November 14, 2022

The State Bar of California
Office of Chief Trial Counsel Intake
845 S. Figueroa St.
Los Angeles, CA 90017

Ladies and Gentlemen:

This is a request for a State Bar investigation of attorney misconduct by California Bar Member Michael R. Goldstein, State Bar No. 129848, Senior Counsel in the Office of the General Counsel of the University of California Office of the President. Your completed form is attached.

My complaint alleges violations of Rule 8.4(c) ("conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation") and/or Rule 8.4(d) ("conduct that is prejudicial to the administration of justice").

Michael R. Goldstein represented the Respondent against me, as Petitioner, in the California Public Records Act ("CPRA") case *Muchnick v. University of California Board of Regents* , Alameda County Superior Court, Case No. RG17857115, and Court of Appeal, First Appellate District, Division Five, A162258.

The case ended at Superior Court with the finding that I was the prevailing party, on the basis of hundreds of pages of previously withheld public agency documents produced in relation to the 2014 death of University of California-Berkeley football player Ted Agu. In my writings of investigative journalism and analysis, I characterize the university's actions as a cover-up of the circumstances of that death. The CPRA case was litigated for more than five years. Following the Superior Court ruling that I was the prevailing party, the parties settled extra-judicially the amount of attorney fees and costs for which the Respondent would reimburse my side – this agreed upon amount was $125,000. The Court issued a final judgment affirming this attorney fee award. The university then appealed to the Court of Appeal, which reversed the finding that I was the prevailing party (of course, canceling the fee award).

This misconduct complaint concerns Mr. Goldstein's advancement to the courts of a specific, serially stated, material, significant and impactful, and unquestionably willful misstatement of fact. This complaint is *not* based on the outcome of the case.

As a lay person, I consider Mr. Goldstein's acts to be textbook perjury. I say this in recognition that he has not been criminally investigated or charged. This complaint seeks appropriate administrative discipline of the individual I accuse of having committed perjury. The misconduct is made more grave, in my view, by the fact that the accused is an officer of the court.

I wish to elucidate why, as an independent journalist who undertook my CPRA action at great expense across a lengthy period, I decided to lodge this complaint. To be sure, Mr. Goldstein's misrepresentations were, for me, incommodious and disadvantageous. However, my goal here is to create a record both of Mr. Goldstein's misconduct and of the disposition of this complaint concerning it. The Bar has the opportunity to hold accountable, to standards of truth consonant with the public interest, attorneys working on behalf of public agencies under CPRA.

While defending against my CPRA Petition, Michael Goldstein lied to a California court – non-trivially, proactively, repeatedly. In order to establish as much, it is not necessary to hear disputed facts. This is because Mr. Goldstein, with bewildering audacity, himself

opportunistically and cyclically asserted, under oath, direct contradictions of the same fact. For purposes of this complaint, it seems sufficient merely to review the self-evident and fundamental contradictions within Mr. Goldstein's own emphatic words. What is before you is not "his word against mine"; it is "his word against his word."

Accordingly, I submit herewith comprehensive documentation of his kaleidoscopic representations on the point of fact in question. These representations were made variously in a case management statement, in a declaration, and in briefs with motions. In the course of considering this complaint, please take special note that in at least one instance – the declaration to the Court – Mr. Goldstein signed his misstatement explicitly under penalty of perjury. (See Exhibit C, below and attached.)

Within the collective representations, Mr. Goldstein swore to the Court both one fundamental thing (that Petitioner had proposed seeking a privacy waiver from a third party) and its diametric opposite (that it was Respondent who had proposed seeking a privacy waiver from that same third party). It will be seen that, in at least one example, Mr. Goldstein even asserted both the one thing and its opposite *within the same document of the same filing*. (See Exhibit D, below and attached. In the listing below, all instances in which Mr. Goldstein stated that his side, rather than mine, had proposed the waiver, in support of a particular polemical point, are flagged with italics added.) (1)

(1) To the question of whether my attorney and I contemporaneously conveyed to the Court, in our own briefs, the extraordinary untruthfulness of Mr. Goldstein, the answer is yes. How we chose to do so in the moment of pleadings to the Court was a function of overall litigation strategy. We called the Regents' serial misstatements of the disputed fact – in part through bizarre alternation of asserting both sides of the disputed fact – both irrelevant to the argument before the Court and "mystifying" in their mendacity.

