* Opinion.) The *Robinson* Court states at page 10:

1 Nothing in the State Bar Court's Decision alters our determination that sanctions
2 against Robinson were appropriate: Robinson appealed from nonappealable orders,
3 raised issues for the first time on appeal, and represented her client on appeal
4 despite the appearance of a conflict and perhaps an actual conflict. Robinson
5 quotes Judge Armendariz's *opinion* that such infractions "involve, at most, the
6 elevation of form over substance." (Emphasis.)

7 The abuse by the State Bar Court in this proceeding is far more egregious and destructive
8 than in *Robinson*, in which Judge Armendariz sought to erase a (just) monetary sanction.
9 Here, Judge Armendariz has imposed an unjust severe punishment.

10 87. Judge Weber clearly developed an untoward personal animus towards Kay and Mr.
11 Dalton described in an interview with the State Bar, in which she admitted that following
12 her disqualification, she "spoke regularly with Judge Anello about [respondents] while
13 the [*Gober*] matter proceeded before [Judge Anello]. . . ." (Exhibit 22, OCTC/Feher
14 memo re: Weber.) Moreover, in a letter written on her judicial letterhead to the State Bar
15 (dated June 26, 2003), Judge Weber, discussing Judge Anello's Complaint, admits,
16 "Judge Anello informs me that this material was attached to his information that was
17 already sent to you." (Exhibit 23, Judge Weber letter to State Bar.) In additional
18 correspondence with OCTC, Judge Anello confirmed that he was discussing his
19 Complaint with disqualified Judge Weber. (Exhibit 24, Judge Anello letter to State Bar.)
20 Judge Meyer testified in the State Bar trial that he had *ex parte* communications with
21 disqualified judges Weber and Anello regarding their shared animus of respondents Kay
22 and Mr. Dalton, while he presided in the *Marcisz* case. (Exhibit 11, State Bar trial
23 transcripts.)

24 **88. It is not a coincidence that these disqualified and embroiled judges teamed up**
25 **in this matter.** Judges Weber and Anello's admitted *ex parte* communications in the
26
27

1 Feher memo and their own correspondence resulted in his Judge Anello's further⁴⁹
2 disqualification in the *Gober* case -- rendering the underlying trial record **void**, which
3 cannot serve as grounds for misconduct. (See *Christie v. City of El Centro, supra*, 135
4 Cal.App.4th at 776.) (See also 2 *Witkin*, Cal. Proc. 5th (2008) Court s, § 61, p. 96;
5 *Lapique v. Superior Court* (1924) 68 Cal.App. 418, 420.) A disqualified judge cannot
6 communicate regarding counsel in any direct or related matter. (§170.4.) See also State
7 Bar Rules of Procedure, rule 116(c) [For purposes of this rule, a "related proceeding" is
8 any civil...or State Bar Court proceeding in which a party, real party in interest, or
9 witness is also a party or witness in the proceeding before the Court, or any civil,
10 criminal, administrative, or State Bar Court proceeding which involves the subject matter
11 of the proceeding before the Court.]

12 Rule 684(c) states:

13 For purposes of this rule, a "related proceeding" is any civil, criminal
14 administrative, or licensing proceeding involving conduct by the applicant which is
or is likely to be an issue in the proceeding before the Court .

15 "Except in very limited circumstances, not applicable here,⁵⁰ a disqualified judge has no
16 power to act in any proceedings after his or her disqualification." (*Christie v. City of El*
17 *Centro, supra*.) (See also *Roscoe Holdings, Inc. v. Bank of America* (2007) 149
18 Cal.App.4th 1353, 1364, *citing to Christie, supra*.) Thus, the *Gober* record is void and
19 cannot serve as the basis for discipline.

20 89. The Decision re-writes the law and facts – reversing and revising Judge Anello's
21 disqualification by the Court of Appeal - "in the interests of justice," pursuant to Code of
22 Civil Procedure §170.1(c). A retrial on remand is not required to take place before a
23 judge different than the one who presided at the prior trial. In fact, the retrial typically
24 occurs before the original judge. (See *Behniwal v. Mix* (2005) 133 Cal.App.4th 1027,

25 ⁴⁹ Prior to trial, Judge Anello struck a timely and sufficient Code of Civil Procedure 170.6
26 peremptory challenge filed by DALTON.

27 ⁵⁰ See §170.4.

