

NO. \_\_\_\_\_

IN THE

# Supreme Court of the United States

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LENORE L. ALBERT-SHERIDAN, DBA Law Offices of Lenore Albert,  
*Petitioner,*

v.  
STATE BAR OF CALIFORNIA, et al.

*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
For the Ninth Circuit

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## APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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(\*Electronic version bookmarked)

Dated: October 15, 2020

Respectfully Submitted,

/s/ Lenore Albert  
LENORE L. ALBERT  
Petitioner, pro se



**User Name:** lenore albert

**Date and Time:** Friday, September 18, 2020 1:51:00 AM EDT

**Job Number:** 125681934

## Document (1)

1. [Albert-Sheridan v. State Bar of Cal. \(In re Albert-Sheridan\), 960 F.3d 1188](#)

**Client/Matter:** -None-

**Search Terms:** Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan), 960 F.3d 1188

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Cases

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Court: State Courts > California

 Neutral

As of: September 18, 2020 5:51 AM Z

**Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)**

United States Court of Appeals for the Ninth Circuit

March 30, 2020\*, Submitted; June 10, 2020, Filed

No. 19-60023

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\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

960 F.3d 1188, \*1188; 2020 U.S. App. LEXIS 18348, \*\*18348

**Reporter**

960 F.3d 1188 \*; 2020 U.S. App. LEXIS 18348 \*\*; 68 Bankr. Ct. Dec. 217; 2020 WL 3086631

IN RE LENORE L. ALBERT-SHERIDAN,  
 Debtor,LENORE L. ALBERT-SHERIDAN, DBA Law  
 Offices of Lenore Albert, Appellant, v. STATE BAR OF  
 CALIFORNIA; MARICRUZ FARFAN; BRANDON TADY;  
 ALEX HACKERT; YVETTE ROLAND; PAUL  
 BERNARDINO, Appellees.

**Notice: FOR PUBLICATION**

punitive and rehabilitative in nature; [2]-The discovery sanctions under [Cal. Civ. Proc. Code § 2023.030](#) were dischargeable because, under the plain text of [11 U.S.C.S. § 523\(a\)\(7\)](#), they were not payable to and for the benefit of a governmental unit and were compensation for actual pecuniary losses; [3]-The bankruptcy court properly dismissed the debtor's claim that by failing to reinstate her law license, the State Bar violated [11 U.S.C.S. § 525\(a\)](#), because the costs of the State Bar's disciplinary proceedings were non-dischargeable under [§ 523\(a\)\(7\)](#) and Findley, and thus, the State Bar was within its right to condition reinstatement on the payment of that debt.

**Prior History:** [\[\\*\\*1\]](#) Appeal from the Ninth Circuit Bankruptcy Appellate Panel. BAP No. 18-1222. Lafferty III, Spraker, and Faris, Bankruptcy Judges, Presiding.

[Albert-Sheridan v. State Bar of Cal. \(In re Albert-Sheridan\), 2019 Bankr. LEXIS 1187 \(B.A.P. 9th Cir., Apr. 11, 2019\)](#)

**Disposition:** AFFIRMED in part; REVERSED in part; REMANDED.

**Core Terms**

discovery, disciplinary, non-dischargeable, restitution, reinstatement, misuse

**Case Summary****Overview**

**HOLDINGS:** [1]-The costs of the State Bar disciplinary proceeding under [Cal. Bus. & Prof. Code §§ 6086.10\(b\)\(3\)](#) and [6140.7](#) were non-dischargeable under [11 U.S.C.S. § 523\(a\)\(7\)](#) because they were not compensation for actual pecuniary loss but, rather, were

**LexisNexis® Headnotes**

Legal Ethics > Sanctions > Disciplinary Proceedings

**[HN1](#) Sanctions, Disciplinary Proceedings**

California law requires the payment of disciplinary costs as a prerequisite for Bar reinstatement. [Cal. Bus. & Prof. Code § 6140.7](#).

Bankruptcy Law > ... > Judicial Review > Standards of Review > De Novo Standard of Review

Bankruptcy Law > Procedural Matters > Judicial Review > Jurisdiction

**[HN2](#) Standards of Review, De Novo Standard of Review**

The appellate court has jurisdiction under [28 U.S.C.S. §](#)

[158\(d\)\(1\)](#) and reviews de novo the Bankruptcy Appellate Panel's decision and the bankruptcy court's dismissal of a complaint for failure to state a claim.

Bankruptcy Law > ... > Discharge & Dischargeability > Liquidations > Denial of Discharge

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

### [HN3](#) Liquidations, Denial of Discharge

A Chapter 7 discharge releases the debtor from personal liability for her pre-bankruptcy debts. A debtor is entitled to a discharge of all pre-petition debts except for nineteen categories of debts set forth in the Code. [11 U.S.C.S. §§ 727\(b\), 523\(a\)](#). One of the exceptions makes non-dischargeable a debt for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss. [11 U.S.C.S. § 523\(a\)\(7\)](#).

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

Legal Ethics > Sanctions > Disciplinary Proceedings

### [HN4](#) Exceptions to Discharge, Government Penalties & Taxes

The costs of State Bar attorney disciplinary proceedings are non-dischargeable in bankruptcy based on their punitive and rehabilitative nature. California law classifies these costs as penalties, payable to and for the benefit of the State Bar of California, a public corporation created pursuant to [Cal. Const. art. VI](#), to promote rehabilitation and to protect the public. [Cal. Bus. & Prof. Code § 6086.10\(e\)](#).

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

Legal Ethics > Sanctions > Disciplinary Proceedings

### [HN5](#) Exceptions to Discharge, Government Penalties & Taxes

[Cal. Bus. & Prof. Code § 6086.10](#) costs are not compensatory to the State Bar but rather disciplinary costs imposed only for misconduct that merits public reproof, suspension or disbarment. Thus the costs are not compensation for actual pecuniary loss under [11 U.S.C.S. § 523\(a\)\(7\)](#).

Governments > Courts > Judicial Precedent

### [HN6](#) Courts, Judicial Precedent

In the absence of intervening United States Supreme Court precedent, one panel cannot overturn another panel, regardless of how wrong the earlier panel decision may seem to be.

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

### [HN7](#) Exceptions to Discharge, Government Penalties & Taxes

[11 U.S.C.S. § 523\(a\)\(7\)](#) expressly requires three elements for a debt to be non-dischargeable. The debt must (1) be a fine, penalty, or forfeiture; (2) be payable to and for the benefit of a governmental unit; and (3) not constitute compensation for actual pecuniary costs.

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

### [HN8](#) Disclosure, Sanctions

California law authorizes the award of sanctions for the misuse of the discovery process. [Cal. Code Civ. Proc. § 2023.030\(a\)](#). A court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct.

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

#### **HN9** **Exceptions to Discharge, Government Penalties & Taxes**

By its terms, [Cal. Code Civ. Proc. § 2023.030\(a\)](#) does not provide for the sanctions to be paid to the court or any other governmental entity, but to anyone incurring an expense as a result of discovery abuse. On its face [§ 2023.030](#) appears to say monetary sanctions and issue sanctions can only be imposed in favor of a party who has suffered harm as the result of the sanctioned party's misuse of the discovery process.

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

#### **HN10** **Disclosure, Sanctions**

Discovery sanctions protect the interests of the party entitled to, but denied, discovery, not to punish the non-compliant party.

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

#### **HN11** **Exceptions to Discharge, Government Penalties & Taxes**

Discovery sanctions constitute compensation for actual pecuniary costs. [11 U.S.C.S. § 523\(a\)\(7\)](#). The sanctions are only available to pay the reasonable expenses, including attorney's fees, incurred. [Cal. Code Civ. Proc. § 2023.030\(a\)](#). Thus, the discovery sanctions enforce compliance with discovery procedures by assessing the costs of compelling compliance against the defaulting party.

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

#### **HN12** **Disclosure, Sanctions**

Although [Cal. Code Civ. Proc. § 2023.030\(a\)](#)'s text is sufficient to prove its compensatory nature, to the extent precedent compels a peek behind its legislative purpose, the court is satisfied of its pecuniary aim. In contrast to the penal and rehabilitative ends of attorney disciplinary proceedings costs, the discovery sanctions are not meant to provide a weapon for punishment, but to prevent abuse of the discovery process and correct the problem presented.

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

#### **HN13** **Exceptions to Discharge, Government Penalties & Taxes**

Under the plain text of [11 U.S.C.S. § 523\(a\)\(7\)](#), the discovery sanctions are not the type of debt protected from discharge.

Legal Ethics > Professional Conduct

Legal Ethics > Sanctions

#### **HN14** **Legal Ethics, Professional Conduct**

The California State Bar established a Client Security Fund to relieve or mitigate pecuniary losses caused by an attorney's dishonest conduct. [Cal. Bus. & Prof. Code § 6140.5\(a\)](#). Some courts have considered reimbursements to the Client Security Fund to be payable to the government.

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

Criminal Law & Procedure > Sentencing > Restitution

#### **HN15** **Exceptions to Discharge, Government Penalties & Taxes**

960 F.3d 1188, \*1188; 2020 U.S. App. LEXIS 18348, \*\*1

Criminal restitution paid to a state agency as a condition of probation is non-dischargeable under [11 U.S.C.S. § 523\(a\)\(7\)](#).

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

Criminal Law & Procedure > Sentencing > Restitution

#### [HN16](#) [↓] Exceptions to Discharge, Government Penalties & Taxes

Federal bankruptcy courts should not invalidate the results of state criminal proceedings, and [11 U.S.C.S. § 523\(a\)\(7\)](#) prevents the discharge of restitution despite it not being for the benefit of a governmental unit. [Section 523](#) was enacted against the background of an established judicial exception to discharge for criminal sentences, including restitution orders. Although restitution resembles a judgment for the benefit of a victim, such a payment really benefits society as a whole. Furthermore, since a criminal sentence necessarily considers the penal and rehabilitative interests of the State, restitution orders are sufficiently within the meaning of [§ 523\(a\)\(7\)](#).

Governments > Legislation > Interpretation

#### [HN17](#) [↓] Legislation, Interpretation

The court has a duty to follow the law as enacted by Congress, not as judged by its convictions. The court must enforce plain and unambiguous statutory language according to its terms. The court's task is to apply the text, not to improve upon it. This command does not change when the matter involves bankruptcy. Whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code. Accordingly, when it comes to interpreting the Code, the court is not at liberty to alter the balance struck by the statute.

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

Civil Procedure > Discovery &

Disclosure > Disclosure > Sanctions

#### [HN18](#) [↓] Exceptions to Discharge, Government Penalties & Taxes

Discovery sanctions imposed under [Cal. Code Civ. Proc. § 2023.030\(a\)](#) are dischargeable under [11 U.S.C.S. § 727\(b\)](#).

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

#### [HN19](#) [↓] Reviewability of Lower Court Decisions, Preservation for Review

Appellate courts will not consider arguments that are not properly raised in the trial courts.

Bankruptcy Law > ... > Bankruptcy > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

#### [HN20](#) [↓] Debtor Benefits & Duties, Protection Against Discriminatory Treatment

[11 U.S.C.S. § 525\(a\)](#) prohibits a governmental unit from denying, revoking, suspending, or refusing to renew a debtor's license solely because the debtor filed for bankruptcy or failed to pay a dischargeable debt. Although the provision prevents discrimination against a debtor based on a dischargeable debt, the inverse is also true: The government may take action that is otherwise forbidden when the debt in question is one of the disfavored class that is nondischargeable.

Bankruptcy Law > Discharge & Dischargeability > Exceptions to Discharge > Government Penalties & Taxes

Legal Ethics > Sanctions > Disciplinary Proceedings

#### [HN21](#) [↓] Exceptions to Discharge, Government Penalties & Taxes

The costs of the California State Bar's disciplinary proceedings are non-dischargeable under [11 U.S.C.S. § 523\(a\)\(7\)](#) and Findley. Accordingly, the State Bar is within its right to condition reinstatement on the payment of that debt.

Bankruptcy Law > ... > Bankruptcy > Case Administration > Bankruptcy Court Powers

## **HN22** Case Administration, Bankruptcy Court Powers

11 U.S.C.S. § 105 is not a substantive grant of authority but empowers the bankruptcy court to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. § 105(a).

compensation for actual pecuniary losses. The panel found inapplicable the holding of Kelly v. Robinson, 479 U.S. 36, 107 S. Ct. 353, 93 L. Ed. 2d 216 (1986), that the dischargeability of a debt turns on the purpose of a restitution award rather than the ultimate recipient of the funds.

The panel affirmed as to the dismissal of the debtor's claim that by failing to reinstate her law license, the State Bar violated 11 U.S.C. § 525(a), which prohibits a government unit from denying, revoking, suspending, or refusing to renew a debtor's license solely because the debtor filed for bankruptcy or failed to pay a dischargeable debt.

In a separate memorandum disposition, the panel affirmed as to the dismissal of the debtor's non-bankruptcy claims and the denial of leave to amend her complaint.

### **Summary:**

### **SUMMARY\*\***

### **Bankruptcy**

The panel affirmed in part and reversed in part the Bankruptcy Appellate Panel's affirmance of the bankruptcy court's dismissal and remanded in a chapter 7 debtor's adversary proceeding asserting that fees imposed by the State Bar of California on a member suspended for misconduct were dischargeable debts.

The State Bar conditioned the debtor's reinstatement on the payment of court-ordered discovery sanctions and costs associated with its disciplinary proceedings.

Affirming in part, the panel followed In re Findley, 593 F.3d 1048 (9th Cir. 2010), and held that the costs of the State Bar disciplinary proceeding under *Cal. Bus. & Prof. Code §§ 6086.10(b)(3)* and 6140.7 were non-dischargeable under 11 U.S.C. § 523(a)(7), which makes non-dischargeable a debt that is "for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss."

Reversing in part, the panel held that the discovery sanctions under Cal. Civ. Proc. Code § 2023.030 were dischargeable because, under the plain test of 11 U.S.C. § 523(a)(7), they were not payable to and for the benefit of a governmental unit and were \*\*2

**Counsel:** Lenore L. Albert, Westminster, California, Pro se, Appellant.

Vanessa L. Holton, Robert G. Retana, and Suzanne C. Grandt, Office of General Counsel, State Bar of California, San Francisco, California, for Appellees.

**Judges:** Before: Richard A. Paez, Consuelo M. Callahan, and Patrick J. Bumatay, Circuit Judges.

**Opinion by:** Bumatay

### **Opinion**

**[\*1190] BUMATAY, Circuit Judge:**

The State Bar of California suspended one of its members for misconduct. It conditioned her reinstatement on the payment of court-ordered discovery sanctions and costs \*\*3 associated with its disciplinary proceedings. Rather than pay the two fees, the suspended attorney sought to discharge them in

\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

bankruptcy.

We consider whether the Bankruptcy Code permits this. The bankruptcy court and the Ninth Circuit Bankruptcy Appellate Panel ("BAP") held that the two fees were non-dischargeable debts. We disagree. While our precedent holds that the costs of the disciplinary proceedings may not be discharged, the plain text of the Code requires a contrary result for the discovery sanctions. For this reason, we affirm in part and reverse in part.

## I.

### BACKGROUND

#### A. Discovery Sanctions and State Bar Proceedings

Until her suspension, Lenore Albert-Sheridan had practiced as an attorney in California since December 2000 with no disciplinary record. She served as a consumer-advocate attorney, often representing homeowners in residential housing and mortgage disputes. By her own account, Albert stopped over 1,000 foreclosure sales in one case alone.

Beginning in May 2012, Albert represented Norman and Helen Koshak in an unlawful detainer matter in California Superior Court. In that case, plaintiffs 10675 S. Orange Park Boulevard, LLC, Francis Lantieri, and Gary Schneider ("Orange <sup>\*\*4</sup> Park Boulevard") commenced an action to evict the Koshaks from their property. In August 2012, Orange Park Boulevard filed three motions to compel Helen Koshak's response to several discovery requests. In each motion, Orange Park Boulevard also sought costs and fees against Koshak and Albert for misuse of the discovery process under [California Code of Civil Procedure § 2023.030](#).

After a hearing, a California Superior Court commissioner granted the discovery motions and imposed sanctions against Helen Koshak and her "counsel-of-record, Lenore Albert" in three separate orders. The commissioner ordered that they pay "monetary sanctions" of \$2,675.50, \$1,242.50, and \$1,820.00 (totaling \$5,738) to "Plaintiff 10675 S Orange Park Boulevard, LLC," jointly and severally within 30 days. To date, these discovery sanctions have not been

paid.

**[\*1191]** In early 2015, the State Bar received a complaint against Albert and initiated an investigation. By July 2015, the State Bar requested documents and written responses from Albert. Albert failed to comply with the inquiry and instead requested an extension to the "eternity of time" while accusing the State Bar of wrongdoing.

The following year, the State Bar began disciplinary **[\*\*5]** proceedings and charged Albert with, as relevant here, failing to cooperate with its investigation and disobeying the court orders to pay Orange Park Boulevard the discovery sanctions. After a State Bar trial, the hearing officer found Albert culpable on both counts. The hearing officer recommended a 30-day suspension of Albert's law license with reinstatement conditioned on her payment of the discovery sanctions. The hearing officer also awarded \$18,714 to the State Bar in "reasonable costs" for the disciplinary proceedings under *California Business and Professions Code § 6086.10(b)(3)*. The costs included a preset base charge of \$16,758 plus \$1,956 for investigations. [HN1](#)<sup>↑</sup> California law requires the payment of disciplinary costs as a prerequisite for Bar reinstatement. [Cal. Bus. & Prof. Code § 6140.7](#).

On appeal, the State Bar Review Department affirmed Albert's culpability on the two charges, her suspension, and the imposition of the disciplinary proceedings' costs.

In December 2017, the California Supreme Court entered a final order of discipline. The supreme court ordered Albert suspended for 30 days, to be continued until:

She pays the following sanctions (or reimburses the Client Security Fund, to the extent of any payment from the Fund to the payees . . .), and furnishes **[\*\*6]** proof to the State Bar . . . the \$2,675.50, \$1,242.50, and \$1,820 sanctions awards issued on August 31, 2012, by the Superior Court of Orange County . . . plus 10 percent interest per year from August 31, 2012.

[In re Albert on Discipline, No. S243927, 2017 Cal. LEXIS 9745, at \\*1 \(Cal. Dec. 13, 2017\)](#). It also awarded the costs of the disciplinary proceedings to the State Bar. [Id. at \\*3](#). The supreme court later denied Albert's petition for rehearing. To date, Albert has not paid the disciplinary proceeding costs.

## B. Bankruptcy Proceedings

In February 2018, Albert filed for Chapter 13 bankruptcy. The bankruptcy court later converted Albert's case to [Chapter 7](#) based on her inability to fund a confirmable Chapter 13 plan.

In April 2018, Albert filed an adversarial complaint in bankruptcy court against the State Bar and several of its employees. In her complaint, Albert alleged (1) the dischargeability of debts under [11 U.S.C. § 523\(a\)\(7\)](#); (2) the violation of [11 U.S.C. § 525\(a\)](#)'s anti-discrimination provision; (3) the violation of her rights under [42 U.S.C. § 1983](#); (4) the violation of [California's Rosenthal Fair Debt Collection Practices Act](#) and the federal [Fair Debt Collection Practices Act](#); and (5) the claim that [California Business and Professions Code §§ 6103](#), [6086.10](#), and [6140.7](#) are unconstitutional.<sup>1</sup>

Four months later, the bankruptcy court granted the State [\[\\*\\*7\]](#) Bar's motion to dismiss the complaint. The bankruptcy court held that both the discovery sanctions and disciplinary costs were non-dischargeable based on [In re Findley](#), [593 F.3d 1048 \(9th Cir. 2010\)](#). The bankruptcy court also dismissed [\[\\*1192\]](#) the [§ 525\(a\)](#) claim because the State Bar could predicate Albert's reinstatement on the payment of non-dischargeable debts. Albert filed a timely notice of appeal to the BAP, which affirmed on largely the same grounds. [In re Albert-Sheridan](#), No. 8:18-AP-01065-SC, 2019 Bankr. LEXIS 1187, 2019 WL 1594012 (B.A.P. 9th Cir. Apr. 11, 2019).

Before us is Albert's appeal from the BAP's decision. [HN2](#) We have jurisdiction under [28 U.S.C. § 158\(d\)\(1\)](#) and review de novo the BAP's decision and the bankruptcy court's dismissal of Albert's complaint for failure to state a claim. [In re Turner](#), [859 F.3d 1145, 1148 \(9th Cir. 2017\)](#).

## II.

## DISCUSSION

### A.

[HN3](#) A Chapter 7 discharge "releases the debtor from personal liability for her pre-bankruptcy debts." [In re Ybarra](#), [424 F.3d 1018, 1022 \(9th Cir. 2005\)](#). A debtor is entitled to a discharge of all pre-petition debts except for nineteen categories of debts set forth in the Code. [11 U.S.C. §§ 727\(b\), 523\(a\)](#). One of the exceptions makes non-dischargeable a debt "for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss." [11 U.S.C. § 523\(a\)\(7\)](#).

In this case, Albert seeks the discharge of two debts: (1) the \$18,714 assessed against her for the costs [\[\\*\\*8\]](#) of the State Bar's disciplinary proceedings, and (2) the \$5,738 in discovery sanctions ordered by a California superior court. We consider [§ 523\(a\)\(7\)](#)'s application to each debt in turn.

#### 1.

Our court has already addressed whether a debtor may discharge the costs of the State Bar's attorney disciplinary proceedings imposed under [California Business and Professions Code § 6086.10](#). The clear answer is no.

[HN4](#) In [Findley](#), we held that the costs of State Bar attorney disciplinary proceedings are non-dischargeable based on their punitive and rehabilitative nature. [593 F.3d at 1049, 1052-54](#). Like here, the attorney in that case was assessed a standard, preset charge and the actual costs of the proceedings. [Id. at 1049](#). California law classifies these costs as "penalties, payable to and for the benefit of the State Bar of California, a public corporation created pursuant to [Article VI of the California Constitution](#), to promote rehabilitation and to protect the public." [Cal. Bus. & Prof. Code § 6086.10\(e\)](#).

The [Findley](#) court concluded that California's classification of the costs was sufficient to render them non-dischargeable under [§ 523\(a\)\(7\)](#). [593 F.3d at 1054](#). We determined that the [HN5](#) [§ 6086.10](#) costs were not compensatory to the State Bar but rather "disciplinary costs" imposed only for "misconduct that merits public reproval, suspension or disbarment." [Id.](#) We thus agreed that the costs were "not compensation [\[\\*\\*9\]](#) for actual pecuniary loss" under [§ 523\(a\)\(7\)](#). [Id.](#)

[Findley](#) stands on all fours with this case. Because

<sup>1</sup> In a separate memorandum, we affirm the dismissal of Albert's non-bankruptcy claims and deny her leave to amend her complaint.

[Findley](#) ruled that attorney disciplinary costs under § 6086.10 are excepted from discharge, Albert's \$18,714 debt to the State Bar is non-dischargeable.

Albert argues that [Findley](#) was wrongly decided given that disciplinary proceeding costs are based on the amount of time the State Bar expends, not on the attorney's underlying conduct—which fits more with compensation rather than punishment. Albert asks us to overrule [Findley](#) for this reason. This is a non-starter.

[HN6](#) [Findley](#) is binding precedent on this question, and we must follow it. See [Koerner v. Grigas](#), 328 F.3d 1039, 1050 (9th Cir. 2003) ("[I]n the absence of intervening Supreme [\*1193] Court precedent, one panel cannot overturn another panel, regardless of how wrong the earlier panel decision may seem to be.") (quoting [Hart v. Massanari](#), 266 F.3d 1155, 1171-72 (9th Cir. 2001)).<sup>2</sup>

## 2.

Unlike attorney disciplinary proceeding costs, the dischargeability of discovery sanctions under [California Code of Civil Procedure § 2023.030](#) is a matter of first impression in this court. As is often the case, "the plain language of the Bankruptcy Code disposes of the question before us." [Toibb v. Radloff](#), 501 U.S. 157, 160, 111 S. Ct. 2197, 115 L. Ed. 2d 145 (1991).

[HN7](#) [Section 523\(a\)\(7\)](#) expressly requires three elements for a debt to be non-dischargeable. The debt must (1) be a fine, penalty, or [\*10] forfeiture; (2) be payable to and for the benefit of a governmental unit; and (3) not constitute compensation for actual pecuniary costs. [11 U.S.C. § 523\(a\)\(7\)](#). Here, the discovery sanctions plainly do not satisfy the last two of these elements and, thus, are not excepted from discharge.<sup>3</sup>

[HN8](#) California law authorizes the award of "sanctions" for the "misuse of the discovery process." [Cal. Civ. Proc. Code § 2023.030\(a\)](#). A "court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney

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<sup>2</sup> To the extent Albert seeks initial en banc review of this matter, she failed to comply with [Federal Rule of Appellate Procedure 35\(c\)](#), and we deny her request.

<sup>3</sup> Because the discovery sanctions do not meet the governmental unit or non-compensatory elements, we need not address whether they are also fines, penalties, or forfeitures under the Code.

advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." *Id.*

[HN9](#) By its terms, the law does not provide for the sanctions to be paid to the court or any other governmental entity, but to "anyone" incurring an expense as a result of discovery abuse. See [Parker v. Wolters Kluwer United States, Inc.](#), 149 Cal. App. 4th 285, 300, 57 Cal. Rptr. 3d 18 (Cal. Ct. App. 2007) ("On its face [section 2023.030](#) appears to say monetary sanctions and issue sanctions can only be imposed in favor of a party who has suffered harm as the result of the sanctioned party's misuse of the discovery process[.]").

Here, Albert was ordered to pay the discovery sanctions to "Plaintiff 10675 S. Orange Park Boulevard, LLC."

[HN10](#) Orange Park Boulevard is not a governmental unit, nor was the sanction [\*11] for the benefit of a governmental unit. See [Siry Inv., L.P. v. Farkhondehpour](#), 45 Cal. App. 5th 1098, 1117, 259 Cal. Rptr. 3d 466 (Cal. Ct. App. 2020) (explaining that "discovery sanctions . . . protect the interests of the party entitled to, but denied, discovery, not to punish the non-compliant party") (simplified). Accordingly, the discovery sanctions are not payable to or for the benefit of a governmental unit.

The State Bar confirmed this understanding in proceedings before the bankruptcy court.

THE COURT: [I]f Ms. Albert won the lottery tomorrow . . . who would she write the check to for the discovery sanctions?

MS. GRANDT: So as of now, it would be written to that third party — let me get their names. They're Francis Lantieri, Gray [sic] Schneider, and 10675 South Orange Park Boulevard.

THE COURT: Okay. And the discovery sanctions would be written to a third party, not to the State of California, not to the State Bar, to a third party?

[\[\\*1194\]](#) MS. GRANDT: Correct.  
Bankr. Ct. Hrg Tr. 31, Aug. 31, 2018.

[HN11](#) Furthermore, the discovery sanctions also constitute "compensation for actual pecuniary costs." [11 U.S.C. § 523\(a\)\(7\)](#). The sanctions are only available to "pay the reasonable expenses, including attorney's fees, incurred." [Cal. Civ. Proc. Code § 2023.030\(a\)](#). Thus, the discovery sanctions enforce compliance with discovery procedures by "assessing the [\*12] costs of compelling compliance against the defaulting party." [Pratt v. Union](#)

Pac. R.R. Co., 168 Cal. App. 4th 165, 183, 85 Cal. Rptr. 3d 321 (Cal. Ct. App. 2008) (simplified). Here, the California superior court ordered the sanctions to reflect the costs Orange Park Boulevard incurred responding to Koshak and Albert's misuse of the discovery process. Accordingly, the discovery sanctions were commensurate with Orange Park Boulevard's expenses to litigate the discovery motions against Albert's former client and, thus, were "compensatory."<sup>4</sup>

**HN13**[<sup>↑</sup>] Under the plain text of § 523(a)(7), the discovery sanctions are not the type of debt protected from discharge. Accordingly, we reverse the BAP's finding that Albert's discovery sanctions are non-dischargeable under Chapter 7.<sup>5</sup>

In finding the discovery fees dischargeable, the BAP relied on its understanding of the Supreme Court's decision in Kelly v. Robinson, 479 U.S. 36, 107 S. Ct. 353, 93 L. Ed. 2d 216 (1986). The BAP ruled that, "notwithstanding the statutory language" of § 523(a)(7), the dischargeability of a debt "turns on the purpose of the restitution award rather than the ultimate recipient of funds." In re Albert-Sheridan, 2019 Bankr. LEXIS 1187, 2019 WL 1594012, at \*4 (citing Kelly, 479 U.S. at 52-53). The BAP then reasoned that since the California Supreme Court ordered the payment of the discovery

<sup>4</sup> **HN12**[<sup>↑</sup>] Although § 2023.030(a)'s text is sufficient to prove its compensatory nature, to the extent our precedent compels a peek behind its legislative purpose, we are satisfied of its pecuniary aim. In contrast to the penal and rehabilitative ends of attorney disciplinary proceedings costs, see Findley, 593 F.3d at 1054, the discovery sanctions are not meant to "provide a weapon for punishment, . . . but to prevent abuse of the discovery process and correct the problem presented," Parker, 149 Cal. App. 4th at 301.

<sup>5</sup> The California Supreme Court alternatively ordered Albert to reimburse the State Bar's Client Security Fund, "to the extent of any payment from the Fund to the payees, in accordance with section 6140.5." In re Albert on Discipline, 2017 Cal. LEXIS 9745, at \*1. **HN14**[<sup>↑</sup>] The State Bar established a Client Security Fund to relieve or mitigate pecuniary losses caused by an attorney's dishonest conduct. Cal. Bus. & Prof. Code § 6140.5(a). Some courts have considered reimbursements to the Client Security Fund to be payable to the government. See In re Phillips, 2010 U.S. Dist. LEXIS 130478, 2010 WL 4916633, at \*5 (C.D. Cal. Dec. 1, 2010); Brookman v. State Bar, 46 Cal. 3d 1004, 251 Cal. Rptr. 495, 760 P.2d 1023 (Cal. 1988). Nevertheless, the record does not show that any Client Security Fund payments were disbursed to Orange Park Boulevard in this case. Accordingly, that issue is not before us.

sanctions, "they were transformed into a primarily punitive sanction that was nondischargeable under § 523(a)(7), despite the [\*\*13] fact that the sanctions are payable to the affected parties rather than the State Bar." 2019 Bankr. LEXIS 1187, [WL] at \*6. We disagree that Kelly has such a broad reach.

**HN15**[<sup>↑</sup>] In Kelly, the Supreme Court held that criminal restitution paid to a state agency as a condition of probation was non-dischargeable under § 523(a)(7). 479 U.S. at 50. There, the defendant was ordered to pay restitution to the State of Connecticut's probation office, which then forwarded the payments to the victim. Id. at 39-40. The defendant filed for Chapter 7 bankruptcy and sought discharge of the restitution obligation. Id. at 39.

[\*1195] **HN16**[<sup>↑</sup>] Based on its "deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings," the Court held that § 523(a)(7) prevents the discharge of restitution despite it not being for the benefit of a governmental unit. Id. at 47, 50. The Court observed that § 523 was enacted against the "background of an established judicial exception to discharge for criminal sentences, including restitution orders[.]" Id. at 46. Although restitution "resemble[s]" a judgment for the benefit of a victim, the Court reasoned that such a payment really benefits "society as a whole." Id. at 52. Furthermore, since a criminal sentence "necessarily considers the penal and rehabilitative interests [\*\*14] of the State," the Court held that restitution orders are sufficiently within the meaning of § 523(a)(7). Id. at 53.

Given that Kelly was based on a "deep conviction" rather than statutory language, we have raised concerns that it has "led to considerable confusion among federal courts and practitioners about section 523(a)(7)'s scope." In re Scheer, 819 F.3d 1206, 1210 (9th Cir. 2016) (collecting cases). We further compared Kelly's approach of "untether[ing] statutory interpretation from the statutory language" to a "relic[] of the 1980s." Id. Like other relics of the 1980s, such as big hair, jam shorts, and acid-wash jeans, Kelly's atextual interpretative method should not come back into fashion. Thus, we have sought to cabin Kelly's reach and refused to expand its rationale to an arbitration award requiring an attorney to refund a client's funds. Id. at 1211. We have also declined to extend Kelly to except criminal restitution payments under the Code's preference statute, 11 U.S.C. § 547(b). In re Silverman, 616 F.3d 1001, 1007-08 (9th Cir. 2010).

Thus, [Kelly](#) does not alter the outcome required by the text of [§ 523\(a\)\(7\)](#) in this case. [Kelly](#) was animated by a "long history" of judicial exceptions for criminal restitution payments in discharge statutes and a concern for "disturb[ing] state criminal proceedings." *Id.* at 1007. These rationales do not apply to the discharge [\[\\*\\*15\]](#) of discovery sanctions at issue here. Although the California Supreme Court conditioned Albert's reinstatement on payment of the sanctions in its order of discipline, Albert's debt compensates a private party for the costs of litigating civil discovery motions for its own benefit. Nothing in these circumstances would cause us to depart from the plain language of the Code.

[HN17](#) [\[¶\]](#) Indeed, the Supreme Court has consistently reminded us of our duty to follow the law as enacted by Congress, not as judged by our convictions. See [Hardt v. Reliance Standard Life Ins. Co.](#), 560 U.S. 242, 251, 130 S. Ct. 2149, 176 L. Ed. 2d 998 (2010) ("We must enforce plain and unambiguous statutory language according to its terms."); [Pavelic & LeFlore v. Marvel Entm't Grp.](#), 493 U.S. 120, 126, 110 S. Ct. 456, 107 L. Ed. 2d 438 (1989) ("Our task is to apply the text, not to improve upon it."). This command does not change when the matter involves bankruptcy. "[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." [Norwest Bank Worthington v. Ahlers](#), 485 U.S. 197, 206, 108 S. Ct. 963, 99 L. Ed. 2d 169 (1988). Accordingly, when it comes to interpreting the Code, we are not at liberty to "alter the balance struck by the statute." [Czyzewski v. Jevic Holding Corp.](#), 137 S. Ct. 973, 987, 197 L. Ed. 2d 398 (2017) (simplified). Accordingly, we are bound to follow the plain meaning of [§ 523\(a\)\(7\)](#) here.

[HN18](#) [\[¶\]](#) For these reasons, we hold that discovery sanctions imposed under [California Code of Civil Procedure § 2023.030\(a\)](#) [\[\\*1196\]](#) are dischargeable under [§ 727\(b\)](#) [\[\\*\\*16\]](#).<sup>6</sup>

## B.

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<sup>6</sup> Albert also claims that the superior court orders awarding the discovery sanctions to Orange Park Boulevard were invalid because they were procedurally deficient under [California Code of Civil Procedure § 2023.040](#). [HN19](#) [\[¶\]](#) Albert waived this argument by failing to present it to the bankruptcy court. See [In re E.R. Feget, Inc.](#), 887 F.2d 955, 957 (9th Cir. 1989) ("The rule in this circuit is that appellate courts will not consider arguments that are not properly raised in the trial courts.") (simplified).

Finally, Albert contends that the State Bar violated [11 U.S.C. § 525\(a\)](#) by failing to reinstate her law license because of her nonpayment of dischargeable debts.

[HN20](#) [\[¶\]](#) [Section 525\(a\)](#) prohibits a governmental unit from "deny[ing], revok[ing], suspend[ing], or refus[ing] to renew" a debtor's license "solely because" the debtor filed for bankruptcy or failed to pay a dischargeable debt. [11 U.S.C. § 525\(a\)](#). Although the provision prevents discrimination against a debtor based on a dischargeable debt, the inverse is also true: "The government *may* take action that is otherwise forbidden when the debt in question is one of the disfavored class that is nondischargeable." [FCC v. NextWave Pers. Commc'n's Inc.](#), 537 U.S. 293, 307, 123 S. Ct. 832, 154 L. Ed. 2d 863 (2003) (emphasis in original).

