

S214058
Court of Appeal Case No.B242054
Super.Ct No. BC452239

IN THE CALIFORNIA SUPREME COURT

PATRICIA J. BARRY,
Plaintiff/Appellant/Respondent,

vs.

STATE BAR OF CALIFORNIA,
Defendant/Respondent/Petitioner.

SUPREME COURT
FILED

FEB 05 2014

Frank A. McGuire Clerk

Deputy

Appellant
~~RESPONDENT~~ PATRICIA BARRY'S APPLICATION TO STRIKE
THE BAR'S PETITION FOR REVIEW AND OPENING BRIEF
BASED ON WASTE AND EXCESSIVE EXPENDITURE OF MEMBER
DUES IN PURSUING A \$2500.00 FEE AWARD
FOR MALICIOUS MOTIVE, TO DISQUALIFY
KERR & WAGSTAFFE AS ATTORNEY FOR THE BAR
IN THIS PROCEEDING AND TO ORDER THE FIRM TO REPAY THE
MEMBERS THE ATTORNEY FEES PAID TO IT;
AND TO ORDER AN INVESTIGATION
OF JAYNE KIM, JAMES FOX, AND STARR BABCOCK FOR THEIR
UNETHICAL APPOINTMENT OF JAMES WAGSTAFFE AS
ATTORNEY FOR THIS PROCEEDING;
OR ALTERNATIVELY, FOR RELIEF FROM DEFAULT AND FOR
LEAVE TO EXTEND TIME TO FILE ANSWERING BRIEF
DECLARATION OF PATRICIA J. BARRY (AUTHORITIES IN
DECLARATION)

PATRICIA J. BARRY (State Bar No.59116)
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Plaintiff/Appellant/Respondent in propria persona

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TO: HONORABLE CHIEF SUPREME COURT JUSTICE TANI
G. CANTIL-SAKAUYE:

Respondent PATRICIA J. BARRY ("Barry") requests the following

relief:

1. Strike the Bar's Petition for Review and Opening Brief based on misappropriation and excessive expenditure of member dues in pursuing a \$2500.00 fee award for malicious motive,
2. Disqualify Kerr & Wagstaffe as attorney for the bar in this proceeding and order the firm to repay the members attorney fees paid to the firm;
3. Order an investigation of Jayne Kim, James Fox, and Starr Babcock for excessive expenditure and waste of members'

dues in this lawsuit and for their unethical appointment of James Wagstaffe's law firm as attorney for the Bar in accordance with Busi & Prof C § 6044.

Or alternatively,

Grant relief from default and for leave to extend time to file Answering brief to February 17, 2014 (Mr. Von Loewenfeldt whose name is on the brief representing the Bar indicated he had no objection to this request. Barry declar., para).

“JAMES AND JAYNE AND STARR AND STEVE AND JAMES”¹

The facts on which Barry relies are as follows:

1. Starr Babcock (“Starr”) is the General Counsel for the Bar.

The client in this lawsuit is Jayne Kim (“Kim”) as Chief Trial Counsel. Her confidante and “consultant” is James Fox, (“Fox”), the former San Mateo District Attorney who was succeeded by Steve Wagstaffe.. **James Wagstaffe (“James”)** who is on the Supreme Court brief is the brother of San Mateo District Attorney Steve Wagstaffe (“Steve”). The cronies are Fox, Kim, Steve, and James, all working together against Barry with James being paid by the Members to litigate for the “Bar” in this Court

¹

Barry's mashup of “Sonia and Vanya and Masha and Spike” a mashup of primarily Chekov's “Uncle Vanya”.

against Barry. Starr Babcock, (“Starr”) General Counsel for Kim and Fox, is carrying out their orders to “get” Barry, no matter how much money of the members they waste and squander. Barry spoke with a Financial Manager for the Bar, possibly his name is Ray Farrish, who confirmed **there is no competitive bidding for outsourcing legal services and no oversight over Starr when he outsources and to whom.**

2. In June 2012 Barry and Michele Fotinos (“Michele”) named D. A. Steve Wagstaffe in a flier, (along with the San Mateo judges, a panel of three justices of the First Appellate District, and the justices of this Court), because Steve did not arrest John Fotinos for possession of guns despite being a felon with 10 guns registered to his name and with a proven history of instability, assaults, rages, and felony child abuse. Barry has also complained about Fox’s and Wagstaffe’s poor performances as District Attorneys (Barry is hardly the only one) in the San Mateo notorious William Ayres serial child sex molester case in pleadings filed mostly in *Fotinos v. Fotinos*, Case No. CV-12-0953 CW, Northern District of California.

3. This is not the first time that Steve went after an attorney (in this case through Fox and Kim) for criticizing him about the botched Ayres child sex abuse case. Victoria Balfour, the activist who worked with the

Ayres victims and their families to bring about the second prosecution of Ayres in 2013, discussed the case with guests Robin Sax, an attorney for Fox News, Channel 11 in Los Angeles, and former prosecutor in L. A. District Attorney Steve Cooley's office .

On September 2, 2013, Award winning journalist and victims' advocate/activist Victoria Balfour was a guest on the Larry Elder radio show out of KABC in Los Angeles, California. The guest hosts for the Labor Day show were Leo Terrell and Robin Sax.

Robin Sax actually has some prior experience with the Ayres case, as she wrote an article in the Huffington Post about Balfour being barred from access to the courtroom in the first criminal trial. For her efforts, DA Wagstaffe contacted Prosecutor Sax's boss [Los Angeles District Attorney Steve Cooley] to try to get her disciplined for speaking out about the matter.

<http://williamayreswatch.blogspot.com/2013/09/victoria-balfour-radio-interview-sept-2.html>

4. Here are some comments found at the above website:

Anonymous September 5, 2013 at 6:50 AM

So let me get this straight: Robin Sax, a prosecutor and legal commentator on the Today Show, writes an OPINION piece about the prosecutor, Melissa Mckowan in the Ayres case in 2009.

San Mateo DA Steve Wagstaffe - who once let one of his own prosecutors write an opinion piece for a paper that was critical of Leland Yee's bill that would outlaw forcing women in domestic violence cases to testify- actually CALLS up then Los Angeles District Attorney Steve Cooley about Sax's opinion piece and tries to get Sax into trouble for writing it.

DA Cooley must have thought Wagstaffe was nuts.

Wagstaffe's small-town, smalltime bullying tactics don't work in the big leagues.

Vote Wagstaffe out in the next election.

Anonymous September 5, 2013 at 7:23 AM

The question is: will Wagstaffe call up Robin Sax's boss at KABC in Los Angeles and try to get her into trouble for talking about how he tried to retaliate against her?

What a petty, vindictive, small-town idiot he is.

It's clear he's never heard of the First Amendment.

Anonymous September 6, 2013 at 1:56 PM

In June 2009, a San Mateo resident sent DA Steve Wagstaffe a copy of Robin Sax's Huffington Post story about Mckowan barring Balfour from the courtroom and then told him she wouldn't be voting for him in the next election.

Here's a small portion of Wagstaffe's very lengthy and VERY defensive response to the San Mateo citizen about Robin Sax from June 27, 2009:

"Finally, I have read the words written by Los Angeles prosecutor Robin Sax. I do not know and have not heard of this attorney before, but it is my view she has a very basic misunderstanding of the legal and ethical boundaries of the role of a prosecutor in court. I have been a prosecutor for 32 years and a member of the Board of Directors of the California District Attorney's Association; District Attorney James Fox has been a prosecutor for 39 years and the President of both the California District Attorney's Association and the National District Attorney's Association. We are both amazed at the statements of Ms. Sax. Beyond that, I will not speak ill of her."

Wagstaffe says he won't speak ill of Sax and then proceeds to trash her. What a misogynist. And for the record, while he says he's never heard of Sax, a lot more people have heard of Sax around the country than they've heard of Wagstaffe. Sax is a legal analyst on the Today Show. Is Wagstaffe?

5. By serendipity, Robin Sax appeared in the juvenile court case, *In re Luke Cuesta in re Joseph Cuesta* Case No. CK 81043, Los Angeles Superior Court to persuade Commissioner Debra Losnick to allow Fox News to attend the hearing concerning the placement of Luke. Barry represented the mother who was being attacked as an alienator (repugnant, misogynistic PAS) when all evidence pointed to the father, Michael Cuesta, having sexually molested Luke. Although Presiding Judge Nash promised open courts he left it to the discretion of each judge. So far, each judge, in Barry's experience, has denied the press attendance during the hearings concerning children. However, Fox News, including Ms. Sax, Gina Silva, and Martin Burns, producer now deceased, pursued Luke's case. Yolanda the Mother and Luke prevailed only to be attacked once more by father and minor's counsel in the Court of Appeals. The appeal has not yet been decided. Attorney Sax is genuinely concerned about justice for children.

6. Just as Barry and Michele had to picket and hand out fliers to get violent felon John Fotinos arrested for weapons possession so Victoria Balfour, the victims, and their family members had to do the work such as

surveiling Ayres to get Steve to prosecute Ayres again.

7. Brother James is in this case for Kim, Fox, and his brother, Steve also because Barry sued Kim for an injunction besides complaining about Fox and Steve in federal pleadings. .

8. Barry sued Kim for a simple injunction to order her to investigate Bonnie Miller, a former minor's counsel for the two Fotinos children, and Ansel Kinney, the attorney for John Fotinos in the family law matter.

9. Barry sued Kim for the injunction because the Bar will not prosecute minors' counsel even if they put their young clients in harm's way through their mendacity, negligence, or malice towards the other parent, typically the mother, in particular if she alleges the father is abusing the child and even worse, if she alleges sexual abuse by the father against the child.

