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State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT

<p>Counsel For The State Bar</p> <p>Kimberly G. Anderson The State Bar of California 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1083</p> <p>Bar # 150359</p>	<p>Case Number(s): 12-O-11550 12-O-13069 12-O-13351</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>JUN 20 2012 <i>RZ</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Francisco S. Nogales 27240 Turnberry Lane, Ste. 20 Valencia, CA 91355</p> <p>Bar # 212819</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Francisco S. Nogales</p> <p>Bar # 212819</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 May 4, 2001.
- (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 (13) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

B. Aggravating Circumstances [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:

See Stipulation Attachment at pages 10-11.
- (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 Stipulation Attachment at page 11.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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 Stipulation Attachment at page 11.
- (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. See Stipulation Attachment at page 11.
- (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. See Stipulation Attachment at page 11.
- (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.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

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(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See Stipulation Attachment at page 11.

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:** Restitution. See Stipulation Attachment at page 10.

after receiving numerous complaints concerning representations made by his new client intake personnel, and in an attempt to correct these problems, Respondent fired many of his employees, and stopped his radio advertising. After these actions, Respondent's receipt of new clients slowed to about 10 per week.

7. Respondent's services offered to his "distressed homeowner" clients of NLC were characterized as provision of a "3 letter" program:

- a. A "Qualified Written Request" to the client's bank seeking a copy of the client's mortgage note and other documents;
- b. A "loan review" or "forensic audit" to determine whether the homeowner's loan was compliant with federal lending requirements; and
- c. Written or telephoned communication with the clients' lenders seeking renegotiation of the mortgage note terms.

8. For this "3 letter" program of services, Respondent generally received a fee of \$3,800 with some variations. Per the retainer agreement, this was applied to: *"assistance in collecting and preparing your application, assistance in collecting the necessary mortgage documents and other documents that are required, consult with our attorney and/or auditor regarding the necessary audit preparation."*

9. Of each \$3,800 fee that was paid by an NLC client for their "3 letter" services, NLC paid \$1,000 to a company called "National Association of Mortgage Auditors" or "NAMA" for the actual "forensic audit" the clients paid for. Most of the remainder of the fee was paid for marketing services to Juan Carlos Jaramillo DBA "Financial Success," from whom Respondent also disassociated himself in March 2010. Approximately 10-15% of the clients who paid Respondent for a "forensic audit" were actually provided with audits. In Respondent's opinion, virtually 100% of the mortgage loan documents supplied by the lenders included errors, most of which were obvious without an audit by NAMA.

10. Following the "Forensic Loan Review," Respondent requested that his clients sign a "Litigation Retainer" for which Respondent generally required an additional fee of \$5,000 with some variations for some clients. On some occasions these two stages were described as "Pre-Litigation and "Litigation," at other times they were described as "Forensic Review" and "Pre-Litigation." In some cases, Respondent's clients signed agreements for "Forensic Review," "Pre-Litigation," and "Litigation."

11. Respondent, who knew very little about loan modifications prior to his association with Lira and his associates, attended a seminar in January 2010 to learn about the practice. At this seminar, Respondent learned of two additional "statutory letters" that an attorney may send on behalf of a delinquent real estate borrower: a "Fair Credit and Lending Act" letter to the credit reporting agencies (contesting any negative credit comments that might result from a client's late or missed mortgage payments), and a "Rescission Request" to the client's lender.

12. At the same time that Respondent was marketing NLC's services, Respondent was attempting to reorganize the business of ATR and to make it efficient and profitable. Respondent was unable to meet the payroll expenses of ATR, and twice he borrowed money from his parents (between \$30,000 and \$40,000) to meet his payroll expenses. In April 2010, Respondent laid off all ATR personnel and in May 2010 he closed the doors to ATR without notice to the clients who had hired the

firm. Respondent had taken on no additional ATR clients since purchasing the company about 6 months earlier. At the time he closed ATR, the company had approximately 20 active cases.

13. In May 2010, two of the fired ATR executives changed the locks on the NLC offices, preventing Respondent from having access to his client files. Respondent complained to the police, who told him the lockout was a "civil matter." Respondent hired an attorney to send a letter to the offending former employees, and filed a civil action against them. Respondent was finally able to gain access to his client files approximately three weeks later.

14. In June 2010 Respondent moved NLC into a new office, and tried to stay afloat financially by going back to the NLC clients who had employed him prior to his attendance at the loan modification seminar, and charging each of them an additional \$1,200 for the two "statutory letters" he had been unaware of prior to that seminar.

15. From July 2010 through October 2010, Respondent attempted to stay in business by laying off employees, but was no longer marketing NLC as he had at the outset, and was no longer receiving new clients to employ his services. By October 2010, Respondent was down to one employee. On October 27, 2010, Respondent sent a letter to all of his NLC clients advising them that he was closing his practice, and promising that all clients would receive their file materials, an accounting, and refunds where applicable, within 60 days. No such return of file materials, renderings of accountings, or refunds, were made.

