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**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

**IN BANK**

In the Matter of	)	Case No. 09-C-16772
	)	
KELLY EINSTEIN DARWIN GILES,	)	RECOMMENDATION OF
	)	SUMMARY DISBARMENT
A Member of the State Bar, No. 144113.	)	
_____	)	

On October 23, 2012, the State Bar filed a request for recommendation of summary disbarment based on Kelly Einstein Darwin Giles's felony convictions. Giles did not file a response. Based on the criminal record in this case, we grant the request and recommend Giles be summarily disbarred.

On September 13, 2012, Giles pled guilty to conspiracy to commit immigration fraud (18 U.S.C. § 1546(a)) in violation of title 18 United States Code section 371, and witness tampering in violation of title 18 United States Code section 1512(b)(3). Effective December 10, 2012, we placed Giles on interim suspension. On September 11, 2013, the State Bar transmitted evidence that Giles' conviction is final.

After the judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony ... 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." (Bus. & Prof. Code, § 6102, subd. (c).) The records of conviction establish that both counts meet



the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c).

Preliminarily, both counts are felonies because they may result in imprisonment in excess of one year. (See 18 U.S.C. § 3559(a) [classifying offenses based on sentencing ranges]; 18 U.S.C. §§ 371, 1546(a), & 1512(b) [reciting sentencing ranges].) Therefore, the first prong of the summary disbarment statute is satisfied.

As for the second prong, both counts also inherently involve moral turpitude. Giles pled guilty to conspiring to knowingly present “as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder.” (18 U.S.C. § 1546(a).)<sup>1</sup> Giles conviction thus required that Giles: (1) conspired in; (2) the making of a false statement; (3) knew the statement was false; (4) the statement was material to the government’s immigration activities or decisions; (5) the statement was under oath; and (6) the statement was made in an immigration application. (See *United States v. Kong Yin Chu* (9th Cir. 1993) 5. F.3d 1244, 1247 [reciting elements of 18 U.S.C. § 1546(a)]; *United States v. Licciardi* (9th Cir. 1994) 30 F.3d 1127, 1131 [conspiracy to violate a federal statute requires the degree of criminal intent necessary for the underlying substantive offense].) Offenses based on knowingly providing documents containing facts that are materially false necessarily involve moral turpitude. (*In re Rivas* (1989) 49 Cal.3d 794, 797, 800 [knowingly providing false residency information in declaration of candidacy papers in violation of Elec. Code, § 29303 involves moral turpitude per se].) Accordingly, because Giles’s

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<sup>1</sup> Although section 1546(a) is divisible, our recommendation is limited to the offense Giles was convicted of violating and is not intended to be determinative of whether conspiring to commit or committing any other violation of section 1546(a) necessarily constitutes moral turpitude.

conviction for conspiring to commit immigration fraud necessarily involved knowing that materially false statements were being submitted, the conviction involved moral turpitude.

As relevant to Giles other offense, title 18 United State Code section 1512(b) states: “Whoever knowingly ... corruptly persuades another person, or attempts to do so ... with intent to ... (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense ... .” The elements of the witness tampering count required that he (1) knowingly; (2) attempted to corruptly persuade a person; (3) with the motivation of hindering, delaying, or preventing the communication between that person and law enforcement authorities concerning the commission or possible commission of an offense; (4) the offense was actually a federal offense; and (5) he believed that the person he attempted to corruptly persuade might communicate with federal authorities. (*United States v. Guadalupe* (3d Cir. 2005) 402 F.3d 409, 412 [reciting elements but omitting knowledge requirement]; *Arthur Andersen LLP v. United States* (2005) 544 U.S. 696, 706 [“Only persons conscious of wrongdoing can be said to ‘knowingly ... corruptly persuade.’”]) A conviction thus “requires a specific intent to interfere with the communication of information” to federal authorities about an actual or possible federal offense. (*United States v. Genao* (2d Cir. 2003) 343 F.3d 578, 586.) As such, the offense reflects a specific intent to impede justice, and, like other crimes involving the “specific intent to impede justice,” it is necessarily a crime of moral turpitude. (*In re Young* (1989) 49 Cal.3d 257, 264 [harboring or aiding known felon avoid arrest or prosecution]; see also *In re Blair* (D.C. App. 2012) 40 A.3d 883, 886 [“witness tampering under 18 U.S.C. § 1512(b)(3) ... constitutes moral turpitude per se and mandates disbarment”].)

Accordingly, both counts that Giles was convicted of qualify for summary disbarment because they were felonies that inherently involve moral turpitude. (See Bus. & Prof. Code, §

6102, subd. (c).) When an attorney's convictions meet the requirements of Business and Professions Code section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Kelly Einstein Darwin Giles, State Bar number 144113, be disbarred from the practice of law in this state. We also recommend that he be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order. Finally, we recommend that the costs be awarded to the State Bar in accordance with section 6086.10 of the Business and Professions Code and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**REMKE**

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Presiding Judge

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); 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 Los Angeles, on November 1, 2013, I deposited a true copy of the following document(s):

**RECOMMENDATION OF SUMMARY DISBARMENT  
FILED NOVEMBER 1, 2013**

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

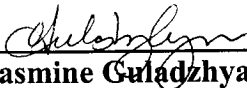
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KELLY E. D. GILES  
LAW OFFICES OF KELLY GILES  
10736 JEFFERSON BLVD #509  
CULVER CITY, CA 90230**

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

**CHARLES A. MURRAY, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 1, 2013.

  
\_\_\_\_\_  
**Jasmine Guladzhyan**  
Case Administrator  
State Bar Court