

1 Raymundo Pacello, Jr., Esq. (SBN 207694)  
2 Tien X. Cao, Esq. (SBN 220045)  
3 **LEGAL BALLER LAW PARTNERS, RLLP**  
4 832 Fifth Avenue, Suites 2, 3, 4 & 5  
5 San Diego, CA 92101  
6 Tel: (619) 531-8831  
7 Fax: (619) 531-2975



**FILED**

**DEC 03 2013**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

**STATE BAR COURT**

**HEARING DEPARTMENT - LOS ANGELES**

11 STATE BAR OF CALIFORNIA ) Complaint No.: 12-0-16459  
12 )  
13 Petitioner, ) NOTICE OF DEFENSE AND RESPONSE TO  
14 vs. ) DISCIPLINARY CHARGES  
15 )  
16 RAYMUNDO PACELLO, JR. )  
17 Respondent. )  
18 )

19 TO THE LADIES AND GENTLEMEN OF THE STATE BAR OF CALIFORNIA AND  
20 THEIR CHOSEN ATTORNEY OF RECORD, ANTHONY GARCIA:

21 COMES NOW, COUNSEL RAYMUNDO PACELLO, JR. on his own behalf or *in propria*  
22 *persona* as and for exculpatory evidence to disprove the allegations sought to be alleged as acts of  
23 professional misconduct, *hoc modo*:

24  
25 ///

26 ///

27 ///



I.

PROOEMINUM

We begin at the very beginning; we begin with what all law students are required to learn- Professional Responsibility; we begin with the CALIFORNIA RULES OF PROFESSIONAL CONDUCT—Chapter 1—Rules of Professional Conduct In General, Subsection (A) *ad verbum*:

The following rules are intended to regulate professional conduct of members of the State Bar through discipline. They have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with any standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar. [Emphasis Added].

The complaint hereinabove referenced stems from, and can in no way, shape or form be divorced, segregated, bifurcated, severed, disjoined, or otherwise removed from a civil dispute between the undersigned and the complainant James V. Parziale. If, then, we move to the controlling Rule of Professional Conduct 5-100; to wit and summarily stated that *a member shall not threaten criminal nor disciplinary action to gain a civil advantage.* The law is abundantly and inexplicably clear. The violation of rule 5-100 is to " . . . *threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.*" Reported cases of attorney discipline concerning allegations of violation of former rule 7-104 involve overt threats made to coerce payment to settle a dispute. Libarian v. State Bar (1952) 38 Cal.2d 328, 329 [239 P.2d 865]; Bluestein v. State Bar (1974) 13 Cal.3d 162, 167 [118 Cal.Rptr. 175]; Crane v. State Bar (1981) 30 Cal.3d 117, 121 [177 Cal.Rptr. 670].) For example, threatening to file a "criminal complaint" to obtain a civil advantage is improper Libarian v. State Bar, supra, 38 Cal.2d at p. 329; Kinnamon v. Staitman& Snyder (1977) 66 Cal.App.3d 893, 895 [136 Cal.Rptr. 321].) There is little doubt that the real culprit here is not yours truly, rather the complainant himself as the undersigned has very good grounds to believe that Mssr. Parziale has filed a criminal complaint against me as well as seeking discipline, which is a tantamount to extortion under Cal.Pen.Code §518 et seq. Mssr. Parziale went beyond "threatening," as he actually filed a complaint; clearly over and above the rule of conduct's prohibition.

1 *Perplexingly*, and moreover, that is exactly the conduct that the complainant James V. Parziale  
2 violated and provides the predicate for me having to answer to a "Per Se Unethical" action by another  
3 member of the Bar. And everso profoundly, this IS not the first and only unethical complaint that the  
4 good Mssr. Parziale filed against the undersigned in an attempt to gain a civil advantage as a second  
5 time violation of the aforementioned rule of professional integrity. See Complaint No. 13-0-011035  
6 which was summarily dismissed the very venerable institution governing this rather matter too  
7 attached hereto as Exhibit 1. That case involved a dispute over costs reimbursement regarding the  
8 David Milner matter that was pending in a civil action AT THE TIME THE COMPLAINT WAS  
9 FILED AGAINST ME. *T'would* verily appear totally *in flagrante delicto* in every sense of its Latin  
10 heritage.

