DARRYL COTTON
6176 Federal Boulevard
San Diego, CA 92104
Telephone: (619) 954-4447

Plaintiff *Pro Se*



NUNC PRO TUNC
Oct 29 2020

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,
Plaintiff,
v.

LARRY GERACI, an individual, REBECCA BERRY, an individual; GINA AUSTIN, an individual; AUSTIN LEGAL GROUP, a Professional Corporation; MICHAEL WEINSTEIN, an individual; SCOTT H. TOOTHACRE, an individual; FERRIS & BRITTON, a Professional Corporation; CITY OF SAN DIEGO, a public entity, and DOES 1 through 10, Inclusive,
Defendants.

Case No.: 3:18-cv-00325-TWR-DEB

PLAINTIFFS NOTICE OF *EX PARTE* APPLICATION AND *EX PARTE* APPLICATION FOR LEAVE TO FILE ATTACHED OMNIBUS SUR-REPLY

Related Case: Case No.: 3:20-cv-00656-TWR-DEB

**PLEASE TAKE NOTICE**: Plaintiff Darryl Cotton pro se, respectfully move for leave to submit the attached omnibus sur-reply (attached as "Exhibit A") in order to prevent an injustice and further fraud upon the court based on newly discovered evidence. Plaintiff requests that this sur-reply be applied to the following motions pending before this Court.

Case No.: 3:18-cv-00325-TWR-DEB (*Cotton v. Geraci et. al.*).

1. Motion to Dismiss for Failure to State a Claim by Gina Austin (Docket No. 24).

2. MOTION to Dismiss for Failure to State a Claim by Michael Weinstein (Docket No.25).
3. Plaintiff's Notice of Ex Parte Application and Ex Parte Application for Appointment of Counsel by Darryl Cotton (Docket No. 36).
4. Plaintiff's Ex Parte Application for (1) OSC RE: Preliminary Injunction, (2) Record Lis Pendens. (Filed October 27, 2020).

Plaintiff's Omnibus Sur-reply is attached to this *Ex Parte* motion as "Exhibit A."

Dated: October 29, 2020

Darryl Cotton

By _____

Plaintiff *In Propria Persona*

## A. INTRODUCTION

Plaintiff has recently been provided new information relevant to the motions pending before Hon. Judge Todd W. Robinson in the cases captioned above. Plaintiff has alleged that a small group of individuals, including attorneys and their client unlawfully conspired against the Plaintiff. Plaintiff Cotton was originally sued in California Superior Court *Geraci v. Cotton*, 37-2017-00010073-CU-BC-CTL ("*Cotton I*"). Cotton maintained throughout *Cotton I* that Geraci had breached their oral joint venture agreement by failing to memorialize their terms in writing. After many months and many requests for assurances Cotton terminated their agreement and sold the property to Flores' predecessor in interest, Richard Martin. The newly discovered evidence, outlined in more detail below, proves that a key witness, Corina Young was kept from testifying by her own attorney who is connected to Geraci's attorney Gina Austin.

## *B.* LEGAL STANDARDS

*Ex Parte* applications "are a form of emergency relief that will only be granted upon an adequate showing of good cause or irreparable injury to the party seeking relief." *Salameh v. Tarsadia Hotel*, No. 09cv2739-GPC (BLM), 2015 U.S. Dist. LEXIS 50354, at *6 (S.D. Cal. Apr. 16, 2015) (quotation and citation omitted). The application must address why the regular noticed motion procedures are not adequate and must be supported by admissible evidence. *Id.* at *6-7. Second, the moving party must be "without fault" in creating the need for ex parte relief. *Id.* at *7.

### a. NEWLY DISCOVERED EVIDENCE CONFIRMS THAT ATTORNEY NYUGEN DIRECTED A MATERIAL WITNESS TO IGNORE A LAWFUL SUBPOENA FOR THE BENFIT AND AT THE DIRECTION OF THE ENTERPRISE CONSPIRATORS.

The newly discovered evidence is related to testimony by a key witness for Cotton in *Cotton I,* Corina Young. See Declaration of Darryl Cotton ("Cotton Dec.") ¶¶ 4-6. Ms. Young has worked in the cannabis industry and had considered helping finance *Cotton I.* She spoke to her attorney Matthew Shapiro about this opportunity and he set a meeting with Geraci's agent and lobbyist Jim Bartell of Bartell and Associates. Matthew Shapiro

has worked extensively with Gina Austin and was a protégé of hers. At this meeting Bartell told Ms. Young not to invest in the litigation since the project was dead because "everyone hates Darryl" providing direct evidence that despite the attestations of Geraci and his agents to the contrary, they were actively attempting to sabotage the marijuana permit application being processed on Mr. Cotton's property. Cotton Dec. ¶ 21.

Cotton found out about these statements from Ms. Young. *Id.* Cotton filed various motions including two separate applications for appointment of a receiver which were denied by state court judge Joel Wohlfeil. Cotton Dec. ¶ 7, lns 9-14. Cotton argued that such a move would limit Geraci's liability because obtaining a permit to operate a marijuana dispensary was a condition precedent to him purchasing the property, and by having it denied he would not have to pay those damages for his breach. *Id.* During *Cotton I*, Cotton's attorney had subpoenaed Ms. Young for her deposition and Young's attorney Natalie Nguyen unilateral cancelled the depositions on two separate occasions and promised to provide an affidavit confirming the contents of her text messages with Cotton's litigation investor, Joe Hurtado. Cotton Dec. ¶ 22; Cotton Dec. Ex. No. 5.

On Tuesday October 27, 2020 Cotton filed an *Ex Parte* application for OSC for why a preliminary injunction should not be issued, along with a request to file a Lis Pendens. After filing, Cotton sent an email to many parties associated with this case (3:18-cv-TWR-DEB). Young was included in that email. Cotton Dec. Ex. No. 1. The next day Cotton received an unsolicited email from Young. In that email she states "Darryl, ¶ I'm not involved. Please do not include me in your lawsuit. Please to don't post this email online. Attached are emails from my attorney at the time." Cotton Dec. Ex. No. 4.

Those attached emails show that Young's attorney Natalie Nguyen "just ignored" Cotton's attorney and that despite Ms. Young's willingness to provide her testimony she instructed to ignore the lawful subpoena. *Id.* Furthermore, the second email sent shortly after the trial in favor of Geraci in *Cotton I* Nguyen tells Young that she "[didn't] have to worry about providing any declaration or testimony in this case." Cotton Dec. ¶ 23; Cotton Dec. Ex. No. 6. At this time Nguyen knew that her client was a material witness

who had ignored a lawful subpoena and was actively absconding from testifying at trial. Cotton Dec. Ex. No. 11. This was in addition to promising testimony to Cotton's attorney with no intention of doing so. Though not included in the material sent to Cotton by Young, the body of the email references a final invoice with "no payment due from ***you***" implying someone else payed the final invoice. Cotton Dec. Ex. No. 6 (emphasis added). The totality of the evidence shows that it is highly likely that these fees were paid by Geraci or one of his agents and/or attorneys.

### C. CONCLUSION

Defendants have contended that this case should be barred because Cotton is forum shopping, the prior state court case was adjudicated in favor of Geraci, the officers of the court did not act outside of their capacity as attorney's. This new evidence proves otherwise. Cotton never received a fair trial in *Cotton I,* attorney Nguyen for the benefit and at the direction of Geraci or his agents suppressed Young's testimony.

Dated: October 29, 2020

Darryl Cotton

By _____

Plaintiff *In Propria Person*

# EXHIBIT A

DARRYL COTTON
6176 Federal Boulevard
San Diego, CA 92104
Telephone: (619) 954-4447

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiff,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual; GINA AUSTIN, an individual; AUSTIN LEGAL GROUP, a Professional Corporation; MICHAEL WEINSTEIN, an individual; SCOTT H. TOOTHACRE, an individual; FERRIS & BRITTON, a Professional Corporation; CITY OF SAN DIEGO, a public entity, and DOES 1 through 10, Inclusive,

Defendants.

Case No.: 3:18-cv-00325-TWR-DEB

OMNIBUS SUR-REPLY

Related Case: Case No.: 3:20-cv-00656-TWR-DEB

Plaintiff hereby files this omnibus sur-reply in reply to:

1. Motion to Dismiss for Failure to State a Claim by Gina Austin (Docket No. 24).

2. MOTION to Dismiss for Failure to State a Claim by Michael Weinstein (Docket No.25).

3. Plaintiff's Notice of Ex Parte Application and Ex Parte Application for Appointment of Counsel by Darryl Cotton (Docket No. 36).

4. Plaintiff's Ex Parte Application for (1) OSC RE: Preliminary Injunction, (2)

Record Lis Pendens.

## I. NEW MATERIAL FACTS

The newly discovered evidence is related to testimony by a key witness for Cotton in *Cotton I,* Corina Young. See Declaration of Darryl Cotton ("Cotton Dec.") ¶¶ 4-6. Ms. Young has worked in the cannabis industry and had considered helping finance *Cotton I.* She spoke to her attorney Matthew Shapiro about this opportunity and he set a meeting with Geraci's agent and lobbyist Jim Bartell of Bartell and Associates. Matthew Shapiro has worked extensively with Gina Austin and was a protégé of hers. At this meeting Bartell told Ms. Young not to invest in the litigation since the project was dead because "everyone hates Darryl" providing direct evidence that despite the attestations of Geraci and his agents to the contrary, they were actively attempting to sabotage the marijuana permit application being processed on Mr. Cotton's property. Cotton Dec. ¶ 21.

Cotton found out about these statements from Ms. Young. *Id.* Cotton filed various motions including two separate applications for appointment of a receiver which were denied by state court judge Joel Wohlfeil. Cotton Dec. ¶ 7, lns 9-14. Cotton argued that such a move would limit Geraci's liability because obtaining a permit to operate a marijuana dispensary was a condition precedent to him purchasing the property, and by having it denied he would not have to pay those damages for his breach. *Id.* During *Cotton I,* Cotton's attorney had subpoenaed Ms. Young for her deposition and Young's attorney Natalie Nguyen unilateral cancelled the depositions on two separate occasions and promised to provide an affidavit confirming the contents of her text messages with Cotton's litigation investor, Joe Hurtado. Cotton Dec. ¶ 22; Cotton Dec. Ex. No. 5.

On Tuesday October 27, 2020 Cotton filed an *Ex Parte* application for OSC for why a preliminary injunction should not be issued, along with a request to file a Lis Pendens. After filing, Cotton sent an email to many parties associated with this case (3:18-cv-TWR-DEB). Young was included in that email. Cotton Dec. Ex. No. 1. The next day Cotton received an unsolicited email from Young. In that email she states "Darryl, ¶ I'm not involved. Please do not include me in your lawsuit. Please to don't post this email online. Attached are emails from my attorney at the time." Cotton Dec. Ex. No. 4.

Those attached emails show that Young's attorney Natalie Nguyen "just ignored" Cotton's attorney and that despite Ms. Young's willingness to provide her testimony she instructed to ignore the

lawful subpoena. *Id.* Furthermore, the second email sent shortly after the trial in favor of Geraci in *Cotton I* Nguyen tells Young that she "[didn't] have to worry about providing any declaration or testimony in this case." Cotton Dec. ¶ 23; Cotton Dec. Ex. No. 6. At this time Nguyen knew that her client was a material witness who had ignored a lawful subpoena and was actively absconding from testifying at trial. Cotton Dec. Ex. No. 11. This was in addition to promising testimony to Cotton's attorney with no intention of doing so. Though not included in the material sent to Cotton by Young, the body of the email references a final invoice with "no payment due from ***you***" implying someone else payed the final invoice. Cotton Dec. Ex. No. 6 (emphasis added). The totality of the evidence shows that it is highly likely that these fees were paid by Geraci or one of his agents and/or attorneys.

## II. ARGUMENT

### A. ATTORNEY NGUYEN'S WILFUL FAILURE TO COMPLY WITH A LAWFULLY ISSUED SUPOEANA AND PROVIDE YOUNG'S PROMISED TESTIMONY CONSTITUTES A FRAUD ON THE COURT.

"Fraud on the court" is defined in terms of its effect on the judicial process, not in terms of the content of a particular misrepresentation or concealment. Fraud on the court must involve more than injury to a single litigant; it is limited to fraud that "seriously" affects the integrity of the normal process of adjudication. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) (fraud on court "is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society").

The Ninth Circuit has quoted Moore's for the proposition that fraud on the court is a "species of fraud which does or attempts to, defile the court itself or is a fraud perpetrated by officers of the court". *In re Intermagnetics America, Inc.*, 926 F.2d 912, 916–917 (9th Cir. 1991). "In the case that prompted the definition just quoted, the Ninth Circuit was dealing with a bankruptcy sale that was confirmed on the basis of a perjured affidavit by the debtor-in-possession. The Ninth Circuit refused to follow the normal rule that presentation of perjured testimony is simply fraud between the parties and not fraud on the court. The court ruled in this case that because the debtor-in-possession was an officer of the court, his perjury was different from that of an ordinary party or witness and amounted to fraud on the court."

12 Moore's Federal Practice - Civil § 60.21 (2020) (citing *In re Intermagnetics America, Inc.*, 926 F.2d 912, 916–917 (9th Cir. 1991) ("The district court … erred in concluding that it was unnecessary to determine whether Anand was an officer of the court at the time he made an admittedly false declaration before the bankruptcy court").

Attorney Nguyen is an officer of the court. Her client was subpoenaed, and Nguyen unlawfully unilaterally cancelled two depositions for her client Young while promising to provide her material and case-dispositive testimony. Contrary to arguments before this Court right now, an officer-of-the court testifying or taking actions allegedly in a capacity as other than an officer of the court does not insulate such a party from liability. *In re Intermagnetics America, Inc.*, 926 F.2d 912, 917 (9th Cir. 1991) ("Contrary to the argument made by CITIC, the fact that Anand was acting outside his authority when he committed fraud cannot mean that he therefore ceased being an officer of the court. Such a rule would operate to shield fraudulent activity by an officer of the court by virtue of the fraudulent activity itself.").

Thus, Nguyen's failure to provide testimony, and unlawfully cancelling two of Young's depositions, blatantly deceive Cotton's promises that Young's testimony would be provided, and her own communications clearly establishing that she was willfully ignoring to abide by her promises to provide Young's testimony, and that her services were paid by a third party, are manifestly, irrefutably a fraud on the court.

Thus, Nguyen's (i) unlawful and unilateral canceling of two of Young's depositions; (ii) blatantly deceitful course of conduct over months promising to provide Young's testimony to Cotton's attorney; (iii) emails to Young TELLING her client that they will "ignore" their promise to provide Young's testimony; and (iv) email reflecting that her services were paid by a third party, not young, are manifestly, irrefutably evidence a fraud on the court that has to date successfully deceived multiple courts in multiple actions across years. Nguyen's actions as an officer of the court are *why* a fraud on the court must be found in the Ninth Circuit and CANNOT be used as a shield by her and co-conspirators. 12 Moore's Federal Practice - Civil § 60.21 (2020) ("Ninth Circuit rules that misconduct by officer of court is

alternative definition of fraud on court." (citing *In re Intermagnetics America, Inc.*, 926 F.2d 912, 916–917)); *In re Golf 255, Inc.*, 652 F.3d 806, 810 (7th Cir. 2011) ("a witness's lies are not fraud on the court unless a lawyer in the case is complicit in them."); *Lockwood v. Bowles*, 46 F.R.D. 625, 632–634 (D.D.C. 1969) ("The allegation involving perjury presents a more difficult question. But we believe the better view is that where the court or its officers are not involved, there is no fraud on the court within the meaning of Rule 60(b)").

**B. ATTORNEY, NGUYEN, PREVENTED HER CLIENT FROM PROVIDING HER TESTIMONY THAT EVIDENCES THAT BARTELL WAS SEEKING TO HAVE THE CUP APPLICATION ON COTTON'S PROPERTY DENIED AND MAGAGNA THREATNED HER TO PREVENER HER FROM PROVIDING HER TESTIMONY REGARDING BARTELL'S STATEMENT. THIS IS IRREFTUBABLE EVIDENCE THAT COTTON IS NOT CRAZY AND THAT GERACI AND HIS ATTORNEYS HAVE ALWAYS BEEN CONSISTENTLY TAKING ACTIONS TO COVER-UP THEIR ILLEGAL ACTIONS.**

Nguyen did not decide to take these actions on her own for no reason. It is not a coincidence that Magagna's attorneys, both Matt Shapiro and Gina Austin, are members of the Antitrust Conspiracy that Cotton has been alleging for years. Also, that Austin is a classmate of Nguyen and Shapiro paid for Young's legal services. What kind of honest attorney pays for their client's legal services? None. Only those that have something to hide and need to hire attorneys that they can control to take illegal actions, like failing to comply with court subpoenas and illegally preventing their clients from providing their testimony.

Judge Robinson, for the love of God, please, please come down like the wrath of God on these self-righteous, officers-of-the-court, who use their license to practice law and the presumption of integrity it affords them to effectuate crimes through the judiciaries, which has including ruining my life. My lifelong passion for the legalization of medical cannabis may make you dislike me as a federal judge (I say may because I don't know what you personal stance is), but I am an innocent victim in all this that has been taken advantage of by everyone, including my own attorneys. Geraci, and all his attorneys and associates are straight up criminals who are continuing to ruin the lives of innocent people.

**C. THIS NEW EVIDENCE COUPLED WITH THE FACT THAT GERACI'S AGENTS WERE ALSO ACTIVELY WORKING ON A COMPETING CUP APPLICATION PROVE THAT THERE WAS A FRAUD PERPETRATED ON THE COURT.**

The record of this cases makes clear that (1) Geraci was legally barred from obtain a marijuana related entitlement because of his prior sanctions for maintaining an illegal marijuana dispensary on at least three separate occasions, (2) Geraci entered into an illegal contract with Cotton to secure such an entitlement, (3) applied for a marijuana entitlement in the name of his secretary for the specific purpose of keeping his name (and by extension his prior sanctions) off of the application, (4) filed a meritless lawsuit to prevent Cotton from selling his property to Flores' predecessor in interest, (5) then conspired with his "team" to sabotage the CUP application on Cotton's property by not actively pursuing it and by having a competing CUP issued 300 ft away, (6) and tamper with a witness damaging to his case. Then after all of those machinations (7) had his co-conspirators lie to the court an obtained a verdict in their favor via a fraud on the court.

