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**Report of Investigation re Former State Bar Board Trustee Sean SeLegue's Potential
Conflict of Interest**

July 10, 2023



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Executive Summary

In December 2022, the Board of Trustees (the “Board”) of the State Bar of California (the “State Bar” or “Bar”) directed the Bar’s General Counsel to retain an external investigator to conduct an investigation into former Trustee Sean SeLegue’s potential conflict of interest and related concerns. Adams, Duerk & Kamenstein LLP (“ADK”)¹ was selected to conduct the investigation regarding

- (a) whether former Trustee Sean SeLegue violated his obligation to disqualify himself from State Bar actions related to Thomas V. Girardi due to a personal, nonfinancial or financial conflict of interest or other interest under applicable law, including but not limited to, California Business & Professions Code Sections 6036 and 6037;
- (b) whether any such interest influenced decisions made by the State Bar; and
- (c) whether any misconduct or crime was committed in connection with this issue by individuals involved.

More specifically, ADK was tasked with investigating whether SeLegue had a conflict of interest arising from his work on a disciplinary investigation regarding Girardi and other attorneys in 2010. If ADK found that SeLegue had such a conflict of interest, the next questions to be answered were whether SeLegue’s conflicted interest influenced State Bar decisions in 2021 and 2022 that were prompted by or related to reporting from the *Los Angeles Times* (“LAT”) on connections between Girardi and the State Bar, and whether any misconduct or crime was committed as a result.

From January to June 2023, ADK conducted fifteen interviews of ten witnesses, including State Bar Board members, current and former State Bar employees, a former Howard Rice associate who had worked on the Falk investigation, and SeLegue.

Investigators reviewed evidence from various witnesses, the State Bar, and Halpern May Ybarra Gelberg (“Halpern May”)—which conducted a separate investigation into whether the Bar’s handling of past Girardi disciplinary complaints was affected by Girardi’s connections to or influence at the Bar and other related concerns (the “Halpern May investigation”). The materials reviewed included State Bar confidential disciplinary investigation case files; several thousand

¹ Formerly the Adams Law Group, APC.

emails among State Bar employees, trustees, and members of the public; screenshots of text messages between SeLegue and the former General Counsel for the State Bar, Vanessa Holton; several hundred Howard Rice documents and emails provided by Arnold & Porter via Halpern May; the unredacted report of an audit of Girardi disciplinary complaints completed by Alyse Lazar (the "Lazar audit"); and nine unredacted pages of the February 4, 2023 Halpern May investigation report, as well as the whole redacted report.

The documentary evidence demonstrates that SeLegue had access to and involvement in many of the Bar's internal deliberations regarding its responses to Girardi-related matters. Specifically, SeLegue (1) participated in early discussions about how the Bar would respond to the LAT's reporting on Girardi, which gave rise to the Lazar audit; (2) attended discussions about the selection of the auditor and the scope of the Lazar audit; (3) authored and signed a letter to the LAT that denied a request for the Chair to waive confidentiality concerning Girardi-related disciplinary investigation records; (4) participated in debates and made decisions on what information about the Lazar audit would be publicly released; (5) edited various Girardi-related media statements the Bar issued; (6) drafted litigation briefs and conferred with the Bar's General Counsel regularly to discuss litigation strategy and major issues of policy import; (7) served on the Committee on Special Discipline Case Audit; and (8) provided limited feedback on the investigator selected to conduct the Halpern May investigation.

Therefore, SeLegue had numerous opportunities to attempt to influence the actions of the State Bar to protect his personal interests. However, substantial witness and documentary evidence indicates that SeLegue advocated for the Bar to prioritize transparency and disclosure with respect to Girardi. Investigators found no evidence that SeLegue influenced the Bar's Girardi-related decisions to protect any personal interests he might have had to conceal his involvement in the Falk investigation.

In assessing SeLegue's credibility, investigators considered that, while he may have had an apparent motive to lie—in that the matters under investigation could have impacted his professional reputation—his statements were inherently plausible, internally consistent, and largely corroborated by documentation and other witnesses.

Documentary and witness evidence also establish that SeLegue disclosed his personal involvement in the Falk investigation to Holton on multiple occasions and made partial disclosures in which he volunteered that his former law partner, Falk, had worked on a potentially mishandled Girardi disciplinary investigation. Accordingly, SeLegue's actions do not appear

consistent with a motive to place any purported interest of his own in preventing the true extent of his involvement in the Falk investigation from becoming known above his duty of loyalty to the State Bar.

In determining whether the law imposed on SeLegue an obligation to disqualify himself because of a personal financial interest, investigators applied Business and Professions Code sections 6036 and 6037 and the implementing regulations for the Political Reform Act.

Under Business and Profession Code section 6036(a), members of the Board are required to disqualify themselves from making, participating in, or attempting to influence any decision of the Board or a committee of the Board in which they have a financial interest that it is reasonably foreseeable may be affected materially by the decision.

The implementing regulations for the Political Reform Act establish that the process for determining whether a trustee has a financial interest requiring disqualification is to (1) ascertain whether or not the interest is explicitly involved in the relevant decisions,² and (2) ascertain whether the trustee has a non-explicit or indirect financial interest in the relevant decisions.³ Investigators determined that SeLegue did not have an explicit financial interest because neither SeLegue, nor his firm Arnold & Porter, was a named party or the subject of any Bar decision, and SeLegue's financial interests were not the subject of any Bar decision.⁴ Investigators further determined that SeLegue did not have a non-explicit or indirect financial interest because the public disclosure of SeLegue's involvement in the Falk investigation was and is unlikely to have a reputational effect sufficient to meet the financial threshold for materiality.⁵

As to whether the law imposed on SeLegue an obligation to disqualify himself because of a personal nonfinancial interest, Business and Professions Code section 6036(b) states that a member of the Board must disqualify himself when there exists a personal nonfinancial interest

² Cal. Code Regs., tit. 2, §§ 18700(d), 18701(a).

³ Cal. Code Regs., tit. 2, § 18701(b).

⁴ Cal. Code Regs., tit. 2, § 18701(a).

⁵ Where an individual may have a non-explicit or indirect interest, that interest must be "material" for disqualification to be required. The applicable regulations state that, where a public official's source of income is a business entity, the materiality of any financial effect on that source of income is assessed using the standards applied to business entities. (Cal. Code Regs., tit. 2, § 18702.3(a)(4).) The question, therefore, is whether Arnold & Porter, as SeLegue's source of income, would be materially affected by the State Bar's decisions around Girardi disciplinary matters. The regulations further dictate that an indirect financial interest is material only where it will affect an entity's annual gross revenues, or the value of its assets, by "\$1,000,000 or . . . [f]ive percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000." (Cal. Code Regs., tit. 2, § 18702.1(a)(2).)

that “will prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.” (emphasis added).

In enacting Business and Professions Code sections 6036 and 6037, the California legislature explicitly codified a different standard for personal nonfinancial conflicts of interest to be applied to members of the State Bar’s Board rather than that set forth in the common law.⁶ In applying this standard, investigators considered the evidence of SeLegue’s conduct during his involvement in each of the Bar’s Girardi-related matters and determined that SeLegue did not have a personal nonfinancial interest at any time that did, in fact, prevent him from “applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.”

Accordingly, investigators find that (a) SeLegue did not have an obligation to disqualify himself due to a personal, financial or nonfinancial conflict of interest or other interest under any applicable law; (b) any personal interest SeLegue may have had that arose from his involvement in the Falk investigation did not influence decisions the State Bar made concerning Girardi, and; (c) no misconduct or crime occurred in connection with this issue by individuals involved.

⁶ The standard in Business and Professions Code sections 6036 and 6037 differs from the common-law standard applied to California public officials generally. That standard is articulated in *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152. In *Hermosa*, the court ruled that in “an adjudicatory hearing, the common law is violated if a decision maker is tempted by his or her personal or pecuniary interests. In addition, the doctrine applies to situations involving a nonfinancial personal interest.” (*Id.* at p. 1171, fn. 18; 92 Ops.Cal.Atty.Gen. 19 (2009), emphasis added. *See also Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51.)

I. Background and Allegations

In December 2022, the Board of Trustees (the “Board”) of the State Bar of California (the “State Bar” or “Bar”) directed the Bar’s General Counsel to retain an external investigator to conduct an investigation into former Trustee Sean SeLegue’s potential conflict of interest and related concerns. Adams, Duerk & Kamenstein LLP (“ADK”)⁷ was selected to conduct the investigation regarding

- (a) whether former Trustee Sean SeLegue violated his obligation to disqualify himself from State Bar actions related to Thomas V. Girardi due to a personal, nonfinancial or financial conflict of interest or other interest under applicable law, including but not limited to, California Business & Professions Code Sections 6036 and 6037;
- (b) whether any such interest influenced decisions made by the State Bar; and
- (c) whether any misconduct or crime was committed in connection with this issue by individuals involved.

More specifically, ADK was tasked with investigating whether SeLegue had a conflict of interest arising from his work on a disciplinary investigation regarding Girardi and other attorneys in 2010. If ADK found that SeLegue had such a conflict of interest, the next questions to be answered were whether SeLegue’s conflicted interest influenced State Bar decisions in 2021 and 2022 that were prompted by or related to reporting from the *Los Angeles Times* (“LAT”) on connections between Girardi and the State Bar, and whether any misconduct or crime was committed as a result.

The 2010 disciplinary investigation was led by Special Deputy Trial Counsel (“SDTC”) Jerome Falk of SeLegue’s former firm, Howard Rice Nemerovski Canady Falk & Rabkin (“Howard Rice” and the “Falk investigation”).⁸

⁷ Formerly the Adams Law Group, APC.

⁸ SeLegue worked as a director and shareholder at Howard Rice in 2010 and has worked as a partner at Arnold & Porter since it acquired Howard Rice in 2012, according to SeLegue and publicly available information.

II. Investigative Activities

A. Scope of the Investigation

Investigators reached the conclusions in this report after an extensive and thorough investigation of all matters they determined were relevant. The findings in this report are based on a preponderance of the evidence standard, meaning investigators assessed whether it was more likely than not that certain events occurred as alleged after considering all available evidence. This report is a summary and does not include all facts obtained or considered by investigators.

The State Bar imposed no constraints on the investigation and provided its full cooperation. Investigators were permitted to interview any witness they identified as having potentially relevant information. No representative of the State Bar revised or edited this report.

B. Witnesses Interviewed

Investigators interviewed the following individuals:

No.	Name	Date(s) of Interview(s)	Title(s)
1.	Mark Toney	January 13, 2023 January 17, 2023	State Bar Board Member; Executive Director, The Utility Reform Network
2.	Donna Hershkowitz	January 13, 2023 January 25, 2023 April 7, 2023	Chief of Programs and former Interim Executive Director, State Bar
3.	Melanie Lawrence	January 17, 2023	Program Director of Office of Professional Support and Client Protection, and former Interim Chief Trial Counsel, State Bar
4.	Ruben Duran	January 24, 2023	Chair and former Vice Chair of State Bar Board; Partner, Best Best & Krieger
5.	Brandon Stallings	January 27, 2023	Vice Chair of State Bar Board; Deputy District Attorney, Kern County

No.	Name	Date(s) of Interview(s)	Title(s)
6.	Leah Wilson	January 30, 2023 April 11, 2023	Executive Director, State Bar
7.	Former Howard Rice Associate	March 9, 2023	Associate, Howard Rice Nemerovski Canady Falk & Rabkin
8.	Alyse Lazar	March 23, 2023	Independent Consultant, State Bar
9.	Vanessa Holton	April 10, 2023	Former General Counsel, State Bar
10.	Sean SeLegue	May 17, 2023 June 12, 2023	Former Chair and Vice Chair of State Bar Board; Partner, Arnold & Porter

C. Evidence Reviewed

Investigators reviewed materials provided by various entities, including the following:

The State Bar

1. Several thousand emails among various State Bar employees, trustees, and members of the public, including
 - a. Two of Vanessa Holton's Outlook folders, which together contained approximately 1,600 documents; and
 - b. Approximately 1,200 documents selected from Holton's email inbox using targeted search terms and date ranges;
2. Screenshots of text messages between Holton and SeLegue;
3. Notes from meetings among various Bar employees and trustees;
4. Two State Bar case files relating to disciplinary investigations conducted by SDTC Justice Harry Low (now deceased);
5. The unredacted report of the audit of Girardi disciplinary complaints completed by Alyse Lazar (the "Lazar audit");

6. The redacted report, dated February 4, 2023, from the investigation Halpern May Ybarra Gelberg ("Halpern May") conducted into whether the Bar's handling of past Girardi disciplinary complaints was affected by Girardi's connections to or influence at the Bar and other related concerns (the "Halpern May investigation");
 - a. Nine unredacted pages of the Halpern May investigation report;
7. Minutes, agendas, and notes from various open and closed-sessions of Board meetings, including for the Committee on Special Discipline Case Audit; and
8. A State Bar Board policy manual.

