In the Supreme Court of the State of California

RONALD PIERCE,
Petitioner

v.

STATE BAR OF CALIFORNIA and the
BOARD OF GOVERNORS OF THE STATE BAR OF CALIFORNIA,
Respondents

Original Proceeding in the Supreme Court of the State of California
after a Decision of the State Bar of California

VERIFIED PETITION FOR MANDAMUS, PROHIBITION OR OTHER EXTRAORDINARY RELIEF

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IN THE SUPREME COURT OF CALIFORNIA

Case Name: RONALD PIERCE, *Petitioner*, STATE BAR OF CALIFORNIA and the BOARD OF GOVERNORS OF THE STATE BAR OF CALIFORNIA, *Respondents*

Supreme Court Case No. _____

CERTIFICATE OF INTERESTED PARTIES, ENTITIES OR PERSONS
(California Rules of Court, Rule 8.208)

(Check one) Initial Certificate [X] Supplemental Certificate [ ]

Please check the applicable box:

[X] There are no interested entities or persons to list in this Certificate per California Rules of Court, Rule 8.208(d).

[ ] Interested entities or persons are listed below:

Full name of Entity or Party	Party	Non-Party	Nature of Interest
_____	[ ]	[ ]	_____
_____	[ ]	[ ]	_____
_____	[ ]	[ ]	_____
_____	[ ]	[ ]	_____

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms or any other association, but not including government entities or their agencies), have either i) an ownership interest of 10 percent or more in the party if an entity; or ii) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(d)(2).

Dated: October 28, 2014

_____

Ronald E. Pierce,
36633 Hawthorne Lane
Squaw Valley, CA 93675
(559) 254-3374

SUMMARY OF QUESTIONS PRESENTED

This is an original proceeding in the Supreme Court of the State of California, after a decision of the State Bar of California and the Board of Governors of the State Bar of California (collectively "Respondents"), denying Ronald Pierce's ("Petitioner") proper access to the programs and services of the State Bar of California. Petitioner asks that the Court direct Respondents to provide the requested services to Petitioner, to include "effective communication[1]" where Petitioner is a person with disabilities pursuant to 42 U.S.C. § 12102, and where his efforts to communicate his complaint to Respondents was thwarted on "red herring logical fallacy" or "business as usual" grounds[2]; refused by Respondents *argumentum ad hominem* where Respondents failed to provide a "method of communication" (see 28 C.F.R. Part 35.160(b)(2)) effective enough "to protect the privacy and *independence* of the individual with a disability." (Emphasis added; see 42 U.S.C. § 12182(b)(2)(A)(iv); *Munson v. Del Taco*, 46 Cal.4th 661, 669-670 (2009), "Intentional discrimination need not be shown to establish a violation of the ADA's access requirements, ...'communication barriers'

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[1] See *K.M. v. Tustin Unified School District* (9th Cir. 11-56259 8/6/13); " *'We afford ... considerable respect' to the DOJ's interpretation of the ADA effective communication regulation, as expressed in its amicus brief to this court."* (*M.R. v. Dreyfus*, 697 F.3d 706, 735 (9th Cir. 2011).); See Brief of the United States as Amicus Curiae, (http://www.justice.gov/crt/about/app/briefs/kmtustinbr.pdf).

[2] See Chewbacca defense – http://en.wikipedia.org/wiki/Chewbacca_defense

and the 'failure to make modifications to existing facilities.' " (42 U.S.C. § 12101(a)(5) [congressional finding]; see *Lentini v. California Center for the Arts* (9th Cir. 2004) 370 F.3d 837, 846-847.)

In summary, this Petition for Mandamus, Prohibition or other Extraordinary Relief ("Petition") presents the following questions:

1. Is this action properly commenced in the Supreme Court of the State of California, or should it be commenced in the Superior Court?

2. Does Petitioner have a right to accommodation under Title II of the Americans With Disabilities Act?

3. Does federal or state law require effective communication and if so, does the Court have inherent authority to require Respondents to provide Petitioner with effective communication in addressing the nature, length, complexity, and context of his complaint?

4. Was Petitioner's complaint, in any part, dismissed based on erroneous misstatement and, if so, was Petitioner then denied effective communication?

Petitioner respectfully submits he is entitled to access to State Bar's services under state, federal, and common law, and the Court's inherent authority to require such services be administered via "effective communication" for the disabled.

VERIFIED PETITION

Petitioner timely petitions this Court, pursuant to Section 3 of Article I of the California Constitution, Section 10 of Article VI of the California Constitution, Title II of the Americans With Disabilities Act, rule 9.13 of the California Rules of Court, Code of Civil Procedure § 1013 and Civil Code § 22.2 for a writ of mandate or other order directed to Respondents State Bar of California and the Board of Governors of the State Bar of California, commanding Respondents to comply with Subdivision (b) of Section 3 of Article I of the California Constitution and California common law, by providing for Petitioner's "right of access".

Petitioner avers and announces that he has been unlawfully placed on California's Vexatious Litigant List [3] pursuant to a sham February 23, 2013 "opinion" issued by the Court of Appeal of the State of California, Fifth Appellate District, Case No. F063915; purportedly barring Petitioner from filing "any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or judge of the court where the litigation is proposed to be filed."

