

LIU, J.

No. S214058

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PATRICIA J. BARRY

*Plaintiff and Appellant,*

v.

SUPREME COURT  
LODGED EXHIBITS

OCT 22 2013

Deputy

THE STATE BAR OF CALIFORNIA,

*Defendant and Respondent.*

---

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

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**REQUEST FOR JUDICIAL NOTICE**

**Volume II of IV**

**Exhibits J-W**

---

STARR BABCOCK (63473)  
LAWRENCE C. YEE (84208)  
DANIELLE A. LEE (223675)  
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**THE STATE BAR OF CALIFORNIA**  
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*Attorneys for Defendant and Respondent*  
**THE STATE BAR OF CALIFORNIA**

No. S214058

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

PATRICIA J. BARRY

*Plaintiff and Appellant,*

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THE STATE BAR OF CALIFORNIA,

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*Attorneys for Defendant and Respondent*  
**THE STATE BAR OF CALIFORNIA**

## REQUEST FOR JUDICIAL NOTICE

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

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

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

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

DATED: October 21, 2013

**KERR & WAGSTAFFE LLP**

By

A handwritten signature in black ink, appearing to read 'M. von Loewenfeldt', written over a horizontal line.

MICHAEL VON LOEWENFELDT  
Attorneys for Respondent  
The State Bar of California

## MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

DATED: October 2, 2013

Respectfully submitted,

**KERR & WAGSTAFFE LLP**

By



Michael von Loewenfeldt

*Attorneys for Respondent*  
**THE STATE BAR OF CALIFORNIA**

## **DECLARATION OF DANIELLE LEE**

I, Danielle Lee, hereby declare:

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

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


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



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

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

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



---

DANIELLE LEE

**PROOF OF SERVICE**

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

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

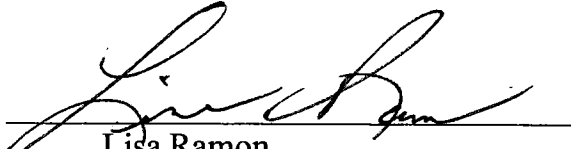
- **REQUEST FOR JUDICIAL NOTICE, VOLUME II OF IV, EXHIBITS J-W**

on the parties listed below as follows:

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

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

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



Lisa Ramon

## TABLE OF CASES

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

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

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

October 9, 2009.

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

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





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

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

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): PLAINTIFF IN PRO PER

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

PLAINTIFF/PETITIONER: DANIEL D. DYDZAK

DEFENDANT/RESPONDENT: JOSEPH LAWRENCE DUNN et al.

REQUEST FOR DISMISSAL

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

CASE NUMBER:  
30-2012-00558031

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

FOR COURT USE ONLY

FILED  
Clerk of the Superior Court

OCT - 9 2012

By: J. Browder, Deputy

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

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

on (date):  
on (date):

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

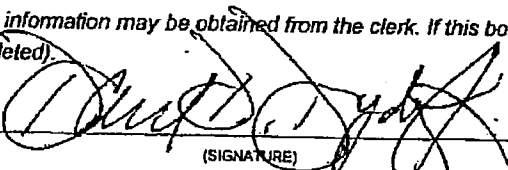
Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date: October 4, 2012

DANIEL D. DYDZAK

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

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

  
(SIGNATURE)


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

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

Date:

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

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

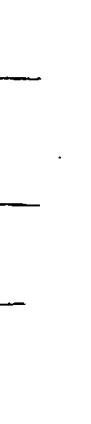
  
(SIGNATURE)  
Attorney or party without attorney for:  
 Plaintiff/Petitioner  Defendant/Respondent  
 Cross-Complainant

(To be completed by clerk)