Halpern May

12. Video recordings of Halpern May investigation interviews of the State Bar's former Deputy Executive Director Bob Hawley, Falk, and SeLegue;
13. Five State Bar confidential disciplinary investigation case files;
14. Several hundred Howard Rice documents and emails produced by Arnold & Porter relating to the Falk investigation; and
15. Documents pertaining to Justice Low's 2011 investigation into Falk's appointment as SDTC.

Witnesses

16. Over 400 documents identified by Melanie Lawrence, Leah Wilson, Ruben Duran, and Donna Hershkowitz as potentially relevant to the investigation;
17. A letter with sixteen attachments produced by SeLegue, through his counsel, which outlined SeLegue's perspective on the relevant facts and law relating to this investigation; and
 - a. A brief written response by SeLegue, through his counsel, to biographical questions posed by investigators.

III. Factual Chronology

A. SeLegue's Involvement in the Falk Investigation

1. 2006 - July 2010: Before the Falk Investigation

SeLegue reported that he joined Howard Rice as a director and shareholder in October 2006.

In March 2008, Ninth Circuit Judge and Special Master Wallace Tashima issued a report finding that Girardi and three other respondents engaged in misconduct by making false statements to the Ninth Circuit in connection with a civil action Girardi and his co-respondents prosecuted against the Dole Food Co. (the "Dole matter").⁹ In June 2008, the Ninth Circuit appointed an independent prosecutor, Professor Rory Little of the University of California College of the Law, San Francisco,¹⁰ to investigate the matter further and make recommendations. That same month, the State Bar opened an investigation case file (Case 08-0-12613) into the matter with Girardi as a respondent. Adhering to Little's recommendations, the Ninth Circuit ultimately suspended Girardi's co-counsel and formally reprimanded Girardi "for his recklessness in determining whether statements or documents central to an action on which his name appears are false."¹¹

The Falk investigation began shortly after the Ninth Circuit issued its opinion in July 2010. The Office of the Chief Trial Counsel ("OCTC") selected an SDTC to conduct the investigation in accordance with the State Bar's Rule 2201 program—which applied when OCTC had a conflict—because then-President of the State Bar Board Howard Miller was a Girardi Keese attorney, and he had been involved in the Ninth Circuit proceedings before being discharged without discipline in 2006. Jerome "Jerry" Falk of Howard Rice was the appointed SDTC for this matter.

No evidence found in the course of this investigation indicates that SeLegue was involved in Falk's selection as SDTC or the Dole matter before July 2010.

⁹ At issue was whether Girardi and his co-respondents misled the court as to the identity of the defendants named in a toxic tort case brought in Nicaragua by banana plantation workers. In that litigation, Dole Food Co. was misidentified as Dole Food Corp. Investigators here identify Dole Food Co. by its then correct name for clarity.

¹⁰ Formerly University of California, Hastings College of the Law.

¹¹ *In Re Girardi*, 611 F.3d 1027, 1039-40 (9th Cir. 2010).

2. July 2010: The Lead-up to the Falk Investigation

SeLegue told ADK investigators he recalled that Falk had first asked him to work on the investigation a few days after the Ninth Circuit issued its opinion. Email records indicate that, on July 20, 2010, Falk emailed SeLegue and the two Howard Rice associates who worked on the matter and asked them all to meet. Falk wrote in the email, “(Sean – I don’t think you need to attend, though you’re welcome; purpose is to give [the associates] some background).” SeLegue reported that he was under the impression at the beginning of the Falk investigation that he would work on it, but his precise role was not defined.

The July 28, 2010 letter appointing Falk as SDTC included the following statements:

You have agreed that your services will be provided on a pro bono basis without charge. You have also agreed that you will undertake an active role in pursuing the assigned matter. You have assembled a team at Howard Rice to provide you with necessary support. It is agreed that your partner, Sean SeLegue will provide limited assistance to you at a billing rate of \$635/hour. . . . The time expended at these rates will be kept to a minimum as much as possible, recognizing the need that you will have for this support in pursuing the matter assigned.

SeLegue said he was not involved in negotiating his billing rate, but he believed he saw Falk’s appointment letter. Contemporaneous emails corroborate that SeLegue reviewed Falk’s appointment letter and suggested a minor edit.

SeLegue also said he remembered discussing with Falk whether his prior work representing attorneys in State Bar disciplinary proceedings could pose a conflict that would prevent him from working on the Falk investigation. SeLegue told investigators that, by 2010, he had represented respondents before the State Bar court, and even more commonly, SeLegue had consulted with attorneys behind the scenes to assist them in responding to the Bar.¹²

When Halpern May investigators interviewed Falk, he said SeLegue had been concerned that his prior work with the State Bar might pose a conflict.¹³ Falk and SeLegue both said they recalled

¹² In a written submission SeLegue sent through his counsel, he confirmed the following biographical details. He was a member of the Bar’s Committee on Professional Responsibility and Conduct from 1998-2002; he was Vice-Chair from 2002-2003; he was Chair from 2003-2004; and he was a special advisor from 2004-2005. SeLegue was a member of the Bar’s Commission for the Revision of the Rules of Professional Conduct from 2005-2007. SeLegue did not hold a position on any State Bar committees in 2010.

¹³ ADK investigators reviewed a video recording of Falk’s interview.

some discussion about this issue, but their accounts diverged on how it was resolved. SeLegue said that Howard Rice received a conflict waiver from the Bar that resolved the potential conflict. Falk told Halpern May investigators that he understood SeLegue to be “disqualified” from his investigation and that SeLegue was not involved as a result.

In addition to the Howard Rice billing records memorializing SeLegue's work on the investigation (which will be discussed in more detail below), two pieces of documentary evidence support SeLegue's account that he was not disqualified from working on the Falk investigation.

First, Falk's appointment letter included an attached State Bar Rule of Procedure conflict waiver labeled Rule 3101(c) “Disqualification of Certain Persons,” which noted that Falk requested the waiver to ensure that he and Howard Rice's partners and employees could represent parties within the regulatory jurisdiction of the State Bar. The waiver included Falk's signature, dated August 3, 2010. SeLegue confirmed that this document was the conflict waiver to which he referred.

Second, also on August 3, 2010, Falk and SeLegue exchanged emails [REDACTED]. SeLegue suggested Falk include a paragraph that would [REDACTED] that “some of my colleagues, including one who may work with me on this matter, are members of the Association of Disciplinary Defense Counsel (‘ADDC’), a group of lawyers who represent Respondents in State Bar matters.” SeLegue confirmed that he was a member of the ADDC from at least 2006 until 2016.

Apart from Falk's uncorroborated statements, investigators reviewed no evidence which indicates that SeLegue was ever recused or disqualified from working on the Falk investigation.

SeLegue said he remembered no other discussions with Falk about conflicts during the investigation.¹⁴

¹⁴ Before the Falk investigation began, Howard Rice had previously represented Girardi Keese in *Copple et al. v. Astrella & Rice, P.C. et al.* (N.D. Cal. Case No. 3:05cv3961). SeLegue reported to Halpern May and ADK investigators that he had no awareness that Howard Rice had previously represented Girardi Keese at the time of the Falk investigation. SeLegue told ADK investigators that he first became aware of the *Copple* case during his Halpern May investigation interview. Investigators note that the Halpern May investigation did not find any evidence that SeLegue had been involved in or aware of the *Copple* case. ADK investigators reviewed Howard Rice records and found no evidence that indicates otherwise.

3. August 2010: Work Starts on the Falk Investigation

Before Halpern May investigators shared the Falk investigation billing records with SeLegue in his January 2022 interview, they asked SeLegue to describe his involvement in the Falk investigation.¹⁵ SeLegue stated, "I had very minimal involvement, but I had some." SeLegue said he had some memory of attending a State Bar procedural training session held by then-OCTC attorney Murray Greenberg in the Howard Rice offices. SeLegue added that he probably read whatever initial materials the State Bar sent to Howard Rice and that Falk might have asked SeLegue a question on occasion. SeLegue said he did not think he was substantively involved in the matter after the State Bar training.

Halpern May investigators [REDACTED]
[REDACTED] SeLegue was then shown Howard Rice billing records from the Falk investigation, which reflected that he billed a total of 7.3 hours on the matter, and included the following time entries in August.

1. August 25, 2010: S. SeLegue – 1.50h – [REDACTED]
[REDACTED]
[REDACTED]
2. August 26, 2010: S. SeLegue – 2.20h – "Team meeting [REDACTED]
[REDACTED]; conference with J. Falk"
3. August 27, 2010: S. SeLegue – 2.80h – "[REDACTED]; team meeting afterwards; conference with J. Falk and [REDACTED]"

SeLegue then reported that he had no memory of meeting [REDACTED] but that he must have, based on the billing records. In his interviews with ADK investigators, SeLegue maintained that he had no memory of meeting [REDACTED] and that he also had no memory of the team meeting referenced in the August 26 entry. A former Howard Rice associate told investigators [REDACTED] recalled that SeLegue had attended conferences with Falk and [REDACTED] as part of the investigation, but that [REDACTED] could not recall specifically which conferences. Multiple Howard Rice emails indicate that SeLegue attended the meeting [REDACTED]

ADK investigators asked SeLegue to identify any work he performed on the Falk investigation that may not have been captured in the billing records. SeLegue noted that the

¹⁵ ADK investigators reviewed a video recording of this interview.

billing records did not reflect that he attended the approximately two-hour State Bar training on August 2, 2010. SeLegue said he thought he billed the time spent in this training to “business development” because it was early on in the investigation, and the matter may not have been opened in the firm’s timekeeping system. [REDACTED]

[REDACTED] SeLegue explained he originally reviewed the opinion to prepare for a conversation with a Daily Journal reporter (before he was aware that Falk had been appointed as an SDTC in the matter) and accordingly did not bill that time to the Falk investigation. SeLegue said he assumed the billing records were otherwise accurate, except that he would occasionally not bill for emails that he read quickly.

4. September - November 2010: Work Continues on the Falk Investigation

SeLegue billed no time on the Falk investigation from September through November 2010. According to the billing records and a Howard Rice associate’s reported recollection, the Howard Rice associate performed most of the billable work as [REDACTED] reviewed evidence before the two witness interviews in December. Only the Howard Rice associate and a paralegal billed time to the matter in October 2010, and they billed only 2.8 total hours of work on the investigation that month.

In his Halpern May investigation interview, SeLegue said that Falk “dropped” him from the investigation at some point without telling him. SeLegue told ADK investigators that he did not know why Falk went silent; he said he could guess that Falk had a concern about costs, but he did not ask Falk because he did not want to “be intrusive.”

5. December 2010: The Falk Investigation Concludes

Before reviewing the Howard Rice billing records in his Halpern May investigation interview, SeLegue reported that he remembered one conversation with Falk that took place in a hallway as the investigation concluded:

And then, at one point, I think Jerry [Falk] and I were walking in the hallway of our firm, I believe. We might have been going to lunch or something. He just mentioned that he had completed his work, and he made his decision about how to handle the file. And he told me what it was. I might have said, “Oh, I don’t think that’s how OCTC would handle it.” But I didn’t elaborate because I felt like he hadn’t asked for my opinion. He had already reached his conclusion, and I wasn’t

gonna . . . he's very senior to me, you know? He didn't take the bait to talk about it further, so I don't think we really had any substantive discussion about it.

Apart from SeLegue's three August time entries noted above, the only other time entries SeLegue recorded in the Falk investigation's invoices were the following two December entries.

1. December 14, 2010: S. SeLegue – 0.50h – “Conference with J. Falk and [REDACTED] re [REDACTED]”
2. December 15, 2010: S. SeLegue – 0.30h – “Conference with J. Falk”

Upon reviewing these two time entries, SeLegue indicated that he assumed the December 15 conference with Falk referred to the hallway conversation SeLegue had previously described, and said he did not remember the December 14 conference.¹⁶

When interviewed by ADK investigators, SeLegue maintained that he remembered a brief hallway conversation with Falk at the end of the investigation, but he did not remember a half-hour discussion with Falk and a Howard Rice associate the day before. SeLegue added that, after reviewing his emails, he saw that on December 14, Falk had sent him a [REDACTED] [REDACTED]. In the December 14 email, Falk asked SeLegue if he had any comments or suggestions for [REDACTED]. There is no documented response from SeLegue. SeLegue told investigators that he probably reviewed [REDACTED], but he had no independent recollection of doing so.

The State Bar received Falk's December 15, 2010 [REDACTED] and closed the Falk investigation case file. Investigators found no documentary evidence indicating SeLegue's further involvement in the investigation in or after December 2010.

6. 2011: After the Falk Investigation

Documentary evidence reflects that, in February 2011, SDTC Justice Harry Low investigated [REDACTED]

[REDACTED] ¹⁷ According to

¹⁶ The billing records also reflect that December 14 was the day [REDACTED]

¹⁷ [REDACTED]

documentary evidence, [REDACTED]
[REDACTED].

SeLegue told Halpern May investigators that he remembered [REDACTED]
[REDACTED].

