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 COUNTY OF STANISLAUS
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7 Attorneys for Respondent
 FRANK C. CARSON

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF STANISLAUS

12 In the Matter of the Assumption of
 Jurisdiction over the Law Practice of
 13
 14 FRANK C. CARSON
 No. 136261

Case No. 2016630

**FRANK C. CARSON'S OPPOSITION TO
 APPLICATION FOR ASSUMPTION OF
 JURISDICTION OVER HIS LAW
 PRACTICE**

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1 **I. INTRODUCTION**

2 The State Bar of California demands control over attorney Frank Carson's law practice in
3 violation of basic due process principles and his clients' rights to counsel of their choosing.
4 Instead of assuming Mr. Carson innocent until proven guilty, and despite the fact that competent
5 attorneys are, with client consent, attending to Mr. Carson's clients' needs while he remains in
6 custody, the State Bar has allowed itself to be lured into the District Attorney's and local law
7 enforcement's political fight against Mr. Carson, a prominent and successful criminal defense
8 attorney. Prosecuting an individual for first degree murder based on the thinnest, most gelatinous
9 "facts" is, indeed, an extreme approach to eliminating a nemesis, but an examination of the
10 purported evidence, or lack thereof, suggests that is a reasonable conclusion.

11 Though the process of determining the truth in the criminal proceeding may be lengthy,
12 that is no basis for the State Bar or this court to be party to the destruction of Mr. Carson's law
13 practice. Mr. Carson's clients' needs are being attended to and, a zealous advocate with an
14 unblemished, almost thirty-year record as a member of the State Bar, Mr. Carson holds his
15 clients' interests paramount; he will be the first to advise his clients to seek other counsel if
16 circumstances warrant, as shown by the fact that he has secured counsel to ensure his clients'
17 interests are being protected while he awaits a bail hearing.

18 The issue before the Court is simple. To prevail on its Application, the State Bar must
19 prove all three elements set forth in Business & Professions Code §6190, *et seq.*¹ by clear and
20 convincing evidence: (1) the attorney is incapable of devoting the time and attention and
21 providing quality service to protect the interest of his clients; (2) the attorney has an unfinished
22 client matter for which no other attorney, with client consent, has agreed to assume responsibility;
23 and (3) the client will be prejudiced. The Bar has satisfied none of these elements.

24 Although the State Bar is not responsible for the District Attorney's prosecution of Mr.
25 Carson, this Application furthers its suspect purpose and undermines attorney-client relationships.
26 Respectfully, the Application should be withdrawn by the Bar or, if not, denied by the Court.

27
28 ¹ Unless otherwise noted, all citations to code sections herein refer to the Business and Professions Code.

1 **II. FACTUAL BACKGROUND**

2 On or about August 18, Mr. Carson was charged with three felony counts: murder,
3 conspiracy and perjury. (Declaration of Kathleen M. Ewins (“Ewins Decl.”) Ex. 1 [People v.
4 Carson, et al., Docket].) Mr. Carson is not alleged to have physically participated in the murder
5 of Korey Kauffman, but rather, is said to have been behind a conspiracy. (*Id.* ¶2.) On August 25,
6 at an arraignment hearing, the District Attorney declared that it would not seek the death penalty
7 for Mr. Carson, but, at the District Attorney’s urging, the Court declined to set bail. (*Ibid.*)

