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In Pro Per

STATE BAR COURT OF CALIFORNIA

In re the Matter of LETITIA E. PEPPER, State Bar License No. 105277, Respondent. STATE BAR OF CALIFORNIA, Petitioner. JUDGE MICHAEL JOSEPH RUSHTON, Complaining Witness.	CASE NO.: 11-O-19391 AMENDED VERIFIED ANSWER TO NOTICE OF DISCIPLINARY CHARGES [Pursuant to Rules of Procedure of the State Bar, Rule 5.55(E)(1)] [new material added at ¶¶ 14c through 14e at p. 18 and ¶¶ 11, 12 at p. 28] DEPT.: Hearing Department JUDGE: Hon. Richard A. Platel

JURISDICTION

1. Respondent admits the jurisdictional allegations.

COUNT ONE

Business & Professions Code Section 6103

Case No. Failure to Obey a Court Order Requiring Respondent to Do, or Forbear, an Act Connected with or in the Course of Her Profession, Which She Ought in Good Faith to Do or Forbear

2. Respondent DENIES that she willfully violated Business and Professions Code section 6103, which provides that "A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, *which he ought in good faith to do or forbear*, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

3. Respondent ADMITS that on or about September 28, 2010, the Riverside Department of Public Social Services (DPSS) filed a juvenile dependency proceeding, *In re Hayden H.*, Riverside Superior Court Case No. SWJ 001172, in which both Maile V. C., the minor's mother ("Mother"), and Michael H., the minor's father ("Father"), the minor's parents, were named as respondents, and that Mother later became Respondent's client, for purposes of advice about and assistance with her civil and constitutional rights, even though she was also represented by appointed and retained counsel for purposes of .the dependency case.

4. Respondent ADMITS that on or about September 29, 2010, Elizabeth Wingate, a member of the Juvenile Defense panel contracted with by the County of Riverside to provide representation to indigent parents in such proceedings, was appointed by Judge Michael Joseph Rushton, the complaining witness in this disciplinary proceeding, to represent Mother in the dependency proceeding.

5. Respondent ADMITS that at some time soon after September 29, 2010, Client fired Ms. Wingate and borrowed money to retain the services of Margi Brakhage, because Windgate had refused to listen to her and to represent her on *any* issues of concern to Client, which included both (1) that the minor was removed from the care of both his parents and placed into foster care when the only allegations against Mother were that she was the victim of domestic violence perpetrated upon Mother by Father and when Father had offered to move out so that the minor could remain in the home with Mother, but the CPS worker had unreasonably refused to accept Father's offer to move out so the minor could remain with his mother, the arrangement preferred by DPSS, as a matter of policy, to placing children in foster care, and (2) Judge Rushton's immediate reference to Mother as a "drug addict" at the first hearing because of her legal use of cannabis ("medical marijuana") when, in fact, the allegations filed by DPSS *did not include any allegations that drug abuse was a basis for the dependency proceeding* and when, in fact, DPSS had noted in its report that Mother's use of medical marijuana was pursuant to a verifiable doctor's recommendation, meaning that it was thus legal under state law, and also permissible under written DPSS policy, a true and correct copy of which is attached to the concurrently-filed volume of Exhibits to Answer as **Exhibit 1**.

6. Respondent ADMITS that in April 2011, Mother contacted Respondent, as the Director of Legal and Legislative Analysis for Crusaders for Patients Rights, a nonprofit organization that helps people legally using cannabis as an alternative to prescription medications, because Mother was frustrated by Ms. Brakhage's refusal to address Judge Rushton's continued treatment of Mother's drug tests that were positive for cannabis as "dirty," despite the fact that her use of cannabis was not only legal, but was not the reason the dependency proceeding had been filed, and because Ms. Brakhage, tired of Mother's demand that she do something, had told Mother to find a "weed attorney."

7. Respondent ADMITS that on or about June 2, 2011, Ms. Brakhage filed a motion to be relieved as Mother's retained counsel. Respondent DENIES that such motion was granted on July 11, 2011, and contends that such motion was *granted* on June 1, 2011, *one day before the motion was filed.*

7a. In fact, such motion was *granted on June 1, 2011,* one day before the motion to be relieved as counsel was filed. A true and correct copy of the file-stamped order granting the motion to be relieved as counsel is attached to the concurrently-filed volume of Exhibits to Answer as **Exhibit 2.**

7b. Respondent had initially volunteered to work *with* Ms. Brakhage by educating her about the law related to Mother's *legal* use of cannabis. However, at the first meeting between Mother, Ms. Brakhage and Respondent, Respondent discovered that Ms. Brakhage had never given Mother a copy of her DPSS case plan. When Respondent looked at the actual written case plan, she discovered that it did *not* require Mother to abstain from medical marijuana, and that, by failing to note this and to object to Judge Rushton's treatment of Mother's use of cannabis as a violation of her case plan, Ms. Brakhage had unnecessarily allowed the minor to remain in five different foster care placements for nine months and had forced Mother to be improperly treated as being in violation of her case plan and unable to see her child for more than a two-hour visit once each week.

7c. Ms. Brakhage made her motion to be relieved as counsel just days after this meeting, and set such motion to be heard in 14 days – on the same day as the contested six-month review

hearing in the dependency proceeding. Mother told Respondent that she had already paid Ms. Brakhage to appear at such hearing, Respondent had not agreed to be Mother's dependency attorney,[1] and therefore Mother would have no attorney preparing to appear for her at such hearing.

7d. Therefore, Respondent entered into the first of several Limited Scope Representation ("LSR") agreements (see Judicial Council Form MC-950) with Mother, in this instance, to help her oppose Ms. Brakhage's motion to be relieved as counsel. A true and correct copy of such Notice of LSR Agreement is attached to this Answer as **Exhibit 3**. A true and correct copy of the Motion to Vacate Void order of June 1, 2012 is attached as **Exhibit 4**.

7e. When Respondent discovered that the Motion to Be Relived as Counsel had been granted a day *before* the motion even was *filed*, she asked the Clerk's Office, at the "Agency Window" where dependency pleadings must be filed, how the motion could have been granted the day *before* the motion was filed. Respondent was told that the Complaining Witness, Judge Michael Joseph Rushton, does not like to have motions set in his courtroom. Therefore, Judge Rushton has the Clerk's Office give him motions *before* they are *filed*, and makes a summary disposition of them – summary meaning that he simply does not hold a hearing (or wait for opposition, it seems) on noticed motions before signing the accompanying order. Thus, he had signed the order granting the Motion to Be Relieved as Counsel *before* the motion was even file-stamped, and his order granting such motion was then file-stamped on June 1, 2011, the day he signed it.

8. Respondent ADMITS that on or about June 28, 2011, pursuant to a *second* Notice of LSR Agreement with Mother, she filed what was the *second* motion to disqualify (hereinafter such "motions" which are actually "disqualification statements," will be called "DS") Judge Rushton based on his reported-by-several-people,-including-Elizabeth-Wingate, comments about his position that, as far as he is concerned, *all* marijuana, medical or not, is illegal, and that therefore he was prejudiced against Mother, who was legally using medical marijuana in compliance with written DPSS policy and state law.

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[1] Respondent had steadfastly refused to become Mother's appointed dependency attorney because she did not have the requisite recent dependency-related training required of appointed dependency counsel. (Cal. Rules of Court, Rule 5.660 (d).)

8a. Respondent DENIES that the motion filed on or about June 28, 2011 was the first or only motion to disqualify (or "disqualification statement") that she filed against the Complaining Witness on behalf of Mother/Client. On June 14, 2011, Respondent filed a *first* DS for cause, on the ground, unrelated to medical marijuana, that he had granted Ms. Brakhage's motion to be relieved as counsel without any concern at all for Mother: whether she might wish to be heard in opposition to her attorney's motion, her right to due process, that litigants rely on the Court to follow basic rules of civil procedure, so that, for one thing, they aren't simply wasting their time and energy opposing a motion in the foolish belief that the Court intends to comply with due process and actually consider an opposition. This first DS noted that Judge Rushton's apparent lack of concern for the Code of Civil Procedure's requirements might case a person aware of such facts might reasonably entertain a doubt that the judge would be able to be impartial in any other decisions he might make that affected Mother's rights, particularly because." [Respondent] stated in Mother's opposition [to the motion to be relieved as counsel] that it is unbelievable that any reasonable judicial officer would do such a thing, and since Judge Rushton has, apparently, done such a thing, [Respondent] has asserted that Judge Rushton is an unreasonable judicial officer . . . and that . . . a judge who intentionally refused to comply with the basic principles of due process represented by Code of Civil Procedure section 1005, apparently in order to save himself the time and effort involved in hearing the opposing party's argument and then making a considered decision that requires thinking about conflicting facts and arguments, cannot possibly provide any litigant, not just Mother and [Respondent], with a fair and impartial decision."