16. In none of Respondent's NLC matters was a home mortgage loan modification applied for, nor were the terms of any client's mortgage loan successfully renegotiated. In none of these client matters did Respondent provide any services beyond mailing the "statutory letters" to the client's lender. In nearly all of these cases, Respondent sent only one letter to the client's lender, consisting of a "3rd party authorization" form. In none of the matters covered by this stipulation did Respondent provide any legal services of value to the client.

17. On October 19, 2011, Respondent executed a stipulation with the State Bar in State Bar Court Case Nos. 10-O-04886, 10-O-05920, 10-O-06223, 10-O-06490, 10-O-06948, 10-O-06953, 10-O-07477, 10-O-07495, 10-O-07538, 10-O-07542, 10-O-08326, 10-O-08718, 10-O-08753, 10-O-09420, 10-O-09421, 10-O-09422, 10-O-09424, 10-O-09563, 10-O-09574, 10-O-09448, 10-O-09801, 10-O-10082, 10-O-10526, 10-O-10655, 10-O-10657, 10-O-11009, 10-O-11142, 10-O-11187, 10-O-11233, 10-O-11239, 11-O-10013, 11-O-10320, 11-O-10401, 11-O-10652, 11-O-11190, 11-O-11445, 11-O-11906, 11-O-13527, 11-O-13626, 11-O-14668, 11-O-15075, 11-O-16366 admitting to misconduct in 42 client matters. On November 8, 2011, the State Bar Court filed an Order approving the stipulation with modifications and recommended to the California Supreme Court that Respondent receive the recommended discipline in that matter. The matter is still pending before the California Supreme Court.

18. On December 27, 2011, Respondent executed a stipulation with the State Bar in State Bar Court Case Nos. 11-O-18216 and 11-O-19217 admitting to misconduct in two additional client matters. On January 12, 2012, the State Bar Court filed an Order approving the stipulation with modifications and recommended to the California Supreme Court that Respondent receive the recommended discipline in that matter. The matter is still pending before the California Supreme Court.

19. The following are three additional clients who employed Respondent for “foreclosure relief” and/or tax resolution services during the same time period, the amounts of their advanced fees, and the dates they paid those fees, no portions of which were earned by Respondent:

Case Number	Client	Retainer Fee	Date Paid
12-O-13069	Francisco P. Cano	\$1,800	January 28, 2010
12-O-13069	Francisco P. Cano	\$5,000	June 25, 2010
12-O-13069	Francisco P. Cano	\$3,700	July 27, 2010
12-O-13351	Indelicio Hernandez	\$3,600	November 21, 2009
12-O-13351	Indelicio Hernandez	\$5,000	March 22, 2010
12-O-13351	Indelicio Hernandez	\$1,400	March 22, 2010
12-O-11550	Ileana D. Markham	\$2,000	January 16, 2010
12-O-11550	Ileana D. Markhan	\$1,800	February 1, 2010

20. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for Francisco P. Cano, prior to demanding, charging, collecting or receiving any fees even though Cano hired him for the purpose of obtaining a loan modification.

21. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for Indelicio Hernandez, prior to demanding, charging, collecting or receiving any fees even though Hernandez hired him for the purpose of obtaining a loan modification.

CONCLUSIONS OF LAW:

22. By failing to perform any legal services of value to Ileana D. Markham, Respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

23. By failing to perform any legal services of value to Francisco P. Cano, Respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

24. By failing to perform any legal services of value to Indelicio Hernandez, Respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

25. By closing ATR without notice to the existing clients, including Ileana D. Markham, Respondent took on at the time he purchased the company, he withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of his clients, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

26. By closing NLC on October 27, 2010 without returning files, without providing any accountings and without refunding unearned fees to the existing clients, including Francisco P. Cano, Respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of his clients, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

27. By closing NLC on October 27, 2010 without returning files, without providing any accountings and without refunding unearned fees to the existing clients, including Indelicio Hernandez., Respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of his clients, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

28. By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving fees from Francisco P. Cano prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of subdivision (a)(1) of Section 2944.7 of the Civil Code, Respondent willfully violated Business and Professions Code, section 6106.3.

29. By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving fees from Indelicio Hernandez prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of subdivision (a)(1) of Section 2944.7 of the Civil Code, Respondent willfully violated Business and Professions Code, section 6106.3.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was May 24, 2012.

RESTITUTION.