10. Barry also sued Kim to order her to investigate Kinney's unethical memorandum and declaration in which Kinney falsified charges against Judge Franchi or made the charges with a reckless disregard for the truth. Judge Franchi acknowledged that the legal system had done a lot of wrong things to Michele Fotinos and her two children, had removed Miller as minors' counsel, and taken other steps to correct the harm, such as

making sure that Michele got her visits without John Fotinos hovering within earshot and eyesight of the children. Judge Franchi ruled that J. Fotinos had committed perjury and referred him for perjury prosecution. He awarded \$16,240 in sanctions to Michele for J. Fotinos' perjury.

11. Recently, we learned J. Fotinos has pled guilty to felony perjury. **Wagstaffe and Judge Mallich or Karesh are also allowing J. Fotinos to plead guilty to possession of only one weapon although J. Fotinos had 14 guns, 2 assault rifles, and 10,000 rounds when arrested.** To keep the San Mateo judges happy, Steve will probably not insist on prison time, despite the fact that without prison time for J. Fotinos, Bay area residents remain at great risk.

12. Michele and Barry contend that this collusive bargain is being struck because if the Fotinos children, A.F. and R.F., testify as the two key witnesses to J. Fotinos hiding the guns in the storage unit of Dawn Grover, J. Fotinos' live-in partner and now, his wife, too much might come out which will badly reflect on the San Mateo legal system which has already taken a beating in the press because of the disastrous Ayres child sex abuse prosecution overseen by Fox and Steve.

13. The jury would most likely learn about J. Fotinos' felony child abuse, Grover's crime of aiding and abetting a felon in hiding his

guns, and the failure of the judges and law enforcement to do anything for five years about J. Fotinos having guns. It took a teenager, R.F. who is the Fotinos daughter, to blow the whistle on J. Fotinos. R. F. reported that her father had guns and she was afraid he might kill her and her mother in her December 2011 declaration for a domestic violence restraining order against J. Fotinos. The jury might well have learned that in June 2012 Michele and Barry had to picket and pass out fliers to get J. Fotinos arrested and his **14 guns, 2 assault rifles, and 10,000 rounds of ammunition confiscated**. Maybe the jury might have learned that Barry, Michele, and R.F. have been suffering intensified judicial retaliation ever since.

14. Former Presiding Judge San Mateo Judge Beth Labson-Freeman and current Presiding Judge Robert Foiles do not want the child abuse, Grover's involvement in the crime, and their failure and that of law enforcement's to arrest J. Fotinos exposed to the public and to the jury.

15. Because J. Fotinos has a long history of lying -- he just pled guilty to perjury -- and was able to obtain guns on the black market even as a convicted felon, as long as J. Fotinos remains free, all Bay Area residents are at risk. J. Fotinos knows that the San Mateo judges and Steve Wagstaffe have his back which he probably sees as a green light to purchase more guns. – Thanks to Judge Foiles and Judge Freeman who

set the tone for the other judges and Steve Wagstaffe.

16. Thus, because Judge Franchi aimed to remedy what had happened to Michele and the children, he clearly ran afoul of Presiding Judge Labson-Freeman and her assistant, Judge Robert Foiles. How does this writer know this? – Because of the subsequent conduct of Judge Foiles who overturned what Judge Franchi had accomplished, going so far as to insult his colleague by refusing to take judicial notice of Judge Franchi's rulings and findings although Barry had fully complied with Evid. C. Sec. 453. See also Evid. C. Sec. 450, 452(d)(1). Judge Foiles prohibited Michele and Barry from enforcing the order on the sanctions now at \$22,000.00 or so because of the ten percent interest on the order. Judge Cretan made sure not to award sufficient support and Michele cannot garnish John Fotinos' tax-free, but taxpayer-paid, pension and so, she goes to a food bank for her and her daughter's groceries..

17. Kim would never investigate a minor's counsel, especially olike Miller whose father-in-law was a San Mateo judge and continues to be supported by Judges Freeman and Foiles. Miller and her husband Cameron Miller serve on numerous San Mateo panels, juvenile delinquency, family law, etc. Miller continues to receive appointments as minor's counsel in San Mateo court despite being sued by Michele and her

children for serious misconduct.

18. Kim would never investigate an attorney like Kinney who had insulted and lied about a judge who had fallen from grace and viewed no longer as a player by those judges, Freeman and Foiles, unfortunately still in control without a nudge from a federal judge. The nudge did not occur, and Kim refused to investigate Kinney. Michele and her children were denied their due process rights and have paid the price ever since.

19. Barry also named the justices of this Court in the flier because they failed to refer John Fotinos for arrest and prosecution or issue a restraining order against him. Kim, Fox, Babcock, and Brothers Wagstaffe are confident the justices will NOT set aside whatever resentment they may harbor towards Barry, the Bar will prevail, and the Court will punish Barry by charging her thousands of dollars when the Bar wins in this Court.

20. It is the perfect storm for Barry: Unlimited Bar dues at Kim's, Fox's, and Babcock's disposal, no accountability, and everyone in control wanting to retaliate against Barry. So much for free speech protected by the First Amendment – whistleblowing about the threat to public safety and potential gun violence. Barry's speech was not so free after all.

21. Kim, Fox, Babcock, and the Wagstaffe brothers have turned this proceeding into an ideological, political vendetta and personal crusade

against Barry which is prohibited by the U. S. Supreme Court's ruling in *Keller v. State Bar of California*, 496 U.S. 1, 14 (1990):

We think these principles are useful guidelines for determining permissible expenditures in the present context as well. Thus, the guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or "improving the quality of the legal service available to the people of the State." *Lathrop*, 367 U.S. at 367 U. S. 843 (plurality opinion).

22. This proceeding has nothing to do with regulating the legal profession or "improving the quality of the legal service available to the people of the State" and everything to do with regulating Barry's not-so-free speech and punishing her for it. It has everything to do with **lowering** "...the quality of the legal service available to the people of the State" because it has a chilling effect on any attorney who wants to take up the causes Barry has taken up, challenging the legal system for what it does to parents and children in family and juvenile courts.

23. Another reason to strike the Bar's pleadings in this Court is because outsourcing legal services in this instance is an excessive and wasteful expenditure of Members' dues without good cause besides being based on nepotism.

A. There is nothing complicated or esoteric about the issue before this Court. Likewise, with the legal arguments of the Bar.

They obviously did not resonate with the Court of Appeals; their brief in this Court remains lackluster with the repeated conflating of “subject matter jurisdiction” with “merits” blurring the distinction between the two concepts until there is none. And there was subject matter jurisdiction – in this Court. Attorney von Loewenfeldt informed Barry that his “commercial hourly rate is \$650/hr”. Lee’s hourly rate is approximately \$50 an hour, maybe she has received a raise since she sought attorney fees at the trial level. Yet, Attorney Loewenfeldt lifted Lee’s arguments from her appellate brief into his. How does plagiarism increase the hourly rate of \$50 to \$650?

B. There are five attorneys whose names appear on the Opening Brief of the Bar: Starr Babcock, Lawrence C. Yee, and Danielle Lee from the office of the General Counsel of the State Bar of California; and James M. Wagstaffe and Michael Von Loewenfeldt of Kerr and Wagstaffe, LLP. Five attorneys are not required. No outside counsel was necessary because the issue is not complex, and nothing is at stake for James and Jayne and Steve and James except their retaliation against Barry’s free speech. While it may be flattering to Barry that the Bar thinks it needs five attorneys to defeat her, Kim, Fox, and Babcock cannot use our members’ dues to vent their spleen on Barry because a Court of Appeals published a case against it. Just as Judge Foiles, Judge Freeman, Judge

Cretan, Judge Karesh, Judge Bergeron, etc. should not be able to vent their spleen on Michele, R.F., and Barry because San Mateo Judge Franchi told the truth, that the legal system had done a lot of wrong things to Michele and her kids, although they continue to do so.

24. All attorneys must exercise billing judgment and what cases are worth pursuing, including Kim, Fox, and Babcock. No reasonable attorney would chase a \$2500.00 fee award all the way to this Court. For such a small award, Babcock should have negotiated a settlement with Barry whereby she dismisses the appeal and he dismisses the order for the attorney fees. Babcock won for the Bar, and Barry's complaint went away. Only Bar officials who are used to bullying and terrorizing attorneys, running the Bar like a fiefdom, and not accounting to anyone for bad economic decisions would embark on such an ideological crusade as this case has become. Now having had a decision published against them, they cannot admit they blundered and keep on spending more good money after bad – only it is not their money; it is our members' money. They are enraged that Barry won even the small victory Division Two of the Second Appellate District Court of Appeal handed her. James and Kim (and Starr) and Steven and James are not thinking straight. They are guilty of hubris and the arrogance which comes from unfettered and runaway power to do

anything they want. After all, it is not their money and what attorney would have the courage to challenge them with their power to make up a rule violation to take away the attorney's bar card and thus the attorney's ability to earn a living? Further, Barry spoke on the phone with a Financial Manager for the Bar, she believes his name is Ray Farrish, but not sure, who confirmed **there is no competitive bidding for outsourcing legal services and no oversight over Starr when he outsources and to whom.**

25. Kim, Fox, Babcock, and Lee have squandered the members' dues as follows:

A. Lee argued in the Bar's demurrer the Court had no (subject matter) jurisdiction over the complaint and all the causes of action. The Court agreed that it did not have jurisdiction over the entire lawsuit in the order granting the anti-SLAPP motion. **But everyone is agreed there is a court which did have jurisdiction, namely, this Court.** So, the complaint should have been transferred there by stipulation or dismiss the complaint without prejudice so Barry could refile in this Court.

B. Therefore, the demurrer should have been sustained (without prejudice, so Barry could refile in this Court) for lack of jurisdiction over all causes of action, and the anti-SLAPP motion deemed moot. This is how the Court proceeded and ruled (except demurrer

sustained with prejudice) in San Francisco Superior Court when Danielle Lee filed an Anti-SLAPP motion in *Kay v. State Bar of California*, No. CGC 10-496869.