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

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

Date: 10/9/12

Clerk, by 

Deputy

F I L E D  
Clerk of the Superior Court

OCT - 9 2012

By: J. Browder, Deputy

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

6 **REQUEST FOR DISMISSAL**

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

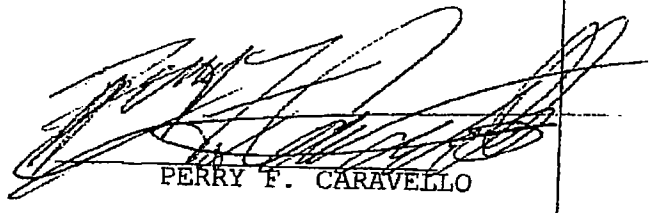
9 See Attached Service List

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

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

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

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

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22  
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24   
PERRY F. CARAVELLO



**FILED**  
Los Angeles Superior Court

NOV 24 2010

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

*AB005*  
*90803*

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

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

MICHAEL R. FLETCHER,  
Plaintiff,

vs.

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

) Case No.:

) *BS129414*

) *Petition For Writ*  
) *of Mandate*

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

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

CITY/CASE: BS129414 LEA/DEF#;  
RECEIPT #: CCH18782050  
DATE PAID: 11/24/10 12:25:08 PM  
PAYMENT: \$395.00  
RECEIVED: 0310  
CHECK: 395.00  
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CHANGE:  
CARD:

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*James A. Chelver*

*11/24/10*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

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

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

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

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

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

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

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

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

13 b) Allegedly leaving an "angry" voice mail albeit  
14 with no yelling or profanity with a person he  
15 believed to be an attorney wherein he threatened  
16 to "sue" the attorney,  
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18 c) Refusing to settle a case in mediation for the  
19 amount offered and  
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21 d) Asking a party to a law suit whether he knew that  
22 he "could be personally liable" in \$1983 cause  
23 of action;

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

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

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

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

7). Despite having been disqualified from hearing cases involving Mr. Fletcher, this same judge five months

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1 later ordered the investigation which gave rise to  
2 this "unprecedented" suspension. [Exhibit D].

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

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

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

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

22 We know the State Bar denied Mr. Fletcher Due Process of  
23 Law and right to fair procedures prior to rejecting his first  
24 Application because the state Bar Committee's suggestion that he  
25 "petition the Committee to waive" this requirement had already  
26 occurred.  
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1 In response to being told his Application had been  
2 summarily denied without even the pretence of notice or hearing  
3 and being told that the Committee could "waive the requirement,"  
4 Michael Fletcher pointed out to Respondents that he had MORE  
5 THAN ONE YEAR prior to Respondents' denial, as part of his  
6 original Application filed his "Petition and Suggestions in  
7 Support of Petitioner's Request that the Bar Committee Disregard  
8 the Suspension and Denial of Reinstatement of Petition in the  
9 Federal Court in the State of Missouri." [Exhibit C].  
10

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

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

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

24 **II. ARGUMENT**

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

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

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

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

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

21  
22 Because the Due Process Clause of the United States  
23 Constitution and the California common law right of "fair  
24 procedure" fundamentally require notice and hearing prior to any  
25 licensing organization's denial of a professional license,  
26 mandamus is appropriate here because the California State Bar  
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1 twice summarily withdrew Michael Fletcher's Application for  
2 Determination of Good Moral Character without affording Mr.  
3 Fletcher notice or affording him an opportunity to be heard.  
4 Id. at pg. 3; Schware v. Board of Bar Exam., 353 U.S. 232  
5 (1957) ("a state cannot exclude a person from the practice of law  
6 in a manner . . .that contravenes the Due Process or Equal  
7 Protection Clause"); Anton v. San Antonio Comm. Hosp., 19 Cal.3d  
8 802, 822-823 (1977) (mandamus is the appropriate mechanism to  
9 reinstate physician's hospital rights and privileges); Salkin  
10 v. California Dental Assoc. (1986), 176 Cal. App.3d 1118, 1119  
11 (mandamus appropriate where provider was denied due process in a  
12 disciplinary hearing); Westlake Comm. Hosp. v. Superior Court  
13 (Los Angeles), 17 Cal.3d 465, 482-483 (1976) (mandamus is  
14 appropriate where hospital denies physician staff privileges  
15 without informing physician of reason for exclusion and also  
16 provide a right to respond).

