

## (APPENDIX, A)

Copy of D.C. order Re further proceedings on order to show cause (5pp)

Copy of timely appeal denial  
order on Fed. habeas. (1pg.)

Copy of D.C. denial order on 1<sup>st</sup> F.R.Cv.P. 60, b, 4 motion on case: (4/1995)

Copy of timely appeal denial on  
15E FR Civ. P. 60, b, 4 motion (120.)

Received - 11-13

1 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY  
2 FIRST CLASS MAIL, POSTAGE PREPAID, TO ~~ALL~~ Petitioner, DFPD\*  
3 (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF  
RECORD IN THIS ACTION ON THIS DATE.

4 DATED: 1-7-13

5 DEPUTY CLERK

6 \*Attn: Sean Kennedy

FILED  
CLERK, U.S.D.C. SOUTHERN DIVISION  
JAN - 7 2013  
CENTRAL DISTRICT OF CALIFORNIA  
BY [Signature] DEPUTY

7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10

11 STEVEN CIOTTA,  
12 Petitioner,  
13 vs.  
14 K. HOLLAND, Warden,  
15 Respondent.

16 } Case No. CV 12-10593-GHK (RNB)  
17 } ORDER RE FURTHER PROCEEDINGS

18 On December 6, 2012, petitioner lodged for filing a Petition for Writ of Habeas  
19 Corpus by a Person in State Custody herein. The Petition purports to be directed to  
20 a 1988 conviction for two counts of murder sustained by petitioner in Los Angeles  
21 Superior Court, pursuant to a guilty plea. At the time of filing, it appeared from the  
22 face of the Petition that all of the claims being alleged by petitioner currently were  
23 pending before the California Supreme Court.<sup>1</sup> Petitioner was requesting inter alia  
24 that the Petition be stayed and held in abeyance pending his exhaustion of state  
remedies in the California Supreme Court.

25 Since, under Ninth Circuit jurisprudence, a petition containing solely

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27 <sup>1</sup> Indeed, according to the California Appellate Courts website, petitioner  
28 currently has two habeas petitions pending before the California Supreme Court.

1 unexhausted claims cannot be stayed, but rather must be dismissed, the Court issued  
2 an Order on December 18, 2012 requiring petitioner to show cause why his stay-and-  
3 abeyance request should not be denied and why this action should not be summarily  
4 dismissed without prejudice for failure to exhaust state remedies pursuant to Rule 4  
5 of the Rules Governing Section 2254 Cases in the United States District Courts. On  
6 December 31, 2012, petitioner filed a response to the Order to Show Cause. Further,  
7 according to the California Appellate Courts website, the California Supreme Court  
8 denied both pending habeas petitions on January 3, 2013.

9 In view of the California Supreme Court denials, the December 18, 2012 Order  
10 to Show Cause is hereby deemed discharged and petitioner's stay motion is denied  
11 as moot.

12 The Court notes that included with his Petition was a request by petitioner for  
13 appointment of counsel. Habeas Rule 8(c) and 18 U.S.C. § 3006A(a)(2)(B) empower  
14 the Court to appoint counsel at any stage of a habeas proceeding "if the interests of  
15 justice so require." Here, it appears likely that respondent will raise the statute of  
16 limitations and/or procedural default as defenses to petitioner's claims and that such  
17 defenses will necessitate further development of the record (including with respect  
18 to issues raised by petitioner in what he denominated as Ground One of the Petition,  
19 which appear to implicate the Ninth Circuit's decision in Whalem/Hunt v. Early, 233  
20 F.3d 1146, 1148 (9th Cir. 2000) (en banc)). Moreover, even if the Court were to  
21 reach the merits of petitioner's claims, it appears that petitioner's guilty plea may  
22 preclude him from raising at least some of those claims under the holding and  
23 reasoning of Tollett v. Henderson, 411 U.S. 258, 266-67, 93 S. Ct. 1602, 36 L. Ed.  
24 2d 235 (1973) ("When a criminal defendant has solemnly admitted in open court that  
25 he is in fact guilty of the offense with which he is charged, he may not thereafter raise  
26 independent claims relating to the deprivation of constitutional rights that occurred  
27 prior to the entry of the guilty plea."). Given these procedurally complex issues, the  
28 Court has concluded that the interests of justice in this case would be served by the

1 appointment of counsel for petitioner. It therefore is ordered as follows:

2       1. Petitioner's request for the appointment of counsel is  
3       granted and the **Office of the Federal Public Defender is hereby**  
4       **appointed as counsel for petitioner.** (The clerk is directed to serve  
5       copies of this Order on the Office of the Federal Public Defender, Attn:  
6       Sean Kennedy, and on petitioner at his prison address.)

