No. B284239

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

R. LEWIS CHAPMAN, JR.,

Appellant,

v.

DANIEL DUNBAR,

Respondent.

Proceedings of the Los Angeles County Superior Court
Case No. 17TRRO00048, Hon. Gary Tanaka, Judge Presiding

APPELLANT'S MOTION FOR SANCTIONS AGAINST RESPONDENT DANIEL DUNBAR AND HIS ATTORNEY CASEY OLSEN

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I. Summary of Argument

Appellant R. Lewis Chapman ("Bob") respectfully requests that the Court impose monetary sanctions against Respondent Daniel Dunbar ("Dan") and his attorney Casey Olsen.[1] Sanctions are authorized by California Rules of Court, Rule 8.276. (See also *Huschke v. Slater* (2008) 168 Cal.App.4th 1153, 1162.) Rather than focusing this appeal on the dispute between the parties, Dan and his attorney instead focused their Respondent's Brief on making personal attacks against Bob's appellate attorney, Jeffrey Lewis. (RB 22.) Dan, through counsel, accused Mr. Lewis of violating the Rules of Professional Conduct and Business and Professions Code, section 6068, subdivision (f) by "advancing facts prejudicial to the honor and reputation" of Dan and his wife Cynthia Dunbar ("Cindy.") (RB 23.) Dan, through counsel, accused Mr. Lewis of intentionally misleading this Court about the basis for a criminal charge against Bob. (RB 18.) Monetary sanctions are also warranted for over a dozen misstatements made in Dan's Respondent's Brief that were either false or had no support in the appellate record.

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[1] As was the case in the opening and reply briefs, first names are used to avoid confusion between multiple parties and witnesses with the same surname. No disrespect is intended.

The amount of time needed to address these demonstrably false statements in the Respondent's Brief warrants the imposition of at least $11,900 in sanctions. Mr. Lewis makes this motion reluctantly and for the first time ever in an appellate proceeding. (Lewis Decl., ¶ 3.)

II. The Court Should Impose Sanctions for the Unwarranted Personal Attacks on the Integrity of Chapman's Appellate Counsel – Mr. Lewis did not Mislead this Court about Bob's Pending Criminal Prosecution for Contacting a Lead of NextDoor.com

This is an appeal from a Civil Harassment Restraining Order ("CHRO") issued against Bob in Dan's favor. One of the arguments raised in Bob's appeal is the invalidity of a CHRO that purports to bar Bob's speech to a third party that is critical of a protected person. Bob's appeal argues that speech to a third party about a protected party cannot constitutionally be enjoined.

To demonstrate the prejudice suffered by Bob, the Opening Brief included a reference to a pending criminal prosecution against Bob for violation of that CHRO. The Opening Brief argued that Count Five of that pending criminal prosecution was based on Bob contacting a third party, the social media website NextDoor.com. (AOB 45-46.) The AOB cited to the pending criminal complaint which states that Count Five is based on a

theory that Bob violated a CHRO "by forwarding disparaging information about [Cindy] to a third party." (AOB 45-46 citing to AUG 25.)

Dan reacted to the foregoing argument by filing a motion to strike Bob's opening brief and seeking monetary sanctions against Mr. Lewis. Per Dan, Mr. Lewis, "deliberately misrepresented the allegations contained within count five of the amended criminal complaint filed in criminal case 8TR01472, and thus attempted to mislead this court." (Dan's Motion to Strike Bob's Opening Brief, p. 18.)

But Dan is wrong. There was no effort to mislead this Court and this Court was not misled. Briefs filed by the Los Angeles County District Attorney in the criminal prosecution against Bob amply support that the prosecution of Count Five is based on Bob's communication to a third party, NextDoor, in a way that is critical of Cindy. (AUG 31,[2] lns. 12-14.) On November 5, 2018, the District Attorney filed a brief that argued that Count Five was based on the following conduct by Bob (the "Defendant"):

> On January 30, 2018, the Defendant contacted Brian Cochran, the NextDoor.com "Lead" of the community and made disparaging comments about Mrs. Dunbar.

---

[2] Reference to "AUG" is to the augmented documents that were the subject of Bob's motion to augment the record filed January 8, 2019.

> The Defendant also forwarded court documents denigrating Mrs. Dunbar to Brian Cochran, despite being cautioned by Judge Tanaka about that conduct. This conduct was charged in count 5…."

(AUG 31, lns. 12-14.)

Based on the foregoing, the Court was not misled. Bob is being prosecuted for speaking with Brian Cochran of NextDoor about Cindy. (AUG 31, lns. 12-14.)

In addition to being wrong, the accusation that Mr. Lewis intentionally misled the court violated the duty to refrain from advancing facts prejudicial to Mr. Lewis' honor or reputation. (Bus. & Prof. Code, § 6068, subd.(f).) The attack on Mr. Lewis was in equal parts inaccurate and unnecessary and constitutes misconduct by Dan and his attorney:

> "[I]t is vital to the integrity of our adversary legal process that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law." (*People v. Chong* (1999) 76 Cal.App.4th 232, 243, 90 Cal.Rptr.2d 198.) Indeed, unwarranted personal attacks on the character or motives of the opposing party, counsel, or witnesses are inappropriate and may constitute misconduct. (*Id.* at p. 245, 90 Cal.Rptr.2d 198; see also *Stone v. Foster* (1980) 106 Cal.App.3d 334, 355, 164 Cal.Rptr. 901.)
>
> (*In re S.C.* (2006) 138 Cal.App.4th 396, 412.)