1 1046-1047 ["(The trial judge) has experienced this case in a way no other judge has, and
2 is the only one with first-hand knowledge bearing on the (remand issue)" (parentheses
3 added)]. Here, the Court of Appeal exercised its rarely invoked discretion to order that a
4 different judge be assigned to the retrial "in the interests of justice," based on the motion
5 to disqualify executed and filed by appellate counsel Charles Bird, pursuant to §170.1(c),
6 which was based primarily on the allegation of bias in the Verified Statements , executed
7 and filed by Mr. Dalton.⁵¹ (See *Marriage of Iverson* (1992) 11 Cal.App.4th 1495, 1502;
8 *Hernandez v. Super.Ct. (Acheson Indus., Inc.)* (2003) 112 Cal.App.4th 285, 303, which
9 states that the appellate court power to disqualify a trial judge under §170.1(c) should be
10 "exercised sparingly," in denying the request because the challenged orders "do not
11 suggest bias or whimsy on behalf of the court, only frustration and a desire to manage a
12 complex case.")

13 90. Regardless, the court here injects the *non-sequitur* that the Court of Appeal made
14 no findings of "bias;" ignoring that the Court of Appeal is a not a fact finding court and is
15 not allowed to make findings of fact.. Moreover, the court fails to understand that there is
16 no requirement for the Court of Appeal to make a finding of "actual bias," rather, the
17 standard is whether doubts exist concerning the judge's impartiality, which then mandates
18 disqualification "in the interest of justice." (See *Peopele v. Panah* (2005) 35 Cal.4th 395,
19 446.)

20 91. Only a neutral trial court can make findings of fact regarding judicial bias,
21 pursuant to §170.1(c)(5): "A judge who refuses to recuse himself or herself shall not pass
22 upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of
23 the statement of disqualification filed by a party. In that case, the question of
24 disqualification shall be heard and determined by another judge agreed upon by all the

25 _____
26 ⁵¹ Kay has been found vicariously culpable for Mr. Bird's executing and filing the motion to
27 disqualify in the Court of Appeal and Mr. Dalton's executing and filing the Verified Statements in
28 the trial court.

1 parties who have appeared or, in the event they are unable to agree within five days of
2 notification of the judge's answer, by a judge selected by the chairperson of the Judicial
3 Council, or if the chairperson is unable to act, the vice chairperson."

4 92. Judge Anello testified in this proceeding the three Verified Statements filed by Mr.
5 Dalton falsely accused him of bias. (Exhibit 11, State Bar trial transcripts.) Thus, Judge
6 Anello admitted under oath that he filed false striking orders to the section 170.1
7 challenges, which stated no legal ground (bias) was specified. Rather than rehabilitate,
8 the record in this proceeding further establishes Judge Anello's judicial misconduct and
9 shows his motivation to burnish his tarnished reputation, with the assistance of the OCTC
10 prosecutors and Judge Armendariz. [The Decision also falsely reports a legal *non-*
11 *sequitur* that the Verified Statements were struck because they were "improper."
12 However, no such "legal" ground exists to strike a Verified Statement (Code of Civil
13 Procedure Section §170.1(6)(C).] Since Judge Anello illegally struck and never contested
14 the Verified Statements, he prevented a **neutral trial court** from ever determining the
15 facts regarding his bias, which based on his failure to contest them, are deemed admitted.
16 (§1703(c)(4) ["(4) A judge who fails to file a consent or answer within the time allowed
17 shall be deemed to have consented to his or her disqualification and the clerk shall notify
18 the subdivision (a)"].) This statutory determination, in and of itself, establishes Judge
19 Anello's bias as a matter of law.

20 93. The Decision states that Kay "falsely accused" Judge Anello of certain conduct and
21 summarily states thereafter: "Judge Anello was not biased or prejudiced against [Kay's]
22 clients in this matter." (Exhibit 1, Decision, p.11.) As discussed, this finding violates
23 California statutes and public policy regarding the disqualification of judges. Only a
24 neutral trial court can adjudicate challenges for bias – not the State Bar, and certainly not
25 after years since the challenge was filed. Thereafter, the Decision continues to focus on
26 defending Judge Anello, stating that Kay filed petitions to disqualify Judge Anello "for an
27 improper purpose: to harass and embroil Judge Anello in a dispute, and because he

1 wanted a judge more favorable to them to hear the Gober matter." *Id.*, at 12. However,
2 Mr. Dalton executed and filed the Verified Statements, to which Judge Anello never
3 provided an answer, which, as a matter of law results in his having admitted to the
4 allegations of bias in the Verified Statements. The Decision contains additional
5 statements designed to "clear" Judge Anello's name, "[T]he Court of Appeal made no
6 finding of bias, but did recuse Judge Anello in 2005 from further proceedings. It made no
7 finding that Judge Anello did anything improper." *Id.*, 14. However, the Court of Appeal
8 is not allowed to make "findings" it only has to determine "in the interest of justice" if the
9 judge in question is disqualified. As stated, this establishes newly minted findings
10 rehabilitating Judge Anello.

