Case No. _____

In the
Supreme Court of the United States

In the Matter of LENORE LUANN ALBERT,
A Member of the State Bar and U.S. Supreme Court Bar,

Respondent and Petitioner for Review,

LENORE LUANN ALBERT,

Petitioner

vs.

STATE BAR OF CALIFORNIA,

Respondent.

Appendix

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Constitutional and Statutory Provisions

I Amend. U.S. Constitution

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.

V Amend. U.S. Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

VIII Amend. U.S. Constitution

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

X Amend. U.S. Constitution

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

XI Amendment U.S. Constitution

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

XIV Amend. U.S. Constitution Sect. 1

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.

Cal. Const. Aet 1 § 17

"Cruel or unusual punishment may not be inflicted or excessive fines imposed." Cal. Const., art. I § 17

E.D.C.A. Local Rule 180 (2017)

(c) Notice of Change in Status. An attorney who is a member of the Bar of this Court or who has been permitted to practice in this Court under (b) shall promptly notify the Court of any change in status in any other jurisdiction that would make the attorney ineligible for membership in the Bar of this Court or ineligible to practice in this Court. In the event an attorney appearing in this Court under (b) is no longer eligible to practice in any other jurisdiction by reason of suspension for nonpayment of fees or enrollment as an inactive member, the attorney shall forthwith be suspended from

practice before this Court without any order of Court until becoming eligible to practice in another jurisdiction.

E.D.C.A. Local Rule 184 (2017)

(b) Notice of Change in Status. An attorney who is a member of the Bar of this Court or who has been permitted to practice in this Court shall promptly notify the Court of any disciplinary action or any change in status in any jurisdiction that would make the attorney ineligible for membership in the Bar of this Court or ineligible to practice in this Court. If an attorney's status so changes with respect to eligibility, the attorney shall forthwith be suspended from practice before this Court without any order of Court until becoming eligible to practice. Upon written motion to the Chief Judge, an attorney shall be afforded an opportunity to show cause why the attorney should not be suspended or disbarred from practice in this Court.

Bus. & Prof. Code, § 6068

"It is the duty of an attorney to do all of the following:(a) To support the Constitution and laws of the United States and of this state."

Bus. & Prof. Code, § 6086.10

(a) Any order imposing a public reproval 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 imposing costs pursuant to this subdivision is enforceable both as provided in Section 6140.7 and as a money judgment. The State Bar may collect these costs through any means provided by law.

(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) If an attorney is exonerated of all charges following a formal hearing, the attorney 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.

Bus. & Prof. Code, § 6086.13

(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.

Bus. & Prof. Code, § 6106

The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.

If the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice therefor.

Bus. & Prof. Code §6124

There is no § 6124 as charged.

Bus. & Prof. Code, § 6125

"No person shall practice law in California unless the person is an active licensee of the State Bar."

Bus. & Prof. Code, § 6126

(a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active licensee of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars ($1,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a sentence of less than 90 days for a second or subsequent conviction under this subdivision, the court shall state the reasons for its sentencing choice on the record.

(b) Any person who has been involuntarily enrolled as an inactive licensee of the State Bar, or whose license has been suspended, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months. However, any person who has been involuntarily enrolled as an inactive licensee of the State Bar pursuant to paragraph (1) of subdivision (e) of Section 6007 and who knowingly thereafter practices or attempts to practice law, or advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

(c) The willful failure of a licensee of the State Bar, or one who has resigned or been disbarred, to comply with an order of the Supreme Court to comply with Rule 9.20 of the California Rules of Court, constitutes a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

(d) The penalties provided in this section are cumulative to each other and to any other remedies or penalties provided by law.

State Bar Rule 5.126 Admonition

(A) When Permissible. The Court may resolve a matter by an admonition to the attorney if the subject matter of a pending disciplinary proceeding does not involve a Client Security Fund matter or a serious offense, and the Court concludes that the violation(s) were not intentional or occurred under mitigating circumstances, and no significant harm resulted.

(B) "Serious Offense" Defined. "Serious offense" means conduct involving dishonesty, moral turpitude, or corruption, including bribery, forgery, perjury, extortion, obstruction of justice, burglary or related offenses, intentional fraud, and intentional breach of a fiduciary relationship.

(C) Publicity. A copy of the admonition or news of its issuance must be sent to the complainant, complainant's counsel (if any), and the deputy trial counsel. The State Bar or the State Bar Court will not actively publicize it otherwise. But unless otherwise ordered, the file in a public proceeding will remain public.

(D) Not Discipline. The giving of an admonition is not equal to imposing discipline on the attorney.

(E) Who May Request Admonition. Any party may move for an admonition, or the parties may make a joint motion. If the motion is made jointly, it must be accompanied by a

stipulation under rule 5.56.

(F) Reopening Proceedings. If within two years after the effective date of an admonition the attorney allegedly commits misconduct that results in another disciplinary proceeding, then within 30 days after the new proceeding begins, the Office of Chief Trial Counsel may file a motion to reopen the proceeding resolved by admonition. All applicable time limitations are tolled between the issuance of the admonition and the filing of the order granting the motion to reopen.

State Bar Rule 5.137 Imposition and Payment of Monetary Sanctions (Bus. & Prof. Code, § 6086.13.)

(A) The Supreme Court May Order Monetary Sanctions. In any disciplinary proceeding in which the licensee is ordered actually suspended, disbarred, or resigns with charges pending, the Supreme Court may order the payment of a monetary sanction not to exceed $5,000 for each violation, to a maximum of $50,000 per disciplinary order.

(B) Violation Defined. For the purposes of this rule, "violation" means (1) each count (including its subparts) contained in a Notice of Disciplinary Charges for which the State Bar Court has found the licensee culpable; (2) each violation of a rule or statute the attorney admits to have violated in a stipulation; or (3) each record of criminal conviction transmitted to State Bar Court pursuant to rule 5.341, regardless of the number of convictions contained in the transmittal.

(C) Monetary Sanctions Payable To Client Security Fund. Imposed monetary sanctions collected under this rule shall be deposited into the Client Security Fund.

(D) Monetary Sanctions and Criminal Penalties or Civil Judgments. Monetary sanctions shall not be collected to the extent that collection would impair the collection of criminal penalties or civil judgments arising out of transactions

connected with discipline of the licensee. If monetary sanctions are collected and such criminal penalties or civil judgments are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected.

(E) Guidelines for Imposition and Collection of Monetary Sanctions.

(1) In any disciplinary proceeding described in subdivision (A), the State Bar Court shall make recommendations to the Supreme Court regarding monetary sanctions and shall provide reasons for its recommendation.

(2) To determine the appropriate monetary sanction to recommend pursuant to subdivision (A), the State Bar Court shall consider all facts and circumstances of the discipline case and be guided by the following amounts as a total sanction per Supreme Court order:

(a) For disbarment: up to $5,000.

(b) For an actual suspension: up to $2,500.

(c) For a resignation with charges pending: up to $1,000.

(3) The State Bar Court may, in its discretion, deviate from the ranges set forth in subdivision (E)(2) to a maximum of $5,000 for each violation, and $50,000 for each disciplinary order.

(a) Deviations from these ranges should be reasonably based on the facts and circumstances of each discipline case.

(b) If the same conduct is encompassed by two or more separate violations, the Court generally should not impose more than one monetary sanction for that conduct. Instead, the Court should consider the most serious applicable violation for that conduct.

(4) The State Bar Court may, in its discretion, recommend that the monetary sanction be waived, in whole or in part, or be paid in installments, or the

time to pay be extended based on a finding of financial hardship, special circumstances, whether a licensee's ability to pay criminal or civil judgments arising out of the discipline case is adversely affected, for good cause, or in the interests of justice. The burden of proof by preponderance of the evidence will be on the licensee to provide financial records and/or other proof to support any argument that the monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended. The State Bar Court must state reasons for its ruling.

(5) Any stipulation to disposition between Office of Chief Trial Counsel of the State Bar and the licensee in a disciplinary proceeding described in (A) must state in writing whether monetary sanctions should be ordered or waived; if ordered, the amount; the reasons for the order or waiver; whether a payment plan or extension of time will be allowed; and the reasons for and specifics of such payment plan or extension. All stipulations must be accepted and approved by the State Bar Court pursuant to rule 5.58.

(6) A licensee may seek relief from an order of monetary sanctions, an extension of time to pay the sanctions, or request a compromise of judgment, through a motion filed with the State Bar Court, following the motion procedure and based on the grounds set forth in the Rules of Procedure of the State Bar. The burden of proof by preponderance of the evidence will be on the licensee to provide financial records and/or other proof to support the motion. The State Bar Court must state reasons for its ruling.

(7) Payment of restitution must be made in full before payment of any monetary sanctions.

(F) Reinstatement. Monetary sanctions shall be paid in full as a condition of

reinstatement or return to active status, unless time for payment is extended pursuant to this rule.

(G) Collection. Imposed monetary sanctions ordered under this rule are enforceable as a money judgment and may be collected through any means provided by law.

(H) Application. This rule shall apply to all disciplinary and criminal conviction proceedings commenced and stipulations signed on or after April 1, 2020.

Discipline Costs

Effective January 1, 2024

Pursuant to action by the State Bar's governing board in January 2011 and May 2012, the costs assessed for disciplinary matters are adjusted annually to account for changes in labor and other resource costs. The adjustment is calculated by combining 40% of the year-on-year percentage change in the Consumer Price Index[1] with 60% of the year-on-year percentage change in the Employment Cost Index for Management, Professional and Related Occupations[2]. For 2024, the adjustment is an increase of 3.44%.

Effective January 1, 2024, the costs assessed for disciplinary matters will be as follows[3]:

Original Proceedings	2023	2024
Matters that go in Default	5,609	5,802
Matters that Settle Prior to Filing of a Notice of Disciplinary Charges	3,864	3,997
Matters that Settle during first 120 days of proceeding	4,516	4,672
Matters that Settle before Pretrial Statement is filed	7,158	7,404
Matters that Settle before trial but after Pretrial Statement is filed	9,365	9,686
Matters that proceed to a One-day trial	9,365	9,686
Matters that proceed to a Multi-day trial	21,119	21,845
Matters that proceed to the Review Department	25,834	26,722

Conviction Referrals	2023	2024
Matters that go into Default	3,784	3,914
Matters that Settle during the first 120 days of proceeding	3,160	3,268
Matters that Settle before Pretrial Statement is filed	6,778	7,011
Matters that Settle before trial but after Pretrial Statement is filed	8,897	9,202
Matters that proceed to a One-day trial	8,897	9,202
Matters that proceed into a Multi-day trial	16,199	16,756
Matters that proceed to the Review Department	23,157	23,953

Other Matters	2023	2024
Probation Revocation Proceedings	3,026	3,130
Rule 9.20 Proceedings	3,184	3,293

Additional Costs	2023	2024
Each investigation matter over one	1,233	1,275
Each resignation	173	179

[1] Specifically, the December-to-December change in U.S. Bureau of Labor Statistics series CUURS49BSA0.
[2] Specifically, the Q4-to-Q4 change in U.S. Bureau of Labor Statistics series CIU2010000100000I.
[3] Cost assessments for 2023 are shown for comparison only.

In addition, the following costs will be assessed as appropriate:

1. Consolidation costs equal to the minimum cost for the consolidated case type
2. Transcript costs[4] incurred by the Office of Chief Trial Counsel
3. Taxable costs[5] incurred by the Office of Chief Trial Counsel

[4] Per Business and Professions Code § 6086.10(b)(1)
[5] Per Business and Professions Code § 6086.10(b)(2)

The State Bar of California

Title of Report: 2024 Adopted Final Budget
Statutory Citation: Business and Professions Code Section 6140.1 and 6140.12
Date of Report: February 28, 2024

The State Bar of California has submitted a report to the Legislature in accordance with Business and Professions Code section 6140.1 and 6140.12, which requires the State Bar to submit a final budget to the Legislature by February 28 of each year. This summary is provided pursuant to Government Code section 9795.

The State Bar Board of Trustees adopted a new five-year strategic plan in May 2022 structured around four goals: (1) protecting the public by strengthening the attorney discipline system; (2) improving access to and inclusion in the legal system; (3) regulating the legal profession; and (4) engaging partners. The State Bar's 2024 budget allocates resources to support the continued provision of core services and to advance the organization's five-year strategic plan.
The State Bar's budget is comprised of eleven funds. The General Fund, Admissions Fund, and grant-related funds support most State Bar activity and expenditures. The 2024 budget reflects the ongoing unfortunate reality of a structural General Fund operating deficit, a shrinking General Fund reserve, and no scheduled attorney licensing fee increases to improve the health of that fund. The State Bar is, however, pursuing a fee increase request for 2025. The Admissions Fund also faces a challenging deficit position; however, with recently adopted service program fee increases, this fund's deficit position decreased as compared to prior years.

Budgeted 2024 revenues of $428.9 million reflect an increase of $94.2 million compared to 2023, comprised entirely of grant-related revenue; overall budgeted expenses of $400.9 million represent a net increase of $106.9 million for over the same comparative period. Key changes from 2023 include:

- Revenue increased $94.2 million from the 2023 budget mostly due to increased interest revenue from Lawyers' Trust Accounts (IOLTA) and state and federal grants revenue.
- Personnel expenses increased by $10 million from the 2023 budget primarily due to cost-of-living adjustments, merit increases, and benefit healthcare rate increases.
- Building operations increased by $4.4 million from the 2023 budget reflecting the impact of transitioning from owned to leased office space. The cost will decrease in 2025 when the State Bar reduces its San Francisco office footprint.
- Services expenditures increased by $7.1 million reflecting critical one-time investments that support key strategic initiatives.

The 2024 Adopted Final Budget can be accessed at: https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Reports. A printed copy of the report may be obtained by calling 415-538- 2000.

The State Bar of California

2024 Budget Report

February 28, 2024

BACKGROUND: THE STATE BAR OF CALIFORNIA

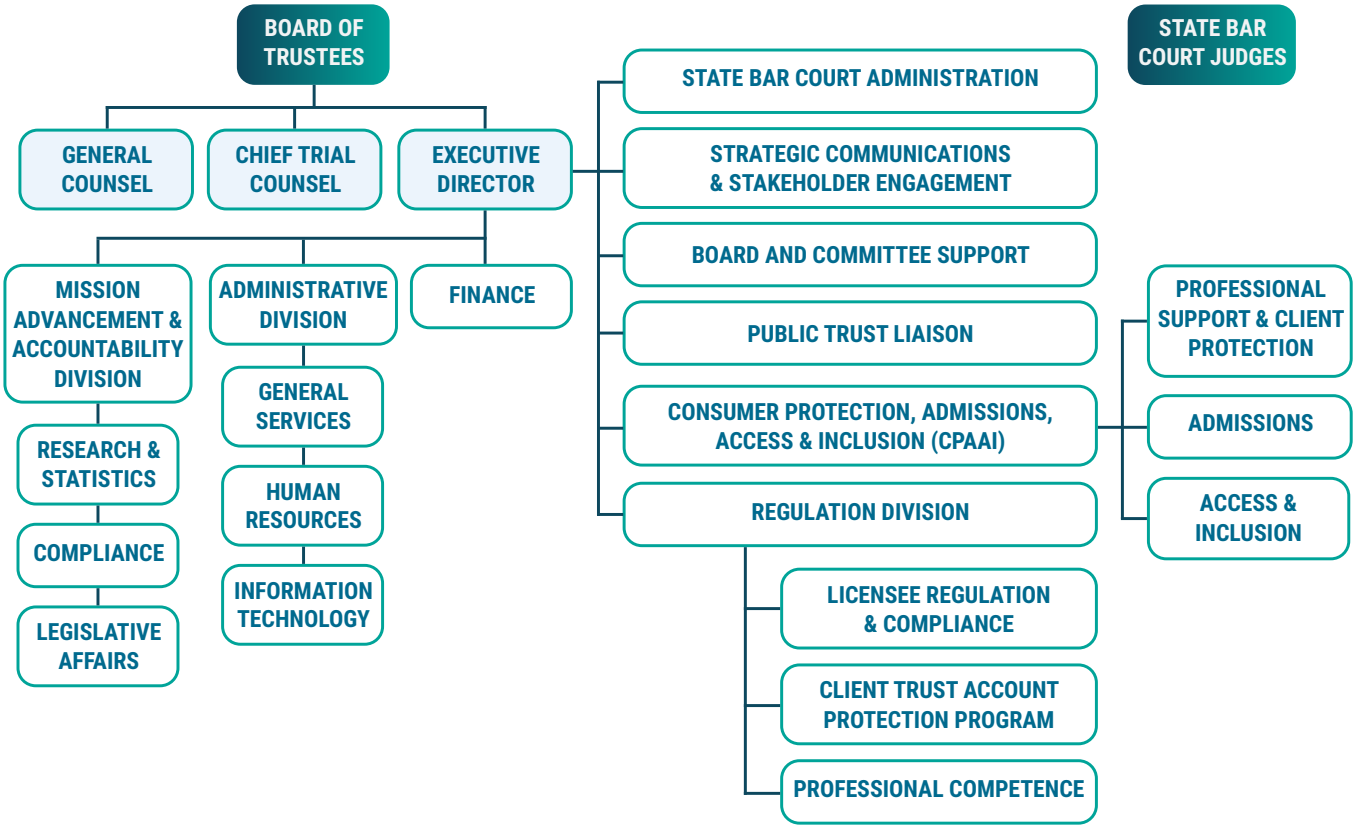
The State Bar of California is a public protection agency committed to transparency, accountability, and excellence. The State Bar serves as an administrative arm of the California Supreme Court on all matters pertaining to the admission, discipline, and regulation of California's lawyers.

The State Bar is governed by a Board of Trustees comprising 13 appointed members:

- Five attorneys appointed by the California Supreme Court;
- Two attorneys appointed by the Legislature, one by the Senate Committee on Rules, and one by the Speaker of the Assembly; and
- Six "public" or nonattorney members—four appointed by the governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly.

The Board of Trustees sets the strategic direction for the State Bar and oversees key staff to ensure execution of that direction.

With over 266,000 licensed attorneys, the State Bar of California is the largest state bar in the country. To practice law in California, attorneys must pass the California Bar Exam, meet moral character requirements, satisfy triennial Minimum Continuing Legal Education (MCLE) requirements, and pay annual licensing fees to the State Bar.



BUDGET BACKGROUND

FUND STRUCTURE

The State Bar's budget represents a complex combination of 21 funding sources supporting over 40 distinct functions within the organization:

General Fund—Spendable financial resources that can generally be used to support most aspects of the State Bar's operations. The primary source of funding for the General Fund are fees paid by licensees of the State Bar, as authorized annually by Business and Professions Code section 6140.

Restricted Fund Group—Activities and financial resources that can only be used for specific purposes. The State Bar has 10 funds in this group:

- Admissions Fund
- Bank Settlement Fund
- Client Security Fund (CSF)
- Elimination of Bias Fund
- Equal Access Fund (EAF)
- Grants Fund
- Justice Gap Fund
- Lawyer Assistance Program (LAP) Fund
- Legal Services Trust Fund
- Legislative Activities Fund

Reserves—State Bar funds are generally required to maintain a net reserve balance minimum equating to two months—or 17 percent—of operating expenses, and a maximum reserve balance of 30 percent. Whenever the reserve level in a fund subject to the policy surpasses 30 percent, a reserve spend-down plan is developed.

2025–2027 FORECAST

Except for line items with known variances, the 2025—2027 forecast assumes the following:

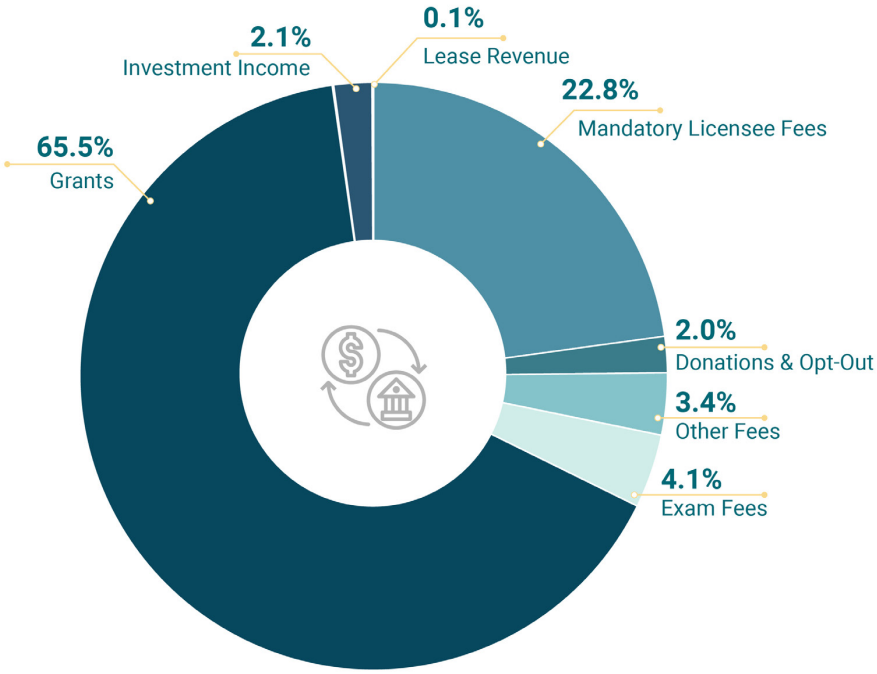
- A 3 percent inflationary increase for expenses annually. The inflationary percentage is based on a rounded three-year historical average of the Consumer Price Index (CPI) for Urban–San Francisco-Oakland-Hayward for the period ending December 2023.
- A 2.5 percent cost-of-living adjustment (COLA) in 2025 per the negotiated memorandum of understanding (MOU).
- No COLA increases for 2026–2027, as they have not yet been negotiated with the State Bar's union. Annual step increases for qualifying employees are included.
- Flat staffing levels.
- Growth in mandatory fee revenue projected annually at 0.3 percent based on projected licensee counts.
- No statutory licensing fee increase.

Without a fee increase, the General Fund will become insolvent in 2025, as all remaining reserves will be depleted. In addition to the General Fund, the Admissions Fund faces a structural deficit and is projected to exhaust its reserves in 2026.

2024 REVENUE OVERVIEW

SOURCES OF FUNDS

The State Bar's 2024 adopted budget reflects $428.9 million in total revenue. Mandatory fees and grants revenues are the largest sources of revenue for the State Bar, totaling approximately $378.5 million, or 88.3 percent.



GRANTS

The State Bar is responsible for the administration and distribution of grants generated through various mechanisms, including IOLTA funding, the Equal Access Fund, the Justice Gap Fund, bank settlements, and federal awards. These grants fund the provision of free legal services to low-income Californians through several programs. Some of these programs distribute funds according to a statutory formula and others through competitive grant processes.

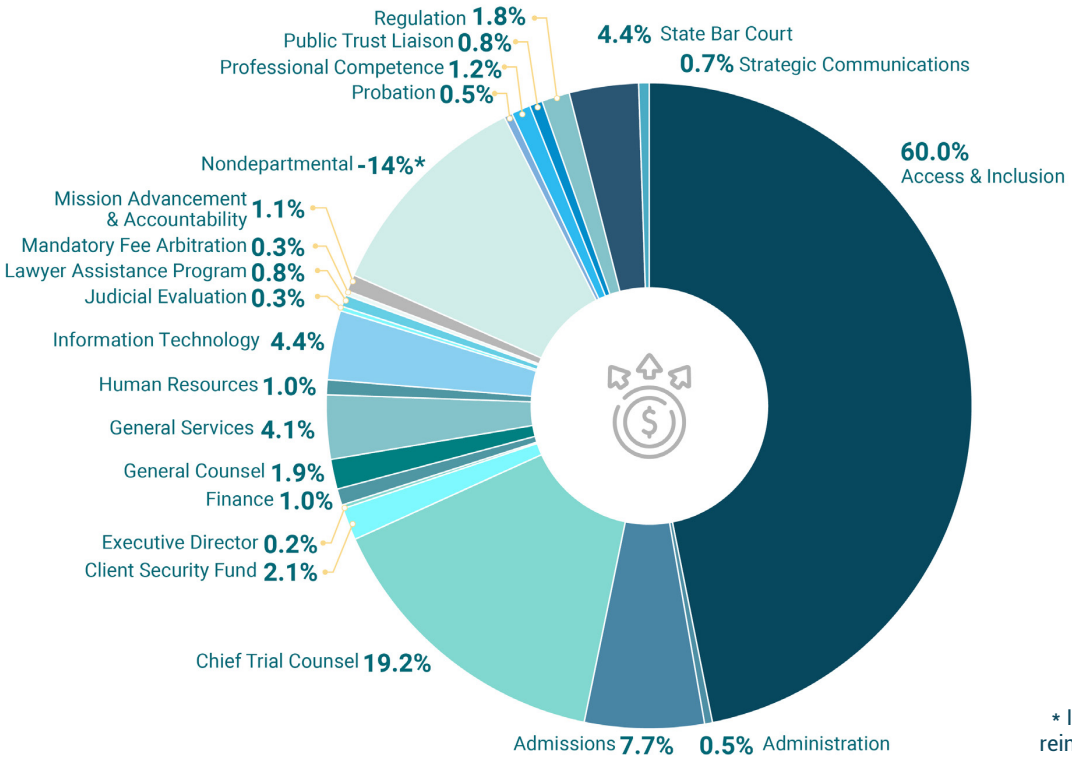
MANDATORY LICENSEE FEES

Attorney licensing fees are set annually by the Legislature. As of 2024, active attorneys pay $463. This amount includes the statutory base fee, plus a $25 discipline fee, a $40 CSF fee, a $4 limited-term building special assessment, a $5 limited-term information technology special assessment, and a $10 LAP fee.

2024 EXPENDITURES OVERVIEW

USE OF FUNDS

The State Bar's 2024 adopted budget reflects $400.9 million in total expenses. The budget for the Office of Access and Inclusion (OA&I), which includes all grant distributions made by the State Bar, comprises 60 percent of total expenses. The Office of Chief Trial Counsel (OCTC) comprises 19.2 percent of operating budget expenses. Together, these two offices comprise 79.2 percent of the State Bar's operating budget. General Fund expenses of $118 million include $7.1 million in one-time costs.

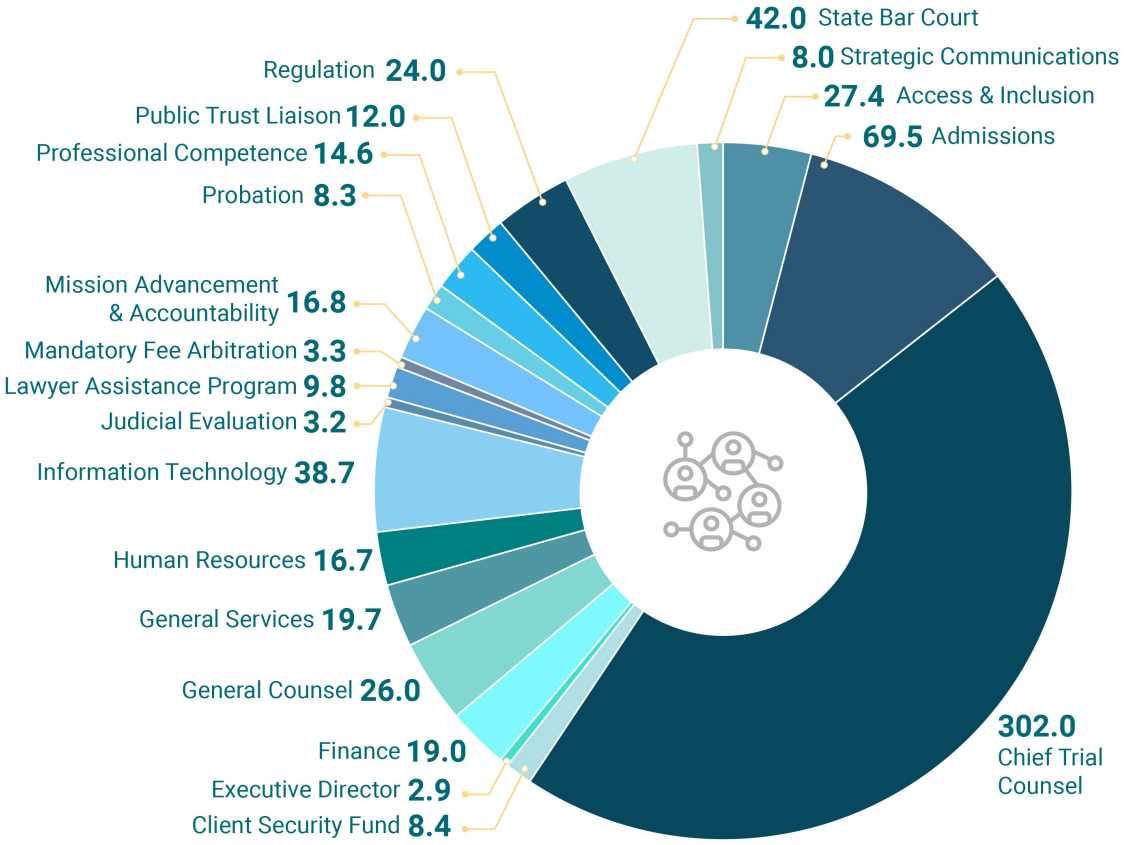


PERSONNEL COSTS

Costs include salary and benefits, supplemental staffing, employee healthcare, and retirement and total $116.9 million of the State Bar's 2024 budget. The adopted budget represents a $10 million increase from the prior year, resulting primarily from merit increases and a COLA (2.5 percent increase in 2024). In addition, the hiring freeze reflected in the 2023 budget was eliminated, with the vacancy rate for positions not funded by the General Fund adjusted to the actual rate, which is 8 percent. The budget also includes five additional positions as well as increases to healthcare and retirement contribution costs.

STAFFING

The 2024 adopted budget supports 672 FTE positions, an increase of 5 total FTEs compared to the prior year.



OFFICE OF CHIEF TRIAL COUNSEL (OCTC)

OCTC is the enforcement arm of the State Bar, responsible for investigating and prosecuting attorneys for violations of the Rules of Professional Conduct and the State Bar Act. OCTC is also responsible for regulatory proceedings before the State Bar Court, such as representing the Committee of Bar Examiners in moral character appeals and representing the Board of Legal Specialization in specialization certification appeals.

FISCAL YEAR 2024 PROJECTS AND OBJECTIVES

- Implement a formal disciplinary diversion program for attorneys accused of minor violations of the Rules of Professional Conduct and work with the Mission Advancement & Accountability Division to develop data to support recommendations by the Board to the Assembly and Senate Judiciary Committees for codifying such a program as required by the April 2024 legislative reports.
- Participate in an assessment of OCTC's performance related to recently established case-processing standards to support the State Bar's request for a mandatory attorney license fee increase.
- Reduce the inventory of open disciplinary cases outside of the current backlog standards (180 days for noncomplex cases and 365 days for complex cases) by 10 percent or more.

EXPENSE

Total 2024 budgeted expenses for the Office of Probation are approximately $2.1 million.

Expense Categories	2023 Budget	2024 Budget	2025 Forecast	2026 Forecast	2027 Forecast
Personnel Costs	$1,274,651	$1,366,000	$1,435,000	$1,462,000	$1,489,000
Building Operations	731	1,000	1,000	1,000	1,000
Services	33,000	26,000	27,000	28,000	29,000
Supplies	2,727	4,500	5,000	5,000	5,000
Equipment	415	500	1,000	1,000	1,000
Indirect Costs	638,307	737,000	761,000	784,000	807,000
Total Expenses	**$1,949,831**	**$2,135,000**	**$2,230,000**	**$2,281,000**	**$2,332,000**

STATE BAR COURT

California has the only state bar in the United States with independent professional judges dedicated to ruling on attorney disciplinary and regulatory cases. The State Bar Court impartially adjudicates matters filed by OCTC and has the power to recommend that the California Supreme Court suspend or disbar attorneys found to have committed acts of professional misconduct or to have been convicted of serious crimes. For lesser offenses, the court may issue public or private reprovals. In regulatory matters, the court adjudicates matters including attorney reinstatements and challenges to adverse moral character determinations.

FISCAL YEAR 2024 PROJECTS AND OBJECTIVES

- Implement mandatory e-filing, which will position the court to transition to an electronic (paperless) court.
- Revise the framework for and implement broad public reporting of court case-processing timelines.
- Publish a self-help practice guide to provide guidance to self-represented respondents and inform the public about court disciplinary and regulatory proceedings.

STATE BAR COURT

OF THE STATE OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:	) Case No. SBC-22-0-30348-DGS
LENORE LUANN ALBERT, ESQ.,	)
Respondent.	)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS G. SAAB
TUESDAY, DECEMBER 13, 2022
845 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017

APPEARANCES:

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recross of yourself based on that last question?

MS. ALBERT: No.

THE COURT: All right. Very well. Okay. Then thank you very much for testifying. Your testimony has concluded at this point as far as Ms. Chan's witness. Ms. Chan, do you have a second witness that you'd like to call?

MS. CHAN: Yes, your Honor. Roxanne Gonzalez.

THE COURT: Roxanne Gonzalez. Okay. Do you need a few moments to get her?

MS. CHAN: How about 2:30?

THE COURT: Okay. Five minutes, 2:30, Sure. Let's take -- let's go off the record. We'll come back at 2.30 for OCTC's next witness, Roxanne Gonzalez. Thank you very much.

THE CLERK: We're off the record.

(Proceedings recessed briefly.)

THE CLERK: We are back on the record.

THE COURT: We're back on the record, the case of Lenore Luann Albert. All the parties are present before the Court.

Ms. Chan, your next witness.

MS. CHAN: Yes, your Honor. Roxanne Gonzalez. She's in the attendee pool right now.

THE COURT: Thank you.

Good afternoon, Ms. Gonzalez.

MS. GONZALEZ: Good afternoon.

THE COURT: All right, you will be placed under oath shortly, and then the attorneys will have some questions for you. And then I'll ask you some brief questions beforehand. Okay.

MS. GONZALEZ: Okay.

THE COURT: Thank you very much for appearing to testify.

THE CLERK: If you can, please, raise your right hand.

ROXANNE GONZALEZ - STATE BAR'S WITNESS - SWORN

THE CLERK: Please state and spell your first and last name for the record.

THE WITNESS: Roxanne Gonzalez. R-O-X-A-N-N-E G-O-N-Z-A-L-E-Z.

THE CLERK: Thank you.

THE COURT: Ms. Gonzalez, again, thank you for appearing here this afternoon. Your hand is raised. Do you want to lower that hand you see on your screen?

THE WITNESS: Oh, I think it did it when I was --

THE COURT: Okay. You wanted to have your virtual hand as well as your real hands.

THE WITNESS: I think I picked it up when I raised my hand to be sworn in.

THE COURT: All right. Very well. Let me ask you, have you observed any portion of this trial?

THE WITNESS: No.

THE COURT: Okay. And have you discussed the trial today with anyone about what testimony has came out during the trial?

THE WITNESS: No.

THE COURT: Have you heard any part of the trial?

THE WITNESS: No.

THE COURT: All right, very well. When you testify here this afternoon, I ask you to please only use the electronic device you're using, and do not use any other electronic device. And also if -- don't look at any documents unless an attorney directs you to an exhibit for example, okay?

THE WITNESS: Okay.

THE COURT: Thank you very much.

Ms. Chan, you may proceed.

MS. CHAN: Okay. Thank you, your Honor.

DIRECT EXAMINATION

BY MS. CHAN:

Q Good afternoon, Ms. Gonzalez.

A Good afternoon.

Q Could you please tell the Court where you are currently employed?

A Yes, I'm employed for the -- with the US District Court, Eastern District of California, and I am housed in the Fresno office.
Q And what is your position or title at the Eastern District, currently?
A Operations Supervisor.
Q And how long have you been an operation supervisor at the Eastern District?
A For three years.
Q And prior to that, were you employed with the Eastern District?
A Yes.
Q And what was your position or title prior to becoming an operation supervisor?
A I was an Operations Specialist, which is the department I now oversee as a supervisor, and I was in that unit for almost 10 years.
Q Okay. So would you say -- so can you say approximately what year you started working with the Eastern District?
A 2011. Yeah, 2011.
Q And in February 2021, you were an operation supervisor then, at that time?
A Correct.
Q And can you just briefly describe what your job duties or responsibilities were as the operations supervisor at --

in the Eastern District?
A I currently oversee the operations unit, which is about a team of eight people right now. And our unit handles all incoming new filings, process any filings that need to go to the docket, monitor quality control of attorney filings. I oversee the unit that handles that. I coordinate their schedules. I run statistics as necessary. We do a lot of the basic case operational duties in our unit, and I oversee that.
Q Are you familiar with the Respondent in this matter, Ms. Albert?
A Yes. With the correspondence that I've had with her, correct, yes. Other than that, I don't know her.
Q Okay. And describe how you know her.
A I apologize. We received a letter in the mail, I believe in -- I think it was probably about a year ago, maybe longer. I don't remember the exact date -- from Ms. Albert, requesting that we issue certificate of good standing for her. And before we do that, we crosscheck the State Bar website to make sure that the attorneys are still in good standing with the State Bar. I realized that it wasn't. So we declined to issue the certificate of good standing and returned the payment to her. And then I received an e-mail from Ms. Albert, asking why we had declined it, and I referenced our local rules and advised

her why we've done it. She sent me another e-mail, which I just didn't respond to after that.

Q So that's the extent of your communications with Ms. Albert, then?

A In the beginning, I think I may have gotten another e-mail either from her or the attorney that she was working with when she was reinstated with the State Bar, and we updated her in our system. But as far as my direct contact with her, any communication, yes, it wasn't more than that.

MS. CHAN: All right. So, Ms. Wang, can you pull up Exhibit 40, please? And page 16 of that exhibit.

BY MS. CHAN:

Q You said you had received a letter. Is this the letter you were referring to?

A Yes.

Q And so in this letter, Ms. Albert is requesting two certificates of good standing, correct?

A Correct.

Q And so after you got -- so, well, let me ask you this. Did this letter go directly to you, or was it reviewed by someone else?

A It goes to our operations staff as they processed the mail. And there was -- I believe there was also a check with this letter. And I don't recall, but the amount might have even been incorrect. I don't know. But when my clerk

-- as part of the process, like I said, we crosscheck through the State Bar to make sure that the attorney is still in good standing, is when she found it and then she brought the letter to me. So it did go to someone else. They brought it to me. And I was the one that said to deny the request.

Q Okay. Did you check her standing on the California State Bar webpage when you got this letter?

A Yes.

Q So you personally checked?

A Yes. Yes, I double-checked it.

Q And when you checked it, what did it say? What do you recall?

A I think it said that she was suspended.

Q Okay. And that's why you denied the request to provide the certificate of good standing?

A Correct. That's why we would deny it.

Q And what else did you do as a result of learning that she was suspended? If anything.

A So at that time, what I did was I went into our case management system, which is the CM/ECF. I went into our case management system, and I updated her status to be inactive with us because she was suspended with the State Bar. So I went in and manually updated our case management system to show that she was inactive in our system.

Q And the reason that you did that was -- the reason you put her on inactive as a result of the California suspension was why? Why did you do that?
A Because pursuant to our local rules, in order for an attorney to practice in our court, even if they're admitted, they have to be in continuous good standing with the State Bar. So if they're not -- and I may be wording it a little bit different than what our local rule states, but that is part of the admission in our district.
Q Okay. So to be clear, which local rules are you referring to?
A I believe it's Local Rule 180.
Q Okay.
A Attorney admissions.
Q Okay. And just so we're all on the same page --
A Sorry, it might be 181, 180 or 181, but I apologize.
MS. CHAN: Ms. Wang, Could you please -- Could you please pull up Exhibit 9.
BY MS. CHAN:
Q Now, this exhibit has been identified as Eastern District of California Local Rule 180 that was effective February 1, 2019, to February 28, 2022. This Court took judicial notice of this exhibit, okay? Is this the local Rule that you're referencing?
A Yes. And I think I -- when I responded to Ms. Albert

in her e-mail, I cited this local rule. Section A is the one that I cited, and I think there's another one again that I also cited, but yes, that's the local rule that I'm referring to.

Q All right.

MS. CHAN: Ms. Wang, can we go back to Exhibit 40? Could you go to page 23, please?

BY MS. CHAN:

Q Do you see this e-mail correspondence?

A Yes.

Q Up top, it says, "From Lenore Albert to Roxanne Gonzalez rgonzalez@caed.uscourts.gov." Is that an e-mail that you were using at the time?

A Yes, that's my e-mail address.

Q And did you receive that e-mail?

A Yes.

Q And what did you do upon reviewing this e-mail?

A I think this is the e-mail I responded to. I don't know what the order is on here. So it'll either be above this e-mail or below it. This is an e-mail I believe I responded to where I cited the local rules to Ms. Albert.

MS. CHAN: Can you scroll up, Ms. Wang?

MS. ALBERT: So yes.

BY MS. CHAN:

Q Is that your response?

A A little bit further. There. That's my response.
Q Where it says,
"Good morning, your status in the CM/ECF was updated pursuant to Local Rule 181?"
A Yes.
Q Okay. And then Ms. Albert responded to you on the same day like -- looks like six minutes later.
A Right.
Q You didn't -- did you respond to that e-mail or no?
A I did not respond to that e-mail.
Q So pages 22 through 24, we just got the extent of your communication with one another then, correct?
A Yes. I believe so until after she was reinstated again. And again, I don't know if that was directly from her or the attorney that she was working with. I don't remember.
Q And then up top on page 20, there is an e-mail correspondence from Lenore Albert to V. Gonzalez -- Victoria Gonzalez. This is a different person, correct?
A Correct.
Q So you didn't get this e-mail.
A If it was a direct to V. Gonzalez, no.
Q Okay. I want to go back to what you were talking about earlier. You made some change to the ECF system or

something like that. Can you briefly restate what you said about that?
A Yes. I made a change to our -- it's CM/ECF, which is our Case Management Electronic Filing System. So we say CM/ECF for short. Upon learning that she was suspended with the State Bar, I updated her attorney profile in our CM system to show that she was inactive. Our system doesn't allow to put suspended, so I updated it to show that she was inactive based off of the information I received from the State Bar.
Q Okay. So it requires somebody from the Eastern District to update that status, correct?
A Correct. We have to manually update that.
Q There's not any kind of link between the Eastern District of California and the California State Bar website that would automatically change the status in the Eastern District due to the status in California, correct?
A No. No.
Q Okay. And are you familiar with the Court's local rule that requires an attorney to report discipline?
A In the sense that I don't know all the local rules by heart, but I do know how to get to them and research them, and I believe that's part of that same local rule there. So yes, I'm familiar with that in that sense.
Q Okay. So you wouldn't -- so asides from checking --

going on to the State Bar website and checking it, which is what you did --

A Right.