The court is not a forum of rich people to abuse others. The idea that justice is only given to those with the resources to secure it is evident in this case. Though many may see this as playing the "game" of litigation this is Cotton's life, his life saving, everything he has worked for. The idea that rich people do not have to follow the same rules as everyone else is repugnant, disgusting, and contrary to the idea that justice is blind. This may be so but unless this miscarriage of justice is ratified all she will ever see is green.

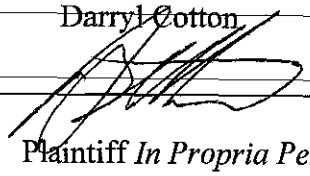
## III. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that this Court use its power to grant the relief it can to Cotton in the most expeditious manner possible. It is not desiring pity or melodramatics when Cotton says his professional, personal and familial relationships have been destroyed by this litigation by Geraci simply because he has the wealth to hire unscrupulous attorneys.

Cotton, his family, his friends, and his colleagues who have invested for years and facing severe financial problems and they need an end to this case as soon as possible, which at no point has ever stated a cause of action and only reached this stage because of unethical attorneys and judicial bias.

Dated: October 29, 2020

Darryl Cotton

By 

Plaintiff *In Propria Person*

DARRYL COTTON
6176 Federal Boulevard
San Diego, CA 92104
Telephone: (619) 954-4447

Plaintiff *Pro Se*



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiff,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual; GINA AUSTIN, an individual; AUSTIN LEGAL GROUP, a Professional Corporation; MICHAEL WEINSTEIN, an individual; SCOTT H. TOOTHACRE, an individual; FERRIS & BRITTON, a Professional Corporation; CITY OF SAN DIEGO, a public entity, and DOES 1 through 10, Inclusive,

Defendants.

Case No. 3:18-cv-00325-TWR (DEB)
Formerly: 3:18-cv-003250-BAS (DEB)

**DECLARATION OF DARRYL COTTON IN SUPPORT OF HIS *EX PARTE* APPLICATION FOR LEAVE TO FILE ATTACHED OMNIBUS SUR-REPLY**

**Hearing Date:** N/A
**Hearing Time:** N/A
**Judge:** Hon. Todd W. Robinson Hon. Todd W. Robinson
**Courtroom: 3A**

I, DARRYL COTTON, declare:

1. I am over the age of eighteen years, and the Plaintiff in this action.

2. The facts set forth herein are true and correct as of my own personal knowledge.

3. This declaration is submitted in support and in furtherance of my Ex Parte Application for Leave to file Omnibus Sur-reply and Omnibus Sur-reply.

4. This Declaration is supplemental to the October 27, 2020 Declaration as there has been new information and evidence that has been given to me the following day, today, October 28, 2020.

5. Corina Young (Young) was to be an essential material witness in the state court case Cotton I. Despite multiple pre-trial communications by my attorney Jacob Austin and Young's attorney

Natalie Nguyen (Nguyen) that began in or around January 17, 2019 and continued up until trial I/we were never able to secure Young's testimony.

6. Young would have testified to her personal knowledge that Geraci and his co-conspirators were colluding to see that the Marijuana Outlet (MO) Conditional Use Permit (CUP) being applied for by Geraci, from the City of San Diego Development Services Department (DSD) at my 6176 Federal Blvd property was nothing more than a ruse to show that at trial Geraci could argue he tried to get that CUP approved but failed when the evidence proves he never had any intention of seeing it approved thereby perpetuating a fraud upon the state court through their actions.

7. In her testimony Young would have validated the text and email exchanges she had with my litigation financier, Mr. Joe Hurtado (Hurtado) that would support my contentions that although I tried, by requesting of Judge Wohlfeil there be a court appointed 3rd party administrator for the CUP processing be granted that Hurtado even agreed to pay for, but was denied which meant I would end up having no control whatsoever and Geraci would have complete control of the 6176 DSD CUP application processes. This ultimately put Geraci in a position where he could have the CUP denied. That denial would result in a substantial savings in what Geraci would owe me under the Joint Venture damages that were being litigated in *Cotton I* should he have lost. Furthermore, those text messages in context, provide evidence of Young's, after attempting to mediate between Cotton and Magagna was bribed by Magagna to claim she had "dreamed the entire meeting". When that did not work, she was threatened by Magagna and still is in fear of Gina Austin because of how "powerful" and "connected" she is in the cannabis industry both in legitimate and black markets.

8. Upon information and belief, it can be proven that Geraci had conspired with numerous parties, including officials in the City of San Diego DSD, lawyers, architects, and Mr. Aaron Magagna (Magagna) who had applied for a competing CUP at 6220 Federal Blvd which would be approved before the 6176 CUP could be approved.

9. This is evident by the fact that Geraci's agent, Abhay Schweitzer of Techne Design, was actively working on a competing project while stating to the court in his various declarations that everything was on course in the 6176 Cup application. Mr. Schweitzer himself admitted in deposition that working on a competing project would be a conflict of interest.

10. I have always stood firm in my belief that the conspiracy to deprive me of my rights in the process of obtaining a CUP for my 6176 Property was orchestrated by Geraci and his team most notably his attorney Gina Austin (Austin) who represents both Geraci and Magagna and attorney Matthew Shapiro (Shapiro). It wasn't until I filed the October 27, 2020 ex parte motion and my accompanying declaration with exhibits that I was able to show the court new evidence that supported my contention of what Geraci and his Team had actually been up to.

11. On October 27, 2020 I sent out a mass email **(see Exhibit 1)** that noticed all recipients, including Young that an Ex Parte Motion had been filed seeking a Preliminary Injunction and that a Lis Pendens was being sought by me to encumber the sale of the 6220 property.

12. It is my belief that since my email was directed at some 80 odd recipients, many of them in the DOJ and in the media that Young, realizing this was not going to go away, made the decision to respond to that email with one of her own.

13. In that Exhibit 1 email I had included the following attachments:

14. The 30 Moore's Federal Practice – Civil (811.04) - Attorneys Have a Duty Not Present Fals or Perjurious Testimony or Make False or Misleading Statements. **See Exhibit 2**

15. Cotton's EP Motion: See Court filing (not currently uploaded to the court docket but presumed to be next in order as ECF No. 43).

16. Cotton's Declaration: See Court filing (not currently uploaded to the court docket but presumed to be next in order as ECF No. 43).

17. Cotton's First Amended Complaint: See ECF No. 18.

18. Flores First Amended Complaint in Associated Case No. 3:20-cv-00656-BAS-DEB. See ECF No. 15.

19. Cotton's last case related Flowchart of May 11, 2020. **See Exhibit 3**

20. On October 28, 2020 at 12:22 PM I received an unsolicited email **(see Exhibit 4)** from Young in which she requests that she not be included in any litigation as she had only been instructed by her attorney Nguyen to avoid the deposition we had been asking for.

21. Prior to that unsolicited email I have had no communication of any type with Young since approximately May of 2018 when Young, who had been considering investing in my property as

a CUP opportunity, had told me that one of Geraci's agent's, a Mr. Jim Bartell (Bartell) a political lobbyist had told her during a meeting where she was accompanied by her then attorney Shapiro, that she should not even consider buying my property because the CUP was going to be denied as "everyone hates Darryl" and I offered no response to the unsolicited email of October 28, 2020.

22. In the attachments to her email to me **(see Exhibit 5)** Young waived her attorney client privilege by providing copies of the emails she had between her and Nguyen. Nguyen made it clear in her communications that she was promising to make her client available to provide the testimony we sought but in fact she was playing keep away with my attorney Jacob Austin as her reasoning for ignoring a lawfully issued subpoena was because my counsel was "bluffing so I ignored him." Oh really, is that why Nguyen canceled two separately scheduled depositions? These communications provide clear evidence that Nguyen was saying one thing to my attorney and another to Young, feigning compliance and providing her testimony yet never having the intention to do so. This is clear evidence of witness tampering prior to trial. The evidence shows my counsel implored her with the importance of Ms. Young's testimony to my case. What possible motivation did she have that would risk losing her license by undertaking this practice? That type of willful misconduct could have only been done in support of and in furtherance of, team Geraci and their attempts to sabotage the 6176 CUP.

23. In the second attachment to that email **(see Exhibit 6)** it is Nguyen on July 22, 2019 telling Young that the trial had been completed (just days earlier on 7/15/19) and Young no longer had to "worry about providing any declaration or testimony on this case". Nguyen tells Young no payment is due "from you" (who actually paid for her services?) the file has been closed and "P.S. The jury found in favor of Geraci".

24. Why would the jury verdict have mattered to Young? Young had no stake in the outcome of my *Cotton I* proceedings. It clearly mattered to Nguyen as she felt compelled to share that information with Young in her final email to her! As one who was deeply affected by not having the promised Young testimony, I took that Nguyen statement to mean "mission accomplished". Nguyen and any of her licensed attorney co-conspirators should be disbarred!

25. Had it not been for Young providing me with these documents and I had come across them in any other way, I would have remained convinced Young was a Geraci co-conspirator. Now I'm

not so sure. With this email I believe while Young would have realized she was purposely refusing to abide by a court issued Subpoena, Notice of Taking Deposition of Corina Young and Proof of Service **(see Exhibit 7)** she wrestled with what to do and until her October 28, 2020 email to me is claiming she followed the direction of her attorney Nguyen. That notwithstanding, Young should have realized, despite any legal advice she was given by ANY of her attorneys that she was engaged in violating a lawful court order.

26. On February 2, 2020 I submitted a CA Bar complaint **(see Exhibit 8)** against Shapiro who works with Gina Austin and represents both Young and Magagna. That complaint outlines what facts I knew to be true at that time regarding their shared clients and how Shapiro needed to have another attorney represent Young in response to the subpoena for her testimony.

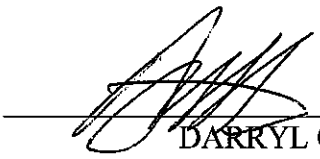
27. On June 22, 2020 I received a response letter from the CA BAR **(see Exhibit 9)** wherein the BAR Investigator, Ms. Michelle King (King) in which she decides to close the complaint against Shapiro because "it was opposing counsel's right to try and get Ms. Young's testimony denied if it would hurt their case and in doing so would have been doing their job. It is not illegal for an attorney to attempt to prevent testimony from being heard by the court through the legal process, as it is their duty to protect their client's interests".

28. Nguyen never submitted anything to the court objecting to the Subpoena for her client's testimony thus she never denied me Young's testimony through the legal process and the CA Bar decision against Shapiro and in the CA Bar complaint of February 2, 2020 I submitted against Nguyen **(see Exhibit 10)** and their response to close that complaint can now be seen as flawed as King cites privileged communication that existed between Young and Nguyen and not what should have been Nguyen's responsibility to legally object to the subpoena on whatever grounds she decided to protest it.

29. The threats and intimidation by Magagna and Austin and how the Young and Nguyen relationship came to be are detailed fully in the related FLORES v AUSTIN 3:20-cv-00656-JLS –LL complaint in pages 147-151 **(see Exhibit 11)** that describe in much greater detail why Young's testimony was so critical to my case and with the work of Nguyen denied me that opportunity to have the jury hear it in *Cotton I.*

30. I do believe this court needs to take action and throw out the state court judgement in Cotton I and maintain any future civil litigation in federal court. I also believe that when the same parties that saw my October 27, 2020 email see this declaration and exhibits the time to ignore criminal prosecution for these crimes is over.

I declare under penalty of perjury according to the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on October 29, 2020 at San Diego, California.



DARRYL COTTON

EXHIBIT 1

Gmail Darryl Cotton <indagrodarryl@gmail.com>

# Fwd: Canna-Greed: Cotton's Ex Parte Motion of 10-27-20 Based on Newly Discovered FOIA Evidence

**Darryl Cotton** <indagrodarryl@gmail.com> Wed, Oct 28, 2020 at 5:07 AM
To: fred.sheppard@us.doj.gov, "Barajas, Hortencia (USACAS)" <Hortencia.Barajas@usdoj.gov>

Mr. Sheppard,

I'm forwarding this email to you and Ms. Barajas as what we're seeing here in these civil matters may rise to criminal acts warranting prosecution. Should you wish to pursue any of these parties I'm available for that purpose.

Darryl Cotton
619.954.4447

---------- Forwarded message ---------
From: **Darryl Cotton** <indagrodarryl@gmail.com>
Date: Wed, Oct 28, 2020 at 4:59 AM
Subject: Fwd: Canna-Greed: Cotton's Ex Parte Motion of 10-27-20 Based on Newly Discovered FOIA Evidence
To: <john@gomeztrialattorneys.com>, <jessica@thegomezfirm.com>, <Klynk@thegomezfirm.com>

---------- Forwarded message ---------
From: **Darryl Cotton** <indagrodarryl@gmail.com>
Date: Tue, Oct 27, 2020 at 8:56 PM
Subject: Canna-Greed: Cotton's Ex Parte Motion of 10-27-20 Based on Newly Discovered FOIA Evidence
To: Larry Geraci <Larry@tfcsd.net>, <CynthiaM@vanstlaw.com>, Terry Strom <Terry@strompermit.com>, zoe villaroman <zoe.g.villaroman@gmail.com>, Michael Morton <michael@m2a.io>, Andrew Flores <afloreslaw@gmail.com>, Jake Austin <jacobaustinesq@gmail.com>, <aaronmagagna@gmail.com>, Claude Anthony Marengo <CAMarengo@m2a.io>, Tirandazi, Firouzeh <FTirandazi@sandiego.gov>, <customerservice@jjhconstruction.com>, Robert Bryson II <rtbrysonlaw@gmail.com>, Abhay Schweitzer <abhay@technе-us.com>, <Ken.Feldman@lewisbrisbois.com>, mphelps (mphelps@sandiego.gov) <MPhelps@sandiego.gov>, David S. Demian <ddemian@ftblaw.com>, Black, Laura <LBlack@sandiego.gov>, Jason R. Thornton <jthornton@ftblaw.com>, <akohn@pettitkohn.com>, Natalie Nguyen <natalie@nguyenlawcorp.com>, <aferris@ferrisbritton.com>, Rishi S. Bhatt <rbhatt@ftblaw.com>, Adam C. Witt <awitt@ftblaw.com>, <corina.young@live.com>, <biancaaimeemartinez@gmail.com>, Hoy, Cheri <choy@sandiego.gov>, Sokolowski, Michelle <msokolowski@sandiego.gov>, <ekulas@ferrisbritton.com>, <dbarker@ferrisbritton.com>, <jorge.delportillo@sdcda.org>, <gbraun@sandiego.gov>, Joe Hurtado <j.hurtado1@gmail.com>, <pfinch@ftblaw.com>, <stoothacre@ferrisbritton.com>, Michael Weinstein <MWeinstein@ferrisbritton.com>, <matthew@shapiro.legal>, <jim@bartellassociates.com>, <jessica@mcelfreshlaw.com>, Chris Williams <Chris@xmgmedia.com>, <edeitz@grsm.com>, <tdupuy@gordonrees.com>, <dpettit@pettitkohn.com>, <jdalzell@pettitkohn.com>, <feldman@lbbslaw.com>, <Tim.Vandenheuvel@doj.ca.gov>, <oomordia@sandiego.gov>, <jhemmerling@sandiego.gov>, <MSkeels@sandiego.gov>, <cityattorney@sandiego.gov>, <jgsandiego@yahoo.com>, <ncarnahan@chulavistaca.gov>, <aclaybon@messner.com>,

<arden@austinlegalgroup.com>, Quintin Shammam <quintin@shammamlaw.com>, <steve.cline@sdcounty.ca.gov>, <crosby@crosbyattorney.com>, Ken Malbrough <kmalbrough@att.net>, <dharmim@dmehtalaw.com>, <elyssakulas@gmail.com>, <tamara@austinlegalgroup.com>, <ndarouian@messner.com>, <jlance@noonanlance.com>, <eboyer@noonanlance.com>, <gruch@noonanlance.com>, <rgriswold@griswoldlawca.com>, <nsheaffer@griswoldlawca.com>, <efile_bashant@casd.uscourts.gov>, <jmickovawill@sandiego.gov>, FitzGerald, PJ <PFitzgerald@sandiego.gov>, <monicamontgomery@sandiego.gov>, Blake, Martha <mblake@sandiego.gov>, Barajas, Hortencia (USACAS) <Hortencia.Barajas@usdoj.gov>, <steve@blakelawca.com>, <dwatts@galuppolaw.com>, <fred.sheppard@usa.doj.gov>, Amy Sherlock <amyjosherlock@gmail.com>
Cc: <stephanie.lai@latimes.com>, <tami@dot.la>, <Hannity@foxnews.com>, <Lisa@vosd.org>, <local@sduniontribune.com>, Kym Kemp <mskymkemp@gmail.com>

All,

I am continuing my fight to vindicate my rights against Lawrence Geraci, Gina Austin, Jessica McElfresh, Cynthia Morgan-Reed, David Demian, Natalie Nguyen, Ferris & Britton, Austin Legal Group, Finch, Thornton & Baird, Lewis & Brisbois, and all the other corrupt and unethical pieces of shit lawyers and firms that conspired to deprive me of my property or failed in their affirmative duties to the Courts to inform them of the fraud that was being perpetrated against me over the course of almost 4 years through the judiciaries.

My first attachment is the Moore's Federal Practice Guide § 811.04 titled Attorneys Have Duty Not to Present False or Perjurious Testimony or Make False or Misleading Statements. Your part in the conspiracy against me, or your failure to prevent the conspiracy against me, means you are liable and contributed to the fraud on the court that will be the basis by which I have the judgements against me set aside.

**NONE OF YOU CAN LATER PRETEND TO LACK KNOWLEDGE OF THE LAW THAT REQUIRES YOU TAKE AFFIRMATIVE STEPS.**

The next attachments will be the ex parte motion that I filed today with the court that includes **NEW INFORMATION I acquired pursuant to a FOIA request** that proves that Geraci agents and Abhay Schweitzer lied in his testimony and knows that 6220 Federal does not qualify for a cannabis CUP because it is within 1,000 feet of a State Licensed Daycare. This is illegal. No judge has the power to make an illegal act legal.

Lastly I have attached my first amended complaint and the parallel federal case of FLORES v AUSTIN first amended complaint as well as a flowchart from 05/11/20 for anyone receiving this that may be unaware as to why they are in this email chain and are in need of additional case background.