III. The Court Should Impose Sanctions for the Unwarranted Personal Attacks on Chapman

In addition to making personal attacks on Mr. Lewis, Dan's Respondent's Brief contains unwarranted personal attacks on the personal integrity of Bob. The attacks on Bob also constitute misconduct by Dan and his counsel. (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 412.) Dan, through counsel, made the following unwarranted attacks on Bob.

A. Dan Accused Bob of being a Cyberbully who Blackmailed and Extorted his Neighbors

The Respondent's Brief characterizes Bob as a "cyberbully," who "harassed neighbors" through "blackmail" and "extortion." (RB 17.) The Respondent's Brief refers to Bob as a:

> [C]yberbully who enjoys the perverted sense of power that comes with exploiting a neighbor's perceived vulnerabilities.

(RB 57.)

While Bob admittedly did not prevail below, there were no express or implied findings that Bob was a "cyberbully" who committed "blackmail" or "extortion." To the contrary, the trial court observed that when Bob was protecting his wife and daughter from Cindy, Bob was not a "bad person." (RT 90, li. 16-17.) The trial court noted that Bob and his wife Jennifer

Chapman ("Jennifer") "seem like good people." (RT 101, li. 13-15.) The trial court also stated:

> People come into neighborhoods. Sometimes neighbors will get along, sometimes they don't. Doesn't make them bad people. Just means sometimes you're just not on the same page.

(RT 100, li. 22-25.)

The trial court's express findings that Bob and Jennifer are "nice" and "good people" who were simply "not on the same page" as Dan and Cindy contradicts the harsh labels used in Dan's Respondent's Brief.

Beyond the name calling, Dan's descriptions of Bob's conduct towards Dan as extortion or blackmail is also unsupported by the record:

> Extortion is the obtaining of property or other consideration from another, with his or her consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

(Pen. Code, § 518.)

Dan's accusations that Bob extorted anyone have no basis in the appellate record. No neighbors – beyond Jennifer, Bob, Dan and Cindy – testified at the hearing. There was no testimony provided by anyone about extortion or its synonym, blackmail.

No evidence was offered or hinted at below that any property, consideration or official act of a public officer was sought or obtained by Bob in this case or any other time in Bob's life. Nor was there any testimony below that anyone blackmailed anyone else. It is true that Bob wished for him, his wife and his young daughter to be left alone and Bob asked Dan six times over three years to influence Cindy to leave Bob, his wife and his young daughter alone. (CT 37-46.)

B. Dan Stated that Bob "Indirectly" Emailed Cindy

The uncontradicted evidence below was that for a three-year period preceding the CHRO hearing, Bob had not telephoned, emailed or initiated face to face contact with Cindy. (RT 67.) Despite statements of the record, the Respondent's Brief repeats in three different places that over a three-year period, Bob's six emails to Dan were sent "indirectly" to Cindy as though somehow that were a fact testified to, established or found by the trial court below. (RB 19, 20, 50.) For example, the Respondent's Brief states:

> Over the next three years [Bob] sent a series of e-mails directly to Daniel at his place of employment, *and indirectly to Cynthia*, falsely claiming that Cynthia had harassed him and his wife, and defamed him.

(RB 19, emphasis added.)

There is no evidence in the appellate record that the "series of emails" described above were ever "indirectly" sent to Cynthia. There is no evidence in the appellate record that Dan contemporaneously read or forwarded Bob's emails from his workplace to Cindy. The Respondent's Brief cited to CT 37-46 and RT 92, lns. 9-14 for the proposition that Bob "indirectly" emailed Cindy. The emails contained at CT 37-46 do not include any emails made to Cindy or evidence that the emails were sent "indirectly" to Cindy. The testimony appearing at RT 92, lns. 9-14 does not refer to anyone emailing anyone else. The sole evidence in the record on this point is Cindy's own testimony that for the three years preceding the hearing below, Bob did not email Cindy, did not call Cindy and did not initiate contact with Cindy. (RT 67.)

C. Dan Repeats in 18 Places in the Respondent's Brief that Bob Made a "False Statement" but the Trial Court Made no Findings that Bob's Statements were False

The Respondent's Brief repeats in eighteen places that Bob made a "false statement." For example, the Respondent's Brief states that Bob made a false statement that Cindy defamed Bob in July 2014. (RB 24-26.) The trial court declined to adjudicate any claim for defamation and made no express or implied factual

findings that Bob made a false statement. (RT 42.) The Respondent's Brief also states that Bob made a false statement that Cindy harassed Jennifer in August 2014, in November 2014 and in February 2015. (RB 27-28.) But the trial court declined to make any findings of defamation and did not find that Bob or Jennifer made any false statements. (RT 42.) The Respondent's Brief also states that Bob falsely accused Cindy of trespass. (RB at 27.) The trial court made no findings about whether Cindy committed a trespass or whether Bob's statement was false. However, the trial court did find that Cindy "entered into [Bob and Jennifer's] property screaming, looking into the windows." (RT 90.) The Respondent's Brief also states that Bob "falsely stated" that Cindy harassed Bob and Jennifer for two years. (RB 29.) The trial court made no finding that Bob's statements were false. The most generous reading of the record in Dan's favor is that the trial court did not find the testimony by Bob and Jennifer was clear and convincing evidence of "harassment" as defined by Section 527.6. (RT 91.) That is a far cry from stating that the trial court found that Bob or Jennifer made a false statement.

