No. _____

In The

Supreme Court of the United States

EMAD TADROS, M.D.,

Petitioner,

vs.

WILLIAM R. LESH and
STATE BAR OF CALIFORNIA,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of California

PETITION FOR WRIT OF CERTIORARI

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No. 12-1438

6-11-13

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QUESTIONS PRESENTED

In *Adarand Constructors v. Peña*, 515 U.S. 200 (1995), this Court reiterated that "strict scrutiny" protection under the Fourteenth Amendment's Equal Protection Clause is applied at least to classes of race, national origin, and alienage. The Ninth Circuit Court of Appeals has acknowledged that strict scrutiny protection extends to discrimination beyond race or gender, to include discrimination against persons or classes "identified by Congress or the courts as needing special protection." *Sever v. Alaska Pulp Corp.,* 978 F.2d 1529 (9th Cir. 1992). A class is entitled to heightened scrutiny provided it can show a "governmental determination that its members require and warrant special federal assistance in protecting their civil rights." *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985); *Denney v. Drug Enforcement Admin*., 508 F.Supp.2d 815 (E.D. Cal. 2007). In *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971) this Court held that groups which have historically been subjected to "invidious discrimination" are entitled to heightened protection under the Equal Protection Clause.

The rights at stake in the present action – parental rights and rights of association and speech – are fundamental rights, and their status under California law entitles the 13700 class to "special protection." *See Troxel v. Granville*, 530 U.S. 57 (2000) ("the interests of parents in the care, custody, and control

QUESTIONS PRESENTED – Continued

of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court."); *Sever*, *supra*, at 1535-36; *Jensen v. Wagner*, 603 F.3d 1182 (2010) ("There is perhaps no more delicate constitutional barrier protecting freedom from governmental interference than that which protects against state interference with parental autonomy.").

Though no court has so ruled, Petitioner submits herein that the state of California has *already defined* a specific "domestic relations" class – including all of the family court litigants affected by the actions of the State Bar of California below – as a group entitled to "special protection" under *Sever v. Alaska Pulp Corp*. California Penal Code section 13700 defines this special class as any "adult or a minor who is a spouse, former spouse, cohabitant, or former cohabitant" or other enumerated relationships while engaging another similarly situated in that relationship. *See Cal.Pen.C.* 13700. For purposes of this Petition, the subject class described under California Penal Code section 13700 shall be referred to as California's "13700 Class."

1. Does California's standard for evaluating attorney misconduct, described under California Business and Professions Code section 6106 as "the commission of any act involving moral turpitude, dishonesty or corruption" ("Moral Turpitude Standard") – impermissibly offend Due Process as arbitrary and effectively ex-post facto?

QUESTIONS PRESENTED – Continued

2. Does California's application in this case (and thousands of other similar cases) of the "Moral Turpitude Standard" violate the Equal Protection rights of Petitioner and the 13700 Class under strict scrutiny, or any standard of review?

PARTIES TO THE PROCEEDING

As listed in the caption, Petitioner here, Complainant below, Emad Tadros, M.D., adverse to Respondents here, Respondents below, State Bar of California and Mr. Robert Lesh, Esq., Chair, Family Law Subsection, San Diego County Bar Association. No parent or subsidiary entities are known.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

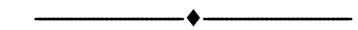
TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

OPINIONS BELOW AND BASIS FOR JURISDICTION

Petitioner seeks review of the State Bar of California's December 22, 2011 (App. 7) and November 21, 2012 (App. 2) denials ("State Bar Denials") of Petitioner's October 11, 2011 professional misconduct complaint regarding Mr. Robert Lesh, Esq. ("Lesh Complaint") (App. 13). Petitioner sought review of the State Bar Denials from the Supreme Court of California on January 14, 2013. The Supreme Court of California on March 13, 2013 denied Petitioner's Petition (App. 1). This Petition for Certiorari on the State Bar Denials ensues.

This Court has jurisdiction under 28 U.S.C. § 1257(a) to review on writ of certiorari The Supreme Court of California's March 13, 2013 denial.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

Section 1 of the Fourteenth Amendment to the United States Constitution forbids any State to "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the United States Constitution provides no citizen of the United States shall "be deprived of life, liberty, or property, without due process of law."

STATE STATUTES

California Business and Professions Code section 6106 prohibits an attorney from committing "any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise."

California Penal Code section 13700 defines "Domestic violence" as

> abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

STATEMENT OF THE CASE

Introduction

Petitioner contends the State Bar's Denials of Petitioner's Complaint to the State Bar against attorney Robert Lesh, Esq. (App. 13) under the "Moral Turpitude Standard" of California Business and Professions Code § 6106 violates the Fifth and Fourteenth Amendments to the United States Constitution as it:

1. Applies an unconstitutional "Moral Turpitude Standard" which, when seen in light of a comparison of Petitioner's Complaint with existing state law precedent and relevant evidentiary standards at issue, is an illusory and ex-post-facto law in violation of Due Process.

2. Offends Equal Protection of the Laws for Petitioner – a member of and advocate for a class of "domestic relations" persons entitled to heightened protection under state and federal law.

There was a time, perhaps, when most anyone capable of defining the term would also agree to what lawyerly acts amounted to "moral turpitude." *Cal. Bus. & Prof. C*. § 6106. Apparently standards evolve.

According to Respondents, the State Bar of California ("State Bar") and San Diego County Bar Association Family Law Subsection Chair, Robert Lesh, Esq., the evidence presented by Petitioner to The State Bar below failed even to establish "probable cause" of "moral turpitude" or "dishonesty" required to initiate a disciplinary investigation against Mr. Lesh. *Cal. Bus. & Prof. C*. § 6106. Petitioner

submits that the evidence presented to the State Bar below *comprises abundant* probable cause of a nascent conspiracy among San Diego County divorce bar attorneys to, inter alia, falsify court records, suborn perjury, obstruct justice, violate client confidences and trust funds, and commit widespread fraud on clients, the courts, and the public. If true, the ramifications for the accused attorneys – dozens of California divorce lawyers – were *breathtakingly severe*. Perhaps, it seems, *too* severe for the State Bar to risk a closer look.

Respondent State Bar's inability to observe probable cause to investigate Petitioner's Complaint impermissibly – and unconstitutionally – ignores more than sufficient evidence to establish "probable cause" to investigate as authorized under California law. It is submitted that such refusal results from a failure of procedural Due Process, and constitutes a deprivation of Petitioner's rights to Due Process and Equal Protection of the laws, such that review of the constitutional fitness of the "Moral Turpitude Standard" – on its face and in application for this Petitioner and the suspect class of which he is a member and advocate – is warranted.

Background

A. The Lesh Email

This case originates from Petitioner's intercept of an allegedly incriminating email from Mr. Robert Lesh, Certified Family Law Specialist and Chairman

of the Family Law Subsection, San Diego County Bar Association, to a private "listserv" consisting of dozens of San Diego County Bar Association Family Law Subsection members. (App. 10-12). The October 1, 2009 email (the "Lesh Email") states:

> *I have been advised that a press conference occurred today (October 1) which involved the issue of custody evaluations and the submission to the Court of the attached Family Law Forms 326 and 327. As you may be aware from a prior e-mail I sent to all of you, these forms are mandatory and have been for some time. Whenever you are involved in a custody evaluation matter, you need to make sure that your custody evaluators sign form FL-326 and that that gets filed with the Court, as there is a strong possibility that the custody evaluator will not be paid for work that they perform prior to the form being signed and submitted to the Court.*
>
> *As to Family Law 327, that also needs to be signed and contained in the case file.*
>
> *It seems apparent that there is going to be a tremendous amount of scrutiny being placed upon these forms and if you have any old cases still pending where these forms have not been used, please make sure that they are filed appropriately as you risk claims from your client that the matter was not properly handled, if they later disagree with the recommendations from the evaluator.*

> *If you have any particular questions regarding this, feel free to contact me.*
>
> Bob Lesh CFLS [Certified Family Law Specialist] Chair

(App. 11-12).

The Lesh Email was intercepted from the closed "listserv" mailing list by an intended recipient and forwarded to San Diego County parents'/children's rights activist, Mr. John Van Doorn, who forwarded the same to Petitioner, San Diego Psychiatrist Dr. Emad Tadros, by email on February 17, 2010. (App. 10).

Dr. Tadros detected in the email possible unethical and/or criminal activity and independently investigated the matter further. His investigation uncovering additional evidence of untoward activity within the "family law community" that received the Lesh Email, Dr. Tadros thereafter filed a formal Complaint with the State Bar alleging misconduct by Mr. Lesh, providing detailed explanations, timelines, and exhibits, and requesting the State Bar investigate the allegations. (App. 13-20) ("Complaint").