8 **A. The 325-Page Affidavit**

9 Precisely who the District Attorney believes killed Korey Kauffman has been moving
10 target for three years, but no one has said it was Frank Carson. As far as proof that Mr. Carson
11 orchestrated a murder *by someone*, the Prosecution hitches its wagon to Robert Lee Woody, a
12 convicted felon with a methamphetamine habit. (Ewins Decl. Ex. 2 [Arrest Affidavit], at p.
13 292:1-12) The affidavit² reflects various stories told by Woody (and he recently told an entirely
14 different story not reflected in the affidavit), including but not limited to Woody’s claim that he
15 killed Mr. Kauffman, chopped him up and fed him to pigs (*Id.* at p. 202:11-18), that Michael
16 Cooley killed Mr. Kauffman (*Id.* at pp. 241-242), that Baljit Atwal assaulted Kauffman and then
17 disposed of his body (*Id.* at p. 203:10-11), and that Daljit Atwal hired “Mexican prison buddies,”
18 in particular, a man named “Mike,” to “do it.” (*Id.* at 208:3-12.) Mr. Woody has also made
19 wildly inconsistent statements about what happened to Mr. Kauffman’s body including that the
20 body was moved in a Sheriff’s vehicle (*Id.* at p. 215:7-13), that he told Atwal that Atwal did a
21 “poor job” of hiding the body (*Id.* at p.102:7-9), and, more recently, that he participated in hiding
22 the body.

23 The affidavit further reflects that Woody told his girlfriend that he killed Kauffman and
24 “that’s what happens when you piss me off.” (*Id.* at p. 201:21-23) When asked by investigators
25 about his “confession” during which he talked about Kauffman’s body parts being “spread out”

26 ² The affidavit is a Ramey affidavit, which means it was prepared by the police agency and not the District Attorney.
27 Nevertheless, the District Attorney was intimately involved in the three-year investigation and surely behind the
28 decision to arrest and prosecute Mr. Carson. More fiction than “fact,” the affidavit reads like the rough draft of a
pitch for a TV drama that incorporates plot lines, characters and elements from “The Wire,” “Sons of Anarchy,”
“Breaking Bad” and “Justified.”

1 and “why he said that,” Woody replied, “just stupid.” (*Id.* at p. 221:20-25)

2 Numerous statements in the affidavit indicate Woody and others have repeatedly denied
3 Mr. Carson had any link to Mr. Kauffman’s demise. The “evidence,” such as it is, suggests Mr.
4 Carson was annoyed with repeated incursions onto his property by drug abusers looking for scrap
5 metal to sell to a recycler. According to Woody, with respect to Kauffman, Mr. Carson “said not
6 to touch him at all, don’t, don’t threaten him, don’t touch him, don’t do not nothing to him...” (*Id.*
7 at p. 242), “do not harm a hair, do not speak out of, you mean, threaten him in any shape or form
8 or anything” (*Id.* at p. 236:20-25), and “Frank Carson...asked us specifically not to threaten, not
9 to do no harm...” (*Id.* at p. 235:15-19.) To the degree that evidence exonerating Mr. Carson is
10 acknowledged in the affidavit, it is typically accompanied by a dismissive statement that the
11 evidence “does not make any sense.” (See, e.g., *Id.* at pp. 172:13-16; 200:14-22; 208:13-15;
12 220:25-221:1; 237:12-14.) This stands in stark contrast to the contradictory evidence the affidavit
13 credits as “probable cause” to arrest.³

14 The 325-page arrest warrant affidavit is rife with allegations that, on their face, have
15 nothing to do with the charges against Mr. Carson, but belie the prosecuting agency’s personal
16 contempt for him, and desperation to justify the charges against him. Mr. Carson is vocal about
17 defective criminal investigations and prosecutions. In the last several years, Mr. Carson has
18 obtained acquittals in numerous cases with dubious evidentiary foundations that cost local
19 taxpayers millions of dollars to prosecute. He ran against the current District Attorney in the
20 2014 election, constitutionally protected political activity that the District Attorney’s office
21 characterizes in the affidavit as a “contrived and calculated effort” to stop the Kory Kauffman
22 murder investigation. (*Id.* at p. 199).

23 Reading the 325-page warrant is a daunting task, but only through reading the entire
24 document is it clear that, despite the years the District Attorney spent preparing for this

25 ³ Notable are passages of the affidavit evidencing an outcome-directed investigation. Investigators wanted a basis to
26 charge Frank Carson with murder and, to that end, told witnesses they cross-examined that they were being
27 questioned, “because of” Frank Carson, which perpetuated explanatory statements along that line. The affidavit takes
28 individuals’ descriptions of what investigators told them (*i.e.*, that they were there because of Frank Carson) and
construes the descriptions as evidence of the witnesses implicating Mr. Carson as a murderer. (See, e.g., *Id.* at pp.
144:11-145:19, 146:21-147:6 “...he [the detective] said it’s because of him [Carson] this is happening to you,
because of Carson.”)