D. Dan States Without any Citation to the Appellate Record that when Dan did not Reply to a May 2016 email from Bob, Chapman Disseminated emails to the Neighborhood

The Respondent's Brief states, without citation to the record, that "When Daniel did not reply to [a May 5, 2016] e-mail, Chapman carried out his threat, and disseminated the e-mails and the Nursing Board document to third parties." (RB 51.) Similarly, the Respondent's Brief states that Bob "sent all 10 pages of the e-mails along with the Nursing Board document, to the 'neighborhood' and other third parties." (RB 59-60.) There is no support in the appellate record for this statement that Bob "carried out his threat" or "disseminated the e-mails and the Nursing Board document to third parties" following the May 5, 2016 email. No witness testified that Bob carried out a threat in May 2016 and no emails from and after May 5, 2016 demonstrated that Bob disseminated emails or Nursing Board documents to any identifiable third parties. If the neighborhood had received emails from Bob, as alleged by Cindy and Dan, certainly one witness could have been found to testify as to that subject or one email could have been printed out and offered into evidence below. Neither occurred. The name of the supposed neighbor who received the Nursing Board documents is not disclosed anywhere in the record. While it is true that Dan

testified that on an unspecified date, two or perhaps three couples received emails from Bob about Cindy, there was no widespread dissemination of emails and no indication of when the emails were sent or why.

E. Dan Inaccurately States that a May 27, 2017 Voicemail Message is not in the Appellate Record

The Respondent's Brief states that a May 27, 2017 voicemail message left by Dan for Bob is not evidence and may not be considered by this Court. (RB 51.) However, the May 27, 2017 voicemail message is in evidence. (RT 44, li. 7-15; CT 80.) The transcript provided to the trial court of this message was:

> Hey Bobby, It's Dan Dunbar. I got your message. I'm out of town. I'll be back Thursday ... touring the middle of the country [chuckle]. Bye

(CT 80.)

This Court may consider: 1) the message that Dan left for Bob on May 27, 2017; 2) the sworn declaration by Bob regarding the significance of that May 27, 2017 message: that only five people refer to Bob as "Bobby" – a childhood nickname. (CT 80.); and 3) the timing of the friendly message – four days before Cindy walked to Bob's property to confront him as he was gardening on May 31, 2017.

F. Dan Inaccurately States that Bob did More than Simply Send Six Emails over a Three-Year Period to Dan

The Respondent's Brief states at pages 68 and 69 that:

> Chapman once again ignores the trial court's finding that his course of conduct consisted of more than just sending threatening e-mails to Daniel in an effort to coerce him into restraining Cynthia's speech and conduct. It also consisted of making good the threats by disseminating the disparaging e-mails, along with the nursing board document, to Daniel and Cynthia's friends and neighbors. Daniel had no control over this aspect of Chapman's conduct, and could not have avoided it. Chapman made it clear that he, alone, would decide whether Daniel had complied with his demands. The e-mails show that when Chapman determined that Daniel had failed to do so, Chapman carried out the "social" remedy he threatened to invoke should Daniel fail to restrain Cynthia's speech and conduct.

(RB 68-69.)

None of the foregoing is supported by a citation to the appellate record and the entire passage should be disregarded. No evidence was offered of any "dissemination" or carrying out a 'social' remedy. It is true that Bob made requests of his seven-year friend and tennis buddy Dan to assist Bob. (CT 43.) The actual word used by Bob was "beseeched." (CT 40.) Dan called Bob on May 5, 2016 and agreed to intercede with Cindy on Bob's behalf. (CT 40-41.)

G. Dan Inaccurately States that Bob was "Incensed" or "Obsessed" with Cindy

The Respondent's Brief states that in "2014, Chapman became incensed with Cynthia, and then obsessed with her." (RB 19). No citation to the appellate record is offered to support this statement. The true facts are that commencing in July 2014, Bob asked to have Cindy not contact Bob anymore and Cindy persisted in doing so. (RT 29-30; CT 37-46.) It was Cindy that approached Bob or Jennifer on each occasion between 2014 and 2017. (RT 67.) As Cindy had to admit in court, there was never an occasion in the three years preceding the CHRO hearing that Bob emailed, phoned or initiated contact with Cindy. (RT 67.)

H. Dan Inaccurately States that the Trial Court Found that Cindy did not Defame Bob

The Respondent's Brief states that the trial court found that Cindy did not defame Bob. (RB 18.) That is not true. The trial court stated, "this is not a lawsuit for defamation." (RT 42, li. 26-27.) No findings were made about defamation.

I. Dan Goes Outside the Record to State that Bob's Opening Brief was Published on the Internet

The Respondent's Brief states at page 20 that "Recently, Chapman's error-riddled opening brief was published on the internet." No citation is offered to support this fact.

J. Dan Misstates the Findings of the Trial Court: The Trial Court Made no Finding that Bob's Conduct had no "Legitimate Purpose"

The Respondent's Brief states that the trial court found that Bob's conduct had no "legitimate purpose." (RB 20.) However, the trial court never made such a finding. The record citation by Dan, to pages 93-94 of the Reporter's Transcript, contains no reference to a finding of no legitimate purpose.

K. Dan Misstates the Findings of the Trial Court: The Trial Court Made no Finding that Bob's Conduct was Likely to Reoccur

The Respondent's Brief states that that the trial court found that Bob's "conduct was likely to reoccur in the future." (RB 21.) However, the trial court never made such a finding. The record citation by Dan, to pages 93-94 of the Reporter's Transcript, contains no reference to a finding that the conduct was going to recur. While there is a reference by the trial court to

a social media campaign, no evidence was offered in the entire record that Bob ever posted anything about Dan or Cindy to the Internet, Facebook, Twitter or other social media site.

L. Dan Misstates the Findings of the Trial Court about Alleged Threats to Cindy, Bob's Threat to Disseminate Emails and Bob Supposedly Carrying out Such Threats

The Respondent's Brief states at page 20 that:

> In fact, the trial court issued the CHRO because Chapman: 1) sent threatening e-mails directly to Daniel, and indirectly to Cynthia; 2) threatened to disseminate the e-mails unless Daniel "restrained" Cynthia's speech and conduct; and 3) carried out those threats when Daniel failed to comply with Chapman's demand to Chapman's satisfaction. The trial court found that in sending Daniel and Cynthia the threatening emails, and thereafter making good his threats, Chapman had engaged in a "knowing and willful course of conduct" which "seriously alarmed, annoyed, and harassed" Daniel and Cynthia.