Q -- there's no reason for you to have known about Ms. Albert's disciplinary action unless she gave notice or somebody gave notice about it, right?

A Right.

Q I want to draw your attention to Exhibit 40, at page 18, please. Does this document look familiar to you?

A Yes.

Q Could you tell me what your understanding of this document shows?

A Yes. So this document, I believe, is most likely a screenshot from our website -- our public website. And there's an area where an attorney can go in and check to see if they've been admitted into our district. It's basically a quick reference check for the attorney.

Q Okay. And this -- the information here is populated based upon the information you enter into the ECF system that you just discussed?

A Correct.

Q All right.

THE COURT: Can I get the -- those initials again? What acronym is -- I understand it's a case management electronic system, but we've been using different ones. Is

it CMCEF?

THE WITNESS: CM slash ECF.

THE COURT: ECF. Thank you very much.

THE WITNESS: Sure.

MS. CHAN: And to be clear, CM stands for Case Management?

THE WITNESS: And then the slash ECF is for Electronic Case Filing.

THE COURT: Thank you.

BY MS. CHAN

Q All right. So moving to Exhibit -- so same Exhibit, page 14. Page 14. Now, this document shows the result of Lenore Albert on the attorney lookup on February 12, 2021. And you see how it says "Active?"

A Right.

Q And it's active because no one had gone to change the status, right?

A Right.

Q And it's active because you were not provided with any notice with regards to her suspension, correct?

A That's correct.

Q Now, let me ask you this, do the clerks just routinely, sua sponte check the status of an attorney on the California State Bar website to make sure they're in good standing?

A No.

Q And so what types of events, generally, would prompt you to look it up, then -- to check the California State Bar website?

A It's usually the two main things that we do it for, when an attorney files for admission, a new attorney is filing a petition to be admitted into our district. So before they appear at all, they file a petition for admission. We crosscheck with the California State Bar to make sure that they're, one, in fact, admitted into the State Bar and in good standing. And when a certificate of good standing is requested is the other time we also check the State Bar. Other than that, we reference it to verify e-mails or addresses if we need it. But those are the only two instances where we regularly check it.

MS. CHAN: All right. I don't have any further questions at this time.

THE COURT: Thank you.

Ms. Gonzalez, at any point if you need a break let the Court know, okay?

THE WITNESS: Okay. I'm sorry. I have my water, I'm sorry. I'm getting over a bad infection.

THE COURT: Okay. No problem.

MS. CHAN: Ms. Wang, can you --

THE COURT: But if you need a break, you just let the Court know. We'll certainly take a break.

All right. Ms. Albert, do you have any cross examination of Ms. Gonzalez?

MS. ALBERT: Yes, I do. Thank you.

THE COURT: All right. You may proceed.

MS. ALBERT: Thank you.

CROSS EXAMINATION

BY MS. ALBERT:

Q So Ms. Gonzalez, did you ever contact the other Ms. Gonzalez, Judge Ishii's clerk, prior to changing my status to inactive?

A I don't believe I did, but I don't recall.

Q Okay. Did you receive a court order from Judge Ishii asking you to change my status to inactive?

A No.

Q Did you receive an order from Chief Judge Mueller to change my status to inactive?

A No.

Q Did you receive a court order from Judge Mcauliffe asking you to change my status to inactive?

A No.

Q Have you ever received an order from any of the judges requesting you to change an attorney's status to inactive because they have been suspended?

A I don't believe I have.

Q Have you changed other attorney's statuses to inactive

due to suspension?
A It's possible that I have, but I couldn't be 100 percent sure.
Q Okay. So you can't recall another instance other than mine when I asked for the certificate of good standing?
A Right now, no, I can't recall if I've done it.
Q Do your powers allow you to sign any clerk orders?
A Clerk orders --
MS. CHAN: Objection, vague.
THE COURT: It might be, yes. I'm going to sustain the objection.
You can rephrase, Ms. Albert. I think the witness didn't quite understand the question.
BY MS. ALBERT:
Q Okay. Thank you, your Honor. Do your powers allow you to sign off an order as a clerk of the Court suspending an attorney's license?
A As a clerk I don't sign any orders.
Q Okay. To your knowledge, was there ever any court order in my case suspending my membership when I was made inactive in February, 2021?
A I'm sorry, could you repeat that?
Q Yes. Was there any court order from the US District Court of the Eastern District of California, suspending my membership in that district?

A An order, you said?
Q Uh-huh.
A Not that I'm aware of.
Q Okay. And along that lines, you can't tell exactly what day you changed my status from active to inactive, correct?
A I cannot tell by looking at those exhibits, no.
Q Okay. So we know it was sometime between February 12, 2021, to March 3, 2021, correct?
A Correct.
Q Okay. And since my membership was reinstated in May of 2021, it's remained active, correct?
A As far as I know, that's correct.
Q Okay. Is there anything in Local Rule 180 that requires -- or that informs -- not requires, but informs an attorney to notify your office when they are suspended?
MS. CHAN: Objection. The document speaks for itself.
THE COURT: It calls for a legal conclusion, does it not, Ms. Albert?
MS. ALBERT: Okay, that's fine. Withdrawn.
THE COURT: Okay. Thank you.
BY MS. ALBERT:
Q Let's see here. I want to look at a couple of my exhibits, which actually might be in their Exhibit 40, so I

don't want to overburden the Court with unnecessary exhibits. You were interviewed by Benson Hom in this case, correct?

A Me?

Q Yes.

A I don't know who Benson Hom is.

Q Okay. Did you receive a call from someone at the State Bar at the end of February 2022, regarding this case?

A Somebody from the State Bar did call me. As far as when, I'm not sure.

Q Okay. I'm going to share Exhibit 1009. Excuse me -- a second for it to pop up here. There we go. And I'm just sharing this to refresh -- maybe refresh your recollection. Did you --

THE COURT: Regarding what question that the witness cannot recall?

MS. ALBERT: Yes, regarding a conversation with someone at the State Bar regarding this case.

THE COURT: Give me a second to locate that exhibit myself.

MS. ALBERT: Okay.

THE WITNESS: I can't really see the exhibit.

THE COURT: Okay.

THE WITNESS: Partial screen. It's really small.

MS. ALBERT: It's really small?

THE COURT: Really tiny.

MS. ALBERT: Okay. Let me see what's going on here. I could be in the wrong -- yes, I wasn't in the Zoom. Let me get to the Zoom. I am not (indiscernible).

MS. WANG: Do you want me to share the document?

MS. ALBERT: Yes, that probably will be better. For some reason I'm in a --

THE WITNESS: Okay. I can see it now.

MS. ALBERT: Okay. Sorry about that.

BY MS. ALBERT:

Q This is Exhibit 1009. It's an e-mail dated March 2, 2022. It's actually a reply --

A Okay.

Q -- e-mail on the second page from Mr. Hom of the California state Bar. And I'm just -- right now, just to -- I will refresh your recollection of the question I even asked. Were you contacted around March 2, 2022, with regard to investigation into this matter by the State Bar?

A Yes, according to (indiscernible) I just don't remember the date. Yes (indiscernible) me that day.

Q Okay. And at that time, Mr. Homs says that he had contacted you on February 24, 2022. Do you recall having a phone conversation with someone prior to getting the e-mail?

A I do remember having a phone conversation.

Q Okay. And at that time you and -- you did inform the

State Bar that you couldn't state definitively whether my license was active when I filed the answer before Judge Mcauliffe in the Grewal matter or not, correct?

A I'm sorry, one more time.

Q Okay. I'm not sure if you can't hear me or --

A No, I can --

THE COURT: There is a lot in that question. I don't think she may know what the Grewal matter is, so you have to back up a little bit.

BY MS. ALBERT:

Q So in around, February 19, 2021, I had filed an answer before Judge Mcauliffe in the case called Avalos vs. Gonzalez --

A Okay.

Q -- for Mr. Grewal. And so my question is, you couldn't tell the State Bar, on or about March 2, 2022, whether or not my status was turned to inactive before or after I filed that pleading on February 19, 2021, correct?

A Right, I believe so. I'm still trying to -- you're asking if when I talked to him on that day, if I can tell when you filed your answer?

Q Yeah. You couldn't tell when I -- you couldn't look at your record and determine what day you changed my status from active to inactive, could you?

A Correct.

Q Right. There's nothing in your -- the system doesn't keep track of that kind of information, correct?
A So that is correct, and that was my understanding. I did not go to our program administrator to ask if there is a way to track that. Correct. There's no way for me to see that.
Q Okay. And did you go to your program administrator or anyone else before changing my status to inactive?
A No.
Q Okay. And it was based on the fact that I had asked for a certificate of good standing, correct?
A It was based off of the fact that we cross-referenced it with the State Bar when you asked for your certificate of good standing.
Q Yes. And going to the other Exhibit 1038, the Eastern District, you actually have a committee of judges and other attorneys that actually look at your local rules from time to time, right?
A That's correct.
Q Okay. And do you know who Scott Kameron is?
A No, I don't.
Q Okay. Do you know who Judge Mueller is?
A Yes.
Q And who is Judge Mueller?
A Judge Mueller is our chief district judge.

Q Okay. And part of the process in getting local rules clarified, a committee is formed in the Eastern District, correct?
A Clarified by who?
Q Well, you guys amend your local rules from time to time, right?
A The Court does, right.
Q And you have a committee for that, correct?
A Correct.
Q And the proper way to go about that is to have --
MS. CHAN: Objection, relevance.
THE COURT: Hold on, let me hear the question here first. Was the question that this witness knows procedures of amending local rules?
MS. ALBERT: Yes.
THE COURT: (Indiscernible) the question? Then go ahead, ask your question. Let me hear your question, and then I'll rule on the objection.
BY MS. ALBERT:
Q Okay. The -- okay, I kind of lost my train of thought. So I'm going to think of a new question but same area, I apologize. So you have a Judicial Advisory Committee, correct?
A I believe so, yes.
Q Are you a member of the Judicial Advisory Committee?

A No.
Q Have you ever been a member of the Advisory Committee?
A No.
Q Okay. And I'm not trying to be offensive when I asked this question. But you've never been an actual judge sitting in the Eastern District, correct?
A No.
Q Okay. And you're not like -- you don't sit as an operation supervisor before a certain judge in the Eastern District, correct?
A For one judge, our unit oversees cases for all judges in the Fresno (indiscernible), yes.
Q Yes. Is there anything I'd forgotten to ask you, regarding the facts and circumstances of my standing being moved from active to inactive in the Eastern District of California?
MS. CHAN: Objection, vague and calls for speculation. How would she know what you're forgetting to ask or not ask?
THE COURT: I'll sustain that. You can rephrase your question, Ms. Albert.
THE WITNESS: Yes.
MS. ALBERT: Okay.
BY MS. ALBERT
Q If there is a -- you haven't received anything showing

that the Eastern District of California did a reciprocal suspension of my license with the State Bar of California, have you?

A I have not. I don't really know how that would -- how that looks or what form it would come in. So that I'm aware of, no.

MS. ALBERT: Thank you. No further questions.

THE COURT: Any redirect of the witness, Ms. Chan?

MS. CHAN: Yes, just briefly.

REDIRECT EXAMINATION

BY MS. CHAN:

Q Ms. Gonzalez, to be clear, you did not change her status as a result of any court orders issued by the Eastern District, correct?

A Correct.

Q You changed her status because the local rule requires her to be in good standing in California, and you determined that she wasn't, right?

A Right.

Q Okay. Prior to changing her status, did you consult with anybody?

A No.

Q Did you consult with anybody regarding the propriety of your actions after that?

A Yes.

Q Who?
A I consulted with my counterpart in Sacramento, after I received Mrs. Albert's e-mail questioning why I changed it.
Q And who's your counterpart?
A His name is Jeremy Donati, and he's the operations supervisor in Sacramento.
Q Okay.
THE COURT: So can you spell that last name, please? Even the first name, Jeremy.
THE WITNESS: Okay. Jeremy is J-E-R-E-M-Y. And last name is Donati, D-O-N-A-T-I.
THE COURT: Thank you very much.
THE WITNESS: Uh-huh.
BY MS. CHAN:
Q And when you consulted with him, what did he tell you?
A He said that I did everything exactly the way we're supposed to do it, and it's what he would have done as well, check the local rules. He re-read them with me. I believe I consulted with him after her second e-mail to me, where -- after I sent the local rules. I asked him, I said, "This is what I said. I just want to make sure that that was correct". And he said, "No, it was correct. Our local rules do state they have to be in good standing with the State Bar to continue practicing in our District. You did everything correct".

Q Were you told by anybody in the Eastern District Court that what you did was improper?
A No.
Q Did any Judge tell you that what you did was improper?
A No.
MS. CHAN: Okay. I have no further questions.
THE COURT: Thank you.
Any recross, Ms. Albert?
MS. ALBERT: Yes.

RECROSS EXAMINATION

BY MS. ALBERT:
Q Was your decision reported to any Judge that you know of in the Eastern District?
A Yes, I alerted Judge Mcauliffe chambers.
Q And did Judge Mcauliffe respond?
A No, just by way of issuing her order to show cause.
Q Okay. And when you say you alerted her chambers, that was her assistant or her clerk in the chambers, or was it Judge Mcauliffe personally?
A I don't remember. It could have very well been Judge Mcauliffe as well as her staff attorneys.
Q Okay. So, as a result, you believe that she issued the order to show cause when you notified Judge Mcauliffe?
A I believe --
MS. CHAN: Objection calls for speculation as to

why the Court issued an OSC.

THE COURT: Overruled. You can answer, Ms. Gonzalez, if you can.

THE WITNESS: I believe that is probably the reason she did it, but I don't know. Of course, they don't share why she issued it.

BY MS. ALBERT:

Q Is Jeremy Donati, you said he's your counterpart, is he a judge in Sacramento?

A No.

Q Okay. And do you know whether Jeremy Donati reached out to the Chief Judge Mueller or any other judge before he gave you his opinion?

A I don't know.

Q And I've never like filed a complaint against you with regard to what happened, did I?

A Not that I'm aware of.

Q Okay. And Judge Mcauliffe didn't send you any written response, correct?

A I don't recall. To be honest, I don't remember.

Q If there was, it wouldn't have been anything in a formal writing, correct?

A If it were, it would have been an e-mail.

MS. ALBERT: No further questions.

THE COURT: All right. Ms. Chan, do you have any

redirect?

MS. CHAN: No, your Honor.

THE COURT: All right. Any reason why the Court cannot excuse the witness at this time, Ms. Chan?

MS. CHAN: No, your Honor.

THE COURT: Ms. Albert?

MS. ALBERT: No, your Honor.

THE COURT: Ms. Gonzalez, Thank you very much for testifying -- taking the time from your busy schedule to come and testify. I appreciate it. As a member of the public, you're welcome to watch the proceedings. You're free to leave but you're welcome to watch the proceedings, if you so desire. Using the same link that you use to join us this afternoon, okay?

THE WITNESS: Okay. Thank you.

(The witness was excused.)

MS. ALBERT: Your Honor, I'd like to admit Exhibit 1009.

THE COURT: Okay. But is Exhibit 1009 already in OCTC's exhibits because --

MS. ALBERT: It's in Exhibit 40. I'm not sure of the entire hierarchy, just the number 40.

THE COURT: Because your exhibit was a -- the e-mail from Roxanne Gonzalez to Investigate Hom. That's what you're asking to move?

CERTIFICATION OF TRANSCRIBER

I, Holly Steinhauer, do hereby certify that the foregoing 218-page transcript of proceedings, recorded by digital recording, represents a true and accurate transcript of the hearing in the matter of Lenore LuAnn Albert, Esq., held on December 13, 2022.

_____ _____

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE AVALOS, an individual, Plaintiff, vs. FELIPE GONZALEZ, an individual; PRITAM S. GREWAL, an individual; MANJEET K. GREWAL, an individual; DEV S. GREWAL, an individual; and DOES 1-10, inclusive, Defendants.	CASE NO. 1:20-cv-01578-NONE-BAM **DECLARATION OF LENORE ALBERT ON HER MEMBERSHIP TO THIS COURT** Hearing Date: April 9, 2021 Time: 9:00AM Ctrm: 8 (BAM)

DECLARATION OF LENORE ALBERT ON HER MEMBERSHIP TO THIS COURT

I, Lenore Albert, do hereby declare that I am over the age of eighteen years old, and if asked to testify in this proceeding, I could and would testify to my own personal knowledge as follows:

1. On or about March 5, 2021 I received an Order to Show Cause asking for my proof of admittance to the United States District Court of the Eastern District of California.
2. I became a member of the United States District Court for the Eastern District of California on December 17, 2014. Attached hereto and fully incorporated herein as **Exhibit A** is a true and correct copy of my Certificate of Membership in the United States District Court for the Eastern District of California.
3. I am a member that was admitted to this Court before I appeared in this case.
4. I appeared in this action February 19, 2021 to represent Defendants Pritam Grewal, Manjeet Grewal and Dev Grewal. Attached hereto and incorporated herein as **Exhibit B** is a true and correct copy of the Docket in this case showing I appeared on February 19, 2021.
5. I was still an active member when I appeared on February 19, 2021. Attached hereto and fully incorporated herein as **Exhibit C** is a true and correct online printout of my membership status on February 12, 2021.
6. I am still a member of this Court, but my membership was changed to inactive after I appeared in this case on or about February 19, 2021.
7. I am not aware of any Order by a judge of the United States District Court for the Eastern District of California changing my active and in good standing membership in this Court to inactive after my appearance in this matter.

8. Separately, on or about February 12, 2021 I contacted the Clerk's office of this Court and the Clerk's office of the United States Supreme Court for a Certificate of Good Standing because I was applying for membership to the Michigan State Bar. Attached hereto and fully incorporated herein as **Exhibit D** is a true and correct copy of the letter I sent to the Clerk of this Court.
9. On or about March 2, 2021, I received a reply from the office stating my status not in good standing due to my suspension by the California State Bar.
10. I was surprised at the change in my membership status because I was never notified of a Court Order changing my status from the Eastern District.
11. I checked my online membership status and it had changed. Attached hereto and fully incorporated herein as **Exhibit E** is a true and correct copy of my online membership status on March 3, 2021.
12. The only other case I had during my suspension was before Judge Ishi, *Kilgore v Wells Fargo* No. 1:12-cv-00899-AWI-SMS, in the Eastern District.
13. I filed a motion to vacate in 2019 in *Kilgore v Wells Fargo*, wherein Judge Ishi was made aware of my suspension but Judge Ishi did not issue an OSC or order my status removed from active and in good standing in this Court.
14. After receiving notice from the clerk's office that my status was no longer in good standing on or about March 2, 2021, I diligently contacted Judge Ishi's clerk and asked if Judge Ishi had Ordered my license suspended. It was researched and determined by his department that no one there had changed my status and suggested I contact the Operations Supervisor and Chief Judge. Attached hereto and fully incorporated herein as **Exhibit E** is a true and correct copy of the email I sent to Judge Ishi's staff.
15. So, I contacted the operations supervisor and Chief Judge Kimberly J. Mueller's assistant.

16. I was informed that when the Clerk's office received my request for the Certificate of Good Standing, someone in the administration arm changed my membership status without seeking an order from the Court. Attached hereto and fully incorporated herein as **Exhibit F** is a true and correct copy of the email exchange I had with the Operations Supervisor of this Court.
17. The Operations office refused to change the status back to active.
18. So, I diligently notified this Court.
19. It is my understanding that once a Court acts to change the status of membership, then the *Selling* Factors come into play.
20. Here, it was not the Court but the clerk's office or office of operations that acted to change my status.
21. I could not find precedent how I should proceed where it was the administrative staff that changed the status of membership to informally resolve this matter and/or exhaust all of my administrative remedies.
22. I was already admitted as a member of this Court when the Court issued its OSC for me to file for admittance. The issue was that I was never afforded my right to maintain my membership in good standing under the *Selling* factors before the administrative arm of this Court placed my membership to inactive status.
23. This Court may have simply ordered the Clerk to turn my status back to active after seeing my Certificate and there being no Order from a Judge terminating or placing my membership on inactive status.
24. The Court can still do this.
25. However, my membership means too much to me to leave it up to chance that this is how the Court will proceed.

26. So, out of an abundance of caution to not waive my rights, I am responding not just to the Membership issue but also the *Selling* factors.

27. I already was and am a member of this Court. It would be impossible for me to try to apply for membership today as my status with the California State Bar is still suspended. The issue is not that I was never admitted or that I am not now admitted to this Court. I am still a member of this Court, my status was changed from active to inactive sometime between February 19, 2021 and March 3, 2021.

I declare under penalty of perjury of the laws of the United States of America, that the foregoing is true and correct, this 29th day of March 2021, Executed in Trabuco Canyon, California.

s/Lenore Albert
Lenore Albert

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE:

I declare that I am over the age of 18 years, and not a party to the within action; that I am employed in Orange County, California; my business address is 31872 Joshua Dr #22C, Trabuco Canyon, CA 92679.

On April 2, 2021 I served a copy of the following document(s) described as:

DECLARATION OF LENORE ALBERT ON HER MEMBERSHIP TO THIS COURT

On the interested parties in this action as follows:

Joseph R. Manning Jr, Esq.
MANNING LAW APC
20062 SW Birch Street, Ste 200
Newport Beach, CA 92660
Office: 949-200-8755
Email: DisabilityRights@manninglawoffice.com

[x] BY CM/ECF – I caused such document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth pursuant to FRCP 5(d)(1).

[] **BY EMAIL –** I caused such document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth herein.

[ ] BY OVERNIGHT MAIL – I caused such document to be transmitted to the office of the above-referenced party(ies) via overnight mail by sealing such document in an envelope and placing it in the depository for pick up by a FedEx.

Dated: April 2, 2021

s/ Lenore Albert_____
Lenore Albert

EXHIBIT A

THE UNITED STATES OF AMERICA

Eastern District of California

I, Marianne Matherly, Clerk of the United States District Court for the Eastern District of California, do hereby certify that

LENORE LUANN ALBERT

was duly admitted and qualified as an Attorney and Counselor of said District Court on the 17th day of December, A.D., 2014

In testimony whereof, I hereunto set my hand and affix the seal of said Court, at my office in Sacramento in the Eastern District of California, this 17th day of December, A.D., 2014

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

Marianne Matherly, Clerk of Court

EXHIBIT B

U.S. District Court
Eastern District of California - Live System (Fresno)
CIVIL DOCKET FOR CASE #: 1:20-cv-01578-NONE-BAM

Avalos v. Gonzalez et al
Assigned to: UnassignedDJ
Referred to: Magistrate Judge Barbara A. McAuliffe
Cause: 42:12101 Americans with Disabilities Act

Date Filed: 11/09/2020
Jury Demand: Plaintiff
Nature of Suit: 446 Civil Rights: Americans with Disabilities - Other
Jurisdiction: Federal Question

Plaintiff

George Avalos
an individual

represented by **Joseph R. Manning , Jr.**
Manning Law, APC
20062 SW Birch Street
Suite 200
Newport Beach, CA 92660
949 200 8755
Fax: 866-843-8308
Email
adapracticegroup@manninglawoffice.com
ATTORNEY TO BE NOTICED

V.

Defendant

Felipe Gonzalez
an individual

represented by **Lenore LuAnn Albert**
Law Office of Lenore Albert
7755 Center Ave, #1100
Huntington Beach, CA 92647
714 372 2264
Fax: 419-831-3376
Email: LenAlbert@InteractiveCounsel.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Pritam S Grewal
an individual

represented by **Lenore LuAnn Albert**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Manjeet K Grewal
an individual

represented by **Lenore LuAnn Albert**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Dev S Grewal

represented by **Lenore LuAnn Albert**

an individual
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/09/2020	1	COMPLAINT *George Avalos* against All Defendants by George Avalos. Attorney Manning, Joseph R. added. (Filing fee $ 400, receipt number 0972-9231920) (Manning, Joseph) (Entered: 11/09/2020)
11/09/2020	2	CIVIL COVER SHEET by George Avalos (Manning, Joseph) (Entered: 11/09/2020)
11/09/2020	3	SUMMONS ISSUED as to *Felipe Gonzalez, Dev S Grewal* with answer to complaint due within *21* days. Attorney *Joseph R. Manning, Jr.* *20062 SW Birch Street* *Suite 200* *Newport Beach, CA 92660*. (Sant Agata, S) (Entered: 11/09/2020)
11/09/2020	4	SUMMONS ISSUED as to *Manjeet K Grewal, Pritam S Grewal* with answer to complaint due within *21* days. Attorney *Joseph R. Manning, Jr.* *20062 SW Birch Street* *Suite 200* *Newport Beach, CA 92660*. (Sant Agata, S) (Entered: 11/09/2020)
11/09/2020	5	CIVIL NEW CASE DOCUMENTS ISSUED: Initial Scheduling Conference set for 2/9/2021 at 09:00 AM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe. (Attachments: # 1 Standing Order, # 2 Standing Order re Judicial Emergency, # 3 Consent Form, # 4 VDRP) (Sant Agata, S) (Entered: 11/09/2020)
11/13/2020	6	SUMMONS RETURNED EXECUTED: Felipe Gonzalez served on 11/13/2020, answer due 12/4/2020. (Manning, Joseph) (Entered: 11/13/2020)
12/11/2020	7	REQUEST FOR ENTRY OF DEFAULT as to Felipe Gonzalez by George Avalos. (Attachments: # 1 Declaration Re: Entry of Default)(Manning, Joseph) (Entered: 12/11/2020)
12/14/2020	8	CLERK'S ENTRY OF DEFAULT as to *Felipe Gonzalez* (Lundstrom, T) (Entered: 12/14/2020)
01/13/2021	9	MINUTE ORDER (TEXT Only): Due to the press of business, the Scheduling Conference is continued from 2/9/2021 to **February 10, 2021 at 9:00 AM** before Magistrate Judge Barbara A. McAuliffe. The parties shall file a Joint Scheduling Report one week prior to the conference. The parties shall appear at the Scheduling Conference with each party connecting remotely either via Zoom video conference or Zoom telephone number. The parties shall be provided with the Zoom ID and password by the Courtroom Deputy prior to the conference. The Zoom ID number and password are confidential and are not to be shared. Appropriate court attire required. Minute order signed by Magistrate Judge Barbara A. McAuliffe on 1/13/2021. (Valdez, E) (Entered: 01/13/2021)
02/01/2021	10	SUMMONS RETURNED EXECUTED: Pritam S Grewal served on 1/29/2021, answer due 2/19/2021. (Manning, Joseph) (Entered: 02/01/2021)
02/01/2021	11	SUMMONS RETURNED EXECUTED: Dev S Grewal served on 1/29/2021, answer due 2/19/2021. (Manning, Joseph) (Entered: 02/01/2021)
02/01/2021	12	SUMMONS RETURNED EXECUTED: Manjeet K Grewal served on 1/29/2021, answer due 2/19/2021. (Manning, Joseph) (Entered: 02/01/2021)
02/05/2021	13	MINUTE ORDER (TEXT Only): Due to the current status of the case, the SCHEDULING CONFERENCE set for 02/10/2021 is continued to **March 22, 2021 at 9:00 AM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe** with each party connecting remotely either via Zoom video conference or Zoom telephone number. The

		parties shall be provided with the Zoom ID and password by the Courtroom Deputy prior to the conference. The Zoom ID number and password are confidential and are not to be shared. Appropriate court attire required. The parties shall file a Joint Scheduling Report one week prior to the conference. Minute order signed by Magistrate Judge Barbara A. McAuliffe on 2/5/2021. (Valdez, E) (Entered: 02/05/2021)
02/19/2021	14	ANSWER by Dev S Grewal, Manjeet K Grewal, Pritam S Grewal. Attorney Albert, Lenore LuAnn added.(Albert, Lenore) (Entered: 02/19/2021)
03/03/2021	15	REQUEST for Ruling Allowing Lenore Albert to Proceed to Represent Defendants In this Case by Felipe Gonzalez, Dev S Grewal, Manjeet K Grewal, Pritam S Grewal. Attorney Albert, Lenore LuAnn added. (Albert, Lenore) (Entered: 03/03/2021)
03/05/2021	16	ORDER to SHOW CAUSE; ORDER VACATING Scheduling Conference set for March 22, 2021, signed by Magistrate Judge Barbara A. McAuliffe on 03/05/2021.(Show Cause Response due within 14-Day Deadline and Zoom Video Hearing set for 4/6/2021 at 09:00 AM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe)(Martin-Gill, S) (Entered: 03/05/2021)

PACER Service Center

Transaction Receipt

03/18/2021 21:36:40

PACER Login:	lenalbert0499:2584862:0	**Client Code:**	Grewal
Description:	Docket Report	**Search Criteria:**	1:20-cv-01578-NONE-BAM
Billable Pages:	2	**Cost:**	0.20

EXHIBIT C

Attorney LookUp

Last Name*: albert First Name (optional): lenore LookUp

Total: 1

Name	Bar Number	Office	City	Bar Status	Admission Date
Albert, Lenore LuAnn	210876	Law Office of Lenore Albert	Huntington Beach	Active	12/17/2014

EXHIBIT D

Lenore Albert
31872 Joshua Drive Apt #22C
Trabuco Canyon, CA 92679

Ph: 424-365-0741 Email: lenorealbert@msn.com

February 12, 2021

U.S. District Court
Office of the Clerk
2500 Tulare Street, Room 1501
Fresno, CA 93721
Attn: Certificate of Good Standing

Re: Certificate of Good Standing Request

To Whom It May Concern:

Please mail two certificates of good standing for myself, Lenore Albert, at the address above and also find enclosed a check for $40.00 for two Certificates of Good Standing.

Thank you for your assistance.

Sincerely,

Lenore Albert

Encl.

EXHIBIT E

Attorney LookUp

Last Name*: albert First Name (optional): lenore LookUp

Total: 1

Name	Bar Number	Office	City	Bar Status	Admission Date
Albert, Lenore LuAnn	210876	Law Office of Lenore Albert	Huntington Beach	Inactive	12/17/2014

EXHIBIT F

Clerk's Suspension without Notice

From: lenore albert (lenalbert@interactivecounsel.com)

To: vgonzales@caed.uscourts.gov; leslieww1@gmail.com

Date: Tuesday, March 2, 2021, 11:45 AM PST

Victoria Gonzales
vgonzales@caed.uscourts.gov
(559) 499-5688

Dear Ms. Gonzales,

Until last weekend, the Eastern District of the US District Court did not suspend my membership to practice in this Court. It appears the Clerk did so. It was without notice to me and no OSC issued. Although I have been suspended by the California State Bar since 2018, Judge Ishi did not pull my membership to practice in this Court thereafter (see, Kilgore v Wells Fargo Case No. 1:12-cv-00899-AWI-SMS.

As the Senior Judge of the District, it is his decision as is my understanding. It is also my understanding that Judge Ishi did not in fact make this ruling but the Clerk's office did without asking the Judge.

I believe this was triggered when I requested a copy of my certificate of good standing for the purposes of applying for Bar membership in Michigan. Please note the US Supreme Court also has not suspended my membership before that Bar and it is the highest Court in the United States, although it has continued to deny petitions for review on the issue.

Attorney Leslie Westmoreland and I have accepted representation of Defendants in the case of Avalos v Gonzales while my membership was still in good standing with this Court. The rule is that a member does not leave membership before a Court or Jurisdiction the same way that they entered. Due process is required. I did not get this due process. No Judge from this District ruled I was suspended from membership in this Bar. How do I get this resolved?

Sincerely,

Lenore

Good Standing Request to CAED 02162021.pdf
303.4kB

Eastern District of California Attorney Look Up Good Standing as of 0212021.pdf
74.9kB

EXHIBIT G

Re: Bar Membership in this District Showing Suspended after Requesting Certificate of Good Standing

From: lenore albert (lenalbert@interactivecounsel.com)

To: rgonzalez@caed.uscourts.gov

Cc: pandrews@caed.uscourts.gov; leslieww1@gmail.com

Date: Wednesday, March 3, 2021, 10:29 AM PST

Ms. Gonzalez,

That rule, if applied as such, is Unconstitutional. I am trying really hard to informally resolve this. There is ample case law on this point. We would have never pushed constitutional rights forward in this country if state bars could suspend attorneys and as such shut the door to the federal courts,

Sincerely,

Lenore Albert

> On Wednesday, March 3, 2021, 10:23:44 AM PST, Roxanne Gonzalez <rgonzalez@caed.uscourts.gov> wrote:
>
> Good Morning,
>
> Your status in CM/ECF was updated pursuant to Local Rule 181 (F.R.C.P. 83), which references your status with the State Bar of California (see below).
>
> **(a) Admission to the Bar of this Court.** Admission to and continuing membership in the Bar of this Court are limited to attorneys who are active members in good standing of the State Bar of California.
>
> **(c) Notice of Change in Status.** An attorney who is a member of the Bar of this Court or who has been permitted to practice in this Court under (b) shall promptly notify the Court of any change in status in any other jurisdiction that would make the attorney ineligible for membership in the Bar of this Court or ineligible to practice in this Court. In the event an attorney appearing in this Court under (b) is no longer eligible to practice in any other jurisdiction by reason of suspension for nonpayment of fees or enrollment as an inactive member, the attorney shall forthwith be suspended from practice before this Court without any order of Court until becoming eligible to practice in another jurisdiction.

Thank you,

From: lenore albert <lenalbert@interactivecounsel.com>
Sent: Wednesday, March 3, 2021 8:51 AM
To: Roxanne Gonzalez <RGonzalez@caed.uscourts.gov>
Cc: Patricia Andrews <pandrews@caed.uscourts.gov>; Leslie Westmoreland <leslieww1@gmail.com>
Subject: Bar Membership in this District Showing Suspended after Requesting Certificate of Good Standing

CAUTION - EXTERNAL:

To: Roxanne Gonzalez, (RGonzalez@caed.uscourts.gov), Supervisor

CC; Judge Mueller's Judicial Assistant, Patti Andrews, pandrews@caed.uscourts.gov (916) 930-4260

Attorney Leslie Westmoreland

Dear Mrs. Gonzalez,

Judge Ishi's clerk, Ms. Gonzales thought that you may be able to assist me in this somewhat complicated matter.

Until last weekend, the Eastern District of the US District Court did not suspend my membership to practice in this Court. It appears someone at the Clerk's office may have mistakenly done so because it was without notice to me and no OSC issued. Although I have been suspended by the California State Bar since 2018, Judge Ishi did not pull my membership to practice in this Court thereafter (see, Kilgore v Wells Fargo Case No. 1:12-cv-00899-AWI-SMS.)

So I reached out to Ms. Gonzales, Judge Ishi's clerk, yesterday who did some research and confirmed that it was not Judge Ishi who changed my status from active and in good standing to suspended. Ms. Gonzales also informed me that the Chief Judge who would make such decisions would be Judge Kimberly Mueller. I suspect that Judge Mueller did not in fact make this ruling but the Clerk's office did when I requested my certificate of good standing without asking the Judge because there are due process issues where an attorney does not leave the same door that they entered when it comes to membership.

I was requesting a copy of my certificate of good standing for the purposes of applying for Bar membership in Michigan. Please note the US Supreme Court also has not suspended my membership before that Bar and it is the highest Court in the United States (see certificate attached), although it has continued to deny petitions for review on the issue of California State Bar's continued suspension of my license.

There is an even more urgent matter at hand. Attorney Leslie Westmoreland and I accepted representation of Defendants in the case of Avalos v Gonzalez (1:20-cv-01578-NONE-BAM) while my membership was still in good standing with this Court. I filed the Answer and still have to file a motion to vacate the default of Mr. Gonzalez. The rule is that a member does not leave membership before a Court or Jurisdiction the same way that they entered. Due process is required. I did not get this due

process. No Judge from this District issued an OSC for me to respond to and Judge Ishi never ruled I was suspended from membership in this Bar. How do I get this resolved?

Sincerely,

Lenore Albert

Supreme Court of the United States
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

LENORE ALBERT
OF HUNTINGTON BEACH, CA

was duly admitted and qualified as an Attorney and Counselor for the Supreme Court of the United States on the twenty-first day of May, in the year two thousand and seven, and is now a member of the Bar of this Court in good standing.

In testimony, whereof, as Clerk of said Court, I have hereunto set my hand and affixed the seal of said Court, at the City of Washington, this twenty-fourth day of February 2021.

Scott S. Harris
Clerk of the Supreme Court
of the United States

By

Assistant Admissions Officer

NOTICE TO STATE BAR REGARDING EMPLOYMENT OF A DISBARRED, RESIGNED, SUSPENDED OR INVOLUNTARILY INACTIVE MEMBER (*Rules of Professional Conduct, rule 1-311*)	*Send to:* *Office of the Chief Trial Counsel, Intake* *845 S. Figueroa St.* *Los Angeles, CA 90017* *Fax: (213) 765-1168*

☑ I am reporting the employment of the following person:
☐ I am reporting the termination of employment of the following person:

DATE EFFECTIVE: 07/12/2019
PERSON EMPLOYED: Lenore L. Albert **BAR NO.** 210876
POSITION TITLE: Employee/Clerk

Pursuant to rule 1-311(B), the employed person will not perform the following duties:

(1) Render legal consultation or advice to the client;
(2) Appear on behalf of a client in any hearing or proceeding or before any judicial office, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
(3) Appear as a representative of the client at a deposition or other discovery matter;
(4) Negotiate or transact any matter for or on behalf of the client with third parties;
(5) Receive, disburse or otherwise handle the client's funds; or
(6) Engage in activities which constitute the practice of law.

Further, pursuant to rule 1-311(C), the employed person may perform the following duties, including but not limited to:

(1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
(2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
(3) Accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active member who will appear as the representative of the client.

Each client will be notified of the employed person's disbarred, resigned, suspended, or involuntarily inactive status, prior to or at the time of employing such person to work on the client's specific matter. The client will be served with such notice, and said notice shall be retained for a period of two (2) years following termination of the employed person's services for said client.

SUBMITTED BY:

Signature: [signature] 195188 Dated: 07/12/2019
Print Name: Leslie W. Westmoreland Bar No.: 195188 Tel. no.:
Address: 4235 N. College Ave.
Fresno, CA 93704

(Rev. 12/31/13)

SB-000770

Leslie W. Westmoreland
SBN 195188
4235 N. College Ave.
Fresno, CA 93704

RECEIVED
JUL 30 2019
OFFICE OF INTAKE / LEGAL
ADVICE LOS ANGELES

RECEIVED
JUL 30 2019
CENTRALADMINISTRATION

Office of the Chief Trial Counsel,
Intake
845 S. Figueroa St.
Los Angeles, CA 90017

The State Bar
of California

WITNESS INTERVIEW MEMORANDUM

DATE OF CONTACT: March 1, 2022

TO: **FILE**

FROM: B. Hom, Investigator _____

RESPONDENT NAME: Lenore Albert

FILE NUMBER: 21 O 05360

INTERVIEW OF: Kamran Javandel, Esq.
Cindy Chan, SA
Benson Hom, Inv.

METHOD OF CONTACT: Telephonic - Zoom Meeting – Cindy Chan's Room

TIME INTERVIEW BEGAN: About 2:00 pm TIME INTERVIEW ENDED: About 2:20 pm

DATE MEMO PREPARED: March 1, 2022

Attorney Javandel provided the following:

This was a wrongful death action re Kilgore. Wells Fargo had lawfully evicted Kilgore by foreclosure. The Noble action was that the eviction was wrongful by the sheriff. Wells Fargo was granted the right to the property. Wells Fargo prevailed by summary judge.

Mr. Javandel also represented Wells Fargo on the appeal.

Regarding document no. 38, the court meant in R's suspension by the Ninth Circuit, she could respond on Noble's behalf. Yes, this probably included filing briefs in their jurisdiction.

Mr. Javandel said that he looked at some emails. He recalled the dealings with R was unpleasant. There is an email dated June 28, 2018 that R was suspended on October 15,2018. Albert had filed a motion to extend time to file brief.

There was a window when R was not suspended There was some confusion on her Bar status.

Mr. Javandel recalled speaking to Susan Grant who told him that R was not eligible and the suspension was lifted due to the bankruptcy. R was concern about the motion for extension and that it might confuse per Grant. Grant advised that R representing Noble was a violation even if the 9th circuit allowed. There were no emails with Grant, they spoke only by phone.

Mr. Javandel stated that on 11/21, R filed 1 day late. Then the court issued the Order that R was reciprocally suspended except for developments in the case.

On February 26, 2019, R filed a supplementation.

On March 12, 2019, R filed an acknowledgment of a hearing date that was vacated.

There is a box in ECF for the attorney to click to certify membership in good standing.

In August 2019, R filed a motion to vacate.

Mr. Javandel was in the other case. He did not represent Wells Fargo but was on the service list. R was making accusation against him and his firm.

Lea Curran is not at that firm anymore. She handled the response. R's motions were denied.

Mr. Javandel will check his records if he has a copy of the Appellate commissioner report.