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[3] *Ron Pierce, et al. v. California Chief Justice Cantil-Sakauye, et al.*, Case No. 13-17170, pending before the U.S. Court of Appeals for the Ninth Circuit; (http://viewsandnewsriversidesuperiourcourt.wordpress.com/2014/07/22/disqualification-sought-of-chief-justice-due-to-conflict-of-interest-of-petition-for-review-that-addresses-the-vexatious-litigant-statue-in-california/)

Whereas Petitioner remains aware that such "opinion" is a sham construct of simulated legal process and judicial scienter, Petitioner ignores it. ("[A] void order is never binding and is but 'a dead limb on the judicial tree' which can be lopped off at any time.", *Roberts v. Roberts*, 241 Cal.App.2d 93, 99 (1966), 50 Cal. Rptr. 408 (citing *Macmillan Petroleum Corp. v. Griffin* (1950) 99 Cal. App.2d 523, 533 [222 P.2d 69]; *Svistunoff v. Svistunoff* (1952) 108 Cal. App.2d 638, 641 [239 P.2d 650]; *Brady v. Superior Court* (1962) 200 Cal. App.2d 69, 73 [19 Cal. Rptr. 242]; *Grant v. Superior Court* (1963) 214 Cal. App.2d 15, 19-20 [29 Cal. Rptr. 125]).

> Under a government which imprisons any unjustly, the true place for a just man is also a prison.... As they could not reach me, they had resolved to punish my body; just as boys, if they cannot come at some person against whom they have a spite, will abuse his dog. I saw that the State was half-witted, that it was timid as a lone woman with her silver spoons, and that it did not know its friends from its foes, and I lost all my remaining respect for it, and pitied it. – *Henry Thoreau*

In this matter, Petitioner further avers as follows:

PARTIES

1. Ronald Pierce ("Pierce") is a homeless, disabled person subsequent to *coram non judice* proceedings in Tulare County effectively fully blocking him from access to the programs and services of the California court system. Pierce is beneficially interested in Respondents' faithful performance of their legal duties under Section 3, Article I of the California Constitution and California common law.

2. The State Bar of California ("State Bar") is a public corporation within the judicial branch of the California state government. The State Bar develops and administers the California bar exam, and oversees admission to the practice of law in California. The State Bar is a public agency of the State of California, and its records are writings of a public agency of the State of California.

3. The Board of Governors of the State Bar of California ("Board of Governors") is the governing body of the State Bar. The Board of Governors has 23 members, most of whom are lawyers elected by members of the State Bar. Six public, non-lawyer members also serve on the Board of Governors. Four are appointed by the Governor of the State of California, one is appointed by the Senate Rules Committee, and one is appointed by the Speaker of the Assembly. The twenty-third member is the President of the State Bar, who is elected by the other members of the Board of Governors. The Board of Governors, a public body whose records are writings of a public agency of the State of California, is ultimately responsible for the rejection of Petitioner's attempts to access State Bar programs and services.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this matter under Article I, Section 3 of the California Constitution, Section 10 of Article VI of the California Constitution, rule 9.13 of the California Rules of Court, and California common law.

FACTS APPLICABLE TO ALL CLAIMS

Article I, Section 3 of the California Constitution, Enacted into Law by the Passage of Proposition 59

5. Proposition 59 was placed on the November 2004 ballot by the Legislature as Senate Constitutional Amendment 1, which was unanimously passed by the State Senate in June 2003 on a 34-0 vote, and by the State Assembly in January 2004 on a 78-0 vote.

6. On November 2, 2004, the voters of the state of California overwhelmingly passed Proposition 59, with 83.4% of voters voting for the proposition. The Amendment became effective the next day, November 3, 2004. (Cal. Const., art. II, § 10, subd. (a).)

7. Proposition 59 amended the California Constitution to create a constitutional right of access to "information concerning the conduct of the people's business." (Cal. Const., art. I, § 3, subd. (b).) In furtherance of this right, the amended Constitution states that "[a] statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating

the interest protected by the limitation and the need for protecting that interest." (Cal. Const., art. I, § 3 subd. (b).) The constitutional amendment and the Voter Information Guide explaining it to the electorate show that the judiciary and the State Bar are subject to this constitutional right of access.

8. Article I, section 3(b) of the California Constitution is self-executing, and therefore provides an independent constitutional basis for the relief sought by this Petition. This Petition is brought pursuant to Article I, section 3(b) of the California Constitution.

California Common Law

9. There is a recognized common law right to access state and local government agencies and bodies. Their programs and services are presumptively subject to public access. The State Bar is subject to this common law right of access. This Petition is also brought pursuant to the common law.

Title II of the Americans With Disabilities Act

10. Title II of the Americans With Disabilities Act, and amendments thereto, enforces the "fundamental right to access to the courts" as "a valid exercise of Congress' § 5 authority to enforce the guarantees of the Fourteenth Amendment." Title II of the Americans With Disabilities Act is self-executing, and therefore

provides an independent constitutional basis for the relief sought by this Petition. This Petition is brought pursuant to Title II of the Americans With Disabilities Act.

The Court's Inherent Authority

11. California courts have inherent authority over their records. This authority extends to records that are created by entities that serve as instrumentalities of the courts, including the State Bar. This Court's inherent authority over the records of Petitioner's complaint to the State Bar gives the Court discretion to address those records, independent of any other legal basis for correction of records.

Pierce's Attempt to Access State Bar Complaint Process under Article I, Section 3(b) of the California Constitution, Common Law and Title II of the Americans With Disabilities Act

12. In 2012, Pierce attempted to lodge complaint with the State Bar against attorney Tara Howard for violation of California law and Rules of Court based on documentation illustrating "on its face" acts. However, rather than receive Pierce's complaint on those grounds, it was instead rejected on red herring logical fallacy arguments not subject to its jurisdiction. More accurately, the State Bar employed a combination "argument to ignorance" fallacy (appealing to commonly held prejudices versus the merits of the argument) and an "ad hominem" fallacy (criticizing Pierce personally instead of the merits of his claim). After a phone call between Trial Counsel Michael Glass and Pierce, in which Pierce was *ad nauseam* "talked at"

instead of “talked with”, Pierce’s complaint was dismissed on fallacious grounds. (See judgment of dismissal, p. 17)

Respondents’ Rejection of Petitioner’s State Bar Complaint

13. Pursuant to the *policy statement* of the California State Bar regarding “Request for Accommodations by Persons with Disabilities”, “[i]t is the policy of the State Bar of California to:... (a) assure that qualified individuals with disabilities have equal and full access to State Bar Court proceedings, services, and programs; and (b) work interactively with qualified persons with disabilities to provide appropriate accommodations whenever possible.”

