



The State Bar
of California

OFFICE OF CHIEF TRIAL COUNSEL

180 Howard Street, San Francisco, CA 94105

415-538-2342

lori.wallerstein@calbar.ca.gov

April 13, 2020

PERSONAL AND CONFIDENTIAL



RE: Case No.: 19-O-17816
Respondent: ERIC YADAO

Dear Ms. Grab:

The State Bar has decided to close your complaint against Eric Yadao.

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

After carefully reviewing your complaint, and the 246 pages of documents you provided, as well as information from other sources, including, but not limited to, briefs submitted in your appeal to the Franchise Tax Board (FTB), hearing transcripts, civil court records, and Mr. Yadao's response, this office has concluded that we would not be able to prevail in a disciplinary proceeding.

Your complaint arises from your appeal of an action by FTB, denying your refund claim of interest and demand penalties. Mr. Yadao is the Franchise Tax Board's Counsel and represented the FTB in the appeal. Records indicate that you represented yourself throughout the appeal, prepared the briefs, and presented oral argument at the hearing before the Office of Tax Appeal's three-judge panel.

San Francisco Office
180 Howard Street
San Francisco, CA 94105

www.calbar.ca.gov

Los Angeles Office
845 S. Figueroa Street
Los Angeles, CA 90017

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Your complaint enumerates three allegations against Mr. Yadao: (1) that he improperly redacted documents submitted to the Office of Tax Appeals (OTA) with the intention of deceiving the court; (2) that he used "*deceptive wording and a few straight up lies*" in the briefs that he submitted for the purpose of deceiving the court, and (3) that he violated the Public Records Act (PRA) by refusing to provide you with information about FTB's policies.

In addition to the documents you provided, the State Bar reviewed numerous records that include, but are not limited to, the transcript of the OTA hearing held on August 29, 2019, OTA's Opinion issued on November 5, 2019 denying your appeal, and the subsequent civil complaint you filed against the FTB in the matter of *Christine N. Grab v. California Franchise Tax Board*, San Diego Superior Court, Case No. 7-2020-00005:100-CL-B in January of 2020 objecting to OTA's decision.

With respect to your allegation that Mr. Yadao's submitted deceptive appellate briefs to OTA, containing misleading statements and "a few straight out lies," you did not identify the specific "lies" you allege Mr. Yadao made. Mr. Yadao denies that he submitted any false statements, or otherwise tried to deceive OTA. He states that the facts articulated in each of the pleadings that he filed on FTB's behalf, and filed with the OTA, were relevant to the legal issues in the appeal, and accurate to the best of his knowledge, information, and belief, and supported by objective evidence.

OTA records show that you addressed your allegations of deception against Mr. Yadao, directly with the OTA judges in your Appellant's Second Response Brief ("Brief") and during oral argument on August 29, 2019. OTA issued its written opinion on November 5, 2019, and sustained the FTB decision to deny your request for a refund. However, OTA's decision made no finding that any of the facts stated in FTB briefs were false or misleading. Instead, OTA's "Factual Findings" were consistent with the facts stated in Mr. Yadao's briefs.

We also reviewed the subsequent civil complaint you filed against FTB in January of 2020 in the Superior Court of San Diego. The complaint indicates that you represent yourself, and prepared this complaint. The State Bar found that the civil complaint, and your OTA Brief, contain inconsistent factual allegations against Mr. Yadao. Specifically, while the factual allegations of FTB's misconduct appear consistent with those you made in your Brief to OTA; the civil complaint omits all allegations of misconduct against Mr. Yadao.

Based on the foregoing, there lacks clear and convincing evidence that Mr. Yadao made intentional misrepresentations to the court or otherwise engaged in acts of deception.

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With respect to your allegation that Mr. Yadao wrongfully denied your request for FTB policies, we reviewed records that indicate you were seeking information on FTB's procedures, guidelines or manuals from its filing enforcement or collection programs, and records maintained by FTB containing your personal information unrelated to the tax years at issue in the OTA appeal. We reviewed documents that indicate Mr. Yadao explained to you that your request falls under the Public Records Act (PRA) and those requests are handled by FTB's Disclosure Office, not Mr. Yadao. Based on the foregoing, there lacks clear and convincing evidence that Mr. Yadao engaged in misconduct by not providing you FTB's policies

With respect to your allegation that Mr. Yadao improperly redacted documents, Mr. Yadao explains that FTB's exhibits were redacted to comply with state and federal law prohibiting disclosure of confidential or personal information, unless otherwise authorized or required by law under Rev. & Tax. Code §§ 19542, 19545; Civ. Code § 1798, et seq., Gov. Code § 6250, et seq., 26 U.S.C. §§ 6103, 7213, 7213A, 7431. Based on the foregoing, there lacks clear and convincing evidence that Mr. Yadao engaged in misconduct by redacting the documents.

In sum, there lacks clear and convincing evidence that Mr. Yadao violated any rules contained in the State Bar Act, or the Rules of Professional Conduct.

If you would like to further discuss this matter or provide additional information or documentation, we request but do not require that you call us or send us the information within ten days of the date of this letter. You may leave a voice mail message for Lori Wallerstein at 415-538-2342. In your message, be sure to identify the lawyer complained against, the case number assigned to your complaint, and your name and return telephone number, including area code. I will return your call as soon as possible.

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

To request a review by the Complaint Review Unit, you must submit your request in writing, post-marked within 90 days of the date of this letter, to:

**The State Bar of California
Complaint Review Unit
Office of General Counsel
180 Howard Street
San Francisco, CA 94105-1617**

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

We would appreciate if you would complete a short, anonymous survey about your experience with filing your complaint. While your responses to the survey will not change the outcome of the complaint you filed against the attorney, the State Bar will use your answers to help improve the services we provide to the public. The survey can be found at <http://bit.ly/StateBarSurvey2>.

Sincerely,



Lori R. Wallerstein
Investigator II

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