C. This is the issue in this review. However, because of the *Kay* precedent, the small attorney fee award, and the fact that the Bar had obtained a dismissal, once Barry filed the appeal Babcock, Kim, and Fox should have negotiated a settlement *because from a costs benefit analysis, it was not worth pursuing the appeal for the reasons stated when maybe Barry could win, and she did.* Kim, Fox, and Babcock did not, choosing to squander more of the members' dues.

D. The Bar was entitled to costs per the law. Lee filed a memorandum of costs but it was late, and the time period is jurisdictional. The Court denied costs. So, the members were billed for Lee's time and received no benefit.

E. At the trial level Lee charged the Members \$143 for messenger service of Motion to Strike on Barry which was not necessary. Priority mail would have sufficed. Babcock, Kim, and Fox charged the members \$14.00, \$111.75, and a \$381.40 for Lee's costs to argue the demurrer and Anti-SLAPP rather than to set up a branch of the General Counsel's Office in Los Angeles County, the most populous county in the state. Lee billed the members for her travel and wait time (in airports) 10

hours at \$50/hr.

F. At the appellate level, Babcock and Lee engaged in needless and frivolous litigation.

....[A]ttorneys seeking court-awarded fees are expected to exercise voluntary “billing judgment,” excluding from a fee request “hours that are excessive, redundant, or otherwise unnecessary *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (citations omitted).

G. Babcock, et al served Barry **again by messenger** with a frivolous exparte application to shorten time within which to hear Motion to force Barry to post a bond. First, Barry was not going anywhere and so, there were no exigent circumstances. Second, one cannot force a losing party to pay a bond to stay a money judgment if the losing party has not sought the stay. Barry had not sought a stay. Lee charged us members to fly to Los Angeles to argue the exparte (the shortening of time ended up being nominal). The members were charged for airfare, taxis, hotel, food, and Lee’s time to make the appearance on the exparte besides the time she spent on preparing the ex parte. Then, when Barry pointed out in her opposition that she had not sought a stay of the \$2500 fee award – the Bar backed out and dropped the motion, but only after drafting and filing the exparte, the motion, and a reply.

H. That was not to deter Babcock, Fox, and Kim – they

had Lee prepare and file a request for debtor's exam and have a **messenger** once more serve the order for the exam on Barry, fly Lee to Los Angeles where Lee took the debtor's exam of Barry, only to learn that she was judgment proof, costing the members Lee's time, airfare, taxis, food, hotel – for a \$2500.00 attorney fee. It is not known whether Lee appeared in court to obtain the order for the debtor's exam. If she did, it would have cost the members roughly another \$1,000.00 for her travel and work time, airfare, hotel, and food. – The members once more picked up the tab for a useless legal proceeding.

I. To make matters worse, they made Lee prepare a Request to Produce documents at the debtors' exam. The members' dues paid for a **messenger** (fourth messenger) to serve the request on Barry. They were late, and Barry filed a timely objection to production of any documents. Babcock did not challenge the objection. Barry did not produce documents at the debtor's exam. More of our dues wasted.

J. **Five attorneys** – Babcock, Yee, Lee, James, and Michael -- were late filing the Petition for Review. So, besides filing the Petition, they had to spend extra time preparing a request for relief from default – again charging the members for this extra pleading. So far, what does the reader think the members have spent on a \$2500 fee award?

K. It gets much worse. Babcock, Fox, Kim, and James Wagstaffe had Bar employees work many hours to locate all the cases they could find where the Bar was sued and then spent thousand of dollars more to put those lawsuits into four appendices consisting of maybe 800 to 1,000 pages. They were not properly batestamped *seriatim*. Besides who is going to read all those cases? From an evidentiary viewpoint, how does the fact that the Bar gets sued a lot going to assist the Court on the limited issue of whether lack of subject matter jurisdiction in the superior court (but this Court has jurisdiction) means that a court can still go through the allegations of the complaint in an anti-SLAPP motion, decide the plaintiff cannot prevail, and award attorney fees in a case where the Court agreed that only this Court had jurisdiction? Also, the appendices of hundreds of lawsuits in which the Bar is sued can cut both ways: either the Bar is being repeatedly victimized with frivolous litigation or the Bar has victimized numerous individuals who are suing the Bar for that victimization. It is probably the latter (Bar picking on people, rather than the reverse).

26. There is nothing dignified about this proceeding. It brings this Court into disrepute, a Court which has a national reputation as a trendsetter in civil rights, much like the Ninth Circuit, a Court that as a California resident Barry was very proud of. Yet when Barry, as a female

civil rights attorney, challenges the legal system itself, civil rights and the constitution fade into obscurity and nimbyism takes a front seat.

The Petition for Review should be dismissed for this foolish incursion into this Court which subjects “Starr and James and Jayne and Steve and James” to ridicule and derision. Attached is Declaration of Patricia J. Barry (Barry provides some legal authorities in her declaration).

DATED: January 26, 2014

PATRICIA J. BARRY

DECLARATION OF PATRICIA J. BARRY

I, PATRICIA J. BARRY, declare the following:

1. I am the attorney/respondent in this proceeding. I testify to the following based on my own direct knowledge. To the extent the information is based on my understanding or belief, I believe the matters to be true.

2. I was astonished that this Court accepted review of a reversal of a \$2500.00 attorney fee award.

3. In my 95-page complaint, I provided an abundance of evidence showing that the Bar has repeatedly engaged in corrupt prosecutions, cronyism, and favoritism among members when it comes to discipline.

4. Irony of all ironies, the Bar is engaging in the same corruption of which I complained in this very lawsuit wasting and squandering the dues of us members including hiring James Wagstaffe, the brother of San Mateo D. A. Steve Wagstaffe, about whom I have complained in federal litigation and who I "outed" in the flier my client, Michele Fotinos and I passed out in San Francisco because Steve and judges refused to arrest violent felon John Fotinos for possession of weapons registered to him. s.

5. When I initially saw the names "James Wagstaffe" and "Kerr

& Wagstaffe” on the Petition for Review and then, Opening Brief of the Bar, I thought no, they could not be related, the same last name was a mere coincidence, that the Bar would not be so foolish as to hire someone related to D. A. Steve Wagstaffe with James Fox sitting second in command at the Bar. However, as I was working on this brief, on January 28, 2014, I became suspicious.

6. In the afternoon of January 29, I called James Wagstaffe’s office and asked to speak to him. He would not take the call. I left a voice mail asking if he objected to my seeking relief from default and whether he was related to D. A. Steve Wagstaffe.

7. On January 29, 2014, I heard Mr. Von Loewenfeldt’s voice mail of January 28. In his voice mail he confirmed that yes, James is indeed the brother of Steve, although not sure of why that was relevant (!) And that he had no objection to my request for relief from default and to extend the time to file my Answering Brief.

8. On January 28, 2014, I started searching the web about James and Steve Wagstaffe since I did not listen to Mr. Von Loewenfeldt’s voice mail until January 29, 2014. Here is what I came up with searching under under James Wagstaffe’s name:

9.
http://www.mercurynews.com/ci_23017170/san-mateo-county-leaders-desc

end-monterey-this-weekend

SAN MATEO COUNTY LEADERS DESCEND ON
MONTEREY THIS WEEKEND FOR ANNUAL
CONFERENCE

By Bonnie Eslinger, Daily News Staff Writer

POSTED: 04/13/2013 01:00:00 AM PDT

A group of San Mateo County politicians are joining other government officials, local business representatives and community leaders in Monterey this weekend for the annual Progress Seminar.

Keynote speakers include ...attorney James Wagstaffe, the brother of San Mateo County District Attorney Steve Wagstaffe. emphasis added.

10. Here is what I learned about James Fox – he is deeply entrenched with this Court and the Judicial Council.

11. According to the September 2011 edition of the Cal Bar Journal,

James Fox, retired San Mateo County District Attorney and the longest sitting district attorney in California prior to his retirement in January, has been retained as a consultant to help Kim bring change to the Office of Chief Trial Counsel.

12. Then, per the website of the law firm Chow & Losinski found at

<http://www.chow-losinski.com/news/item/9-state-bar-names-attorney-member-to-judicial-council-of-california>, Wednesday, 20 June 2012 22:14:

State Bar Names Attorney Member to Judicial Council of California SAN FRANCISCO—Chief Justice Tani G.

Cantil-Sakauye has announced that the State Bar Board of Trustees has appointed a new attorney member to the Judicial Council of California, the policy-making body of state courts.

The new member is James P. Fox of San Carlos.

He was appointed to a three-year term, from September 15, 2012 to September 15, 2015. He joins three other attorney members on the Judicial Council: Angela Joy Davis, of Los Angeles, Mark P. Robinson, Jr., of Newport Beach, and Edith R. Matthai of Los Angeles.

James P. Fox is a consultant to the State Bar, assisting Chief Trial Counsel Jayne Kim in reducing a backlog of complaints against California attorneys. Before his retirement on December 31, 2010, Fox was the district attorney of San Mateo County for 28 years. emphasis added.

In 2009, the Judicial Council presented Fox with the Bernard E. Witkin Amicus Curiae Award for his many contributions to the administration of justice through his leadership [like, the Ayres prosecution?] and service at national, state, and local levels. Fox has also served on the Judicial Council's Criminal Law Advisory Committee and Court Profiles Advisory Committee, as well as the State Bar's Commission on Judicial Nominees Evaluation.

13. First, where is the authorization to use OUR bar dues to pay the salary for a "consultant" to Ms. Kim who has no experience in state bar discipline; whereas, the person he is "consulting" with, does? According to the Cal Bar Journal cited above, Ms. Kim is as a former Bar prosecutor. So, why does she need a retired D. A. to serve as her "consultant"? (I thought with her experience as both a Bar prosecutor and a U. S. Attorney [removed from state political imbroglios], Ms. Kim might clean up the Bar. Perhaps

with this Court cuing Ms. Kim it is time for change, she will follow your lead). Wouldn't Ms. Kim be advising Mr. Fox and having to spend her time training him? Their roles look like the reverse of what they should be.