[HN21](#) [\[¶\]](#) As stated above, the costs of the State Bar's disciplinary proceedings are non-dischargeable under [§ 523\(a\)\(7\)](#) and [Findley](#). Accordingly, the State Bar is within its right to condition [\[\\*\\*17\]](#) reinstatement on the payment of that debt. *Id.* We affirm the dismissal of this claim.<sup>7</sup>

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For the foregoing reasons, we affirm the BAP in part and reverse in part and remand in light of this opinion. Each party shall bear its own costs on appeal. See *Fed. R. App. P.* 39(a)(4).

**AFFIRMED** in part; **REVERSED** in part; **REMANDED**.

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<sup>7</sup> Albert also appeals the denial of a preliminary injunction or temporary restraining order enjoining the State Bar from suspending her law license under [11 U.S.C. §§ 525\(a\)](#) and [105](#). [HN22](#) [\[¶\]](#) [Section 105](#) is not a substantive grant of authority but empowers the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Code. [11 U.S.C. § 105\(a\)](#). Since we affirm the dismissal of her [§ 525\(a\)](#) claim, she has no likelihood of success on the merits and, thus, injunctive relief is not warranted here. See [Winter v. Nat. Res. Def. Council, Inc.](#), 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JUN 10 2020

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

In re: LENORE L. ALBERT-SHERIDAN,

No. 19-60023

Debtor,

BAP No. 18-1222

-----  
LENORE L. ALBERT-SHERIDAN, DBA  
Law Offices of Lenore Albert,

MEMORANDUM\*

Appellant,

v.

STATE BAR OF CALIFORNIA; et al.,

Appellees.

Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Lafferty III, Spraker, and Faris, Bankruptcy Judges, Presiding

Submitted March 30, 2020\*\*  
Pasadena, California

Before: PAEZ, CALLAHAN, and BUMATAY, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Debtor Lenore L. Albert-Sheridan appeals the dismissal of her complaint against the State Bar of California and its employees, alleging violations of the Bankruptcy Code and other federal and state laws. We have jurisdiction under 28 U.S.C. § 158(d)(1) and review the dismissal de novo. *In re Turner*, 859 F.3d 1145, 1148 (9th Cir. 2017). In a separate opinion, we review Albert’s claims under 11 U.S.C. §§ 523(a)(7) and 525(a) and affirm in part, reverse in part, and remand. In this memorandum, we affirm the dismissal of Albert’s remaining claims.

1. Under 42 U.S.C. § 1983, a plaintiff must allege: (1) the violation of a right secured by the Constitution and laws of the United States, and (2) that the violation was committed by a person acting under color of state law. *Naffe v. Frey*, 789 F.3d 1030, 1035–36 (9th Cir. 2015). Albert asserts that State Bar employees violated her First, Fourth, Fifth, and Fourteenth Amendment rights. Federal courts generally abstain from interfering with state bar proceedings given States’ “extensive control over the professional conduct of attorneys.” *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 434 (1982). Albert has not alleged any reason to depart from this general view. Her allegations are predicated on a mistaken belief that the State Bar impermissibly suspended her law license due to a dischargeable debt. Under California law, the State Bar and its employees may condition the reinstatement of Albert’s law license on payment of those costs. Cal. Bus. & Prof. Code § 6140.7. As we explain in our opinion, bankruptcy does not

disturb the State Bar's authority since costs for attorney disciplinary proceedings may not be discharged under 11 U.S.C. § 523(a)(7). *In re Albert-Sheridan*, No. 19-60023, slip op. at \_\_ (9th Cir. June \_\_, 2020). Because the debt to the State Bar is non-dischargeable, her claim must fail. We therefore affirm the dismissal of her § 1983 claim.<sup>1</sup>

2. Albert's constitutional challenges to California Business and Professions Code §§ 6086.10, 6103, and 6047 are equally without merit. Albert principally reiterates the same allegations as her § 1983 claim. She also adds that the California statutes as applied to her violate 11 U.S.C. § 525(a), which prohibits a governmental unit from discriminating against a debtor "solely" because of a dischargeable debt. For the reasons stated above, we affirm. Albert's obligation to pay the State Bar for its disciplinary proceedings is not dischargeable; accordingly, the suspension of her license due to this debt does not violate § 525(a) or any other federal law alleged in the complaint. *See Albert-Sheridan*, No. 19-60023, slip op. at \_\_.

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<sup>1</sup> Albert asserts for the first time in her opening brief that the State Bar's actions also violate the Eighth Amendment's Excessive Fines Clause. As Albert did not raise that theory in the bankruptcy proceedings below, we do not consider it now. *See Singleton v. Wulff*, 428 U.S. 106, 120 (1976) ("It is the general rule . . . that a federal appellate court does not consider an issue not passed upon below."); *In re Mortg. Store, Inc.*, 773 F.3d 990, 998 (9th Cir. 2014) ("A litigant may waive an issue by failing to raise it in a bankruptcy court.").

3. The federal Fair Debt Collection Practices Act, 15 U.S.C.

§§ 1692–1692p, and California’s Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.*, protect consumers from abusive, unfair, or deceptive practices by debt collection agencies. The bankruptcy appellate panel dismissed Albert’s claims under both statutes, reasoning that the State Bar is not a “debt collector” under either law. *In re Albert-Sheridan*, 2019 WL 1594012, at \*9–10 (B.A.P. 9th Cir. Apr. 11, 2019) (“Attorney disciplinary proceedings are not designed or intended to be debt collection mechanisms for private parties, even where attorneys are ordered to pay money.”). In response, Albert argues that the State Bar’s annual operating fund is significantly funded by the collection of attorney disciplinary costs. Even if true, it would not save her claim since Albert fails to assert how the State Bar violated either statute in her opening brief. “We cannot manufacture arguments for an appellant and therefore we will not consider any claims that were not actually argued in appellant’s opening brief.” *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (simplified). We thus affirm the dismissal of this claim.

4. Finally, Albert requests that we grant her leave to amend her complaint.

It does not appear, however, that Albert sought leave in the bankruptcy proceedings below. We decline to address a request Albert raises for the first time on appeal. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 749 (9th Cir. 2006)

(“[W]e generally will not remand with instructions to grant leave to amend unless the plaintiff sought leave to amend below.”).

**AFFIRMED.**

APR 11 2019

## NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUITUNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:

BAP No. CC-18-1222-LSF

LENORE L. ALBERT-SHERIDAN, DBA  
Law Offices of Lenore Albert,

Bk. No. 8:18-bk-10548-ES

Debtor.

Adv. No. 8:18-ap-01065-SC

LENORE L. ALBERT-SHERIDAN,

Appellant,

v.

## MEMORANDUM\*

STATE BAR OF CALIFORNIA;  
MARICRUZ FARFAN; BRANDON  
TADY; ALEX HACKERT; YVETTE  
ROLAND; PAUL BERNARDINO,

Appellees.

Argued and Submitted on February 21, 2019  
at Pasadena, California

Filed – April 11, 2019

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\*This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Scott C. Clarkson, Bankruptcy Judge, Presiding

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Appearances: Lenore L. Albert-Sheridan argued pro se; Suzanne C. Grandt argued for Appellees.

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Before: LAFFERTY, SPRAKER, and FARIS, Bankruptcy Judges.

## INTRODUCTION

Debtor Lenore Albert-Sheridan appeals the bankruptcy court's order dismissing her adversary proceeding against Appellees State Bar of California and its employees Maricruz Farfan, Brandon Tady, Alex Hackert, Yvette Roland, and Paul Bernardino. In that adversary proceeding, Ms. Albert<sup>1</sup> sought, among other things, a declaration that sanctions and costs ordered paid by the California Supreme Court as a condition of reinstatement of her law license were dischargeable. The bankruptcy court did not err in concluding that sanctions and costs were nondischargeable under § 523(a)(7).<sup>2</sup> The remaining causes of action

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<sup>1</sup>Although Debtor's last name is listed on her bankruptcy petition as "Albert-Sheridan," she refers to herself as "Lenore Albert" and "Ms. Albert" in her papers. We thus refer to her as "Ms. Albert" throughout this Memorandum.

<sup>2</sup>Unless specified otherwise, all chapter and section references are to the  
(continued...)

pledged in Ms. Albert's complaint were reliant on the premise that the entire amount was dischargeable. Because it found otherwise, the bankruptcy court did not err in dismissing the balance of Ms. Albert's complaint.

Accordingly, we AFFIRM.

## FACTUAL BACKGROUND

Ms. Albert was an attorney licensed to practice in the state of California. In 2015 and 2016, the State Bar of California ("State Bar") filed Notices of Disciplinary Charges in State Bar Court alleging that Ms. Albert had failed to cooperate with State Bar investigations, disobeyed superior court orders ordering Ms. Albert to pay discovery sanctions, failed to perform competent legal services, failed to render accounts of client funds, and failed to refund unearned fees.

After a trial, the State Bar Court found Ms. Albert culpable on all but one count and recommended a minimum 30-day suspension, after which Ms. Albert would remain suspended until she provided to the State Bar proof of payment of four court-ordered discovery sanctions. The State Bar Court also recommended that costs be awarded to the State Bar under California Business & Professions Code ("CBP") § 6086.10.

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<sup>2</sup>(...continued)

Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

Ms. Albert appealed the recommendation to the State Bar Review Department, which found Ms. Albert culpable on two counts but dismissed the other two for insufficient evidence. The Review Department agreed with the recommendation of a 30-day suspension, proof of payment of three of the four discovery sanctions totaling \$5,735 plus interest, and an award of costs to the State Bar.

Ms. Albert sought review of these determinations with the Supreme Court of California. On December 13, 2017, that court issued a final order of discipline reflecting the recommendation of the Review Department, including suspension. Ms. Albert sought rehearing, which the supreme court denied on February 14, 2018.

Ms. Albert filed for chapter 13 relief on February 20, 2018. She then moved the State Bar and the supreme court to reinstate her license and waive costs based on her inability to pay. The State Bar, believing the monetary sanctions were dischargeable in chapter 13, reinstated Ms. Albert's license retroactive to March 16, 2018.

On June 26, 2018, the bankruptcy court converted Ms. Albert's chapter 13 case to chapter 7 based on ineligibility under § 109(e) and Ms. Albert's inability to fund a confirmable plan. Thereafter, the State Bar sent a letter to the supreme court explaining that the case had been converted and requesting that the court deny Ms. Albert's motion for reinstatement. Ms. Albert also sent a letter to the supreme court arguing

that the debt remained dischargeable despite conversion. On July 25, 2018, the supreme court denied Ms. Albert's motion for reinstatement.

In the meantime, Ms. Albert filed an adversary proceeding against Appellees. The complaint alleged five causes of action: (1) dischargeability of debt under § 523(a)(7); (2) violation of § 525(a); (3) violation of 42 U.S.C. § 1983; (4) violation of Rosenthal Act/Fair Debt Collection Practices Act ("FDCPA"); and (5) unconstitutionality of CBP §§ 6103, 6086.10, and 6140.7. Ms. Albert sought: (1) declarations that (a) the debt to the State Bar is dischargeable; and (b) the statutes under which she was sanctioned and disciplined are unconstitutional as applied; (2) injunctive relief requiring the State Bar to reinstate her license based on its violations of § 525 and 42 U.S.C. § 1983; and (3) damages for violations of the Rosenthal Act/FDCPA. Ms. Albert concurrently filed an emergency motion for a temporary restraining order, which the bankruptcy court denied "due to insufficient grounds stated."

Appellees moved to dismiss the adversary proceeding for failure to state a claim. Appellees also asserted that the bankruptcy court should abstain pursuant to the *Younger* abstention and *Rooker-Feldman* doctrines. Lastly, they argued that the State Bar was entitled to Eleventh Amendment immunity and the individual defendants to judicial immunity. Ms. Albert filed an opposition, and the State Bar a reply. In the meantime, Ms. Albert filed a new Application for TRO and Order to Show Cause Why a

Preliminary Injunction Should Not Issue.

The bankruptcy court heard both matters on August 1, 2018. It denied Ms. Albert's motion for a TRO and granted the State Bar's motion to dismiss by separate orders entered August 9, 2018.

Ms. Albert timely appealed both orders.<sup>3</sup>

## **JURISDICTION**

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A), (I), and (O). We have jurisdiction under 28 U.S.C. § 158.

## **ISSUES**

Did the bankruptcy court err in dismissing the adversary proceeding?

Did the bankruptcy court abuse its discretion in denying Ms. Albert's motion for a TRO and order to show cause?

## **STANDARDS OF REVIEW**

We review de novo a bankruptcy court's order granting a motion to dismiss for failure to state a claim. *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1071 (9th Cir. 2012) (en banc); *Cedano v. Aurora Loan Servs., LLC (In re Cedano)*, 470 B.R. 522, 528 (9th Cir. BAP 2012). Under de novo

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<sup>3</sup>On the same date Ms. Albert filed her notice of appeal, she filed an objection to the State Bar's proposed order and the bankruptcy court's order denying her application for a TRO. The bankruptcy court treated the objection as a motion to alter or amend under Civil Rule 59(e), incorporated in bankruptcy via Rule 9023, and denied it by order entered December 14, 2018. Ms. Albert did not separately appeal that order, nor did she amend her notice of appeal in this case.

review, we look at the matter anew, as if it had not been heard before, and as if no decision had been rendered previously, giving no deference to the bankruptcy court's determinations. *Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006).

We review an order denying injunctive relief for an abuse of discretion. *See Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 635 (9th Cir. 2015). To determine whether the bankruptcy court abused its discretion, we conduct a two-step inquiry: (1) we review de novo whether the bankruptcy court "identified the correct legal rule to apply to the relief requested" and (2) if it did, whether the bankruptcy court's application of the legal standard was illogical, implausible, or "without support in inferences that may be drawn from the facts in the record." *United States v. Hinkson*, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

## DISCUSSION

In reviewing the bankruptcy court's decision on a motion to dismiss, we apply the same standards to Civil Rule 12(b)(6) dismissal motions that all other federal courts are required to apply. *Barnes v. Belice (In re Belice)*, 461 B.R. 564, 572–73 (9th Cir. BAP 2011). Under Civil Rule 12(b)(6), made applicable in adversary proceedings by Rule 7012, we may dismiss a complaint for "failure to state a claim upon which relief can be granted." To survive a Civil Rule 12(b)(6) dismissal motion, a complaint must present cognizable legal theories and sufficient factual allegations to support those

theories. *See Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121–22 (9th Cir. 2008). As the Supreme Court has explained:

a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.

*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations and internal quotation marks omitted). In reviewing the sufficiency of a complaint under Civil Rule 12(b)(6), we must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *See Newcal Indus., Inc. v. Ikon Office Sols.*, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). However, we do not need to accept as true conclusory allegations or legal characterizations cast in the form of factual allegations. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007).

We may use judicially noticed facts to establish that a complaint does not state a claim for relief. *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1016 n.9 (9th Cir. 2012).

**A. The bankruptcy court did not err in granting Appellees' motion to dismiss.**

The California Supreme Court ordered Ms. Albert to pay, as a condition to her license reinstatement: (1) costs of \$18,714 incurred by the

State Bar in prosecuting Ms. Albert's misconduct pursuant to CBP § 6086.10(b)(3); and (2) unpaid discovery sanctions ordered by the superior court in the amount of \$5,738 plus interest, payable to 10675 Orange Park Blvd LLC. The bankruptcy court found that both of these awards were nondischargeable under § 523(a)(7).

**1. The bankruptcy court did not err in dismissing the first cause of action for a declaration of dischargeability.**

Section 523(a)(7)(A) provides that a discharge under § 727 does not discharge an individual from a debt "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss . . . ." There are three requirements for a debt to be excepted from discharge under § 523(a)(7): (1) the debt must be for a fine, penalty or forfeiture; (2) the debt must be payable to and for the benefit of a governmental unit; and (3) the debt cannot constitute compensation for actual pecuniary loss. *Searcy v. Ada Cty. Prosecuting Attorney's Office (In re Searcy)*, 463 B.R. 888, 891 (9th Cir. BAP 2012), *aff'd*, 561 F. App'x 644 (9th Cir. 2014).<sup>4</sup> "Although the question of whether a debt is a 'fine, penalty or forfeiture' for purposes of § 523(a)(7) is a question of federal law, we look to state law to determine whether the subject debt is such an obligation." *Id.* at 892 (citations omitted).

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<sup>4</sup>In *Searcy*, although the Panel correctly quoted the statute, in its recitation of the requirements, it erroneously stated that the debt must be payable to **or** for the benefit of a governmental unit, when the statute is in the conjunctive.

The Supreme Court has held that criminal restitution ordered to be paid to the State of Connecticut as a condition of probation in state criminal proceedings was nondischargeable under § 523(a)(7). *Kelly v. Robinson*, 479 U.S. 36 (1986). In *Kelly*, the defendant pleaded guilty to larceny for wrongful receipt of welfare benefits. The state court conditioned the defendant's probation on making restitution to the State of Connecticut Office of Adult Probation. In her subsequent chapter 7 filing, the defendant sought a declaration of nondischargeability of the restitution. The bankruptcy court found the debt nondischargeable, the district court affirmed, and the Second Circuit Court of Appeals reversed.

The Supreme Court reversed the court of appeals, holding that despite the fact that the restitution at issue was facially for the benefit of the victim, it fell within the rubric of a fine or penalty under § 523(a)(7). This was because: (1) the victim has no control over the amount of restitution awarded or the decision to award restitution; and (2) the decision to impose restitution does not turn on the victim's injury but on the penal goals of the state and the situation of the defendant. *Id.* at 52.

Because criminal proceedings focus on the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation, we conclude that restitution orders imposed in such proceedings operate "for the benefit of" the State. Similarly, they are not assessed "for . . . compensation" of the victim. The sentence following a criminal conviction necessarily considers the penal and rehabilitative

interests of the State. Those interests are sufficient to place restitution orders within the meaning of § 523(a)(7). . . .”

*Id.* at 53. The Court’s broad holding was that “§ 523(a)(7) preserves from discharge any condition a state criminal court imposes as part of a criminal sentence.” *Id.* at 50.

Under *Kelly*, then, notwithstanding the statutory language (“payable to and for the benefit of a governmental unit”), the determination of nondischargeability turns on the purpose of the restitution award rather than the ultimate recipient of the funds. *See id.* at 52-53. Where the purpose of the restitution is to further a governmental interest in rehabilitation and punishment, the ultimate payee of the restitution is not determinative of dischargeability. *Id.*

Courts in this circuit have applied *Kelly*’s holding to criminal restitution debts. *See, e.g., Armstrong v. Kaplon (In re Armstrong)*, 677 F. App’x 434 (9th Cir. 2017); *Steiger v. Clark Cty. (In re Steiger)*, 159 B.R. 907 (9th Cir. BAP 1993). Additionally, this Panel has held that attorney’s fees assessed against an incarcerated debtor, payable to a county district attorney as a penalty for pursuing frivolous claims, qualified as a fine, penalty or forfeiture under § 523(a)(7). *In re Searcy*, 463 B.R. at 893.

Further, as discussed below, courts in the Ninth Circuit have applied *Kelly*’s holding to restitution ordered in attorney disciplinary proceedings as a condition of license reinstatement under under CBP § 6086.10 (costs

payable to the State Bar) and CBP § 6140.5(c)<sup>5</sup> (reimbursement to Client Security Fund). *See State Bar of Cal. v. Findley (In re Findley)*, 593 F.3d 1048 (9th Cir. 2010); *In re Phillips*, No. CV 09-2138 AHM, 2010 WL 4916633 (C.D. Cal. Dec. 1, 2010).

In contrast, in *Scheer v. State Bar of California*, 819 F.3d 1206 (9th Cir. 2016), the court of appeals held dischargeable under § 523(a)(7) a refund of client fees ordered paid by the State Bar Court (and affirmed by the California Supreme Court) as a condition of an attorney's reinstatement of active enrollment status. *Id.* at 1208-09. The refund was ordered by an arbitrator who found that the debtor had competently performed services and had done nothing willful or malicious, but California law required her to return the funds. The court of appeals found the debt dischargeable because it was not assessed for disciplinary reasons. *Id.* at 1211.

In all of these cases, dischargeability turned on the punitive nature of the fine or penalty at issue.

- a. **Under *Findley*, the cost reimbursement ordered paid by the California Supreme Court pursuant to CBP § 6086.10 is nondischargeable under § 523(a)(7).**

The California Supreme Court ordered Ms. Albert to pay costs

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<sup>5</sup>That statute provides, in relevant part: "Any attorney whose actions have caused the payment of funds to a claimant from the Client Security Fund shall reimburse the fund for all moneys paid out as a result of his or her conduct with interest, in addition to payment of the assessment for the procedural costs of processing the claim, as a condition of continued practice. . . ."

pursuant to CBP § 6086.10(a), which provides:

Any order imposing a public reproof on a licensee of the State Bar shall include a direction that the licensee shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the licensee shall pay costs. An order pursuant to this subdivision is enforceable both as provided in Section 6140.7 and as a money judgment.

In *Findley*, the Ninth Circuit Court of Appeals considered the identical statute, CBP § 6086.10(a), and determined that costs imposed under it were nondischargeable under § 523(a)(7). 593 F.3d at 1054. The debtor in *Findley* was an attorney who was found to have violated the California Rules of Professional Conduct and the California Business & Professions Code in dealings with a client and was suspended from practice for one year. The supreme court adopted the State Bar's assessment of fees under CBP § 6086.10(a) to cover the cost of the disciplinary proceedings. While the disciplinary proceedings were pending, *Findley* filed a chapter 7 case and received a discharge. He then declined to pay the disciplinary cost award and sought reinstatement.

In the State Bar's adversary proceeding to determine the dischargeability of the cost award, the bankruptcy court ruled that the award was nondischargeable under § 523(a)(7). This Panel reversed, relying on *State Bar of California v. Taggart (In re Taggart)*, 249 F.3d 987 (9th Cir. 2001), in which the Ninth Circuit held that costs assessed under the

prior version of CBP § 6086.10 were dischargeable. On appeal to the Ninth Circuit, the court of appeals noted that after *Taggart* was decided, the California legislature had amended CBP § 6086.10 by adding subsection (e), which provides:

In addition to other monetary sanctions as may be ordered by the Supreme Court pursuant to Section 6086.13, costs imposed pursuant to this section are penalties, payable to and for the benefit of the State Bar of California, a public corporation created pursuant to Article VI of the California Constitution, to promote rehabilitation and to protect the public. This subdivision is declaratory of existing law.

The Circuit cited the legislative history of the amendment, which made clear that its purpose was to clarify that orders to pay disciplinary costs were nondischargeable penalties imposed on California lawyers for professional misconduct. *In re Findley*, 593 F.3d at 1053. The Circuit held that the amendment was “sufficient to render attorney discipline costs imposed by the California State Bar Court non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(7).” *Id.* at 1054.

Accordingly, the bankruptcy court did not err in concluding that *Findley* mandated the conclusion that the costs assessed pursuant to CBP § 6086.10 are nondischargeable.

Ms. Albert contends that *Findley*’s conclusion that the California legislature amended the statute in response to *Taggart* was wrong, and that in any event the State of California did not have the power to legislate

around federal law, citing *Perez v. Campbell*, 402 U.S. 637, 652 (1971) (holding that state laws that frustrate the full effectiveness of federal law are rendered invalid by the Supremacy Clause). However, the bankruptcy court—and this Panel—are bound to follow Ninth Circuit precedent unless that precedent is overturned by the Supreme Court. *Deitz v. Ford (In re Deitz)*, 469 B.R. 11, 22 (9th Cir. BAP 2012) (citing *United States v. Martinez-Rodriguez*, 472 F.3d 1087, 1093 (9th Cir. 2007)). Because *Findley* controls the outcome here, we need not address Ms. Albert’s other arguments regarding the cost award.<sup>6</sup>

The bankruptcy court did not err in ruling that the costs ordered by the California Supreme Court to be paid to the State Bar under CBP § 6086.10 as a condition of Ms. Albert’s license reinstatement are nondischargeable.

**b. The bankruptcy court did not err in concluding that the discovery sanctions ordered to be paid by the California Supreme Court were nondischargeable.**

The California Supreme Court also ordered Ms. Albert to pay to the affected parties the discovery sanctions ordered by the superior court. Alternatively, it ordered Ms. Albert to reimburse the Client Security Fund to the extent of any payment from that fund to the payees.

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<sup>6</sup>Ms. Albert notes that the cost form submitted by the State Bar states that it is for compensation for the State Bar’s costs in prosecuting the Notices of Disciplinary Charges, arguing that this supports her position that such an award is purely compensatory. In light of *Findley*, we do not find this argument persuasive.

The discovery sanctions were imposed under California Civil Procedure Code § 2023.030, which provides in relevant part:

(a) The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

California courts have held that discovery sanctions awarded under this statute are not intended to be punitive, but "to prevent abuse of the discovery process and correct the problem presented." *Parker v. Wolters Kluwer U.S., Inc.*, 149 Cal. App. 4th 285, 301 (2007). See also *Doppes v. Bentley Motors, Inc.*, 174 Cal. App. 4th 967, 992 (2009) ("The trial court cannot impose sanctions for misuse of the discovery process as a punishment."). Despite this characterization, *Kelly* and its progeny support the conclusion that once the discovery sanctions were ordered paid by the supreme court as part of a disciplinary proceeding, they were transformed into a primarily punitive sanction that was nondischargeable under § 523(a)(7), despite the fact that the sanctions are payable to the affected parties rather than the State Bar.

The California Supreme Court has held that restitution ordered to be paid to the Client Security Fund as part of an attorney disciplinary proceeding would be nondischargeable in bankruptcy despite the fact that it had a compensatory effect. The court reasoned that

[r]estitution imposed as a condition of probation serves the state interest of rehabilitating culpable attorneys (and protecting the public) by forcing the attorney to “confront, in concrete terms, the harm his actions have caused.” Such restitution--especially when, as here, it is made payable to the State Bar Client Security Fund--is clearly for the benefit of the public at large, not the underlying victim in this case (who, we note, has already been compensated by the State Bar Client Security Fund). Because such restitution fundamentally serves the goal of rehabilitation, it is not merely compensation to the government for “actual pecuniary loss.”

*Brookman v. State Bar*, 46 Cal. 3d 1004, 1009 (1988) (quoting *Kelly*, 479 U.S. at 49). *See also In re Phillips*, 2010 WL 4916633, at \*5 (holding that debt to State Bar consisting of attorney’s obligation under CBP § 6140.5(c) to reimburse the Client Security Fund was excepted from discharge under § 532(a)(7)).

Based on these authorities, regardless of whether Ms. Albert was required to reimburse the third parties or the Client Security Fund, the bankruptcy court did not err in concluding that the discovery sanctions ordered to be paid as a condition of reinstatement of her law license were nondischargeable under § 523(a)(7). At that point, the purpose of the payment of the discovery sanctions was punitive and rehabilitative, and

served the State's interest in regulating attorneys; it thus passed muster under *Kelly*. See *In re Phillips*, 2010 WL 4916633, at \*4 (noting that the Supreme Court's focus in *Kelly* was on the governmental interest and purpose in imposing a fine or penalty, not on the ultimate destination of the money).<sup>7</sup>

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<sup>7</sup>We note that *Kelly* seems to have been expanded to the point where the requirement that the fine or penalty must be payable "to and for the benefit of a governmental unit" has been read out of the statute. See *Kelly*, 479 U.S. at 56 n.3 (Marshall, J., dissenting) (noting that the majority did not need to consider whether the payee was a governmental unit because the ultimate beneficiary of the restitution was the State of Connecticut, and pointing out that to hold all criminal restitution nondischargeable, including where the victim is a private individual, would read the "payable to and for the benefit of a governmental unit" requirement out of the statute). We also note, however, that Congress has amended the Bankruptcy Code several times in the thirty-three years since *Kelly* was decided; Congress could have overruled *Kelly*, but it has not done so. Further, we must follow *Kelly* and its Ninth Circuit progeny in any event.

Appellees cite three cases to support their contention that the payee of a fine does not matter so long as the fine is sufficiently penal and the state has sufficient interests: *In re Armstrong*, 677 F. App'x 434; *Hansbrough v. Birdsell (In re Hercules Enters., Inc.)*, 387 F.3d 1024 (9th Cir. 2004); and *In re Steiger*, 159 B.R. 907. Although we conclude that the bankruptcy court did not err in holding the discovery sanctions nondischargeable under § 523(a)(7), we do not rely on these cases. Both *Armstrong* and *Steiger* involved criminal restitution, which the respective reviewing courts held was nondischargeable under the Supreme Court's broad holding in *Kelly*. *In re Armstrong*, 677 F. App'x at 436; *In re Steiger*, 159 B.R. at 912. The *Armstrong* opinion did not state or analyze whether the restitution was payable to a governmental unit. In *Steiger*, although the restitution was payable to an individual, the BAP relied on *Kelly*'s broad holding that § 523(a)(7) preserves from discharge any condition a state criminal court imposes as part of a criminal sentence. 159 B.R. at 911. In *Hercules*, the Circuit held that the bankruptcy court erred in ordering that a contempt sanction imposed on a non-party would be nondischargeable in any subsequent personal bankruptcy filed by the non-party. But in (continued...)

Ms. Albert argues on appeal that the discovery sanctions orders themselves were a “legal nullity” because the request for sanctions did not comply with California Civil Procedure Code § 2023.040, which requires the notice of motion to include the names of all “persons, parties or attorneys” to be sanctioned, and her name was not listed.<sup>8</sup> Ms. Albert did not present this argument to the bankruptcy court. Thus, we need not consider it. *See O'Rourke v. Seaboard Surety Co. (In re E.R. Fegert, Inc.)*, 887 F.2d 955, 957 (9th Cir. 1989).<sup>9</sup>

**2. The bankruptcy court did not err in dismissing Ms. Albert’s cause of action under § 525.**

Ms. Albert alleged in her complaint that the State Bar was in violation of § 525 because it refused to reinstate her license until she paid the costs and sanctions as ordered by the supreme court. Section 525 provides in

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<sup>7</sup>(...continued)

dicta, the Circuit noted that under § 523(a)(7), “civil contempt sanctions are generally non-dischargeable where, as here, they are imposed to uphold the dignity and authority of the court.” *In re Hercules Enters.*, 387 F.3d at 1029. The Circuit did not hold that the debt at issue (which was payable to the chapter 7 trustee) would be nondischargeable, nor did it analyze whether the fact that the trustee was the payee made a difference.

<sup>8</sup>That statute provides, in relevant part, “[a] request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought.”

<sup>9</sup>In Ms. Albert’s opposition to the motion to dismiss filed in the bankruptcy court, she argued that the discovery sanction order was void because the commissioner who ordered the sanctions later recused himself “due to bias.” She did not pursue this argument at the hearing on the motion, however. Additionally, Ms. Albert did not raise this issue with the California Supreme Court.

relevant part:

a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

The bankruptcy court dismissed this claim based on its conclusion that the costs and discovery sanctions were nondischargeable. Because the bankruptcy court did not err in finding those debts nondischargeable, it did not err in dismissing the § 525 claim, as it is premised entirely on the debt at issue being dischargeable.

**3. The bankruptcy court did not err in dismissing Ms. Albert's 42 U.S.C. § 1983 claim.**

A plaintiff must allege two elements to state a cause of action under 42 U.S.C. § 1983: (1) that some person has deprived him of a federal right; and (2) that the person who has deprived him of that right acted under color of state or territorial law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980).

Here, Ms. Albert alleged that the individual defendants, acting under color of law, had violated her constitutional rights under the First, Fourth, Fifth, and Fourteenth Amendments. She requested “injunctive relief” and damages against those defendants. The acts complained of appear to be the State Bar’s failure to explain why she was to be suspended effective February 14, 2018, by failing to give notice of the suspension, and by “snatching” her law license while she was in bankruptcy. She alleged that her suspension thwarted her attempt to run for Orange County District Attorney and disqualified her from representing a client in federal court.

The bankruptcy court dismissed this claim on grounds that the individual defendants had absolute immunity and that the cause of action was based upon the presumption that the costs and sanctions were dischargeable.

Ms. Albert points out that the State Bar filed a proof of claim, which resulted in a waiver of sovereign immunity. But the 42 U.S.C. § 1983 cause of action was brought against the individual defendants only. As to those defendants, the bankruptcy court did not err in ruling that they were entitled to immunity. State Bar employees are entitled to absolute quasi-judicial immunity under the Civil Rights Act for acts performed in their official capacities. *See Greene v. Zank*, 158 Cal. App. 3d 497, 508-09 (1984). Ms. Albert argues that Appellee Maricruz Farfan did not perform acts of a judicial nature because she was in charge of probation. But under

California law, probation officers performing their official duties of monitoring probation are performing quasi-judicial functions and are entitled to immunity. *Demoran v. Witt*, 781 F.2d 155, 158 (9th Cir. 1985); *Burkes v. Callion*, 433 F.2d 318, 319 (9th Cir. 1970).

In any event, conduct by the State Bar and its agents cannot constitute a deprivation of any federally protected rights. *See, e.g., Margulis v. State Bar of Cal.*, 845 F.2d 215, 216-17 (9th Cir. 1988); *Giannini v. Comm. of Bar Examiners*, 847 F.2d 1434, 1435 (9th Cir. 1988); *Chaney v. State Bar of Cal.*, 386 F.2d 962, 966 (9th Cir. 1967). Finally, because this cause of action was premised upon the dischargeability of the underlying debt, as a matter of law the complaint does not state a claim for relief under 42 U.S.C. § 1983. The bankruptcy court did not err in dismissing this cause of action.

**4. The bankruptcy court did not err in dismissing Ms. Albert's cause of action for violations of the Rosenthal Act/FDCPA.**

The bankruptcy court correctly found that the activities of the State Bar did not fall within the scope of either California's Rosenthal Act or the federal FDCPA and dismissed the cause of action on that ground.

This cause of action depends on the premise that the State Bar is acting as a debt collector under federal and state fair debt collection statutes. A debt collector is defined under the FDCPA as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or

who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). The definition under the Rosenthal Act is similar, but specifically excludes attorneys. Cal. Civ. Code § 1788.2(c).

Attorney disciplinary proceedings are not designed or intended to be debt collection mechanisms for private parties, even where attorneys are ordered to pay money. *See Bach v. State Bar*, 52 Cal. 3d 1201, 1207 (1991) (in rejecting the argument that the State Bar and the California Supreme Court lacked jurisdiction to impose discipline in the form of suspension conditioned upon restitution to a former client, the court noted that in exercising their power to discipline attorneys, the State Bar and the California Supreme Court further the goals of protecting the public, preserving confidence in the legal profession, and the rehabilitation of errant attorneys; they do not “sit in disciplinary matters as a collection board for clients aggrieved over fee matters.”). Ms. Albert has not cited any authority even suggesting that the State Bar or the individual defendants qualify as debt collectors under either the federal or state statutes.

The bankruptcy court did not err in dismissing this cause of action.

**5. The bankruptcy court did not err in dismissing Ms. Albert’s cause of action for a declaration that CBP §§ 6086.10, 6103, and 6047 are unconstitutional.**

The bankruptcy court observed that the constitutional challenges were “indecipherable.” We agree. The allegations supporting this cause of

action are rambling and seem to be based solely on the fact that Ms. Albert was disciplined and her various complaints about the process and result. Nothing in the allegations, even if taken as true, states a claim that the statutes are unconstitutional, even as applied. In her brief, Ms. Albert clarifies this cause of action by alleging that the statutes in question are being used to condition reinstatement of her license on payment of the costs and sanctions and thus are in violation of § 525 and *Perez*. Because the bankruptcy court correctly found no violation of § 525, it did not err in dismissing this cause of action.

