



THE STATE BAR
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL
ENFORCEMENT UNIT

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May 31, 2016

Ty Clevenger
21 Bennett Ave., #62
New York, NY 10033

RE: Inquiry Number: 16-18661
Respondent: Cydney T. Batchelor, No. 114637
Robert A. Henderson, No. 173205

Dear Mr. Clevenger:

The State Bar of California ("State Bar") is in receipt of your complaints against Cydney T. Batchelor and Robert A. Henderson. Rule 2201, subdivision (a), of the Rules of Procedure of the State Bar ("Rules of Procedure") requires the Chief Trial Counsel or her designee to conduct a preliminary review of any complaint that our office receives against a member "who has a current or recent . . . professional relationship to the State Bar." Because Cydney T. Batchelor and Robert A. Henderson are employed by the Office of Chief Trial Counsel of the State Bar, they meet this description. As the Chief Trial Counsel's designee, I have therefore conducted a preliminary review of your allegations against them.

The purpose of the preliminary review is to determine whether grounds exist to investigate whether the conduct of Cydney T. Batchelor and Robert A. Henderson constituted professional misconduct based upon a violation of the State Bar Act or of the Rules of Professional Conduct. Pursuant to rule 2201, subdivision (a)(1), of the Rules of Procedure, in determining whether grounds exist to conduct such an investigation, this office must consider (1) the specificity of the allegations, (2) the credibility of the source of the information and (3) whether the factual allegations, if proven, would result in discipline.

You have alleged that Ms. Batchelor and Mr. Henderson, acting as prosecutors for the State Bar, have knowingly withheld exculpatory evidence in a prosecution of Wade A. Robertson, your former client. Mr. Henderson prosecuted charges against Mr. Robertson in the Hearing Department of the State Bar Court, resulting in findings by the court that Mr. Robertson had misappropriated \$3.5 million from an elderly man, William C. Cartinhour. Mr. Robertson sought review, and Ms. Batchelor represented the State Bar in the Review Department, presenting oral argument on April 13, 2016. You alleged that Ms. Batchelor told the Review Department panel that Mr. Robertson did not spend any of the funds he had taken from Mr. Cartinhour on the New York securities litigation. Thereafter, on April 18, 2016, Ms. Batchelor had a telephone conversation with attorney Jason Yearout of Alabama when Mr. Yearout confirmed that Mr. Robertson had paid a "substantial" amount of money to the law firm in support of the securities litigation, and Ms. Batchelor stated she was not going to document their conversation. Mr. Yearout notified Mr. Robertson, who waited two weeks to see if Ms. Batchelor would disclose the communication with Mr. Yearout to the State Bar Court, and then Mr. Robertson made a motion to the court to dismiss the case due to fraud on the court. As to Mr. Henderson, you alleged that he was copied by Ms. Batchelor on her email communications and so was aware of the matter.

You provided Mr. Robertson's motion to dismiss filed with the State Bar Court on May 4, 2016. I have reviewed the State Bar's opposition to the motion filed by Ms. Batchelor. In that response, Ms. Batchelor stated that one of the judges on the Review Department panel asked during the oral argument if the record reflected that any of the \$3.5 million that Dr. Cartinhour had entrusted to Mr. Robertson had been used for the securities litigation, and Ms. Batchelor responded in the negative. The issue arose because Mr. Robertson was asserting that he had paid some expenses of the litigation to attorney John Watts, but he could not point to any evidence in the record. Ms. Batchelor acknowledged that, after the hearing, she contacted attorney John Watts, who referred her to the law firm where he was formerly employed to address the issue. Ms. Batchelor then sent an email to that law firm, and attorney Jason Yearout responded by email to indicate that he would look into the issue. Ms. Batchelor was seeking to confirm Mr. Robertson's claim that \$35,000 had been paid for expenses. She did not expect that such evidence would alter the court's findings that Mr. Robertson had misappropriated a large sum of Mr. Cartinhour's funds, but it could affect a restitution order by the court. Mr. Yearout telephoned Ms. Batchelor to discuss the issue, but he was hesitant to provide information due to confidentiality. Ms. Batchelor stated that she told Mr. Yearout not to provide confidential information, but she denied stating that she would keep no record of the communication. She stated that she had no specific information about expenses that Mr. Robertson may have paid, noting that there is a civil judgment against Mr. Robertson in favor of Mr. Cartinhour for the full \$3.5 million. Ms. Batchelor understood that Mr. Yearout would contact her again if he was able to confirm Mr. Robertson's payment of expenses. Mr. Yearout did not do so and, instead, contacted Mr. Robertson who filed a motion to dismiss the disciplinary case against him. Mr. Robertson's motion to dismiss the disciplinary proceedings does not seek to present evidence of the specific amount of expenses he claims to have paid.

Based on my evaluation of the information provided, no further action will be taken on your complaint. Under the laws of California, the facts presented here, if proved, would not be grounds for disciplinary action. It is misconduct for an attorney to suppress any evidence that the attorney or the attorney's client has a legal obligation to reveal or to produce. Here, Mr. Robertson asserted at oral argument that he had paid expenses of the securities litigation with some of the funds from Mr. Cartinhour, but he had not presented evidence of such payment during the trial. Following the oral argument, Ms. Batchelor contacted Mr. Watts and his former law firm seeking to confirm Mr. Robertson's statement because it impacted a potential restitution order, but Mr. Yearout did not confirm the payment due to confidentiality concerns. These facts do not demonstrate that Ms. Batchelor or Mr. Henderson had a legal obligation to produce evidence to either Mr. Robertson or the Review Department regarding the amount that Mr. Robertson may have paid for the expenses of the securities litigation.

This conclusion is supported by the fact that on May 26, 2016, the Review Department denied Mr. Robertson's motion to dismiss for lack of good cause.

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

If you disagree with this decision, you may file an accusation against the attorney with the California Supreme Court. A copy of the applicable rule is enclosed. (See Rule 9.13, subsections (d) through (f), California Rules of Court.) If you choose to file an accusation, you must do so **within 60 days of the date of the mailing of this letter**. The State Bar cannot give you legal advice or representation. If you have not already done so, you may wish to consult with an attorney for advice regarding any other

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remedies, which may be available to you. You may contact your local or county bar association to obtain the names of attorneys who might assist you further in this matter.

The address to file your petition with the California Supreme Court is:

CALIFORNIA SUPREME COURT
CLERK'S OFFICE
350 McALLISTER STREET
SAN FRANCISCO, CA 94102

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

Very truly yours,


Donald R. Steedman
Acting Assistant Chief Trial Counsel

Enclosure