

# PUBLIC MATTER

**FILED**

FEB 03 2005

THE STATE BAR COURT

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

**RICHARD LAVERN WYRICK,**

**Member No. 42504,**

A Member of the State Bar.

Case No. 04-O-13790-PEM

**DECISION & ORDER OF  
INACTIVE ENROLLMENT**

## I. INTRODUCTION

This is an original disciplinary proceeding in which the State Bar (1) alleges that respondent Richard Lavern Wyrick<sup>1</sup> violated a number of the disciplinary probation conditions imposed on him in Supreme Court case number S112439 (State Bar Court case numbers 01-O-01623, 01-O-01855) and (2) charges those alleged probation violations as violations both of his duty, under Business and Professions Code section 6068(k),<sup>2</sup> "[t]o comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney" and of his duty, under section 6103, to obey all court orders issued in the course of his profession. After considering the evidence and the law, the court recommends that respondent be disbarred.

In this proceeding, Mark Hartman appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent did not appear in person or by counsel.

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<sup>1</sup>Respondent was admitted to the practice of law in California on January 9, 1969, and has been a member of the State Bar since that time.

<sup>2</sup>All statutory references are to this code unless otherwise stated.





## II. SIGNIFICANT PROCEDURAL HISTORY

On September 7, 2004, the State Bar filed the notice of disciplinary charges ("NDC") and, in accordance with section 6002.1(c), properly served a copy of it on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar (official address). On the same day and as a courtesy to respondent, the State Bar mailed another copy of the NDC to respondent at the Fresno County Jail, where he presumably was an inmate. Then, on October 4, 2004, as a further courtesy to respondent, the State Bar mailed yet another copy of the NDC to respondent at the Wasco State Prison, in Wasco, California, where he is incarcerated.<sup>3</sup>

In addition to exceeding the statutory notice requirements in an attempt to ensure that respondent has actual notice of this proceeding and of the consequences of his failure to appear and participate in this proceeding by sending additional copies of the NDC to respondent at the Fresno County Jail and the Wasco State Prison, the State Bar further exceeded the statutory notice requirements by under taking a number of additional steps as fully set forth in the declaration of a State Bar law clerk that is attached to the State Bar's October 6, 2004, motion for entry of default.

The copy of the NDC that was sent to respondent at his official address was returned to the State Bar with the notation "undeliverable as addressed unable to forward." Nevertheless, service was deemed complete as of the time of mailing. (§ 6002.1(c); *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) Neither the copy of the NDC mailed to respondent at the Fresno County Jail nor the copy mailed to him at the Wasco State Prison was not returned to the State Bar.

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<sup>3</sup>During its attempt to locate respondent to provide him with actual notice of this proceeding, the State Bar contacted respondent's criminal attorney, Kimberly Hall, and she told the State Bar that respondent was an inmate in the Wasco State Prison. While not determinative of any issue in the present proceeding, the court notes that official State Bar Court records establish that, on May 7, 2004, respondent was convicted in the Fresno Superior Court on eight counts of violating Penal Code section 487, subdivision (a) (grand theft) and that, as a result thereof, the review department placed respondent on interim suspension beginning on July 7, 2004.



1           Respondent did not file a response to the NDC. And, on October 6, 2004, the State Bar  
2       filed a motion for entry of default and, in accordance with rule 60 and 200(b) of the Rules of  
3       Procedure of the State Bar, properly served a copy of it on respondent by certified mail, return  
4       receipt requested, at his official address. On the same day, as a courtesy to respondent, the State  
5       Bar mailed another copy of the motion to respondent at the Wasco State Prison. The motion  
6       recited all of the information required by rule 200(a) of the Rules of Procedure of the State Bar,  
7       including notification as to the consequences of the entry of his default and as to the fact that the  
8       State Bar intends to recommend his disbarment if culpability is found. The copy of the motion  
9       for entry of default that was sent to respondent at his official address was returned to the State  
10      Bar, but the motion mailed to respondent at the Wasco State Prison was not returned.

11           Respondent did not respond to the motion for entry of default, and November 1, 2004, the  
12      court filed an order entering respondent's default and, in accordance with section 6007(e),  
13      placing respondent on involuntary inactive enrollment. The State Bar Court Clerk properly  
14      served a copy of this order on respondent by certified mail, return receipt requested, to  
15      respondent at his official address. And, as a courtesy to respondent, the clerk mailed another  
16      copy of the order to him at the Wasco State Prison. The copy of the order served on respondent  
17      at his official address was returned to the clerk, but the copy served on respondent at the Wasco  
18      State Prison was not returned.

