

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

IN THE MATTER OF THE
VERIFIED ACCUSATION OF
ATTORNEY GARY L. ZERMAN

AGAINST

Case No. _____

State Bar No. 93-47899
94CR11303

ATTORNEY
ROGER C. STERN

VERIFIED ACCUSATION OF
SERIOUS MISCONDUCT
AGAINST AN ATTORNEY

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TO CHIEF JUSTICE RONALD GEORGE AND THE ASSOCIATE JUSTICES OF
THE CALIFORNIA SUPREME COURT:

Attorney Gary L. Zerman (hereafter CW - complaining witness)
files this verified accusation (hereafter VA) of serious attorney
misconduct against attorney ROGER C. STERN (hereafter STERN), with
appendix (hereafter A). This VA presents the larger question:

DOES THE CALIFORNIA LEGAL SYSTEM HAVE INTEGRITY?¹

¹This question has already been answered - NO! On 4-14-95 CW, as a private attorney general, filed a petition in the U.S. Supreme Court, 94-1704 against the California Supreme Court for violating the due process of the people of the State of California, because of its repeated failure to follow the law (Bus. & Prof. Code sec. 6018 et. seq.) - its summary denial of every VA that has been filed. (Copy of title, questions presented and conclusion pages of petition attached, A1-3). That petition asked the question:

Has the "RULE OF LAW" collapsed in the State of California?

The California Supreme Court, as well as the Bar never replied. On 6-13-95 the LA Daily Journal ran under "U.S. Supreme Court Highlights", the high Court's denial of the petition. (Copy attached, A4).

JURISDICTION

This verified accusation is filed pursuant to Cal. Bus. & Prof. Code, section 6108 et. seq., and In Re Walker (1948) 32 Cal.2d 488. (Also pursuant to Cal. Evidence Code, section 451(c) and Day v. Rosenthal (1985) 170 Cal.App.3d 1135, 1147, which require this Court take mandatory judicial notice of violations of the Cal. Rules of Prof. Conduct).

The basis for filing a verified accusation is that the State Bar has failed/refused to do its duty to properly investigate and discipline serious attorney misconduct, when such was brought to and before it. Thus the accusation then is not only reasserting the allegations against the attorney, but now also charges the State Bar - with incompetence, neglect and/or misconduct of its own.

Misconduct by attorneys or the State Bar simply can not and will not be tolerated. As stated by this Court in Beery v. State Bar (1987) 42 Cal.3d 806, 815, where it imposed a 5-year suspension on an attorney:

"Our principal concern is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standard for attorneys." (Citations.)."

JURISDICTIONAL HISTORY

On June 30, 1993 STERN executed a declaration (copy attached, A9-11) in support of his former clients' motion for reconsideration set for hearing on August 13, 1993 in LASC, Dept. "M" before Judge Irving Shimer. The above declaration of STERN, contradicted in

several material respects STERN's April 20, 1993 declaration (copy attached, A7&8) filed with his motion to withdraw.²

On August 13, 1993 CW appeared for the hearing; STERN did not appear. There CW found Judge Shimer's written tentative ruling (copy attached, A20-22) which was:

"Stern declares under penalty of perjury that his prior declaration misrepresented the facts about discovery responses to the court. The court accepts the acknowledgment that he lied in April."

At the hearing, CW read the tentative ruling into the record. Judge Shimer then affirmed his tentative ruling. CW then asked Judge Shimer what was going to happen to STERN - a member of the Bar whom Judge Shimer acknowledged had lied to the court? Judge Shimer replied (copy of hearing transcript attached, A23-34):

"You want to report him to the State Bar? Go ahead.
... I'm not here to run a kindergarten. I didn't volunteer for this job, to be there with the birch rod, to whack people on the behind. Follow me? I don't believe in it." (Reporter's Transcript 2:19-3:21; A25).

CW replied:

"I think you should, your honor. You should bring him down here, and we should get to the bottom of this, and find out waht happened. (RT 2:212-23; A25) ... the reason I'm here for the third time is because of the games they have played. Now there is a kindergarten going on out there, and attorneys are playing in it, and if you look at Exhibit 5 to my motion [opposition], it's the State Bar's discipline report of September '91, that states that the attorney misconduct in this state is in a state of crisis, and if judges don't do anything about it, who will?" (RT 4:7-15; A27).

²Plaintiff's (CW's) opposition to the motion motion for reconsideration of defendants McCashin dated 7-20-93, in Zerman v. McCashin, wherein STERN's declarations were in issue, thrashed STERN's 2nd declaration and indisputably proved it was false. (See below at p. 15, and A59-71).

Judge Shimer replied:

"Mr. Stern, in his declaration, says that in the April declaration he made a misrepresentation with regard to the agreement of his office on alleged association and preparation of discovery responses. In his current declaration, he says, 'I was talking through my hat.' I did not know that my ex-associate, whose whereabouts are unknown to me . . . a law firm who had an associate who left sometime in the last several months, and they don[t know where he is, at all. I mean, are there that many vagabonds in the practice of law these days, where the lawyers disappear? I mean, they just don't leave; they fall off the edge of the earth. Maybe Columbus' people were right, that the earth is flat, and you go so far, you fall off. (RT 4:16-5:3; A27)

Because Judge Shimer concluded the obvious - that STERN was lying - but then ignored the result and did nothing - CW was forced to report STERN to the Bar.³

First though, on October 13, 1993 CW wrote a letter (copy attached, A12) to STERN, providing him a copy of the reporter's transcript of the August 13, 1993 hearing and requested (and gave STERN the opportunity) that he - as an officer of the court - report his misconduct to the State Bar. STERN never replied.

On December 9, 1993 CW filed a formal complaint against STERN with the Bar (copy attached, A5-44), charging that STERN had lied and had been found to have lied by Judge Shimer. The complaint stated in part (see A6):

"At an 8-13-93 hearing before Judge Shimer, Judge Shimer determined that attorney Roger C. Stern had "lied" in a

³CW earlier filed a complaint against Judge Shimer with the Commission on Judicial Performance, not only for his failure to do anything about STERN, but also for his improper judicial demeanor and his attempt to intimidate CW. (Copy of complaint attached, A13-44). No litigant or attorney should have to take such abuse from a judge. Of course though, like the Bar, the Commission did nothing.

4-20-93 declaration (copy enclosed) that he had filed with the court. Enclosed also is a copy of attorney Stern's subsequent 6-30-93 declaration, where it is claimed (by both Judge Shimer and Mr. Stern) he now was telling the truth. I contend Mr. Stern was closer to the truth in his earlier declaration, rather than the subsequent. Regardless, the two (2) declarations can not be reconciled and Judge Shimer determined Mr. Stern "lied".

* * *

"Mr. Stern has committed a serious act of misconduct. Judge Shimer has determined such. In fact, Mr. Stern has committed an act of perjury. Beyond violating his attorney oath, Mr. Stern has particularly violated Rules 3-200, 3-210 and 5-200. Need I remind the Bar that perjury is a crime."

On December 15, 1993 the Bar sent a post card acknowledging receipt of the complaint. On May 4, 1994 the Bar sent CW a letter (copy attached, A45-46) re Inquiry No. 93 47899, Respondent: Roger Stern, which stated in pertinent part:

"Careful consideration has been given to your complaint against the above named attorney it has been determined that there are no grounds for disciplinary action by the State Bar.

"In your complaint you allege that Mr. Stern misrepresented the court when he 'lied in a April 20, 1993 declaration that he filed with the court.' You allude that he made this misrepresentation in order to get the court to waive the sanctions imposed on the defendants.

"I spoke with Mr. Stern regarding this allegation, I also spoke to Mr. Parcells of Rucker, Clarkson & McCashin, and reviewed the documents attached to your complaint and documents that were faxed to me.

"According to Mr. Stern, he may have made statements that were inaccurate, he did not wilfully make them to mislead the court. He claims he made a statement which, to the best of his knowledge, at that particular time was the truth. When he discovered that his statement was inaccurate, he took steps to correct it.

"In reviewing the documents, it appears the court agreed with him hence, the reversal of sanctions.