SeLegue also said he remembered that multiple bloggers had written sensational articles about dozens of prominent lawyers allegedly involved in a web of corruption, and he assumed that these articles [REDACTED]
[REDACTED]
[REDACTED]. Some of the articles mentioned the blogger's attempts to contact SeLegue directly. SeLegue told ADK investigators that he somewhat recalled this blogger publishing conspiracy theories about the Falk investigation, but SeLegue did not remember being contacted directly by the blogger.

SeLegue stated that he may have heard at some point [REDACTED]
[REDACTED] but that he had no other specific memory of the Low investigation.

7. A Note on SeLegue's Recollection

SeLegue reported that his recollection of his involvement in the Falk investigation was "materially different" after he saw the Howard Rice billing records in his Halpern May investigation interview in January 2022. SeLegue said that, in light of the billing records, "it is fair to say [he] worked on" the Falk investigation; however, he maintained that he had minimal involvement and did not influence the investigation's outcome. SeLegue added that he did not remember personally working on the case before seeing the billing records.

SeLegue summarized that, before his January 2022 interview, all he remembered about his involvement in the Falk investigation was that (1) Falk took some steps to have him work on the case; (2) SeLegue participated in some investigation preliminaries such as the State Bar training; (3) he did not end up working on the case; and (4) Falk and he had a brief conversation at the end of the matter. SeLegue also recalled [REDACTED] after the Falk investigation had ended.

Through his counsel, SeLegue reported that he billed 193 hours on 22 separate matters in August 2010, and 254 hours on 21 separate matters in December 2010. It, therefore, appears that

the Falk matter accounted for only a small fraction of work SeLegue performed in the months that SeLegue billed time on the Falk investigation.

B. SeLegue's Involvement in the Bar's Decisions Related to Girardi in 2021 and 2022

1. 2016 - January 2021: Background

SeLegue became a State Bar Board Member in October 2016 and served as Board Chair from September 2020 until September 2021. SeLegue served in various other roles until he resigned from the Board in December 2022.¹⁸

ADK investigators asked SeLegue whether he had ever spoken to anyone at the State Bar about his involvement in the Falk investigation before the LAT requested records concerning Girardi in early 2021. SeLegue said he vaguely remembered discussing the Falk investigation with then-General Counsel Vanessa Holton when he first joined the Board. SeLegue explained that he had spoken with Holton in approximately 2016 or 2017 about the bloggers that had made outlandish allegations against the Bar. SeLegue said that, during those conversations, he probably told Holton the nature of his involvement in the Falk investigation, but that he did not remember any particulars. SeLegue did not recall making anyone else at the Bar aware of his involvement in the Falk investigation before 2021.

In Holton's interview with ADK investigators, she did not identify any pre-2021 conversations with SeLegue about the Falk investigation. Holton did say she recalled one phone conversation with SeLegue about the Falk investigation that she guessed occurred in early 2021.¹⁹

[REDACTED]

¹⁸ In his time on the State Bar Board, SeLegue also served as a member of the Bar's Regulation and Discipline Committee ("RAD") from October 2016 until his resignation in December 2022, Vice Chair of RAD from 2017-2018, Co-Chair of RAD from 2018-2019, and Board Vice Chair from 2019-2020. These dates are according to a written submission SeLegue's counsel provided to investigators, which also noted that SeLegue believes he was first appointed as litigation liaison in 2016 or 2017 and held the role until he left the Board.

¹⁹ This phone conversation—which investigators approximate occurred between February 8 and March 5, 2021—will be discussed in more detail below.

[REDACTED]

When asked how these personal circumstances impacted him, SeLegue stated that he was not relying [REDACTED] to excuse the decisions he made while he was on the Board. He said his “instinct” was that these events did not impact his recollection of the Falk investigation. Nevertheless, SeLegue described [REDACTED] as extremely challenging. [REDACTED] SeLegue noted that he could maintain his roles at the Bar [REDACTED].

2. January 30 - February 17, 2021: Initial LAT Requests

On January 25, 2021, Communications Program Supervisor Teresa Ruano emailed Holton and other Bar employees that two LAT reporters had called her, said they were “doing some reporting regarding Tom Girardi,” and requested depositions and forms 700 from the lawsuit concerning former Bar Executive Director Joe Dunn.

Holton sent SeLegue the first email he received about the LAT’s inquiries into Girardi’s State Bar connections on January 30, 2021— [REDACTED]. Holton wrote,

Apparently one of the reporters [sic] angles is that the Bar went light on [Girardi] because of his relationship with Dunn. I only know of only some of the cases against [Girardi] that went to the rule 2201 program and I don’t know much about them, except that they concerned unhappy clients in [REDACTED]

SeLegue responded to Holton that same day. He wrote that he did not fully understand where this was coming from and suggested a call.

On February 7, 2021, LAT reporter Harriet Ryan emailed a Public Records Act (“PRA”) request to the Bar’s Office of Communications. Among six other requests, Ryan asked for “7. Any records of the referral of the Ninth Circuit disciplinary case involving Walter Lack and Tom

Girardi and Sean Traina to an outside prosecutor, Jerry Faulk [sic]. 8. Billing records related to Mr. Faulk's [sic] work[.]”

Investigators found no evidence that indicates SeLegue was immediately aware of Ryan's request. SeLegue told ADK investigators that he was not a decision-maker regarding PRA requests when he was Chair, and that this responsibility was with the General Counsel. SeLegue said Holton received hundreds of PRA requests, and she did not routinely forward them to him.²⁰

The following evening, Holton exchanged emails with [REDACTED] [REDACTED] about Ryan's recent PRA request. Holton's emails to [REDACTED] reflect that, as of February 8, 2021, (1) Holton did not clearly understand who Falk was or the nature of his investigation into Girardi, and (2) Holton thought that Falk's investigative files were to be kept confidential, but his billing records were probably disclosable, potentially with redactions.

On February 11, 2021, LAT reporter Matt Hamilton sent another PRA request to the Bar's Office of Communications and Ruano. Hamilton's email included a request for

All complaints about Thomas V. Girardi, S.B. # 36603, as well as a listing of all disciplinary investigations conducted into Mr. Girardi between the date of Mr. Girardi's admission to the bar and the date this request is fulfilled. . . .

In the event that the State Bar believes that some or all of these records are exempt from disclosure, we request that the Chief Trial Counsel or Chair of the State Bar waive confidentiality, which is warranted in this case “for protection of the public.” See Bus. & Profs. Code § 6086.1(b)(2).

Hamilton emailed his PRA request on the same day [REDACTED]. Investigators found no evidence that indicates that SeLegue was immediately aware of this request.

On February 12, 2021, Holton and then-Interim CTC Melanie Lawrence each emailed Ruano about Hamilton's PRA request. Holton wrote, “The requested records appear to fall

²⁰ Ryan was not the only person to submit PRA requests for records that could have referenced SeLegue's name in connection with the Falk investigation. Documentary evidence reflects that a member of the Bar requested, on May 23, 2021, among other things, “the contracts and compensation paid to any, each and every such special deputy trial counsel in any investigation involving Tom Girardi (SBN 36603) or Girardi Keese, from 1990-2021.” Documentary evidence also reflects that, on November 11, 2021, a Law360 reporter asked for all emails between former OCTC attorney Murray Greenberg and “howardrice.com” email addresses. No records reviewed by investigators reflect that SeLegue was involved in deciding how the Bar should respond to either request.

squarely within the confidentiality laws. At any rate, the waiver decision lies with the Chief Trial Counsel, copied here. I don't expect or recommend that she release the requested records." Lawrence responded and confirmed that she would not waive confidentiality.

On February 17, 2021, Ruano responded to Hamilton that the CTC had been consulted, and the Bar would not waive confidentiality over the records sought. Also on February 17, [REDACTED] emailed Ruano a response to Ryan's PRA request that stated the Bar was "unable to locate any records responsive to [the request for Falk's billing records] using reasonable efforts."

3. February 19, 2021: SeLegue's First Partial Disclosure

Aside from discussions with Holton circa 2016, SeLegue appears to have first disclosed part of his connection to the Falk investigation on February 19, 2021, during a weekly check-in meeting with Hershkowitz, Holton, [REDACTED] then-Board Vice Chair Ruben Duran, and a few others.²¹ Hershkowitz told ADK investigators that, in that meeting, SeLegue mentioned that one of the Girardi disciplinary cases was handled by Falk, who was his former law partner. Hershkowitz said she was confident that SeLegue did not say he had worked on the case and that, if he had, "a huge red flag" would have been raised in her mind. Hershkowitz said that she had never heard the name Falk before. She added that, when SeLegue said a former partner of his had worked on a past case, she did not know if SeLegue meant that they were both partners at the same firm during the Girardi investigation or if Falk had just been someone SeLegue worked with at some point in the past.

Hershkowitz's notes from this February 19, 2021 meeting include the line, "Did the Howard Miller matter that was handled by Jerry Foulk [sic] - (Sean's partner) as SDTC involve Girardi??"

When asked when they first learned of SeLegue's connection to the Falk investigation, neither Duran nor Holton referenced the February 19, 2021 disclosure.

During his interviews with ADK investigators, SeLegue indicated that he remembered weekly calls with Hershkowitz and Bar leadership, but he did not remember mentioning Falk's involvement in a past Girardi case. When asked why he would mention his former partner's involvement in the investigation and not his own, SeLegue said he was not trying to "split hairs" in what he disclosed. SeLegue explained that he did not think his connection to the Falk investigation was relevant to what the Bar was dealing with; he did not perform any sort of

²¹ Hershkowitz recalled that Holton had attended the meeting, though Hershkowitz's notes reflect that Holton declined the meeting invitation.

analysis about what he should disclose to whom; and that, during that time, he did not view himself as having been involved in the Falk investigation.

4. March 1 - 5, 2021: SeLegue's Disclosure to Holton

On March 1, 2021, Hamilton emailed SeLegue the same PRA request he had sent to Ruano, which asked for all Girardi complaints and a list of Girardi disciplinary investigations. Hamilton again requested that the Chair waive confidentiality under Business and Professions Code section 6086.1. SeLegue forwarded Hamilton's message to Holton, Duran, Hershkowitz, and Ruano. In her emailed response, Holton recommended they continue their general approach of having Ruano communicate directly with Hamilton.

On March 5, 2021, at 10:25 a.m., Holton sent an email to ██████ asking whether a media outlet had requested SDTC records from the Girardi matters. ██████ responded that Ryan had requested records and invoices related to the Falk investigation, and the Bar replied that the Falk investigation records were exempt from disclosure, and that the invoices could not be located with reasonable efforts.

At 10:30 a.m., Holton emailed ██████ a response that included, "How could there not be records on this? The billing records may show SeLegue billing in Falk's invoices."

Holton and ██████ continued exchanging emails about the Falk invoices on the morning of March 5. After 11 a.m., ██████ emailed Holton that Finance had indicated they did not have the Falk invoices "likely because they are destroyed after 7 years."

At 11:34 a.m., Holton texted SeLegue, "No invoice for Falk work because SDTCs were uncompensated back then. We have a records destruction cycle of 7 years anyway. And other Falk files would be exempt from disclosure. At least that's the current state of things." There is no documented response from SeLegue.

In her interview, Holton described a phone conversation with SeLegue in which he reported that he had "talked to Falk" during the Falk investigation. Holton told investigators that the conversation with SeLegue left her with the sense that Falk had wanted to use SeLegue as a resource for attorney ethics issues during his investigation but that SeLegue had ultimately not played a large role in Falk's handling of the matter. Holton also noted that SeLegue may have told her that Falk and he were partners before this phone conversation. Upon reviewing her March 5 email exchange with ██████ Holton concluded that she had likely spoken with SeLegue about his

connection to the Falk investigation by this point, in part because she was the one to interject SeLegue's name into the conversation about Falk's invoices.

SeLegue corroborated Holton's account and provided more detail. SeLegue said he remembered a phone conversation with Holton after he became aware of the LAT's PRA requests. SeLegue said that, during the discussion with Holton, he reminded her of his connection to the Falk investigation and gave her a "one-minute summary" of his role. SeLegue explained that the summary he gave covered that Falk asked him to join the investigation; SeLegue attended a State Bar training; SeLegue was ultimately not involved in the matter; and Falk relayed his final disposition at the end of the matter in a brief conversation with SeLegue. When asked what prompted him to raise the issue with Holton, SeLegue said that, if he had some personal knowledge of a matter affecting the Bar, he wanted to ensure that the General Counsel was aware.

SeLegue added that he did not have a specific recollection of Holton's March 5 text, but he did remember asking Holton to check if he had billed time on the Falk investigation. When asked why he would have asked Holton to check that, SeLegue responded, "I was just curious whether I had [billed time] or not." Holton told investigators she did not think she would have sent SeLegue the information in her March 5 text if he had not asked for it.