**6 attachments**

**Moore - Attorney Duty Not to Present Perjury.pdf**
245K

**10-27-20 Cotton's EP Motion.pdf**
448K

**10-27-20 Cotton's Declaration.pdf**
8238K

**05-13-20-Cotton's First Amended Complaint.pdf**
1394K

**07-09-20-Flores First-Amended-Complaint.pdf**
3797K

**Geraci-Flowcharts-05-11-20.pdf**
185K

EXHIBIT 2

# 30 Moore's Federal Practice - Civil § 811.04

***Moore's Federal Practice - Civil > Volume 30: Analysis: Federal Law of Attorney Conduct (Chs. 800–899) > Volume 30 Analysis: Federal Law of Attorney Conduct (Chs. 800-899) > Chapter 811 Candor and Confidentiality***

## § 811.04 Attorneys Have Duty Not to Present False or Perjurious Testimony or Make False or Misleading Statements*

### [1] Limiting Lawyer's Knowing Presentation or Use of False Evidence Facilitates Truth-Seeking Functions of Courts

Both the Model Rules and Model Code impose an affirmative duty to avoid participation in wrongdoing, including knowingly presenting false or perjurious testimony, or facilitating a crime or fraud by the client.[1] In many instances this is captured in the concept that the duty of zealous representation only applies when acting "within the bounds of the law." The adversary system is grounded in the fundamental belief that adversarial presentation will increase the likelihood that the truth will emerge. The conventional wisdom holds that the while the system of confidentiality and adversarial presentation may have a short-term negative effect on truth seeking, this cost is tolerated because the system ultimately increases the probability that the neutral decision-maker will have all points of view available.[2] Knowing participation in the presentation of false or perjurious testimony or facilitation of client crime or fraud typically does not provide either short or long-term support for the truth-seeking function and consequently is condemned.[3]

### [2] Use of False or Perjurious Testimony Poses Strategic and Legal Risks to Both Client and Attorney

Even if the use of false or perjurious testimony were not prohibited by ethical rules, other strategic and legal factors would recommend against the use of such testimony. For instance, the testimony will be subject to vigorous cross-examination, and a witness' inconsistent or unbelievable testimony may be interpreted by the fact-finder as evidence of guilt.[4]

---

* We are grateful to Thomas O'Shea, Boston College Law School '00; Solveig Hanson McShea, BCLS '02; Craig F. Kowalski, BCLS '02; and Jackie A. Gardina, BCLS '99 for their invaluable research assistance in preparing this chapter.

[1] Model Rule of Prof'l Conduct 3.3(a); Model Code of Prof'l Responsibility DR 7-102.

[2] *But cf.* Silver, *Truth, Justice, and the American Way: The Case Against the Client Perjury Rules*, 47 Vand. L. Rev. 339, 354–357 (1994) (allowing untruthful testimony facilitates search for truth by exposing the testimony to cross examination and provides factfinding with truthful information that accompanies the false).

[3] *See generally* Nathan M. Crystal, AN INTRODUCTION TO PROFESSIONAL RESPONSIBILITY 229–232 (1998) (describing the truth-maximizing function of the adversary system).

[4] **Falsity may be exposed.** *E.g.*, Rock v. Arkansas, 483 U.S. 44, 61, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987) ("Cross-examination, even in the face of a confident defendant, is an effective tool for revealing inconsistencies"); *see generally* Silver, *Truth, Justice, and the American Way: The Case Against the Client Perjury Rules*, 47 Vand. L. Rev. 339, 355 (1994) ("A defendant's confused, conflicting, fantastic, or incomplete testimony or suspicious demeanor frequently represents, in the minds of jurors, the clearest proof that the defendant's version of the case is untruthful").

The suspicion or outright exposure of perjury can cause not only cause serious harm to the merits of the client's case, but may also lead to personal and professional censure for the lawyer. Both perjury and subornation of perjury are criminal offenses.[5] Punishment of a criminal defendant may be enhanced based on perjury.[6] A lawyer who knowingly presents false testimony is subject to fines and other sanctions, including attorney fees, disqualification and disbarment.[7] Even if the perjury is not immediately exposed and the client wins the case, the subsequent exposure of the perjury may be grounds for relief from the judgment for fraud on the court under Fed. R. Civ. P. 60(b)(3) (*see generally* § 60.21[4]).[8] All these variables are likely to be part of the client counseling discussed in [e][i], *below.*

**[3] Courts Condemn Knowing Use of False or Perjurious Evidence, but Actual Implementation of Duty Is Extremely Fact Sensitive**

The "perjury problem"—i.e., how the lawyer should act in response to knowledge that a client or witness intends to present false or perjurious testimony—has received extensive treatment by scholars because it provides a dramatic conflict between the lawyer's duty to maintain the confidences and secrets of clients, and the lawyer's duty as an officer of the court.[9] Client perjury, particularly in the criminal defense context, has been explored in detail, with no firm consensus among scholars on the best method to resolve the tensions.[10] More recently, legal literature has explored issues of police perjury, touching on the concomitant obligation of prosecutors.[11]

In the rare circumstances in which the issue is presented in reported decisions, the federal courts have stated that knowing presentation of perjurious and fraudulent evidence threatens the integrity of the judicial process

---

[5] 18 U.S.C. § 1621 (perjury); 18 U.S.C. § 1622 (suborning perjury).

[6] **Sentence enhancement for perjury.** *United States v. Dunnigan, 507 U.S. 87, 88–89, 113 S. Ct. 111, 122 L. Ed. 2d 445 (1993).*

[7] **Sanctions for subornation of perjury.**

2d Circuit *See Tedesco v. Mishkin, 629 F. Supp. 1474, 1487 (S.D.N.Y. 1986)* ($10,000 fine, plus attorneys fees and costs, imposed for suborning perjury and other offenses).

11th Circuit *See Knox v. Hayes, 933 F. Supp. 1573, 1582, 1586 (S.D. Ga. 1995)* (attorneys fees imposed and defense counsel disqualified for incorporating false and misleading statements in an affidavit, and allowing those statements to be relied on by fact witnesses).

[8] **Perjury as fraud on court.** *See Johnson v. VeriSign, Inc., No. 01-765-A, 2002 U.S. Dist. LEXIS 13229 (E.D. Va. July 17, 2002)* (while perjury not sufficient to constitute fraud on the court under Rule 60, involvement of attorney in scheme to suborn perjury should be considered fraud on court; falsity of evidence not sufficient to show conspiracy to present false testimony between counsel and witness); *Cleveland Demolition Co. v. Azcon Scrap Corp., 827 F.2d 984, 987 (4th Cir. 1982)* (involvement of attorney in perjury of party or witness constitutes fraud on court).

[9] *See* Wilkinson, *"That's A Damn Lie!": Ethical Obligations of Counsel When a Witness Offers False Testimony in a Criminal Trial,* 31 St. Mary's L.J. 407 (2000); Silver, *Truth, Justice, and the American Way: The Case Against the Client Perjury Rules,* 47 Vand. L. Rev. 339 (1994); Freedman, *Client Confidences and Client Perjury: Some Unanswered Questions,* 136 U. Pa. L. Rev. 1939 (1988).

[10] *See* Silver, *Truth, Justice, and the American Way: The Case Against the Client Perjury Rules,* 47 Vand. L. Rev. 339 (1994); Freedman, *Client Confidences and Client Perjury: Some Unanswered Questions,* 136 U. Pa. L. Rev. 1939 (1988); Wolfram, *Client Perjury,* 50 S. Cal. L. Rev. 809 (1977).

[11] *See* Dorfman, *Proving the Lie: Litigating Police Credibility,* 26 Am. J. Crim. L. 455 (1999); Slobogin, *Testilying: Police Perjury and What to Do About It,* 67 U. Colo. L. Rev. 1037 (1996).

and is prohibited.[12] As discussed below, the more challenging question is the proper actions to take in the face of proposed perjury. The duty of confidentiality usually plays a smaller role when the lie is by a third person, not the client, and not surprisingly courts have imposed sanctions for knowing presentation of false evidence by third persons.[13] The actual implementation of the duty not to present false or perjurious testimony is extremely fact sensitive. Some of the most important factual variables are discussed below.

### [4] Problem in Determining Whether Counsel "Knows" Evidence Is False

#### [a] Actual Knowledge (or Its Equivalent) Is Required

Both the Model Rules and the Model Code clearly prohibit the use of any evidence that the lawyer actually knows to be false.[14] The first challenge is ascertaining whether the lawyer knows the evidence is false. This does not require an examination of the state of mind of counsel, as actual knowledge may be inferred from the circumstances. The 2000 revisions to the Model Rules also state that "[a] lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false."[15]

Relatively few federal cases have probed the nuances of actual knowledge, though clearly a mere belief or even a firm conviction that the client or witness is lying does not constitute actual knowledge.[16] A major purpose of the trial process is to resolve issues of credibility and truthfulness, leaving the courtroom as the forum for resolving doubts.[17] For this reason, lawyers typically should only conclude that the client intends to commit perjury based on strong evidence. Anything less than actual knowledge based on a firm factual basis runs the risk of placing the lawyer as the final arbiter of credibility. The federal courts have held that a lawyer must have a "firm factual basis" for the conclusion that the client's testimony is false, so that "mere suspicion or inconsistent statements" are not sufficient.[18] If the lawyer merely has a reasonable belief that

---

[12] **Use of false evidence prohibited.** *Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250 (1944)* (use of false evidence to support patent and infringement claim justifies equitable relief of setting aside prior decree).

[13] **Perjury by other than client.** *See, e.g., Knox v. Hayes, 933 F. Supp. 1573, 1582, 1586 (S.D. Ga. 1995)* (imposing sanctions for submission of known false statements in witness affidavit).

[14] Model Rule of Prof'l Conduct 3.3(a)(4); *see also* Model Code of Prof'l Responsibility DR 7-102 (analogous provision of Model Code).

[15] Model Rule of Prof'l Conduct 3.3(c).

[16] *See generally* Windham, Note, *Candor Toward the Court: How Much Evidence Must an Attorney Have That the Client has Done a Wrongful or Illegal Act?, 21 J. Legal Prof. 307 (1996)*.

[17] **Attorney not to make credibility determinations.** *United States ex rel. Wilcox v. Johnson, 555 F.2d 115, 122 (3d Cir. 1977)* ("it is the role of the judge or jury to determine the facts, not that of the attorney").

[18] **Client perjury in criminal action.** *E.g., United States v. Long, 857 F.2d 436, 445–446 (8th Cir. 1988)*; *cf. Nix v. Whiteside, 475 U.S. 157, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986)* (accepting state court finding in habeas proceeding that lawyer had knowledge of intended perjury).

3d Circuit *See United States ex rel. Wilcox v. Johnson, 555 F.2d 115, 122 (3d Cir. 1977)* (defense counsel's refusal to allow client to testify based on belief, not documented on record, that client intended to commit perjury violated right to testify and *Sixth Amendment* right to counsel).

4th Circuit *United States v. Midgett, 342 F.3d 321, 326 (4th Cir. 2003)* ("Defense counsel's mere belief, albeit a strong one supported by other evidence, was not a sufficient basis to refuse Midgett's need for assistance in presenting his own testimony").

8th Circuit *E.g., United States v. Long, 857 F.2d 436, 445–446 (8th Cir. 1988)*.

the evidence is false, the lawyer may choose to present or not present the evidence. Although the duty of zealous advocacy may counsel in favor of offering the evidence, strategic concerns may counsel against proceeding with questionable evidence. This is particularly true in the criminal defense context, where lawyers also have a very practical reason to have a firm factual basis. In criminal cases a lawyer who dissuades a client from testifying, or who discloses perjury, may be required to describe in detail the factual basis for that conclusion in an hearing on an ineffective assistance of counsel claim.[19]

At least in the context of a prosecutor's presentation of evidence to the grand jury, the Supreme Court has indicated that doubts about accuracy of testimony do not rise to the level of knowledge of falsity.[20] While doubt might not justify a formal remedy, courts have been willing to urge self-restraint, or "soul searching in the prosecutor's office" before offering questionable evidence.[21] Professional responsibility obligations are primarily self-executing, and the fact that a court may allow a particular practice does not answer the question of whether the practice is proper. For a more complete discussion of the professional regulation of prosecutors, see *Ch. 813, Special Issues in Criminal Cases*.

In a civil context, a lawyer "cannot counsel others to make statements in the face of obvious indications of which he is aware that those assertions are not true."[22] In criminal matters, however, absent such obvious indications of fraud or perjury, "the lawyer is not obligated to undertake an independent determination before advancing his client's position."[23]

Similarly, in a civil context the Second Circuit reversed the six month suspension of an attorney for allegedly allowing the introduction of perjurious testimony, concluding that the duty to rectify a fraud upon the court through perjury is triggered only if the lawyer has actual knowledge that would "clearly establish" that a fraud was being committed. This was not, the court hastened to add, a requirement of moral certainty, but strong personal suspicion is not sufficient.[24] Merely being "surprised" at a witness' response does not constitute actual knowledge that the response is perjurious.[25] Certainly the client's or witness' admission of the falsity of testimony would be sufficient to provide actual knowledge.[26]

---

[19] **Hearing on issue.** *See, e.g., United States ex rel. Wilcox v. Johnson, 555 F.2d 115 (3d Cir. 1977)* (failure of record to document factual basis for lawyer's belief one factor in reversal of criminal conviction).

[20] **Doubt not equivalent to knowledge.** *Bank of Nova Scotia v. United States, 487 U.S. 250, 261, 108 S. Ct. 2369, 101 L. Ed. 2d 228 (1988)* ("Although the Government may have had doubts about the accuracy of certain aspects of the summaries, this is quite different from having knowledge of falsity").

[21] **Restrain encouraged.** *E.g., Veney v. United States, 344 F.2d 542, 542–43 (D.C. Cir. 1965)* (Wright, J. concurring).

[22] **May not advise perjury.** *United States v. Sarantos, 455 F.2d 877, 881 (2d Cir. 1972)* (when lawyer is part of scheme to arrange sham marriages in return for finder's fee, lawyer may not advise false testimony as to validity of marriages).

[23] **No duty of independent investigation.** *In re Grand Jury Subpoena (Legal Services Center), 615 F. Supp. 958, 969 (D. Mass. 1985)* (motion to quash subpoenas granted pursuant to *Fed. R. Crim. P. 17(c)* on basis of attorney-client privilege, work product doctrine and as unduly burdensome and oppressive, relying on state provision similar to Model Code).

[24] **No actual knowledge.** *In re Grievance Committee of the U.S. District Court, District of Connecticut, 847 F.2d 57, 63 (2d Cir. 1988)*; *see also* Quodrozzi v. City of New York, 123 F.R.D. 63, 82 (S.D.N.Y. 1989) (attorney must clearly know, rather than suspect, fraud on the court, citing *Grievance Committee*).

[25] **Surprise not equivalent to knowledge.** *Sigma-Tau Industrie Farmaceutiche Riunite, S.P.A. v. Lonza, Ltd., 48 F. Supp. 2d 16, 20 (D.D.C. 1999)* (surprise does not, in and of itself, constitute actual knowledge that the testimony is false).

[26] **Admission is actual knowledge.** *See United States v. Shaffer Equip., 11 F.3d 450, 459 (4th Cir. 1993)* (government expert admitted to falsifying credentials, so that government's "claim to have held only a suspicion rings hollow").

The lawyer also has an obligation not to induce a witness to lie under oath.[27] At least one court has found that it is not sanctionable conduct, however, for an attorney, in an arms length interview with a witness, to attempt to persuade the witness, even aggressively, that an alternate version of the facts is more accurate.[28] Pressure tactics, however, such as agreeing to withdraw a broad request for production of documents to induce a third party witness to recant testimony, may be the basis of discipline.[29]

In practice, the level of certitude about the potential perjury is merely one factor that shapes the complex decision of how to proceed. The interaction between certitude, prejudice and client counseling is discussed in [6], *below*.

**[b] Dangers of Proceeding With Deliberate Ignorance**

The duty to avoid presenting false or misleading evidence requires actual knowledge. The actual knowledge requirement, coupled with a duty to serve as an advocate, indicates that lawyers should give sympathetic ear to the client's version of events. This conceptually makes good sense, because the veracity and accuracy of the information will ultimately be tested in litigation. Some conscious avoidance is inevitable and, according to some commentators, even required for effective advocacy, at least in criminal matters.[30]

A lawyer should not, however, rely merely on information provided by the client, particularly when investigation into those assertions would be relatively easy and quick. Accordingly, courts turn a disdainful eye to what they perceive as strategic ignorance, particularly in civil matters.[31]

While it appears that federal courts have not widely used the notion of deliberate ignorance in assessing a lawyer's conduct in federal court proceedings, the development of this jurisprudence in criminal contexts

---

[27] **No inducement to lie.**

3d Circuit *See* United States v. Friedland, 502 F. Supp. 611, 619 (D.N.J. 1980) (inducing a witness to lie under oath in a judicial proceeding is an action involving moral turpitude).

5th Circuit *See* In re Thalheim, 853 F.2d 383, 390 (5th Cir. 1988).

[28] **May attempt to persuade witness.** Resolution Trust Corp. v. Bright, 6 F.3d 336, 341 (5th Cir. 1993) (attorney may inquire of witness whether factual assertions in draft affidavit are more accurate than witness' recollection, as activity does not induce witness to testify falsely under oath).

[29] **Improper attempt to persuade.** Addamax Corp. v. Open Software Found. Inc., 151 F.R.D. 504, 511–512 (D. Mass. 1993) (declined to disqualify counsel based on conduct that "tread perilously close to or even crossed the line of propriety," but referred matter to state disciplinary body).

[30] *See generally* Green, The Criminal Regulation of Lawyers, 67 Ford. L. Rev. 327, 356 (1998)

[31] **Strategic ignorance unacceptable.**

6th Circuit *Cf.* United States v. Wuliger, 981 F.2d 1497, 1505 (6th Cir. 1992) (overturning wiretapping conviction of lawyer who used audiotapes made by client after assurances that tapes were legally obtained, noting that knowledge of legality was element that had to be proved beyond reasonable doubt, and that although "an attorney must not turn a blind eye to the obvious, he should be able to give his clients the benefit of the doubt").