1 prosecution, in the words of Gertrude Stein, “there is no there there.” Examples of the building
2 blocks of the prosecution’s case that highlight disdain for Mr. Carson—rather than evidence he
3 masterminded a murder—include the affidavit’s criticism that, in one 2005 case, Mr. Carson
4 engaged in a “tug of war” with a courthouse door. (*Id.* at pp. 6:13-7:13) He was needed in
5 Department 9 to take a jury verdict after 5:00 p.m., but had been locked outside. This incident of
6 ten years ago purports to show how Mr. Carson “responds to law enforcement...and is indicative
7 of inappropriate and violent responses.” (*Id.* at p. 7:17-18) Respectfully, any trial lawyer can
8 attest to the importance of getting into a courtroom to take a verdict when a judge and jury are
9 waiting; exhibiting agitation under such circumstances was reasonable and understandable.

10 The affidavit also includes allegations that, on a jury service hardship request form
11 advising that he had a pre-planned vacation, Mr. Carson wrote that he had “behavior control
12 issues” and “my dog is the devil.” (*Id.* at p. 26.) On their face, Mr. Carson’s statements—aside
13 from the one regarding his vacation—were a joke directed to an audience he had known for
14 decades. Nevertheless, the affidavit states that the hardship form evidences Mr. Carson’s “lack of
15 respect, if not contempt, for the court or that he does have behavioral control issues which is
16 relevant to this investigation.” (*Id.* at p. 26:7-17.)

17 Yet another example involves a December 2011 request Carson made to have a matter set
18 on calendar. The good cause Mr. Carson articulated was, clearly tongue in cheek, a litany of
19 excuses, some of which are typically heard by courts—“(choose One) Def. Forgot, couldn’t be
20 bothered, dog ate docket paper, conspiracy of fate, car stolen, bus missed, bus stolen, lawyer’s
21 fault, parent’s fault, I’m special, the Federal Reserve is unconstitutional.” (*Id.* at p. 28:7-13) The
22 judge in the case was amused,⁴ but the DA pocketed the document for later use. The arrest
23 affidavit now characterizes the document as evidence Mr. Carson “lack[s] respect for the court
24

25 ⁴ There are abundant examples of lawyers and judges integrating humor into proceedings and pleadings. For a recent
26 example, see Supreme Court Justice Elena Kagan’s decision in *Kimble v. Marvel* (2014) 135 S.Ct. 781; see also, e.g.,
27 *United States v. Batson* (5th Cir. 1986) 782 F.2d 1307 [court decision opens with “Some farmers from Gaines had a
28 plan. It amounted to quite a big scam. But the payments for cotton began to smell rotten. T’was a mugging of poor
Uncle Sam.”]; *Noble v. Bradford Marine, Inc.* (S.D. Fla. 1992) 789 F. Supp. 395 [opinion written with lines from the
movie “Wayne’s World” and holding that defendant’s “most bogus” attempt at removal is “not worthy” and “way
improvident,” and arguing that the defendant must “party on” in state court; sections of the opinion are labeled
“Hurling Chunks” and “A Schwing and a Miss.”].