19           On November 22, 2004, the State Bar filed a request for waiver of default hearing and  
20      brief on culpability and discipline. The court took the matter under submission for decision  
21      without hearing that same day.

### 22                           **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23           The court's findings are based (1) on the allegations contained in the NDC, which are  
24      deemed admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule  
25      200(d)(1)(A)), (2) on the certified copies of respondent's prior records of discipline, which are  
26      attached as exhibits to the State Bar's request for waiver of default hearing, and (3) the facts in  
27      court's official case file. The court finds that respondent has both statutory notice and actual  
28      notice of this proceeding.



1 On March 18, 2003, the Supreme Court filed an order in case number S112439 placing  
2 respondent on one year's stayed suspension and on two years' probation with conditions,  
3 including a 60-day period of actual suspension. That order became effective on April 17, 2003.  
4 (Cal. Rules of Court, rule 953(a).) Respondent had notice of that order shortly after it was filed.<sup>4</sup>  
5 As noted above, respondent is now charged, in this proceeding, with violating the probation  
6 conditions imposed on him in that March 18, 2003, Supreme Court order.

7 The discipline imposed on respondent in the Supreme Court's order in case number  
8 S112439, including each of the probation conditions, was imposed on him in accordance with a  
9 stipulation re facts, conclusions of law, and disposition that he entered into with the State Bar in  
10 October 2002 and that was thereafter approved by a State Bar Court judge in November 2002.  
11 The probation conditions imposed on respondent in that case require respondent, inter alia, to  
12 submit quarterly reports to the State Bar's Probation Unit, which is now known and hereinafter  
13 referred to as the State Bar's Office of Probation, on each January 10, April 10, July 10, and  
14 October 10 of the period of his probation and to submit, with each of those quarterly reports,  
15 either a written statement by a certified public account or other approved accounting professional  
16 certifying that respondent had complied with the client trust account rule and the Trust Account  
17 Record Keeping Standards adopted by the State Bar's Board of Governors, effective January 1,  
18 1993, or a written declaration from respondent stating, under penalty of perjury, that he did not  
19 hold any client funds, securities, or other property at any time during time period covered by the  
20 quarterly report. In addition, the probation conditions require respondent, within one year after  
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22 <sup>4</sup>No proof was offered to establish that respondent had notice of the order. However,  
23 upon filing, the Clerk of the Supreme Court is required to promptly send copies of all court  
24 Supreme Court opinions and orders to the parties. (Cal. Rules of Court, rule 29.4(a).) Also,  
25 except with respect to arrests, it is presumed that official duties have been regularly performed  
26 unless the party against whom the presumption operates proves otherwise. (Evid. Code, §§ 606,  
27 660, 664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Thus, because respondent has not  
28 proved otherwise, the court must find that the Supreme Court Clerk properly sent respondent a  
copy of the order. (*Ibid.*) And, because there is no evidence to the contrary, the court finds that  
respondent received that copy of the order. (Cf. Evid. Code, §§ 604, 630, 641 [correctly  
addressed and properly mailed letter is presumed to have been received in the ordinary course of  
mail].)



1 the effective date of the Supreme Court's order in case number S112439, to attend and  
2 satisfactorily complete both the State Bar's Ethics School and its Client Trust Accounting School  
3 and to provide satisfactory proof of his completion of those schools to the State Bar's Office of  
4 Probation.

5 Respondent never submitted, to the State Bar's Office of Probation, the quarterly  
6 probation reports that were due by January 10, 2004, April 10, 2004, and July 10, 2004. And  
7 respondent never submitted, to the Office of Probation, the accountant's certifications certifying  
8 that he properly handled all client funds, securities and other property that were to have been  
9 submitted with each of those three quarterly reports. Nor did he ever submit any declarations  
10 stating that he did not hold any such funds, securities, or other property that would have excused  
11 him from having to submit those accountant certifications. What is more, respondent never  
12 submitted, to the Office of Probation, proof of his attendance and successful completion of either  
13 ethics school or trust accounting school. The court holds that each of the foregoing failures is a  
14 willful violation of respondent's duty, under section 6068(k), "[t]o comply with all conditions  
15 attached to any disciplinary probation. . ." as charged in count 1 of the NDC. The court further  
16 finds that the respondent's failures to act meet the more specific level of willfulness needed to  
17 establish violations of the State Bar Act (e.g., violations of section 6068(k)). (*In the Matter of*  
18 *Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603, and cases there cited.)  
19 This is particularly true in light of the fact that, as noted above, respondent stipulated to the  
20 imposition of each of probation conditions that he violated. Moreover, it is no defense that  
21 respondent was an inmate in the Fresno County Jail or that he is incarcerated in the Wasco State  
22 Prison because he never filed a motion to modify the terms of his probation (e.g., to extend the  
23 time for him to comply) in accordance with Rules of Procedure of the State Bar, rule 550 et seq.