**B. We need not reach the issue of whether the bankruptcy court abused its discretion in denying Ms. Albert's application for a TRO.**

Because we are affirming the dismissal of Ms. Albert's complaint, we need not address the bankruptcy court's denial of her application for a TRO.

### **CONCLUSION**

The bankruptcy court did not err in dismissing Ms. Albert's complaint. Even taking the allegations of her complaint as true, as a matter of law she did not state any plausible claims for relief. We AFFIRM.

App. 12  
**FILED**

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

In re: LENORE L. ALBERT-SHERIDAN, DBA Law  
Offices of Lenore Albert

Debtor

BAP No. CC-18-1222-LSF

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LENORE L. ALBERT-SHERIDAN

Bankr. No. 18-10548-ES

Appellant

Adv. No. 18-01065-SC

Chapter 7

v.

STATE BAR OF CALIFORNIA; MARICRUZ  
FARFAN; BRANDON TADY; ALEX HACKERT;  
YVETTE ROLAND; PAUL BERNARDINO

Appellees

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**JUDGMENT**

ON APPEAL from the United States Bankruptcy Court for California Central - Santa Ana.

THIS CAUSE came on to be heard on the record from the above court.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Panel that the  
judgment of the Bankruptcy Court is **AFFIRMED**.

**FOR THE PANEL,**

Susan M Spraul  
Clerk of Court

By: Vicky Jackson-Walker, Deputy Clerk

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## UNITED STATES BANKRUPTCY COURT

## CENTRAL DISTRICT OF CALIFORNIA – Santa Ana Division

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In re  
Lenore Luan Albert-Sheridan  
d/b/a Law Offices of Lenore Albert,  
Debtor.

Lenore Luan Albert-Sheridan  
d/b/a Law Offices of Lenore Albert,  
Plaintiff,  
v.  
Maricruz Farfan, Brandon Tady, Paul  
Bernardino, Hon. Yvette Roland, State  
Bar of California,  
Defendants.

Case No. 8:18-bk-10548-ES

Chapter 7

Adversary No. 8:18-ap-01065-SC

**ORDER****Hearing:**

Date: August 1, 2018  
Time: 11:00 a.m.  
Courtroom 5C  
411 W. Fourth Street  
Santa Ana, CA 92701

On August 1, 2018, the Court held a hearing on Debtor's Ex Parte Application for T.R.O. and Order to Show Cause Why a Preliminary Injunction Should Not Issue filed on July 24, 2018 [Dk. 29] (the "Application"). Appearances are as noted on the record.

The issue before the Court is whether Lenore Luann Albert-Sheridan's ("Debtor") *ex parte* application for a temporary restraining order should be granted. After consideration of oral argument of the parties at the hearing, the Application and all papers filed in connection therewith, and for the reasons stated on the record and more fully set forth below, the Court hereby DENIES Debtor's Application because Debtor

FILED &amp; ENTERED

AUG 09 2018

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY nbolte DEPUTY CLERK

1 failed to meet her burden in demonstrating that (1) she is “likely to succeed on the  
2 merits,” (2) she is “likely to suffer irreparable harm in the absence of preliminary relief,”  
3 (3) “the balance of equities tips in [her] favor,” and (4) “an injunction is in the public  
4 interest.” *See Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

5 **I. Statement of Facts**

6 Debtor filed a similar motion before Judge Smith on April 6, 2018. [Dk. 3]<sup>1</sup>. The  
7 Court denied Debtor’s motion on April 9, 2018, without a hearing, due to insufficient  
8 grounds stated. [Dk. 5]. A comparison of the original motion [Dk. 3] to the Application  
9 [Dk. 29], reveals the following additions.

10 Additions to the facts section of the Application:

11 (1) The State Bar of California (“State Bar”) found that Albert owed non-  
12 government third parties \$5000 due to unlawful detainer civil discovery sanction  
13 awards (attorney fees). [Application 5:4-8].

14 (2) On June 28, 2018, State Bar suspended Debtor’s license following the  
15 conversion of Debtor’s case to a Chapter 7 case. [Application, 5:1-3].

16 (3) Debtor lost her contingency fee award on a civil rights case because her  
17 license was suspended. [Application, 5:20-23].

18 (4) Debtor may lose her contingency fee on another case, *Noble v. Wells*  
19 *Fargo*. [Application, 5:24-27].

20 (5) Debtor lost her clients and monthly income. She also has no money to buy  
21 necessities. [Application., 5:26-27 – 6:1-3].

22 Additions to the legal argument section of the Application:

23 (1) The Ninth Circuit uses the *Winters* sliding scale test to determine if a TRO  
24 should be issued. [Application, 9:2-5].

25 (2) Under *Emmert v. Taggart* (*In re Taggart*), 548 B.R. 275 (B.A.P. 9th Cir.  
26 2016), the court should conclude that Debtor is likely to win the case because the

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28 <sup>1</sup> The case was reassigned to this Court after an order of recusal was entered on July 19, 2018 [Dk. 24].

1 attorney fees owed to private third parties is dischargeable under 11 U.S.C. § 523(a)(7).  
2 The debt to the State Bar is compensatory and dischargeable under 11 U.S.C. § 523(a)(7)  
3 because it includes court reporter and investigation fees. [Application, 10:15-21].

## 4 **II. Preliminary Injunction Standard**

5 A party may obtain a preliminary injunction by demonstrating that (1) it is “likely  
6 to succeed on the merits,” (2) it is “likely to suffer irreparable harm in the absence of  
7 preliminary relief,” (3) “the balance of equities tips in [its] favor,” and (4) “an injunction  
8 is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

9 “A party seeking a preliminary injunction must demonstrate either a combination  
10 of probable success on the merits and the possibility of irreparable injury, or that  
11 serious questions are raised and the balance of hardships tips in its favor.” *Hunt v.*  
12 *National Broadcasting Co.*, 872 F.2d 289, 293 (9th Cir. 1989). “These two formulations  
13 represent two points on a sliding scale in which the required degree of irreparable harm  
14 increases as the probability of success decreases.” *United States v. Odessa Union*  
15 *Warehouse Co-op*, 833 F.2d 172, 174 (9th Cir. 1987).

## 16 **III. Findings and Analysis**

### 17 **a) Likelihood of Success on the Merits**

18 11 U.S.C. § 523(a)(7) provides that a debt is non-dischargeable in bankruptcy “to  
19 the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a  
20 governmental unit, and is not compensation for actual pecuniary loss.” *Scheer v. State*  
21 *Bar (In re Scheer)*, 819 F.3d 1206, 1209 (9th Cir. 2016).

22 In *Scheer*, the State Bar suspended the debtor’s law license because the debtor  
23 had failed to pay an arbitration award fee to her former client and the State Bar. The  
24 court found that the compensatory debt owed to the State Bar was dischargeable and did  
25 not fall under § 523(a)(7). See *In re Scheer*, 819 F.3d 1206, 1211-1212 (9th Cir. 2016).  
26 However, courts have found debts arising from attorney discipline costs imposed by the  
27 California State Bar Court are non-dischargeable in bankruptcy pursuant to § 523(a)(7).  
28 See *State Bar v. Findley (In re Findley)*, 593 F.3d 1048, 1054 (9th Cir. 2010).

1       Here, Debtor owes \$5000 in attorney fees because of a civil discovery sanction.  
2 [Application, 5:4-8]. If the attorney fees are considered a compensatory debt, then the  
3 debt is dischargeable. *See In re Scheer*, 819 F.3d at 1211-1212. If the attorney fees are  
4 considered a disciplinary debt, then the debt is non-dischargeable. *See In re Findley*,  
5 593 F.3d at 1054. This Court finds that the attorney fees are a disciplinary debt because  
6 the debt arises from discovery sanctions relating to a motion to compel; it does not  
7 appear to be compensation for any particular pecuniary loss. Debtor alleges that the  
8 State Bar wrongly ordered her to pay attorney fees, which should have been paid by her  
9 client. [Application, 5:4-8]. However, Debtor fails to meet her burden in proving this  
10 allegation. Therefore, the Court finds that the attorney fees are disciplinary in nature  
11 and are non-dischargeable under § 523(a)(7).

12      Debtor also owes \$18,714 to the State Bar. [Application, 6:21-23]. Debtor fails to  
13 provide evidence of the State Bar's notice of fees and charges. Without such information,  
14 the Court cannot determine if the debt is compensatory or disciplinary in nature, and  
15 thus cannot weigh whether it is likely to be dischargeable. Overall, the Court finds that  
16 Debtor has failed to meet her burden of proof and that the likelihood of success on the  
17 merits is low.

18      **b) Likelihood of Suffering Immediate Irreparable Injury in the  
19           Absence of Preliminary Relief**

20      Debtor fails to meet her burden in showing that "imminent irreparable injury"  
21 will likely occur in the absence of the issuance of a temporary restraining order. Debtor  
22 references *Noble v. Wells Fargo*, a federal civil rights case, [Application, 5:24-27], and  
23 argues that because her license to practice law is suspended, she is not able to represent  
24 existing clients and earn a living. [Application, 12:19-22]. However, Debtor fails to show  
25 the *immediacy* of any *irreparable* harm.

26      Debtor also argues that the continued shutdown of the law office operations will  
27 significantly decrease the value of the estate. [Application, 13:5-8]. This argument fails  
28 because upon conversion from Chapter 13 to Chapter 7, Debtor's post-petition income

1 ceased to be property of the estate under 11 U.S.C. § 541(a)(6). *See Wu v. Markosian (In*  
2 *re Markosian)*, 506 B.R. 273, 276-77 (B.A.P. 9th Cir. 2014). The Court finds that Debtor  
3 failed to satisfy the burden of proof required to show that Debtor will likely suffer  
4 immediate irreparable injury in the absence of preliminary relief.

5 **c) Balance of Equities Tips in her Favor**

6 Debtor argues that a preliminary injunction would protect the going value of the  
7 estate. [Application, 13:21-22]. Debtor fails to meet her burden of proof in showing that  
8 the balance of equities tips in her favor for this reason because the estate is not impacted  
9 by Debtor's ability to earn post-petition income. *See In re Markosian*, 506 B.R. at 276-  
10 77.

11 **d) Public Interest**

12 The public interest is involved when "the impact of an injunction reaches beyond  
13 the parties, carrying with it a potential for public consequences." *Stormans, Inc. v.*  
14 *Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009). "In considering the public interest, [the  
15 Court] may [also] consider the hardship to all individuals . . . [and is] not limited to  
16 parties . . ." *Golden Gate Rest. Ass'n v. City of San Francisco*, 512 F.3d 1112, 1126 (9th  
17 Cir. 2008).

18 Debtor alleges that the State Bar Court violated the Fourteenth Amendment  
19 because the State Bar suspend Debtor's license without notifying Debtor. [Application,  
20 16:8-12]. Debtor failed to provide evidence in support of her allegations. Debtor also  
21 fails to show that the impact of an injunction requiring the State Bar to reinstate her  
22 license would extend beyond her. Additionally, since Debtor's case has been converted  
23 to a Chapter 7 case, Debtor's post-petition income is not the property of the estate and  
24 the estate is not impacted by Debtor's ability to earn income. *See In re Markosian*, 506  
25 B.R. at 276-77. Therefore, Debtor has failed to show that the preliminary injunction is in  
26 the public interest.

27     ///

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1           **IV. Conclusion**

2           Accordingly, for the foregoing reasons, the Application is DENIED.

3           IT IS SO ORDERED.

4           IT IS FURTHER ORDERED that this Court has certified Debtor as indigent and  
5 eligible for waiver of appellate filing fees.

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24           Date: August 9, 2018  
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24           Scott C. Clarkson  
25           United States Bankruptcy Judge

1 VANESSA L. HOLTON (111613)  
2 General Counsel  
3 ROBERT G. RETANA (148677)  
4 Deputy General Counsel  
5 SUZANNE C. GRANDT (304794)  
6 Assistant General Counsel  
7 TAREN M. FUJIMOTO (296792)  
8 Assistant General Counsel  
9 **OFFICE OF GENERAL COUNSEL**  
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11 180 Howard Street  
12 San Francisco, CA 94105-1639  
13 Telephone: 415-538-2388  
14 Facsimile: 415-538-2321  
15 Email: suzanne.grandt@calbar.ca.gov

FILED & ENTERED

AUG 09 2018

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY nbolte DEPUTY CLERK

CHANGES MADE BY COURT

10 Attorneys for Defendants Maricruz Farfan, Brandon Tady, Alex Hackert,  
11 Paul Bernardino, Hon. Yvette Roland, and The State Bar of California

12 UNITED STATES BANKRUPTCY COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 SANTA ANA DIVISION

15 In re LENORE LUANN ALBERT-SHERIDAN  
16 d/b/a LAW OFFICES OF LENORE ALBERT

17 Debtor.

18  
19 LENORE LUANN ALBERT-SHERIDAN  
20 d/b/a LAW OFFICES OF LENORE ALBERT,

21 Plaintiff,

22 v.

23 MARICRUZ FARFAN, an individual;  
24 BRANDON TADY, an individual; ALEX  
25 HACKERT, an individual; PAUL  
26 BERNARDINO, an individual; HON. YVETTE  
ROLAND, an individual; STATE BAR OF  
CALIFORNIA, a public corporation

27 Defendants.

28 Case No. SA 8:18-bk-10548-ES

Chapter 13

Adv. Proc. No. 8:18-ap-01065-SC

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS COMPLAINT**

HEARING DATE: August 1, 2018  
TIME: 11:00 AM  
COURTROOM: 5C – Fifth Floor

JUDGE: Honorable Scott C. Clarkson

1       On May 7, 2018, Defendants Maricruz Farfan, Brandon Tady, Alex Hackert, Paul  
2 Bernardino, Hon. Yvette Roland, and The State Bar of California (“Defendants”) filed a Notice  
3 of Motion and Motion to Dismiss Complaint (the “Motion to Dismiss”) [Dkt. No. 8].  
4 Debtor/Plaintiff Lenore Luann Albert-Sheridan (“Plaintiff”) opposed the Motion to Dismiss.  
5 [Dkt. No. 18].

6       On August 1, 2018, the court held a hearing on the Motion to Dismiss. Appearances  
7 were made as noted on the record. For the reasons stated on the record,

8           IT IS ORDERED that Defendants’ Motion to Dismiss is GRANTED.

9           IT IS FURTHER ORDERED that the Court has certified Plaintiff as indigent and eligible  
10 for waiver of appellate filing fees.

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23 Date: August 9, 2018

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Scott C. Clarkson  
United States Bankruptcy Judge

**FILED**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUL 17 2020

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

In re: LENORE L. ALBERT-SHERIDAN,

Debtor,

-----  
LENORE L. ALBERT-SHERIDAN, DBA  
Law Offices of Lenore Albert,

Appellant,

v.

STATE BAR OF CALIFORNIA;  
MARICRUZ FARFAN; BRANDON  
TADY; ALEX HACKERT; YVETTE  
ROLAND; PAUL BERNARDINO,

Appellees.

No. 19-60023

BAP No. 18-1222

**ORDER**

Before: PAEZ, CALLAHAN, and BUMATAY, Circuit Judges.

The panel has unanimously voted to deny Appellant's petition for panel rehearing. The full court has been advised of the petitions for rehearing en banc, (Dkt. Nos. 35 and 36), and no judge of the court has requested a vote on it. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc is therefore **DENIED**.

G

## 1 UNITED STATES BANKRUPTCY COURT

## 2 CENTRAL DISTRICT OF CALIFORNIA

3 -00-

4 In Re: ) Case No. 8:18-bk-10548  
5 LENORE LUANN ALBERT-SHERIDAN ) Chapter 7  
6 Debtor. )  
7 ) Santa Ana, California  
8 ) Wednesday, August 1, 2018  
9 ) 11:00 AM

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10 ADV#: 8:18-ap-01065  
11 LENORE LUANN ALBERT-SHERIDAN  
12 v. MARICRUZ FARFAN, ET AL.

13 #6.10 HEARING RE: MOTION TO  
14 DISMISS COMPLAINT (MOTION  
15 FILED 5/7/18);

16 #6.20 STATUS CONFERENCE  
17 HEARING RE: COMPLAINT:  
18 (1) DISCHARGEABILITY OF DEBT,  
19 (2) 11 U.S.C. SECTION 525(A)  
20 VIOLATION,  
21 (3) 42 U.S.C. SECTION 1983  
22 VIOLATION,  
23 (4) ROSENTHAL/FDCPA,  
24 (5) BUS & PROF CODE SECTIONS  
25 6103; 6140.7 AND 6086.10 ARE  
UNCONSTITUTIONAL (COMPLAINT  
FILED /4/6/18)  
(SET PER ORDER ENTERED  
7/23/18);

TRANSSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SCOTT CLARKSON  
UNITED STATES BANKRUPTCY JUDGE

## 1 APPEARANCES:

2 For the Debtor:

LENORE LUANN ALBERT-SHERIDAN, ESQ.  
Pro Se

3 For the Defendants:

SUZANNE C. GRANDT, ESQ.  
State Bar of California  
180 Howard Street  
San Francisco, CA 94111  
(415) 538-2388

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Proceedings recorded by electronic sound recording;  
transcript provided by transcription service.

24

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1 Court Recorder: JAMES LE  
2 United States Bankruptcy  
3 Court  
Ronald Reagan Federal Building  
4 411 West Fourth Street  
Santa Ana, CA 92701  
(855) 460-9641

5 Transcriber: PENINA WOLICKI  
6 eScribers, LLC  
7 7227 N. 16th Street  
Suite #207  
Phoenix, AZ 85020  
(973) 406-2250  
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Lenore LuAnn Albert-Sheridan

1                   SANTA ANA, CALIFORNIA, WEDNESDAY, AUGUST 1, 2018, 11:27 AM

2                   -00o-

3                   (Call to order of the Court.)

4                   THE COURT: Let's call all of the Lenore LuAnn Albert-  
5 Sheridan matters, 6.10 through 6.3. And one second. Let's  
6 have appearances.

7                   MS. ALBERT: Good afternoon, Your Honor. Lenore  
8 Albert, debtor.

9                   THE COURT: Ms. Albert.

10                  MS. GRANDT: Suzanne Grandt on behalf of defendants,  
11 from the State Bar of California.

12                  THE COURT: Ms. Grandt.

13                  Are there any other appearances on the telephone?  
14                  No? All right.

15                  What I'd like to do first of all is take up item  
16 number 6.3. This is in Albert-Sheridan v. Farfan, et al.,  
17 debtor's ex parte application for a temporary restraining order  
18 and order to show cause why a preliminary injunction should not  
19 issue.

20                  I have to tell you that I have read all of the papers,  
21 including the most recent filings. So Ms. Albert -- you prefer  
22 Albert and not Albert-Sheridan?

23                  MS. ALBERT: Yes.

24                  THE COURT: Ms. Albert, do you have anything to add  
25 that's not already contained in your papers? I don't want you

Lenore LuAnn Albert-Sheridan

1 to repeat what you already put into the papers.

2 MS. ALBERT: Yes.

3 THE COURT: Okay.

4 MS. ALBERT: When I was re-reading my declaration on  
5 page 25 --

6 THE COURT: Let me get --

7 MS. ALBERT: -- paragraph --

8 THE COURT: Hold on. Let me get there.

9 Okay. What docket would that be?

10 MS. ALBERT: I don't know, because I have to file mine  
11 manually, so I don't get a docket number.

12 THE COURT: Okay. What is the title of that document?

13 MS. ALBERT: Debtor's supplemental brief and  
14 declaration of Lenore Albert in support of TRO.

15 THE COURT: Got it. Okay, now you'd like me to refer  
16 to something.

17 MS. ALBERT: Page 25.

18 THE COURT: Thank you very much. Page 25. I am  
19 there.

20 MS. ALBERT: Okay. Paragraph 28 at line 21 --

21 THE COURT: One second. One second.

22 MS. ALBERT: Oh, sorry.

23 THE COURT: Let's see. "Attached hereto and fully  
24 incorporated herein as Exhibit 18 is a true and correct copy of  
25 my State Bar member profile online as of 3/20/18 showing I was

Lenore LuAnn Albert-Sheridan

1 active to practice law." Is that the item you're looking at?

2 MS. ALBERT: Yes.

3 THE COURT: Okay. How can I help you?

4 MS. ALBERT: It should say "I was not active". So I  
5 wanted to correct that for the Court.

6 THE COURT: That is hereby corrected.

7 MS. ALBERT: Thank you.

8 THE COURT: I've interlineated my copy, and I make  
9 note now that it shows that you were not active.

10 MS. ALBERT: Thank you.

11 THE COURT: Anything else I can help you with?

12 MS. ALBERT: I think that my -- since you read the  
13 supplemental brief -- I know my first -- my TRO application was  
14 very jumbled and frantic. And I apologize for that. But I  
15 believe that this Court has everything that it needs in the  
16 supplemental brief.

17 THE COURT: Very good. Would you please turn to  
18 Exhibit 20 of your supplement?

19 MS. ALBERT: Yes.

20 THE COURT: That is an exhibit, I believe you've  
21 entitled it Exhibit 20?

22 MS. ALBERT: Yes.

23 THE COURT: Can you tell me what that -- it's a two-  
24 page document, correct? Or is it more?

25 MS. ALBERT: It actually had an appendix to it, so the

Lenore LuAnn Albert-Sheridan

1 document itself was two pages; and I left off the appendix.

2 THE COURT: Okay. So we now turn to the second page  
3 of your Exhibit 20.

4 MS. ALBERT: Okay.

5 THE COURT: Okay. And by the way, this is a letter?

6 MS. ALBERT: Yes.

7 THE COURT: And what is the date of the letter?

8 MS. ALBERT: The date of the letter is June 28th,  
9 2018.

10 THE COURT: And who is it from?

11 MS. ALBERT: It is from Suzanne C. Grandt, Assistant  
12 General Counsel to the State Bar of --

13 THE COURT: Would that be the same Suzanne Grandt  
14 who's here in the courtroom today?

15 MS. ALBERT: Yes, it is.

16 THE COURT: Would you turn to the second page?

17 MS. ALBERT: Yes.

18 THE COURT: Okay. The very first complete paragraph  
19 starts with the words "Now that her case is in Chapter 7  
20 bankruptcy." Do you see that?

21 MS. ALBERT: Yes, I do.

22 THE COURT: Okay. Tell me, I've now read several  
23 times all of the papers, and I've included in my reading this  
24 sentence -- pardon me, this paragraph. How do you respond to  
25 the fact that they have told you in a letter and in their

Lenore LuAnn Albert-Sheridan

1 papers that *In re Findley*, 593 F.3d 1048, 1049, where it says  
2 disciplinary costs imposed pursuant to California Business and  
3 Professions Code 6086.10 are nondischargeable under 523(a)(7);  
4 I would like to hear your response to that.

5 MS. ALBERT: Okay. So *In re Findley* is an interesting  
6 case, because yes, they looked at this one attorney who was  
7 disciplined by the Bar and they determined that because the  
8 state legislature had added in a subparagraph in response to *In*  
9 *re Taggart* saying these costs are disciplinary in nature and  
10 nondischargeable.

11 So *In re Findley*, when they looked at that they said  
12 since the state legislature added in this subsection, now what  
13 used to be dischargeable is no longer dischargeable. So but  
14 they also said we do not overrule -- we're not overruling *In re*  
15 *Taggart*, where *In re Taggart* held the opposite.

16 My response to that is we need to look at our U.S.  
17 Supreme Court opinion and go back to what those four factors  
18 are under 523(a)(7).

19 THE COURT: And you covered those?

20 MS. ALBERT: Yes, and I covered those.

21 THE COURT: Okay. So --

22 MS. ALBERT: And then --

23 THE COURT: -- so I guess what I'm trying to do is  
24 just get -- hear from you at this point, do you believe that is  
25 the State Bar's argument?

Lenore LuAnn Albert-Sheridan

1 MS. ALBERT: What's in this paragraph, I believe, is  
2 the State Bar's argument. I just believe it's wrong.

3 THE COURT: I appreciate that. No, let me tell you, I  
4 ask this question all the time in court. And I never get as  
5 straightforward of an answer as what you've just provided me.

6 MS. ALBERT: Okay.

7 THE COURT: **And so I truly appreciate it.**

8 **So you think that Findley was decided wrongly?**

9 MS. ALBERT: I believe that it doesn't appear that the  
10 analysis was done.

11 THE COURT: Let me ask you -- let me ask you to answer  
12 my question again.

13 MS. ALBERT: Okay.

14 THE COURT: **Do you believe that In re Findley was**  
15 **decided wrongly.**

16 MS. ALBERT: **I do.**

17 THE COURT: Okay.

18 MS. ALBERT: Unless if -- I gave this Court the actual  
19 exhibit of my cost bill, which showed it was only going under  
20 6086.10(b). Now, maybe in In re Findley -- because they don't  
21 talk -- see that's the problem with In re Findley is they  
22 don't -- they don't go through the discussion. So we don't  
23 know -- we can speculate -- maybe their cost bill said we're  
24 doing this as a sanction under 6068.13 or something like that.  
25 You know, it's hard, because we just don't have the analysis in

Lenore LuAnn Albert-Sheridan

1 what Findley was actually looking at.

2 THE COURT: And why don't you have that analysis?

3 MS. ALBERT: Because the Findley court didn't go  
4 through the analysis. They started and they stopped with the  
5 state legislature amended this section, and therefore we've  
6 decided to flip our answer.

7 THE COURT: Okay. And so your analysis is that that  
8 the Ninth Circuit got it wrong in Findley?

9 MS. ALBERT: It's -- it's that we don't know. I know  
10 that if we tried to apply Findley to my case in saying that  
11 I -- saying that broadly, saying all actions where there's a  
12 cost section of 6086.10 is nondischargeable, I would say if  
13 we're going to apply it that broadly, then yes, Findley is  
14 wrong.

15 I guess so it depends on how we want to interpret  
16 Findley --

17 THE COURT: Okay.

18 MS. ALBERT: -- if we want to interpret narrowly,  
19 because it does say we're not overruling In re Taggart. And In  
20 re Taggart went the other way. I'm just saying we don't know,  
21 so we need to apply the factors. And I think when we apply the  
22 factors, we see it's clearly dischargeable in my case.

23 THE COURT: Okay, thank you very much.

24 MS. ALBERT: Thank you.

25 MS. GRANDT: Your Honor, did you want me to respond to

Lenore LuAnn Albert-Sheridan

1 Ms. Albert, or did you have a question for me? However you  
2 would like me to proceed.

3 THE COURT: Well, as I've invited everyone to do, if  
4 there's anything else you'd like to discuss other than what's  
5 in your papers, please feel free. And that would include any  
6 responses that you'd like to make with respect to my question  
7 on the paragraph that I referred to in Exhibit 20 on the TRO  
8 supplemental motion.

9 MS. GRANDT: No, Your Honor. I think it's laid out in  
10 our briefing for you. And I don't think that anything I could  
11 say would add to that.

12 I would like to point out that your order from last  
13 week stated that a reply may be made orally at the hearing.  
14 And Ms. Albert sent last night at about 11 o'clock a lengthy  
15 reply, which it sounds like you've read, which is --

16 THE COURT: I have read everything.

17 MS. GRANDT: -- which is helpful. And I appreciate  
18 that. I just wanted to say we object to that document as it  
19 was filed in violation of the order that you had set.

20 THE COURT: Well, I'm revising my order now.

21 MS. GRANDT: Okay, that's fine.

22 THE COURT: And so I'm not overruling your objection,  
23 I'm simply -- I'm simply adding that she can reply, and she  
24 did.

25 MS. GRANDT: Okay, thank you, Your Honor.

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1                   THE COURT: Yeah, anything that's going to help --

2                   MS. GRANDT: Okay.

3                   THE COURT: -- on this matter with respect to briefing  
4 is important. And I respect that.

5                   Okay, well, first of all, I'm denying the motion for  
6 TRO. It doesn't meet the criteria, and I'll send out a  
7 specific order on that in the near future.

8                   Now, as close as I can to taking it under submission  
9 without -- and still telling you that I'm denying this.

10                  Now let's move to the motion to dismiss. This is item  
11 number 6.10. Let's have appearances on that.

12                  MS. GRANDT: Suzanne Grandt on behalf of defendants,  
13 the moving party.

14                  THE COURT: Thank you.

15                  MS. ALBERT: Good afternoon, Your Honor. Lenore  
16 Albert, debtor.

17                  THE COURT: All right. I have not listed a tentative.  
18 I'd like to hear from the moving party.

19                  MS. GRANDT: Your Honor, we feel that this is one of  
20 Ms. Albert's -- I would say it's actually her second attempt to  
21 interfere with her disciplinary proceedings. The bankruptcy  
22 matter is only involved in the first two causes of action that  
23 Ms. Albert brings, and that's based on the dischargeability of  
24 the debt as well as the violation of 525.

25                  I hope it was clear in the papers, but I know the

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1 history of this case is a little confusing, because she was  
2 originally in Chapter 13. So because the State Bar did want  
3 to, of course, follow the law, and we felt that there was a  
4 potential violation of Section 525 based on the broader  
5 dischargeability of Chapter 13, the State Bar did reinstate her  
6 license.

7 However, I want to make clear that the California  
8 Supreme Court maintains inherent authority over discipline,  
9 admissions, regulation of attorneys. The act the State Bar did  
10 was taken despite that authority, because there was a  
11 contradiction. It was a federal preemption issue. Essentially  
12 the Supreme Court had this order. It was a state court --  
13 Supreme Court order suspending her. And then that violated  
14 bankruptcy law.

15 So the State Bar took action on its own. And however,  
16 when the case was converted, the State Bar then put her back  
17 on -- put her suspension back. Essentially, the suspension was  
18 always still there, but there was a period of time where we  
19 felt due to her bankruptcy, it was not valid.

20 So now that she's been back in Chapter 7, we've -- I  
21 don't want to go through too many of the arguments about the  
22 dischargeability; I think you've addressed some of them with  
23 the Findley case -- the other money that's a condition of her  
24 reinstatement is an amount -- an amount of sanctions, I think  
25 it's approximately 8,000 dollars. I'm estimating the amount.

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1 It's 5,000 dollars plus interest. Ms. Albert has estimated it  
2 to being a little over 8,000 dollars.

3 Those were sanctions awarded by a superior court for  
4 violating a discovery order. The California State Bar brought  
5 charges against Ms. Albert for violating Rule of Professional  
6 Conduct for willful violation of court order. It was not  
7 acting as a debt collector. That's not the State Bar's job.  
8 The State Bar brings action to discipline attorneys who commit  
9 acts of misconduct.

10 And the Supreme Court, then in an order dated December  
11 13th, 2017, suspended Ms. Albert for a year based on her  
12 failure to pay these discovery sanctions, which was a willful  
13 violation of a court order. However, Ms. Albert then moved to  
14 reconsider that, so the court then extended the time when the  
15 order would become valid.

16 So the order actually became valid on February 14,  
17 2018. That's the effective date of the order under the  
18 California Supreme Court's rules. As I laid out about the  
19 history of the Bar -- and it is a little confusing, so if you  
20 have any questions about the Bar and how it's worked, I'd be  
21 happy to answer it.

22 The State Bar itself --

23 THE COURT: Why do I have to be fingerprinted again?

24 MS. GRANDT: Oh. Well, that's -- I could go into that  
25 later. But that's a whole other issue.

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1           But the Supreme Court is the one that enters the  
2 discipline. So the Supreme Court is the one that sends Ms.  
3 Albert the orders. Like the State Bar can just recommend the  
4 discipline. So once it goes to the Supreme Court, they're the  
5 ones that then need to notify Ms. Albert.

6           She makes a very big deal about how she didn't receive  
7 notice of her suspension. However, the State Bar itself does  
8 not notify people. The Supreme Court does. So her status, I  
9 think, was updated a little later on the website. That does  
10 not mean she wasn't suspended on February 14th .

11           So then the issue was, after her thirty-day actual  
12 suspension, the only conditions were these sanctions and  
13 disciplinary costs. So I went over the disciplinary costs.

14           The sanctions are these discovery abuse -- discovery  
15 sanctions -- I don't want to use the word "abuse". So in the  
16 context of -- the context of their dischargeability, although  
17 we feel it's not -- it doesn't really matter, because she still  
18 owes these disciplinary costs as a condition of her suspension,  
19 however, we believe the sanctions are also nondischargeable in  
20 Chapter 7, not Chapter 13, because they fall under a fine,  
21 penalty, or forfeiture as well. And that's based on the Kelly  
22 v. Robinson analysis and the fact that they are part of  
23 restitution, rehabilitation to the -- rehabilitation. They're  
24 not technically restitution to a client, but they're the same  
25 public interests.

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1 I don't want to go too much into detail about her  
2 other causes of action. We believe they're meritless. Her  
3 third cause of action -- I'll just go in order of her causes of  
4 action --

5 THE COURT: Well, what's the first cause of action?

6 MS. GRANDT: So the first cause of action is the --  
7 and let me just get her complaint -- is the dischargeability of  
8 the debt. So that's whether the debt is dischargeable or not.  
9 And I think that's, as I said, covered at length, and you've  
10 discussed Findley, and I just talked about the sanctions.

11 The second cause of action is the 525 case. And  
12 they're related. And so our argument is that since the debt is  
13 nondischargeable, we're clearly not withholding her license  
14 based on the nonpayment of dischargeable debt. So that's the  
15 second cause of action.

16 The third cause of action is the 1983 claim. This is,  
17 we believe, barred under --

18 THE COURT: Who's the 1983 claim against?

19 MS. GRANDT: The 1983 claim is against the individual  
20 defendants.

21 THE COURT: Excuse me. May I ask a favor?

22 MS. GRANDT: Yeah.

23 THE COURT: Are you on a -- do you have to go  
24 somewhere real soon?

25 MS. GRANDT: No.

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1 THE COURT: Why are you talking so fast?

2 MS. GRANDT: I just talk fast. I'm sorry.

3 THE COURT: Well, it's not helpful.

4 MS. GRANDT: I am -- I apologize.

5 THE COURT: Take a breath.

6 MS. GRANDT: I'm sorry.

7 THE COURT: That's --

8 MS. GRANDT: That's just my natural speech.

9 THE COURT: Well, we're going to -- it's not my  
10 natural hearing.

11 MS. GRANDT: I apologize.

12 THE COURT: And the problem --

13 MS. GRANDT: I apologize.

14 THE COURT: -- is that I really do want to understand  
15 everything you're saying.

16 MS. GRANDT: Sure. I'm sorry.

17 THE COURT: So if you'd just slow down.

18 MS. GRANDT: Okay.

19 THE COURT: Take a deep breath. Let's go back to the  
20 1983 claim.

21 MS. GRANDT: Okay.

22 THE COURT: Okay? Who is it against?

23 MS. GRANDT: It is against the individual defendants.  
24 Those are Ms. Maricruz Farfan; she is an employee in the office  
25 of probation. Mr. Brandon Tady; he is a State Bar prosecutor

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1 in the Office of the Chief Trial Counsel, he's an individual  
2 who does -- is in charge of prosecuting these discipline  
3 proceedings. Mr. Alex Hackert is also a prosecutor in the  
4 Office of Chief Trial Counsel. Mr. Paul Bernardino is an  
5 individual who works in the Office of General Counsel. And he  
6 had defended the State Bar in Ms. Albert's prior civil action  
7 when she was first disciplined; she sued the bar.

8 Ms. Yvette Roland is the State Bar Court judge -- a  
9 Hearing Department judge who signed Ms. Albert's initial  
10 disciplinary order. And those are the individuals that she has  
11 brought he 1983 claim against.

12 THE COURT: And what is the 1983 claim about?

13 MS. GRANDT: So I would argue it's not that clear.

14 THE COURT: No, no, no.

15 MS. GRANDT: But I --

16 THE COURT: But you're missing my question.

17 MS. GRANDT: Oh, yeah.

18 THE COURT: Tell me under what circumstances would  
19 someone bring a 1983 action?

20 MS. GRANDT: When an individual -- a government  
21 official violates a Constitutional right.

22 THE COURT: Okay. And what Constitutional right is  
23 being alleged in this complaint?

24 MS. GRANDT: Her license to practice law was taken  
25 away.

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1                   THE COURT: I'm sorry?