14. However, in this case, Petitioner was given the appearance of access, but instead was denied access via *ad hominem* attack and assumptions of facts not in evidence. Dismissal was contingent upon such assertions as the State Bar’s unsolicited review of the legal validity of the document evidence provided – an issue separate from Petitioner’s complaint, and beyond the State Bar’s jurisdiction – as well as the claim that Petitioner lacks standing where he has no prior contract for services with Attorney Howard.

15. Pursuant to the U.S. Department of Justice’s summary publication on “effective communication”, ... “[t]he key to communicating effectively is to consider the *nature, length, complexity, and context* of the communication and the person’s

normal method(s) of communication."[4] The State Bar's duty to provide effective communication to members of the public, particularly the disabled, implicates California's *integration mandate* under *Olmstead v. L.C.*, 527 U.S. 581 (1999) as well as state and local responsibility to provide "reasonable care and diligence to ascertain the truth, before giving currency to an untrue communication." (See *Retrobloom v. Metromedia, Inc.*, 403 U.S. 29 (1971))

16. While Petitioner has not as yet requested "effective communication" as an accommodation for his disability, it remains a fact that by the time Petitioner was in a position to realize his communication with the State Bar had entirely failed, the dismissal of his complaint was already at hand. However, Petitioner did repeatedly seek to correct the State Bar's failure to provide effective communication and access, prior to dismissal. (See Exhibit "A")

FIRST CAUSE OF ACTION

Mandate or Other Extraordinary Relief Compelling Respondents to Provide Access Pursuant to Article I, Section 3 of the California Constitution, California Common Law and Title II of the Americans With Disabilities Act

17. Petitioner re-alleges and incorporates by this reference each and every allegation contained in paragraphs 1 through 17 of this Petition as though fully set forth herein.

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[4] http://www.ada.gov/effective-comm.htm

18. Petitioner is informed and believes, and on that basis alleges that at all times relevant to this Petition, Respondents have at all times refused, and continue to refuse, to provide Petitioner with access to State Bar programs and services.

19. Pursuant to Article I, Section 3(b) of the California Constitution, Respondents are required to provide access to State Bar programs and services to Petitioner. The right of access established by the California Constitution applies to all state agencies and bodies, including the State Bar. (See Cal. Const., art. I, § 3, subd. (b).) There is no constitutional provision, statute, or regulation that makes the State Bar exempt from accommodating this right of access. Respondents' refusal to provide effective communication is therefore a violation of Petitioner's constitutional right of access.

20. Pursuant to California common law, Respondents are required to provide access to Petitioner. There is no constitutional provision, statute, or regulation that makes the State Bar exempt from accommodating this right of access. Respondents' refusal to provide effective communication is therefore a violation of Petitioner's common law right of access.

21. Pursuant to Title II of the Americans With Disabilities Act, and amendments thereto, the right of access established under the Fourteenth Amendment of the U.S. Constitution applies to all state and local agencies and bodies, including

the State Bar. There is no constitutional provision, statute, or regulation that makes the State Bar exempt from accommodating this right of access. Respondents' refusal to provide effective communication is therefore a violation of Petitioner's constitutional right of access.

SECOND CAUSE OF ACTION

Review and Order Compelling Respondents to Provide Access Pursuant to Article I, Section 3 of the California Constitution, California Common Law, and Title II of the Americans With Disabilities Act

22. Petitioner re-alleges and incorporates by this reference each and every allegation contained in paragraphs 1 through 22 of this Petition as though fully set forth herein.

23. Petitioner is informed and believes, and on that basis alleges that at all times relevant to this Petition, Respondents have at all times refused, and continue to refuse, to provide Petitioner with access to State Bar programs and services.

24. Pursuant to Article I, Section 3(b) of the California Constitution, Respondents are required to provide access to State Bar programs and services to Petitioner. The right of access established by the California Constitution applies to all state agencies and bodies, including the State Bar. (See Cal. Const., art. I, § 3, subd. (b).) There is no constitutional provision, statute, or regulation that makes the State Bar exempt from accommodating this right of access. Respondents' refusal to

provide effective communication is therefore a violation of Petitioner's constitutional right of access.

25. Pursuant to California common law, Respondents are required to provide access to Petitioner. There is no constitutional provision, statute, or regulation that makes the State Bar exempt from accommodating this right of access. Respondents' refusal to provide effective communication is therefore a violation of Petitioner's common law right of access.

26. Pursuant to Title II of the Americans With Disabilities Act, and amendments thereto, Respondents are required to provide access to Petitioner. There is no constitutional provision, statute, or regulation that makes the State Bar exempt from accommodating this right of access. Title II of the Americans With Disabilities Act requires the State Bar to provide effective communication to the disabled in the provision of access to its programs and services. Respondents' refusal to provide effective communication is therefore a violation of Petitioner's constitutional right of access.