7th Circuit *See* Romano Bros. Beverage Co. v. D'Agostino-Yerow Assocs., 1996 U.S. Dist. LEXIS 10730, at *24 (N.D. Ill. 1996) (looking to Model Rules, local rules of court, and state professional responsibility rules, and holding that reckless and cavalier disregard for the truth merited sanctions when counsel was deliberately ignorant of facts).

11th Circuit *See* Worldwide Primates, Inc. v. McGreal, 87 F.3d 1252, 1254–1255 (11th Cir. 1996) (counsel's good faith reliance on statements of client insufficient to protect attorney from sanctions under Fed. R. Civ. P. 11 when cursory investigation would have shown claim could not be supported).

sets the stage for incorporating ideas of deliberate ignorance into professional responsibility standards in federal court practice.[32] Deliberate ignorance is present when the circumstances indicate "(1) subjective awareness of a high probability of the existence of illegal conduct, and (2) purposeful contrivance to avoid learning of the illegal conduct."[33] Deliberate ignorance is sometimes referred to "ostrich" tactics and has been used to impose either criminal liability on attorneys,[34] or significant civil liability for continued facilitation of client fraud.[35] Federal courts have been willing to chastise counsel who select this option and have used their inherent power to impose additional sanctions for engaging in deliberate ignorance.[36] Imposition of liability in both these contexts suggests that the substantive law, rather than professional ethics, is more responsible for defining the limits of a lawyer's obligation to believe the client.[37]

### [5] Constitutional Implications of Perjury in Criminal Cases

#### [a] Duty of Defense Counsel Not to Present False or Perjurious Testimony Is Typically Addressed as Ineffective Assistance of Counsel

The Model Rules and Model Code generally do not distinguish in the text of the rules between civil and criminal proceedings in the context of knowingly offering false statements and perjury. The comment to the Models Rules, however, sets out the "intensely debated" issue of how defense counsel should respond when confronted by a client's desire to present false testimony.[38] In criminal cases the defense counsel's

---

[32] **Deliberate ignorance in criminal cases.** *See generally* Charlow, *Willful Ignorance and Criminal Culpability*, 70 Tex. L. Rev. 1351 (1992) (describes and analyzes rapid expansion of use of deliberate ignorance and similar concepts to impose criminal sanctions).

2d Circuit *See* United States v. Benjamin, 328 F.2d 854, 863 (2d Cir. 1964) (attorney and accountant convicted of Securities Act violations; Congress "could not have intended that men holding themselves out as members of these ancient professions should be able to escape criminal liability on a plea of ignorance when they have shut their eyes to what was plainly to be seen or have represented a knowledge they knew they did not possess").

5th Circuit *See* United States v. Cihak, 137 F.3d 252, 260 (5th Cir. 1998) (upholding conspiracy conviction of attorney, finding that deliberate ignorance is sufficient to establish knowing participation in conspiracy).

6th Circuit *See* Nix v. O'Malley, 1998 U.S. App. LEXIS 37797, at *17, *18 (6th Cir. 1998) (summary judgment for violation of Ohio wiretap laws reversed where circumstantial evidence could allow jury to find that defendant attorney had "reason to know" of illegality sufficient to satisfy state statute).

[33] **Defining deliberate ignorance.** United States v. Cavin, 39 F.3d 1299, 1310 (5th Cir. 1994)

[34] **Criminal liability.** United States v. Cavin, 39 F.3d 1299, 1310–1311 (5th Cir. 1994) (instruction proper as to one defendant; improper if there is no evidence of purposeful contrivance to avoid learning the truth).

[35] **Civil liability.** In re First Merchants Acceptance Corp. Sec. Litig., 1998 U.S. Dist. LEXIS 17760, at *32, *33 (N.D. Ill. 1998) (because of law firm's deliberate ignorance, court denied firm's motion to dismiss claims that impose civil liability on persons preparing and signing materially misleading registration statements).

[36] **Inherent power to sanction.** Wyle v. R.J. Reynolds Indus., Inc., 709 F. 2d 585, 590 (9th Cir. 1983) (dismissal of complaint as sanction for false denials and failure to comply with discovery; "law firm's deliberate ignorance constituted the equivalent of knowledge of the truth"); Xanadu Maritime Trust v. Meyer, 21 F. Supp. 2d 1104, 1105 (N.D. Cal. 1998) (noting unprofessional conduct by plaintiff's counsel for admitting evidence in civil case despite suspicions that evidence was false and misleading; attorney admitted he did not ask witness about potentially false or misleading testimony before offering witness in rebuttal).

[37] *See generally* Luban, *Contrived Ignorance*, 87 Geo. L. Rev. 957, 976 (1999) ("in legal ethics, unlike criminal law, there is not a willful blindness doctrine").

[38] See Model Rule of Prof'l Conduct 3.3, Comment Advisory Committee; Perjury by a Criminal Defendant.

decision to offer, or not offer, false or perjurious testimony is typically framed as a question of whether defendant received ineffective assistance of counsel under the *Sixth Amendment* (*see generally* Ch. 644, *Right to and Appointment of Counsel*). The question that must be asked is whether the lawyer's conduct was required or permitted by the rules of ethics, and if so, may that conduct nevertheless constitute ineffective assistance of counsel.

The Supreme Court essentially answered both questions in *Nix v. Whiteside,* holding that the defendant was not denied the *Sixth Amendment* right to assistance of counsel when defense counsel obeyed his perceived ethical obligation and refused to cooperate in presenting perjurious testimony.[39] The Nix Court concluded that although ethical rules may have some bearing on the ineffective assistance of counsel issues, the two are analytically distinct, so that a conclusion on one does not compel any conclusion on the other.

In *Nix,* defense counsel threatened to inform the court if the defendant client testified in a manner that the lawyer believed was a lie. In response, the client withheld testimony that could have bolstered his claim of self-defense. The jury rejected the self-defense argument and convicted the defendant of second-degree murder. The *Nix* majority applied the traditional test for ineffective assistance of counsel, asking whether counsel's performance fell below the base line of "reasonably effective assistance" and whether the defendant suffered prejudice, which required a showing that the results would have been different but for counsel's performance.[40]

The *Nix* Court framed the issue by seeking to define "reasonably effective" counsel in a manner that would not intrude on the state's proper authority to define and apply standards of professional conduct for attorneys.[41] The Court stated that "breach of an ethical standard does not necessarily make out a denial of the *Sixth Amendment* guarantee of assistance of counsel."[42] Ethical standards, however, were relevant to determine whether the defense counsel's conduct "fell within the wide range of professional responses to threatened client perjury acceptable under the *Sixth Amendment*."[43] The *Nix* Court stated, somewhat inaccurately, that "virtually all of the sources," such as recognized canons of ethics, state statutes or professional codes, and the *Sixth Amendment* "speak with one voice" on the proper response to client perjury.[44] The *Nix* holding, however, merely stated that when confronted with perjury in a state court criminal prosecution, defense counsel's decision to dissuade the client from the false testimony on threat of withdrawal and disclosure was not ineffective assistance of counsel. The concurring opinions noted that this decision does not constitutionalize a single proper response to perjury.[44.1]

---

[39] *Nix v. Whiteside, 475 U.S. 157, 175–176, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986)* (habeas proceeding).

[40] *475 U.S. 157, 161–62*, applying *Strickland v. Washington, 466 U.S. 668, 687–694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)*.

[41] *475 U.S. at 165*.

[42] *475 U.S. at 165*.

[43] *475 U.S. at 166*.

[44] *475 U.S. at 166*.

[44.1] ***Nix* concurrence.** *475 U.S. at 176–191*.

2d Circuit *See also De Pallo v. Burge, 296 F. Supp. 2d 282, 287 (E.D.N.Y. 2003)*

4th Circuit *See also United States v. Midgett, 342 F.3d 321, 326 (4th Cir. 2003)*.

**[b] Duty of Prosecutors Not to Present False or Misleading Evidence (Including Duty Under *Brady* to Present Exculpatory Evidence) Is Typically Addressed as Due Process Violation**

The Supreme Court has held that the Due Process Clause is violated when the prosecutor knowingly uses perjurious testimony or deliberately suppresses evidence favorable to the accused.[45] The prosecutor's constitutional (and ethical) duty was further clarified by the Court's seminal *Brady* decision, which requires the prosecution to disclose all exculpatory evidence.[46]

In a decision concerning suppression of exculpatory evidence, the Supreme Court concluded that if a prosecutor "asserts that he complies with *Brady* through an open file policy, defense counsel may reasonably rely on that file to contain all materials the State is constitutionally obligated to disclose under *Brady*."[47]

Due Process is also violated if the prosecutor fails to correct evidence known to be false.[48] As discussed in detail in *Ch. 813, Special Issues in Criminal Cases*, this constitutional framing of the issue frequently may limit the inherent power of the court to provide a remedy for use of perjurious testimony that does not rise to the level of a due process violation. The use of perjurious testimony is one area in which the Supreme Court has suggested that defendants have a lower burden of proof to demonstrate a violation of constitutional standards.

When a prosecutor fails to comply with a request for exculpatory evidence under *Brady*, the subsequent conviction is reversed only if the information is "material," which is defined as entailing a reasonable probability that the outcome of the trial would have been different had the information been disclosed.[49] The standard of materiality is lower when the prosecutor knowingly uses perjurious testimony or false evidence, and the conviction should be overturned "if there is any reasonably likelihood that the false testimony could have affected the jury's verdict."[50] For a more detailed discussion of the prosecutor's duty see *Ch. 813, Special Issues in Criminal Cases*.

---

[45] **Prosecutorial misconduct as Due Process violation.** *See United States v. Bagley, 473 U.S. 667, 679 n.9, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)*; *Giglio v. United States, 405 U.S. 150, 153–154, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972)* (failure to disclose Government agreement with witness violates due process); *Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)* ("Suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution"); *Napue v. Illinois, 360 U.S. 264, 269–270, 79 S. Ct. 1173 3 L. Ed. 2d 1217 (1959)* (failure of State to correct testimony known to be false violates due process); *but cf. United States v. Williams, 504 U.S. 36, 52–53, 112 S. Ct. 1735, 118 L. Ed. 2d 352, (1992)* (prosecutor need not present exculpatory evidence in his possession to the grand jury).

[46] ***Brady* decision.** *Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)*.

[47] **Open file policy.** *Strickler v. Greene, 527 U.S 263, 283 n.23, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)* (although not deliberate, prosecutor withheld exculpatory evidence because defense counsel had the right to assume that prosecutor would alert him to exculpatory evidence in the open-file); *see also Youngblood v. West Virginia, 547 U.S. 867, 126 S. Ct. 2188, 165 L. Ed. 2d 269, 272–273 (2006)* (*Brady* duty extends to impeachment evidence; suppression occurs when the government fails to turn over even evidence that is known only to police investigators and not to prosecutor).

[48] **Failure to correct false evidence.** *Napue v. Illinois, 360 U.S. 264, 269–270, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959)* (failure of State to correct testimony known to be false violates due process).

[49] **Evidence must be material for *Brady* violation.** *Strickler v. Greene, 527 U.S 263, 281, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)* (not every violation of the duty to provide exculpatory evidence necessarily establishes that the outcome was unjust; *Brady* is violated only when nondisclosure was so serious that there is reasonable probability that the suppressed evidence would have produced a different verdict).

[50] **Lesser standard for prosecutor's use of perjury.** *United States v. Bagley, 473 U.S. 667, 679 n. 9, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)*.

### [6] Attorney's Response to False or Perjurious Testimony

#### [a] Duty to Discourage Witness From Engaging in Perjury

When confronted with an intent by the client or third person to commit perjury, the attorney's first obligation is to attempt to persuade the individual not to present the false testimony, or to correct the testimony if it has already been presented.[51]

An attorney has an array of arguments to attempt to dissuade the client or witness from perjury. Clients face both criminal sanctions and significant strategic risks for presenting perjury (*see* [2], *above*). False testimony exposes the witness to prosecution for perjury.[52] If the jury sees through the perjurious testimony, the lack of candor may affect the entire proceeding. Juries may give enhanced damages in civil cases, or the judge may consider perjury to enhance a sentence in criminal cases.[53]

If these consequences do not dissuade the client or witness, the attorney may attempt to show how easy it will be to see through the testimony. A sample cross examination may give the client or witness a better understanding of how the opposing counsel or prosecutor may expose holes or inconsistencies in the testimony to increase the chance that the testimony will not be believed. In many cases, extrinsic evidence that disproves the perjury will be available to the prosecutor to use in cross examination.[54]

The issue of good ethics and good strategy coincide in most cases in which the lawyer knows or believes that the client or a witness intends to commit perjury. Lawyers walk a delicate line, however. The mere fact that evidence is not believed does not make the witness a perjurer, and there is danger of confusing the strategic concerns with the duty to not testify falsely: if the client or witness appears to sincerely believe that the testimony is true, even though not believable, the lawyer cannot pressure the witness to change the testimony to make it more believable if the effect is to make it false in the eyes of the client or witness.

Sometimes extraneous factors provide the most powerful disincentive to perjury. One court has noted:[55]

> even a statement of an intention to lie on the stand does not necessarily mean the client will indeed lie once on the stand. Once a client hears the testimony of other witnesses, takes an oath, faces a judge and jury, and contemplates the prospect of cross-examination by opposing counsel, she may well change her mind and decide to testify truthfully.

The duty to persuade the client to tell the truth applies in civil proceedings, including depositions. It does not matter that the deposition is being taken by opposing counsel. At least in a civil context, the lawyer's

---

[51] **First duty to dissuade.** *Nix v. Whiteside, 475 U.S. 157, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986)* ("It is universally agreed that at a minimum the attorney's first duty when confronted with a proposal for perjured testimony is to attempt to dissuade the client from the unlawful course of conduct."); *see generally* Wilkinson, *"That's a Damn Lie!": Obligations of Counsel when Witness Offers False Testimony in a Criminal Trial, 51 St. Mary's L. J. 407 (2000)*.

[52] **Perjury prosecution.** *See, e.g., Bronston v. United States, 409 U.S. 352, 360–361, 93 S. Ct. 595, 34 L. Ed. 2d 568 (1973)*; *see generally* Aycot, *Nothing But the Truth: A Solution to the Current Inadequacies of the Federal Perjury Statutes, 28 Val. U.L. Rev. 247 (1993)*.

[53] *United States v. Dunnigan, 507 U.S. 87, 113 S. Ct. 111, 122 L. Ed. 2d 445 (1993)* (sentence enhanced for perjury); *but see United States v. Booker, 543 U.S. 220, 244, 122 S. Ct. 738, 160 L. Ed. 2d 621 (2005)* (under *Sixth Amendment*, "[a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by a defendant or proved to a jury beyond a reasonable doubt").

[54] *Nix v. Whiteside, 475 U.S. 157, 191, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986)* (Stevens, J. concurring); *see also United States v. Curtis, 742 F.2d 1070, 1074 (7th Cir. 1984)* (decision not to present witnesses and documentation for alibi defense was "a virtually unassailable strategic choice based upon counsel's assessments that the alibi witnesses lacked credibility").

[55] *United States v. Long, 857 F.2d 436, 445 (8th Cir. 1988)*.

"inaction and silence" in the face of false testimony in a deposition may be seen as "tantamount to acquiescence."[56]

If persuasion is unsuccessful, the harder question is whether the lawyer can threaten to withdraw or threaten to disclose the perjury if the client proceeds to testify.

**[b] Withdrawal**

The Model Rules envision that a lawyer must withdraw if "the representation will result in violation of the rules of professional conduct or other law"[57] Withdrawal, particularly in the course of litigation, is no panacea. Courts are often understandably resistant to allowing lawyers to withdraw in the midst of litigation. This is particularly true when the problem will likely persist for substitute counsel.[58] Withdrawal also may have double jeopardy implications in criminal cases.[59]

In addition, withdrawal is likely to occur at the eve or during trial, after vigorous client counseling, and after giving the client an opportunity to reflect on the concededly limited options available. Yet "an attorney's motion to withdraw at such a tell-tale junction," such as just prior to testifying, may inform the court and potentially the jury that the defendant intends to commit perjury.[60] Judges are faced with inadequate guidance on how to proceed. If the judge seeks specific information about the reason for withdrawal, the judge's own impartiality may be compromised.[61] But if the judge fails to develop a precise record of the factual basis for the lawyer's belief that the client will commit perjury, the judge may force the client into an impermissible choice between the right to testify or the right to proceed with counsel.[62] In-house counsel may feel particular pressure, particularly if withdrawal means not only withdrawing from one part of the litigation but from the entire employment relationship.

In many cases the motion to withdraw is the first indication to the court that the client intends to testify falsely. Most courts appreciate the delicate situation presented by client perjury. At a minimum, the lawyer must not disclose any more information than necessary.[63]

---

[56] **False testimony in deposition.** *Romano Bros. Beverage Co. v. D'Agostino-Yerow Assoc., 1996 U.S. Dist. LEXIS 10730, at *19 (N.D. Ill. 1996)*.

[57] Model Rule of Prof'l Conduct 1.16(a)(1); *see also* Model Code of Prof'l Responsibility DR 2-110(B)(2), (C)(1) (analogous provision of Model Code).

[58] **Problem will persist.** *E.g., United States v. Omene, 143 F.3d 1167, 1168 (9th Cir. 1998)*.

[59] **Double jeopardy implications.** *Nix v. Whiteside, 475 U.S. 157, 170 n.6, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986)* ("Withdrawal of counsel when this situation arises at trial gives rise to many different questions including possible mistrial and claims of double jeopardy").

[60] **Timing is problematic.** *E.g., United States v. Henkel, 799 F.2d 369, 370 (7th Cir. 1986)* (conviction on direct appeal affirmed because defendant "had no right to commit perjury") *Cf. Lowery v. Cardwell, 575 F.2d 727 (9th Cir. 1978)* (due process violation when defense counsel cut short defendant's testimony, moved to withdraw which was denied, then failed to argue defendant's testimony in closing).

[61] **Judge may appear impartial.** *Lowery v. Cardwell, 575 F.2d 727, 730 (9th Cir. 1978)*.

[62] **Client dilemma.** *United States v. Scott, 909 F.2d 488, 492 (11th Cir. 1990)* (to advise defendant that he could proceed pro se, or could keep attorney and be precluded from testifying impermissibly forced him to choose between two constitutionally protected rights).