After cursory evaluation, on December 22, 2011, the State Bar initially closed the Complaint without action, concluding that the Complaint "would not likely meet [the] burden of proof" of "clear and convincing evidence." (App. 8). The State Bar Deputy Trial Counsel, Ms. Diane Meyers, concluded that:

"*Mr. Lesh said to make sure the forms were filed appropriately. In other words, each attorney was to determine whether the form may still be filed retroactively. We concluded that Mr. Lesh does not have an ethical duty to meet with you, because you are not his client.*"

(App. 8). Ms. Meyers advised she was closing the Complaint and that Petitioner could request that the Audit and Review Unit re-open the Complaint, and submit "new evidence or a showing that closing your complaint was made without any basis." (App. 8-9).

On March 16, 2012, Petitioner filed a request to re-open the Complaint with the Review and Audit Unit. (App. 2). Petitioner provided (1) additional detail not previously identified, (2) further explanation of the significance of the Lesh Email as indicative of a conspiracy to illegally back-date and back-file professional custody evaluator eligibility forms in potentially hundreds of court case files, (3) additional correspondence identifying ongoing investigation by the former San Diego City Attorney and the presiding Family Court Judge Lorna Alksne, and (4) additional evidence consisting of written accounts from over a dozen angry parents frustrated with the disclosure in the Lesh Email. (App. 2).

In response, on November 21, 2012, Deputy Trial Counsel Mr. Mark Hartman advised his office had received Petitioner's March 16 correspondence as well as a "package of additional materials from the Office of the district Attorney of the County of San Diego.

(App. 2-3). Mr. Hartman concluded that no further investigation was warranted, explaining: "Although the email might have been a mistaken comment, it does not prove by the high standard of clear and convincing evidence that Mr. Lesh committed an act of moral turpitude or dishonesty. Accordingly, the State Bar cannot prosecute him." (App. 5).

Dr. Tadros timely petitioned for review of the State Bar Denial to The California Supreme Court. The California Supreme Court denied Petitioner's petition without comment on March 13, 2013. (App. 1). This Petition ensues.

B. Professional Child Custody Evaluators: Why?

The significance of the Lesh Email is better understood in the context of the family court "professional child custody evaluator" history, powers, and reason for "FL Forms" at the center of this dispute.

Under California Family Code section 730, a State of California Superior Court judge presiding over a family law (marital dissolution, adoption, parentage, dissolution, annulment, etc.) matter involving custody of a child may appoint a private "custody evaluator" to "evaluate" the "best interests of the child" in a dispute between parents. The appointee is empowered to "evaluate," inter alia, each contending parent's relative fitness and make decisions and/or recommendations to the court about how and with whom the child will live.

Acting pursuant to statutory court appointments, evaluators attain sweeping jurisdiction over the family's daily interactions during the pendency of the appointment which may last for *years*. They can and often do insert themselves as de facto "judges" to micromanage virtually any parental dispute affecting the child's welfare, which can include everything a parent of dependent children does. They commonly make "recommendations" to the parents or, if unsuccessful, to the court, regarding even minute details of a child's (and his or her parents') life. Further, evaluators can and do "recommend" referrals to a wide variety of third party "professional services" for parents and children, including extensive counseling and education, paid for by the parents. The recommendations have the effect of binding decisions, and are often imposed as a condition on any parent/child contact whatsoever.

A custody evaluator's "recommendations" are subject to review by a court, but are given great deference by a judge. In custody matters, a judge is empowered to, and in California courts often does, adopt drastic or controversial "recommendations", imposing complicated, expensive, and highly controversial "therapeutic" and/or "rehabilitative" referrals to a vast network of "service professionals." Such "recommendations" regularly threaten or deprive one *or both* parents of constitutional rights of free association and parental autonomy *with little or no Due Process*.

In essence, once appointed, a "professional custody evaluator" inserts him or herself as a default

"co-parent" with virtually unchecked authority to run every aspect of the children and parents' lives. At often upwards of $300 per hour, broad jurisdiction, and a flexible "best interests of the child" mandate, private custody evaluators become expensive and *surprisingly invasive* parental "co-pilots" who, once secured by court order and empowered to tilt custody at a whim, are not easily ejected.

Not surprisingly, given the scope of discretionary power wielded by "professional evaluators," their history in the state has not been unblemished by abuse. As detailed in Petitioner's August 27, 2011 Complaint (App. 13-20), the "FL Forms" at the center of this case were adopted and have evolved in response to a pattern of substantial harm inflicted on unsophisticated divorcing parents and their children by unscrupulous "professional child custody evaluators." Offenses included soliciting and obtaining appointments without adequate qualifications, training, and supervision, malpractice, overbilling – even bribery – and general incompetence or malfeasance. The field was populated by a variety of professionals from other fields, including social work, psychology, education, and general child care. With few standards, less scrupulous "evaluators" functioned as "snake oil salesmen," fed by unsophisticated warring parents. (App. 13-17). *See also* Hagen, *supra*, 233-34.

C. Professional Custody Evaluators: "Training" and "Oversight" (?)

It was (and is) recognized by all parties that "professional custody evaluators" must be accountable, adequately educated, trained, monitored, vetted, and subject to meaningful oversight. However, prior to the enactment of the "FL Forms" (and ongoing even today where the Forms are not properly used), training and oversight of these otherwise "free radical" professionals fell to no one. With no specific professional oversight body,[1] training or degree curriculum, licensing discipline, or professional standards body, quality assurance was difficult or impossible.

The environment necessitating use of the forms as "gatekeeping" devices is peculiar to the California "professional custody evaluator" profession. Unlike more "traditional" professions of medicine, psychology, social work, law, etc., the education, training, and oversight of the "custody evaluator" profession has no traditional training, education, or "best practices" heritage; no formal undergraduate or graduate academic curriculum; no specific local, state, or national professional licensure, regulatory, discipline, or oversight body; and scant little state or federal regulatory attention.

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[1] Some *Psychologist* evaluators (though not their social worker brethren) are monitored by the California Board of Psychology. However, because of their "special" status as "forensic" as opposed to "clinical" psychologists, the Board of Psychology carves out "unique" professional standards for the profession.

Though abandoned by their erstwhile academic and scientific professional cousins, "professional custody evaluators" nonetheless found welcome among social science *practitioners* – particularly in the law. In essence, "professional child custody evaluators" became free agents grafted onto the court system from traditional "soft science" disciplines of psychology, education, social work, and sociology. Yet despite aspiring close-degree-filiality to those professional communities, the "professional child custody evaluator" profession has been adopted by none.

This lack of or, more accurately, inability to regulate, supervise, train, and discipline "professional custody evaluators" led to abuses too voluminous to indulge here. However, the situation has been recently described in a 1997 publication by Dr. Margaret Hagan:

> The abuses and excesses of so many child welfare specialists should not be allowed to obscure the indisputable fact that there are many decent, caring, hardworking professionals who do their absolute best with huge caseloads to help the children as well as they can be helped with the psychological tools available. It would be cruel and ungrateful and stupid to say otherwise.
>
> The problem for them and for us is that the psychological tools just do not exist for them to do their jobs, and no one can or is willing to admit that. It is just too difficult to deal with the awful reality that in the three million annual cases of alleged abuse, our

already overworked police forces would be called on to investigate and make determinations essentially without any evidence at all of where, with whom, and by whom abuse has occurred. Who can blame the police and the prosecutors' offices – along with our courts – for wanting the assistance of professionals who know what they are doing?

It is just too bad that there are none available.

Both in custody cases involving allegations of grave risk to children in the home, and in cases arising where parents cannot agree on custody for reasons both profoundly serious and dismayingly foolish, our judges – our whole family legal system – desperately seeks guidance about where to find and where to place the best interests of the children involved. Agencies, parents, and judges alike turn to psychological professionals to help them find the truth or make their case.

Our common desperation seems to have produced the common delusion that experts actually exist who really can determine with the unerring instinct of a homing pigeon exactly where the best interests of a child lie, where a child should live, whether and how a child has been hurt, how a child should be protected, who will be the superior parent, and who is unfit to be a parent at all, who should have the right and the duty to care for a child, who should see the child only under restricted conditions, and who should be kept away from the child altogether.

> Acceptance of their expertise has led us to trust professionals to make these decisions for the family court system. That means ultimately that we also grant them the power to make these decisions for our own families. The abstract need of society to protect its children becomes inevitably the rape of the rights of the real parents of individual children. Once again, the institutionalization of society's desire to "do good" results in terrible harm for those in the path of the do-gooders.
>
> The marriage of law and psychology has reached the heights of disproportionate power for the psychologists not just in family courts but in all legal disputes in which a psychological matter is at issue. Judges buy the validity of the expertise of the confident psychological practitioner and no doubt welcome the opportunity to make their own decisions on some foundation other than personal opinion and bias.

Professor Margaret A. Hagen, Ph.D., *Whores of the Court; The Fraud of Psychiatric Testimony and the Rape of American Justice* (Harper Collins 1997), p. 233-34.

Notwithstanding the "professional child custody evaluators'" lack of formal professional methodology, training, licensing, educational curriculum, or certifications, demand for their "services" among courts and divorce attorneys remains. To meet the demand, the California legislature attempted to impose at least nominal order in the otherwise chaotic field. The

device erected to perform the otherwise absent "gate-keeping" function: filing procedures requiring representations under oath that the "professional child custody evaluator" filer had obtained specific relevant minimum standards of education, licensure, training, and eligibility: The "Family Law" or "FL" Forms 325, 326, and 327.

