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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of: JOHN CHARLES EASTMAN, State Bar No. 193726, An Attorney of the State Bar	CASE NO. SBC-23-O-30029 **STATE BAR'S OPPOSITION TO RESPONDENT'S MOTION TO STAY INACTIVE ENROLLMENT OR FOR AN INTERIM REMEDY**

The State Bar hereby opposes respondent's April 3, 2024, motion (1) to stay the Court's order placing him on inactive enrollment pursuant to Business and Professions Code section 6007(c)(4) and rule 5.111(D)(1) of the State Bar Rules of Procedure or (2) in the alternative for an interim remedy pursuant to Business and Professions Code section 6007(h).

I. Inactive Enrollment Is Mandatory under Section 6007(c)(4) and Rule 5.111(D)(1)

Unlike involuntary inactive enrollment under Business and Professions Code sections 6007(c)(1) and 6007(c)(2), which is discretionary, inactive enrollment under section 6007(c)(4) is mandatory: "The State Bar Court **shall** order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default." (Emphasis added.) The statute authorizes the State Bar Board of Trustees to "formulate and adopt rules to implement this subdivision." (Business and Professions Code section 6007(c)(7).) The Board has done so, and the resulting rules also make clear that inactive enrollment is mandatory: "If the Court recommends disbarment, it **must** also order the attorney placed on inactive enrollment under Business and Professions Code § 6007(c)(4)." (Rule 5.111(D)(1) (emphasis added).)

Respondent argues that "[p]ursuant to Rule 5.162 and California Rules of Court, Rule 9.10(e), this Court has the authority to delay temporarily the effective date of, or temporarily stay the effect of, an order for a licensee's disciplinary suspension from practice upon a showing of good cause." (Motion at 2 (footnote omitted).) This argument fails for several reasons.

First, rule 9.10(e) applies only to an "order for a licensee's disciplinary suspension from practice." Respondent is not the subject of an order for disciplinary suspension, which could only be issued by the Supreme Court, and which would impose a lesser form of discipline than disbarment. Nowhere in rule 9.10 is there any provision authorizing the State Bar Court to terminate a statutorily mandated order for inactive enrollment following a recommendation for disbarment.

Second, rule 5.162 similarly does not apply to an order for inactive enrollment under section 6007(c)(4). Rather, in relevant part, it implements rule 9.10, setting out procedures for seeking "to delay or temporarily stay the actual suspension from the practice of law previously ordered by the Supreme Court." (Rule 5.162(F).)

Finally, respondent is not seeking merely to delay or temporarily stay his inactive enrollment for some specified period of days or weeks to permit the winding up and transition of client matters. Rather, as respondent's motion makes clear, he is seeking termination of the order for inactive enrollment to enable him to remain on active status throughout his appeal of the recommendation for disbarment. Neither rule 9.10, rule 5.162, nor any other rule authorizes such action.

Respondent also argues that the Court has authority to grant his requested relief pursuant to the final clause of section 6007(c), which provides, in relevant part: "In the case of an enrollment pursuant to this subdivision, the State Bar Court shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public. . . ." (Motion at 3.) This argument too is without merit.

First, the provision in section 6007 on which respondent relies was in the statute prior to the amendment to subsection (c)(4) that made inactive enrollment automatic and mandatory upon a disbarment recommendation. Effective January 1, 1997, subsection (c)(4) was amended to read as it does currently (1996 Cal. Legis. Serv. Ch. 1104 (A.B. 2787) (WEST)), the effect being "to create an automatic inactive enrollment upon a disbarment recommendation, without any additional hearing." (*In the Matter of Phillips* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 47, 49.) Prior to this amendment, inactive enrollment following a recommendation for disbarment had to be sought by petition under section 6007(c)(2), with the State Bar bearing the burden of showing that the attorney's conduct posed a substantial threat of harm to the interests of the attorney's clients or the public; in such a proceeding, under then subsection (c)(4), the recommendation for disbarment "created a rebuttable presumption affecting the burden of proof that the factors warranting inactive enrollment are established." (*In the Matter of Phillips*, *supra*, at 49.) The 1997 change to the statute was substantive and significant. (*Id.* at 49-50.) It necessarily reflects a legislative determination that, as a matter of law, disbarment establishes a substantial threat of harm

sufficient to mandate inactive enrollment. Respondent's interpretation of the statute ignores this significant change and would improperly re-establish the pre-1997 rule, effectively returning a recommendation for disbarment to nothing more than a basis for a rebuttable presumption.

Second, as noted above, subsection (c)(7) authorizes the Board of Trustees to "formulate and adopt rules to implement this subdivision." The rules put in place by the Board contain provisions authorizing a lawyer who has been subject to a discretionary transfer to inactive enrollment under section 6007(c)(2) to "petition for transfer to active enrollment, with or without interim remedies." The rules contain no similar provision authorizing a petition for return to active enrollment after a transfer to inactive enrollment under section 6007(c)(4). Thus, the rules reflect an interpretation of the statute by the Board, which is entitled to deference, that inactive enrollment under section 6007(c)(4) is mandatory and not subject to rebuttal by a respondent. Indeed, the only rules addressing inactive enrollment under section 6007(c)(4) are rules 5.111(D) and 5.155(G), both of which, like the statute, mandate inactive enrollment.