These perjurious variations of both sides of an assertion were pushed in the context of a most extraordinary attempt to impose sanctions against me for allegedly having prosecuted a "clearly frivolous" CPRA Petition. There is no precedent in a published case for such a finding against a CPRA petitioner. In ruling that I was the prevailing party, Judge Jeffrey S. Brand would simultaneously deny what Mr. Goldstein called his "cross-motion" on behalf of the Regents of the University of California arguing that my action was "clearly frivolous"; if successful, this motion would have made me liable for punitive "counter" attorney fees. By any reasonable standard, Respondent's motion, at Mr. Goldstein's direction, was itself "clearly frivolous" -- in addition to being leveraged and prejudiced with his perjurious statements.

On appeal, the university doubled down on the argument that my action had been "clearly frivolous," calling for fee sanctions against me. (As noted above, though the Court of Appeal rejected this part of the appeal, the Court did reverse the Superior Court ruling that I was the prevailing party and entitled to attorney fees.)

I re-emphasize that this State Bar complaint is not premised on a one-to-one relationship between the lies and the case outcome. It is based, rather, on the plain language of those lies, and on their corrosive and destructive impact on faith in the legal system.

The general principle of the baseline need for honesty from attorneys was well articulated in an essay for the *San Francisco Daily Journal* on November 20, 2020, by San Francisco County Superior Court Judge Curtis E.A. Karnow. In the article, entitled "Officer of the court," Judge Karnow wrote that truth-telling "is the basic rule. The rest is commentary." He added that "like democracy itself," preserving the safety of the courts from lies by their officers "needs constant attention." The State Bar's attorney misconduct disciplinary mechanism is well positioned to apply, with clarity, this objective to my complaint.

I respectfully submit that principled standards for truth-telling by attorneys are, if anything, more important in the CPRA setting than they are in application to other types of litigation, such as commercial contract disputes. The CPRA statute, which often winds up pitting adversaries with asymmetrical resources (in my own case, an individual citizen petitioner versus a multibillion-dollar public agency respondent), cannot function as intended when petitioners seeking relief in the courts are met not just with vigorous advocacy, but also with blatant bad faith and willful falsehood. CPRA's policy objectives of transparency and accountability of public agencies simply have no chance of being achieved when the attorneys representing them are allowed to lie with impunity.

Below is a summary of the content of the attached exhibits, which are excerpts of documents in the record of *Muchnick v. University of California Board of Regents*.

EXHIBIT A
February 16, 2018 (Case Management Statement filed and signed by Mr. Goldstein)

- "*[T]he Regents proposed* in December [2017] that the Petitioner consider obtaining waivers from the students whose records are being sought, to release The Regents from its obligations under FERPA and the students' and their families' privacy rights." (italics added)

EXHIBIT B
March 27, 2018 (declaration filed and signed by Mr. Goldstein)

- "[...] *I proposed* to Mr. Gordet in December [2017] that he and Mr. Muchnick consider obtaining waivers from the students whose records are being sought to release the Regents from its obligations under FERPA and the students' and families' privacy rights." (italics added)

EXHIBIT C
August 12, 2020 (brief filed and signed by Mr. Goldstein, in support of motion by Respondent the Regents of the University of California "For Order Designating The Regents As The Prevailing Party And Entitled to Court Costs And Attorney's Fees") (excerpt)

- Quoting the same February 16, 2018, representation referenced above: " *[T]he Regents proposed* in December [2017] that the Petitioner consider obtaining waivers from the Students whose records are being sought, to release The Regents from its obligations under FERPA and the students' and their families' privacy rights." (italics added)

EXHIBIT D
September 10, 2020 (brief filed and signed by Mr. Goldstein, in opposition to Petitioner's motion for attorney fees) (excerpt)

- "Counsel for Petitioner came with up with the idea of seeking a waiver early in the case [...]"

- Brief section caption "A. The Agu Family Waiver Was Petitioner's Idea [...]"

- “Petitioner is the one who first raised the idea of obtaining waivers [...]”

- “Petitioner never followed up on *The Regents’ suggestion about obtaining waivers* [...]” (italics added)

- “... the idea of obtaining a waiver came from Petitioner’s counsel ...”

- “The idea came from Petitioner, who offered it at the beginning of the case. It did not come from The Regents.”

- “It was Petitioner’s suggestion [of the waiver], not the Petition, that prompted The Regents to act.”

I look forward to the State Bar’s notice of intake of this complaint and to information about the procedure going forward. If you have any questions or would like to review additional documents, please do not hesitate to contact me.

Respectfully submitted,

Irvin Muchnick