"The contentions you raised in your complaint deal with

matters which have been properly handled and dealt with in a court of record and which has been disposed of based on appropriate findings of fact. In this situation, it appears the court found that there was no misconduct on the part of this respondent.

"The authority of the State Bar is limited by law. We can discipline an attorney, or recommend that he be disciplined, only for a wilful violation of the State Bar Act or the Rules of Professional Conduct. The conduct of which you have complained does not fall within the prohibitions of that Act or those Rules.

"In view of the above, we are closing our file in this matter. Thank you for bringing this matter to our attention."

On July 1, 1994 CW sent a 6-page letter/appeal (copy attached, A47-52) to the Bar's Complainant Grievance Panel (hereafter CGP), which stated in pertinent part:

"Please be advised that I am totally dissatisfied with the Bar's 5-4-94 letter/determination "that there are no grounds for disciplinary action by the State Bar" in this matter. I find the Bar's action to be not only incorrect, but derelict. The bar has once again failed to protect the public from dishonest and miscreant attorneys; instead the Bar has gone to the aid of miscreant attorneys and protected the wrongdoer. The Bar's action here is once again a betrayal of its public trust. I thus must bring this matter to you and request, no demand, a proper review of the matter and the proper imposition of discipline."

That letter then made several points why there in fact were grounds to take disciplinary action against STERN:

"Again, the Bar ignores that Judge Shimer stated and in fact determined Mr. Stern "lied". Why does the Bar ignore the judge's determination on this issue? Why does the Bar take the word of Mr. Stern, who has already been determined to be a liar and who now has every reason to further mislead, further lie?

"Moreover, Mr. Stern took no steps to 'correct' his misrepresentations until he was pressured by Mr. Parcels and Mr. McCashin (review the letters referenced in his 4-20-94 declaration) to give his 6-30-93, second and purportedly "correct" declaration.

"Why did Mr. Stern wait over two (2) months to give the second declaration? [P] Why was his declaration submitted to the court attached to defendants' (his ex-clients) 8-13-93 motion for reconsideration of Judge Shimer's 6-22-93 order compelling defendants to provide discovery and order of sanctions against defendants?

"Why did Mr. Parcels (who is not only defendants McCashin's subsequent attorney, but McCashin's employee) fail to mention - in his clients/defendants opposition papers that he prepared to plaintiff's 6-22-93 motion to compel - that Mr. Stern was incorrect, misleading, misrepresenting and/or lying when he gave his 4-20-93 declaration? [P] Why did Mr. Parcels also fail to mention that at the 6-22-93 hearing? (The Bar should obtain a copy of the transcript of that hearing).

"Additionally, why does the Bar take the word of Mr. Parcels? Why does the Bar ignore the fact that Mr. Parcels is not an impartial witness but an advocate and the employee of his client. [Letter then lists several acts of misconduct committed by Parcels].

"Rather than believing Mr. Parcels, an objective fact finder at the Bar should be initiating a complaint against attorney Parcels for his misconduct. . . ."

On August 26, 1994 the CGP sent CW a 1-page form letter (copy attached, A53) advising that the request for further investigation would be "considered", with a 2-page information sheet (A54-55) that stated in part, under "How long does the process take?":

"The length of time involved depends on the amount of business before the Panel. However, the request probably

"The evidence was clear that Parcels, and his client-boss attorney McCashin committed several acts of serious misconduct. The Bar of course failed to initiate a complaint against them, forcing CW to. The Bar went through its perfunctory steps of opening files: Parcels, 94018804; McCashin, 94018803. It then did its dog & pony show of talking to them, and like its 5-4-94 letter above re STERN, then wrote a 6-6-95 letter on these complaints. (CW never received a single responsive document). Just like in STERN - but worse, that letter could have been written by defense counsel for Parcels and McCashin. It makes no finding of fact or conclusions and there is no analysis. It is worthless.

will be reviewed within twelve months. As soon as a decision is reached, you will be notified by letter."

CW never heard back from the CGP. However, on March 8, 1996 (now 21 months since the matter was appealed to the CGP, and now over 27 months since the complaint was filed on 12-9-93) the Bar's Office of Chief Trial Counsel sent CW 1-page form letter (copy attached, A4) stating in pertinent part:

"The Complainants' Grievance Panel has transmitted to the Office of the Chief Trial Counsel your file accompanied by your request that the Office of the Chief Trial Counsel provide a review of your file as part of an internal quality review program. That internal quality review will determine whether or not the Office of the Chief Trial Counsel exercised appropriate judgment within the acceptable range of options in resolving the matter. If it is determined that the initial decision was inappropriate or in excess of permissible discretion, the matter will receive further consideration. "

On April 25, 1996 the Bar's Office of Chief Trial Counsel, sent CW a 1-page form letter (copy attached, A57), which stated in pertinent part:

"We have completed our review of your complaint as part of the internal quality review program of the Office of the Chief Trial Counsel. We have concluded that the initial resolution was within the authorized range of discretion for this type of complaint. [P] As a result, the Office of the Chief Trial counsel will take no further action concerning the complaint. We express our appreciation to you for bringing this matter to the attention of the State Bar. Your concerns assist the Bar in maintaining public confidence in the legal profession." [P] Should you desire further information regarding the procedures utilized by the Supreme Court, please contact the Supreme Court's Clerk's Office . . ."

CW did that. CW now files this VA reasserting his charges against STERN, and now asserting charges of misconduct against the Bar.

GENERAL ACCUSATIONS

CW asserts here:

1. That CW's complaint (with attached exhibits thereto) and CW's July 1, 1994 letter to the Bar set forth a specific charge of serious misconduct against attorney STERN, and CW believes that such charge is indisputable and thereby constituted clear grounds for severe disciplinary action that must be taken by the Bar against STERN, to wit: disbarment or a very lengthy suspension;
2. that CW's complaint, and more particularly CW's July 1, 1994 letter, were presented to the Bar (at several levels) for the purpose of invoking the disciplinary powers of the Bar against attorney STERN;
3. that since the initial presentation of the complaint (and several other prior and subsequent complaints that CW has filed with the Bar against other attorneys) and thereafter up to this day, the Bar (at several levels) has handled the complaint against attorney STERN (and all the others), in an arbitrary, incompetent and unlawful manner by refusing to apply and follow its own policies, its own rules and the law, by refusing take appropriate disciplinary action required thereunder, and by refusing to order a hearing against attorney STERN.
4. that this complaint (as well as several others CW has filed himself and some filed by others and known by CW) indisputably demonstrate that the Bar procedures and conduct, have not, do not and will not, afford due process to complaining witnesses - the public. That this situation is readily known by

the personnel in charge of the Bar, but ignored and in fact condoned by those in charge.

This Court must address the charge of serious misconduct that CW asserts against attorney STERN and this Court must discipline attorney STERN. This Court must then call for an independent investigation of the Bar - and its involved personnel - who have repeatedly failed to perform their duty. Those personnel must then be brought to justice and must answer for their own misconduct.

SPECIFIC CHARGE PRESENTED

WEBSTER'S 21st Century Dictionary (1992) states in defining the word "lie":

"lie, v.i., lay (for 1, 2) or lied (for 3), lain (for 1, 2), lying, n. v.i. 1. rest on something horizontal. 2. be situated. 3. make statements intended to deceive. --n. 4. situation. 5. lying statement."

Attorney STERN lied. Judge Shimer determined STERN lied. Judge Shimer did not determine that STERN mad a mistake - he said he lied. It only gets complicated because lawyers, a judge (a former lawyer) and the Bar are involved. Again, Judge Shimer at the August 13, 1993 hearing determined attorney STERN lied - but the problem is - he did nothing about it, except to tell CW:

"You want to report him to the State Bar? Go ahead."

Due to Judge Shimer's failure to follow his sworn duty (see Cal. Code of Judicial Conduct, Canon 3D and 3C (1992) and Evidence Code sec. 451(c)), CW was forced to file the formal complaint with the Bar against STERN on December 9, 1993. (See A5).