14. As the web article indicates, Mr. Fox was the San Mateo District Attorney for 28 years. So, he was around when the sexual abuse complaints first surfaced in the late 80's against William Ayres, a "child psychiatrist" who sexually abused children **referred by San Mateo judges and the County to him. Yet he, like San Mateo Judge Freeman who aspires to be a federal judge and who was a County Counsel at the time, did nothing.**

15. Your Honors, Out with the Old Guard. In with the New made up of public servants who refuse to cover up crimes against children even if it means stepping on the toes of judges and county officials. Why? Because of the **moral imperative** to act for children when it comes to human rights crimes committed against them.

16. To say Ayres abused his position and authority as a child psychiatrist as he sexually abused the children forced to see him by court order is an understatement, and putting it mildly. Abuse of authority and position does not begin to describe adequately the suffering he inflicted on children – whom he threatened with jail or work camp if they reported him

to the authorities. Sadly enough, web articles describe Mr. Fox as one of his friends and supporters.

17. As a member, I do not want my dues going to pay for Mr. Fox's salary. (I do have a say, don't I, how my dues are spent?). He has a generous retirement, paid for by the taxpayers. So, his source of income is secure until he dies. Mr. Fox needs to beg forgiveness from those persons he let down when they were children for not immediately seeking an investigation of Ayres in the late 80's and possible prosecution. Just as all the San Mateo judges and James' brother need to do as well. Damages should be paid to the Ayres victims.

18. Robin Sax, former prosecutor with Los Angeles District Attorney's Office commented about the poor performance of the San Mateo District Attorney who tried the Ayres case, and Steve Wagstaffe apparently contacted Steve Cooley, former D. A. For Los Angeles, to have him file a Complaint against Sax with the Bar. As one of those commenting about Steve doing this to Robin Sax said, apparently Steve Wagstaffe never heard of the First Amendment. Neither has Mr. Fox, Ms. Kim, Mr. Babcock, and Steve's brother James.

19. Robin Sax appeared in the juvenile court case, *In re Luke Cuesta in re Joseph Cuesta* Case No. CK 81043, Los Angeles Superior

Court to persuade Commissioner Debra Losnick to allow Fox News to attend the hearing concerning the placement of Luke. Barry represented the mother who was being attacked as an alienator (repugnant, misogynistic PAS) when all evidence pointed to the father, Michael Cuesta, having sexually molested Luke. Although Presiding Judge Nash promised open courts he left it to the discretion of each judge. Commissioner Losnick denied Fox News access to the proceeding. So far, each judge, in Barry's experience, has denied the press attendance during the hearings concerning children. However, Fox News, including Ms. Sax, Gina Silva, and Martin Burns, producer now deceased, pursued Luke's case. Yolanda the Mother and Luke prevailed only to be attacked once more by father and minor's counsel in the Court of Appeals. The appeal has not yet been decided.

**THE BAR'S PROFLIGATE AND IMPROVIDENT SPENDING
OF BAR DUES ON THIS CASE:**

20. Attorney von Loewenfeldt informed me in our telephone conversation that his "commercial hourly rate is \$650/hr". Lee's hourly rate is approximately \$50 an hour, maybe she has received a raise since she sought attorney fees at the trial level. Yet, Attorney Loewenfeldt lifted arguments of Lee from her appellate brief into his. How does plagiarism rate an increase of the hourly rate of \$50 to \$650?

21. There are five attorneys whose names appear on the Opening

Brief of the Bar: Starr Babcock, Lawrence C. Yee, and Danielle Lee from the office of the General Counsel of the State Bar of California; and James M. Wagstaffe and Michael Von Loewenfeldt of Kerr and Wagstaffe, LLP.

Five attorneys are not required. No outside counsel was necessary because the issue is not complex, and nothing is at stake for the Bar except the retaliation against my free speech. While it may be flattering to me that the Bar thinks it needs five attorneys to defeat me, Kim, Fox, and Babcock cannot use our members' dues to vent their spleen on me because a Court of Appeals published a case against it and in my favor. Just as Judge Foiles, Judge Freeman, Judge Cretan, Judge Karesh, Judge Bergeron should not vent their spleen on Michele, R.F., and me because Judge Franchi told the truth, that the San Mateo legal system had done a lot of wrong things to Michele and her children, although they do so at every opportunity.

22. Babcock did not offer to dismiss the attorney fee order in exchange for which I would have dismissed the appeal.

23. Kim, Fox, Babcock, and Lee have squandered the members' dues as follows:

A. Lee argued in the Bar's demurrer the Court had no (subject matter) jurisdiction over the complaint and all the causes of action. The Court agreed that it did not have jurisdiction over the entire lawsuit in

the order granting the anti-SLAPP motion. **But everyone is agreed there is a court which did have jurisdiction, namely, this Court.** So, the complaint should have been transferred to this Court by stipulation or dismiss it without prejudice so Barry could refile in this Court.

B. Therefore, the demurrer should have been sustained (without prejudice, so Barry could refile in this Court) for lack of jurisdiction over the causes of action, and the anti-SLAPP motion deemed moot. This is how the Court proceeded and ruled (except demurrer sustained with prejudice) in San Francisco Superior Court when Danielle Lee filed an Anti-SLAPP motion in *Kay v. State Bar of California*, No. CGC 10-496869.

C. This is the issue in this review. Because of the *Kay* precedent, the small attorney fee award, and the fact that the Bar had obtained a dismissal, once Barry filed the appeal on the attorney fees only, Babcock, Kim, and Fox should have negotiated a settlement *because from a costs benefit analysis, it was not worth pursuing the appeal for the reasons stated when maybe Barry could win, and she did.* Kim, Fox, and Babcock did not, choosing to squander more of the members' dues.

D. The Bar was entitled to costs per the law. Lee filed a memorandum of costs but it was late, and the time period is jurisdictional.

The Court denied costs. So, the members were billed for Lee's time and received no benefit.

E. At the trial level Lee charged the Members \$143 for personal service of Motion to Strike on me which was not necessary. Priority mail would have sufficed. Babcock, Kim, and Fox charged the members \$14.00, \$111.75, and a \$381.40 for Lee's costs to argue the demurrer and Anti-SLAPP rather than to set up a branch of the General Counsel's Office in Los Angeles County, the most populous county in the state. Lee billed the members for her travel and wait time \$500.00.

F. Babcock, et al served me **by messenger** with a frivolous ex parte application to shorten time within which to hear Motion to force me to post a bond. First, I was not going anywhere and so, there were no exigent circumstances. Second, one cannot force a losing party to pay a bond to stay a money judgment if the losing party has not sought the stay. I had not sought a stay. Lee charged us members to fly to Los Angeles to argue the ex parte (the shortening of time ended up being nominal). The members were charged for airfare, taxis, hotel, food, and Lee's time to make the appearance on the ex parte besides the time she spent on preparing the ex parte. Then, when I pointed out in my opposition that I had not sought a stay of the \$2500 fee award – the Bar backed out and dropped the

motion, but only after drafting and filing the exparte, the motion, and a reply. Babcock, Kim, and Fox charged us members for the work Lee did on the frivolous Motion and Reply to Post a Bond besides all the costs the Members had to pick up because Babcock malpracticed the members .

G. That was not to deter Babcock, Fox, and Kim – they had Lee prepare and file a request for debtor’s exam and have a **messenger** once more serve the order for the exam on me, fly Lee to Los Angeles where Lee took my debtor’s exam, only to learn that I was judgment proof, costing the members Lee’s time, airfare, taxis, food, hotel – for a \$2500.00 attorney fee. It is not known whether Lee appeared in court to obtain the order for the debtor’s exam. If she did, it would have cost the members roughly another \$1,000.00 for her travel and work time, airfare, hotel, and food. – The members once more picked up the tab.

H.. To make matters worse, Babcock, et al made Lee prepare a Request to Produce documents at the debtors’ exam. The members’ dues paid for a **messenger** to serve the request on Barry. They were late, and Barry filed a timely objection to production of any documents. Babcock did not challenge the objection. Barry did not produce documents at the debtor’s exam. More of our dues wasted.

I. **Five attorneys** – Babcock, Yee, Lee, James, and

Michael – were late filing the Petition for Review. So, besides filing the Petition, they had to spend extra time preparing a request for relief from default – again charging the members for this extra pleading. So far, what does the reader think the members have spent on a \$2500 fee award?

J. It gets much worse. Babcock, Fox, Kim, and Brothers Wagstaffe had Bar employees work many hours to locate all the cases they could find where the Bar was sued and then spent thousand of dollars more to put those lawsuits into four appendices consisting of maybe 800 to 1,000 pages. They were not properly batestamped *seriatim*. Besides who is going to read all those cases? From an evidentiary viewpoint, how does the fact that the Bar gets sued a lot going to assist the Court on the limited issue of whether lack of subject matter jurisdiction in the superior Court, but this Court has it, means that a court can still go through the allegations of the complaint in an anti-SLAPP motion, decide the plaintiff cannot prevail, and award attorney fees in a case where the Bar had obtained a dismissal? This is a waste and an unnecessary expenditure of the members' dues. Also, the appendices of hundreds of lawsuits in which the Bar is sued can cut both ways: either the Bar is being repeatedly victimized with frivolous litigation or the Bar has victimized numerous individuals who are suing the Bar.