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

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

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

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

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

23 Here, on January 28, 2009, Respondent State Bar of  
24 California unilaterally conducted an ex parte proceeding  
25 concerning Petitioner's moral character application wherein Mr.  
26 Fletcher's substantive and constitutionally recognized interest  
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1 in the ability to practice law in the State of California were  
2 expressly addressed. [Exhibit A and B].

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

5 At this ex parte proceeding, a proceeding for which  
6 Petitioner was never given notice or afforded the opportunity to  
7 attend, the State Bar ignored Petitioner's seventy-six page  
8 motion [Exhibit C] wherein he recited California precedent that  
9 expressly prohibits the State Bar from relying solely on an  
10 irregular or "unfair" disciplinary proceeding in denying an  
11 applicant admission to the State Bar. Id.; Martin B., 33 Cal.3d  
12 at 723.  
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15 After intentionally or negligently ignoring Petitioner's  
16 motion and brief, Respondent State Bar of California determined  
17 that Mr. Fletcher's "moral character application" would be  
18 "administratively withdrawn" based solely on the federal  
19 district court for the Western District of Missouri's  
20 unconstitutional three year suspension that was imposed in May  
21 of 2004 and which ended on May of 2007. [Exhibit B].  
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24 This conclusion was reached without affording Michael  
25 Fletcher any opportunity to show for example that 1) nationally  
26 acclaimed Stanford School of Law Professor Jeffrey Fisher opined  
27 that the Missouri suspension was "unprecedented" and  
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1 "unconstitutional;" 2) that Mr. Fletcher was not allowed to  
2 conduct any discovery, interview any witness, prohibited from  
3 calling witnesses and denied the right to "make legal arguments"  
4 at his one and only hearing in 2004; and 3) despite his  
5 suspension having ended in 2007 that Mr. Fletcher's petitions  
6 for reinstatement had all been "summarily denied" without notice  
7 or hearing. [Declaration of Michael Fletcher; Exhibit D].  
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10 This denial of the most basic elements of due process and  
11 fair procedure is even more outrageous today because the public  
12 record now reflects that Michael Fletcher's "three year  
13 suspension" was carried out based on an "arbitrary and unwritten  
14 rule" imposed by two Caucasian federal judges who have been  
15 "discriminating against black people for years." Id.  
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17 This "arbitrary and unwritten rule" was discovered in  
18 October of 2009 when former Missouri Supreme Court Justice  
19 Ronnie White, the only African American to have ever served on  
20 Missouri's Supreme Court, called Michael Fletcher at his  
21 California home.  
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24 During this call, Justice White admitted that the only  
25 reason Michael Fletcher had been suspended and the only reason  
26 he had not be reinstated was because members of the Missouri  
27 Supreme Court and of the WDMO agreed that they would "fuck"  
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1 Fletcher by "applying an arbitrary and unwritten rule" to deny  
2 him reinstatement. Justice White also stated that these same  
3 judges "had been discriminated against black people for years."  
4 Id.

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6 Based on Justice White's admissions and the fact that  
7 Michael Fletcher, as of November 2010, has NEVER received a  
8 hearing in Missouri and has NEVER been afforded notice or an  
9 opportunity to be heard regarding his multiple petitions for  
10 reinstatement filed in the WDMO, in February of 2010 Mr.  
11 Fletcher brought a section 1983 and Bivens claim against members  
12 of the WDMO and the individual judges who Justice White  
13 identified in the partially recorded October phone conversation  
14 with Mr. Fletcher.  
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16  
17 In this federal litigation no judge from Missouri, from  
18 Missouri state or federal court, has denied that they conspired  
19 to "apply an arbitrary and unwritten rule" to punish Michael  
20 Fletcher. Nor has any judge from Missouri suggested, inferred  
21 or argued that Justice White was lying, mislead or mistaken when  
22 he called Michael Fletcher and admitted this conspiracy amongst  
23 judges to "fuck" the only African American attorney to have ever  
24 tried a case in federal court in Missouri. Id.  
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