

**State Bar Court of California
Hearing Department
San Francisco
DISBARMENT**

Counsel For The State Bar Esther J. Rogers Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2258 Bar # 148246	Case Number(s): 12-C-15305-PEM	For Court use only PUBLIC MATTER FILED DEC 11 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Eric Hamilton Hintz Hintz & Welch 1006 4th St #220 Sacramento, CA 95814 (916) 444-5203 Bar # 119211	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: DANIEL MADDEN HORTON Bar # 160532 A Member of the State Bar of California (Respondent)		

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 9, 2002.
- (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 (10) pages, not including the order.



(Do not write above this line.)

- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (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 [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline**
 - (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If respondent has two or more incidents of prior discipline, use space provided below:
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **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.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Attachment, p. 8.

- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Attachment, p. 8.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. 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 deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating 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 in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical 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 respondent no longer suffers from such difficulties or disabilities.
- (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 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.

(Do not write above this line.)

- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Record of Discipline, See Attachment, p. 8

Pretrial Stipulation, See Attachment, p. 8

Good Character, See Attachment, p. 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

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DANIEL MADDEN HORTON

CASE NUMBER: 12-C-15305-PEM

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. 12-C-17435-PEM (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 15, 2012, in *People v. Horton*, Sacramento Superior Court, case number 12M00022, Respondent was charged with three counts: a violation of Penal Code section 647.6(a)(2) [motivated by unnatural sexual interest in children], and a violation of Penal Code 664/288.4(a)(1) [motivated by unnatural sexual interest in children, attempting to arrange a meeting] and a violation of Penal Code section 647.6(a)(2) [motivated by unnatural sexual interest in children].
3. On June 2, 2012, Respondent plead no contest and was convicted of violating Penal Code section 647.6(a)(2) [motivated by unnatural sexual interest in children]. The remaining two counts were dismissed in the interest of justice.
4. Respondent was sentenced to 90 days' jail time, and three years' probation. Respondent was also required to register as a sex offender under Penal Code section 290 and complete a sex offender management program.
5. On July 8, 2013, 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 imposed in the event the Hearing Department finds the facts and circumstances surrounding the offense for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

6. Prior to February 2012, Respondent served as a juvenile judicial commissioner for the Sacramento County Superior Court. In that capacity, Respondent presided over hearings in matters initiated under Welfare and Institution Code section 300 [juvenile dependency hearings] and section 602 [juvenile detention hearings].
7. On February 2, 2012, The Sacramento Police Department conducted a sting operation on Respondent. The sting operation arose from allegations Jane Doe made regarding Respondent as

follows: In November 2010, Respondent entered a tanning salon in Sacramento and approached employee Jane Doe. Jane Doe was alone in the salon. Respondent falsely stated that he was a modeling agent searching for a tanning salon for his models' use. Respondent asked Jane Doe if she would audition to be one of his models. Respondent convinced Jane Doe that she likely had a body to model nude and informed her she could make \$600 per nude photo shoot. When Respondent raised the topic of nude modeling, Jane Doe revealed to Respondent that she was only 17 years old. At Respondent's suggestion, Jane Doe put on a bathing suit. Respondent informed Jane Doe that he needed to see her bare breasts to determine whether she would qualify for nude modeling and Jane Doe complied. During the course of Respondent's interaction with Jane Doe, Respondent inappropriately touched Jane Doe and indecently exposed himself.

8. Approximately one year after the incident, Jane Doe went to the Sacramento Police Department. She explained to the police: she was ashamed of the incident with Respondent and did not immediately report it to them because she felt it was her fault for being so gullible. She was enticed by the money and the opportunity to have air brushed photos that hid what she considered her flaws. It was not until a year later, when her friend spotted Respondent's car, that Jane Doe had the courage to report the incident with Respondent to the police.

9. By the time Jane Doe made the report, the statute of limitations to charge Respondent with a crime had passed. Thus, the Sacramento Police Department conducted a sting operation by deploying Amber Doe in Respondent's expected travel route during his lunch break from the court and Ashley Doe in his expected travel route after he left work in the afternoon. Both decoys could pass as juveniles but in fact Amber Doe was 20 and Ashley Doe was 18.