THE BAR'S RETALIATION AGAINST ME:

A. Injunction Sought Against Jayne Kim:

24. In March 2012 I had sued Jayne Kim in the Northern District of California for very limited injunctive relief in *Fotinos v. Fotinos*, Case No. CV-12-0953 CW. I wanted the court to order Ms. Kim to investigate minor's counsel Bonnie Miller who represented the two Fotinos children until she was removed by Judge Franchi, and Ansel Kinney, the attorney for J. Fotinos..

1. Bonnie Miller.

25. Miller has never denied she suborned the perjury of Renee La Farge, an erstwhile "therapist" who together with Miller conspired to have Michele lose the custody she had just won six days before from Judge Cretan, in December 2007 after John Fotinos had kept her from the children for over six months. Judge Cretan acknowledged that the children spoke and behaved like robots and that they were severely emotionally harmed and did something about it. He restored custody to Michele. Today, he has kept custody of Michele's son with the abusing parent. No custody for a mother who dared to pass out a flier to alert the public to the dangerous felon in their midst loaded with guns and the failure of judges and law enforcement to arrest him and confiscate his weapons.

26. By Miller committing the crime of subornation of perjury, she

pulled off this unconstitutional coup, and exposed the two children, R. F. And A. F., to some of the worst abuse they had experienced.

2. Kinney

27. I also wanted Ms. Kim to investigate Ansel Kinney for his outrageous “memorandum” and “declaration” against San Mateo Judge Franchi neither of which met the standards of a Sec.170.1 Statement of Disqualification. Just to open up an investigation of the two attorneys. Denied of course and Ms. Kim refused to agree to the request.

B. James Fox and Steven Wagstaffe.

28. After I filed suit in federal court, I learned about the scandalous, foot dragging prosecution of William Ayres, the notorious serial child molester who victimized over and over again the children referred to him by both the County and the judges in San Mateo. Fox was D. A. at the time of the Ayres prosecution. He or Steve Wagstaffe, then Fox’ s assistant, assigned the case to, as far as I have learned, to an inexperienced prosecutor, Melissa McKowan. The jury hung, 11-1 for guilt.

29. On August 6, 2012, I filed my declaration in the *Fotinos case*, *supra*, in which I alleged at paras 3-8 the following:

I am presenting evidence in support of the *Monell* violation, realizing that at trial I would have to produce witnesses, documents, and trial

transcripts. However, the evidence I attach which I received from Balfour shows that I have a prima facie case for maintaining the *Monell* violation against the County.

I learned from Ms. Balfour that the Ayres victims and their families are extremely upset and angry at San Mateo D. A. Melissa McKowan who apparently is ill trained, and who failed to prepare adequately for the Ayres trial. The criminal trial which should have been a slam dunk for a seasoned, dedicated, and competent prosecutor since there were so many victims who testified against Ayres ended in a hung jury, 11-1 for guilt. Then, Ayres feigned incompetency which was a total sham.

The victims urged the current **D.A. Wagstaffe** to surveil him. They ignored him. They came up with their own money and hired an investigator. The investigator tailed Ayres to a restaurant where he looked quite competent and was joined for lunch with colleagues. He joked to the others sitting at the table with him about how Alzheimers could help him in the courtroom. Yet, McKowan and San Mateo D.A. **Wagstaffe** apparently refuse to have him stand for trial.

If Ayres were to be convicted, there will be hundreds of claims against the County because the judges and county agencies used him for many years placing the children repeatedly in a zone of danger. It is my understanding that Defendant Bonnie Miller and others knew he was a pedophile and quit referring children to him but failed to refer him to law enforcement.

Jim Fox was the district attorney at the time. He is now the assistant to Defendant Jayne Kim. According to an Ayres blog, Fox was a supporter of Ayres. I attach as Exh. 1 the Ayres Blog dated July 12, 2012, where an individual commenting states:

These comments are similar in nature to what I've been saying for a number of years now. In addition to the financial consequences to the county, there are several local politicians who have been supporters /friends of Ayres in the past (Like Jim Fox and Rich Gordon for example) and who stand to face significant

embarrassment were there to be a conviction....

30. Since I filed the above declaration, Wagstaffe did prosecute Ayres the second time. Judge Freeman who was the judge in Ayres' first trial and kept from the jury evidence of Ayres' book filled with naked boys in sexually provocative poses and other apparently similar material either made herself judge or had her friend Judge Foiles appoint her as the judge in Ayres' second trial. McKowan once again was assigned as the trial attorney. Once more, Judge Freeman kept out the book and other material. Ayres entered a plea. In August 2013, Judge Freeman sentenced Ayres to only eight years.

31. Judge Freeman is also the judge who gave custody to a man that his wife claimed was a member of the Mexican drug cartel. The man said he was a tomato farmer, and Judge Freeman agreed he was. She did not refer him to the DEA as a person of interest. Since this trial, Mexican drug cartel activity has been on the rise recently near San Mateo County. The father took the children and returned to Mexico where he was executed in the presence of his little boy assumedly by the cartel. The mother and the children returned to San Mateo totally devastated by the chain of events set in motion by Judge Freeman. From what I learned the state of California granted them compensation as victims of a crime.

C. Bar Investigator Jaime Saucedo's Demands that I Respond to Complaints of John Fotinos, Just Convicted of Perjury and Three Times a Convicted Felon, and the Individual Michele and I got Arrested.

32. Saucedo forced me to respond to two complaints of John Fotinos. One was closed, and the other remains open. The first was about my being made a vexatious litigant in **representing Michele**. Since it is impossible legally for a lawyer representing a party to be labeled a vexatious litigant, I have no idea what the ethical violation would be. So who helped J. Fotinos on that complaint? Fox? Steve? James? Kim? Using a surrogate in San Mateo like Miller or Kinney?

33. The second email was about the flier. Who helped him with that? How much money did the Bar spend investigating a convicted felon's Bar Complaint concerning a flier exposing the fact that the convicted felon had guns registered to him? J. Fotinos keeps insisting I passed out fliers about him in his neighborhood which is not true – and he is convicted of perjury. So, does anyone believe anything he says? But even if I had, which I did not, is he saying his neighbors do not have a right to know he was a convicted felon with 10 guns registered to his name?

34. J. Fotinos sent my client a text in which he claimed the Bar encouraged him to complain against me and that the Bar told him I was going to be disbarred. He said I brought it on myself. His words or the

Bar's? Saucedo denied in writing he ever made such a statement, but perhaps someone closer to Ms. Kim or Mr. Fox did tell J. Fotinos the above. Or, is this just another one of his lies? It is impossible to know with J. Fotinos.

35. There is no question – not with Mr. Fox and Ms. Kim heading it up -- that the Bar is aiding and abetting John Fotinos' harassment of me. It is no coincidence that Mr. Fox is the former San Mateo D.A., Steve Wagstaffe is the D. A. giving breaks to the convicted felon complaining against me, and James Wagstaffe is Steve's brother writing the brief here.

D. State Bar Probation Officer Maricruz Farfan's Threat of Prosecution Based on My Inadvertently Writing the Number "2" Rather than the Number "3" as Part of the Date on My Timely-filed Probation Report.

36. State Bar Probation Officer Maricruz Farfan ("Farfan") is threatening to have me prosecuted because I refuse to change the date when I filed my January 2013 quarterly probation report to the date I provided the report with the corrected date.

37. I filed the January 2013 probation report on January 8, 2013. No question about it. Nor does Ms. Farfan dispute that the date of the act of filing was January 8, 2013 (due date was January 10, 2013). I erroneously wrote "January 8, 2012" on the report because it was only eight days into the new year of 2013. Ms. Farfan told me to refile with the corrected date.

So, I did. Oh, no, Ms. Farfan said, I had to write the date I actually filed for the second time, which would have made me late, setting me up for discipline.

38. Ms. Farfan is wrong on the law. Someone told her to cite Code of Civ. Proced. 2015.5 to me. It requires that a declaration have the signature of the declarant, the date she signs the declaration, and location where the declaration was signed. I complied with all those requirements. I made a clerical error, writing "2" in place of "3" for the last number of the year.

39. If a judge makes a clerical error in an order, she corrects the clerical error *nunc pro tunc* but without changing the date of the original order. See, e.g., *Siegal v. Superior Court* (1968) 68 Cal.2d 97:

"The rule is well settled in this state that every court of record has the inherent power to correct its records so that they shall conform to the facts and speak the truth, and likewise correct any error or defect occurring in a record through acts of omission or commission of the clerk in entering of record the judgments or orders of the court, and such correction may be made at any time by the court on its own motion, ... [Citations.]

40. See also *People v. Leppke*, Court of Appeal, Second District, Division 4, California. October 28, 2013 Not Reported in Cal.Rptr.3d 2013 WL 5797685 B244820

In this appeal from a September 14, 2012 order modifying a protective order, defendant Bradley Dean Leppke contends the trial

court inadvertently entered the wrong expiration date of October 22, 2020. The Attorney General agrees the correct expiration date is October 22, 2013, and attributes the entry of the wrong expiration date to clerical error. We reject defendant's claim of prosecutorial misconduct and direct the superior court to modify the September 14, 2012 order to reflect the correct expiration date of October 22, 2013. Because the parties agree the September 14, 2012 order must be modified to reflect the correct expiration date of October 22, 2013, our discussion of the relevant facts will be brief.The matter is remanded with directions to modify the September 14, 2012 order by striking the erroneous October 22, 2020 expiration date and replacing it with the correct expiration date of October 22, 2013.... emphasis added.

41. There is no indication the date of the filing of the order was changed because of the clerical error involving its expiration date.

42. Likewise here. All Ms. Farfan can request of me is that I change the "2" of "2012" to read "3", and initial the correction on the report I submitted, and be done with it. That is precisely what I did. No, Ms. Farfan will not allow me to "...correct [the Bar's] records so that they shall conform to the facts and speak the truth, [I did in fact file the report on January 8, 2013] and likewise correct any error or defect occurring in a record [from "2012" to "2013"] through acts of omission or commission of the [Member]". Rather, she wants me to lie as to the **date I did an act – filing my probation report which was on January 8, 2013.** Farfan continues to threaten me with discipline if I do not submit the January 2013 report which I filed on January 8, 2013 with the date on whenever I file it –

for the fourth time.