D. The FL Forms

The "FL Forms" referred to in Mr. Lesh's email – "FL 326" and "FL 327" – are not mere "name-rank-and serial number" perfunctory forms – They are intended to impose education, training, experience, certification, and licensing, standards and accountability on the entire profession. (App. 24-28).

The Forms require:

Sections 1, 2: Evaluator's name, place of business, legal affiliates, and date of formal appointment by the court;

Section 3 "LICENSING REQUIREMENTS": The evaluator must disclose and represent whether he or she is a physician, a psychologist, a marriage and family therapist, or a clinical social worker, and any board certifications (sections 3(a) and (b)).

Section 3(c) advises that if the evaluator does not meet the criteria in 3(a) or 3(b), the evaluator may perform work on the case only if (1) the court determines that there are no available evaluators who meet the licensing requirements; (2) the parties have

stipulated that the person may conduct the evaluation; and (3) the court approves the person's appointment.

Sections 4, 5 "EDUCATION AND TRAINING REQUIREMENTS": The evaluator must represent to litigants, attorneys, and the court that the evaluator has completed: 4(a) "basic and advanced domestic violence training requirements", 4(b) "40 hours additional training for a private child custody evaluator", 5(a), (b) the annual hourly update training required by California Rules of Court 5.225(h) and 5.230.

Sections 6, 7, 8 "EXPERIENCE REQUIREMENTS" and "USE OF INTERNS": The evaluator must represent whether and how the evaluator meets experience requirements under California Rules of Court 5.225(g) (completed four court-appointed child custody evaluations in the preceding three years) and whether the evaluator intends to use interns during the evaluation.

The FL Forms must be filed and served *within ten days of appointment and prior to beginning an evaluation* – a critical protection for parents and courts to enable parents to review the veracity of the representations and otherwise "vet" the evaluator. (App. 27).

The cumulative effect of these detailed "mandatory" representations is to assure that all appointed evaluators possess a high level of training, education, and experience to enable litigants, attorneys, and courts to obtain qualified, honest services from a private provider. The Forms are effectively the only oversight of "professional child custody evaluators."

Any professional unable to represent under penalty of perjury that the evaluator meets the detailed requirements of the Form is "weeded out" from the pool of eligible evaluators, ensuring that only truly eligible professionals can receive court-appointed work.

The Forms moreover enable the litigants and their attorneys to hold accountable the custody evaluators. Should the evaluator fail, refuse to file, or fraudulently file the Forms, or commit malpractice during the evaluation, the evaluator is potentially responsible to parents for malpractice, misrepresentation, or fraud. For intentional malfeasance, the Forms provide an avenue for criminal prosecution.

E. Lesh's Instructions to "Family Law Community" Attorneys: A Nascent Conspiracy to Obstruct Justice

Given the import of the FL Forms and the protections for vulnerable parents, children, and courts their use ensures, it is understandable that the October 1, 2009 press conference revealing that a significant number of evaluators and attorneys had not properly prepared and/or filed the Forms was *alarming* – enough so to prompt Mr. Lesh to broadcast an *immediate warning and instruction* to the entire "Family Law Community." Mr. Lesh's advice on how to respond to what *even he* anticipated to be a "tremendous amount of scrutiny being placed upon these forms" was:

" . . . if you have any old cases still pending where these forms have not been used, please make sure that they are filed appropriately." (App. 12).

Mr. Lesh's email also expresses fear that the attorneys "risk claims from your client that the matter was not properly handled" and that "the custody evaluator will not be paid." (App. 11-12). Tellingly, Mr. Lesh's fear is not related to the eligibility, integrity, or accuracy of the representations by the (illegally-appointed) evaluators; not for the family law clients' (or their children's) interests in competent, fair evaluation services; not for the integrity of the custody evaluation or legal process; and not for the Family Law Subsection attorneys' potentially serious breach of their professional responsibilities – but ***only for the pecuniary interests of the lawyers facing claims from their clients that the "matter was not properly handled" and that "the custody evaluator will not be paid."*** (App. 12).

Mr. Lesh's instructions, even to a forgiving eye, read as a shrewd suggestion to embark on an after-the-fact conspiracy to cover-up what appeared to be *widespread* failures to file the FL Forms *to avoid an avalanche of client lawsuits*. A less-forgiving view would recognize Mr. Lesh's instructions effectively to be: "I've learned that you likely have a problem with your handling of the FL Forms. To deal with it, *back-date and back-file the Forms before our clients or the courts figure this out and sue us. Shhh – Pass it on*." While perhaps a client facing criminal obstruction of justice charges would hope to receive such (illegal)

"advice" from a *retained* attorney, Mr. Lesh's instructions were directed *to an entire "community"* of attorneys with whom he enjoyed no attorney-client relationship. "Do it but just don't get caught" is never good advice; especially when simultaneously broadcast to the entire world.

In both letter and spirit, Mr. Lesh's advice premeditates nothing less ambitious than a "Family Law Community"-wide conspiracy to commit, *inter alia*, fraud on the court, fraud on family court clients and their children, obstruction of justice, evidence tampering, subornation of perjury, and violate litigants' rights actionable under state and federal law. The "Family Law Community's" response to Mr. Lesh's inducement of conspiracy shows that at least one evaluator understood the Lesh's Email to be exactly that. The September 23, 2009 form FL 326 filing by custody evaluator Dr. Stephen Doyne was completed and filed in response to the revelation of the filing errors, nearly *a year after his initial appointment*, in direct contravention of the "NOTICE" on the Form.[2] (App. 15-19, 24-28). Even the State Bar Deputy trial Counsel, Diane Meyers, understood Lesh's

[2] Petitioner has brought separate actions against Dr. Stephen Doyne for obtaining a fraudulent "Diplomate" certificate from an alleged "diploma mill" – the American College of Forensic Examiners International ("ACFEI") and its director, Mr. Robert O'Block. ACFEI's fraud has subsequently been exposed by PBS Frontline (http://www.pbs.org/wgbh/pages/frontline/real-csi/) and by the national public interest media organization ProPublica (http://www.propublica.org/article/no-forensic-background-no-problem).

instruction to implicate potentially illegal activity: "[E]ach attorney was to determine whether the form may still be filed retroactively." (App. 7).

F. The Lesh Complaint

San Diego Family Law Subsection members recognized the gravity of Mr. Lesh's instructions. A "Family Law Community" whistleblower intercepted and forwarded the email to John Van Doorn, who subsequently forwarded Mr. Lesh's email to Petitioner, noting "I can and will testify under oath as to the conditions that I received this communication under and the integrity of the individual who forwarded this document to me and his/her professional affiliation (a practicing member of the family law section of the San Diego Bar Association). . . ." (App. 10-11).

Petitioner – a San Diego Psychiatrist, at the time the Vice-Chief of Behavioral Science at Scripps Mercy Hospital in San Diego, and activist for California parents and children enduring divorce proceedings – upon receiving the intercepted email investigated further and, finding reasonable suspicion of widespread wrongdoing, delivered a formal Complaint to the State Bar Office of Chief Trial Counsel Intake Unit as well as the San Diego County District Attorney's Office. (App. 13-20).

Dr. Tadros's Complaint was detailed and corroborated: it provided State Bar counsel with an extensive explanation and exhibits, including a timeline of events, explanation of the FL Forms, relevant legal

and historical context, and his concerns for the harmful consequences to family court litigants from the improper implantation of the FL Forms as directed by Mr. Lesh. (App. 13-20). Though Petitioner, a trained physician and naturalized U.S. citizen whose native language is not English, in writing the pro se letter Complaint did not perhaps draft a model of written legal analysis, his Complaint provided documentary evidence, witness accounts of widespread abuse, and sincerely expressed the understandable outrage that thousands of California parents feel toward the predatory tactics of "family law community" courts, judges, and lawyers. *Id.*

Dr. Tadros's State Bar Complaint articulated that widespread abandonment of the FL Forms by evaluators, attorneys, and courts effectively abrogated important procedural safeguards, thereby exposing parents to the caustic predatory environment that existed prior to adoption of the Forms. Hence, because the Forms were the "new (and only meaningful) Sheriff in town" when adopted, the "Family Law Community's" failure to require their use cast the profession back into its previous state of regulatory purgatory – and the concomitant jeopardy threatened to vulnerable parents and children.

G. The State Bar Investigation

The State Bar of California's investigation and response to Dr. Tadros' Complaint was summarily dismissive:

"Although the email might have been *a mistaken comment*, it does not prove by the high standard of clear and convincing evidence that Mr. Lesh committed an act of moral turpitude or dishonesty." (italics added). (App. 5).

Deputy Counsel Mark Hartman's conclusion that the Lesh Email was a "mistaken comment" is at least disingenuous – a conclusion enabled, as discussed below, by the unconstitutionally illusory "Moral Turpitude Standard." It is difficult to comprehend how a disinterested regulatory authority could read Mr. Lesh's email as innocently as a "mistaken comment" – whatever species of "comment" that may be.

