

State Bar Court of California Hearing Department Los Angeles DISBARMENT				
Counsel For The State Bar Scott D. Karpf Deputy Trial Counsel 845 S. Figueroa Ave. Los Angeles, CA 90017 (213) 765-1161	Case Number(s): 11-C-11554-DFM	For Court use only PUBLIC MATTER		
Bar <b># 274682</b> In Pro Per Respondent Gary Lee Hicks 500 Woodingham Drive, Apt. 22 East Lansing, MI 48823-1982 (517) 525-1732		FILED APR 20 2018 STATE BAR COURT CLERK'S OFFICE LOS ANGELES		
Bar # 239743 In the Matter of: GARY LEE HICKS	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT			
Bar <b># 239743</b> A Member of the State Bar of California (Respondent)	DISBARMENT			

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

#### A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 1, 2005.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (11) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Costs to be awarded to the State Bar.
    - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".

Costs are entirely waived.

(9) ORDER OF INACTIVE ENROLLMENT: The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

# B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** 
  - (a) State Bar Court case # of prior case
  - (b) Date prior discipline effective

  - (d) Degree of prior discipline
  - (e) If respondent has two or more incidents of prior discipline, use space provided below:
- (2) Intentional/Bad Faith/Dishonesty: Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) Misrepresentation: Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) Concealment: Respondent's misconduct was surrounded by, or followed by concealment.
- (5) Overreaching: Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.

- (7) Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) Harm: Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) Lack of Candor/Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) I Multiple Acts: Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) Vulnerable Victim: The victim(s) of Respondent's misconduct was/were highly vulnerable. See Attachment to Stipulation, at page 8.
- (15) Do aggravating circumstances are involved.

Additional aggravating circumstances:

## C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) I No Harm: Respondent did not harm the client, the public, or the administration of justice.
- (3) Candor/Cooperation: Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) Remorse: Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) Restitution: Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) Good Faith: Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the

product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (9) Severe Financial Stress: At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Discipline, see page 8.

Pretrial Stipulation, see page 8.

#### D. Discipline: Disbarment.

#### E. Additional Requirements:

- (1) Rule 9.20, California Rules of Court: Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (2) Restitution: Respondent must make restitution to in the amount of \$ plus 10 percent interest per year from . If the Client Security Fund has reimbursed for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than days from the effective date of the Supreme Court order in this case.
- (3) **Other**:

#### ATTACHMENT TO

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### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: GARY LEE HICKS

CASE NUMBER: 11-C-11554-DFM

#### FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved moral turpitude.

Case No. 11-C-11554 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On February 22, 2011, the Ingham County Prosecutor's Office filed a felony information against respondent in case no. 11-000283-FH, alleging a violation of Michigan Compiled Laws § 750.520d(1)(c) [criminal sexual conduct –  $3^{rd}$  degree (incapacitated victim)].

3. On March 25, 2011, a preliminary hearing was held on respondent's case, and respondent was held to answer on the charge.

4. On May 25, 2011, after negotiating a plea deal with respondent, the Ingham County Prosecutor's Office filed an amended information adding a Count 2, alleging violations of Michigan Compiled Laws §§ 750.520e(1) and 750.92 ) [attempted criminal sexual conduct  $-4^{th}$  degree (force or coercion)], a misdemeanor. The added misdemeanor charge of attempted criminal sexual conduct  $-4^{th}$ degree has the same underlying elements as the original felony charge of criminal sexual conduct  $-3^{rd}$ degree. On the same date, respondent entered a plea of no contest to this added Count 2, and the felony count was dismissed.

5. On June 22, 2011, the Court sentenced respondent to 12 months jail with credit for one day served, and ordered a two-year supervised probation. The Court placed the unserved jail time in abeyance pending successful completion of probation. Amongst the terms of probation included that respondent register as a sex offender in Michigan, complete sex offender or other treatment, stay away from Capital Area Transportation Authority ("CATA") property, and pay fines and fees.

6. On August 21, 2013, the prosecutor and respondent's defense attorney stipulated to an entry of amended judgment to, and the sentencing documents were corrected nunc pro tunc to reflect, violations of Michigan Compiled Laws §§ 750.520e(1)(c) and 750.92 [attempted criminal sexual conduct  $-4^{\text{th}}$  degree (incapacitated victim)].