10. In approaching both decoys, Respondent again impersonated a modeling agent looking for nude models. Both decoys informed Respondent they were 17 years old, soon to turn 18.

11. Respondent inquired if Amber Doe would be interested in nude modeling and she said responded that she was not.

12. When Respondent approached Ashley Doe, he claimed to be visiting Sacramento from San Diego to audition two other girls in a nearby club. Respondent inquired if Ashley Doe would be interested in auditioning to perform in a nude video. Respondent informed Ashley Doe she could make \$3,000 for a seven or eight minute video. After Ashley Doe expressed interest in nude modeling, Respondent asked her to do a five minute audition in a nearby alley, but Ashley Doe declined.

13. Respondent's conduct was abhorrent. The facts and circumstances surrounding Respondent's conviction involved moral turpitude. (See *In Re Safran* (1976) 18 Cal. 3d 134 [conviction for annoying or molesting child may or may not involve moral turpitude]; *In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608 [the crime of child molestation involves moral turpitude.])

CONCLUSIONS OF LAW:

14. The facts and circumstances surrounding Respondent's misdemeanor conviction for Penal Code section 647.6(a)(2) [motivated by unnatural sexual interest in children] did involve moral turpitude.

AGGRAVATING CIRCUMSTANCES.

Harm (Std.1.2(b)(iv)): Respondent's conduct harmed the administration of justice. It also significantly harmed Jane Doe by altering her sense of security and trust. Jane Doe's immediate reaction now is to distrust men, including at times her fiancée, with whom she has a child. She also continues to blame herself for being naïve.

Multiple Acts of Misconduct (Std.1.2(b)(ii)): Respondent's inappropriate acts towards at least three victims represent multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Although Respondent's misconduct is serious, he is entitled to mitigation for having practiced law for approximately 18 years before his misconduct began without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pretrial Stipulation: Respondent entered into a stipulation with the State Bar prior to trial, thereby relieving Jane Doe of the trauma she would have suffered testifying and saving the State Bar and the State Bar Court resources. (*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].)

Good Character: Respondent is entitled to some mitigation based upon the nine individuals, including three attorneys, who provided letters attesting to Respondent's good character. Since the individuals were unaware of the full extent of Respondent's conduct, the mitigation credit is reduced. (*In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 219.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

The facts and circumstances surrounding Respondent's criminal conviction involve moral turpitude. Thus, Standard 3.2 applies to this matter.

Standard 3.2 states that "Final Conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission, shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. ..."

Here, Respondent preyed on vulnerable young women whom he believed to be underage. He attempted to lure the young women into inappropriate sexual situations by posing as a modeling agent and promising them money to pose nude. And, in Jane Doe's case, Respondent also inappropriately touched her and indecently exposed himself. Respondent's misconduct is even more egregious since he held a position of trust as juvenile court commissioner in charge of juvenile dependency and detention matters. Respondent's misconduct was abhorrent and involved moral turpitude.

In aggravation, Respondent committed multiple offenses. Although he was convicted as to only one victim, respondent engaged in similar conduct on at least two other occasions, for which he was not convicted. Furthermore, Jane Doe was significantly harmed by Respondent's wrong doing. She continues to suffer emotionally and believes that she will be permanently affected by Respondent's reprehensible conduct.

While Respondent is entitled to mitigative credit for his lack of a prior record, his willingness to enter into this stipulation and the letters he supplied to support good character, such mitigation is neither compelling nor clearly predominates, which is required under Standard 3.2 to impose discipline less than disbarment. Disbarment is the only appropriate outcome to achieve the directive of the applicable Standards, which compels disbarment in this situation to protect the public and the legal profession.

Case law also supports disbarment. In *In re Lesansky* (2001) 25 Cal.4th 11, the attorney was convicted of the felony of attempting to commit a lewd act on a child. The Supreme Court held that because Respondent's conduct "was such a serious breach of the duties of respect and care that all adults owe to all children, it showed a flagrant disrespect for the law and for societal norms, that continuation of [the attorney's] State Bar membership would be likely to undermine public confidence in and respect for the legal profession." (*Id.*, at p. 17.) That same principle holds true in this matter. Respondent's conduct, just like that in the *Lesansky* case, showed such a flagrant disrespect for the law and societal norms, the only outcome that is appropriate is disbarment.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 6, 2013, the prosecution costs in this matter are approximately \$5,131. 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.