2                   MS. GRANDT: She's alleging that they took away her  
3 license to practice law without proper notice.

4                   THE COURT: Okay.

5                   MS. GRANDT: Unless -- I mean, I believe that's what  
6 she's alleging based on my reading of the papers.

7                   So we brought up a number of defenses. One is that  
8 all of these individuals have immunity. The prosecutors  
9 have -- and the judges -- have absolute immunity. The case law  
10 is very clear that when State Bar judges and prosecutors are  
11 acting in that capacity, they're entitled to absolute judicial  
12 immunity.

13                  And although the probation officer was not involved in  
14 her actual prosecution, her allegations alleged that she worked  
15 with -- as a conspiracy to take her license away.

16                  And then the claims are also barred because she does  
17 not adequately state a claim, because the State Bar, as I  
18 explained earlier, does not actually take anybody's license.  
19 They only make recommendations to the California Supreme Court,  
20 which then conducts its own review to decide whether to impose  
21 discipline. Only the California Supreme Court can decide  
22 whether to suspend somebody or disbar somebody. And that's --  
23 there's a very good case on it called In re Rose in 2000 that  
24 discusses that.

25                  And then she also doesn't state a claim because she

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1 can't allege any acts that any of these individuals actually  
2 took that violated any rights --

3 THE COURT: Don't pound the table.

4 MS. GRANDT: Sorry. She can't allege any acts by  
5 these individuals they actually took that violated a right, so  
6 it doesn't meet the basic pleading standards.

7 THE COURT: Okay.

8 MS. GRANDT: And that's our response to the 1983  
9 claims.

10 THE COURT: And what's **fourth cause of action?**

11 MS. GRANDT: The **Rosenthal FDCPA** claim. And I believe  
12 she's alleging here that the State Bar -- or the individual  
13 defendants are acting as debt collectors on behalf of a number  
14 of individuals. And by bringing State Bar disciplinary  
15 proceedings against her, both the one I just spoke about as  
16 well as now she has new discipline that's proceeding right now,  
17 **they're improperly using the State Bar to collect the debt** --  
18 that's her fourth cause of action -- which violates the  
19 Rosenthal Act, state law, and the Fair Debt Collection  
20 Practices Act under federal law.

21 And our response to that is we have the same  
22 **immunities**, as I just said, and as well as any claim that her  
23 current disciplinary proceedings are being done improperly is  
24 barred on the grounds of **Younger abstention**, which is a  
25 judicial doctrine that says that federal courts cannot

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1 interfere with ongoing state court proceedings, as well as the  
2 fact that the State Bar is not a debt collector -- that's  
3 probably our strongest argument -- or no employees can be  
4 considered debt collectors. The State Bar is not trying to  
5 collect a debt; they're not acting on behalf of the client.  
6 They are bringing a quasi-criminal action because of Ms.  
7 Albert's alleged misconduct. So it doesn't meet the elements  
8 of being a debt collector under either the Rosenthal Act or the  
9 FDCPA. That's our argument for that.

10 And then the last --

11 THE COURT: When a --

12 MS. GRANDT: Yes.

13 THE COURT: -- when a state suspends a driver's  
14 license for failure to pay child support, is the state -- do  
15 you have any cases where the Rosenthal Act has been applied or  
16 there's been an analysis that the suspension of a driver's  
17 license in California, because of failure to pay the child  
18 support that's in arrears, was somewhat of a violation of the  
19 Rosenthal Act or the Fair Debt Collection Practices Act?

20 MS. GRANDT: I don't, Your Honor. I didn't look at  
21 those. In this case, though, the State Bar is not -- is not  
22 bringing an action to get money back from somebody or saying we  
23 want to --

24 THE COURT: I understand.

25 MS. GRANDT: -- get your money. So to answer your

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1 question, no, I didn't --

2 THE COURT: But I just wanted to --

3 MS. GRANDT: -- look at the cases about that.

4 THE COURT: -- finish the circle on that?

5 MS. GRANDT: Oh, yeah. No, but to answer your  
6 question, I do not. I'm --

7 THE COURT: Okay. And the **fifth cause of action?**

8 MS. GRANDT: So she's alleging that a series of state  
9 **statutes are unconstitutional.** The first one is the B&P Code  
10 **6103,** which was the one that she was disciplined under. And  
11 that's violation of a court order. The next one is **6140.7** and  
12 **6086.10.** And she's alleging those are both statutes that talk  
13 about the disciplinary costs she was just referring to.  
14 6086.10 states that any order of disbarment or suspension must  
15 include a -- **must** include the payment of costs for bringing  
16 that action. That's 6086.10. And 6140.7 says that those costs  
17 must be paid as a **condition of reinstatement.**

18 I should point out, and I think we emphasize in the  
19 papers, there is **an ability for attorneys who are indigent to**  
20 **seek a waiver,** a payment plan, or extension of time to pay  
21 those costs, such that they can be reinstated and still be  
22 paying off those costs if they make the proper motions in State  
23 Bar Court under the State Bar rules.

24 Our response to this pleading -- to this cause of  
25 action is that this is barred by the **Rooker-Feldman doctrine,**

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1 because she is bringing these as-applied challenges to these  
2 statutes, and she had the opportunity and in fact did raise  
3 these Constitutional challenges in -- before the California  
4 Supreme Court, and the California Supreme Court denied her  
5 petitions. And since there's a final state court order, to  
6 have this court then look at the same issue would be improper  
7 under the Rooker-Feldman doctrine.

8 THE COURT: In the State Bar's opposition -- actually  
9 it was the entire defendant group --

10 MS. GRANDT: Um-hum.

11 THE COURT: -- to the ex parte application for a TRO,  
12 a statement is made on page 2 lines 13 through 19 that there is  
13 a state law already in place that provides recourse for  
14 indigent attorneys who are unable to pay disciplinary costs in  
15 full.

16 MS. GRANDT: Um-hum.

17 THE COURT: Do you know if -- first of all, is that --  
18 I'm sure that's accurate. But do you have any working  
19 knowledge of the process?

20 MS. GRANDT: Yes. It's in the State Bar Rules of  
21 Procedure, Rule 5.130. There's instructions that tells the  
22 attorney they need to -- I'm just finding it -- that says that  
23 they must -- "if costs have been assessed against a member  
24 under rule 5.129, the member may move for relief, in whole or  
25 in part, from the order assessing costs, for an extension of

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1 time to pay costs, or for the compromise of a judgment obtained  
2 under Business and Professions Code 6086.10(a) on grounds of  
3 hardship, special circumstances, or other good cause. The  
4 motion must be served on the Office of the Chief Trial Counsel  
5 under rule 5.26."

6 And then: "If the motion is based, in whole or in  
7 part, on financial hardship, it must be filed as soon as  
8 practicable after the circumstances giving rise to the  
9 financial hardship become known and be accompanied by the  
10 member's completed financial statement in the form prescribed  
11 by the court."

12 THE COURT: Now, with respect to the first and second  
13 causes of action, the discharge of the debt and the 525  
14 allegation -- the violation of 525, which is the anti-  
15 discrimination aspect of the Bankruptcy Code, let's make it  
16 clear to me what items you believe are nondischargeable that  
17 have been assessed against Ms. Albert.

18 MS. GRANDT: We believe that --

19 THE COURT: And slow down.

20 MS. GRANDT: Sorry -- the disciplinary costs which  
21 were rendered under Business & Professions Code Section 6086.10  
22 in the amount of approximately 18,000 dollars -- I call --

23 THE COURT: How much exactly?

24 MS. GRANDT: I don't know if I have the exact amount,  
25 Your Honor.

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1                   THE COURT: Ms. Albert, do you know?

2                   MS. ALBERT: I'm not going to guess, but yes, I can  
3 get that for you, Your Honor.

4                   MS. GRANDT: Oh, she says in the complaint, if you  
5 accept that as true, 18,714 dollars.

6                   THE COURT: Okay. And I believe that's -- that  
7 assessment is one of the exhibits --

8                   MS. ALBERT: Yes, it is.

9                   THE COURT: -- in her pleadings. Would you please  
10 help us out here and point out the exhibit number?

11                  MS. ALBERT: Exhibit 21 to the debtor's supplemental  
12 brief and declaration of Lenore Albert in support of TRO.

13                  THE COURT: Thank you. Okay, Exhibit 21.

14                  (Pause.)

15                  THE COURT: Was that document filed with the State Bar  
16 Court on August 9, 2017?

17                  MS. ALBERT: Yes, it was, Your Honor.

18                  THE COURT: So I just wanted to make sure that that's  
19 the document. And it does look like it's 18,714 dollars.

20                  And let me ask you this. Is there another assessment,  
21 cost, penalty, fine, charge that is alleged to be owed by Ms.  
22 Albert in any form, that is, in your view, nondischargeable?

23                  MS. GRANDT: Yes, the money she owes as the discovery  
24 sanctions in the amount of -- she -- it's 5,738 dollars plus  
25 interest. And she alleges that that amount is, with the

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1 interest, I'm assuming, is 8,929 dollars.

2 THE COURT: I'm sorry. You're talking much too fast.

3 MS. GRANDT: Oh, sorry. She --

4 THE COURT: And I need to write this down.

5 MS. GRANDT: Okay, so she alleges that the amount is  
6 5,738 dollars plus interest. And in the complaint she states

7 that it is \$8,929.27.

8 THE COURT: And do you know which number is right?

9 MS. GRANDT: Well, I think that's with the interest,  
10 I'm assuming. That's her number. So I can't speak --

11 THE COURT: Well, you're the State Bar.

12 MS. GRANDT: Right.

13 THE COURT: Okay. Your job is to --

14 MS. GRANDT: Right.

15 THE COURT: -- tell me -- tell her --

16 MS. GRANDT: Right.

17 THE COURT: -- if she had the -- if could write a  
18 check today --

19 MS. GRANDT: Right.

20 THE COURT: -- how much would she write to satisfy  
21 these sanctions.

22 MS. GRANDT: I would need to find out from the finance  
23 department.

24 THE COURT: So you don't know?

25 MS. GRANDT: Not right now.

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1                   THE COURT: Okay. And these are all based upon a  
2 document that's in the record?

3                   MS. GRANDT: Yes, that's Exhibit 7 to my declaration  
4 to the motion to dismiss, which is the California Supreme Court  
5 order.

6                   THE COURT: Okay. Is **there another, in your view,**  
7 **nondischargeable obligation that is owing by Ms. Albert?**

8                   MS. GRANDT: **No.**

9                   ~~THE~~ COURT: Okay. So you believe that the  
10 disciplinary cost of 18,714 dollars and the discovery sanctions  
11 of between 5,000 -- well, 5,738 dollars plus interest, which  
12 may have accrued it up to about 8,900 dollars, those items are,  
13 in your view, nondischargeable?

14                  MS. GRANDT: Yes.

15                  THE COURT: Okay. And tell me why Ms. Albert's  
16 analysis of Findley is, in your view, incorrect?

17                  MS. GRANDT: Well, Findley is Ninth Circuit precedent  
18 that looked at an almost identical situation and looked at the  
19 statute in which these costs were awarded under, which is  
20 6086.10, and they stated, due to the language that the  
21 legislature had added, **it made clear that these costs were as**  
22 **punishment for the benefit of -- for public protection**  
23 **benefits.** I don't have the exact language.

24                  And the Findley court looked at that, and they said,  
25 oh well, it's clear now that that would fall in the exception

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1 of dischargeability under 11 U.S.C. 523(a)(7) for fine,  
2 penalty, or forfeiture.

3 So you have a Ninth Circuit case that looked at this  
4 exact same statute, costs were awarded under the same exact  
5 statute, and that case is binding on this court. **So I don't**  
6 **think Taggart is still good law.** I think in this context, I  
7 think they said that because of these amendments that Taggart  
8 had found the opposite, and now they said since Taggart the  
9 legislature responded by amending the statute.

10 THE COURT: Now, let me appreciate your understanding  
11 of Ms. Albert's discussion of variances of specific California  
12 Code sections -- I guess it's the Business & Professions Code  
13 sections and under which the costs were assessed in her  
14 particular case, and the costs that were assessed in the  
15 Findley case.

16 I listened to her make the distinction. I'd like your  
17 take on that.

18 MS. GRANDT: I don't understand -- **there was no**  
19 **distinction.** **Every case there's a bill of costs submitted.**  
20 **They're all the same.** **It's the costs that are submitted for**  
21 **discipline.**

22 THE COURT: Yes, but you heard her say --

23 MS. GRANDT: I did, but --

24 THE COURT: -- there was a distinction.

25 MS. GRANDT: -- I -- I did. But I -- she has no -- as

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1 to my knowledge -- obviously I don't have every order in front  
2 of me, but there shouldn't have been a difference. And I can't  
3 speak to what was in the Findley case. **I haven't seen that**  
4 **order.** **But the costs were awarded under that statute.** **It's a**  
5 **bill of costs.** **Here we also have a bill of costs awarded under**  
6 **that statute.**

7 I don't see any reason that the Findley case, there  
8 would have been anything in there to make the case different.  
9 These are -- I mean, I've seen many of these. These are bills  
10 that the State Bar processes. They're not -- they don't have  
11 reasoning in them.

12 The Supreme Court's the only one that can make the  
13 reasoning, so --

14 THE COURT: Now, the legislature, did it specifically  
15 cite a specific bill of -- not a bill of sale -- a bill of cost  
16 statute or rule or anything that could distinguish one from  
17 another --

18 MS. GRANDT: Um --

19 THE COURT: -- for instance, a bill of costs in the  
20 Findley matter versus the bill of costs that was assessed which  
21 is Exhibit 21?

22 MS. GRANDT: **No.** And in fact, I would argue it would  
23 be inappropriate if they were different, because there are  
24 State Bar rules and statutes that say it's -- the statute  
25 itself, 6086.10 says every order will have a cost associated

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1 with it in every disbarment or suspension. And that's supposed  
2 to be set. And if there was something that said these are  
3 imposed for this reason or these are imposed for that reason, I  
4 don't see how that would -- that would be inappropriate,  
5 because only the Supreme Court can impose costs for other  
6 reasons, if that makes sense.

7 THE COURT: Well, you're making the argument.

8 MS. GRANDT: Like I just -- I don't think I unders --  
9 I guess I don't understand her argument. I don't see why a  
10 bill of costs would have different language in it. That  
11 doesn't make any sense. These are bills of costs submitted  
12 pursuant to a statute, and there's a State Bar Rule of  
13 Procedure that actually talks about how those -- the bill of  
14 costs are developed and represented and given to people. And  
15 there's all this state law -- there's all this procedure about  
16 it. It's Rule 5.129 talks about how those costs are created.  
17 A certificate of assessment of costs, and cost certificates are  
18 submitted with a record, and there's the whole explanation of  
19 how those are supposed to be done.

20 So there's procedures in place. So I just don't  
21 understand why in Findley there were -- it would be possible to  
22 have it different -- done differently.

23 THE COURT: So you're relying on Findley to make the  
24 determination, from your point of view, that the disciplinary  
25 cost of 18,714 is nondischargeable?

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1 MS. GRANDT: Yes.

2 THE COURT: And it's nondischargeable because of the  
3 state law?

4 MS. GRANDT: Yes.

5 THE COURT: Okay.

6 MS. GRANDT: And the Ninth Circuit interpretation of  
7 that state law.

8 THE COURT: Okay. Now, let's move to the discovery  
9 sanctions. Just tell me, first of all, who -- if Ms. Albert  
10 won the lottery tomorrow -- or today -- yesterday, and she had  
11 her check today, who would she write the check to for the  
12 discovery sanctions?

13 MS. GRANDT: So as of now, it would be written to that  
14 third party -- let me get their names. They're Francis  
15 Lantieri, Gray Schneider, and 10675 South Orange Park  
16 Boulevard.

17 THE COURT: Okay. And the discovery sanctions would  
18 be written to a third party, not to the State of California,  
19 not to the State Bar, to a third party?

20 MS. GRANDT: Correct. The only caveat is, we do have  
21 a client security fund. So if those -- I don't know -- it's a  
22 different department -- but if they had made an application to  
23 our client security fund to get the money, we have a way so  
24 victims can get money right away from the bar, and in that  
25 case, she would then be liable to the client security fund.

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1                   THE COURT: But you don't have any evidence of that?

2                   MS. GRANDT: No, I don't.

3                   THE COURT: Okay. So now, you believe that the -- no.  
4 I'll ask you directly. Why are the discovery sanctions payable  
5 to a third party and not to the court or the clerk or the State  
6 Bar, which wasn't the party in that matter -- why are those  
7 nondischargeable?

8                   MS. GRANDT: Because those are similar to restitution  
9 awarded in criminal cases, which in Kelly v. Robinson, was held  
10 to be nondischargeable. These are something the court has  
11 awarded due to her violation of -- violation of a court order.  
12 It's part of her punishment. It's part of her -- it's part of  
13 a court's order saying she needs to do these things because of  
14 her misconduct.

15                  And in that case, it's not -- it goes away from just  
16 being a typical discovery sanction. Now you have a court  
17 awarding it as part of a misconduct award.

18                  THE COURT: Well, let's back up a few seconds.

19                  There are times when parties are in front of me and  
20 there's been what I consider an unnecessary delay in turning  
21 over documents, as an example. And I then ask the question,  
22 why didn't you turn over the documents as I asked you to do the  
23 last hearing? Well, I had to go off on a vacation. Okay. But  
24 have you turned them over yet? No. And thus we have a  
25 hearing. Yes.

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1                   And so I then say, well, first of all, I'm going to  
2 fee shift. I'm going to sanction you. And then I turn to the  
3 other counsel and say how much have you incurred to have to  
4 come here to listen to the fact that you didn't turn over these  
5 documents -- that they didn't turn over the documents to you  
6 because they went on vacation? 1,450 dollars.

7                   Okay. I'm going to order you, within thirty days, to  
8 pay the sanction of 1,430 (sic) dollars to the other side. And  
9 that will cover their expenditures for having to even be in  
10 front of me, and they deserve hundreds of more dollars just  
11 having to be in front of me. People should be paid to be in  
12 front of me. It's horrible.

13                  But the point is, that that's fee shifting. Okay?  
14 Tell me why the discovery sanctions in that particular case  
15 weren't fee shifting?

16                  MS. GRANDT: Well, they might have been, in that  
17 context.

18                  THE COURT: No, no, tell me what evidence you have --  
19 this is your motion to dismiss.

20                  MS. GRANDT: Right. But --

21                  THE COURT: Okay, and you're trying to dismiss a  
22 complaint to determine the dischargeability of the sanctions,  
23 discovery sanctions, correct?

24                  MS. GRANDT: Well, I --

25                  THE COURT: Answer my question.

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1 MS. GRANDT: Well, yes.

2 THE COURT: Yes, you are trying to dismiss a cause of  
3 action that has, as part of it, a determination -- a request  
4 for a debtor -- by a debtor to determine whether discovery  
5 sanctions that were awarded to a third party against her by a  
6 state court should or shouldn't be dischargeable.

7 MS. GRANDT: Your Honor, I think that there's a little  
8 confusion that I'd like to clear up. We're not saying that --  
9 we're not trying to determine if the discovery sanctions are  
10 dischargeable in the context of the state court that awarded  
11 them. I'm saying that they're nondischargeable in the context  
12 of the California Supreme Court awarding them as part of her  
13 discipline.

14 So I would argue that they could -- I don't care if  
15 they're dischargeable in superior court as a fee shifting.  
16 That could very well be.

17 THE COURT: What do you mean in superior court?

18 MS. GRANDT: That was where they were awarded as a  
19 discovery sanction.

20 THE COURT: Well, I understand that. And the --

21 MS. GRANDT: Yeah, so they very well could be  
22 dischargeable, and that's not what we'd base the analysis on.  
23 Our analysis is on whether these costs awarded by the  
24 California Supreme Court as part of --

25 THE COURT: "These costs", you mean the sanctions?

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1 MS. GRANDT: -- her discipline. Yeah, but they  
2 weren't -- they were awarded as discipline for failure to  
3 willful -- willful disobedience of a court order under  
4 California Business & Professions Code 6103. **They were awarded**  
5 **by the California Supreme Court as punishment, not as a fee**  
6 **shifting for discovery. It takes it into a different context.**

7 THE COURT: And show me where, in the papers, that  
8 exists -- in your papers, show me where that exists.

9 MS. GRANDT: It's in the Supreme Court order that  
10 says --

11 THE COURT: Show me -- tell me where it is.

12 MS. GRANDT: **Exhibit 7 to my declaration.**

13 THE COURT: One second.

14 MS. GRANDT: The California Supreme Court order,  
15 Exhibit 7.

16 THE COURT: Well, you just have to be patient.

17 MS. GRANDT: Sure.

18 THE COURT: I have your declaration in front of me.

19 MS. GRANDT: In the -- so if you go to Exhibit 7.

20 THE COURT: That's docket number 37?

21 MS. GRANDT: No, **it's docket number 9.** I apologize.  
22 It's the -- my declaration to our motion to dismiss. So it's  
23 docket number 9.

24 THE COURT: Okay, one second, please.

25 (Pause.)

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1 THE COURT: Docket number 9.

2 MS. GRANDT: Um-hum. And it's Exhibit 7.

3 THE COURT: 7?

4 MS. GRANDT: Yes.

5 THE COURT: One second, please.

6 (Pause.)

7 MS. GRANDT: So --

8 THE COURT: Stand with me here for a second.

9 You violated my order, and therefore I'm going to  
10 sanction you 5,000 dollars. Okay. You violated my order, and  
11 you're going to be suspended until you pay those sanctions that  
12 were ordered by the superior court back in 2012. Do you see  
13 the distinction?

14 MS. GRANDT: I do. I think --

15 THE COURT: Okay, now tell me -- I'm reading this as  
16 well as you are. Tell me, why does section 1(a) of the  
17 California Supreme Court decision of December 13, 2017 say  
18 you're going to pay the 5,000 dollars, this is new sanctions.  
19 You violated that order, and therefore are going to pay that  
20 money because of your violation; compared to, you will remain  
21 suspended until this condition is satisfied. You pay those  
22 sanctions -- and this is in 1(a) -- you pay those sanctions  
23 that were already awarded on August 31, 2012. Do you  
24 understand my distinction? Let's not try to over-lawyer this.  
25 Do you understand the difference?

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1 MS. GRANDT: I do, but these weren't -- these aren't  
2 new sanctions. Think about it as --

3 THE COURT: That's the point.

4 MS. GRANDT: Well, think about --

5 THE COURT: They're not new sanctions.

6 MS. GRANDT: But they're not new sanctions, but  
7 they're part of her discipline. They're saying that --

8 THE COURT: Let me -- stop. The sanctions themselves  
9 had to be paid, correct?

10 MS. GRANDT: In which context? They have to be paid  
11 in order for her license to be reinstated.

12 THE COURT: Well, the week -- a week after the  
13 Superior Court of the State of California awarded the sanctions  
14 on August 31, 2012, suppose she filed Chapter 7 September 6,  
15 2012. Okay? Would those be dischargeable or nondischargeable?

16 MS. GRANDT: I don't have enough information about her  
17 superior court case. I --

18 THE COURT: Well, I don't either.

19 MS. GRANDT: But I'm asking you the --

20 THE COURT: And it's your motion to dismiss.

21 MS. GRANDT: Right. But I'm telling you that that  
22 doesn't matter for this. It's a -- you can look at -- there's  
23 a Brookman case -- a California Supreme Court case that talks  
24 about how it's different. This is a condition of her  
25 suspension. So think about it as in a criminal case with

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1 **restitution.**

2 You might steal money from somebody, and somebody  
3 might bring a civil case for that money, and that money might  
4 be dischargeable in that civil case. But if the criminal court  
5 said --

6 THE COURT: Well, let's back that up. Restitution in  
7 a criminal case. I'm now --

8 MS. GRANDT: Yes.

9 THE COURT: -- the superior court judge in a case  
10 where there was as Ponzi scheme, and I say you stole 10,000  
11 dollars from Widow Smith. I order you, besides going to jail,  
12 to pay Widow Smith 10,000 dollars back.

13 MS. GRANDT: Right.

14 THE COURT: Would that 10,000 dollars -- and that's  
15 restitution.

16 MS. GRANDT: Restitution.

17 THE COURT: Would that restitution award be  
18 dischargeable or nondischargeable?

19 MS. GRANDT: It would be nondischargeable.

20 THE COURT: Okay, why?

21 MS. GRANDT: Because Kelly v. Robinson talks about how  
22 that exact -- restitution in criminal proceedings benefit the  
23 public protection, and they are -- they're the purpose of a  
24 fine, penalty, or forfeiture, for purposes of government  
25 protection.

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1                   THE COURT: Okay.

2                   MS. GRANDT: And it's the same thing here.

3                   THE COURT: Now the superior court judge says I really  
4 don't like it that you stonewalled and you've caused these  
5 people to come back and -- come back and have another hearing,  
6 and it's cost them 2,500 dollars to come back and send their  
7 lawyer to try to get documents that I've already asked you to  
8 send. You're going to pay their legal fees in the next thirty  
9 days, 2,500 dollars. Dischargeable or nondischargeable?

10                  MS. GRANDT: Like I said, I can't make a legal  
11 determination about dischargeability or not --

12                  THE COURT: And yet you want me to.

13                  MS. GRANDT: Well, but I'm saying they're not -- I  
14 don't know -- I feel like I'm not -- either not -- I think it's  
15 laid out very nicely in our brief, is that these are not -- it  
16 doesn't matter whether it was dischargeable or not in the  
17 context of being a discovery sanction in superior court.

18                  THE COURT: It doesn't matter if it's dischargeable or  
19 not.

20                  MS. GRANDT: In the context of --

21                  THE COURT: Okay, so let's --

22                  MS. GRANDT: -- the superior court. In the context  
23 of --

24                  THE COURT: I'm not asking you for that.

25                  MS. GRANDT: That's what you just asked me.

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1                   THE COURT: Well, then I'm asking -- you've told me  
2 that the Supreme Court of the United -- of California has  
3 issued new sanctions.

4                   MS. GRANDT: It's not a new sanction. It's part of  
5 her -- it's part of her --

6                   THE COURT: And that's --

7                   MS. GRANDT: -- it's part of her --

8                   THE COURT: -- I'm agreeing with you entirely.

9                   MS. GRANDT: -- discipline.

10                  THE COURT: **It's not a new sanction. These are old**  
11 **sanctions.**

12                  MS. GRANDT: But they have to be paid as part -- so  
13 for instance -- it has to be paid as part of her discipline,  
14 though. So for instance, when someone commits restitution -- if  
15 someone stole money from a client, and they were awarded -- and  
16 a civil court says you have to pay back that money, Mr. Smith,  
17 because you stole money from a client; the State Bar often --  
18 and it happens all the time -- says you have to pay back that  
19 money to your client as part of your discipline. And in that  
20 case, it becomes a part of the punishment.

21                  THE COURT: So the distinction is that in my scenario  
22 that I've laid out for you -- various scenarios -- if the State  
23 Supreme Court doesn't get involved and say that you're being  
24 suspended until you pay money to a third party, if they say it,  
25 and they add you're being suspended until you pay, it's

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1 nondischargeable, but you're not clear whether or not it would  
2 be dischargeable or not with respect to a superior court judge  
3 doing it in the first place.

4 MS. GRANDT: Right. And I don't think it matters.  
5 That's my point. I think it only matters the fact that the  
6 Supreme Court put this as part of her discipline.

7 THE COURT: So the distinction is that once the  
8 California Supreme Court says you will remain suspended until  
9 those conditions, i.e., payment, accrue -- occur --

10 MS. GRANDT: Right.

11 THE COURT: Now, let me ask you, remember we talked  
12 earlier about the process of getting relief. So I take it that  
13 you're wrong, then, that the state program to allow indigent  
14 attorneys to not have to pay sanctions --

15 MS. GRANDT: I didn't say sanctions --

16 THE COURT: Those are costs.

17 MS. GRANDT: I didn't say sanctions. It's costs.

18 THE COURT: Those are costs only.

19 MS. GRANDT: I didn't say sanctions. It's only  
20 disciplinary costs.

21 THE COURT: Okay. So is there any way for an -- is  
22 there any way for an indigent member of the California State  
23 Bar who has been suspended because they didn't pay, and then  
24 get an order against them saying you don't get your license  
25 back until you pay -- is there any way that they can escape

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1 that problem by going forward through a program of mediation  
2 and negotiation?

3 MS. GRANDT: I believe they -- during the discipline  
4 there might be situations where they could talk to the  
5 prosecutors.

6 THE COURT: But it's already too late.

7 MS. GRANDT: Yes. No, so there's no -- to answer --  
8 there's no way, after the discipline, to get that cost -- to  
9 get that cost waived or lowered. That's correct.

10 THE COURT: Okay. So as long as the 5,738 dollars  
11 plus interest --

12 MS. GRANDT: Um-hum.

13 THE COURT: -- is unpaid --

14 MS. GRANDT: Right.

15 THE COURT: -- Ms. Albert will never, ever be able to  
16 earn a living as a lawyer in California?

17 MS. GRANDT: That's correct. Because that's what the  
18 California Supreme Court says in the order. The California  
19 Supreme Court ordered that.

20 THE COURT: And you believe that's the federal  
21 bankruptcy law?

22 MS. GRANDT: Yes.

23 THE COURT: Especially under 520- -- I'm sorry --  
24 yeah, 525, discrimination --

25 MS. GRANDT: And I just want to point -- I just want

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1 to point out, that there's also some cases -- there was a case  
2 called Phillips, which was from the -- a 2007 (sic) Central  
3 District case, that also said -- it looked at money that an  
4 attorney owed to the client security fund -- that fund I was  
5 talking about -- where they might owe 50,000, 100,000 --

6 THE COURT: Yes. But you have no evidence that she  
7 owes money to the client fund.

8 MS. GRANDT: No. But it's the same -- or money owed  
9 as restitution. I don't want to make the distinction about the  
10 client security fund or not. But there is some cases that do  
11 talk about how money owed to these third people as restitution  
12 is nondischargeable under 523(a)(7).

13 The fact that you have this money as part of your --  
14 as part of your Supreme Court order saying you can't practice  
15 until you pay back this money that you owe to clients, that you  
16 owe to a third party, it doesn't matter who you owe it.

17 There's a -- that's the Phillips case, 2010 Phillips case.

18 THE COURT: So if you had to point me to two cases  
19 that will put to rest my concerns with respect to the discovery  
20 sanctions that were ordered to be paid by the California  
21 Supreme Court with respect to Exhibit 7 --

22 MS. GRANDT: Um-hum.

23 THE COURT: -- in the order entered on December 13,  
24 2017, what would those cases be?

25 MS. GRANDT: So one of them is Phillips. And

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1 that's -- it's a 2010 WL 4916633. And then I could look  
2 through my briefing and see if there's another one. I don't  
3 know off the top of my head.

4 THE COURT: And Phillips is from what court?

5 MS. GRANDT: The Central District of -- District  
6 Court, Central District of California. It was on appeal from a  
7 bankruptcy court. I can see if there's another one. I may  
8 need to look through my briefing.

9 And there's also the **Brookman** case, which talks --

10 THE COURT: I'm sorry?

11 MS. GRANDT: It's there's the California Supreme Court  
12 Brookman case. It's not a federal case, but Brookman v. State  
13 Bar, which is **46 Cal. 3d 1004**. That's a California District  
14 Court case in which the California Supreme Court said that  
15 there's **no violation of 525 by awarding** restitution as a  
16 condition of probation.

17 THE COURT: **The California Supreme Court ruled that**  
18 **there was no violation of Section 525?**

19 MS. GRANDT: Well, they ruled that they didn't see --  
20 well, they can't. I mean, they're not a bankruptcy court. But  
21 they ruled that under -- I don't have the case in front of me,  
22 and I don't want to paraphrase it, but they said that they were  
23 allowed to impose -- it was a -- **it was a debtor who owed money**  
24 **under bankruptcy that he argued was dischargeable.** And they  
25 **said that they can impose that money owed as a condition to**

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1 practice law for the -- and that would be okay.

2 THE COURT: Okay. Give me the Phillips cite one more  
3 time.

4 MS. GRANDT: Sure. It's 2010 WL 4916633.

5 THE COURT: I'm sorry. 49 --

6 MS. GRANDT: Sorry.

7 THE COURT: -- I'm begging you now --

8 MS. GRANDT: Sorry.

9 THE COURT: -- I'm begging you to slow down and quit  
10 rattling off so much.

11 MS. GRANDT: Sorry.

12 THE COURT: I need you to get me information.

13 MS. GRANDT: So 2010 WL 4916633.

14 THE COURT: And that's the Central District of  
15 California?

16 MS. GRANDT: Yes.

17 THE COURT: Okay. And the Brook --

18 MS. GRANDT: Brookman?

19 THE COURT: -- man case.

20 MS. GRANDT: That's 46 Cal.3d 1004.

21 THE COURT: Okay.

22 MS. GRANDT: And I'm sure -- I'd be happy to find  
23 other ones if you would like me to do some --

24 THE COURT: No.

25 MS. GRANDT: -- research.

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1           THE COURT: No, no. Okay. Anything else?

2           MS. GRANDT: Nothing, Your Honor.

3           THE COURT: Thank you.

4           Ms. Albert?

5           MS. ALBERT: I would like the Court to look again at  
6 Exhibit 21.

7           THE COURT: I am there.

8           MS. ALBERT: The sup -- my supplemental brief and  
9 declaration of Lenore Albert in support of TRO, because that's  
10 where the cost award --

11          THE COURT: One second. You want me to look at the  
12 debtor's supplemental brief?

13          MS. ALBERT: Yeah, the -- yeah, the one that was filed  
14 yesterday.

15          THE COURT: And what page would you like me to look  
16 on?

17          MS. ALBERT: It's Exhibit 21, the one that you had  
18 referred to earlier.

19          THE COURT: **Exhibit 21.** One second. All right, I'm  
20 there.

21          MS. ALBERT: Okay. So when we look at this document,  
22 we can see that **there's five separate sections** that the State  
23 Bar Court can choose when it wants to enter numbers for State  
24 Bar costs. And each one is a separate Code section. And then  
25 even under --

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1                   THE COURT: Let me just parse this out. There's  
2 taxable cost, there's reasonable cost, there's other reasonable  
3 cost, there's other reasonable cost of the State Bar Court.  
4 That's five?

5                   MS. ALBERT: Yes.

6                   THE COURT: You see, you say five sections, but in  
7 fact, the fourth section is simply a subtotal.

8                   MS. ALBERT: Oh, yeah. Yeah.

9                   THE COURT: So in fact, there seems to be three.

10                  MS. ALBERT: Correct, yes. Yes.

11                  THE COURT: Okay, taxable costs, reasonable cost  
12 pursuant to a formula, and then other reasonable cost,  
13 incidental expenses.

14                  MS. ALBERT: Yes.

15                  THE COURT: And it looks like that there was only one  
16 section that was charged off, and that is the second section:  
17 reasonable costs pursuant to formula approved by the Board of  
18 Trustees Business and Professions Code, 6086.10(b)(3).

19                  MS. ALBERT: Yes.

20                  THE COURT: Okay, I'm there.

21                  MS. ALBERT: Okay. And so in my case, like I -- this  
22 is what I was trying to say when I was saying with Findley,  
23 because Findley said that they weren't overruling Taggart,  
24 okay?

25                  THE COURT: I -- you don't --

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1 MS. ALBERT: Yeah.