1 and the legal process.” (*Id.* p. 28:12-13)

2 Another troubling prosecution theme relates to Mr. Carson being a murderer because he
3 did not call law enforcement about every petty incursion onto his property despite the fact that, in
4 2003, he was advised “to call the police next time.” (*Id.* at pp. 5:19-6:5) The affidavit suggests
5 that there were numerous trespasses and/or burglaries on Mr. Carson’s properties and that he
6 sometimes, but not always, sought law enforcement’s help. (See, e.g., *Id.* at pp. 8:21-9:10; 10:4-
7 8; 12; 13:25-14:8; 26:1-6; 28:1-6; 200:11-19) Mr. Carson’s alleged occasional failure to seek law
8 enforcement assistance when individuals stole or trespassed purportedly shows he is inclined to
9 engage in “personal action” (*Id.* at pp. 10:4-8; 26:1-6), and thus murder. This leap defies logic,
10 particularly given there is not a single alleged instance of Mr. Carson committing physical
11 violence upon any trespasser or thief. Rather, even though a neighbor/thief, Michael Cooley,
12 allegedly spit in Mr. Carson’s face during one encounter, and it made Mr. Carson “extremely
13 upset,” there is no suggestion he touched Cooley. (*Id.* at p. 12:16-18)

14 Mr. Carson should be afforded due process and presumed innocent. The Court should
15 decline to find the cobbled together affidavit, which seeks to paint a zealous advocate as a
16 premediated murderer, provides any basis to deprive Mr. Carson’s clients of their lawyer, or
17 Mr. Carson of his profession.

18 **B. Mr. Carson’s Clients’ Interests Are Being Protected**

19 Despite the fact that he is incarcerated, Mr. Carson’s law office has remained open for
20 business. His legal assistant, Jessica Duran, has been working ten to fourteen hour days and on
21 weekends. (Declaration of Jessica Duran (“Duran Decl.”), ¶4.) She works with the two lawyers
22 responsible for tending to Mr. Carson’s cases while he is incarcerated, John Hillenbrand and
23 Ryan Roth. (*Ibid.*)

24 Since Mr. Carson’s August 14, 2015 arrest, Ms. Duran has communicated daily with
25 attorneys Hillenbrand and Roth to ensure Mr. Carson’s court appearances are covered. She
26 prepares daily calendars and meets with the lawyers. (*Id.*, ¶5.) Mr. Duran also receives daily
27 instructions and communications from Mr. Carson. (*Id.*, ¶7.)

28 Attorney John Hillenbrand is one of the lawyers attending to the needs of Mr. Carson’s

1 clients in his absence. (Declaration of John Hillenbrand (“Hillenbrand Decl.”), ¶4.) Since 2001
2 when he was a Stanislaus County Deputy District Attorney, Mr. Hillenbrand’s practice has been
3 devoted exclusively to criminal law. (*Id.*, ¶3.) Mr. Hillenbrand has met with a number of Mr.
4 Carson’s clients to explain the circumstances, their options, and to seek their consent to his
5 representation. (*Id.*, ¶6.) Mr. Hillenbrand regularly meets with Mr. Carson to discuss client
6 matters. (*Id.*, ¶8.) He also communicates with Ms. Duran and attorney Ryan Roth several times a
7 day. Together they review open matters for coverage and Mr. Carson’s instructions regarding
8 case management and disposition. (*Id.*, ¶9.)

9 Attorney Ryan Roth is the second lawyer who is representing Mr. Carson’s clients while
10 he is incarcerated. (Declaration of Ryan Roth (“Roth Decl.”), ¶2.) He has likewise been
11 receiving instructions from Mr. Carson regarding cases he is covering and meets several times a
12 day with Ms. Duran and Mr. Hillenbrand. (*Id.*, ¶6.) Mr. Roth has met with numerous clients
13 regarding their options and the consent forms. (*Id.*, ¶4.)

14 Counsel for Mr. Carson has engaged State Bar attorney Robert Henderson in discussions
15 regarding the status of Mr. Carson’s cases and steps that might assuage the State Bar’s concerns.
16 (Ewins Decl., ¶6) Arrangements for representation or withdrawal have been made for the vast
17 majority of Mr. Carson’s clients, and Mr. Carson’s office is working on addressing the situation
18 with his remaining clients. In eighteen cases (for fourteen clients) in which Mr. Carson was court
19 appointed to represent defendants, his office is filing motions to withdraw. (*Id.*, ¶6) Of Mr.
20 Carson’s forty-three remaining clients, twenty-eight have elected to go forward with Mr. Carson
21 in conjunction with Mr. Roth and/or Mr. Hillenbrand while Mr. Carson is incarcerated. (*Id.* ¶8 &
22 Ex. 6.) Three of the cases on the State Bar’s list of cases were already closed. (*Ibid.*) Three
23 clients (with six cases) have chosen to retain other counsel. (*Ibid.*) To date, there are eight clients
24 (with eleven cases) that Mr. Hillenbrand and Mr. Roth have been unable to reach to discuss their
25 options, despite efforts to do so. (*Ibid.*) Either Mr. Roth or Mr. Hillenbrand will meet with one
26 client this upcoming Thursday to discuss the client’s options with him. (*Ibid.*)