Lenore L. Albert, Esq. SBN 210876
Law Offices of Lenore Albert
1968 S. Coast Hwy #3960
Laguna Beach, CA 92651
Ph: 424-365-0741
Email: lenalbert@interactivecounsel.com
Respondent, LENORE L. ALBERT, pro se

STATE BAR COURT

REVIEW DEPARTMENT – LOS ANGELES

In the Matter of:

LENORE LUANN ALBERT
No. 210876

Case No. SBC-22-O-30348-DGS

Filed: 4/28/2022 Recommendation: 4/3/2023
Appealed for Review: 5/03/2023
Assigned to: Hon. Dennis G. Saab, Courtroom C

LENORE ALBERT'S MOTION TO MODIFY OR WAIVE COSTS AND SANCTIONS

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Respondent, Lenore Albert, MOVES this Court to waive or modify the Costs and sanctions.

The motion is based on Bus & Prof Code §6068.10(c), California Constitution art 1 § 17, the U.S. Constitution, ABA Model Rule 10, California Rules of Procedure 5.137 and 5.138, federal bankruptcy law 11 USC 362, 11 USC 524, 11 USC 525, and the attached Financial Declaration.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

The Court assessed $27,055.00 against respondent in State Bar costs pursuant to Cal Bus & Prof Code §6086.10.

On March 11, 2024, the State Bar Review Department recommended Ms. Albert sanctioned $5,000.00 pursuant to Cal Bus & Prof Code § 6086.13.

On April 2, 2024, the Ninth Circuit B.A.P. held that Ms. Albert could proceed against the State Bar in her bankruptcy on the grounds that the State Bar Costs violated the California Constitution – constituting excessive fines.

On April 10, 2024 the Court issued Costs bill against Ms. Albert totaling $27,055.00.

On June 17, 2024, the California Supreme Court Ordered Ms. Albert to pay the State Bar Costs and Sanctions.

In July, Ms. Albert received a letter from the State Bar informing her that the State Bar would refer collection to the California Franchise Tax Board on August 16, 2024 if she had not paid the State Bar Costs and sanctions in full by that time.

So, Ms. Albert asked opposing counsel and general counsel if they would stipulate to waiving the costs and sanctions, to which they refused, without legal justification on July 11, 2024.

As of March 14, 2024, Ms. Albert has been ineligible to practice law. She was headed to trial on a contingency fee matter in Marasco v 1753 9th Street LLC in Santa Monica on April 8, 2024. As a result of the abrupt suspension, she was not able to collect her contingency fee in that matter. Furthermore, the Court did not award any attorney fees in the matter of Paula Gilbert-Bonnaire v Dana Demerjian. As such, Ms. Albert is unable to recoup over $100,000.00 in attorney fees owed to her from her impecunious client, Ms. Gilbert-Bonnaire. Finally, the State Bar disrupted Ms. Albert's renewed efforts to collect an attorney fee award in the case of Womack v Lovell – again – the client is impecunious, and Ms. Albert would need an active law license to pursue collection efforts against Mr. Womack. Furthermore, Ms. Albert has been in bankruptcy since February 22, 2018 and the Office of General Counsel of the State Bar has known since 2018 it was not supposed to be collecting State Bar costs against Ms. Albert.

II. LEGAL ARGUMENT

1. The Practice of Law was Ms. Albert's Sole Source of Income

Cal State Bar Rules 5.137 and 5.138 allow this Court the power to modify or waive State Bar costs and sanctions based on the member's inability to pay. The State Bar has had its neck on Ms. Albert's throat for over six years and she was not able to make money as a result. She is still in active bankruptcy since 2018 as a result. She does not have a license to practice law which was her sole source of support since March 14, 2024. Thus, she is impecunious and the Costs and sanctions should be waived. If not waived, then modified to be paid at a later time in very small increment over the next five years, not starting repayment until at least February 1, 2025.

Ms. Albert's sole source of support is from the practice of law. She had a law firm from 2001 through 2018 when she was suspended. She lost her entire firm without compensation when the State Bar refused to reinstate her license and allow her to reorganize her debts under Chapter 13.

She was still struggling to overcome the massive character assassination performed by the State Bar opinions against her. Ms. Albert may make some mistakes, but she does not lie, cheat, or steal.

There were three years that the State Bar suspended or failed to reinstate Ms. Albert's license to practice law in violation of federal law. Like a horse trainer in the case of *Barry v. Barchi* (1979) 443 U.S. 55, 73-7, the wrongful suspension irreparably damaged her livelihood.

Much of that suspension was found to be wrongful.

Ms. Albert has a constitutional right to be free from arbitrary state action.

> The Fourteenth Amendment protects the pursuit of one's profession from abridgment by arbitrary state action. We therefore begin with the settled proposition that a "[s]tate cannot exclude a person from . . . any . . . occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.

Endler v. Schutzbank (1968) 68 Cal.2d 162, 169-70

The State Bar's action in 2018 was arbitrary. It refused to reinstate her license when it was obvious the debt owed to 10675 S Orange Park Blvd was discharged. See. *Albert-Sheridan v. State Bar of Cal.* (In re Albert-Sheridan) (9th Cir. 2020) 960 F.3d 1188. (See, *Cabardo v. Patacsil* (In re Patacsil) (Bankr. E.D. Cal., June 9, 2023, No. 20-23457-A-7) for the details).

When the Ninth Circuit spoke, the State Bar took the discharged debt owed to Dr. Woods and converted it to CSF fund reimbursement to further thwart Ms. Albert's reinstatement. Ms. Albert paid the State Bar $20,000.00 as a result until the Ninth Circuit spoke again in *Kassas v. State Bar of Cal.* (9th Cir. 2022) 49 F.4th 1158. Then the State Bar had to refund the funds (without interest).

It refused to reinstate her license in 2018 during the automatic stay although it was obvious the State Bar could not hold onto her license until she repaid the debt while in bankruptcy. Ten days ago, the Ninth Circuit BAP finally spoke on this issue and told the State Bar they were wrong – again. See, *Albert-Sheridan v. State Bar of Cal.* (In re Albert-Sheridan) (B.A.P. 9th Cir., Apr. 2, 2024, No. CC-23-1024-SFL).

By issuing a reciprocal suspension or disbarment under these circumstances would be a manifest injustice.

There is no doubt that the State Bar's action in 2024 is arbitrary also. Federal law clearly preempted the State Bar Act.

The State Bar is trying to ruin Ms. Albert financially and impugn her reputation in her profession.

The current state bar suspension, if reciprocated in this federal court will do the same – again because "even a temporary suspension can irreparably damage a [lawyer's] livelihood. Not only does a [lawyer] lose the income from [cases] during the suspension, but also, even more harmful, he [or she] is likely to lose the clients he [or she] has collected over the span of his [or her] career. Where, as here, even a short temporary suspension threatens to inflict substantial and irreparable harm, an "initial" deprivation quickly becomes "final," and the procedures afforded either before or immediately after suspension are *de facto* the final procedures." *Barry v. Barchi* (1979) 443 U.S. 55, 73-74.

2. <u>Requiring Ms. Albert to Pay $27,055.00 in State Bar Costs is Unconstitutional</u>

a. <u>Costs Violate the Due Process Clause</u>

"The state has a constitutional obligation to provide a hearing to decide whether dismissal or suspension is appropriate" without charging the respondent. *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344.

In order to make sure an attorney is afforded due process; the State Bar disciplinary proceeding must provide both: (1) "[a]n opportunity to challenge the state's factual determinations;" and (2) that

opportunity must be held "before an impartial and disinterested decisionmaker." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344.

The State Bar provided Ms. Albert with the opportunity to challenge the state's factual determinations – but she had to pay $27,055.00 for that right. The disciplinary system is a pay to play system. The more an attorney refuses to default and admit the charges, the more the attorney pays.

It is the most expensive adjudicatory in the United States. Currently it costs an attorney at least $24,695.00 to be heard. If the attorney wants to appeal it costs an additional $2,000 to $3,000 to appeal. In comparison the filing fee to file an Answer in state court in California is $435.00 in an unlimited civil case and to appeal it costs $775.00[1]. It is only $75.00 to file a small claims complaint which deals with matters less than $12,500 and it costs nothing to defend.

Here, there was no financial obligation owing to a client in this matter, yet Ms. Albert had to risk owing the State Bar $27,055.00 in order to defend herself.

The Costs Sheet increases at each point of litigation process and if the State Bar proves just one point of misconduct charged, then the member must pay those State Bar costs plus additional costs assessed enumerated in Bus & Prof Code § 6086.10 The attorney is not allowed to seek summary judgment in order to avoid full adjudication of the matter at a lower cost.

On April 10, 2024, the State Bar charged Ms. Albert $27,055.00 in State Bar Costs ($24,695.00 for a three-day hearing plus $2,360.00 for the State Bar's reporter's transcript). (4-10-24 Costs Certificate). (Ms. Albert paid $825.00 for the reporter's transcript separately so she could appeal to the Review Department). (Request for Review).

In *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344, this Court held it was unconstitutional for the School Board to charge half of the costs in a disciplinary proceeding against a teacher on the grounds that the teacher has a right to defend herself. By forcing her to pay a

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[1] It is arguable whether California Rules of Court, 900 et seq. require the attorney to pay$775.00 to petition for review under Cal Rules of Court, Rule 8.25. If so, that is far too high a price to seek review before a license to practice law is taken.

portion of the costs, the costs statute violated her due process right to a hearing. It would also chill other professionals from seeking a hearing, thus the statute was found to be facially invalid.

"The right to practice one's profession is sufficiently precious to surround it with a panoply of legal protection" (*Emslie v. State Bar* (1974) 11 Cal.3d 210, 226), including a disciplinary hearing consistent with the requirements of due process (*Conway v. State Bar* (1989) 47 Cal.3d 1107, 1113). At issue here is whether [the State Bar Costs Statute Bus & Prof Code §6086.10] violates those requirements by impairing the right of a licensee subject to discipline by the Board to obtain a hearing." *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 39.

Like the costs statute in *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344, Bus & Prof Code § 6086.10 and Bus & Prof Code §6140.7 impair the rights of a licensee like Ms. Albert subject to discipline by the State Bar to obtain a hearing.

Second, the attorney's opportunity to defend must be held "before an impartial and disinterested decisionmaker." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344.

The lawyers are being deprived of a disinterested and impartial adjudicator because the people who create the complaint, investigate the complaint, and determine to charge and issue discipline all get paid from the mandatory disciplinary costs foisted on those attorneys thrown into the attorney disciplinary system.

In Ms. Albert's case, is it the State Bar prosecutor creating the investigation and charges against her – not a client and not the court.

Because the complainant, investigator, judge, jury, and executioner derive a financial benefit from finding the attorney culpable, the system lacks due process and is nothing more than an unconstitutional *Tumey* Court. *Tumey* v. *Ohio* (1927) 273 U.S. 510, 531-532.

The State Bar cost structure under Bus & Prof Code § 6086.10 has taken "a radical departure from the established common law tradition of public funding of adjudicators in courts and in official quasi-judicial bodies." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 336-37.

"[T]he importance of free access to the courts as an aspect of the First Amendment right of petition" (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 339) has been abandoned under Bus & Prof Code § 6086.10.

b. Costs Also Violate the Excessive Fines Clause

The Costs and Sanctions are unconstitional. "[P]rotection against excessive punitive economic sanctions secured by the Clause is [] both "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition." *McDonald*, 561 U. S., at 767" *Timbs v. Indiana*, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019).

The Ninth Circuit relied on *Timbs v Indiana* decision in expanding claims based on the Eighth Amendment to the civil context because it is a "core right worthy of constitutional protection." *Pimentel v. City of Los Angeles*, 966 F.3d 934, 937-938 (9th Cir. 2020).("We hold that the *Timbs* decision affirmatively opens the door for Eighth Amendment challenges to fines imposed by state and local authorities." Id. 938). The California Constitution has a similar excessive fines clause under Cal Const. Article 1 § 17.

The Ninth Circuit B.A.P. revived Ms. Albert's claims that the State Bar costs violated Cal Const. Article 1 §17 on April 2, 2024.

Yet, the State Bar Office of Chief Trial Counsel and Office of General Counsel refuse to stay, abate, void, or stipulate to waive those costs in light of the B.A.P. opinion.

In the present case, the State Bar costs totaled $27,055.00 wherein Ms. Albert obtained no fee from a client, did not misappropriate any money, owed no money to any third party, and caused no harm to a client, opposing counsel or the court. The cost is excessive.

The fixed disciplinary costs charged to attorneys who seek to have an administrative hearing must pay all the costs even if all the charges end up dismissed except for one or two technical charges. Previously, Albert had to pay $37,555.90 which is excessive for two disciplinary proceedings, and her license was suspended until full payment was made making it even harder to earn the income to pay the Costs under Bus & Prof Code § 6140.7

3. Sanctions Were Arbitrary and Capricious as Applied

There was no evidence, test or factors laid out to explain how the Review Department determined that Ms. Albert should be sanctioned an additional $5,000.00.

The State Bar Court issued $1,500.00 in sanctions under Rule 5.137. (SB Opn. 51). The Review Department changed that ruling and issued $5,000.00 in sanctions to Ms. Albert based on disbarment.

Here, there was no intentional misappropriation of money; no monetary loss; no misconduct against a vulnerable victim; no serious conduct (work was competent); no victims; no client abandonment; no judicial sanction; and no criminal conviction.

All the State Bar had was prior discipline because this Court has already held that UPL does not apply to practice in federal court.

This is unconstitutional. It is also contrary to the purpose of discipline by including prior discipline as an element because that is a form of disciplining the attorney simply for having prior disciplinary record. If it were a criminal proceeding it would be in violation of the double jeopardy clause.

Here, the state court cannot charge Ms. Albert with UPL in federal court as such, the only thing left to support a sanction being issued against Ms. Albert was her prior record of discipline. That is unconstitutional under the California Constitution and the Fifth Amendment, Eighth Amendment and Fourteenth Amendment.

Under ABA Rule 10 sanctions are imposed only after considering (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. These factors were not weighed and favor that no sanctions issue in this case because respondent was negligent, there was no actual injury by the misconduct, and the mitigating factors outweigh the aggravating factors.

Thus, the application of Bus & Prof Code § 6086.13 and Rule 5.137 was wholly arbitrary and capricious.

It was also excessive in violation of the Eighth Amendment and the California Constitution Article 1 § 17 because it was greater than the State Bar was charging other lawyers being pushed through the Disciplinary canal without substantial justification for the variance.

Other attorneys have paid far less a price. See, *In re Gutierrez* (June 15, 2023, S276466) the respondent was ordered to pay $1,250.00; *In re Bachman* (June 7, 2023, S279186) ordered to pay $250.00; *In re Stroj* (May 19, 2023, S279005) ordered to pay $1,500.00 in installments; *In re Bailey* (May 10, 2023, S278919) ordered to pay $1,500.00; *In re Khaliq* (Jan. 18, 2023, S277357) ordered to

pay $250.00; *In re Paglia* (Nov. 22, 2021, S270918) ordered to pay $250.00; *In re Carmichael* (Jan. 25, 2023, S277370) ordered to pay $250.00; In re Kelly on Discipline (July 27, 2022, S274527) ordered to pay $250.00; *In re Carmichael* (Feb. 15, 2023, S277370) ordered to pay $250.00; *In re Isola* (Sep. 1, 2022, S275172) ordered to pay $500.00; *In re Sahni* (Apr. 7, 2022, S272800) ordered to pay $500.00; *In re Chavez* (Dec. 28, 2022, S276066) ordered to pay $500.00; *In re Barbarie* (Dec. 20, 2021, S271018) ordered to pay $500.00; *In re Mataele* (Feb. 22, 2022, S272398) ordered to pay $500.00. (All from California Supreme Court Orders of discipline).

The evidence was insufficient to find that Respondent's conduct warranted a $5,000.00 sanction.

By requiring Ms. Albert to make this motion, Ms. Albert reserves the right to seek further damages from the U.S. Bankruptcy Court against the Office of General Counsel.

III. CONCLUSION

Wherefore, Ms. Albert requests that this Court waive or modify the Costs and Sanctions owed.

Dated: July 12, 2024

Respectfully Submitted,
/s/ Lenore Albert
LENORE L. ALBERT, SBN #210876
Respondent, pro se

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE:
I declare that I am over the age of 18 years; that I am employed in Orange County, California; my business address is 1968 S. Coast Hwy #3960, Laguna Beach, CA 92651

On July 12, 2024, I served a copy of the following document(s) described as
LENORE ALBERT'S MOTION TO MODIFY OR WAIVE COSTS AND SANCTIONS

On the interested parties in this action as follows:

STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL
PETER A. KLIVANS, No. 236673
CINDY CHAN
SUZANNE GRANDT
TRIAL COUNSEL
RUBIN DURAN - CHAIR
180 Howard Street
San Francisco, California 94105-1639
Telephone: (415) 538-2447
Peter.klivans@calbar.ca.gov

[x] BY EMAIL – I caused such document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.
Dated: July 12, 2024

/s/ Lenore Albert
Lenore Albert, SBN #210876

Case No. S284532

In the

California Supreme Court

In the Matter of LENORE LUANN ALBERT,

A Member of the State Bar,

No. 210876.

Respondent and Petitioner for Review,

DECLARATION OF NZ IN SUPPORT OF LENORE ALBERT'S PETITION FOR REVIEW

Petition for Review from the California State Bar Review Department
SBC-22-O-30348-DGS
Hon. Dennis G. Saab, presiding judge in the Los Angeles Hearing Department.

Lenore L. Albert*
Suspended by Cal. State Bar 3-14-2024
Cannot write SBN – UPL
Not an attempt to practice law in the State of California**
1968 S. Coast Hwy #3960
Laguna Beach, CA 92651
Telephone (424) 365-0741
Email: lenalbert@Interactivecounsel.com
Plaintiff and Appellant, pro se

DECLARATION OF NZ IN SUPPORT OF LENORE ALBERT'S PETITION FOR REVIEW

I, NZ, am a Plaintiff in the case of John Roe v. State Bar of California, Orange County Superior Court Case Number 30-2022-01250695-CU-AT-CXC, which was remanded from the federal court, Case No. 22-cv-00983-DFM (the "Data Breach" matter), in this case. I declare as follows:

1. I am over the age of 18, and if called as a witness, I could competently testify to the following of my own personal knowledge.

2. I am an attorney in good standing, duly admitted to the State Bar of California, as well as to the federal Central and Northern Districts of California and the Ninth Circuit Court of Appeals. I have been admitted *pro hac vice* in other jurisdictions as well.

3. I am active in many local, state, and national bar organizations, am a member of an Inn of Court, and I regularly mentor law students through judging various moot court-type competitions around the country. I have published articles on various aspects of the law on two continents, and I have served my local community as a board member of our chamber of commerce for 7 years, have served as an appointed city commissioner, and was the President of our local Rotary Club. I routinely give guest lectures at law schools around the world, and I also had the opportunity to serve as a law clerk at the Supreme Court of another country nearly two decades ago.

4. I make this declaration anonymously, using only my initials, in order to protect my privacy. Notwithstanding, opposing counsel are well aware of my true identity, and I am willing to make

my true identity known to the justices of this honorable Court *in camera*[1].

5. On May 18, 2022, I received an email from the State Bar administrator "castatebarodysseynotice.com," giving me notice of the State Bar data breach. Attached hereto and fully incorporated herein as **Exhibit 1** is a true and correct copy of the email I received on May 18, 2022 from castatebarodysseynotice.com.

6. The Notice I received from the administrator explained that the confidential state bar investigation found evidence on JudyRecords.com of a "page view" of my confidential records.

7. Importantly, I have no public State Bar disciplinary history on my California State Bar membership page.

8. However, after I received notice of the Breach, I have had issues with the State Bar, mostly in the form of frivolous complaints, which greatly concerns me. Indeed, after seeing the vindictive and unjustified manner in which the State Bar has brought multiple meritless actions against my attorney, Ms. Albert, simply because she has chosen to speak the truth about the State Bar's ineptitude with regard to security, I am even more concerned for my own wellbeing.

9. After receiving this notice of the Data Breach, I contacted Ms. Albert and subsequently retained her to represent me in this matter. I was not only acquainted with Ms. Albert based on her strong record of fighting for consumer rights in California, but based on our shared commitment to social justice and our prior work with the California Democratic Party.

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[1] I can be contacted through Ms. Albert, and Ms. Albert is authorized to reveal my identity to the Court *in camera.*

10. I believe that our case against the State Bar is meritorious, as the State Bar was grossly negligent and breached its ethical and fiduciary duty to nearly two hundred thousand licensed attorneys in the State of California, which, in turn, works a terrible prejudice not just to the attorney victims of the State Bar's malfeasance, but to the people of the State of California as well.

11. I further believe that, with Ms. Albert's representation, it is likely we will succeed because the facts underlying this case, including the State Bar's admission to me that my **confidential** information was not only part of the massive data breach caused by the State Bar's gross negligence, but that my page – a page that is supposed to be confidential as a matter of law – was in fact viewed at least once by a person not authorized to view it.

12. Notably, on March 18, 2022, Ms. Albert filed the data breach putative class action on our behalf with anonymous Roe plaintiffs. Notwithstanding the improper and ill-advised actions of the State Bar, up through and including the improper and retaliatory suspension of Ms. Albert and their incomprehensible recommendation that she be disbarred, I am and remain confident in Lenore Albert, Esq. and the Law Offices of Lenore Albert to act as counsel on my behalf and on behalf of the class.

13. As an attorney, a professor, and a mediator, and as a citizen and resident of California, I believe that the California Supreme Court should grant review of Ms. Albert's petition because the recommended discipline is not appropriate.

14. The State Bar suspended my attorney of choice, Lenore Albert, from practicing law in the State of California, and recommended she be disbarred on the *pretextual* grounds that she

purportedly violated a local rule in the federal court in the Eastern District of California when it was, in fact, that the State Bar which was operating in violation of an order from the United States Bankruptcy Court.

15. The inability of my counsel, Lenore Albert, to continue representing me and my fellow Plaintiffs due to this abrupt, retaliatory, and wholly improper suspension – **executed by the very entity we are suing for its misdeeds** – is irreparably harming me as a plaintiff in the Data Breach case because Ms. Albert has worked diligently on this case, has institutional knowledge about both the facts underlying this case as well as the legal theories we are using to prosecute our claims, that would be nearly impossible to replicate at this point in time, and time is of the essence in prosecuting our claims. Sadly, while the litigation is presently on a very brief hold, if this Court does not permit Ms. Albert to continue to represent us, we face a likely dismissal in June, as the State Bar has demurred to the operative complaint and there is no one to oppose these demurrers. A dismissal would, of course, cause irreparable harm not just to Ms. Albert, but also to those of us who have also been victimized by the State Bar. And while it is true that I would be permitted to step in for the purposes of opposing the demurrer on my own behalf, that would be problematic for at least two reasons: first, it would require me to forego the privacy protections that Ms. Albert has fought for on my behalf, and second, I believe that there is some wisdom in the old adage about an attorney representing himself having a fool for a client. I am too emotionally involved in this matter to represent myself with the same skill and zealous advocacy that I regularly bring to each matter I am involved with.

16. I note that Ms. Albert has obtained multiple favorable rulings in this case on our behalf, including my paramount right to proceed anonymously. I consider Ms. Albert to be a trusted colleague, an honest person, and someone who I am proud to have on my team. Her representation of me and others in the Data Breach case has been without reproach, and notwithstanding the specious and self-serving allegations levied against her by the very entity we are suing, I have seen absolutely no evidence that Ms. Albert has ever conducted herself improperly in any way or manner whatsoever in my case. Indeed, she has been a zealous advocate, operating solely within the strictures of the Rules of Professional Conduct. I personally have complete trust and faith in Ms. Albert's knowledge, training and skillset to adequately represent us in this case against the State Bar.

17. I have a fundamental right to seek redress for my grievances with the judicial branch of government, and by unceremoniously taking away my attorney in such an abrupt manner, that right has been violated. Indeed, my most fundamental civil rights under the First and Fourteenth amendment are being violated by the State Bar's gamesmanship of charging, prosecuting, and then suspending my attorney of record, with recommendation of disbarment, pretextually based solely on her practice in federal court.

18. Indeed, I not only have a constitutional right to petition grievances to the Court under the First Amendment, but the State Bar of California – the very entity which wronged me *ab initio* – is attempting to cut me off from that fundamental right. This cannot and should not be countenanced by this honorable Court.

19. As officers of the Court, we are constantly reminded that it is the strong public policy in California that litigation be conducted

on a level playing field. Due process, as enshrined in the Fifth and Fourteenth Amendments and as codified through statute and other positive law, would be virtually destroyed by the manifest injustice of allowing the primary tortfeasor and wrongdoer to unfairly disqualify the one lawyer capable of establishing that wrongdoer's unlawful misdeeds.

20. It is important for this Court to further recognize that the harms to Ms. Albert by the State Bar's improper actions against her are inextricably intertwined with the continuing harm to me and my fellow victims, and it is patently unfair to allow the State Bar and its allies to further harm us through their unjust efforts to harm Ms. Albert.

21. It is also important to recognize that we were all caught completely off guard by the capricious action of the State Bar, and we believe that this action by the State Bar against Ms. Albert was and is an improper attempt by the State Bar to unfairly tip the scales in their direction in the Data Breach matter, thwart justice, and further damage both Ms. Albert and the plaintiffs in the Data Breach matter.

22. Our case law, both in California and throughout this country, is rightly replete with unambiguous statements that preserving the public trust in the integrity of the judicial system is paramount. The imprudent and rash actions by the State Bar directly against Ms. Albert and indirectly against all of the victims in the Data Breach matter, impede and destroy public confidence in our system of justice. Indeed, it appears that the State Bar is more concerned with "just us" than "justice."

23. Indeed, allowing the State Bar to irreparably damage my case by suspending my attorney, and letting the State Bar act with

impunity just because they are a state agency, undermines the public's faith in the integrity of the judicial system.

24. After the State Bar improperly suspended Ms. Albert, I tried to get other attorneys to represent me and others in my class in the Data Breach matter. Unfortunately, no other attorney was willing to take a case against the State Bar out of the legitimate fear of retaliation. Indeed, after observing the ongoing vindictive nature of the State Bar towards Ms. Albert, those fears by other attorneys appear to be justified.

25. I have also suffered, and indeed continue to suffer, privacy harm and emotional distress harm. The State Bar's improper actions have served only to exacerbate my damages. Indeed, the harm to me is pretty straightforward. First, I don't get the counsel of my choice. Second, even if I can find someone, and that is certainly a big if, I do not believe that they will be able to get up to speed quickly enough. Furthermore, I obviously have no intention of proceeding *pro se* in this matter, because *pro se* litigants cannot represent themselves in a class action lawsuit. Class action suits are also outside of my personal expertise, and while I maintain professional liability insurance in excess of the minimums required, I do not maintain the policy rider which would allow me to represent parties in a class action matter.

26. Frankly, however, even if this case were not a class action lawsuit, I cannot and would not proceed against the State Bar individually because I have the same fear about the State Bar and its retaliatory, vengeful, and predatory conduct as do my colleagues. Importantly, the practice of law is my sole source of income.

27. Justice requires that this Court immediately stay any execution of the State Bar's suspension order and disbarment recommendations until this Court, and the United States Supreme Court (if necessary) review this matter *in toto.* Justice further requires that Ms. Albert be permitted to continue to represent me and my fellow litigants in the Data Breach matter (and other related matters), as these cases are far too important to the interests of justice to allow them to just wither and die due to the capricious and unjustified actions of a state agency which has been troublingly mired in graft and corruption for many, many years.

28. I should also note that I engaged Ms. Albert's representation in this case on a contingency fee arrangement. To date, Ms. Albert has advanced all costs for experts, filing fees, and the other usual and customary expenses of litigation. Thus, not allowing Ms. Albert to continue representing us in the case Data Breach case would also be financially detrimental to Ms. Albert and the plaintiffs.

I declare under the penalty of perjury of the laws of the state of California and under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed this 26th day in Los Angeles, California.

Dated: April 26, 2024

Respectfully Submitted,

/s/ NZ

NZ, Esq.

EXHIBIT 1

Fwd: Informational Notice Re Odyssey Portal Vulnerability

From: [redacted]

To: lenalbert@interactivecounsel.com

Date: Thursday, July 14, 2022 at 05:59 PM PDT

[redacted]

Please excuse any typos. E-mails from my iPhone are usually dictated through Siri, who often seems to have a mind of her own.

Begin forwarded message:

From: CA State Bar <admin@castatebarodysseynotice.com>
Date: May 18, 2022 at 16:00:29 CDT
To: [redacted]
Subject: Informational Notice Re Odyssey Portal Vulnerability
Reply-To: "questions@castatebarodysseynotice.com" <questions@castatebarodysseynotice.com>

INFORMATIONAL NOTICE RE ODYSSEY PORTAL VULNERABILITY

Dear [redacted]

On February 24, 2022, the California State Bar became aware that judyrecords.com (judyrecords), a public website that aggregates nationwide court case records, had included both public and nonpublic State Bar case records in its search engine. These records came from the State Bar's Odyssey Portal, which was supposed to provide access to public case records only. The State Bar immediately asked the owner of judyrecords to remove the nonpublic records from the search engine (which they did) and launched an investigation with the assistance of a third-party IT forensics firm (Forensics Firm).

We are notifying you because your nonpublic State Bar record(s) showed evidence of a page view on judyrecords. This notice provides you with information about the data fields contained in a nonpublic record where you were listed as a respondent. We explain below the steps we have taken to investigate and remediate the issue.

Immediate Steps Taken to Remove Nonpublic Records from Judyrecords

The owner of judyrecords informed the State Bar that they had intended to index only publicly available State Bar case records, and they were unaware that records intended to be nonpublic had been automatically collected by their computer program, a technique called "scraping." Judyrecords fully cooperated with the State Bar's investigation and: (1) removed all confidential State Bar records from judyrecords by February 26, 2022; (2) provided relevant website logs and analytics logs; and (3) provided a detailed explanation of the scraping method used, which revealed a previously unknown vulnerability in the Odyssey case management software provided by Tyler Technologies, a third-party vendor.

The State Bar verified that this vulnerability allowed judyrecords to scrape both public and nonpublic State Bar attorney discipline case records from the Odyssey Portal. The scraping occurred on or about October 15, 2021.

To determine if a record may have been viewed, the State Bar and Forensics Firm analyzed detailed judyrecords website logs for the month of February 2022, as well as website analytics logs for the period between October 15, 2021, and February 26, 2022, the full period when State Bar records were indexed on the site.

Data Fields Contained in Your Nonpublic Record

The nonpublic State Bar records indexed on judyrecords contained basic case information:

- case number;
- file date;
- case type;
- case status;
- respondent name; and
- sometimes complaining witness or other witness names.

For some of these cases, the same information ultimately became public through the course of the State Bar's disciplinary process, including where discipline ultimately was imposed.

Full confidential case documents were not scraped by and were not indexed on judyrecords. That means no complaints, transcripts of hearings, mental health reports, or other documents related to nonpublic attorney discipline proceedings were available or viewed by unauthorized individuals as a result of the Odyssey vulnerability.

The information in your nonpublic record consisted of: your first and last name, case number, file date, case type,[1] case status, and your California Bar number.

More Information About the State Bar Investigation and Remediation

The State Bar confirmed that judyrecords has deleted all nonpublic records from the site.

Importantly, the Odyssey vulnerability was only triggered by web scraping; regular searches of the Odyssey Portal did not permit access to nonpublic records. There is no evidence to suggest the Odyssey Portal was scraped by any entity besides judyrecords. The investigation revealed no evidence that scraped State Bar records were on internet archive sites. The State Bar took the Odyssey Portal offline on February 25, 2022, so Tyler Technologies could remediate the vulnerability.

Access to the State Bar's Odyssey Portal was restored on March 15, 2022, after Tyler Technologies had remediated the vulnerability. Thereafter, both the State Bar and the Forensics Firm confirmed that nonpublic records could no longer be scraped.

Our previous posts on this issue can be found here: https://www.calbar.ca.gov/About-Us/News/Data-Breach-Updates.

***

The State Bar takes the confidentiality of its bar members and community seriously and sincerely regrets that this event occurred. If you have questions that you feel have not been addressed by this notice, please contact questions@CAStateBarOdysseyNotice.com for more information.

Sincerely,

The State Bar of California

[1] The case types at issue here are: 6180/6190, 9.20 Violation – State Bar Court Order, ADP, Agreement in Lieu of Discipline, Conviction Matter, Discipline in Other Jurisdiction, Early Neutral Evaluation Conference, Moral Character, Original Matter, Other, Pre-filing Motion to Quash, Probation, Probation Violation, RA – Insufficient Funds, RA—Insurance Claim, RA – Reversal of Judgment, RA – Sanction Order, Reinstatement, Reproval, Resignation with Charges Pending, Rule 2605 – Vexatious Complainant, Rule. 9.20 – Interim Conviction Matter, Rule 9.20 – Order, Rule 9.20 – Resignation, and Unauthorized Practice of Law – Non-Attorney. Some of these case types reflect internal State Bar coding references.

AG439_v03

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

-oOo-

In Re:	) Case No. 8:18-Bk-10548-ES
	) Chapter 7
LENORE LUANN ALBERT-SHERIDAN	)
	) Santa Ana, California
Debtor.	) Wednesday, May 5, 2021
_____	) 10:00 AM

ADV#: 8:20-ap-01095-SC
LENORE LUANN ALBERT-SHERIDAN
v. MARICRUZ FARFAN, ET AL.

#1.10 HEARING RE: DEBTOR'S THIRD EX PARTE APPLICATION FOR T.R.O. AND PRELIMINARY INJUNCTION FILED MAY 3, 2021 (SET PER ORDER ENETERD 5/3/21)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SCOTT C. CLARKSON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

For the Debtor:	LENORE LUANN ALBERT-SHERIDAN, ESQ., Pro Se
For Defendants:	JAMES J. CHANG, ESQ. SUZANNE C. GRANDT, ESQ. State Bar of California 180 Howard Street San Francisco, CA 94111 (415)538-2388

Court Recorder: SALLY DANIELS
United States Bankruptcy Court
Ronald Reagan Federal Building
411 West Fourth Street
Santa Ana, CA 92701
(855)460-9641

Transcriber: MICHAEL DRAKE
eScribers, LLC
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Phoenix, AZ 85020
(973)406-2250

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

SANTA ANA, CALIFORNIA, WEDNESDAY, MAY 5, 2021, 10:02 AM

-oOo-

(Call to order of the Court.)

THE COURT: Good morning, everyone. And welcome to Cinco de Mayo, Docket number -- on the 10 o'clock calendar. I'd like to call item number 1.10 in the Albert-Sheridan matter. Appearances, please.

MS. ALBERT: Good morning, Your Honor. Lenore Albert, debtor/plaintiff, moving party.

THE COURT: Good morning.

MR. CHANG: Good morning, Your Honor. James Chang for the State Bar defendants. And I'm joined by my colleague, Ms. Grandt.

THE COURT: Good morning to both of you.

MS. GRANDT: Good morning.

THE COURT: Does anyone here Mr. Poindexter?

MS. ALBERT: No, I don't, Your Honor.

THE COURT: I don't hear him either. Does anyone know who Mr. Poindexter is with?

MS. ALBERT: Yes, I do, Your Honor.

THE COURT: Would you perhaps explain?

MS. ALBERT: Yes, I will, Your Honor. In the case of Paula Gilbert Bonair (ph.) versus Dana Demersian (ph.) which I've been assisting Leslie Ms. Worland on in which Ms. Bonair was going to trial on May 7th, Mr. Poindexter is one the

opposing counsel. Yesterday Mr. Poindexter asked the court and also asked me if I was committing unauthorized practice of law. I did submit the letter that Mr. Chang wrote to the court in that case regarding Ms. Bonair's intention of wanting to retain me as trial counsel and that I've paid the fees, but my license has not been reinstated.

I asked Mr. Poindexter why he was asking about whether I was unlawfully practicing law, if he meant that he was going to be filing a complaint and further injuring me and damaging me when I'm trying my hardest to reinstate my license and assist Leslie until -- Leslie Westmoreland, the attorney, until I get there. And so I gave him notice of this hearing to attend today. He did not answer my question directly if he intended to file State Bar complaints against me due to my activity in the other matter which is one of the irrevocable injury reasons why I'm here today and I keep on bothering this Court. And I apologize for that, Your Honor.

THE COURT: Well, first of all, you're not bothering anybody.

Second of all, Mr. Poindexter, do you have your microphone working yet?

MR. POINDEXTER: Yeah, I believe I do, Your Honor. I called in on my phone.

THE COURT: Oh, that's good. Thank you. Now, we'd appreciate it if, when you're not speaking, you mute the phone

so that we don't get any reverb. But otherwise, welcome to the court.

MR. POINDEXTER: Thank you, Your Honor.

THE COURT: Now, are you making an appearance in this matter? And tell us why.

MR. POINDEXTER: I'm making an appearance because yesterday I received an email notification from Ms. Albert at about -- and I'll tell you precisely.

THE COURT: I don't care.

MR. POINDEXTER: Yesterday afternoon she said that she was seeking a restraining order against me and the law firm for which I work.

THE COURT: Okay. So you got notice yesterday.

MR. POINDEXTER: Yesterday afternoon, correct, Your Honor.

THE COURT: All right. Well, thank you. And would you put yourself on mute at this point?

Okay. Do we have all appearances?

Ms. Albert, you filed an emergency motion for a TRO.

MS. ALBERT: Yes, Your Honor. It's my position that the State Bar was less than truthful on April 20th.

THE COURT: Mr. Poindexter, you need to really mute your telephone and your -- and your system on Zoom. Thank you.

Please proceed, Ms. Albert.

MS. ALBERT: yes. On April 20th, 2021, I heard

Attorney Jim Chang and Suzanne Grant tell this Court and tell me that if I paid the $37,550.90 to reinstate my license plus reimburse the client security funds, that they would reinstate my license. As this Court knows, I did not have the money to do that at the hearing.

I had told Ms. Bonair who told Mr. Shale (ph.) what happened at court when I lost the TRO. And he loaned me the money to pay everything. I contacted the State Bar right away. I paid everything under reservation of rights. I do believe definitely that that CSF on money was discharged. But because of the urgency of the matter, it was paid. The State Bar never disclosed that they were going to ask the California Supreme Court to ask my license.

And I want to point out in the response on page 2, Your Honor, I believe that that is less than truthful. I have to follow the same procedures here of the State Bar probation office. It is a State Bar court. It is the Office of Trial Counsel. And it is the probation office that can reinstate a license. It is not --

THE COURT: Ms. Albert? Ms. Albert?

MS. ALBERT: Um-hum.

THE COURT: Let's do us all favor here. First of all, I completely respect your motion, and I want to hear what you have to say. But let's see if we can deescalate some of this right now.

MS. ALBERT: Okay.

THE COURT: Let's just see if we can deescalate it.

Ms. Grandt, hi. Good morning.

MS. GRANDT: Good morning.

THE COURT: Can you give me a status on Ms. Albert's situation with her law license in California?

MS. GRANDT: Yes. So we -- the State Bar has submitted an emergency petition to the California Supreme Court to reinstate her license. We asked for emergency consideration. And then once she files a TRO, the State Bar sent immediately notification to the California Supreme Court informing them of that.

Mr. Chang, did I miss anything that you want to add?

MR. CHANG: That's accurate.

THE COURT: Okay. So when you told the California Supreme Court about Ms. Albert's filing of a pleading and her own bankruptcy case, what were your -- well, what were you intending to do?

MS. GRANDT: To take the appropriate steps to reinstate her license.

THE COURT: So you said she's filed a TRO, you need to work on this; or she filed a TRO, and you should stop everything; or she filed a TRO, let's punish her. Tell me exactly what you did and why you did it.

MR. CHANG: If I may address that, Your Honor. So

when the State Bar files the petition to modify discipline orders, it did so on an emergency basis by indicating that in the caption and then by following up with staff contact to the clerk respectfully requesting the Supreme Court to consider the matter on an urgent basis.

And the purpose of notifying the Supreme Court of the TRO request was to, of course, make them aware of the developments in this proceeding and to signal, again, the State Bar's interest in an urgent resolution of the petition.

MS. GRANDT: And --

THE COURT: And -- oh, I'm sorry, Ms. Grandt. Go ahead.

MS. GRANDT: Oh, I was just going to say, to clarify, the State Bar filed the petition before Ms. Albert filed a TRO. So it was just going to -- we got notification. She paid the money. So that was when the State Bar filed the petition.

THE COURT: Okay. So with respect to the situation of Ms. Albert paying the money that's owed that we determined last hearing that she needed to pay to have her license reinstated, what is the State Bar's position today, that she should be getting her license back?

MR. CHANG: The State Bar is very clear in its papers, both in the Supreme Court and in this Court, that its position is that she has paid the discharge and that, accordingly, the Supreme Court should modify the order so that she may be

reinstated.

THE COURT: Okay. What can I do to help with respect to, first of all, not getting in the way at all of California Supreme Court and letting them make their own decisions? Because that's the last thing I'm going to ever do is order the California Supreme Court to do anything. That is so way above my paygrade. But more importantly, I have a -- I wouldn't do it anyway. I have a very high respect for the state court all the way from the Avalon, Catalina, all the way up to the Sacramento, California Supreme Court, or are they in San Francisco? I have no idea.

But the point is, what can I do and not get in the way to assist in any activity to get the State Bar to reinstate Ms. Albert's law license if, in fact, she's deserving of it? Ms. Grandt, Mr. Chang?

MS. GRANDT: I apologize. I was on mute.

Mr. Chang, do you want to take that?

MR. CHANG: Yes. The Court's question is what can the Court do to assist in the process?

THE COURT: That's right.

MR. CHANG: I'm not sure that I have a clear answer for that. I suppose that the Court is, of course, within its discretion to issue any order or --

THE COURT: Well, I'm not going to do that. You're missing my point. Do you think that I would be getting in the

way of the process by contacting the California Supreme Court and saying this Court would appreciate a swift determination that Ms. Albert has, in fact, paid her money and she's entitled to the law that's in effect? Would that help?

