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May 9, 2016

Members, Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, California 94105  
*Via email and facsimile to individual Board members*

Re: *In re Wade A. Robertson*, Case No. 09-O-19259-LMA (California State  
Bar Court)

Members of the Board of Trustees:

According to an evidentiary exhibit to the enclosed motion, a state bar prosecutor knowingly withheld exculpatory evidence in the case listed above. During trial proceedings, prosecutors from the Office of Chief Trial Counsel argued that Wade Robertson perpetrated a fraud on William C. Cartinhour, Jr. by accepting \$3.5 million from Mr. Cartinhour without using any of the funds for their intended purpose (namely, to pursue a securities fraud case in New York). Mr. Robertson sought the testimony of John Watts, an Alabama attorney who assisted Mr. Robertson with the securities case in New York, but state bar prosecutors successfully blocked Mr. Robertson from taking the testimony of Mr. Watts.

At an appellate argument on April 13, 2016, prosecutor Cydney Batchelor told the hearing panel that Mr. Robertson did not spend *any* money on the New York securities litigation. Mr. Batchelor should have known that her statement was false based on documentary evidence that was already in the record. Regardless, Ms. Batchelor learned immediately after the hearing that Mr. Robertson had paid a “substantial” amount of money to Mr. Watts's former law firm, Yearout & Traylor, P.C., and she deliberately concealed that information from the appellate panel.

According to the affidavit of Jason Yearout (enclosed), Ms. Batchelor sent his firm an email on April 14, 2016 (one day after oral argument) inquiring about whether Mr. Robertson spent any of the \$3.5 million on the New York securities litigation. During a telephone conversation on April 18, 2016, Mr. Yearout confirmed that Mr. Robertson had paid a “substantial” amount of money to Yearout & Traylor, P.C. in support of the securities litigation. According to Mr. Yearout, Ms. Batchelor voluntarily and repeatedly said that she was *not* going to document their conversation. Ms. Batchelor's statement disturbed Mr. Yearout so much that he notified Mr. Robertson, who then waited two weeks to see if Ms. Batchelor would disclose the exculpatory evidence. Ms. Batchelor

never disclosed the exculpatory evidence, therefore Mr. Robertson filed the enclosed motion on May 3, 2016.

California Business & Professions Code § 6106 makes any act of dishonesty or corruption a cause for disbarment or suspension, and § 6068(d) prohibits an attorney from misleading any judicial officer or court by misrepresenting facts. Furthermore, § 6128 criminalizes such misconduct. Similarly, Penal Code § 135 provides criminal penalties for the willful destruction or concealment of evidence. Finally, Rule 5-220 (Suppression of Evidence), and Rule 5-200 (Trial Conduct) of the Rules of Professional Conduct impose overlapping prohibitions.

I am not representing Mr. Robertson in California, but the Board will note from its files that he and I have written to the Board repeatedly regarding the evidence of misconduct in the bar court proceedings as well as related federal court proceedings. Mr. Cartinhour's attorneys obtained a judgment by fraud in D.C., and the D.C. bar has already rejected Mr. Cartinhour's attempts to get money from its client security fund, yet the OCTC inexplicably is trying to give Mr. Cartinhour money from the California Client Security Fund.

Ms. Batchelor and her co-counsel, Robert Henderson, are trying to persuade the bar court that Mr. Robertson perpetrated a fraud on Mr. Cartinhour even though a jury in D.C. expressly *rejected* Mr. Cartinhour's fraud claim (the jury did find for Mr. Cartinhour on a breach of fiduciary duty claim). In any civilized jurisdiction, that jury verdict should have settled the issue as a matter of *res judicata*, yet Ms. Batchelor and Mr. Henderson kept prosecuting Mr. Robertson for fraud. Furthermore, email records indicate that Ms. Batchelor and Mr. Henderson have been in frequent contact with Mr. Cartinhour's attorneys, *i.e.*, the same ones who perpetrated the fraud in D.C. And now the OCTC is so deeply invested in producing an outcome favorable to Mr. Cartinhour that its prosecutors appear willing to commit crimes in order to “win” against Mr. Robertson.

By copy of this letter, I wish to file a grievance against Ms. Batchelor for the foregoing misconduct. I further wish to file a grievance against Mr. Henderson. You will note from Mr. Yearout's affidavit that Mr. Henderson was copied on the April 14, 2016 email, thus it appears likely that he was aware of the fraud perpetrated by Ms. Batchelor. In light of its conflicts of interest, I ask the OCTC to recuse itself from both cases. I further request that the California Attorney General's Office and the San Francisco District Attorney's Office initiate a criminal investigation.

At some point, the Board's continued inaction will become ratification of the fraud. Business & Professions Code §6044 specifically authorizes the Board to initiate an investigation, and the Board and its Regulation and Discipline Committee have general statutory oversight authority over the OCTC. *See, e.g.*, Bus. & Prof. Code, §§6044 and 6079.5. I ask that you appoint a special counsel to investigate my grievances against Ms. Batchelor and Ms. Henderson, as well as any related misconduct within the OCTC.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: The Hon. Kamala Harris, Attorney General  
Office of the Attorney General of California  
The Hon. George Gascón, District Attorney  
Office of the San Francisco County District Attorney  
Office of Chief Trial Counsel  
State Bar of California