Simple common sense tells us that attorneys should not be able

to lie in their professional capacity period - much less in documents/pleadings and directly to the court. How can the legal process function if attorneys lie? And can get away with it? Common sense again tells us that it can not.⁵ Reality however, tells us that attorneys are lying, are getting away with it and that the legal system is collapsing.⁶ (See ftnt.1, p.1 above).

⁵In Emslie v. State Bar (1974) 11 Cal.3d 210, the California Supreme Court stated:

"The State Bar Act is designed to provide a procedure whereby those attorneys at law who prove recreant to their trust may be removed from the ranks of the profession. The public, as well the legal profession and the courts must be protected from those who do not measure up to their responsibilities. . . . Government largely depends upon the stability of the courts, and to a considerable extent, upon the integrity of members of the legal profession . . . [P] The State Bar is empowered by the Legislature to act in place and stead of the board of governors in the determination of disciplinary proceedings . . ."

⁶Former Chief Justice Warren Burger wrote in his introductory paragraph of his article (copy attached, A58) Rule of Law - The ABA Has Fallen Down On The Job that ran in the Wall Street Journal:

"The reputation of the legal profession is at its lowest ebb since I first started practicing law more than 60 years ago. With ever increasing frequency, the public is questioning the competence, integrity and honesty of lawyers. Indeed, over the past few years, a number of judges and all too many lawyers have been guilty of self-dealing and forms of professional misconduct in and out of the courtroom. These transgressions not only diminish the public's confidence in the profession, but they also subtly undermine the public's respect for the rule of law." (Wall Street Journal 8-10-94, p. 11).

For further evidence see THE BETRAYED PROFESSION: Lawyering At The End of The Twentieth Century (1994) by attorney Sol Linowitz and GUILTY! - The Collapse of The Criminal Justice System (1996) by Judge Harold Wathrax. More recently: the outrageous misconduct of several attorneys in People v. Orenthal James Simpson and lies by attorney Leslie Abramson in People v. Menendez.

Cal. Bus. & Prof. Code, sec. 6068 provides in pertinent part:

"It is the duty of an attorney to all of the following:

* * *

(d) To employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with truth, and never seek to mislead the judge or any judicial officer by an artifice of false statement of fact or law."

In Davis v. State Bar (1983) 33 Cal.3d 231 a unanimous Supreme Court found attorney Davis committed a wilful deception on the court and violated Bus. & Prof. Code sec. 6068(d) and Rule 7-105 (now Rule 5-200) for preparing and signing his verified answer that contained false statements. Increasing the discipline earlier imposed by the Bar to an actual year of suspension, the Court stated at pages 239-40:

"The finding of the State Bar Court that petitioner knew the verified answer to be false when he signed it is thus well supported.

* * *

"In the past we have recognized that the filing of false or misleading pleadings or documents is ground for discipline. In Pickering v. State Bar (1944) 24 Cal.2d 141, 144; 148 P2d. 1, we held that 'The presentation to a court [in a complaint] of a fact known to be false presumes an intent to secure a determination based upon it and is a clear violation of [sec. 6068].' (See also

⁷A corollary to section 6068(d) is Cal. Rules of Professional Conduct, Rule 5-200 - Trial Conduct, provides in pertinent part:

"In presenting a matter to a tribunal, a member:

(A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth;

(B) Shall not seek to mislead the judge, judicial officer, or the jury by artifice or false statement of fact or law;"

It is clear that STERN also violated both parts A and B of Rule 5-200.

Olguin v. State Bar (1980) 28 Cal.3d 195, 199-200; 167 CR 876, 616 P.2d 858). As previously noted, the hearing panel's finding that petitioner knew that his answer was false when he signed it is well supported by the evidence. Petitioner is thus presumed to have intended to secure a favorable determination based on his pleading and likewise culpable of violating section 6068.

"Petitioner urges that his misrepresentation does not warrant discipline because it was unlikely to mislead the court or injure Ms. B. This contention lacks merit. Actual deception is not necessary to prove wilful deception of a court; it is sufficient that the attorney knowingly presents a false statement which tends to mislead the court. (Pickering v. State Bar, supra). Moreover, petitioner's false statement, if believed, would have had a substantial effect upon Ms. B, whose medical expenses and lost wages were at stake."

(See also Dorciak v. State Bar (1991) 52 Cal.3d 1095; Rogers v. State Bar (1989) 48 Cal.3d 300; and Di Sabatino v. State Bar (1980) 27 Cal.3d 159).

Like attorney Davis' false verified answer above - here attorney STERN's executed a false declaration. It is indisputable that STERN lied. It is indisputable that Judge Shimer determined that he lied. It is equally indisputable that both Judge Shimer and the Bar - inexcusably did nothing about it.

Also like Davis' false verified answer, here attorney STERN's false declaration resulted in harm. First, STERN caused the opposing party (CW) to have to go back to court for not 1, but 2 frivolous hearings because of STERN's lie and his aid to the illegal conduct of his former clients, with his 2nd declaration - wasting the time and money of both CW and the court.⁸ Second, CW

⁸The gravamen of each of the four (4) motions (5-4-93, 6-22-93, 8-13-93 - McCashin's reconsideration, and 10-21-93) was the simple and unrefutable fact that dfndts' McCashin never filed an association of attorney, yet repeatedly wilfully wrongly claimed

lost the sanctions imposed against defendants McCashin (STERN's former clients) for CW earlier having to respond to their nonsense; although they were essentially later imposed again by another judge (see ftnt. 8, p.13 above). Third, and most important, STERN brought the rule of law and the legal profession/system into disrepute and trivialized the truth, by making the act of lying of no consequence. In fact worse, he made it profit.

SPECIFIC FAILURE OF THE BAR HERE

As will shown below, like Judge Shimer, the Bar simply ignored the result that attorney STERN lied, and likewise did nothing about it. CW's complaint to the Bar indisputably proved that STERN lied and thereby violated his attorney oath, Bus. & Prof. Code sec. 6068 (d), and Rules 3-200, 3-210 and 5-200. (See Davis v. State Bar, above). STERN thus should have been disciplined - but was not.

The Bar's May 4, 1994 letter (largely set forth above at 5; see A45 for entire letter) stating that "there are no grounds for disciplinary action by the State Bar" is not only wrong, but a pitiful excuse for an investigation. That letter speaks volumes of the Bar's failure to perform its duty. Worse, it is typical.

they had, via STERN's associate - atty Chris Garcia, then rogue dfndt-atty James McCashin, and then McCashin lackey attorney-employee Dayton Parcels. After STERN's false 2nd declaration, where Judge Shimer relieved defendants McCashin of sanctions, they continued to disobey Judge Shimer's order to produce documents. CW was forced to bring the 10-21-93 motion to compel and request for sanctions. There Comm. Bruce Mitchell sanctioned defendants McCashin \$1028 for attempting to "rewrite" a court order and for "engaging in obstruction". The games playing by attorney STERN and his clients, and rogue attorneys McCashin and Parcels simply shows how out of control and corrupt the California legal system is. The misconduct by Judge Shimer and the Bar aided it.

First, the Bar simply swallowed whatever purported excuses that STERN could make up.⁹ (CW was never given any documents re the purported response of STERN). A review of the Bar's letter readily discloses that there are no factual findings, no analysis and no proof provided to support STERN's bald claims. The same is true for the Bar's bald conclusions. The Bar simply accepts - wholesale - STERN's bogus claims. Why?