8b. Judge Rushton was not present on June 14, 2011, so the pro tem judge at such hearing continued such contested hearing until August 11, 2011.

8c. On June 23, 2011, Judge Rushton having filed an answer to the DS, improperly ruled on the merits of his own answer and the DS, as opposed to on the allowed, limited procedural grounds, (see Benchguide 2, Disqualification of Judge (CJER rev. 2010) § 2.5 at p. 2-6 [hereinafter "Benchguide"), and struck such motion, but did not advance the hearing date for the contested review hearing of August 11, 2011.

8d. On June 28, 2011, Respondent filed and served on Judge Rushton's clerk the *second* DS to disqualify Judge Rushton, based on, e.g., his evasive and disingenuous explanations of how he

had signed the order granting the motion to be relieved as counsel on June 1, 2011, before such motion was filed, and his improperly ruling on the merits of the first DS instead of letting the issue be decided by a neutral judge. A true and correct copy of such second DS, and of the order improperly striking it, is attached to the concurrently-filed Volume of Exhibits to Answer as **Exhibit 5.** The filing of such DS should have disqualified Judge Rushton from taking any further action in Mother's case except for only very limited actions, only one of which – to review such second DS for timeliness and legal sufficiency "on its face" and strike it for procedural deficiencies – would have allowed him to resume jurisdiction over Mother's case.

8e. By June 28, in addition to filing two DSs, Respondent had also filed **Exhibit 4,** a properly-noticed motion to vacate as void the June 1, 2011 order granting Ms. Brakhage's motion to be relieved as counsel as having been granted in violation of Mother's right to due process when Judge Rushton granted such motion on June 1, 2011, giving Mother no time to oppose such motion.

8f. On June 28, 2011, Judge Rushton *advanced* the contested hearing by a full month, from August 11, 2011 to July 11, 2011, to be heard the same day as the motion to set aside the June 1, 2011 order relieving Ms. Brakhage as Mother's retained dependency attorney, in apparent violation of the rule that once a DS statement has been filed and served, a judge is limited as to the actions he or she may take until the DS has been ruled upon by a neutral judge, which actions do not include the power to rule on the merits of a DS or to advance an already set hearing. (See Benchguide at §170.4(d), at p. 2-29, § 2.33.)

8g. Based on the advancement of the contested six-month review hearing to July 11, 2011, the same date as Mother's motion to vacate the order relieving her retained counsel was to be heard, in apparent violation of the rules related to DSs, Respondent, on Mother's behalf, filed a *third* DS to disqualify Judge Rushton on or about June 30, 2011.

8h. Judge Rushton, as he had done with the two earlier DSs, improperly ruled himself on the merits of the third DS, struck it, and, in the order striking the third DS, improperly *ordered* Respondent to file no further DSs for cause; a DS for caused may always be filed upon the development of new cause. A true and correct copy of the third DS and of the order striking the third DS is attached to the concurrently-filed Volume of Exhibits to Answer as **Exhibit 6.** When Respondent directly asked Judge Rushton if he had ordered her not to make any further

disqualification statements, he evasively replied, "you'll have to read the paperwork on that subject yourself." (**Exhibit 7**, p. 15.)

9. Respondent ADMITS that on or about July 22, 2011, Ms. Wingate was re-appointed by Judge Rushton to represent Mother, but admits that Respondent objected to such re-appointment because *Mother* objected to such re-appointment. Respondent also DENIES that July 22, 2011 was the second time that Ms. Wingate was appointed, since she had also been re-appointed on July 11, 2011.

9a. The events that took place on July 11, 2011 are reflected in the Reporter's Transcript of that date, a true and correct copy of which is attached to the Volume of Exhibits to the Answer as **Exhibit 7**. When Judge Rushton appointed Ms. Wingate for a second time, he made a point of saying that whoever he appointed would be lead counsel if there were any association of counsel, and that she need not have anything to do with Respondent or Respondent's input – a subtle way of saying appointed counsel was not required to address the medical marijuana issue. (**Exhibit 7** at pp. 5-6.) Respondent objected to Judge Rushton being the person to choose what attorney to appoint, because of Judge Ruston's apparent prejudice against Mother. (**Exhibit 7**, p. 6.) Sure enough, Judge Rushton appointed Ms. Wingate again, who, upon being reappointed on July 11, took Mother into a back room and told her that she would not defend Mother's legal use of cannabis. When Mother did not return to the courtroom, Respondent went to look for her, and discovered her crying. When Respondent asked Mother why she was crying, Mother told Respondent that Ms. Wingate had stated that she would not defend Mother's legal use of cannabis, even though Mother's case plan did not require her to not use cannabis; in other words, Ms. Wingate was going to represent Judge Rushton's personal prejudices that all marijuana is illegal, instead of representing her client's legal rights under state law and written DPSS policy.

9b. Respondent told Mother that she had a constitutional right to *effective* appointed counsel, and that counsel who would not defend her legal rights was not effective.

9c. Mother then said she did not want Ms. Wingate as her attorney.

9d. When Ms. Wingate was informed of this, she incorrectly told Judge Rushton that Mother did not want *appointed* counsel. Respondent pointed out that it was not that Mother did not want appointed counsel, but that she did not want appointed counsel who would not represent her legal right to use cannabis in place of prescription drugs. (**Exhibit 7** at p. 9.)

9e. Instead of conducting a *Marsden* hearing to confirm that Mother had been told by Ms. Wingate that she would not represent her on the medical marijuana issue, Judge Rushton simply told Mother that she had two weeks to retain private counsel. In other words, the choices Judge Rushton gave Mother were to accept ineffective assistance of appointed counsel, or to hire private counsel, or to appear in pro per.

9f. Mother was entitled to appointed counsel because she was indigent, Having been given only two weeks to try to find private dependency counsel, Mother even sought a section 352 continuance to try to retain, with Respondent's help, dependency counsel who would actually try the issue of her legal use of cannabis – an issue that should not even have been subject to being tried, since DPSS had not made such legal use an issue. A true and correct copy of such motion for am continuance is attached to the Volume of Exhibits to this answer as **Exhibit 7a.** Judge Rushton, however, refused to grant Mother a continuance, and instead gave her the improper choice of proceeding in pro per or of accepting Ms. Wingate as her appointed attorney; such choice was improper because a parent entitled to appointed counsel is entitled to *effective* appointed counsel, not to an attorney who is actually representing the judge's unlawful point of view on a legal issue. He then granted Ms. Wingate a continuance to prepare.

9g. Because Judge Rushton's personal prejudice about medical marijuana was affecting his ability to appoint effective counsel, Respondent even lodged an ex parte application with the Honorable Charles Koosed, Judge Presiding of the County of Riverside Juvenile Court, for appointment of a competent dependency attorney who would actually provide Mother with representation that included the issue of her legal use of medical marijuana. A true and correct copy of this application is attached to the concurrently-filed Volume of Exhibits to this answer as **Exhibit 8.** This application was returned to Respondent unfiled, on the grounds that such application for appointment of counsel had to be made to the judge handling such dependency proceeding.