7       2. Within fourteen (14) days of the service date of this Order,  
8       the assigned Deputy Public Defender shall e-file a Notice of  
9       Appearance.

10       3. Within thirty (30) days of the service date of this Order  
11       (subject to any reasonable extensions sought and granted), the assigned  
12       Deputy Public Defender shall consult with petitioner either in person or  
13       telephonically.

14

15       It is further ordered as follows:

16       4. The clerk shall promptly serve electronic copies of the  
17       Petition, the December 18, 2012 Order to Show Cause, petitioner's  
18       response to the Order to Show Cause, and this Order on the California  
19       Attorney General's Office.

20       5. Respondent shall e-file and serve a Notice of Appearance  
21       that designates the Deputy Attorney General(s) in charge of the case  
22       within fourteen (14) days of the service date of this Order.

23       6. If respondent contends that the Petition can be decided  
24       without the Court reaching the merits of petitioner's claims (e.g.,  
25       because respondent contends that petitioner has failed to exhaust any  
26       state remedies as to any ground for relief alleged in the Petition, or that  
27       the Petition is barred by the applicable statute of limitations), respondent  
28       shall file a Motion to Dismiss within thirty (30) days of the date of this

Order.<sup>2</sup> The Motion to Dismiss shall not address the merits of petitioner's claims, but rather shall be confined to the basis for respondent's contention that dismissal without reaching the merits of petitioner's claims is warranted.<sup>3</sup> At the time the Motion to Dismiss is filed, respondent shall lodge with the Court all records bearing on respondent's contention in this regard.

7. If respondent files a Motion to Dismiss, petitioner shall file his opposition, if any, to the Motion within thirty (30) days of the date of service thereof. At the time the opposition is filed, petitioner shall lodge with the Court any records not lodged by respondent which petitioner believes may be relevant to the Court's determination of the Motion.

8. Unless the Court orders otherwise, respondent shall not file a reply to petitioner's opposition to a Motion to Dismiss. If the Motion is denied, the Court will afford respondent adequate time to answer petitioner's claims on the merits.

9. If respondent does not contend that the Petition can be decided without the Court reaching the merits of petitioner's claims, then respondent shall file and serve an Answer to Petition within sixty (60) days of the date of service of this Order. At the time the Answer is filed, respondent shall lodge with the Court all records bearing on the

<sup>2</sup> If respondent contends that some or all of petitioner's claims are procedurally defaulted, such contention should not be made in a Motion to Dismiss, but rather should be made in an Answer to Petition which addresses the allegedly defaulted claims on the merits in the alternative.

<sup>3</sup> If respondent contends that petitioner has failed to exhaust any state remedies as to any ground for relief alleged in the Petition, the motion to dismiss shall also specify the state remedies still available to petitioner.

merits of petitioner's claims, including the briefs specified in Rule 5(d) of the Rules Governing Section 2254 Cases in the United States District Courts. The Answer shall also specifically address the necessity for an evidentiary hearing to resolve any issue.

10. Petitioner may file a single Reply responding to matters raised in the Answer within thirty (30) days of the date of service thereof. Any Reply filed by petitioner (a) shall state whether petitioner admits or denies each allegation of fact contained in the Answer; (b) shall be limited to facts or arguments responsive to matters raised in the Answer; and (c) shall not raise new grounds for relief that were not asserted in the Petition. Grounds for relief withheld until the Reply will not be considered, unless the Court grants leave to amend the Petition. No Reply shall exceed twenty-five (25) pages in length absent advance leave of Court for good cause shown.

11. A request by a party for an extension of time within which to file any of the pleadings required hereunder will be granted only upon a showing of good cause, and should be made in advance of the due date of the pleading. Any such request shall be accompanied by a declaration explaining why an extension of time is necessary and by a proposed form of order granting the requested extension.

12. Unless otherwise ordered by the Court, this case shall be deemed submitted on the day following the date petitioner's opposition to a Motion to Dismiss and/or Reply is due.

DATED: January 7, 2013

ROBERT N. BLOCK  
UNITED STATES MAGISTRATE JUDGE

## (APPENDIX, A).

**FILED**

UNITED STATES COURT OF APPEALS

JAN 15 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

STEVEN CIOTTA,

Petitioner - Appellant,

v.