MY CONCERN FOR JUDICIAL RETALIATION BY THIS COURT:

43. When I first started writing this motion, I was convinced that I am not going to get a fair shake in this Court. The petition was granted unanimously. However, as I worked on my revisions of this brief yesterday evening, January 30, 2014, a sense of peace came over me. I am convinced that you will affirm the reversal of the Court of Appeals.

44. You, the justices, know that the abuse and corruption of family and juvenile courts have reached a critical mass. You will take the “bull by the horns” in this case, the Bar and start initiating changes. I am certain of it.

45. I notified you about John Fotinos in a Petition for Review, *Fotinos v. San Mateo Superior Court*, Case No. S199920 begging for protection for Michele Fotinos and her two children and the public. You denied the Petition on February 22, 2012. I respectfully urge you to reconsider as to whether you made a grave error.

46. In the Introduction of the Petition, I stated as follows:

NECESSITY FOR REVIEW

It is with the greatest of urgency that M. Fotinos files this Petition. Her daughter Rachel is suffering solely because she has no order of protection. M. Fotinos’ son wants to live with his mother and sister but is terrified the same thing will happen to him: that he will

disclose the years of abuse and the legal system will deny him protection against his father. John Fotinos owns an arsenal of guns and has a demonstrated history of a short fuse, having assaulted even a teenage nanny and ran her mother off the road with his truck. He has repeatedly told the children how much he hates his mother and when Barry came on the case, how much he hates her. J. Fotinos has never used the carrot to make his children say they did not want to live with their mother – it was only the stick using all the classic batterer’s bullying techniques to get them to do so, until now.

There is no question that under ordinary circumstances, the exparte TRO and request for temporary custody would have been granted given Rachel’s allegations of severe abuse. However, Judge Foiles, Assistant Presiding Judge of San Mateo Superior Court, is exacting revenge because Judge Don Franchi who was on the case since May 2010 had made findings which reflected badly on the Court and because he took the unheard- of step and referred John Fotinos, Petitioner below and the father of the children, to the District Attorney’s Office for perjury prosecution. Judge Franchi promised reform when he ran for office, he was initiating it, and it infuriated Judge Foiles and probably Judge Labson-Freeman, the presiding judge.

Judicial independence is at stake. Worse yet, M. Fotinos and her two children are the victims of political retaliation and could end up dead if this Court does not act immediately. J. Fotinos is not just a loose cannon – he is an armed and dangerous loose cannon. If there was ever a family (and attorney) in need of immediate protection, it is this one.

Despite Rachel providing in her TRO declaration recent incidents of extreme criminal child abuse committed by her father and abetted by his wife or live- in partner Dawn Grover (“Grover”) against her and her brother, the First Appellate District Court of Appeal turned its own ruling in *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334 on its head and denied a DVPA TRO and custody to the mother, as did Judge Foiles. Their denials make no sense, since Ms. Nakamura’s allegations are far tamer than those of Rachel against her father. Given the proven history of violent and criminal misconduct on the part of J. Fotinos, the denial of protection is

doubly irrational, which is explained only by our allegations that M. Fotinos and her children are suffering retaliation because Judge Foiles wants to send a message to Judge Franchi to step back in line. It is judicial politics and courthouse intrigue first, and protection of family members against domestic violence last.

Thus, what should have been a routine grant of a restraining order and temporary custody has mushroomed into a political battle in the San Mateo court with Mother and Children caught in the crosshairs. An ethical judge's independence has been sacrificed, and in the process, M. Fotinos' and her children's due process and equal protection rights once more reduced to tatters.

Attorney Kinney filed an untimely, unverified, unsubstantiated memorandum and declaration which by any measure do not meet the requirements for disqualification of a judge for bias. He attacked Judge Franchi's integrity without any evidence. Yet, on the very day of the hearing on custody, November 3, 2011, Judge Franchi recused himself from the Fotinos case. M. Fotinos and her two children once more ended up as they always have: ping ponging from judge to judge for the past eight and a half years while J. Fotinos was severely abusing the two children – and nobody at the courthouse bothered to ask the children if he was.

Whereas, Judge Franchi ran on a platform for family court reform, stating he wanted to serve only as a family law judge, his recusal has thrown M. Fotinos and her two children back to the dark ages, which CA Rules of Court Standards 5.30 and 10.12 were designed to remedy. Since Judge Franchi had recused himself, the DPVA application should have been referred to Judge Livermore in South San Francisco since he is specifically listed on the court website as a domestic violence judge. Instead, the presiding judge supposedly appointed her assistant, Judge Robert Foiles, to the case "for all purposes" although her name and signature appears nowhere on the appointment, raising a suspicion that Judge Foiles appointed himself. It is doubtful Judge Foiles meets the standards for serving as a family law judge. He has not served on the family law bench for eleven years according to his biography on the court website. This Court should demand an explanation from Judge Foiles why the DVPA case was not transferred to the judge obviously qualified to handle

the case, Judge Livermore, the domestic violence judge.

Judge Foiles' conduct since his assignment raises even more red flags because he has set about to undo the orders of Judge Franchi – rendering the order of arrearages for \$16,240 + interest a nullity by quashing all enforcement action of M. Fotinos, threatening to put Bonnie Miller back on the case as minors counsel although Judge Franchi had removed her sixteen months ago, ordering Rachel to be interviewed by Family Court Services, although the parents and children have already gone through mediation on this go-around of M. Fotinos' OSC, threatening a custody evaluation when no expert is needed to explain why a DPVA restraining order should be entered against J. Fotinos, and that Rachel and Austin belong in the sole custody of their mother, nodding approvingly as J. Fotinos slanders his daughter because she is blowing the whistle on J. Fotinos' chronic abuse and neglect for all the years she and her brother were forced to live in his custody. Rachel should be accorded whistleblower and witness protection by the courts, not calumny by the abuser. Just as years ago J. Fotinos slandered the mother of his children – both, according to this convicted perjurer, are drug addicts – so J. Fotinos spreads his slander of Rachel all over San Mateo County like an uncontrollable deadly contagion. And as Rachel's school counselor states in her declaration J. Fotinos told her he does not even want her.

Thus, Mother and children are caught up in a political maelstrom not of their making. This case has been politicized with the reputation and integrity of an ethical judge besmirched and the due process and equal protection rights of Mother and Children reduced – once more -- to tatters.

This Court should accept review, order Judge Foiles to enter a DVPA TRO and order of custody of both children to the mother forthwith, vacate his order quashing M. Fotinos' enforcement action to collect the arrearages, recuse Judge Foiles from further proceedings, order the Judicial Council to appoint an out-of-county judge with a specialty in domestic violence and family law, declare the recusal of Judge Franchi void, issue an OSC re: contempt against Attorney Kinney for impugning the integrity of Judge Franchi without sufficient foundation and refer him to the Bar for discipline,

and order attorney fees and costs. Alternatively, we request that it recuse J. Foiles in accordance with Code of Civ. Proced. Sec.170.3(c) which states

At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court.

47. Once this Court denied my clients protection, I had to do something. I have read too many stories of mothers and children murdered – mostly with guns – by the father of the children. So, because the very officials entrusted with the protection of the public would not take action, leaving it to us two women who had no police power, and could not arrest, prosecute, convict, and jail John Fotinos, Michele and I took our First Amendment rights, dusted them off, and picketed and passed out fliers in front of the state building on MacAllister St in San Francisco in June 2012.

48. Our picket and fliers worked – at least getting J. Fotinos arrested and his arsenal of guns and ammunition confiscated. Michele, her daughter R.F. who provided the officers the location of her father's guns, and I were elated and believed we would be congratulated. Our elation was short lived, however. No one at San Mateo Court thanked us. They were all glum and resentful, and Judge Foiles, seething with resentment. The San Mateo judges, especially Judges Freeman and Foiles, and the Bar have

subjected us to intensified humiliation and retaliation ever since, including Judges Freeman, Foiles, and Karesh labeling Michele and me vexatious litigants. I filed a civil rights action suing the Judges for acting beyond and in excess of all jurisdiction. Judge Henderson rejected that argument and ruled against us, finding no subject matter jurisdiction under *Rooker /Feldman*. *Barry v. Labson Freeman*, Case No. CV-13-04463 THE.

49. With all respect to Judge Henderson for whom I have the highest regard, I believe his ruling is legal error. I will be filing an appeal in the Ninth Circuit. I also sued President Obama for Declaratory Relief for Breach of his Fiduciary Duty to the American People in Nominating J. Freeman to the federal bench pursuant to Article II, Section 2, Clause 2 of the U. S. Constitution. That cause of action has yet to be adjudicated.

50. What is frightening is that in the midst of a national epidemic of gun massacres, the public safety once more has been sacrificed by the San Mateo judges and Steve Wagstaffe. John Fotinos is still walking free, D. A. Wagstaffe, and San Mateo Judge Barbara Mallich are allowing John Fotinos to plead to possession of only one weapon when he possessed 14 guns, 2 assault rifles, and 10,000 rounds of ammo, and his attorney Ansel Kinney is suggesting that he may not have to serve prison time!

51. J. Fotinos has a history of angry outbursts, including in his

workplace, a fire department. J. Fotinos called Michele names, repeatedly harassed and verbally abused her, and even threw something at her when she was close to giving birth with no concern he might harm the baby she was carrying because he did not want her to attend the baby shower her friends were having for her. J. Fotinos regularly beat and emotionally abused both his children , such as putting his fist down his daughter's throat to make her throw up so he could tell the pediatrician she had projectile vomiting because she had to visit her mother.