MR. CHANG: I believe that would be helpful. I don't see any reason that the State Bar would have concern or objection to that course of action if that's what the Court believes is appropriate to resolve the situation.

THE COURT: And again, that's why -- I don't know if it's appropriate. I'm asking you.

MS. GRANDT: Well, I think the -- I think the court is aware of the bankruptcy proceedings. And the court is aware of the State Bar's position. So I'm not sure that if your -- if the Court is taking the position that the California Supreme Court is handling that, I'm not sure what else could be done.

THE COURT: So let me give you some insider information. Courts all the time interact with each other. And they talk to each other through only their orders and only through their public pronouncements. They don't talk to each other by telephone. They don't call each other. They don't -- They don't Twitter, tweet I guess. They don't Facebook. They don't Instagram.

And the problem that occurs is sometimes the courts don't want to get in the way of what they think might be happening in another court. So it very well may be that

there's someone in the California Supreme Court who is scratching their head and saying I wonder what we should do; we don't want to get in the way of the Bankruptcy Court. And that happens all the time. It unbelievably happens in mediations where there's some kind of judicial mediator. And the trial judge has said that to mediation, but mediators aren't supposed to and they don't talk to the trial judge and vice versa.

And so you typically as a trial judge don't want to get in the way of the mediator by doing something rationally by having one party suggest something. And that's the problem. I don't want to give the California Supreme Court any mixed signals. I have heard very clearly, and think that the State Bar has been forthright in these proceedings with respect to the fact that if Ms. Albert pays the nondischargeable amounts, she will have her law license back. And I think that you both -- Mr. Chang and Ms. Grandt, have confirmed that last hearing and this hearing.

I just want to make sure that the California Supreme Court understands that that was my intention to bring the parties together and to try to deescalate this entire matter. And so that's why I'm asking you, is there anything I can do to assist in the processing of the -- of your emergency request to have Ms. Albert's law license reinstated by the California Supreme Court.

Now, maybe I've already done it. Maybe somebody might

take this transcript and send it up to the California Supreme Court. But the fact is, all I know is this. And I made no determinations about any of the efficacy of the lawsuits pending in front of me. All I know is I've been told by the State Bar that if she pays that money, she gets her law license back and that she have it.

I don't know what the rules are. I don't know what the procedures are. Ms. Albert wanted to look at the rules. The State Bar says that they have to get the California Supreme Court to act. I don't know the answer. And frankly, if we can just get it done, whatever has -- whatever has to happen, more people than less will be pleased with the outcome.

So now that you have my statement on this, and I think we've beaten this horse pretty badly right now, Ms. Albert, I have to tell you that your request for a TRO does not meet the standards at this point for a temporary restraining order. I am of the belief that I'm going to take the State Bar's word that they made a California Supreme Court action even if you disagree.

But Ms. Albert, let's do this: Let's see what we can do about getting the process done. You have been without a law license for how long, how many years?

MS. ALBERT: Since 2018, July of -- June 28th, 2018.

THE COURT: Okay. You can wait another week. If that's the case, you can wait another week. Let's see what the

State Bar can do for you. And let's show what you can do for yourself by perhaps letting the State Bar know what my position -- I mean the Supreme Court.

And the reason is, again, that why fight when you don't need to? Why do we do this? Because you're not going to get a TRO from me on this. You're not going to have me enjoin anybody at this point. But the fact is we're making progress. It's incremental, I know. But the fact is you have to sometimes adopt or adapt to the processes that the bar -- that the administrative structure believes is the correct way rather than may be the correct way. It might not be worth the squeeze to get the juice that you want.

And so anyway, let me let you proceed now.

MS. ALBERT: Yes. Your Honor, I want to point something out to you. Their petition that they filed with the California Supreme Court does not ask the Supreme Court -- the California Supreme Court to reinstate my license. That is not the relief that they've asked of the California Supreme Court. So when the California Supreme Court rules on their emergency petition, it will not reinstate my license.

The only thing they've asked the California Supreme Court is to modify the orders. The California State Bar and the probation office is the department that actually suspends a license and reinstates a license. They do not get an order from the California Supreme Court to do so.

In the letter that Mr. Chang wrote to the California Supreme Court yesterday, again, did not ask the California Supreme Court to reinstate my license. There is no petition before the California Supreme Court requesting that type of relief. They filed that petition also with the State Bar court who has done nothing with it. There are no rules that the California Supreme Court has to act.

And as far as their comity argument goes, this is actually reversed comity. This is a core proceeding with regard to dischargeability of debt. A state court does not rule on that issue. That is within the purview of the Federal Bankruptcy Court. And I looked. I got, like, 20 pages of cases where I could refute what Mr. Chang and Ms. Grandt wrote in their brief yesterday.

So it is not within the purview of the state court to determine which part of the payments were dischargeable or not. That was --

THE COURT: All right. You're repeating yourself, Ms. Albert.

MS. ALBERT: Right.

THE COURT: Let me --

MS. ALBERT: No.

THE COURT: Stop for a second.

MS. ALBERT: Okay.

THE COURT: Mr. Chang, now she's told you that --

she's told me that you guys aren't being as forthright as I've given you credit for.

MR. CHANG: We have submitted to the Court with our papers the petition that was filed with the Supreme Court. And --

THE COURT: Yes, I know. And she may be right about that. So let's ask the straight question: Do you believe that you -- the State Bar needs the California Supreme Court to do anything to give her her law license back?

MR. CHANG: That is our client's position, yes.

THE COURT: Okay. What does the Supreme Court have to do?

MR. CHANG: The State Bar's position is that the Supreme Court has to modify the discipline order to vacate the condition that were discharged.

THE COURT: That's not true. They don't have to vacate it. They don't have to vacate it at all. You have to -- you know what a satisfaction of judgment is? You don't --

MR. CHANG: Yes.

THE COURT: -- vacate the order. The order was the order was to pay. She paid. You don't vacate it. You provide something with respect to satisfaction.

And, Ms. Albert, have you provided the State Bar with some sort of evidence that you've satisfied the dischargeable

amount -- nondischargeable amounts?

MS. ALBERT: Yes, I did.

THE COURT: Okay. Do you see the difference, Mr. Chang, between -- they're not going to -- why would they vacate the order?

MR. CHANG: If --

THE COURT: If the order was correct -- Mr. Chang, the order was correct. She was required to make the payments. She did make the payments. You litigated this all the way to the Ninth Circuit. And you got told by the Ninth Circuit that the -- some aspects were dischargeable and some aspects were nondischargeable. Now we've got ourselves a pretty good, hard, and fast rule with respect to some of those issues. Thank you very much. The Court and other Bankruptcy Courts in the Ninth Circuit are appreciative.

But now I don't want to be misled here. Why would you -- why would they ever vacate it? They would deny your motion. They don't vacate their order. You say you've been satisfied.

MR. CHANG: So there are two different components of the orders. There are the components that have been satisfied. And the State Bar does not dispute that Ms. Albert has satisfied the discipline costs and the debt to the CSF. And there are those remaining unsatisfied conditions which are still part of the order.

THE COURT: Yes. And now you're violating the automatic stay. Now you are definitely violating the automatic stay. Waiting for this California Supreme Court to vacate something which they have already been told by the Ninth Circuit that they cannot attempt to collect -- I'd like a response, Mr. Chang.

MR. CHANG: The client --

THE COURT: You've been told by the Ninth -- do you agree the Ninth Circuit has told the State Bar that they cannot force Ms. Albert to pay the third parties the money that she previously owed before she filed and got a discharge?

MR. CHANG: I personally agree with that reading, Your Honor.

THE COURT: Well, you know, personally. Maybe ought to put you in as a plaintiff -- or a defendant because here you are telling me that you personally agree. Who doesn't personally agree, Mr. Chang? Because I'm going to have them come to court and talk to me about it.

MR. CHANG: The position that I have been instructed by my client to represent --

THE COURT: And who is the name of that person? Because they're coming to court. Name them.

MR. CHANG: What I have been authorized to disclose is that --

THE COURT: Mr. Chang? Mr. Chang?

MR. CHANG: Yes. Yes.

THE COURT: Name the person who has instructed you on behalf of the State Bar to represent what you're -- what you've now represented to me.

MR. CHANG: Yes. It's the State Bar Court of the State Bar.

THE COURT: Give me the names. You don't talk to a court; you talk to people. Names of people.

MR. CHANG: Right. But there are -- okay. The agent of that internal component of the bar are Michele Cramton, the Clerk of the State Bar Court. And the ultimate client in this matter is Donna Hershkowitz, the executive director of the State Bar.

THE COURT: Good. I am this close to ordering them to appear at a hearing tomorrow. I'm that close to having them explain why they're not violating the automatic stay and a discharge injunction. The Ninth Circuit has already told the State Bar that the aspects of the dischargeable debts have been -- have been determined. And they're final. And you haven't appealed -- well, maybe we did go to the Supreme Court of the United States. And so now it's hard in cast.

So now I completely understand what the State Bar has done. You've delayed this more by seeking a court order from the California Supreme Court to vacate something that's already been vacated by the United States Courts for the Ninth Circuit.

I get it now. It took me a few minutes to get it, but that's what's happening here. And I've been trying to be real nice about this. What are you going to do, Mr. Chang, to get Ms. Albert's law license back?

MR. CHANG: Well, I will certainly convey to my client the Court -- what the Court has clarified here. Frankly, the Court's proposal may well be helpful to this process.

THE COURT: Well, that's not enough. You know, every day that Ms. Albert doesn't -- isn't able to earn a living and repay the loan that she took to get your State Bar fee is damages.

So I'll ask again, what are you going to do today to get Ms. Albert's law license back, reinstated as an active member?

MR. CHANG: What I can do in my role as counsel is to advise the client of what this Court has explained. And if I understand correctly, the Court's view here is that a -- and please clarify so that I have an accurate record to convey to my client, but that the Bankruptcy Court's view is that no California Supreme Court order is required to vacate conditions that have already been discharged by the --

THE COURT: You misstated me. You misstated me. We don't need to vacate anything. The only thing that needs to be done, according to that order -- that Supreme Court order is she has to pay what's owed. We now know that she does not owe

a sizeable portion of that amount.

Now, any action that delays her being able to function in her chosen profession is a violation of the discharge injunction. And I will hold the individuals responsible for violating that discharge injunction.

So what I'm going to do is I'm going to continue this hearing until tomorrow. One second, please. I'm going to continue this hearing until tomorrow at 11 a.m. That would be May 6th. And we're going to reconvene. And I want a report. And I want the names, again, filed today of the people who have -- the individuals on behalf of the State of California's bar who has told you that you need anything but an understanding, that you've already told this Bankruptcy Court that all Ms. Albert has to do is make those payments and she'll have her law license back.

MR. CHANG: Yes, Your Honor. And are you ordering those individuals' appearance?

THE COURT: Not yet. I want to -- I'll hear from you at 11 o'clock. And then I'll issue an order to show cause if I need to because my order to show cause will be about probably 10,000 dollars a day for violation of the discharge injunction until it's done. And you can report that back too. And if you don't believe I will do it, ask Governor Robert "Bobby" Jindal of Louisiana if I don't have a problem doing that.

MR. CHANG: Yes, Your Honor. So I want to ensure that

I have a clear understanding so that I can communicate this to my client. You are ordering the State Bar's counsel to report to the Court today the names of the individuals at the State Bar who are responsible --

THE COURT: You've already give me their names.

MR. CHANG: Right, right. Okay.

THE COURT: I want you to repeat it on paper.

MR. CHANG: Yes. And --

THE COURT: And file it with this Court.

MR. CHANG: Right. And you are informing the bar that the Court may issue an order that would --

THE COURT: An order to show cause.

MR. CHANG: An order to show cause.

THE COURT: Why they shouldn't -- why these individuals should not be held in contempt for violating the discharge injunction.

MR. CHANG: Okay.

THE COURT: And there's no immunity here. And if you don't believe me, talk to Governor Jindal of Louisiana.

MR. CHANG: And that the order could include sanctions of 10,000 dollars?

THE COURT: At least -- 10,000 dollars a day for keeping Ms. Albert away after you -- and I'll tell you this, I'll add on. Under Section 105 of the Bankruptcy Code, I think you've misled me. And you'll be subjects to sanctions too and

MS. Grandt too. And then if we get into the issues of the discharge injunction, you may beheld to that too.

I think I have been abused and misled. I previously asked -- we have transcripts, what does Ms. Albert need to do to get her law license back. And you've already told me pay her fines that are nondischargeable. And she's done it.

MR. CHANG: I understand, Your Honor.

THE COURT: Okay. We're going to come back here --

Mr. Poindexter, I have no idea why you're here except that apparently you're personally dissatisfied with Ms. Albert; is that correct?

MR. POINDEXTER: It's correct that I had no idea why I'm here. I'm not personally dissatisfied with her. As a matter of fact, I'm involved in a state court proceeding that I'd like to go to trial. My understanding is that once she gets her license reinstated, she's going to handle that trial. So it's actually in my client's interest to have her reinstated.

THE COURT: Okay.

MR. POINDEXTER: And I'm not even sure why I'm here to be candid, Your Honor. But I'd like to be excused from tomorrow.

THE COURT: You're excused from tomorrow.

MR. POINDEXTER: Thank you, Your Honor.

THE COURT: You're welcome.

All right. That's what we're going to do. I truly -- and see we have another person on the call.

Mr. Okon (ph.), are you there?

MR. OKON: Hello.

THE COURT: Are you involved in this matter?

MR. OKON: Yes, Your Honor. No, I'm not involved. I'm an interested party, a very close friend to Ms. Albert, sir.

THE COURT: Okay. Thank you.

All right. If you'll -- I appreciate you coming.

Now, is there any questions that you have for me before tomorrow at 11? You'll have the time now to gather up your statements from the transcript of the last hearing and the last hearings that we've had so that we can make sure that everyone is still on the same page. And I'll determine whether or not this Court has been misled. Thank you very much.

Are there any other parties wishing to be heard on the 10 o'clock calendar? If not --

MS. ALBERT: Yes, Your Honor. I just want to say I did file all the transcripts for the Court. It's on my -- in my declaration, Exhibits 10 through 13.

THE COURT: Good. That'll be helpful. Thank you very much.

All right. The Court is in recess until 11:00. Thank you.

MR. CHANG: Thank you, Your Honor.

MS. ALBERT: Thank you.

(Whereupon these proceedings were concluded at 10:33 AM)

C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.

_____

/s/ MICHAEL DRAKE, CER-513, CET-513

eScribers
7227 N. 16th Street, Suite #207
Phoenix, AZ 85020

Date: May 6, 2021

Case No. S284532

In the California Supreme Court

In the Matter of LENORE LUANN ALBERT,

A Member of the State Bar,

No. 210876* (not attempt to UPL)

Respondent and Petitioner for Review,

LENORE ALBERT'S EMERGENCY PETITION TO REINSTATE LICENSE AND PETITION FOR REVIEW AND DAMAGES

Petition for Review from the California State Bar Review Department
SBC-22-O-30348-DGS
Hon. Dennis G. Saab, presiding judge in the Los Angeles Hearing Department.

Lenore L. Albert*
Suspended by Cal. State Bar 3-14-2024
Cannot write SBN – UPL
Not an attempt to practice law in the State of California**
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EMERGENCY PETITION TO REINSTATE MS. ALBERT'S LICENSE THAT WAS SUSPENDED UNDER BUS & PROF CODE § 6007(C)(4)

A. Reasons to Grant Emergency Relief

Ms. Albert petitions this Court to reinstate her license to practice law which was abruptly taken from her by the State Bar on 03-14-2024.

The State Bar disciplined Ms. Albert for filing papers in federal court while she was an active member in that federal court because she used "Esq." or "attorneys for" along with Attorney Leslie Westmoreland on the papers she filed.

The State Bar also took it upon itself to interpret the federal court's local rules as to what a prompt notification of a state bar suspension should look like and found Ms. Albert violated those local rules, too.

The Review Department *further* found that Ms. Albert engaged in unauthorized practice of law in the state of California while working on the federal court cases by sending or receiving emails concerning that matter from opposing counsel. It was a new theory that the State Bar can regulate the practice of law in federal court so long as there are emails about the federal case because those emails are made outside of the federal court and thus "in California" making the State Bar Act applicable. (OCTC Request for Publication and Rev Dept. Opn.).

There was no finding that Ms. Albert's work was incompetent or that she harmed any client or was a danger to the public. It was a State Bar initiated investigation. Some clients even testified at the State Bar hearing, pleading for no discipline on the grounds it would harm their cases.

Although Standard 2.19 recommends reproval or a suspension as the presumed sanction for a rule violation, the Review Department used Standard 1.8(b) instead, because this was Ms. Albert's third disciplinary proceeding. Standard 1.8(b) presumes disbarment. It does not reserve disbarment for those unfit to practice law or to protect the public. It is akin to a Three strikes rule.

With the recommendation of disbarment, Bus & Prof Code § 6007(c)(4) mandates that the State Bar immediately suspend the lawyer's license to practice law.

The State Bar Review Dept. recommended Ms. Albert's disbarment on March 11, 2024, and Ordered her license suspended as of March 14, 2024.

The interim suspension has left Ms. Albert's clients unprotected in their civil litigation matters because they could not find other attorneys to take their case, including approximately 191,000 other attorneys in the State Bar data breach matter.

Bus. & Prof. Code § 6001.1 instructs that protection of the public should outweigh any decision to discipline an attorney. The interim suspension is harming the public (Ms. Albert's clients). Because the discipline is being imposed to satisfy an internal State Bar investigation as opposed to a complaint of client harm, her license should be reinstated to prevent further harm to her clients.

This petition sufficiently supports a finding from this Court that exigent circumstances exist to grant Ms. Albert emergency relief.

B. <u>Bus & Prof Code § 6007(c)(4) and Standard 1.8(b) Are Unconstitutional</u>

On December 5, 2000, Ms. Albert became a member of the California State Bar and was entitled to practice in all state courts in California. (Ex 1). She acquired "a property interest in the right to practice [her] profession that cannot be taken from [her] without due process." *Conway v. State Bar* (1989) 47 Cal.3d 1107, 1113.

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.
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> *Bell v. Burson* (1971) 402 U.S. 535, 539.

Ms. Albert was deprived of her license to practice law on March 11, 2024, based on subsection 4 of Bus & Prof Code § 6007(c) and Standard 1.8(b). Subsection 4 was added to 6007 section (c) after this Court decided *Conway v. State Bar* (1989) 47 Cal.3d 1107 making this an issue of first impression for this Court to review.

Currently, the State Bar *presumes* disbarment for any attorney the State Bar targets for discipline a third time pursuant to Standard 1.8(b). Upon recommendation of disbarment, the attorney's license is suspended almost immediately under Bus & Prof Code § 6007(c)(4) which declares:

> The State Bar Court shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default. For purposes of this section, that attorney shall be placed on involuntary inactive enrollment regardless of the license status of the attorney at the time.

The State Bar Review Department recommended Ms. Albert disbarred under Std. 1.8(b) because this was the third time the State Bar targeted her for discipline hence suspending her license to practice law forthwith on March 14, 2024, pursuant to Bus & Prof Code § 6007(c)(4). (Rev. Dept. Opn. P. 51).

In 1989, this Court found Bus & Prof. Code § 6007 subsection (c) passed constitutional muster because the State Bar was required to apply the following three-part "exigent circumstances" test before issuing an interim suspension.[1]

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[1] *(See, Conway v. State Bar* (1989) 47 Cal.3d 1107, 1120, fn. 7, "Contrary to the dissent's suggestion, in our view the statutory authorization for the State Bar to order involuntary inactive enrollment in exigent circumstances, subject to our immediate and plenary review, cannot reasonably be said to "defeat or materially impair" the inherent prerogatives of this court").

(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.

(B) There is a reasonable likelihood that the harm will reoccur or continue.

(C) The balance of interests, as between the attorney on the one hand and the attorney's clients and the public on the other hand, favors an involuntary inactive enrollment.

Conway v. State Bar (1989) 47 Cal.3d 1107

However, when subsection 4 was later added, the Legislature did not require and the State Bar did not use this three-part test to prove "exigent circumstances" prior to recommending suspension under Bus & Prof Code §6007(c)(4).

Furthermore, the exigent circumstances test laid out in *Conway* is not used to justify disbarment under Standard 1.8(b) either.

The only thing the State Bar must do is recommend disbarment to trigger an interim suspension that happens within three (3) days of the recommendation or opinion.

Because Standard 1.8(b) includes discipline based on internal State Bar investigations, there is a substantial risk of disbarment resulting from political bias against a member insufficient to pass constitutional muster.

Standard 1.8(b) merely declares "If a lawyer has two or more prior records of discipline, disbarment is appropriate." (State Bar Rules of Proc. Std. 1.8(b).

Thus, Bus & Prof Code § 6007(c)(4) and Standard 1.8(b) are facially invalid and constitutionally infirm as applied.

In Ms. Albert's case, the State Bar Review Department issued the Interim Suspension solely based on its recommendation of disbarment where no client harm or harm to the public was involved. (Rev. Dept. Opn. P. 51)

INVOLUNTARY INACTIVE ENROLLMENT

> Lenore LuAnn Albert is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Her inactive enrollment will be effective three calendar days after this order is served and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5. 111(D)(2) of the State Bar Rules of Procedure or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.
>
> (Rev. Dept. Opn. P. 51).

Neither the State Bar Hearing Department nor the Review Department found that Ms. Albert harmed a client, nor could they as there was no incompetent work at issue. (SB Rec. and Rev. Dept. Opn.).

Furthermore, the State Bar Rules of Procedure Rule 5.225 through Rule 5.238 limit employing the exigent circumstances test to subsection 1 through 3 of Bus & Prof Code § 6007(c). In that instance, the State Bar must prove that there is a threat of harm to the public or the attorney's clients. No similar procedure is called for with an interim suspension under subsection (c)(4).[2]

The State Bar did not find that Ms. Albert has caused or is causing substantial harm to her clients or the public. The State Bar Hearing Department explicitly stated no harm to the client was proven. (SB Rec. 04-03-2023).

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[2] Ms. Albert is not addressing whether the State Bar Rules adequately cover the Exigent Circumstances test because she does not have standing to address the situations in subsection (c)(3). However, on the face of it, it appears that the State Bar did not follow this Court's instructions in Conway because two of the elements of the three-part test are missing. The Court has most likely been depriving other attorneys of their license without due process as a result.

Greater access to the legal system is the "highest priority" for the State Bar. Cal Bus & Prof Code 6001.1.

Albert was providing "greater access" to the legal system by helping Ms. Noble who was impecunious. (Exhibit 1160, 1163) Discipline is not necessary here to protect the public, the courts, or the legal profession. (See Declarations).

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

The State Bar Court found that there was no harm to the clients or the judiciary. (SB Rec.). [3]

There was no evidence that her work was not competent or that either matter was unnecessarily multiplied, delayed, or otherwise derailed. Neither Ms. Noble nor Mr. Grewal complained about Ms. Albert's work.

The deployment of Std 1.8 and Bus & Prof Code§ 6007 to take away Ms. Albert's license to practice law was both unjustified and contrary to the purpose of the State Bar under Bus & Prof Code §6001.1.

Additionally, there is no reasonable likelihood any harm will reoccur or continue because the harm would be limited to time periods that Ms. Albert's license was suspended. (SB Rec. 04-03-2023).

Third, the balance of interests, as between the attorney on the one hand and the attorney's clients and the public on the other hand, did not favor an interim

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[3] Purported harm to a court cannot support an interim suspension. There is no emergency created therein. Hence, the Review Department's flawed finding that a four-page letter to Judge McAuliffe informing her of the suspension somehow caused "significant harm" to the Court is irrelevant. (Ex 35, Rev. Dept. Opn. P. 29).

suspension because Ms. Albert's clients testified at the State Bar hearing that suspending Ms. Albert would cause them irreparable harm.

This was nothing more than a generic politically motivated disciplinary proceeding that was generated internally by State Bar employees Suzanne Grandt, Cindy Chan, and Benson Hom without a supervisor authorizing prosecution. (Ex SB Report).

The Legislature failed to develop the necessary due process requirements when adding subsection 4 to the statute. Simply citing disbarment cannot fulfil that requirement because disbarment in California does not currently require harm to the public or the attorney's clients. *Bell v. Burson* (1971) 402 U.S. 535, 540.

Some independent objective measure of culpability rising to the level of client or public harm outside the State Bar system such as an expert medical opinion, criminal Judgment, or other Court order is required before the State Bar can issue an interim suspension and have it pass constitutional muster. See, *Barry v. Barchi* (1979) 443 U.S. 55, 65.

In *Conway*, this Court created an exigent circumstances test prior to suspending an attorney upon recommendation of disbarment in the hopes that the State Bar would then create Rules of Procedure to incorporate said test so Bus & Prof Code § 6007 would pass constitutional muster.

The Review Department did not consider the Conway factors or articulate any emergency that warranted an interim suspension of Ms. Albert's license before this Court could review its recommendation and opinion.

This Court must revert back to its original rule[4] and find that the state legislature overstepped its authority in amending the statute to include subsection

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[4] Originally, the State Bar was not given the authority to issue suspensions or disbarment because this Court recognized that the decisionmakers are politically appointed. The State Bar is not a constitutional court. (See, *In re Attorney*

(c)(4) because the "[*f*] *inal action [disbarring or suspending the license of an attorney] can only be taken by this court*" (*Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 338-39) but subsection (c)(4) "defeat[s] or materially impair[s] the exercise of those functions."" *Hustedt v. Workers' Comp. Appeals Bd.* at 338.

"[T]he State Bar acts "as an arm of the court, for the purpose of taking evidence and making its recommendations,"" *Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal.2d 548, 563.

By overstepping its authority, it violated the separation of powers principle by defeating or materially impairing the exercise of the constitutional function of abrogating the sole authority to suspend or disbar an attorney with the California Supreme Court.

That power was usurped and given to the political body of the State Bar by the Legislature via Bus. & Prof. Code § 6007(c)(4) - gifting the State Bar (itself) the sole authority to recommend disbarment and then issue an immediate suspension. Such swift action without proof of harm cut off any reasonable expectation that a trial lawyer like Ms. Albert could have time to seek judicial review before being irreparably harmed in violation of her due process rights.

Whatever administrative relief the State Bar gives to this Court's docket, such relief cannot outweigh the attorney's constitutional right to due process before their entire livelihood is taken from them.

Discipline System (1998) 19 Cal.4th 582, 600 ("If the Legislature had not recognized this fact, and made provision therefor, the constitutionality of those portions of the State Bar Act which provide for the admission, discipline and disbarment of attorneys could have been seriously challenged on the ground of legislative infringement on the judicial prerogative.").).

The statute is unconstitutional as applied. Ms. Albert's constitutional rights were violated based on the arbitrary and capricious use of Standard 1.8(b) and Bus & Prof Code §6007(c)(4) by the State Bar Review Department.

The *Conway* Court opined that interim suspensions were employed under exigent circumstances and afforded due process "because the order is subject to our immediate, independent review." *Conway v. State Bar* (1989) 47 Cal.3d 1107.

Conway v. State Bar (1989) 47 Cal.3d 1107 should be revisited. History shows that this Court can no longer take immediate action on these interim suspensions envisioned in *Conway* when issued under subsection (c)(4). Recent reviews by this Court have taken nearly a year. *In re Rose* (2000) 22 Cal.4th 430, 442 n. 7.

In addition to the due process violation under the Fourteenth Amendment, Ms. Albert's license was an unlawful seizure under the Fourth Amendment to the extent it was a property interest and she was not afforded Equal Protection under the law.

Neither the Michigan State Bar, U.S. Supreme Court, nor the Ninth Circuit Court of Appeals have issued an O.S.C. why a reciprocal suspension or disbarment should not issue. One can presume these courts do not recognize the legitimacy of the State Bar's ability to issue an Order suspending an Attorney under Bus. & Prof. Code § 6007(c)(4) leaving that to this Court.

On the other hand, Ms. Albert's other cases were put in harms' way and Ms. Albert was deprived of income as a result.

Because the State Bar failed to employ a strong procedural rule before employing the almost instant interim suspension of Ms. Albert's professional license based on State Bar generated investigations and disciplinary charges, it created extreme financial hardship for Ms. Albert. By taking her license to practice law away from her in California state courts, the state has deprived her of her livelihood causing a serious financial death spiral warranting not only granting

immediate restoration of her license back to active status, but also taking up review as to the constitutional issues and determining if this Court is the appropriate venue to award her damages as a result.

C. <u>The State Bar's Interim Suspension Harmed Ms. Albert's Clients</u>

The State Bar has caused harm to Ms. Albert's clients by suspending her license to practice law.

The policy of protecting the public applies as much to the State Bar as it does to Ms. Albert. The State Bar Act declares:

> Protection of the public, which includes support for greater access to, and inclusion in, the legal system, shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.
>
> Bus. & Prof Code § 6001.1

The State Bar violates Bus & Prof Code §6001.1 when it harms the public by suspending or disbarring an attorney. The State Bar cannot act above the law. The United States Supreme Court explained that "[d]ecency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously." *Miranda v. Arizona* (1966) 384 U.S. 436, 479-80.

The State Bar has left the public unprotected by suspending Ms. Albert's license to practice law. Protection of the public was inconsistent with suspending Ms. Albert's license to practice law warranting immediate reinstatement.

Ms. Albert had several cases that were not completely annihilated by the State Bar when it suddenly suspended Ms. Albert's license.

Ms. Albert was representing Ryan McMahon, former law enforcement officer, and plaintiff in the United States District Court for the Eastern District of California ("CAED"); *McMahon v Whitney*, Case No. 23-cv-01972-KJM-JDP.

Mr. Ryan McMahon has declared he cannot find another attorney to represent him in this invasion of privacy/defamation/false light/constitutional rights lawsuit based on the highly negative publicity he has endured. Mr. McMahon has supplied a declaration in support of Ms. Albert demonstrating that he will be irreparably harmed if Ms. Albert cannot continue to represent him in his action. The Court has stayed that case until on or about **May 25, 2024**, for Defendant John Whitney to find new counsel and will presumably have decided whether Mr. McMahon would need new counsel based on a reciprocal suspension or disbarment by that time as well. (Order Doc. 66 filed 3/26/2024). Separately, Ms. Albert filed a motion for sanctions against Mr. Whitney's counsel who was disqualified from representing him against Mr. McMahon which involves a potential financial impact on Ms. Albert.

Ms. Albert was also representing Mr. Larry Tran, a law clerk, in a civil lawsuit against Tesla in the Los Angeles Superior Court (Inglewood) *Tran v. Tesla, Inc*. Case No. 23TRCV02546. Unlike Mr. McMahon, Mr. Tran has no avenue to keep Ms. Albert as his counsel unless this suspension is reversed. Like Mr. McMahon, Mr. Tran has also declared that this interim suspension has left him without representation. Mr. Tran has been left to defend a demurrer to his first amended complaint without counsel at a hearing set for **May 16, 2024,** against a well-heeled defense firm.

> In his opposition to the Demurrer, Plaintiff provides only one paragraph of factual analysis, with no case law or statutory analysis as applied to the facts. Plaintiff, a self-represented party, also filed declarations in opposition to the demurrer and motion to strike, apparently under the mistaken belief that a demurrer or motion to strike hearing is an evidentiary hearing like a trial or arbitration. It is not an evidentiary hearing. In considering a demurrer or motion to

> strike, the judge only considers the pleading, i.e., the allegations of the complaint or amended complaint, matters of which the Court is requested to take judicial notice, plus any exhibits attached to the complaint, rather than affidavits or declaration or other matters outside the four corners of the complaint and its exhibits.
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> (Ct Tentative Ruling 05-16-2024 which can be found at https://www.lacourt.org/tentativeRulingNet/ui/Result.aspx?Referer=Index).

The State Bar suspension harmed Mr. Tran's legitimate case by ripping away his counsel and thus, the court sustained the demurrer.

Ms. Albert was representing Mr. Tran under a contingency fee agreement, thus the suspension adversely affected Ms. Albert's financial expectancy.

Theresa Marasco, Antonio Marasco, Holly Burns and Simon Valenzuela were also clients represented by Ms. Albert when the interim suspension was ordered. These clients testified in support of Ms. Albert at the State Bar hearing and the State Bar was on notice that the clients testified it would irreparably harm their case if the State Bar suspended Ms. Albert or disbarred her. Their case sitting in the state court in Santa Monica, California captioned Marasco v 1753 9th Street, LLC et al Case No. 19SMCV00056 was set for jury trial on **April 8, 2024**. Due to the interim suspension, a settlement was reached with Ms. Albert losing her financial expectancy under the contingency fee agreement (monetary loss of approximately $125,000.00) and disrupted the attorney-client relationship. Ms. Marasco, a Section 8 tenant, and former paralegal was deprived of her jury trial and could not obtain other counsel to take her case. Ms. Marasco has supplied a declaration recounting the harm that this suspension caused.

In the case of *Gilbert-Bonnaire v Demerjian* case, OCSC Case No. 30-2019-01089080-CU-FR-CJC, Ms. Albert represented the plaintiff through jury trial and bench trial where the jury awarded the plaintiff damages for fraud. The hearing on the motion for attorney fees in the amount of $657,445.10 is set for **June 18, 2024**. Ms. Albert is exposed to an unfavorable ruling based on misconceptions of how

attorney fees are awarded when an attorney is suspended or pending disbarment. Furthermore, she has no ability to protect the reasonable attorney fees she earned because she cannot further represent Ms. Gilbert-Bonnaire in state court on that motion at this time.

Finally, as this Court is well aware, Ms. Albert was representing the plaintiffs in the putative class action case *Roe v State Bar*, OCSC Case No. 30-2022-01250695-CU-AT-CXC, Order 3/20/2024.

The plaintiff's beat the State Bar's demurrer on violation of mandatory duty to keep State Bar investigations confidential until public disciplinary charges are filed (Cal. Govt Code § 815.6). When the Review Department filed its Opinion, the State Bar filed a demurrer to all causes of action including the one that was overruled. Without counsel to represent the John Roe attorneys the State Bar will be able to get the entire action dismissed – not because the causes of action were not legitimate, but on the grounds all other attorneys fear the State Bar will take their license away and disbar them so no one is willing to step up and represent the plaintiffs. That hearing is set for **June 28, 2024**. The plaintiffs' motion for class certification was struck based on the Interim suspension and recommended Disbarment.

Ms. Albert has filed a motion in federal court to vacate the remand in R*oe v State Bar*, CACD Case No. 22-cv-00983-DFM because her membership remains active in the Central District however the State Bar filed an application to vacate the hearing until the Central District determines whether to issue a reciprocal suspension or disbarment. No timeline is set for that matter to be heard. So, the data breach plaintiffs are sitting in a rudderless ship approaching the craggy rocks while the foghorn rages.

Frustrated at the State Bar's actions, a putative class member blasted off and filed a motion in the federal court which was readily denied.

NZ, and Mr. Pratt both attorney plaintiffs (and others) in the State Bar data breach case have supplied a declaration in support of Ms. Albert showing that the interim suspension has harmed the data breach case and no other attorney will touch it out of justified fear that the State Bar will retaliate against the attorney.

OCTC Cindy Chan and other State Bar officials neglected the mandates of Bus & Prof Code §6001.1 by putting their own self-interest before the "[p]rotection of the public, which includes support for greater access to, and inclusion in, the legal system… the highest priority for the State Bar of California" Id. by relentlessly bombing Ms. Albert with disciplinary investigations, complaints and charges generated by the State Bar or opposing counsel gaining an advantage in litigation instead of clients.

There is a "causal connection" between Ms. Albert's data breach case against the State Bar and the State Bar's suspension as a member in good standing of the State Bar which can be "inferred from circumstantial evidence, such as the [State Bar's] knowledge that plaintiff engaged in protected activities and the proximity in time between the protected action and the allegedly retaliatory [State Bar] decision. *Casumpang v. International Longshoremen's & Warehousemen's Union, Local 142* (9th Cir. 2001) 269 F.3d 1042, 1058-59.

Like Casumpang, Ms. Albert's record shows a causal link between the protected activity of filing the Data breach lawsuit on behalf of approximately 191,000 lawyers, former judges and complainants and the proximity in time between the protected action and the allegedly retaliatory decision to discipline Albert and disbar her.

- March 18, 2022, Ms. Albert filed the State Bar data breach putative class action.
- April 29, 2022, State Bar filed notice of public disciplinary charges in this case.

- April 3, 2023, Judge McCormick dismissed the antitrust claims finding the allegation that the State Bar would attempt to regulate federal practice fanciful and implausible.
- April 3, 2023, 10-15 minutes later State Bar issues recommendation of 18-month suspension for UPL in federal Court and violation of Local Rules in Federal Court against Ms. Albert
- December 8, 2023, Judge Sherman grants protective order to plaintiffs in State Bar data breach case
- January 12, 2024, Judge Sherman overrules demurrer against State Bar (breach of mandatory duty under Bus & Prof Code 6086.1) in data breach case.
- March 1, 2024, Defendants request extension of time to file demurrers and produce discovery – Ms. Albert grants extension of time to March 11, 2024, for filing demurrers if the defendants produce the documents the prior Friday March 8, 2024
- March 7, 2024, Judge Sherman signs protective order after previously ordering the Defendants to submit their discovery to plaintiff's counsel in the data breach case.
- March 8, 2024, State Bar says it needs more time to review its documents before handing them over.
- March 11, 2024, State Bar Review Department issued Opinion of Disbarment with Interim Suspension
- March 11, 2024, State Bar files demurrer to data breach case
- March 12, 2024, State Bar refuses to turn over documents based on impending suspension.
- March 14, 2024, Suspension begins.
- March 15, 2024, State Bar requests Court to dismiss the Motion for Class Certification in the data breach case.

This data breach case had three prongs to it. First, there was an admitted breach of 322,525 confidential State Bar investigations identifying approximately 200,000 lawyers, former judges and complainants posted on the internet. Second, most of the confidential State Bar investigations were the result of the State Bar's abuse of their power using self-initiated State Bar investigations to snoop on the members (there are approximately 191,000 active members and over 200,000 notices went out with Complainants only comprising 124 out of that total). Third, the State Bar waited to send out the notice because thirteen (13) other government agencies in California suffered the same breach using Tyler Technology Inc.'s Odyssey Portal. By waiting, those other government agencies and Tyler Technologies cleaned up the postings on the internet and never sent out notices to the victims. They were victims because the confidential information included things like the identity of minors in sexual assault cases, or expunged criminal records, or identity of confidential informants. Whatever may be on a Court docket but sealed or expunged. (Exhibit 1148).

Purported violation of a federal local rule does not justify disbarment under any circumstance.

Ms. Albert cannot think of one attorney who has not broken a Local Rule in court. On January 23, 2023, the State Bar's own general counsel walked into the well two times during the one-day bench trial while Judge Clarkson was on the bench. She did it a second time even after the Judge directed her not to.

MS. GRANDT: Can I approach?

THE COURT: Yes, as long as I can have a copy of it too.

You're actually supposed to approach him.

MS. GRANDT: Oh, I apologize.

THE COURT: That's okay. Federal court procedure.

Well, again, he's going to give it to me.

MS. GRANDT: I'm Sorry, Your Honor.

THE COURT: No, no. That's okay. Thank you.

(RT 18-ap-1065-SC 01/23/23 p. 242).

It appears Ms. Grandt did not know what a well was. Violating the Court rule to stay out of the well is more harmful than filing a 4-page letter about the state bar suspension, yet no disciplinary charges were filed, and she was not disbarred for it. (Ex 35, 40).

Ms. Grandt also made commotion during testimony by her trial binders falling off the counsel table and into the trash on three occasions in one day. The State Bar also violated more than local rules – federal court discharge order and federal bankruptcy law on multiple occasions. But she still works in the office of general counsel for the State Bar without any disciplinary record at all. In fact, the State Bar was held in contempt of court but again, no disciplinary action was taken against anyone at the State Bar for that transgression either. (See judgment in *Albert-Sheridan v Cal. State Bar* 18-ap-1065-SC dated 1/27/23).

D. <u>State Bar's Deliberate Indifference to the Law Warrants Relief</u>

The State Bar has acted with deliberate indifference to ensuring it is operating in a lawful manner. Its deliberate indifference has caused harm to Ms. Albert. The State Bar repeatedly suspended and/or refused to reinstate her license to practice law over the past six years in violation of her constitutional and federal rights.

On March 11, 2024, the Review Department used a novel and frivolous legal theory to find that Ms. Albert's practice in federal court while her membership was active was also practice in the state of California warranting disbarment and thus suspending her license to practice law in the interim. This act of creating a frivolous legal theory was just another act of deliberate indifference, closing their eyes to the state of constitutional law as well as this Court's own precedent as laid out above and below in Section Three which is incorporated by reference herein.

The State Bar's pattern of its inability to adhere to the law is apparent warranting review.

Contrary to clearly established Supreme Court precedent and federal statutes, on March 16, 2018, the State Bar violated federal law (11 U.S.C. §362) by refusing to reinstate Ms. Albert's license while she was in Chapter 13 bankruptcy. The Ninth Circuit Court of Appeals had to step in and tell the State Bar it was wrong. *Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)* (B.A.P. 9th Cir., Apr. 2, 2024, No. CC-23-1024-SFL).

Contrary to the clearly established elements of 11 USC § 523(a)(7) the State Bar continued to wrongfully withhold Ms. Albert's license to practice law based on nonpayment of civil discovery sanctions from VOID civil discovery orders. The State Bar went as far as filing another disciplinary charge against Ms. Albert for failing to pay the discharged debt on January 29, 2020, in SBC-20-O-00045-DGS and purportedly violating Rule 9.20 even though Ms. Albert gave notice to all courts in SBC 20-O-00044-DGS. Again, the Ninth Circuit Court of Appeals stepped in and told the State Bar it was wrong. *Albert-Sheridan v. State Bar of Cal.* (In re Albert-Sheridan) (9th Cir. 2020) 960 F.3d 1188.