2 THE COURT: -- need to tell me that.

3 MS. ALBERT: Yeah.

4 THE COURT: Obviously they did in an aspect, because  
5 Taggart said that the costs were dischargeable. Findley said  
6 the costs weren't dischargeable. Something got reversed --  
7 maybe not reversed, but over -- maybe -- I don't even know what  
8 the right word would be. What do you do when circuits --

9 MS. ALBERT: A split?

10 THE COURT: -- have splits?

11 MS. ALBERT: Yeah.

12 THE COURT: You have an inside split.

13 MS. ALBERT: Yeah.

14 THE COURT: Okay, but they -- but why did they say --  
15 no, what is your point with respect to these subsections or  
16 sections of the Business & Professions Code?

17 MS. ALBERT: Okay. What we do know -- what this --  
18 what I can show this Court today with this evidence --

19 THE COURT: Please.

20 MS. ALBERT: -- is that under my costs in my case,  
21 were costs assessed under 6068.10(b)(3).

22 THE COURT: Well, those are, in fact, reasonable costs  
23 pursuant to a formula approved by the Board of Trustees.  
24 That's the section.

25 MS. ALBERT: Yes. And when we look at the wording

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1 under (b) (3), they say it's for investigation, hearing, and  
2 review to defray the costs for the services of their attorneys  
3 and their experts.

4 THE COURT: Okay.

5 MS. ALBERT: And that is important in this case.

6 THE COURT: Well, how's it important with respect to  
7 distinguishing Findley from this case?

8 MS. ALBERT: Because the fourth factor under our four-  
9 factor test on dischargeability --

10 THE COURT: Under -- I'm sorry. Who set that four-  
11 factor test?

12 MS. ALBERT: Oh, okay. It would be -- oh, wow, I  
13 can't believe I just slipped on the U.S. Supreme Court name.

14 (Pause.)

15 THE COURT: Play like you've said the name and move  
16 on.

17 MS. ALBERT: Okay, I'll pretend like I said the name,  
18 yes. I will get to it -- U.S. Supreme Court decision.

19 So in order to be not dischargeable, the creditor has  
20 to prove all four things. And --

21 THE COURT: I'm sorry, dischargeable under what?  
22 Student loans, slip-and-falls --

23 MS. ALBERT: Oh.

24 THE COURT: -- 506 -- 523(a)(6), 523(a)(2)(A), under  
25 what circumstances?

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1 MS. ALBERT: 11 U.S.C. 525(a) subsection (7).

2 THE COURT: Okay.

3 MS. ALBERT: Okay. The fourth factor is that looking  
4 at what the actual amount is for, it must not be compensatory  
5 to the government unit. Here, as we can see in Exhibit 21, we  
6 have evidence before us that the only costs were for  
7 compensation to the -- for -- assuming the State Bar is a  
8 government unit -- to a government unit.

9 So there is credible evidence before this Court that  
10 their motion to dismiss should be denied because they can't  
11 meet the four -- even if they met the first three elements,  
12 they could not meet the fourth element --

13 THE COURT: And what is the --

14 MS. ALBERT: -- on the state court costs.

15 THE COURT: -- fourth element? Not being  
16 compensatory?

17 MS. ALBERT: Right. **It cannot be compensatory.**

18 I love the one case in the Midwest where it was a  
19 prison case, right? A prisoner escapes. He escapes out of  
20 prison and the guards -- then he gets charged for the guards  
21 having to go and find him. And that was found to be  
22 dischargeable in a Chapter 7. And they said it was because it  
23 was compensatory that that fine that was put against  
24 the prisoner, because it was actually compensatory for the  
25 costs of getting him.

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1                   So definitely, though, in this case, in our Exhibit  
2 21, we can see exactly what the State Bar was thinking when  
3 they awarded the 18,714 dollars.

4                   THE COURT: What do you think that base charge means?

5                   MS. ALBERT: It's actually explained, because it's  
6 explained in (b) (3). And it says it is for their  
7 investigation, hearing, and review to defray the costs --

8                   THE COURT: I'm sorry. I'm sorry. It's explained  
9 where?

10                  MS. ALBERT: In 6086.10, subsection (b) (3).

11                  THE COURT: Okay.

12                  MS. ALBERT: And it literally says that that cost is  
13 for investigation, hearing, and review, and to defray the costs  
14 for services of attorneys or experts.

15                  So it literally is for -- in my case at least -- for  
16 compensating the State Bar for their costs.

17                  So I argue that the motion to dismiss with regard to  
18 the dischargeability and with regard to the second cause of  
19 action of violating the 525(a), should not be dismissed.

20                  With regard to the discovery --

21                  THE COURT: Well, let's stick with this, first.

22                  MS. ALBERT: Okay. Okay.

23                  THE COURT: The change of statute by the California  
24 legislature, what exactly did they change?

25                  MS. ALBERT: They added in subsection (e) which said

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1 that --

2 THE COURT: Do you have the -- where is the language  
3 in your papers?

4 MS. ALBERT: It's on page 16 line 10. It starts at  
5 line 10.

6 THE COURT: Okay. "In addition to the monetary  
7 sanctions as may be ordered by the Supreme Court pursuant to  
8 Section 6086.13, costs imposed pursuant to this section are  
9 penalties, payable to and for the benefit of the State Bar of  
10 California." Okay.

11 So that change in law has now imposed language in that  
12 section that says it's a penalty.

13 MS. ALBERT: Yes.

14 THE COURT: Okay. Do you think that that language  
15 itself is a violation of the Supreme Court case that we can't  
16 remember the name of?

17 MS. ALBERT: Yes. I believe it's unconstitutional,  
18 and that's why I put 6086 --

19 THE COURT: Have you ever challenged it before?

20 MS. ALBERT: No, I have not.

21 THE COURT: May I interrupt for a second and ask  
22 counsel for the State Bar a question?

23 MS. GRANDT: Sure.

24 THE COURT: If the state legislature of California  
25 wrote a statute that said any money owing to the state that's a

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1 cost because of a traffic accident where you knock down a state  
2 sign is nondischargeable -- is a penalty -- pardon me, not is  
3 not dischargeable -- is a penalty -- so let me rephrase that so  
4 that the record is very clear.

5           If the California legislature wrote a statute that  
6 said if you're in a traffic accident and you knock down a state  
7 sign that said "Greetings to California" -- "Welcome to  
8 California", it's a penalty; and if that penalty is assessed,  
9 it's nondischargeable, would that be able to override the  
10 Supreme Court cases on 523(a)(6), which is willful and  
11 malicious injury to others or property?

12           MS. GRANDT: Well, I think then, somebody would need  
13 to challenge that in court.

14           THE COURT: Yeah. Exactly.

15           MS. GRANDT: Right.

16           THE COURT: Exactly. Somebody would need to challenge  
17 that --

18           MS. GRANDT: Right.

19           THE COURT: -- in court. Because the problem I'm  
20 processing right now is this, that the state legislature said  
21 any cost imposed pursuant to this section are penalties. The  
22 Supreme Court of the United States has said that when you're  
23 assessing the anti-discrimination aspects of the Bankruptcy  
24 Code and relating it to nondischargeability, that a state would  
25 simply have to -- could say oh, it's not compensatory, it's a

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1 penalty, and then vitiate the Supreme Court's mandate as  
2 amplified by Ms. Albert.

3 And I'm just wondering what your thoughts are on that.

4 MS. GRANDT: Well, there's two things. One is that if  
5 she believes that it's unconstitutional, the answer is to  
6 challenge it, as she's done in the California Supreme Court.

7 And since she's done that already, this Court should not be  
8 interfering with that.

9 THE COURT: Well, that's a question that I asked.

10 MS. GRANDT: Right.

11 THE COURT: But did she already say that -- anywhere  
12 in state court that the section 6086.13, the modifications --  
13 I'm sorry, the modifications made by the legislature with  
14 respect to calling costs penalties, has she already challenged  
15 that in state court?

16 MS. GRANDT: Yes, she challenged them in the  
17 California Supreme Court a couple times when she recently filed  
18 a motion for reinstatement. She challenged the  
19 Constitutionality --

20 THE COURT: Has there been a ruling on that?

21 MS. GRANDT: Yeah. That was the July 25th -- last  
22 week, the court denied her petition?

23 THE COURT: Which court?

24 MS. GRANDT: The California Supreme Court.

25 THE COURT: Okay. So when you heard me ask Ms.

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1       Albert, has this ever been addressed in state court, do you  
2       recall her answer to me?

3            MS. GRANDT: I don't want to misspeak what Ms. Albert  
4       said.

5            THE COURT: Well, you were here.

6            MS. GRANDT: Yeah, I believe she said no.

7            THE COURT: Yeah, and that's why I'm confused.

8            MS. GRANDT: She says -- I'm just trying to find  
9       the --- one second, I don't want to -- I want to make sure the  
10       record's clear. Well, she challenges -- in her motion to the  
11       California Supreme Court --

12           THE COURT: Whose motion?

13           MS. GRANDT: Ms. Albert's motion to the California  
14       Supreme Court to reinstate her license, it is -- I'll give you  
15       the number so you have it, because it's attached as an exhibit  
16       to -- I think it's attached as an exhibit to my recent  
17       declaration. Sorry, one second. I'm just trying to find it so  
18       I can give you --

19           THE COURT: Well, let me say it one more time. Yes or  
20       no, did she challenge the Constitutionality of this California  
21       amendment before the California Supreme Court at any time in  
22       the past?

23           MS. GRANDT: Well, I think it depends on how clear you  
24       want to define "challenge". She mentioned the fact that these  
25       costs are not Constitutional in her motion to the California

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1 Supreme Court. She says, "Finally, in order for the costs to  
2 be Constitutional, the State Bar must waive the costs when an  
3 attorney cannot afford them," and she cites Cal. Business &  
4 Professions Code 6086.10.

5 So I don't know if you would classify that -- I would  
6 classify that as a challenge. But I don't want to misrepresent  
7 what Ms. Albert was claiming.

8 THE COURT: Okay.

9 MS. GRANDT: And that's what she put in her motion.

10 THE COURT: And that motion was entitled --

11 MS. GRANDT: That is Ms. Albert's motion for reinstate  
12 her license and modify order and waive costs. It's an exhibit  
13 to my -- it's Exhibit 14 to my declaration in reply to the  
14 motion to dismiss. It's docket 22 Exhibit 14.

15 THE COURT: One second. Docket number 22?

16 MS. GRANDT: Um-hum. Exhibit 14.

17 THE COURT: All right, one second. Exhibit 14.

18 And what page are you referring to?

19 MS. GRANDT: It's on the second page of the brief.  
20 It's the third paragraph before the conclusion. Sorry, it's  
21 the second paragraph -- it's the first sentence of the second  
22 paragraph on page 2.

23 THE COURT: Ah, "Finally, in order for the costs  
24 section to be Constitutional, the State Bar must waive the  
25 State Bar costs when an attorney cannot afford them." So

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1 that's a challenge with respect to the Constitutionality of  
2 indentured servitude, I suspect. I'm not sure what -- what  
3 Constitutional provision are you referring to where the cost  
4 section has to be Constitutional?

5 MS. ALBERT: I don't have that exhibit in front of me,  
6 but I'm sure that I was probably -- it could have been in  
7 servitude. It could have -- I'm not sure. **But the point is,**  
8 **is that was my -- my -- the Rule 5 motion that she was** telling  
9 Your Honor that I needed to do for the State to go ahead and  
10 **waive costs if you're indigent**, that was the process that I was  
11 using. And I put that in there.

12 So yes, I've made -- I've screamed it to the top of my  
13 lungs in any court that would hear me that I think that what's  
14 going on is wrong and the legal reasons why. But it's not that  
15 I've filed a pleading -- I haven't filed a complaint anywhere  
16 saying I would like this tribunal to determine the  
17 Constitutionality for 6086.10 because I believe it's  
18 unconstitutional.

19 And yes, that motion was denied last week. And that's  
20 what her two-page brief was in response to that motion that we  
21 were referring to where she referred to Phillips and Findley.

22 (Pause.)

23 THE COURT: Okay, I'm going to take a ten-minute  
24 break.

25 (Recess from 12:37 p.m., until 12:48 p.m.)

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1                   THE CLERK: Please remain seated. Court is again in  
2 session.

3                   THE COURT: Would anyone like to add anything else?

4                   MS. GRANDT: No, Your Honor.

5                   MS. ALBERT: I would like to add that -- or impress  
6 upon this Court that as much as the state legislature may want  
7 to or desire to change the outcome of federal law, the U.S.  
8 Supreme Court in *Perez v. Campbell* said federal law controls  
9 federal law. A state can't legislate around federal law. That  
10 was 1971 at 402 U.S. 637, 648.

11                  After that, and recently in 2017, the bankruptcy court  
12 in New Hampshire in *In re Morgenstern*, used the U.S. Supreme  
13 Court case when that state, New Hampshire, tried to legislate  
14 around 11 U.S.C. on the dischargeability statute.

15                  And I do have that in my supplemental brief for the  
16 Court, so you have the case cite. But I just want to impress  
17 upon the Court that so even though the Findley court stopped --  
18 looked at that statute, we do have U.S. precedent which is  
19 actually controlling law, which says the federal court must do  
20 the federal court's job, or else we would have states going  
21 beyond their Tenth Amendment powers and trying to subvert all  
22 kinds of protections for the people in the United States.

23                  THE COURT: Hold it. Repeat that.

24                  MS. ALBERT: The federal law -- there --

25                  THE COURT: No, I understand what you --

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1 MS. ALBERT: Yeah.

2 THE COURT: I want you to repeat what you just said.

3 MS. ALBERT: Okay. We would have -- federal law  
4 controls anything that goes beyond the Tenth Amendment power of  
5 the states, because if it didn't, we would have states that  
6 could subvert any kind of federal law that was there to protect  
7 the people.

8 THE COURT: So if there was a federal law -- Congress  
9 that passed a law and a president that signed that we're going  
10 to protect the people by allowing oil drill welling -- oil well  
11 drilling off the coast of Los Angeles County, and the state  
12 legislature said no, you're not, that would be nullification of  
13 a federal law?

14 MS. ALBERT: Not necessarily, because --

15 THE COURT: Or if they said we're going to allow you  
16 to disregard the California carbon dioxide emissions, because  
17 we think in Washington that we know better with respect to how  
18 your air -- what your air quality should be, and therefore a  
19 state legislature can't say we're going to have higher  
20 restrictions on carbon dioxide?

21 MS. ALBERT: No.

22 THE COURT: Okay, just checking.

23 MS. ALBERT: Yeah.

24 THE COURT: Because that's what I heard you say.

25 MS. ALBERT: Yeah. No, that's not what I meant. I

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1 didn't mean to imply that.

2 THE COURT: Okay.

3 MS. ALBERT: And the U.S. Supreme Court case -- and I  
4 apologize why it was slipping my mind -- is Kelly v. Robinson.

5 THE COURT: Right.

6 MS. ALBERT: Yeah. So I just wanted to make sure. I  
7 think that everything is in the briefs. The FDCPA, I gave you  
8 the McCulla case, so -- and I know you've given us so much  
9 time, and I want to thank you for --

10 THE COURT: It's an important issue.

11 MS. ALBERT: -- for giving us this time.

12 THE COURT: I truly appreciate your comment. It's an  
13 important issue.

14 I left a notepad back on my desk. I have to take one  
15 minute. I'll be right back.

16 (Recess from 12:52 p.m., until 12:52 p.

17 THE CLERK: Please remain seated. Court is again in  
18 session.

19 THE COURT: Would you like to add anything else?

20 MS. GRANDT: No. Of course I echo Ms. Albert's  
21 statement to thank you for your time. And my apologies for  
22 speaking quickly. And I will work on that.

23 THE COURT: I'm just trying to make my way through  
24 every day in listening to people carefully and understanding  
25 them, that's all.

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1 MS. GRANDT: Thank you.

2 THE COURT: All right. Before me is a motion to  
3 dismiss a complaint that contains five causes of action. The  
4 first cause of action is discharge of debt with respect to the  
5 two matters that we've been discussing, the disciplinary cost  
6 and the discovery sanctions issued -- or actually amplified by  
7 the California Supreme Court. The second is a cause of action  
8 with respect to violation of 525, the anti-discrimination  
9 portion of the Bankruptcy Code.

10 And then number 3 -- the third cause of action are  
11 1983 claims against various individuals involved in the  
12 process -- the underlying process with respect to the licensing  
13 of -- continuing licensing of the debtor.

14 The fourth cause of action was allegations of the  
15 Rosenthal Act and the Federal Debt Collection Practices Action.  
16 And the fifth cause of action is a series of Constitutional  
17 challenges of state statutes.

18 But they all hinge on whether or not the issue of  
19 dischargeability of debt and the possible 525 anti-  
20 discrimination allegation can or cannot be determined through  
21 the motion to dismiss, because everything else falls into place  
22 after that.

23 The Court is satisfied that the law is very clear with  
24 respect to the disciplinary cost and the discharge -- pardon  
25 me -- the discovery sanctions that were set forth in the

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1 California ruling -- California Supreme Court ruling, whether  
2 it be 5,738 dollars plus interest or 8,929 dollars -- both of  
3 those **are nondischargeable under the current law.**

4 **And I cite Findley and I cite the connector to the**  
5 California legislature amendments stating that the disciplinary  
6 costs are, in fact, penalties and not compensatory in nature.

7 By dismissing this case instead of letting it go  
8 forward, it gives, of course, opportunities to appeal to a  
9 higher court instead of spending incredible amounts of time and  
10 money and then after that, having an appeal. So I don't know  
11 if you completely appreciate what I'm doing, **but the fact is**  
12 **that as I read the law today, that both the disciplinary costs**  
13 **and the discovery sanctions are, in fact, nondischargeable.**

14 Because they are nondischargeable, there's no  
15 violation -- I think I said nondischargeable -- there's no  
16 violation of 525. So with respect to the law on the matter,  
17 they are nondischargeable. It is clear. The law on the matter  
18 is that because they are nondischargeable there is no cause of  
19 action that can go forward with respect to 525.

20 With respect to the third cause of action, for various  
21 reasons, the 1983 claims are improper and don't belong here.  
22 They are -- first of all, the defendants are afforded absolute  
23 immunity with respect to the causes of action. And second of  
24 all, it all, again, is based upon the issue of dischargeability  
25 of debt and the 525 violation allegation.

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1                   Further, the fourth cause of action, the Rosenthal Act  
2 violation or the Federal (sic) Debt Collection Practices Act,  
3 the activities of the State Bar do not fall into the gambit  
4 (sic) of either the Rosenthal Act or the federal Fair Debt  
5 Collection Practices Act, and thus that cause of action fails.

6                   And finally, the state statute Constitutionality  
7 challenges don't belong here. They're indecipherable, frankly.  
8 And they will be dismissed as will the entire complaint.

9                   And it is based upon the rulings made orally by this  
10 Court. I will not be issuing a memorandum of opinion. You can  
11 get the transcript.

12                  And the State Bar and the other defendants will  
13 provide an order that simply says the motion is granted in full  
14 for the reasons stated on the record. And that is the end of  
15 that.

16                  Now, I certify that the debtor is indigent and is  
17 subject to waiver of any filing fees with respect to an appeal  
18 or other costs.

19                  MS. ALBERT: Will you certify the issue to go to the  
20 Ninth --

21                  THE COURT: I don't need to certify the issue. I've  
22 dismissed -- I've granted their motion.

23                  MS. ALBERT: Right.

24                  THE COURT: There's no issue to certify. It's up  
25 to -- you can now appeal.

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1 MS. ALBERT: Can I appeal it to the Ninth Circuit  
2 directly, though, without a motion?

3 THE COURT: No, you have to go to the district court  
4 or BAP.

5 MS. ALBERT: Oh.

6 THE COURT: You can get the BAP to certify that, if  
7 you'd like. You can request that, and I believe they are  
8 statutorily enabled to redirect the issue directly to the Ninth  
9 Circuit. I think. But I'm not going to do that.

10 MS. ALBERT: Okay.

11 THE COURT: I'm not going to do that to the Ninth  
12 Circuit. I want to be reappointed. They have enough work on  
13 their hands.

14 MS. ALBERT: Thank you.

15 THE COURT: There's a status conference, 6.2 on the  
16 calendar, but that is moot. This case has been dismissed.

17 MS. ALBERT: Inquiry. Can the fee waiver also go with  
18 the TRO since that was the prior matter? I can appeal them  
19 both, then, the TRO -- injunctions are --

20 THE COURT: I'm not sure you can appeal a TRO, but if  
21 you can, sure, why not?

22 MS. ALBERT: Yeah, injunctions are immediately  
23 appealable.

24 THE COURT: I'm not sure.

25 MS. ALBERT: Granting or denying --



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1                   THE COURT: Give it a shot.

2                   MS. ALBERT: Okay.

3                   THE COURT: But I'll -- you're indigent and your  
4 papers and declarations have indicated that. And if I'm  
5 required to certify that, I do.

6                   MS. ALBERT: Okay.

7                   THE COURT: Okay. I'm not even sure if I'm required  
8 to certify it, but I think I am.

9                   All right. The 6.2 is the status conference, and in  
10 fact, that is now moot because the case is dismissed.

11                  Is there anything else with respect to this litigation  
12 that I need to know about or be prepared for or anticipate  
13 other than either an affirmation, a reversal, or God-forsaken  
14 reversal and remand?

15                  MS. ALBERT: We still have the Ninth Circuit who's  
16 going to independently determine the Noble matter. So I will  
17 take -- when they get their order -- when the order is --

18                  THE COURT: I'm sorry, what matter?

19                  MS. ALBERT: Noble v. Wells Fargo. On my TRO I had --  
20 on the application I had attached it. The first time around I  
21 just -- I sent out my -- I sent out my notifications to all the  
22 judges on the first round of suspension, you know, when I  
23 received notice of it in March.

24                  And so the Ninth Circuit just treated it as an  
25 automatic disqualification. And then when I received the June

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1 letter from the State Bar, they recertified me in the Ninth  
2 Circuit.

3 THE COURT: But that didn't arise from the bankruptcy  
4 court.

5 MS. ALBERT: Well, you -- I believe you're asking what  
6 you might anticipate. What I anticipate -- because this time  
7 around, in his order, he said it's going to take away my ECF  
8 filing, I might have to come back in here --

9 THE COURT: I'm sorry, who said that? What order?

10 MS. ALBERT: Commissioner Shaw.

11 THE COURT: Commissioner Shaw.

12 MS. ALBERT: Of the Ninth Circuit.

13 THE COURT: Okay; okay. I forgot about the  
14 commissioners.

15 MS. ALBERT: Yeah. So --

16 THE COURT: Yeah, we always do. He said -- did he  
17 issue an order about your ECF filing?

18 MS. ALBERT: Yeah, he -- yeah, he said that -- he  
19 issued an order. I had twenty-eight days to figure out whether  
20 I could or could not practice law and show him one way or the  
21 other what's going on, right, basically, this time; because  
22 they weren't just going to take anything away.

23 THE COURT: But that's the ECF filing. Who was  
24 opposing your use of the ECF?

25 MS. ALBERT: I guess -- they said that if I'm



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1 suspended they're taking that away.

2 THE COURT: Who said that?

3 MS. ALBERT: Commissioner Shaw. It's on the -- it's  
4 the only exhibit to my actual TRO application.

5 THE COURT: And he's with the Ninth Circuit?

6 MS. ALBERT: Yeah, he's with the Ninth Circuit.

7 THE COURT: And ECF, with respect to the bankruptcy  
8 court?

9 MS. ALBERT: It's my only PACER -- it's the only --

10 THE COURT: It's the only one.

11 MS. ALBERT: Yeah, you only have one.

12 THE COURT: So let me get this straight. A  
13 Commissioner from the Ninth Circuit said -- and I'm saying this  
14 for the record so that someday maybe he might read it.

15 MS. ALBERT: Okay.

16 THE COURT: Commissioner said I'm going, while we're  
17 going through this entire process, order that you're not  
18 allowed to use -- utilize ECF, even if you're paying for it,  
19 which you are, which is going to require, over-the-counter  
20 filings, which is going to burden the clerk's office at the  
21 Ninth Circuit, and burden the clerk's office at the district  
22 office -- at the district clerk's office, and burden the clerks  
23 at the Bankruptcy Appellate Panel, and burden the clerks at the  
24 Ronald Reagan Federal Courthouse Bankruptcy Department.

25 And so we're punishing you by saying you can't file

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1 electronically, and by punishing you that way, we're actually  
2 **punishing the clerks who have to deal with all of the hand-**  
3 **delivered** papers; but we're also now punishing the State Bar  
4 attorney, because the State Bar attorney won't be getting  
5 electronic notification of any filings that you make.

6 Ms. Grandt, let me ask you a question.

7 MS. GRANDT: Yes.

8 THE COURT: Does that make any sense?

9 MS. GRANDT: It does not seem so.

10 THE COURT: It doesn't make sense.

11 MS. GRANDT: I --

12 THE COURT: No, I can understand why, as a knee-jerk  
13 reaction, that we want to do things like oh, you can't use the  
14 system. But the fact is, when it helps us -- it's like saying  
15 you're not allowed to let a person with a wheelchair use the  
16 wheelchair ramp going into the courtroom because we're  
17 punishing you, and therefore, our court officers are going to  
18 have to go down and help you, carry you into the courtroom, and  
19 get you through the magnetometer and things like that. It  
20 doesn't really make sense.

21 I understand why they do it --

22 MS. GRANDT: Could I just -- I just want to say that  
23 the State Bar has no involvement with that, at all. That's the  
24 Ninth Circuit.

25 THE COURT: Oh, I know.

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1 MS. GRANDT: I just wanted to -- I thought you were  
2 asking me because we had --

3 THE COURT: I understand, but think about -- let's  
4 think about this for a second.

5 You are able -- the only way you can now get notice of  
6 anything is through the mail.

7 MS. GRANDT: Right.

8 THE COURT: But you are a registered ECF user. Okay.  
9 So now, there is an order from the Ninth Circuit saying you  
10 don't have Ninth Circuit -- pardon me -- privileges for ECF or  
11 PACER at this point, correct?

12 MS. ALBERT: He said it's going to be taken away.

13 THE COURT: Okay. What is the name of this  
14 commissioner?

15 MS. ALBERT: Commissioner Peter L. Shaw.

16 THE COURT: Okay. And what is -- where is he based;  
17 San Francisco?

18 MS. ALBERT: I would assume so.

19 THE COURT: Does he have a telephone number?

20 MS. ALBERT: No.

21 THE COURT: Does he have an email address?

22 MS. ALBERT: Not on this order.

23 THE COURT: Okay. What is the -- is there a  
24 citation -- is there a reference number of that order?

25 MS. ALBERT: 18 --

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1           THE COURT:  18 --

2           MS. ALBERT:  -- -80051.

3           THE COURT:  Okay.  So I'm going to make a call, with  
4 your permission -- with everybody in this courtroom's  
5 permission to Pete -- to Commissioner Peter Shaw and explain  
6 that I appreciate entirely why he would want to suspend your  
7 ECF privileges, and it's because you haven't paid your  
8 penalty -- what did you do to make Commissioner Shaw so angry?

9           MS. ALBERT:  It was -- the received a letter from the  
10 State Bar saying I was suspended.

11          THE COURT:  Okay, well, there you go.

12          MS. ALBERT:  Yeah.

13          THE COURT:  In this particular case, I'm going to call  
14 him and explain the practicalities of why we would want to keep  
15 you in the system for my purpose, for the district court  
16 purpose, for the BAP purpose, for the California Ninth -- for  
17 the Ninth Circuit's purpose, and for the purposes of the State  
18 Bar itself, and make a pitch that you should continue to be on  
19 the system and paying for the system, and see what I can do.

20          MS. ALBERT:  Okay.

21          THE COURT:  Would that be okay if I did that, counsel?

22          MS. GRANDT:  Oh, yes, Your Honor.

23          THE COURT:  Okay.  And then I will have my law clerk  
24 call you each and let you know.  Do we have your information?

25          MS. GRANDT:  He has my card.

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1 THE COURT: Yes. Is that okay?

2 MS. ALBERT: Yes, that's fine.

3 THE COURT: Is there any other housekeeping matter I  
4 could perhaps involve myself in as an officious intermeddler?

5 MS. GRANDT: I don't believe so.

6 MS. ALBERT: No.

7 THE COURT: Okay. Thanks for coming today. Send in  
8 that order -- send in both orders, the TRO and --

9 MS. GRANDT: The two orders.

10 THE COURT: -- and do me a favor --

11 MS. GRANDT: Yes.

12 THE COURT: -- add to that bottom of both of those  
13 orders that the bankruptcy court has certified Ms. Albert, the  
14 debtor, as indigent and eligible for a waiver of all appellate  
15 filing fees.

16 MS. GRANDT: Indigent and eligible for a waiver?

17 THE COURT: But not transcripts.

18 MS. GRANDT: Okay.

19 THE COURT: Thank you.

20 MS. GRANDT: Thank you, Your Honor.

21 THE COURT: Court is adjourned.

22 (Whereupon these proceedings were concluded at 1:08 PM)

23

24

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1

## I N D E X

2

## RULINGS: PAGE LINE

3 Debtor's application for TRO is denied. 12 5

4 Motion to dismiss adversary is granted in 63 8  
5 its entirety.6 The Court certifies that the debtor is 63 16  
7 indigent and is subject to waiver of any  
8 filing fees with respect to an appeal or  
9 other costs

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## C E R T I F I C A T I O N

3 I, Penina Wolicki, certify that the foregoing transcript is a  
4 true and accurate record of the proceedings.

Pennia Wdick

/s/ PENINA WOLICKI, CET-569

eScribers

7227 N. 16th Street, Suite #207

Phoenix, AZ 85020

Date: August 6, 2018

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Neutral  
As of: October 14, 2020 1:32 AM Z

## Albert on Discipline

Supreme Court of California

December 13, 2017, Opinion Filed

S243927

### Reporter

2017 Cal. LEXIS 9745 \*

ALBERT ON DISCIPLINE.

**Subsequent History:** Time for Granting or Denying Rehearing Extended [Albert on Discipline, 2017 Cal. LEXIS 9848 \(Cal., Dec. 29, 2017\)](#)

Rehearing denied by [Albert on Discipline, 2018 Cal. LEXIS 1359 \(Cal., Feb. 14, 2018\)](#)

Motion denied by [In re Albert, 2018 Cal. LEXIS 5528 \(Cal., July 25, 2018\)](#)

US Supreme Court certiorari denied by [Albert v. State Bar of Ca, 2018 U.S. LEXIS 5766 \(U.S., Oct. 1, 2018\)](#)

## Core Terms

probation, suspension, suspended, recommended, terminated, Stds

## Opinion

[\*1] Petition for review denied; recommended discipline imposed

The petition for review and request for stay is denied.

The court orders that LENORE LuANN ALBERT, State Bar Number 210876, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and she is placed on probation for one year subject to the following conditions:

1. LENORE LuANN ALBERT is suspended from the practice of law for the first 30 days of probation, and she will remain suspended until the following conditions are satisfied:

a. She pays the following sanctions (or reimburses the Client Security Fund, to the extent of any payment from the Fund to the payees, in accordance with section 6140.5), and furnishes proof to the State Bar Office of Probation in Los Angeles: the \$2,675.50, \$1,242.50, and \$1,820 sanctions awards issued on August 31, 2012, by the Superior Court of Orange County in case no. 30-2012-00568954-CL-UD-CJC, plus 10 percent interest per year from August 31, 2012.

b. If she remains suspended for two years or more as a result of not satisfying the preceding requirements, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice, and [\*2] learning and ability in the general law before her suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. LENORE LuANN ALBERT must comply with the other conditions of probation recommended by the Review Department of the State Bar Court in its Opinion filed on June 30, 2017; and

3. At the expiration of the period of probation, if LENORE LuANN ALBERT has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

LENORE LuANN ALBERT must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

If LENORE LuANN ALBERT remains suspended for 90 days or more, she must comply with the requirements of *rule 9.20 of the California Rules of Court*, and perform the acts specified in *subdivisions (a) and (c)* of that rule within 120 and 130 days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension. [\*3]

Costs are awarded to the State Bar in accordance with *Business and Professions Code section 6086.10* and are enforceable both as provided in *Business and Professions Code section 6140.7* and as a money judgment.

---

End of Document

ORIGINAL

App. 139

I

1 Lenore L. Albert, Esq. SBN 210876  
2 LAW OFFICES OF LENORE ALBERT  
3 7755 Center Avenue, Suite #1100  
4 Huntington Beach, CA 92647  
5 Telephone (714) 372-2264  
6 Facsimile (419) 831-3376  
7 Email: lenorealbert@msn.com  
8 Attorney for Debtor, pro se

CLERK U.S. BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
BY: Deputy Clerk

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APR - 9 2018

ENTERED

APR - 9 2018

CLERK U.S. BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
BY: Deputy Clerk

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CLERK U.S. BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
BY: Deputy Clerk

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SANTA ANA DIVISION

In re LENORE LUANN ALBERT-  
SHERIDAN d/b/a LAW OFFICES OF  
LENORE ALBERT

Debtor,

LENORE LUANN ALBERT-SHERIDAN  
d/b/a LAW OFFICES OF LENORE  
ALBERT,

Petitioner/Plaintiff(s),

MARICRUZ FARFAN, an individual;  
BRANDON TADY, an individual; ALEX  
HACKERT, an individual; PAUL  
BERNARDINO, an individual; HON.  
YVETTE ROLAND, an individual;  
STATE BAR OF CALIFORNIA, a public  
corporation

Respondents/Defendants.

Chapter 13

CASE NO. SA 8:18-bk-10548-ES

ADVERSARY NO. 8:18-ap-01065-ES

Assigned to the Hon. Erithe A. Smith,  
Ctrm: 5A – Fifth Floor

*DENYING*

**ORDER ~~CONTINUING~~ DEBTOR'S  
EMERGENCY MOTION FOR T.R.O.**

~~Hearing Date: April 9, 2018~~

~~Time: 9:00AM~~

~~Ctrm: 5A – Fifth Floor~~

*No hearing required.*

1 **GOOD CAUSE APPEARING**, this court ~~grants~~ Debtor Lenore LuAnn Albert-  
2 Sheridan's temporary restraining order, *due to insufficient grounds stated.* *EDS*

3 Defendant Creditor California State Bar, and their agents, servants, employees or  
4 representatives, are ordered to reinstate Lenore Albert's license to practice law and  
5 prohibited from suspending her license without order from this Court.

6 The Orange County Registrar of Voters is prohibited from removing Ms. Albert-  
7 Sheridan from the ballot without order from this court.

8 This order shall be served on the Orange County Registrar of Voters and the State  
9 Bar by email and US Mail.

10 This Court also issues an order to show cause ("OSC") why a preliminary  
11 injunction should not be granted to restrain and enjoin defendant California State Bar  
12 and their agents, servants, employees or representatives, from suspending Debtor's  
13 license until final determination of her Adversary proceeding. The hearing will be held  
14 on \_\_\_\_\_ at \_\_\_\_\_ (time) in this courtroom. Defendants may file a response by \_\_\_\_\_  
15 and Plaintiff may file a reply by \_\_\_\_\_.

16 Dated: April 9, 2018



21 **Hon. Erithe A. Smith**  
22 **US Bankruptcy Judge**

**FILED**

MAY 04 2018

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

**STATE BAR COURT OF CALIFORNIA**

## REVIEW DEPARTMENT

**IN BANK**

In the Matter of ) Case Nos. 15-O-11311  
LENORE LUANN ALBERT, ) (15-O-11708; 15-O-12260)  
A Member of the State Bar, No. 210876. ) (S243927)  
 ) ORDER  
 )

On June 30, 2017, this Court filed an Opinion in the instant matter, recommending discipline including a one-year stayed suspension, and conditions including that respondent be actually suspended for thirty days and must pay specified sanctions awards and disciplinary costs against her. Respondent filed a Petition for Review, which the Supreme Court denied on December 13, 2017. Respondent then filed a petition for rehearing on December 28, 2017, which the Supreme Court denied on February 14, 2018. On April 16, 2018, respondent filed a motion with the Review Department to reinstate her license, modify the order to pay sanctions awards and waive disciplinary costs against her.