11 94. The primary goal of the State Bar proceeding is to do the bidding of disqualified
12 and embroiled Judge Anello to make certain that Kay never walks into another Court
13 room again, as he requested in his Complaint.⁵² (Exhibit 18, Judge Anello State Bar
14 Complaint, p. 21.) However, other goals have been achieved, including:

- 15 • preventing plaintiffs' lawyers from protecting the record for appeal from reversible
16 error on behalf of their clients;
- 17 • without standing or jurisdiction, vindicating the losing corporate defendants and
18 their attorneys to allow them to claim they were denied fair trials and seek writs of
19 *coram vobis or nobis* to start the trials all over again to reclaim the damages and
20 attorney's fees awarded and to be awarded;
- 21 • defame Kay by falsely finding and claiming he is guilty of obstruction of justice
22 (criminal contempt),
- 23 • gain publicity by taking down, as OCTC has stated, "a high profile plaintiffs'
24 lawyer."

25 _____
26 ⁵² Judge Anello's Complaint contains numerous false statements of fact (record) in *Gober*, including
27 the claim that he granted a partial new trial based attorney misconduct. The complaint further uses
28 ellipses and cut and paste from the record to create fabrications of the record.

1 95. Up until now, Kay has only been recognized for his exemplary work as a nationally
2 recognized employment-civil rights attorney, who represents victims of discrimination
3 and harassment and whistle-blowers in cases, which have resulted in *progressive case*
4 authority in the field of employment law.⁵³ The State Bar Court was shocked and
5 angered, because Kay, a civil rights lawyer, asserted his own rights in the State Bar
6 proceeding, by contesting the erroneous rulings of the State Bar Court. Then, in the
7 Decision, the State Bar Court stated, "he (Kay) lost it, not the cases, but his integrity,
8 professional decorum, credibility, and respect of the Court." This pejorative finding was
9 made by a political - jurist who never found it and does not belong in any position of
10 authority from which she can do harm. This State Bar proceeding exemplifies the
11 political misuse and abuse of the anticipated by former Supreme Court Justice Janice
12 Rogers Brown in her prescient dissent in *In re Rose, supra*, 22 Cal.4th at 470:

13 "At the heart of the majority opinion is the supposition that review by any other
14 name is still review and passes constitutional muster; that due process is satisfied
15 by any process, however much the **decisionmakers may be driven by**
16 **bureaucratic agendas or political ties.** In this corner of the law, at least, we
seem to be presiding over a union of the legislative and judicial components of
government. It may be efficient; it certainly isn't pretty. And because it seems
antithetical to the constitutional design, I dissent."

17 96. The Decision finds Kay violated court orders; however, there is no evidence or
18 analysis establishing the existence of any valid written (binding and final) court orders.
19 Rather, the Decision finds Kay violated non-specific and incompetent oral judicial
20 musings in the place of valid written orders. These findings dispense altogether with the
21 required legal elements to hold an attorney in contempt or culpable for violation of a
22 court order. Not once in the Decision does the State Bar Court state the grounds
23 establishing the validity or sufficiency of any alleged order of the trial court or its own
24 orders. Rather, the State Bar Court cites to inadmissible hearsay colloquy between the
25

26
27 ⁵³ See, e.g., *Weeks v. Baker & McKenzie* (2002) 63 Cal.App.4th 1128; *Greene v. Dillingham*
28 *Construction* (2002) 101 Cal.App.4th 418.

1 trial judges and Kay and declares its own evidentiary rulings valid in place of valid
2 written (final and binding) orders to find contemptuous misconduct and violations of trial
3 court orders and its own orders resulting in moral turpitude.

4 97. The Decision makes findings of culpability on matters in which OCTC neither
5 charged or presented any evidence; thus, denying Kay any notice or opportunity to
6 respond. (See Canon 3B(7)(d)(ii) [“the judge makes provision promptly to notify all
7 other parties of the substance of ex parte communications and allows an opportunity to
8 respond] and **Advisory Committee Commentary** [“**A judge must not independently
9 investigate facts in a case and must consider only the evidence presented . . .**”]
10 (Emphasis.) Thus, the State Bar Court further acted without and in excess of jurisdiction.