(RT 93, lns.27-28; RT 94, lns. 1-23.)

But the reporter's transcript at pages 93 and 94 contain no such findings. There was no finding at RT 93-94 that Bob sent a threatening email to Cindy or that Bob "made good on his threats" or that Cindy was alarmed, annoyed or harassed.

M. Dan Misstates the Findings of the Trial Court about Alleged Threats to Cindy, Bob's Threat to Disseminate Emails and Bob Supposedly Using "Self-Help"

The Respondent's Brief states at pages 21-22 that:

> the reason the trial court issued the CHRO, at least in part, was because Chapman, in threatening to publish the e-mails to third parties if Daniel did not comply with his demands, and thereafter carrying out the threats, improperly used extra judicial, self-help measures in an effort to impose a prior restraint on Cynthia's First Amendment right to free speech.

(RB 21-22.)

No citation to the appellate record is offered for this argument.

N. Dan Omits Material Facts Regarding Cindy's Stipulation to Surrender her Nursing License and Confirming the Fact of her Criminal Conviction

The Respondent's Brief states at page 24 that Cindy's criminal charges were dismissed on January 27, 2012. However, the Respondent's Brief omits that four months later, on June 1, 2012, Cindy signed a stipulation surrendering her nursing license explicitly confirming the fact of her felony criminal conviction. (AUG 6 [signature page for stipulation]; AUG 3 [admitting truth

of all Nursing Board charges]; AUG 13-14, ¶ 20(a) [Nursing Board charging allegation that Cindy pled guilty to felony].)

O. Dan Omits Material Facts Regarding Cindy's Rehabilitation Being Terminated

The Respondent's Brief states at page 24 that Cindy went to "rehab" but omits that Cindy's participation in the diversion program was terminated. (AUG 6 [signature page for Nursing Board stipulation]; AUG 3 [admitting truth of all Nursing Board charges]; AUG 13, ¶ 19 (k) [nursing board charging allegation that Cindy's rehabilitation was terminated on September 29, 2010].) The Nursing Board documents detail Cindy's failure to adhere to the diversion program requirements and multiple failed drug tests as the specific reasons for Cindy being terminated from the diversion program. (AUG 13.)

P. Dan Misstates the Evidence about Bob's Expectations about What Dan Would do with Emails

The Respondent's Brief states at page 35 that when Bob emailed Dan, Bob "expected that [Dan] would share the contents of the emails with [Cindy]. (RT 76, lns. 8-10.) There is no evidence in the appellate record that Bob wanted Dan to share Bob's emails with Cindy. Dan's reference to page 76 is a citation

to argument by Dan's trial counsel – not evidence – and there is no discussion of Bob's expectations in that portion of the transcript.

Q. Dan Omits Material Facts About Bob's Home Being Located on a Cul de Sac

The Respondent's Brief states that "even after Chapman served Cynthia with a temporary restraining order, he would drive by her home." (RB 40.) The Respondent's Brief omits the fact that Bob lives at the end of a cul de sac and must pass by the Dunbars' home to leave and enter his own property. (RT 51-53.)

R. Dan Misstates the Evidence about Cindy Being Called a "Beast."

The Respondent's Brief states on three occasions that Bob referred to Cindy as a "beast." (RB 29, 66, 72.) No witness testified to such a comment. To the contrary, the only testimony provided by Cindy on the subject of Bob's baby daughter and Cindy's attempt to visit was that Jennifer informed Cindy that the baby was not available for viewing. (RT 58.) Dan's CHRO petition and supporting declarations by Dan and Cindy do not reference the alleged comment about being called a "beast." The only reference to "beast" in the appellate record is contained in an

email describing Bob's desire not to wake his own infant daughter resting in a carriage. (CT 43.) Bob stated:

> Today at around 3:00 p.m., my extended family was walking peacefully with our daughter in carriage away. from our home on Via Horcada. As we passed your home, with rationale I cannot fathom given our prior explicit instructions to her, your wife approached our baby's carriage and attempted to-engage us in order to "see the baby." As your wife's emotional and psychological (not to mention chemical) state is unpredictable, and she was declared a "public safety risk" by no less than the state of California, I desired to manage the risk to my child and accordingly responded with as polite a deflection as possible, stating, "We're not having her interact with anyone today." As I am certain you will not be surprised to learn, your wife replied by casting various aspersions about me (in front of my family) before directing her pejorative commentary about me to a child apparently named "Andrea." In the interest of not "disturbing the beast," particularly given the peaceful walk I was having w/ my family, I ignored your wife and continued walking.
>
> This is the last time I beseech you to find a means of restraining your wife from any interaction with my family.

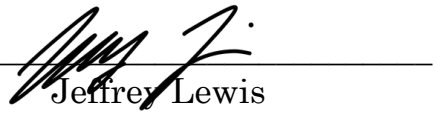
(CT 43.)

IV. The Court Should Impose Sanctions for the Omission of a Material Fact about Dan's License History

The Respondent's Brief states that Dan has been a licensed attorney since 1981. (RB 24.) That statement suggests that Dan has been *continuously* licensed since 1981 to bolster Dan's credibility. In fact, Dan was suspended in 1990. (Lewis Decl., ¶ 6, Ex. 1.) The suspension was based on Dan "simulating" a client's signature on a settlement check and release agreement. (Lewis Decl., ¶ 6, Ex. 1.)