Respondent must pay restitution (including the principle amount, plus interest of 10 percent per annum) to the payee(s) listed below. If the Client Security Fund (“CSF”) has reimbursed one or more of the payee(s) for all or any portion of the principle amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principle Amount	Interest Accrues From
Francisco P. Cano	\$1,800	January 28, 2010
Francisco P. Cano	\$5,000	June 25, 2010
Francisco P. Cano	\$3,700	July 27, 2010
Indelicio Hernandez	\$3,600	November 21, 2009
Indelicio Hernandez	\$6,400	March 22, 2010
Ileana D. Markham	\$2,000	January 16, 2010
Ileana D. Markham	\$1,800	February 1, 2010

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 365 days from the effective date of the Supreme Court order in this case.

AGGRAVATION.

Prior Record of Discipline:

Respondent has the following two prior records of discipline, which are still pending before the Supreme Court and which involve the same pattern of misconduct and same time period as the current misconduct:

State Bar Court Case No. 10-O-04886 et. al. (42 cases)

Violations: Rules 3-110(A), 3-700(A)(2) and 3-700(d)(2) of the Rules of Professional Conduct

Effective Date of Discipline: Pending Supreme Court Order

Degree of Discipline: Five (5) years' probation, three (3) years' stayed suspension and two (2) years' actual suspension, Respondent to remain suspended until he satisfies Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

State Bar Court Case No. 11-O-18216 et. al. (2 cases)

Violations: Rules 3-110(A), 3-700(A)(2) of the Rules of Professional Conduct

Effective Date of Discipline: Pending Supreme Court Order

Degree of Discipline: Five (5) years' probation, three (3) years' stayed suspension.

Harm: Respondent's clients were harmed by the abandonment of their matters.

Multiple/Pattern of Misconduct: Respondent's failures to perform in the 3 client matters in this case and the 44 client matters in the two prior disciplinary matters, all of which occurred during the same time period, demonstrates a pattern of misconduct in 47 client matters. Taking into consideration, that all three disciplinary matters arise out of the same time period (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602), Respondent's pattern of misconduct is a serious aggravating factor.

MITIGATION.

Candor/Cooperation: Respondent volunteered to submit to a recorded interview by State Bar trial counsel and investigators, and has agreed to settle this matter at an early stage in the disciplinary proceedings before the State Bar had to expend its resources completing an investigation. (Standards for Attorney Sanctions for Professional Misconduct, Standard 1.2(e)(v).) Respondent has also agreed to stipulate to disbarment in this matter.

Emotional/Physical Problems and Family Problems: In 2005, Respondent's wife of 27 years was diagnosed with uterine cancer, followed by her treatment with aggressive chemotherapy. Respondent's daughter became despondent over her mother's illness and began to abuse heroin, and became addicted to the drug. At one point Respondent's daughter's weight dropped to a low of 76 pounds. In August 2007 Respondent's wife succumbed to her cancer. Respondent became depressed and began to drink heavily.

Additional Mitigation: Additional mitigation credit is given for the personal family tragedies Respondent suffered and the depression and alcohol abuse which followed, which affected his ability to make prudent decisions about the expansion of his legal practice and his response when he became overwhelmed by subsequent events, and which also negatively affected his judgment, work performance, and diligence during the period of his misconduct herein. Respondent entered the Lawyer's Assistance Program and regularly attended Alcoholics Anonymous for help with his drinking. Respondent has been treated by a physician for his depression.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.4(a) of the Standards for Attorney Sanctions for Professional Misconduct states, "Culpability of a member of a pattern of willfully failing to perform services demonstrating the member's abandonment of the causes in which he or she was retained shall result in disbarment."

Standard 2.10 applies to Respondent's violation of Business and Professions Code, section 6106.3. It provides for reproof or suspension according to the gravity of the harm or offense, if any.

Standard 1.6 (a) provides that where two or more Standards are applicable to an attorney's misconduct, the sanction shall be the more or most severe of the applicable sanctions. Therefore, disbarment is the appropriate sanction under Standard 2.4(a) based upon Respondent's pattern of abandonment of 47 clients in the current and two prior disciplinary matters.

Standard 1.7(b) provides that, "If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 24, 2012, the prosecution costs in this matter are approximately \$4,035. 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.

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In the Matter of: Francisco S. Nogales	Case number(s): 12-O-13069 and 12-O-13351
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SIGNATURE OF THE PARTIES

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

5/31/2012 Francisco S. Nogales FRANCISCO S. NOGALES
Date Respondent's Signature Print Name

6/1/12 [Signature] KIMBERLY G. ANDERSON
Date Deputy Trial Counsel's Signature Print Name

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 20, 2012, I deposited a true copy of the following document(s):

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

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

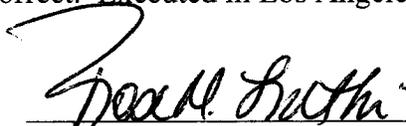
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

FRANCISCO S. NOGALES
FRANCISCO S. NOGALES, ESQ.
27240 TURNBERRY LNE, STE 200
VALENCIA, CA 91355

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

KIMBERLY ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 20, 2012.



Rose Luthi
Case Administrator
State Bar Court