9h. On July 22, 2011, Judge Rushton ordered Respondent out of the courtroom "off the record" before any hearing even began, using as an excuse that Ms. Wingate was upset that Respondent handed her a copy of one of the pleadings Respondent had attempted to file with the court. Then, after he re-appointed Ms. Wingate for a third time on July 22, 2011 (having denied Mother's request for a continuance), Judge Rushton ordered Respondent back into the courtroom and proceeded to criticize Respondent, on the record, for daring to advise Mother that she had a

legal right to effective appointed counsel, blamed Respondent for Mother's dissatisfaction with the attorneys who would not defend her legal rights, refused to allow Respondent to respond to his comments, which were demonstrably untrue, and then ordered her removed from the courtroom again so she could not respond. A true and correct copy of the minute order of July 22, 2012 is attached to the concurrently-filed Volume of Exhibits to this answer as **Exhibit 8.**

9i. Respondent was never given a copy of **Exhibit 8,** and was consistently told by the Superior Court and its General Counsel, Michael Capelli, that she could not have a copy of such order because she was not an attorney of record. She was only recently able to get a copy of the minute order after Mother insisted on being given a copy. As **Exhibit 8** shows, Judge Rushton intentionally attempted to make a record criticizing Respondent, to which she was not allowed to respond, because he intended to use such transcript to try to get Respondent into trouble with the State Bar.

9j. A further hearing was set for July 28, 2011. Because Respondent had been kicked out of the courtroom on July 22, 2011 by Judge Rushton (except for the part when he wanted to chastise her), and because she could not get a copy of the July 22, 2011 minute order, Respondent was not sure what was supposed to happen at the July 28, 2011 hearing and Mother, too, was not sure what was supposed to happen. Based on what Mother reported, it sounded like Judge Rushton wanted to have a trial on the issue of Mother's use of cannabis. On July 22, upon learning that her case plan did not *require her not to use cannabis,* he had *ordered* her to stop using it without any evidentiary basis for doing so, *with no objection by Ms. Wingate.*

9k. Between July 22 and July 27, 2011, Ms. Wingate never returned Mother's calls nor called her herself. Mother, as stated in her declaration under penalty of perjury, which Respondent attempted to file on her behalf on July 28, 2011, stated that therefore Ms. Wingate had no knowledge of how Mother was doing with her case plan in terms of drug testing, psychological evaluations, or services ordered or provided to her, nor did she have any idea about the reasons that Mother was using cannabis instead of prescription drugs. A true and correct copy of the declaration Respondent attempted to file on behalf of Mother, which the Clerk's Office refused to file at Judge Rushton's direction, and instead stamped "received," is attached to the concurrently-filed Volume of Exhibits to this answer as **Exhibit 9.**

9l. Also on July 28, 2011, Respondent attempted to file with the court a "Response to Judge Rushton's Comments of July 22, 2011," as well as the Declarations of Mother and of

Respondent related to Ms. Wingate's failure to consult at all with Mother, before the July 28, 2011 hearing, about her legal use of cannabis or her progress with her case plan. However, in keeping with Judge Rushton's practice of having the clerk's office bring him all pleadings before they could be filed by the Clerk's Office, the Clerk's Office refused to file such pleadings but merely marked them "received." A true and correct copy of such "Response to Judge Rushton's Comments of July 22, 2011" is attached to the concurrently-filed Volume of Exhibits to this answer as **Exhibit 10.** A true and correct copy of Respondent's Declaration, also stamped "received," is attached as **Exhibit 11.**

9m. On July 28, 2011, Judge Rushton once again refused to allow Respondent to accompany Mother at the hearing, despite the fact that Respondent and Mother had on file three LSR Agreements.

9n. At the July 28, 2011 hearing, Ms. Wingate and Judge Rushton discussed, in front of Mother, how Respondent was the problem. Ms. Wingate then wanted Mother to agree to get a restraining order against Respondent, but Mother refused. Then Ms. Wingate wanted Mother to state, on the record, that she wanted to stop using cannabis, but again Mother refused, saying that she did not want to stop using cannabis, and that that was why she'd gone looking for someone like Respondent to help her.

9o. At this point, Ms. Wingate made Mother leave the courtroom and wait in the hallway. Respondent was still in the hallway, so Mother told her of these events. Ms. Wingate then came out and, seeing her talking to Respondent, made Mother sit alone in another room, away from Respondent, for 20 minutes while Ms. Wingate and Judge Rushton continued to talk.

9p. Ms. Wingate then came and told Mother that unless she agreed to revoke her representation agreements with Respondent, Judge Rushton would not give her another six months to reunify with her child –even though at the previous hearing he had said that DPSS had not provided Mother with adequate services and that she was therefore entitled to another six months of reunification services. Mother had already been told that if she did not get another six months of reunification time, her child would be adopted in 120 days, so, faced with this threat, she was extorted by her own appointed attorney into orally revoking her written representation agreements with Respondent.

9q. Thereafter, when Respondent attempted to file a pleading in the dependency case, she was informed that she was no longer an attorney of record. i.e., that she *had* been an attorney of

record until the three LSR Agreements were revoked on July 28, 2011, and that her representation agreements had been revoked. When she attempted to obtain a copy of the minute order allegedly revoking such agreements, or a copy of the transcript doing so, she was denied access to such records because she was no longer an attorney of record.

9r. When *Mother* attempted to obtain a copy of such minute order, the Clerk's Office refused to give her a copy, claiming, some 10 days after July 28, 2011, that such order was not yet ready.

9s. Beginning in June, 2011, Respondent had complained to both the Commission on Judicial Performance and to the Hon. Sherrill Johnson, Presiding Judge of the Riverside Superior Court, about Judge Rushton's systemic misconduct in Mother's case, beginning with him having the Clerk's Office bring him motions before they were filed so he could deal with them immediately by, e.g., granting them without waiting for opposition, and then adding letters of complaint as Respondent learned of new misconduct in connection with Mother's case, such as Judge Rushton's refusal to follow state law related to medical marijuana's legality or DPSS's written policy such that Mother's legal use of cannabis was not considered by *DPSS, as opposed to by Judge Rushton,* to be an issue in the dependency case. A true and correct copy of Respondent's June 12, 2011 letter to Riverside County Superior Court Presiding Judge Sherrill Johnson, as printed from Respondent's electronic file, is attached to the Volume of Exhibits to Answer as **Exhibit 12.**

9t. Respondent sent numerous letters to the Commission on Judicial Performance about Judge Rushton's lack of impartiality and refusal to follow the law. Copies of such letters, sans the exhibits that accompanied them to the Commission on Judicial Performance are attached to the Volume of Exhibits to the Answer

9ti. A true and correct copy of Respondent's June 11, 2011 letter to the Commission on Judicial Performance, as printed from Respondent's electronic file, is attached to the Volume of Exhibits to Answer as **Exhibit 13.**

9tii. A true and correct copy of Respondent's June 23, 2011 letter to the Commission on Judicial Performance about Judge Rushton's refusal to follow state law about medical marijuana, as printed from Respondent's electronic file, is attached to the Volume of Exhibits to Answer as **Exhibit 14.**

9tiii. A true and correct copy of Respondent's September 9, 2011 letter to the Commission on Judicial Performance about Judge Rushton's selective choice of which of Respondent's

pleadings he would allow the Clerk's Office to file, as printed from Respondent's electronic file, is attached to this Answer as **Exhibit 15.**

9tiv. A true and correct copy of Respondent's September 10, 2011 letter to the Commission on Judicial Performance about Judge Rushton's improperly ruling on his own disqualification for cause and then ordering Respondent not to file any further challenges for cause, as printed from Respondent's electronic file, is attached to this Answer as **Exhibit 16.**

9tv. A true and correct copy of Respondent's letter of September 12, 2011 to the Commission on Judicial Performance about Judge Rushton's selective use of the power to direct the Clerk's Office not to file litigants' documents to shape the record in a case (and thereby affect the record on appeal) and to retaliate against litigants and attorneys, as printed from Respondent's electronic file, is attached to this Answer as **Exhibit 17.**

9tvi. A true and correct copy of Respondent's letter of September 14, 2011 to the Commission on Judicial Performance about how Judge Rushton tried to keep relevant evidence related to the August 29, 2011 *Marsden* hearing from being filed, as printed from Respondent's electronic file, is attached as **Exhibit 18**.

9tvii. A true and correct copy of Respondent's letter of September 22, 2011 to the Commission on Judicial Performance about how Judge Rushton prevented Respondent's appeal bond from being filed, so that he could force her to both pay the contempt fine *and* post a bond, as printed from Respondent's electronic file, is attached as **Exhibit 19**.