52. He called Dawn Grover his present wife insulting names to his children both in front of her and behind her back. She left and came back several times. She has remained and generally has shown that she follows his orders – so that the gun issue remains a very viable one. Grover can buy weapons legally and if J. Fotinos tells her to purchase more guns, she will do so. They live together.

53. J. Fotinos and Ms. Grover called Michele the most vile of names to the children. John Fotinos said she slept with the D.A. and police officers and that is why he was arrested, prosecuted, and convicted for grand theft auto.

54. J. Fotinos assaulted and threatened three female court-connected professionals, two of whom got off the case and reported his

behavior to San Mateo Superior Court Judges who promptly rewarded Fotinos with custody. He assaulted and threatened a female pediatrician, and a female witness driving her car off the road with his truck with his two children in the truck. He assaulted a female teenage babysitter, a female court supporter (in the hallway of San Mateo Superior Court), and threatened a female school principal.

55. Because the Bar and the San Mateo judges continue to support him, besides harassing me at the Bar with his frivolous complaints, he has filed a complaint against Kira Gangsei, the school counselor who reported his abuse against his daughter after R. F. finally built up her courage and disclosed his eight years of abuse to her. Gangsei has absolute immunity for making the report – but nothing deters J. Fotinos however since he continues to be supported by both Kim and Fox at the Bar and the San Mateo judges. The school officials want nothing to do with him, and yet A.F., the son, attends the school where Ms. Gangsei is employed and which his sister used to attend. All of us, including the school officials at A.F.'s school, have to walk on egg shells wondering when J. Fotinos' other shoe will drop since San Mateo Judges, Kim, Fox, and Steve Wagstaffe continue to molycoddle him.

56. The Fotinos case is not just about Michele and her two

children. It is about the public safety. How many gun massacres have occurred since June 2012 when Michele and I picketed and passed out fliers to get John Fotinos arrested? **The public, as well as Michele and her two children, deserves protection against the likes of John Fotinos and Dawn Grover.** They both belong in prison.

57. In June 2012, six months after R. F. left her father's home and went to live with her mother, reluctantly, Judge Foiles issued a paltry one year restraining order against J. Fotinos and Dawn Grover when he knew it was likely that the criminal prosecutions (perjury and weapons possession) would go beyond a year which they did. Judge Foiles also kept custody of the boy with J. Fotinos. Judge Foiles denied Michele custody of R.F. although R.F. had been living with her mother for six months. Judge Foiles passed the case to Judge Cretan who refused to change custody of A.F. to Michele. After R. F. had been living with her mother, Judge Cretan awarded sole legal and physical custody to Michele of R.F. Judge Cretan allows J. Fotinos and Kinney to defame and slander R.F. who is 17-1/2 years old. The restraining orders expired in June 2013 because Judge Cretan refused to renew them.

58. Ms. Grover has probably retrieved her guns. She is free to purchase more. J. Fotinos had obtained more guns and acquired 10,000

rounds of ammo as a convicted felon during the five years that San Mateo law enforcement dropped the ball, failing to have him surrender his weapons after his first felony conviction in 2007.

59. J. Fotinos could be doing the same thing now: purchasing guns or having his wife do it for him.

60. Judge Cretan stated from the bench that convictions for grand theft auto, perjury, weapons/ammo possession as a convicted felon do not necessarily make J. Fotinos a bad parent (!)

61. Judge Cretan is wrong. John Fotinos is the worst role model for his son. John Fotinos is teaching his son that when a person blows the whistle on a criminal, the criminal gets to blame the whistleblower – and judges will punish the whistleblowers. He is teaching the boy that he is not accountable for his criminal actions. He is teaching the boy that you can lie your way out of situations and not be held accountable. He is teaching his boy that domestic violence towards him, his sister, and the children's mother is no big thing and to get over it. He was teaching the boy how to shoot using one of his guns in his cache when as a felon he could not be around guns, signaling to his son that it is ok to commit a crime – just don't get caught. J. Fotinos has taught him to hate his mother and sister although he loves them very much, causing enormous emotional turmoil for the boy.

62. This Court pointed out in *In re Marriage of Carney* (1979)

24 Cal. 3d 725, 739 as eloquently expressed by Justice Mosk:

On a deeper level, finally, the stereotype is false because it fails to reach the heart of the parent-child relationship. Contemporary psychology confirms what wise families have perhaps always known -- that the essence of parenting is not to be found in the harried rounds of daily carpooling endemic to modern suburban life, or even in the doggedly dutiful acts of "togetherness" committed every weekend by well-meaning fathers and mothers across America. Rather, its essence lies in the ethical, emotional, and intellectual guidance the parent gives to the child throughout his formative years, and often beyond. The source of this guidance is the adult's own experience of life; its motive power is parental love and concern for the child's well-being; and its teachings deal with such fundamental matters as the child's feelings about himself, his relationships with others, his system of values, his standards of conduct, and his goals and priorities in life.

63. John Fotinos has shown himself over and over again to be incapable of providing any child the ethical, emotional, and intellectual guidance a child needs as she grows toward adulthood. Continually to enable and support this man is not only irrational it reflects very badly on the legal system for doing so.

THE BAR'S INSISTENCE THAT MY COMPLAINT IS A SLAPP LAWSUIT IS NOT THAT CLEAR CUT.

64. Although the "merits" of the anti-SLAPP motion are not at issue, since the Bar referred it to the motion frequently in its Opening Brief, I bring it up as well. I was prosecuted because of the way the Bar is allowed to operate without any oversight or accountability. I sought the

following injunctive relief in my 95-page complaint:

- B. Ordering the State Bar to form a permanent committee specifically designed to protect members against judicial retaliation and to address and remedy **judicial** retaliation, sexism, and racism against its members, establishing written guidelines for investigators to follow when the bar complaint comes from a judge or opposing party or attorney. The guidelines should include a requirement that the investigator must consider independently the evidence offered by the judge or opposing party or attorney in connection with the bar complaint, and not be influenced by status or intimidated by it. The investigator **must** provide the complaint and all documents in support of the complaint to the attorney, not just a summary by the investigator of what she thinks the complaint states.
- C. Creating a department devoted solely to investigation and prosecution of minors' counsel and other court-connected attorneys.
- D. Opening up investigations of Miller and LaFlamme. [minors counsel with LaFlamme running a mill in Orange County taking – I have heard – millions of dollars from the taxpayers.]
- E. Ordering the State Bar to reopen the investigation of Shirley Deutsch and independently assessing the evidence against her without relying on Judge Kronstadt's refusal to rule on the perjury issue which Barry contends were designed to cover up Deutsch's misconduct and the perjury and falsified documents of Astrid Heger.
- F. Ordering the Bar to open up a prosecution of Drescher and to enjoin any further prosecution of Barry based on a complaint of Drescher;
- G. Enjoining the State Bar from prosecuting an attorney solely based on her petitioning activity on her own behalf or on behalf of her clients.

- H. Remove Jerome Craig as special prosecutor because he has served in that position far too long for a private corporate attorney, which gives him power and authority over peoples' attorneys he is not entitled to, and he has NO experience as a people's lawyer; whereas, people's attorneys make up the largest group of attorneys being prosecuted by the State Bar;
- I. Eliminate the role of "Special Prosecutor", or alternatively, select attorneys for "Special Prosecutor" who are peoples' attorneys **and** either a solo practitioner or from a small law firm;
- J. Establish additional criteria for the Board of Governors,
 - ☞ which include that besides geographical location, the attorney members must be at least fifty percent made up of peoples' attorneys, including workers, victims of domestic violence, public defenders;
 - ☞ prohibiting any state bar employee from serving as a "public" member;
 - ☞ **Election** of the public members rather than appointment through "who you know" among the ruling elites as occurred with the appointment of Laura Chick.
- K. Create a transparent procedure for the selection of prosecutors and judges open to the public and attorney members;
- L. Elect the Trial Counsel at general election for a term of four years.
- M. Order annual evaluations of Bar judges which include ratings by both complaining witnesses and attorneys being prosecuted.
- N. Insure that 50% of deputy prosecutors are made up former peoples' attorneys;
- O. Order the Board to conduct an investigation into the

appointment of Judge Armendariz and of former Trial Counsel Nisperos.

65. I also provided evidence of the Bar's corruption which was not a part of my prosecution.

66. See, e.g., Complaint, paras 10- 13:

As evidence of the Bar Spoils System to select Bar Trial Counsel, also on December 19, 2010, Barry learned from Brodie's blog that **on August 10, 2010**, a Bar complaint was filed against Michael Nisperos, **the former State Bar Trial Counsel who ordered Barry's first prosecution**. The complaint alleges that Nisperos tried to board an airplane at the Burbank Airport (date not given) carrying a dangerous weapon. He was arrested and criminally prosecuted. The outcome of the prosecution is not stated.

The Bar complaint found also on the Brodie Blog also alleges that Nisperos had a history of crack addiction, and that while under the influence of the drug, he fired a shot at an imaginary intruder in his Oakland home. Nisperos was arrested and charged with being under the influence of cocaine and possession of narcotics paraphernalia. The outcome of the arrest is not indicated. Subsequently, Nisperos was fired from his job at INS (now, ICE) due to cocaine addiction and the arrest. Nisperos sued for reinstatement. The complaint does not indicate the outcome of the lawsuit.

According to Menlo City Council Email found on the web entitled "Open Letter to Governor Schwarzenegger concerning Corruption at the State Bar of California" dated January 9, 2010, the concerned citizens who signed off on that letter also noted that Nisperos was addicted to cocaine for five years while he practiced law with no criminal or Bar prosecutions. The Menlo email further alleged that Nisperos was also unqualified for the position of Bar Trial Counsel.