CONCLUSION

Based on the foregoing, Appellant respectfully requests that the Court grant the motion and award $11,900 in sanctions.

Dated: June 29, 2018 By: 

Jeffrey Lewis

Attorney for appellant

DECLARATION OF JEFFREY LEWIS

I, Jeffrey Lewis, declare as follows:

1. I am counsel for appellant R. Lewis Chapman.

2. I have personal knowledge of the truth and accuracy of the facts set forth herein, and if called upon as a witness, I could competently testify thereto. I do not intend to waive the attorney-client privilege or work product doctrine by making any statement herein.

3. I have been an attorney since December 1996 and have had primary briefing responsibility for over 125 appeals. I cannot recall ever having monetary sanctions sought against me or having sought monetary sanctions against an opposing counsel. It is with great reluctance that I make this request for monetary sanctions against Respondent Daniel Dunbar and attorney Casey Olsen.

4. I am a 1996 graduate of Loyola Law School. I have been admitted to the California State Bar continuously since 1996. I am also a Certified Specialist in Appellate Law by the State Bar of California Board of Legal Specialization.

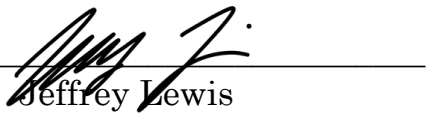
5. I have spent in excess of 20 hours drafting the Appellant's Reply Brief as it relates solely to the issues set forth in this motion – the identification of false statements of fact contained in the Respondent's Brief and locating the evidence within the appellate record to refute those false statements. As of

2019, my normal and customary rate for appellate work is $595 per hour. I am requesting monetary sanctions in the amount of $11,900 for the time spent devoted to the issues described in this motion.

6. The Respondent's Brief includes a statement that Respondent Daniel Dunbar has been licensed since 1981. In 1990, Daniel Dunbar was suspended by the state bar and thereafter reinstated. A true and correct copy of the state bar records for Dunbar's 1990's suspension is attached hereto and incorporated herein as **Exhibit "1."**

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

Executed this 8th day of January 2019, at Rolling Hills Estates, California.



Jeffrey Lewis

EXHIBIT A TO DECLARATION OF JEFFREY LEWIS

S014784

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

IN THE MATTER OF THE SUSPENSION OF DANIEL WILLIAM DUNBAR

A MEMBER OF THE STATE BAR OF CALIFORNIA

It is ordered that Daniel William Dunbar be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be placed on probation for one year on condition that he be actually suspended for the first 30 days and comply with the other conditions of probation adopted by the Review Department at its November 8, 1989, meeting. It is further ordered that he take and pass the Professional Responsibility Examination within one year after the effective date of this order. (See Segretti v. State Bar (1976) 15 Cal.3d 878, 891, fn. 8.) The State Bar is awarded costs. This order is effective upon finality of this decision in this Court. (See Cal. Rules of Court, rule 24 (a).)

I, Robert F. Wandruff, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this JUN 27 1990 day of _____ A.D. 19__

By P. QUINN Clerk

Deputy Clerk

Panelli
Acting Chief Justice

STATE BAR COURT

THE STATE BAR OF CALIFORNIA

REVIEW DEPARTMENT

PUBLIC MATTER

I, Judy Duffield, hereby certify that I am Clerk of the State Bar Court, and that as such, I am the custodian of all records and files of the State Bar Court, and that the following is a full, true and correct copy of a resolution or resolutions adopted as the decision of the Review Department on November 8, 1989, insofar as it relates to the following proceeding:

88-O-11458 - In the Matter of Daniel W. Dunbar

After discussion and consideration by the Review Department of the record in the above-entitled proceeding and upon motion made, seconded and adopted it was

RESOLVED that, pursuant to rules 405-408, Rules of Procedure of the State Bar, the stipulation as to facts and disposition entered into between the Office of Trial Counsel and the Respondent filed July 3, 1989, in the above-entitled matter is hereby adopted, construing paragraph 5 of the probation conditions to include any probation monitor referee assigned under these conditions of probation and construing the stipulation so as to delete the last paragraph of the section entitled Additional Recommendation.

Voting Yes: Referees Azevedo, Bowie, Boyle, Carlin, Dean, Katsky, Kirkham, Schafer, Thompson, Vogt, Walenta, Whelan and Wilczynski.

Dated November 27, 1989

Judy Duffield

Judy Duffield, Clerk
of the State Bar Court

DECLARATION OF SERVICE

I, the undersigned, over the age of 18 years, whose business address and place of employment is 818 West Seventh Street, Los Angeles, California, declare that I am not a party to the within action; that in the City and County of Los Angeles, on the date shown below, I deposited a true copy of the within

REVIEW DEPARTMENT MINUTES FILED NOVEMBER 29, 1989

in a sealed envelope as follows:

In a facility regularly maintained by the United States Postal Service with postage thereon fully prepaid addressed to:

Daniel W. Dunbar
9952 Santa Monica Boulevard
Beverly Hills, CA 90212

Teresa J. Schmid, Attorney at Law
State Bar of California
333 South Beaudry Avenue, Ninth Floor
Los Angeles, CA 90017

Theodore A. Cohen, Esq.
Suite 900
433 North Camden Drive
Beverly Hills, CA 90210

Via an overnight courier service addressed to:

In an inter-office mail facility regularly maintained by the State Bar of California addressed to:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Los Angeles, California on November 29, 1989.