[63] **Lawyer must be discrete.** *Cf. United States v. Bruce, 89 F.3d 886, 893 (D.C. Cir. 1996)* (attorney exercised poor judgment and possibly violated rules of professional conduct in disclosing client urging that the lawyer lie on the client's behalf, but no conflict of interest present).

### [c] Refusal to Submit False or Perjurious Testimony

Submission of testimony requires the active participation of the lawyer in calling and questioning the witness. Assuming that the lawyer knows that the testimony is false, and is unable to convince the witness to avoid perjury, the lawyer must refuse to offer false evidence of non-parties.[64]

The issue is much more challenging in criminal cases because a defendant has a constitutional right to testify.[65] In addition, the decision whether to testify belongs ultimately to the client.[66] A defendant's right to testify, however, "does not extend to testifying falsely."[67]

Keeping the defendant off the stand entirely is no solution to the perjury issue, because it deprives the fact-finder of truthful testimony as well as the perjury. This concern was reflected in one case in which the state court judge ruled that if the defendant chose to testify, counsel would be allowed to withdraw, and the defendant would proceed pro se. The defendant elected to retain counsel and not testify, and was subsequently convicted. The Third Circuit found that the state court action impermissibly forced the defendant to choose between the right to testify and the right to counsel.[68] In contrast, another court found that defendant was not deprived of his constitutional right to testify when defense counsel refused to put the defendant on the stand despite defendant's wishes, though the court expressly reserved the issue of whether counsel's conduct conformed to professional standards.[69]

### [d] Testifying in Narrative Form

Testifying in narrative form has been proposed by several commentators as a potential solution to the perjury conundrum.[70] While narrative testimony has been approved in some states, the practice has not been given significant attention in reported federal decisions. The Ninth Circuit implicitly approved of the practice in 1998 when it upheld the conviction of a defendant who had testified in narrative form after defense counsel's motion to withdraw was denied. The court of appeals found that this procedure did not

---

[64] **May not offer perjury from witness.** *Knox v. Hayes, 933 F. Supp. 1573, 1586 (S.D. Ga. 1995)* (sanctions imposed on attorney for allowing witness to sign false affidavit). *See* Model Rule of Prof'l Conduct 1.6, comment [4] ("When evidence that a lawyer knows to be false is provided by a person who is not the client, the lawyer must refuse to offer it regardless of the client's wishes").

[65] **Right to testify.** *Alicea v. Gagnon, 675 F.2d 913, 923 (7th Cir. 1982)*.

[66] **Decision is client's.** *Florida v. Nixon, 543 U.S. 175, 187, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004)* (attorney must both consult with defendant and obtain consent to recommended course of action for important decisions involving overarching defense strategy, including whether to testify in his or her own behalf); *Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983)* (accused has ultimate authority "to make certain fundamental decisions regarding the case" such as whether to "testify in his or her own behalf"); *United States v. Scott, 909 F.2d 488, 490 (11th Cir. 1990)* ("the right to testify is personal and cannot be waived by counsel").

[67] **No right to commit perjury.** *Nix v. Whiteside, 475 U.S. 157, 171–172, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986)*.

[68] **Right to testify and right to counsel.**

2d Circuit *De Pallo v. Burge, 296 F. Supp. 2d 282, 287 (E.D.N.Y. 2003)*.

3d Circuit *United States ex rel. Wilcox v. Johnson, 555 F.2d 115, 120 (3d Cir. 1977)*.

4th Circuit *United States v. Midgett, 342 F.3d 321, 326 (4th Cir. 2003)*.

[69] **Right to testify not infringed.** *United States v. Curtis, 742 F.2d 1070, 1076 n.4 (7th Cir. 1984)*.

[70] *See* Wilkinson, *"That's a Damn Lie!": Ethical Obligations of Counsel When a Witness Offers False Testimony in a Criminal Trial, 31 St. Mary's L. J. 407 (2000)*; Thompson, *The Attorney's Ethical Obligations When Faced With Client Perjury*, 42 S.C. L. Rev. 973 (1991).

constitute ineffective assistance of counsel, particularly when defendant had the assistance of counsel as to all matters other than the narrative testimony, and in light of the finding of the trial judge at sentencing that the testimony was, in fact, false.[71]

**[e] Disclosure to Court**

No lawyer wishes to disclose, and no judge wishes to hear, that a client or witness intends to commit perjury. Disclosure should be absolutely a last resort, and should disclose only the information necessary to constrain the perjury. Because of the possibility that the witness will change his or her mind, presumably disclosure would be most likely immediately prior to the witness' intent to testify.[72] As noted earlier, a motion to withdraw or to permit the client to testify in narrative form is, in essence, a disclosure to the court that the client intends to commit perjury.

**[7] Lawyer Must Take "Reasonable Remedial Measures" Upon Learning of Prior Submission of Perjury**

Relying on false or perjurious testimony is a continuing offense. Lawyers may attempt to minimize the impact of false testimony by avoiding express reliance on the false testimony. However, under the ethical rules, such action generally is insufficient. The Model Rules require that the lawyer who learns that earlier submitted evidence is false or perjurious must take "reasonable remedial measures," including, if necessary, disclosure to the tribunal.[73] Thus, if the false or perjurious testimony cannot be withdrawn or otherwise remedied, the lawyer should disclose the falsity to the court.[73.1] This is required because once the false testimony is on the record, it can influence settlement negotiations or summary judgment even if not directly relied upon at trial.[74] Accordingly, submitting a corrected affidavit or otherwise withdrawing false or perjurious testimony may be insufficient under the circumstances, and full disclosure may be required on pain of sanction.[75]

---

[71] **Implicit approval of narrative testimony.** *United States v. Omene, 143 F.3d 1167, 1168–1171 (9th Cir. 1998)*.

[72] **Timing of disclosure.** *United States v. Del Carpio-Cotrina, 733 F. Supp. 95, 100 (S.D. Fla. 1990)* ("a lawyer who knows that his client intends to commit perjury need not advise the court until the client takes the witness stand").

[73] Model Rule of Prof'l Conduct 3.3(a).

[73.1] **Disclosure to court.** *Interstate Narrow Fabrics, Inc. v. Century United States, Inc., No. 1:02CV00146, 2006 U.S. Dist. LEXIS 9039 (M.D.N.C. Feb. 22, 2006)* (court criticized attorney who when apprised of the incorrectness of his statements to the Court, chose to withdraw rather than cure mistake by taking affirmative action to inform the Court).

[74] **Perjury taints entire process.**

2d Circuit *Romano Bros. Beverage Co. v. D'Agostino-Yerow Assoc., 1996 U.S. Dist. LEXIS 10730, at *47 (N.D. Ill. 1996)* (perjury in pretrial discovery "is more destructive to the judicial system and the search for truth than lying on the stand during trial").

11th Circuit *Knox v. Hayes, 933 F. Supp. 1573, 1584 (S.D. Ga. 1995)*.

[75] **Sanctions for failure to disclose.**

2d Circuit *Tedesco v. Mishkin, 629 F. Supp. 1474, 1485 (S.D.N.Y. 1986)* (misconduct included aiding and abetting witness to commit perjury and corrupt endeavor to influence and impede testimony; attorney also restrained from contacting class members, enjoined from interfering with the due administration and determination of class action by the court, and ordered to pay $64,792.35 in costs and attorneys fees, plus $10,000 sanction payable to court).

11th Circuit *Knox v. Hayes, 933 F. Supp. 1573, 1586 (S.D. Ga. 1995)* (counsel should have informed opposing counsel of true nature and admitted indiscretion to court; attorney fees ordered and counsel disqualified from further representation of defendant).

The comments to Model Rule 3.3 state that except in criminal defense, "if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party."[76] The duty to counsel one's client and to minimize the harmful impact of the disclosure suggests that this subject must be discussed with the client before the lawyer's disclosure.[77] Presumably in most cases the client will agree to facilitate the correction of the record in a way that minimizes negative impact rather than having the lawyer proceed independently to inform the court. If the decision-making process leads to a rupture of the attorney-client relationship, the lawyer may make a motion to withdraw, although such a motion is likely to be met with resistance if it occurs at or near trial.

**[8] Duty Not to Provide False or Misleading Statements**

The duty not to knowingly make a false statement of material fact has been a part of legal ethics since codification began (*see generally* § 801.02 (discussing history of federal regulation of attorney conduct)). The false statement of fact might come through the lawyer's knowing facilitation of client perjury, or the lawyer's own false statements to a court. A lawyer may not make false or misleading statements to a court, either in oral presentations or in documents.[78] Failure to make a factual disclosure, or giving only partial information, has been found to be the equivalent of an affirmative misrepresentation.[78.1] Knowing presentation of false evidence can be the basis for disbarment or denial of pro hac vice status.[79]

Federal courts have been quite emphatic that the duty of confidentiality does not justify making false or misleading statements to a court.[80] Claims that misleading statements were not technically lies, and similar

---

[76] Model Rule of Prof'l Conduct 3.3, comment [6].

[77] *See* Model Rule of Prof'l Conduct 1.4(a) ("A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information").

[78] **Lawyer may not lie to court.**

1st Circuit *See* *Gonsalves v. City of New Bedford, 168 F.R.D. 102, 112–118 (D. Mass 1996)* (attorney's false and misleading statements to court constituted serious misconduct which "threatened the integrity of the trial" and were thus sanctionable).

2d Circuit *United States v. Gotti, 322 F. Supp. 2d 230, 237 (E.D.N.Y. 2004)* (criticizes AUSA for misleading court).

5th Circuit *See* *Smith v. Our Lady of the Lake Hospital, Inc., 135 F.R.D. 139, 144 (M.D. La. 1991)* ("impermissible, misleading and half-truth pleadings, briefs, and oral arguments made by the plaintiff and his counsel cannot be tolerated").

[78.1] **Affirmative misrepresentation.** *Schmude v. Sheahan, 312 F. Supp. 2d 1047, 1088, 1092 (N.D. Ill. 2004)* ("Making a passing reference to the issue is not the same as being forthright and fairly presenting the matter to the court").

[79] **Disbarment for lying.**

5th Circuit *In re Sealed Appellant, 194 F.3d 666, 670 (5th Cir. 1999)* (backdating endorsement of stock certificate and lying or misleading in subsequent deposition basis for disbarment).

10th Circuit *United States v. Howell, 936 F. Supp. 767, 774 (D. Kan. 1996)* (omissions and misstatements in pro hac vice affidavit and materially misleading responses to the magistrate judge justify denial of pro hac vice admission)

[80] **Confidentiality does not justify lying to court.**

4th Circuit *See* *United States v. Shaffer Equip. Co. 11 F.3d 450, 458 (4th Cir. 1993)* (as officers of the court, "the lawyer's duties to maintain the confidences of a client and advocate vigorously are trumped ultimately by a duty to guard against the corruption that justice will be dispensed on an act of deceit").

7th Circuit *See* *Cleveland Hair Clinic, Inc. v. Puig, 200 F.3d 1063, 1066 (7th Cir. 2000)*.

"hairsplitting," have not been generously received.[81] Failing to correct a false statement, reliance upon it, or efforts to cover-up the wrongdoing, can impact the sanction.[82] When courts catch a lawyer making misleading or false statements the court appears likely to seek disciplinary action against counsel[83] or impose other significant sanctions on the lawyer.[84]

In refusing to make false statements to the court, however, the lawyer must be careful not to divulge more information than necessary to honor the lawyer's ethical obligations of both candor and confidentiality.[85]

Counsel also has a "continuing duty to inform the Court of any development which may conceivably affect the outcome" of the litigation," such as facts that might render the case moot.[86]

A lawyer must also avoid making false or misleading statements about the law to a court. For example, lawyers have been sanctioned for selective quotation or direct misquotation of precedent (*see* § 811.02).[87]

---

[81] **"Hairsplitting" not tolerated.**

7th Circuit *See* *Cleveland Hair Clinic, Inc. v. Puig, 200 F.3d 1063, 1066 (7th Cir. 2000)*.

8th Circuit *See* *Jones v. Clinton, 36 F. Supp. 2d 1118, 1130 (E.D. Ark. 1999)* (misleading statements in deposition "undermined the integrity of the judicial system" and were sanctionable because they were "intentionally false, notwithstanding tortured definitions and interpretations" of certain terms).

[82] **Exacerbating behavior.**

1st Circuit *Romero-Barcelo v. Acevedo-Vila, 275 F. Supp. 2d 177, 191 (D.P.R. 2003)* ("The dishonesty rule has also been applied in instances where an attorney fails to correct innocently created misunderstandings of which a lawyer subsequently becomes aware and neglects to correct her own statements that were initially believed to be true but later revealed to be false.").

7th Circuit *See* *Cleveland Hair Clinic, Inc. v. Puig, 200 F.3d 1063, 1064 (7th Cir. 2000)* ("People often get in hot water not so much for the original misdeed, but for the cover-up").

11th Circuit *See* *Knox v. Hayes, 933 F. Supp. 1573, 1586 (S.D. Ga. 1995)* (continued use and reliance on false affidavit; award of costs and attorneys fees, and counsel disqualified from further representation).

[83] **Disciplinary action sought.**

8th Circuit *See* *Jones v. Clinton, 36 F. Supp. 2d 1118, 1130 (E.D. Ark. 1999)* (member of bar who lied in deposition found in civil contempt, ordered to pay reasonable expenses, including attorney fees to opposing counsel and reimbursement to court; matter also referred to state disciplinary body).

9th Circuit *See* *Erickson v. Newmar Corp., 87 F.3d 298, 303–304 (9th Cir. 1996)* (remand to impose "appropriate sanctions and disciplinary action" upon defense counsel for witness tampering and false statements to appellate court).

[84] **Awarding sanctions.** *E.g.*, *In re General Motors Corp., 110 F.3d 1003, 1008 (4th Cir. 1997)* (counsel cited language previously stricken by Fourth Circuit and ordered not cited; these acts misled later courts into thinking that certain findings had been made; total of $190,541.37 in attorney fees awarded).

[85] **Disclosure only when necessary.** *United States v. Bruce, 89 F.3d 886, 894–895 (D.C. Cir. 1996)* (lawyer correctly advised client that he would not honor request to lie, but conduct was problematic when lawyer went on to disclose client's request to court).

[86] **Continuing duty to inform.** *Arizonans for Official English v. Ariz., 520 U.S. 43, 68 n.23 (U.S. 1997)* ("It is the duty of counsel to bring to the federal tribunal's attention, 'without delay,' facts that may raise a question of mootness."); *Tiverton Bd. of License Comm'rs v. Pastore, 469 U.S. 238, 240, 105 S. Ct. 685, 83 L. Ed. 2d 618 (1985)* (per curium) (dismissing case as moot, adding admonishment, citing *Fusari v. Steinberg, 419 U.S. 379, 391, 95 S. Ct. 533, 42 L. Ed. 2d 521 (1975)* (Burger, C. J., concurring); *Schreiber Foods, Inc. v. Beatrice Cheese, Inc., 402 F.3d 1198, 1205 (Fed. Cir. 2005)*.

The duty not to make false or misleading statements extends to misrepresenting a lawyer's status to third persons.[88] Similarly, a prosecutor may not make a false statement of fact to induce a plea bargain.[89]



End of Document

[87] **Selective quotations.** *Federal Circuit Precision Specialty Metals, Inc. v. United States, 315 F.3d 1346, 1355 (Fed. Cir. 2003)* (Rule 11 and inherent powers supports reprimand of attorney for selective quotations that gave false and misleading impression about existing law).

[88] **Misrepresenting status to third persons.** *Chimko v. Lucas (In re Lucas), 317 B.R. 195, 201 (D. Mass. 2004)*.

[89] **False statement to induce plea bargain.** *Morgan v. Perry, 142 F.3d 670, 684 (3d Cir. 1998)* (Marine prosecutor's fabrications about during plea negotiations "constituted a gross ethical violation of his duty and responsibility as a lawyer as well as government prosecutor").

EXHIBIT 3

# A Personnel Flowchart for Competing Licensed Marijuana Outlets at 6176 and 6220 Federal Boulevard, San Diego, CA 92114

'Team Geraci' is: Larry Geraci, Tax & Financial Advisor, Enrolled Agent, Real Estate Agent, Owner of Tax and Financial Center – Published Date: 05/11/20

**Abhay Schweitzer, AIA**
The Enterprise
6176 Point of Contact

**Rebecca Berry, Office Mgr**
The Enterprise
6176 CUP Proxy for Geraci

**Jessica McElfresh, Esq** 265209
The Enterprise
Represented Cotton and Geraci

**Jim Bartell. Consultant**
The Enterprise
6176 CUP Lobbyist

**Ken Malbrough, Chairperson** Chollas Valley Community Planning Group (CPG)
Ken and the CPG would be the one party (CPG Bylaws) that had a responsibility to both Cotton, as the Property Owner and Geraci/Berry as the CUP applicant. As can be seen by this 3/14/17 letter from DSD to Geraci's representative, Barbara Harris Permitting Services, the CPG contact requirements are clearly spelled out for Team Geraci. but as the property owner, Malbrough ceases all communication with Cotton, thus under the Brown Act Cotton has no access or rights within the CPG.

**Michael Weinstein, Esq** 106464
**Scott Toothacre, Esq** 146530
**Elyssa Kulas, Esq** 317559
Ferris & Britton Law
Representing Geraci
9/23/19 Opposition to New Trial

**Mara W. Elliott, Esq** 175466
**Michael Phelps, Esq** - 258246
**Jana Will, Esq** - 211064
**Mark Skeels, Esq** 209766
**Onuoma Omordia, Esq** 231583
**Jan Goldsmith, Esq** 70988
**John Hemmerling, Esq** 218796
**Onuoma Omordia, Esq** 231583
**Nicole A. Carnahan, Esq** 262929
City of San Diego v Cotton
10/06/17 Cotton v City of San Diego
05/21/18 Appellate WOM

**Quintin G. Shammam, Esq** 246926
Cannabis Law Specialist

**Judge Joel Wohlfeil**
**Superior Court** Tips from the Bench
03/21/17 Geraci v Cotton
5/12/17 Cotton's Cross Complaint
6/30/17 1st Amended X Complaint
8/25/17 2nd Amended X Complaint
11/06/17 Overrules Demurrer
12/07/17 Denies TRO
1/18/18 Denies Sealed Doc Request
1/25/18 Denies WOM
4/03/18 Denies 3rd Party Receiver
4/03/18 Orders Access to Property
4/05/18 Denies Motion to Stay
4/13/18 Denies Removal of LP
9/17/18 Denies DQ Motion
6/27/19 Denies Flores MOI
7/03/19 Denies Non-Suit
7/13/18 Denies JOP
4/29/19 Denies Motion to Bind
5/23/19 Denies MSJ
7/01/19 Denies Fraud Charges
7/10/19 Denies Directed Verdict
7/13/19 Cotton's Motion for New Trial
9/23/19 Geraci's Objections
9/30/19 Cotton's Reply to Objections
10/25/19 Denies Motion for New Trial

**Bianca Martinez, Agent**
Bartell and Associates
6176 CUP Lobbyist who worked for Bartell and Geraci had been promised an equity interest in the new Marijuana Outlet.