9u. Although the Commission on Judicial Performance investigated Judge Rushton for some nine months, in 2012 it closed such investigation and sent Respondent a brief letter stating that even if the Commission concluded that Judge Rushton had done something wrong, it had the discretion not to do anything about such misconduct, and that it was closing the case.

9v. Presiding Judge Johnson turned the matter over to the Superior Court's General Counsel, Michael Capelli, who also did nothing to prevent the Clerk's Office from refusing to file Respondent's pleadings without Judge Rushton's approval – even in the absence of any hearing on such practice or any formal order that such pleadings must be approved by a judge before they could be filed, and who resolved the problem of Respondent being unable to even get a copy of the minute order revoking her representation agreements with Mother by supposedly choosing, on his own, another judge, Judge Cope, to "decide," with no hearing or input from Respondent, that Respondent could not have a copy of such order. Respondent, however, never

received an order to this effect from Judge Cope, but only an e-mail from Mr. Capelli claiming that Judge Cope had decided this issue. Respondent, however, was told by the head of the Murrieta Clerk's Office that Mr. Capelli, not Judge Cope, was the person who told her not to give Respondent a copy of the minute order that supposedly revoked her written representation agreements with Mother.

9w. Attached as **Exhibit 20** to the Volume of Exhibits to Answer is a true and correct copy of the e-mail exchanges between Respondent and Mr. Capelli about Judge Rushton's conduct, about Respondent's inability to obtain a copy of any order revoking her written representation agreements with Mother, and Mr. Capelli's claim that Judge Cope had, with no input from Respondent, decided that Respondent could not have a copy of the order allegedly revoking her agreements with Mother.

9x. In other words, there was far more going on in this case in than a simple, single re-appointment of Ms. Wingate – all of which events informed Respondent's suspicion, on August 29, 2011, that Judge Rushton's immediate decision, on August 29, 2011, to take the August 29, 2011 Marsden motion off calendar on his own motion and to then use such action to insist that Respondent could not remain with her client for the rest of the hearing, was a maneuver on his part, such as the ones on July 11, July 22 and July 28, to deprive Mother of the advice and support of independent counsel, such as Respondent, so that he could once again force Mother into continuing to "accept" Ms. Wingate as her appointed dependency attorney so that the "show trial" on medical marijuana could be held on August 29, 2011.

10. Respondent ADMITS that Ms. Wingate filed a request to set a *Marsden* hearing on or about August 18, 2012 – but that she did so only *after* Mother faxed Ms. Wingate a letter asking her why she was not going to call Mother's cannabis doctor, Dr. David Bearman, who was also an experienced expert witness on the legal use of medical marijuana, to testify at her upcoming trial, on August 29, 2011, on her use of cannabis. Respondent also ADMITS that Judge Rushton, rather than setting such *Marsden* hearing to be heard *before* the day of trial, intentionally set such hearing for the morning of August 29, 2011, *the same day as the trial for which Ms. Wingate was not preparing to call Mother's cannabis doctor/expert witness.*

10a. Respondent further ADMITS that the fact that Judge Rushton *chose* to set the *Marsden* hearing for the same morning as the medical marijuana trial caused Respondent to suspect that, as at every prior *Marsden* hearing, Judge Rushton intended to rubber-stamp his earlier, repeated

conclusions that Ms. Wingate could adequately represent Mother at such trial, no matter what complaint Mother might have about Ms. Wingate's performance – with Judge Rushton's personal opinion that all marijuana, medical or not, being the measure of how adequate such representation was.

11. Respondent ADMITS that on August 23, 2011, she filed a *fourth* Notice of LSR Agreement between herself and Mother after, on July 28, 2011, Mother was forced to revoke her earlier agreements with Respondent or face the loss of any further reunification time with her child at the July 28, 2011 hearing while Mother was denied access by Judge Rushton to consult with Respondent, but DENIES that such agreement was for the limited purpose of the August 29, 2011 *Marsden* hearing, and asserts that such written agreement speaks for itself. A true and correct copy of such fourth LSR Agreement is attached to the concurrently-filed Volume of Exhibits to Answer as **Exhibit 21.**

11a. Respondent further asserts that she was only able to *file* such agreement, because of Judge Rushton's improper direction to the Clerk's Office to bring him all pleadings to approve before they could be filed, by bringing seven witnesses, all members of The Human Solution, a nonprofit group that provides court support for people legally using cannabis who are being persecuted for exercising their civil rights, with her to observe what happened when she and Mother attempted to file pleadings and to get a copy of the minute order of July 28, 2011, a copy of which the Clerk's Office had improperly refused to give to Mother, although the Rules of Court for juvenile proceedings provide that all parents have a right to a copy of all documents in their file, including such orders. (Rule 5.552, (b)(1)(D).)

12. Respondent ADMITS that she filed a verified, interlineated-by-Mother malpractice action against Ms. Wingate on August 25, 2011, *Vera Cruz* v. *Wingate*, Riverside Superior Court Case Jo. 1114072, and that she served a copy of such action on Ms. Wingate's office with a direction to alert her that she was being sued. A true and correct copy of such malpractice action is attached to the concurrently-filed Volume of Exhibits to Answer as **Exhibit 22.**

12a. Respondent further asserts that she filed such action so that there would be a written record of Ms. Wingate's failures to adequately represent Mother in the dependency proceeding, and that she also attempted to file a copy of such action as an attachment to a "Notice of Related

Action" in the dependency case on the morning of August 29, 2011, so that Judge Rushton would not be able to hold a *Marsden* hearing and conclude that he could continue to keep Ms. Wingate as Mother's attorney for the medical marijuana trial set to be held that same day as though there was no record before him of Ms. Wingate's failings.

13. Respondent ADMITS that Ms. Wingate "declared a conflict" because of the malpractice action, but notes that a conflict had already existed *before* such malpractice action was filed, as shown by Ms. Wingate's August 18, 2011 request to set a *Marsden* hearing. Respondent DENIES that Judge Rushton then relieved Ms. Wingate as counsel. The transcript of such proceeding is the best record of what occurred; a true and correct copy of such transcript is attached to this Answer as **Exhibit 23,** and it clearly shows that Judge Rushton did *not* relieve Ms. Wingate as Mother's appointed attorney before or after he ordered Respondent to leave the court room.

13a. The "evidence" on which the Notice of Charges relies to assert that Judge Rushton had actually *granted* the Marsden motion and relieved Ms. Wingate as counsel before he ordered Respondent to leave the court room is the *recitation* that Judge Rushton placed on the record at the beginning of the contempt proceeding, in order to hold Respondent in contempt. Such recitation of the events is contradicted by the actual transcript of the proceedings.

13b. Respondent DENIES that Judge Rushton took the *Marsden* hearing off calendar because he had actually relieved Ms. Wingate as counsel. **If Judge Rushton had actually relieved Ms. Wingate as counsel, it would have been because he'd granted the *Marsden* motion, in which case he would not have taken such motion "off-calendar." But he did not decide the Marsden motion at all; he took it "off calendar" at the very beginning of the hearing.**

13c. Respondent contends that, as the record shows, Judge Rushton merely *purported* to take the *Marsden* hearing off calendar as an excuse to once again demand that Respondent leave Mother alone in the courtroom with no representation independent of that representation preferred for her by Judge Rushton – Ms. Wingate and himself -- and that as soon as Respondent left the room, he actually began to engage in his preferred method of holding a *Marsden* hearing by, e.g., complaining about Mother's unhappiness with her dependency attorneys, both Ms. Wingate and even Ms. Brakhage, blaming *her* for such problem, and then also blaming *Respondent* for Mother's unhappiness with Ms. Wingate.

13d. Notably, although a *Marsden* hearing is supposed to allow the *litigant* to express his or her problems with their appointed attorney, Judge Rushton was *telling* Mother that Mother and Respondent were the problems, not Ms. Wingate's refusal to defend Mother's legal right to use cannabis. Then, in the midst of his berating Mother and blaming her and Respondent for poisoning the "relationship" between Mother and her appointed attorney, Mother suddenly exclaimed that Respondent was not the problem, but that Judge Rushton and Ms. Wingate were the problems. When Judge Rushton then told Mother she could not speak without his say so, she exclaimed in frustration that her child was being sexually molested in foster care, and why couldn't she complain about what was going on.