K. HOLLAND,

Respondent - Appellee.

No. 14-56002

D.C. No. 2:12-cv-10593-GHK-AS  
Central District of California,  
Los Angeles

ORDER

|   |
|---|
| RECEIVED<br>CLERK U.S. DISTRICT COURT           |
| 1/15/2015                                       |
| CENTRAL DISTRICT OF CALIFORNIA<br>BY: CR DEPUTY |

Before: GOODWIN and NGUYEN, Circuit Judges.

The request for a certificate of appealability is denied. *See* 28 U.S.C.

§ 2253(c)(2). Any pending motions are denied as moot.

For the reasons stated below, Petitioner's Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b) is denied.

## I. BACKGROUND

Petitioner Steven Ciotta ("Petitioner"), a prisoner in the custody of the California Department of Corrections and Rehabilitation, seeks relief from this Court's June 17, 2014 dismissal of his Petition for Writ of Habeas Corpus.

## (APPENDIX, <sup>A</sup><sub>B</sub>)

1       On December 11, 2012, Petitioner filed a Petition for Writ of  
2 Habeas Corpus By a Person in State Custody pursuant to 28 U.S.C. § 2254  
3 ("Petition"). (Docket Entry No. 1). The Petition challenged  
4 Petitioner's 1998 convictions for first degree murder, first degree  
5 attempted murder and various special allegation findings. On June 17,  
6 2014, the district court denied the Petition (on the merits [time bar])  
7 with prejudice, in accordance with the findings and conclusions of the  
8 Magistrate Judge (Docket Entry Nos. 45, 52-53). On the same date, the  
9 district court denied Petitioner a certificate of appealability ("COA")  
10 (Docket Entry No. 54).

11  
12       On June 23, 2014, Petitioner filed a Notice of Appeal from the  
13 Court's denial of his Petition. (Docket Entry No. 55).

14  
15       On January 15, 2015, the Ninth Circuit Court of Appeals denied  
16 Petitioner's request for a COA. (Docket Entry No. 59).

17  
18       On July 13, 2015, Petitioner filed a Notice of Appeal from the  
19 Court's February 24, 2015 Notice of Document Discrepancies with respect  
20 to Petitioner's Motion For Leave to File Amended Complaint (see Docket  
21 Entry No. 60). (Docket Entry No. 62).

22  
23       On July 30, 2015, Petitioner filed the instant "1st Motion for  
24 Reconsideration, and Leave to File a [sic] Amended Complaint," which  
25  
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(APPENDIX, A, B)

1 the Court construes as a Motion for Relief from Judgment pursuant to  
2 Fed. R. Civ. P. 60(b) ("Motion"). (Docket Entry No. 64).<sup>1</sup>

3

4 **II. DISCUSSION**

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6 Petitioner filed his Motion pursuant to Fed. R. Civ. P. 60(b).  
7 (See Motion at 2). Although Petitioner does not identify any specific  
8 subsection, the Court assumes Petitioner is bringing his Motion under  
9 Fed. R. Civ. P. 60(b)(6) ("any other reason that justifies relief").

10

11 Petitioner's allegations are unintelligible. To the extent that  
12 Petitioner is attempting to reargue his contention that equitable  
13 tolling of the statute of limitations is warranted based on his mental  
14 illness (see e.g., Motion at 3-6, 14), the Court has already rejected  
15 Petitioner's equitable tolling contention. (See Docket Entry Nos. 45,  
16 52). Therefore, Petitioner has failed to show extraordinary  
17 circumstances justifying the reopening of a final judgment, as required  
18 under Rule 60(b)(6). See Gonzalez v. Crosby, 545 U.S. 524, 5365  
19 (2005).

20

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21 <sup>1</sup> The Court GRANTS Petitioner's request that his appointed  
22 counsel be withdrawn and that Petitioner be allowed to represent  
23 himself (see Motion at 1).

24 To the extent that Petitioner is requesting that the proposed  
25 Amended Petition attached to the Motion be deemed filed on May 27, 2015  
26 (the day after which Petitioner signed the proposed Declaration, see  
27 proposed Amended Petition at 102) (see Motion at 1), Petitioner's  
28 request is DENIED, since Petitioner is being denied leave to file his  
proposed Amended Petition, as discussed herein.

Moreover, to the extent that Petitioner is requesting that  
the Motion be deemed filed on May 27, 2015, Petitioner's request is  
DENIED based on Petitioner's failure to show good cause for the change  
of filing date.