Equally inauthentic, Mr. Hartman's professed *inability* to surmount a standard of "clear and convincing evidence" of a violation *applied the wrong standard of proof* at this – the intake – stage. It's not surprising that an examiner could conclude that a single email – read in isolation – failed to satisfy the ultimate burden after instigation and trial. It's *shocking*, however, that the examiner failed to recognize the damning implications of a nascent conspiracy detectable by proper investigation. State bar precedent discussed herein demonstrates that the "smoke" of Mr. Lesh's instruction and corroborating evidence of compliance in furtherance of conspiracy raised – at the very least – questions of "fire" substantial enough to establish probable cause to investigate.

Nevertheless, Mr. Hartman dismissively garaged the Lesh Complaint. It is submitted that, though

prosecutorial intake decisions are entitled to a "presumption of regularity", such deference does not shackle a reviewing court to abide deliberate indifference to well-founded claims – particularly where the decision bears the "invidiously discriminatory" hallmarks of a deprivation of Equal Protection for a suspect class. At the very least, the Lesh Complaint and the accompanying seminal body of insinuating evidence warranted further investigation into what, if fleshed out as suspected, appeared (and still appears) to be a premeditated conspiracy *to defraud hundreds or thousands of California parents and children in the crisis of a divorce*.

Petitioner respectfully urges that the Court grant no deference to Mr. Hartman's oddly deferential myopia, and conduct or require observation through fresh eyes.

REASONS FOR GRANTING THE WRIT

I. The State Bar Denial Is Enabled By An Unconstitutionally Illusory "Moral Turpitude Standard" Constituting A Failure Of Due Process

The State Bar Denial is enabled by a constitutionally-flawed standard of proof: "an attorney must not commit any act involving moral turpitude, dishonesty, or corruption. . . ." (App. 5). *Cal. Bus. & Prof. C*. § 6106. As applied in this and in the cases cited

below, the "Moral Turpitude Standard" is so illusory as to constitute a failure of Due Process.

As defined by the State Bar, an act of "moral turpitude" is "one that is contrary to honesty and good morals." The primary purpose of the moral turpitude standard is "not to punish practitioners but to protect the public, the courts, and the profession against unsuitable practitioners." *In re Calaway*, 20 Cal.3d 165 (1977). An attorney may be disciplined for convictions of crimes involving moral turpitude that are completely unrelated to his or her law practice; no "nexus" to the practice of law is required. *Segretti v. State Bar*, 15 Cal.3d 878, 887-88 (1976) (conviction for election law violations).

The Fifth and Fourteenth Amendments to the United States Constitution prohibit states to "deprive any person of life, liberty, or property, without due process of law." Petitioner, as a member of and advocate for a class of California citizens – parents and children in domestic relationships – is entitled to fair adjudication of complaints against attorneys for offenses on the public at large, and particularly those directed to the "domestic relations" 13700 Class. In responding to Petitioner's Complaint, the State Bar acknowledged that Petitioner possessed sufficient standing and interest to assert a complaint. (App. 2-4). As such, Petitioner possesses sufficient standing and property interest in the State Bar Denials and discipline process to assert a violation of Equal Protection and Due Process. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-77 (1992).

The "Moral Turpitude Standard" offends Due Process and Equal Protection as it "subjects the individual to an arbitrary exercise of the powers of government." *Duncan v. State*, 152 U.S. 377 (1894); *Mathews v. DeCastro*, 429 U.S. 181, 185 (1976).

The "Moral Turpitude Standard" is – by its own definition and in use – wholly illusory. California courts define the standard as one that "depends upon the state of public morals, and may vary according to the community or times, as well as on the degree of public harm produced by the act in question." *In re Calaway*, 20 Cal.3d 165 at 170 (1977).

Yet this "definition" on its face and in application constitutes a mere tautology – a circular definition – which may be understood by the following analysis:

Q: What conduct is subject to discipline in California?

A: Conduct that involves "Moral Turpitude." (*Cal. Bus. Prof. C.* § 6106).

Q: What conduct constitutes "Moral Turpitude"?

A: Conduct involved is "sufficiently serious to merit discipline." *In re Calaway* at 170.

Q: What conduct is "sufficiently serious to merit discipline"?

A: "'Moral Turpitude' depends upon the state of public morals, and may vary according to the community or times, as well as on the degree of public harm produced by the act in question." *Id.*

As the circular "Moral Turpitude Standard" is merely a specious tautology, it is effectively illusory, and therefore "an absence of any meaningful Due Process at all." *See Duncan* at 382.

While it may be asserted that the "Moral Turpitude Standard," on its face, aims at objectivity, and perhaps in a past era commanded enough consensus to achieve that goal, as applied its chameleon DNA is expressed. The State Bar's determination that the Lesh Email did not present even probable cause is – literally – inexplicable, as Mr. Hartman's brave supposition that "it may be a mistaken comment" reveals. Mr. Hartman cited no precedent, definition, or workable process to enable anything close to a regular analysis by a reviewing court. (App. 5).

For similar reasons, the "Moral Turpitude Standard" is an illusory ex-post facto law: "one which imposes a punishment for an act which was not punishable at the time it was committed." *Cummings v. Missouri*, 4 Wall. 277 (1867); *Smith v. Doe*, 538 U.S. 84 (2003). As "moral turpitude" in this case is construed not to indicate even probable cause for further investigation of potentially dozens of state and federal felonies – it's malleability reduces it to a trivial artifice.[3]

[3] The caprice of this standard becomes more acute when combined with the reluctance of disciplining authorities to discipline their own. *See, e.g., The Professional Discipline of Prosecutors*, 79 N.C. L. Rev. 721. The discretion enjoyed by prosecutors –

(Continued on following page)

The illusory nature of the "Moral Turpitude Standard" is exposed by an analysis of the State Bar's own historically capricious treatment of the standard. The "Moral Turpitude Standard" "depends . . . on the violator's own motivation as it relates to his moral fitness to practice law." *In re Fahey*, 8 Cal.3d 842 (1973); *see also ABA Model Rule 8.4(b)* – "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Crimes involving "moral turpitude" as a matter of law include those of the general nature of the crimes alleged by Petitioner/Complainant below: Crimes involving an intent to defraud or intentional dishonesty for the purpose of personal gain (forgery, extortion, bribery, perjury, etc.) (*In re Fahey*, 8 Cal.3d at 849); conspiracy to assist others in wrongdoing, including money laundering, tax evasion,[4] evidence tampering, and perjury (*In re Berman,* 48 Cal.3d 517, 522-23 (1989)); making or filing of false pleadings or

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including State Bar prosecutors – is enormously powerful in both its use and misuse. *See, e.g.*, *The American Prosecutor: Independence, Power, and the Threat of Tyranny*, 86 Iowa L. Rev. 393. This discretion must, however, be exercised within the bounds of Due Process. *U.S. v. Armstrong*, 517 U.S. 456 (1996); *U.S. v. Redondo-Lemos*, 955 F.2d 1296 (1992).

[4] Psychological evaluations escape taxpayer reporting because fees paid to evaluators are rarely reported by the client – a divorcing parent. Insurance does not cover or pay evaluators, and payments are not tax deductible by any payor. The FL Forms filed with the court clerk are the *only handy record for corroboration of tax filing data*. Without third-party income reporting or accurate internal recordkeeping, potentially millions of dollars in tax revenue may be underreported with impunity.

documents (*Drociak v. State Bar*, 52 Cal.3d 1085 (1991)); overseeing filing of false declarations (*Matter of Downey,* 5 Cal. State Bar Ct.Rptr. 151, 155 (2009)); signing a client's name without authority and deliberately misrepresenting client's county of residence (*In re Brimberry*, 3 Cal. State Bar Ct.Rptr. 390, 395 (1995)); encouraging perjury (*Read v. State Bar*, 53 Cal.3d 394, 416 (1990)); altering filed court documents (*Lebbos v. State Bar,* 53 Cal.3d 37, 45 (1991)); evidence tampering or suppression (*In re Matter of Field*, 5 Cal. State Bar Ct.Rptr. at 178 (2009)).

"Moral turpitude" "includes acts of dishonesty, including intentional misrepresentation or concealment of material facts." *Matter of Jeffers,* 3 Cal. State Bar Ct.Rptr. 211, 220-221 (1994); *Matter of Taylor,* 1 Cal. State Bar Ct.Rptr. 563, 576 (1991). But for the interception, the "Family Law Community" conspiracy to back-date and back-file sworn eligibility declarations would, thanks in large part to Mr. Lesh's clandestine coordination, have gone unnoticed by the victimized parents, children, and court. Thus, the email alone is sufficient evidence for a finding of "Moral Turpitude" as it discloses wrongs *the mere covering up for which* are grounds for discipline. *Read v. State Bar*, *supra*, 53 Cal.3d at 421-422 (collecting fees for services in probate matter without court approval).