(Do not write above this line.)

In the Matter of:
DANIEL MADDEN HORTON

Case number(s):
12-C-15305-PEM

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.

Date

11/21/13

Respondent's Signature

Eric Hamilton Hintz

DANIEL MADDEN HORTON

Print Name

Date

11/25/13

Respondent's Counsel Signature

Esther J. Rogers

ERIC HAMILTON HINTZ

Print Name

Date

Deputy Trial Counsel's Signature

ESTHER J. ROGERS

Print Name

(Do not write above this line.)

In the Matter of:
DANIEL MADDEN HORTON

Case number(s):
12-C-15305-PEM

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.

<u>11/25/13</u> Date	<u>Daniel M. Horton</u> Respondent's Signature	<u>DANIEL MADDEN HORTON</u> Print Name
<u>11/21/13</u> Date	<u>Eric H. Hintz</u> Respondent's Counsel Signature	<u>ERIC HAMILTON HINTZ</u> Print Name
<u> </u> Date	<u> </u> Deputy Trial Counsel's Signature	<u>ESTHER J. ROGERS</u> Print Name

(Do not write above this line.)

In the Matter of: DANIEL MADDEN HORTON	Case Number(s): 12-C-15305
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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.

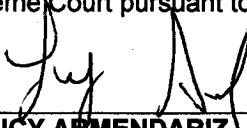
1. On page 1 of the Stipulation, paragraph A.(1), "2002" is deleted, and in its place is inserted "1992."
2. On page 1 of the Stipulation, paragraph A.(3), "(10)" is deleted, and in its place is inserted "(11)."
3. On page 3 of the Stipulation, paragraph B.(7), the "X" next to Multiple/Pattern of Misconduct is deleted.
4. On page 6 of the Stipulation, the title "Case No. 12-C-17435-PEM (Conviction Proceedings)," is deleted, and its place is inserted "Case No. 12-C-15305-PEM (Conviction Proceedings)."
5. On page 8 of the Stipulation, under Aggravating Circumstances, the first paragraph relating to Harm, all language relating to Jane Doe after the word "justice," is deleted.
6. On page 8 of the Stipulation, under Aggravating Circumstances, the entire second paragraph relating to Multiple Acts of Misconduct is deleted.
7. On page 8 of the Stipulation under Mitigating Circumstances, the paragraph relating to Pretrial Stipulation, the phrase "thereby relieving Jane Doe of the trauma she would have suffered testifying and," is deleted.
8. On page 9 of the Stipulation, paragraph 1, "Conviction" is deleted, and in its place is inserted "conviction."
9. On page 9 of the Stipulation, paragraph 2, the sentence "And, in Jane Doe's case, Respondent also inappropriately touched her and indecently exposed himself," is deleted.
10. On page 9 of the Stipulation, paragraph 3, the entire paragraph relating to multiple offenses, is deleted.

(Do not write above this line.)

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 DANIEL MADDEN HORTON 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.

Dec. 11, 2013
Date



LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator 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 San Francisco, on December 11, 2013, 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 San Francisco, California, addressed as follows:

ERIC HAMILTON HINTZ
HINTZ & WELCH
1006 4TH ST #220
SACRAMENTO, CA 95814

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ by overnight mail at , California, addressed as follows:

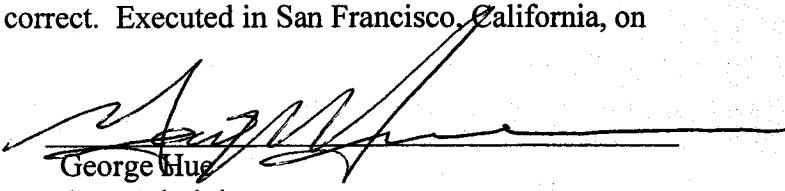
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Esther Rogers, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 11, 2013.


George Mue
Case Administrator
State Bar Court