(APPENDIX A)

1 To the extent that Petitioner might be attempting to allege new  
2 substantive claims (see e.g., Motion at 2, 4) or to file an amended  
3 federal habeas petition, the assertion of any such claim(s) would  
4 require the Court to treat the Motion as a successive habeas petition.  
5 See Gonzalez v. Crosby, supra, 545 U.S. at 530-32.<sup>2</sup>

6

7 To the extent that Petitioner might be seeking relief pursuant to  
8 Fed. R. Civ. P. 59(e) ("Motion to Alter or Amend a Judgment") (see  
9 Motion at 2), the Motion is untimely. (See Fed. R. Civ. P. 59(e) [A  
10 motion to alter or amend a judgment must be filed no later than 28 days  
11 after the entry of judgment.]).

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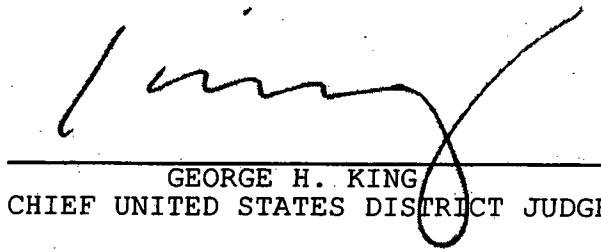
### III. ORDER

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15 For all these reasons, Petitioner's Motion is **DENIED**.

16

17 DATED: 8/14, 2015.

18  
19  
20   
GEORGE H. KING  
CHIEF UNITED STATES DISTRICT JUDGE

21

Presented by:

22

/s/

23 ALKA SAGAR

24

UNITED STATES MAGISTRATE JUDGE

25

26 <sup>2</sup> Before filing a second or successive habeas petition,  
27 Petitioner is required to obtain authorization from the Ninth Circuit  
28 Court of Appeals. See 28 U.S.C. §2244(b)(3)(A); Felker v. Turpin, 518  
U.S. 651, 657(1996).

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NOV 03 2015

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

STEVEN CIOTTA,

Petitioner - Appellant,

v.

K. HOLLAND,

Respondent - Appellee.

No. 15-56488

D.C. No. 2:12-cv-10593-GHK-AS  
Central District of California,  
Los Angeles

## ORDER

Before: GRABER and McKEOWN, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown "that (1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion and, (2) jurists of reason would find it debatable whether the underlying section [2254 petition] states a valid claim of the denial of a constitutional right." *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015); *see also* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Lynch v. Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (order).

Any pending motions are denied as moot.

**DENIED.**

(APPENDIX, A).

**(APPENDIX B):**

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION ONE

|                |                             |
|----------------|-----------------------------|
| In re          | B241059                     |
| STEVE CIOTTA   | (L.A.S.C. No. A575551)      |
| on             | (JANICE CLARE CROFT, Judge) |
| Habeas Corpus. | <u>ORDER</u>                |

B241059

(L.A.S.C. No. A575551)

(JANICE CLARE CROFT, Judge)

ORDER

**COURT OF APPEAL – SECOND DIST.**

FILED

May 23, 2012

JOSEPH A. LANE, Clerk  
chon Deputy Clerk

## ANSWER

## THE COURT\*:

The petition for writ of habeas corpus, filed May 8, 2012, has been read and considered.

The petition is denied

\*ROTHSCHILD, Acting P. J.

CHANAY, J.

JOHNSON, J.

**S207246**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

**In re STEVEN CIOTTA on Habeas Corpus.**

---

The petition for writ of habeas corpus and request for stay are denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780; *In re Clark* (1993) 5 Cal.4th 750, 767-769; *In re Dixon* (1953) 41 Cal.2d 756, 759.)

**SUPREME COURT  
FILED**

**JAN - 3 2013**

**Frank A. McGuire Clerk**

---

**Deputy**

*writ filed  
in fed. court*

---

**CANTIL-SAKAUYE**

*Chief Justice*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION ONE

THE PEOPLE,

Plaintiff,

v.

STEVE CIOTTA,

Defendant.

B103841

(L.A.S.C. No. A575551)

ORDER

COURT OF APPEAL - SECOND DIST.  
F I L E D  
JUL 24 1996

JOSEPH A. LANE  
MARK I. SALAS  
Deputy Clerks

Clerk  
Deputy Clerk

THE COURT\*:

The application for permission to file a belated notice of appeal, filed July 19, 1996, has been read and considered.

The application is denied.

Spencer  
\*SPENCER, P.J.

Ortega  
ORTEGA, J.