11 In closing, for my part, I adduce the controlling law to this Honorable Institution and attorney  
12 charged with governing its compliance: The law of California was established in 1918 holds that the  
13 victim owes a debt is not a defense to the crime of extortion. **"It is the means employed which the  
14 law denounces, and, though the purpose may be to collect a just indebtedness arising from and  
15 created by the criminal act for which the threat is to prosecute the wrongdoer, it is nevertheless  
16 within the statutory inhibition."** People v. Beggs, 178 Cal. 79, 83 (1918). Beggs was cited in dictum  
17 in 1929 in People v. Whipple, 100 Cal.App. 261, 263 (1929). It was applied in 1945 in Lindenbaum v.  
18 State Bar, 160 P.2d 9, 14 (Cal. 1945) (lawyer guilty of extortion when he sought to obtain money  
19 through his threats although the money "may have been justly due him.") Beggs was most recently  
20 applied in People v. Serrano, 15 Cal. Rptr. 2d 305, 11 Cal.App.4th 1672 (1993). *Under section 518 of  
21 the penal code, to threaten a thief with an accusation and prosecution, unless he paid the value of the  
22 stolen property, is extortion, independent of the good faith of the accuser in exacting the amount justly  
23 due. People vs Beggs, 55 Cal.. Dec.618, 172 Pac. 152. Attached as Exhibit 2 is a true and correct  
24 copy of Mssr. Parziale's post to the CONSUMER ATTORNEY'S OF SAN DIEGO LISTSERVE evincing  
25 an intent to file criminal charges-this is being offered to show Mssr. Parziale's state of mind; rather  
26 than the truth of the matter asserted; thusly, it comes into evidence under the "state of mind" exception  
27 to the hearsay rule of exclusion.*  
28

**The salient difference here** good Ladies and Gentlemen of the State Bar is that I am no thief nor can I be said be a criminal under any reasonable interpretation of that term. This, *ipso facto*, makes the complainant's allegations the more egregious and would turn any reasonable jurist's attention to the complainant as being the threat to the public, *for 'tis certainly not I.*

Irrespective of the foregoing, it is my duty-whether the predicate Complaint is unethical as a matter of the Rules of Professional Conduct-to respond *in kind* to the Good Members of the California State Bar-and I do so with the utmost respect and sans any tincture of recalcitrance or “aggravating circumstance” as that term is duly defined under Subsection (b) 1.2-DEFINITIONS *hoc modo*:

## II.

**RESPONSE TO COUNT ONE – FAILURE TO PERFORMANCE WITH COMPETENCE**

**PROFESSIONAL RULE OF CONDUCT 3-110(A)**

While it may normally seem unseemly to reply to an allegation with a question, under the unique circumstances of this case, it appears illustrative. How can one be levied with the allegation of failure to perform with competence on a low-impact, rear-end auto traffic collision **when one obtained “policy limits” from the responsible third party in the amount of \$250,000.00 as the primary level of insurance?** Attached hereto as **Exhibit 3** is a true and correct copy of the Release signed and notarized by Esther Edwards—the client herein—confirming the same.

As and for the allegation that I made “no attempt to reduce Edwards’ medical liens or to pay any of her medical liens despite having knowledge of the liens,” I reply: The evidence to the contrary. Attached hereto as **Exhibit 4** is a true and correct copy of my letter to Mdm. Edwards apprising her of case status, which includes the undersigned’s statements that I was endeavoring to secure payment of all liens-save statutory control-for approximately 50% of the face value of the lien **and** that I was still working on the potential part II of her case—the UIM claim(s) with Encompass Insurance Co.