On April 20, 2021, the State Bar wrongfully made Ms. Albert pay the CSF fund $20,000.00 plus interest and expenses. It held that money for one year until the Ninth Circuit Court of Appeals affirmed that the State Bar agreed in Kassas that such obligations were discharged. *Kassas v. State Bar of Cal.* (9th Cir. 2022) 49 F.4th 1158.

On May 5, 2021, the State Bar wrongfully withheld Ms. Albert's license to practice law based solely on nonpayment of discharged debt after Ms. Albert paid the State Bar $60,000.00 on April 20, 2021, resulting in a charge of violating the discharge injunction (11 U.S.C. § 524). Instead of acknowledging Ms. Albert paid the State Bar $60,000.00 it had this Court delete those conditions in the California

Supreme Court Orders, obfuscating her financial obligations that were satisfied through payment. (Ex 1168 p. 16-20).

On January 27, 2023, the U.S. Bankruptcy Court ordered the State Bar to pay Ms. Albert for her costs of having to bring the case which was approximately $25,000.00 due to the State Bar's contempt of the Court's discharge Order by refusing to reinstate Ms. Albert's license to practice law.

In Ms. Albert's opening brief on Review, she asserted that the State Bar's heavy hand on Ms. Albert since 2014 has been the result of retaliation and harassment. OCTC moved to strike that portion of the brief which the Review Dept. granted. Then the Review Department issued an opinion that Ms. Albert's conclusory argument was not supported by any evidence. It was not supported because the Court struck it and did not give Ms. Albert an opportunity to develop the evidence in support of her claims. It was there in the timing and exhibits. (Exhibits 1142-1149, 1158, 1167-1169).

E. PRAYER

Wherefore, petitioner, Lenore Albert respectfully requests that this Court immediately reinstate her license to practice law in California, review Bus & Prof Code §6007(c)(4) and Standard 1.8(b) because they are constitutionally infirm for the reasons listed above. The petitioner also verifies that she has read the petition and declares under penalty of perjury of the laws of the State of California that the foregoing is true and correct to best of her knowledge. Executed this day in Coldwater, Michigan.

Dated: May 16, 2024

Respectfully Submitted,
/s/ LENORE ALBERT
LENORE L. ALBERT
* Cal State Bar Suspension effective 3-14-2024

Word Count

State Bar disciplinary proceedings are *sui generis*. The Rules on Law Practice, Attorneys, and Judges do not dictate any page or word length limit. (Cal Rules of Court Rule 9.00 et seq.). State Bar uses Rule 8.520(c)(1) (see *In re Drexel A. Bradshaw* S29234). The emergency petition to reinstate Ms. Albert's license on the grounds Bus & Prof Code § 6007(c)(4) and Standard 1.8(b) are unconstitutional as applied is 5,436 words in length.

Dated: May 20, 2024

Respectfully Submitted,
/s/ LENORE ALBERT
LENORE L. ALBERT
* Cal State Bar Suspension effective 3-14-2024

I. PETITION FOR REVIEW

The California Supreme Court should grant this petition for review of the State Bar Opinion and Recommendation on the grounds that the State Bar Court acted without or in excess of its jurisdiction in investigating, prosecuting and recommending Ms. Albert be disbarred and suspended because it was based solely on Ms. Albert's conduct while she was an active member in a federal court.

The California Supreme Court is bound to "review disciplinary proceedings conducted in violation of the law, or which result in recommended discipline that is inappropriate under the circumstances." *In re Rose* (2000) 22 Cal.4th 430, 460.

As further discussed below, this petition for review should be granted on the following grounds:

1. Necessary to settle important questions of law;
2. The State Bar Court has acted without or in excess of jurisdiction;
3. Petitioner did not receive a fair hearing;
4. The decision is not supported by the weight of the evidence; or
5. The recommended discipline is not appropriate in light of the record as a whole.

Cal. Rules of Court, Rule 9.16.

The actions violated Ms. Albert's First Amendment, Fourth Amendment, Fifth Amendment, Eighth Amendment, and Fourteenth Amendment rights as laid out in Section III (and her rights under the California Constitution Article 1 § 17). The reduction in judicial resources "devoted to overseeing the [attorney disciplinary] process" does not outweigh Ms. Albert's right to practice law because the decision to suspend and disbar her from the practice of law is not in the public's interest within the powers of this state under the Tenth Amendment, but purely a political one. *In re Rose* (2000) 22 Cal.4th 430, 457. (X Amend. U.S. Const.).

The State Bar needs to be stripped of all immunity.

PRAYER

Review within the State Bar has been exhausted pursuant to Cal. Rules of Court Rule 9.13. On April 3, 2023 the State Bar Court made its recommendation of 18-month suspension. The petitioner timely appealed to the Review Department. On March 11, 2024, the State Bar Review Department filed its Opinion recommending disbarment and issued an Order of Interim Suspension effective March 14, 2024.

A copy of the State Bar Court decision and State Bar Review Department Opinion are attached. (Cal. Rules of Court, Rule 9.13).

Pursuant to Cal. Rules of Court, Rule 9.13, petitioner, Lenore Albert verifies that she has read the petition and declares under penalty of perjury of the laws of the State of California that the foregoing is true and correct to best of her knowledge. Executed this day in Coldwater, Michigan.

Dated: May 20, 2024

Respectfully Submitted,
/s/ LENORE ALBERT_____
LENORE L. ALBERT
* Cal State Bar Suspension effective 3-14-2024

Word Count

State Bar disciplinary proceedings are *sui generis*. The Rules on Law Practice, Attorneys, and Judges do not dictate any page or word length limit. (Cal Rules of Court Rule 9.00 et seq.). State Bar uses Rule 8.520(c)(1) (see *In re Drexel A. Bradshaw* S29234). The petition for review is 447 words in length.

Dated: May 20, 2024

Respectfully Submitted,
/s/ LENORE ALBERT_____
LENORE L. ALBERT
* Cal State Bar Suspension effective 3-14-2024

II. REASONS TO GRANT REVIEW

IV. FACTS

A. Ms. Albert Was a Consumer Trial Lawyer

Ms. Albert is a consumer protection lawyer who holds licenses to practice law in California, Michigan, the U.S. District Court for the Central District of California, the U.S. District Court for the Eastern District of California ("CAED"), the Ninth Circuit Court of Appeals, and the U.S. Supreme Court. (12/21/22 RT 15 Ex 1047, 1083, 1085; RT 38-39, Ex 1072).

She currently has three (3) Bar Numbers: California State Bar Number 210876; Michigan State Bar Number P85667; and U.S. Supreme Court Bar Number 264066.

The California Supreme Court suspended Ms. Albert for 30-days on or about February 14, 2018. (Ex 6). The same Court suspended Ms. Albert for an additional 6 months on or about August 28, 2019. (Ex 7).

Each order conditioned reinstatement on large financial payment conditions Ms. Albert could not meet so, in reality, Ms. Albert's license to practice law in California was not actually reinstated prior to the second suspension Order effective August 28, 2019. (Ex 6, 7, 1156 & 1167).

On May 5, 2021, U.S. Bankruptcy Court Judge Scott C. Clarkson stepped in warning the State Bar that the federal court would issue sanctions of $10,000.00 per day until the State Bar reinstated Ms. Albert's license to practice law after Ms. Albert had paid off approximately $37,500.00 in State Bar Costs and $20,000.00 to the State Bar Client Security Fund ("CSF"). (Ex 1168).

> THE COURT: If the order was correct -- Mr. Chang, the order was correct. She was required to make the payments. She did make the payments. You litigated this all the way to the Ninth Circuit. And you got told by the Ninth Circuit that the -- some aspects were dischargeable and some aspects were nondischargeable. Now we've got ourselves a pretty good, hard, and fast rule with respect to some of those issues. Thank you very much. The Court and other Bankruptcy

Courts in the Ninth Circuit are appreciative. But now I don't want to be misled here. Why would you -- why would they ever vacate it? They would deny your motion. They don't vacate their order. You say you've been satisfied.

(Ex 1168 RT p. 16)

THE COURT: Yes. And now you're violating the automatic stay. Now you are definitely violating the automatic stay. Waiting for this California Supreme Court to vacate something which they have already been told by the Ninth Circuit that they cannot attempt to collect -- I'd like a response, Mr. Chang.

(Ex 1168 RT p. 17)

THE COURT: Give me the names. You don't talk to a court; you talk to people. Names of people.

MR. CHANG: Right. But there are -- okay. The agent of that internal component of the bar are Michele Cramton, the Clerk of the State Bar Court. And the ultimate client in this matter is Donna Hershkowitz, the executive director of the State Bar.

THE COURT: Good. I am this close to ordering them to appear at a hearing tomorrow. I'm that close to having them explain why they're not violating the automatic stay and a discharge injunction. The Ninth Circuit has already told the State Bar that the aspects of the dischargeable debts have been -- have been determined. And they're final. And you haven't appealed -- well, maybe we did go to the Supreme Court of the United States. And so now it's hard in cast.

So now I completely understand what the State Bar has done. You've delayed this more by seeking a court order from the California Supreme Court to vacate something that's already been vacated by the United States Courts for the Ninth Circuit.

(Ex 1168 RT p. 18)

I get it now. It took me a few minutes to get it, but that's what's happening here. And I've been trying to be real nice about this. What are you going to do, Mr. Chang, to get Ms. Albert's law license back?

(Ex 1168 RT p. 19)

…

> MR. CHANG: Yes, Your Honor. And are you ordering those individuals' appearance?
>
> THE COURT: Not yet. I want to -- I'll hear from you at 11 o'clock. And then I'll issue an order to show cause if I need to because my order to show cause will be about probably 10,000 dollars a day for violation of the discharge injunction until it's done. And you can report that back too. And if you don't believe I will do it, ask Governor Robert "Bobby" Jindal of Louisiana if I don't have a problem doing that.
>
> (Ex 1168 RT p. 20)

The matter was before Judge Clarkson because Ms. Albert petitioned for bankruptcy protection on or about February 20, 2018, under Chapter 13, placing repayment of the State Bar costs in her Chapter 13 plan. (RT 12/21/22 67-68, Ex 1180).

Although Ms. Albert sought bankruptcy protection to reorganize her debts and obtain a fresh start, the State Bar refused to reinstate her license to practice law in 2018 until she paid third party 10675 S Orange Park Blvd LLC $5,678.00 for civil discovery sanctions contained in three (3) VOID orders in Unlawful Detainer case *10675 S Orange Park Blvd LLC v Koshak*, plus State Bar costs totaling $18,714.00 because she sought a hearing on the disciplinary charges. [Ex 6, 1114].

On April 17, 2018, Ms. Albert notified the Ninth Circuit Court of Appeals of the suspension where she was representing appellant Brooke Noble in *Noble v Wells Fargo Bank, NA*. Her notice stated:

> PLEASE TAKE NOTICE THAT APPELLANT BROOKE NOBLE'S attorney, Lenore Albert is temporarily disqualified from representing Brooke Noble on this appeal because an employee at the California State Bar wrongfully and unlawfully suspended her license by back dating the suspension to February 14, 2018. The State Bar court has refused to reinstate the license to date although it says it was a 30 day suspension. Make no mistake this was an unlawful act by the employee of the State Bar and is in furtherance of their cover up in assisting sovereign citizen extremists targeting consumer lawyers with

> paper terrorism in the form of massive amounts of State Bar complaints. Nevertheless, until a court is willing to rule on the unlawfulness, Brooke Noble will have to proceed in pro per until such time this political battle with the State Bar is won by Ms. Albert.[5]
>
> [Exhibit 17]

The Noble appeal was from a case Wells Fargo removed to federal court sitting in the CAED before Judge Drozd. In response to Ms. Albert's notice, the Ninth Circuit issued an Order and had it filed on Judge Drozd's docket giving Notice of Ms. Albert's suspension to the Court in the CAED. That Order stated in pertinent part:

> On April 17, 2018, Lenore Albert, counsel for Appellant and Cross-Appellee Brooke Noble in the above-captioned cases, filed notice of her "temporary disqualification" by the State Bar of California.
>
> [Exhibit 18]

On April 2, 2024, the Ninth Circuit B.A.P. vindicated Ms. Albert, finding that the State Bar suspension of Ms. Albert's license violated the automatic stay pursuant to 11 U.S.C. § 362 from March 16, 2018, through her discharge on February 26, 2019 [Ex 1180], in a published decision. *Albert-Sheridan v. State Bar of Cal*. (*In re Albert-Sheridan*) (B.A.P. 9th Cir., Apr. 2, 2024, No. CC-23-1024-SFL).

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[5] *U.S. v. Mitchell* (D. Md. 2005) 405 F. Supp. 2d 602, 605 ("Though the precise contours of their philosophy differ among the various groups, almost all antigovernment movements adhere to a theory of a "sovereign" citizen. Essentially, they believe that our nation is made up of two types of people: those who are sovereign citizens by virtue of Article IV of the Constitution, and those who are "corporate" or "14th Amendment" citizens by virtue of the ratification of the 14th Amendment.")

The Ninth Circuit B.A.P. explained, "[w]hile Albert was in chapter 13, all debts owed to the State Bar were dischargeable under § 1328(a), including the Disciplinary Costs, because § 523(a)(7) does not apply in chapter 13. Accordingly, there is no question that § 362(a)(6) stayed the State Bar from attempting to collect **any** debts owed by Albert while she was in chapter 13. Any effort to collect these debts as a condition of reinstatement of Albert's law license, therefore, violated the automatic stay. The bankruptcy court erred in dismissing this claim under Civil Rule 12(b)(6)."). *Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)* (B.A.P. 9th Cir., Apr. 2, 2024, No. CC-23-1024-SFL) [pp. 23].

The Ninth Circuit B.A.P. also reversed dismissal of Ms. Albert's claim that the State Bar "violat[ed] Article 1, Section 17, of the California Constitution for excessive fines" issued as State Bar costs. *Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)* (B.A.P. 9th Cir., Apr. 2, 2024, No. CC-23-1024-SFL) [pp. 11].

Previously, on June 10, 2020, the Ninth Circuit explained in *Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)* (9th Cir. 2020) 960 F.3d 1188, 1193, that the civil discovery sanctions Ms. Albert was ordered to pay 10675 S. Orange Park Blvd. LLC was also discharged; "[a]s 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). Section 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. 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." Id.

Prior to 2018, Ms. Albert owned her own law office for nearly 18 years. She earned a BA in economics and JD in law from McGeorge School of Law. She held honors in moot court. She went to Austria to learn international law and received an A grade from retired U.S. Supreme Court justice Anthony Kennedy. (RT

12/21/22 Vol 4, 27-28, Ex 1099). She passed the Bar with High MBE scores (top 10% in the nation) which allowed for admission in Minnesota and D.C. if she chose to apply. (RT 12/21/22 Vol 4, 28-29, Ex. 1039).

After passing the Bar, Ms. Albert held out her own shingle while taking care of her disabled mother who passed in 2009. In 2004, she worked for the government mostly on securities fraud settlements to find money or assets the government could not find. (RT 12/21/22 Vol. 4, 31-32). By developing relationships with banks, she learned about the world of fraud and banking. (RT 12/21/22 Vol. 4, 33). Albert began assisting those being fraudulently foreclosed upon after the foreclosure crises. (RT 12/21/22 Vol. 4, 33-34). In January 2011, she filed *Yau v Deutsche Bank*, a putative class action case, stopping over 1,000 foreclosure sales, leading the way to making dual tracking illegal in California. (RT 12/21/22 Vol. 4, 34-35).

This is not the only time Ms. Albert's ethics positively affected the public. As teenagers, Melissa Keyes and Ms. Albert stuck to the truth amidst official pressure in the events leading to the abduction and murder of their school friend which led the way to federal legislation nationally barring prosecutors from destroying DNA evidence until all appeals are final. (RT 12/21/22 Vol. 4, 30-31).

Even in Ms. Albert's prior suspension, her efforts led to a Standing Order issued by the California Supreme Court on July 28, 2021, wherein the Court has directed the State Bar to promptly act to avoid violating federal law without waiting for the California Supreme Court to say something. (RT 12/21/22 Vol. 4, 36, Ex 1181).

From August 1, 2018, through September 27, 2018, Ms. Holton, Ms. Farfan, and other State Bar employees refused to give Ms. Albert any meaningful guidance on what tasks she could perform to avoid UPL charges. (RT 12/21/22 97-98, Ex. 1015-1019).

During her three-year suspension, she worked on developing artificial intelligence programs and demonstrating ATSCE 3.0 technology throughout the United States. (RT 12/21/22 19-20 Ex 1084, 1093). She used her algorithm to identify long Covid in September 2020 which Vice News aired. The news story generated 369,000 views on YouTube which can be verified at https://www.youtube.com/watch?v=RkfMTIiJ2nM&t=2s. (RT 12/21/22 20-26 Ex 1040, 1041, 1042, 1043, 1086).

Ms. Albert developed Artificial Intelligence as a Service technology and trademarked it ICanID, MasterMined, in addition to applying for a patent. It was developed in response to the overwhelming number of documents dumped on her from those using sovereign citizen tactics and the barrage of State Bar investigations. [Ex 1042, 1043].

B. <u>Chronology of Events that Led to the Discipline</u>

On 12/5/2000, Ms. Albert was admitted to the California State Bar. [Ex 1]

On 12/17/2014, Albert is admitted to CAED. [Ex 40, 1157-8]

On or about 2/14/18, the California Supreme Court suspended Albert. [Ex 6].

On 4/17/2018, a Notice of Disqualification was filed by Respondent and docketed in Ninth Circuit. [Ex 17].

On 4/24/2018, the Ninth Circuit filed an Order on the CAED Docket informing Judge Drozd of Ms. Albert's suspension by the California State Bar. [Ex 18 – two cases in header].

On 5/30/2018, the California State Bar Member page showed Ms. Albert was still suspended [Ex 1001].

On 10/02/2018, Ms. Noble wrote to the Ninth Circuit pleading to allow Ms. Albert to continue to represent her. [Ex 1129].

On 10/05/2018, Ms. Irma Escobar, a former client, wrote a letter to the Ninth Circuit in support of Ms. Albert remaining counsel for Ms. Noble, explaining Ms. Albert was set up by a group of other individuals with State Bar complaints:

> Unlike other people, I had a loan modification. However, Wells Fargo Bank told me not to make my payment on the loan modification because the amount stated was incorrect and they were going to correct. Instead of correcting it, they sold my home. At least this is the way Ms. Albert framed my new pleadings when she refiled my case for me. The court of appeal agreed and reversed my cause of action for fraud.
>
> However, Ms. Albert was no longer my attorney. I had filed a State Bar complaint against her. You may be wondering why I would write a letter of support for an attorney I wrote a State Bar complaint against and I am writing this to show that these State Bar complaints should not be taken seriously…
>
> …On or about approximately August 2014, Carlos Maroquin, Maegan Donovan Nikolic , Cindy Brown, George Olivo, , Sherri Moody, Sherry Hernandez, Soley, and others told us to write State Bar complaints against attorney Lenore Albert because she was harming homeowners... I had already had 3 attorneys prior to Lenore who just took my money and did nothing to represent me, and this is the kind of attorney that this group was out to expose and put an end to. However rather than a long list of incompetent attorneys or firms who have failed homeowners they were supposed to represent, it was solely Ms. Albert we were persuaded to go against. So, I filed a complaint. And sadly wish I hadn't. I had no idea it would cause such damage, or that we were targeting the wrong person. This group did nothing for homeowners but to spread disinformation while posing as advocates for us.
>
> [Ex 1061-1, 2]

On 11/10/2018, Ms. Albert took and passed the MPRE with scaled score of 88. [Ex 1048].[6]

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[6] The MPRE test question showed that if an attorney believes a Local Rule is not valid, it is ethical to violate it. [Ex 1049]

On 12/19/2018, the Ninth Circuit allowed Albert to proceed to represent Ms. Noble on appeal in Noble v Wells Fargo. [Ex 20].

> For the convenience of the court and in the interest of justice, Albert shall remain counsel of record for Brooke Noble in the related pending appeals, *Noble v. Wells Fargo,* Nos. 16-16362, 17-17294, and respond to any developments in those cases.
>
> [Ex 20]

On 2/26/2019, an Order of Discharge of Albert's debts in Bankruptcy Court was filed. [Ex 1180]

After Ms. Noble lost her appeal, Leslie Westmoreland spoke to Ms. Noble and decided they should proceed with filing a motion to vacate the *Kilgore v Wells Fargo Bank, NA* case in the Eastern District based on fraud on the court in Judge Ishii's court – something Albert presented to Shaw at the hearing. (RJN RT Vol 1:22-25, Exhibits 1029-1031, 1035-1037).

On or about 7/12/2019, Mr. Westmoreland sent the State Bar a Former Rule 1-311 Letter informing the State Bar that he was employing Ms. Albert to assist him [Ex 1022]. Ms. Albert worked for a few attorneys, including Leslie Westmoreland under Former Rule 1-311 of the State Bar. Mr. Westmoreland is located in Fresno, California and as such, the work that led to the State Bar charges in this matter were two cases that involved him located in Fresno, California. A year earlier, Ms. Albert had sent Ms. Holton and Ms. Farfan multiple written requests to clarify what work Ms. Albert could perform under Former Rule 1-311 before working with Westmoreland, but the State Bar refused to give Ms. Albert a meaningful substantive response. Instead, it turned into a cat fight with one of the most powerful state agencies in California, the United States and even the world. [Ex 1015-19].

On 8/18/2019, Ms. Albert filed a motion to vacate papers for Ms. Noble in Kilgore v Wells Fargo Bank, N.A. and notified CAED Judge Ishii of her

suspension in her declaration in support thereof [Ex 22, 23] under Westmoreland's supervision. [Ex 1029, 1030, 1031, 1035, 1037]. Albert Notified the Court contemporaneously with the motion that she was suspended by the California State Bar and expected the CAED Court to issue an OSC as to why she should not be suspended before Judge Ishii. [Ex 23 p. 9-11].

> 34. I represent Brooke Noble in the case of Noble v Wells Fargo for the wrongful death of her mother and emotional distress caused which is on appeal before the Ninth Circuit.
>
> 35. During the appeal I was suspended (unjustly) by the California State Bar for (ironically) violating a court order by not paying civil discovery sanctions in an Unlawful Detainer action.
>
> …
>
> 37. I learned that I could bring a motion for fraud on the court to this Court's attention and am doing so understanding I will probably have an OSC issued against me to kick me out of this District, too. So, I have added Leslie Westmoreland as representation for Brooke Noble also.

[Ex 23 p. 9-10]

On 12/23/2019, CAED Judge Ishii denied the motion to vacate based on fraud on the court. In his Order, he acknowledged Ms. Albert's State Bar suspension, but he did not suspend Ms. Albert, or hold she was automatically suspended in the CAED, or issue an OSC in the Order. [Ex 31]. Judge Ishii testified at trial that he did not request Albert's membership in the CAED to be suspended nor did he issue an OSC. [RT Vol. 2:200-09 12/14/22].

On 01/29/2020, just before Ms. Albert's trial against David Seal was ready to go forward, the State Bar filed two more Notice of Disciplinary Charges, purporting violation of probation terms and conditions, including failure to pay civil Discovery Sanctions to 10675 S. Orange Park Blvd LLC. Those cases almost went to trial but then were abated. Former clients and others wrote the State Bar. (SBC-20-N-00044-DGS; SBC-20-O-00045-DGS). These cases and the suspension

were used against Ms. Albert to characterize her as an unethical attorney for a defense jury verdict in attorney David Seal's favor.

On 5/03/2020, Mr. Nathan Koshak told the California State Bar "I do not think the State Bar should prosecute her because it has been apparent that many of these charges result from extralegal tactics used by professional opponents to hamper or hinder her ability to defend clients. Now I am a scientist not a lawyer, but this proceeding looks to be some form of legal bullying from my vantage point." [Ex 1057]

On 5/03/2020, Mr. Norman Koshak wrote the California State Bar "It is not so often you find an individual who look at the clients needs before her own. Losing her hurts the many who need her talents." [Ex 1058]

On 5/20/2020, Ms. Irma Escobar wrote to the California State Bar begging for the State Bar to reinstate Ms. Albert's license because she needed representation, but the State Bar did not grant Ms. Escobar her wish. [Ex 1060]

On 6/10/2020, the Ninth Circuit Court of Appeals published the decision in Ms. Albert's favor that the plain reading of the statute showed discovery sanction payable to 10675 S Orange Park Blvd LLC were discharged. [Ex 1169]

On 10/10/2020, Anthony Troy Williams, self-professed sovereign citizen, of the Common Law Offices of California, one of the people who assisted others like complainants Cindy Brown and attorney David Seal to solicit State Bar complaints against Ms. Albert is found guilty of committing 32 RICO acts and sentenced in Hawaii. [Ex 1011, 1104-1110].

A few years later, in February 2021, Westmoreland had another case in CAED that he wanted to work on with Albert, the Grewal matter. Westmoreland lived in Fresno and a local business owner that he knew was sued in CAED for ADA violations and needed representation. So, Albert agreed to work with Westmoreland. Again, under Westmoreland's supervision she prepared an Answer for Grewal and filed it in the US District Court. [Ex 34, 1157, 1171-76]. Prior to

that Albert had applied for membership to the State Bar in Michigan and had requested a certificate of good standing after checking to make sure her membership in the CAED was still in good standing. [Ex 40, 1071-73].

An operations Supervisor unilaterally made the decision to change Albert's membership status to inactive after looking up her Bar membership. This was done without a court Order and Albert had nothing she could appeal. The Operations Supervisor, Roxanne Gonzalez appeared at trial and confirmed she made this decision without a judge order and furthermore she did it based on Local Rule 180 – admissions which operations staff oversees. [RT Vol 1:170-72 (12/13/22)].

Albert tried to reason with the clerk without success then wrote a letter to the US District Judge presiding over the Avalos matter to inform the Court immediately as to what happened. The Court then issued an OSC not as to reciprocal suspension which had now entered 3 years on a 30-day suspension, but to determine her admission. [Ex 40, 1157, 1008-9, 1176, 1173].

On 2/12/2021, Albert confirmed her membership was in good standing in CAED and requested a Certificate in Good Standing for her application to the Michigan State Bar [Ex 40].

On or about 2/19/2021, Albert prepared a fee agreement and filed an Answer in Avalos v Gonzalez (Grewal) in CAED sitting before Judge McAuliffe with attorney Leslie Westmoreland [Ex 34].

On 2/24/2021, the United States Supreme Court issued Ms. Albert's Certificate of Good Standing as a Member of that Court. [Ex 1047].

On 3/1/2021, Roxanne Gonzalez, CAED Operations Supervisor switched Ms. Albert's CAED membership to inactive. [RT 170-72 (12/13/22), Ex 40].

On 3/2/2021, Albert received an Email from Victoria Gonzalez confirming Judge Ishii did not suspend Albert's license to practice in federal court. [Ex 1173].

On 3/3/2021, Ms. Albert sends a letter to Judge McAuliffe and Judge Mueller, notifying them of her suspension. [Ex 35]

On 3/05/2021, in response to Ms. Albert's letter, the Chief Judge passed the issue to Judge McAuliffe who ordered an Order to Show Cause in the CAED. (It was as to Admission – not Suspension). [Ex 36]. The OSC which was later discharged. [Ex 41]

On 3/09/2021, Ms. Albert took and passed the California State Bar Ethics School. [Ex 1051]

On 4/20/2021, Ms. Albert obtained a loan from Mr. Scott Schales and paid the State Bar $37,500.00 in State Bar costs plus $20,000.00 to the State Bar Client Security Fund for reinstatement of her license.

On 5/5/2021 the California State Bar reinstated Albert's License [Ex 1168].

In retaliation for having the Court force reinstatement of Ms. Albert's license State Bar Investigator sent Ms. Albert a letter on 5/11/2021 informing her that the State Bar has opened an investigation for unauthorized practice of law ("UPL") in federal court and for obtaining a loan from Mr. Schales in order to pay the State Bar to reinstate her license. [Ex 1162, 1146 – note OCTC and Hom does **not** include this in their Report or prior Investigation].

On 5/12/2021, the following day, the California Supreme Court modified its prior disciplinary orders. [Ex 1181].

On 5/12/2021, CAED Judge McAuliffe discharged the OSC. [Ex 41]

2/26/2022 the State Bar announces the State Bar data breach on its own website. [Ex 1143]

On 3/1/2022 Ms. Albert emailed the State Bar asking what kind of information was released in the data breach. [Ex 1144].

On 3/2/2022 Ms. Bassi sent an email to the State Bar informing the State Bar that Ms. Albert was going to sue the State Bar for the data breach. [Ex 1145].

On 3/2/2022 Mr. Hom and CAED Operations Supervisor Roxanne Gonzalez exchanged emails about Ms. Gonzalez's inability to pinpoint the day she looked up Ms. Albert's State Bar membership and switched her CAED status to inactive as a

result. [Ex 1008-1009] (Mr. Hom's email asserts he called Ms. Gonzalez on 2/24/2022 but no phone record substantiated that assertion and Ms. Gonzalez could not recall what date she spoke to Mr. Hom when she testified at the State Bar hearing. [RT Vol. 1:173]

> Q. …You were interviewed by Benson Hom in this case, correct?
>
> A Me?
>
> Q Yes.
>
> A I don't know who Benson Hom is.
>
> Q Okay. Did you receive a call from someone at the State Bar at the end of February 2022, regarding this case?
>
> A Somebody from the State Bar did call me. As far as when, I'm not sure.
>
> [RT Vol 1:173]

On 3/4/2022 Mr. Hom tries to contact Mr. Grewal and Ms. Gilbert-Bonnaire (not Ms. Noble) with no success. [Ex 1010].

On 3/10/2022 the State Bar created an Investigation report (unsigned) to support this disciplinary proceeding. [Ex 1146].

On 3/14/2022, Ms. Albert submitted tort claim forms to the State Bar on behalf of several people who were victims of the State Bar data breach. [Ex 1147]

On 3/18/2022, Ms. Albert filed a putative class action against the California State Bar for the data breach wherein the State Bar failed to adequately secure the identity of the approximate 191,000 State Bar members under confidential State Bar investigation (*John Roe v State Bar of California*, et al). [Ex 1148]

On 4/29/2022, the California State Bar filed public disciplinary charges against Ms. Albert alleging she violated the Local Rules of the United States District Court for the Eastern District of California ("EDCA"). Local Rule 180

and/or Local Rule 184 merely instructs an attorney who is suspended to "notify" the Court. In each case Albert notified the Court. The Ninth Circuit was notified in the Noble matter, which was then sent down to Judge Drozd of the CAED on April 17, 2018. (Ex 1164, 1155).

4/02/2024, the Ninth Circuit BAP published an opinion holding that the State Bar violated the automatic stay under 11 U.S.C. § 362 and Ms. Albert can maintain her civil rights cause of action that the State Bar costs were excessive.

4/03/2024, Ms. Albert received a Letter from the U.S. Supreme Court demonstrating that any suspension or disbarment would be premature under the Rules because suspension or disbarment is not automatic based on a State Bar suspension. It is being submitted herewith.

In sum, after the State Bar data breach complaint was filed, the State Bar decided to pursue Ms. Albert for violating Rule 180 in the Eastern District. That Notice of Disciplinary Charges ("NDC") was dismissed for failure to state a charge. The State Bar refiled in June 2022 adding Rule 184. [SANDC Ex 1184]. It proceeded to trial on December 13, 2022. [Ex 1142-1149, 1158, 1167-1169].

At all times mentioned in the Notice of Disciplinary Charges ("NDC"), the Eastern District had shown Ms. Albert's membership active and in good standing when each paper at issue was filed. Ms. Albert had a printout dated February 12, 2021, as proof. (Exhibit 40 p. 14).

As soon as Albert learned the Bar was filing charges she sent a letter to the Eastern District requesting they amend their Local Rules because they are not consistent with US Supreme Court law which Albert was educated on during her first suspension in response to her Notice of Disqualifications that she filed in her cases before each Judge presiding over an open case in the Federal Courts. To date the CAED has not amended its Local Rule 180 or 184 to clarify that in order to be consistent with federal law, no suspension is 'automatic' based on a State Bar suspension. [Ex 1034, 1038].

Local Rule 180 provides that to be admitted as a member of the U.S. District Court for the Eastern District of California, the attorney must be admitted and in good standing with the California State Bar. On the other hand, Local Rules 184 provides that an attorney who is suspended by any court must notify "the court" of his or her suspension immediately. [Ex 8-13].

No client, opposing counsel or Judge complained about Albert's work in Kilgore or Avalos. [Ex 1129, 1160, 1163, 1069-70]. Although there was no harm done to the public, the clients or the court, the State Bar Review Department found Ms. Albert should be disbarred due to its willful blindness of the mandates under federal law before a reciprocal suspension can be issued.

"[S]uspension from federal practice is not dictated by state Rules." *In re Poole,* 222 F.3d 618, 622 (9th Cir. 2000). Our Ninth Circuit explained "[t]he Rules in *Theard v. United States,*354 U.S. 278, 77 S.Ct. 1274, 1 L.Ed.2d 1342 (1957), required a hearing prior to disbarment…and therefore prevented the local Rules from taking effect automatically." *United States v. Mouzin* (9th Cir. 1986) 785 F.2d 682, 704 fn. 6. "Without its observance no one would be safe from oppression wherever power may be lodged." *Ex Parte Robinson,* 86 U.S. 505, 512-13 (1873)

Because Ms. Albert's conduct solely concerned the practice of law in a federal Court where she was already a member, the State Bar acted with willful blindness in suspending Ms. Albert's license and recommending disbarment because neither Roxanne Gonzalez nor the CAED had the authority to automatically suspend Ms. Albert's membership in the CAED based on a State Bar suspension. Furthermore, Ms. Albert did not file further papers on behalf of Mr. Grewal after she learned Ms. Gonzalez changed her status to inactive.

The State Bar, nevertheless, recommended disbarment and interim suspension by finding that these facts demonstrated by clear and convincing evidence that Ms. Albert (1) violated EDCA Local Rules by failing to promptly notify the Court of both of her suspension; (2) committed unauthorized practice of

law (UPL); and (3) held herself (advertising) by putting her SBN 210876 next to her name and the use of "Esq." while suspended by the State Bar. (St. Bar Opn. 04-03-2023). Then the Rev. Dept. ruled Ms. Albert should be disbarred. (Rev. Dept. Opn. 03-11-2024).

C. The Charges

This is a case of first impression. The State Bar Office of Chief Trial Counsel ("OCTC") initiated an investigation into and then charged Ms. Albert with six counts of misconduct in two federal civil lawsuits while Ms. Albert's membership in that federal court showed it was still active. OCTC charged Ms. Albert with unauthorized practice of law ("UPL") in federal court and violating local federal rules of court in violation of Rule 3.4(f), Rule 5.5(a), Bus & Prof Code § 6125, Bus & Prof Code § 6126, Bus & Prof Code §6068(a) and Bus & Prof Code § 6106.

The State Bar recommended suspension for Ms. Albert even though Albert's membership in federal court was active, determining as a matter of law under federal local rules she was automatically suspended while working under the supervision of attorney Leslie Westmoreland under Former Rule 1-311.

The Review Department increased culpability finding Ms. Albert culpable of all charges, recommending disbarment and issuing an interim suspension.

On May 8, 2024, the State Bar Office of Chief Trial Counsel ("OCTC") requested the Review Department Opinion published.

D. The Recommendation and Findings

In this matter, the California State Bar hearing department recommended an 18-month actual suspension on April 3, 2023. (SB Opn. 04-03-23). On March 11, 2024, the California State Bar Review Department recommended Disbarment with an interim suspension which began on March 14, 2024. (Rev. Dept. Opn. 03-11-2024).

The State Bar hearing department found Ms. Albert's conduct violated the California Rules of Professional Conduct, the State Bar Act, and that she had an honest but unreasonable belief she was not committing UPL. As such, he did not find that Ms. Albert's conduct rose to the level of moral turpitude or warranted disbarment. (SB Opn. 04-03-2023 p. 32-33).

The State Bar Hearing Department did not find OCTC proved that Ms. Albert was committing unauthorized practice of law ("UPL") while suspended regarding settlement negotiations in Avalos v Grewal. This was an act not charged in the SANDC, thus Ms. Albert was not provided with a fair hearing on this issue. The Review Department Recommended Disbarment and Interim Suspension

However, the Review Department found Ms. Albert entered into settlement negotiations and as such it was "in California" and an act of UPL.

The State Bar Review Department found that Ms. Albert acted with willful blindness to support the moral turpitude charge; and her conduct was indifferent as she continued to argue that the federal Court could not automatically suspend her license without due process afforded to her – regardless of how the Local Rules of the Eastern District are interpreted or implemented. (Rev. Dept. Opn. 03-11-2024 p. 25-26).

The State Bar hearing department held that the constitutional issues would not be considered (because the State Bar does not consider constitutional issues during the disciplinary process). (SB Opn. 04-03-23 p. 23, "Whether the automatic suspension is unconstitutional, as Respondent claims, is not before this Court.").

On Review, the State Bar used the constitutional argument as an aggravating factor of indifference warranting disbarment.

> Here, Albert was willfully blind to the EDCA Local Rules that prohibited her appearances in Kilgore and Avalos. Albert shifted responsibility to Judge Ishii for not issuing an O.S.C. and blamed EDCA staff for inappropriately changing her EDCA status once they

> learned she was suspended. At trial, Albert testified that she did not believe she misinterpreted either EDCA L.R. 180 or EDCA L.R 184. She still holds that view. Albert has consistently demonstrated indifference towards her misconduct. Accordingly, we find moderate weight is appropriate for this factor.
>
> (Rev. Dept. Opn. 03-11-24 p. 29-30).

On Page 26 of the State Bar Review Department Opinion filed 03-11-2024, the Court opined.

> We reject Albert's argument on review that In the Matter Carver, supra, 5 Cal. State Bar Ct. Rptr. 427 and other moral turpitude/UPL cases are inapplicable because those cases dealt with UPL in "state Court. " Here, the EDCA Local Rules are clear who can and cannot practice in the EDCA. Attorneys must be "active members in good standing of the State Bar of California." (EDCA L.R. 180(a).) Due to her suspensions by the California Supreme Court, Albert was not an active member in good standing while those suspensions were in effect. She was required to promptly report her suspensions. Hence, while suspended in Albert I and Albert II, Albert was prohibited from practicing in the EDCA by operation of the EDCA's Local Rules.

Whether the federal courts should treat the State Bar as an arm of the California Supreme Court, cloaked in immunity like a state agency, has been up for much debate. In December, the Ninth Circuit sat en banc ruling that it is a state agency (with dissent). *Kohn v. State Bar of Cal.* (9th Cir., Dec. 6, 2023, No. 20-17316).

State Bar “administrative law doctrines must take account of the far-reaching influence of agencies and the opportunities such power carries for abuse.” *Kisor v. Wilkie* (2019) 139 S. Ct. 2400, 2423.

E. Prior Disciplinary Matters

The first disciplinary matter, the OCTC failed to prove the most egregious charges. The State Bar used its power to collect a debt for opposing party while that case was pending in Koshak v 10675 S Orange Park Blvd LLC. Ms. Albert was found culpable of "violating" three VOID discovery sanctions orders in the related UD action 10675 S Orange Park Blvd LLC v Koshal even though California case precedent clearly found such orders void in violation of due process in three ways to Sunday. *Sole Energy Co. v. Hodges* (2005) 128 Cal.App.4th 199, 202 ("defendants were denied due process because sanctions for the abuse or misuse of discovery may not be awarded ex parte."); *Trail v. Cornwell* (1984) 161 Cal.App.3d 477, 483, fn. 4 (" Judge Janes' order and judgment were void because he had been properly disqualified pursuant to section 170"). Albert received a 30-day suspension. [Ex 6]

The second disciplinary matter, the OCTC failed to prove the most egregious charges again. Ms. Albert was found culpable of "disobeying" a Court order by sending Fin City Foods a check in the amount of $75.00 instead of $47.00 for civil discovery sanctions. (Paying more is not significant harm to opposing counsel or opposing counsel's client). Ms. Albert was also found culpable as being "incompetent" for the work of an outside attorney Jean-Marc Zimmerman of Zimmerman, Weiser & Paray, LLP located at 226 St. Paul Street, Westfield, NJ 07090 who drafted and filed Dr. Nira Schwartz Woods patent infringement complaint against AT&T in the U.S. District Court of New Jersey. No expert testified that Mr. Zimmerman's patent infringement complaint was inadequate and there was no adverse ruling in that matter. The record showed that Dr. Woods voluntarily dismissed that lawsuit. The Bar lacked jurisdiction or standing to discipline Ms. Albert based on Mr. Zimmerman's practice. *In re Application of McCue* (1930) 211 Cal. 57, 66 ("would be acting entirely without right and beyond its jurisdiction.").

As a result, after spending approximately 100 hours representing Dr. Woods for one year as general counsel vetting patent litigation counsel, the State Bar ordered Ms. Albert to pay back 100% of the fees earned from Dr. Woods in the amount of $20,000.00, some of which Dr. Woods asked Ms. Albert to use to cover costs of the fraud lawsuit Ms. Albert represented Dr. Woods wherein Ms. Albert was able to obtain a favorable jury verdict in Dr. Woods favor and paid her 100%. The Complaint of abandonment as to the fraud case was not pursued.

V. LEGAL ARGUMENT

1. As to Culpability in General

1. Burden of Proof

"The burden of proof was on the accuser." (*Golden v. the State Bar* (1931) 213 Cal. 237, 247.). "In State Bar proceedings guilt must be established by convincing proof to a reasonable certainty, and reasonable doubts must be resolved in favor of the accused. (Emslie v. *State Bar* (1974) 11 Cal.3d 210, 226 [113 Cal.Rptr. 175, 520 P.2d 991].)" *Price v. State Bar* (1982) 30 Cal.3d 537, 547.

"Under the clear and convincing standard, the evidence must be so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind." *Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1158 (internal quotes omitted).