27. Rule 9.13 of the California Rules of Court provide for a petition to the Supreme Court to review an action of the Board of Governors of the State Bar, or of any board or committee appointed by it and authorized to make a determination under the provisions of the State Bar Act, or of the chief executive officer of the State Bar

or the designee of the chief executive officer authorized to make a determination under article 10 of the State Bar Act. (Cal. Rules of Court, rule 9.13.)

28. Therefore, pursuant to Article I, Section 3(b) and Article VI, Section 10 of the California Constitution, California common law, Title II of the Americans With Disabilities Act, and rule 9.13 of the California Rules of Court, the Court should review and reverse the action of the State Bar rejecting Petitioner's complaint, and order that access with effective communication be provided to Petitioner forthwith.

THIRD CAUSE OF ACTION

Order Directing Respondents to Provide Access Pursuant to the Court's Inherent Authority

29. Petitioner re-alleges and incorporates by this reference each and every allegation contained in paragraphs 1 through 29 of this Petition as though fully set forth herein.

30. Under Article VI of the California Constitution and California common law, the State Bar is an arm and instrumentality of this Court, and its records are records of this Court. The Court's inherent authority over the records of Petitioner's complaint to the State Bar gives the Court discretion to address those records, independent of any other legal basis for correction of records.

31. Petitioner has demonstrated that there is a legitimate and profound public interest in being provided access to the programs and services of the State Bar. There is no countervailing public policy that outweighs the public interest in Petitioner's right of access. There is no constitutional provision, statute, or regulation that makes the State Bar exempt from accommodating this right of access. Respondents' refusal to provide effective communication is therefore a violation of Petitioner's constitutional right of access.

32. Therefore, pursuant to Articles I and VI of the California Constitution, California common law, and Title II of the Americans With Disabilities Act, Respondents should be ordered to provide access to the programs and services of the State Bar that necessarily include effective communication, instead of furthering the growing public mistrust of an agency increasingly known to do "almost nothing to police abuses by lawyers in California, relating to fraud in mortgage lending and other activities."[5]

PRAYER

1. That a writ of mandate or other order issue under the seal of this Court, without a hearing or further notice, directing Respondents to immediately provide to

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[5] http://seekingalpha.com/instablog/522421-timothy-d-naegele/3243585-the-state-bar-of-california-is-lawless-and-a-travesty-and-should-be-abolished

Petitioner public access as stated, pursuant to Article I, Section 3 and Article VI of the California Constitution, California common law, and Title II of the Americans With Disabilities Act, or that an alternative writ of mandate or order to show cause issue under the seal of this Court, directing Respondents to show cause at a time and date to be established by the Court why they should not provide the requested access, and that thereafter the Court order Respondents to provide to Petitioner the public access he has requested;

2. That the Court issue an order awarding Petitioner his costs and fees incurred in bringing this action, pursuant to Code of Civil Procedure §§ 1021.5, 1032, 1033.5, and any other applicable law, in addition to any other relief granted; and,

3. That the Court award such other and further relief as is just and proper.

Dated: October 28, 2014 *Vindicare*,

_____

Ronald E. Pierce,
36633 Hawthorne Lane
Squaw Valley, CA 93675
(559) 254-3374

THE STATE BAR
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT
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http://www.calbar.ca.gov

August 28, 2014

JUDGMENT IN QUESTION

Ronald Pierce
36633 Hawthorne Lane
Squaw Valley, CA 93675

Re: Inquiry No.: 13-33678
Respondent: Tara Howard

Dear Mr. Pierce:

Thank you for speaking with me today with regard to the above captioned matter.

As we discussed, the Audit and Review Unit of the State Bar's Office of the Chief Trial Counsel has completed its review of your request to re-open your complaint against Tara Howard. After reviewing all the information provided, we have determined that there is not a sufficient basis to re-open your complaint.

Under applicable law and State Bar policy, we will re-open a complaint if: (1) new evidence or information of acts by Ms. Howard is presented that would result in discipline; or (2) the State Bar arbitrarily failed to take appropriate action. In this case, we have determined that neither basis for re-opening your complaint exists for the following reasons.

First, your request for review did not include any new evidence or information, but was rather a request that we re-evaluate your initial complaint. We have done that. In so doing, we have determined that our original decision to close your complaint was appropriate.

Your complaint against Ms. Howard was that she did not follow the appropriate procedures in the garnishment of your wages pursuant to a court order in a child support matter involving Nadira Arreola, the mother of your children.

As we discussed, on April 25, 2008, the parties appeared before Commissioner Alldredge for a hearing on the setting of guideline child support. vMs. Howard presented a copy of Findings and Order After Hearing, dated April 25, 2008. vThe Order After Hearing indicates that you were ordered to pay $1,341 in child support. vIn addition, the documentation stated that you were ordered to pay $2,682 in child support arrears, which were to be liquidated at the rate of $100 per month. vYou and your attorney, Kathy L. Wallace, signed the Order After Hearing which stated that, "If child, spousal or family support is ordered, a NOTICE TO WITHHOLD WAGES SHALL ISSUE."

On July 10, 2008, the Order/Notice to Withhold Income for Child Support, prepared by Ms. Howard, was signed by Judge Shirk. The Order/Notice to Withhold Income for Child Support was issued and executed by the court pursuant to Findings and Order After Hearing dated April 25, 2008. Ms. Howard contends that the amounts your employer was directed to withhold from your wages are in compliance with the child support and child support arrears court orders. On July 21, 2008, a copy of the Order/ Notice to Withhold Income for Child Support was mailed to your employer, your attorney, and to Ms. Arreola.

Ms. Howard contends that the law does not require that the judge who issued the support order be same judge who signs the Order/Notice to Withhold Income. Ms. Howard provided a copy of the Order/ Notice to Withhold Income for Child Support. Additionally, neither you nor your attorney filed a Motion for Reconsideration, Motion to Vacate, or Motion to Modify the Child Support Orders in the Tulare County Superior Court.