1 I close, for my part, on this topic with the salient fact in this matter that appears grievously  
2 overlooked-for reasons unbeknownst to the undersigned-the trust funds to pay said liens were indeed  
3 “frozen” secondary to an unsubstantiated fraud claim by none other than JAMES V. PARZIALE.  
4 Attached as **Exhibit 5** is a true and correct copy of the e-mail communications between Graham Duck,  
5 Branch Manager for US Bank and the undersigned showing that Mssr. Parziale was, indeed, at work to  
6 try and extort funds from the undersigned to pay his unfounded claims for attorney’s fees on a case he  
7 did practically nothing on. Consequently, it was legally impossible for me to perform the accused  
8 tasks due to the tortious, and dare I say, criminal conduct of Mssr. Parziale. And, on that, I conclude  
9 this section of response. On to, then...

10 **III.**

11 **COUNT TWO – FORGERY B&P CODE 6106 –FORGERY**

12 First and foremost, this allegation is taken most seriously as it calls into question the  
13 undersigned’s moral character, which is heretofore unblemished by my impeccable disciplinary record.  
14 Second, it has been, and continues to be, vehemently denied by the undersigned. Third, the element of  
15 moral turpitude alleged would be deemed a felony under California Penal law; to wit Cal.Pen.Code  
16 §470 **“with the intent to commit a fraud”** sign another’s name.

17 I say to you, Ladies and Gentlemen of the Bar, that the undersigned had no such *mens rea*  
18 whatsoever such that any judicial institution in this great country of ours could ever so find by any  
19 reasonable interpretation of the evidence under either evidentiary threshold: (a) beyond a reasonable  
20 doubt-criminal or (b) by “clear and convincing evidence” under the State Bar Rules of Court. The  
21 exhibits speak volumes in this regard. I adduce *hoc modo*:

22 **Exhibit 6** – Deposition Transcript of Raymundo Pacello, Jr., Esq. in the Edwards v. Pacello  
23 case wherein I testified under oath that Mrs. Esther Edwards provided me verbal authority to execute  
24 her signature as her attorney of record.

25 **Exhibit 7** – Copy of the Settlement Draft bearing my handwriting of Esther Edwards name  
26 with a small “poa” next to it to signify the authority behind the signature. In addition, no client funds  
27 were ever touched; therefore, there was **no** “intent to commit a fraud” upon Mrs. Edwards and  
28 moreover, she received ALL of the funds she was entitled to.

1       **Exhibit 8** – Copy of my letter to Mssr. Parziale request that he justify his exorbitant claimed  
2 attorney fee lien in the amount of \$54,000.00 and that I would “gladly write him a check.”  
3 Furthermore, “AFTER” Mssr. Parziale alleged I committed some untoward conduct, he outright  
4 accepted money from me regarding the Complaint he alleged I violated some agreement that never  
5 existed.   *Why would one after making a criminal allegation accept funds (fruit) from alleged*  
6 *criminal conduct (poisonous tree)?*

7       **Exhibit 9** – Coupled with **Exhibit 1** is a true and correct copy of the undersigned Motion to  
8 Enforce the Stay and Request for Sanctions for Mssr. Parziale’s “willful” violation of my automatic  
9 stay since filing for Chapter 7 Bankruptcy on September 19, 2013. Evidentiary wise then, we have (a)  
10 a per se unethical complaint against me in violation to extort funds under CPRC 5-100, (b) a  
11 subsequent and even more flagrant violation of that rule by filing yet another complaint that this  
12 venerable institution dismissed forthwith—See Exhibit 1 lodged herewith, (c) a “willful” violation of  
13 the automatic stay in my chapter 7 bankruptcy by the very same person making the allegation(s)  
14 against me, and (d) an illogical and contradictory argument by said individual that in one case that suits  
15 his interests, I am not entitled to a lien and then a few months later, argue that he is entitled to a lien for  
16 all the work, I did. The intent to defraud or mens rea lies not here, but with Mssr. Parziale.