Kaoru Tamura
Deputy Court Clerk

THE STATE BAR OF CALIFORNIA

OFFICE OF STATE BAR COURT
Director, STUART A. FORSYTH

COURT CLERK'S OFFICE, 818 WEST SEVENTH STREET, SUITE 201, LOS ANGELES, CALIFORNIA 90017-3432 (213) 689-6200

PERSONAL AND CONFIDENTIAL

NOTICE ACCOMPANYING SERVICE OF STIPULATION AS TO FACTS AND DISPOSITION PRIOR TO ISSUANCE OF NOTICE TO SHOW CAUSE IN CASE NUMBER 88-O-11458

IN THE MATTER OF Daniel William Dunbar, Esq.

Enclosed is a copy of the Stipulation As To Facts and Disposition entered into in the above-numbered matter pursuant to Rules 405 and 406 of the Rules of Procedure of the State Bar Rules. Also enclosed is a copy of Rules 405-408, Rules of Procedure of the State Bar.

The Stipulation is subject to review by the Review Department of the State Bar Court in accordance with Rules 407(a) and 450(b). Upon adoption by the Review Department of the Stipulation As To Facts and Disposition the stipulation shall be binding on the parties to this proceeding as provided by Rule 408(a). Rule 408(b) is applicable if the stipulation is rejected by the Review Department.

The matter will come before the Review Department on its ex-parte calendar and no appearances are contemplated. You will be advised by the Court Clerk's Office of the action taken.

The Court Clerk's Office of the State Bar Court can provide the dates upon which the Review Department is likely to act on this matter. Formal notification of the action in this matter will be forecoming from the Effectuation of Decision Section of the Court Clerk's Office. Time limits required by the applicable rules will commence from the date of the final notification.

DECLARATION OF SERVICE

I, the undersigned, over the age of 18 years, whose business and place of employment is 818 West Seventh Street, Los Angeles, California, declare that I am not a party to the within action; that in the City and County of Los Angeles, on the date shown below, I deposited a true copy of the above Notice, Stipulation As To Facts and Disposition, and Rules of Procedure 405-408 and 450; in a sealed envelope as follows:

In a facility regularly maintained by the United States Postal Service with postage thereon fully prepaid addressed to:
Daniel William Dunbar, Esq., 9952 Santa Monica Blvd., Beverly Hills, CA 90212

Teresa Schmid, A/L., State Bar of California, 333 S. Beaudry, 9th Floor, Los Angeles, CA 90017

In an inter-office facility regularly maintained by the State Bar of California addressed to:

I declare under penalty of perjury at Los Angeles, California, that the foregoing is true and correct. Dated, this 05th day of July, 19 89.

Victor Thrash
Deputy Court Clerk

1stpprior.127

PUBLIC MATTER

OFFICE OF TRIAL COUNSEL
STATE BAR OF CALIFORNIA
TERESA J. SCHMID, NO. 135266
Attorney at Law
333 South Beaudry Avenue
Los Angeles, California 90017

213/580-5000

THE STATE BAR COURT

OF THE STATE BAR OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	88-O-11458
DANIEL WILLIAM DUNBAR, NO. 100607	STIPULATION AS TO FACTS AND DISCIPLINE PURSUANT TO RULE 405-408 OF THE RULES OF PROCEDURE OF THE STATE BAR
A Member of the State Bar	

IT IS HEREBY STIPULATED by and between of the Office of Trial Counsel of the STATE BAR OF CALIFORNIA, through its Examiner, TERESA J. SCHMID, and Respondent, DANIEL WILLIAM DUNBAR, (hereinafter "Respondent"), and Respondent's attorney of record, THEODORE A. COHEN, in accordance with Rules 405 through 408 of the Rules of Procedure of the State Bar of California as follows:

I. THE PROCEEDING INVOLVED

A. On February 16, 1989, a Notice to Show Cause against Respondent was approved by the Office of Trial Counsel. A letter of intent to issue the Notice was sent to the Respondent on March 1, 1989. Respondent answered the letter of intent,

and conferences were held on February 3, 1989 with Respondent, and on February 13, 1989 with Respondent's attorney and the Examiner for the State Bar.

It is now the intention of the State Bar and Respondent to dispose of all of the issues raised in investigation matter No. 88-O-11458 pursuant to the terms of this Stipulation and in accordance with Rules 405 through 408 of the State Bar Rules of Procedure. It is understood and acknowledged by the parties to this stipulation that:

A. The issuance of a Notice to Show Cause be waived; that the right to a formal hearing be waived; that the matter may be determined by the Review Department of the State Bar pursuant to Rule 407(a) of the Rules of Procedure of the State Bar of California.

B. Stipulations as to proposed discipline are not binding upon the California Supreme Court; and

C. Stipulations as to Facts and Discipline are not effective until approved by the Review Department, and may be disapproved or rejected by the Review Department.

D. This Stipulation relates only to investigation matter No. 88-O-11458 and does not purport to resolve any other open investigation now pending.

E. Respondent has been notified of his obligation to pay costs for this disciplinary proceeding as provided in Business and Professions Code Sections 6086.10 and 6140.7. The amount of costs assessed will be set forth in cost certificates submitted by the Office of

Trial Counsel and State Bar Court upon final review of the matter the Review Department.

II. STATEMENT OF ACTS OR OMISSIONS OF RESPONDENT WHICH ARE ADMITTED BY AND ACKNOWLEDGED BY THE RESPONDENT AS CAUSE OR CAUSES FOR DISCIPLINE

A. On May 2, 1987, Manuel Tapia (hereinafter "Tapia") employed Respondent to represent him in a personal injury action. At the same time, Tapia executed a Contingency Fee Agreement (hereinafter "Agreement", a copy of which is attached as Exhibit "A".) The Agreement purports to grant the attorneys in Respondent's firm a general power of attorney to execute documents on behalf of Tapia, but also provides they will enter into no settlement without Tapia's approval.