11 98. The Decision falsely reports the record in the *Gober* and *Marcisz* cases to create
12 non-existent orders and findings on which to base culpability. The State Bar Court is an
13 administrative (professional) judge, who is supposed to know the law and record and act
14 in accordance with the Judicial Canons⁵⁴ in issuing its Decision. Here, the State Bar Court
15 has acted as both prosecutor and judge -- relieving OCTC of its burden to charge and
16 prove the charges in the NDC, while covering up OCTC’s malfeasance for having
17 brought the charges and rehabilitating the reputation of a disqualified and embroiled
18 judge, who engaged in judicial misconduct and then re-qualified him to be a jurist in this
19 matter, along with his disqualified colleagues – allowing them to testify about matters
20 they never determined or found in written orders while qualified. The State Bar Court’s
21 actions create a dangerous threat to the fundamental rights of due process and equal
22 protection for all respondents and their clients in the State Bar. This is the very reason
23 behind the public policy of once a judge is disqualified they are to have no more contact

24 ⁵⁴ (See, e.g., Canon II (a): “A judge shall respect and comply with the law and shall act at all
25 times in a manner that promotes public confidence in the integrity and impartiality of the
26 judiciary;” Canon III(b)(2): “A judge shall be faithful to the law regardless of partisan
27 interests, public clamor, or fear of criticism, and shall maintain professional competence in
28 the law.”

1 with any matters related to the case in which they have been disqualified. The potential
2 harm to both the parties and their attorneys is self evident here. The fact that a STATE
3 BAR court allowed these judges to come in and claim that the defendants were denied a
4 fair trial in order to harm Kay and thereby his clients, turns the protections of CCP 170 et
5 seq on it's head.

6 99. Since the alleged contemptuous misconduct did not take place in the presence of
7 the State Bar Court, this means the Court was conducting indirect contempt proceedings,
8 without standing and jurisdiction and in which an *affidavit* by a party present at the time
9 of the alleged conduct was required; however, none exist. Moreover, State Bar Court
10 judges have **not** been given the power to **cite** (charge) and/or sanction respondents and
11 litigants appearing before them for contempt. (*Matter of Lapin* (Rev.Dept. 1993) 2 Cal.
12 State Bar Ct.Rptr. 279, 295.)

13 100. The State Bar Rules of Procedure do not allow the State Bar Court to enter a
14 default and then later *sua sponte* strike the Answer, once it has been filed. Only after a
15 finding of discovery abuse, pursuant to Rule 186 – not applicable or relevant here, are
16 they allowed to consider that drastic measure, and it certainly does not apply to the issue
17 of trial testimony. Even, under Rule 201, which allows the entry of default for failing to
18 appear at trial, there is no provision allowing the striking of the Answer. Kay was never
19 provided with the Notice requirements under Rule 201 regarding the entry of his Default
20 nor was he allowed to vacate or cure⁵⁵ the default under Rule 203 by agreeing to provide
21 further testimony, or was he afforded the rights under Rule 205, as stated in the Decision.
22 Moreover, Kay's refusal to answer questions and provide further testimony at trial is an
23 **alleged contempt and must be treated as such**, as set fort in the State Bar Rules of
24 Procedure, Business & Professions Code §§6000, et seq. (State Bar Act), Code of Civil

25 _____
26 ⁵⁵ (See *Wilson v. Goldman, supra*, 274 Cal.App.2d at 576-578 [where answer filed, default order
27 based on failure to appear at trial is void and thus subject to direct or collateral attack].)

1 Procedure, Evidence Code and Decisions of the State Bar Court, Court of Appeal and the
2 Supreme Court.

3 Business & Professions Code §6050 **Disobedience of subpoena as contempt**

4 “Whenever any person subpoenaed to appear and give testimony or to produce
5 books, papers or documents refuses to appear or testify before the subpoenaing
6 body, or to answer any pertinent or proper questions, or to produce such books,
7 papers or documents, he or she is in **contempt** of the subpoenaing body.”

8 See also, *Waterman v. State Bar* (1936) 8 Cal.2d 17, 18 [failure to appear pursuant to
9 subpoena is a contempt]; discussion in Rutter, Professional Responsibility, §§11:717, et
10 seq.) Rules 152(b) and 187 of the Rules of Procedure and Business & Professions Code
11 §6051, set forth the procedure for having an alleged contempt in the determined by an
12 Article VI court, which the State Bar Court admits in the order entering the Default
13 101. In a bizarre ruling, the State Bar Court disregarded this well-established procedure
14 (due process), because it would take time; thereby, placing due process rights on the
15 clock. (Exhibit 4, Default , p.5): “A contempt referral will add further delay in
16 disposing of this case.” (Emphasis.) All due process takes time. Trials can last months;
17 appeals can last years. Applying the State Bar Court’s rationale would do away the
18 system of justice in this country -- to be replaced with a make it up as you go along
19 summary system of injustice. While this would speed up the process, it would result in a
20 denial of due process. This should end the discussion; however, the record in this
21 proceeding discloses that the State Bar Court is engaging in a charade.