5. March 6 - 10, 2021: The Inception of the Lazar Audit

On March 6, 2021, the LAT published its first major article on Girardi's alleged influence at the State Bar, which briefly referenced the Falk investigation and explained the underlying Dole matter in detail.²²

SeLegue reported to ADK investigators that the article had stunned him. He said he told members of State Bar leadership, "We have a real scandal on our hands, and we need to get to the bottom of it." SeLegue added that he suggested a file review to figure out what had happened, and to his recollection, this was the genesis of the Lazar audit of all disciplinary complaints against Girardi. While Holton said that she believed the initial idea to conduct an audit came from her, both SeLegue and Holton told investigators that Bar leadership agreed that an audit should occur.

SeLegue explained that Holton said interim CTC Melanie Lawrence should commission the audit while Holton oversaw it. Lawrence and Holton corroborated this point in their respective

²² Harriet Ryan & Matt Hamilton, *Vegas parties, celebrities and boozy lunches: How legal titan Tom Girardi seduced the State Bar*, L.A. Times (Mar. 6, 2021, 5:00 AM), <https://www.latimes.com/california/story/2021-03-06/how-california-state-bar-enabled-tom-girardi>.

interviews. No witness suggested that SeLegue opposed or attempted to block the commission of the audit.

Regarding who should conduct the audit, Lawrence said Lazar was “the only obvious person” because Lazar had conducted random audits of OCTC files, which would enable her to complete the audit efficiently and with the requisite specialized expertise regarding State Bar disciplinary procedures. In her interview, Holton provided the same reasons for Lazar’s selection.

Emails from Holton in early March indicate that Holton was aware a potential conflict might arise from Lazar’s prior employment with OCTC.²³ On March 10, 2021, Holton emailed SeLegue, Duran, and Hershkowitz about the possibility of a conflict arising with Lazar and wrote, “The alternative is to find an auditor for all 157 [Girardi cases] with no history at octc, but we need an auditor with deep knowledge of octc ways and that [person] won’t come from someone who hasn’t worked at octc.” Other March emails from Holton clarified that the plan to avoid conflicts was for Lazar to set aside any Girardi cases that she had worked on.²⁴

SeLegue said he did not recall having any personal involvement in selecting Lazar to conduct the audit.²⁵ Investigators identified no evidence that indicates otherwise.

²³ According to the Curriculum Vitae Lazar gave the Bar, Lazar worked in the OCTC from 1980 to 1998, and she performed random audits of State Bar files as an independent consultant from 2012 through to the present. In her interview with ADK investigators, Lazar adopted the CV as accurate and added that, when she was in private practice, the Bar also paid her a small amount of money to provide some advice to various Rule 2201 counsel starting in 2005.

²⁴ On April 11, 2021, Lazar emailed Holton that she saw her own name listed as a potential resource in a Falk investigation case file. Lazar wrote to Holton, “I have never been contacted by Falk on any cases he was assigned as special deputy trial counsel and particularly not on this case. Therefore, I am auditing the file and do not see any impropriety in doing so even though I am referenced in this letter. If you disagree, please let me know.” Holton responded that she saw no issue with Lazar’s auditing the Falk investigation file.

In reviewing the documents produced by Arnold & Porter related to the Falk investigation, ADK investigators found two emails from a former Howard Rice associate that reflect that the associate and Lazar had spoken about issues related to the Falk investigation on at least two occasions. The first email from the associate, dated August 30, 2010, memorialized a conversation ██████ had with Lazar about ██████ ██████ SeLegue and Falk received this email. The second email from the associate, dated September 20, 2010, was sent only to Falk ██████ Both emails indicate that Lazar was consulted to explain State Bar procedure.

When shown the emails in her interview, Lazar told investigators that she had no memory of her conversations with the Howard Rice associate and that she did not know who SeLegue was. Investigators find Lazar to be credible on these points. Lazar said neither of the emails from the associate were included in the State Bar files she reviewed during her audit, and investigators found no evidence that indicates otherwise. In a written submission following her interview, Lazar said that she would not have audited the Falk investigation file had she remembered her interactions with the associate, but her tangential involvement did not influence the analysis in her audit report.

²⁵ SeLegue told investigators that, during his time on the Board, he had not remembered that Lazar had worked on the Falk investigation.

Regarding the scope of the audit, in a March 9, 2021 email exchange, Hershkowitz asked several members of Bar leadership if the Bar should limit the period of the Girardi cases reviewed in the Lazar audit to the past 20 years. SeLegue responded, "20 years sounds very thorough to me." SeLegue reported that he had not been involved in determining the scope of the Lazar audit, and, other than the above email, no evidence investigators reviewed indicates otherwise.

6. March 10 - May 5, 2021: Debate Over the State Bar's Potential Disclosures

Witness and documentary evidence reflect that, through March, April, and May 2021, Holton, Lawrence, Hershkowitz, Duran, and SeLegue engaged in discussions about what information the Bar could lawfully disclose about past Girardi disciplinary investigations to the LAT, other reporters, and the public generally. Much of this debate centered on the extent of the CTC's and Chair's authority to disclose under Business & Professions Code section 6086.1(b)(2).

The documentary evidence indicates that, throughout this debate, SeLegue consistently sought to disclose information about past Girardi disciplinary investigations if he believed the State Bar could do so legally. SeLegue's correspondence with State Bar officials presented a pattern wherein SeLegue generally followed Holton's advice, and in the instances when he did not, he pushed for more disclosure, not less.

For example, on March 10, 2021, SeLegue emailed Ruano and Hershkowitz and wrote, "[The LAT reporters] mistakenly think I have some authority to waive confidentiality on OCTC investigations. . . . I think we should make this clarification right away because if it were up to me I would definitely disclose at least some information."

A few hours later, Hershkowitz responded to SeLegue and indicated that she and Holton advised against his immediately disclosing information. Hershkowitz wrote,

Technically, B&P 6086.1 authorizes the CTC or "Chair of the State Bar" to "waive confidentiality, but only when warranted for protection of the public." If acting on that authority, the statute nonetheless limits what can be disclosed [to information] . . . confirming the fact of an investigation or proceeding, clarifying the procedural aspects and current status, and defending the right of the licensee to a fair hearing. . . .

Practically speaking, however, OCTC is the only one in possession of the knowledge or documents about a case – so while you theoretically have the authority to waive confidentiality, you do not possess the information that would allow you to waive – you don't know what or how many investigations are proceeding, current status, or procedural aspects.

SeLegue responded and pushed back against this interpretation of the statute, writing,

I disagree with the notion that my lack of access to the information means as a practical matter the Chair's statutory authority is meaningless. That cannot be the case. I think OCTC would have to follow the Chair's direction if confidentiality is waived. I definitely would not want to go there and would want to work out parameters on which we have consensus if at all possible.

From the outset, Holton maintained that SeLegue had little to no authority to disclose any information concerning Girardi's disciplinary cases. Numerous pieces of documentary evidence, and Holton's interview, corroborate that Holton took the position that the confidentiality waiver in Business and Professions Code section 6086.1 could be applied only to *pending* disciplinary cases, and she advised SeLegue accordingly.

Further, on April 15, 2021, Holton emailed Hershkowitz that, even if the waiver could apply to closed cases, the Bar would only be able to reveal—at most—the number of cases that had been closed without disciplinary charges. Holton went on to write that the language of the statute appears to apply primarily to pending investigations in order to protect the public, and that Girardi was not a present threat to the public because he had been placed on inactive status and could no longer practice law.

Lawrence reported that she also believed that a confidentiality waiver was not warranted on the basis of public protection because Girardi had been on inactive status since early March 2021.

SeLegue told investigators (and documentary evidence confirms) that he disagreed with Holton's argument that confidentiality could not be waived for Girardi cases because Girardi was on inactive status.

Hershkowitz said she remembered a debate over whether Business and Professions Code section 6086.1 applied to closed cases (with Holton firmly in the non-disclosure camp) and that Bar leadership had a general understanding that, even if there were some power to waive

confidentiality concerning closed cases, any potential disclosure would be limited to the three criteria outlined by the statute: “confirming the fact of an investigation or proceeding, clarifying the procedural aspects and current status, and defending the right of the licensee to a fair hearing.” Hershkowitz added that, in early 2021, she did not recall leadership parsing the statutory language to determine all the information that could be released under the three criteria. Still, she noted that Bar leadership was generally confident the LAT could not access the underlying Girardi case files.

7. May 6 - 13, 2021: SeLegue's Response to the LAT

On May 6, 2021, the LAT sent a letter to SeLegue reiterating the request for him to waive confidentiality for the records from prior Girardi disciplinary investigations.

Lazar completed her audit report the following day and emailed it to Holton and Lawrence. On May 9, 2021, SeLegue emailed Holton, Duran, and current Board Vice Chair Brandon Stallings. SeLegue wrote, “I cannot think of an adjective strong enough to describe my reaction to this report. I am preparing a list of immediate policy changes that I believe OCTC should implement and will send to this group when I can.”

Holton and SeLegue worked together over the next few days to prepare SeLegue's response to the LAT. Documentary evidence reflects that Holton encouraged SeLegue not to disclose any information about closed Girardi disciplinary cases. On May 10, 2021, Holton emailed SeLegue, “I suggest in your letter that you simply reference [the State Bar's] prior response and that [the LAT's] letter to you is a request for reconsideration of the SB's determination.”

On May 11, 2021, SeLegue emailed Holton, Hershkowitz, and Duran a copy of his draft response letter and wrote,

I'm having second thoughts about not providing any information. It seems to me I could disclose the number of investigations and how they were disposed. As we know, it's not a pretty picture and if it ever comes out, we will not look good for having withheld it.

When ADK investigators asked SeLegue about his mindset surrounding this May 11 email, SeLegue said he thought what the Bar knew from the Lazar audit was “appalling” and that it was uncomfortable to be “sitting on” it. SeLegue added that he thought Bar leadership agreed that his potential options for disclosure were “very narrow and not that helpful.” SeLegue said that, in his

view, “even disclosing the number of cases would have said a lot,” but Holton was very concerned about that.

Holton reported to investigators that she and SeLegue had a “big argument” over whether the statute’s confidentiality waiver applied only to pending cases. Holton said she recalled that SeLegue ultimately deferred to her view, but he wanted to disclose more.

On May 13, 2021, SeLegue responded to the LAT with a one-page letter that closely followed Holton’s suggested response. SeLegue wrote he was “obligated to decline [the LAT’s] request for reconsideration of the State Bar’s February 2021 decision” because “the language of the statute reflects that it is applicable only to pending investigations against a licensee.”

When asked about his response letter, SeLegue said that at the time, he was thinking, “If we have a strong confidentiality statute and the exception is ambiguous, it seems dicey to disclose.” He stated that he also deferred to Holton’s advice.²⁶

8. May 19 - 25, 2021: Debate Over the Lazar Audit Press Statement

After Lazar finished her audit, Bar leadership debated what, if anything, about the audit should be shared publicly. Documentary evidence reflects that SeLegue and Duran favored a public statement with some basic details about the audit and its findings, and Holton and Lawrence disagreed.

In a May 19, 2021 email exchange between Holton and SeLegue regarding a reporter’s request for information about the Lazar audit, SeLegue wrote, “Adding Ruben. I agree about telling her closed session matters are confidential but also note that I think we are on the brink of losing the opportunity to make a public statement about the special audit without having it dragged out of us.”

According to Hershkowitz’s weekly meeting check-in notes, this debate continued among Holton, SeLegue, and Duran. Hershkowitz’s May 25, 2021 meeting notes read in relevant parts,

SS: have to say something.

²⁶ This statement from SeLegue is corroborated by Hershkowitz’s weekly meeting check-in notes, dated June 23, 2021, in which Holton and SeLegue discussed SeLegue’s response letter to the LAT. According to Hershkowitz’s notes, Holton said that, apart from the statute’s not applying to closed cases, there were other reasons for why they decided not to release information to the LAT, and SeLegue replied “[B]ut the only reason I gave was that I didn’t have authority; if I did have authority, I might very well have exercised my discretion.”

SS: did an audit; can't disclose the results. Recently significant reforms have taken place; actively looking at additional reforms.

VH: . . . Girardi cases - should not be discussed in any situation.

SS - how can we discuss the mishandling when that ties back to the confidential cases.

RD - doesn't the board have the legal authority to waive the closed session privilege. The fact that we've done an audit is not privileged. Couldn't we speak generally about what we have learned about how the SB does its business. Over the course of X # of years, the audit reveals the State Bar has mishandled . . .

VH - why are we revealing on Girardi and not on other audits?

SS - it's become an issue of public concern.

VH - concern, not protection - as to Girardi. Are opening a huge door - Legislature and press will launch on what a complete screw up SB is. At Board meeting - VH to present issue.

SS - I think we should do the right thing.

9. *May 28 - 29, 2021: SeLegue's Presentation of the Lazar Audit Summary*

SeLegue presented a summary of the Lazar audit to the Board in a closed session on May 29, 2021, according to documentary evidence and witnesses, including SeLegue.