It is Barry's understanding that Nisperos' longtime addiction to, and arrest for using, cocaine and possessing the narcotics paraphernalia occurred before Nisperos was selected to be the Bar Trial Counsel. If this is true, then Nisperos' appointment is the

Spoils System sinking to its lowest depths. Clearly, Nisperos lacked the moral credibility to be prosecuting other attorneys.

67. I also alleged the Girardi/Lack discipline fiasco that put the Bar to shame and probably made attorneys more cynical about the Bar than ever at paras 62-63:

C. The Bar Declined to Discipline Thomas Girardi and Walter Lack, Two Wealthy White Male Attorneys, with Close Ties to the Bar Who Were Disciplined by the Ninth Circuit and Yet the Bar Prosecuted Barry Based on Federal Lawsuits She Filed, But No Federal Court Imposed Discipline on Her.

The Ninth Circuit publicly disciplined Lack and Girardi for their misconduct in appeals they filed in that court. On information and belief, the excuse the Bar gave for not prosecuting the two attorneys was that the Bar does not involve itself in federal cases.

Yet, the Bar prosecuted Barry for federal lawsuits she filed in which no federal judge disciplined her for filing them. The findings of “frivolousness” are unfair, given the law and the facts, not the least of which a **Ninth Circuit panel of three judges found merit to Barry’s appeal challenging the dismissal of the complaint in one of the lawsuits.**

68. The administrative /employment injunctive relief I sought would have helped to correct the arbitrary, irregular, highly politicized way of disciplining attorneys the Bar engages in – and the punishment of those like me who represents mothers and children, and some fathers who have been badly harmed **by the legal system itself.** Aha, and there’s the rub. -- **by the legal system itself.**

69. The Fifth, Sixth, and Seventh Causes of Action address institutionalized corruption, favoritism, cronyism leading to unfair and selective prosecutions of attorney often for political reasons, such as Judge Armendariz revisiting the sexual harassment trial of Ralph's, ignoring res judicata and collateral estoppel doctrines, and inventing claims that Ralph's did not receive due process, a company which was proven to have sexually harassed several women workers. The jury righteously awarded damages against Ralph's and Judge Armendariz punished Phil Kay for proving that Ralph's deserved to have the jury award damages against it.

70. Where, as here, a cause of action is based on both protected activity and unprotected activity, it is subject to section 425.16 "unless the protected conduct is "merely incidental" to the unprotected conduct." (Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP (2005) 133 Cal.App.4th 658, 672 [35 Cal.Rptr.3d 31] *Haight Ashbury Free Clinics, Inc. v Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1551.

71. If a public agency like the Bar whose principal job is to discipline and prosecute attorneys can always claim "petitioning activity" then the Bar's corruption will never be remedied. The "petitioning activity" waxes pale in comparison to the way the Bar *really* works as alleged in my complaint.

72. The Bar claims that

....an anti-SLAPP motion should be allowed where the basis for

dismissal is that the lawsuit was brought in the wrong court even though, like those other motions, an anti-SLAPP motion is often dispositive of the merits of the suit. Brief, p.3.

73. Since the Bar argues that the superior court does not have subject matter jurisdiction but the Supreme Court does, the Bar cannot obtain a dismissal but must seek transfer to the Court that does have subject matter jurisdiction.

74. Code of Civ. Procd. Sec. 396 states in part:

If an action or proceeding is commenced in a court that lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state that has subject matter jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and subdivision 1 of Section 581) but shall, on the application of either party, or on the court's own motion, be transferred to a court having jurisdiction of the subject matter that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved.

75. However, in *Traffics Schoolonline, Inc., v. Superior Court of Los Angeles County*, Case No. No. B144333, Second Appellate District Court of Appeal, published May 21, 2001 holds that superior courts do not have authority to transfer cases to the Court of Appeal or the Supreme Court. If the case holding does not apply in this very special instance where the court and the parties agree that this Court has special jurisdiction over

attorney discipline, then the parties should have filed a stipulation to transfer it to this Court.

76. However, what Court oversees the Bar and its mishandling of its affairs? The Bar is subject to the Government Claim Act and the U. S. Constitution. Thus, while it repeatedly confers on itself more immunity than any governmental agency in the United States of America, misuse of governmental power such as wasting and squandering Bar dues on this case and repeated instances of putting unqualified individuals into state bar judge positions appear to be issues the superior court is empowered to consider just as it has jurisdiction to consider issues of corruption of other state government agencies.

77. Ironically, although the Bar cries victim and claims that I had SLAPP'ed it with my lawsuit, this very same Bar would deny me the very same right it gives itself, namely, the right to file an anti-SLAPP motion, in my case, to its untimely Notice of Disciplinary Action when my discipline was not based on an attorney-client dispute but unbelievably on a complaint by a batterer, Joseph Morin, proven over and over again to be a sociopath, and who as I stated in my brief in this Court on my discipline was, according to the brother of Mr. Morin's daughter, beating and abusing his daughter even as the Bar championed him with our members' dues.

78. Yet, the Bar would have deprived me of a right to file an anti-SLAPP motion to the Notice of Disciplinary Action guaranteed me under Cal. Bus. & Prof. Code §6085.

Any person complained against shall be given fair, adequate, and reasonable notice and have a fair, adequate, and reasonable opportunity and right:....

- (e) To exercise any right guaranteed by the California Constitution or the United States Constitution, including the right against self-incrimination.

79. Morin was able to accomplish what he could not had he sued me in superior court. I would have filed and prevailed on an anti-SLAPP motion and I would have SLAPP'ed him back in a malicious prosecution action. So, the Bar became Morin's attorney armed with "super" powers and punished me.

80. What the Bar also ignores as it brings up my discipline is that an unqualified Bar prosecutor and an unqualified Bar judge (as courteous as both of them were to me personally) were judging me. They had no experience whatsoever in federal court litigating a federal civil rights action – I was the only expert in the courtroom about my issues. Which is why the U. S. Supreme Court should have granted cert. - especially since the U. S. District Court and the Ninth Circuit never so much as mentioned referral to their respective disciplinary committees, Judge Lourdes Baird withdrew her

Rule 11 sanctions OSC against me and yet threw the book at me on attorney fees, and after I notified the District Court and the Ninth Circuit of my Bar discipline both courts declined to discipline me. Not only that, I won reversal of three of the awards including in favor of the LASC judges in a published decision. *Elwood v. Drescher*, 456 F.3d 943 (9th Cir. 2006).

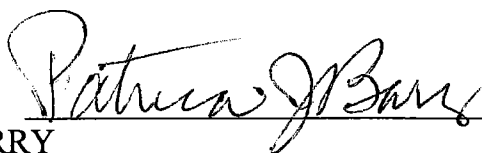
81. The *Elwood* case is helping other attorneys and litigants. Just check out the cases citing *Elwood*.

FORCING ME TO LITIGATE AND RESPOND TO COMPLAINTS OF A FELON I HELPED TO CONVICT IS DESIGNED TO TAKE ME AWAY FROM ATTENDING TO MY CLIENTS' NEEDS.

82. Finally, Kim, Fox, and Babcock know exactly what they are doing: forcing me to turn aside my legal work for my clients – most of whom are parents who are suffering because their children are in proven danger, remaining in the custody of abusers thanks to the Courts – which is why they continue to harass and retaliate against me. That is the point.

83. I request that the Court grant the relief set out on

I declare the foregoing to be true and correct under penalty of perjury. Executed this 3rd day of February 2013 in Los Angeles, California.


PATRICIA J. BARRY

1 PROOF OF SERVICE BY MAIL

2 (Ca.Code of Civ. Proced. Secs.1013, 2015.5)

3 I am employed in the City of Los Angeles and County of Los Angeles; I am over the age
4 of 18 years and am not a party to the action entitled on the document to which this Proof of
5 Service is attached; my business address is 634 S. Spring St, #823, Los Angeles, CA 90014.

6 I served the "RESPONDENT PATRICIA BARRY'S APPLICATION TO STRIKE
7 THE BAR'S PETITION FOR REVIEW AND OPENING BRIEF BASED ON WASTE AND
8 EXCESSIVE EXPENDITURE OF MEMBER DUES IN PURSUING A \$2500.00 FEE AWARD
9 FOR MALICIOUS MOTIVE, TO DISQUALIFY KERR & WAGSTAFFE AS ATTORNEY
10 FOR THE BAR IN THIS PROCEEDING AND TO ORDER THE FIRM TO REPAY THE
11 MEMBERS THE ATTORNEY FEES PAID TO IT; AND TO ORDER AN INVESTIGATION
OF JAYNE KIM, JAMES FOX, AND STARR BABCOCK FOR THEIR UNETHICAL
APPOINTMENT OF JAMES WAGSTAFFE AS ATTORNEY FOR THIS PROCEEDING;
OR ALTERNATIVELY, FOR RELIEF FROM DEFAULT AND FOR LEAVE TO EXTEND
TIME TO FILE ANSWERING BRIEF DECLARATION OF PATRICIA J. BARRY
(AUTHORITIES IN DECLARATION)"

12 on the parties named below by enclosing a copy of said document in a sealed envelope addressed
13 as set forth below and by depositing said envelope, with postage thereon fully prepaid, in the
14 United States mail at Los Angeles, CA on February 3, 2014, as follows:

15 JAMES WAGSTAFFE, ATTORNEY
16 KERR & WAGSTAFFE
17 100 Spear St,
San Francisco, CA 94105

18 I am "readily familiar" with the firm's practice of collection and processing
19 correspondence for mailing. Under the practice it would be deposited with U.S. postal service on
20 that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary
21 course of business. I am aware that on motion of the party served, service is presumed invalid if
22 postal cancellation date or postage meter date is more than one day after date of deposit for
mailing in affidavit.

23 I declare under penalty of perjury that the foregoing is true and correct. Executed at Los
24 Angeles, California on February 3, 2014.

25 
26 PATRICIA J. BARRY