



The State Bar
of California

OFFICE OF CHIEF TRIAL COUNSEL

845 S. Figueroa Street, Los Angeles, CA 90017

213-765-1338

bo.yang@calbar.ca.gov

February 20, 2020

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114

RE: Case Number: 20-O-02561
Respondent: David Demian

Dear Mr. Cotton:

The State Bar's Office of Chief Trial Counsel has reviewed your complaint against David Demian to determine whether there are sufficient grounds to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct. Please note that this letter addresses only your complaint against David Demian. The complaint you have made against other attorneys will be reviewed and addressed separately.

In your complaint to the State Bar, you alleged that Mr. Demian dropped two causes of action from your civil complaint without your authorization. You expressed your belief that "[o]nly an attorney seeking to sabotage his client's case would have dropped those allegations." You stated that the opposing parties testified to facts which would have supported the causes of action and allegations that Mr. Demian had dropped. In your separate complaint against Ms. Jana Mickova Will, you also alleged that Mr. Demian failed to argue that a key document in your case was not an enforceable contract.

Based on our evaluation of the information provided, we are closing your complaint. In order to investigate allegations of attorney misconduct, the State Bar needs specific facts which, if proved, would establish a violation of the attorney's ethical duties. We have determined that your complaint does not present sufficient facts to support an investigation.

Under the laws of California, it is misconduct for an attorney to intentionally or recklessly provide incompetent legal services, and the State Bar may take disciplinary action against such misconduct where appropriate. In contrast, mere negligence or poor judgment by an attorney does not provide a basis for discipline by the State Bar. Instead, these are matters of

professional malpractice to be addressed by a court of competent jurisdiction. Also, an attorney can exercise discretion in handling a client's legal matters and may decide what claims or defenses are viable and what evidence, testimony, and argument should be offered to the court. An attorney has "wide latitude in choosing among legitimate but competing considerations, and is not liable for an informed tactical choice within the range of reasonable competence." *Barner v. Leeds* (2000) 24 Cal.4th 676, 690. Here, the facts you presented – that Mr. Demian did not include certain allegations and did not advance an argument about the disputed document – would not establish that the attorney acted intentionally or recklessly to provide incompetent legal services. Based on the facts you have presented, it appears that Mr. Demian was within his professional discretion to decide which allegations and causes of actions to present, and what arguments to present before the court. Even if Mr. Demian did not perform these acts as an informed tactical choice, the conduct you have alleged would still be considered a matter of negligence or poor judgment best addressed by a civil court of competent jurisdiction.

For these reasons, the State Bar is closing this matter.

If you have new facts and circumstances that you believe may change our determination to close your complaint, you may submit a written statement with the new information to the Intake Unit for review. If you have any questions about this process, you may call Deputy Trial Counsel Bo Yang at 213-765-1338. If you leave a voice message, be sure to clearly identify the lawyer complained of, the case number assigned, and your telephone number including the area code. We should return your call within two business days.

If you are not aware of new facts or circumstances but otherwise disagree with the decision to close your complaint, you may submit a request for review by the State Bar's Complaint Review Unit, which will review your complaint and the Intake Unit's decision to close the complaint. The Complaint Review Unit may reopen your complaint if it determines that your complaint was inappropriately closed or that you presented new, significant evidence to support your complaint. To request review by the Complaint Review Unit, you must submit your request **in writing**, together with any new evidence you wish to be considered, post-marked within **90 days of the date of this letter**, to:

The State Bar of California
Complaint Review Unit
Office of General Counsel

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180 Howard Street
San Francisco, CA 94105-1617

We would appreciate if you would complete a short, anonymous survey about your experience with filing your complaint. While your responses to the survey will not change the outcome of the complaint you filed against the attorney, the State Bar will use your answers to help improve the services we provide to the public. The survey can be found at <http://bit.ly/StateBarSurvey1>.

Thank you for bringing your concerns to the attention of the State Bar.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bo Yang', written over a horizontal line.

Bo Yang
Deputy Trial Counsel