7. On January 17, 2018, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be

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imposed for the offense for which respondent was convicted which the Review Department determined involved moral turpitude as a matter of law. In addition, the Review Department placed respondent on interim suspension, effective February 12, 2018, pending final disposition of any proceeding.

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#### FACTS:

8. In or around October 2010, Samuel T. met respondent at the CATA bus station on Kalamazoo Street in East Lansing, Michigan. Respondent introduced himself and stated that he was looking for workers to help him clean out some apartments that he owned in Flint, Michigan. Respondent gave Samuel T. his telephone number. Samuel T. was not looking for work so he gave respondent's number to Mr. B., who was 18 years old and unemployed.

9. On December 8, 2010, Mr. B. called respondent regarding employment and agreed to meet respondent at a coffeehouse in East Lansing. At the coffeehouse, respondent and Mr. B. discussed the potential job assignment. Upon learning that Mr. B. was unable to return home, was unemployed, and had prior troubles with law enforcement, respondent invited Mr. B. to his apartment to hang out. During the time in his apartment, respondent made pizza for Mr. B. Respondent and Mr. B. spent between one and two hours in respondent's apartment. During some part of the one to two hours Mr. B. stayed at respondent's apartment, Mr. B. fell asleep on respondent's sofa. Later, respondent gave Mr. B. a ride to where Mr. B. was staying with a friend.

10. On January 5, 2011, around 10:00 p.m., respondent located Mr. B. at the CATA bus station. He approached Mr. B. and offered Mr. B. a ride, which Mr. B. accepted. On the way to respondent's car, respondent asked Mr. B. if he would like to hang out at his apartment for a few hours, and stated he would give Mr. B. a ride to where he was staying afterwards. Mr. B. accepted respondent's offer.

11. Upon arriving at his apartment, respondent offered Mr. B. a beer, which Mr. B. declined. Respondent then made Mr. B. a sandwich, which Mr. B. ate while they watched television seated on respondent's sofa.

12. Respondent offered Mr. B. an inhalant containing alkyl nitrites called Rush. Respondent told Mr. B. that Rush would get him high for a few minutes. Mr. B. inhaled some Rush, which made him feel slightly lightheaded for a few minutes. After the Rush wore off, Mr. B. fell asleep on respondent's sofa.

13. While Mr. B. was asleep, respondent unbuckled Mr. B's belt, unzipped his zipper, folded Mr. B's pants back, exposed Mr. B.'s penis through the opening in his underwear, and performed fellatio on Mr. B. While in the middle of the act, Mr. B. awoke and demanded that respondent drive him to his friend's home.

14. On January 7, 2011, Mr. B. filed a police report with Officer Bove of the East Lansing Police Department against respondent for sexually assaulting him while he was asleep.

15. On January 27, 2011, Detectives Phelps and Fadly of the East Lansing Police Department interviewed respondent regarding Mr. B.'s allegations. During the interview, respondent admitted that he performed fellatio on Mr. B. without his express consent.

#### CONCLUSIONS OF LAW:

16. The facts and circumstances surrounding the above-described violation involved moral turpitude.

17. As determined by the Review Department in its order referring this matter for hearing, the above-described violation involved moral turpitude.

#### AGGRAVATING CIRCUMSTANCES.

Highly Vulnerable Victim (Std. 1.5(n)): At the time respondent committed the misconduct against Mr. B., respondent was aware that Mr. B. was homeless, jobless, and financially destitute. To make Mr. B. feel safe, respondent offered him a warm place to spend time, food, and a few comfort items. In addition, Mr. B. was asleep and unable to defend himself from respondent when the misconduct occurred.

#### **MITIGATING CIRCUMSTANCES.**

No Prior Discipline: Respondent had six years of practice (he was admitted December 1, 2005) without discipline when he committed the misconduct in January 2011. However, respondent has not practiced law in California since his admission date. Nonetheless, respondent's six years of discipline-free practice is a slight to nominal mitigating factor. (See *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67 [5 years entitled to no weight but described as nominal weight]; *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 [7 years worth only slight mitigation].) Additionally, respondent has been a member of the State Bar of Michigan since 1980, and had 31 years of discipline-free practice in Michigan prior to the date of the misconduct. Respondent was employed as an assistant attorney general from 1984 through 2001 before opening a part-time solo practice. (See *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88 [respondent's credit for 27 years of practice in Nebraska is severely diminished because he offered no evidence other than the number of years as to the scope of continuing nature of his practice in Nebraska].)