Early May 2021 email correspondence indicates that a few other people—namely Stallings, Holton, and Lawrence—were potentially slated to present the Lazar audit summary. Stallings told investigators that he had some recollection that SeLegue wanted to present the summary. When asked how he came to present the summary to the Board, SeLegue said that he might have put himself forward because the audit was “a matter of such significance” that he thought it was something the Chair should report to the Board.

On the night of May 28, 2021, SeLegue emailed Holton, Duran, Hershkowitz, Lawrence, and former CTC Steven Moawad:

My apologies but I don't have the draft ready yet. I will circulate it this evening, even if incomplete, but am [sic] trying to complete it. I will get up early tomorrow so if you have any comments I can address them in the morning. Apologies for the delay; very hectic week.

About two hours later, at 8:59 p.m., SeLegue emailed the same group a draft of his notes for his presentation. The five-page draft included one paragraph on the Falk investigation:

The files also reveal a pattern of misleading statements by Girardi. I will note that proving violations based on incorrect or misleading statements can be challenging; Melanie [Lawrence] could elaborate on that. One notable case, which generated substantial publicity, involves a matter in which Girardi and his co-counsel were disciplined by the Ninth Circuit for bringing a frivolous appeal. An outside examiner was appointed because one of the lawyers involved was a current for [sic] former President of the State Bar. The outside examiner (equivalent of SDTC today) closed the file with no discipline. That was contrary to how OCTC would have handled the case. In addition, the examiner did not consider a statute that requires what is known as "reciprocal discipline"—discipline in California for misconduct found by another jurisdiction to be a violation of the disciplinary rules.

The following morning, at 8:15 a.m., SeLegue circulated the final version of his presentation notes with a redline copy capturing his changes.²⁷ In this seven-page draft, the paragraph on the Falk investigation expanded:

The files also reveal a pattern of misleading statements by Girardi. I will note that proving a disciplinary violation based on incorrect or misleading statements can be challenging; Melanie [Lawrence] could elaborate on that. But when an attorney is making misleading statements, especially about financial matters, that is a red flag that warrants investigation.

One notable case, which generated substantial publicity, involves a matter in which Girardi and his co-counsel were disciplined by the Ninth Circuit for bringing a frivolous appeal. An outside examiner was appointed because one of the lawyers

²⁷ No investigation witnesses who were present for this May 29, 2021 Board meeting provided investigators with contemporaneous notes from SeLegue's presentation or reported having a clear memory of SeLegue's presentation. Consequently, this 8:15 a.m. draft from SeLegue is the closest approximation that investigators reviewed of what SeLegue presented to the Board.

involved was a current or former President of the State Bar. The outside examiner (equivalent of SDTC today) closed the file with no discipline. That was contrary to how OCTC would have handled the case. In addition, the examiner did not consider a statute that allows for what is known as “reciprocal discipline”—discipline in California for misconduct found by another jurisdiction to be a violation of the disciplinary rules. In reciprocal discipline, the prosecutor [does not] need to prove the conduct again; the State Bar Court considers only what discipline is appropriate under California’s rules for that conduct. Therefore, reciprocal discipline cases are easy [sic] to prove than a typical case.

We believe the problem with this examiner was that he did not have experience in the discipline system and was not adequately trained.²⁸ In fact, the examiner was a senior partner in my law firm and a highly respected lawyer. He was a former President of the State Bar. While I was aware of the case, the examiner is a strong personality and made his decision without consulting me.

ADK investigators asked SeLegue about the changes between his drafts. He said that no one suggested he expand the Falk investigation section and that he did this on his own. SeLegue said there was no particular reason why he did not include the disclosure about Falk being a senior partner in his firm in the earlier draft.

In a subsequent interview with ADK investigators, SeLegue reported that he had rewritten his notes in a rush on the morning of the presentation. SeLegue said he would have likely added more detail if he had taken a couple more passes through his notes. SeLegue stated, “If I could do it over again, I would have said that I think Falk wanted me to be involved, and I had a training and a brief hallway conversation” with Falk.

The redline copy corroborated that SeLegue edited many portions of his notes the morning before his presentation to the Board.

10. June 2, 2021: The Lazar Audit Press Release

Emails dated June 2, 2021, indicate that SeLegue edited the State Bar’s press statement about the Lazar audit. Based on the various drafts of the statement investigators reviewed, SeLegue’s

²⁸ When asked who “we” referred to in this sentence, SeLegue said that he was not describing his personal beliefs based on his experiences with the Falk investigation. He said that “we believe” referred to Holton’s belief and the conclusions made in the Lazar audit.

edits did not appear to lessen the impact of the Bar's message. In a June 2, 2021 email, SeLegue explained that the intent behind his edits was to make the statement more hard-hitting and to help the Bar avoid appearing "as though we were trying to bury the lede or soft-pedal it."²⁹

At this point, SeLegue and Duran still favored making a public disclosure, despite Holton and Lawrence's opposition. On June 2, 2021, Hershkowitz sent an email about the press release to SeLegue, Duran, Lawrence, Holton, and Ruano. Hershkowitz wrote, "Sean [SeLegue] and Ruben [Duran] – as you know, Vanessa [Holton] and Melanie [Lawrence] do not believe sending out this release is a good idea."

11. June 10 - 23, 2021: Beginning of the LAT Litigation

The State Bar released its Lazar audit press statement on June 10, 2021. Emails indicate that, over the following week, the LAT requested that the Bar release the audit, the Bar declined this request, and the LAT filed a petition with the California Supreme Court, which raised the issue of what could be disclosed about the Girardi disciplinary investigations under Business and Professions Code section 6086.1.

SeLegue held the position of litigation liaison through the course of the LAT litigation until his time on the Board ended, according to SeLegue's interviews and a written submission from SeLegue's counsel. Holton explained that SeLegue's role was litigation liaison to the Office of General Counsel, and that, in that role, SeLegue met with Holton regularly to discuss litigation strategy and major issues of policy import. Holton noted that this role was particularly active for the LAT litigation, as this was one of the only cases where SeLegue drafted litigation briefs. Holton said SeLegue was "very hands-on about the position taken." Numerous emails between Holton and SeLegue corroborate that SeLegue was aware of and involved in many aspects of the LAT litigation both during and after his chairmanship.

Regarding his role in the LAT litigation, SeLegue said it "never entered my mind whether my involvement in the [Falk] investigation would come to light or not." SeLegue stated that he did not perceive any self-interest in his work as litigation liaison, and he still did not perceive a self-interest at the time of his interviews with ADK.

²⁹ SeLegue was involved in reviewing and editing other Girardi-related statements from the Bar during his time on the Board. Documentary evidence indicates that SeLegue edited a statement relating to Girardi's conservatorship in March 2021 and a statement relating to the LAT litigation in early September 2021. Investigators found no evidence that SeLegue attempted to conceal any information about his connection to the Falk investigation through editing State Bar press statements.

Holton told investigators that SeLegue appeared concerned with upholding his and the Bar's reputation in the LAT litigation, but she did not have the impression that the Falk investigation "loomed large for him." Holton indicated that SeLegue generally wanted to be transparent, and email correspondence from Holton corroborates this point.³⁰

Investigators found no evidence that suggested SeLegue attempted to conceal his involvement in the Falk investigation through his work on the LAT litigation or through his role as litigation liaison.

12. June 30 - July 5, 2021: Additional Evidence of SeLegue's Disclosure to Holton

Two additional pieces of documentary evidence from the summer of 2021 indicate that SeLegue had already disclosed his involvement in the Falk investigation to Holton. On June 30, 2021, Holton texted SeLegue that someone had suggested Falk "was an instrument" of Girardi. SeLegue responded, "Oh my. Nothing could be further from the truth." On July 5, 2021, Holton emailed SeLegue about Falk, and SeLegue's response included, "I recall Jerry [Falk] saying Bob Hawley contacted him. Justice Low (I think) did an investigation into this. [REDACTED]

Hershkowitz, Lawrence, Duran, Stallings, and Executive Director Leah Wilson each told investigators they did not know of SeLegue's personal involvement in the Falk investigation at this time.

13. July - November 2021: Committee on Special Discipline Case Audit

In late July 2021, SeLegue became one of six Board members placed on the Committee on Special Discipline Case Audit ("the committee"), which was created to "to further analyze the audit report on the closed discipline cases, and to develop a proposed corrective action plan."³¹ SeLegue and other witnesses who were interviewed could not describe the specific selection

³⁰ Emails from late August 2021 reflect that SeLegue advocated for the Bar to "go on record" in stating that the current and incoming Board Chairs (SeLegue and Duran) intended to release the Lazar audit if the California Supreme Court decided that Business and Professions Code section 6086.1 did not prohibit them from doing so.

³¹ *Archived: Committee on Special Discipline Case Audit*, State Bar of California, <https://www.calbar.ca.gov/About-Us/Who-We-Are/Archived-Committees/Committee-on-Special-Discipline-Case-Audit> (last visited June 19, 2023).

process for the committee, but SeLegue told investigators that, given the significance of the issues, he felt it was appropriate for the Chair to be involved.³²

Holton reported that the committee focused on addressing the problems raised by the Girardi matters. Wilson told investigators the committee had multiple purposes. In open-session, members discussed Client Trust Accounts and malpractice insurance. In closed-session, they focused on initiating a review of all attorneys with fifteen or more complaints against them and an investigation into Girardi's influence on the Bar, which later became the Halpern May investigation.

SeLegue said the committee did not discuss the Falk investigation and that disclosing his involvement in it "never entered [his] mind." He added that he focused primarily on trust account issues (which email correspondence from SeLegue corroborates). SeLegue said the committee discussed the matter of who would be selected as the investigator for what later became the Halpern May investigation, but only to a very limited extent.

Wilson told investigators she did not recall SeLegue's being present for committee discussions about the Halpern May investigation.

14. September 2, 2021 - January 24, 2022: SeLegue's Recusal from the Halpern May Investigation

On September 2, 2021, Holton emailed SeLegue about who should conduct what later became the Halpern May investigation. Holton suggested Hueston Hennigan, and SeLegue replied, "Good idea." SeLegue told investigators that he may have looked at Hueston Hennigan's website, but he primarily deferred to Holton; he did not do any substantive research into particular investigators.

SeLegue was included in a few email exchanges with Holton, Wilson, and Lawrence about the Halpern May investigation before September 9, 2021. After that, investigators did not identify any record reflecting SeLegue's involvement in any aspect of the investigation, apart from his role as a witness.

³² Publicly available records indicate that the committee met on six occasions from September 2 through November 5, 2021, and SeLegue was present for five of those meetings. SeLegue indicated that he never recused himself from the committee's work.

When asked about this apparent shift in his level of involvement, SeLegue told ADK investigators that he recalled Holton's asking him, "Don't you think you should recuse yourself from this investigation?" SeLegue said he agreed and stepped back, assuming Holton would identify him as a witness.³³

In her interview, Holton reported that she did not recall asking SeLegue to recuse himself from the Halpern May investigation because of his connection to the Falk investigation, but that it is possible, if not likely, that she forgot the conversation.

Documentary evidence indicates that Holton interviewed Aaron May of Halpern May on September 10, 2021, and selected his firm to lead the investigation shortly afterward.

According to Board closed-session minutes, on September 24, 2021, SeLegue abstained from a vote to authorize the Committee on Special Discipline Case Audit to enter into a contract in excess of \$50,000 with Halpern May. After reviewing this record, SeLegue told investigators that he thinks this September 24 meeting was when he first announced that he would abstain from the vote because he would be a witness in the investigation.

Duran, who was present at the September 24 meeting according to the closed-session minutes, reported that he remembered SeLegue's making this announcement at a Board meeting, though Duran could not remember when this occurred. Wilson also reported hearing SeLegue make this announcement, and she approximated that he did so around the time Halpern May was selected. Wilson told investigators that she did not understand SeLegue's announcement to make clear that he was recusing himself based on his personal involvement in the Falk investigation.

Investigators identified no evidence indicating that SeLegue was involved in any aspect of the Halpern May investigation, apart from his role as a witness, after September 24, 2021. This was the same day Duran was sworn in as the Board's new Chair.

SeLegue stated in a December 14, 2021 email to Holton and Wilson that he was "staying out of the substance of the [Halpern May] investigation."

³³ Documentary evidence indicates that Holton identified SeLegue as a potential witness in the Halpern May investigation.

Closed-session Board minutes from January 20, 2022, reflect that SeLegue recused himself from a vote to confirm Halpern May as an SDTC to conduct the investigation.³⁴ Multiple witnesses—Holton, Wilson, and Duran—said that they understood SeLegue to be recused from the Halpern May investigation from its outset.

15. January 24 - February 22, 2022: SeLegue's Interview with Halpern May

Halpern May interviewed SeLegue on January 24, 2022. During the interview, SeLegue was shown Howard Rice billing records that featured SeLegue's time entries from the Falk investigation. SeLegue reported that the billing records revealed that he had been more involved in the Falk investigation than he had previously remembered.