In fact, not only is there no proof, but when reviewed, the proof indisputably is to the contrary. Plaintiff's/CW's opposition to defendants' motion for reconsideration dated July 20, 1993 (copy attached, A59-71), in Zerman v. McCashin, thrashed STERN's 2nd declaration and indisputably proved that his 1st declaration was true - and his 2nd was false. That opposition specifically pointed out, first to the court (Judge Shimer), then second to the Bar, the following indisputable facts:

1. that defendants McCashin (STERN's clients) once again were ignoring and violating the law (re no association of attorney) and that their motion for reconsideration was simply a ruse for an opportunity to manipulate the facts;
2. that defendants McCashin claim of "new facts" was clearly false - a ruse - because they had failed on 4 prior occasions ([1] 5-4-93 hearing on plaintiff's motion to compel and request for sanctions; [2] the opposition papers of defendants McCashin dated 4-27-93 to that motion; [3] 6-22-93 hearing on plaintiff's motion to compel and request for sanctions; and, [4] the

⁹WHATEVER - because CW was never provided any documents in reply from STERN, if he even filed any. That the complaining witness has to verify the accusation against the attorney, but is never given any of the documents in response from the accused, or worse yet the accused never has to file any, is simply the height of hypocrisy and denial of due process. It turns the hallmark element of the law - proof - on its head.

opposition papers of defendants McCashin dated 6-15-93 to that motion) to raise the fact that STERN's 4-30-93 declaration was incorrect or false;

3. STERN's 2nd declaration was incompetent because it contained hearsay, was absent of facts, failed to explain the letters (see A64) listed in his 1st declaration and failed to explain why his 1st dec. mislead the court;

4. that it was clear that STERN's former clients had threatened him and pressured him into doing the false 2nd declaration (A64). STERN did not reply to the oppositon. Although his former clients did, their reply not only failed to address the points made in the opposition, but in fact mislead the court by falsely stating:

"Plaintiff's arguments as presented in his opposition to this motion are essentially identical to those made in the underlying motion [plaintiff's 6-22-93]. Rather than reiterate their specific responses setting forth the inapplicability of those arguments to the present motion, Defendants' reference and incorporate herein by reference the arguments and authorities made in their opposition to Plaintiff's motion to compel which was executed and filed on June 15, 1993."

Again the reply of defendants McCashin (STERN's ex-clients) does not even address the opposition. (Nor did the Bar). That the arguments are "essentially identical" to the underlying motion is a lie. That it is a lie is demonstrated by the simple fact that the motion for reconsideration by McCashin dated June 30, 1993 claims it was based upon:

"New and different facts and circumstances now exist in that Mr. Stern has retracted and substantially changed and corrected his declaration." (at 2:8-10).

That claim was then affirmed (and the lied furthered) by the McCashin reply papers filed August 11, 1993, where they state:

"New and different facts and circumstances now exist in that Roger C. Stern has retracted his April 20, 1993 declaration (4:25-26) . . . [P] Plaintiff's request for

sanctions must be denied. Substantial justification exists for bringing this meritorious motion based upon new and different facts and circumstances submitted in the June 30, 1993 declaration of Roger C. Stern." (5:16-19).

It is a lie because of the simple fact that STERN's 2nd declaration was executed on June 30, 1993, after the June 22, 1993 motion hearing. It is impossible for CW's moving papers, dated June 7, 1993, to have addressed STERN's 2nd declaration executed afterward. CW's July 20, 1993 opposition papers are therefore not "essentially identical" - defendants McCashin and their new attorney Dayton Parcels, like STERN, was lying to the court. Like STERN's lie, this lie, was also ignored by Judge Shimer. Why?

Plaintiff's/CW's opposition papers (A59-71), set forth the four (4) points, listed above, that prove STERN's 2nd declaration was a lie; a review of the opposition papers show this is indisputable. Neither STERN, nor defendants McCashin ever addressed, much less rebutted those points. Why?

Moreover, CW also brought that out to Judge Shimer at the August 13, 1993 hearing:

"Well, his declaration is consistently absent of facts, particularly the second one. The first declaration is more specific; it lists letters. The declaration was filed because he was making a motion to withdraw as attorney of record. That in fact happened, later, so I think we should believe the first one. There were problems between -- [STERN and his clients]." (RT 1:21-27; see A24).

Second, just like with STERN, the Bar simply swallows what attorney Parcels said. (CW was never provided any documents re the purported response of Parcels). As set forth above, it is clear that Parcels lied in the reply papers of defendants McCashin

that he prepared and that Parcells no apprehension about making an appearance without legal authority. With such a pedigree, why does the Bar so readily accept claims? There simply is no proof in the Bar's letter to support its bald conclusions.

Third, that letter claims the STERN matter has "been properly handled and dealt with in a court of record". Does the Bar mean Judge Shimer? That's a joke - he thinks its kindergarten time. As set forth above, he did nothing, except tell CW to report him to the Bar. Judge Shimer's dereliction has been addressed above.

Fourth, that letter claims:

"The authority of the State Bar is limited by law. We can discipline an attorney, or recommend that he be disciplined, only for a wilful violation of the State Bar Act or the Rules of Professional Conduct. The conduct of which you complain does not fall within the prohibitions of that Act or those Rules."

Again, nothing but baseless conclusions. As mentioned above, that letter like virtually all replies from the Bar is totally devoid of analysis; there is nothing said about the evidence CW provided and nothing is given to support the Bar's bald conclusions. Why? Because the Bar's conclusions do not hold water - they are false. CW's opposition dated July 20, 1993 (A59) and the Bar complaint (A5), both prove STERN's lie was wilful. The Bar never addressed any of the evidence set forth there, much less rebutted it.

Fifth, contrary to the Bar's conclusion, STERN's lying does fall within the prohibitions of not only the "Act" and the "Rules", but the law. STERN not only violated Bus. & Prof. Code sec. 6068(d) and Rules 3-200, 3-210 and 5-200, he lied in a declaration under oath - he committed perjury.

CW's July 1, 1994 letter (A47) then appealed the matter to the Bar's CGP. There the matter was lost in a black hole for over 21-months and apparently nothing was done. (See A56).

Then finally the Bar's Office of Trial Counsel writes a letter on April 25, 1996 (A57), stating:

"We have concluded that the initial resolution was within the authorized range of discretion for this type of complaint. [P] as a result, the Office of Trial Counsel will take no further action concerning this complaint."

Again, another letter from the Bar with baseless conclusions, devoid of any analysis. This is simply a rubber stamp of the garbage in the Bar's May 4, 1994 letter. There are no findings. That letter is totally devoid of any proof that there was any review of the matter. CW's opposition dated July 20, 1993, the Bar complaint, and CW's July 1, 1994 letter, all prove STERN's lie was wilful. The Bar never addressed any of the evidence set forth there, much less rebutted it.

STERN lied. And like Judge Shimer, the Bar did nothing about it. CW never received, saw or heard of, even one document STERN filed in response to the charges in this matter. Rather than investigate STERN, the Bar did attorney STERN's bidding. CW, like so many of the wrong clients who complain to the Bar, was simply playing solitaire. As shown below, this is nothing new at the Bar.

HISTORY OF NEGLECT BY THE BAR

On August 27, 1994 the Bar, through its Discipline Evaluation Committee (commonly known as the Alarcon Committee) published The Report of The Discipline Evaluation Committee To The Board of

Governors of The State Bar of California (commonly known as the Alarcon Report, copy of referenced pages attached, A72-90). At page 16 (A74), under the heading "THE DISCIPLINE CRISIS - THE WAY WE WERE", the report states:

"In the ten-year period ending in 1983, California's attorney population doubled, increasing from approximately 39,000 to more than 89,000. (ftnt omtd). This soaring number of the practicing lawyers and the corresponding doubling of misconduct complaints outstripped the State Bar Discipline system's ability to deal with them in a timely and effective way. The general public and the California Legislature did not become aware of the dimensions of the problem until the San Francisco Examiner newspaper published a series of articles in 1985 that criticized the system as 'secretive, slow and lenient,' (ftnt omtd) and questioned whether a professional association of lawyers could police itself.

"After examining more than 20,000 pages of records, conducting more than 1,000 interviews and surveying nearly 400 lawyers and appellate judges over an 8-month period, the San Francisco Examiner revealed the following facts about the State Bar discipline system: There was a backlog of more than 4,000 unresolved complaints. It found that only 11 lawyers were disbarred in a year when more than 9,000 complaints were received. It disclosed that dozens of lawyers who were convicted felons, or who were accused of egregious, unethical conduct were allowed to continue to practice law. The reporters asserted that the bulk of complaints from aggrieved clients were rejected with little or no investigation and were never made public. (ftnt omtd). In a letter to the editor of the San Francisco Examiner, dated March 18, 1985 the communications director of the State Bar did not refute the general findings of the problems and was working on solutions. (ftnt omtd). In 1987, however, newly-appointed State Bar Discipline Monitor Robert C. Fellmeth described the State Bar's discipline system as still 'a disaster'. (ftnt omtd)."