22 First, the Court failed to place Kay on involuntary inactive status, as required by
23 Business & Professions Code §6007(e); thus, there was no compelling reason to impose
24 discipline.

25 Second, the trial in this proceeding was being scheduled a few days a month, with
26 several weeks in between these limited court days. The trial, had it continued, would
27 have lasted many months, if not years, considering the amount of material at issue arising
28

1 from three underlying trials, each lasting between 6 to 8 weeks and additional matters.
2 The contempt referral could have been promptly resolved during any of these recesses.

3 Third, the only delay in this matter is by OCTC, which filed charges regarding
4 alleged conduct that took place between 6 to 15 years before the NDC was filed in 2008.
5 However, the State Bar Court claims that to avoid further “delay,” it must chuck due
6 process out the window and enter the Default .

7 102. Thus, the Court (Judge Armendariz) embraced a clever but illegal and void means
8 to prevent her rulings and Decision from ever being subject to *de novo* review in the State
9 Bar Review Department; thereby, making herself the ultimate and sole authority in this
10 matter, because she based them on non-existent law, facts and charges not in the NDC.
11 Moreover, the Court failed to follow its own ruling in the default (Exhibit 4), which
12 states at page 6:

13 “FN6: As noted above, upon entry of the default the Court will consider the
14 allegations in the NDC as having been deemed admitted. However, the will still
15 have the burden of proving the charges in the NDC by clear and convincing
evidence. Thus, the entry of Kay's default would not establish the issue of his
culpability per se whereas the imposition of the above issue sanction would.”

16 Regardless, without any evidence or citation to the record, the Decision leaps to the
17 conclusion that all of the charges in the NDC have been proved by “clear and convincing
18 evidence,” despite the existence of evidence in the record directly contrary to these
19 findings. (See Rules of Procedure, rule 200(d)(1)(A).)

20 103. The Court took away all of Kay’s rights, because he contested the NDC charges
21 brought by OCTC and refused to testify about privileged and confidential matters. Thus,
22 the State Bar Court ruled that Kay must admit to the false charges that he obstructed
23 justice through contempt of court and denied the defendants fair trials. These false
24 charges and findings impugn the judicial system, juries, trial courts and appellate courts;
25 which affirmed these civil rights verdicts and made no such findings. In other words, the
26 State Bar Court here (Judge Armendariz) has determined, without due process, whether a
27 lawyer has the right to contest the charges brought by OCTC and that it is can reverse and

1 impugn the final orders and decisions of Article VI trial courts, Courts of Appeal and
2 Supreme Court.

3 **V. CAUSES OF ACTION (Against all Defendants)**

4 **FIRST CAUSE OF ACTION - Declaratory Relief**

5 104. The allegations set forth in the foregoing paragraphs of this Complaint are
6 realleged and incorporated by reference as if fully set forth herein.

7 105. Attorneys have a property interest in the right to practice law. See *Conway v.*
8 *State Bar, supra*, 47 Cal.3d at 1113.

9 106. There is an actual controversy between Kay and defendants and each of
10 them. Kay seeks a declaration of his rights to be free of the unlawful, illegal, void and
11 *ultra vires* acts by defendants, and each of them, including a declaration of rights to be
12 afforded under Code of Civil Procedure §1060. In perpetrating the above described acts
13 and omissions without and in excess of jurisdiction, defendant State Bar was, at all
14 relevant times herein, a governmental agency of the State of California, and defendants
15 Armendariz, Drexel, Blumenthatl, and Dal Cerro were, at all relevant times herein, its
16 agents/employees.

17 107. In perpetrating the above-described acts and failures to act in excess and without
18 jurisdiction, the defendants, and each of them, engaged in a pattern, practice, policy,
19 tradition and/or custom of depriving Kay (licensed to practice law in the State of
20 California) of his right to practice law without undue and unreasonable government
21 interference in violation of law through the entry of an illegal and void default and in
22 violation of due process to be afforded under the Fourteenth Amendment to the United
23 States Constitution.

24 108. At all relevant times herein, there existed within the State Bar of California as
25 promulgated by the Board of Governors of the State Bar, a pattern, policy, practice,
26 tradition, custom, and usage of conduct without and in excess of jurisdiction of depriving
27 Kay (licensed to practice law in the State of California) of his right to practice his

1 profession without undue and unreasonable government interference in violation of law
2 through the entry of an illegal and void default and in violation of due process to be
3 afforded under the Fourteenth Amendment to the United States Constitution.