**Firouzeh Tirandazi, Senior Manager**
**Cherlyn Cac, Project Manager**
City of SD Development Services Dept. (DSD) for both of the 6176 and 6220 CUP applications

**Michelle Sokolowski, Deputy Director**
**PJ Fitzgerald, Asst. Deputy Director**
**Martha Blake, Senior Planner**
**Laura Black, Program Manager**
City of SD - DSD
**Gerry Braun, Chief of Staff**
City of SD City Attorney's Office
**Cheri Hoy, Assistant to the Chief of Staff**
City of SD Mayors Office Staff
**Ken Malbrough, Chairperson**
Chollas Valley Community Planning Group
07/25/18 Emails & 07/27/18 Emails

**Gina Austin, Esq** 246833
**Arden Anderson, Esq 289201**
The Enterprise
Represents Geraci & Magagna

**Aaron Magagna, Applicant**
Competing 6220 CUP

**John Ek, Property Owner**
Competing 6220 CUP
06/01/18 Email

**Matt Shapiro, Esq** 292542
Matthew Shapiro Law
Magagna Attorney
Civil Conspiracy Emails

**Cynthia Reed, Esq** 204235
Vanst Law - Attorney/Lobbyist
Represents Magagna @ the
10/18/18 (Pg 4) Testimony

**Corina Young, Fact Witness**
Testifies to statements made by Bartell, Shapiro and Nguyen re 6176 CUP Processing
(See Text Messages)

**Natalie Nguyen, Esq** 246753
Represents Corina Young.
Refuses to allow Young to Testify under Subpoena
Emails re Young Deposition

**Salam Ruzuki, Businessman**
. An Austin & Bartell Cannabis Cabal Client Soliciting Murder
United States v Razuki

**Darryl Cotton, Owner**
6176 Federal Blvd.
151 Farms & Inda-Gro

**Joseph Hurtado**
Cotton's Litigation Investor

**David Demian, Esq 220626**
Finch Thorton & Baird
Jessica McElfresh Referral
06/30/17 thru 12/08/17

**Adam Witt, Esq** 271502
Finch Thorton & Baird
Co-Counsel with Demian
06/30/17 thru 12/08/17

**Stephen G. Cline, Esq**
**Cline Law Offices** 169828
Demian's Cotton II referral

**Dharmi Mehta, Esq** 301999
**Robert Bryson, Esq** 299566
04/05/17 Case No M230071
05/09/17 Bryson Declaration
05/18/17 Disengagement Ltr

**Jacob Austin, Esq 290303**
Represents Cotton from
04/04/18 thru current

**Andrew Flores, Esq** 272958
Purchases 6176 Property
06/19 Denied MOI Cotton I
04/20 Filed Flores v Austin

**Evan Schube, Esq**
Tiffany and Bosco
Represents Cotton in
Motion for New Trial

**Judge Gonzalo Curiel**
**Federal - Recused**
18CV0325 GPC-MDD

**Judge Thomas Whela**
**Federal - Recused**
18CV0325-W-MDD

**Judge Cynthia Bashar**
**Federal**
18CV0325-BAS-MDD

**K. Feldman, Esq** 13069
**VandenHeuvel, Esq** 140
Lewis & Brisbois
5/3/19 FTB Oppositio

**D. Pettit, Esq** 16037
**J. Dalzell, Esq** 32335
Pettit & Kohn
3/26/19 ALG Oppositic

**E. Deitz, Esq** 22256
**T. Dupuy, Esq** 24670
Gordon & Rees
5/3/19 F&B Oppositic

**J. Crosby, Esq** 110383
CrosbyAttorney.com
03-26-19 Crosby Answ

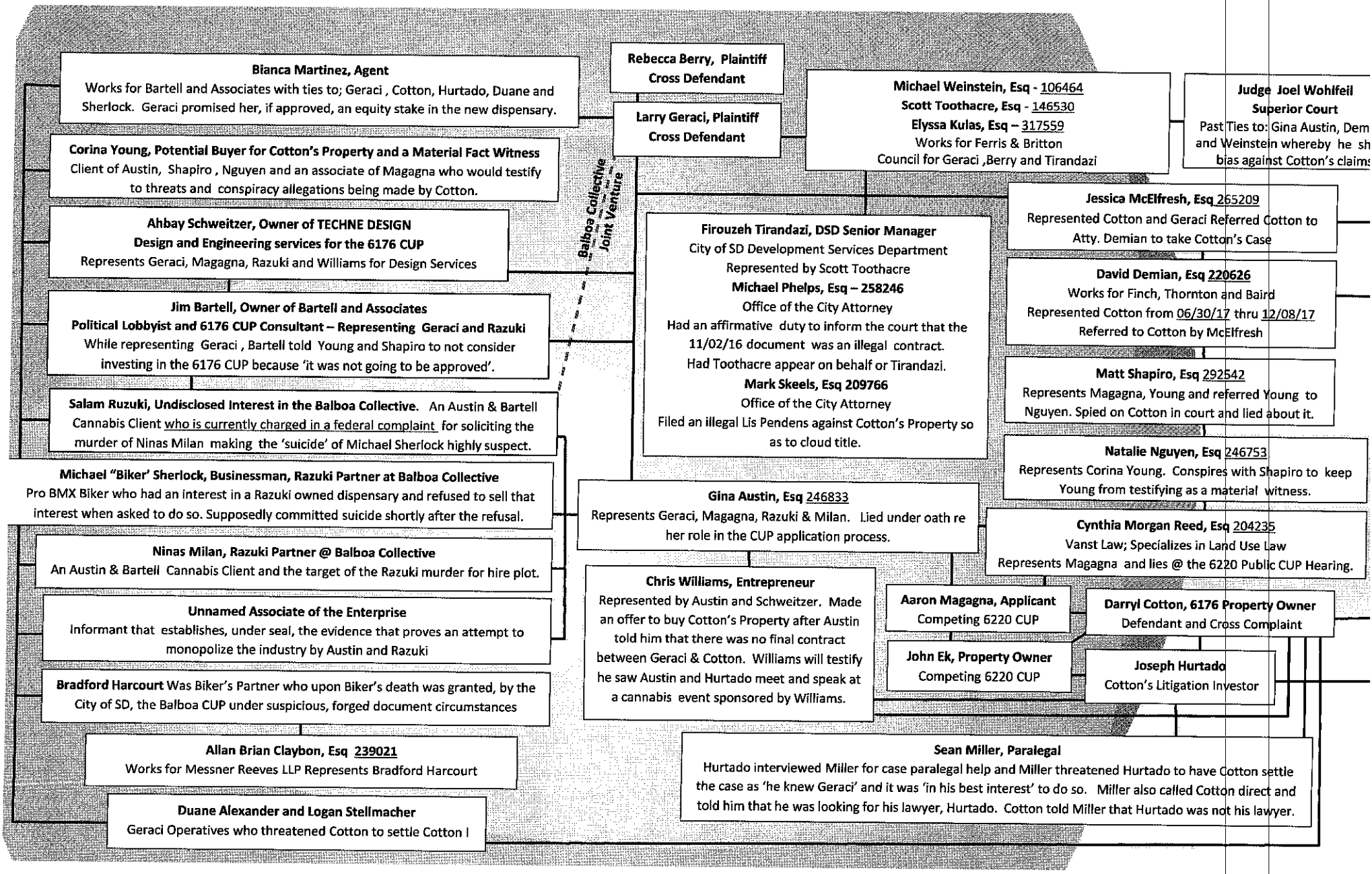

Bianca Martinez, Agent
Works for Bartell and Associates with ties to; Geraci , Cotton, Hurtado, Duane and Sherlock. Geraci promised her, if approved, an equity stake in the new dispensary.
Rebecca Berry, Plaintiff
Cross Defendant
Larry Geraci, Plaintiff
Cross Defendant
Michael Weinstein, Esq - 106464
Scott Toothacre, Esq - 146530
Elyssa Kulas, Esq – 317559
Works for Ferris & Britton
Council for Geraci ,Berry and Tirandazi
Judge Joel Wohlfeil
Superior Court
Past Ties to: Gina Austin, Dem
and Weinstein whereby he sh
bias against Cotton's claims
Corina Young, Potential Buyer for Cotton's Property and a Material Fact Witness
Client of Austin, Shapiro , Nguyen and an associate of Magagna who would testify to threats and conspiracy allegations being made by Cotton.
Balboa Collective
Joint Venture
Jessica McElfresh, Esq 265209
Represented Cotton and Geraci Referred Cotton to Atty. Demian to take Cotton's Case
Ahbay Schweitzer, Owner of TECHNE DESIGN
Design and Engineering services for the 6176 CUP
Represents Geraci, Magagna, Razuki and Williams for Design Services
Firouzeh Tirandazi, DSD Senior Manager
City of SD Development Services Department
Represented by Scott Toothacre
Michael Phelps, Esq – 258246
Office of the City Attorney
Had an affirmative duty to inform the court that the 11/02/16 document was an illegal contract.
Had Toothacre appear on behalf or Tirandazi.
Mark Skeels, Esq 209766
Office of the City Attorney
Filed an illegal Lis Pendens against Cotton's Property so as to cloud title.
David Demian, Esq 220626
Works for Finch, Thornton and Baird
Represented Cotton from 06/30/17 thru 12/08/17
Referred to Cotton by McElfresh
Jim Bartell, Owner of Bartell and Associates
Political Lobbyist and 6176 CUP Consultant – Representing Geraci and Razuki
While representing Geraci , Bartell told Young and Shapiro to not consider investing in the 6176 CUP because 'it was not going to be approved'.
Matt Shapiro, Esq 292542
Represents Magagna, Young and referred Young to Nguyen. Spied on Cotton in court and lied about it.
Salam Ruzuki, Undisclosed Interest in the Balboa Collective. An Austin & Bartell Cannabis Client who is currently charged in a federal complaint for soliciting the murder of Ninas Milan making the 'suicide' of Michael Sherlock highly suspect.
Natalie Nguyen, Esq 246753
Represents Corina Young. Conspires with Shapiro to keep Young from testifying as a material witness.
Michael "Biker' Sherlock, Businessman, Razuki Partner at Balboa Collective
Pro BMX Biker who had an interest in a Razuki owned dispensary and refused to sell that interest when asked to do so. Supposedly committed suicide shortly after the refusal.
Gina Austin, Esq 246833
Represents Geraci, Magagna, Razuki & Milan. Lied under oath re her role in the CUP application process.
Cynthia Morgan Reed, Esq 204235
Vanst Law; Specializes in Land Use Law
Represents Magagna and lies @ the 6220 Public CUP Hearing.
Ninas Milan, Razuki Partner @ Balboa Collective
An Austin & Bartell Cannabis Client and the target of the Razuki murder for hire plot.
Chris Williams, Entrepreneur
Represented by Austin and Schweitzer. Made an offer to buy Cotton's Property after Austin told him that there was no final contract between Geraci & Cotton. Williams will testify he saw Austin and Hurtado meet and speak at a cannabis event sponsored by Williams.
Aaron Magagna, Applicant
Competing 6220 CUP
Darryl Cotton, 6176 Property Owner
Defendant and Cross Complaint
Unnamed Associate of the Enterprise
Informant that establishes, under seal, the evidence that proves an attempt to monopolize the industry by Austin and Razuki
John Ek, Property Owner
Competing 6220 CUP
Joseph Hurtado
Cotton's Litigation Investor
Bradford Harcourt Was Biker's Partner who upon Biker's death was granted, by the City of SD, the Balboa CUP under suspicious, forged document circumstances
Allan Brian Claybon, Esq 239021
Works for Messner Reeves LLP Represents Bradford Harcourt
Sean Miller, Paralegal
Hurtado interviewed Miller for case paralegal help and Miller threatened Hurtado to have Cotton settle the case as 'he knew Geraci' and it was 'in his best interest' to do so. Miller also called Cotton direct and told him that he was looking for his lawyer, Hurtado. Cotton told Miller that Hurtado was not his lawyer.
Duane Alexander and Logan Stellmacher
Geraci Operatives who threatened Cotton to settle Cotton I

EXHIBIT 4

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

# Testimony

**Corina Young** <corina.young@live.com>
To: Darryl Cotton <indagrodarryl@gmail.com>

Wed, Oct 28, 2020 at 12:22 PM

Darryl,

I am not involved. Please do not include me in your lawsuit. Please do not post this email online.

Attached are emails from my attorney at the time.

Corina

**2 attachments**

**Email #1.pdf**
299K

**Email 2.pdf**
133K

EXHIBIT 5

# FW: Geraci v. Cotton [Deposition Subpoena - Corina Young]

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Tue 7/2/2019 12:01 PM

**To:** 'Corina Young' <corina.young@live.com>

1 attachments (10 KB)
190627.Tentative Rulings on Motions in Limine.pdf;

Good morning Corina,

I hope this email finds you well. I haven't heard back from you so I assume you are occupied with other importance.

As an update, below is the last email from Cotton's attorney. In light of the trial dates, I presumed he was bluffing so I just ignored him.

The court issued its ruling on the parties' Motions in Limine in the Geraci v. Cotton trial last week. If you are bored or curious, it is attached for your review. The Trial was supposed to start July 1 but it looks as if someone (likely Cotton's attorney) filed an appeal and so trial was taken off calendar. I'll keep you apprised of this but for the moment, there's nothing you really need to do.

Yours,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

**From:** Jake Austin <jpa@jacobaustinesq.com>
**Sent:** Wednesday, June 12, 2019 6:45 PM
**To:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>
**Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Ms. Nguyen,

Trial on the Geraci v. Cotton case in which your client, Corina Young, is a material witness is immediately impending and you have yet to deliver on any of the items we had previously agreed upon.

At this point in time it is too late to rely on you to uphold your promises without a proper demand. I need you to provide a declaration by end of week or I will have to file a motion for sanctions against you personally, and re-issue a subpoena.

Let me know by the end of the day Friday if you will provide the declaration requested or not so I can proceed accordingly.

Jacob

**Law Office of Jacob Austin**
P.O. Box 231189
San Diego, CA 92193 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

On Tue, May 28, 2019 at 10:20 AM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Ms. Young's original deposition was scheduled for Jan. 18th and we agreed to your request that she provide a declaration instead. It has been over 4 months and we have yet to receive anything. Please provide an update.
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
> *The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*
>
> On Fri, May 3, 2019 at 12:04 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Good morning Jake,
> >
> > Thanks for following up. Let me check and get back to you soon.
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > NGUYEN LAW CORPORATION
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, May 2, 2019 11:56 AM
> > **To:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Please give me an update, this is important to my client's case.
> >
> > Jacob
> > **Law Office of Jacob Austin**
> > P.O. Box 231189
> > San Diego, CA 92193 USA
> > Phone: (619) 357-6850
> > Facsimile: (888) 357-8501
> >
> > *The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*

On Tue, Apr 16, 2019 at 6:15 PM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Hello Natalie,
>
> As you recall we have been trying to work out an affidavit or a deposition for three months now, can you kindly give me an update on Ms. Young?
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
> *The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*
>
> On Thu, Mar 7, 2019 at 1:45 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Hi Jacob,
> >
> > Ms. Young is out of town on March 11 so she will not be able to attend the deposition as noticed. Our Objection to the Deposition Notice is attached.
> >
> > Despite her limited availability, we maintain the intention to provide you with a written statement as previously agreed. I hope to have it ready sometime next week.
> >
> > Best regards,
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > NGUYEN LAW CORPORATION
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, February 28, 2019 2:05 PM
> > **To:** natalie@nguyenlawcorp.com
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Hello,
> >
> > I haven't heard from you for awhile so just so you know my office is generating a subpoena for a deposition. We hope we do not need a deposition so if you can provide an affidavit that would be greatly appreciated. Also can we agree to accept electronic service from one another moving forward?
> >
> > Jacob
> >
> > On Mon, Jan 21, 2019 at 3:09 PM <natalie@nguyenlawcorp.com> wrote:
> >
> > > Hi Jacob,

I closely reviewed the Declaration of Joe Hurtado and the text message exchange attached thereto. I also discussed your proposal:

"Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

with Ms. Young and she's accepted the same. We will provide a sworn written testimony by Ms. Young as described above.

Best regards,

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

---

**From:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>
**Sent:** Thursday, January 17, 2019 5:23 PM
**To:** 'Jake Austin' <jpa@jacobaustinesq.com>
**Subject:** RE: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hi Jacob,

Thank you for taking the time to lay it all out for me. My grasp of this case is limited to the online register of action, the minute order to continue trial, and the deposition subpoena. However, I'm only representing a third-party witness so I see no reason to be embroiled in the case. Perhaps it's best this way.

I quickly scanned the attachment you sent, mostly the text message exchange. I gather there's some complicated history between the parties. In any event, I don't see an issue with a providing a sworn statement.

I intend to review your email and attachment more closely tomorrow and discuss your proposal with Mr. Young. I will reach back out to you after that.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 11440 West Bernardo Court, Suite 210 | San Diego, CA 92127
T: 858-225-9208
E: natalie@nguyenlawcorp.com

**From:** Jake Austin <jpa@jacobaustinesq.com>
**Sent:** Thursday, January 17, 2019 4:55 PM
**To:** natalie@nguyenlawcorp.com
**Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hello Natalie,

This is an awkward situation, so I will be direct. Your client has repeatedly communicated that she is hostile to my client and will not provide her deposition to material matters that are crucial to my client. Thus, your unilateral decision to cancel the deposition because I did not respond with an alternative to her deposition is procedural improper and, in light of her long history of seeking to avoid being deposed, is suspect.