The Alarcon Report then goes on to list numerous serious problems that Prof. Fellmeth documented his "disaster" conclusion with "in his June 1, 1987 initial assessment report." (A75-6).

DISASTER - this was the condition the Bar was in right after

former Chief Justice Lucas wrote his scathing opinion in Saleeby v. State Bar (1985) 39 Cal.3d 547, which found the Bar's process for handling applications to its Client Security Fund, filed by defrauded ex-clients of attorneys that committed misconduct, violated due process. (See below, at p. 30).

More alarming is that 4-years later when his term as "Discipline Monitor" terminated, Prof. Fellmeth had many of these same complaints, and more, about the condition of the Bar, stating that attorney misconduct in California was in a "state of crisis" and that "The level of attorney dishonesty in representations to the court, in promises to clients [and in] dealings with adverse counsel . . . is embarrassing." (From the September 21, 1991 LA Times article misleadingly entitled State Bar Steps Up disciplining of Lawyers; copy attached, A36; see also A79). Isn't that the exact problem stated here re STERN?

In fact, in his September 20, 1991 Final Report of the State Bar Discipline Monitor (condensed edition, copy of referenced pages attached, A81-88), Prof. Fellmeth came to the same conclusion that the San Francisco Examiner reached: that the Bar simply could not police itself. There Prof. Fellmeth stated at p. 19-22 (A85-88):

"We have some doubt that these kinds of reforms can be accomplished given the regrettable structure of the Bar governance; that is, a system where the state agency regulating the profession in the interests of the larger body politic consists largely of members of the profession selected by the profession. Political reality makes it difficult for the Bar's governors or its electorate (here, attorneys electing the Board of Governors) to burden themselves substantially for the benefit of a larger population or purpose . . . The State Bar is a long way from assuring acceptable attorneys for the public, particularly in terms of

everyday personal honesty (short of financial theft) and competence. . . . Many of the measures needed to address these problems do not rest within the jurisdiction of the discipline system itself - but they burden the system, and undermine its purpose."

* * *

"The State Bar must understand that the disrepute of what should be a proud profession is not the product of media bias, and is not curable through public relations campaigns - such as the Bar periodically suggests. . . . [P] The State Bar, despite its acknowledged progress and new sensitivity, has yet to face up to the magnitude of its problems."

A code of silence, perhaps? But even more alarming, is that the Alarcon Report itself is nothing more than a self-serving public relations campaign, demonstrated by its misleading "MISSION STATEMENT" at p. 3 (A73), which reads:

"The mission of the Discipline Evaluation Committee [Alarcon Committee] is to report to the Board of Governors on the cost-effectiveness of the current operations and provide recommendations regarding budgets for these operations in the future. It is also the mission of the Discipline Evaluation committee to review the fairness of the system and to make recommendations to ensure consumer protection and fair process for attorneys."

By placing "cost-effectiveness" and "budgets", in the 1st sentence of its "MISSION STATEMENT", it is clear that neither this committee, nor its report, take the issue of attorney misconduct serious. In fact, the "MISSION STATEMENT" fails to even identify attorney misconduct and the vacuum of any meaningful discipline as the "DISASTER" and "CRISIS" they without doubt have been, presently are and certainly will persist and expand to be, in the future.

Moreover, the 2nd sentence of the "MISSION STATEMENT" makes it clear that the committee actually, was not asked to investigate the problems of misconduct/discipline - those two (2) words are

conspicuously absent. Why? This conclusion is supported by the following facts. First, is the misleading heading mentioned above, "THE DISCIPLINE CRISIS: THE WAY WE WERE". WERE?

Clearly, this heading and the statements made under it, were intended to mislead one to the false conclusion that attorney misconduct/discipline problems have largely been solved - just like the misleading March 18, 1995 letter from the Bar's communication director, referenced above at p. 20.¹⁰

Second, the report fails to even mention Prof. Fellmeth's final report, except a single reference, which is tucked away in a footnote (no. 10, at p. 17 - see A84), that misleadingly appears among a long list of "problems" that are attributed to be from his "initial assessment report released June 1, 1987". Again, Prof. Fellmeth stated in connection with the release of his Final Report, that attorney misconduct in California was in a "state of crisis". Why did, how can, the Alarcon Committee/Report overlook such a fundamental conclusion?¹¹

Third, the report also incredibly states at page 10:

"We have found no evidence that clients are treated unfairly."

Incredible because - the report itself then blows that statement completely out of the water, with the amazing statements that

¹⁰One is reminded here of the quote from Yogi Berra: "It's deja vu, all over again."

¹¹The 12-21-93 LA Daily Journal p. 3 article Bar's Discipline System Will Face Panel Review, that announced the appointment of the Alarcon Committee has the simple answer, where it states - "but no overt critics of the State Bar" were appointed by Bar President Margaret Morrow.

directly follow it:

"The present system, however, has the appearance of being biased in favor of attorneys in the eyes of a person who complain about unprofessional conduct. Persons who seek review before the Complainant's Grievance Panel of a determination that formal disciplinary proceedings should not be initiated are doomed to disappointment in approximately 99% of their appeals."

99% of appeals doomed to failure? This is a system that clearly is devoid of any meaningful appeal. This is a system devoid of due process. This is a captive system simply closed to the outsider - the public. The complaining party - usually ex-clients that have been wronged by their attorneys, the people of the State of California - clearly have been and are - locked out.¹²

But again, the Alarcon Committee/Report "found no evidence that clients are treated unfairly." The only conclusion possible is that the Alarcon Report is just another P.R. ploy by the Bar and that the public have been lied to - again.

However, like a broken clock - that's right twice a day, the Alarcon Report also stumbled into making a few correct statements.

¹²In the very recent past, the CGP would conclude its standard (99% of appeals are doomed to failure) denial/rejection letter, with the following paragraph:

"Because the Panel considers all cases in a closed and confidential meeting we cannot provide you with any details concerning its decision."

Closed and confidential meeting? Cannot provide any details?
A code of silence, perhaps? How do we know that an investigation or review is ever done? Like the CGP's form letter above, the Office of Trial Counsel's 4-25-96 standard denial/rejection letter makes no findings, states bald conclusions and is totally absent of any analysis. There has been no review. (See Saleeby at 533, and below at p. 30).

For example, at pages 54-55 (A79&80) the report states:

"Under the present system, disbarment is relatively rare, and is meted out only for the most egregious misconduct. . . . Yet under the current system, a disbarred attorney can apply for reinstatement after three(3) years, and resources must then be expended considering such applications. When successful, disbarred attorneys are given another chance to victimize unsuspecting clients. If the public were aware of the fact that disbarment does not really mean disbarment, it would question the seriousness of the State Bar's resolve to cleanse the legal profession of the relatively few attorneys whose misconduct casts all attorneys in a bad light.

* * *

". . . an attorney should be eligible for permanent disbarment where he has engaged in particularly reprehensible misconduct, e.g., embezzlement of client funds, perjury, suborning perjury, knowingly making false statements to the court with intent to deceive, and using his position as a lawyer to commit fraud on his clients or the public."

And the most incredible statements from the Alarcon Report ((A78):

"There is a troubling lack of consensus among bar discipline staff as to who is in charge of the discipline system as a whole. Interviews held with management staff in the State Bar Court and others revealed that there were many answers to the question, "Who is in charge of the State Bar discipline system?", the most prevailing answer being "no one." (Recommendation No. 2, Discussion point 6, at p. 53).

". . . It is unconscionable that the discipline system has gotten so far out of control with too much staff, lack of fiscal oversight--the most glaring examples being in the area of travel--and no expectation that the system operate efficiently or cooperatively. . ." (Further discussion under point 6, p. 53).