Respondent's motion is denied because we have no authority to modify a final Supreme Court disciplinary order. (See Rules Proc. of State Bar, rule 5.300(C) [State Bar Court will not consider motion or stipulation to modify an actual or stayed period of suspension, whether a condition of probation or not, unless expressly authorized by Supreme Court].)

# **PURCELL**

Presiding Judge

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 4, 2018, I deposited a true copy of the following document(s):

ORDER FILED MAY 4, 2018

in a sealed envelope for collection and mailing on that date as follows:

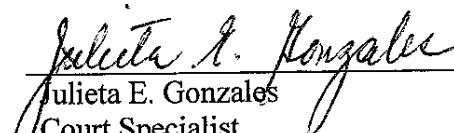
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LENORE L. ALBERT  
LAW OFC LENORE ALBERT  
7755 CENTER AVE STE 1100  
HUNTINGTON BEACH, CA 92647

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Brandon K. Tady, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 4, 2018.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Court Specialist  
State Bar Court

K  
**FILED**JUL 03 2018 *HC*STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT - LOS ANGELES**

In the Matter of

LENORE LUANN ALBERT,

A Member of the State Bar, No. 210876.

) Case Nos. 15-O-11311 (15-O-11708;  
) 15-O-12260)-YDR  
) (S243927)  
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)

ORDER DISMISSING PETITION TO  
REINSTATE LAW LICENSE AND  
DENYING PETITION FOR WAIVER  
OF COSTS WITHOUT PREJUDICE

This matter is before the court on the petition that respondent LENORE LUANN ALBERT (Respondent) filed on April 16, 2018, seeking to have her law license reinstated and the disciplinary costs assessed against her waived.<sup>1</sup> The State Bar's Office of Chief Trial Counsel opposes Respondent's petition.

On June 30, 2017, the Review Department filed its opinion in this proceeding finding that Respondent was culpable of professional misconduct and recommending, as discipline, that Respondent be placed on one year's stayed suspension and one year's probation on conditions, including that Respondent be actually suspended from the practice of law for a minimum of thirty days and until she pays three sanction orders totaling \$5,738 with interest (or reimburses the Client Security Fund if it pays the sanctions). Thereafter, the Supreme Court accepted the

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<sup>1</sup> Respondent inadvertently titled her petition only as a petition to reinstate her law license instead of properly titling it as a petition to reinstate her law license and to waive costs.

Review Department's recommendation and imposed the recommended discipline on Respondent in an order filed on December 13, 2017, in case number S243927.

On December 29, 2017, the Supreme Court extended the time for granting or denying rehearing in case number S243927. Then, on February 14, 2018, the Supreme Court denied Respondent's petition for rehearing in case number S243927. Accordingly, that same day, the Supreme Court's December 13, 2017, disciplinary order became final, and Respondent's one-year probation and minimum thirty-day actual suspension began.

In its December 13, 2017, disciplinary order, the Supreme Court also awarded costs to the State Bar of California and ordered that those costs be enforceable both as a money judgment and as provided in Business and Professions Code section 6140.7. Under section 6140.7, unless the time to pay the costs has been extended under Business and Professions Code section 6086.10, subdivision (c), an attorney who has been actually suspended from practice—like Respondent—must pay any assessed disciplinary costs in full before the attorney can be returned to active membership in the State Bar and lawfully practice law again. Thus, even after Respondent has been suspended for at least 30 days and has paid the \$5,738 in sanctions plus interest (or reimbursed the CSF if appropriate), Respondent will not be returned to active membership in the State Bar or entitled to practice law until she has paid the \$18,714 in assessed costs in full.

In her petition, Respondent asserts that she filed a bankruptcy petition under Chapter 13 of the United States Bankruptcy Code on February 22, 2018. Moreover, Respondent asserts that the minimum 30-day actual suspension imposed on her in the Supreme Court's December 13, 2017, order violates the Bankruptcy Code. In addition, Respondent asserts that she lacks the financial ability to pay the \$5,738 in sanctions plus interest and the \$18,714 in assessed costs.

**The Petition to Reinstate Law License is Really a Motion to Modify Actual Suspension and is Dismissed for Want of Jurisdiction**

Respondent's minimum 30-day actual suspension is one of the conditions of the one-year disciplinary probation that the Supreme Court imposed on Respondent in its December 13, 2017, order. Thus, Respondent's petition to reinstate her law license is actually a motion to modify Respondent's actual-suspension probation condition to terminate the actual suspension so that she can return to active membership in the State Bar and lawfully practice law. Such probation modification motions are governed by Rules of Procedure of the State Bar, rule 5.300 et seq. California Rules of Court, rule 9.10(c)(2) authorizes this court to “[m]ake corrections and minor modifications to the terms of [an attorney's] disciplinary probation.” Rule 9.10(c) does not authorize this court to modify a probation condition to terminate a period of actual suspension.

Ordinarily, when an attorney seeks a probation modification that this court does not have the authority to make under rule 9.10(c), the court is nevertheless required to consider the motion on its merit and to either deny it (Rules Proc. of State Bar, rule 5.304(A)(4)) or recommend to the Supreme Court that it grant it (Rules Proc. of State Bar, rule 5.304(B)(2)). However, the court will not consider the merits of Respondent's motion to modify her actual-suspension probation condition. Nor will the court either deny it or recommend that it be granted. The court is expressly deprived of jurisdiction to consider Respondent's motion to modify her probation to terminate her actual suspension in the absence of Supreme Court authorization to the contrary. (Rules Proc. of State Bar, rule 5.300(C) [“Unless expressly authorized by the Supreme Court, the State Bar Court will not consider a motion … to modify an actual or stayed period of suspension, whether it's a condition of probation or not.”].) The Supreme Court has not expressly authorized the court to consider Respondent's motion. Accordingly, the court must dismiss Respondent's request to reinstate her law license (i.e., motion to modify probation to terminate actual suspension) for want of jurisdiction.

**Request for Waiver of Costs is Defective**

Respondent's request for waiver of costs is neither timely nor "accompanied by [Respondent's] completed financial statement in the form prescribed by the [State Bar] Court." (Rules Proc. of State Bar, rule 5.130(B).) Thus, Respondent has failed to properly establish grounds of hardship, special circumstances, or other good cause to waive any portion of the \$18,714 in assessed costs (or for an extension of time to pay the costs).

Filing a chapter 13 bankruptcy petition does not conclusively establish the requisite grounds for waiver of costs (or for an extension of time to pay the costs). Moreover, even though Respondent attached a copy of her original chapter 13 plan to her present petition, that copy is not certified or otherwise authenticated, and nothing before this court establishes that the plan has been approved by bankruptcy court. In any event, nothing in the plan establishes the requisite grounds for a waiver of costs (or for an extension of time to pay the costs).<sup>2</sup>

In short, the court will deny Respondent's request for waiver of costs without prejudice to Respondent's prompt filing of a motion for waiver of costs or, in the alternative, for an extension of time to pay the costs that strictly complies with all of the Rules of Procedure of the State Bar.

**ORDER**

The court orders that, to the extent that respondent LENORE LUAN ALBERT'S April 16, 2018, petition seeks to reinstate her law license, the petition is DISMISSED for want of jurisdiction. The court further orders that, to the extent that respondent LENORE LUAN ALBERT'S April 16, 2018, petition seeks a waiver of the assessed costs, the petition is DENIED

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<sup>2</sup> In Respondent's original chapter 13 plan, Respondent lists a \$19,000 debt to the State Bar of California on her class 3A claims schedule. Presumably, that claim is Respondent's debt to the State Bar for costs and that Respondent's listing of the claim as a class 3A claim is an error because class 3A claims are claims that are secured by real or personal property. On her class 3A claims schedule, Respondent listed \$1,000 of the State Bar's \$19,000 claim as being a secured claim, which she is to pay in full at the rate of \$27.78 per month. Apparently, Respondent seeks to discharge the remaining \$18,000 of the State Bar's \$19,000 claim.

without prejudice to Respondent's filing, within 20 days after the service of this order by mail, a motion for waiver of costs or, in the alternative, for an extension of time to pay costs that strictly complies with all of the Rules of Procedure of the State Bar (e.g., that is supported by exhibits that have been properly authenticated).

Dated: July 3, 2018.

  
\_\_\_\_\_  
YVETTE D. ROLAND  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 3, 2018, I deposited a true copy of the following document(s):

### ORDER DISMISSING PETITION TO REINSTATE LAW LICENSE AND DENYING PETITION FOR WAIVER OF COSTS WITHOUT PREJUDICE

in a sealed envelope for collection and mailing on that date as follows:

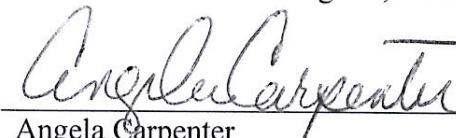
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LENORE L. ALBERT  
LAW OFC LENORE ALBERT  
14272 HOOVER STREET  
SP 69  
WESTMINSTER, CA 92683

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Eli Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 3, 2018.

  
\_\_\_\_\_  
Angela Carpenter  
Court Specialist  
State Bar Court

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FILED & ENTERED

JUL 20 2018

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY duarte DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SANTA ANA DIVISION

In re  
Lenore LuAnn Albert-Sheridan,  
Debtor.

Chapter 13  
Case No. 8:18-bk-10548-ES

**ORDER DENYING MOTION FOR  
SANCTIONS AGAINST CREDITORS  
STATE BAR OF CALIFORNIA,  
FRANCIS B. LANTIERI, GARY  
SCHNEIDER, 10675 S ORANGE  
PARK BLVD, LCC AND PHIL GREEN  
FOR VIOLATION OF THE  
AUTOMATIC STAY AND REQUEST  
FOR INJUNCTIVE RELIEF**

Hearing  
Date: May 3, 2018  
Time: 10:30 a.m.  
Ctrm: 5A

On March 28, 2018, Debtor filed A "Motion for Sanctions Against Creditors State  
Bar of California, Francis B. Lantieri, Gary Schneider, 10675 S Orange Park Blvd, LCC

1 and Phil Green for Violation of the Automatic Stay and Request for Injunctive Relief" [dkt  
2 # 58] ("Motion").

3 The Motion was taken under advisement while this case was pending under  
4 chapter 13 and prior to the reinstatement of Debtor's state bar license. However, as the  
5 case as now been converted to one under chapter 7, the court has determined that the  
6 Motion is now moot. Accordingly, the Motion is denied without prejudice to Debtor  
7 refiling a new motion if she believes current circumstances so warrant.

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10 **IT IS SO ORDERED.**

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23 Date: July 20, 2018

  
24 Erithe A. Smith  
25 Erithe Smith  
26 United States Bankruptcy Judge  
27  
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# Appellate Courts Case Information

Supreme Court

Change court ▼

*Court data last updated: 07/27/2018 11:32 AM*

## Docket (Register of Actions)

**ALBERT ON DISCIPLINE**

**Division SF**

**Case Number S243927**

Date	Description	Notes
08/09/2017	Record of State Bar discipline filed	11 volumes
10/10/2017	Petition for review filed	Petitioner: Lenore Luann Albert Attorney: Lenore Luann Albert (with stay request)
10/10/2017	Exhibit(s) lodged	Petitioner's Supplemental Exhibits. Lenore Luann Albert, Petitioner Lenore Luann Albert, Pro se
10/10/2017	Forma pauperis application filed	Lenore Luann Albert, Petitioner Lenore Luann Albert, Pro se
10/27/2017	Response by State Bar filed	Non-Title Respondent: State Bar of California Attorney: Paul A. Bernardino
11/02/2017	Reply to State Bar response filed	Petitioner: Lenore Luann Albert Attorney: Lenore Luann Albert
11/02/2017	Exhibit(s) lodged	Petitioner's Supplemental Exhibits, Volume 2. Lenore Luann Albert, Petitioner Lenore Luann Albert, Pro se

12/13/2017	Petition for review denied; recommended discipline imposed	The Petition for Review and Request for Stay is denied. The court orders that Lenore LuAnn Albert, State Bar Number 210876, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and she is placed on probation for one year subject to the following conditions: 1. Lenore LuAnn Albert is suspended from the practice of law for the first 30 days of probation, and she will remain suspended until the following conditions are satisfied: a. She pays the following sanctions (or reimburses the Client Security Fund, to the extent of any payment from the Fund to the payees, in accordance with section 6140.5), and furnishes proof to the State Bar Office of Probation in Los Angeles: the \$2, 675.50, \$1, 242.50, and \$1, 820 sanctions awards issued on August 31, 2012, by the Superior Court of Orange County in case no. 30-2012-00568954-CL-UD-CJC, plus 10 percent interest per year from August 31, 2012. b. If she remains suspended for two years or more as a result of not satisfying the preceding requirements, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law before her suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).) 2. Lenore LuAnn Albert must comply with the other conditions of probation recommended by the Review Department of the State Bar Court in its Opinion filed on June 30, 2017; and 3. At the expiration of the period of probation, if Lenore LuAnn Albert has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated. Lenore LuAnn Albert must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Lenore LuAnn Albert remains suspended for 90 days or more, she must comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension. Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
12/28/2017	Petition for rehearing of State Bar discipline filed	Petitioner: Lenore Luann Albert Attorney: Lenore Luann Albert
12/29/2017	Time extended to consider modification or rehearing	The time for granting or denying rehearing in the above-entitled case is hereby extended to and including March 13, 2018, or the date upon which rehearing is either granted or denied, whichever occurs first.
02/14/2018	Request for rehearing of State Bar discipline denied	
04/19/2018	Motion filed	Petitioner Lenore Luann Albert's Motion to Reinstate her License and Modify Order and Waive Cost. Lenore Luann Albert, Petitioner Lenore Luann Albert, Pro se
05/30/2018	Received:	Letter from the U.S Supreme Court dated May 23, 2018 stating: "The petition for writ of certiorari in the above entitled case was filed on May 15, 2018 and placed on the docket May 23, 2018 as No. 17-9047".

06/08/2018	Letter sent to:	Vanessa Holton State Bar of California, Office of General Counsel Dear Ms. Holton: It has come to the court's attention that the State Bar updated its website on June 1, 2018, to reflect Lenore Albert's active status as of March 16, 2018. The court has directed that I request your response to Ms. Albert's motion to reinstate her license, modify this court's order, and waive costs. In your response, please provide information regarding Ms. Albert's compliance with this court's order dated December 13, 2017. Your response is to be filed in this court on or before June 15, 2018.
06/15/2018	Response by State Bar filed	Non-Title Respondent: State Bar of California Attorney: Suzanne G. Grandt
06/18/2018	Received:	Service copy of the response electronically filed by the State Bar on June 15, 2018.
06/15/2018	Application filed	petitioner Lenore Luann Albert's request to brief pending issues brought up by the State Bar.
06/15/2018	Change of contact information filed for:	change of address for petitioner.
06/27/2018	Letter sent to:	Vanessa Holton State Bar of California, Office of General Counsel Lenore Luann Albert, Petitioner Lenore Luann Albert, Pro se Dear Ms. Holton and Ms. Albert: In the State Bar's Response to Petitioner Lenore Luann Albert's Motion to Reinstate her License and Modify Order and Waive Costs, filed on June 15, 2018, the State Bar represented that a hearing on two motions to convert Ms. Albert's case to a chapter 7 bankruptcy was set in the bankruptcy court for June 19, 2018. That date has since passed. The court invites supplemental briefing regarding the outcome of the June 19 bankruptcy hearing, and what effect, if any, that outcome has on the parties' positions in this matter. The State Bar may file and personally or electronically serve a letter brief no later than July 6, 2018. Ms. Albert may file and serve a reply letter brief no later than seven (7) calendar days after the filing of the State Bar's letter brief.
06/28/2018	Supplemental brief filed	Non-Title Respondent: State Bar of California Attorney: Suzanne G. Grandt
06/29/2018	Received:	one hard copy of State Bar supplemental brief filed 06/28/18.
06/28/2018	Received:	notice of errata State Bar of California, Non-Title Respondent Suzanne G. Grandt, State Bar
06/29/2018	Received:	hard copy of notice of errata received 06/28/18.
07/06/2018	Reply to supplemental brief filed	Petitioner: Lenore Luann Albert Attorney: Lenore Luann Albert
07/09/2018	Received:	CC of Letter addressed to Ms. Lenore Albert, dated 6/28/2018, from the State Bar of California.
07/25/2018	Motion denied	The motion to reinstate petitioner Lenore Luann Albert's State Bar license, modify the order filed on December 13, 2017, imposing the recommended discipline on petitioner, and waive State Bar costs and fees is denied.

[Click here](#) to request automatic e-mail notifications about this case.

**A** Neutral  
As of: October 14, 2020 3:40 AM Z

## Albert on Discipline

Supreme Court of California

July 10, 2019, Opinion Filed

S254967

### Reporter

2019 Cal. LEXIS 5692 \*

ALBERT ON DISCIPLINE.

**Subsequent History:** Time for Granting or Denying Review Extended [Albert on Discipline, 2019 Cal. LEXIS 5852 \(Cal., July 29, 2019\)](#)

Rehearing denied by [Albert on Discipline, 2019 Cal. LEXIS 6415 \(Cal., Aug. 28, 2019\)](#)

US Supreme Court certiorari denied by [Albert v. State Bar of Ca, 2020 U.S. LEXIS 4 \(U.S., Jan. 13, 2020\)](#)

## Core Terms

probation, suspension, suspended, recommended, terminated, payee, Stds

**Judges:** [\*1] Kruger, J., was absent and did not participate.

## Opinion

Petition for review denied; recommended discipline imposed.

The request to correct or augment the record and/or for judicial notice is denied. The petition for writ of review is denied.

The court orders that **LENORE** LuANN ALBERT (Respondent), State Bar Number 210876, is suspended

from the practice of law in California for one year, execution of that period of suspension is stayed, and Respondent is placed on probation for two years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first six months of probation, and Respondent will remain suspended until the following requirements are satisfied:

i. Respondent makes restitution to the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburses the Client Security Fund, to the extent of any payment from the Fund to such payee, in accordance with *Business and Professions Code section 6140.5*) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles:

(1) Dr. Nira Schwartz-Woods in the amount of \$20,000 plus 10 percent interest per year from April 1, 2016; and  
(2) Fin City Foods in the amount [\*2] of \$47.00.

ii. If Respondent remains suspended for two years or longer as a result of not satisfying the preceding requirement, Respondent must also provide proof to the State Bar Court of rehabilitation, fitness to practice and present learning and ability in the general law before the suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Respondent must also comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on January 9, 2019.

3. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must also comply with *California Rules of Court*, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension. Respondent must also maintain the records of compliance as required by the conditions of probation.

Costs are awarded to the State Bar in accordance with *Business and Professions Code section 6086.10* and are [\*3] enforceable both as provided in *Business and Professions Code section 6140.7* and as a money judgment.

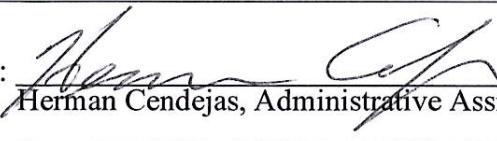
Kruger, J., was absent and did not participate.

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End of Document

STATE BAR COURT OF CALIFORNIA 845 South Figueroa Street, 3rd Floor Los Angeles, CA 90017-2515 (213) 765-1400	FOR STATE BAR COURT USE <b>FILED</b> <b>AUG 09 2017 E.A.</b> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In the Matter of  LEONORE LUANN ALBERT, No. 210876  Member of the State Bar	
CERTIFICATE OF COSTS	CASE NO.: 15O11311, 15O11708, 15O12260.

1. TAXABLE COSTS of the Office of the Chief Trial Counsel (Code Civ. Proc. §1033.5(a)).
\$ Witness fees pursuant to Government Code.
\$ Fees of expert witnesses when ordered by the Court.
\$ Deposition expenses, including transcript and travel costs.
\$ Service of process.
\$ Photocopies of exhibits.
\$ Models and blowups of exhibits.
2. REASONABLE COSTS PURSUANT TO FORMULA APPROVED BY THE BOARD OF TRUSTEES (Bus. & Prof. Code § 6086.10(b)(3)).
\$ <u>16,758.00</u> Base Charge.
\$ <u>1,956.00</u> Charge of \$978 for Investigations over one.
\$ Minimum charge for consolidated matter.
\$ Resignation charge (\$ 137.00).
3. OTHER REASONABLE COSTS—Incidental expenses of the Office of the Chief Trial Counsel (Bus. & Prof. Code §6086.10(b)(1); CCP §1033.5(c)).
\$ Reporter's transcript of State Bar Court proceedings.
\$ Cost for certifying court documents.
\$ Staff travel expenses.
4. <u>\$ 18,714.00</u> SUBTOTAL

By:   
Herman Cendejas, Administrative Assistant, Office of Chief Trial Counsel

Dated: 10/21/16

5. OTHER REASONABLE COSTS OF THE STATE BAR COURT

\$ 00.00

\$ 18,714.00 **TOTAL OF ALL COSTS**

By:   
Elizabeth Allen  
Deputy Court Clerk, Office of the State Bar Court  
Cost Form 4/15

Dated: 8/9/17

**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Deputy Court Clerk of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 9, 2017, I deposited a true copy of the following document(s):

**CERTIFICATE OF COSTS**

in a sealed envelope for collection and mailing on that date as follows:

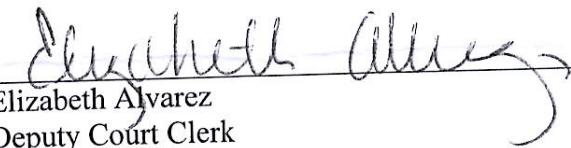
(X) by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LENORE L. ALBERT  
LAW OFC LENORE ALBERT  
7755 CENTER AVE STE 1100  
HUNTINGTON BEACH, CA 92647

(X) by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Brandon Keith Tady, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 9, 2017.

  
Elizabeth Alvarez  
Deputy Court Clerk  
State Bar Court

STATE BAR COURT OF CALIFORNIA		FOR CLERK'S USE ONLY:	P
REVIEW DEPARTMENT		<b>FILED</b> <b>FEB 15 2019</b> <i>MR</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
845 S. Figueroa St., Los Angeles, CA 90017			
In the Matter of:	Case No(s): 16-O-10548; 16-O-12958 (Consolidated)		
LENORE LUANN ALBERT Member No. 210876	<b>AMENDED NOTICE RE FAILURE TO COMPLY WITH RULE 5.151(D)</b>		
A Member of the State Bar.			

**TO ALL PARTIES AND COUNSEL IN THE ABOVE ENTITLED MATTER:**

Pursuant to rule 5.151(D) of the Rules of Procedure of the State Bar, you are hereby NOTIFIED that unless LENORE LUANN ALBERT submits payment of \$2100.00 for the transcripts within five (5) days from service of this notice, the request for review will be dismissed with prejudice, and if no other party requested review, the decision of the hearing judge in this matter will become final decision of the State Bar Court.



\_\_\_\_\_  
 Mel Zavala  
 Court Specialist  
 Review Department

Dated: February 15, 2019

STATE BAR COURT OF CALIFORNIA		FOR CLERK'S USE ONLY:
REVIEW DEPARTMENT		
845 S. Figueroa St., Los Angeles, CA 90017		
In the Matter of:	Case No(s): 16-O-10548; 16-O-12958 (Consolidated)	
LENORE LUANN ALBERT Member No. 210876	<b>NOTICE RE FAILURE TO COMPLY WITH RULE 5.151(D)</b>	
A Member of the State Bar.		

**TO ALL PARTIES AND COUNSEL IN THE ABOVE ENTITLED MATTER:**

Pursuant to rule 5.151(D) of the Rules of Procedure of the State Bar, you are hereby NOTIFIED that unless LENORE LUANN ALBERT submits payment of \$2100.00 for the transcripts within five (5) days from service of this notice, the request for review will be dismissed with prejudice, and if no other party requested review, the decision of the hearing judge in this matter will become final decision of the State Bar Court.



Mel Zavala  
Court Specialist  
Review Department

Dated: February 13, 2019

STATE BAR COURT OF CALIFORNIA  
845 South Figueroa Street, 3rd Floor  
Los Angeles, CA 90017-2515  
(213) 765-1400

FOR STATE BAR COURT USE

FILED

MAR 27 2019 *JH*

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of

LENORE LUANN ALBERT, No. 210876

Member of the State Bar

CERTIFICATE OF COSTS

CASE NO.: 16O12958, 16O10548.

## 1. TAXABLE COSTS of the Office of Chief Trial Counsel (Code Civ. Proc. §1033.5(a)).

\$ 201.90	Witness fees pursuant to Government Code.
\$	Fees of expert witnesses when ordered by the Court.
\$	Deposition expenses, including transcript and travel costs.
\$	Service of process.
\$	Photocopies of exhibits.
\$	Models and blowups of exhibits.

2. REASONABLE COSTS PURSUANT TO FORMULA APPROVED BY THE BOARD OF TRUSTEES  
(Bus. & Prof. Code §6086.10(b)(3)).

\$ 17,574.00	Base Charge.
\$ 1,026.00	Charge of \$1,026 for investigations over one.
\$	Minimum charge for consolidated matter.
\$	Resignation charge (\$144).

3. OTHER REASONABLE COSTS—Incidental expenses of the Office of Chief Trial Counsel  
(Bus. & Prof. Code §6086.10(b)(1); CCP §1033.5(c)).

\$	Reporter's transcript of State Bar Court proceedings.
\$ 40.00	Cost for certifying court documents.
\$	Staff travel expenses.
\$	

## 4. \$ 18,841.90 SUBTOTAL

By: *[Signature]* *[Signature]* Dated: 03/26/19  
Herman Cendejas, Program Assistant II, Office of Chief Trial Counsel

## 5. OTHER REASONABLE COSTS OF THE STATE BAR COURT

\$ 00.00

\$ 18,841.90 TOTAL OF ALL COSTS

By: *[Signature]* Dated: 3-27-19  
Sr. Administrative Assistant, Office of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Sr. Administrative Assistant of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 27, 2019, I deposited a true copy of the following document(s):

**CERTIFICATE OF COSTS**

in a sealed envelope for collection and mailing on that date as follows:

( X ) by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LENORE L. ALBERT  
LAW OFC LENORE ALBERT  
14272 HOOVER STREET SP 69  
WESTMINSTER, CA 92683

(X) by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Timothy G. Byer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 27, 2019.

  
Jesus Hernandez  
Sr. Administrative Assistant  
State Bar Court

# CONSTITUTION ANNOTATED

Analysis and Interpretation of the U.S. Constitution

## Constitution of the United States

### First Amendment

First Amendment Annotated

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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# CONSTITUTION ANNOTATED

Analysis and Interpretation of the U.S. Constitution

## Constitution of the United States

### Eighth Amendment

Eighth Amendment Annotated

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Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

# CONSTITUTION ANNOTATED

Analysis and Interpretation of the U.S. Constitution

## Constitution of the United States

### Fourteenth Amendment

Fourteenth Amendment Annotated

#### Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

#### Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

#### Section 3

No Person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United

States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

#### **Section 4**

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

#### **Section 5**

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

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(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) to round to the nearest \$25 the dollar amount that represents such change.

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) of this title.

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 103-394, title I, §108(e), Oct. 22, 1994, 108 Stat. 4112.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 104 represents a compromise between the House bill and the Senate amendment with respect to the adjustment of dollar amounts in title 11. The House amendment authorizes the Judicial Conference of the United States to transmit a recommendation for the uniform percentage of adjustment for each dollar amount in title 11 and in 28 U.S.C. 1930 to the Congress and to the President before May 1, 1985, and before May 1 of every sixth year thereafter. The requirement in the House bill that each such recommendation be based only on any change in the cost-of-living increase during the period immediately preceding the recommendation is deleted.

##### SENATE REPORT NO. 95-989

This section requires that the Director of the Administrative Office of the U. S. Courts report to Congress and the President before Oct. 1, 1985, and before May 1 every 6 years thereafter a recommendation for adjustment in dollar amounts found in this title. The Committee feels that regular adjustment of the dollar amounts by the Director will conserve congressional time and yet assure that the relative dollar amounts used in the bill are maintained. Changes in the cost of living should be a significant, but not necessarily the only, factor considered by the Director. The fact that there has been an increase in the cost of living does not necessarily mean that an adjustment of dollar amounts would be needed or warranted.

##### HOUSE REPORT NO. 95-595

This section requires the Judicial Conference to report to the Congress every four years after the effective date of the bankruptcy code any changes that have occurred in the cost of living during the preceding four years, and the appropriate adjustments to the dollar amounts in the bill. The dollar amounts are found primarily in the exemption section (11 U.S.C. 522), the wage priority (11 U.S.C. 507), and the eligibility for chapter 13 (11 U.S.C. 109). This section requires that the Conference recommend uniform percentage changes in these amounts based solely on cost of living changes. The dollar amounts in the bill would not change on that recommendation, absent Congressional veto. Instead, Congress is required to take affirmative action, by passing a law amending the appropriate section, if it wishes to accomplish the change.

If the Judicial Conference has policy recommendations concerning the appropriate dollar amounts in the bankruptcy code based other than on cost of living considerations there are adequate channels through which

it may communicate its views. This section is solely for the housekeeping function of maintaining the dollar amounts in the code at fairly constant real dollar levels.

##### AMENDMENTS

1994—Pub. L. 103-394 designated existing provisions as subsec. (a) and added subsec. (b).

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

#### § 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest, may—

(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be

**§ 106****TITLE 11—BANKRUPTCY**

combined with the hearing on confirmation of the plan.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 98-353, title I, § 118, July 10, 1984, 98 Stat. 344; Pub. L. 99-554, title II, § 203, Oct. 27, 1986, 100 Stat. 3097; Pub. L. 103-394, title I, § 104(a), Oct. 22, 1994, 108 Stat. 4108.)

**HISTORICAL AND REVISION NOTES****SENATE REPORT NO. 95-989**

Section 105 is derived from section 2a (15) of present law [section 11(a)(15) of former title 11], with two changes. First, the limitation on the power of a bankruptcy judge (the power to enjoin a court being reserved to the district judge) is removed as inconsistent with the increased powers and jurisdiction of the new bankruptcy court. Second, the bankruptcy judge is prohibited from appointing a receiver in a case under title 11 under any circumstances. The bankruptcy code has ample provision for the appointment of a trustee when needed. Appointment of a receiver would simply circumvent the established procedures.

This section is also an authorization, as required under 28 U.S.C. 2283, for a court of the United States to stay the action of a State court. As such, *Toucey v. New York Life Insurance Company*, 314 U.S. 118 (1941), is overruled.

**REFERENCES IN TEXT**

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (d)(2), are set out in the Appendix to this title.

**AMENDMENTS**

1994—Subsec. (d). Pub. L. 103-394 added subsec. (d).

1986—Subsec. (a). Pub. L. 99-554 inserted at end “No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”

1984—Subsecs. (a), (b). Pub. L. 98-353, § 118(1), struck out “bankruptcy” before “court.”

Subsec. (c). Pub. L. 98-353, § 118(2), added subsec. (c).

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 106 of this title.

**§ 106. Waiver of sovereign immunity**

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524,

525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate non-bankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

(b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

(c) Notwithstanding any assertion of sovereign immunity by a governmental unit, there shall be offset against a claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 103-394, title I, § 113, Oct. 22, 1994, 108 Stat. 4117.)

**HISTORICAL AND REVISION NOTES****LEGISLATIVE STATEMENTS**

Section 106(c) relating to sovereign immunity is new. The provision indicates that the use of the term “creditor,” “entity,” or “governmental unit” in title 11 applies to governmental units notwithstanding any assertion of sovereign immunity and that an order of the court binds governmental units. The provision is included to comply with the requirement in case law that an express waiver of sovereign immunity is required in order to be effective. Section 106(c) codifies *In re Guillian*, 519 F.2d 407 (9th Cir., 1975), and *In re Dolard*, 519 F.2d 282 (9th Cir., 1975), permitting the bankruptcy court to determine the amount and dischargeability of tax liabilities owing by the debtor or the estate prior to or during a bankruptcy case whether or not the governmental unit to which such taxes are owed files a proof of claim. Except as provided in sections 106(a) and (b), subsection (c) is not limited to those issues, but permits the bankruptcy court to bind governmental units on other matters as well. For example, section 106(c) permits a trustee or debtor in possession to assert avoiding powers under title 11 against a governmental unit; contrary language in the House report to H.R. 8200 is thereby overruled.

## 11 U.S. Code § 523. Exceptions to discharge

U.S. Code Notes

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**(a)** A discharge under section 727, 1141, 1192 <sup>[1]</sup> 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt

—  
**(1)** for a tax or a customs duty—

**(A)** of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

**(B)** with respect to which a return, or equivalent report or notice, if required—

**(i)** was not filed or given; or

**(ii)** was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

**(C)** with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

**(2)** for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

**(A)** false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

**(B)** use of a statement in writing—

**(i)** that is materially false;

- (ii) respecting the debtor's or an insider's financial condition;
- (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
- (iv) that the debtor caused to be made or published with intent to deceive; or

**(C)**

- (i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than \$500<sup>[2]</sup> for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than \$750<sup>2</sup> that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

- (ii) for purposes of this subparagraph—

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and

(II) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

**(B)** if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

**(4)** for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

**(5)** for a domestic support obligation;

**(6)** for willful and malicious injury by the debtor to another entity or to the property of another entity;

**(7)** to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

**(A)** relating to a tax of a kind not specified in paragraph (1) of this subsection; or

**(B)** imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

**(8)** unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

**(A)**

**(i)** an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

**(ii)** an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

**(B)** any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

**(9)** for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful

App. 171  
because the debtor was intoxicated from using alcohol, a drug, or another substance;

**(10)** that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

**(11)** provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

**(12)** for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;

**(13)** for any payment of an order of restitution issued under title 18, United States Code;

**(14)** incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

**(14A)** incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

**(14B)** incurred to pay fines or penalties imposed under Federal election law;

**(15)** to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

**(16)** for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share

of a cooperative corporation, or a lot in a homeowners association, for App. 172 as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

**(17)** for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);

**(18)** owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

**(A)** a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

**(B)** a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

**(19)** that—

**(A)** is for—

**(i)** the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

**(ii)** common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

**(B)** results, before, on, or after the date on which the petition was filed, from—

- (i)** any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;
- (ii)** any settlement agreement entered into by the debtor; or
- (iii)** any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

For purposes of this subsection, the term “return” means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

**(b)** Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A<sup>[3]</sup> of the Higher Education Act of 1965, or under section 733(g)<sup>[3]</sup> of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

**(c)**

**(1)** Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

**(2)** Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

**(d)** If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

**(e)** Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2590; Pub. L. 96-56, § 3, Aug. 14, 1979, 93 Stat. 387; Pub. L. 97-35, title XXIII, § 2334(b), Aug. 13, 1981, 95 Stat. 863; Pub. L. 98-353, title III, §§ 307, 371, 454, July 10, 1984, 98 Stat. 353, 364, 375; Pub. L. 99-554, title II, §§ 257(n), 281, 283(j), Oct. 27, 1986, 100 Stat. 3115-3117; Pub. L. 101-581, § 2(a), Nov. 15, 1990, 104 Stat. 2865; Pub. L. 101-647, title XXV, § 2522(a), title XXXI, § 3102(a), title XXXVI, § 3621, Nov. 29, 1990, 104 Stat. 4865, 4916, 4964; Pub. L. 103-322, title XXXII, § 320934, Sept. 13, 1994, 108 Stat. 2135; Pub. L. 103-394, title II, § 221, title III, §§ 304(e), (h)(3), 306, 309, title V, § 501(d)(13), Oct. 22, 1994, 108 Stat. 4129, 4133-4135, 4137, 4145; Pub. L. 104-134, title I, § 101[(a)] [title VIII, § 804(b)], Apr. 26, 1996, 110 Stat. 1321, 1321-74; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104-193, title III, § 374(a), Aug. 22, 1996, 110 Stat. 2255; Pub. L. 105-244, title IX, § 971(a), Oct. 7, 1998, 112 Stat. 1837; Pub. L. 107-204, title VIII, § 803, July 30, 2002, 116 Stat. 801; Pub. L. 109-8, title II, §§ 215, 220, 224(c), title III, §§ 301, 310, 314(a), title IV, § 412, title VII, § 714, title XII, §§ 1209, 1235, title XIV, § 1404(a), title XV, § 1502(a)(2), Apr. 20, 2005, 119 Stat. 54, 59, 64, 75, 84, 88, 107, 128, 194, 204, 215, 216; Pub. L. 111-

## 11 U.S. Code § 525. Protection against discriminatory treatment

U.S. Code      Notes

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**(a)** Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

**(b)** No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt—

- (1)** is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;
- (2)** has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

**(3)** has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

**(c)**

**(1)** A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a student grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

**(2)** In this section, "student loan program" means any program operated under title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2593; Pub. L. 98-353, title III, § 309, July 10, 1984, 98 Stat. 354; Pub. L. 103-394, title III, § 313, title V, § 501(d) (15), Oct. 22, 1994, 108 Stat. 4140, 4145; Pub. L. 109-8, title XII, § 1211, Apr. 20, 2005, 119 Stat. 194.)