17       **Exhibit 10** – A true and correct copy of my deposition transcript pgs. 62-65 wherein I testified  
18 that I thought it was Mssr. Parziale’s signature; therefore, assuming I was wrong-which I deny-I was  
19 operating under a mistake of fact. And coupled with Exhibit 8, I never intended to defraud Mssr.  
20 Parziale out of any “lawful” and/or “rightful” funds he was entitled to. Again, I harbored no  
21 fraudulent *mens rea* at all to commit any act of moral turpitude or dishonesty or corruption by any  
22 stretch of the meaning.

23       **Exhibit 11** -- See page 2 of Exhibit 5 wherein the Branch Manager-Graham Duck-after his  
24 legal department reviewed my letter advising Mssr. Parziale that his claims were unfounded and  
25 unsupported by the law, US BANK released the hold on my trust account. Clearly, they did not feel  
26 defrauded and I had no intent to defraud them anyway. Lastly, at the time my trust account was  
27 frozen, Mrs. Edwards was my client. It would be preposterous to think she alleged fraud to tie up her  
28 own—close to \$200,000.00 for over a year.

**Exhibit 12**— Attached is a true and correct copy of Allstate Adjuster Jose Castillo's facsimile dated November 5, 2013 advising the undersigned that my client's signature does NOT need to be notarized on their Release of All Claims. This is probative insofar as the claim made by Mssr. Parziale was to Allstate that there was an issue of fraud and/or forgery or both regarding Esther Edward's \$250,000.00 settlement check. A reasonable inference can therefore be drawn that IF Allstate were concerned about any intent to defraud on "my behalf" surely there would be a "company-wide memorandum" that Pacello is not to be trusted and Allstate will require notaries on all of his client's signatures. Obviously, that is NOT the case and Exhibit 12 is provocative evidence thereof that no-one person or entity involved in the Edwards' matter, save Mssr. Parziale has made any claim of fraud to suit his own greedy desires.

**Exhibit 13** – Perhaps the most poignant piece of evidence is the Declaration Under Penalty of Perjury attached to former Parziale client’s lawsuit against him for none other than fraud stating that “he,” i.e., Mssr. Parziale is liable for fraud to put the proverbial “cherry on the cake!”

To end, then, a long reply briefly: No act of moral turpitude, dishonesty or corruption can be levied or proven against the undersigned because I had **no intent to defraud anyone** and the evidence supports the same by “clear and convincing” proof. We proceed therefore to...

#### IV.

**COUNT THREE COMMINGLING—CPRC 4-100(A)**

To this count I can neither admit nor deny the allegations as a whole. It is rather odd and thus curiously curious that checks drawn off a trust account have no check numbers on them. Save numbers 4 and 5 to which I admit were drawn off the trust account—either in inadvertent error or as a direct result of the undersigned's strategic legal decision to sue Mssr. Parziale for intentionally interfering with Esther Edwards' funds without true claim or right and to use that vehicle to file a Temporary Restraining Order against from endeavoring to "freeze" or "tie up" client funds based on a civil dispute between attorneys. That would be one of the \$435.00 drafts to the Clerk of the Court. I do not see how that can be a personal expense; rather it is a "case expense;" a fortiori no-commingling with the Court. The same holds true for the other \$435.00 check.

///

1 The other checks identified as "0000" appear more to be checks written off the general business  
2 account and absent proof of trust funds used therefor, I am not in a position to respond adequately as  
3 none of the trust documents in my possession evidence them save but one for Stephanie Kelly for  
4 \$91.22. If this was in fact done, then I capitulate to it as an error due to mistake, inadvertence or  
5 oversight because it is likely the "starter checks" were miswrote by a contract office assistant/helper  
6 and I signed the same thinking it was a general account check. I have no problem providing  
7 restitution to whoever I may have inadvertently harmed due to this less than significant sum mistake;  
8 and I close with: "*mea culpa.*" I move forward then to...