Mr. Lesh's email points to activity that crosses many, if not all, of these demarcations of the "Moral Turpitude Standard." The email evinces Mr. Lesh's understanding of the magnitude of the professional

responsibility violations and their implications for clients of the "community" attorneys: he warns that the problems in the failure to file may lead to "claims" from clients.

To find moral turpitude, no evil intent is required; nor need it be shown that the attorney was acting in bad faith. All that is required is a general purpose or willingness to commit the act or permit the omission. *McKnight v. State Bar,* 53 Cal.3d 1025, 1034 (1991). "Moral Turpitude" includes gross negligence: "Gross carelessness and negligence constitute violations of the oath of an attorney to faithfully discharge his duties to the best of his knowledge and ability, and involve moral turpitude as they breach the fiduciary relationship owed to clients." *Giovanazzi v. State Bar*, 28 Cal.3d 465, 475 (1980); *Matter of Malek-Yonan*, 4 Cal. State Bar Ct.Rptr. 627, 635 (2003) – "where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support a charge of violating section 6106" (internal quotes omitted); *Matter of Downey,* 5 Cal. State Bar Ct.Rptr. 151, 155 (2009) – attorney who executed and filed verification that falsely stated his clients were out of county acted with gross negligence where he unreasonably concluded clients were absent based on insufficient facts and analysis.

Even if Mr. Lesh did not instruct others to commit the crimes he did, his *mere failure to report* the apparently widespread intentional disregard for the California Rules of Court revealed at the "press

conference" itself may constitute Moral Turpitude. Though "honest mistake" is a valid defense to a State Bar case, the burden lies on the accused to establish the lack of ill intent, and in this case the evidence appears at least to suggest – if not clearly establish – seriously dishonest conspiratorial conduct. *See, e.g., In re Klein,* 3 Cal. State Bar Ct.Rptr. 1 (1994).

State Bar Counsel's "head in the sand" intake administration disregards California's very welcoming standard of probable cause.[5] This admittedly cursory survey of relevant California law reveals that the evidence before the State Bar Examiner of Lesh's own acts – not to mention the dozens of criminal acts he conspires to instruct others to commit – provides abundant probable cause to warrant further investigation. While it is not surprising that the State Bar concluded that a single email – by itself – does not surmount the "clear and convincing" burden of proof, it is *shocking* that Deputy Trial Counsel Hartman saw nothing more potentially culpable than a "possibly mistaken comment." (App. 5).

It is submitted that the State Bar Denial of the Lesh Complaint in spite of Petitioner's presentation

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[5] "Reasonable or probable cause is shown if a man of ordinary care (or caution) and prudence (or a reasonable and prudent person) would be led to believe and conscientiously entertain an honest and strong suspicion that the accused is guilty." *People v. Lewis*, 109 Cal.App.3d 599, 608-09 (1980); *People v. Campa*, 36 Cal.3d 870, 879 (1984); *Rules Proc. of State Bar*, §§ 12.10-12.40; *Jacobs v. State Bar*, 20 Cal.3d 191 (1977).

of inculpating emails, identification of available witnesses, evaluators, clients, attorneys, other section members, and even Mr. Lesh himself, is arbitrary, capricious, unsupported by any substantial evidence, and deprives Petitioner of rights to procedural and substantive Due Process, warranting review, reversal and/or remand.

II. The State Bar Denial Inflicts Deprivation Of Equal Protection Of The Laws On A Suspect Class – California's Domestic Relations "13700 Class" For a Fundamental Right

The "Moral Turpitude" standard as wielded by the State Bar in this case and thousands of others offends Petitioner and the suspect class of which he is a member and advocate rights to Equal Protection of the laws as it perpetuates "invidious discrimination" against a protected class of persons based upon "domestic status." *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); *Adarand Constructors v. Peña*, 515 U.S. 200 (1995). California federal courts have acknowledged that Equal Protection extends beyond race or gender to prevent discrimination against persons or classes "identified by Congress or the courts as needing special protection." *Sever v. Alaska Pulp Corp.,* 978 F.2d 1529 (9th Cir. 1992). Under Ninth Circuit precedent, a class is entitled to heightened scrutiny provided it can show a "governmental determination that its members require and warrant special federal assistance in protecting their civil

rights." *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985); *Denney v. Drug Enforcement Admin*., 508 F.Supp.2d 815 (E.D. Cal. 2007).

The rights at stake in the present action – parental rights and rights of association and speech – are fundamental rights, and their status under California law entitles the 13700 class to "special protection." *See Troxel v. Granville*, 530 U.S. 57 (2000) ("the interests of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court."); *Sever*, *supra*, at 1535-36; *Jensen v. Wagner*, 603 F.3d 1182 (2010) ("There is perhaps no more delicate constitutional barrier protecting freedom from governmental interference than that which protects against state interference with parental autonomy.").

A. The "13700 Class": Domestic Relations Already Identified As A Suspect Class Under California Law

Though no controlling precedent has so ruled, the class which is the benefactor of the FL Forms, and the victims of the State Bar Denials here, is the type of class entitled to heightened scrutiny under the Ninth Circuit Equal Protection analysis. The state of California has *already defined* this "domestic relations" class – including virtually all family court litigants – as a group entitled to "special protection." California Penal Code section 13700 defines the class: Any "adult or a minor who is a spouse, former

spouse, cohabitant, or former cohabitant" or other enumerated relationships while engaging another similarly situated in that relationship. *See Cal. Pen. C.* § 13700.

Like marital status, the 13700 Class is defined by a "relational" characteristic – persons in a current or former relationship, but also certain behavior of such persons within the same identified relationship. For example, a husband and wife are within the 13700 Class for interactions with one another, but not so for their interactions with the rest of the world.

It will not be disputed that California has identified the 13700 Class members as uniquely vulnerable and therefore entitled to "special protection:" under state law. *See Sever* at 1535. For example, California has adopted an extensive scheme of statutory and administrative privileges, programs, services, protections, set asides, funding, and immunities, including 13700 Class-specific social services, law enforcement resources and processes, and social welfare programs with the honorable aim of addressing the "governmentally-determined" special needs of this Class. *Id.* The motivation for carving out the 13700 Class for "special treatment" was to provide heightened sensitivity to domestic violence and child abuse. The mechanisms for identifying and "protecting" the 13700 Class have become ensconced in California Penal Code sections 13700, 136.1, 136.2, 646.91, etc., and Family Code sections 6250, 6320, and 6380 and voluminous similar statutes, rules, and regulations directed specifically to the 13700 Class.

B. The State Bar Denials Demonstrate Impermissible De Facto Discrimination Against A Suspect Class

Under any standard of review, the State Bar Denials result from impermissibly discriminatory application of the laws to the interests of 13700 Class members. By failing to enforce the filing requirements and investigate the coordinated defiance directed by Lesh, The State Bar's summary dismissal of the Lesh Complaint is de facto perpetuation of historic and ongoing invidiously discriminatory treatment of parents and children of divorce.

The Fourteenth Amendment's Equal Protection clause was adopted to prohibit exactly this type of selective enforcement of protective laws – "there was, it was said, no quarrel with the state laws on the books. *It was their lack of enforcement that was the rub of the difficulty*." *Monroe v. Pape*, 365 U.S. 167 (1961) (italics added). Selective prosecution to deprive a suspect class of Equal Protection has been specifically prohibited in California for decades. *See, e.g., People v. Superior Court (Hartway),* 19 Cal.3d 338 (1977). In the present case, the State Bar Denials result from California's systemic and premeditated "lack of enforcement" of civil protections for targeted members of the 13700 Class – vulnerable parents and children during a divorce proceeding.

As detailed above, the FL Forms were initially enacted to provide protection against pilfering of vulnerable 13700 Class members by unqualified,

unscrupulous, or incompetent private evaluators. However, in the environment in which the "Family Law Community" has failed to police itself, and as The State Bar appears not only aware of, but suspiciously indifferent to the same, the legitimacy of The State Bar's illusory "Moral Turpitude Standard" is further refuted. Would The State Bar have applied the "Moral Turpitude Standard" equally in light of the welcoming "probable cause" burden, it would have found abundant reason *at least* to pursue a proper investigation of Mr. Lesh and his co-conspirators on suspicion of *indictable wrongdoing* by "Family Law Community" members. *See, e.g.,* cases cited in section H. 1., *supra*. Conveniently, The State Bar here saw "nothing here to see." The State Bar Denials effectively re-elect the foxes to (yet) another term in the hen-house. Such invidious disparate enforcement of the laws providing protections to vulnerable parents and children undergoing custody evaluations violates the Equal Protection rights of the 13700 Class.

The State Bar Denials under the illusory "Moral Turpitude Standard" deprive Petitioner and the 13700 Class – who *have no* ***effective*** *advocates in divorce proceedings* – Equal Protection of the laws.