## 42 U.S. Code § 1983. Civil action for deprivation of rights

[U.S. Code](#) [Notes](#)

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Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

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## Cal Bus & Prof Code § 6086.10

Deering's California Codes are current through Chapters 1-35, 37-45, 47-85, 87, 89, 91-97, 99, 100, 102, 104, 106, 107, 109, 110, 112-114, 118-123, 127-129, 132-135, 145, 147, 155, 162, 164, 171, 172, 175, 176, 178, 183, 206-209, 211-213, 232, 236, 262, 282, 300, and 343 of the 2020 Regular Session, including all legislation effective September 24, 2020 or earlier.

***Deering's California Codes Annotated > BUSINESS & PROFESSIONS CODE (§§ 1 — 30047) > Division 3 Professions and Vocations Generally (Chs. 1 — 21.5) > Chapter 4 Attorneys (Arts. 1 — 16) > Article 5 Disciplinary Authority of the Board of Governors (§§ 6075 — 6089)***

### **Notice**

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🚩 This section has more than one version with varying effective dates.

## **§ 6086.10. Order imposing public reproof or discipline; Imposition of costs; Relief or extension; Reimbursement upon exoneration**

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**(a)** Any order imposing a public reproof on a licensee of the State Bar shall include a direction that the licensee shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the licensee shall pay costs. An order pursuant to this subdivision is enforceable both as provided in [Section 6140.7](#) and as a money judgment.

**(b)** The costs required to be imposed pursuant to this section include all of the following:

**(1)** The actual expense incurred by the State Bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

**(2)** All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

**(3)** The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State Bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the Client Security Fund.

**(c)** A licensee may be granted relief, in whole or in part, from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the State Bar, upon grounds of hardship, special circumstances, or other good cause.

**(d)** In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State Bar in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparation for the hearing.

**(e)** In addition to other monetary sanctions as may be ordered by the Supreme Court pursuant to [Section 6086.13](#), costs imposed pursuant to this section are penalties, payable to and for the benefit of the State Bar of California, a public corporation created pursuant to Article VI of the California Constitution, to promote rehabilitation and to protect the public. This subdivision is declaratory of existing law.

## History

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Added Stats 1986 ch 662 § 1. Amended [Stats 2003 ch 334 § 4 \(AB 1708\)](#); [Stats 2018 ch 659 § 72 \(AB 3249\)](#), effective January 1, 2019.

### Annotations

## Notes

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### Amendments:

#### Note—

### Amendments:

#### 2003 Amendment:

(1) Added the last sentence of subd (a); (2) substituted “Client Security Fund” for “client security fund” in the last sentence of subd (b)(3); and (3) added subd (e).

#### 2018 Amendment (ch 659):

Substituted “licensee” for “member” three times in (a) and in (c).

#### Note—

#### [Stats 2003 ch 334](#) provides:

SEC. 11. It is the intent of the Legislature that the changes made to Sections 6086.10 and 6140.5 of the *Business and Professions Code* by this act shall apply to costs and assessments ordered but unpaid on the date this act becomes operative, as well as to any costs and assessments ordered thereafter.

SEC. 12. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

## Notes to Decisions

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### 1. Generally

### 2. Construction with Other Law

## 1. Generally

Legislature clearly intended that the 2003 amendment to *B & P C § 6086.10* be retroactively applicable to disbarred attorneys. [\*Gadda v. State Bar of Cal. \(9th Cir. Cal. Dec. 27, 2007\), 511 F.3d 933, 2007 U.S. App. LEXIS 29806.\*](#)

Legislative purpose of 2003 amendment to *B & P C § 6086.10* was a legitimate one: to recover costs owed to the California State Bar by disbarred attorneys who did not seek readmission; the amendment was rationally related to that legitimate end, and therefore the retroactive application did not offend due process. [\*Gadda v. State Bar of Cal. \(9th Cir. Cal. Dec. 27, 2007\), 511 F.3d 933, 2007 U.S. App. LEXIS 29806.\*](#)

## 2. Construction with Other Law

Where an attorney subject to disciplinary proceedings was ordered to pay costs under *B & P C § 6086.10* rather than to pay a monetary sanction under *B & P C § 6086.13*, his debt was compensation to the California State Bar as expense rather than a fine or penalty. [\*State Bar v. Taggart \(In re Taggart\) \(9th Cir. May 10, 2001\), 249 F.3d 987, 2001 U.S. App. LEXIS 8799.\*](#)

Cost award assessed by the California State Bar against an attorney following a disciplinary proceeding was excepted from discharge under 11 U.S.C.S. § [523\(a\)\(7\)](#). Section 523(a)(7) did not require proof that an award was both a penalty and also not intended to compensate for an actual pecuniary loss, and the cost award mandated by *B & P C § 6086.10(a)* was intended as a penalty. [\*State Bar of Cal. v. Findley \(In re Findley\) \(Bankr. N.D. Cal. Apr. 25, 2007\), 2007 Bankr. LEXIS 1509\*, rev'd, \*\(B.A.P. 9th Cir. Apr. 7, 2008\), 387 B.R. 260, 2008 Bankr. LEXIS 1253.\*](#)

The U.S. Bankruptcy Court for the Northern District California construes the amended version of *B & P C § 6086.10* to statutorily reverse [\*In re Taggart, 249 F.3d 987, 2001 US App LEXIS 8799 \(9th Cir. 2001\)\*](#) and clarifies that the cost award mandated by § 6086.10(a) is intended as a penalty and not as compensation for actual pecuniary loss. [\*State Bar of Cal. v. Findley \(In re Findley\) \(Bankr. N.D. Cal. Apr. 25, 2007\), 2007 Bankr. LEXIS 1509\*, rev'd, \*\(B.A.P. 9th Cir. Apr. 7, 2008\), 387 B.R. 260, 2008 Bankr. LEXIS 1253.\*](#)

Where a debtor, an attorney, was assessed a fee to cover the cost of the debtor's disciplinary proceedings, the cost award was non-dischargeable under 11 U.S.C.S. § [523\(a\)\(7\)](#) because the 2003 amendments to *B & P C § 6086.10* were sufficient to render the attorney discipline costs non-dischargeable in bankruptcy pursuant to § 523(a)(7). [\*State Bar v. Findley \(In re Findley\) \(9th Cir. Feb. 1, 2010\), 593 F.3d 1048, 2010 U.S. App. LEXIS 2115.\*](#)

[\*2003\*](#) amendments to *B & P C § 6086.10* are sufficient to render attorney discipline costs imposed by the California State Bar Court non-dischargeable in bankruptcy pursuant to 11 U.S.C.S. § [523\(a\)\(7\)](#). [\*State Bar v. Findley \(In re Findley\) \(9th Cir. Feb. 1, 2010\), 593 F.3d 1048, 2010 U.S. App. LEXIS 2115.\*](#)

[\*Under State Bar of Cal. v. Findley \(In re Findley\), 593 F.3d 1048 \(9th Cir. 2010\)\*](#), the cost reimbursement ordered paid by the California Supreme Court pursuant to *B & P C § 6086.10* was nondischargeable under [11 USCS § 523\(a\)\(7\)](#). [\*Albert-Sheridan v. State Bar of Cal. \(In re Albert-Sheridan\) \(B.A.P. 9th Cir. Apr. 11, 2019\), 2019 Bankr. LEXIS 1187\*, aff'd, \*\(9th Cir. June 10, 2020\), 808 Fed. Appx. 565, 2020 U.S. App. LEXIS 18369\*, rev'd, in part, aff'd, \*\(9th Cir. June 10, 2020\), 960 F.3d 1188, 2020 U.S. App. LEXIS 18348.\*](#)

Costs of California State Bar disciplinary proceeding were non-dischargeable because they were not compensation for actual pecuniary loss but, rather, were punitive and rehabilitative in nature. [\*Albert-Sheridan v. State Bar of Cal. \(In re Albert-Sheridan\) \(9th Cir. June 10, 2020\), 960 F.3d 1188, 2020 U.S. App. LEXIS 18348.\*](#)

### Cal Bus & Prof Code § 6086.13

Deering's California Codes are current through Chapters 1-35, 37-45, 47-85, 87, 89, 91-97, 99, 100, 102, 104, 106, 107, 109, 110, 112-114, 118-123, 127-129, 132-135, 145, 147, 155, 162, 164, 171, 172, 175, 176, 178, 183, 206-209, 211-213, 232, 236, 262, 282, 300, and 343 of the 2020 Regular Session, including all legislation effective September 24, 2020 or earlier.

***Deering's California Codes Annotated > BUSINESS & PROFESSIONS CODE (§§ 1 — 30047) > Division 3 Professions and Vocations Generally (Chs. 1 — 21.5) > Chapter 4 Attorneys (Arts. 1 — 16) > Article 5 Disciplinary Authority of the Board of Governors (§§ 6075 — 6089)***

## **§ 6086.13. Order for monetary sanction in order imposing suspension or disbarment or accepting resignation with disciplinary matter pending**

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**(a)**Any order of the Supreme Court imposing suspension or disbarment of a licensee of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the licensee pay a monetary sanction not to exceed five thousand dollars (\$5,000) for each violation, subject to a total limit of fifty thousand dollars (\$50,000).

**(b)**Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

**(c)**The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.

**(d)**The authority granted under this section is in addition to the provisions of *Section 6086.10* and any other authority to impose costs or monetary sanctions.

**(e)**Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

## **History**

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Added [Stats 1992 ch 1270 § 1 \(AB 2300\)](#). Amended [Stats 1993 ch 926 § 1 \(AB 2205\)](#); [Stats 2018 ch 659 § 73 \(AB 3249\)](#), effective January 1, 2019.

Annotations

## **Notes**

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**Prior Law:**

**Amendments:**

**Prior Law:**

There was another section of this number which was added Stats 1992 ch 1265 § [2](#) and amended and renumbered B & P C § [6086.15](#) by Stats 1994 ch 146 § [6](#).

**Amendments:****1993 Amendment:**

Substituted "Supreme Court" for "State Bar Court" in subd (a).

**2018 Amendment (ch 659):**

Substituted "licensee" for "member" twice in (a).

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**Notes to Decisions****1. Generally**

Where an attorney subject to disciplinary proceedings was ordered to pay costs under B & P C § 6086.10 rather than to pay a monetary sanction under B & P C § [6086.13](#), his debt was compensation to the California State Bar as expense rather than a fine or penalty. [State Bar v. Taggart \(In re Taggart\) \(9th Cir. May 10, 2001\), 249 F.3d 987, 2001 U.S. App. LEXIS 8799](#).

Where a debtor, an attorney, was assessed a fee to cover the cost of the debtor's disciplinary proceedings, the cost award was non-dischargeable under 11 U.S.C.S. § [523\(a\)\(7\)](#) because the 2003 amendments to B & P C § 6086.10 were sufficient to render the attorney discipline costs non-dischargeable in bankruptcy pursuant to § 523(a)(7). [State Bar v. Findley \(In re Findley\) \(9th Cir. Feb. 1, 2010\), 593 F.3d 1048, 2010 U.S. App. LEXIS 2115](#).

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**Research References & Practice Aids****Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 71 "Attorney Discipline"](#).

Cal. Legal Forms, (Matthew Bender) § [1A.31](#).

**Hierarchy Notes:**

## Cal Bus & Prof Code § 6140.7

Deering's California Codes are current through Chapters 1-35, 37-45, 47-85, 87, 89, 91-97, 99, 100, 102, 104, 106, 107, 109, 110, 112-114, 118-123, 127-129, 132-135, 145, 147, 155, 162, 164, 171, 172, 175, 176, 178, 183, 206-209, 211-213, 232, 236, 262, 282, 300, and 343 of the 2020 Regular Session, including all legislation effective September 24, 2020 or earlier.

***Deering's California Codes Annotated > BUSINESS & PROFESSIONS CODE (§§ 1 — 30047) > Division 3 Professions and Vocations Generally (Chs. 1 — 21.5) > Chapter 4 Attorneys (Arts. 1 — 16) > Article 8 Revenue (§§ 6140 — 6145)***

### **§ 6140.7. Assessment of costs against licensee who is reproved or suspended or who resigns with charges pending**

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Costs assessed against a licensee publicly reproved or suspended, where suspension is stayed and the licensee is not actually suspended, shall be added to and become a part of the license fee of the licensee, for the next calendar year. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section 6086.10, costs assessed against a licensee who resigns with disciplinary charges pending or by a licensee who is actually suspended or disbarred shall be paid as a condition of applying for reinstatement of his or her license to practice law or return to active license status.

### **History**

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Added Stats 1986 ch 662 § 2. Amended [Stats 1996 ch 1104 § 7 \(AB 2787\)](#); [Stats 2004 ch 529 § 3 \(AB 1711\)](#); [Stats 2018 ch 659 § 104 \(AB 3249\)](#), effective January 1, 2019.

Annotations

### **Notes**

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#### **Amendments:**

##### **1996 Amendment:**

##### **1996 Amendment:**

(1) Substituted "member publicly reproved or suspended, where suspension is stayed and the member is not actually suspended," for "publicly reproved or suspended member"; (2) substituted "Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section 6085.10, costs assessed against" for "Costs unpaid by"; (3) added "actually" after "a member who is"; and (4) added "or return to active" near the end of the section.

##### **2004 Amendment:**

Substituted "Section 6086.10" for "Section 6085.10" in the last sentence.

**2018 Amendment (ch 659):**

Substituted "licensee" for "member" five times; substituted "license fee" for "membership fee"; and substituted "condition of reinstatement of his or her license to practice law or return to active license status" for "condition of reinstatement of or return to active membership".

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## Notes to Decisions

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### 1. Construction

Where a debtor, an attorney, was assessed a fee to cover the cost of the debtor's disciplinary proceedings, the cost award was non-dischargeable under 11 U.S.C.S. § [523\(a\)\(7\)](#) because the 2003 amendments to *B & P C* § 6086.10 were sufficient to render the attorney discipline costs non-dischargeable in bankruptcy pursuant to § 523(a)(7). [State Bar v. Findley \(In re Findley\) \(9th Cir. Feb. 1, 2010\), 593 F.3d 1048, 2010 U.S. App. LEXIS 2115.](#)

Costs of California State Bar disciplinary proceeding were non-dischargeable because they were not compensation for actual pecuniary loss but, rather, were punitive and rehabilitative in nature. [Albert-Sheridan v. State Bar of Cal. \(In re Albert-Sheridan\) \(9th Cir. June 10, 2020\), 960 F.3d 1188, 2020 U.S. App. LEXIS 18348.](#)

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## Research References & Practice Aids

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### Jurisprudences

Cal Jur 3d (Rev) Attorneys at Law §§ 43, 44.

### Legal Periodicals:

Review of Selected 1986 Legislation. 18 Pac. L.J. 467.

### Treatises:

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 70 "Attorney Admission".](#)

Cal. Legal Forms, (Matthew Bender) § [1A.31.](#)

### Hierarchy Notes:

[Cal Bus & Prof Code Div. 3](#)

[Cal Bus & Prof Code Div. 3, Ch. 4, Art. 8](#)

SENATE JUDICIARY COMMITTEE  
 Martha M. Escutia, Chair  
 2003-2004 Regular Session

AB 1708	A
Assembly Committee on Judiciary	B
As Amended July 2, 2003	
Hearing Date: July 8, 2003	1
Business and Professions Code	7
GW:ctj	0
	8

SUBJECT

State Bar of California Potpourri: Annual Dues and Other Assortments

DESCRIPTION

This bill would:

Authorize the State Bar to collect up to \$390 as total State Bar active membership dues for 2004. The dues would fund only mandatory programs of the Bar. Members could deduct \$5 if they did not wish to support non-Keller activities.

Revise the "scaling" criteria that allows members to reduce their bar dues by either 50% or 25%, depending on their earned income, as specified.

Authorize the State Bar to seek court judgments to collect disciplinary costs assessed upon disciplined attorneys, and to recover from errant attorneys moneys paid out to their wronged clients from the Client Security Fund.

Require the State Bar to report to the Judiciary Committees of the Assembly and Senate by January 1, 2005 on the status of its regulatory and disciplinary efforts concerning alleged abuses of the Unfair Competition Law by private actions brought on the behalf of the general public.

Provide, until 2009, that applicants who fail the bar exam do not have the right to inspect their Multistate Bar Exam results if the Committee of Bar Examiners do not physically have those results.

(more)

AB 1708 (Asm. Judiciary Committee)  
 Page 2

(This analysis reflects author's amendments to be offered in Committee.)

BACKGROUND

As the State Bar faced near-extinction with the veto of its dues bill in 1997 and its failure to obtain a dues bill for 1998 and 1999, it began a reorganization and streamlining of its structure that continues to this day. In 1999 with SB 144 (Schiff), Chapter 342, Statutes of 1999, the State Bar:

- Lowered the annual dues from a permitted \$478 to \$395.
- Made the Conference of Delegates and the State Bar Sections self-funding.
- Allowed members to deduct \$5 from their dues bill if they did not want to support State Bar lobby activities outside the limits of Keller v. State Bar, and limited the State Bar's expenditures on non-Keller lobbying and related activities to an amount raised by members paying the "\$5 voluntary dues."
- Provided a 25% fee reduction if the lawyer's annual income from the practice of law was less than \$40,000, and a 50% deduction if the income was less than \$25,000 (and dropped the discount for 1st and 2d year lawyers).
- Required the State Bar to contract for a performance audit by the Bureau of State Audits every two years, and required an annual independent comprehensive financial audit of Bar expenses.

In 1999 and 2000, the State Bar also revamped its disciplinary system to adopt numerous recommendations made by Justice Elwood Lui, who was appointed as the Bar's Special Master by the Supreme Court to oversee Bar operations as it resumed its disciplinary activities under a \$173 per member emergency assessment by the Supreme Court. (In Re Attorney Discipline System (1998) 19. Cal. 4th 582)

AOB Addendum

In 2000, SB 1367 (Schiff), Ch. 118, Stats. of 2000, authorized annual dues of up to \$395 for the year 2001. In fact, hiring was so slow during the restart that the Bar accumulated nearly \$15 million in surplus funds by the end of 2000 because they could not fill all the vacant employee positions. Of this surplus, the Bar refunded about one-half of it to the members by reducing the 2001 dues to \$345. Most of the remainder was

AB 1708 (Asm. Judiciary Committee)  
Page 3

earmarked for paying for building improvements and earthquake retrofitting for the State Bar's building in San Francisco.

In 2001, SB 352 (Kuehl) authorized the Bar to collect up to \$390 in annual dues for the years 2002 and 2003, which reflected a \$5 reduction in the Client Security Fund assessment. That same year, SB 479 (Burton) was enacted to require the State Bar to establish a diversion and assistance program for attorneys who suffer from alcohol or drug abuse or a mental illness. This program is funded by a \$10 per member fee collected as part of the annual \$390 bar dues allowed by SB 352.

This bill continues the statutory re-structuring of the State Bar by reflecting the former affiliated Conference of Delegates as a separate, independent entity, the Conference of Delegates of California State Bar Associations. It also proposes additional collection authority for the Bar and an adjustment of the fee scaling provisions to increase revenues to ward off potential future budget deficits forewarned in the recent April 24, 2003 State Auditor's report. (See Comment 6 for summary of the State Auditor's Report.) -

CHANGES TO EXISTING LAW

1. Existing law requires all attorneys who practice law in California to be a member of the State Bar of California, and establishes the State Bar of California for the purpose of regulating the legal profession. Pursuant to the State Bar Act, the annual mandatory membership fee set by the Bar's Board of Governors to pay for discipline and other functions must be ratified by the Legislature. (Business and Professions Code Section 6000 et. seq. All references hereinafter are to this Code.)

Existing case law, *Keller v. State Bar of California* (1990) 496 U.S. 1, prohibits the use by the State Bar of mandatory dues to fund political and ideological activities, as a violation of a member's First Amendment freedom of speech rights, where such expenditures were not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of the legal services available to the people of the state.

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Existing law authorized the State Bar to collect \$310 in annual membership fees from active members for a total annual dues bill of \$390 for the years 2002 and 2003 (The other \$80 is pursuant to ongoing statutory authorization to assess annually the following fees: \$35 for the Client Security Fund, \$10 for the Building Fund, \$25 for disciplinary activities, and \$10 to fund the Attorney Diversion and Assistance Program enacted by SB 479 (Burton).) Existing law allows members to deduct \$5 from the mandatory dues if the member did not wish to fund non-Keller lobbying and activities with his or her dues. (Sections 6140, 6140.05.)

Existing law provides for a 25% reduction of the Bar dues if the member's annual income from the practice of law is less than \$40,000, and provides for a 50% reduction if that income from the practice of law is less than \$25,000. (Section 6141.1.)

This bill would authorize the State Bar to collect \$310 in membership fees for the year 2004 for a total annual dues bill of \$390, and continue the \$5 deduction for members who

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did not wish to fund lobbying and non-Keller activities.

This bill would revise the "scaling" provisions as follows:

- a) A member who can demonstrate total annual earned income of less than \$40,000 derived from the provision of arbitration, mediation, referee or other dispute resolution services and, generally, from the practice of law, is presumptively qualified for a 25% waiver of the annual membership fee.
- b) A member who can demonstrate total annual individual earned income of less than \$30,000 is presumptively qualified for a 50% waiver of the annual membership fee.

2. Existing law provides that any disciplinary action imposed upon an attorney must include an order that the attorney pays the costs of the State Bar's disciplinary proceedings. These costs are added to the attorney's annual membership fee or, if the attorney has resigned, must be paid as a condition of reinstatement. (Business and Professions Code Sections 6086.10 and 6140.7.)

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This bill would authorize the State Bar to seek court judgments to: a) collect disciplinary costs assessed upon disciplined attorneys, and b) recover from errant attorneys moneys paid to their wronged clients from the Client Security Fund.

The bill would state the Legislature's intent that these changes also apply to costs and assessments ordered but unpaid on the date of this bill becoming operative.

3. Existing law provides applicants who fail the bar exam with the right to inspect his or her exam papers within four months of the results being posted, but limits, until January 1, 2004, the inspection to exam papers that are in the actual, physical possession of the State Bar Committee of Bar Examiners (CBE). (Section 6065.)

This bill would extend that limitation to January 1, 2009.

4. This bill would:

Require the State Bar to report to the Judiciary Committees of the Senate and Assembly, by January 1, 2005, on the status of its regulatory and disciplinary efforts concerning alleged abuses of the Unfair Competition Law by private actions brought on the behalf of the general public.

Make necessary reference changes in the law to reflect the Conference of Delegates of California State Bar Associations (nee' State Bar Conference of Delegates) independence and separation from the State Bar.

#### COMMENT

##### 1. Stated need for bill

In support, the sponsor, the State Bar of California, states: "AB 1708 will extend for one year the State Bar's authority to collect the fees needed to keep it operating. The fees will remain at the current level, a maximum of \$390 a year. This would make 2004 the fifth straight year since the State Bar's restoration that the State Bar has gone without a fee increase. The audit of the State Bar released in April by the Bureau of State Audits praised the Bar for

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the way it reasonably sets and manages mandatory fees' and 'ensures that dues for members are reasonable and are not used to support voluntary functions,' identifying only relatively minor improvements the Bar should make in its enforcement of disciplinary policies and procedures."

The sponsor also points out that the State Auditor recognizes that the Bar faces potential funding deficits in the near future, and that two of AB 1708's other parts - revision of scaling provision and improvement of Bar's debt collection authority (discussed in Comments 3 and 4) - are

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in direct response to the State Auditor's report and are intended to produce some added revenues for the Bar to ward off potential fiscal disaster.

2. Potential of fiscal crisis in 2005 for State Bar, at least according to the Bar; part of the cause may be self-inflicted

Based on the State Bar's financial forecast, the State Auditor opined that the State Bar's General Fund and Public Protection Reserve Fund could face a combined deficit of \$1.3 million by the end of 2005 without any increase in revenue.

Her opinion, however, must be viewed in the light it was formulated - based on the State Bar's financial forecast. While the State Bar has ceased its formerly opaque accounting practices in favor of greater transparency, the current accounting or reporting methods still make it difficult for Committee staff to readily ascertain the true extent of the Bar's expenses and fiscal condition without having to ask numerous follow-up questions to reconcile inconsistent numbers at times and in response to some inadequate answers at other times.

As one example, the Auditor reports that the Client Security Fund (CSF) paid out \$6.6 million (\$6,597,057) in claims in 2002, a figure verified by the Bar's 10-year report on the CSF. However, in a document detailing CSF activity up to May, 2003, the Bar reported CSF Claims Paid in 2002 at \$7,830,169. Even adjusting for the \$715,136 of CSF Reimbursement, that still left a net expense of \$7,115,033,

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a difference of over \$500,000 from the figures used by the State Auditor. Upon questioning, the Bar's first explanation was that the \$7.8 figure includes \$1.1 in "claims paid accrual," which reportedly reserves that amount for future claims payments. This explanation was confusing because that term and reserve had not been referenced in the 10-year report or the State Auditor's report. Even accepting the explanation, however, that still left over \$100,000 unaccounted for. Only after additional calls were the numbers reconciled: the "claims paid accrual" was actually \$1.2 million and not \$1.1 million. Needless to say, the reporting of different numbers on different reports, and the error in reconciling the numbers, unnecessarily made the task of "finding the truth" more difficult.

The State Auditor also reported at page 30 that projected 2003 expenses will be \$6 million higher than 2002 actual expenses. "Of that increase, \$4.5 million was due to an increase in salaries and related expenses. One of the related expenses, fringe benefits, increased \$2.6 million." This increase includes a \$720,000 increase in required employer contributions to the Public Employees' Retirement System, a cost visited upon every state entity, including the State Senate and Assembly.

In making her report, the State Auditor assumed there would be no additional revenues and no salary increases. However, since the report, the Bar has committed to giving its non-executive employees an annual 2.5% increase in 2003 and 2004. This increase is in addition to the wage increases of over 40% given these employees in 2000, 2001 and 2002 (20.5% across-the-board increase given to all non-executive employees in the three-year period, plus additional 20% in step or merit increases given in the same period).

While the Bar asserts that their salaries are necessary to compete with the private and public sector in San Francisco and Los Angeles, the salaries appear to be nonetheless generous, at least when compared to salaries at other state agencies or the State Senate. For example, the State Bar's Executive Director, who currently oversees 563 full time employees and works with a 23-member Board of Governors,

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earns more than the Senate's Chief Executive Officer who oversees a 953-employed operation and works with a 40-member State Senate. (To be fair, the current State Bar CEO salary is less than the predecessor, who earned more than \$195,000.) Based on the Bar's July 2002 salary figures, at least 44 employees earn over \$100,000 annually, 33 of them attorneys for the Bar. Included are the Chief Trial Counsel and General Counsel, both of whom earn more than \$140,000. (In addition, executive level employees in October 2002 received a pay raise of between 3% and 7%.) In comparison, three counsels for this Committee, each with over 24 years of legal experience, are paid less than \$100,000 annually.

Thus, in no small measure, State Bar spending on employee salaries play a large part in the forecasted deficits. And in that regard, the projected fiscal wounds appear to be at least partially self-inflicted. (Particularly at a time when other state employees are facing layoffs and reduced or frozen pay levels, the largesse of the State Bar to provide employee salary and fringe benefit increases is enviable.)

The Bar responds that it too has undertaken harsh budget measures, that in order to accommodate the 2.5% increase, the Bar intends to lay off 16 staff members, including 5 executive staff and 1 senior executive, for a projected savings of \$1.1 million this year and 2004. However, the Bar does concede that some staff positions may be filled again in the future because the Bar is currently running at 65 people less than its full complement of 630 full time positions in compliance with the Governor's mandated vacancy rate of 12%. (Here, too, the reported numbers are at odds and cannot be easily reconciled. While the Bar reports that they currently have 563 full time employees, the Bar's "2004 Background and Budget Assumptions" earlier given to staff in late June states: "The staff level within the General Fund will remain constant at approximately 494 FTE (full-time equivalents). Total budgeted FTE for the State Bar in 2004 approximates 640 positions." The Bar's occasional inconsistency with numbers do not inspire great trust or confidence.

3. Revision of scaling formula needed to reduce shortfall and to increase revenue

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The scaling of the annual dues for lower-income practitioners has been more popularly received than anticipated, thus resulting in greater than projected shortfalls in dues revenue. When conceived in 1999 by SB 144, the proposal was designed to be a "revenue-neutral" replacement for the then-existing discount (maximum of \$97) for first and second year lawyers. Combined, those discounts resulted in a \$1.7 million "deduction" for the eligible members in 1997.

When first proposed by SB 144 (Schiff), the scaling thresholds were based upon the member's total annual income. The 25% deduction was intended as the "general" deduction, giving modest-income lawyers a \$98.75 dues reduction, a figure that intentionally approximated the maximum \$97 reduction under the former system. The 50% deduction was intended as a "hardship" deduction where low-and lower-income lawyers would get a greater discount. As envisioned, the bulk of member scaling would occur in the 25% class, but the reverse has occurred. The original formulation also estimated about \$2 million in deductions, a slightly higher, but acceptable, cost for the Bar. Instead, scaling costs the Bar about \$4 million in reduced dues.

The problem arises because the qualifying criterion for scaling was changed during the process. Instead of the cutoff being based on the member's total income, the revised threshold looked only at the member's income from the practice of law. This change essentially broke the model and allowed individuals who may have significant annual incomes, but whose income from the practice of law was less than \$25,000, to take the 50% deduction.

Consequently, far more lawyers than anticipated took the maximum 50% deduction. The following chart shows the impact of scaling:

Year	Numbers	Cost of	Numbers
	Cost of	Total cost	Cost of
taking 25%		25% scaling	
taking 50%		50% scaling	

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scaling

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2000	1,947	\$191,021	9,495
	\$1,870,606	\$2,061,627	
2001	2,355	\$203,536	
13,205	\$2,277,371	\$2,480,907	
2002	2,873	\$280,117	
17,110	\$3,335,490	\$3,615,607	
2003	3,708	\$361,628	
18,808	\$3,667,755	\$4,029,383	

Thus, instead of being "revenue-neutral," scaling in 2003 reduced Bar revenues for the year by over \$2 million than planned. This in turn puts budgetary pressure on the Bar to make up the shortfall in order to ward off the 2005 fiscal crisis projected by the State Auditor's Office. The most obvious avenue is budget cuts, which the Bar will undertake by laying off 16 employees as noted earlier. Another avenue is an increase in the annual dues for active members, which is unpopular and a "non-starter" for many legislators.

A third tack, which this bill adopts, is to revise the scaling formula so that it reduces the Bar's cost of the deduction while still "giving a break" to a lawyer whose total earned income is below or near low-income guidelines.

Thus, this bill would revise the 50% scaling provision to apply to lawyers whose annual total earned income is less than \$30,000. This \$30,000 threshold appears appropriate, in light of statistics showing that the estimated median income of a 1-person household in California is \$32,867 for the federal fiscal year 2003. (Source: U.S. Department of Human Services.) By way of comparison, the 2003 federal poverty guideline for a 1-person family is income of less than \$8,980. (Source: Federal Register, Vol. 68, No. 26, February 7, 2003, pp. 6456-6458.)

The proposed \$30,000 threshold is slightly higher numerically than the existing \$25,000 threshold, but narrower in that it would be based upon total earned income and not just income from the practice of law. This change, the Bar argues, would appropriately protect the deduction for the lower-income attorney and even allow that person to earn other income and still qualify for the 50% deduction so long as the total earned income did not exceed \$30,000. However, for those others whose earned income significantly

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boosts the person's total earned income to over \$30,000, or even \$100,000, and therefore no longer qualify as low or lower-income in any sense, that attorney could still qualify for the 25% deduction if his or her income from the practice of law and dispute resolution services did not exceed \$40,000.

The bill would also make an adjustment to the scaling provisions to preclude its abuse by attorneys who serve as arbitrators or referees, earn significant fees, but claim the 50% or 25% deduction by claiming that their income from their dispute resolution services is not from the practice of law. This bill would close that unintended loophole by providing the 25% deduction to members who can demonstrate total annual earned income of less than \$40,000 derived from the provision of arbitration, mediation, referee or other dispute resolution services and, generally, from the practice of law. The 50% deduction would be available only if, e.g., an arbitrator-lawyer can demonstrate total annual individual earned income of less than \$30,000. When arbitration service fees are sometimes over \$10,000 per day, few, if any, arbitrator-lawyers will qualify for this deduction.

This proposal appears to be an appropriate adjustment of the scaling provisions to preserve the maximum deduction for low and lower-income attorneys while eliminating its application to those attorneys who earn more than \$30,000 or \$40,000, as specified, and are thus in a better financial position to pay higher dues.

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Whether these adjustments alone will be sufficient to ward off a potential 2005 deficit of over \$4,000,000 is unknown because their impact can only be speculated upon at this time. An arbitrary guess might establish a range of a possibly conservative \$600,000 to a wishful \$1.8 million of added revenue each year.

The Bar has also signaled that it may ask for other revenue enhancements next year when it seeks its authorization for 2005 dues. One potential source is an increase in the "Inactive Fee," which is currently set at \$50. According to the Bar, 36 states have a higher Inactive Fee than

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California. Eight other states also assess \$50. (On the other hand, general bar dues are the 7th highest in the country.)

As part of those future negotiations for the 2005 Bar dues bill, members might well consider whether increased revenues from the revised scaling and possible future increase in the Inactive Fee might be used to lower the 7th highest dues in the country, or leave to the Bar to spend as it desires.

#### 4. Client Security Fund: Cost recovery issues and proposal

Created in 1972, the Client Security Fund (CSF) reimburses client-victims up to \$50,000 for losses due to attorney theft. Currently, the State Bar collects \$35 per member per year as part of the \$390 annual dues to fund the CSF. This raised \$4,852,118 in 2002 and \$4,478,913 in 2003. Earned interest resulted in total revenue of \$5,099,114 in 2002 and \$4,543,898 thus far in 2003.

However, the Bar reports that since this Committee last reviewed the issue two years ago, payouts from the Client Security Fund has increased dramatically, to the point that payouts from the CSF exceeded revenue by more than \$2 million in 2002. CSF claims paid accounted for \$7.83 million, offset by \$715,136 of claims reimbursement. Expenses amounted to almost \$1.3 million, for a total 2002 operating deficit of \$3.36 million.

While the CSF reserve stood at \$5,656,284 at the beginning of 2003, the Bar is projecting another operating deficit for 2003 and 2004 of at least \$2 million each year. The Bar's current estimates are that the CSF will burn through its remaining reserve in 2005 will be \$400,000 in the red by that year's end. The Bar also estimates a \$2 million CSF operating deficit for 2006 which will necessitate a \$2 million infusion from the Bar's general fund in the absence of more CSF revenue.