27 At least two newspapers have reported that the State Bar has already taken over Mr.
28 Carson’s law practice. (*Id.*, Ex 8 & 9 [articles from Modesto Bee and Sacramento Bee].) The

1 District Attorney's Office has told people that his office is closed and advises them to file a State
2 Bar complaint against him. (Declaration of Nola Alford, ¶7.) As troubling, the Court's Criminal
3 Division's clerk's office is likewise representing that Mr. Carson's office is closed, not working
4 on cases, and is instructing callers to lodge a complaint against Mr. Carson through the State Bar
5 hotline. (*Id.*, ¶5.) The inaccurate reports and misrepresentations would cause any client grave
6 concern, however, most of Mr. Carson's clients are steadfast in their determination to have Mr.
7 Carson continue to represent them.

8 In short, the District Attorney and the State Bar have already impaired Mr. Carson's law
9 practice. The Sheriff's department piles on, using medieval shackling to impede Mr. Carson from
10 reviewing documents or writing when he meets with his lawyers, despite a court order that one
11 wrist be unshackled for such meetings; the Sheriff also refuses him access to law books for use in
12 his own defense. (Ewins Decl., ¶4.) This Court should not further compound the extraordinary
13 situation by ordering the takeover of Mr. Carson's law practice when he has taken all steps
14 necessary to protect his clients' interests.

15 **III. LEGAL ARGUMENT**

16 **A. Mr. Carson's Due Process Rights Require Proof by Clear and Convincing** 17 **Evidence**

18 Mr. Carson has been accused of a crime, arrested, and held without bail based on
19 contradictory allegations made by an assortment of unreliable witnesses. While the County, its
20 Sheriff and its District Attorney turns a blind eye to justice, this Court cannot. Mr. Carson has a
21 constitutionally protected liberty interest to be presumed innocent until he is convicted of a crime
22 beyond a reasonable doubt. "A person may not be deprived of life, liberty, or property without
23 due process of law" (Cal. Const., Art. I, §7, subd. a; see also Pen. Code §1096 ["A
24 defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case
25 of a reasonable doubt whether his or her guilt is satisfactorily shown, he or she is entitled to an
26 acquittal"].)

27 In addition to Mr. Carson's constitutional liberty interest, he also possesses a vested
28 interest in his professional licensure by the State Bar. The California Supreme Court recognizes

1 that "certain procedural protections consistent with a vested interest" must be followed. (*Hughes*
2 *v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 789.) To begin with, to the extent that
3 the Bar seeks jurisdiction based on Mr. Carson's alleged criminal activity, it must prove beyond a
4 reasonable doubt that he committed the alleged crimes. (*Matter of Wells* (Rev. Dep't 2006) 4 Cal.
5 State Bar Ct. Rptr. 896, 902-03 fn. 11.) The State Bar does not argue for jurisdiction on this basis
6 and makes no attempt to prove Mr. Carson is guilty of the alleged crimes beyond a reasonable
7 doubt.

8 Because of the gravity of the loss, an attorney's professional license cannot be revoked or
9 even suspended unless the State Bar proves that such action is supported by clear and convincing
10 evidence. (*Arden v. State Bar* (1987) 43 Cal.3d 713, 725; *In re Morse* (1995) 11 Cal.4th 184,
11 206.) As in the pending criminal case, any reasonable doubt in this matter must be resolved in
12 Mr. Carson's favor. (*Price v. State Bar* (1982) 30 Cal.3d 537, 547.) The State Bar bears the
13 burden of proof in this matter. (*Golden v. State Bar* (1931) 213 Cal. 237, 247.) It has not met its
14 burden.