Clearly the Bar is not only a broken, but a twisted and deformed are, a "disaster", in a "state of crisis", "out of control", with "no one" in charge. The Bar simply is a disgrace to the RULE OF LAW. It is a brotherhood - mostly gone bad.

Most incredible though is that the subject of the this VA, lying attorneys, was one of the biggest criticisms of Professor

Fellmeth's Final Report. There, under "Honesty" at p. 20 (A86), he stated the following about attorney deceit:

"The Bar must begin to search for ways to deter attorney deceit, particularly in the practice of civil law. The level of attorney dishonest in representations to the court, in promises to clients, in dealings with adverse counsel, and perhaps especially in points and authorities and legal briefs, is embarrassing to anyone with a measure of intellectual pride. Regrettably, the large city practice, where an attorney's previous abuses do not become widely known so that his or her statements are then discounted based on reputation, means that misleading behavior is not deterred by the courts adequately, and can even be familiar.

"Part of the problem has to do with the lack of certain sanctions for deceit. And part of it has to do with an adversary which has gone awry. . . . On the civil side, the has been distorted to justify deceit on a grand and institutionalized scale. It has reached the stage where any trier of fact is going to have difficulty in ferreting out the truth from two persons each bound and determined to mislead as much as possible.

"What is needed are some bounds, some clear and defined limits. The Bar should consider examining with special care and with a fresh eyes some of the underlying rules of civil representation. It is possible to develop new rules of behavior supervening adversary representation, and restoring a measure of honor to a profession which is in a current sate of well-deserved dishonor."

Professor Fellmeth's tenure expired with his Final Report, and there has been no further discipline monitors since. The Alarcon Report is just another lie from the legal establishment. Simply put - it's a joke. But there is no laughter from the wronged clients - the public.

Shortly after the release of the Alarcon Report, Prof. Fellmeth wrote Alarcon report: Out at the Plate, which appeared in the October 1994 issue of the California Bar Journal.

In pertinent part, Prof. Fellmeth states there:

"The Alarcon Committee, within its assigned task, has hit several dozen singles and perhaps one triple. The Bar's **regrettable structure** places the prosecutor of attorney wrongdoing under the jurisdiction of a board controlled by persons elected by other attorneys. The office suggested by the committee addresses the underlying need of any **cartel system** to have a check originally from the outside tribe. [P] Currently the bar's Complainants' Grievance Panel provides some check, but its jurisdiction focuses on reviewing individual complaints that were dismissed early on over the objection of those reporting them. . . . [P] but the committee **undermined** its most promising suggestion with the instruction that the position report directly to the executive director of the Board of Governors. If one removes the single relatively independent check extant (The Grievance Panel), it should **not be replaced with a cartel-subservient creature**. In its one extra base hit, the committee has been thrown out going for home."

Further evidence that no one is in charge of the Bar's discipline system and the Alarcon Report is just P.R. ploy, comes from one of the Bar's own. Mr. David Guay, Special Investigator in the Office of Investigations of the State Bar of California writes in The Undisciplined - State Bar 'Reforms' Need Reforming (copy attached, A89), that appeared in the LA Daily Journal on December 28, 1994:

"Yet again, the State Bar attorney discipline system is slated for major reform and organization. In 1986, after many years of criticism by just about everyone who dealt with the State bar regarding complaints about attorney misconduct, the **system was completely overhauled** by the Legislature. This finished product . . . greatly increased the State Bar's revenue. There also was a massive increase in the number of complaints about attorneys and a corresponding increase in . . . discipline staff and equipment. Despite improvements in many areas, the results of the 1987 reform failed to meet **expectations**. Once again, there was an outcry of complaints by consumers, attorneys and the legal profession in general. In December 1993, the president of the State Bar responded. She established a blue-ribbon panel to take an in-depth look at the current

discipline system. . . . designated the Discipline Evaluation Committee [the Alarcon Committee/Report, who's] . . . mission was to evaluate the structure, efficiency, fairness and cost of the State Bar's discipline operation. After an exhaustive study, . . .

"Unfortunately, there was one area the committee did not investigate and report on. That was the effectiveness, performance and leadership of the senior executives in charge of the State Bar discipline system. Except for the person holding the position of chief trial counsel, the same people have been in charge for over 10 years--some considerably longer. They are directly accountable to no one. . . .

"As a State Bar investigator for over six years, I have had the opportunity to observe and assess the leadership skills of the discipline system's senior executives. It is my impression that they couldn't lead a 3-year-old to the toilet. Had the current discipline system's executives been in charge of the Titanic when it struck the iceberg, they would have immediately informed the Board of Governors by radio that the ship was going to be delayed because it had stopped to take on ice. Then, as it began to sink they would have asked each other, 'Where the hell is all this water coming from?'"

Where is all this lying coming from?

Even more recent, is attorney Richard Lubetzky's article State Bar's Narrow View of DISCIPLINE - Severe Lawyer Misconduct Deserves Permanent Disbarment (copy attached, A90), that appeared in the LA Daily Journal on April 24, 1996. There Mr. Lubetzky writes:

"Whether or not the State Bar should impose permanent disbarment upon errant attorneys is one of the most controversial issues to rock the bar today. This should not be surprising, since the issue epitomizes the classic clash between the needs of our profession to perpetuate its own interests and to discharge its obligations to act in the best interests of the public. The conflict is both inevitable and irreconcilable.

"Unlike many other fields, the practice of law is regulated by the very members who make up the profession. As a profession, we answer to no one but ourselves. This in itself is sufficient to breed distrust, and it places on the bar a special duty to ensure that attorneys act competently, ethically and responsibly in dealing with

clients, the courts, opposing counsel and the public. Unfortunately, the bar has failed dismally in this regard, notwithstanding the expenditure of thousands of dollars of our dues.

"We as attorneys are officers of the court. As such, we are sworn to uphold the law, act as guardians . . . But the practice of law today . . . is now dominated by mega-firms . . . [with] a virtual 'license to steal'. What's right and just has taken a back seat to gamesmanship and the desire to win at any costs. Attorneys have become gladiators. Deceit, character assassination and trickery have replaced civility, fairness and honesty.

". . . the State Bar Board's Committee on Discipline [Alarcon Committee] was wrong when it recently rejected a proposal to permanently disbar those attorneys who have been convicted of a felony involving moral turpitude or misappropriation of client funds in an amount that would constitute grand theft."

The Bar simply is a joke.



This CONRAD commentoonary appeared in the LA Times in July 1992 about then Bar president Harvey Saferstein, after his proposal to outlaw lawyer jokes - and make them a hate crime.

HISTORY OF NEGLECT BY THE SUPREME COURT

In Saleeby v. State Bar (1985) 39 Cal.3d 547, Chief Justice

Lucas of our Supreme Court wrote:

"In 1927, the Legislature adopted the State Bar Act (Bus. & Prof. Code sec. 6000 et. seq.) establishing "what is known as an "integrated" bar, i.e., an organization of members of the legal profession of the state with a large measure of self-government. . . We have described the bar a 'a public corporation created as an administrative arm of this court for the purpose of assisting in matters of admission and discipline of attorneys.' (Citation)."

The only conclusion possible then, regarding WHY the Bar discipline system has been a "disaster", in a "state of crisis", "out of control", with "no one" in charge, is that the Cal. Supreme Court is to blame. Simply put, the Cal. Supreme Court has allowed, tolerated and fostered this "disaster". The Cal. Supreme Court, like its arm the Bar, has repeatedly failed in its duty to protect the public and in fact has repeatedly protected miscreant attorneys and the Bar personnel who cover for them.

The above proof is unrefutable. A further example, is when Chief Justice Lucas wrote Saleeby v. State Bar, above. Recall that the San Francisco Examiner had just published its series of articles castigating the Bar and stating the discipline system was:

"secretive, slow and lenient" and "questioned whether a professional association of lawyers could police itself".