When speaking with ADK investigators, SeLegue noted that the reason he did not disclose to the Board the full extent of his involvement in the Falk investigation after his Halpern May interview was that he had been asked to keep the matters discussed in his interview confidential, and SeLegue wanted to respect the investigative process. SeLegue added that he was well aware that Halpern May would report the information it gathered to the Board in due time.

SeLegue reported to ADK investigators that Holton contacted him after his Halpern May interview and asked how it went. SeLegue believed he could properly share the contents of his interview with the Bar's General Counsel, and he told her that he had been shown the billing records and that he was surprised by what they showed about the extent of his involvement.

On February 3, 2022, Holton and SeLegue engaged in the following conversation via text:

Holton: Thinking: how can Aaron [May] have had invoices (if that's what you said) for your involvement in the girardi case Falk handled, when SDTCs didn't get paid back then?

Also, I checked and my staff have no recollection of reviewing any sdtc billing records on the case Falk handled. Can you jog my memory, or could you have misunderstood what Aaron said?

³⁴ Regarding the distinction between his September 2021 abstention and his January 2022 recusal, SeLegue noted that a recusal is technically "more complete" and said he would step out of discussions about the Halpern May investigation once recused. SeLegue noted that the line he drew (and with which he said he believed Holton agreed) was that he would not be involved in the investigation once it began.

SeLegue: It was right before I gave my summary of the Girardi audit to the board.³⁵

I think the firm was paid for Jerry [Falk]'s work based on what he said plus the fact there are invoices. If that wasn't the general practice at the time, I have no idea why. Bob Hawley was the one who dealt with Jerry.

On February 22, 2022, Holton sent an email to Wilson, Duran, and Stallings that noted that SeLegue had some billable time related to a Girardi matter led by Falk, a former SDTC who had worked with SeLegue.

When interviewed, Duran, Stallings, and Wilson each expressed that they had no independent recollection of Holton's ever informing them that SeLegue had billed time related to a Girardi matter in general or had any personal involvement in the Falk investigation in particular. Stallings told investigators that he assumed he had read the email (because he had sent a short reply that addressed a topic unrelated to SeLegue), but he had no independent recollection of the email nor of the information it contained about SeLegue until the email was brought to his attention nine months later, in November 2022. Moreover, Duran and Wilson both indicated that they possibly, if not likely, did not read Holton's entire email. Duran and Wilson explained that they used to regularly receive a high volume of emails from Holton and had assumed that Holton would ensure they were aware of any significant issues by raising such issues in a manner more obvious than a mention at the bottom of an email.

In her interview, Holton said that she did not intend for any action to be taken; she stated that she was simply updating Bar leadership on her conversations regarding the Halpern May investigation, as she would do on occasion. Wilson, Duran, and Stallings each said they took no action as a result of the disclosure Holton made in the email.

Apart from the February 22, 2022 email, no evidence found in the course of this investigation indicates that anyone at the Bar, other than Holton, may have been aware that SeLegue had personally worked on the Falk investigation until the new General Counsel, Ellin Davtyan, learned the information in November 2022 and brought it to the Board's attention.

³⁵ SeLegue clarified that this sentence meant that he thought he had asked Holton to check whether he had billed time in the Falk investigation invoices right before he presented the summary of the Lazar audit to the Board.

*16. July - October 2022: Decision to Change Interpretation of Business and Professions
Code Section 6086.1*

Email correspondence from Holton indicates that she officially retired in July 2022, and Davtayan became the Bar's General Counsel shortly thereafter. SeLegue stated that he discussed many matters with Holton, and it did not occur to him to debrief with Davtayan or disclose to her his involvement in the Falk investigation.

According to Board closed-session minutes, SeLegue stepped out during a discussion about the Halpern May investigation on September 22, 2022. Board closed-session minutes further indicate that the following day, SeLegue was present for a discussion on the LAT litigation.

SeLegue told investigators he remembered speaking with Wilson and Davtayan about the LAT litigation around this time because he still held the role of litigation liaison. SeLegue explained that he had discussions with Wilson and Davtayan about whether the Bar should change its position on whether the discretionary authority to waive confidentiality in section 6086.1(b)(2) should be interpreted to extend to closed cases. SeLegue said he was initially skeptical, but upon further review, he agreed that portions of the Bar's argument did not make sense to him in hindsight. SeLegue said he ultimately supported the State Bar's position to change the statute's interpretation.

Multiple witnesses corroborated that SeLegue agreed to change the Bar's position on the statute. Duran said he recalled that SeLegue agreed to change the position without serious objections. Wilson told investigators she was "pleasantly surprised" that SeLegue did not try to hang on to the old position. On October 7, 2022, the State Bar submitted a supplemental brief that changed its interpretation of the confidentiality waiver in the statute to extend to closed cases.³⁶

17. November 2022: SeLegue's Recusal from the LAT Litigation

On November 10, 2022, the LAT filed a supplemental brief that requested "the identification of the State Bar officials who were responsible for overseeing the handling of the . . . complaints, and deciding that no discipline was warranted."³⁷ Wilson told investigators that, at this time, SeLegue was still involved in the LAT litigation.

³⁶ *Los Angeles Times Communications, LLC v. State Bar of California* 2022 WL 11896255 (Cal.) (Supplemental Brief by State Bar of California.)

³⁷ *Los Angeles Times Communications LLC, v. State Bar of California*, 2022 WL 17215544, *5 (Cal.) (Supplemental Brief of Petitioner Los Angeles Times Communications LLC).

On November 14, 2022, at 11:17 a.m., May sent an email to Davtyan which noted that SeLegue had been interviewed in the Halpern May investigation because he had worked on the Falk investigation. At 1:52 p.m., in response to Davtyan's request for more information, May provided Davtyan with some key points from SeLegue's interview, which included that SeLegue "had minimal involvement in the case and didn't recall all of the tasks he handled."

At 1:58 p.m. on that same day, Davtyan emailed SeLegue, asking when he would be available to speak with her and Wilson. Shortly thereafter, according to witness and documentary evidence, Davtyan and Wilson spoke with SeLegue about his work on the Falk investigation. In that conversation, Davtyan suggested there was a conflict of interest and that SeLegue should recuse himself from reviewing the Bar's response to the LAT's recent supplemental brief. Wilson told investigators that SeLegue stopped working on the LAT litigation from that point forward.

SeLegue told ADK investigators that he had not yet read the LAT's most recent filing when he had the November 14 conversation with Davtyan and Wilson. SeLegue said he did not want to "fight" Davtyan and Wilson and agreed to recuse himself. SeLegue added that he read the LAT's supplemental brief a day or two later and understood Davtyan's view when he read that the LAT sought the names of investigators who had worked on past Girardi disciplinary cases.

SeLegue acknowledged that there was an "optics issue" with his work on the LAT litigation, given the LAT's request in its November 2022 brief. However, SeLegue also said that he recently reread the brief and noted that the LAT was looking for the names of people who *oversaw* the Girardi disciplinary investigations and made decisions about their disposition, and SeLegue did not consider himself to fall within this category. SeLegue emphasized that he did not parse this language at the end of 2022 and that he recused himself before reading the brief.

SeLegue said that he never perceived a self-interest in any of the Girardi-related matters he worked on for the Bar, and that he never felt his passing involvement in the Falk investigation jeopardized his ability to serve the Bar.

Investigators identified no evidence that SeLegue had any involvement in the LAT litigation or any other State Bar decision relating to Girardi after November 2022. SeLegue resigned from the Board in December 2022.

IV. Credibility Analysis

Investigators found each witness interviewed to be generally credible. In assessing SeLegue's credibility, investigators considered that, while he may have had an apparent motive to lie—in that the matters under investigation could have impacted his professional reputation—his statements were inherently plausible, internally consistent, and largely corroborated by documentation and other witnesses. ADK investigators reviewed over two hours of video footage of SeLegue's interview with Halpern May and interviewed him personally for over four hours. His manner of responding to questions remained open and forthright throughout.

Investigators find it plausible that SeLegue failed to remember the full extent of his involvement in the Falk investigation before he reviewed the billing records in January 2022. In evaluating the credibility of SeLegue's reported recollections, investigators considered that (1) the LAT inquiries into Girardi began over a decade after the Falk investigation ended; (2) SeLegue reported that he worked on more than twenty matters and billed nearly 200 and over 250 hours respectively during August and December 2010, the same two months in which he billed all of his 7.3 total hours on the Falk investigation; and (3) Falk, who had greater involvement in the Falk investigation and no apparent motive to lie, told Halpern May investigators that he did not recall that SeLegue had worked on the investigation.

Further, documentary evidence corroborates that SeLegue did not have a clear memory of working on the Falk investigation before May showed him the billing records. Emails indicate that SeLegue likely asked Holton to check whether he had billed time on the Falk investigation, and Holton's March 5, 2021 email stated that SeLegue "may have" billable time in the investigation. Investigators note that all of SeLegue's time as Board Chair and most of his involvement in the Bar's Girardi-related decisions occurred before he reviewed the billing records in January 2022.³⁸

SeLegue had numerous opportunities to attempt to influence the actions of the State Bar to protect his personal interests. Still, no evidence found in the course of this investigation indicates that he did so, and substantial evidence indicates that SeLegue consistently sought to disclose information regarding Girardi if he thought the State Bar had legal authority to do so. The

³⁸ Witness and documentary evidence indicate that, after his interview with May in January 2022, SeLegue remained actively involved in the LAT litigation and continued to hold the role of litigation liaison.

evidence also reflects that SeLegue took this stance because he felt disclosure was “the right thing”³⁹ and because he felt disclosure was best for the State Bar’s reputation.⁴⁰

Documentary and witness evidence also establish that SeLegue disclosed his personal involvement in the Falk investigation to Holton on multiple occasions and made partial disclosures in which he volunteered that his former law partner, Falk, had worked on a potentially mishandled Girardi disciplinary investigation.⁴¹ Accordingly, SeLegue’s actions do not appear consistent with a motive to place any purported interest of his own in preventing the true extent of his involvement in the Falk investigation from becoming known above his duty of loyalty to the State Bar.

V. **Legal Findings and Analysis**

At issue is whether the law imposed on SeLegue an obligation to disqualify himself from the State Bar’s decisions related to Girardi’s past disciplinary matters because of a personal financial or nonfinancial interest.

1. *Applicable Law*

The Political Reform Act generally governs financial conflicts of interest for California public officials, and nonfinancial conflicts of interest are generally addressed in the common law. *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1171, fn. 18 (1996). In the case of trustees of the State Bar, however, the legislature created a separate regime that addresses both financial and nonfinancial conflicts of interest. That regime is codified in Business and Professions Code sections 6036 and 6037. This explicit statutory scheme abrogates the common law. *Id.*, citing 67 Ops.Cal.Atty.Gen. 369, 381 (1984) (“the Legislature may abrogate the common law rule at its pleasure.”)

A statute displaces the common law where it “clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter.” *Goodman v. Zimmerman* (1994) 25 Cal. App. 4th 1667, 1676. Business and Professions Code section 6036 sets out an entirely different standard and test for nonfinancial conflicts of

³⁹ Hershkowitz’s May 25, 2021 meeting notes.

⁴⁰ On May 11, 2021, SeLegue emailed Holton, Hershkowitz, and Duran a copy of his draft response letter to the LAT, which noted: “As we know, it’s not a pretty picture and if it ever comes out, we will not look good for having withheld it.”

⁴¹ The first instance was the February 19, 2021 weekly check-in meeting with Bar leadership, and the second instance was the May 29, 2021 Board meeting in which he presented a summary of the Lazar audit report.

interest for trustees of the State Bar than that found in the common law for other types of public officials, and in so doing, abrogates the common law. Likewise, Business and Professions Code section 6036 sets forth a separate regime for financial conflicts of interest for trustees of the State Bar. Thus Business and Professions Code sections 6036 and 6037 are the applicable law for both financial and nonfinancial conflicts of interest here.

2. *Financial Interest*

Business and Professions Code Section 6036 states that Members of the Board are required to disqualify themselves from making, participating in, or attempting to influence any decision of the Board or a committee of the Board in which they have a financial interest that it is reasonably foreseeable may be affected materially by the decision. (Bus. & Prof. Code § 6036(a).)

Business and Professions Code section 6036(d) further states,

A member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.

The definition of “financial interest” is incorporated by reference from the Political Reform Act. (Gov. Code § 81000 *et seq.*) A financial interest exists where “it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family” or on the business entities, real property, or income of the official. (Gov. Code § 87103.)

The process for determining whether a trustee has a financial interest requiring disqualification is set forth in the implementing regulations for the Political Reform Act.

The first step is to ascertain whether or not the interest is “explicitly” involved in the relevant decision. (Cal. Code Regs., tit. 2, §§ 18700(d), 18701(a).) An explicit interest exists if “the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency.” (Cal. Code Regs., tit. 2, § 18701(a).)