15 **B. The Bar Cannot Satisfy the Threshold Requirements of Business and**
16 **Professions Code Section 6190**

17 For the Court to obtain jurisdiction over Mr. Carson's practice, the State Bar must satisfy
18 the three elements of Section 6190, *et seq.*, of the Business and Professions Code by clear and
19 convincing evidence. Under Section 6190, a Court may assume jurisdiction where (1) the
20 attorney is "incapable of devoting the time and attention to, and providing the quality of service
21 for, his or her law practice which is necessary to protect the interest of a client" (Bus. & Prof.
22 Code §6190); (2) "there is an unfinished client matter for which no other active member of the
23 State Bar, with the consent of the client, has agreed to assume responsibility" (*Ibid.*); and (3) "an
24 interested person or entity will be prejudiced" if the court does not assume jurisdiction. (Bus. &
25 Prof. Code §6190.34.) The Bar's Application proves none of these elements.

26 **1. Other Active Bar Members Have Agreed to Assume Responsibility**
Over Mr. Carson's Matters

27 The State Bar cannot establish that "no other active member of the State Bar, with the
28 consent of the client, has agreed to assume responsibility" for Mr. Carson's cases. The Bar has

1 known since at least August 20, 2015 that two attorneys, Mr. Roth and Mr. Hillenbrand, agreed to
2 assume responsibility. The Bar admits that this fact alone “suggests that the remedy sought might
3 not be necessary.” (Ewins Decl., Ex. 4 [Aug. 20, 2015 email from Robert Henderson]); see also
4 Declaration of Robert A. Henderson ¶¶6-10 [implicitly recognizing the impact of the retention of
5 Mr. Roth and Mr. Hillenbrand in conjunction with obtaining client consents to their
6 representation].) The Bar is correct – the remedy it seeks *is not necessary*.

7 Although Mr. Carson is temporarily unavailable to be present in his office or to appear in
8 court on behalf of his clients, his primary concern is that his clients’ interests are fully protected
9 and that they suffer no prejudice. He has taken every reasonable measure to make this so. His
10 office is open. The phone is being answered and calls are being returned. His private investigator
11 continues to work on cases and discovery has not ceased in his clients’ matters since his arrest.
12 Two qualified attorneys—Mr. Roth and Mr. Hillenbrand—represent his clients in his absence.
13 Nothing more can or should be required.

14 2. Clients Have Consented to Messrs. Roth and Hillenbrand Accepting
15 Responsibility in Their Matters

16 The Bar states that it is “unaware” whether Mr. Carson’s clients have consented to
17 representation by Messrs. Roth and Hillenbrand. Mr. Carson has fifty-eight cases for forty-three
18 clients in which he was directly retained, and nineteen cases for fourteen clients cases in which he
19 was appointed by the Court. (Ewins Decl. Ex. 6 & 7.) Of the forty-three clients in retention
20 matters, twenty-nine have consented to Mr. Roth and/or Mr. Hillenbrand’s representation while
21 Mr. Carson is incarcerated. (*Id.* ¶8 & Ex. 6.) Three of the cases on the State Bar’s list of cases
22 were already closed. (*Ibid.*) Three clients (with six cases) have chosen to retain other counsel.
23 (*Ibid.*) To date, there are eight clients (with eleven cases) that Mr. Hillenbrand and Mr. Roth have
24 been unable to reach to discuss their options, despite efforts to do so. (*Ibid.*) Either Mr. Roth or
25 Mr. Hillenbrand will meet with one client this upcoming Thursday to discuss the client’s options
26 with him. (*Ibid.*) With the assistance of Messrs. Roth and Hillenbrand, Mr. Carson is preparing
27 and filing motions to be relieved as counsel in each open appointment case. The motions will ask
28 the court to appoint new counsel. (*Id.* ¶6.)