In short, involuntary inactive enrollment is mandatory following a disbarment recommendation. Respondent has not requested a brief delay or temporary stay of his inactive enrollment for a certain number of weeks to accomplish a specific task for a client; rather he seeks to terminate his inactive enrollment to remain on active status until his appeal is resolved. There has been no change in circumstance since the Court placed him on inactive enrollment on March 27, 2024, and there is no provision in the applicable rules or statutes that would allow respondent to remain on active status pending an appeal of the disbarment recommendation. Moreover, respondent's claim that the rules provide for termination or an indefinite stay of his involuntary inactive would negate the Legislature's purpose in adopting

the current version of the statute: to mandate that an attorney who received a disbarment recommendation shall be placed on inactive enrollment.[1]

II. Respondent Has Not Demonstrated that He No Longer Poses a Substantial Threat of Harm to the Public

Even if the Court had the authority to reconsider whether respondent should remain on inactive enrollment, respondent has not met the high burden of showing that, notwithstanding the recent disbarment recommendation, he no longer poses a threat of harm. Following a full disciplinary proceeding, this Court found that respondent engaged in multiple acts of dishonesty, that he conspired with President Trump to violate the law, and that his "lack of remorse and accountability presents a significant risk that Eastman may engage in further unethical conduct, compounding the threat to the public." (March 27, 2024 Decision, p. 126.) The Court further found that given "the heightened risk of future misconduct from his complete denial of wrongdoing," disbarment was appropriate "to protect the public and uphold public confidence in the legal system." (*Ibid*.)

Section 6007(c)(4) mandates that an attorney for whom disbarment is recommended be placed in inactive enrollment because, as a matter of law, the disbarment recommendation constitutes a finding that the attorney is unfit to practice law, and allowing an attorney subject to such a finding to continue practicing during the appeal process poses a significant threat of harm to clients, the administration of justice, and the public. Here, the threat of harm posed by respondent continuing to practice is established not only as a matter of law by the Court's disbarment recommendation, but also by the Court's specific findings underlying the

[1] Respondent's reliance on *Conway v. State Bar* (1989) 47 Cal. 3d 1107, 1132, as authorizing the relief he seeks is misplaced. First, *Conway* did not involve a recommendation for disbarment – as the court noted, at the time of the respondent's inactive enrollment "[n]o formal disciplinary charges had been brought against" him, and, as a result, the court was addressing the validity of proceedings in which the State Bar sought inactive enrollment under section 6007(c)(1), (2). (*Id.* at 1111.) Second, at the time *Conway* was decided, prior to its 1997 amendment, section 6007(c)(4) did not mandate inactive enrollment following a recommendation for disbarment. Third, as noted in the text above, respondent is not seeking a temporary stay of his inactive enrollment, but its termination. Finally, though defendant fails to so indicate, the language from *Conway* on which he relies comes not from the court's majority opinion, but from a dissent.

disbarment recommendation. Respondent has not presented any evidence sufficient to overcome these factors.

Respondent emphasizes that his disciplinary charges were not based on client complaints, and that his current clients want him to continue to represent them, but this argument shows that he continues to misunderstand his ethical duties, the nature of his misconduct, and the threat that it poses to the public and the administration of justice. There was no question that respondent's former client, then President Trump, wanted respondent to represent him. But this did not prevent respondent from engaging in misconduct that posed a significant threat of harm to the public and the administration of justice. A lawyer's obligations are not only to their client; to the contrary, as officers of the court, lawyers have obligations to the system of justice that transcend their duties to a particular client. *(In re Johnson* (1992) 1 Cal.4th 689, 705–706 (conc. & dis. opn. of Kennard, J.).)

Here, the Court found that respondent made numerous false statements and violated the law on behalf of a client. Respondent has demonstrated a willingness to misrepresent facts, violate the law, and pursue frivolous claims on behalf of clients. In this context, that respondent's current clients want his continued representation does nothing to establish that there is no risk of harm from respondent's continued handling of cases on behalf of those clients. Indeed, a recent ruling in a case in which respondent represents some of those clients who desire his continued representation demonstrates the risks.