13e. Respondent further ADMITS that Judge Rushton had *purported* to ask Respondent to leave because he had purported to take the *Marsden* motion off calendar and because he *claimed* that Respondent had no other lawful standing or connection to the closed hearing. Respondent ADMITS that as Judge Rushton raised each alleged reason that she had no basis for remaining to represent and advise Mother, Respondent *responded* to each alleged reason, until Judge Rushton was forced to state that he simply *refused to "recognize" Respondent's the written representation agreement with Mother*, and that he wasn't "granting" Respondent "permission" to represent Mother's civil and constitutional rights. Respondent does not characterize this as improperly "arguing" with Judge Rushton, but as *responding* to each of his assertions of the basis for ordering her to leave the court room. When Respondent replied that she had not requested permission of him to represent Mother, Judge Rushton's final basis for ordering Respondent to leave was that it was *his* court room (where, implicitly, the normal rules of civil procedure and constitutional law were regularly ignored) and, if she did not leave, he would have his bailiff bodily remove her.

13f. Respondent further contends that Judge Rushton could not very well take the *Marsden* hearing off-calendar, unless he was also going to take the medical marijuana trial set for that same day, to be tried by Ms. Wingate, off calendar, yet he had not done so before insisting that Respondent leave the court room.

13g. Respondent ADMITS that Judge Rushton purported to deny that Mother had the right to be represented by Respondent, but DENIES that Judge Rushton had any legal right to deny Mother the right to be represented by counsel of her choice on the non-dependency-specific

issues of her right to effective appointed dependency counsel, her right to a fair *Marsden* hearing, and her right not to be forced to trial with an ineffective appointed attorney.

13h. Respondent ADMITS that Judge Rushton used the excuse that dependency proceedings are closed to the public as a reason to insist that Respondent abandon her client, but DENIES that a parent's counsel on issues of civil and constitutional rights implicated by dependency proceedings is merely a "member of the public" who can be excluded over the parent's objections, but is instead the parent's chosen counsel, who the parent has a constitutional right to have accompany her at such hearings.

13i. Respondent DENIES that she continued to argue with Judge Rushton after he was reduced to using the "it's my court room and I'll order the bailiff to remove you" rationale for ordering her to leave, and notes that the transcript speaks for itself. (See **Exhibit 23.**) Respondent notes that the *description* of such events contained in the Notice of Disciplinary Charges at page 3, lines 16 through 27, were not taken from the transcript of the actual events, but instead were taken from the comments that Judge Rushton read into the record at the contempt proceeding, which comments do not accurately reflect what actually occurred as shown by the transcript of the August 29, 2011 hearing. Judge Rushton had had at least an hour after the actual events to go back into his office and prepare a script to read into the record in order to hold Respondent in contempt.

14. Respondent ADMITS that she left the court room, and ADMITS that perhaps 7 to 8 minutes later, she returned to the court room, "without notice and without permission," when, upon reflection, she had realized that, in fact, the *Marsden* hearing could not have been taken off calendar unless the trial was also taken off calendar, and if the trial was not taken off calendar, then what was going on in the ongoing hearing in her absence?

14a. Respondent DENIES that she "rushed" into the court room, ADMITS that she walked up to the counsel table because she was Mother's retained attorney and had realized that if the Marsden hearing had been continued, then the trial, too, should have been continued, or, if the trial had not been continued, then the Marsden motion couldn't be taken "off calendar," and that she needed to do this to ensure that her client's legal right to effective, appointed counsel to defend her at the imminent medical marijuana trial would be protected.

14b. Respondent further contends that the transcript, **Exhibit 23,** speaks for itself, and shows that when Respondent returned to the court room, she was attempting to explain why she'd

returned, and that Judge Rushton, rather than allowing her to explain why she'd returned, immediately became incensed and ordered the bailiff to stop her and to clear the court room. Respondent DENIES that Judge Rushton "had" to halt the proceedings and clear the court room, and contends that he chose to do so rather than to acknowledge that, once he took the *Marsden* hearing off calendar, he should have simply ended the hearing altogether and taken the medical marijuana trial off calendar, too, until the issue of who would be serving as Mother's dependency attorney for purposes of such trial could be resolved at a *Marsden* hearing.

14c. On or about September 23, 2012, Respondent learned that the transcript of August 29, 2012 does not include everything that was said after Respondent left the court room and before she returned. On or about that date, Respondent learned from Lana Piercy, a witness in the courtroom that day, that after Respondent left the court room as ordered, Judge Rushton stated "off the record," and then said to Mother, "Letitia Pepper cannot be your attorney. She can be a witness, but she can't be your attorney."

14d. Whether or not Respondent could be Mother's attorney at a *Marsden* hearing was a legal issue, one that should have been discussed with Respondent, not with Respondent's client after Respondent had been ordered to leave the court room on the pretext that the *Marsden* hearing was taken "off-calendar": a discussion of Respondent's right to represent Mother at the *Marsden* hearing was rightly part of the *Marsden* hearing.

14e. Normally, transcripts include a notation, "off the record," and "back on the record," so Respondent had not had any idea that anything else was said at the August 29, 2011 hearing until Ms. Piercy told her this.

14f. This new information also explains why, when Respondent returned to the court room, and Judge Rushton became angry, the record shows that Ms. Piercy exclaimed that Respondent was going to be a witness, so it was okay that she had returned to the court room.

15. Respondent ADMITS that Judge Rushton held a contempt proceeding, ADMITS that her re-entrance into the court room was disruptive, but contends that the level of disruption was more a function of Judge Rushton's initial insistence that she leave before the hearing was ended and his reaction to her return than of Respondent's return itself, and DENIES that her behavior was disorderly, contemptuous or insolent.

15a. Respondent further DENIES that she failed to follow the judge's direction, which was to leave the court room, which is what she did. However, the judge did not order her not to return

if she realized that, if the *Marsden* motion was taken off calendar, then the trial, too, would need to be taken of calendar, and that her client's right to the appointment of effective appointed counsel still needed to be protected until it was clear that the trial itself was not going to go forward that same day.

15b. Respondent DENIES that she engaged in "a breach of the peace" and "boisterous conduct" by simply re-entering the court room to point out that, if the *Marsden* motion was off calendar, then the trial, too, should be taken off calendar.

15c. Respondent DENIES that she disobeyed a lawful court order. First, she obeyed the order to leave, and she left. Second, the order to leave her client was not lawful; it was "void *ab initio*" because it constituted a violation of Mother's constitutional, due process rights to be represented and advised by counsel of her choice, even when represented by appointed counsel. (*Chandler v. Fretag,* 348 U.S. 3, 10; 75 U. S. 1, 8 (1954).) An order, made in violation of a litigant's constitutional due process rights, is "void ab initio," in other words, *it was never valid for even a moment*. (*Vallely* v. *Northern Fire and Marine Ins. Co.,* 254 U.S. 348, 41 S. Ct. 116 (1920) ("*Vallely*"); *see also Old Wayne Mut. I. Assoc.* v. *McDonough,* 204 U.S. 8, 27 S.Ct. 236 (1907); *Williamson* v. *Berry,* 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); *Rose* v. *Himely,* 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

15d. No authority gives a court the power to prevent a litigant from being accompanied to court by an attorney of her own choosing, whether or not she is a defendant in a criminal case or a respondent in a dependency case. "Courts are constituted by authority and they cannot act beyond the power delegated to them. If they act beyond that authority, and certainly [if they act] in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal. (Citations.)" (*Vallely, supra,* 254 U.S. 348, 353-354.) A litigant has an unqualified, constitutional right to be represented by counsel of her choice regardless of her concomitant right to appointed counsel. (*Chandler v. Fretag, supra,* 348 U.S. at pp. 9-10; 75 U. S. at pp. 7-8.)

15e. The right to a hearing also includes *the right to the aid of counsel when desired and provided by the party asserting the right* (*id.,* at pp. 9-10). Here, Mother and Respondent had an agreement that Respondent would accompany Mother at dependency court proceedings to provide her with advice and representation on civil and constitutional issues which tended to arise when Mother was left with only Ms. Wingate as her attorney, e.g., when Ms. Wingate told

Mother that unless she agreed to revoke her representation agreements with Respondent, she would not receive the six months of reunification services to which she was already legally entitled whether or not she agreed to revoke such agreements.