Saleeby v. State Bar, above, involved the Cal. Supreme Court considering the question WHAT DUE PROCESS the Bar was required to provide applicants (wronged clients) making claims to the Bar's Client Security Fund (hereafter CSF). At page 533, ftnts. 4 and

5, Chief Justice Lucas wrote:

"4. The confusion under which the bar appears to labor is demonstrated by its concession that some review is appropriate and its simultaneous assertion that its payments are a matter of grace. In other words, the bar can do whatever it wishes, but that decisions are in some manner 'reviewable'. If the bar has complete discretion and that discretion is limitless, what is there for this or any court to review? Moreover, what, if anything, can be reviewed if there is no record upon which to base review?"

* * *

"5. Note, too, that ordinarily review by administrative mandate is based only on the administrative record. (Citations). Here, there is no 'administrative record' from which a meaningful review could be made."

Chief Justice Lucas later wrote at page 535:

"We will conclude that the procedures followed by the bar are insufficient because they fail to provide a record upon which judicial review may be had and deny due process and that the bar therefore must formulate new rules. We will also conclude that decisions relating to applications for reimbursement for the CSF are reviewable by a writ of mandamus heard in the first instance in the superior court. . . ."

Why are complaints of misconduct not? Saleeby was simply another P.R. ploy. Because although the Supreme Court preached about the ills with the Bar's CSF and its total failure to provide due process to wronged clients where attorneys had taken their money, it did nothing to restrain the same and even more glaring problems with the Bar's discipline system, as documented initially by the San Francisco Examiner, and then later by Prof. Fellmeth's statements that it was a "disaster" and in a "state of crisis".¹³

¹³Moreover, the reforms that Chief Justice Lucas in Saleeby told the Bar to implement with its CSF - never happened. Prof. Fellmeth wrote in his Final Report, under section G, "Client Security Fund", at page 17 (A84):

"Regrettably, the current rewrite of CSF rules does not

Justice Lucas had it right the first time - "the bar can do whatever it wishes". That was true when he wrote Saleeby, it is true now. The Bar's discretion is limitless and it is that way because Justice Lucas and his colleagues have simply let the Bar and miscreant attorneys, have their way with clients - the public.¹⁴

Another poignant example of the Cal. Supreme Court ignorance of its duty - and actually its complicity in aiding renegade attorneys - is shown in a January 28, 1993 LA Daily Journal p. 2 article entitled High Court OKs Michelson Discipline Terms. In pertinent part that article states:

"The California Supreme court accepted an agreement Wednesday to place famed palimony attorney Margin Mitchelson on three years of disciplinary probation with

properly address these concerns, nor move affirmatively to provide a more efficient system. Rather, rule 9 of the CSF's Rules of Procedure provides that reimbursement is only paid where there is a dishonest act of any attorney acting as a lawyer where he or she "(A) dies or was adjudicated mentally incompetent; (b) was disciplined, or voluntarily resigned from the practice of law in California; (c) became a judgment debtor of the applicant in a contested proceeding, or was judged guilty of a crime" (emphasis added). The next section of the rule allows the Commission to waive qualifications under one of the three categories above in its "discretion." Hence, many of the reforms of the Commission, including its new default system, depend upon the use of the undefined discretionary power to waive."

Nothing changed. There simply is no RULE OF LAW when the Bar ignores directives from the Supreme Court. One has to wonder who runs who? Maybe the Supreme Court is actually an arm of the Bar. Regardless, it is clear that they both are broken. Unfortunably, it is the public that bears the pain.

¹⁴And the beat goes on. See Howard v. Babcock (1993) 6 Cal.4th 409, a 6/1 decision, where only the dissent placed "Protection of the public and preservation of public respect for the law . . ." as a paramount concern - still consistent with this Court's "principal concern" proclaimed in Beery v. State Bar, above at p.2.

the State Bar. [P] . . . [he] is required to take and pass the California Professional Responsibility Exam, a test on legal ethics and the rules of professional conduct within one year. [P] Mitchelson, currently on trial in Los Angeles federal court on charges he understated his income taxes could not be reached for comment. But his attorney, Arthur Margolis of Los Angeles, said ~We think the disposition is a fair one.' [P] The agreement between Mitchelson and the State Bar disposes of all disciplinary charges. . . . As part of the deal, Mitchelson stipulated that he failed to properly supervise the work of an associate, failed to tell two clients that he had delegated most of the work on their cases to an associate and commingled personal funds with client funds in his bank account.

* * *

"The Bar agreed to drop charges that he mishandled clients funds, filed frivolous appeals, failed to refund unearned fees and related forms of conduct. [P] Mitchelson also was accused of rape by two women in 1988. But the Los Angeles District Attorney's Office, the state attorney general's office, the county grand jury and the State Bar all declined to prosecute, saying evidence was insufficient to support their claims. [P] The court's one-paragraph order, signed by Chief Justice Lucas, routinely goes along with the Bar's recommendation in lawyer discipline cases. . . ."

A follow up February 10, 1993 LA Times article entitled Celebrity Lawyer Mitchelson Found Guilty of Tax Fraud - Famed Palimony Attorney Convicted of Concealing Nearly \$3 Million In Income from 1983-86 quoted U.S. Attorney Terree Bowers:

"This is the West Coast version of the Leona Helmsley case . . . This type of case is particularly irksome to us when you have people who are famous and wealthy, yet they engage in manipulative conduct in order to cheat on their taxes. More than 98% of the income that the IRS collected from Mitchelson since 1972 has been obtained through liens and other activities."

Where was the Bar? Where were the courts? A code of silence, perhaps? For an education about just how much of a renegade attorney Mitchelson was and for how long his misconduct was ignored by the Bar and court, see the article Marvin Mitchelson Hits the Wall July

1993 issue of California Lawyer. The Bar and the Supreme Court do not act because an attorney commits misconduct, they only act when an attorney becomes an embarrassment and they are backed into a corner and their hands are forced. And then they only impose the minimum discipline they believe they can get by the public.

For anyone that still believes that the Cal. Supreme Court is doing its job, CW provides the following list of VA of serious attorney misconduct, which the Court ignored and thus is indisputable proof the Court is aiding renegade attorneys.

1. S053994, VA against attorney Ernest Anderson;
2. S037043, VA against attorney Thomas Pfalzer;
3. S042880, VA against attys. Donna Peizer & Sandra McNabb;
4. S037066, VA against attys. Browne Greene & Melvin Belli;
5. S042217, VA against attorney Henry Nelson.

If anyone still believes that the Cal. Supreme Court is doing its job, CW would direct them to call or write Mr. Phillip Carizosa, reporter for the LA Daily Journal, who has covered the Cal. Supreme Court for over 15-years. He related to CW that he has seen hundreds of VAs against attorneys filed in the Cal. Supreme Court, many with merit, but has never seen the Court grant even 1.

This is despite Bus. & Prof. Code sec. 6109, mandating that:

"Upon receiving the accusation, the court shall make an order requiring the accused to appear and answer it at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order."

It is clear that, not only is the Cal. Supreme Court aiding and abetting miscreant attorneys and that the Bar personnel are running

cover for those attorneys, but the Supreme Court is violating the law, Bus. & Prof. Code sec. 6109 - itself. (See ftnt.1, at p. 1).

DUE PROCESS? - NO PROCESS!

It is indisputable that the Bar denied CW due process in its handling of the complaint against STERN. First, the whole process complaint process is confidential - totally favoring the charged attorney and ignoring the CW. CW was never provided with a single document that STERN filed in response to this charge. However, this is the case in virtually all complaints filed with the Bar. The CW is left in the dark. The CW is playing solitaire.

Second, the Bar never provides the CW an explanation about its investigation, its finding of facts, an analysis of its purported review of the complaint, or the proof. It simply provides bald and baseless conclusions without any information as to how they were reached. The same is true - of any rubber stamped purported review done by the Bar's higher ups.

In this regard, Prof. Fellmeth in his Final Report, under the section "Intake", stated at pages 4-5 (copies attached, A82-83);

"In early 1987, we found the following major deficiencies in the Bar's system of initial complaint intake:

(1) Intake operators were insufficiently qualified, inadequately trained, and were not supervised closely by legally trained Bar prosecutors.