B. Tapia's deposition was set for December 15, 1988, and his trial was set in January 1988. Prior to the date set for the deposition, Respondent lost contact with Tapia. Tapia's mail was returned, and Respondent could not contact him by telephone.

C. In his personal and telephone interviews with Tapia, conducted through a translator employed by Respondent, Respondent explained to Tapia the nature and extent of his case and the difficulties with liability. Respondent believed himself to be authorized to accept on Tapia's behalf the best settlement offer he could negotiate.5

D. In December 1987 and January 1988, Respondent negotiated what he believed in good faith to be an advantageous settlement for Tapia and one which he believed

Tapia would approve. However, he was unable to contact Tapia for his express consent to the settlement.

E. On January 7, 1988, the opposing attorney in the Tapia lawsuit sent Respondent a draft in the amount of $15,000.00 and a Release for Tapia's signature in settlement of the lawsuit. Respondent, believing himself to be acting under color of the power of attorney and in Tapia's best interest, simulated Tapia's signature on the Release and draft.

F. In simulating Tapia's signature on the draft and Release, Respondent intended that opposing counsel accept such signatures as being those of Tapia himself. At no time did Respondent disclose or otherwise indicate that he had signed the documents for Tapia as his representative.

G. Respondent deposited the draft in his Client Trust Account and held the amount due Tapia in trust until he was contacted by Tapia on March 31, 1988.

H. On March 31, 1988, Respondent met with Tapia and delivered to him a check in the amount of $9,149.00, representing Tapia's recovery from the settlement proceeds, less 30% as attorney fees (per the Agreement) and costs of litigation. The check was taken directly to the bank and cashed that day. At or about the same time, Respondent delivered to Tapia a written accounting for the distribution of funds.

I. Tapia accepted Respondent's trust check and accounting and made no objection to the settlement until he filed his complaint with the State Bar on April 28, 1988.

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III. LEGAL CONCLUSIONS

The Respondent committed the above-described acts in wilful violation of his oath and duties as an attorney and, in particular, California Business and Professions Code Sections 6068(a), 6103, and 6106.

IV. STATEMENT OF AGGRAVATING CIRCUMSTANCES

Respondent's conduct involves dishonesty toward opposing counsel in that he purported to be authorized by his client to enter a settlement agreement, and to have obtained his client's acceptance of such settlement, as evidenced by the simulated signatures, when in fact no such acceptance was obtained.

V. STATEMENT OF MITIGATING CIRCUMSTANCES

A. Respondent was admitted to the Bar on December 1, 1981, and has no prior record of discipline.

B. Respondent has been spontaneous, candid and cooperative with the State Bar Office of Investigation and Office of Trial Counsel.

C. Respondent has, prior to execution of this Stipulation, taken steps to comply with condition 2 of paragraph VI(A) infra. He has further opened his file and client trust records to the State Bar.

D. Respondent has exhibited remorse for his conduct.

VI. RECOMMENDED STIPULATED DISCIPLINE

A. It being found that the protection of the public and the interests of the attorney will be served, it is hereby stipulated that the recommended discipline in this matter be that the Respondent be suspended from the practice of law for one (1) year, that execution of the order of suspension be

stayed and that Respondent be placed on probation for one (1) year upon the following conditions:

1. Respondent shall be actually suspended from the practice of law in the State of California for the first thirty (30) days of the period of probation.
2. Respondent shall remove from his fee agreements language purporting to create a general power of attorney in favor of Respondent and his associate attorneys, and shall, beginning immediately, refrain from use of such general power as to those clients who have previously executed fee agreements containing such language.
3. During the period of probation Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California;
4. During the period of probation Respondent shall file written reports no later than January 10, April 10, July 10, and October 10, of each year or part thereof during which the probation is in effect, to the Los Angeles office of the State Bar Court, State Bar of California. Each report shall state that it covers the preceding calendar quarter or applicable portion thereof, and shall be certified by affidavit or executed under penalty of perjury provided; however, if the effective date of probation is less than thirty (30) days preceding any of the reporting dates, Respondent shall file the first report on the second

reporting date following the effective date of probation:

(a) In Respondent's first report, that (i) Respondent has read and complied with all provisions of the State Bar Act and Rules of Professional Conduct since the effective date of said probation; and (ii) that Respondent has complied with paragraphs 4 and 5 of these conditions of probation since the effective date of said probation;

(b) in each subsequent report, that Respondent has read and complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period; and (ii) that Respondent has complied with paragraph numbers 2, 5 and 6 of these conditions of probation during said period;

(c) provided; however, that a final report shall be filed covering the remaining portion of the period of probation following the last report required by the foregoing provisions of this paragraph number 3 certifying to the matters set forth in paragraph number 4 and 5 of these conditions of probation;

5. Except to the extent prohibited by the attorney-client privilege and the privilege of self-incrimination, he shall answer fully, promptly and truthfully to the Presiding Referee of The State Bar Court or his designee at the Respondent's office or an office of The State Bar (provided, however, that nothing herein shall prohibit the Respondent and Presiding Referee

from fixing another place by agreement), any inquiry or inquiries directed to him personally or in writing by said Presiding Referee or his designee relating to whether *Respondent is complying or has complied* with these terms of probation;

6. The period of suspension and probation shall commence as of the date on which the Order of the Supreme Court herein becomes effective; at the expiration of said probation period, if he has complied with the terms of probation, said Order of the Supreme Court suspending respondent from the practice of law for a period of one (1) year shall be satisfied and the suspension is terminated.