———♦———

CONCLUSION

Petitioner respectfully submits that the present Petition and underlying Complaint identify laws and practices relating to an arbitrary State Bar "Moral Turpitude Standard" inflicting widespread deprivation of fundamental constitutional protections on thousands of California citizens, particularly the vulnerable "13700 Class" already defined and entitled to "special protection" under California law. Petitioner submits that issues worthy of federal review are presented, and prays for issuance of the Writ.

Respectfully submitted,

EMAD TADROS, M.D.
Pro Se
4060 Fourth Ave. Ste. 120
San Diego, CA 92103
(858) 775-2122
tadrosmd@gmail.com

S208293

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Accusation of EMAD G. TADROS, M.D. Against an Attorney.

(Filed Mar. 13, 2013)

The petition is denied.

CANTIL-SAKAUYE
Chief Justice

[SEAL]

THE STATE BAR
OF CALIFORNIA

OFFICE OF THE
CHIEF TRIAL COUNSEL
AUDIT & REVIEW

1149 SOUTH HILL STREET,
LOS ANGELES, CALIFORNIA
90015-2299

TELEPHONE: **(213) 765-1612**
FAX: **(213) 765-1442**
http://www.calbar.ca.gov
(415) 538-2558

November 21, 2012

PERSONAL AND CONFIDENTIAL

Dr. Emad G. Tadros
3914 Third Avenue
San Diego, CA 92103

Inquiry No.: 11-31506
Respondent: Mr. William R. Lesh

Dear Dr. Tadros:

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 Mr. William R. Lesh. After examining the information and evidence, we have concluded that at this time, there is not a sufficient basis to reopen your complaint.

On October 11, 2011, the State Bar received your complaint. On December 22, 2012 [sic], the State Bar sent you a letter closing your complaint. On March 16, 2012, you sent the State Bar a letter requesting review.

On July 25, 2012, the State Bar received a package of additional materials from the Office of the District Attorney of the County of San Diego. With these materials there was a cover letter, in which Deputy District Attorney Gina Darvas asserted that the Office of the District Attorney had declined to prosecute Mr. Lesh and was forwarding your complaint to the State Bar.

In your request for review, you describe your complaint as follows:

> Mr. Lesh privately prompted attorneys and evaluators to go to ***old*** cases and file those (missing but mandatory CRC) FL forms on ***old*** cases instead of prompting attorneys to Due Diligence, and never touch the forms or old cases, and to acknowledge the violated parents immediately. **Mr. Lesh absolutely proves clear, conscious knowledge of the details of 5.225 and FL-326. He admits that monies were collected illegally from the SD Families in the absence of filing those forms – the Rules are crystal clear and *mandatory* that no work is to begin before the forms are completed and filed with the clerk of the court.** Upon discover [sic] of this email and behavior, Dr. Tadros formally requested to meet with Mr. Lesh, and he neither pursued any Due-Diligence nor met with Dr. Tadros.

In the email with which you are concerned, Mr. Lesh stated the following:

> "[Family Law Forms 326 and 327] are mandatory and have been now for some time. Whenever you are involved in a custody evaluation matter, you need to make sure that your custody evaluators sign form FL-326 and that that gets filed with the Court, as there is a strong possibility that the custody evaluator will not be paid for work that they perform prior to the form being signed and submitted to the court.
>
> "As to Family Law 327, that also needs to be signed and contained in the case file."
>
> "It seems apparent that there is going to be a tremendous amount scrutiny being placed upon these forms and if you have any old cases still pending where these forms have not been used, please make sure that they are filed appropriately as you risk claims from your client that the matter was not properly handled, if they later disagree with the recommendations from the evaluator."

In order to prosecute an attorney for misconduct, the State Bar must establish by clear and convincing evidence that the attorney willfully violated a provision of the Rules of Professional Conduct or the State Bar Act. Clear and convincing evidence must be clear enough to leave no substantial doubt about a matter and convincing enough to command the unhesitating assent of every reasonable mind. The State Bar's burden of proof in a disciplinary action is close to the

burden of proof in criminal cases (i.e., proof beyond a reasonable doubt). Also, in a disciplinary proceeding, all reasonable doubts must be resolved in favor of an attorney accused of misconduct.

It might be that an attorney has violated a provision of the Rules of Professional Conduct or the State Bar Act. Prosecution, however, requires the State Bar to prove by the high standard of clear and convincing evidence that the attorney committed misconduct. The law does not require an attorney to prove his or her innocence.

Pursuant to section 6106 of the Business and Professions Code, an attorney must not commit "any act involving moral turpitude, dishonesty, or corruption. . . ." Your complaint and request for review claim that Mr. Lesh committed fraud by sending this email to other attorneys. Although the email might have been a mistaken comment, it does not prove by the high standard of clear and convincing evidence that Mr. Lesh committed an act of moral turpitude or dishonesty. Accordingly, the State Bar cannot prosecute him.

Under applicable law and State Bar policy, the Audit and Review Unit will re-open a complaint if the Unit finds that the State Bar arbitrarily failed to take appropriate action or if there is new evidence or information of acts by the attorney that would result in discipline. In the current matter, I have determined that the State Bar's decision to close your case was not arbitrary and that you have not presented

new information or evidence that would result in discipline. For the reasons discussed above, your complaint will remain closed. If you disagree with this decision, 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), California Rules of Court.) If you choose to file an accusation, you must do so **within 60 days of the date of the mailing of this letter**. 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 advice 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,

/s/ [Illegible]
Mark Hartman
Deputy Trial Counsel

MH/mh
Enclosure

[SEAL]

THE STATE BAR
OF CALIFORNIA

OFFICE OF THE
CHIEF TRIAL COUNSEL
INTAKE
Dane Dauphine,
Assistant Chief Trial Counsel

1149 SOUTH HILL STREET,
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TELEPHONE: **(213) 765-1000**
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http://www.calbar.ca.gov

December 22, 2011

Emad G. Tadros, M.D.
3914 Third Avenue
San Diego, CA 92103

RE: Inquiry Number: 11-31506
Respondent: William Lesh

Dear Dr. Tadros:

An attorney for the State Bar's Office of the Chief Trial Counsel has reviewed your complaint against William Lesh to determine whether there are sufficient grounds for proceeding to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You have stated that Mr. Lesh, Chair of the Family Court Services Subcommittee for the San Diego County Certified Family Law Specialists, sent an email on October 1, 2009 to all attorneys in San Diego County advising them to retroactively file FL-326, which became effective in January 2005, or else they could be subject to client malpractice complaints. You

suggest this is unethical and illegal. Mr. Lesh has not responded to you.

Based on our evaluation of the information provided, we are closing your complaint. We have the burden to prove ethical violations to the State Bar Court by clear and convincing evidence. We concluded that we would not likely meet this burden of proof. In the e-mail, Mr. Lesh said to make sure the forms were filed appropriately. In other words, each attorney was to determine whether the form may still be filed retroactively. We concluded that Mr. Lesh does not have an ethical duty to meet with you, because you are not his client.

If you have any questions or disagree with the decision to close your complaint or have new information or other allegations not included in your initial complaint, you have two options. For immediate assistance, the first option is to speak directly with a Complaint Specialist. You may leave a voice message with the State Bar's Complaint Specialist at (213) 765-1695. Be sure to clearly identify the lawyer complained of, the case number assigned, and your telephone number including the area code in your voice message. The Complaint Specialist will return your call within two business days.

The second option is to request the State Bar's Audit & Review Unit to review your complaint. An attorney may re-open your complaint if he or she determines that you presented new, significant evidence about your complaint or that the State Bar closed your

complaint without any basis. You must submit your request for review with the new evidence or a showing that closing your complaint was made without any basis. To request review, you must submit your request in writing, together with any new evidence, post-marked within **90 days of the date of this letter**, to:

State Bar of California.
Audit & Review Unit,
1149 South Hill Street
Los Angeles, CA 90015-2299.

Please note that telephone requests for review will not be accepted.

Thank you for bringing your concerns to the attention of the State Bar.

Sincerely,

/s/ [Illegible]
Diane J. Meyers
Deputy Trial Counsel

Fwd: Email from Robert Lesh to Family Law Community
2 messages

Emad Tadros< tadrosmd@pol.net> Fri, Jan 4, 2013
To: TadrosMD <TadrosMD@gmail.com> at 10:13 PM

-----Forwarded Message-----

From: jvandoorn@cox.net
To: tadrosmd@pol.net, strictlybusiness2k@yahoo.com
Sent: Wednesday, February 17, 2010 12:34:31 AM
GMT -08:00 US/Canada Pacific
Subject: Email from Robert Lesh to Family
Law Community

Emad,

Below is a forwarded email I received from an anonymous source who is a member of the San Diego Family Law community. I was told that this email was sent as a mass emailing to all members of the San Diego County Bar Association who practice in family law. I had originally received this email in early October of 2009 and as you recall, had forwarded it to you and various other members of the 'Doyned' community at that time.

If required, I can and will testify under oath as to the conditions that I received this communication under and the integrity of the individual who forwarded this document to me and his/her professional affiliation (a practicing member of the family law section of the San Diego Bar Association) in order that you can

legally establish the veracity of this document with the courts.