4 109. The acts set forth herein constitute a policy, practice, or custom of ordering,
5 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the
6 violation by State Bar personnel without and in excess of jurisdiction of the due process
7 and constitutional rights of Kay (an attorney licensed to practice law in the State of
8 California) without undue and unreasonable government interference in violation of law
9 through the entry of an illegal and void Default and in violation of due process to be
10 afforded under the Fourteenth Amendment to the United States Constituion.

11 110. The acts and failures to act as alleged herein also result from a custom, practice or
12 policy of inadequate training in a deliberate indifference to the rights of Kay (an attorney
13 licensed to practice law in the State of California) to practice law without undue and
14 unreasonable government interference in violation of law through the entry of an illegal
15 and void Default and in violation of due process to be afforded under the Fourteenth
16 Amendment to the United States Constitution.

17 SECOND CAUSE OF ACTION - Injunctive Relief

18 111. The allegations set forth in the foregoing paragraphs of this Complaint are
19 realleged and incorporated by reference as if fully set forth herein.

20 112. For the foregoing reasons, injunctive relief is appropriate in this matter, in which
21 Kay requests this Court to enjoin the Decision⁵⁶, Order entering default and subsequent
22 Order striking his Answer, because they are void and entered without and in excess of the
23 State Bar Court's jurisdiction. Kay further requests this Court to enjoin the State Bar
24 proceeding, because it was brought without standing and jurisdiction. In the alternative,
25 to preserve judicial resources, Kay requests this Court to vacate the Decision, Default

26 _____
27 ⁵⁶ Decision of the State Bar Hearing Department (Hon. Lucy Armendariz, 180 Howard Street, 6th
28 Floor, San Francisco, CA 94105, 415-538-2050) filed on December 15, 2009.

1 and striking of his Answer, because they are void and were entered without and in excess
2 of the State Bar Court's jurisdiction and in violation of his statutory and constitutional
3 rights. Kay further seeks relief from the State Bar to protect him, his clients, including
4 those in the *Marcisz* case, which is scheduled for retrial regarding the amount of punitive
5 damages and adjudication of attorney's fees, from irreparable injury to prevent defendants
6 Ralphs and UltraStar from attempting to use the Decision as a bar and/or to reverse the
7 "law of the case" to seek a new trial and/or disgorgement of the damages and attorney's
8 fees awarded to the plaintiffs and their attorneys.

9 113. As a result of the conduct of Defendants and each of them, Kay and his clients's
10 fees, have been and will continue to be injured, and in the absence of injunctive relief,
11 will be irreparably harmed. Kay has no adequate remedy at law. Kay, therefore, seeks
12 injunctive relief under the laws of equity to remedy his injuries and prevent any future
13 injury to his person, including rights afforded under Code of Civil Procedure §§1065,
14 1068 & 1102.

15 THIRD CAUSE OF ACTION - VIOLATION OF 42 U.S.C. §1983
16 (PROCEDURAL DUE PROCESS)

17 114. The allegations set forth in the foregoing paragraphs of this Complaint are
18 realleged and incorporated by reference as if fully set forth herein.

19 114. In perpetrating the above described acts and omissions, defendant State Bar was, at
20 all relevant times herein, a governmental agency of the State of California, and
21 defendants Armendariz, Drexel, Blumenthal, and Dal Cerro were, at all relevant times
22 herein, its agents/employees. Thus, defendants' above-described acts and omissions
23 constitute cognizable state action under color of state law.

24 115. In perpetrating the above-described acts and failures to act, the defendants, and
25 each of them, engaged in a pattern, practice, policy, tradition and/or custom of depriving
26 Kay of his right to adequate notice and a fair trial in violation of the Fourteenth
27 Amendment to the United States Constitution. Because rights under the federal

1 Constitution are federally protected, defendants also violated Kay' rights under 42 U.S.C.
2 § 1983.

3 116. At all relevant times herein, there existed within the State Bar of California as
4 promulgated by the Board of Governors, a pattern, policy, practice, tradition, custom, and
5 usage of conduct of depriving Kay his right to adequate notice and a fair trial in violation
6 of the Fourteenth Amendment to the United States Constitution, which resulted in
7 deliberate indifference to Kay's procedural due process rights.

8 117. The acts set forth herein constitute a policy, practice, or custom of ordering,
9 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the
10 violation by State Bar personnel of the constitutional right of Kay to adequate notice and
11 a fair trial.