24 Each of respondent's failures is also a willful violation of his duty, under section 6103, to  
25 obey court orders in the course of his profession as charged in count 2. However, the section  
26 6103 charges are duplicative of the section 6068(k) charges, and the section 6068(k) charges  
27 more specifically address respondent's misconduct and support the same level of discipline as the  
28 6103 charges (see Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,



1 std. 2.6).<sup>5</sup> It is generally inappropriate to find redundant charged violations. (*Bates v. State Bar*  
2 (1990) 51 Cal.3d 1056, 1060; *Heavey v. State Bar* (1976) 17 Cal.3d 553, 559-560.) The  
3 appropriate level of discipline for an act of misconduct does not depend upon how many rules of  
4 professional conduct or statutes proscribe the misconduct. (See *Bates v. State Bar, supra*, 51  
5 Cal.3d at p.1060 [There is "little, if any, purpose served by duplicative allegations of  
6 misconduct."].) Accordingly, count 2 is dismissed with prejudice. (Cf. *In the Matter of*  
7 *Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 108 [section 6103 charge  
8 dismissed as duplicative of charged rule 1-110 of the Rules of Professional Conduct<sup>6</sup> violation  
9 for failure to comply with conditions attached to reproof].)

#### 10 IV. LEVEL OF DISCIPLINE

##### 11 A. Aggravating Circumstances

12 The State Bar must prove all aggravating circumstances by clear and convincing  
13 evidence. (Std. 1.2(b).)

##### 14 1. Prior Records of Discipline

15 Respondent has four prior records of discipline, which are each aggravating  
16 circumstances. (Std. 1.2(b)(ii).) The discipline imposed in each of respondent's first three prior  
17 records of discipline was imposed on him based on a stipulation as to facts and disposition that  
18 he entered into with the State Bar and that was thereafter approved by a State Bar Court Judge.  
19 Respondent's first prior record of discipline was in May 1992 when he was privately reproofed  
20 with conditions in State Bar Court case number 91-O-01299. That discipline was imposed  
21 because, from December 1990 to May 1991, respondent repeatedly used his client trust account  
22 for personal purposes (e.g., to pay rent and health insurance premiums and to make mortgage  
23 payments) in willful violation of rule 4-100(A).

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26 <sup>5</sup>All further references to standards are to this source.

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28 <sup>6</sup>All further references to rules are to these Rules of Professional Conduct unless  
otherwise stated.



1           Respondent's second prior record of discipline was in March 1994 when the Supreme  
2 Court placed him on six months' stayed suspension and on two years' probation with conditions  
3 in Supreme Court case number S037696 (State Bar Court case number 93-H-14768). That  
4 discipline was imposed on respondent because, in willful violation of section 6103 and rule  
5 1-110, he failed to comply with the conditions attached to his May 1999 private reproof.  
6 Specifically, respondent failed to file two quarterly reports, which were to include statements  
7 regarding his proper handling of client funds, securities, and other property. In addition,  
8 respondent failed to attend the State Bar's Ethics School and to take the former California  
9 Professional Responsibility Examination as required.

10           Respondent's third prior record was in March 2003 when the Supreme Court placed him  
11 on one year's stayed suspension and on two years' probation with conditions, including 60 days'  
12 actual suspension, in Supreme Court case number S112439. Again, respondent's culpability in  
13 this proceeding is based on his violations of the probation conditions that the Supreme Court  
14 imposed on him in that case. The discipline in case number S112439 was imposed because,  
15 beginning in February 2001, respondent (1) issued at least 13 insufficiently funded checks drawn  
16 on his attorney client trust account, which were later returned to the payees unpaid and (2) issued  
17 checks drawn on his attorney client trust account for personal reasons on at least 20 occasions all  
18 in willful violation of rule 4-100(A).