The question is whether SeLegue, or his firm Arnold & Porter, was a named party or the subject of any Bar decision. They were not. Arnold & Porter acquired Howard Rice after the Falk investigation and thus had no involvement. SeLegue was not “a named party” in any request identified by investigators. Investigators here considered LAT reporter Harriet Ryan’s February 7, 2021 PRA request for invoices from the Falk investigation; the LAT’s May 6, 2021 request through its counsel for “records concerning prior Bar investigations into Tom Girardi”; a member of the Bar’s May 23, 2021 PRA request for, among other things, “the contracts and compensation paid to any, each and every such special deputy trial counsel in any investigation involving Tom Girardi (SBN 36603) or Girardi Keese, from 1990-2021”; a Law360 reporter’s November 11, 2021 PRA request for all emails between Murray Greenberg and “howardrice.com” email addresses; and the LAT’s November 10, 2022 supplemental brief, requesting “the identification of the State Bar officials who were responsible for overseeing the handling of the . . . complaints, and deciding that no discipline was warranted.”

While SeLegue’s name likely would have been found in records responsive to at least two of these requests—the requests for Falk’s invoices and emails between Greenberg and howardrice.com email addresses—SeLegue was not a named party in any request. The “named parties” were Girardi, Greenberg, the SDTCs assigned to investigations related to Girardi (which, in this instance, was Falk, not SeLegue), and State Bar officials who oversaw complaints.

The next inquiry is whether SeLegue was the subject of a proceeding. Under the relevant regulations:

[A] financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).⁴²

Under this definition, SeLegue’s financial interests were not the subject of any Bar decision.

Investigators find that SeLegue did not have an explicit interest as defined in the relevant regulation. (Cal. Code Regs., tit. 2, § 18701(a).)

⁴² Cal. Code Regs., tit. 2, § 18701(a).

The next question is whether SeLegue had a non-explicit or indirect financial interest in the State Bar's decisions concerning Girardi disciplinary matters. (Cal. Code Regs., tit. 2, § 18701(b).) SeLegue's financial interest could come from his reputation as an attorney, particularly one who works in the area of attorney liability and attorney ethics. Where an individual may have a non-explicit or indirect interest, that interest must be "material" for disqualification to be required. The question, therefore, is whether Arnold & Porter, as SeLegue's source of income, would be materially affected by the State Bar's decisions around Girardi disciplinary matters.

The applicable regulations state that, where a public official's source of income is a business entity, the materiality of any financial effect on that source of income is assessed using the standards applied to business entities. (Cal. Code Regs., tit. 2, § 18702.3(a)(4).) The regulations further dictate that an indirect financial interest is material only where it will affect an entity's annual gross revenues, or the value of its assets, by "\$1,000,000 or . . . [f]ive percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000." (Cal. Code Regs., tit. 2, § 18702.1(a)(2).)

Arnold & Porter's 2022 revenue was reported to be more than \$1 billion USD.⁴³ The firm is reported to have nearly 1,000 attorneys.⁴⁴ Investigators find it unlikely that public disclosure of SeLegue's involvement in the Falk investigation could have a reputational effect sufficient to meet the financial threshold for materiality. In making this determination, investigators considered the following factors:

- The high public profile of, and public attention to, matters related to Girardi and the State Bar during the relevant time period;
- The fact that SeLegue had limited involvement in the Falk investigation such that he reported he did not participate in decision making and Falk had no recollection that SeLegue was involved at all;
- The fact that the investigation was led by Falk, not SeLegue;

⁴³ Brenda Jeffreys, *Arnold & Porter Sets Record Revenue, But Profits Slipped as Economy Slowed Demand*, National Law Journal (Mar. 27, 2023, 10:06 AM), <https://www.law.com/nationallawjournal/2023/03/27/arnold-porter-sets-record-revenue-but-profits-slipped-as-economy-slowed-demand/>.

⁴⁴ *About the Firm*, Arnold & Porter, <https://www.arnoldporter.com/en/about/firm> (last visited June 20, 2023).

- The fact that this work was done while Falk and SeLegue were members of the now defunct law firm, Howard Rice, not Arnold & Porter.

Finally, with regard to financial interests, investigators note that the Political Reform Act requires a variety of public entities to adopt a conflict of interest code. The Supreme Court of California has adopted such a code for the State Bar Board of Trustees. It is made available to members through the Board of Trustees Policy Manual.⁴⁵

The Board of Trustees Policy Manual is silent as to when members should disqualify themselves from decisions. It does, however, address disclosure:

A member shall disclose an investment, interest in real property, and income as required by Government Code sections 87206 and 87207 if, during a reporting period, the Board of Trustees has made a decision that materially affects the investment, interest in real property, or income. Disclosures required by this code are in addition to disclosures required by Business and Professions Code section 6036.

(Board of Trustees Policy Manual, Conflict of Interest Code, section 3).

Materiality is not defined in the Board of Trustees Policy Manual. Importing the definition of materiality set forth in the Political Reform Act's implementing regulations at Cal. Code Regs. tit. 2, § 18702.1(a)(3), SeLegue had no obligation to disclose.

Investigators find that SeLegue did not have a material financial interest sufficient to trigger the obligation to disqualify himself.

3. *Nonfinancial Interest*

The Business and Professions Code states that a member of the Board must “disqualify himself or herself when there exists a personal nonfinancial interest that will prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.” (Bus. & Prof. Code § 6036(b).) As with financial conflicts of interest, a member with a nonfinancial conflict of interest is required to

⁴⁵ *Board of Trustees Policy Manual*, The State Bar of California, <https://www.calbar.ca.gov/Portals/0/documents/bog/Board-of-Trustees-Policy-Manual.pdf> (last visited July 5, 2023).

(1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.

See id.

Unlike financial interests, the Political Reform Act's implementing regulations do not define "personal nonfinancial interest" nor set out a rubric for assessing when a board member's personal nonfinancial interest requires disqualification.

On its face, the Business and Professions Code states that a board member must disqualify him or herself when there exists a personal nonfinancial interest that "will prevent the member from 'applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.'" (emphasis added)

This standard differs from the common-law standard applied to California public officials generally. That standard is articulated in *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152. In *Hermosa*, the court ruled that in "an adjudicatory hearing, the common law is violated if a decision maker is tempted by his or her personal or pecuniary interests. In addition, the doctrine applies to situations involving a nonfinancial personal interest." (*Id.* at p. 1171, fn. 18; 92 Ops.Cal.Atty.Gen. 19 (2009), emphasis added. *See also Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51.)

In enacting Business and Professions Code sections 6036 and 6037, the California legislature explicitly codified a different standard for personal nonfinancial conflicts of interest to be applied to members of the State Bar's Board than that set forth in the common law. The question before investigators is whether SeLegue had a personal nonfinancial interest at any time that did in fact prevent him from "applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions."

Applying this standard, investigators find that SeLegue did not have a personal nonfinancial interest in the Falk investigation requiring him to disqualify himself.

In making this finding, investigators considered the evidence of SeLegue's conduct during his involvement in each of the following Girardi-related matters. SeLegue

- participated in early discussions about how the Bar would respond to the LAT's reporting on Girardi, which gave rise to the Lazar audit;
- attended discussions about the selection of the auditor and the scope of the Lazar audit;
- authored and signed a letter to the LAT that denied a request for the Chair to waive confidentiality concerning Girardi disciplinary investigation records;
- participated in debates and made decisions on what information about the Lazar audit would be publicly released;
- edited various Girardi-related media statements the Bar issued;
- drafted litigation briefs and conferred with the General Counsel regularly to discuss litigation strategy and major issues of policy import;
- served on the Committee on Special Discipline Case Audit; and
- provided limited feedback on the investigator selected to conduct the Halpern May investigation.

Investigators further considered the following evidence of SeLegue's disclosures and recusals relating to the Falk investigation.

- SeLegue disclosed to Hershkowitz and others in February 2021 that one of his former partners had worked on one of the impugned Girardi investigations. (Hershkowitz interview).
- SeLegue disclosed his involvement in the Falk investigation to Holton sometime before March 5, 2021, as Holton noted in writing that she expected SeLegue's name might appear in the Falk investigation's billing records. (Contemporaneous emails).
- SeLegue disclosed that one of his law partners was involved in one of the impugned investigations in the May 29, 2021 Lazar audit summary Board presentation. (SeLegue's notes).

- SeLegue disclosed to Holton in July 2021 [REDACTED] for Justice Low's inquiry into Falk's SDTC appointment. (Email from SeLegue to Holton dated July 5, 2021).
- SeLegue abstained from a Halpern May investigation-related vote in September 2021, and recused himself from the oversight of the Halpern May investigation in January 2022 and informed the Board that the reason was because he might be a witness. (Closed-session board minutes and SeLegue and Duran interviews).
- SeLegue disclosed that he had some involvement in the Falk investigation before he was shown the billing records that captured his involvement in an interview with Halpern May in January 2022.

Investigators found no evidence that SeLegue sought to conceal his involvement in the Falk investigation or sought to impede the State Bar's efforts to bring to light any shortcomings in its investigations of Girardi.

Given SeLegue's support for the audit of Girardi disciplinary complaints completed by Lazar and the Halpern May investigation, his support for disclosure to the LAT, and his overall credibility, investigators find that, in some instances, he applied "disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions," and in other instances, he recused himself from participating in decisions. Based on the plain language of Business and Professions Code section 6036, and all of the evidence described above, investigators find that SeLegue did not have a personal nonfinancial interest that required him to disqualify himself.

VI. Conclusion

After a thorough review of the evidence and applicable law, investigators find that (a) SeLegue did not have an obligation to disqualify himself due to a personal, financial or nonfinancial conflict of interest or other interest under any applicable law; (b) any personal interest SeLegue may have had that arose from his involvement in the Falk investigation did not influence decisions the State Bar made concerning Girardi, and; (c) no misconduct or crime occurred in connection with this issue by individuals involved.

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**Report of Investigation re Former State Bar Board Trustee Sean SeLegue's Potential
Conflict of Interest:
Addendum to Report of Investigation**

July 31, 2023



I. Introduction

In December 2022, the Board of Trustees of the State Bar of California (the "State Bar") directed the State Bar's General Counsel to retain an external investigator to conduct an investigation into former Trustee Sean SeLegue's potential conflict of interest and related concerns. Adams, Duerk & Kamenstein LLP ("ADK") was selected to conduct the investigation. ADK delivered the Report of Investigation to the State Bar on July 10, 2023. ADK now submits this addendum to our Report of Investigation to correct one parenthetical legal citation. This correction does not affect the substantive findings or conclusions of our investigation.

II. Correction

Investigators identify the following correction to a parenthetical legal citation that is set forth on page 7 (in footnote 6) and on page 47 of the Report of Investigation. The citation currently states,

In *Hermosa*, the court ruled that in "an adjudicatory hearing, the common law is violated if a decision maker *is tempted by* his or her personal or pecuniary interests. In addition, the doctrine applies to situations involving a nonfinancial personal interest." (*Id.* at p. 1171, fn. 18; 92 Ops.Cal.Atty.Gen. 19 (2009), emphasis added. *See also Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51.)

The above citation is amended as follows.

In *Hermosa*, the court ruled that in "an adjudicatory hearing, the common law is violated if a decision maker *is tempted by* his or her personal or pecuniary interests. In addition, the doctrine applies to situations involving a nonfinancial personal interest." (California Attorney General's Office, *Conflicts of Interest* (2010) 102 (citing *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171 n.18; 92 Ops.Cal.Atty.Gen. 19 (2009) (emphasis added)). *See also Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51.)

No further errors have been noted.

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**Report of Investigation re Concerns Related to Former State Bar Board Trustee Sean
SeLegue's Potential Conflict of Interest**

July 10, 2023

ADK

ADAMS, DUERK & KAMENSTEIN

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Executive Summary

In December 2022, the Board of Trustees (the “Board”) of the State Bar of California (the “State Bar” or “Bar”) directed the Bar’s General Counsel to retain an external investigator to conduct an investigation into former Trustee Sean SeLegue’s potential conflict of interest and related concerns; Adams, Duerk & Kamenstein LLP (“ADK”)¹ was selected to conduct the investigation.

ADK specifically investigated whether SeLegue had a conflict of interest arising from his work on a disciplinary investigation regarding Girardi and other attorneys in 2010. The 2010 disciplinary investigation was led by Special Deputy Trial Counsel Jerome Falk of SeLegue’s former firm, Howard Rice Nemerovski Canady Falk & Rabkin (the “Falk investigation”). As part of ADK’s larger investigation, the Bar directed ADK to examine whether there was any effort on the part of certain members of the Bar’s leadership to deliberately conceal information about SeLegue’s personal involvement in the Falk investigation.

More specifically, the State Bar directed ADK to examine the circumstances surrounding a February 22, 2022 email that then-General Counsel Vanessa Holton had sent to Board Chair Ruben Duran, Board Vice Chair Brandon Stallings, and Executive Director Leah Wilson, which noted, “Sean has some billable time related to that Girardi case.” This email is significant because no other evidence found over the course of ADK’s investigation indicates that any State Bar employee or trustee, apart from Holton, may have been aware that SeLegue had personally worked on the Falk investigation until the issue was raised nine months later, in November 2022.