Factual findings by the State Bar Hearing Department, such as the strength of the attorney's character witnesses, trump the Review Department findings in evaluating "conflicting statements because they could observe the demeanor of the witnesses and the character of their testimony." *Arden v. State Bar* (1987) 43 Cal.3d 713, 725.

On the other hand, the State Bar OCTC cannot meet its burden of proof with witnesses who are "colored by self-interest" or give conflicting testimony. *Hildebrand v. State Bar* (1941) 18 Cal.2d 816, 834.

Finally, the Court must consider it favorable to the attorney when "[t]here is no contention that petitioner failed to give proper attention and care to the cases and his client's interests." *Hildebrand v. State Bar* (1941) 18 Cal.2d 816, 834.

2. The State Bar Has Acted Without or In Excess of Jurisdiction

In this case, the State Bar has attempted to regulate the practice of law in federal courts by disciplining Ms. Albert for practice in federal court while her membership in that federal court remained active, but her state bar membership was purportedly suspended at the time.

It is of utmost importance in society to keep bar membership between state and federal courts separate for trial lawyers. For example, it would have been nearly impossible for lawyers in the NAACP to forge forward with certain civil rights cases in the South if a state court disbarment or suspension could automatically halt a lawyer from continuing to practice law in all courts, both state and federal. Due to the hostility (or fear of losing their license to practice law) it was out-of-state attorneys that represented oppressed minorities in the South to push civil rights forward. See Pollitt, Counsel for the Unpopular Cause: The "Hazard of Being Undone, " 43 N. C. L. Rev. 9 (1964); Pollitt, Timid Lawyers and Neglected Clients Harper's Magazine, Aug., 1964 at 81-86; Frankel The Alabama Lawyer. 1954-64: Has the Official Organ atrophied? 64 Colum. L. Rev. 1243 (1964).

The out-of-state lawyers had to push through in the federal courts. See Note, Judicial Performance in the Fifth Circuit 73 Yale L. J. 90 (1963); Wright, The Overloaded Fifth Circuit: A Crisis in Judicial Administration 42 Texas L. Rev. 949 (1964); S. Fingerhood The Fifth Circuit Court of Appeals in Southern Justice 214(L. Friedman, ed. 1965).

Civil rights would never have been able to progress as far as it has if the federal court system followed the local state bar membership status and

automatically shut its doors to those the state bar suspended, disbarred, or refused to admit.

The State Bar Hearing Department recognized that The State Bar Act does not regulate practice before United States courts, citing, *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 130; see also, *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 74.

Nevertheless, the State Bar Review Department found that Ms. Albert violated various statutes under the State Bar Act, including Cal. Bus. & Prof. Code § 6068(a), Cal. Bus. & Prof. Code § 6106, Cal. Bus. & Prof. Code § 6124, and Cal. Bus. & Prof. Code § 6125. (Rev. Dept. Opn. Pg. 2-3).

The Review Department attempted a run around by finding emails about a federal court case is practice "in California" under the State Bar Act. (Rev. Dept. Opn.).

California Rules of Professional Responsibility, Rule 3.4 and Rule 5.5 were bootstrapped to a violation under the State Bar Act, constituting other regulations the State was barred from applying to members practicing in federal court. (*In re McCue* (1930) 211 Cal. 57, 66.).

The State Bar's entire case for UPL was aimed at *two federal Court cases* that the State Bar Act does not cover. As such, the entire disciplinary proceeding, Recommendation, Opinion, and Order were erroneously made in excess of or without jurisdiction to do so, warranting review and reversal.

The California Legislature created the State Bar by enacting the State Bar Act in 1927 for the regulation of admission and discipline of State Bar members.

In 1929, the California Supreme Court found that the State Bar does not have jurisdiction to discipline judges. The Court reasoned Judges hold constitutionally created offices and can be impeached. The State Bar, on the other hand, was not constitutionally created but created by the California Legislature. *State Bar v. Superior Court* (1929) 207 Cal. 323, 338, 340-341.

The State Bar was not added to the California Constitution until the 1960s.

In 1930, the California Supreme Court held that "[t]he State Bar Act and other statutes enacted for the purpose of regulating the practice of law in this state are applicable to our state Courts only." (*In re McCue* (1930) 211 Cal. 57, 66.) (emphasis added).

In 1998, the California Supreme Court reiterated again that "The Act does not regulate practice before United States Courts." *Birbrower, Montalbano, Condon Frank v. Superior Ct.* (1998) 17 Cal.4th 119, 130. "There are certain exceptions to section 6125's broad prohibition. *Id*. at 129. For example, section 6125 does not prohibit the practice of law before federal Courts." *Id*. at 130 (*citing*, *Cowen v. Calabrese*, 230 Cal.App.2d 870, 872-73).

In 2006, when the State Bar ignored this precedent and took an attorney's office files related to his federal cases, the California Court of Appeal ordered the State Bar to return those files reiterating California Supreme Court precedent that "state law cannot restrict the right of federal Courts and agencies to control who practices before them…Once federal admission is secured, a change in circumstances underlying state admission . . . is `wholly negligible' on the right to practice before a federal Court". *Benninghoff v. Superior Court of Orange County* (2006) 136 Cal.App.4th 61, 74

On December 5, 2000, Ms. Albert became a member of the California State Bar. (Ex 1).

On December 17, 2014, Ms. Albert became a member of the U.S. District Court for the Eastern District of California ("CAED"). On the date she was admitted, Ms. Albert was a member in good standing with the California State Bar.

Ms. Albert's membership showed active on the CAED attorney membership page of its website until Operations Supervisor, Roxanne Gonzalez, unilaterally decided to switch Ms. Albert's membership from active to inactive based on her

suspension of her membership in the California State Bar on or about March 1, 2021.

From August 18, 2019, to March 1, 2021, the State Bar alleged Ms. Albert violated the State Bar Act by practicing law in the CAED federal court because the California Supreme Court suspended her license. The conduct consisted of two separate instances where Ms. Albert filed a motion to vacate and supporting papers in the federal case of *Kilgore v Wells Fargo* in 2019; and filing an answer in the case of *Avalos v Grewa*l in 2021 while Ms. Albert's membership in that federal court remained active.

The State Bar tried to do an end run on Ms. Albert's eligibility by "interpreting" the CAED Local Rules to mean she was "automatically" suspended when such would be unconstitutional. Without a federal court Order finding Ms. Albert actually practiced UPL in federal court, the State Bar acted without or in excess of its jurisdiction by pursuing and disciplining Ms. Albert under all counts in the SANDC.

Hence, on April 3, 2023, the State Bar Court acted without or in excess of jurisdiction by applying the State Bar Act, Rule 3.4(f) and Rule 5.5(a) to the practice of law in federal court while Ms. Albert's membership status still showed active in that court, and as such, recommending an 18-month suspension of Ms. Albert's license to practice law. (SB Rec.).

On March 11, 2024, the State Bar Review Department acted without or in excess of jurisdiction by applying the State Bar Act, Rule 3.4(f) and Rule 5.5(a) to the practice of law in federal court while Ms. Albert was a member in good standing in that court, and as such, recommending disbarment with an interim suspension of Ms. Albert's license to practice law. (Rev. Dept. Opn.).

3. Office of General Counsel

Furthermore, the State Bar Office of General Counsel ("OGC"), Suzanne Grandt, Esq. acted without or in excess of jurisdiction by telephoning attorney

Kamren Javendal, opposing counsel in *Noble v Wells Fargo* to investigate Ms. Albert's work and accuse Ms. Albert of UPL in the Ninth Circuit. OGC Suzanne Grandt was not authorized to conduct this State Bar investigation into Ms. Albert's practice in federal court because she was not in the Office of Chief Trial Counsel department. Bus. & Prof. Code, § 6044 ("The chief trial counsel, with or without the filing or presentation of any complaint, may initiate and conduct investigations")

4. **Office of Chief Trial Counsel**

Additionally, on April 29, 2022, the State Bar Office of Chief Trial Counsel, Cindy Chan, Esq. acted without or in excess of jurisdiction by maliciously filing Notice of Disciplinary Charges publicly accusing Ms. Albert of violating the State Bar Act for practice in federal court while her membership still showed active in that federal court. Ms. Chan was not authorized to conduct this State Bar investigation or file these charges because it was solely based on federal practice. *In re McCue* (1930) 211 Cal. 57, 66

5. **Broadening UPL to Include Practice in Federal Court Was an Unjustified and Unpredictable Break in the Law**

Broadening the concept of UPL to include practice in federal Court while Ms. Albert's membership was active in that federal court was an "unjustified and unpredictable break" in state precedent. *Benninghoff v. Superior Court of Orange County* (2006) 136 Cal.App.4th 61, 74.

Precedent stretching back to the past century consistently held that the State Bar Act only applied to state court proceedings.

Although Professional Rules of Conduct are regulations, the State Bar used Rule 5.5(a) to find Ms. Albert culpable of committing UPL alongside Bus & Prof Code § 6068(a), Bus & Prof Code § 6125, and Bus & Prof Code § 6126 (or Bus & Prof Code § 6124) in the State Bar Act. *Zauderer v. Office of Disciplinary*

Counsel (1985) 471 U.S. 626, 646, fn. 13 (“Rules of Professional Conduct eschew all regulation[s]”).

The clear rule was laid out by the California Supreme Court in 1930: "[t]he State Bar Act and other statutes enacted for the purpose of regulating the practice of law in this state **are applicable to our state Courts only**." (*In re McCue* (1930) 211 Cal. 57, 66.) (emphasis added).

The only conduct Ms. Albert is charged with is practice in federal court while her membership in that federal court showed it was active on the Court’s website.

By using the State Bar Act and other regulations such as Rule 5.5(a) to find Ms. Albert committed UPL, the State Bar impermissibly broadened UPL to regulate the practice of law in federal court, making culpability in general reversible error.

6. <u>State Bar Was Willfully Blind to Ms. Albert’s Constitutional Rights</u>

The State Bar was willfully blind to Ms. Albert’s constitutional right to due process by holding the federal court local rules could automatically suspend Ms. Albert’s license based on a state court suspension.[7]

Ms. Albert contends interpreting the federal court’s Local Rules to mean that Ms. Albert’s membership in the federal court was automatically suspended upon the state court suspension was outside the State Bar’s expertise and unconstitutional.

“Despite the mandatory nature of the language of [CAED Local Rule 180 or 184], the Supreme Court has held that an attorney disbarred from a State Bar

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[7] The Hearing Dept. refused to consider the constitutional issue. (Saab Opn. 4-03-2023 p. 23). The Review Dept. stated Ms. Albert’s argument was “unpersuasive.” (Rev. Dept. Opn. P. 18). Both departments erred warranting review.

association may not be summarily disbarred from practice before a federal Court even if the State Bar membership was the predicate upon which the lawyer was admitted to the federal Court." *United States v. Hoffman* (9th Cir. 1984) 733 F.2d 596, 599.

Here, the District Court properly admitted Ms. Albert on December 17, 2014, while she was an active member of the California State Bar. [Ex 40].

Once admitted, the United States Supreme Court has found that an attorney "is not automatically sent out of the federal Court by the same route." *Theard v. United States* (1957) 354 U.S. 278, 281

The Ninth Circuit explained "'[o]nce federal admission is secured, a change in circumstances underlying *state admission* . . . is wholly negligible on the right to practice before a federal Court.'" *Gallo v. United States District Court for the District of Arizona* (9th Cir. 2003) 349 F.3d 1169, 1184. (citations omitted).

"[S]uspension from federal practice is not dictated by state Rules." *In re Poole,* 222 F.3d 618, 622 (9th Cir. 2000). Our Ninth Circuit explained "[t]he Rules in *Theard v. United States,*354 U.S. 278, 77 S.Ct. 1274, 1 L.Ed.2d 1342 (1957), required a hearing prior to disbarment…and therefore prevented the local Rules from taking effect automatically." *United States v. Mouzin* (9th Cir. 1986) 785 F.2d 682, 704 fn. 6. "Without its observance no one would be safe from oppression wherever power may be lodged." *Ex Parte Robinson,* 86 U.S. 505, 512-13 (1873)

A reciprocal suspension or disbarment based on a State Court Order cannot be automatic or "forthwith" because "ample opportunity must be afforded to show cause why an accused practitioner should not be disbarred. If the accusation rests on disbarment by a state Court [] it is not conclusively binding on the federal Courts." *Theard v. United States* (1957) 354 U.S. 278, 282.

To comply with the mandates of due process prior to suspension or disbarment, "[t]he attorney "must in advance be informed of the purpose of the proceeding and of the grounds therefor and be afforded a fair opportunity . . . to

produce evidence in refutation or rebuttal." *In re Corrinet* (9th Cir. 2011) 645 F.3d 1141, 1145 (citation omitted).

The *Selling* factors considered by the federal court prior to issuing a reciprocal suspension or disbarment can be boiled down to: "(1) a deprivation of due process; (2) insufficient proof of misconduct; or (3) grave injustice which would result from the imposition of such discipline." *In re Kramer* (9th Cir. 2002) 282 F.3d 721, 724. (See also, *In re North* (9th Cir. 2004) 383 F.3d 871, 875).

For example, in 1935, Mr. Theard, an attorney, forged a promissory note, took the money, and was prosecuted for it. He pleaded insanity. The State Bar at that time did not disbar Mr. Theard for the forgery due to his infirmity. Instead, the State Bar disbarred him in 1954, initiating the proceedings in 1950 – two years after Mr. Theard was cured of his mental infirmities. (*Theard v. United States* (1957) 354 U.S. 278, 280 ("The state proceedings thus establish that petitioner was disbarred in 1954 for an action in 1935, although at the time of the fateful conduct he was concededly in a condition of mental irresponsibility so pronounced that for years he was in an insane asylum under judicial restraint.").).

Mr. Theard was disbarred by a Court Order issued by the Louisianna Supreme Court.

The United States District Court of the Eastern District of Louisianna struck Mr. Theard from its rolls based on the State disbarment order. The Fifth Circuit Court of appeals affirmed the Order of the district Court.

In *Theard*, a district Court's local rule provided that an attorney "will be forthwith suspended" if that attorney was disbarred in another jurisdiction. [**Ex 61**].

Mr. Theard petitioned the United States Supreme Court.

The United States Supreme Court reversed the disbarment by the U.S. District Court explaining, "[t]he short of it is that disbarment by federal Courts does not automatically flow from disbarment by state Courts." *Theard v. United States* (1957) 354 U.S. 278, 282.

The case was remanded directing the lower Court to apply the *Selling* factors inferring that a reciprocal disbarment was unjust because Mr. Theard had been practicing law for the past six years without incident. (See, *Theard v. United States* (1957) 354 U.S. 278, 282. See, *Selling v. Radford* (1917) 243 U.S. 46.

The "Court reaffirmed its decision that a state disbarment is not conclusively binding on a federal Court and that an attorney facing disbarment from a federal Court is entitled to procedural due process." *United States v. Hoffman* (9th Cir. 1984) 733 F.2d 596, 599.

"Beyond all question, when admission to the Bar of this Court is secured, that right may not be taken away except by the action of this Court." *Selling v. Radford* (1917) 243 U.S. 46, 48.

Ms. Albert's membership status in the CAED remained active until March 1, 2021, when Roxanne Gonzalez switched it to inactive. At that time, Ms. Albert no longer filed any papers for others in the CAED until Ms. Gonzalez switched Ms. Albert's status back to active on May 12, 2021.

The Ninth Circuit in *In re Kramer* (9th Cir. 2002) 282 F.3d 721 explained how the Central District of California's attempt to summarily disbar an attorney based on a State Bar disbarment was reversed in *Kramer I* for invoking a Local Rule (similar to Eastern District Rule 184) which failed to follow *Selling* and *Theard*. The U.S. Supreme Court prohibits a federal Court from automatically issuing a reciprocal suspension without first providing due process to the member; to do so offends traditional notions of due process - and is unconstitutional.

These cases clearly indicate that federal courts *cannot* automatically suspend or disbar an attorney based on a state bar suspension or disbarment.

Yet, the State Bar Hearing Department and Review Department refused to consider case precedent and used the OCTC's unsupported version of what the law is on this issue. The Review Department found Ms. Albert's constitutional arguments "unpersuasive." (Rev. Dept. Opn. P. 18).

Fed. R. Civ. Proc. Rule 83 granted the CAED the authority to create Local Rules but the "local rule must be consistent with—but not duplicate—federal statutes and rules." Fed. R. Civ. Proc. Rule 83(a).[8]

"[T]he legislative grant of power is not a discretionless or roving commission for the district Court to bludgeon violators of local or federal rules." *Zambrano v. City of Tustin* (9th Cir. 1989) 885 F.2d 1473, 1480.

As such, interpreting CAED Local Rule 180 or Rule 184 to "automatically" suspend Ms. Albert based on the state court suspension without the due process afforded in *Theard v. United States* (1957) 354 U.S. 278, 282. See, *Selling v. Radford* (1917) 243 U.S. 46 would be void ab initio because it was not consistent with federal statutes and rules.

7. <u>The State Bar Did Not Have the Expertise to Determine Whether Ms. Albert's Notices of Her State Bar Suspension to the Federal Court Were Substantially Compliant</u>

Finally, the only other conduct that the State Bar found to be a violation of Ms. Albert's ethics was that her notice to the federal court of her state bar suspension was not prompt or sufficient in violation of the federal court local rules.

There was no federal court order, admonishment or complaint from the federal court finding that Ms. Albert's notice of her state bar suspension was either not prompt or sufficient.

Yet, the State Bar Review Department found Ms. Albert violated the CAED Local Rules by the form of the notice given. First indirectly through the Ninth Circuit Order and then by declaration.

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[8] Local Rules are administrative in nature to do the court's business. They are not Court Orders or even like them and the Review Department prejudiced Ms. Albert by conflating the two.

The State Bar finding was erroneous because **"**[a] local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply." Fed. R. Civ. Proc. Rule 83(a).

The Rev. Dept. also quibbled that Ms. Albert's notice failed to identify each suspension separately and was not contained in each paper filed, thus not prompt.

But the Rules did not require any of the items the State Bar conjured up to support their finding of culpability.

The State Bar acted without or in excess of its jurisdiction in defining what the Local Rules required.

Interpreting the definition of what prompt is to the CAED or the format the notice should be in when the Local Rule merely stated that the Court should receive notice is "not a technical issue within the State Bar's area of expertise." *Obbard v. State Bar* (2020) 48 Cal.App.5th 345, 351.

The discipline has resulted in an absurd result recommending disbarment and suspension on something that the federal court itself did not find to be an issue.

For example, in the case of *Zambrano v. City of Tustin* (9th Cir. 1989) 885 F.2d 1473, 1480, fn. 24 two attorneys appeared in federal Court and tried a civil case in the United States District Court for the Central District of California. One attorney, Orr, had been a member of the California State Bar for five years but was not a member of the United States District Court for the Central District of California. The other attorney, Tafolla, was a member of the California State Bar for twelve years but not a member of the United States District Court for the Central District of California.

The Court found that both attorneys violated the Court's Local Rules by failing to be admitted to the federal Court when they made their appearance and signed pleadings. The attorneys responded it was a mistake. The Court accepted that excuse and found it would be easy enough for him to obtain admission because he was a member of the State Bar. Finding no bad faith violation of the

Local Rules, the Ninth Circuit affirmed stating, the "record before us suggests that Judge Gadbois permitted Orr to handle certain pretrial matters without first requiring that he be admitted to the district bar and that Orr thought that, in doing so, the Court had approved his appearance for all purposes. Although counsel's misunderstanding may reflect a lack of diligent attention to the local rules, nothing in the record suggests any bad faith, or even gross negligence, on his part." *Zambrano v. City of Tustin* (9th Cir. 1989) 885 F.2d 1473, 1484

The district judge issued a monetary sanction against Or and Tafolla. The Ninth Circuit reversed finding that a sanction was not appropriate for violation of the Local Rules when there was no evidence of bad faith. *Zambrano v. City of Tustin* (9th Cir. 1989) 885 F.2d 1473, 1484

The California State Bar did not suspend or disbar Orr or Tafolla for violating the Local Rules of the federal court in this instance, either.

The Ninth Circuit considered it to be a "minor violation." *Zambrano v. City of Tustin* (9th Cir. 1989) 885 F.2d 1473, 1484, fn. 32

Like Or, Ms. Albert filed papers in Judge Ishii's Courtroom. She informed the Court of her suspension in her declaration and the Court acknowledged it in the Order denying the motion. She thought that because he did not issue an OSC why she should not be suspended after he was aware of her State Bar suspension, she was still allowed to file papers in the CAED. Two years later she saw her membership was still active and filed an Answer in Judge McAuliffe's court. Like, Orr, nothing in the record suggests any bad faith, or even gross negligence on Ms. Albert's part. (Ex 23, 40).

No district court judge (1) issued an order to show cause; (2) admonished Ms. Albert, (3) issued an order fining her; or (4) even reported her to the State Bar. Thus, the State Bar overreacted to the manner that Ms. Albert interpreted the Local Rules of the Eastern District.

In federal court, violations of Local Rules happen routinely. There most likely isn't an attorney who has practiced in federal court that hasn't violated a Local Rule.[9]

Refusing to consider Ms. Albert's constitutional issues when it came to interpreting the Local Rules of the EDCA and U.S. Supreme Court precedent on whether a federal Court could "automatically" suspend an attorney based on a State Court order cut to the center of this case warranting the petition for review to be granted. *In re Rose* (2000) 22 Cal.4th 430.

B. <u>As To Each Count in the SANDC</u>

1. <u>Count One – Violation of Rule 3.4(f)</u>

The State Bar charged Albert with violating CAED Local Rule 180 and Local Rule 184 under Rule 3.4f because she "failed to promptly notify the [CAED] Court of disciplinary action imposed by the California Supreme Court." (SANDC).

CAED Local Rule 180 is an admissions Rule. CAED Local Rule 184 stated that an attorney who has a "change in status" in their membership in another jurisdiction should "promptly" notify "the Court."

California Rules of Professional Responsibility, Rule 3.4f prohibits a member from "**<u>knowingly</u>*** disobey[ing] an obligation under the rules of a tribunal* except for an open refusal based on an assertion that no valid obligation exists." *Id*. [emphasis added]. The Rule is identical to ABA Model Rule 3.4 subsection c.

The State Bar Hearing Department and Review Department erroneously found Ms. Albert violated CAED Local Rules 180 and 184 because she failed to "promptly" notify the CAED Court of each specific case of suspension.

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[9] Throwing stones from a glass house is a forgotten moral because the State Bar Office of General Counsel violated Local rules of federal court multiple times. Serious ones like walking into the well.

The Review Department also found Ms. Albert's notice to the Ninth Circuit which was then docketed in an Order from the Ninth Circuit to the CAED Court as insufficient. (Rev. Dept. Opn. 16).

No Local Rule further defined what "prompt" or "sufficient" meant. Yet the Review Department ruled "Albert was less than forthcoming with the EDCA bench in her attempts to address her Albert I and Albert II suspensions in the Kilgore and Avalos litigation. Disbarment is appropriate and necessary for the protection of the public, the Courts, and the legal profession." (Rev. Dept. Opn. P. 39).

However, no other Local Rule defined "change in status" or "prompt" in the Local Rules and the CAED did not issue any Order finding that any of the notices of Ms. Albert's state bar suspension was either insufficient or not prompt.

a. Granting this Petition is Necessary to Settle Important Questions of Law

Whether the State Bar has the authority to determine the scope and meaning of "prompt" or "change in status" in Local Rule 184 or any federal local rule in order to discipline an attorney is an important question of law warranting review.

Previously, the California Court of Appeals found that the State Bar cannot define words or embark upon issues dealing with statutory construction such is "not a technical issue within the State Bar's area of expertise." *Obbard v. State Bar* (2020) 48 Cal.App.5th 345, 351. However, the California Supreme Court has not weighed in on the issue.

Ms. Albert contends the State Bar overstepped its role by disciplining her under Rule 3.4(f) because the word "prompt" in the CAED Local Rules was not defined by the Local Rules itself or by any case precedent that the State Bar proffered. Yet, the State Bar concluded that Ms. Albert's notice to the CAED Court was not "prompt."

Furthermore, the CAED Local Rules did not explicitly instruct attorneys who had multiple suspensions running concurrently to notify the CAED of each concurrently running suspension. It merely said, "change in status."

Ms. Albert's status of suspension did not change from 2018 through May 5, 2021, as such, the Review Department holding that each separate suspension had to be identified and given to the CAED, but the Local Rule never stated such was prejudicial error warranting review. (Rev. Dept. Opn. P. 17).

Third, the Review Department found that Ms. Albert's Notice of Disqualification filed in Ninth Circuit on April 17, 2018, was "insufficient." (Exhibit 1155).

"Where the words of the statute [or Local Rule] are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." *Burden v. Snowden* (1992) 2 Cal.4th 556, 562.

Nothing in CAED Local Rule 180 and Local Rule 184 required Ms. Albert to do anything more than notify the Court of her suspension. Details such as the start date of her suspension, length of her suspension, or State Bar case numbers are not required.

In the Matte of George Martin Derieg, Case No. SBC-21-O-30532, (Rev. Dept. Dec. 7, 2023) the Rev. Dept found it inappropriate to use Bus & prof Code 6068(a) when another Rule is used. Here other rules were used for the same conduct making the finding that Ms. Albert violated Bus & Prof Code §6068(a) inappropriate.

This Court should accept review and find the State Bar acted inappropriately for all of the foregoing reasons. *Obbard v. State Bar* (2020) 48 Cal.App.5th 345.

b. <u>The State Bar Acted Without or In Excess of Its Jurisdiction</u>

Based on the legal argument above, which is incorporated herein, the State Bar has no jurisdiction determining whether or not a violation occurred under

CAED Local Rule 180 or Local Rule 184 because the practice before a federal court is a separate adjudicatory, and as such, the State Bar acted outside of its jurisdiction (see argument on jurisdiction, infra).

The Rev. Dept found "her constitutional arguments focused on EDCA Local Rules 180 and 184 and the EDCA's application of those rules unpersuasive." (Rev. Dept. p. 18).

Rule 3.4f cannot apply to practice in federal court. (*In re McCue* (1930) 211 Cal. 57, 66

The State Bar applied Rule 3.4f to Ms. Albert's conduct in federal court in an attempt to regulate the practice of law in federal court, and as such, acted without or in excess of its jurisdiction.

For all of the foregoing reasons, this Court should accept the petition for review, reverse the State Bar's decision and issue an opinion barring the Office of Chief Trial Counsel and State Bar Court from investigating and prosecuting any other attorney in the future on these facts because it has no jurisdiction to do so.

c. Petitioner Did not Receive a Fair Hearing Because She Was Not Charged with Giving "Insufficient" Notice of Her Suspension

The Review Department found that Ms. Albert's declaration to Judge Ishii that was filed on August 18, 2019, was insufficient to give notice of her suspension although it invited the Court to issue an O.S.C. why she should not be kicked out of the Eastern District, too. (Exhibit 23 p. 9-11).

As stated above the word "sufficient" is not in CAED Local Rule 180 or Local Rule 184. The NDC did not charge Ms. Albert with providing "insufficient" notice of her suspension to the CAED. As such, Ms. Albert had no fair opportunity to defend against a violation of providing "insufficient" notice at her State Bar hearing, making the Review Department culpability finding unconstitutional. Finding her culpable under these circumstances violated her right to notice and

opportunity to be heard under the Fourteenth Amendment of the U.S. Constitution before depriving her of her license to practice law. XIV Amend. U.S. Const.

d. <u>The Decision to Disbar Ms. Albert for Violating Rule 3.4(f) is Not Supported by the Weight of the Evidence</u>

Third, the State Bar's evidence was insufficient to prove Ms. Albert's notification to the CAED Court of her state bar suspension was not prompt.

As stated above, there was no Court Order from the CAED finding Ms. Albert violated Local Rule 180 or Local Rule 184.

Ms. Albert was in good standing with the California State Bar when she was admitted to the CAED so there was no violation of Local Rule 180.

Second, Ms. Albert's notification of her suspension to the CAED Court landed on three different Court dockets on three separate occasions. (Ex 17). The Ninth Circuit filed an Order on the CAED Court docket of Judge Drozd in Noble v Wells Fargo on **<u>April 24, 2018,</u>** informing the Court of Ms. Albert's suspension. (Exhibit 1020, 1164). She made no further appearance before Judge Drozd because that case was on appeal.

Her second notice was filed on **<u>August 18, 2019,</u>** in the case of Kilgore v Wells Fargo for Ms. Noble after her appeal ended. (Ex 23 p. 9-11). (Docket Ex 14). At trial, the State Bar did not ask Judge Ishii if Ms. Albert's notice of her suspension was prompt. Additionally, Judge Ishii did not testify that he did not see Ms. Albert's declaration where she informed the Court of her suspension when she filed the motion to vacate on August 18, 2019. (RT Vo. 2, p. 203-209).

Third, Ms. Albert notified the CAED Court of her state bar suspension on **<u>March 3, 2021</u>**. This was twelve (12) days after she filed the Answer for Mr. Grewal in the case of Avalos v Gonzalez sitting before Judge McAuliffe. (Ex 31). Ms. Albert's membership status in the Eastern District on February 12, 2021, showed active and in good standing. (Exhibit 40 p. 8, 14).

These three above-mentioned cases are the only cases Ms. Albert ever filed a paper in the CAED. (Ex 1006). Plus, these papers were filed *before* Ms. Gonzalez changed her status to inactive.

The CAED was notified of Ms. Albert's suspension on April 24, 2018. Ms. Albert did not notify the CAED of any *change* of her "status" (meaning her license was reinstated by the State Bar) until after May 5, 2021.

The rule required nothing more than notice of change in status. Disciplinary proceedings "cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or uncorroborated hearsay." *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.

The State Bar had the burden to prove culpability by "clear and convincing" evidence. Evidence of merely "suspicious circumstances in support of the charges made" is not sustainable in a disciplinary hearing. *Werner v. the State Bar* (1939) 13 Cal.2d 666, 668.

Every doubt is supposed to be found in the favor of the Responding Attorney.

No evidence to contradict Ms. Albert's testimony that she thought she was reasonably prompt in accord with the Local Rules surfaced.

Ms. Roxanne Gonzalez testified that she is the Operations Supervisor of the Court and that Ms. Albert's membership status showed active because no one notified her of Ms. Albert's suspension. (RT Vo1. 1 p. 168). However, neither Local Rule 180 nor Local Rule 184 required Ms. Albert to notify the Operations supervisor of a suspension.

Without a federal Court order finding Ms. Albert violated Local Rule 180 or Local Rule 184, the State Bar erred in supplanting its own opinion to support culpability by clear and convincing evidence. (RT. Vol. 1 p. 170).

e. <u>BAP Opinion Issued on 4-02-2024 Shows that the Court Has Yet to Determine the Valid Dates</u>

of Ms. Albert's State Bar Suspension from 2018 Onward

There is insufficient proof of misconduct in that the State Bar's suspension dates are flat out wrong.

On April 2, 2024, the Ninth Circuit BAP ruled that the State Bar violated federal law by holding Ms. Albert's license to practice law in 2018. See, *Albert-Sheridan v. State Bar of Cal.* (In re Albert-Sheridan) (B.A.P. 9th Cir., Apr. 2, 2024, No. CC-23-1024-SFL, published).

The ruling of the BAP is consistent with Ms. Albert's position which she filed in Notice of Disqualification with the Ninth Circuit on April 17, 2018 in that the State Bar was violating bankruptcy law by failing to reinstate her license to practice law after the 30 day suspension was over because the State Bar was only refusing to reinstate it based on financial obligations. (Exhibit 17).

The dates she was rightfully suspended thereafter are only speculative. The dates that the federal court may have begun or ended any reciprocal suspension are purely speculative as well because there was no federal court order suspending Ms. Albert from the practice of law in the CAED at any relevant time period. (Exhibit 40 p. 8, 14).

The U.S. Supreme Court refused to issue a reciprocal suspension for both prior California suspensions. (Exhibit 1047). Under these circumstances, the State Bar could not meet its high burden of proving Ms. Albert was not prompt.

2. Count Two – Violation of Bus & Prof Code §§ 6125, 6126, and 6068(a)

The State Bar charged Ms. Albert with violating the State Bar Act, alleging "[b]etween in or around August 2019 and December 2019, respondent held herself out as entitled to practice law and actually practiced law…in violation of Business and Professions Code sections 6125 and 6126, and thereby willfully violated Business and Professions Code section 6068(a):" (SANDC). (Exhibit 1184)

Bus. & Prof. Code § 6068(a) provides that it is the duty of an attorney "to support the Constitution and laws of the United States and of this state."

The Constitution and laws of the United States bar federal courts to automatically suspending an attorney based on a state court order of suspension. If the federal court chooses to suspend the attorney based on a state court order of suspension, then it must first afford the attorney due process. *Theard v. United States* (1957) 354 U.S. 278, 281.

Being willfully blind to the Constitution and laws of the United States, the State Bar made up its interpretation of the CAED Local Rules to find that Ms. Albert was "automatically" suspended without due process in the CAED based on the state court suspension.

The State Bar Hearing Department affirmed there was no evidence that Ms. Albert "render[ed] legal advice to Brooke Noble" in *Marsha Kilgore v. Wells Fargo Bank*, Case No. 1:12-CV-00899. (SB Rec. p. 26).

The Review Department reversed although no one testified that Ms. Albert gave Ms. Noble advice and there was no communication showing Ms. Albert gave Ms. Noble any advice.

The SANDC also charged that Ms. Albert "[p]repar[ed] and fil[ed] a Motion to Vacate the Judgment [reply brief, Motion to Substitute a Party, further reply brief and supplemental declaration], entered in *Kilgore v. Wells Fargo* ("Motion to Vacate") on behalf of Ms. Noble on or about August 18, 2019, [September 16, 2019, October 28, 2019, and November 12, 2019] and related documents" but the evidence showed that work was under the supervision of attorney Leslie Westmoreland and as such authorized under Former Rule 1-311. It was not a chargeable offense. (Exhibit 1184).

Count Two of the SANDC further alleged that Ms. Albert "identified herself, along with attorney Leslie Westmoreland, as "Attorneys for Plaintiff, BROOKE NOBLE" on the documents filed in federal court. But the State Bar Act

including Bus & Prof Code § 6068(a), Bus & Prof Code § 6125, and Bus & Prof Code § 6126 do not apply to practice in the federal court and this identification was limited to the papers filed in federal court.

All acts alleged not only occurred in federal court, but also while Ms. Albert's membership in that federal court remained "active" after she notified the Court of her suspension by the California State Bar.

a. Granting this Petition is Necessary to Settle Important Questions of Law

Bus & Prof Code § 6125 states "No person shall practice law in California unless the person is an active licensee of the State Bar." Id. For a Section 6125 violation, the State Bar was required to establish: (1) the practice of law; (2) in California; (3) with an inactive license; (4) the conduct was unauthorized; and (5) was incompetent. *Altizer v. Highsmith* (2020) 52 Cal.App.5th 331, 340.

The State Bar has expanded "in California" to include work done for a federal case outside of court.

Any statute that "forbids or requires the doing of an act" where reasonable men can "differ as to its application" is vague and violates the "first essential element of due process of law." (*Connally v. General Const. Co.* (1926) 269 U.S. 385, 391.) The law requires clear and unequivocal demarcation of what is allowed or not allowed under a statute; this requirement applies equally to the State Bar Act and the California State Bar's disciplinary rules, and Rules of Professional Responsibility. The Ninth Circuit likewise concluded that the terms in Section 6068 are unconstitutionally vague like former Bus & Prof Code § 6068(f) phrase "offensive personality." (*U.S. v. Wunsch* (9th Cir. 1995) 84 F.3d 1110, 1120). "A statute is void for vagueness when it does not sufficiently identify the conduct that is prohibited." *Id*. at 1119.

Disciplining Ms. Albert under Bus & Prof Code § 6068(a) for UPL under Bus & Prof Code § 6125 and Bus. & Prof Code § 6126 or even § 6124 is improper as a result.

The papers filed for Ms. Noble were in federal court and thus not "in California." Furthermore, there was no finding that the work was incompetent. As far as drafting and filing papers in federal court, those acts were authorized under Former Rule 1-311 because attorney Leslie Westmoreland was supervising her. Consequently, the State Bar erred in finding Ms. Albert culpable under Count Two of the SANDC.

Mr. Westmoreland had submitted a Notice under Former Rule 1-311 that he would be employing Ms. Albert while suspended to do tasks under that rule.

The notice which was on the State Bar form stated that the suspended attorney could draft and file papers.

Nevertheless, the NDC charged Ms. Albert with unauthorized practice of law which included the tasks of drafting and filing papers in Noble and Grewal and drafting a fee agreement with payments made to Mr. Westmoreland.

Ms. Albert contends the charges of UPL were frivolous because she was allowed to perform those tasks for Mr. Westmoreland. As a matter of law, those tasks were not "unauthorized."

Each of the cases that this Court has addressed had attorneys working on their own. Here, Ms. Albert was working for Mr. Westmoreland under Former Rule 1-311.

She never made a court appearance, but she drafted and filed papers. She put her SBN next to her name and listed herself as an attorney in federal court where she was still showing as a member.

Corroborating evidence showed that she was asked to file the papers electronically because Mr. Westmoreland misplaced his password and to put her SBN number next to her name.

When Ms. Albert asked the State Bar what specific tasks she could perform while suspended, she was told to figure it out herself. Under these circumstances the tasks she completed were not UPL.

b. Petitioner Did not Receive a Fair Hearing Because She was Not Charged for UPL based on a Local Rule Violation

Furthermore, Ms. Albert did not receive a fair hearing because the State Bar Hearing Department found that Ms. Albert committed UPL in Count Two and Count Three because she used her "state bar number" ("SBN") but the SANDC did not allege use of her SBN was UPL. (SB Rec. p. 26, SANDC).

"If [] a state court makes evidentiary findings without holding a hearing and giving petitioner an opportunity to present evidence, such findings clearly result in an unreasonable determination of the facts." *Hurles v. Ryan* (9th Cir. 2014) 752 F.3d 768, 790.

Because the SANDC did not charge Ms. Albert with UPL by using her SBN, the court made an evidentiary finding without holding a hearing on that issue.

Moreover, the Review Department also erred by finding, "[t]he record amply supports the UPL charge alleged in count two. While suspended in both Albert I and Albert II, Albert held herself out as being entitled to practice law in the Kilgore litigation, in violation of section 6126… [because] Albert… used "Esq. " following her name, and listed herself above Westmoreland. She used her State Bar number. Albert signed pleadings as counsel of record, and her signature line was above Westmoreland's." (Rev Dept Opn pg. 19-20).

The use of "Esq." and the SBN was not part of the charges in the SANDC making the proceeding unfair. (Ex 1184).

The unfair process was prejudicial because, as a matter of law, using "Esq." after Ms. Albert's name does not mean that she held herself out as eligible to practice law. "The fact that a person uses the term 'Esquire' after his name is not

sufficient to show that the person held himself out to be entitled to practice law." *People v. Starski* (2017) 7 Cal.App.5th 215, 226. (*See also*, The Globe, What's the Difference in Legal Titles? (Chris Michell, adjunct professor of law at Univ of the Pacific, McGeorge School of Law.).

Additionally, these documents were filed in federal court. Documents filed in federal court in this Circuit with these labels, including "attorney" are not "treated as unauthorized practice of law."

Noting one is an attorney on papers is not UPL (the practice of law) because the CAED does not consider someone asserting they are the attorney in a brief UPL. See, *Singmoungthong v. Astrue* (E.D. Cal., July 12, 2011, 1:09cv1328 DLB) [pp. 5-6]

The Ninth Circuit explained, "the licensed attorneys alone remain responsible to the clients, there are no court appearances as attorney, and no holding out of the unlicensed person as an Independent giver of legal advice." *Winterrowd v. American General* (9th Cir. 2009) 556 F.3d 815, 824.

Like *Winterrowd,* Albert's work was filtered through attorney Leslie Westmoreland. His name was also on the papers. She did not hold herself as an "independent giver of legal advice." Id. More importantly Albert was a member in good standing in the Eastern District when the papers were filed.

The Local Rules of the CAED required a SBN to be placed next to the name. Local Rule 131(a). Ms. Albert asked Mr. Westmoreland if she should put her State Bar Number next to her name or not before proceeding. (Appendix Ex 1).

Adding these charges that were not in the NDC was a due process violation. *in re Ruffalo* (1968) 390 U.S. 544.

However, this was never addressed by the State Bar. As such, she was deprived of notice and fair opportunity to be heard warranting a finding of want of due process warranting departure from the Recommendation and Opinion.

Finally, to the extent the Rev. Dept. found Ms. Albert violated § 6124, such was never charged in the SANDC warranting review based on want of process.

c. Count Two Is Not Supported by the Weight of the Evidence Because No Practice Occurred in a State Court

The State Bar does not have the power to discipline based on practice in a federal court. *In re McCue* (1930) 211 Cal. 57, 66 Nevertheless, the State Bar Review Department found Ms. Albert culpable.

"Charges of unprofessional conduct on the part of an attorney should be sustained by convincing proof and to a reasonable certainty, and any reasonable doubts should be resolved in favor of the accused." *Hildebrand v. State Bar* (1941) 18 Cal.2d 816, 834 (citations omitted).

Any certainty that Ms. Albert was suspended in the federal court when she filed the papers for Noble and Grewal was rebutted by Ms. Albert when she provided a printout of her membership status in the CAED showing active as of February 12, 2021. Her testimony that her membership showed active until Ms. Gonzalez switched Ms. Albert's status to inactive was corroborated by Ms. Gonzalez.

OCTC did not have any witness testify that use of the words "Esq.," or "attorney," or "SBN" was UPL in the CAED. It was the State Bar's own hypothetical conclusion that such was the case. Disciplinary proceedings "cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or uncorroborated hearsay." *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.