19           Respondent's fourth prior record of discipline is State Bar Court case number  
20 02-C-15896, which is a criminal conviction referral proceeding in which respondent also  
21 defaulted. Because of the entry of his default, respondent was involuntarily enrolled as an  
22 inactive member of the State Bar effective April 16, 2004. (§ 6007(e).) On September 22, 2004,  
23 this court filed its decision in case number 02-C-15896. In that decision, the court recommends  
24 that the Supreme Court, inter alia, place respondent on two years' stayed suspension and on one  
25 year's actual suspension that will continue until respondent provides satisfactory proof of  
26 payment of all child support arrearage to the State Bar's Office of Probation and until he files and  
27 the State Bar Court grants a motion, under rule 205 of the Rules of Procedure of the State Bar, to  
28 terminate his actual suspension. Even though the court's September 22, 2004, decision is still



1 pending before the Supreme Court in case number S129328, the court's decision is still a prior  
2 record of discipline for purposes of aggravation. (Std. 1.2(f) ["'Prior record of discipline' is a  
3 previous imposition or *recommendation* of discipline . . ."] [Italics added.]; Rules of Proc. of  
4 State Bar, rule 215(a)&(c).) Of course, when a respondent attorney has a prior record of  
5 discipline that is not final, the State Bar Court is to make one discipline recommendation under  
6 the assumption that the nonfinal discipline recommendation will be adopted by the Supreme  
7 Court and another on the assumption that the nonfinal recommendation will be rejected. (Rules  
8 of Proc. of State Bar, rule 215(c).)

## 9 **2. Multiple Acts of Misconduct**

10 The misconduct found against respondent in the present proceeding consists of eight acts  
11 of misconduct (three failures to submit quarterly probation reports, three failures to submit an  
12 accountant's certification of respondent's compliance with properly client trust account  
13 procedures or declarations that would excuse his failure to submit those accountant's  
14 certifications, one failure to attend ethics school, and one failure to attend client trust account  
15 school). Eight multiple acts of misconduct are serious aggravating circumstances. (Std.  
16 1.2(b)(ii).)

## 17 **3. Respondent's Failure to File a Response to the NDC**

18 Respondent's failure to file a response to the NDC, which allowed his default to be  
19 entered in this proceeding, is serious aggravation particularly in light of the "numerous  
20 efforts by State Bar personnel to notify him of impending events and consequences of  
21 nonappearance." (*Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.) First, it establishes that  
22 he fails to appreciate the seriousness of the charges against him. (*Ibid.*) And, second, "it  
23 establishes that he does not comprehend the duty as an officer of the court to participate in  
24 disciplinary proceedings. [Citation.]" (*In the Matter of Stansbury* (Review Dept. 2000) 4  
25 Cal. State Bar Ct. Rptr. 103, 109, citing *Conroy v. State Bar* (1992) 53 Cal.3d 495, 507-508;  
26 but see *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1080 [failure to participate in a default  
27 hearing is not an aggravating circumstance].)

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1 **B. Mitigating Circumstances**

2 Because of respondent's lack of participation in this proceeding, there is no evidence  
3 affirmatively establishing any mitigating circumstances. Nor is there any evidence in the record  
4 that otherwise establishes any mitigating circumstances.

5 **C. Discussion**

6 In determining the appropriate level of discipline, we first look to the standards for  
7 guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review  
8 Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

9 The applicable sanction for violating section 6068(k) is found in standard 2.6, which  
10 provides that the violation "shall result in disbarment or suspension depending on the gravity of  
11 the offense or the harm, if any, to the victim, with due regard to the purposes of imposing  
12 discipline set forth in standard 1.3. . . ." In that regard, standard 1.3 provides that the primary  
13 purposes of discipline are to protect the public, the courts, and the legal profession; to maintain  
14 the highest possible professional standards for attorneys; and to preserve public confidence in the  
15 legal profession.

16 However, because respondent has two or more prior records of discipline, standard 1.7(b)  
17 is also applicable. That standard provides that when an attorneys has two prior records of  
18 discipline, "the degree of discipline in the current proceeding shall be disbarment unless the most  
19 compelling mitigating circumstances clearly predominate." Because respondent has not two, but  
20 four prior records of discipline, the court concludes that a disbarment recommendation is  
21 warranted under standard 1.7(b) alone, particularly since there are *no* mitigating circumstances.  
22 Even assuming that the Supreme Court rejects the nonfinal discipline recommendation in  
23 respondent's fourth prior record of discipline, which recommendation is currently pending before  
24 the Supreme Court in its case number S129328, this court still concludes that disbarment is the  
25 appropriate disposition in this proceeding because, inter alia, respondent would then still have  
26 not just two prior records, but three prior records of discipline.