9 V.

10 **COUNT FOUR—APPEARING WITHOUT AUTHORITY B&P CODE §6104**

11 In reply to this without, again, recalcitrance or haught; however, is not one of our cardinal  
12 ethical duties is to zealously represent our client and take such acts to protect their legal rights through  
13 the use of the court system that we are licensed to practice before? Though it is not codified to my  
14 cursory research in California, there is a Model Code of Professional Conduct Rule that, at least, I  
15 recall from Professional Responsibility Class that is, *DR-7101 Representing a Client Zealously*.  
16

17 I did just that by filing the lawsuit on Esther Edwards' behalf-in my humble opinion-to (a)  
18 protect her legal interests, (b) try and do everything I could to stop Mssr. Parziale from interfering with  
19 her settlement money as he already tried to tie the funds up *unethically*, and (c) I had no other legal  
20 alternative but to seek redress in the Court for such egregious conduct. I intended no harm to Mrs.  
21 Esther Edwards and sought only to protect her and stop who I believed to be an unethical lawyer trying  
22 to use extortive tactics to get money he really had no right too.  
23  
24

25 In closing, then, if my decision to protect my client's settlement funds by filing suit and seeking  
26 a TRO against Mssr. Parziale is violative of B & P Code §6104 as being done corruptly or willfully by  
27 clear and convincing evidence, then I would be in genuine shock. Also, I do believe my Retainer  
28

1 Agreement allows me to take such necessary and proper steps to protect my client and filing suit is one  
2 of those steps authorized by my Retainer Agreement. I would submit that none of the acts taken for  
3 Mrs. Esther Edwards were in any way corrupt or willful and/or nefariously designed to harm her nor  
4 were they unauthorized pursuant to the authority granted by my then firm's retainer agreement. I  
5 thusly proceed to the next count, as follows:  
6

7 **VI.**  
8

9 **COUNT FIVE – ALLEGED VIOLATION OF B & P §6090.5(a)(2)**  
10

11 I also vehemently deny this allegation in its entirety. I had NO communications with Mssr.  
12 Parziale to the effect that I would only mediate with him IF he withdrew his Bar Complaint and/or  
13 agreed not to cooperate with an investigation or prosecution by the State Bar. On the absolute  
14 contrary, I consulted with Jonathan Brenner, Esq. before a Bar Complaint was ever filed and told him  
15 of the situation and asked for his assistance because, in all due candor, I had bigger fish to fry and  
16 wanted to resolve this puerile dispute amongst colleagues without a big ordeal.  
17

18 I understand, and do pardon as it has been some time, that Mr. Brenner had contacted Mssr.  
19 Parziale and we were going to mediate and work it out. It was thereafter that I received a Bar  
20 Complaint filed by Mssr. Parziale against me for stuff that wasn't even true and that's when I  
21 contacted John Brenner and said I have no interest in mediating with Mssr. Parziale; he crossed the line  
22 and I wanted no part of him. I believe that was communicated by John Brenner and if I recall  
23 correctly, that is when he started defaming me on the CASD Listserve and threatening to sue me. It  
24 was shortly thereafter that my trust account was frozen due to his conduct; not mine. So while I  
25 backed out of mediation, I never conditioned it on withdrawing a Complaint or seeking an agreement  
26  
27  
28

VIII.