15f. Respondent further DENIES that Judge Rushton's order to abandon Mother before the hearing was concluded was a lawful order as shown by the fact that Judge Rushton never gave any legal explanation to support such order, was reduced to saying that Respondent was required to leave because it was his court room and he would have her bodily removed if she did not leave, and, when asked by the State Bar's investigator the legal basis for such order, declined to try to explain the legal basis for such order and said he needed to speak to the presiding judge before he spoke any further to the investigator, all circumstantial evidence that, in fact, such order was not lawful.

15g. Respondent further DENIES that the order in question, even assuming arguendo it were a legal order, which it was not, was "an order of the court requiring [Respondent] to do or forbear an act connected with or in the course of [her] profession, which [s]he ought in good faith to do or forbear." In fact, the order to abandon her client while a hearing that could affect such client's civil and constitutional rights was still in progress, was an order which required Respondent to do an act connected with and in the course of her profession which she ought in good faith *not* to do. In fact, once Respondent obeyed the order to leave, and left, she felt uneasy and then realized that her client's rights could still be in jeopardy if the trial, too, were not continued or taken off calendar, Respondent did the only reasonable thing under the circumstances: she returned to point out the *Marsden* hearing could not be taken off calendar unless the trial, too, were taken off calendar.

16. Respondent ADMITS that she filed a Petition for a Writ of Certiorari to seek review of the Complaining Witness's contempt order, ADMITS that such Petition was denied without any opinion being issued, and DENIES that such Petition addressed the specific issue raised by Respondent as her defense in this Disciplinary Proceeding.

16.a Specifically, the Petition for a Writ of certiorari did not attack the lawfulness of the order to leave the court room as void *ab initio* because made in violation of Mother's constitutional right to counsel of her choice, but instead contended that it was unlawful to order Respondent to leave the hearing by taking the *Marsden* motion off calendar, because Judge Rushton had no legal right to take such motion off calendar; as stated in the Petition:

Once the defendant makes a *Marsden* motion, the court *must* hold a hearing to allow the defendant the opportunity to explain the grounds for the motion and to relate specific instances of his or her attorney's inadequate performance." (Benchguide 54 at §54.22, citing People v Marsden (1970) 2 Cal.3d 118, 124 [denial of motion for substitution of counsel based solely on courtroom observations constitutes abuse of discretion], emphasis added.)

In fact, "[t]he trial court's failure to hear a defendant's request for substitution of appointed counsel is treated as prejudicial per se error. (*People* v *Hill* (1983) 148 Cal.App.3d 744, 755.)" (Benchguide 54, at §54.29) "The defendant is not required to make a proper and formal legal motion. Any indication by the defendant that he or she wants a substitute attorney triggers the court's duty." (Benchguide 54 at § 54.23, citing People v. Lucky, supra, 45 Cal.3d at 28, fn. 8.)

16b. Thus, denial of the Petition has no res judicata or collateral estoppel effect on the issue of whether the order to leave the court room (and, according to the State Bar prosecutor, also to not return no matter what) was a even a valid order, let alone an order which, in good faith Respondent should have obeyed.

17. Respondent DENIES that she engaged in disorderly, contemptuous, and/or insolent conduct, and DENIES that her conduct was intentionally disruptive or more disruptive than necessary to defend her client's rights under the circumstances created by Judge Rushton's improperly taking the *Marsden* hearing off calendar while leaving the medical marijuana trial still on calendar and insisting that Respondent must leave the court room while the hearing was still going on.

17a. Respondent further DENIES that she failed to follow the judge's directive, which was to leave the court room, DENIES that she engaged in a breach of the peace and/or boisterous conduct by returning to the court room to point out that if the trial had not been taken off calendar, too, then the *Marsden* motion couldn't be taken off calendar, DENIES that she disobeyed a lawful court order, because the order to abandon her client was void ab initio as violative of her client's right to counsel, and DENIES that she willfully failed to obey a lawful order that, in good faith she should have obeyed pursuant to Business and Professions Code section 6103.

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COUNT TWO

Business & Professions Code Section 6068(o)(3)

To Report to the State Bar, in Writing, the imposition of Sanctions of $1,000 or More

18. Respondent DENIES that she willfully violated Business & Professions Code section 6068(o)(3) by failing to report to the agency charged with attorney discipline (the State Bar) , in writing, within 30 days of the time she learned of the imposition of such sanctions.

19. Respondent's responses to the allegations of Count One are incorporated here by this reference.

20. Respondent is informed and believes, and on that basis alleges, that she did notify the State Bar, in writing made on August 29, 2011, addressed to Shawnee Michaelson at the State Bar, and mailed August 30, 2011, not only that she had been sanctioned $1,000 by Judge Michael Joseph Rushton, but about the circumstances surrounding such sanction.

21. Contrary to a statement in the discovery materials provided to Respondent by the State Bar Prosecutor, Respondent never admitted to the State Bar Investigator that she did not report such sanctions to the State Bar. When contacted by the investigator, Agnes Mina, Respondent stated that she knew she was supposed to report such sanctions, that she intended to report such sanctions, but she had no independent memory of doing so.

22. Thereafter, while going through an electronic list of documents related to her representation of Mother, Respondent discovered a file entitled "SELF REPORTING OF CONTEMPT TO STATE BAR" containing a letter, dated August 29, 2011, addressed to Shawnee Michaelson at the State Bar (a Bar employee with whom Respondent had had dealings related to both a client's complaints about Respondent and Respondent's own self-reporting of possible violations in the past) whose related electronic information showed that such document was created on August 29, 2011 at 5:43 p.m., was last modified on August 30, 2011 at 3:40 a.m., and was printed on August 30, 2011 at 3:39 p.m., with a total editing time of 376 minutes. A true and correct copy of such document is attached to this Answer as **Exhibit 24,** and a true and correct copy of such electronic file (which should show the document's properties) showing the related information is attached to such Answer as **Exhibit 25.**

23. When Respondent found and read the electronic version of the August 29, 2011 letter addressed to Shawnee Michaelson, it did not refresh her recollection of writing such letter, nor did such document refresh her recollection of mailing such letter.

24. Respondent alleges that all the events leading up to the August 29, 2011 hearing and the contempt proceeding had been *extremely* stressful and time-consuming. She further alleges that when such long-standing stresses were followed by, on the same day as the contempt proceeding (at which she was held incommunicado by four large, male deputy sheriffs for 45 minutes, and at which Judge Rushton had told Respondent that he was fining her **$5,000** rather than the $1,000 which he later told her was all he could legally fine her) coming home and spending some six hours drafting a letter to the State Bar reporting such events, such stress and tiredness simply affected her ability to form a memory about the later events.

25. Severe stress impairs memory. The effect of ongoing and severe stress on "working memory," the kind of memory involved in caring out tasks such as writing and mailing letters, is to *impair and reduce* such memory. (Qin S, Hermans EJ, van Marle HJ, Luo J, Fernández G (July 2009). "Acute psychological stress reduces working memory-related activity in the dorsolateral prefrontal cortex". *Biological Psychiatry* 66 (1): 25–32; Liston C, McEwen BS, Casey BJ (Jan 2009). *Proc. Nat'l Acad. Sci. U S A* 106 (3): 912–7; Lupien, S., Gaudreau, S., Tchiteya, B., Maheu, F., Sharma, S., Nair, N., et al. (1997). Stress-Induced Declarative Memory Impairment in Healthy Elderly Subjects: Relationship to Cortisol Reactivity. The Journal of Clinical Endocrinology & Metabolism, 82(7), 2070-2075: Cabeza, R., & LaBar, K. S. (2006). Cognitive neuroscience of emotional memory. Nature Publishing Group, 7, 54-64.)