According to your complaint and supporting documents and the response by Ms. Howard and supporting documents, it would appear that his matter has been adjudicated by the Tulare County Superior Court.

In regard to your complaint against Ms. Howard, in order to prove a case of attorney misconduct before the State Bar Court, we must present clear and convincing evidence of intentional misconduct. The evidence here indicates that Ms. Howard properly filed the Findings and Order After Haring, dated April 25, 2008, and that on July 10, 2008, the court properly signed the Order/Notice to Withhold Income for Child Support. Thereafter, on July 21, 2008, a copy of the Order/Notice to Withhold Income for Child Support was mailed to your employer, your attorney, and Ms. Arreola. Further, neither you nor your attorney filed any type of Motion for Reconsideration, Motion to Vacate, or Motion to Modify the Child Support Orders in the Tulare County Superior Court. Therefore, the evidence does not indicate that Ms. Howard followed improper procedures in the garnishment of your wages pursuant to the court order in this child support matter.

If you disagree with our decision not to re-open your complaint, you may file an accusation against the attorney with the California Supreme Court. A copy of the applicable rule is enclosed. (See Rule 9.13, subsections (d) through (f), Califoria Rules of Court.) If you chose to file an accusation, you must do so **within 60 days of the date of the mailing of this letter.**

Again, the State Bar cannot give you legal advice or representation. If you have not already done so, you may wish to consult with an attorney for advise regarding any other remedies, which may be available to you. You may contact your local or county bar association to obtain the names of attorneys who might assist you further in this matter.

Very truly yours,

Michael J. Glass
Supervising Senior Trial Counsel

MJG:mjg
Enclosure

VERIFICATION

(Code of Civ. Pro. §§ 446; 2015.5)

I, RONALD E. PIERCE, am the Petitioner. I have read the foregoing **VERIFIED PETITION FOR MANDAMUS, PROHIBITION OR OTHER EXTRAORDINARY RELIEF** and it is true and correct to the best of my knowledge except as to those matters stated in it on my information or belief, and as to those matters, I believe them to be true and correct to the best of my knowledge.

Executed on October 28, 2014

_____

Ronald E. Pierce

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2014, three copies of the foregoing **VERIFIED PETITION FOR MANDAMUS, PROHIBITION OR OTHER EXTRAORDINARY RELIEF** was served by regular mail on the following:

Thomas A. Miller,
General Counsel of the State Bar
180 Howard Street
San Francisco, CA 94105

General Counsel for Respondents, in this matter.

I hereby certify that on October 28, 2014, one copy of the foregoing **VERIFIED PETITION FOR MANDAMUS, PROHIBITION OR OTHER EXTRAORDINARY RELIEF** was served by regular mail on the following:

Clerk of the State Bar Court
845 S. Figueroa Street, 3rd Floor
Los Angeles, CA 90017

Clerk of the State Bar Court, in this matter.

Dated: October 28, 2014

_____
Ronald E. Pierce

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, we hereby certify this brief contains 3666 words, including footnotes. In making this certification, we have relied on the word count of the computer program used to prepare the brief.

Dated: October 28, 2014

_____

Ronald E. Pierce

February 26, 2014

The State Bar of California
Office of the Chief Trial Counsel/Intake
Russell G. Weiner, Interim Chief Trial Counsel
1149 South Hill Street
Los Angeles, California 90015-2299

Re: **Closure of Inquiry No. 13-33678 - Respondent Tara Howard**

Dear Mr. Kern,

I am in late receipt of your letter regarding your agency's dismissal of my complaint against Tara K. Howard, Bar No. 173545.

I believe there has been a miscommunication regarding the subject matter of my complaint to your agency. In the interests of clarity I have retyped certain portions of your letter below, in order to better facilitate discussion of some errors your office is asserting as grounds for dismissal of my complaint.

"You have stated that Ms. Howard is the opposing counsel in a matter concerning child support. You explained that Ms. Howard did not follow the appropriate procedure to garnish your wages.... Accordingly, we contacted Ms. Howard regarding your allegations. In response to these allegations, the attorney acknowledged she is the attorney of record for the opposing party, Nadira Arreola, in your marital dissolution/child support matter."

Ms. Howard is the attorney of record for the opposing party, Nadira Arreola, in our *unfinished* marital dissolution/*private* child support matter.

"On April 25, 2008, the parties appeared before Commissioner Alldredge for a hearing on the setting of guideline child support. Ms. Howard presented a copy of the Findings and Order After Hearing, dated April 25, 2008. The Order After Hearing indicates that you were ordered to pay $1,341 in child support. In addition, the documentation stated that you were ordered to pay $2,682 in child support arrears, which were to be liquidated at the rate of $100 per month. Ms. Howard points out that you and your attorney signed the Order After Hearing wherein it stated, "If child, spousal or family support is ordered, a NOTICE TO WITHHOLD WAGES SHALL ISSUE."....According to Ms. Howard..., the Order/Notice to Withhold Income for Child Support, WHICH SHE PREPARED, was signed by Judge Shirk."

Where Ms. Howard admits to preparing and issuing said Notice, such is the crux of my complaint; am not arguing before your agency the invalidity of both orders involved[1]. I am of course bringing that issue before other appropriate agencies.