I can inform you that one of the parties on our side went through Stage III cancer and so we are aware of the challenges that dealing with cancer treatments takes on a patient and their loved ones. However, because of that, we also know that there will never be a "good" time in that context to be deposed.
I am not sure how deeply you are aware of the facts in this matter, so I will not assume you are purposefully being antagonistic and will not file a motion to compel your client's attendance and seek sanctions.

With that said, we understand your client is in a tough situation, which is what makes her testimony highly relevant and credible to our case. In your prior email you state that we can discuss "alternatives to her sitting for the deposition" and since it wasn't a request to reschedule, I have been racking my brain for an alternative to having her go through a deposition which I know could be tedious and stressful on its own. I also know that she may be hesitant to discuss certain subjects and may rely on the right against self-incrimination in some of her responses. I am not sure how familiar you are with the underlying case, but it is my belief that Ms. Young has not been involved in the acts that underline the causes of action and it is not my intention to name her in any lawsuit or anything to that effect.
To be specific, the facts which we hope to elicit from Ms.
Young have already been provided ***by*** her in her text messages with Mr. Hurtado. Attached hereto is a declaration from Mr. Hurtado that in turn has exhibits of text messages between him and Ms. Young regarding the subjects that we desire to depose Ms. Young on. The only additional facts we would want established, beyond those in her text messages, is a description of how long and how many interactions she has had with the parties at issue in this litigation and in the text messages.

What should be clear is that Ms. Young has known the parties associated with Mr. Geraci significantly longer and has established professional relationships with them, as opposed to the limited number of times she has met Mr. Cotton and Mr. Hurtado with whom she only had a couple of interactions with (setting aside her communications related to not wanting to be involved in this litigation to Mr. Hurtado).

Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

Please confirm if your client is willing to provide such sworn testimony. If not, please let me know if your client is available to be deposed any day next week between Wednesday through Friday.
Please note that the trial calendar requires us to file a motion for summary judgement on or before February 8, 2019. As you know, getting transcripts back and drafting an MSJ is time

consuming, so, unfortunately, we are not in a position to push back her deposition for any prolong period of time.

Thus, if you cannot agree to providing her sworn testimony as described above, or having her deposition taken sometime next week, in the interests of my client's case, I will be forced to file an ex-parte application seeking to compel her deposition.

Lastly, again, my apologies for this direct and confrontational email. However, given Ms. Young's repeated statements, the nearing MSJ deadline, and the actions by the attorneys for Mr. Geraci, which I have already gone on record of stating and believing to be tantamount to fraud, I hope you can appreciate that I am attempting to manage this situation for Ms. Young as best as possible. The bottom line is that Ms. Young's testimony provides damaging evidence against her own attorney and agents and I realize the uncomfortable position she is in.

I am open to alternatives and discussions, but Ms. Young's testimony is material and crucial. If you would like to discuss this issue further, I will make myself available to you.

Jacob

On Tue, Jan 15, 2019 at 1:05 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,
>
> I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?
>
> Best regards,
>
> Natalie
>
> Natalie T. Nguyen, Esq.
> NGUYEN LAW CORPORATION
> M: 2260 Avenida de la Playa | La Jolla, CA 92037
> T: 858-225-9208
> E: natalie@nguyenlawcorp.com

**Law Office of Jacob Austin**
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

*The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*

On Wed, Jan 16, 2019 at 3:39 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,

I did not receive a response from you. Please note that for the reasons set forth in my email below, Ms. Young is unable and will not attend the deposition you set for this Friday, January 18, 2019, at 10:00 am. Please kindly contact my office before setting another deposition date.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

---

**From:** natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
**Sent:** Tuesday, January 15, 2019 1:05 PM
**To:** JPA@jacobaustinesq.com
**Subject:** Geraci v. Cotton [Deposition Subpoena - Corina Young]
**Importance:** High

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

--

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

EXHIBIT 6

6

**Geraci v Cotton**

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Mon 7/22/2019 11:24 AM
**To:** 'Corina Young' <corina.young@live.com>

1 attachments (80 KB)
Invoice_656_491294_g8e.pdf;

Hi Corina,

I hope this email finds you very well.

I just wanted to let you know that the trial in Geraci v Cotton went forward and was completed. Therefore, you don't have to worry about providing any declaration or testimony on this case. Attached is your final invoice; no payment is due from you and we will close our file.

It was a pleasure working with you. Good luck on all your future endeavors!

PS. The jury found in favor of Geraci.

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

EXHIBIT 7

SUBP-015

| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): | FOR COURT USE ONLY |
|---|---|
| Jacob P. Austin (SBN290303)<br>The Law Office of Jacob Austin<br>1455 Frazee Road #500<br>San Diego CA 92108<br>TELEPHONE NO.: (619) 357-6850 FAX NO. (Optional): (888) 357-8501<br>E-MAIL ADDRESS (Optional): JPA@JacobAustinEsq.com<br>ATTORNEY FOR (Name): Defendant/Cross-complainant Darryl Cotton | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego<br>STREET ADDRESS: 330 West Broadway<br>MAILING ADDRESS: 330 West Broadway<br>CITY AND ZIP CODE: San Diego 92101<br>BRANCH NAME: Hall of Justice | |
| PLAINTIFF/ PETITIONER: Larry Geraci<br>DEFENDANT/ RESPONDENT: Darryl Cotton | |
| **DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE** | CASE NUMBER:<br>2017-37-00010073-CU-BC-CTL |

**THE PEOPLE OF THE STATE OF CALIFORNIA, TO** ***(name, address, and telephone number of deponent, if known):***
Corina Young 1390 Weers Street, El Cajon CA 92020

1. **YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:**

Date: January 18, 2019 Time: 10:00 A.M. Address:
7880 Broadway, Lemon Grove CA 91945

a. ☐ As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025.230.)

b. ☑ This deposition will be recorded stenographically ☐ through the instant visual display of testimony and by ☐ audiotape ☑ videotape.

c. ☐ This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).

2. ☐ If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:

3. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.*

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF $500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: January 1, 2019

Jacob P. Austin
(TYPE OR PRINT NAME)

DocuSigned by:
Jacob Austin
(SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney at Law
(TITLE)

(Proof of service on reverse)



Form Adopted for Mandatory Use
Judicial Council of California
SUBP-015 [Rev. January 1, 2009]

**DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE**

Code of Civil Procedure §§ 2020.310, 2025.220, 2025.230, 2025.250, 2025.620
Government Code, § 68097.1
www.courtinfo.ca.gov

| PLAINTIFF/PETITIONER: Larry Geraci | SUBP-015 |
|---|---|
| DEFENDANT/RESPONDENT: Darryl Cotton | CASE NUMBER: 2017-00010073-CU-BC-CTL |

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE**

1. I served this *Deposition Subpoena for Personal Appearance* by personally delivering a copy to the person served as follows:
   a. Person served *(name)*: Corina Young
   b. Address where served: 1390 Weers Street, El Cajon CA 92020
   c. Date of delivery: January 2, 2019
   d. Time of delivery: 11:00 AM
   e. Witness fees and mileage both ways *(check one)*:
      (1) ☑ were paid. Amount: . . . . . $ 43.00
      (2) ☐ were not paid.
      (3) ☐ were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was *(specify)*: . . . . . $ _____
   f. Fee for service: . . . . . $ _____
2. I received this subpoena for service on *(date)*: January 2, 2019
3. Person serving:
   a. ☑ Not a registered California process server
   b. ☐ California sheriff or marshal
   c. ☐ Registered California process server
   d. ☐ Employee or independent contractor of a registered California process server
   e. ☐ Exempt from registration under Business and Professions Code section 22350(b)
   f. ☐ Registered professional photocopier
   g. ☐ Exempt from registration under Business and Professions Code section 22451
   h. Name, address, telephone number, and, if applicable, county of registration and number:

**I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 2, 2019

▶ Tammy J. Thomas
(SIGNATURE)

**(For California sheriff or marshal use only)**
**I certify** that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
P.O. Box 231189
San Diego, CA 92193
Telephone: (619) 357.6850
Facsimile: (888) 357.8501
Email: JPA@JacobAustinEsq.com

Attorney for Defendant/Cross-Complainant DARRYL COTTON

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN DIEGO – CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; and DOES 1-10, Inclusive,

Defendants.

CASE NO. 37-2017-00010073-CU-BC-CTL

**NOTICE OF TAKING DEPOSITION OF CORINA YOUNG**

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, and individual, REBECCA BERRY, an individual; and DOES 1 through 10, Inclusive,

Cross-Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU AND EACH OF YOU will please take notice that Defendant/Cross-Complainant DARRYL COTTON will take the Deposition of witness CORINA YOUNG on MARCH 11, 2019 commencing at

10:00 a.m. at 7880 Broadway, Lemon Grove, California 91945 (619) 356-1556. upon oral examination before a Certified Shorthand Reporter. Said Deposition will continue from day to day, Saturdays, Sundays, and holidays excepted, until completed.

Pursuant to Code of Civil Procedure section 2025.220, Defendant/Cross-Complainant DARRYL COTTON gives notice of his intention to record the testimony via audiotape, videotape, and/or stenographic methods with instant display of testimony and reserves the right to use any videotaped portion of the Deposition testimony at Trial in this matter.

DATED: February 26, 2019

THE LAW OFFICE OF JACOB AUSTIN

By_____

JACOB P. AUSTIN
Attorney for Defendant/Cross-Complainant
DARRYL COTTON

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
P.O. Box 231189
San Diego, CA 92108
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

Attorney for Defendant/Cross-Complainant DARRYL COTTON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN DIEGO**

| | |
|---|---|
| LARRY GERACI, an individual,<br>Plaintiff,<br>vs.<br>DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,<br>Defendants.<br>AND RELATED CROSS-ACTION. | Case No. 37-2017-00010073-CU-BC-CTL<br>**PROOF OF SERVICE** |

I, the undersigned, declare that I am over the age of 18 years and not a party to this action. I am employed in the county of San Diego. My business address is P.O. Box 231189, San Diego, CA 92108.

. I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On this day I served the document(s) entitled:

**NOTICE OF TAKING DEPOSITION OF CORINA YOUNG**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

[ ] (BY MAIL) I caused each such envelope, with postage thereon fully prepaid to be placed in the United States mail at P.O. Box 231189, San Diego, CA 92108.

. I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business.

[ ] BY OVERNIGHT DELIVERY. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[ X ] (BY PERSONAL SERVICE) I caused to be delivered such envelope by hand to the addressee. ONLY as to Attorney for Deponent, Corina Young to:
Natalie T. Nguyen, Nguyen Law Corporation, 2260 Avenida del la Playa, La Jolla, CA 92034 (858) 225-9208.

[ X ] (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to be electronically served the aforementioned documents on behalf of Jacob P. Austin, Esq. to Michael Weinstein, Esq. (mweinstein@ferrisbritton.com), Scott Toothacre (stoothacre@ferrisbritton.com) AND . A true and correct copy of transmittal will be provided to any party that so requests it or to the court. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[ X ] (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[ X ] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 1, 2019, at San Diego, California.

Leanne Thomas

EXHIBIT 8

The State Bar of California
OFFICE OF CHIEF TRIAL COUNSEL
845 S Figueroa Street, Los Angeles, CA 90017
Tel: 213-765-1000

# Attorney Misconduct Complaint Form

| Your Contact Information | | | |
|---|---|---|---|
| First Name: Darryl | | Middle Name: Gerard | |
| Last Name: Cotton | | | |
| Address: 6176 Federal Blvd | | | |
| City: San Diego | State: CA | Zip: 92114 | |
| Email: indagrodarryl@gmail.com | | | |
| Home Phone: none | Work: none | Cell: 619.954.4447 | |

| Attorney's Information | | | |
|---|---|---|---|
| First Name: Matthew | | Middle Name: William | |
| Last Name: Shapiro | | | |
| Address: 7676 Hazard Center Dr, Ste 500, San Diego, CA 92108-4508 | | | |
| City: San Diego | State: CA | Zip: 92108 | |
| Email: matthew@shapiro.legal | | CA Bar License #: 292542 | |
| Home Phone: unknown | | Work Phone: (858) 859-2420 | |
| Cell Phone: unknown | | Website: www.shapiro.legal | |

**Have you or a member of your family complained to the State Bar about this attorney previously?**

☐ YES ☒ NO

**Did you hire this attorney?**

☐ YES ☒ NO

**Enter the approximate date you hired the attorney and the amount paid (if any) to the attorney.**

**Date:** _____ **Amount Paid:** _____

Shapiro is a fairly high profile cannabis lawyer here in San Diego. He works with several other noted cannabias attorneys here such as Aust and McElfresh. Shapiro had a conflict of interest issue arise when he told my then counsel in the Geraci v Cotton matter in a series of email that he had nothing to do with a competing CUP with mine that should the competitor get to the finish line first my CUP would be denied. What we came to find out by a fact witness, Corina Young, in the Geraci v Cotton case was that based on Shapiro representing both the competitor, Aaron Magagna and Young he would need to distance himself from any representation of Young in the Geraci v Cotton case. What Shapiro did was hired another attorney Natalie Nguyen (246753) to appear to act in accordance with my atty's request that Young be deposed for my case but instead (this is per Young) Nguyen was to use any means necessary to keep Young from providing testimony in the Geraci v Cotton matter even though by email correspondence between Jake Austin and Nguyen it would appear the Nguyen was doing everything possible to provide that testimony prior to trial. Young will also testify that Shapiro negotiates a fixed fee for every pound of cannabis that his unlicensed cannabis clients sell.

## Attorney's Information

**Statement of Complaint**

Include with your submission, a statement of what the attorney did or did not do that is the basis of your complaint. Please state the facts as you understand them. Do not include opinions or arguments. If you hired the attorney(s), state what you hired the attorney(s) to do. Additional information may be requested.

Shapiro is part of an enterprise of cannabis attorneys based here in San Diego that take retainer fee's from unlicensed dispensary owners and work as a team to see that any licensed dispensary has to go through them. This information is all being made public in my federal complaint no; 18cv325-BAS (MDD). They share this information amongst themselves to see who should be awarded the license even though they are representing other clients who believe they have a fair shot at these limited licenses. The money those clients pay the attorneys is simply a hopeless loss even though they don't kow that at the time they hire him. The CUP application fee's with the City of San Diego are also non-refundable and it is not unusual to see multiple applications seeking the same approval with only one being eligible based on Land Use Regulations. It's time this scheme and the fraud it perpetuates be exposed and attorney's like Shapiro be disbarred and even held criminally responsible for their actions.

| | |
|---|---|
| **Name of Court:** Superior Court | **Case Name:** Geraci v Cotton |
| **Case Number:** 37-2017-00010073 | **Approx. date case was filed:** 03/21/17 |
| **Size of law firm complained about:** NA | |

**If you are not a party to this case, what is your connection with it? Explain briefly.**

I am a party.

## Translation Information

☒ **Not Applicable**

**The State Bar accepts complaints in over 200 languages. If you need translation services to communicate with the State Bar, please let us know by completing this section of the complaint form. We will communicate with you through a translation service in the language of your choice. Do you need translation services?**

☐ **YES** ☒ **NO**

**Please state the language in which you need formal translation:**

The State Bar's mission is to protect complainants regardless of their immigration status. Complainants who are unable to complete this form due to disability, language restrictions, or other circumstances may obtain help by calling the complaint line at 800-843-9053.

## Attestation

☒ **By checking this box I certify that all information on this form is true and correct. I understand that the content of my complaint can be disclosed to the attorney. I understand that I waive the attorney client privilege and any other applicable privilege between myself and the attorney to the extent necessary for the investigation and prosecution of the allegations.**

**Signature:**  **Date:** 02/06/2020

# EXHIBIT 9

The State Bar of California

OFFICE OF CHIEF TRIAL COUNSEL
ENFORCEMENT

845 S. Figueroa Street, Los Angeles, CA 90017 213-765-1205 michelle.king@calbar.ca.gov

June 22, 2020

SENT VIA U.S. MAIL

**PERSONAL AND CONFIDENTIAL**

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114

Re: Respondent: Matthew Shapiro
Case Number: 20-O-02529

Dear Mr. Cotton:

I am writing to inform you that the State Bar has decided to close your complaint against Matthew Shapiro.

Please understand that the State Bar cannot proceed with disciplinary charges unless we can present evidence and testimony in court sufficient to prove by clear and convincing evidence that the attorney has committed a violation of the State Bar Act or the Rules of Professional Conduct. The violation must be serious enough to support both a finding of culpability and the imposition of professional discipline. In some cases, there may be evidence of attorney malfeasance or negligence, but this evidence may be insufficient to justify the commencement of a disciplinary proceeding or to be successful at a disciplinary trial.

After carefully reviewing the information that you provided in your complaint and interview, this office has concluded that we would not be able to prevail in a disciplinary proceeding.

You alleged that that Mr. Shapiro takes clients seeking to obtain a CUP knowing fully that the chances are slim at best. You alleged that Mr. Shapiro had a conflict of interest issue arise when he told your then-counsel in the *Geraci v. Cotton* matter in a series of emails that he had nothing to do with a competing CUP with yours, and that should the competitor get to the finish line first, your CUP would be denied.

You alleged that Mr. Shapiro represented Corina Young, a fact witness in the *Geraci v. Cotton* case, but there was a conflict because Mr. Shapiro was representing both Ms. Young and the competitor, Aaron Magagna. As such, Mr. Shapiro would need to distance himself from any representation of Ms. Young in the *Geraci v. Cotton* case. Due to this, Mr. Shapiro hired attorney Natalie Nguyen to appear to act in accordance with your attorney's request that Ms. Young be deposed for your case. You alleged that you had evidence to show that Mr. Shapiro hired Ms. Nguyen and that Mr. Shapiro engaged in witness intimidation/threats in order to keep Ms. Young from testifying.

During your interview with the State Bar, it was explained to you that you were complaining about duties owed to the client and not to you. With this complaint, we do not have a client complainant, and Mr. Shapiro's communications/advice to his client are privileged. As such, we lack clear and convincing evidence to prove a violation.

In addition, during the interview, it was also explained to you that it was opposing counsel's right to try to get Ms. Young's testimony denied if it would hurt their case and in doing so they would have been doing their job. It is not illegal for an attorney to attempt to prevent testimony from being heard by the court through the legal process, as it is their duty to protect their client's interests. You stated that there were threats to Ms. Young and that you would provide the evidence and contact information for Ms. Young. You stated that these issues were specifically addressed to the court. You were given several weeks to produce information that you believed would help the investigation, but you failed to do so. Without proof of the alleged actions by Mr. Shapiro and given that these allegations were addressed to the court with no findings of impropriety, we are unable to prove a violation.