26. Stress also effects the formation of "episodic memory," a form of declarative memory *which stores specific personal experiences*. (Tulving E. 1972. Episodic and semantic memory. In Organization of Memory, ed. E Tulving, W Donaldson, pp. 381–403. New York: Academic.) In other words, Respondent's inability to remember writing the August 29 letter or mailing it is just the kind of event – a personal experience – of which, on August 29, 2011, Respondent failed to form an episodic memory. The failure to form a memory of writing the letter or mailing it explains why Respondent has no independent memory of either event. Respondent *knows* she wrote the letter, because she found it on her computer. She doesn't *know* she *mailed* it, because she hasn't found any direct evidence of mailing, just the electronic copy of the letter.

27. What Respondent *does independently* remember is *indirect* evidence of mailing: (1) she knew she had to report the sanction, (2) she intended to do so, (3) she prepared and addressed a letter doing so, in great detail, to a member of the State Bar's staff to whom she had self-reported possible violations in the past, and (4) had printed out such letter.

28. Furthermore, when the State Bar investigator asked Respondent, in May 2012, whether she had reported the sanction order to the State Bar, Respondent, at that time, had no independent memory of even *writing* the August 29, 2011 letter to Shawnee Michaelson, but could only remember that she had *intended* to report herself to the State Bar – which was, obviously, given that it was the *only* independent memory Respondent could call up when contacted by Agnes Mina, the most *important* fact to Respondent: I *must* report myself to the State Bar. If it was important to do, then Respondent *would* have done it.

29. Respondent has always complied with the Rules of Professional Conduct. She has never been sanctioned before, in almost 30 years of practice. She knew she was supposed to report herself, so she *immediately* wrote the letter to do so when she finally returned to her office from Murrieta after an extremely stressful day, but she doesn't *remember* writing it *or* sending it.

30. However, Respondent accidentally found the letter to Shawnee Michaelson while looking for another electronic file, so, although she doesn't remember writing it, she did write it. Therefore, although Respondent doesn't remember writing the letter, she believes that, having written it, and not being ashamed about the sanction order, and being very upset by the day's events, and intending to send it, she did mail it, even though she doesn't remember doing so. A few of the "Maxims of Equity" apply to this situation.

31. "That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due." (Civ. Code, § 3529.) Since Respondent ought to have mailed the August 29, 2011 letter to the State Bar, and intended to do so, equity suggests that Respondent should be regarded as having mailed the letter after she wrote it.

32. "Things happen according to the ordinary course of nature and the ordinary habits of life." (Civ. Code, § 3546.) Ordinarily, when one goes to the trouble to write a required and important letter that must be mailed, and prints it out, one mails it. This is another reason that Respondent believes she did mail the letter in question, and that she should be regarded as having mailed the letter she wrote and printed out.

33. "The law has been obeyed." (Civ. Code § 3548.) State Bar rules require attorneys to report sanctions of $1,000 or more. Respondent knew this rule and intended to comply with it; her intent is evidenced by the fact she actually wrote a self-reporting letter on August 29, 2011 and printed it out on August 30, 2011. Equity thus suggests that Respondent did mail the letter.

34. Respondent does not know whether the State Bar or Ms. Michaelson received her letter. The failure to receive a letter is not proof it was not mailed; it is a well-known fact that letters may be lost, misplaced or even destroyed after being posted.

35. Respondent DENIES each and every material allegation not heretofore controverted and demands strict proof thereof.

AFFIRMATIVE DEFENSES

1. At all relevant times, Respondent was acting in good faith and in the sincere, honest intention or belief that she was acting in keeping with the Rules of Professional Conduct and Business & Professions Code Section 6103, by representing Mother's legal rights to, e.g., use cannabis in place of prescription medicine, to the assistance of *effective* appointed counsel, and to an impartial finder of fact.

2. On August 29, 2012, the Complaining Witness used his act of taking the *Marsden* motion "off-calendar" on his own motion as the basis to order Respondent to leave the court room. Respondent *obeyed* this order. After leaving the court room, Respondent realized that something didn't make sense. The trial set for after the *Marsden* hearing could not take place until Mother had appointed counsel to represent her, but Judge Rushton had not taken the trial off calendar, too. Respondent returned to the court room to find out what was taking place if the *Marsden* motion was off-calendar, Ms. Wingate had not been relieved as counsel, and no new counsel had been appointed. In fact, Judge Rushton was actually engaging his version of a *Marsden* motion without having formally stated that the Marsden motion was now "back on calendar." Thus, to the extent that Judge Rushton's order to leave the court room was based on the *Marsden* motion being "off calendar," and, in fact, it was "back on calendar," Respondent's return to the court room was not a violation of an order to leave because the *Marsden* motion was not being heard.

3. When the Complaining Witness recited facts into the record in order to hold Respondent in contempt, he recited as fact events that did not occur. For example, Judge Rushton stated that he had relieved Ms. Brakhage as Mother's appointed attorney *before* he ordered Respondent to leave the room. However, since he *began* the hearing by taking the *Marsden* motion "off calendar," he would not have had any reason to relieve Ms. Brakhage as appointed counsel. In fact, as the transcript of August 29, 2011 shows, he never relieved Ms. Wingate as counsel before Respondent left the court room. Nor did he relieve Ms. Wingate as counsel *after* Respondent returned to the court room and before he held Respondent in contempt.

4. Mother's retained and appointed attorneys acted unreasonably in regard to performing their own duties to Mother, all in violation of California Rules of Professional Conduct, Rule 3-110 (C)(1), by, e.g., refusing to listen to her, refusing to defend her legal use of cannabis, refusing to professionally consult with or associate with Respondent after Mother sought Respondent out to try to educate them on the fact that her use of cannabis was legal under both state law and the written policies of the Riverside County Department of Public Social Services, and, in the case of Elizabeth Wingate, because of her repeated willingness to be appointed as Mother's dependency attorney when she refused to defend her legal use of cannabis. But for these attorneys' failure to perform the duties they owed to Mother, Respondent would not have had to enter into LSR Agreements with Mother or accompany Mother to court hearings, and would not have been involved with this case on August 29, 2012, the day she allegedly violated Rule 6103.

5. The Complaining Witness, Judge Michael Joseph Rushton, acted unreasonably in regard to performing his duties to the public and to the litigants before him, in violation of the California Code of Judicial Ethics, by, e.g., refusing to follow state law and written County of Riverside Department of Public Social Services, by failing to act impartially because of his personal opinion about the use of "medical marijuana," by failing to follow rules related to due process and notice by granting Ms. Brakhage's motion to be relieved as counsel a day before it was filed, by failing to follow the rules related to disqualification statements for cause by answering such statements and then ruling on them himself, by refusing to allow Mother the assistance of independent counsel at the first three *Marsden* hearings, and, once Mother's LSR Agreement expressly covered *Marsden* hearings in addition to issues impacting her civil and constitutional rights, by purporting to take such *Marsden* motion off calendar so he could insist Respondent leave the court room so that he could berate Mother, with no intercession from Respondent, on the very matters related to the *Marsden* motion that he had purported to take off calendar. But for the Complaining Witness's failure to perform the duties he owed the public and litigants before him, and to comply with the Canons of Judicial Ethics, Respondent would not have had to enter into LSR Agreements with Mother or accompany Mother to court hearings, and would not have been involved with this case on August 29, 2012, the day she allegedly violated Rule 6103.

6. Respondent reported both Ms. Brakhage and Ms. Wingate to the State Bar for, e.g., their failures to communicate with Mother and to represent her legal right, under both state law and the written policies of the Riverside County Department of Public Social Services, to use cannabis in lieu of prescription medications, and for Ms. Wingate's repeated willingness to be appointed to represent a client whose relevant legal rights she knew she would not defend. Attached to the Volume of Exhibits to the Answer as **Exhibit 26** is a true and correct copy, as printed from Respondent's electronic file of such document, the letter of complaint about Ms. Brakhage and Ms. Wingate to the State Bar. The State Bar closed both such cases; Respondent objected to the closure, with no action, of the case involving Ms. Wingate, and the State Bar never responded to her objection. Attached to the Volume of Exhibits to the Answer as **Exhibit 27** is a true and correct copy, as printed from Respondent's electronic file of such document, Respondent's letter to the State Bar objecting to its closure of the case against Ms. Wingate.

7. Respondent reported the Complaining Witness, Judge Rushton, to the Commission on Judicial Performance, see **Exhibits 13 through 19,** which investigated him for nine months and then closed its case with a letter stating that the Commission has the discretion to not pursue a matter even if it finds evidence of improprieties.

