THE STATE BAR OF CALIFORNIA
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FILED
JUN 26 2015
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

IN THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA

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|---|---|
| IN THE MATTER OF THE CONVICTION OF:<br><br>**NATHAN WHITNEY DRAGE, No. 130448**<br><br>A Member of the State Bar | Case No. 09-C-13858<br><br>Transmittal of Records of Conviction of Attorney (Bus. & Prof. Code §§ 6101-6102; Cal. Rules of Court, rule 9.5 et seq.)<br><br>[ X ] Felony;<br>[ X ] Crime(s) involved moral turpitude; Fraud<br>[ ] Probable cause to believe the crime(s) involved moral turpitude;<br>[ ] Crime(s) which may or may not involve moral turpitude or other misconduct warranting discipline;<br>[ ] Transmittal of Notice of Finality of Conviction. |

To the CLERK OF THE STATE BAR COURT:

1. Transmittal of records.

[ X ] A. Pursuant to the provisions of Business and Professions Code, section 6101-6102 and California Rules of Court, rule 9.5 et seq., the Office of the Chief Trial Counsel transmits a certified copy of the record of convictions of the following member of the State Bar and for such consideration and action as the Court deems appropriate:

[ ] B. Notice of Appeal

[ ] C. Evidence of Finality of Conviction (Notice of Lack of Appeal)

[ ] D. Other

Name of Member: Nathan Whitney Drage

Date member admitted to practice law in California: December 11, 1987

Member's Address of Record: 6975 S. Union Park Ctr. #600
Midvale, UT 84047

2. Date and court of conviction; offense(s).

The record of conviction reflects that the above-named member of the State Bar was convicted as follows:

Date of entry of conviction: March 17, 2015

Convicting court: United States District Court, District of Utah

Case number(s): 09CR00460

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Crime(s) of which convicted and classification(s): Violation of Title 18 United States Code § 371 (Conspiracy to Impair and Impede the IRS), one count, a felony which involves moral turpitude and/or fraud. Title 26 United States Code § 7203 (Willful Failure to File a Return), three counts, misdemeanors which may or may not involve moral turpitude as in *In re Rohan* (1978) 21 Cal. 3d 195.

[ X ] 3. Compliance with Rule 9.20. (Applicable only if checked.)

We bring to the Court's attention that, should the Court enter an order of interim suspension herein, the Court may wish to require the above-named member to comply with the provisions of rule 9.20, California Rules of Court, paragraph (a), within 30 days of the effective date of any such order; and to file the affidavit with the Clerk of the State Bar Court provided for in paragraph (c) of rule 9.20 within 40 days of the effective date of said order, showing the member's compliance with the provisions of rule 9.20.

[ X ] 4. Other information to assist the State Bar Court

**Sec. 371. Conspiracy to commit offense or to defraud United States**

> If two or more persons conspire either to commit any offense against the United States, **or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy**, each shall be fined under this title or imprisoned not more than five years, or both.
>
> If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. [bold emphasis added]

Respondent's conviction was for a violation of the "defraud" prong of that statute.

> "... [Respondent] ... did knowingly and willfully combine, conspire, confederate and agree to **defraud** the Internal Revenue Service ..." (Superseding Indictment, Count 1, pg.2, para. 6) [bold emphasis added]

Respondent was found guilty by jury of Count 1 of the Superseding Indictment. (Verdict)

> The intent required for a conspiracy to defraud the government is that the defendant possessed the intent (a) to defraud, (b) to make false statements or representations to the government or its agencies in order to obtain property of the government, or that the defendant performed acts or made statements that he/she knew to be false, fraudulent or deceitful to a government agency, which disrupted the functions of the agency or of the government. It is sufficient for the government to prove that the defendant knew the statements were false or fraudulent when made. The government is not required to prove the statements ultimately resulted in any actual loss to the government of any property or funds, only that the defendant's activities impeded or interfered with legitimate governmental functions. See *United States v. Puerto*, 730 F.2d 627 (11th Cir.), cert. denied, 469 U.S. 847 (1984); *United States v. Tuohey*, 867 F.2d 534 (9th Cir. 1989); *United States v. Sprecher*, 783 F. Supp. 133, 156 (S.D.N.Y. 1992)("it is sufficient that the defendant engaged in acts that interfered with or obstructed a lawful governmental function by deceit, craft, trickery or by means that were dishonest"), modified on other grounds, 988 F.2d 318 (2d Cir. 1993).

(U.S. Attorney's Manual, Offices of the United States Attorneys, United States Department of Justice, **923. 18 U.S.C. § 371—Conspiracy to Defraud the United States)**

Section 6102(c) provides in part that "...the Supreme Court shall summarily disbar the attorney if the offense is a felony under the laws of California, the United States, or any state or territory thereof, and **an element of the offense is the specific intent to deceive, defraud,** steal, or make or suborn a false statement, or involved moral turpitude." [bold emphasis added]

Thus, this conviction involves the intent to deceive or defraud and meets the requirements for summary disbarment.

Sentencing in this matter is set for September 14, 2015.

DOCUMENTS TRANSMITTED:

Superseding Indictment
Verdict
Docket

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: 6/25/2015

BY: _____
Charles A. Murray
Senior Trial Counsel

A copy of this transmittal and its Attachments have been sent to:

Nathan Whitney Drage
6975 S. Union Park Ctr. #600
Midvale, UT 84047

## DECLARATION OF SERVICE BY CERTIFIED MAIL

**CASE NUMBER: 09-C-13858**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

**TRANSMITTAL OF RECORDS OF CONVICTION OF ATTORNEY; Superseding Indictment; Verdict; Docket**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9914 7266 9904 2010 0715 70, at Los Angeles, on the date shown below, addressed to:

**Nathan Whitney Drage**
**6975 S. Union Park Ctr. #600**
**Midvale, UT 84047**

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

**N/A**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: June 26, 2015

Signed: _____
Lupe Pacheco
Declarant