The same is true with the issue of whether Ms. Albert was committing UPL. *In Hildebrand v. State Bar* (1941) 18 Cal.2d 816, 834, OCTC's witnesses in support of the charges gave conflicting testimony and the testimony was "colored by self-interest" which the California Supreme Court found could not meet the

clear and convincing nature which is necessary to establish a finding of culpability on the part of the accused." Id at 834.

Like *Hildebrand,* Judge Ishii further testified although he mentioned that Ms. Albert's license was suspended by the California State Bar, he did not mention whether or not her membership was suspended in the federal court as part of his order in 2019. No one at the federal court referred Ms. Albert to the California State Bar for discipline or issued its own discipline against her for her conduct. Opining that the Local Rule automatically suspended an attorney was pure conjecture.

Additionally, "[t[here is no contention that petitioner failed to give proper attention and care to the cases and [her] client's interests. The results obtained and services rendered were satisfactory." *Hildebrand v. State Bar* (1941) 18 Cal.2d 816, 834.

Based on the foregoing reasons, the State Bar was without or in excess of its jurisdiction in disciplining Ms. Albert for conduct in federal court. Even if there was jurisdiction, there was insufficient proof to meet the exacting burden placed on the OCTC that Ms. Albert's membership was suspended at those times.

3. <u>Count Three – Violation of Rule 5.5(b)</u>

In Count Three, the SANDC alleged Ms. Albert violated Rule 5.5(b) by "filing various documents on behalf of her client, Brooke Noble" … "and identifying herself, along with attorney Leslie Westmoreland, as "Attorneys for Plaintiff, BROOKE NOBLE," on said documents."" [SANDC] (Exhibit 1184)

The Hearing Department found OCTC failed to prove a violation for drafting and filing the documents. (State Bar Opn. 04-03-2023, P. 26)

The State Bar correctly noted no clear and convincing evidence was produced by OCTC to show Ms. Albert was giving legal advice during her suspension. The Court found that "Noble did not testify at trial and the evidence did not otherwise reflect that Noble received legal advice from Respondent." (St.

Bar. Op. 04-03-23 p. 26). Furthermore, Mr. Grewal did not testify at trial and there was no other evidence to show Mr. Grewal received legal advice from Ms. Albert, either. (St. Bar. Op. 04-03-23 p. 30). The Hearing Department also found that "drafting an attorney-client fee agreement for the Grewals" did not support a violation, either. (St. Bar. Op. 04-03-23 p. 30).

However, the Hearing Dept. and the Review Dept found Ms. Albert culpable under Rule 5.5(a) for the same conduct it found she was not culpable under Bus & Prof § 6125 or Bus & Prof § 6126 because "Albert was not an active member in good standing with the State Bar during the effective dates of her two suspensions. Hence, Albert was automatically suspended from the ability to practice in the EDCA." (Rev. Dept. Opn. P. 21).

Rule 5.5(a) states:

> (a) A lawyer admitted to practice law in California shall not: (1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or (2) knowingly* assist a person* in the unauthorized practice of law in that jurisdiction.

a. <u>Review is Necessary to Answer an Important Question of Law.</u>

First, this Court should grant review on the grounds of determining whether the State Bar can decide Ms. Albert was culpable under Rule 5.5(a) when the SANDC only charged Ms. Albert of violating Rule 5.5(b).

Second, if the State Bar Act is limited to practice in state court, then any violation under Rule 5.5 must be limited to practice in other state courts, not federal courts for the same reasons explained in *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 130

Third, this Court should grant review on the grounds it should determine whether the State Bar can determine whether there was a violation of regulation of

profession in another jurisdiction absent a final valid order from that other jurisdiction making said finding.

The practice of law is not a matter of the State's grace. *Ex parte Garland*, 4 Wall. 333, 379.").).

Since the State Bar has no jurisdiction under the State Bar Act, then it should follow it could not be a violation under Rule 5.5 either.

This was the State Bar's attempt to regulate conduct that was protected by federal law. Such regulation is manifestly unjust, and the State was preempted from doing so. Because it was a State Bar and not a proper court, Ms. Albert could not remove the case to the federal court as a result. Nevertheless, "[i]f the state law regulates conduct that is actually protected by federal law; however, pre-emption follows not as a matter of protecting primary jurisdiction, but as a matter of substantive right." *Brown v. Hotel Employees* (1984) 468 U.S. 491, 503

The discipline was unwarranted wherein the petition for review should be granted and reverse the culpability finding under this Count.

b. <u>The State Bar Court Acted Without or In Excess of Jurisdiction</u>

Petitioner incorporates the arguments preceding this section as though fully laid out herein. Like the other counts, the charges allege Ms. Albert's practice of law in federal court was regulated by the State Bar suspension, which as a matter of law is not true and by investigating, prosecuting and suspending Ms. Albert's license to practice law based on practice in federal court while – as a matter of law – her membership status was active in that federal court was in excess of or outside the jurisdiction of the State Bar.

The State Bar Review Department determined that "in California" includes sending email communications on federal cases when the attorney is in California and as such Ms. Albert committed UPL in violation of Rule 5.5(a) by sending emails about settlement negotiations.

But precedent has held the State Bar is not the proper authority to determine or change what "in California" means. It is not a *technical issue* within their expertise or authority. "The proper definition[s] [are] not a technical issue within the State Bar's area of expertise." *Obbard v. State Bar* (2020) 48 Cal.App.5th 345, 351

"More broadly, state law cannot restrict the right of federal Courts and agencies to control who practices before them…Once federal admission is secured, a change in circumstances underlying state admission . . . is `wholly negligible' on the right to practice before a federal Court"]. *Benninghoff v. Superior Court of Orange County* (2006) 136 Cal.App.4th 61, 74 The appellate Court in *Benninghoff v. Superior Court of Orange County* (2006) 136 Cal.App.4th 61, found that the State Bar violated Benninghoff's right to practice in federal Court and ordered the State Bar to return his federal practice files. "Once federal admission is secured, a change in circumstances underlying state admission . . . is `wholly negligible' on the right to practice before a federal Court"].) Thus, the Court erred by assuming jurisdiction over Benninghoff's federal practice." *Benninghoff v. Superior Court of Orange County* (2006) 136 Cal.App.4th 61, 74

The State Bar's entire case for UPL was aimed at *two federal Court cases* which the State Bar Act does not cover.

c. <u>Petitioner Did not Receive a Fair Hearing</u>

Furthermore, the NDC charged Ms. Albert with violating Rule 5.5(b), but the State Bar found that Ms. Albert violated Rule 5.5(a). The OCTC never amended the charge and the Review Department found that changing the violation charged was merely a "typographical error." (Rev. Dept. **Opn. P 20 fnt. 22).**

That charge is a completely different charge from a violation of Rule 5.5(b) and on those grounds, it was unfair. This was a due process violation under *In re Ruffalo* (1968) 390 U.S. 544, 550.

Additionally, Ms. Albert was never charged with practicing law "in California" by way of sending or receiving emails about settlement communications in the Grewal matter so she had no opportunity to defend that finding by the Review Dept.

In the case of *in re Ruffalo* (1968) 390 U.S. 544, the trial lawyer in Ohio hired a railroad employee to investigate his own employer for him in FELA cases. At the Ohio State Bar (grievance commission) proceeding, the Bar disbarred Mr. Ruffalo. After hearing the railroad employee testify, "the Board added a misconduct charge, No. 13, based on petitioner's hiring of Orlando to *investigate* Orlando's own employer." *In re Ruffalo* (1968) 390 U.S. 544.

The U.S. Supreme Court held that this violated Mr. Ruffalo's due process rights because he needed to be informed of all charges prior to the hearing. *In re Ruffalo* (1968) 390 U.S. 544, 550

Counts 3 and 5 should be dismissed because the State Bar charged Ms. Albert with violating Rule 5.5b and then found her guilty of violating Rule 5.5a. Furthermore, Ms. Albert was never charged with violating Rule 5.5 on the grounds she engaged in settlement communications or sent emails as the Rev. Dept. erroneously found.

d. <u>The Discipline did not Support the Weight of the Evidence</u>

Rule 5.5(b) states: "(b) A lawyer who is not admitted to practice law in California shall not…." Id. Ms. Albert was admitted to practice law in California on December 5, 2000. [Ex 1]. Thus, the OCTC could not prove Ms. Albert was culpable under Rule 5.5(b) as charged.

Rule 5.5(a) was not charged in the SANDC. (Exhibit 1184) Even if it were, the discipline did not support the weight of the evidence because Rule 5.5(a) states that "(1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." Id. Ms. Albert was duly admitted

into the CAED on December 17, 2014. [Ex 40, 1157-58]. The evidence showed that when Ms. Albert filed the papers for Ms. Noble and Mr. Grewal her admission status was active in the CAED. [Ex 23, 40]. Her admission status had not changed to inactive until on or about March 1, 2021, by Ms. Gonzalez. [RT 1:172]

There was no court order from another jurisdiction finding Ms. Albert violated the regulations of the profession in the CAED. As a matter of law, under both U.S. Supreme Court precedent and Ninth Circuit precedent cited above, the CAED could not automatically suspend Ms. Albert's license based on the State Court order of suspension without a hearing (due process) as discussed elsewhere in this brief. It is irrelevant that the CAED adopted the State Bar Rules on the grounds the State has no jurisdiction over the federal adjudicatory functions.

Additionally, settlement negotiations have been defined as "engaging in negotiations with opposing counsel concerning settlement and agreeing that the case should be continued until a later date, constitutes the practice of law." *Morgan v. State Bar* (1990) 51 Cal.3d 598, 604.

Here, Ms. Albert was copied on emails asking if there was the ability to settle. No negotiations or agreements on her part took place. (RT Vol 4:110-114 Ex 1176, 62).

As such, the discipline was not supported by the weight of the evidence.

4. <u>Count Four – Violation of Bus & Prof Code §6125, 6126 & 6068(a)</u>

Like Count Two, the State Bar charged Ms. Albert with violating the State Bar Act, alleging "[i]n or around February 2021, respondent held herself out as entitled to practice law and actually practiced law when respondent was not an active member of the State Bar by committing the following acts in violation of Business and Professions Code sections 6125 and 6126, and thereby willfully violated Business and Professions Code section 6068(a)" in count Four. (SANDC). (Exhibit 1184).

The State Bar Hearing Department affirmed there was no evidence that Ms. Albert "render[ed] legal advice to defendants Pritam Grewal, Manjeet K. Grewal, and Dev S. Grewal (collectively "the Grewals") regarding the matter *George Avalos v. Felipe Gonzalez, et al.*, Case No. 1:20-cv-01578 ("*Avalos v. Gonzalez*"), pending before the United States District Court, Eastern District of California." (Rec. p. 26 (Noble) and p. 30 (Grewal)).

The Review Department reversed although no one testified that Ms. Albert gave Mr. Grewal advice and there was no communication showing Ms. Albert gave Mr. Grewal any advice.

The Review Department erroneously found that Ms. Albert engaged in settlement discussions and because the federal court was situated in California, such was UPL under Bus & Prof Code §6126 and Bus & Prof Code § 6125. (OCTC Request for Publication)

The SANDC also alleged Ms. Albert was "[d]rafting the attorney-client fee agreement" and "[p]repar[ed] and fil[ed] an answer on behalf of the Grewals on February 19, 2021 in response to the complaint filed in *Avalos v. Gonzalez*" (SANDC, Exhibit 1184) but the evidence showed that work was under the supervision of attorney Leslie Westmoreland and as such authorized under Former Rule 1-311. It was not a chargeable offense. An email showed the fees were paid to attorney Leslie Westmoreland.

Count Four of the SANDC further alleged Ms. Albert "identified herself, along with attorney Leslie Westmoreland, as "Attorneys for Defendants" on the Document" (answer) filed in federal court. But the State Bar Act including Bus & Prof Code § 6068(a), Bus & Prof Code §6125, and Bus & Prof Code §6126 do not apply to practice in the federal court and this identification was limited to the papers filed in federal court. (Exhibit 1184)

Like Count Two, the Rev. Dept. Opinion found, "[t]he record clearly and convincingly supports the section 6126 UPL charge in count four. Albert held

herself out as being entitled to practice law in the Avalos litigation while suspended. She electronically filed the Grewals' answer to the complaint, identified herself as an attorney, and she used "Esq. " and her State Bar number following her name." (Rev. Dept. Opn. P. 22).

For all of the reasons laid out in Count Two section above, these allegations do not prove Ms. Albert was engaging in UPL. See, *People v. Starski* (2017) 7 Cal.App.5th 215, 226. (*See also*, The Globe, What's the Difference in Legal Titles? (Chris Michell, adjunct professor of law at Univ of the Pacific, McGeorge School of Law.); *Singmoungthong v. Astrue* (E.D. Cal., July 12, 2011, 1:09cv1328 DLB) [pp. 5-6]; and *Winterrowd v. American General* (9th Cir. 2009) 556 F.3d 815, 824

All acts alleged not only occurred in federal court, but also while Ms. Albert's membership in that federal court remained "active" after she notified the Court of her suspension by the California State Bar.

Ms. Gonzalez did not change Ms. Albert's status to inactive until on or about March 1, 2021. Consequently, for the same reasons laid out in Section under Count Two, the discipline under Count Four was inappropriate as well, warranting this Court to grant petition for review and vacate the recommended discipline.

The Rev. Dept.'s finding that Ms. Albert engaged in UPL under Bus & Prof Code § 6125 based on settlement negotiations was unfair because that was not alleged in the SANDC. Ms. Albert rebutted the evidence by OCTC showing Mr. Westmoreland engaged in settlement negotiations at trial. The OCTC edited a document to make an email conversation *look like* Ms. Albert was engaging in settlement negotiations but in fact it was Mr. Westmoreland doing the negotiations, and Ms. Albert was copied on the email. She brought forth the rest of the email to Court to set the record straight. (RT Vol 4:110-114 Ex 1176, 62) (Rev. Dept Opn. P. 22-23).

5. Count Five – Violation of Rule 5.5(b)

Like Count Three, the State Bar charged Ms. Albert with violating Rule 5.5(b) and then found that she violated Rule 5.5(a). The charges were for filing an answer in *Avalos v Grewal* in the CAED on February 19, 2021, plus drafting a fee agreement, advising Mr. Grewal, and identifying herself as an attorney along with attorney Leslie Westmoreland in the CAED.

The Review Dept. went one step further and used an email to counsel in Avalos to erroneously find Ms. Albert was "in California" and not in federal court at that moment supporting UPL. This was a stretch of interpretation from the charges.

Ms. Albert incorporates the legal arguments made in the section captioned Count Three as though the arguments are fully laid out herein.

There was no evidence Ms. Albert advised Mr. Grewal and Mr. Grewal did not testify at trial.

Additionally, the State Bar acted in excess of its jurisdiction in determining for itself if Ms. Albert engaged in UPL in federal court without independent evidence such as a federal court order finding the same.

Rule 5.5 was implemented to work as a rule where an attorney practices in another state court.

"The courts must construe the law as it is written, not as it might be written." *Smith v. Rhea* (1977) 72 Cal.App.3d 361, 370.

Like Count Three, the State Bar charged Ms. Albert of violating Rule 5.5(b) and the Review Dept. found she was culpable of violating Rule 5.5(a).

This was a due process violation "because [she] needed to be informed of all charges prior to the hearing." *In re Ruffalo* (1968) 390 U.S. 544, 550

The Review Dept. produced a frivolous theory that the email between Ms. Albert and counsel for Mr. Avalos was "in California" because it was something done outside of the federal court. That does not comport with the legal reasoning

under "[t]he State Bar Act and other statutes enacted for the purpose of regulating the practice of law in this state **are applicable to our state Courts only**." (*In re McCue* (1930) 211 Cal. 57, 66.)

The Rev. Dept.'s finding that Ms. Albert engaged in settlement negotiations was rebutted by evidence Ms. Albert brought forth. (Rev. Dept Opn. P. 22-23). The OCTC edited a document to make an email conversation look like Ms. Albert was engaging in settlement negotiations but in fact it was Mr. Westmoreland doing the negotiations, and Ms. Albert was copied on the email. She brought forth the rest of the email to Court to set the record straight. (RT Vol 4:110-114 Ex 1176, 62).

Like Count Three, the Court should grant review and dismiss the charges under Count Five.

6. <u>Count Six – Violation of Bus & Prof Code § 6106</u>

In Count six, the SANDC charged Ms. Albert with the same conduct purporting she committed UPL in federal court on the Grewal matter as alleged in Count Four. OCTC contended the conduct was an act of moral turpitude in violation of Bus. & Prof. Code § 6106. That section reads it is a violation to commit "any act involving moral turpitude, dishonesty or corruption." Bus. & Prof. Code § 6106.

""Because the right to practice a profession is sufficiently important to warrant legal and constitutional protection, the term [`moral turpitude'] must be given a meaning and content relevant to the attorney's fitness to practice."" *In re Lesansky* (2001) 25 Cal.4th 11, 14.

There was no finding that Ms. Albert's conduct was "immoral." There was no finding that Ms. Albert was incompetent, either.

""Good moral character includes traits of `honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation and respect for the rights of others and for the judicial process.'" *In re Lesansky* (2001) 25 Cal.4th 11, 15.

As shown in the extraordinarily good character section below, Ms. Albert had multiple professionals vouching for her good character who testified that Ms. Albert does not lie, cheat, or steal.

The State Bar Court did not find moral turpitude. The Review Department characterized Ms. Albert's interpretation of the federal precedent that there is no automatic suspension in federal court based on a state court suspension as "willful blindness" (03-11-2024 Rev. Dept. Opinion pg. 39) and on that ground found Ms. Albert's conduct was an act of moral turpitude.

The Review Department summarily concluded that Ms. Albert "ignored EDCA Local Rules and engaged in UPL, including UPL with moral turpitude. (Id. at pp. 435-436.) Moreover, Albert was less than forthcoming with the EDCA bench in her attempts to address her Albert I and Albert II suspensions in the Kilgore and Avalos litigation. Disbarment is appropriate and necessary for the protection of the public, the Courts, and the legal profession." (3-11-2024 Opinion p. 39).

Because the State Bar erred in its legal conclusion, the finding of moral turpitude should be reversed.

Furthermore, willful blindness was never alleged, making the hearing unfair. Also, there was insufficient evidence to support such a finding. To prove an attorney acted with willful blindness there must be clear and convincing evidence that "(1) the attorney subjectively believed that there is a high probability that a fact exists and (2) the attorney must take deliberate actions to avoid learning of that fact." *Global-Tech Appliances, Inc. v. Seb S. A.* (2011) 563 U.S. 754, 769-70

The Review Department did not find the evidence showed by clear and convincing evidence that (1) Ms. Albert subjectively believed that a high probability of fact existed she was committing UPL and (2) that Ms. Albert took deliberate actions to avoid learning of that fact.

The Review Department merely stated that Ms. Albert's actions were "indifferent." This is insufficient. "[I]n demanding only "deliberate indifference" to that risk, the [State Bar's] test does not require active efforts by an inducer to avoid knowing about the infringing nature of the activities." *Global-Tech Appliances, Inc. v. Seb S. A.* (2011) 563 U.S. 754, 770.

The evidence shows Ms. Albert proceeded with caution and made an active effort to look up her membership status where it showed she was active prior to filing the answer for Mr. Grewal. If she subjectively believed that there was a high probability her membership was suspended in the federal court, she would not have requested her certificate in good standing.

Hence, there was insufficient evidence to support a finding of moral turpitude based on willful blindness.

Second, not all UPL is considered moral turpitude *per se*. For example, the Court in the case of in re Marilyn Scheer found her representation of clients in loan modification cases *in other states* constituted the unauthorized practice of law. However, no finding of moral turpitude is attached to the Review Department's Opinion. (See, *In the Matter of Marilyn Scheer*, 11-O-108881 *et al.* Rev. Dept. (March 18, 2014).). *Marilyn Scheer*, Case Nos. 12-O-14071 *et al.*

There can be a good faith misinterpretation of the law. As in Albert's case, no other jurisdiction found Scheer's practice unauthorized under the multijurisdictional practice rules (ABA Rule 5.5, adopted by most states).

For all the reasons laid out above there was insufficient proof to find Ms. Albert committed moral turpitude.

C. <u>The Recommended Discipline is Not Appropriate in Light of the Record as a Whole</u>

Finally, the recommended discipline of interim suspension and disbarment for purportedly violating Rule 3.4(f) is not appropriate in light of the record as a whole.

All arguments made above are incorporated herein as additional reasons for accepting this petition for review and reversing the findings made by the State Bar against Ms. Albert.

1. State Bar Has Unclean Hands

The State Bar comes to this Court with unclean hands. The State Bar delayed giving notice to the California Supreme Court that Ms. Albert's debts were satisfied through discharge to reinstate her license after the Ninth Circuit found those types of debts were discharged on June 10, 2020. *Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)* (9th Cir. 2020) 960 F.3d 1188, 1193. (Exhibit 42).[10]

The OCTC originally charged Ms. Albert with violating Eastern District Local Rule 180. It demonstrates that OCTC failed to do any legal research and seriously consider whether the situation called for disciplinary charges.

Rule 180 clearly involves admission only and not suspension. A simple search on Westlaw or Lexis would have confirmed that the State Bar was barking up the wrong tree.

Since Ms. Albert was in good standing with the State Bar when she was admitted to the Eastern District on December 17, 2014, through the alleged misconduct period, no violation of Local Rule 180 occurred.

The Court allowed the State Bar to amend three times so that they finally found a way to make the charges sound more credible. That is an abuse and misuse of the power of the OCTC when the OCTC is the one who created the investigation

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[10] Thereafter, on or about July 28, 2021, the California Supreme Court issued a standing Order to the State Bar allowing the State Bar to obey two federal bankruptcy rules 11 USC § 524 and 11 USC § 525. (Exhibit 1181). Up until that time, the State Bar insisted that the California Supreme Court barred them from obeying federal law to the extent it demanded reinstatement of a law license.

without any State Bar complaint. Cindy Chan has a personal beef with Ms. Albert practicing law, and she has investigated Ms. Albert's every move since circa 2018. Ms. Chan and Mr. Hom are literally using the power this Court gave them to stalk Ms. Albert since 2018 (for the past six (6) years).

Additionally, the discipline for purported violation of Rule 3.4(f) and Bus & Prof Code § 6106 is inappropriate because the State Bar violated the automatic stay under 11 U.S.C. § 362 when the State Bar refused to reinstate Ms. Albert's license on March 16, 2018 based on the California Supreme Court Order issued in December 2017 (back dating the suspension dates on June 1, 2018 is not the same until someone makes time travel a reality). See, *Albert-Sheridan v. State Bar of Cal.* (In re Albert-Sheridan) (B.A.P. 9th Cir., Apr. 2, 2024, No. CC-23-1024-SFL, published).

Thus, Ms. Alber's notice filed in the Ninth Circuit compelling the Order of the Ninth Circuit filed on Judge Drozd's docket or any notice thereafter based on the 30-day suspension is non sequitur.

The discipline for purported violation of Rule 5.5(a) is not appropriate in light of the entire record because there was no harm to a client or the court and it was a frivolous claim – never applied in this fashion before.

The discipline for purported violation of Bus & Prof Code §§ 6068(a), 6125, and 6126 is not appropriate in light of the entire record because unlike UPL case precedent, Ms. Albert was not walking into a state court representing another individual as their attorney of record while the California Supreme Court had suspended her license to practice law.

The discipline for purported violation of Bus & Prof Code §6106 is not appropriate in light of the entire record because it is speculative that the CAED would have suspended Ms. Albert's license during Avalos v Grewal because the federal court had no financial reason to do so. The actual punishment (six-month suspension period) expired in February 2020. By February 19, 2021, the sole

reason the State Bar was refusing to reinstate Ms. Albert's license was to collect State Bar costs and other discharged financial obligations in the California Supreme Court order.

Furthermore, Ms. Albert was forthright about her status in federal court and only worked alongside Mr. Westmoreland. As shown elsewhere, the federal court does not consider putting the title attorney next to a name as UPL and as such this State Court should not impugn it to the like of advertising or holding oneself out when the federal court where it occurred does not.

The recommendation of suspension and disbarment is not appropriate in light of the record as a whole. Ms. Albert did not act unilaterally. No harm was caused to the litigants or the court. Her work was competent. No one complained to the State Bar either. This was initiated by the same OCTC prosecutor that has initiated all of the investigations and charges against Ms. Albert since 2018.other than attorney David Seal who has been sending State Bar complaints, filing TROs and making social media memes about her since 2014 after Ms. Albert rejected him upon finding out he was telling others that she was going to be his girlfriend. #MeToo.

Ms. Albert's clients were begging the State Bar not to suspend Ms. Albert because she represents consumers – the underrepresented who need greater access to and inclusion in the legal system. Bus & Prof Code § 6001.1 which provides that "Protection of the public, which includes support for greater access to, and inclusion in, the legal system, shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." Id.

The finding also goes against the ABA Model Rules of Professional Responsibility. (Exhibit 1049).

Disbarring or suspending Ms. Albert for this conduct when no one was harmed does not support the policy underlying the State Bar Act as a whole.

2. The OCTC Prosecution Lacked Candor

Ms. Albert incorporates the legal arguments made above as though the arguments are fully laid out herein.

OCTC lacked candor to the Court by altering an email string in Exhibit 62. The OCTC committed the professional board equivalent of a Brady violation by purporting their Exhibit 62 was a true and correct copy of the email exchange of Ms. Albert engaging in settlement negotiations when the complete email communication which begins in Exhibit 1176 shows Mr. Westmoreland was engaging in settlement communications not Ms. Albert.

One of the most common consequences of a Brady violation is the overturning of a conviction. Legally Blind: Hyperadversarialism, Brady Violations, and the Prosecutorial Organizational Culture, 87 St. John's L. Rev. 1 (2013).

Likewise, due to the State Bar's misconduct, the culpability finding should be overturned because discipline is not appropriate in light of the record as a whole.

3. Local Rules Violation Cannot Create a Pattern of Misconduct Based on Prior Debt Collection Proceedings of the State Bar

The first two disciplinary actions were debt collection proceedings where the State Bar collected debt for third parties equating the debt collection to disobeying a Court Order.

The Review Department found that a violation of federal Local Rules was the same as a violation of a Court order and on those grounds found there was a pattern justifying disbarment based on all three cases. However, Local Rules are not Court Orders. Rules are administrative – procedural in nature. A Court Order, on the other hand, is specific. Thus, as a matter of law violation of a Local Rule

cannot be likened to finding a violation of a Court Order to find a pattern to justify disbarment.

Second, the Court Orders were not the same. The Koshak civil discovery sanctions orders were all void. The Fin City Foods civil discovery sanction order was paid. Ms. Albert sent a check of $75.00 instead of $47.00.

D. The Findings in Aggravation and Mitigation Were Inappropriate

1. The Standards are Unconstitutional

The law is the only thing that makes people equal. But members of the Bar are not treated equally by the Bar itself.

The standards require a court to issue a more stringent punishment than the one before. But that is overbroad because it does not mandate that the State Bar start with a private reproval and work its way up.

In Ms. Albert's case, her first offence of not following three VOID civil discovery sanction orders was a 30-day actual suspension. She did not get a private reproval like *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. In Ms. Albert's second case, instead of issuing a 60-day actual suspension, the judge jumped the shark and issued a 6-month suspension. In other cases, judges would issue 60 days.

In the Matter of Respondent V (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442, Respondent V was admonished.

It is not logical. It makes no sense. An attorney can commit the same act and one can get a private reproval and another can get disbarred. That is disparate treatment in violation of the Equal Protection afforded Bar members under the Fifth and Fourteenth Amendment. V Amend. U.S. Const.; XIV Amend. U.S. Const.

Furthermore, the standards presume disbarment after a third disciplinary hearing. That is too harsh on the grounds that the State Bar can create complaints, pursue prosecution, and adjudicate the matter.

The Rev. Dept. equated violating a federal local rule is the equivalent of disobeying a Void discovery order. This is arbitrary and capricious.

The State Bar Rev. Dept. erroneously found Ms. Albert was previously disciplined for the same type of thing as the third disciplinary proceeding to justify disbarment. "Albert's failure to comply with the self-reporting requirement of EDCA L.R. 184, and that she continued to practice in the EDCA while suspended, is analogous to the acts of failure to follow court orders."[11] (Rev. Dept. Opn. 03-11-2024 p. 28).

The first two actions were debt collection actions. The Statutes used for the violations were not the same in all three proceedings. The conduct was not the same in all three cases, either. Neither of the other cases alleged Ms. Albert failed to notify the Court of her suspension or that she placed her SBN number or Esq. after her name. This proceeding was completely unlike the others. (Exhibits 6, 7, 1184, 1185).

The Standards, as applied, are too ambiguous and vague and this Court should accept the petition to determine that the Standards need to be changed in order to pass constitutional muster.

It is unfair to presume a third disciplinary matter should result in disbarment when the OCTC is free to and has in Ms. Albert's case been able to start its own investigations, complaints and split up its investigations into separate proceedings

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[11] The irony is not lost on Ms. Albert considering the State Bar violated 11 U.S.C. § 362 (automatic stay); 11 U.S.C. §524 (discharge injunction); 11 U.S.C. §525; and misused 11 U.S.C. §523(a)(7) to justify withholding Ms. Albert's license to practice law during this same three year period. Yet, no one at the State Bar was disciplined for these violations.

to create this never-ending cycle of disciplinary proceedings against her. Lawyers are treated politically not equally under the standards because they are so broad.

For example, the hearing department could issue an admonishment or disbarment in this matter or anything in between for UPL. That is like having the discretion to issue a warning or capital punishment for the same crime in a criminal case. The standards made no sense.

2. Finding Deliberate Indifference Was Erroneous

The Court also erred in finding Ms. Albert's conduct was one of deliberate indifference because she chose to defend herself or by arguing the law supported by case precedent.

To find someone was deliberately indifferent, there must be some deliberate choice made that caused harm to someone else. (See, *Connick v. Thompson* (2011) 563 U.S. 51, 62 ("A pattern of similar constitutional violations by untrained employees is "ordinarily necessary" to demonstrate deliberate indifference for purposes of failure to train. (*Bryan Cty.,* 520 U.S., at 409, 117 S.Ct. 1382.) Policymakers' "continued adherence to an approach that they know or should know has failed to prevent tortious conduct by employees may establish the conscious disregard for the consequences of their action—the 'deliberate indifference'—necessary to trigger municipal liability." *Id.,* at 407, 117 S.Ct. 1382. Without notice +9*/that a course of training is deficient in a particular respect, decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights." *Connick, Id*.). See also, *Adams v. Angeles* (2012) 209 Cal.App.4th 1543, 1554.

There was no pattern and there was no deliberate choice Ms. Albert made that harmed anyone else.

Furthermore, she was able to change her approach in the manner of reporting her suspension to this federal court which was demonstrated when she did so this

time. Mistakes and standing one's ground on a legal theory based on court precedent is not indifference.

3. Good Faith Belief (Std. 1.6(b))

Good faith belief Mitigation may include a "good faith belief that is honestly held and objectively reasonable." (Std. 1.6(b)); See *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331.

Albert testified she had a good faith belief that everything she was doing was not UPL, and when she was suspended that she was complying with her suspension. (RT 12/21/22 36-37). Respondent believed her belief was reasonable because other attorneys like opposing counsel for Wells Fargo told the State Bar, he did not believe her conduct was UPL, State Bar's attorneys from Cooley called it even "frivolous" to think the State Bar would attempt to regulate who could practice in federal court. (RT 80-87, Ex 23, p. 8 et seq. Ex 1007 denied p. 81; Ex 1158 denied p. 83).

. She would not have asked for a Certificate in Good Standing from the Court if she thought otherwise. (Exhibit 40 p. 16). The only time she filed papers on behalf of others was from August 18, 2019, to February 19, 2021, and it was with Mr. Westmoreland – not alone. Ms. Gonzalez did not switch Ms. Albert's admission status to inactive until after she filed the Answer in Avalos v Grewal.

When Ms. Albert was allowed to practice law from 2018 to 2021 is still up for debate. At one time it showed she was suspended in January 2018. Then it showed February 14, 2018, through May 30, 2018. Now it shows February 14, 2018, to March 16, 2018. At one time it showed from June 26, 2018, through May 5, 2021. (Exhibit 1001-1003).

OCTC never provided any case law from the U.S. Supreme Court to contradict the *Selling* or *Theard* or any of the other cases like *Kramer* which stands for the proposition that an attorney does not leave being a member of a federal court automatically when there is a state bar suspension.

OCTC never provided any evidence that CAED told her she was suspended prior to March 1, 2021. Judge Ishii never suspended Albert from practicing. Her membership showed it was in good standing like the U.S. Supreme Court membership. Thus, reasonable justification existed for respondent's conduct before the CAED.

4. Evidence Showed No Harm to the Client or the Court

The State Bar did not present specific evidence that Albert's conduct resulted in significant harm to the court under Std. 1.2(b)(iv). Her membership status changed from active to inactive in the CAED during the Grewal matter which Judge McAuliffe presided over. Judge McAuliffe never testified that Albert's conduct caused harm in her court. There was no admonishment or sanction. Judge Ishii also did not testify to any delay et al causing harm to the CAED. (RT Vol 2:200-210 12/14/22). There was no significant delay in Noble or Grewal. There was no significant cost or disruption to the cases. Neither Grewal nor Noble testified. The work was competent and free. No evidence exists to show harm to the court or client.

There was no interruption in Noble and any interruption to Avalos was brief, and the record does not establish significant judicial time or resources were used. (See *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 290 [no aggravation for speculative harm].) (Cf. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 77, 79–80.

Albert supplied clear and convincing evidence in mitigation. Significant weight should be given in mitigation to Albert. Mr. Schales observed Albert was very respectful to the court in Paula's case. (RT Vol 3:173, 12/16/22, Vol 3:177-78, 12/16/22)

5. Candor and Cooperation (Std 1.6(e))

State Bar Std. 1.6(e) allows for mitigation for spontaneous candor and cooperation to victims or State Bar. *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.

Albert testified to her cooperation how she was regularly communicating with Chan from 2020 through 2021. (RT Vol 4:88-89, 12/21/22). She immediately notified Judge McAuliffe by letter. (Ex.35). She stipulated to the few material facts that the State Bar used and allowed judicial notice of their exhibits at trial. (Pretrial Stipulation and Order on RJN 11/16/22). The weight in mitigation should be more than minimal under Std. 1.6(e).

6. Extraordinary Good Character (Std. 1.6(f)).

The hearing judge assigned significant weight in mitigation for extraordinarily good character. The Rev. Dept. reversed that finding unjustly.

About sixteen people submitted declarations. Most had known the respondent for 10 to 30 years and were aware of her misconduct. James Ocon testified respondent was working with his company on the OConsortium technology tour because she "was not allowed to practice law." (RT Vol. 3:18-21, 12/16/22; Ex 1093, 1119, 1131). Mark Aitken, president of One Media described respondent as honest. He said he held respondent in "high regard" and "would entrust 'her' with tomorrow" based on his experience as a sponsor of the $1 million dollar technology tour she was on during the pandemic while she was suspended. (Ex 1129 RT Vol 3:85-87, 12/16/22). Attorney Brian Liddicoat, who has known respondent for over 10 years said respondent "demonstrated the high standards of both professionalism and ethics." (RT 12/16/22 1029). He was informed of the charges against respondent (RT Vol 3:104, 12/16/22) and that the charges do not change his opinion of respondent's integrity. (RT Vol. 3:104, 12/16/22) When working with her, he found her to "be a careful and extremely ethical attorney" and that she was reliable because she has the "very unusual

characteristic of actually doing" what she said she would do which was "lacking both in many professionals, and especially with attorneys." (RT Vol 3:105, 12/16/22) Respondent would not be a danger to the public, but a benefit, and "very much above-average attorney, both in capability and in ethics…. the type of attorney that the system needs more of." (RT Vol 3:106, 12/16/22) He also testified that respondent "fights very aggressively the allegations against her, and sometimes people that do that end up losing the battle and getting more discipline." (RT Vol 3:110, 12/16/22). What he has seen with his own eyes "working with Lenore Alber is that she behaves extremely ethically, works to make her clients behave extremely ethically, and is a very good and reliable person" unlike some attorneys in the Bay area working at blue chip firms that "constantly play games." (RT Vol. 3:111, 12/16/22). He had worked with respondent on cases from 2011 to 2016 (RT 12/16/22 114). He "[did]not believe that justice would be served by disbarring" respondent." (RT Vol. 3:115, 12/16/22). He put Albert's good character in the "top 10 to 15 percent" compared to other attorneys. (RT Vol. 3:115, 12/16/22). Albert never went to him and asked for a case while she was suspended, either. (RT Vol. 3:116, 12/16/22). (See also Ex 1054, 1063, 1065, 1084, 1086, 1087, 1088, 1093-96, 1100, 1119, 1124-29, 1131, 1133, 1135-37, 1139-41, 1151).

The Court should have given serious consideration to attorneys' references because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) He also testified that he did not think defending oneself at the State Bar was unethical, either. (Vol. 3:118, RT 12/16/22).

However, the Rev. Dept. prejudged Mr. Pratt's testimony because he was suspended. There is nothing in the rule book that an attorney must be in good standing to speak about another's character. His status was irrelevant.

Furthermore, it isn't as if other colleagues could not see for themselves that the State Bar was targeting Ms. Albert. In fact, the Bar summarily disbarred Mr. Westmoreland for "assisting" Ms. Albert in UPL in the Eastern District. That doesn't give other colleagues great confidence in stepping forward.

Ms. Albert is not Tom Girardi. She did not amass wealth on the backs of others in this profession and she did not steal client funds. Colleagues could see that the State Bar unfairly targeted her – not for her practice of law.

Theresa Marasco, a paralegal testified that she has "worked with a lot of attorneys over the years" and that respondent is "one of the most honest and ethical attorneys" she has ever met, "and the integrity that you work with is beyond phenomenal." (RT Vol. 3:135, 12/16/22, Ex 1125)

Mr. Schales, a top engineer at DWP, testified that he observed respondent working for attorney Leslie Westmoreland on Paula Gilbert-Bonnaire's case in state court and that respondent "delineated [her] role clearly" that she was the assistant and not the attorney. (Ex 1124, RT Vol 3:165, 12/16/22). He observed Albert and Westmoreland in court and that Westmoreland went up to counsel table while respondent "sat back with" him and the client. (RT Vol 3:166, 12/16/22) He agreed to pay the State Bar costs and CSF fund so that Albert "could practice law and represent Paula in the case." (RT Vol 3:166, 12/16/22). He testified that Paula won phase one. Respondent "did a wonderful job. She's thorough, accurate, just really what a lawyer should be, and cared, and we prevailed." (RT Vol. 3:167, 12/16/22). He found respondent to be "honest" and "have high moral standards." (RT Vol. 3:168, 12/16/22). He observed respondent remaining calm and ethical even when opposing counsel made sexist remarks which forced the Judge to admonish counsel and opposing counsel had to formally apologize for it. (RT Vol. 3:170-171, 12/16/22).

Attorney Pratt testified that he thought the State Bar was coming "down hard" on respondent. (RT Vol. 3:191, 12/16/22) And that if disbarred - the legal

community and "public would lose a strong voice for the underdog." (RT Vol. 3:193, 12/16/22). And that "the bar is killing a fly with a nuclear bomb." (RT Vol 3:201, 12/16/22).

Former special agent Gregory Meinhardt testified. He worked with Leslie Westmoreland on a wild deeding fraud that dealt with foreign nationals and sovereign citizens and was referred to assist Albert when sovereign citizens started to harass her. (RT Vol. 3:207-208, 12/16/22; Ex 1140). He found her to be "honest" and have the "highest moral character." (RT Vol. 3:213, 12/16/22). Even when the sovereign citizens were harassing Albert. (RT Vol. 3:219, 12/16/22).

Client Holly Burns described Albert as an attorney that "came to our rescue" after her prior attorneys lied to the court and abandoned them. (RT Vol. 4:122-123, 12/21/22).

Former Client Joanne Anderson testified to Ms. Albert's competence and good character. (Ex 1151).

Dan Chmielewski who participated in the California Democratic party with respondent described Albert as a person who "play by the rules" and "abhor[s] unfairness." (RT Vol. 4:139, 12/21/22).

Melissa Keyes, a childhood friend described Albert as honest even as a teenager and how their friendship led to freeing a wrongfully incarcerated man and a change in federal law. (Ex 1122).

Ed Garza, a trauma specialist, and philanthropist who has multiple certificates of congressional recognition (RT Vol. 3:50, 12/16/22) testified that he observed respondent uphold her ethics as a delegate and her trials both before and after her prior suspension. (RT Vol. 3:53-54, 12/16/22). He said even if the bar found her guilty his opinion would not change because he saw her give her food to a homeless man who came into a restaurant and just ordered a drink. (RT Vol. 3:57, 12/16/22).

James Ocon testified that he "was very impressed by [Albert's] behavior" …when Seal tried to goad her into things at trial and he didn't know how "someone could be that professional." (RT Vol. 3:43, 12/16/22). The totality of the wide-ranging and extensive character evidence respondent presented from over sixteen people is compelling and, therefore, the federal court should consider keeping Ms. Albert's membership in this federal court in the interest of justice. (*In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 185, 187.).

The Review Dept. found that the declarants said they would change their mind or were confused about the charges. Jim Ocon and Greg Meinhardt have provided further declarations challenging the findings the Rev. Dept. made regarding their testimony.

The Review Department also gave short shrift to testimony about Ms. Albert's legal skills. Thus, they found that good character could only be demonstrated by good work outside of the legal profession. Mr. Garza testified that Ms. Albert gave her meal to a homeless person and that is truly the only meaningful weight the Review Department gave.

7. <u>Pro Bono and Community Service Work</u>

Albert continued to represent pro bono clients now and then. (RT Vol. 4:77-78 12/21/22). Ed Garza, who has been granted many public service honors and a Purple Heart, also gave multiple instances of Albert's volunteer work before and during her suspension. (RT Vol. 3:59, 12/16/22; Ex 1087, 1094, 10951096, 1100, 1133). He also observed respondent take a pro bono client to the DMV to get her ID. (RT Vol. 3:69, 12/16/22).