1 3. Denial of the Bar's Application Will Not Prejudice Mr. Carson's Clients

2 Because Mr. Roth and Mr. Hillenbrand have taken responsibility for Mr. Carson's clients
3 in retained matters, with their consent, the State Bar has failed to prove—by clear and convincing
4 evidence or otherwise—another of the required elements of Section 6190 *et seq.*: that his clients
5 will be prejudiced if the Court does not take jurisdiction of his practice. Because competent
6 counsel have stepped in to act as Mr. Carson's co-counsel while he is incarcerated, the Court need
7 not engage in an analysis of whether Mr. Carson's clients will be prejudiced unless his practice is
8 assumed by the Bar. But even if it does, the Bar has submitted no evidence that a single client of
9 Mr. Carson's would be prejudiced. In fact, the opposite is true; granting the Application will
10 prejudice Mr. Carson's clients and Mr. Carson.

11 As the client consents demonstrate, the vast majority of Mr. Carson's clients want him to
12 continue to defend them, notwithstanding the pending charges. (Ewins Decl., Ex. 5, 6 & 7.) This
13 Court should not lightly interfere with Mr. Carson's clients' choice of counsel. (See, e.g., *United*
14 *States v. Gonzalez-Lopez* (2006) 548 U.S. 140, 144 ["an element of [the Sixth Amendment right
15 to counsel] is the right of a defendant who does not require appointed counsel to choose who will
16 represent him"]; *People v. Baylis* (2006) 139 Cal.App.4th 1054, 1073 ["a criminal defendant's
17 right to counsel of choice may be forced to yield where it would result in a "disruption of the
18 orderly processes of justice unreasonable under the circumstances of the particular case"],
19 quoting *People v. Crovedi* (1966) 65 Cal.2d 199, 208; *Gregori v. Bank of America* (1989) 207
20 Cal.App.3d 291, 300 ["A client deprived of the attorney of his choice suffers a particularly heavy
21 penalty where, as appears to be the case here, his attorney is highly skilled in the relevant area of
22 the law"]; *Comden v. Sup. Ct.* (1978) 20 Cal.3d 906, 915 [scrutiny important when court removes
23 attorney from representation because of [t]he client's recognizably important right to counsel of
24 his choice"].) It would be improper for this Court to find prejudice to Mr. Carson's clients when
25 he has competent counsel in place to protect their interests, they have consented to this
26 arrangement, and indicated that they wish for Mr. Carson to remain as their counsel.

27 Granting the Application would prejudice Mr. Carson's clients and Mr. Carson.
28 Assuming jurisdiction is a drastic remedy, which involves the State Bar (or another appointed

1 attorney) going through all of Mr. Carson's files, reviewing his clients' confidential information,
2 contacting all of his clients and insisting that they obtain new counsel, regardless of their
3 preference for Mr. Carson. Not only is the process onerous, it interferes with Mr. Carson's
4 clients' right to select their own counsel.

5 The potential prejudice to Mr. Carson is severe. Granting the Bar's Application will alter
6 his status from "Active" to "Involuntarily Inactive." Under Section 6007(b)(2), the State Bar
7 "shall . . . enroll a member of the State Bar as an inactive member" when the Court "makes an
8 order assuming jurisdiction over the member's law practice, pursuant to Section . . . 6190.3."
9 Accordingly, if the Court grants the State Bar's Application, the law compels the Bar to enroll
10 Mr. Carson as "inactive." He will not be permitted to practice law until he petitions to be
11 returned to active status. In essence, the Bar will have obtained his suspension without proving
12 by clear and convincing evidence that he committed any crime. It would be unprecedented to
13 declare an attorney unable to practice law simply because he is defending against criminal
14 charges. To do so under the circumstances here—where the "evidence" supporting the charges is
15 diaphanous—would shock the conscience.

16 **IV. CONCLUSION**

17 For the reasons set forth herein, the Courts should deny the Bar's Application.
18

19 Dated: September 1, 2015

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