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (Silva-Vidor v. State Bar (1989) 49 Cal.3d\*1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.15(c) states, "Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude." This Standard applies to respondent's misdemeanor conviction as the Review Department has already determined that the conviction does involve moral turpitude.

In this matter, respondent was 57 years old at the time of the misconduct, and was a licensed attorney in both Michigan and California. On December 8, 2010, respondent hosted Mr. B., an 18-year old, homeless, jobless, and destitute individual, in his apartment for a few hours of warmth, sustenance, and platonic human connection. He made Mr. B. feel safe in his home. Yet, at the very next opportunity of having Mr. B. back in his apartment, respondent exploited Mr. B.'s false feeling of security by sexually assaulting Mr. B. for respondent's own gratification while Mr. B. was asleep. Even though respondent was convicted of attempted criminal sexual conduct of an incapacitated person - 4th degree, a misdemeanor, he was originally charged with the felony counterpart of this crime, criminal sexual conduct of an incapacitated person - 3<sup>rd</sup> degree, which has the same elements as the original charge. The offense respondent attempted to commit is a serious, specific intent, sexual offense that as a felony is punishable by up to 15 years in state prison. The fact that respondent pleaded to a lesser misdemeanor neither undercuts the magnitude of the misconduct, nor changes the licentiousness of respondent's actions. Such misconduct of sexually assaulting an individual, while that individual is incapacitated and unable to consent, is deprave misconduct that is extremely repugnant to accepted moral standards and flagrantly shows a disrespect for the law and societal norms. Accordingly, the most severe sanction of disbarment is necessary to protect the public, the courts, and the legal profession.

Case law supports this level of discipline. In *In re Lesansky* (2001) 25 Cal.4<sup>th</sup> 11, an attorney met a woman in a chat room who described herself as a 14-year old who looks 17 years old. After having a few conversations, some with overtly sexual overtones, the attorney met the woman for lunch on two occasions. The woman turned out to be a 20-year old undercover journalist researching a story on sex over the internet. Though no sexual conduct ever took place during their meetings, the attorney was arrested after the second lunch, and eventually was convicted of attempting to commit a lewd or lascivious act on a child, a felony. The Supreme Court reasoned that the attorney's conviction for an attempt crime demonstrated his readiness to engage in a serious sexual offense likely to result in harm to a child, and that such unlawful sexual behavior committed against a child was "extremely repugnant to accepted moral standards." Based on the seriousness of the misconduct and the Court's determination

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that the attorney's crime displayed the attorney's "unsuitability to be entrusted with the privileges and duties of the legal profession[,]" the Court summarily disbarred the attorney.

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Respondent's misconduct is even more egregious than Lesansky's. Though the victim in the current matter was not a child, and thereby should have the capacity to formally consent to sexual contact, no such consent was able to be given by the victim due to his incapacitation at the time the sexual act was committed. In addition, by knowingly soliciting a homeless, jobless, and destitute individual, and providing that individual with some of the basic necessities he needed for a couple short respites, respondent essentially groomed the victim into adopting a false sense of security, which respondent then took advantage of to satisfy his own sexual urges. Whether attempting to act with the specific intent to sexually assault an incapacitated person, or actually completing the act as did occur in this case, Respondent's wanton behavior shows an inherent disrespect for societal norms and the laws of the country. Accordingly, respondent should be disbarred.

#### COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of April 9, 2018, the discipline costs in this matter are \$2,629. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

In the Matter of:	of loss with the		
GARY LEE HICKS	Case number(s):		
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#### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

April 13,2018 Date	Bary Lee Hicks Respondence Signature	Gary Lee Hicks Print Name
Date	Respondent's Counsel Signature	Print Name
<u> </u>	Deputy Trial Counsel's Signature	Scott D. Karpf
	C Q	Fint Name

In the Matter of:	Case Number(s):
GARY LEE HICKS	11-C-11554-DFM

#### **DISBARMENT ORDER**

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)

Respondent Gary Lee Hicks is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

pril 20, 2018

lenzuela CYNTHIA VALENZUELA

Judge of the State Bar Court

#### **CERTIFICATE OF SERVICE**

#### [Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. 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 April 20, 2018, I deposited a true copy of the following document(s):

#### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

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

GARY L. HICKS 500 WOODINGHAM DR APT 22 EAST LANSING, MI 48823 - 1982

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

SCOTT D. KARPF, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 20, 2018.

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Court Specialist State Bar Court