My complaint to your agency specifically regards only Ms. Howard's admitted preparation and issuance of the documentation in question to my employer's payroll officer in violation of

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[1] Commissioner Alldredge was never stipulated to by the parties litigant; his orders are of course void. (See *In re Marriage of Monge* (2001) 93 Cal. App. 4th 911, 915 [113 Cal. Rptr. 2d 524] "Because no valid stipulation to the hearing of the matter by a commissioner appears on this record, the order entered by the commissioner was void. (*In re Frye* (1983) 150 Cal. App. 3d 407, 409.) In light of this conclusion, we have no need to consider Gerig's other contentions of error in the order."

EXHIBIT "A"

Family Code §§ 5208 and 5610, respectively. As your office has now verified, Ms. Howard admits to having prepared and issued documentation; that documentation failing to conform to California Family Code § 5208. Also verified by your office, Ms. Howard admits she is "any attorney who addresses issues of ongoing child support or child support arrearages in the course of an action to establish parentage or a child support obligation, a proceeding under Division 10 (commencing with Section 6200), a proceeding for dissolution of marriage, legal separation, or nullity of marriage, or in postjudgment or modification proceedings related to any of those actions." (See Family Code § 5610)

If you will, your letter seems to indicate that I am arguing the validity of the documentation Ms. Howard prepared and issued only, and surprisingly seems to argue its validity instead; basing dismissal of my complaint on such other grounds.

I appreciate your office taking the time to review this matter and further understand that it may be difficult, in light of the many other complaints your agency no doubt receives, to understand the gravamen of my complaint document. However, your letter makes it apparent that my complaint against Ms. Howard for violation of, Family Code §§ 5208, 5610 and Rule 1.20(b)(2)(A) was not reviewed on those grounds.

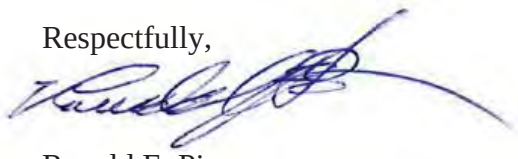
Nevertheless, your office has regardless verified that Ms. Howard fully admits to having prepared and issued the documentation in question. Where Ms. Howard has made such admission to, at the very least, violation of Business & Professions Code §§ 6127(a), 6128, Rule 1-300, 3-110, 3-200, Ms. Howard's "competency" to practice law comes into question, as then does the legitimacy of the many cases she has been involved in while a former "District Attorney With FBI Training" (http://www.tarahowardlaw.com/).

An attorney who holds herself out as a "federally-trained" former district attorney should exhibit more competence and understanding of law and practice (see example attached) before engaging in conduct that specifically violates state law, promotes fraud, invades privacy and promotes urban legend amongst other members of the Bar; and I make this observation as a pro se homeless disabled person with absolutely no law school training to speak of. This does more to harm the integrity of the State Bar and California court system than to promote stated ethical standards and rules of professional conduct.

Where No. 13-33678 has been closed based on errant grounds, I would ask that your agency please reverse this improper closure in light of what appears to be some misunderstanding and misstatement of the facts upon which said complaint is based.

If you have any questions or concerns regarding this letter, please feel free to contact me.

Respectfully,



Ronald E. Pierce,
Victim of Unethical Legal Practice
(559) 338-2418

Encl.

TARA K. HOWARD
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TEL: 559-635-0588
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July 2, 2009

Re: Notice of Non-Availablity

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Tara K. Howard, Attorney at Law, will not be available for all purposes from noon on Wednesday, July 29, 2009 through Monday August 3, 2009 for any court or other appearances, including, but not limited to, receiving notices to pleadings, ex parte hearings and/or attending depositions.

Please refer to *Tenderloin Housing Clinic v. Sparks* (1992) 8 Cal.App.4th 299, regarding the consequences of purposefully scheduling a conflicting proceeding without good cause.

Very truly yours,

TARA K. HOWARD
Attorney at Law

PROOF OF SERVICE

I am employed in the County of Tulare, State of California. I am over the age of 18 and not a party to the within action. My business address is 4046 So. Demaree Street, Suite A, Visalia, California. 93277.

On July 2, 2009 I served the foregoing document described as:

NOTICE OF NON-AVAILABILITY

by enclosing them in an envelope AND–

_____ **(By Personal Delivery)** I caused each envelope to be delivered by hand to the following address:

__X__ **(By Mail)** I placed the envelope for collection and processing for mail following the ordinary practice of this business with which I am readily familiar. On the same date that correspondence is for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Each envelope was addressed and mailed as follows:

PLEASE SEE ATTACHED MAILING LIST

_____ **(By Facsimile)** I caused each document to be sent by facsimile to the following number(s):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed and served on July 2, 2009 at Visalia, California.

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28-NOV L.A. Law. 92

Los Angeles Lawyer
November, 2005

Department
Closing Argument

THE UNMASKING OF A LEGAL URBAN LEGEND

David Hazelkorn [a1]

OVER THE PAST COUPLE OF YEARS an increasing number of lawyers have been filing "notices of unavailability" that state, for one reason or another, that the lawyers are unavailable to do anything regarding a particular case during specified periods of time. These notices are then waved before opposing counsel like a cross in front of a vampire, with the argument that all service, discovery, motions, hearings, and everything else concerning the case must cease during the periods of unavailability.

Tenderloin Housing Clinic, Inc. v. *Sparks* [1] invariably is presented as authority for this proposition. However, *Tenderloin* does *not* so hold. That belief is a legal urban legend.

Tenderloin is about an attorney who persistently engaged in discovery in a frivolous and oppressive fashion with the obvious intent to harass and inconvenience opposing counsel and her client. The ruling concerned sanctions for persistent bad faith and frivolous and harassing tactics.