Vogel  
VOGEL (Miriam A.), J.

ORIGINATED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CLERICAL STAFF AND CLERK  
BUREAU

DEC 30 1992

JOSEPH A. LANE \_\_\_\_\_ Clerk  
G. A. BRODER \_\_\_\_\_

RECEIVED

In re ) B071745  
 )

STEVEN ALLEN CIOTTA, ) (L.A.S.C. No. A 575 551)  
 )

on Habeas Corpus. ) O R D E R  
 )  
 )

THE COURT\*:

The petition for writ of habeas corpus, filed December 3, 1992; and the superior court file in the People v. Steven Allen Ciotta, no. A575551, have been read and considered.

The petition is denied.

Spencer

\*SPENCER, P.J.

Turner

TURNER, J.†

†Assigned by the Chairperson of the Judicial Council.

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**(APPENDIX C);**

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TEHACAPI

CALIFORNIA CORRECTIONAL  
INSTITUTION  
CONFIDENTIAL/LEGAL MAIL LOG  
OUTGOING HISTORY

| CIOTTA  | D94599 | ADDRESS  | TYPE OF LETTER REC'D/SENT | SENT      | REC'D |
|---|--------|--|---------------------------|-----------|-------|
|   |        | US DIST COURT CENTRAL DIST 312 N SPRING ST<br>LOS ANGELES CA 90012 |                           | 1/2/2013  |       |
|   |        | 2ND DIST COURT OF APPEALS 300 SPRING ST LOS<br>ANGELES CA 90013    |                           | 1/10/2013 |       |
|   |        | LA CO SUP COURT 300 E WALNUT AVE PASADENA<br>CA 91101              |                           | 1/10/2013 |       |
|   |        | CAL SUPREME COURT 350 MCALLISTER ST SAN<br>FRAN CA 94102           |                           | 1/11/2013 |       |
| X<br>Motion for withdraw of<br>council to amend |        | US DIST COURT CENTRAL DIST 312 N SPRING ST<br>LOS ANGELES CA 90012 |                           | 2/4/2013  |       |
|   |        | US DIST COURT CENTRAL DIST 312 N SPRING ST<br>LOS ANGELES CA 90012 |                           | 2/5/2013  |       |
|   |        | FEDERAL PUBLIC DEFENDER 321 E 2ND ST LOS<br>ANGELES CA 90012       |                           | 2/25/2013 |       |
|   |        | FEDERAL PUBLIC DEFENDER 321 E 2ND ST LOS<br>ANGELES CA 90012       |                           | 3/4/2013  |       |
|   |        | US DIST COURT CENTRAL DIST 312 N SPRING ST<br>LOS ANGELES CA 90012 |                           | 4/4/2013  |       |
|   |        | FEDERAL PUBLIC DEFENDER 321 E 2ND ST LOS<br>ANGELES CA 90012       |                           | 4/18/2013 |       |
|   |        | 2ND DIST COURT OF APPEALS 300 S SPRING ST LOS<br>ANGELES CA 90013  |                           | 4/22/2013 |       |
|   |        | FEDERAL PUBLIC DEFENDER 321 E 2ND ST LOS<br>ANGELES CA 90012       |                           | 4/22/2013 |       |