This drastic imbalance may be explained, according to the Bar, as follows. The 2002 payouts were historic highs, both in terms of raw dollars and the claims payout ratio, a trend

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apparently continuing in 2003. Since the restart of the Bar, claims have risen from 1,046 in 2000, to 1,114 in 2001, and to 1,300 in 2002. Claims paid rose from \$3,673,850 in 2000, to \$4,435,212 in 2001, and to \$6,597,057 in 2002. Even more significant, the claims payout ratio rose from 30.20% in 2000 to 44.20% in 2002. As a comparison, prior to 1997, the high water mark was 1993 when 1,257 new claims were filed, \$3,184,826 paid, with a claims ratio payout of 25.43%.

A primary reason for the higher claims ratio payout, according to the Bar, is that the Bar since 1999-2000 has prioritized its prosecutions to pursue the more serious offenders. Thus, victims of those offenders are likely to have more serious and meritorious claims. As the Bar acknowledges, the peak 2002 and 2003 claims experience may be an historical anomaly due to the flood of claims following the Bar's restart after a two-year shutdown of the

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disciplinary system. However, the new "triage" system of the Bar to pursue the more serious offenders clearly has an impact by increasing the claims paid ratio. Thus, as acknowledged by the Bar, it will probably take another two years to determine whether the current high payout trends will hold and what adjustments in the CSF funding might be needed. For now, its projected \$2,000,000 annual deficits for the next two years, based on current trends, is not unreasonable.

To decrease the negative flow, the State Bar is seeking authorization to enhance its ability to obtain reimbursement of its disciplinary costs and recovery of payments from the Client Security Fund from the disciplined, errant attorneys. This action also responds to a criticism of the 2001 State Auditor's report that opined that the State Bar was not aggressively seeking these reimbursements, therefore requiring higher membership fees to fund the disciplinary program. She contended that if the Bar could increase its collection results, the resulting additional recovered funds could then be used to offset some of the costs. Similarly, increased recoveries could also be used to fund the Client Security Fund Account and decrease reliance on membership dues.

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Adopting a suggestion of this Committee's analysis of the Bar's dues bill two years ago, AB 1708 would authorize the State Bar to seek money judgments against disciplined attorneys for any ordered costs, and to pursue judgments against errant attorneys for payments made to their clients from the Client Security Fund. The Bar asserts that this new enforcement tool will be far more effective than the current process of simply adding those costs to the attorney's fee bill or making payment of them a condition of reinstatement because "very few attorneys who have incurred disciplinary costs - let alone those who have been disbarred - are willing to re-join the ranks of attorneys at those costs."

The bill would also state the Legislature's intent that this authority to seek court judgments apply to costs and assessments ordered but unpaid on the date this bill becomes operative. The Bar asserts that retroactive application to prior court ordered costs and disbursements from the CSF would not affect any vested rights of a disciplined attorney. It reasons that these attorneys must currently repay the monies as a condition of regaining the right to practice law, and that, effectively, there is no statute of limitations for the Bar's conditioning of reinstatement upon the member's reimbursement for disciplinary and CSF costs.

The Bar also asserts that these procedural changes do not impose any added penalties upon the disciplined lawyer, nor do they alter any defenses, including the statute of limitations under Section 337.5 of the Code of Civil Procedure, for enforcing money judgments. (Los Angeles v. Oliver (1929) 102 Cal.App. 299, 315 [a well-settled rule of law that the Legislature may change rules of procedure, or remedies and that such changes may be made applicable to pending actions.])

5. Report from Bar on its efforts to stop abuses of Unfair Competition Law

In March 2003, after his 40-person task force completed more than 8,000 hours of investigative work, the Office of the Chief Trial Counsel announced that the State Bar was pursuing disciplinary action against three attorneys who

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were accused of abusing California's Unfair Competition Law by filing meritless lawsuits to engage in legal extortion. In May, the State Bar Court agreed and ordered the immediate inactive enrollment of the trio. (This shining moment for the Bar, however, has come at the possible cost of handling other complaints. Backlog of complaints has risen to 400.)

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at the beginning of the year to about 800 currently.)

This bill would underscore the important role the Bar and Office of Chief Trial Counsel plays in policing the proper use of the laws by lawyers. It would direct the Bar to report to the Judiciary Committees of the Assembly and Senate by January 1, 2005 on the status of its regulatory and disciplinary efforts concerning alleged abuses of the Unfair Competition Law by private actions brought on the behalf of the general public.

#### 6. Recent State Auditor's Report - a summary

In its April 2003 report, the State Auditor found that the State Bar continues to make some improvements since the 2001 audit. She credited the Bar with making changes to reduce its backlog of disciplinary cases, and continuing to ensure that mandatory fees are reasonable and do not support voluntary programs.

She also found, however, that the Bar needs to ensure that policies and procedures for processing disciplinary cases are being followed, and monitor its need for a membership fees increase to avoid a potential General Fund deficit in the future.

The Auditor recommended several measures for the State Bar to strengthen its disciplinary process: They are:

Continue its efforts to reduce its current backlog of disciplinary cases, which stood at 401 at the end of 2002. (As noted earlier, the current backlog is up to over 800 cases. Concern might be expressed that cases are not dumped just to reach a 400 target at the year's end.)

Require that staff maintain a checklist of important

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steps in the process and potential documents for each file, which should be reviewed by appropriate supervisors. In addition, the State Bar should conduct spot checks of current cases that are being closed. Specific problems included staff's failure to enter information into a computer database, poor record keeping and file maintenance, and not sending a closure memo to the complainant or respondent. However, these omissions generally had no adverse effect on the overall outcome of a case's disposition.

Responsible staff should be required to resolve any issues concerning files determined to be noncompliant.

The Auditor also suggested that the Bar:

seek a legislative amendment that will strengthen its enforcement ability to collect costs for discipline and client security.

continue to monitor for the necessity of a fee increase, to ensure that mandatory fees are set at a reasonable level to meet its operational needs.

AB 1708 responds to those suggestions by revising the current scaling provision and seeking approval for the Bar to pursue court judgments to collect monies owed by disciplined attorneys, as discussed in Comments 3 and 4, above.

#### 7. Failed applicant review rights

Until September last year, applicants who failed the General Bar Examination had the right to examine at the Bar's offices the results of their failed exam, including the Multistate Bar Exam (MBE) portion. (Section 6065.)

Last year, last minute language was added to SB 1897 (Kuehl), Chapter 415, Statutes of 2002, to make an urgency change in the law to protect the State Bar Committee of Bar Examiners (CBE) from potential liability as a result of the National Conference of Bar Examiners' decision to no longer make copies of the Multistate Bar Exam (MBE) available to California for a failed applicant's review. Their policy

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change was brought about by security concerns that failed applicants were sneaking the failed MBE test exams or questions out of the building and making the exam questions and answers available to the public, sometimes at an exorbitant price. This breach of security threatened the integrity of the MBE which uses a significant number of repeat questions in order to "scale" the difficulty of each exam in order to make appropriate adjustments.

Without the urgency change, necessary for the 2002 November Bar Exam and the 2003 Bar Exams, the State Bar Committee of Bar Examiners (CBE) faced potential liability for ignoring the statutory mandate to allow failed applicants to review their exam materials, including the MBE portion. Thus, the failed applicant's exam right was limited by SB 1897 to the materials in the possession of the CBE. SB 1897 contained a January 1, 2004 sunset to allow the Legislature to revisit the issue in a more deliberate manner.

This bill would extend that sunset date for five years, to January 1, 2009, as the National Conference of Bar Examiners has continued its recent policy of not providing the MBE to California. This provision would sunset in five years to allow a revisiting of the issue should the security concerns of the National Conference of Bar Examiners be resolved sufficiently to enable the CBE to once again receive the failed MBE exams for possible review by failed applicants.

Support: None Known

Opposition: None Known

HISTORY

Source: State Bar of California

Related Pending Legislation: None Known

Prior Legislation: SB 352 (Kuehl), Chapter 24, Stats. of 2001  
SB 1367 (Schiff), Ch. 118, Stats. of 2008  
SB 144 (Schiff), Ch. 342, Stats. of 1999

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Prior Vote: Assembly Floor Vote (55 - 19)  
Assembly Judiciary Committee (14 - 0)

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# Rules of Procedure of the State Bar of California

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**January 1, 2017**

# **Rules of Procedure of the State Bar of California**

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**With Amendments Adopted by the Board of Trustees (formerly Board  
of Governors) Effective January 1, 2011, with subsequent revisions**

**Title 5: Discipline**

<b>Division 1</b>	<b>General Rules</b>
<b>Division 2</b>	<b>Case Processing</b>
<b>Division 3</b>	<b>Review Department and Powers Delegated by Supreme Court</b>
<b>Division 4</b>	<b>Involuntary Inactive Enrollment Proceedings</b>
<b>Division 5</b>	<b>Probation Proceedings</b>
<b>Division 6</b>	<b>Special Proceedings</b>
<b>Division 7</b>	<b>Regulatory Proceedings</b>

**Title III: General Provisions**

**Title IV: Standards for Attorney Sanctions for  
Professional Misconduct**

## Rule 4407. MATERIALS

The Office of the Chief Trial Counsel may publish forms, procedures and guidelines to be used in implementing this program.

Eff. May 14, 1994. Renumbered: January 1, 1996. Source: TRP 846.

## TITLE IV. STANDARDS FOR ATTORNEY SANCTIONS FOR PROFESSIONAL MISCONDUCT

### PART A. STANDARDS IN GENERAL

#### 1.1 PURPOSES AND SCOPE OF STANDARDS

The Standards For Attorney Sanctions For Professional Misconduct (the "Standards") are adopted by the Board of Trustees to set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances. The Standards help fulfill the primary purposes of discipline, which include:

- (a) protection of the public, the courts and the legal profession;
- (b) maintenance of the highest professional standards; and
- (c) preservation of public confidence in the legal profession.

Rehabilitation can also be an objective in determining the appropriate sanction in a particular case, so long as it is consistent with the primary purposes of discipline.

The Standards are based on the State Bar Act, the published opinions of the Review Department of the State Bar Court, and the longstanding decisions of the California Supreme Court, which maintains inherent and plenary authority over the practice of law in California. Although not binding, the Standards are afforded great weight by the Supreme Court and should be followed whenever possible. The Supreme Court will accept a disciplinary recommendation that is consistent with the Standards unless it has grave doubts about the propriety of the recommended sanction. If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.

The Standards do not apply to: non-disciplinary dispositions such as admonitions and agreements in lieu of discipline; resignations; involuntary inactive enrollments; interim suspensions after conviction of a crime; or suspensions for nonpayment of State Bar fees, failure to comply with child support orders, or tax delinquencies.

Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014; July 1, 2015.

## 1.2 DEFINITIONS

- (a) "Member" is a member of the State Bar of California.
- (b) "Disbarment" is termination from the practice of law and from holding oneself out as entitled to practice law. Membership in the State Bar ceases and the member's name is stricken from the roll of attorneys.
- (c) "Suspension" can include a period of actual suspension, stayed suspension, or both:
  - (1) "Actual suspension" is a disqualification from the practice of law and from holding oneself out as entitled to practice law, subject to probation and attached conditions. Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met. Actual suspension for two years or more requires proof, satisfactory to the State Bar Court, of rehabilitation, fitness to practice, and present learning and ability in the general law before a member may be relieved of the actual suspension. The State Bar Court can require this showing in other appropriate cases as well.
  - (2) "Stayed suspension" is a stay of all or part of a suspension. Stayed suspension is generally for a period of at least one year. A suspension can be stayed only if it is consistent with the primary purposes of discipline.
- (d) "Public Reproval" is a public censure or reprimand. A public reproval may include conditions.
- (e) "Private Reproval" is a censure or reprimand that is not a matter of public record unless imposed after the initiation of formal disciplinary proceedings. A private reproval may include conditions.
- (f) "Interim Remedies" are temporary restrictions imposed by the State Bar Court on a member's ability to practice law. They are imposed in order to protect the public, the courts, and the legal profession until such time as the issues can be resolved through formal proceedings.
- (g) "Prior record of discipline" is a previous imposition or recommendation of discipline. It includes all charges, stipulations, findings and decisions (final or not) reflecting or recommending discipline, including from another jurisdiction. It can be discipline imposed for a violation of a term of probation or a violation of a Supreme Court order requiring compliance with rule 9.20 of the California Rules of Court.

- (h) "Aggravating circumstances" are factors surrounding a member's misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard.
- (i) "Mitigating circumstances" are factors surrounding a member's misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard.
- (j) "Probation" is a period of time under which a member is subject to State Bar supervision. Probation may include conditions that further the primary purposes of discipline.
- (k) "Conditions" are terms that a member must comply with as part of a disciplinary sanction. They relate to a member's misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.

Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014; July 1, 2015.

### **1.3 DEGREES OF SANCTIONS**

Subject to these Standards and the laws and rules governing the conduct of disciplinary proceedings, the following sanctions may be imposed upon a finding of misconduct:

- (a) disbarment;
- (b) actual suspension;
- (c) stayed suspension;
- (d) public reproof;
- (e) private reproof; or
- (f) any interim remedies or other final discipline authorized by the Business and Professions Code.

Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015.

### **1.4 CONDITIONS ATTACHED TO SANCTIONS**

Conditions attached to a reproof or probation may require a member to:

- (a) make specific restitution or file a satisfaction of judgment;
- (b) take and pass a professional responsibility examination;

- (c) undergo treatment, at the member's expense, for medical, psychological, or psychiatric conditions or for problems related to alcohol or substance abuse;
- (d) complete, at the member's expense, educational or rehabilitative work regarding substantive law, ethics, or law office management;
- (e) complete probation, subject to reporting requirements;
- (f) give notice to affected parties, including clients, co-counsel, opposing counsel, courts or other tribunals; or
- (g) comply with any other conditions consistent with the primary purposes of discipline.

Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015.

## **1.5 AGGRAVATING CIRCUMSTANCES**

The State Bar must establish aggravating circumstances by clear and convincing evidence. Aggravating circumstances may include:

- (a) a prior record of discipline;
- (b) multiple acts of wrongdoing;
- (c) a pattern of misconduct;
- (d) intentional misconduct, bad faith or dishonesty;
- (e) misrepresentation;
- (f) concealment;
- (g) overreaching;
- (h) uncharged violations of the Business and Professions Code or the Rules of Professional Conduct;
- (i) refusal or inability to account for entrusted funds or property;
- (j) significant harm to the client, the public, or the administration of justice;
- (k) indifference toward rectification or atonement for the consequences of the misconduct;
- (l) lack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings;

- (m) failure to make restitution; or
- (n) high level of vulnerability of the victim.

Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014; July 1, 2015.

## **1.6 MITIGATING CIRCUMSTANCES**

A member must establish mitigating circumstances by clear and convincing evidence. Mitigating circumstances may include:

- (a) absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur;
- (b) good faith belief that is honestly held and objectively reasonable;
- (c) lack of harm to the client, the public, or the administration of justice;
- (d) extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the member established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct;
- (e) spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar;
- (f) extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct;
- (g) prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement;
- (h) remoteness in time of the misconduct and subsequent rehabilitation;
- (i) excessive delay by the State Bar in conducting disciplinary proceedings causing prejudice to the member; or
- (j) restitution was made without the threat or force of administrative, disciplinary, civil or criminal proceedings.

Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015.

## 1.7 DETERMINATION OF APPROPRIATE SANCTIONS

- (a) If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.
- (b) If aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities.
- (c) If mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.

Eff. January 1, 1986. Revised: January 1, 2014.

## 1.8 EFFECT OF PRIOR DISCIPLINE

- (a) If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.
- (b) If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:
  1. Actual suspension was ordered in any one of the prior disciplinary matters;
  2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
  3. The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

- (c) Sanctions may be imposed, including disbarment, even if a member has no prior record of discipline.

Eff. January 1, 2014.

## **PART B. SANCTIONS FOR SPECIFIC MISCONDUCT<sup>1</sup>**

The presumed sanction for any specific act of misconduct is a starting point for the imposition of discipline, but can be adjusted up or down depending on the application of mitigating and aggravating circumstances set forth in Standards 1.5 and 1.6, and the balancing of these circumstances as described in Standard 1.7(b) and (c). For any specific act of misconduct not listed in Part B, please refer to Standards 2.18 and 2.19.

Eff. July 1, 2015

### **2.1. MISAPPROPRIATION**

- (a) Disbarment is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.
- (b) Actual suspension is the presumed sanction for misappropriation involving gross negligence.
- (c) Suspension or reproof is the presumed sanction for misappropriation that does not involve intentional misconduct or gross negligence.

Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015.

### **2.2 COMMINGLING AND OTHER TRUST ACCOUNT VIOLATIONS**

- (a) Actual suspension of three months is the presumed sanction for commingling or failure to promptly pay out entrusted funds.
- (b) Suspension or reproof is the presumed sanction for any other violation of Rule 4-100.

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; July 1, 2015.

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<sup>1</sup> The term "reproof" includes public or private reproof.

Fill in this information to identify your case:

DD

Debtor 1	Lenore LuAnn Albert-Sheridan		
First Name	Middle Name	Last Name	
Debtor 2 (Spouse, if filing)	First Name	Middle Name	Last Name
United States Bankruptcy Court for the: Central District of California			
Case number (if known)	8:18-bk-10548-ES		

Check if this is:

An amended filing  
 A supplement showing postpetition chapter 13 income as of the following date:

MM / DD / YYYY

Official Form 106I

12/15

## Schedule I: Your Income

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

### Part 1: Describe Employment

1. Fill in your employment information.

If you have more than one job, attach a separate page with information about additional employers.

Include part-time, seasonal, or self-employed work.

Occupation may include student or homemaker, if it applies.

	Debtor 1	Debtor 2 or non-filing spouse
Employment status	<input checked="" type="checkbox"/> Employed <input type="checkbox"/> Not employed	<input type="checkbox"/> Employed <input type="checkbox"/> Not employed
Occupation	Lawyer	
Employer's name	Law Offices of Lenore Albert	
Employer's address	7755 Center Ave #1100 Number Street	Number Street
How long employed there?	17	

### Part 2: Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write \$0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

- List monthly gross wages, salary, and commissions (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.
- Estimate and list monthly overtime pay.
- Calculate gross income. Add line 2 + line 3.

For Debtor 1	For Debtor 2 or non-filing spouse
2. \$ <u>0.00</u>	\$ <u>0.00</u>
3. + \$ <u>0.00</u>	+ \$ <u>0.00</u>
4. \$ <u>0.00</u>	\$ <u>0.00</u>

Debtor 1 Lenore LuAnn Albert-Sheridan

First Name Middle Name Last Name

Case number (if known) 8:18-bk-10548-ES

	<u>For Debtor 1</u>	<u>For Debtor 2 or non-filing spouse</u>
<b>Copy line 4 here.....</b>	→ 4. \$ <u>0.00</u>	\$ <u>                  </u>
<b>5. List all payroll deductions:</b>		
5a. <b>Tax, Medicare, and Social Security deductions</b>	5a. \$ <u>                  </u>	\$ <u>                  </u>
5b. <b>Mandatory contributions for retirement plans</b>	5b. \$ <u>                  </u>	\$ <u>                  </u>
5c. <b>Voluntary contributions for retirement plans</b>	5c. \$ <u>                  </u>	\$ <u>                  </u>
5d. <b>Required repayments of retirement fund loans</b>	5d. \$ <u>                  </u>	\$ <u>                  </u>
5e. <b>Insurance</b>	5e. \$ <u>                  </u>	\$ <u>                  </u>
5f. <b>Domestic support obligations</b>	5f. \$ <u>                  </u>	\$ <u>                  </u>
5g. <b>Union dues</b>	5g. \$ <u>                  </u>	\$ <u>                  </u>
5h. <b>Other deductions. Specify:</b> _____	5h. + \$ <u>                  </u>	+ \$ <u>                  </u>
<b>6. Add the payroll deductions.</b> Add lines 5a + 5b + 5c + 5d + 5e + 5f + 5g + 5h.	6. \$ <u>                  </u> 0.00	\$ <u>                  </u>
<b>7. Calculate total monthly take-home pay.</b> Subtract line 6 from line 4.	7. \$ <u>                  </u> 0.00	\$ <u>                  </u>
<b>8. List all other income regularly received:</b>		
8a. <b>Net income from rental property and from operating a business, profession, or farm</b> Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a. \$ <u>                  </u> 4,650.00	\$ <u>                  </u>
8b. <b>Interest and dividends</b>	8b. \$ <u>                  </u> 0.00	\$ <u>                  </u>
8c. <b>Family support payments that you, a non-filing spouse, or a dependent regularly receive</b> Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c. \$ <u>                  </u> 0.00	\$ <u>                  </u>
8d. <b>Unemployment compensation</b>	8d. \$ <u>                  </u> 0.00	\$ <u>                  </u>
8e. <b>Social Security</b>	8e. \$ <u>                  </u> 0.00	\$ <u>                  </u>
8f. <b>Other government assistance that you regularly receive</b> Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify: _____	8f. \$ <u>                  </u> 0.00	\$ <u>                  </u>
8g. <b>Pension or retirement income</b>	8g. \$ <u>                  </u> 0.00	\$ <u>                  </u>
8h. <b>Other monthly income. Specify:</b> _____	8h. + \$ <u>                  </u> 0.00	+ \$ <u>                  </u>
<b>9. Add all other income.</b> Add lines 8a + 8b + 8c + 8d + 8e + 8f + 8g + 8h.	9. \$ <u>                  </u> 4,650.00	\$ <u>                  </u>
<b>10. Calculate monthly income.</b> Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10. \$ <u>                  </u> 4,650.00	+ \$ <u>                  </u> = \$ <u>                  </u> 4,650.00
<b>11. State all other regular contributions to the expenses that you list in Schedule J.</b> Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives. Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in Schedule J. Specify: _____		
11. + \$ <u>                  </u> 0.00		
<b>12. Add the amount in the last column of line 10 to the amount in line 11.</b> The result is the combined monthly income. Write that amount on the <i>Summary of Your Assets and Liabilities and Certain Statistical Information</i> , if it applies		
12. \$ <u>                  </u> 4,650.00		
<b>Combined monthly income</b>		
<b>13. Do you expect an increase or decrease within the year after you file this form?</b>		
<input type="checkbox"/> No. <input checked="" type="checkbox"/> Yes. Explain: State Bar is preventing me from providing services for pay. However, I do expect an increase. I expect to win my lawsuit against Ford Credit and stop the extremists and the State Bar. DA win will increase pay.		

Attachment to Schedule I

Average Income	
Fees	5000
Costs Advanced	700
Total Income	5700
Expense	
Costs Advanced	700
Lease 1	280
Lease 2	500
Software	200
Transportation	450
Office Supplies	100
	2230
Net Income	3470

\* Note that the expenses are included in  
Schedule J - sole proprietor

Fill in this information to identify your case:

Debtor 1	Lenore LuAnn Albert-Sheridan		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse, if filing)	First Name	Middle Name	Last Name
United States Bankruptcy Court for the: Central District of California			
Case number (if known)	8:18-bk-10548-ES		

Check if this is:

An amended filing  
 A supplement showing postpetition chapter 13 expenses as of the following date:

MM / DD / YYYY

## Official Form 106J

### Schedule J: Your Expenses

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

#### Part 1: Describe Your Household

1. Is this a joint case?

No. Go to line 2.  
 Yes. Does Debtor 2 live in a separate household?

No

Yes. Debtor 2 must file Official Form 106J-2, Expenses for Separate Household of Debtor 2.

2. Do you have dependents?

Do not list Debtor 1 and Debtor 2.

No

Yes. Fill out this information for each dependent.....

Dependent's relationship to Debtor 1 or Debtor 2

Dependent's age

Does dependent live with you?

No  
 Yes  
 No  
 Yes  
 No  
 Yes  
 No  
 Yes  
 No  
 Yes

3. Do your expenses include expenses of people other than yourself and your dependents?

No

Yes

#### Part 2: Estimate Your Ongoing Monthly Expenses

Estimate your expenses as of your bankruptcy filing date unless you are using this form as a supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental Schedule J, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on Schedule I: Your Income (Official Form 106I.)

4. The rental or home ownership expenses for your residence. Include first mortgage payments and any rent for the ground or lot.

Your expenses		
4.	\$	1,300.00
4a.	\$	5.00
4b.	\$	0.00
4c.	\$	35.00
4d.	\$	0.00

If not included in line 4:

4a. Real estate taxes  
 4b. Property, homeowner's, or renter's insurance  
 4c. Home maintenance, repair, and upkeep expenses  
 4d. Homeowner's association or condominium dues

Debtor 1 Lenore LuAnn Albert-Sheridan  
 First Name Middle Name Last Name

Case number (if known) 8:18-bk-10548-ES

<b>Your expenses</b>	
5. <b>Additional mortgage payments for your residence</b> , such as home equity loans	5. \$ <u>1,340.00</u>
<b>6. Utilities:</b>	
6a. Electricity, heat, natural gas	6a. \$ <u>100.00</u>
6b. Water, sewer, garbage collection	6b. \$ <u>20.00</u>
6c. Telephone, cell phone, Internet, satellite, and cable services	6c. \$ <u>250.00</u>
6d. Other. Specify: _____	6d. \$ _____
<b>7. Food and housekeeping supplies</b>	
<b>8. Childcare and children's education costs</b>	
<b>9. Clothing, laundry, and dry cleaning</b>	
<b>10. Personal care products and services</b>	
<b>11. Medical and dental expenses</b>	
<b>12. Transportation.</b> Include gas, maintenance, bus or train fare. Do not include car payments.	
<b>13. Entertainment, clubs, recreation, newspapers, magazines, and books</b>	
<b>14. Charitable contributions and religious donations</b>	
<b>15. Insurance.</b> Do not include insurance deducted from your pay or included in lines 4 or 20.	
15a. Life insurance	15a. \$ <u>0.00</u>
15b. Health insurance	15b. \$ <u>0.00</u>
15c. Vehicle insurance	15c. \$ <u>0.00</u>
15d. Other insurance. Specify: <u>0</u>	15d. \$ <u>0.00</u>
<b>16. Taxes.</b> Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: _____	
16. \$ <u>50.00</u>	
<b>17. Installment or lease payments:</b>	
17a. Car payments for Vehicle 1	17a. \$ <u>0.00</u>
17b. Car payments for Vehicle 2	17b. \$ <u>0.00</u>
17c. Other. Specify: <u>Office HB</u>	17c. \$ <u>500.00</u>
17d. Other. Specify: <u>Bolsa Storage</u>	17d. \$ <u>500.00</u>
<b>18. Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, Schedule I, Your Income (Official Form 106I).</b>	
18. \$ <u>0.00</u>	
<b>19. Other payments you make to support others who do not live with you.</b> Specify: _____	
19. \$ <u>0.00</u>	
<b>20. Other real property expenses not included in lines 4 or 5 of this form or on Schedule I: Your Income.</b>	
20a. Mortgages on other property	20a. \$ <u>0.00</u>
20b. Real estate taxes	20b. \$ <u>0.00</u>
20c. Property, homeowner's, or renter's insurance	20c. \$ <u>0.00</u>
20d. Maintenance, repair, and upkeep expenses	20d. \$ <u>0.00</u>
20e. Homeowner's association or condominium dues	20e. \$ <u>0.00</u>

Debtor 1 Lenore LuAnn Albert-Sheridan  
First Name Middle Name Last Name

Case number (if known) 8:18-bk-10548-ES

21. Other. Specify: Software fees

21. +\$ 200.00

22. Calculate your monthly expenses.

22a. Add lines 4 through 21.

22a. \$ 4,435.00

22b. Copy line 22 (monthly expenses for Debtor 2), if any, from Official Form 106J-2

22b. \$

22c. Add line 22a and 22b. The result is your monthly expenses.

22c. \$ 4,435.00

23. Calculate your monthly net income.

23a. Copy line 12 (*your combined monthly income*) from *Schedule I*.

23a. \$ 4,650.00

23b. Copy your monthly expenses from line 22c above.

23b. -\$ 4,435.00

23c. Subtract your monthly expenses from your monthly income.

The result is your *monthly net income*.

23c. \$ 215.00

24. Do you expect an increase or decrease in your expenses within the year after you file this form?

For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?

No.

Yes.

Explain here:

I expect my expenses to increase over the next year in order to run a business. I also expect to be able to afford some entertainment and other items I have had to cut out. I also need to increase my home security systems.



# THE STATE BAR OF CALIFORNIA

FINANCE

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

TEL (415) 538-2200

## MEMORANDUM

**DATE:** February 21, 2017

**TO:** Members, Planning and Budget Committee  
Members, Audit Committee  
Members, Board of Trustees

**FROM:** Christine Wong, Chief Financial Officer

**SUBJECT:** 2016 Q4 Pre-Audited Investment Report

Attached is the annual investment report for the State Bar of California as of December 31, 2016. The report is presented in a format that conforms to the investment policy adopted by the Board of Governors in May 2005. As of the end of December, the market value of the State Bar's investment portfolio totaled \$115.4 million.

The time-weighted average rate of return of the investment portfolio for the reported year is 0.71%, compared to 0.29% in 2015. Actual investment earnings increased approximately 278.58% from \$185,745 in 2015 to \$703,186 in 2016. The increase in investment earnings is due to a larger investment portfolio after receiving the \$44.7 million settlement grant from Bank of America. The higher rate of return is due to investments in bonds with longer durations compared to the prior year.

The unrealized loss for the reporting year is \$230,666. This loss will be amortized over the life of the bonds and will eventually offset the effect on investment income when the bonds mature. An unrealized loss is a bond premium incurred when a bond is purchased at a price in excess of its face value. A bond is traded at a premium when it offers a coupon rate that is higher than prevailing interest rates, a reflection of declining interest rate in the existing bond market. This unrealized loss is considered to be a "paper loss" because all investments are held to maturity.

**The State Bar of California  
Investment Report Summary  
December 31, 2016**

<b><u>Asset Group</u></b>	<b>Original Cost</b>	<b>Market Value</b>	<b>Portfolio Percentage</b>	<b>Weighted Average Yield</b>
Wells Fargo Custody Account:				
- Government Bonds	68,345,964	68,121,328	59.02%	0.79%
- Corporate Bonds	2,999,250	2,993,220	2.59%	1.12%
- Common Stock-Metlife Inc.	158,221	158,221	0.14%	N.A
- Interest Receivable	-	166,780	0.14%	N.A
<b>Subtotal-Securities, Bonds and Notes</b>	<b>71,503,435</b>	<b>71,439,549</b>	<b>61.90%</b>	
Local Agency Investment Fund				
<b>Subtotal-Other Investments</b>	<b>43,913,090</b>	<b>43,976,718</b>	<b>38.10%</b>	<b>0.57%</b>
<b>Grand Total</b>	<b>115,416,525</b>	<b>115,416,267</b>	<b>100%</b>	<b>0.71%</b>

**Unrealized Gain/(Loss)-Securities, Bonds and Notes:**

Market Value of Portfolio	71,272,769
Original Cost of Portfolio	71,503,435
Unrealized Gain/(Loss):	<u>(230,666)</u>

**State Bar of California**  
**Investment Report - Wells Fargo Custody Account**  
**Balance as of December 31, 2016**

Issuer	CUSIP #	S&P Rating	Type	Par Value	Cost	Mkt Value	Interest Receivable	Unrealized Gain/(Loss)	Yield	Maturity Date
FED HOME LN MTG CORP	3137EADU0	AA+	Government Agency	3,000,000	2,999,970	2,999,970	6,417	0	0.50%	01/27/17
FED HOME LOAN BANK	3130A4M41	AA+	Government Agency	3,000,000	3,011,880	3,000,690	4,875	(11,190)	0.55%	04/13/15
FED HOME LOAN BANK	3130A4U42	AA+	Government Agency	3,000,000	3,005,580	3,001,230	67	(4,350)	0.65%	06/30/17
FED FARM CREDIT BANK	3133EFK30	AA+	Government Agency	3,000,000	3,000,780	2,998,800	11,165	(1,980)	0.75%	07/07/17
FED HOME LN MTG CORP	3137EADV8	AA+	Government Agency	3,000,000	2,995,050	3,000,510	10,438	5,460	0.86%	01/08/16
FED FARM CREDIT BANK	3133EE4K3	AA+	Government Agency	3,000,000	3,003,810	2,999,850	9,600	(3,960)	0.63%	02/16/16
FED HOME LOAN BANK	3130A62S5	AA+	Government Agency	2,000,000	1,995,480	1,999,620	5,125	4,140	0.89%	01/11/16
FED FARM CREDIT BANK	3133EFPH4	AA+	Government Agency	3,000,000	2,999,970	2,999,520	3,410	(450)	0.93%	01/11/16
FED HOME LOAN BANK	313381FEDN	AA+	Government Agency	3,000,000	2,999,970	2,993,880	1,438	(6,090)	0.75%	02/19/16
FED HOME LN MTG CORP	3137EADN6	AA+	Government Agency	3,000,000	3,002,820	2,993,880	10,563	(8,940)	0.70%	02/16/16
FED HOME LN MTG CORP	3137EADN6	AA+	Government Agency	3,000,000	2,997,780	2,983,880	10,563	(3,900)	0.79%	03/08/16
FED HOME LN MTG CORP	3137EADN6	AA+	Government Agency	1,800,000	1,799,514	1,796,328	6,338	(3,186)	0.77%	03/29/16
FED FARM CREDIT BANK	3133EFV87	AA+	Government Agency	3,000,000	3,004,140	2,993,370	6,708	(10,770)	0.81%	03/29/18
FED HOME LN MTG CORP	3137EAE3	AA+	Government Agency	5,000,000	4,995,300	4,981,550	8,542	(13,750)	0.80%	05/17/16
FED FARM CREDIT BANK	3133EGF2	AA+	Government Agency	5,000,000	4,995,050	4,971,400	4,688	(23,650)	0.80%	05/17/16
FED HOME LN MTG CORP	3134G8Y60	AA+	Government Agency	3,500,000	3,500,000	3,487,820	14,972	(12,180)	1.00%	04/28/16
FED HOME LN MTG CORP	3134G8XA2	AA+	Government Agency	5,000,000	5,000,000	4,969,750	21,389	(30,250)	1.00%	04/28/16
FED FARM CREDIT BANK	3133EGFQ3	AA+	Government Agency	3,000,000	3,010,170	2,984,160	7,802	(26,010)	0.72%	06/24/16
FED FARM CREDIT BANK	3133EFX69	AA+	Government Agency	5,000,000	5,010,550	4,981,150	11,467	(29,400)	0.87%	05/17/16
FED FARM CREDIT BANK	3133EFX69	AA+	Government Agency	3,000,000	3,018,150	2,988,690	6,880	(29,460)	0.69%	06/29/16
FED HOME LN MTG CORP	3134G9HV2	AA+	Government Agency	2,000,000	2,000,000	1,985,280	1,944	(14,720)	1.00%	05/17/16
<b>TOTAL GOVERNMENT BONDS AND NOTES:</b>										
CHEVRON CORP	166764AA8	AA-	Corporate Bonds	3,000,000	2,999,250	2,993,220	2,392	(6,030)	1.12%	05/17/16
METLIFE INC	59156R108	N/A	Common Stock	<b>3,000,000</b>	<b>2,999,250</b>	<b>2,993,220</b>	<b>2,392</b>	<b>(6,030)</b>	<b>1.12%</b>	<b>05/17/16</b>
<b>TOTAL INVESTMENT HELD BY WELLS FARGO:</b>										
<b>TOTAL COMMON STOCKS:</b>	<b>71,300,000</b>	<b>71,345,214</b>	<b>71,272,769</b>	<b>166,780</b>	<b>(72,445)</b>					N/A

