



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-02570  
Respondent: Scott Toothacre

Dear Mr. Cotton:

The State Bar's Office of Chief Trial Counsel has reviewed your complaint against Scott Toothacre 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 only addresses your complaint against Scott Toothacre. The complaints you have filed against other attorneys will be reviewed and addressed separately.

In this particular complaint, you stated that Mr. Toothacre represented your opposing party in a civil case, and that one of the key issues in that case was whether a document dated November 2, 2016 should be construed as an enforceable contract. You alleged that Mr. Toothacre failed to apprise the court that the disputed document was not an enforceable contract. Based on the above, you alleged that Mr. Toothacre has defrauded the court. In your other State Bar complaints involving the same case, you expressed your belief that the disputed document 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.

The facts you have alleged here – that Mr. Toothacre failed to apprise the court that a disputed document was not an enforceable contract – is a legal dispute between opposing parties. As such, the court with jurisdiction over that case is the only entity with authority to make a ruling on this issue. The State Bar is not a trier of fact or law, and cannot overrule or otherwise

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change the court's ruling on this issue. The State Bar cannot discipline an attorney based on a factual or legal dispute alone.

Furthermore, as opposing counsel, Mr. Toothacre does not owe you a duty to perform legal services or your behalf or to litigate in a manner that is favorable to you. Instead, he has a responsibility to pursue his client's best interests, which includes making arguments regarding the nature of certain documents under various legal doctrines. To protect his client's interests, Mr. Toothacre was also entitled to rely on information from his client in good faith (including the nature of the disputed document) in taking the civil actions he deems necessary to protect those interests. This is true even when to do so might directly conflict with your interests, or those of other parties involved. This conflict alone is insufficient to demonstrate misconduct.

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  
180 Howard Street  
San Francisco, CA 94105-1617

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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,



Bo Yang  
Deputy Trial Counsel