Tuesday, February 24, 2015

APPENDIX C

| CIOTTA | D94599                                | ADDRESS  | TYPE OF LETTER REC'D/SENT | SENT      | REC'D |
|--------|---------------------------------------|--|---------------------------|-----------|-------|
| X      | Motion to amend,<br>withdrawl counsel | FEDERAL PUBLIC DEFENDER 321 E 2ND ST LOS<br>ANGELES CA 90012       |                           | 2/6/2014  |       |
|        |                                       | US DIST COURT CENTRAL DIST 312 N SPRING ST<br>LOS ANGELES CA 90012 |                           | 2/6/2014  |       |
|        |                                       | LEGAL AFFAIRS STATE CAPITOL SACTO CA 95814                         |                           | 2/10/2014 |       |
|        |                                       | ATTY GEN 300 S SPRING ST LOS ANGELES CA 90013                      |                           | 2/18/2014 |       |
|        |                                       | 2ND DIST COURT OF APPEALS 300 S SPRING ST LOS<br>ANGELES CA 90013  |                           | 2/20/2014 |       |
|        |                                       | LEGAL AFFAIRS STATE CAPITOL SACTO CA 95814                         |                           | 2/26/2014 |       |
|        |                                       | CAL SUPREME COURT 350 MCALLISTER ST SAN<br>FRAN CA 94102           |                           | 3/5/2014  |       |
|        |                                       | CAL SUPREME COURT 914 CAPITAL MALL SACTO CA<br>95814               |                           | 3/12/2014 |       |
| X      |                                       | US DIST COURT CLERK 312 N SPRING ST LOS<br>ANGELES CA 90012        |                           | 4/3/2014  |       |
|        |                                       | FEDERAL PUBLIC DEFENDER 321 E 2ND ST LOS<br>ANGELES CA 90012       |                           | 4/4/2014  |       |
|        |                                       | KERN CO SUP COURT 1415 TRUXTUN AVE<br>BAKERSFIELD CA 93301         |                           | 4/4/2014  |       |
|        |                                       | FEDERAL PUBLIC DEFENDER 321 E 2ND ST LOS<br>ANGELES CA 90012       |                           | 4/11/2014 |       |
|        |                                       | KERN CO SUP COURT 1415 TRUXTUN AVE<br>BAKERSFIELD CA 93301         |                           | 4/11/2014 |       |
|        |                                       | FEDERAL PUBLIC DEFENDER 321 E 2ND ST LOS<br>ANGELES CA 90012       |                           | 4/15/2014 |       |
|        |                                       | 5TH DIST COURT OF APPEALS 2424 VENTURA ST<br>FRESNO CA 93721       |                           | 4/16/2014 |       |

**(APPENDIX D);**



# THE STATE BAR OF CALIFORNIA

## OFFICE OF THE CHIEF TRIAL COUNSEL INTAKE

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

TELEPHONE: (213) 765-1000  
FAX: (213) 765-1168  
<http://www.calbar.ca.gov>

July 21, 2011

Steven Ciotta #D94599  
KVSP Fac B, Bldg 1  
P.O. Box 6000  
Delano, CA 93216

RE: Inquiry Number: 11-19836  
Respondent: Steven Kaplan

Dear Mr. Ciotta:

An attorney for the State Bar's Office of the Chief Trial Counsel has reviewed your complaint against Steven Kaplan to determine whether there are sufficient grounds for proceeding to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

We have concluded that because the conduct complained of is beyond the time limit allowed, we are unable to proceed with your complaint.

Rule 5.21, Rules of Procedure of the State Bar of California, prohibits the State Bar from initiating disciplinary proceedings against an attorney for alleged misconduct occurring more than five years from the date of the violation(s). The rule recognizes various exceptions to extend the five-year period, including for example, when the attorney continues to represent the complainant; when the complainant is a minor; when there are pending civil, criminal, or administrative investigations or proceedings based on the same acts against the attorney; or when the attorney conceals facts about the misconduct.

After reviewing whether any of the possible exceptions available under rule 5.21 would apply to permit your complaint to proceed, we conclude that your complaint fails to meet an exception to the five year limitations rule. However, if you have additional information showing that an exception applies, you may request in writing that your complaint be reopened. In explaining why an exception may apply, please give specific dates of possible violations so that we may properly evaluate your additional information.

Also, Mr. Kaplan has been an inactive member of the State Bar of California since January 1, 2008 and he is no longer working for the Office of the Public Defender. You may wish to contact the Public Defender's office to request a copy of your file, including a copy of the advisal.

For these reasons, the State Bar is closing this matter.

If you have any questions or disagree with the decision to close your complaint or have new information or other allegations not included in your initial complaint, you have two options. For immediate assistance, the first option is to speak directly with a Complaint Specialist. You may leave a voice message with the State Bar's Complaint Specialist at 213-765-1695. Be sure to clearly identify the

Steven Ciotta  
July 21, 2011  
Page 2

lawyer complained of, the case number assigned, and your telephone number including the area code in your voice message. The Complaint Specialist will return your call within 2 business days. The second option is to request the State Bar's Audit & Review Unit to review your complaint. An attorney may re-open your complaint if he or she determines that you presented new, significant evidence about your complaint or that the State Bar closed your complaint without any basis. You must submit your request for review with the new evidence or a showing that closing your complaint was made without any basis. To request review, you must submit your request in writing, together with any new evidence, post-marked within **90 days of the date of this letter**, to:

State Bar of California,  
Audit & Review Unit,  
1149 South Hill Street  
Los Angeles, CA 90015-2299.

Please note that telephonic requests for review will not be accepted.

Thank you for bringing your concerns to the attention of the State Bar.

Very truly yours,



L. Kern  
Deputy Trial Counsel

SC