12 118. The acts and failures to act as alleged herein also result from a custom, practice or
13 policy of inadequate training in a deliberate indifference to their right to adequate notice
14 and a fair trial, and the injuries suffered by Kay as alleged herein were caused by such
15 inadequate training.

16 Defendants, and each of them, exhibited deliberate indifference to the violation of Kay's
17 protected procedural due process rights by failing to investigate or provide protection
18 from unlawful conduct. The acts and failures to act as alleged herein were done pursuant
19 to policies and practices instituted by these defendants pursuant to their authority as
20 policymakers for the State Bar.

21 119. As a result of the acts and failures to act as alleged herein, and as a result of the
22 State Bar's customs, traditions, usages, patterns, practices, and policies, Kay was
23 deprived of his constitutional rights to due process, and suffered damages caused thereby
24 as more particularly alleged above.

25 120. Unless and until defendants' unlawful policies and practices as alleged herein are
26 enjoined and restrained by order of this Court, defendants will continue to cause great and
27 irreparable injury to Kay.

1 FOURTH CAUSE OF THE ACTION - VIOLATION OF 42 U.S.C. §1983 (FREE
2 SPEECH)

3 121. The allegations set forth in the foregoing paragraphs of this Complaint are
4 realleged and incorporated by reference as if fully set forth herein.

5 123. In perpetrating the above-described acts and failures to act, the defendants, and
6 each of them, engaged in a pattern, practice, policy, tradition and/or custom of restraining
7 and enacting impermissible prior restraints on plaintiff's' free speech on matters of public
8 concern in violation of the First Amendment to the United States Constitution and the
9 California Constitution. Because rights under the federal and state Constitutions are
10 federally protected, defendants also violated Plaintiffs' rights under 42 U.S.C. § 1983.

11 124. At all relevant times herein, there existed within the State Bar, a pattern, policy,
12 practice, tradition, custom, and usage of conduct of restraining the free speech of and
13 enacting impermissible prior restraints on attorneys practicing law in California on
14 matters of public concern, which resulted in a deliberate indifference to Kay's rights to
15 free speech.

16 125. The acts set forth herein constitute a policy, practice, or custom of ordering,
17 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the
18 violation by State Bar personnel of the constitutional rights to free speech of attorneys
19 practicing law in California on matters of public concern.

20 126. The acts and failures to act as alleged herein also result from a custom, practice or
21 policy of inadequate training in a deliberate indifference to the rights of attorneys
22 practicing law in California who speak out on matters of public concern, and the injuries
23 suffered by Kay as alleged herein were caused by such inadequate training. Defendants,
24 and each of them, exhibited deliberate indifference to the violation of Kay's protected
25 speech rights by failing to investigate or provide protection from unlawful conduct. The
26 acts and failures to act as alleged herein were done pursuant to policies and practices
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1 instituted by these defendants pursuant to their authority as policymakers for the State
2 Bar.

3 127. As a result of the acts and failures to act as alleged herein, and as a result of the
4 State Bar's customs, traditions, usages, patterns, practices, and policies, Kay was deprived
5 of his constitutional rights to free speech, and suffered damages caused thereby as more
6 particularly alleged above.

7 128. Unless and until defendants' unlawful policies and practices as alleged herein are
8 enjoined and restrained by order of this Court, defendants will continue to cause great and
9 irreparable injury to Kay.

10 FIFTH CAUSE OF ACTION - VIOLATION OF 42 U.S.C. § 1983

11 (SUBSTANTIVE DUE PROCESS)

12 129. The allegations set forth in the foregoing paragraphs of this Complaint are
13 realleged and incorporated by reference as if fully set forth herein.

14 131. In perpetrating the above-described acts and failures to act, the defendants, and
15 each of them, engaged in a pattern, practice, policy, tradition and/or custom of depriving
16 Kay of his right to practice law without undue and unreasonable government interference
17 in violation of the Fourteenth Amendment to the United States Constitution. Because
18 rights under the federal Constitution are federally protected, defendants also violated
19 Kay's rights under 42 U.S.C. § 1983.

20 132. At all relevant times herein, there existed within the State Bar, a pattern, policy,
21 practice, tradition, custom, and usage of conduct of depriving Kay, licensed to practice
22 law in the State of California of his right to practice his profession without undue and
23 unreasonable government interference in violation of the Fourteenth Amendment to the
24 United States Constitution, which resulted in deliberate indifference to Kay's right to
25 practice his profession.

26 133. The acts set forth herein constitute a policy, practice, or custom of ordering,
27 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the

1 violation by State Bar personnel of the constitutional rights of attorneys licensed to
2 practice law in the State of California to practice law without undue and unreasonable
3 government interference.