Regards!
John van Doorn

Robert Lesh [mailto:wrl@leshlaw.com]
Sent: Thursday, October 01, 2009 5:19 PM
To: SDCBA Family Law Section
Subject: [sdcbafamilylaw] Important Custody Evaluation Forms/Orders

SDCBA Community Message Sent by: W. Lesh. To reply privately to W. Lesh, Click Here

Note: By replying to this message, your response will be e-mailed directly to the individual sender. Click "Reply to All" in your e-mail client to send your response to all SDCBA Family Law Section members instantly. This is a PRIVATE list for members of the SDCBA's Family Law Section. Do not forward messages or post confidential case or client data on this list server. For a list of SDCBA list serve guidelines, click here.

To permanently unsubscribe from this listserve, Click Here

I have been advised that a press conference occurred today (October 1) which involved the issue of custody evaluations and the submission to the Court of the attached Family Law Forms 326 and 327. As you may be aware from a prior e-mail I sent to all of you, these forms are mandatory and have been now for some time. Whenever you are involved in a custody evaluation matter, you need to make sure that your custody

evaluators sign form FL-326 and that that gets filed with the Court, as there is a strong possibility that the custody evaluator will not be paid for work that they perform prior to the form being signed and submitted to the Court.

As to Family Law 327, that also needs to be signed and contained in the case file.

It seems apparent that there is going to be a tremendous amount of scrutiny being placed upon these forms and if you have any old cases still pending where these forms have not been used, please make sure that they are filed appropriately as you risk claims from your client that the matter was not properly handled, if they later disagree with the recommendations from the evaluator.

If you have any particular questions regarding this, feel free to contact me.

Bob Lesh
CFLS Chair

Emad Tadros MD – Diplomate American Board
of Psychiatry and Neurology.
3914 Third Ave. San Diego CA 92103
TadrosMD@pol.net
619-291-4808 & Fax: 619-291-4426

August 27, 2011

The California State Bar
Office of the Chief Trial Counsel – Intake Unit
1149 S. Hill Street, Los Angeles, CA 90015-2299
Atten: UPL Project

Re: Attorney Bob Lesh, a.k.a. Robert W. Lesh

I am submitting a formal complaint asking for your immediate attention in regards to grave concerns about one of the Bar representatives, attorney Bob Lesh, Certified Family Law Specialist CA, President-Elect of the Executive Committee of the San Diego County Certified Family Law Specialists, and last but not least, the Chair of the Family Court Services Subcommittee for the San Diego County Certified Family Law Specialists.

History of the FL 326: In the nineties, California Families and Family Courts suffered countless complaints about incompetence, fraud, unprofessionalism and misrepresentation conducted by the Private Child Custody 730 Evaluators. The California Judicial Counsel/CJC decided to take the upper hand with firm measures by placing this serious matter under both judicial and parental control.

As a result, starting 2000, the CJC met on the average twice a year with every CA county court CEO

along with the county's presiding judges. It was considered pivotal that the public be present in those meetings to share their views and actually voted on how to serve the California Counties with a Statewide standard. CJC met in this public forum at least twice annually and since that time there have been other specific changes to the CJC forms FL326 and FL327.

Purpose of FL326: In 2001 CJC established CRC 5.225 that relates to the Appointment, Qualifications and Credentials of 730 Private Custody Evaluators. This was the birth of FL326 to be served on the parents where it would be filed by the Private Custody Evaluator at the Clerk's Office and FL327 would be filed by the appointing judge, at the clerk's office, as CJC strongly recommended. From its inception, FL326 was mandated to be signed under the penalty of perjury by the custody evaluator, for good reasons.

Evolution of FL326: Over the following few years, the CJC evolved this pivotal FL326 with more specific details about qualifying 730 Evaluators, requiring their educational background, qualifications, credentials, expertise and continuing education hours that are specified according to CJC State Family law, to be properly submitted before appointing each and every private custody evaluator.

Legality of FL 326: This FL 326 form continued to be signed "Under the Penalty of Perjury . . . regardless."

The CRC 5.225(k)(1)(B) *[re-lettered to now be (l)(1)(B)]* is boxed and bolded on the Mandatory FL326 as follows:

> NOTICE:
>
> Private Custody Evaluators must complete this form and file it with the clerk's office no later than 10 days after notification of each appointment and ***before*** beginning any work on the child custody evaluation. (Cal. Rules of Court Rule 5.225(k)(1)(B)

FL 326 becomes Mandatory: Starting on January 1st 2005, CJC MANDATED this specific rule 5.225(k)(1)(B) &(l)(1)(B) that only applies to FL326. CJC mandated that FL326 must be served on the parties involved in the custody action, signed under the Penalty of perjury by the 730 Evaluator and be filed with the Clerk of the Court, "*no later than 10 days after notification of each appointment and before any work on each child custody evaluation has begun*."

CJC made sure to demand that such FL326 forms continue to be signed under the penalty of perjury, and mandated that new forms are filed individually for each and every new private custody evaluation case. CJC did not allow for any exemptions or alternatives. The CJC pursued such mandatory steps for good reasons.

Consequences of Violating FL326: In June 2009, it was discovered by a frustrated parent that the San Diego Superior Court CEO, Michael M. Roddy had

been aware of the new CRC [5.225(k)(1)(B) and (l)(1)(B)] mandatory rules, but chose not to implement them. As a result not one single FL326 form was filled out, and/or turned in, for any Custody Evaluation case. This is to say that not one member of the San Diego Bar Association bothered to even Read the Court's new Rule Book. And if they did they either kept quiet or were told to do so: even after these rules became mandatory. This violation story broke on ABC news and is currently posted under the www.thepubliccourt.com and http://www.thepubliccourt.com/archives/1.

On 9-29-09, my attorney Mr. Mike Aguirre, past San Diego City Attorney, directed a formal communication (attached) to the Family Court Supervising Judge Hon. Lorna Alksne requesting the immediate compliance of such "mandatory but somehow missing" FL326 rules. Otherwise, some San Diego families were going to file a "Federal Relief Act."

Following this 9-29-09 letter by Mr. Aguirre, the Hon. Judge Lorna Alksne sent an immediate notice to all San Diego County attorneys asking them to make sure that the FL326 forms were filed by their appointed evaluators in a timely manner (10 days *before* any custody evaluation work starts) and to follow the mandatory CRC as the law mandates.

Why Advance Notice about FL326 was Mandated to be given to parents: The main purpose for filing these missing FL326 forms is to give the parents a chance to check out, and make an educated decision

to either hire or fire their appointed custody evaluator, *before* any work starts. However, in addition to robbing San Diego families of their new rights by lacking the filing of these mandatory forms with the Clerk's office, this violation omitted who charged who and how many Thousands of Dollars the families were charged by the involved attorneys and custody evaluators.

Consequences of lacking the proper filing of FL326: By not complying with these rules in a timely manner, the question of Felony Tax Evasion on both the State and Federal levels by San Diego Attorneys and Private Child Custody Evaluators is now on the table. Otherwise, one wonders why these rules were not implemented when they became mandatory in January of 2005.

Filing the FL 326 after the Fact: Asking San Diego attorneys and/or Private Child Custody Evaluators, directly or indirectly, to go back to old case files and sign the FL326 forms, under the penalty of perjury, months/years after the work was started and/or completed is meaningless, unethical, and even criminal.

If any, it behooves each and every San Diego Attorney to contact the violated families (who were never allowed to be knowledgeable, or were ever timely served these mandatory FL326 forms), advise them of the violation committed and offer them a fair and equitable remedy due to the violations of the Mandatory Rules of Court caused by the involved attorneys and evaluators.

Mr. Lesh's Professional Obligation: With Mr. Lesh being a Certified CA Family Law Specialist, the President-Elect of the Executive Committee of the San Diego County Certified Family Law Specialists, and last but not least, the Chair of the Family Court Services Subcommittee for the San Diego County Certified Family Law Specialists., he had a due diligence to notify the parents whose rights were violated; however, to date this has not been done. Mr. Lesh was also ethically and professionally obligated to advise San Diego County attorneys that filing these FL326 forms on any old cases is not only unethical, but illegal and criminal: especially if doing so would mean signing forms under the penalty of perjury after the fact, when the law mandated that they be signed "at least 10-days before any work started."

Mr. Lesh Privately Prompts Family Attorneys to go to old cases: On October 1, 2009 Mr. Lesh sent a mass private email to all San Diego attorneys (attached) on the SDCBA list-serve. In that email Mr. Lesh stated:

> "It seems *[present tense]* apparent that there is going to be *[future tense]* a tremendous amount of scrutiny being placed *[Present tense]* upon these forms and if you have any ***old*** *[Past tense]* cases, where these forms have not been used *[Mandatory Rule applies – 10 days* ***before*** *any custody work starts]* please make sure that they are *[present tense]* filed appropriately, as you risk claims from your client that the matter was not

> properly handled, if they later *[future tense]* disagree with the recommendations of the evaluators."