27 The court's conclusion that a disbarment recommendation is warranted in this proceeding  
28 even if the Supreme Court rejects the nonfinal discipline recommendation is also supported by



1 the following facts. First, respondent was disciplined *twice* for improperly using his client trust  
2 account for personal purposes in willful violation of rule 4-100(A). That is extremely serious  
3 misconduct: (1) because rule 4-100(A) absolutely bars the use of attorney trust accounts for  
4 personal purposes even when there are no client funds in the account (cf. *Doyle v. State Bar*  
5 (1982) 32 Cal.3d 12, 22-23 [construing rule 8-101(A) the predecessor to rule 4-100(A)]); and (2)  
6 because, when client funds are on deposit in the account, the personal use of a trust account  
7 subjects the client funds to the claims of the attorney's creditors, which is one of the very risks  
8 the rule is designed to protect against (*Clark v. State Bar* (1952) 39 Cal.2d 161, 167-168).

9       Second, the probation condition requiring that respondent submit, with each of his  
10 quarterly reports, an accountant's certification verifying that he properly handled all client funds,  
11 securities, and other property or a declaration stating that he did not hold any such funds,  
12 securities, or other property and the condition requiring that respondent attend and complete trust  
13 accounting school and to provide proof thereof to the Office of Probation specifically address his  
14 *repeated* misuse of his client trust account, which misuse raises serious public (i.e., client)  
15 protection concerns. Thus, the foregoing two conditions are significantly related to the  
16 underlying misconduct. This is important because "the greatest amount of discipline is  
17 warranted for violations of probation which show a breach of a condition of probation  
18 significantly related to the misconduct for which probation was given, especially in  
19 circumstances raising a serious concern about the need for public protection. [Citation.]" *In the*  
20 *Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) Consequently,  
21 respondent's violations of the two foregoing probation conditions were not minor and warrant a  
22 great amount of discipline standing alone.

23       In short, while the court recognizes that the standards are not to be applied in a talismanic  
24 fashion (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828); it does not find in the record any reason,  
25 much less a compelling reason, to depart from the disbarment sanction in standard 1.7(b) (cf.  
26 *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291). In fact, the court concludes that a disbarment  
27 recommendation is necessary because respondent's multiple probation violations and his

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1 repeated misconduct over a number of years together establish that he is either unable or  
2 unwilling to conform his conduct to the ethical strictures of the profession.

3 **V. Discipline Recommendation**

4 In light of the reasons set forth above, this court recommends, regardless of whether the  
5 Supreme Court adopts or rejects the nonfinal discipline recommendation in respondent's fourth  
6 prior record of discipline, that respondent Richard Lavern Wyrick be disbarred from the practice  
7 of law in the State of California and that his name be stricken from the Roll of Attorneys of all  
8 persons admitted to practice in this state.

9 **VI. Rule 955 of the California Rules of Court and Costs**

10 The court further recommends respondent Wyrick be ordered to comply with the  
11 provisions of rule 955 of the California Rules of Court and to perform the acts specified in  
12 subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the  
13 effective date of the Supreme Court order in this matter.

14 Finally, the court recommends that the costs incurred by the State Bar in this matter be  
15 awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and  
16 that such costs be payable in accordance with Business and Professions Code section 6140.7.

17 **VII. ORDER OF INACTIVE ENROLLMENT**

18 In accordance with Business and Professions Code section 6007(c)(4), it is ordered that  
19 respondent Richard Lavern Wyrick is involuntary enrolled as an inactive member of the State  
20 Bar of California effective three calendar days after the service of this decision and order by mail.  
21 (Accord, Rules Proc. of State Bar, rule 220(c).)

22  
23  
24 Dated: February 3, 2005

25   
26 PAT MCELROY  
27 Judge of the State Bar Court  
28



**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on February 3, 2005, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INACTIVE ENROLLMENT**

in a sealed envelope for collection and mailing on that date as follows:

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**RICHARD LAVERN WYRICK**  
**1655 W MAGILL**  
**FRESNO CA 93711**

**(COURTESY COPY)**

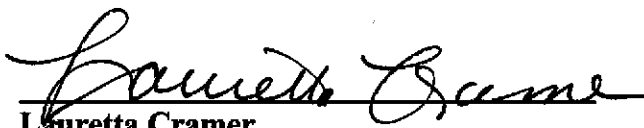
**RICHARD LAVERN WYRICK**  
**INMATE #V52906**  
**WASCO STATE PRISON**  
**P O BOX 5500**  
**WASCO CA 93280**

**LEGAL MAIL**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**MARK HARTMAN, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 3, 2005.

  
**Lauretta Cramer**  
Case Administrator  
State Bar Court