4 134. The acts and failures to act as alleged herein also result from a custom, practice or
5 policy of inadequate training in a deliberate indifference to the rights of attorneys licensed
6 to practice law in the State of California to practice law without undue and unreasonable
7 government interference, and the injuries suffered by Kay as alleged herein were caused
8 by such inadequate training. In perpetrating the above-described acts and failures to act,
9 the defendants, and each of them, also engaged in a pattern, practice, policy, tradition
10 and/or custom of depriving Kay's clients of their right of access to the courts, which
11 necessarily includes the right to be represented by the attorneys of their choice, in
12 violation of the Fourteenth Amendment to the United States Constitution. Because rights
13 under the federal Constitution are federally protected, defendants also violated Kay's
14 rights under 42 U.S.C. § 1983.

15 135. Unless and until defendants' unlawful policies and practices as alleged herein are
16 enjoined and restrained by order of this Court, defendants will continue to cause great and
17 irreparable injury to Kay and his clients.

18 SIXTH CAUSE OF ACTION - VIOLATION OF 42 U.S.C. § 1983 (EQUAL
19 PROTECTION)

20 136. The allegations set forth in foregoing paragraphs of this Complaint are realleged
21 and incorporated by reference as if fully set forth herein.

22 137. In perpetrating the above-described acts and failures to act, the defendants, and
23 each of them, engaged in a pattern, practice, policy, tradition and/or custom of
24 unlawful selective prosecution of solo practitioners who represent and advance the
25 individual rights of plaintiffs in lawsuits in violation of the Equal Protection Clause of the
26 Fourteenth Amendment to the United States Constitution. Because rights under the

1 federal are federally protected, defendants also violated Plaintiffs' rights under 42 U.S.C.
2 § 1983.

3 138. At all relevant times herein, there existed within the State Bar a pattern, policy,
4 practice, tradition, custom, and usage of conduct of unlawful selective prosecution of civil
5 laws against solo practitioner plaintiffs' lawyers, which resulted in a deliberate
6 indifference to Kay's constitutional rights. In perpetrating the above-described acts and
7 failures to act, the defendants, and each of them, knowingly engaged in a pattern,
8 practice, policy, tradition and/or custom of unlawful selective prosecution of civil laws
9 against solo practitioner plaintiffs' lawyers in violation of the Equal Protection Clause of
10 the Fourteenth Amendment to the United States Constitution. Because rights under the
11 federal and state Constitutions are federally protected, defendants also violated Kay's
12 rights under 42 U.S.C. § 1983.

13 139. The acts set forth herein constitute a policy, practice, or custom of ordering,
14 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the
15 violation by State Bar personnel of Kay's constitutional rights as solo practitioner
16 plaintiffs' lawyers. The acts and failures to act as alleged herein also result from a
17 custom, practice or policy of inadequate training in a deliberate indifference to Kay's
18 constitutional rights as solo practitioner plaintiffs' lawyers, and the injuries suffered by
19 plaintiff as alleged herein were caused by such inadequate training.

20 140. Defendants, and each of them, exhibited deliberate indifference to the violation of
21 Kay's protected rights by failing to investigate and provide protection from unlawful
22 conduct. The acts and failures to act as alleged herein were done pursuant to policies and
23 practices instituted by these defendants pursuant to their authority as policymakers for the
24 State Bar.

25 141. As a result of the acts and failures to act as alleged herein, and as a result of the
26 State Bar's customs, traditions, usages, patterns, practices, and policies, Kay was deprived

1 of his constitutional equal protection rights and suffered damages caused thereby as more
2 particularly alleged above.

3 142. Unless and until defendants' unlawful policies and practices as alleged herein are
4 enjoined and restrained by order of this Court, defendants will continue to cause great and
5 irreparable injury to Kay.

6 WHEREFORE, plaintiff prays for relief against defendants, and each of them, as
7 follows:

- 8 (1) Declaratory and injunctive relief, including a temporary restraining order
9 and preliminary injunction, pursuant to the Motion filed herewith; writ of
10 certiorari, and/or writ of prohibition or any other appropriate relief
11 (2) For general and special damages according to proof;
12 (3) For punitive or exemplary damages;
13 (4) For reasonable attorney's fees and costs of suit herein;
14 and
15 (5) For each other such and further relief as the Court may deem proper.

16
17 Dated: Feb. 15, 2010

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20 By: 

Philip E. Kay

VERIFICATION

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1. I, am the plaintiff in this action.

2. I have read the foregoing Complaint. I make this declaration to verify the contents thereof; the factual allegations of which are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on the 15th day of February 2010 at San Francisco California.


Philip E. Kay