VII. ADDITIONAL RECOMMENDATION

It is further stipulated that Respondent shall take and pass the Professional Responsibility Examination given by the National Conference of Bar Examiners within one (1) year from the effective date of his suspension, (Segretti v. State Bar (1976) 15 Cal. 3d 878, 890-891) and furnish satisfactory proof of such to the Los Angeles Office of the Probation Department of the State Bar Court of the State Bar of California within said year.

Respondent is hereby notified that failure to comply with the above conditions may constitute cause for a separate

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proceeding for wilful breach of Rule 9-101, Rules of Professional Conduct of the State Bar of California.

Respectfully submitted,

OFFICE OF TRIAL COUNSEL
STATE BAR OF CALIFORNIA

DATED: 5-22, 1989 By: _____
TERESA J. SCHMID
Examiner

DATED: 5-13, 1989 By: _____
DANIEL WILLIAM DUNBAR
Respondent

DATED: 5-12, 1989 By: _____
THEODORE A. COHEN
Attorney For Respondent

REVIEW AND APPROVED

DATED: 5-22, 1989 By: _____
MICHAEL SALEEN
Assistant Chief Trial Counsel

EXHIBIT "A"

CONTINGENT FEE AGREEMENT

THIS AGREEMENT is made this 2ND day of MAY, 1987, at Beverly Hills, California, by and between MANUEL TAMA and the law firm of BELLI AND SABIH.

Client hereby retains BELLI AND SABIH to recover for personal injuries and property damage usstained by client on or about FEBRUARY 8, 1987, or any other claim otherwise arising directly or indirectly therefrom, as BELLI AND SABIH in their judgment deem appropriate.

DD

Should a recovery result by settlement before the filing of a complaint, or a petition for arbitration (Uninsured Motorist), BELLI AND SABIH are to receive for their services ~~one-third (1/3)~~ 30% FEE of the gross recovery, and client is to receive ~~two-thirds (2/3)~~, 70% CLIENT less any expenses and/or costs advanced by BELLI AND SABIH, and/or any medical liens outstanding.

~~Should a recovery result either by settlement, arbitration, trial or otherwise, after the filing of the complaint or petition for arbitration, BELLI AND SABIH are to receive for their services forty percent (40%) of the gross amount thereof, and client is to receive sixty percent (60%), less any expenses and/or costs advanced by BELLI AND SABIH, and/or any medical liens outstanding.~~

BELLI AND SABIH agree not to enter into any settlement with any parties without the prior consent of client.

If a settlement offer is tendered in the case by the defendants and BELLI AND SABIH believe, in good faith, that settlement should be accepted and communicates this to client and client does not agree to the settlement offer, BELLI AND SABIH may require client to advance the reasonable costs of trial in the case. In the event that client refuses to accept a reasonable settlement offer and refuses to advance costs, client thereby agrees to permit BELLI AND SABIH to withdraw from the case by filing a Substitution of Attorney form, substituting client in as his/her own attorney, said Substitution form being signed concurrent with this Agreement.

If BELLI AND SABIH do not obtain a settlement or judgment for client, client will owe them nothing for their time and services.

Attorneys are hereby given a lien for their fees and any costs and expenses advanced by them, upon any settlement or judgment obtained by client. Client hereby gives BELLI AND SABIH power of attorney, and express authorization, to execute all complaints, claims, contracts, settlements, checks, drafts, compromises, releases, dismissals and orders, on my behalf, as attorneys in their discretion deem appropriate.

Client acknowledges that this Contingent Fee Agreement is not set by law, is negotiable, and has been negotiated. Further, this Contingent Fee Agreement does not cover any other matters,

related or unrelated, other than those set forth hereinabove. Any other services to be performed by attorneys will be covered in a separate agreement. Client acknowledges receipt of a copy of this agreement.

DATED: Mayo 2, 1987

Manuel J. Tapia
CLIENT

261 S Ave 50 # 3 90042
(Address)

(Telephone)

(Business Address)

(Business Telephone)

We accept:

BELLI AND SABIH

By:_____

The Belli Building
9952 Santa Monica Boulevard
Beverly Hills, California 90212
(213)277-3612

The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST August 3, 2018
State Bar Court, State Bar of California,
Los Angeles

By _____
Clerk

PROOF OF SERVICE

Chapman v. Dunbar
Los Angeles County Superior Court Case No.: 17TRRO00048
Court of Appeal Case No.: B284239

I, Jason R. Ebbens, declare that I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 609 Deep Valley Drive, Suite 200, Rolling Hills Estates, CA 90274.

On **January 8, 2019**, I served the foregoing: **APPELLANT'S MOTION FOR SANCTIONS AGAINST RESPONDENT DANIEL DUNBAR AND HIS ATTORNEY CASEY OLSEN** on the interested parties in this action by placing ☐ the original ☒ a true copy thereof, enclosed in a sealed envelope with postage pre-paid, addressed as follows:

**** See Attached Service List ****

☒ BY ELECTRONIC SERVICE. I served the foregoing document(s) on interested parties by using the electronic filing service TrueFiling to serve and file documents electronically as mandated by the California Court of Appeal, Second District. The documents were electronically transmitted to the e-mail addresses of the persons set forth the above.

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

Executed on **January 8, 2019**, in Rolling Hills Estates, California.

Jason R. Ebbens

SERVICE LIST

Page 1 of 1

Chapman v. Dunbar
Los Angeles County Superior Court Case No.: 17TRRO00048
Court of Appeal Case No.: B284239

VIA TRUEFILING

LAW OFFICES OF OLSEN & OLSEN 2367 Torrance Blvd. Torrance, CA 90501 Tel: (310) 325-1515 Fax: (310) 328-1114 **Casey A. Olsen, Esq.** Email: caseyaolsen@gmail.com	*Attorneys for Respondent:* **Daniel Dunbar**