COUNT SEVEN – CPRC 4-100 (B)(4) FAILURE TO PAY CLIENT FUNDS PROMPTLY

I request this venerable institution take judicial notice of California Superior Court Case No. 37-2013-00046320-CU-BT-CTL, which will show as a matter of law-that an Order from the Honorable John S. Meyer was required to obtain U.S. Bank's release of the held in trust for Mrs. Esther Edwards because, as Exhibit 5 demonstrates, the account was "frozen" and I had NO access to the money to give to Esther Edwards. I DID NOT WILLFULLY WITHHOLD any of her funds ever and it was because of the unforeseeable supervening, intervening act of Mssr. Parziale that rendered my ability to do so legally impossible. I was no longer Mrs. Edwards' attorney. My trust account containing the funds was frozen and court Order was required to release them that I had no power to seek. Therefore, a willful violation of CPRC 4-100(B)(4) was impossible for me commit for the foregoing reasons and the record will so confirm. And as to the last alleged I reply:

IX.

COUNT EIGHT – CPRC 3-700(D)(1) FAILURE TO RELEASE FILE

I absolutely released Mrs. Edwards file to Mr. Tremblatt. His associate or contract attorney (who I used occasionally) named Daniel Vespi, Esq. actually came by the office and retrieved it without impediment. See also Exhibit 14. I am unaware of any evidence that would show by clear and convincing evidence that I willfully withheld Esther Edwards' file, because it certainly was not me that withheld anything.

///

///

X.

CONCLUSION

It goes without saying that this is a very stressful matter. I remain cooperative with State Bar and intend no animus to not comply with their investigation and/or prosecution for that matter.

However, I can and will defend myself vigorously and to the full extent my meager skills will allow.

I am currently in Chapter 7 Bankruptcy and am trying to maintain the partnership practice Mr. Cao and I conceived many years ago. I have no disciplinary history and no criminal convictions for any crime of moral turpitude. I endeavor to believe that the Good Members of the State Bar see that the Complainant had it out for me ever since I left contract employment and has used economic duress, disciplinary threats, and criminal extortion to cripple me personally and professionally.

With that, I close my respectful reply to the State Bar, its Counsel and the Judges of the Court.

Dated: November 6, 2013

Raymundo Pacello, Jr., Esq.

1 **PROOF OF SERVICE BY MAIL**

2 **STATE OF CALIFORNIA** }

3 }

4 **COUNTY OF SAN DIEGO** }

5 I am EMPLOYED IN THE county of San Diego, State of California. I am  
6 over the age of eighteen (18) and not a party to the within action. My business  
address is 2801 Camino Del Rio South, Suite 318, San Diego, CA 92108.

7 On November 7, 2013, I served the foregoing document(s), as follows:

8 **Notice of Defense and Response to Alleged Disciplinary Charges to the**  
9 **State Bar of California**

10 Said document was served on the interested party/parties in this action  
11 by placing a true and correct copy thereof, enclosed in a sealed envelope,  
addressed as follows:

12 State Bar of California  
13 Office of the Chief Trial Counsel  
Jayne Kim, No. 174614  
14 Chief Trial Counsel  
Joseph R. Carlucci, No. 172309  
15 Deputy Chief Trial Counsel  
Melanie J. Lawrence, No. 230102  
16 Assistant Chief Trial Counsel  
17 Anthony J. Garcia, No. 171419  
18 Senior Trial Counsel  
1149 South Hill Street  
19 Los Angeles, CA 90015-2299  
20 Telephone: (213) 765-1089

**VIA OVERNIGHT DELIVERY**  
**VIA FED EX**

21 I am "readily familiar" with the firm's practice of collection and  
22 processing correspondence for mailing. Under the practice it would be  
deposited with the U.S. Postal Service on that same day with postage thereon  
23 fully prepaid at San Diego, in the ordinary course of business. I am aware that  
on motion of the served party, service California service is presumed invalid if  
24 postal cancellation date or postage meter date is more than one (1) day after  
the date of deposit for mailing in affidavit.

25 Executed on the 7<sup>th</sup> day of November, 2013, at San Diego, California.

26 I declare under penalty of perjury under the laws of the State of  
California that the above is true and correct. I further declare that I am  
27 employed in the office of a member of the bar of this Court at whose direction  
the service was made.

28   
Denni Coslett