On March 22, 2024, in a case in which respondent represents Matt Gaetz and Marjorie Taylor-Greene, two of the clients who have submitted declarations in support of respondent's motion, the court issued an order granting motions to dismiss by certain civil rights groups, including the League of Women Voters, the National Association for the Advancement of Colored People, the League of United Latin American Citizens, and Unidos for La Causa, who were named as defendants (the "Nonprofit Defendants"). (*Gaetz, et al. v. City of Riverside, et al.*, Case No. 5:23-cv-01368-HDV (SHKx), Document No. 95 (Central District California, Mar. 22, 2024). In granting the Nonprofit Defendants' motion to dismiss

claims filed under Section 1985, the court found "the complete lack of any alleged facts to support a 'meeting of the minds' as required for a conspiracy claim," that the complaint "even charitably construed with all reasonable inferences drawn in Plaintiffs' favor – is utterly devoid of any specifics plausibly alleging such an agreement," and that the "gravamen of Plaintiffs' claims against the Nonprofit Defendants is, both legally and literally, a conspiracy theory that relies purely on conjecture." (*Id.* at 3.) The court then found, "The effect of Plaintiff's unprecedented and stunningly deficient pleading – haling nine civil rights groups into federal court for speaking out against an event – should shock in equal measure civic members from across the political spectrum." (*Ibid.*)

Respondent's motion further demonstrates his continuing "complete denial of wrongdoing," which as cited above was a basis for the Court's finding that disbarment was appropriate to protect the public. In support of his motion, respondent has chosen to submit declarations of certain of his clients that, despite the irrelevance of this point to respondent's arguments, assert their belief that the disciplinary charges in this matter have no merit.[2] This Court found that respondent's "complete failure to understand the wrongfulness of his actions" is "concerning." (March 27, 2024 Decision at p. 118.) Respondent's motion and supporting declarations show that he continues to misunderstand his duties as an attorney and his misconduct. Furthermore, by arguing that allowing him to practice law presents no potential for harm, he misidentifies and misunderstands the harm that he caused. Respondent has demonstrated that he is willing to ignore facts, misrepresent facts, and misrepresent the law in the advocacy of his clients. Allowing him to continue practicing law presents a risk that he will do the same for his other clients.

[2] Four of the declarations submitted by respondent assert that the disciplinary charges in this case—which this Court found were proved by clear and convincing evidence—are meritless and politically motivated. *See* Gaetz Dec.¶¶ 5-7; Greene Dec. ¶¶ 5-7; Lundberg Dec. ¶¶ 4, 7; Paredes ¶ 7. Furthermore, Rep. Gaetz's declaration includes an attached letter in which he attacks this proceeding as part of a "coordinated and politically motivated attempt to deplatform Dr. Eastman" and citing so-called "bar targeting" as an example of the "weaponization of government against Americans." Gaetz Dec. Ex. A.

By misidentifying the type of harm that his conduct poses, and by continuing to show a lack of insight into his misconduct, respondent's motion further demonstrates that inactive enrollment is required to protect he public. An attorney's lack of insight into their misconduct and lack of remorse are highly relevant when evaluating risks to the public and should be given significant weight. (See *In the Matter of Song* (Review Dept. 2013) [lack of insight and remorse assigned most significant aggravating weight because of "ongoing danger to the public"].)[3]

For the foregoing reasons, the State Bar respectfully requests that the court deny respondent's motion.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: April 10, 2023

By: _____
Duncan Carling
Supervising Attorney

[3] Respondent argues that his clients will be harmed if his inactive enrollment precludes him from continuing his representation in their matters. (Motion at 8-11.) As respondent's own declaration demonstrates, however, each of the clients has been made aware of the potential that respondent would be unable to continue representation, and in each matter there is co-counsel who can assume representation. See Eastman Decl. ¶¶ 7, 9, 15-19. Respondent also argues that he will suffer harm in the form of lost income if he is unable to continue representation in these matters. (Motion at 2.) Under the portion of section 6007 that respondent cites as authorizing this Court to terminate his inactive enrollment, however, potential harm to respondent is irrelevant – the only issue is whether respondent has met his high burden of demonstrating that he no longer poses a substantial threat of harm to the interests of the public. As set forth in the text above, respondent fails to meet this burden.

DECLARATION OF SERVICE

CASE NUMBER(s): **EASTMAN (SBC-23-O-30029)**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, dawn.williams@calbar.ca.gov, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

STATE BAR'S OPPOSITION TO RESPONDENT'S MOTION TO STAY INACTIVE ENROLLMENT OR FOR AN INTERIM REMEDY

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- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County
- of San Francisco.

☐ **By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**
- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

☐ **By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**
Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

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☐ *(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at San Francisco, addressed to: *(see below)*

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Tracking No.: _____ addressed to: *(see below)*

Person Served	Business Address	Fax Number / Electronic Address	Courtesy Copy via Email to:
Randall Allen Miller Zachary Mayer Jeanette Chu		Electronic Address rmiller@millerlawapc.com zachary@millerlawapc.com jeanette@millerlawapc.com	Olga Gorbunkova olga@millerlawapc.com Yvette Blandon yvette@millerlawapc.com

☐ **via inter-office mail regularly processed and maintained by the State Bar of California addressed to:**
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: April 10, 2024

SIGNED: Dawn Williams

Dawn Williams
Declarant