In *Tenderloin* the defendants' lawyer advised the plaintiff's trial counsel by telephone that the defendants' lawyer would be away for two and one-half weeks, first at an arbitration proceeding in New York and then on a long-planned vacation in England. Shortly after the telephone conversation, the plaintiff's trial counsel set three discovery motions for hearing on a date he knew defense counsel would be away, forcing defense counsel to file a motion and obtain a continuance. While defense counsel was away, the plaintiff's trial counsel served two of defense counsel's clients with trial subpoenas that required them to appear as witnesses in an unrelated third-party action. Defense counsel had to obtain a telephone hearing from London to quash the subpoenas and protect her clients' interests.

The plaintiff's trial counsel never explained why he waited until opposing counsel was in London to serve subpoenas in a case that was later dismissed by the plaintiff. Several days after defense counsel's departure, the plaintiff's lawyer set three depositions for days he knew to be the last two weekdays of defense counsel's vacation. The plaintiff's lawyer refused to continue the depositions. The defendants' lawyer had to cut her vacation short and purchase a one-way ticket from London to San Francisco to safeguard her clients' interests. Upon arrival in San Francisco, she was informed by the plaintiff's trial counsel that at least one of the depositions was canceled. She also learned that, contrary to a written stipulation, the plaintiff's counsel, in an attempt to cause a default by the defendant, had secretly moved forward a hearing to a date that required the defendants to file their opposition papers while their lawyer was supposed to still be in England.

Attorneys who say *Tenderloin* is about notices of unavailability are misreading the case by taking the facts out of context. *Tenderloin* is not about unavailability, notices of unavailability, or any similar concept. And it certainly does not hold that such notices are talismans imbuing attorneys with the power to stay all proceedings.

Tenderloin stands for only two principles: 1) the availability of sanctions, and 2) the imposition of sanctions for bad faith tactics. *Tenderloin* has been cited repeatedly for the principle that trial courts have broad discretion in ruling on sanctions. [2]

A monetary sanction may be based not only on attorney's fees and costs but also on any other reasonable expenses incurred, including compensation for airfare and reimbursement for lost vacation. An appellate court will not reweigh the evidence or substitute its discretion for the trial court's.

Tenderloin also has been cited for the imposition of sanctions under Code of Civil Procedure Section 128.5 for bad faith actions and tactics.[3] For example, in *Wells Properties* v. *Popkin*, the court cited *Tenderloin* to show that Wells's course of conduct evinced bad faith.
"[E]ven if a legal step taken or legal procedure pursued may have justification in law, the timing of these may be oppressive and may constitute harassment if it unjustifiably neglects or ignores the legitimate interest of a fellow attorney."[4]

In *Abandonato* v. *Coldren*, the court cited *Tenderloin* to support its holding that the trial court did not abuse its discretion in awarding sanctions based on persistent bad faith tactics.[5]

Sanctions in *Tenderloin* were based on the trial court's finding that the appellant acted in bad faith, frivolously, and solely to harass the respondent. No case or article citing *Tenderloin* mentions unavailability, notices of unavailability, or any similar concept.

There is nothing in *Tenderloin* creating or discussing a legal concept of unavailability. It does not discuss a notice of unavailability as a recognized legal document. Nor does *Tenderloin* or any other case say a lawyer's unavailability creates or abrogates legal rights, tolls deadlines, or has any other effect except when there is bad faith by a party (including, probably, the unavailable party).

Footnotes

a1 **David Hazelkorn is not currently practicing law. He consults on litigation and trial strategy in Santa Ana.**

1 Tenderloin Housing Clinic, Inc. v. Sparks, 8 Cal. App. 4th 299 (1992).

2 *See, e.g.*, Gemini Aluminum Corp. v. California Custom Shapes, Inc., 95 Cal. App. 4th 1249, 1262 (2002).

3 Abandonato v. Coldren, 41 Cal. App. 4th 264, 267-68 (1995); Wells Props. v. Popkin, 9 Cal. App. 4th 1053, 1058 (1992) (Sonenshine, J., dissenting).

4 Wells, 9 Cal. App. 4th at 1058 (Sonenshine, J., dissenting) (citing Tenderloin, 8 Cal. App. 4th at 306).

5 Abandonato, 41 Cal. App. 4th at 267 (citing Tenderloin, 8 Cal. App. 4th at 304).

28-NOV LALAW 92

34-AUG L.A. Law. 52

Los Angeles Lawyer
July-August, 2011

Department
Closing Argument

THE MYTH OF UNAVAILABILITY: A LAWYER-CREATED FICTION

Judge Michael L. Stern [a1]

A SURPRISING, FALSE NOTION HAS TAKEN HOLD among some attorneys that they may file a self-executing "notice of unavailability" that momentarily excuses them from litigating in active superior court civil cases. Like baseless urban legends that arise mysteriously and never go away, a belief persists that there is authority for a practice that an attorney may unilaterally disengage from legal representation for a self-selected period. In fact, there is neither legal authority nor court procedures that allow counsel to check out of representation to suit their own convenience by filing a "notice of unavailability."

Copied over and over again and passed from one attorney to another, the typical "notice of unavailability" served on opposing counsel and filed in the superior court states that an attorney
[W]ill be unavailable for any settlement negotiations, depositions, court hearings, or other appearances, including, but not limited to, summary judgment and/or summary adjudication hearings. Purposefully scheduling a conflicting proceeding without good cause is sanctionable conduct. *Tenderloin Housing Clinic, Inc. v. Sparks*, 8 Cal. App. 4th 299, 307 (1992).

Whether the motivation behind such notices is benign or self-serving, there is no authority--including *Tenderloin*--that lends any weight to such a notice. This attorney-created device is no more than a handy crutch for counsel who choose to ignore their professional obligations and the common courtesies that should be extended between attorneys to consult with one another regarding scheduling of case-related matters. There is no judicial sanction for these notices, and they have never been condoned by any court.