In above email, Mr. Lesh asks San Diego Family Law attorneys to file these past due forms "appropriately." Does this mean they are being filed only with the county clerk, or also with the parents whose rights were violated? I have written to Mr. Lesh asking to meet with him in this regard, however I have not heard from him.

I ask that the State Bar Association undertake whatever steps that it deems are necessary and appropriate, in keeping with the guidelines of how the Bar Association defines itself. For example at the Free Online Law Dictionary website (at http://legal-dictionary.thefreedictionary.com), the Bar Association defines itself as "*An organization of lawyers established to promote professional competence, enforce standards of ethical conduct, and encourage a spirit of public service "pursued" in the spirit of a service of furthering the administration of justice according to law.*" The article goes on to describe members of the Bar association (or lawyers) as those who "*encourage*" and/or "*offer Pro Bono . . . services.*" **When in-fact Mr. Lesh was prompting the attorneys to the untimely FL326 filing so they would NOT have to refund any money back to the violated families, instead of prompting them to call the families and acknowledge that their rights were clearly violated.**

On the behalf of countless San Diego families and on the behalf of California Coalition for Families and Children/CCFC, I appreciate your seriously needed attention to this matter. We ask the California State Bar Association to undertake the next step that would deem appropriate towards San Diego County Violated Families.

Thank you for your prompt attention to this serious matter.

Respectfully,

/s/ Emad Tadros, M.D.

Emad Tadros, M.D.

CC: Various Members of the Public.

Enclosures:

1 – Mr. Lesh Private Email to the San Diego County Attorneys dated October 1-2009.

2 – Stephen Doyne Psychologist following Mr. Lesh's commands to the T.

3 – Attorney Mike Aguirre's letter to the San Diego Family Court Presiding Judge.

No Paper Trail – Dr. Stephen Doyne PhD
by Admin – http://www.thepubliccourt.com/no-paper-trail/

No Paper Trail – Dr. Stephen Doyne PhD

*You must Register and Log in to post comments.

Form FL-326 Missing

Virtually all Divorce Related Transactions including Attorney fees, 730 psychological Evaluations, Private (social worker) Mediation, Therapy, Supervision, and Child Exchanges are paid by Cash or Check, and sometimes by Credit Card. It is also important to realize that virtually NONE of this money is reported to the IRS simply because NONE of it is Tax Deductible. In addition, since almost none of these bills are paid by insurance (i.e. Blue Shield, Aetna, etc.), therefore, almost no family court officials, and/or court-ordered Specifically Named Service Providers receive 1099 forms, since their bills are paid by cash or checks by divorcing parents.

Therefore, at the end of each year the income that these people have received – often in the hundreds of thousands, if not millions, of dollars – may not be, and many think is NOT reported to the IRS since there is no way to audit them.

Dr. Stephen Doyne PhD

For example, *Dr. Stephen Doyne PhD* is known to have performed about 4000 custody evaluations in the last 25 years. So, for example, if he does approximately

150 evaluations a year with an average evaluation estimated to cost 15,000 dollars (?), this amounts to $2,250,000.00 a year in income for this one evaluator. Note also that this does not include other services that they may provide: such as therapy, mediation, lectures, etc.

In the absence of FL326 and/or FL327 forms that were both mandated to be filed at the clerk's office at the court house, a paper trail vacuum was created, and thus the IRS and State Franchise Tax Board have no way to accurately audit these officials for tax years 2001-2009.

And to this date, Nobody in the San Diego Family court system has been held to account for this in the least bit: other than that – because a Robbed and Abused parent discovered the 'oversight' and complained (to other parents: who then went public) – the San Diego court was pressured to recently implement rules that were strongly advised in 2001, and mandatory in 2005.

Stephen Doyne Is Above The Law

"Stephen Doyne is Above The Law" . . . Pay attention to the second page where It's bolded and boxed-in, saying "NOTICE." They are making this area extra Important for a reason. It says that Evaluators must complete and file the form no later than 10-days after notification of each appointment, and "before" beginning any work on the child custody evaluation. The 10-day period is to allow parents time to examine,

accept or reject the appointed evaluator. CA Rules of Court MANDATED that this very form (FL-326) must be signed under the penalty of perjury by the appointed Custordy [sic] Evaluator.

Dr. Stephen Doyne PhD declared that he was appointed on October 22, 2008 as you see on page one, item No. 2. According to the mandated requirements on this form, of signing under the penalty of perjury, Stephen Doyne must complete, sign and file this form any time on or after October 22, 2008, but no later than November 5, 2008 (ten working days after October 22). However, San Diego Superior Court allows Stephen Doyne, PhD to be "above the law," and to also totally disrespect and disregard The Penalty of Perjury by completing, signing and filing this MANDATED form on or after September 18, 2009, almost an entire year after the mandatory requirement, and after the work started!

This form is a living example that San Diego Family Court Litigants undergoing custody evaluations are held captive and deprived of their civil rights, legal due process, and are discriminated against as a special class of litigant:

1 – By not implementing any rules of court, even if they were mandatory.

2 – By Allowing Stephen Doyne, Judges' Election Campaign donor, to be "Above the Law."

3 – By never allowing Due Process to San Diego Families when Perjury was committed by San Diego's own court friendly operators (Stephen Doyne)!

FL-326

EVALUATOR *(Name and address):* Stephen E. Doyne, Ph.D. 9834 Genesee Avenue, Suite 321 La Jolla, CA 92037 TELEPHONE NO.: 858.452.5900 FAX NO. *(Optional):* 858.452.7610 E-MAIL ADDRESS *(Optional):*	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 1555 Sixth Avenue MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Family Law Court	(Filed Sep. 23, 2009)
PETITIONER/PLAINTIFF: [redacted] RESPONDENT/DEFENDANT: [redacted]	
DECLARATION OF PRIVATE CHILD CUSTODY EVALUATOR REGARDING QUALIFICATIONS	CASE NUMBER: [redacted]

1. I, *(name)*: Stephen E. Doyne, Ph.D., declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.

2. On *(date)*: October 22, 2008, I was appointed by the court to perform a child custody evaluation in this case.

LICENSING REQUIREMENTS

3. a. ☑ I am licensed as a psychologist, marriage and family therapist, or clinical social worker;

   b. ☐ I am licensed as a physician and I am a board-certified psychiatrist or I have completed a residency in psychiatry; or

   c. ☐ I am not licensed as indicated in 3a or 3b.

   NOTICE: If Item 3c is checked, the court may not appoint the person to perform a child custody evaluation in this case unless, under Family Code section 3110.5(d) and rule 5.225(c)(2)(B) of the California Rules of Court, all the following criteria have been met:

   (1) The court determined that there are no evaluators who meet the licensing requirements who are willing and available, within a reasonable period of time, to perform child custody evaluations;

   (2) The parties have stipulated that the person may conduct the evaluation; and

   (3) The court approves the person's appointment.

EDUCATION AND TRAINING REQUIREMENTS

4. I have completed:

   a. ☑ The basic and advanced domestic violence training requirements for a private child custody evaluator under rule 5.225(e); and

   b. ☑ The 40 hours of education and training requirements for a private child custody evaluator under rule 5.225(d).

5. I have completed:

   a. ☑ The annual 8 hours of update training requirements for a private child custody evaluator under rule 5.225(h); and

   b. ☑ The annual 4 hours of domestic violence update training requirements for a private child custody evaluator under rules 5.225 and 5.230.

EXPERIENCE REQUIREMENTS

6. ☑ I have complied with the experience requirements for a private child custody evaluator in rule 5.225(g) because I participated in the completion of four court-appointed child custody evaluations in the preceding three years I *(specify)*:

   a. ☐ Independently conducted and completed the child custody evaluation as stated in rule 5.225(g)(1)(A);

   b. ☐ Materially assisted another evaluator as stated in rule 5.225(g)(1)(B); or

c. ☑ Complied with the requirements stated in rule 5.225(g)(2), and I am deemed to meet the experience requirements of rule 5.225(g) until December 31, 2009.

7. ☐ I have not complied with the experience requirements for child custody evaluators in rule 5.225(g)(1).

NOTICE: If Item 7 is checked, the court may not appoint a court-connected evaluator to perform a child custody evaluation unless, under rule 5.225(g)(3), all the following criteria have been met:

a. The court determined that there are no child custody evaluators who meet the experience requirements for child custody evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations;

b. The parties have stipulated that the person may conduct the evaluation; and

c. The court approves the person's appointment.

USE OF INTERNS

8. ☐ I intend to use interns to assist with the child custody evaluation in the manner disclosed and agreed to by the parties and attorneys in the case. Each intern will have complied with the criteria of rule 5.225(*l*)

and will work under my supervision at all times.

NOTICE

Private child custody evaluators must complete this form and file it with the clerk's office no later than 10 days after notification of each appointment and before beginning any work on the child custody evaluation. (Cal. Rules of Court, rule 5.225(k)(1)(B))

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 18, 2009

Stephen E. Doyne, Ph.D. (TYPE OR PRINT NAME)

► Stephen Doyne (SIGNATURE OF DECLARANT)

SIGNATURE BY FAX