Albert testified to volunteering in the legal community too, including volunteer judging for mock trial competitions, authoring articles, joining organizations, and lobbying for consumer protection laws until she was no longer qualified based on her suspension. She even co-authored an article for the State

Bar Antitrust and Unfair Competition Law Section prior to her suspension. (RT Vol. 4:41-47, 54-57, 74-75-77, 12/21/22; Ex 1075, 1078, 1079, 1082, 1097, 1098).

Albert was also politically active, creating Advocacy and the Arts Club during her suspension, going to convention, and running for office. She also authored resolutions for making use of the choke hold illegal, clean water, anti-cyber bullying, and protection for residents in nonjudicial foreclosures. (RT Vol. 4:48-54, 60-61, 12/21/22; Ex 1089, 1091, 1115) Albert also assisted in GOTV efforts signing people up to vote. (RT Vol. 4:59, 12/21/22; Ex 1116).

She also attended CFPB and Federal Reserve stakeholders' meetings. (RT Vol. 4:79-80, 12/21/22).

8. Remorse and Recognition of Wrongdoing and Timely Atonement

The record showed that Ms. Albert exhibited remorse and recognition of wrongdoing and timely atonement by taking "prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement." (Std. 1.6(g).) Respondent demonstrated remorse for the incident with Judge McAuliffe by having a letter sent explaining what happened to her status and she stopped further work on Grewal. (Ex 35). She obtained a $60,000.00 loan from Schales, paid the State Bar costs of $37,555.90 plus $20,000.00 to the CSF fund and then reapplied for admission to CAED after her state bar license was reinstated. Albert apologized to the Court and testified that this was a mistake. What she did - was not intended to be UPL.

E. The Discipline Imposed Was Not Proper

1. All Charges Should Be Dismissed

" The purpose of disciplinary proceedings is not to punish the attorney but rather to protect the public and the profession from the wrongful conduct of persons unfit to practice law." *Arden v. State Bar* (1987) 43 Cal.3d 713, 725.

Policy reasons support this Court's decision to part ways with the State Bar, too. "The primary purposes of disciplinary proceedings ... are the protection of the

public, the courts and the legal profession; the maintenance of high professional standards by attorneys [;] and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205.)

Because Ms. Albert's conduct was not wrongful, there should be no discipline given.

Alternatively, if this Court feels compelled to save face that it should find any misconduct occurred then it was so minor it could rise no further than a private reproval or admonishment.

2. Private Reproval or Admonition for a Local Rule Violation is The Most Serious Discipline One Could Impose Without Violating an Attorney's Rights

Standard 2.19 is unconstitutional because it is overbroad allowing for anything from private reproval to suspension for a Local Rule violation. As shown above, only bad faith violations of a Local Rule can warrant discipline and that discipline is limited to a small fine (like $200.00). *Zambrano v. City of Tustin* (9th Cir. 1989) 885 F.2d 1473, 1484.

An admonition by the Court where the violation occurred is appropriate most of the time. Consequently, Standard 2.19 which allows for a suspension or up to $5,000.00 monetary sanction is too excessive, in violation of the excessive fines clause and due process clause. (VIII Amend. U.S. Const. XIV Amend. U.S. Const.).

Neither the State Bar Court nor the OCTC could find a similar case where an attorney was disciplined for the conduct the Bar has alleged to be unethical. (RB p. 27). The Review Dept. found that Ms. Albert's case was like Carver. (Rev. Dept. 03-11-2024 P. 38-39). In the OCTC's request for publication, it correctly noted that Ms. Albert's case is nothing like Carver who allowed a default to occur. See, *In the Matter of Carver* (Review Dept. 2016) 5 Cal State Bar Ct. Rprt 427. (RT Vol 3:179-180 12/16/22 Ex 1141).

This is a case where no misconduct occurred warranting dismissal in the interests of justice.

At the most a technical mistake of minor misconduct occurred where there was no harm to the client, the public, or the legal system.

In the Matter of Respondent V (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442, Respondent V was admonished. The misconduct in Respondent V involved improper use of the state seal in a solicitation letter. Like respondent, the attorney in Respondent V engaged in very limited misconduct, did not engage in dishonesty, no harm was done, and there wasn't any serious aggravating circumstances. One motion was made before Judge Ishii for Ms. Noble in 2019. One Answer was filed before Judge McAuliffe for Mr. Grewal in 2021. Two incidents over a three-year time period would qualify as "very limited misconduct." No harm was done. No dishonesty was found. *In the Matter of Respondent V* supported Albert's request that she be admonished for minor misconduct was more in line with the evidence at trial than a disbarment.

Respondent's conduct before Judge Ishii and Judge McAuliffe was very brief. Neither Judge sanctioned Albert for her conduct. Her conduct in Noble or Grewal resulted in no appreciable injury to her client, the public, the legal system, or the profession. Thus, both incidents fall within the definition of "minor misconduct" if there was any misconduct at all.

Mr. Schales testified that Albert's conduct, if liable, was nothing more than "a mistake" and an apology should be all that is required from the Board to stand in line with the purpose of the disciplinary proceedings. (RT 12/16/22 179, 180, Ex 1141). Another client, Ms. Burns testified that "it would be horrible" if Albert were suspended or disbarred because it would "negatively" affect her case. (RT Vol 4:124 12/21/22). (It negatively affected her case. Ms. Burns case was set for jury trial on April 8, 2024. The State Bar was aware of this case and issued the

interim suspension just prior to trial. (See Declaration of Theresa Marasco and Antonio Marasco).

Furthermore, Respondent's misconduct did not involve a Client Security Fund ("CSF") matter and was not a "serious offense" as defined in Rule 5.126(B). Thus, Rule 5.126(A) provides a disciplinary proceeding may be resolved by admonition. Both incidents in Noble and Grewal occurred under mitigating and irregular circumstances. In both, the respondent functioned as an advocate in a way that she thought was protecting her clients' interests in federal court where she was still an active member before that court.

Being admitted both in the California State Bar and the CAED currently, there is negligible risk that future misconduct would occur. Finally, as explained above, no significant harm occurred. Given the circumstances, discipline is unnecessary and would be punitive considering the compelling mitigation and lack of aggravation, the narrow extent of her misconduct, and the lack of consequential harm. Therefore, anything beyond an admonition was inappropriate. (Rule 5.126).

3. Credit for prior Wrongful Suspension

It is stated that only the California Supreme Court can suspend, disbar, or reinstate a member's license to practice law.

As such, the Ninth Circuit B.A.P. confirmed that the California Supreme Court wrongfully withheld Ms. Albert's license to practice law from April 16, 2018, through February 26, 2019, in violation of 11 U.S.C. §362.

The U.S. Bankruptcy Court also confirmed that the California Supreme Court wrongfully withheld Ms. Albert's license to practice law from April 20, 2021, through May 5, 2021, in violation of 11 U.S.C. §524 and/or 11 U.S.C. § 525.

It is yet to be determined, as Ms. Albert contends, this Court continued to wrongfully withhold her license to practice law from February 26, 2019, through August 28, 2019, and from February 28, 2020, through April 20, 2021.

As such, Ms. Albert should be credited for the 2.5 years she was inactive based on this Court's wrongful refusal to comply with federal law.

4. Requiring Ms. Albert to Pay $27,055.00 in State Bar Costs is Unconstitutional

a. Costs Violate the Due Process Clause

The State Bar Disciplinary system charged Ms. Albert $27,055.00 in costs.

"The state has a constitutional obligation to provide a hearing to decide whether dismissal or suspension is appropriate." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344.

In order to make sure an attorney is afforded due process; the State Bar disciplinary proceeding must provide both: (1) "[a]n opportunity to challenge the state's factual determinations;" and (2) that opportunity must be held "before an impartial and disinterested decisionmaker." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344.

i. Ms. Albert Only Had an Opportunity to Challenge the State's Factual Determinations That Were in the SANDC

The State Bar provided Ms. Albert with the opportunity to challenge the state's factual determinations – but she had to pay $27,055.00 for that right. The disciplinary system is a pay to play system. The more an attorney refuses to default and admit the charges, the more the attorney pays.

It is the most expensive adjudicatory in the United States. Currently it costs an attorney at least $24,695.00 to be heard. If the attorney wants to appeal it costs an additional $2,000 to $3,000 to appeal. In comparison the filing fee to file an Answer in state court in California is $435.00 in an unlimited civil case and to

appeal it costs $775.00[12]. It is only $75.00 to file a small claims complaint which deals with matters less than $12,500 and it costs nothing to defend.

Here, there was no financial obligation owing to a client in this matter, yet Ms. Albert had to risk owing the State Bar $27,055.00 in order to defend herself.

The State Bar determines how much it will pay its employees in wages and benefits. Then it creates a fixed State Bar costs sheet based on how much it costs to operate the State Bar, including its wages and benefits. Then the revenue the State Bar collects from the disciplinary costs is used to pay for the State Bar operation, including employee wages and benefits. The revenue from the disciplinary process accounts for nearly half of the entire State Bar budget.

The Costs Sheet increases at each point of litigation process and if the State Bar proves just one point of misconduct charged, then the member must pay those State Bar costs plus additional costs assessed enumerated in Bus & Prof Code § 6086.10 The attorney is not allowed to seek summary judgment in order to avoid full adjudication of the matter at a lower cost.

On April 10, 2024, the State Bar charged Ms. Albert $27,055.00 in State Bar Costs ($24,695.00 for a three-day hearing plus $2,360.00 for the State Bar's reporter's transcript). (4-10-24 Costs Certificate). (Ms. Albert paid $825.00 for the reporter's transcript separately so she could appeal to the Review Department). (Request for Review).

In *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344, this Court held it was unconstitutional for the School Board to charge half of the costs in a disciplinary proceeding against a teacher on the grounds that the

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[12] It is arguable whether California Rules of Court, 900 et seq. require the attorney to pay$775.00 to petition for review under Cal Rules of Court, Rule 8.25. If so, that is far too high a price to seek review before a license to practice law is taken.

teacher has a right to defend herself. By forcing her to pay a portion of the costs, the costs statute violated her due process right to a hearing. It would also chill other professionals from seeking a hearing, thus the statute was found to be facially invalid.

"The right to practice one's profession is sufficiently precious to surround it with a panoply of legal protection" (*Emslie v. State Bar* (1974) 11 Cal.3d 210, 226), including a disciplinary hearing consistent with the requirements of due process (*Conway v. State Bar* (1989) 47 Cal.3d 1107, 1113). At issue here is whether [the State Bar Costs Statute Bus & Prof Code §6086.10] violates those requirements by impairing the right of a licensee subject to discipline by the Board to obtain a hearing." *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 39.

Like the costs statute in *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344, Bus & Prof Code § 6086.10 and Bus & Prof Code §6140.7 impair the rights of a licensee like Ms. Albert subject to discipline by the State Bar to obtain a hearing.

In the last disciplinary proceeding, Ms. Albert was deprived of review on the grounds she could not pay the transcript costs of $2,360.00 as her filing fee.

An attorney has a right to clear her name. The State Bar has never met its burden of proof on its most salacious charges against Ms. Albert.

By putting in baseless salacious charges into the NDC, the State Bar has implanted a process wherein it is more likely to capture increased revenue by baiting the attorney to defend up to the hearing.

Because the costs structure has bastardized the "right to an opportunity to respond to the particular charges asserted by the [State Bar] and to clear his or her name" it fails the first due process prong under *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344.

ii. Plus the State Bar Is Not an Impartial and Disinterested Decisionmaker

The attorney's opportunity to defend must be held "before an impartial and disinterested decisionmaker." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 344.

The lawyers are being deprived of a disinterested and impartial adjudicator because the people who create the complaint, investigate the complaint, and determine to charge and issue discipline all get paid from the mandatory disciplinary costs foisted on those attorneys thrown into the attorney disciplinary system.

In Ms. Albert's case, is it the State Bar prosecutor creating the investigation and charges against her – not a client and not the court.

Because the complainant, investigator, judge, jury, and executioner derive a financial benefit from finding the attorney culpable, the system lacks due process and is nothing more than an unconstitutional *Tumey* Court.
Tumey v. *Ohio* (1927) 273 U.S. 510, 531-532.

Previously, there was no such conflict because the State Bar was "controlled and managed by the members of the profession *who are public officers* acting under oath without compensation " *Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal.2d 548, 566.

Ms. Albert is a revenue maker for the State Bar. On April 20, 2021, she paid the State Bar $60,000.00. The State Bar was allowed to keep all but $20,000.00 of the $60,000.00 she paid to get her license back.

The State Bar cost structure under Bus & Prof Code § 6086.10 has taken "a radical departure from the established common law tradition of public funding of adjudicators in courts and in official quasi-judicial bodies." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 336-37.

Ms. Albert was sold into the system to generate income as a political favor with State Bar initiated investigations rather than being disciplined based on legitimate client complaints. It can only exist in this state because the adjudicator is not impartial. *Tumey* v. *Ohio* (1927) 273 U.S. 510, 531-532.

As this Court may recall, the costs are so high that in the second disciplinary proceeding Ms. Albert was deprived access to the Review Department because she was in bankruptcy and could not afford the transcript fee which was thousands of dollars - much more expensive than a court filing fee. (see, *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 335, "refusing to allow indigents access was the equivalent of denying them an opportunity to be heard, in violation of the guarantee of due process").

The costs are not rehabilitative as the statute purports because the more culpable professionals offered a stipulation pay less than an attorney with a viable defense to one or more charges. Even then, the cost chills an innocent attorney who is given a stipulation from proceeding to trial if they can cover the lower charge just to keep their license.

In the *California Teachers Assn* case this Court found that a statute requiring a teacher to pay half of the administrative costs to defend herself to the Board violated due process. It did not assert any costs could be collected such as filing fees:

The California Supreme Court made clear that attorneys are entitled to the same due process protections as teachers in the case of *In re Rose* (2000) 22 Cal. 4th 430. "To the extent the charges against the attorney implicate his or her good name, reputation, honor, or integrity, the attorney has a protected liberty interest as well." *In re Rose*, at 456 (citing *California Teachers Assn. v. State of California*, *supra*, 20 Cal. 4th at p. 348.). But, the Bar's disciplinary cost structure is *inconsistent* with the California Supreme Court's decision in *California*

Teachers Assn. v. State of California (1999) 20 Cal.4th 327, 347 (CTA). Unsuccessful litigants are not supposed to be required to pay the cost of administrative hearings. (*Id.* at pp. 339-342.).

"[T]he importance of free access to the courts as an aspect of the First Amendment right of petition" (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 339) has been abandoned under Bus & Prof Code § 6086.10.

The State Bar has affirmed through litigation that the purpose of the State Bar costs is to fine the attorney and points to subsection (e) which declares:

> **(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.
>
> Bus & Prof Code §6086.10(e)

Like the Costs statute in California Teachers Assn, the State Bar cannot make a "plausible argument" that the Costs statute is a penalty for the attorney's tactics because it "imposes hearing costs upon all [attorneys' who are [disbarred] or suspended." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 340.

There is no explanation in the Legislative history how the costs would "promote rehabilitation and protect the public." Bus & Prof Code §6086.10(e). In fact, the Legislature only speaks about the Bar having difficulty collecting costs and that this amendment would give them an avenue to collect costs through a judgment. "The actual standard contained in the statute for imposing costs is unconstitutional." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 345) because it "impermissibly chills the right to a hearing in every

case in which a [lawyer]…through fear of subsequent reprisals in the form of monetary penalties." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 345.

Each of the reasons laid out in *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 345 apply with equal force here. "Under the challenged statute, [lawyers] possessing colorable arguments who exercise their right to a hearing are subjected to a penalty more severe than that typically imposed on defeated parties." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 346

"First, the significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 348.

"The second factor in this procedural due process analysis is the state's interest in the expeditious removal of unsatisfactory [lawyers] and the avoidance of administrative burdens." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 348

> Conserving judicial resources is a legitimate interest (*Bankers Life Casualty Co*. v. *Crenshaw* (1988) 486 U.S. 71, 82, 85), as is conserving public funds devoted to providing administrative hearings. In light of the circumstance that the state traditionally has funded the cost of judges in both judicial and quasi-judicial proceedings, however, its interest in requiring teachers, alone, to bear a major share of the financial burden of providing administrative law judges in disciplinary proceedings cannot be very strong.
>
> *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 348-49

"Shifting the state's cost of this constitutional obligation to the individual entitled to the hearing, simply because the individual ultimately did not prevail, is a

weak interest to be balanced against the other interests at stake." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 349.

> The third factor shows Bus & Prof Code §6086.10
>
> poses a substantial risk of erroneous terminations, because it deters [lawyers] with colorable claims from obtaining a hearing and vigorously presenting their side of the case…
>
> Assessing [] the cost of the administrative law judge, [prosecutor, investigator and infrastructure] on the other hand, imposes an indeterminate, substantial, additional debt upon the [lawyer] at the very time he or she has been deprived of a job. Therefore, the risk that [lawyers] will forgo hearings or limit their defense against the district's charges is significant.
>
> *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 349

Although the State Bar has a cost waiver statute, Ms. Albert applied for a cost waiver when she was in bankruptcy, her license was suspended and she had no income, yet the State Bar court, Review Department and California Supreme Court denied her request for a waiver, making that statute less meaningful. Unlike the fee waivers granted in court, where it is obligatory based on an impecunious status, the Costs statute makes waiver 'discretionary' which is actually arbitrary as seen by the different handling of costs in the Recommendation versus the Review Department Opinion in this case.

Bus & Prof Code § 6086.10 "contains no provision requiring the {State Bar adjudicator] to consider the financial condition of the [lawyer] before imposing costs, and we may not assume that [lawyers] who have lost their jobs will have adequate financial resources when they are billed based on [the fixed cost sheet]. *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 352

"As in *Cole*, [and California Teachers Assn.] such fees would be unlike anything [lawyers] would have to pay to protect their constitutional interests in court." *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 356

Bus & Prof Code § 6086.10 requiring lawyers to pay State Bar Costs" necessarily and impermissibly deters [lawyers] from exercising their due process right to a hearing" making the statute invalid on its face and as applied. *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 357.

Financially supporting the disciplinary system is not a legitimate interest that can override the lawyer's due process rights.

The cost requirement presents a total and fatal conflict with controlling c. constitutional principles and is invalid on its face and as applied. Id.

Furthermore, the State Bar Hearing Department and Review Department are nothing more than *Tumey* courts. The State Bar obtains nearly 50% of its funding from its own members that it disciplines. The judges, investigators, prosecuting attorneys are all paid from State Bar costs and sanctions it levies against its members when it issues its Recommendations and Opinions in the State Bar Court and Review Department. By giving this body the sole discretion to be the Complainant, prosecutor, judge and jury, Ms. Albert had no chance at a fair trial as envisioned by the separation of powers because the Legislature is supposed to be the collector of revenue and the Courts are supposed to be independent of having to need to catch its own prey to put food on the table. *Tumey v. Ohio* (1927) 273 U.S. 510, 535 ("both because of his direct pecuniary interest in the outcome, and because of his official motive to convict and to graduate the fine to help the financial needs of the village. There were thus presented at the outset both features of the disqualification.")

This Court has abrogated the ability to mete out financial sanctions, determine the amount of State Bar costs and issue Recommendation of suspensions and disbarment it is unconstitutional while prosecutors and attorneys sitting in the

Office of General Counsel have bloated salaries – some exceeding those of the judges sitting on the California Supreme Court.

As the U.S. Supreme Court explained in Tumey, "it is very clear that the slightest pecuniary interest of any officer, judicial or quasi-judicial, in the resolving of the subject matter which he was to decide, rendered the decision voidable." *Tumey v. Ohio* (1927) 273 U.S. 510, 524.

Furthermore, the Costs, characterized as a fine cannot be excessive under either Bus & Prof Code § 6086.10 or Bus & Prof Code § 6086.13 in violation of Cal Const Art 1 §17 (See, BAP Opinion Albert-Sheridan v State Bar 4/02/2024) or the Eighth Amendment. VIII U.S. Const. Amend.

The State Bar disciplinary costs statute is facially invalid and as applied to Ms. Albert.

b. <u>Costs Also Violate the Excessive Fines Clause</u>

Timbs v. Indiana, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019)..

The Court explained "[p]rotection against excessive punitive economic sanctions secured by the Clause is [] both "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition." *McDonald*, 561 U. S., at 767" *Timbs v. Indiana*, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019).

The Ninth Circuit relied on *Timbs v Indiana* decision in expanding claims based on the Eighth Amendment to the civil context because it is a "core right worthy of constitutional protection." *Pimentel v. City of Los Angeles*, 966 F.3d 934, 937-938 (9th Cir. 2020).("We hold that the *Timbs* decision affirmatively opens the door for Eighth Amendment challenges to fines imposed by state and local authorities." Id. 938).

In the present case, the State Bar costs totaled $27,055.00 wherein Ms. Albert obtained no fee from a client, did not misappropriate any money, owed no

money to any third party, and caused no harm to a client, opposing counsel or the court. The cost is excessive.

The fixed disciplinary costs charged to attorneys who seek to have an administrative hearing must pay all the costs even if all the charges end up dismissed except for one or two technical charges. Previously, Albert had to pay $37,555.90 which is excessive for two disciplinary proceedings, and her license was suspended until full payment was made making it even harder to earn the income to pay the Costs under Bus & Prof Code § 6140.7.

c. <u>Bus & Prof Code §6140.7 Violates the Equal Protection Clause</u>

Next, Bus & Prof Code § 6140.7 provides in pertinent part that ‘

> 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.

Bus & Prof Code § 6140.7

This statute violates the Equal protection Clause of the Constitution on the grounds that it treats lawyers who serve the underserved community that make less money disparately from lawyers with wealthy practices. The wealthy lawyer can pay off the State Bar costs and resume their practice after the actual suspension has ended. However, the impecunious lawyers out there like Ms. Albert end up being suspended indefinitely. When this Court suspended Ms. Albert for 30-days that suspension lasted three years (wrongfully) on the sole grounds that she did not have the money to pay the State Bar costs to regain her license.

After the suspension has ended there is no legitimate regulatory purpose in continuing to withhold an attorney’s ability to reinstate their license with the State Bar. This is purely a fiscal pay-to-play system.

By continuing to suspend an attorney's license for payment of Costs it goes against the ethical standards of the ABA which state that a license should not be suspended for longer than 3 years. (ABA Model Rule 10). Furthermore, conditions should not attack to anything more than terms of probation. The term of suspension should be a finite time period. The ABA only allows conditions to attach to probation, not the length of the suspension. Attaching financial obligations to the length of the suspension is unconstitutional, turning it into an excessive punishment for those who are not wealthy. There is no legitimate purpose, because those who attained the wealth may have attained it in an unethical manner.

5. Sanctions Were Arbitrary and Capricious as Applied

There was no evidence, test or factors laid out to explain how the Review Department determined that Ms. Albert should be sanctioned an additional $5,000.00.

The State Bar Court issued $1,500.00 in sanctions under Rule 5.137. (SB Opn. 51). The Review Department changed that ruling and issued $5,000.00 in sanctions to Ms. Albert based on disbarment.

Here, there was no intentional misappropriation of money; no monetary loss; no misconduct against a vulnerable victim; no serious conduct (work was competent); no victims; no client abandonment; no judicial sanction; and no criminal conviction.

All the State Bar had was prior discipline because this Court has already held that UPL does not apply to practice in federal court.

Proposed Rule 5.137(g) provided:

> The State Bar Court will consider the following factors in setting the amount of a recommended sanction within the appropriate range in subsection (F): 1. Whether there was an intentional misappropriation of money; 2. The amount of the direct or indirect monetary loss to any victim(s); 3. Whether the misconduct was against a vulnerable victim, including but not limited to the aged, incapacitated, infirm, disabled, incarcerated, an immigrant, or a minor; 4. The seriousness of the

> conduct underlying the discipline; 5. Any prior discipline of the attorney; 6. The number of victims affected by the conduct in this matter; 7. Whether the respondent has abandoned a client or the entire law practice; 8. Whether the respondent has been judicially sanctioned for engaging in abusive or frivolous conduct; 9. Whether the respondent has engaged in the unauthorized practice of law, or aided others in the unauthorized practice of law; and/or 10. Whether an underlying criminal conviction resulted in a significant jail sentence.

However, **Rule 5.137 as implemented fails to list any factors at all**. The Rule also increased the range of sanctions that the State Bar can recommend.

This is unconstitutional. It is also contrary to the purpose of discipline by including prior discipline as an element because that is a form of disciplining the attorney simply for having prior disciplinary record. If it were a criminal proceeding it would be in violation of the double jeopardy clause.

Here, the state court cannot charge Ms. Albert with UPL in federal court as such, the only thing left to support a sanction being issued against Ms. Albert was her prior record of discipline. That is unconstitutional under the California Constitution and the Fifth Amendment, Eighth Amendment and Fourteenth Amendment.

Under ABA Rule 10 sanctions are imposed only after considering (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. These factors were not weighed and favor that no sanctions issue in this case because respondent was negligent, there was no actual injury by the misconduct, and the mitigating factors outweigh the aggravating factors.

Thus, the application of Bus & Prof Code § 6086.13 and Rule 5.137 was wholly arbitrary and capricious.

It was also excessive in violation of the Eighth Amendment and the California Constitution because it was greater than the State Bar was charging other lawyers being pushed through the Disciplinary canal without substantial justification for the variance.

Other attorneys have paid far less a price. See, *In re Gutierrez* (June 15, 2023, S276466) the respondent was ordered to pay $1,250.00; *In re Bachman* (June 7, 2023, S279186) ordered to pay $250.00; *In re Stroj* (May 19, 2023, S279005) ordered to pay $1,500.00 in installments; *In re Bailey* (May 10, 2023, S278919) ordered to pay $1,500.00; *In re Khaliq* (Jan. 18, 2023, S277357) ordered to pay $250.00; *In re Paglia* (Nov. 22, 2021, S270918) ordered to pay $250.00; *In re Carmichael* (Jan. 25, 2023, S277370) ordered to pay $250.00; In re Kelly on Discipline (July 27, 2022, S274527) ordered to pay $250.00; *In re Carmichael* (Feb. 15, 2023, S277370) ordered to pay $250.00; *In re Isola* (Sep. 1, 2022, S275172) ordered to pay $500.00; *In re Sahni* (Apr. 7, 2022, S272800) ordered to pay $500.00; *In re Chavez* (Dec. 28, 2022, S276066) ordered to pay $500.00; *In re Barbarie* (Dec. 20, 2021, S271018) ordered to pay $500.00; *In re Mataele* (Feb. 22, 2022, S272398) ordered to pay $500.00. (All from California Supreme Court Orders of discipline).

The evidence was insufficient to find that Respondent's conduct warranted a $5,000.00 sanction.

6. <u>Not Similar to Discipline of Other Attorneys</u>

Attorney BB in the Matter of BB was admonished for writing "14 checks that Respondent wrote directly from his CTA to pay for business and personal expenses," instead of receiving the minimum standard discipline of 90 days suspension. *In the Matter of DD* p. 14 (Rev. Dept. Opn. Apr. 22, 2024)

According to the Daily Journal article published on May 8, 2024, the Court disbarred two attorneys. Neither of those attorneys defended themselves at the State Bar. (Douglas McClintock 04/05/2024; and Hamid Safavi 04/05/2024). The

Court suspended Ernest Franchesci for nine months for tax evasion on 04/13/2024. Sharron Gelobter was suspended for two years with credit given for inactive enrollment on 04/05/2024. She purportedly had a drug/alcohol addiction problem and thus was in the LAP program or mental illness and committed UPL, violated her probation conditions, took advanced fees, failed to refund fees to a client, acted with incompetence and committed moral turpitude. Micheal Lindley was suspended for 30 days on 04/13/2024 for his second DUI which was considered the "higher end of discipline" because according to the Standard driving while intoxicated, a criminal act, is apparently acceptable behavior whereas representing consumers who cannot afford a competent attorney against Wall Street giants like Wells Fargo Bank in federal court, is not. Daily Journal, State Bar Disciplines 9 Attorneys, May 8, 2024, Spcl. Edition.

James Mills was suspended for two years after stipulating to 24 separate acts of misconduct in five different client matters that ranged from failing to report court ordered sanctions to failing to keep clients informed of their cases. The Daily Journal article noted that the gravamen was that the attorney was incompetent in each lawsuit and caused significant harm to his clients.

Ms. Albert has no reason to believe any of the accusations or findings by the State Bar on each of these attorneys are accurate or true. Sher is citing these cases to show that the discipline of recommended disbarment or suspension is way out of line with the type of discipline issued on allegations of far worse conduct than those allegedly committed by Ms. Albert.

7. The Practice of Law is Ms. Albert's Sole Source of Support

Ms. Albert's sole source of support is from the practice of law. She had a law firm from 2001 through 2018 when she was suspended. She lost her entire firm without compensation when the State Bar refused to reinstate her license and allow her to reorganize her debts under Chapter 13.

She was still struggling to overcome the massive character assassination performed by the State Bar opinions against her. Ms. Albert may make some mistakes, but she does not lie, cheat, or steal.

There were three years that the State Bar suspended or failed to reinstate Ms. Albert's license to practice law in violation of federal law. Like a horse trainer in the case of *Barry v. Barchi* (1979) 443 U.S. 55, 73-7, the wrongful suspension irreparably damaged her livelihood.

Much of that suspension was found to be wrongful.

> Ms. Albert has a constitutional right to be free from arbitrary state action. The Fourteenth Amendment protects the pursuit of one's profession from abridgment by arbitrary state action. We therefore begin with the settled proposition that a "[s]tate cannot exclude a person from . . . any . . . occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.
>
> *Endler v. Schutzbank* (1968) 68 Cal.2d 162, 169-70

The State Bar's action in 2018 was arbitrary. It refused to reinstate her license when it was obvious the debt owed to 10675 S Orange Park Blvd was discharged. See. *Albert-Sheridan v. State Bar of Cal.* (In re Albert-Sheridan) (9th Cir. 2020) 960 F.3d 1188. (See, *Cabardo v. Patacsil* (In re Patacsil) (Bankr. E.D. Cal., June 9, 2023, No. 20-23457-A-7) for the details).

When the Ninth Circuit spoke, the State Bar took the discharged debt owed to Dr. Woods and converted it to CSF fund reimbursement to further thwart Ms. Albert's reinstatement. Ms. Albert paid the State Bar $20,000.00 as a result until the Ninth Circuit spoke again in *Kassas v. State Bar of Cal.* (9th Cir. 2022) 49 F.4th 1158. Then the State Bar had to refund the funds (without interest).

It refused to reinstate her license in 2018 during the automatic stay although it was obvious the State Bar could not hold onto her license until she repaid the

debt while in bankruptcy. Ten days ago, the Ninth Circuit BAP finally spoke on this issue and told the State Bar they were wrong – again. See, *Albert-Sheridan v. State Bar of Cal.* (In re Albert-Sheridan) (B.A.P. 9th Cir., Apr. 2, 2024, No. CC-23-1024-SFL).

By issuing a reciprocal suspension or disbarment under these circumstances would be a manifest injustice.

There is no doubt that the State Bar's action in 2024 is arbitrary also. Federal law clearly preempted the State Bar Act.

The State Bar is trying to ruin Ms. Albert financially and impugn her reputation in her profession.

The current state bar suspension, if reciprocated in this federal court will do the same – again because "even a temporary suspension can irreparably damage a [lawyer's] livelihood. Not only does a [lawyer] lose the income from [cases] during the suspension, but also, even more harmful, he [or she] is likely to lose the clients he [or she] has collected over the span of his [or her] career. Where, as here, even a short temporary suspension threatens to inflict substantial and irreparable harm, an "initial" deprivation quickly becomes "final," and the procedures afforded either before or immediately after suspension are *de facto* the final procedures." *Barry v. Barchi* (1979) 443 U.S. 55, 73-74.

The State Bar is using this suspension to thwart the data breach case.

It has also ripped Ms. Albert's state cases away from her -one that was set to be tried on April 8, 2024, in Santa Monica.

Interest of justice includes systemic integrity and fairness. Leaving the State Bar data breach without counsel will rip apart any integrity that may be left in the judicial system in California.

Like a pebble in a pond, attorneys are watching anonymously from the wings. They watch anonymously because they fear the State Bar.

Ms. Albert does not have a history of alcohol or drug addiction. She has no mental illness. She has no criminal record. She is competent, except in the eyes of a few.

She has won numerous reversals on appeal in both the state and federal court. Her worst trait is the spelling errors she makes in her papers. However, that is covered under the ADA because she has an eyesight/optic nerve issue.

These are not legitimate reasons to disbar or suspend Ms. Albert.

8. Other Grounds Warranting Review

State Bar rules harass the attorneys by burdening them with the financial expense of obtaining Exhibit tabs starting at 1,000. There is no legitimate reason to require attorneys to pay for special numbered exhibit tabs starting at 1,000. It is harassment and should be done away with.

To the extent this Court reverses discipline of Ms. Albert, it should necessarily vacate the default disbarment of attorney Leslie Westmoreland. Mr. Westmoreland was summarily disbarred on the same grounds Ms. Albert was disciplined. Knowing that an unconstitutional order was entered by this Court, this Court has the inherent authority to vacate it.

State Bar Standards are set up in a manner where it is implied that discipline would progress in steps, such as private reproval, then public reproval before moving onto an actual suspension. Even the steps in a suspension had a 30, 60, 90-day progression. In Ms. Albert's case the State Bar arbitrarily disregarded these steps and jumped from a 30-day suspension to a 180-day suspension to disbarment – with heavy financial obligations attached that have nothing to do with protecting her clients.

The State Bar has refused to allow Ms. Albert to participate in its activities. Ms. Albert applied to be on all of the volunteer committees, and she was ignored. If this Court wants to change the political body of the State Bar it needs to be more inclusive.

The term of probation should be eliminated. Prior probation was emotionally and mentally abusive, causing Ms. Albert extreme emotional distress through government sponsored harassment in an effort to make Ms. Albert waive her rights. There is no justification for further probation – and seriously if there is some legitimate purpose behind it, such was abandoned by the Department of Probation over six years ago.

Furthermore, Ms. Albert passed the MBE and the State Bar ethics exam. There is no reason to require her to take those exams again.

Nor is there any justification to make Ms. Albert petition for readmission and prove fitness and rehabilitation. Her work is better than the average practicing trial lawyer. (See decl. Brian Liddicoat and RT Vol. 3:100-107, 112-116, 117).

Additionally, a Supreme Court Order issuing a suspension or disbarment is an injunction.

Injunctions require all terms to be clear, concise, and included in the document. This Court must include all terms of probation, suspension, and the amount of costs to be paid, when and to whom in the Order. It cannot refer to another document as it has done in the past. That is simply invalid.

The State should live up to the same standards any trial lawyer representing homeowners must live up to when they draft a proposed order to restrain a lender from selling a home at foreclosure.

Finally, the modification to Rule 9.20 requiring "certified" letters of a suspension for trial lawyers is extremely inefficient and unnecessarily costly when courts accept e-filing. E-file and -EServe opposing counsel and client and be done with it. It is in the record as a result.

F. The Public Disciplinary Records on The State Bar Website Should Be Removed

Additionally, this Court should order the disciplinary record and Ms. Albert's entire public disciplinary history sealed.

It should be deleted from the website. Other State Bars like the Michigan State Bar do not hand out scarlet letters in such a fashion. It is a scarlet letter. It is used to harm the attorney, not protect the public.

None of the most egregious charges in any of the disciplinary proceedings were found to be true and some that were found to be true were built on a mountain of lies. One of the cases initially brought charged Ms. Albert with violation of a Court order and that was not proven to be true and dismissed by the Review Department, the discovery sanctions orders which existed were also void.

In the second disciplinary proceeding the charge of forgery and moral turpitude and misrepresentation was not proven to be true and dismissed by the State Bar court, the purported $20,000.00 in unearned fees, abandonment of a client, and incompetence was absurd when the patent infringement complaint was actually filed in New Jersey which OCTC tried to hide from the Court. The civil discovery sanctions order was not "obeyed" on the grounds that Ms. Albert sent opposing counsel a $75.00 check instead of a $47.00 check. Again, absurd to waste resources filing an entire Notice of Disciplinary charges solely on the attorney paying opposing counsel too much money.

For all of the above reasons laid out above, although this may be the most honest set of facts that the State Bar has ever filed in the history of the State Bar and it surely is when it comes to truthfully relating what Ms. Albert drafted and filed (not advised), but it was not a crime. It was not misconduct and not disciplinable.

These malicious charges are harming Ms. Albert's reputation and have resulted in a loss of her liberty and property rights.

"The fact that a charge has been made against an attorney, no matter how guiltless the attorney might be, if generally known, would do the attorney irreparable harm even though he be cleared by the State Bar." *Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal.2d 548, 569.

"the "stigma-plus" test set forth in *Paul* v. *Davis,* and requires a showing that respondents not only defamed appellant (the "stigma"), but deprived him of a property or liberty interest (the "plus")." *Higginbotham v. King* (1997) 54 Cal.App.4th 1040, 1046.

Here, the State Bar has not only defamed Ms. Albert and continues to do so by the public posting on the California State Bar website, but also has deprived Ms. Albert of her property or liberty interest in her license to practice law and work in her chosen profession. It is an excessive punishment – scarlet letter no other State Bar employs. (VIII Amend. U.S. Const.)

It is cruel and unusual punishment to keep these disciplinary histories attached to their public member profile after the suspension period is over in violation of the Eighth Amendment.

Furthermore, third party websites such as Avvo.com picks up these suspensions and posts them on their website which is a search engine for people looking for attorneys. It is unfair because other State Bars do not issue these scarlet letters putting California attorneys at an unequal advantage.

Consequently, this Court should order the removal of all prior public disciplinary history from Ms. Albert's membership page on the California State Bar website.

G. <u>State Bar Needs to Be Stripped of Immunity</u>

Finally, this Court should find that the State Bar cannot be cloaked in 11th Amendment immunity because it collects revenue from its members as opposed to the public. The Ninth Circuit was recently split on this issue. *Kohn v. State Bar of Cal.* (9th Cir., Dec. 6, 2023, No. 20-17316).

Ms. Albert incorporates all arguments made in this brief as though laid out herein. For all of the reasons stated above, the Court should find there is no sovereign immunity; no judicial or quasi-judicial immunity, no *Younger* abstention, and no *Rooker Feldman* issue either because the State Bar is a like a

union with attorneys its members – self funded by its attorney members. An attorney has no right to seek a writ in a state superior court like other licensed professions from any action taken by the state bar either before, during or after this Court issues an order thereon.

State Bar "administrative law doctrines must take account of the far-reaching influence of agencies and the opportunities such power carries for abuse." *Kisor v. Wilkie* (2019) 139 S. Ct. 2400, 2423. The State Bar will forever be uncontrollable when there is no fear of accountability for its unlawful actions.

VI. CONCLUSION

Wherefore, Ms. Albert respectfully requests that this Court: (1) grant review, (2) dismiss all charges against Ms. Albert, (3) delete all disciplinary history; (4) order the State Bar to dismiss all other pending charges; (5) declare Bus & Prof Code §§ 6007(c)(4); 6068(a), 6086.10, 6086.13, 6140.7 are unconstitutional; (6) State Bar Rules 5.137 unconstitutional; (6) declare Standards 1.8(b) and 2.19 unconstitutional; (7) change the Exhibit numbering from 1,000 to 100; (8) find the State Bar has no 11th Amendment immunity from suit in federal court and there is no *Rooker Feldman* or *Younger* abstention issue for disciplinary proceedings by the State Bar; and (8) terminate the employees who violated Ms. Albert's federal rights then restructure the State Bar to prevent further harm to other members.

Dated: May 20, 2024

Respectfully Submitted,
/s/ LENORE ALBERT
LENORE L. ALBERT
* Cal State Bar Suspension effective 3-14-2024

The petitioner is filing this brief with reservation of rights to seek monetary and injunctive relief based on constitutional rights violations mentioned herein.

Related Cases

Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan) (B.A.P. 9th Cir., Apr. 2, 2024, No. CC-23-1024-SFL, published).

Albert-Sheridan v State Bar of California 8:18-ap-1065-SC (U.S.

In the Matter of Lenore Albert, U.S. District Court for the Eastern District of California (whether suspension or disbarment should be reciprocal)

In the Matter of Lenore Albert, U.S. District Court for the Eastern District of California (whether suspension or disbarment should be reciprocal)

Albert v Gonzalez, Ninth Circuit Case No. 23-3322 appeal from Albert *v Gonzalez* Case No. 8:23-cv-00635-FWS-JDE.

In the Matter of Leslie Westmoreland, California Supreme Court Case No. S280627 closed on September 26, 2023, with default disbarment based on supervision of Ms. Albert in Noble and Grewal matters.

Word Count

State Bar disciplinary proceedings are *sui generis*. The Rules on Law Practice, Attorneys, and Judges do not dictate any page or word length limit. (Cal Rules of Court Rule 9.00 et seq.). State Bar uses Rule 8.520(c)(1) (see *In re Drexel A. Bradshaw* S29234). The brief supporting the emergency petition to reinstate Ms. Albert's license and petition for review is 28,795 words in length using Word 10.

Dated: May 20, 2024

Respectfully Submitted,
/s/ LENORE ALBERT_____
LENORE L. ALBERT
* Cal State Bar Suspension effective 3-14-2024

APPENDIX

EX A

For Your Review - Notice of Death before Judge Ishi

Lenore Albert <lenorealbert@msn.com>
Sat 8/3/2019 5:08 PM
To:leslieww1@gmail.com <leslieww1@gmail.com>;Brooke Lynn <readproverbs8@gmail.com>

1 attachments (1 MB)
Noble - Notice of Death.pdf;

Please review. Unsure if wording in caption for "plaintiff" is correct. Unsure if I include my SBN number on Document.

Sincerely,

Simply Lenore :)