Having lost patience with counsel who have frustrated courts with "notices of unavailability," the court of appeal in *Carl v. Superior Court* [1] went to great lengths to repudiate reliance on *Tenderloin* as authority for such notices, to explain its disapproval of their filing, and to admonish counsel to stop utilizing this practice. The appellate court in *Carl* affirmed the denial of a writ of mandate seeking to overturn a trial court ruling striking as untimely a petitioner's challenge under Code of Civil Procedure Section 170.3(d), which counsel contended was properly filed late because he had filed a "notice of unavailability" excusing himself from litigating for a period of time.

First, the *Carl* court commented that it has "apparently become common practice in the trial courts for litigants to file a 'notice of unavailability' under the guise" of *Tenderloin*. Such a notice "purports to advise the other parties to the action--as well as the court--that the deliverer will not be available for a prescribed period of rime and that no action may be taken during that period which adversely affects the availability of counsel. To the extent that this practice attempts to put control of the court's calendar in the hands of counsel--as opposed to the judiciary--it is an impermissible infringement of the court's inherent powers." [2]

In strong language, the court stated that the "purported function of this 'notice' was to arrest the power of the superior court to issue any order that would require or impose upon petitioner any legal obligation to act. Simply put, petitioner essentially argues that by filing a 'notice of unavailability' he unilaterally called a litigation timeout." [3] The court reasoned that counsel cannot

on their own enjoin the superior court from issuing orders and, further, it is beyond an attorney's power to extend statutory times imposed by the court to act.

Finally, the *Carl* court put to rest the misplaced reliance on *Tenderloin* as the source of entitlement to file "notices of unavailability." In directly repudiating the idea that attorneys can abdicate professional responsibilities during the litigation process, the court concluded that "*Tenderloin*, of course, merely holds that a trial court may impose sanctions against an attorney who conducts litigation in bad faith and solely for the purpose of harassment. There, among other things, the sanctioned attorney purposefully set discovery for times when he knew opposing counsel was on vacation and unavailable in order to gain an unfair tactical advantage in the litigation. Nothing in *Tenderloin*, however, expressly condones the practice that has grown up around its name. It has simply been made up." For the appellate courts, "a 'notice of unavailability' is not a fileable document under the rules of court and will be returned to counsel." [4]

The strong admonition from the court in *Carl* that "unavailability" is an attorney-constructed fiction has not been discovered by some attorneys. These notices intrude upon the power of the courts to control their dockets without interference. [5] Moreover, counsel are ethically bound by the Rules of Professional Conduct to act for their clients' benefit, not their own.

Attorneys would best serve the interests of the courts, their clients, and opposing counsel by abandoning the practice of serving or filing "notices of unavailability." By taking into consideration the rights and demands of opposing counsel through respectful mutual communications, counsel will eliminate the possibility of even contemplating the necessity of ever preparing a "notice of unavailability."

Footnotes

a1 **Michael L. Stern is a Los Angeles Superior Court judge.**

1 Carl v. Superior Court, 157 Cal. App. 4th 73 (2007).

2 *Id.* at 75.

3 *Id.*

4 *Id.* at 77.

5 *See* GOV'T CODE §68607.

34-AUG LALAW 52

Cal. Civ. Ctrm. Hbook. & Desktop Ref. § 17:5 (2012 ed.)

Expert Series
California Civil Courtroom Handbook And Desktop Reference
Database updated April 2012
Michael Paul Thomas

Chapter 17. Law And Motion Practice
I. Overview
A. Motions Generally

§ 17:5. Standards of professionalism; notice of unavailability

West's Key Number Digest

West's Key Number Digest, Motions 12.1

A.L.R. Library

West's A.L.R. Digest, Motions §§12.1

Some courts have adopted guidelines as court rules, enforceable by sanctions, with respect to the service and filing of motions. For example:

> The time and manner of service of motions should not be used to the disadvantage of the party receiving the papers. (L.A. Sup.Ct. Rule 7.12(b)(1))
>
> Motions should not be served sufficiently close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or, where permitted by law, to respond to the motion. (L.A. Sup.Ct. Rule 7.12(b)(2))
>
> Motions should not be served in order to take advantage of an opponent's known absence from the office or in a time designed to inconvenience an adversary, such as late on Friday afternoon or the day preceding a secular or religious holiday. (L.A. Sup.Ct. Rule 7.12(b)(3))

Because these are rules relating to motions they may well be preempted under California Rule of Court 981.1(a), but the matter is unclear. (Weil & Brown, Cal Prac Guide: Civ Proc Before Trial (TRG 2011), § 9:33.5)

Attorneys commonly serve a "Notice of Unavailability" on parties and the court when they are going to be out-of-state or otherwise "unavailable" for a particular period of time. However, the practice is entirely nonstatutory. There are no provisions for such a notice, and no corresponding legal obligation on opposing counsel receiving such notice. (See Carl v. Superior Court (2007) 157 Cal.App.4th 73, 74–77, 68 Cal.Rptr.3d 566)

Although attorneys often cite to Tenderloin Housing Clinic, Inc. v. Sparks (1992) 8 Cal.App.4th 299, 10 Cal.Rptr.2d 371 in support of a "Notice of Unavailability," nothing in that case grants a party the right to unilaterally declare a stay of proceedings by serving and filing such a notice. *Tenderloin* merely stands for the proposition that where an attorney who engages in egregious conduct seeks to take advantage of the absence of opposing counsel by purposefully and deliberately scheduling hearings and appearances during the period of absence, a court has discretion to impose sanctions as warranted.

End of Document