8. Comparatively speaking, Respondent's conduct on August 29, 2011, committed in the diligent effort to represent Mother pursuant to their written LSR Agreement, which conduct was simply returning to the court room after she realized that *if* the *Marsden* motion actually had been taken off calendar, *then* the trial on Mother's use of cannabis could not go forward until the *Marsden* hearing had been held, and that therefore there was no reason that there was any further proceeding taking place, was more in keeping with the law and rules of conduct and ethics for attorneys and judges than was the conduct of Mother's dependency attorneys and the conduct of the Complaining Witness.

9. Given that the State Bar decided not to pursue any disciplinary action against Ms. Wingate or Mr. Brakhage, both of whom refused to listen to or represent their client's legal interests because they were apparently prejudiced against the legal use of cannabis in place of prescription drugs, and given that the Commission on Judicial Performance decided not to take any action against Judge Rushton, despite his intentional failure and refusal to follow state law and Riverside County Department of Public Social Services written policy about cannabis, and his repeated use of his judicial power to impose his own values and medical views on Mother, in

violation of her civil and constitutional right to use cannabis instead of prescription drugs, this prosecution of Respondent for diligently representing her client's civil and constitutional right to choose cannabis instead of prescription drugs in the face of such illegal opposition by Mother's own appointed and retained dependency counsel and by her dependency court judge, appears to be partial to the position of those persons who continue to use their positions of government authority to oppose the legal use of cannabis as medicine.

10. The State Bar's mission is to "Preserve and improve our justice system in order to ensure a free and just society under the law." Respondent respectfully submits that prosecuting Respondent for trying to do her job, which was to protect Mother's civil and constitutional rights in the face of improper and partial conduct by the Complaining Witness, and in the face of the conduct of an appointed attorney who refused to listen to or defend her appointed client, but agreed to be re-appointed over and over knowing she had refused to represent her client's legal interests, is contrary to the State Bar's mission statement.

11. The right to use cannabis as medicine is a civil and constitutional right enacted by the People of the State of California which should be respected by all members of the justice system, including judges, attorneys, law enforcement and the State Bar.

12. Just as women's right to choose abortion over pregnancy is protected by the U.S. Constitution's First and Fourteenth Amendments' protection of privacy and liberty; Californians' right to choose cannabis in lieu of prescription drugs is a constitutional right protected by the U.S. Constitution as well as California law which should be respected by all members of the justice system, including judges, attorneys, law enforcement and the State Bar.

13. Respondent has already "paid" for returning to the court room; she was fined $1,000, which she paid. Threatening to disbar her or to suspend her license, under the facts presented by this case, in addition to such fine, is excessive punishment.

Dated: September 26, 2012

RESPECTFULLY SUBMITTED,

Letitia E. Pepper

LETITIA E. PEPPER

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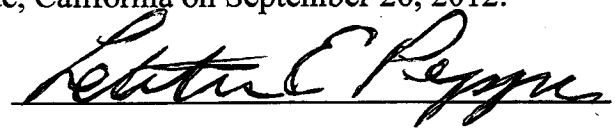
VERIFICATION

I, Letitia E. Pepper, am the Respondent in the above-entitled proceeding. I have read the foregoing answer and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Riverside, California on September 26, 2012.



LETITIA E. PEPPER

TABLE OF EXHIBITS TO ANSWER

EXHIBIT NUMBER	DESCRIPTION	¶ FIRST MENTIONED
1	Riverside County DPSS Written Policy re medical marijuana	¶ 5
2	Order granting Ms. Brakhage's motion, signed June 1, 2011 and filed June 2, 2011, to be relieved as Mother's retained counsel	¶ 7a
3	First Notice of LSR Agreement between Respondent & Mother	¶ 7d
4	Motion to Vacate Void order of June 1, 2012	¶ 7d
5	Second DS and Order Striking Second DS	¶ 8d
6	Order striking the third DS	¶ 8h
7	Reporter's Transcript of July 22, 2012	¶ 9g
7a	Mother's Section 352 Motion for a Continuance	¶ 9f
8	ex parte application to Honorable Charles Koosed, Judge Presiding of the County of Riverside Juvenile Court For appointment of effective dependency counsel	¶ 9h
9	Mother's Declaration, stamped "received" July 28, 2011	¶ 9k
10	Respondent's "Response to Judge Rushton's Comments of July 22, 2011, stamped "received" July 28, 2011"	¶ *9l*

11	**Respondent's Declaration, stamped "received" July 28, 2011**	**¶ *9l***
12	**Respondent's June 12, 2011 letter to Judge Johnson**	**¶ 9s**
13	**Respondent's June 11, 2011 letter to the Commission on Judicial Performance re Judge Michael Joseph Rushton**	**¶ 9ti**
14	**Respondent's June 23, 2011 letter to the Commission on Judicial Performance about Judge Rushton's refusal to follow state law about medical marijuana**	**¶ 9tii ¶ 9tiii**
15	**Respondent's September 9, 2011 letter to the Commission on Judicial Performance about Judge Rushton's selective choice of which of Respondent's pleadings he would allow the Clerk's Office to file**	**¶ 9tiv**
16.	**Respondent's September 10, 2011 letter to the Commission on Judicial Performance about Judge Rushton's improperly Ruling on his own disqualification for cause and then ordering Respondent not to file any further challenges for cause**	**¶ 9tv**
17.	**Respondent's letter of September 12, 2011 to the Commission on Judicial Performance about Judge Rushton's selective use of the power to direct the Clerk's Office not to file litigants' documents to shape the record in a case (and thereby affect the record on appeal) and to retaliate against litigants and attorneys**	**¶ 9tvi**
18.	**Respondent's letter of September 14, 2011 to the Commission on Judicial Performance about how Judge Rushton tried to keep relevant evidence related to the August 29, 2011 *Marsden* hearing from being filed**	**¶ 9tvii**
19.	**Respondent's letter of September 22, 2011 to the Commission on Judicial Performance about how Judge Rushton prevented Respondent's appeal bond from being filed, so that he could force her to both pay the contempt fine *and* post a bond**	**¶ 9tviii**
20	**e-mail exchanges between Respondent and Michael Capelli, General Counsel of Riverside County Superior Court, about Judge Rushton's conduct, about Respondent's inability to obtain a copy of any order revoking her written LSR Agreements with Mother, and Mr. Capelli's claim that Judge Cope had, with no input from Respondent, decided that Respondent could not have a copy of the order allegedly revoking her agreements with Mother**	**¶ 9w**
21	**Fourth LSR Agreement**	**¶ 11**
22	**Verified Complaint in *Vera Cruz* v. *Wingate,* Riverside**	**¶ 12**

	County Superior Court Case No. RIC 1114072, filed August 25, 2012, for legal malpractice action	
23	**August 29, 2011 transcript of *Marsden* hearing**	**¶ 13**
24	**August 29, 2011 letter from Respondent to State Bar self-reporting order of contempt and fine**	**¶ 14b**
25	**Electronic copy of August 29, 2011 letter (with meta data)**	**¶ 22**
26	**Respondent's letter to State Bar complaining about Misconduct by Ms. Brakhage and Ms. Wingate**	**¶ 4 of Aff. Def.**
27	**Respondent's letter to State Bar objecting to the closing of the case re Ms. Wingate**	**¶ 4 of Aff. Def.**

PERSONAL DELIVERY

PROOF OF SERVICE BY ~~FIRST CLASS~~ MAIL

I am the Respondent in this action.

On ~~September 26,~~ Nov. 8, 2012, I ~~placed~~ personally delivered a copy of the Amended Verified Answer to Notice of Disciplinary Charges in an envelope, sealed it, addressed the envelope to

Riza Sitton at
~~State Bar of California, Enforcement~~
~~1149 S Hill Street~~
Los Angeles, CA 90015-2299

~~paid for first class postage for such envelope, and deposited it into the U.S. mail at the Chicago Street post office in Riverside, California~~ on September 26, 2012.

I declare under penalty of perjury that the foregoing is true and that this declaration was executed on ~~September 26, 2012~~. Nov. 8, 2012

Letitia E. Pepper