If you would like to further discuss this matter or provide additional information or documentation, we request but do not require that you call us or send us the information within ten days of the date of this letter. You may leave a voice mail message with attorney Jessica Jorgensen at (213) 765-1409. In your message, be sure to clearly identify the lawyer complained against, the case number assigned to your complaint, and your name and return telephone number, including area code. The attorney will return your call as soon as possible.

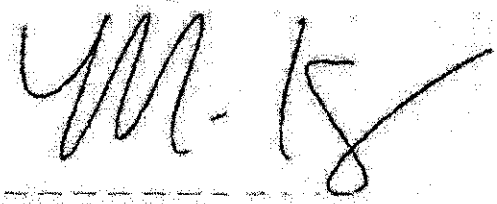
If you have presented all of the information that you wish to have considered, and you disagree with the decision to close your complaint, you may request that the State Bar's Complaint Review Unit review your complaint. The Complaint Review Unit will recommend that your complaint be reopened if it determines that further investigation is warranted. To request review by the Complaint Review Unit, you must submit your request in writing, **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.

If you decide to send new information or documents to this office, the 90-day period will continue to run during the time that this office considers the new material. You may wish to consult with legal counsel for advice regarding any other available remedies. You may contact your local or county bar association to obtain the names of attorneys to assist you in this matter.

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/StateBarSurvey2.

Respectfully,



Michelle King
Investigator

MK:wss

EXHIBIT 10

The State Bar of California
OFFICE OF CHIEF TRIAL COUNSEL
845 S Figueroa Street, Los Angeles, CA 90017 Tel: 213-765-1000

# Attorney Misconduct Complaint Form

| Your Contact Information | | | |
|---|---|---|---|
| First Name: Darryl | | Middle Name: Gerard | |
| Last Name: Cotton | | | |
| Address: 6176 Federal Blvd | | | |
| City: San Diego | State: CA | Zip: 92114 | |
| Email: indagrodarryl@gmail.com | | | |
| Home Phone: none | Work: none | Cell: 619.954.4447 | |

| Attorney's Information | | | |
|---|---|---|---|
| First Name: Natalie | | Middle Name: Trang-My | |
| Last Name: Nguyen | | | |
| Address: 2260 Avenida De La Playa | | | |
| City: La Jolla | State: CA | Zip: 92037 | |
| Email: natalie@nguyenlawcorp.com | | CA Bar License #: 246753 | |
| Home Phone: unknown | | Work Phone: (858) 757-8577 | |
| Cell Phone: unknown | | Website: www.nguyenlawcorp.com | |

**Have you or a member of your family complained to the State Bar about this attorney previously?**

☐ YES ☒ NO

**Did you hire this attorney?**

☐ YES ☒ NO

**Enter the approximate date you hired the attorney and the amount paid (if any) to the attorney.**

**Date:** _____ **Amount Paid:** _____

Nguyen represented Ms. Donna Young who was a material fact witness in the above referenced case. Nguyen was not hired by Young. Nguyen was hired my atty Matt Shapiro (292542) who I have also filed a CA-BAR complaint against. Shapiro knew he was involved in an illegal plot to help his client Aaron Magagna acquire a Condtional Use Permit (CUP) for a licensed Marijuana Outlet (MO) that if granted, because of the setback/spacing regulations that the City of SD has between MO licenses, would make my CUP ineligible for the license. Shapiro represented not only Magagna but Young as well. He needed another attorney to represent Young and that atty would have to be willing to use any means necessary to keep Young from being deposed or testify at trial. Shapiro picked Nguyen for this task and she cooperated fully.

## Attorney's Information

**Statement of Complaint**

Include with your submission, a statement of what the attorney did or did not do that is the basis of your complaint. Please state the facts as you understand them. Do not include opinions or arguments. If you hired the attorney(s), state what you hired the attorney(s) to do. Additional information may be requested.

On or about 01/16/19 my atty, Jacob Austin had a series of email exchanges with Nguyen that would make Young available for a deposition. Young would have testified to her relationship with Shapiro, Magagna and a political lobbyist James Bartell when it comes to maintaining illegal, unlicensed cannabis dispensaries and how Magagna was the straw person being used to acquire a competing license to mine which once granted would disqualify my application. Nguyen was a good soldier for her team. She kept telling Austin she was working on scheduling a mutually accpetable date or would atleast provide a sworn statement for our use at trial. Besides multiple promises by email and phone, that never occurred. Since Young's testimony was never provided it played a large part in evidence we were not able to bring to the jury and I lost a verdict against Geraci. After the trial it became known that Shapiro had paid for Nguyen's services. Nguyen should be disbarred for her unethical participation in this scheme.

| Name of Court: Superior Court | Case Name: Geraci v Cotton |
|---|---|
| Case Number: 37-2017-00010073 | Approx. date case was filed: 03/21/17 |

**Size of law firm complained about:**

**If you are not a party to this case, what is your connection with it? Explain briefly.**

I am a party in the above referenced case.

## Translation Information

☒ **Not Applicable**

**The State Bar accepts complaints in over 200 languages. If you need translation services to communicate with the State Bar, please let us know by completing this section of the complaint form. We will communicate with you through a translation service in the language of your choice. Do you need translation services?**

☐ **YES** ☒ **NO**

**Please state the language in which you need formal translation:**

The State Bar's mission is to protect complainants regardless of their immigration status. Complainants who are unable to complete this form due to disability, language restrictions, or other circumstances may obtain help by calling the complaint line at 800-843-9053.

## Attestation

☒ **By checking this box I certify that all information on this form is true and correct. I understand that the content of my complaint can be disclosed to the attorney. I understand that I waive the attorney client privilege and any other applicable privilege between myself and the attorney to the extent necessary for the investigation and prosecution of the allegations.**

**Signature:**  **Date:** 02/06/2020

The State Bar of California

OFFICE OF CHIEF TRIAL COUNSEL
ENFORCEMENT

845 S. Figueroa Street, Los Angeles, CA 90017 213-765-1205 michelle.king@calbar.ca.gov

June 22, 2020

SENT VIA U.S. MAIL

**PERSONAL AND CONFIDENTIAL**

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114

Re: Respondent: Natalie Nguyen
Case Number: 20-O-02531

Dear Mr. Cotton:

I am writing to inform you that the State Bar has decided to close your complaint against Natalie Nguyen.

Please understand that the State Bar cannot proceed with disciplinary charges unless we can present evidence and testimony in court sufficient to prove by clear and convincing evidence that the attorney has committed a violation of the State Bar Act or the Rules of Professional Conduct. The violation must be serious enough to support both a finding of culpability and the imposition of professional discipline. In some cases, there may be evidence of attorney malfeasance or negligence, but this evidence may be insufficient to justify the commencement of a disciplinary proceeding or to be successful at a disciplinary trial.

After carefully reviewing the information that you provided in your complaint and interview, this office has concluded that we would not be able to prevail in a disciplinary proceeding.

You alleged that attorney Matthew Shapiro represented a fact witness, Corina Young, in the *Geraci v. Cotton* case, but there was a conflict because Mr. Shapiro was representing both Ms. Young and the competitor, Aaron Magagna. As such, Mr. Shapiro would need to distance himself from any representation of Ms. Young in the *Geraci v. Cotton* case. Due to this, Mr. Shapiro hired Ms. Nguyen to represent Ms. Young and to appear to act in accordance with your attorney's request that Ms. Young be deposed for your case. You alleged that you had evidence to show that Mr. Shapiro hired Ms. Nguyen.

During your interview with the State Bar, it was explained to you that you were complaining about duties owed to the client and not to you. With this complaint, we do not have a client complainant, and Ms. Nguyen's communications/advice to her client are privileged. As such, we lack clear and convincing evidence to prove a violation.

In addition, during the interview, it was also explained to you that it is not illegal for an attorney to prevent testimony from being heard by the court through the legal process, as it is their duty to protect their client's interests.

During the interview, you stated that you would provide proof that Mr. Shapiro hired Ms. Nguyen. You were given several weeks to produce information that you believed would help the investigation, but you failed to do so. Without proof of the alleged actions by Ms. Nguyen and given that these allegations were addressed to the court with no findings of impropriety, we are unable to prove a violation.

If you would like to further discuss this matter or provide additional information or documentation, we request but do not require that you call us or send us the information within ten days of the date of this letter. You may leave a voice mail message with attorney Jessica Jorgensen at (213) 765-1409. In your message, be sure to clearly identify the lawyer complained against, the case number assigned to your complaint, and your name and return telephone number, including area code. The attorney will return your call as soon as possible.

If you have presented all of the information that you wish to have considered, and you disagree with the decision to close your complaint, you may request that the State Bar's Complaint Review Unit review your complaint. The Complaint Review Unit will recommend that your complaint be reopened if it determines that further investigation is warranted. To request review by the Complaint Review Unit, you must submit your request in writing, **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.

If you decide to send new information or documents to this office, the 90-day period will continue to run during the time that this office considers the new material. You may wish to consult with legal counsel for advice regarding any other available remedies. You may contact your local or county bar association to obtain the names of attorneys to assist you in this matter.

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/StateBarSurvey2.

Respectfully,

Michelle King
Investigator

MK:wss

EXHIBIT 11

961. Any reasonable attorney in F&B's position would know that Geraci's response evidences that Miller did threaten Hurtado and his family and Geraci was involved.

962. The response, drafted by F&B, reflects F&B's knowing complicity in the violence undertaken by Geraci to avoid liability and their evil disregard for the mental, financial, and physical safety of Cotton and his supporters, including Jane and Hurtado.

**I. Corina Young**

963. On or around October 2, 2017, Young visited the Property and took a tour of 151 Farms. She went to the Property because she had heard about the Property qualifying for a cannabis CUP.

964. Young introduced herself to Cotton and informed him she was looking for investment opportunities in cannabis businesses.

965. Cotton called Hurtado and he went to the Property to meet Young.

966. Hurtado explained the Property qualified for a cannabis CUP, but there was a legal dispute that needed to be resolved that required financing (*i.e.*, *Cotton I*).

967. Young was interested in investing in the litigation as a means of acquiring an ownership interest in the contemplated Business at the Property.

i. *The Bartell Statement*

968. Around mid-October 2017, Young's attorney, Shapiro, took Young to consult with Bartell regarding the potential investment and likelihood of a cannabis CUP being issued at the Property.

969. At the meeting, Bartell responded by stating he "owned" the Berry Application with the City and that he was getting it denied "because everyone hates Darryl" (the "Bartell Statement").

970. Young was not aware that at the same time the Bartell Statement was made, Geraci/F&B were arguing to Judge Wohlfeil that Geraci was using his best efforts to have the Berry Application approved, including through the political lobbying efforts of Bartell.

971. Young did not communicate the Bartell Statement to Cotton or Hurtado but

let them know she had decided to not pursue investing in *Cotton I*.

ii. *Magagna's Attempted Bribery & Threats*

972. On or about May 17, 2019, Hurtado sent Young an investment proposal to finance *Cotton I* not as a litigation investment, but as a loan secured by a note on the Property.

973. On or around May 27, 2018, Young met with Hurtado at Jane's residence to discuss the investment proposal. When they met, Cotton and Jacob were also at Jane's residence.

974. Jacob and Cotton had discovered that Shapiro represented Magagna and Shapiro had previously sat next to Cotton and Hurtado in plain clothes at a hearing before Judge Wohlfeil.

975. Thereafter, when confronted, Shapiro stated he was in Judge Wohlfeil's chambers because he had a client before Judge Wohlfeil, but was forced to admit he lied when Jacob demanded the party and case number.

976. On May 272, 2018, when Young arrived at Jane's residence, Cotton had a picture of Magagna on a computer screen.

977. Young recognized Magagna and explained that she had been introduced to him by Shapiro.

978. Cotton communicated that they believed Magagna to be a co-conspirator of Geraci and were contemplating taking legal action. Young defended Magagna, arguing he was not someone who would do something unethical and that there must be a misunderstanding.

979. Young, attempting to mediate the situation, contacted Magagna and he requested they meet.

980. When they met, Young explained the situation as she understood it, that her testimony regarding the Bartell Statement somehow provided evidence that supported Cotton's case against Geraci.

981. Furthermore, that because of his relationship with Shapiro, and because

Shapiro was at the meeting with Bartell when he made the Bartell Statement, they believed Magagna was a knowing co-conspirator of Geraci helping him to mitigate his liability to Cotton by acquiring the District Four CUP at 6220 Federal.

982. To her surprise, Magagna did not deny the allegations, instead, he asked her to change her statements and offered to bribe her for doing so. Young refused. Despite her refusal, Magagna repeatedly requested that Young go back to Cotton, Jacob and Hurtado and change her statements by saying that she "dreamed" the Bartell Statement. Young continued to refuse and Magagna continuously pressured her to change her testimony until they parted.

983. Over the course of the next several days, Magagna continued to contact Young, but started aggressively demanding that Young change her statements to "keep him out of it," and to not disclose that he sells his "legal" marijuana to Shapiro's clients.

984. Young became intensely frightened at Magagna's turn to aggressiveness, something he had not exhibited before during their relationship, and told him that she would not get involved at all in the case.

985. Young met with Hurtado and asked him to help her stay out of the *Cotton I* litigation. However, Hurtado explained that she was the proverbial "smoking gun" directly connecting Geraci to Magagna via Shapiro and Bartell. Furthermore, that because she had made those statements in front of Jacob and Cotton, even if he, Hurtado, was not willing to volunteer his testimony, he could not contradict their testimony regarding her statements.

986. Young confided in him that she was scared of Magagna because she believed him to be involved with organized crime. That Magagna had a licensed cultivation facility and that Shapiro brokered deals for Magagna to his clients, who were primarily criminals, and for which Shapiro would be paid $100 for every pound of marijuana sold.

iii. *Attorney Natalie Nguyen – Promised Testimony*

987. On June 1, 2018, Hurtado spoke with Young and she was in an agitated and fearful state. Young made comments that reflected she had investigated Geraci, and she

had confirmed that he was a dangerous individual, and she started to imply she would not be able to testify.

988. Hurtado then communicated via text with Young. Those text messages make clear that: (i) Bartell made the Bartell Statement; (ii) Bartell at that point in time had already been hired by Young to help her acquire a cannabis CUP at another real property and she was concerned that if she provided her testimony, adverse to Bartell, he sabotage her marijuana application as he was doing with Cotton; (iii) Shapiro gets paid for illegal marijuana sales he brokers for Magagna; (iv) Shapiro and Magagna had both been to Young's home; (iv) Magagna had attempted to bribe and threatened her; and (v) Young was worried for her physical safety.[74]

989. On January 1, 2019, Jacob subpoenaed Young to be deposed on January 18, 2019. On January 16, 2019, attorney Nguyen, representing Young, unilaterally cancelled the deposition of Young.

990. On January 21, 2019, Nguyen promised to provide Young's testimony confirming, *inter alia*, the Bartell Statement and Magagna's attempts at bribing and threatening her.

991. On June 12, 2019, after having been put off for months by Nguyen, Jacob emailed Nguyen demanding she provide Young's promised testimony, to which Nguyen never responded.

992. On June 30, 2019, the day before the start of trial in *Cotton I*, Hurtado and Flores spoke with Young who said she had moved out of the City, could not be served, would not testify, and did not "want anything" to do with Cotton or *Cotton I*. Young also told Flores that he needed to be fearful for the safety of himself and his family because, *inter alia*, Austin and Magagna are "dangerous."

993. In January 2020, Flores believed he was done preparing the complaint for the instant action and intended to name Young as a co-conspirator of Geraci. Flores spoke

---

[74] Mr. Hurtado provided a declaration in *Cotton I*, attaching the text messages with Young. *Cotton I*, ROA 237, Ex. 5.

with Young and was clear, informing her that by failing to provide her testimony she was a co-conspirator of Geraci, and he would seek to have her held civilly liable. Further, that it was possible after the civil action was concluded, and factual findings had been made, that such could lead to a criminal action against her.

994. Young broke down and said she had done nothing illegal and that it was Nguyen's sole decision to not provide Young's testimony.

995. Young alleged that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro paid Nguyen's legal fees for defending Young, (iii) Nguyen – in an email – told her that it was OK to "ignore" their obligation to provide Young's testimony because "it was too late for Cotton to do anything about it" (the "Young Allegations").

996. At that point, Flores was skeptical because he could not believe that Nguyen would so blatantly violate her ethical duties and ratify the violence against Young, which was before Flores discovered that Nguyen and Mrs. Austin attended law school together.

997. Nguyen's failure to provide Young's promised testimony perpetuated the *Cotton I* Conspiracy, which she knew would cause severe mental, financial, and emotional distress to Cotton and his supporters, and severely prejudice Cotton's case.

## ADDITIONAL SPECIFIC ALLEGATIONS AND CAUSES OF ACTION

### FIRST CAUSE OF ACTION - § 1983

(Plaintiffs against Judge Wohlfeil and the City Clerk)

998. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

999. "42 U.S.C. § 1983 is derived from Section 1 of the Ku Klux Klan Act of 1871… Generally, [§] 1983 creates a cause of action for deprivation of rights secured by the 'Constitution and [federal] laws' perpetrated under color of state law." *Bell v. City of Milwaukee*, 746 F.2d 1205, 1232 (7th Cir. 1984) (citing § 1983).

1000. "The Due Process Clause entitles a person to an impartial and disinterested tribunal." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980). In addition, "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954); *Exxon*

# CERTIFICATE OF SERVICE

I, Darryl G. Cotton, hereby certify that a true and correct copy of the forgoing Motion for Leave to File Omnibus Sur-reply was served via Electronic Mail to the following parties:

**Defendants**

Larry Geraci
Larry@tfcsd.net

Gina Austin
Gaustin@austinlegalgroup.com

Michael Weinstein
Mweinstein@ferrisbritton.com

Scoot Toothacre
Stoothacre@ferrisbritton.com

City of San Diego
Cityattorney@sandiego.gov

**Attorney For Defendant Gina Austin and Austin Legal Group**
Julia Dalzell
jdalzell@pettikohn.com

**Attorney for Michael Weinstein**
Gregory Brian Emdee
gemdee@kmslegal.com

Dated: October 29, 2020

Darryl Cotton

By _____

Plaintiff *In Propria Persona*