From January to June 2023, ADK conducted fifteen interviews of ten witnesses, including Holton, Duran, Stallings, Wilson, and SeLegue. Investigators reviewed evidence from various witnesses, the State Bar, and Halpern May Ybarra Gelberg—which conducted a separate investigation into whether the Bar’s handling of past Girardi disciplinary complaints was affected by Girardi’s connections to or influence at the Bar and other related concerns (the “Halpern May investigation”).

In their interviews, Duran, Wilson, and Stallings each reported that they had no independent recollection of the email nor of the information it contained about SeLegue until the email was brought to their attention in November 2022. Duran and Wilson each noted that it was likely they had not read the entire email, in part because they assumed Holton would ensure they were made

¹ Formerly the Adams Law Group, APC.

aware of any significant issues by raising them in a manner more obvious than a mention at the bottom of an email. Stallings explained that he likely read the email but did not take action because he knew the information was preliminary and that the Board was awaiting a final report and to be advised by the General Counsel. Duran, Wilson, and Stallings each confirmed that they took no action in response to the information about SeLegue's prior work on a Girardi matter contained in Holton's email.

In her interview, Holton said that she did not intend for any action to be taken as a result of her email. She stated that she was simply updating Bar leadership on her conversations regarding the Halpern May investigation, as she would do on occasion.

After a thorough review of the evidence, investigators find there was no deliberate effort on the part of Duran, Stallings, Wilson, or any combination of the three to conceal the information they received from Holton in February 2022 about SeLegue's personal involvement in the Falk investigation.

I. Background

In December 2022, the Board of Trustees (the “Board”) of the State Bar of California (the “State Bar” or “Bar”) directed the Bar’s General Counsel to retain an external investigator to conduct an investigation into former Trustee Sean SeLegue’s potential conflict of interest and related concerns. Adams, Duerk & Kamenstein LLP (“ADK”)² was selected to conduct the investigation regarding:

- (a) whether former Trustee Sean SeLegue violated his obligation to disqualify himself from State Bar actions related to Thomas V. Girardi due to a personal, nonfinancial or financial conflict of interest or other interest, under applicable law including but not limited to California Business & Professions Code Sections 6036 and 6037;
- (b) whether any such interest influenced decisions made by the State Bar; and
- (c) whether any misconduct or crime was committed in connection with this issue by individuals involved.

ADK specifically investigated whether SeLegue had a conflict of interest arising from his work on a disciplinary investigation regarding Girardi and other attorneys in 2010. The 2010 disciplinary investigation was led by Special Deputy Trial Counsel (“SDTC”) Jerome Falk of SeLegue’s former firm, Howard Rice Nemerovski Canady Falk & Rabkin (“Howard Rice” and the “Falk investigation”).

As part of ADK’s larger investigation, the Bar directed ADK to examine whether there was any effort on the part of certain members of the Bar’s leadership to deliberately conceal information about SeLegue’s personal involvement in the Falk investigation.

More specifically, the State Bar directed ADK to examine the circumstances surrounding a February 22, 2022 email the then-General Counsel Vanessa Holton sent to Board Chair Ruben Duran, Board Vice Chair Brandon Stallings, and Executive Director Leah Wilson, which noted, “Sean has some billable time related to that Girardi case.” This email is significant because no other evidence developed over the course of the investigation indicates that any State Bar employee or trustee, apart from Holton, may have been aware that SeLegue had personally worked on the Falk investigation until the issue was raised in November 2022.

² Formerly the Adams Law Group, APC.

II. Investigative Activities

A. Scope of the Investigation

Investigators reached the conclusions in this report after an extensive and thorough investigation of all matters they determined were relevant. The findings in this report are based on a preponderance of the evidence standard, meaning investigators assessed whether it was more likely than not that certain events occurred as alleged after considering all available evidence. This report is a summary and does not include all facts obtained or considered by investigators.

The State Bar imposed no constraints on the investigation and provided its full cooperation. Investigators were permitted to interview any witness they identified as having potentially relevant information. No representative of the State Bar revised or edited this report.

B. Witness Interviewed

Investigators interviewed the following individuals:

No.	Name	Date(s) of Interview(s)	Title(s)
1.	Mark Toney	January 13, 2023 January 17, 2023	State Bar Board Member; Executive Director, The Utility Reform Network
2.	Donna Hershkowitz	January 13, 2023 January 25, 2023 April 7, 2023	Chief of Programs and former Interim Executive Director, State Bar
3.	Melanie Lawrence	January 17, 2023	Program Director of Office of Professional Support and Client Protection, and former Interim Chief Trial Counsel, State Bar
4.	Ruben Duran	January 24, 2023	Chair and former Vice Chair of State Bar Board; Partner, Best Best & Krieger
5.	Brandon Stallings	January 27, 2023	Vice Chair of State Bar Board; Deputy District Attorney, Kern County

No.	Name	Date(s) of Interview(s)	Title(s)
6.	Leah Wilson	January 30, 2023 April 11, 2023	Executive Director, State Bar
7.	Former Howard Rice Associate	March 9, 2023	Associate, Howard Rice Nemerovski Canady Falk & Rabkin
8.	Alyse Lazar	March 23, 2023	Independent Consultant, State Bar
9.	Vanessa Holton	April 10, 2023	Former General Counsel, State Bar
10.	Sean SeLegue	May 17, 2023 June 12, 2023	Former Chair and Vice Chair of State Bar Board; Partner, Arnold & Porter

C. Evidence Reviewed

Investigators reviewed materials provided by various entities, including the following:

The State Bar

1. Several thousand emails among various State Bar employees, trustees, and members of the public, including
 - a. Two of Vanessa Holton's Outlook folders, which together contained approximately 1,600 emails; and
 - b. Approximately 1,200 documents selected from Holton's email inbox using targeted search terms and date ranges;

Halpern May Ybarra Gelberg ("Halpern May")

2. Video recordings of interviews of the State Bar's former Deputy Executive Director Bob Hawley, Falk, and SeLegue's interviews in the Halpern May investigation into whether the Bar's handling of past Girardi disciplinary complaints was affected by Girardi's connections to or influence at the Bar and other related concerns (the "Halpern May investigation");

3. Five State Bar confidential disciplinary investigation case files relating to the Falk investigation;
4. Several hundred Howard Rice documents and emails produced by Arnold & Porter relating to the Falk investigation; and

Witnesses

5. Over 400 documents identified by Melanie Lawrence, Leah Wilson, Ruben Duran, and Donna Hershkowitz as potentially relevant to the investigation; and
6. A letter with sixteen attachments produced by SeLegue through his counsel, which outlined SeLegue's perspective on the relevant facts and law relating to this investigation.

III. Allegation

The State Bar directed ADK to examine whether there was any deliberate effort on the part of Duran, Stallings, Wilson, or any combination of the three, to conceal information received in a February 2022 email from Holton about SeLegue's personal involvement in the Falk investigation.

IV. Factual Background

On February 22, 2022, Holton sent an email to Duran, Stallings, and Wilson that recapped a conversation Holton had with Aaron May, an investigator in the Halpern May investigation. Holton's email included the line, "Sean has some billable time related to that Girardi case."

The email from Holton (Subject: Girardi malfeasance investigation) states in full as follows:

I spoke with Aaron May today about three subjects:

1. Cost efficiency in the investigation. He continues to push back on having multiple participants on their side in each interview and defends the process they use. He says it is best practice and public entities they work for have accepted the need for it. Nevertheless, he will try to implement cost saving measures, including charging the Bar for a second attorney at the paralegal rate, using a paralegal, and getting my permission to charge for two attorneys.

2. Whether recording an interview renders it public. He said that it is not settled law, but that it is somewhat harder to protect recorded interviews v notes that are clearly attorney work product. Before he changes course, which may increase our costs, my question to you is whether we care to maintain confidentiality of interviews.

3. Notable development in the investigation.

There are two:

The first I've mentioned before, but this comes after Aaron's interview of Bob Hawley, whom he thinks was less than forthcoming about the fact that Hawley drafted SDTC decisions for SDTCs simply to sign. There were other things I can't recall right now, but Aaron and I agree that, barring other smoking gun evidence that Girardi benefited and influenced decisions in his favor, this will only show what we already know - a formerly unprofessional R2201 program that has been improved.

The second concerns Sean SeLegue and a decision in a Girardi case by a former SDTC Jerry Falk who worked with Sean. Sean has some billable time related to that Girardi case. And it turns out that two years before Falk took the 2201 Girardi case, the firm represented Girardi Keese against a class member suing Girardi. I'm told that Sean's view is the conflicts check failed.

Controversial witness interviews may not start for several weeks.

According to the email correspondence, Stallings replied to Holton (and cc'd Duran and Wilson) on February 22, 2022, with the following: "Thank you for the update. As to confidentiality, I think that we should take the steps necessary to maintain it, unless there is a compelling public policy reason not to."

V. Evidence and Analysis

Duran and Wilson told investigators that they had no knowledge of SeLegue's personal involvement in a State Bar disciplinary matter that implicated Girardi until the matter was raised nine months later, in November 2022. Stallings told investigators that he assumed he had read the February 2022 email because he had replied to it, but he had no independent recollection of

the email nor of the information it contained about SeLegue until the email was brought to his attention in November 2022. Based on the totality of the evidence collected in ADK's investigation, investigators regard these assertions by Duran, Wilson, and Stallings as credible.

When interviewed, Duran, Stallings, and Wilson each expressed that they had no independent recollection of Holton's ever informing them that SeLegue had billed time related to a Girardi matter in general or had any personal involvement in the Falk investigation in particular. Moreover, Duran and Wilson both indicated that they possibly, if not likely, did not read Holton's entire email. Duran and Wilson explained that they used to regularly receive a high volume of emails from Holton and had assumed that Holton would ensure they were aware of any significant issues by raising such issues in a manner more obvious than a mention at the bottom of an email.

When Stallings was asked why he did not take action if he had read the entire February 22, 2022 email, he explained that, based on his "daily practice," the following considerations likely informed his response: (1) Holton did not request that action be taken in regard to SeLegue; (2) Stallings knew that SeLegue had already recused himself from the Halpern May investigation; (3) Stallings declined to take action generally without a final report addressing this issue; and (4) Stallings believed based on his observations that SeLegue had always wanted to hold Girardi accountable and keep the public informed about Girardi-related matters to the fullest extent of the law.

Duran, Stallings, and Wilson each told investigators that it was not apparent to them why Holton sent the email to the three of them. Nevertheless, Duran, Wilson, and Stallings each noted that they had varying levels of involvement in the Halpern May investigation, and each described having at least some involvement around the time the email was sent. State Bar email communications with Holton confirm that Duran, Wilson, and Stallings were each involved with the Halpern May investigation in the manner they described.³

Holton told investigators that she remembered writing the February 22, 2022 email. She said that she sent the email to Wilson, Duran, and Stallings as part of the intermittent reports Holton

³ Wilson and Stallings each noted that Duran was a liaison to the Halpern May investigation—a role which entailed frequent communications with Holton. Wilson indicated that she had no formal role with respect to the Halpern May investigation, but Holton commonly sent her emails relating to the investigation and other Girardi concerns. Stallings communicated that he generally had little involvement in the Halpern May investigation, but that there was a period of time when he was brought into discussions with Holton concerning confidentiality and conversations with the U.S. Attorney's Office because of his prosecution experience.

provided after her conversations with May. Holton explained that her conversations with May were generally focused on billing or research issues and any significant developments, which she would relay to the relevant leadership. Holton said that her February 22 email was simply conveying what May described as a notable development in his investigation, and that it did not mean that Holton first learned of SeLegue's billable time on the Falk investigation from May.

Holton added that, if she had intended for Duran, Wilson, or Stallings to take action based on the information in her email, she would have made it more obvious or asked them to do something.

Holton said she sent the February 22 email to Duran, Wilson, and Stallings because they were each part of the relevant Bar leadership that she updated on occasion. Holton explained that Duran was the Board Chair, Wilson was the Executive Director, and Stallings was the Chair of the Regulation and Discipline Committee.⁴ Holton said she was unsure why José Cisneros, a liaison to the Halpern May investigation, was not included as a recipient on the email. Holton noted that Cisneros was not particularly involved in the day-to-day activities concerning the Halpern May investigation, but he possibly should have received the email instead of Stallings.

No witness or documentary evidence in the investigation contradicted any aspect of the accounts Duran, Stallings, Wilson, and Holton each provided about the February 22, 2022 email. No evidence indicated that SeLegue had any awareness of or involvement in the February 22, 2022 email.

Investigators found no evidence indicating that Duran, Stallings, or Wilson engaged in any kind of deliberate effort to conceal information about SeLegue's involvement in the Falk investigation.

VI. Finding

Investigators find there was no deliberate effort on the part of Duran, Stallings, Wilson, or any combination of the three, to conceal the information they received from Holton in February 2022 about SeLegue's personal involvement in the Falk investigation.

⁴ Investigators note that Stallings was also the Board Vice Chair in February 2022.