* * *

(4) Under the system then extant, the Bar relied upon the 'complaining witness (CW)-that is, the person informing the Bar of a possible licensee-to 'carry the ball' and provide evidence. However, 80% of those complaining to the State Bar by phone did not bother to send in subsequently requested written material. When this occurred, the matter was dropped. With rare exception, the Bar viewed a complaint about an attorney

as a matter between the CW and the attorney who was the subject of the complaint.

(5) Information about lawyer misconduct from attorney self-reporting (required by the State Bar Act), judges, malpractice judgments, or other potentially rich sources of information about attorney wrongdoing was not reliably gathered, and was not systematically used for pattern detection purposes."

A code of silence, perhaps? The entire Bar process is a denial of due process. In fact it is so contrary to the law, it is no process at all.

The same is true for the VA process. The CW is required to file: an original and 9 copies of the VA on the Supreme Court, 3 copies on the Bar and 1 on the accused attorney. That is fourteen (14) copies. This clearly is a burdensome requirement designed by this Court to discourage filings by CWs and to once again burden the CW to "carry the ball". As intended, most drop it.

Second, despite the mandatory provisions of Bus. & Prof. Code sect 6109 et. seq., the Supreme Court never orders the charged attorney or the Bar to "answer and appear". VAs 4 and 5 above, were filed by CW, and there neither the attorneys charged, nor the Bar, ever filed a document in the matter. (Ftnt. 1, p.1, above). The VAs simply fall into a black hole at the Supreme Court for 15-months or longer, and then after all their efforts, CWs are told just two (2) words: "Petition denied". The Supreme Court must learn to expand its vocabulary.

Finally, since In Re Walker (1948), where this Court recognized the VA process (it was established by the Legislature in 1939) - there has never been a single VA granted by this Court.

Again, the CW is playing solitaire. A code of silence, perhaps? Something's rotten in Denmark. Or is it something's rotten in the Supreme Court?

Put simply, rather than protecting the public and disciplining miscreant attorneys, both the Bar and the courts are largely protecting the miscreants. The Bar and the courts for the most part, only act against miscreant attorneys out of embarrassment, not because misconduct has been committed and not out of compliance with the law and their sworn duties to uphold it. It is clear they both, in fact, constantly ignore their duties, and the law as well.

The above has established that not only does the public not get due process in their complaints to the Bar against bandit attorneys, but in fact, there is no process at all. The public is just not a part of the system, the club - the public is locked out.

THE COST

The cover story of the April 1996 issue of the California Bar Journal is The governor Reflects on Law and The Legal Profession - Wilson Says Out-of-Control Legal System Is Hurting The State's economic Interests, states in part:

"For Gov. Pete Wilson, his chosen profession is putting a squeeze on the state he is trying to lead. . . . [with] a legal system which he believes is spinning out of control.

* * *

". . . 'one of the major costs of doing business in California is the legal system' -- a system he believes has lost the confidence of the public and is in need of drastic overhaul."

But where has he been? And why has he done nothing about it? Why and how has he ignored the above listed sources that have

broadcast the problems with the Bar? But even more recent - and more alarming - is the December 1994 California State Office of Research report LAW ENFORCEMENT'S VIEW - THE GROWING MENACE OF FRAUD IN CALIFORNIA, which states:

". . . This report offers evidence that fraud is a growing menace to the well-being of Californians based on the first-hand observations of those trying to combat it. (p. 2).

* * *

"Often called financial, economic or white-collar crime, fraud is committed more frequently in Southern California than anywhere else in the nation. Experts frequently say California is the fraud capital of the United States, if not the world. (at 3).

* * *

"The attorney general's office, which runs the state Department of Justice, disbanded its fraud unit three years ago and assigned prosecutors to other areas. (at 11).

* * *

"The system [worker's comp] was notorious for abuses by workers who complained of phony pains and by doctors and lawyers who helped file fraudulent claims for a share of the system's pay-outs. Costs of the fraud had been pegged at up to \$3 billion annually. (at 16).

* * *

"There's a problem with Superior Court judges up and down the state viewing white-collar as a civil thing that's not really that important. (at 22).

* * *

"If you think these people are going to prison, they're not. When an elderly person loses a house or a retirement plan, because [con artists] get them to cash them in, they don't live very well. Their self-respect dies and their will to live goes with it. I've had victims coming in talking about wanting to kill themselves. And these defendants are usually getting probation because the judges are almost vulgar about saying it's the victims' fault for being such idiots. Judges are part of the problem." (at 23).

It is no coincidence: that California is the fraud capital of the world - and the fact that it has the most lawyers.

CONCLUSION

This should have been a simple matter. Attorney STERN lied. He should have been promptly disciplined. But there is a code of silence in the legal profession. And it is not just STERN - attorneys by the thousands are lying in this state (and the country). This VA has proven that. And they get away with it - because judges ignore it - because the Bar ignores it - because this Court ignores it. This VA has proven that.

The result: attorney misconduct in California is in "a state of crisis" and the attorney discipline system in this state is a "disaster", "out of control", with "no one" in charge. The result: the CLAIFORNIA LEGAL SYSTEM HAS NO INTEGRITY.

This VA has proven that. California no longer then has the RULE OF LAW. And that should frighten, if not shame, this Court into doing something about it.

Like for staters, maybe granting this VA?

Will this Court listen? Will this Court hear? Will this Court break the code of silence?

The people of this state are holding their ears - listening - waiting. What will this Court tell them?

Dated: 6-25-96


GARY L. ZERMAN,
CW - Complaining Witness

APPENDIX

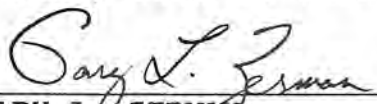
Petition to U.S. Supreme Court, 94-1704, Title, questions presented & conclusion pages.....	A1-3
LA Daily Journal U.S. Supreme Court Highlights.....	A4
12-9-93 CW complaint to Bar against STERN.....	A5-44
10-8-93 CW complaint to CJP against Judge Shimer.....	A13-44
9-21-91 LA Times article <u>State Bar Steps Up Discipline</u>	A36
5-4-94 Bar letter to CW.....	A45&46
7-1-94 CW letter/appeal to Bar.....	A47-52
8-26-96 Bar letter CW, with 2-page info sheet.....	A53-55
3-8-96 Bar letter to CW.....	A56
4-25-96 Bar letter to CW.....	A57
<u>Rule of Law - The ABA Has Fallen Down on the Job</u>	A58
7-20-93 CW Opposition (<u>Zerman v. McCashin</u>).....	A59-71
9-21-91 <u>Final Report</u> by Discipline Monitor Prof. Fellmeth..	A72-80
9-94 Bar - <u>Alarcon Report</u>	A81-88
12-28-94 LADJ article <u>The Undiscipline System</u>	A89
4-24-94 LADJ article <u>State Bar's Narrow View of Discipline</u> ..	A90

VERIFICATION

State of California)
County of Los Angeles)

I am the Complaining Witness - CW, in the above action; I have read the foregoing **VERIFIED ACCUSATION OF SERIOUS ATTORNEY MISCONDUCT** and know the contents thereof; I certify that the allegations and statements in same are true of my own knowledge, except to matters stated therein on my information and belief and those matters I in fact believe them to be true; and I attest that the documents referred to in the appendix are true and correct copies of the documents they represent.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 26th day of June, 1996 at Newhall, California.



GARY L. ZERMAN,
CW - Complaining Witness

PROOF OF SERVICE

I am employed in the county of Los Angeles, state of California; my business address is 18824 Vista Del Canon, Suite G, Newhall, California. I am over the age of eighteen years.

On the date shown below, I severed the within **VERIFIED ACCUSATION OF SERIOUS ATTORNEY MISCONDUCT**, on the entities listed below, by:

Personally delivering three (3) copies to an apparent person in charge at:

The State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

Placing a true copy of the above document, enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Mail at Canyon Country, California addressed to:

Roger C. Stern, Esq.
Kahn, Stern & Blaney
5959 W. Century Blvd., Suite 100
Los Angeles, California 90045

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26th day of June, 1996 at Newhall, California.



GARY L. ZERMAN