

STATE BAR COURT  
REVIEW DEPARTMENT

In the Matter of

STEVEN J. SEGALL

A Member of the State Bar

No. 89-C-11101

Filed February 21, 1992

SUMMARY

The Office of Trial Counsel requested the review department, in its exercise of powers delegated to the State Bar Court by the Supreme Court, to disbar respondent summarily, pursuant to Business and Professions Code section 6102 (c), upon the finality of respondent's federal felony conviction for mail fraud. The crime entailed a specific intent to defraud, was committed in the course of the practice of law, and involved a client as victim.

Based on the record of the conviction, the review department concluded that respondent's crime met the statutory requirements for summary disbarment. However, after reviewing applicable constitutional principles and Supreme Court precedent, the review department held that only the Supreme Court and not the State Bar Court has the power to disbar an attorney summarily. Accordingly, the review department recommended to the Supreme Court that respondent be summarily disbarred.

COUNSEL FOR PARTIES

For Office of Trials: Teresa J. Schmid

For Respondent: Arthur L. Margolis, Susan L. Margolis

HEADNOTES

[1 a, b] 1512 Conviction Matters—Nature of Conviction—Theft Crimes

1541.20 Conviction Matters—Interim Suspension—Ordered

Mail fraud (18 U.S.C. § 1341) is a crime involving moral turpitude, for which interim suspension is ordered following an attorney's conviction.

- [2]     **151     Evidence—Stipulations**  
**191     Effect/Relationship of Other Proceedings**  
**1691    Conviction Cases—Record in Criminal Proceeding**  
 In reviewing the record of an attorney’s criminal conviction resulting from a guilty plea, for the purpose of determining the propriety of summary disbarment, the court does not take into account language in the information unnecessary to the crime to which the attorney pled guilty, but may consider additional undisputed facts based on the record.
- [3 a-d]   **193     Constitutional Issues**  
**1553.10 Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment**  
**1699    Conviction Cases—Miscellaneous Issues**  
 Business and Professions Code section 6102 (c), providing for summary disbarment of attorneys convicted of crimes meeting the criteria set forth in the statute, must be read in the context of the statutory scheme of the State Bar Act as a whole, which indicates the Legislature’s intent to defer to the Supreme Court’s inherent authority to judge each case on its merits and disbar or suspend pursuant to its own view of the record.
- [4]     **1512    Conviction Matters—Nature of Conviction—Theft Crimes**  
**1553.10 Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment**  
 A conviction for mail fraud (18 U.S.C. § 1341) involves intentional fraud within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)).
- [5 a, b]   **230.00   State Bar Act—Section 6125**  
**1553.10 Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment**  
 The practice of law includes not only performing services in court but also legal advice and counsel and the preparation of legal instruments and contracts. Where an attorney was convicted of mail fraud based on the attorney’s fraudulent creation of a separate corporation in order to obtain payment for legal work for clients which otherwise would have been performed by the attorney’s law firm, the crime was committed in the practice of law within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)).
- [6]     **582.10   Aggravation—Harm to Client—Found**  
**745.51   Mitigation—Remorse/Restitution—Declined to Find**  
**1553.10 Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment**  
 Where an attorney was convicted of mail fraud based on fraudulently billing an insurance company for services rendered on behalf of its insureds, the insureds, as the attorney’s clients, were victimized by the crime, and the crime therefore involved a client as a victim within the meaning of the summary disbarment statute (Bus. & Prof. Code § 6102 (c)). The attorney’s subsequent restitution to the insurance company, ordered as part of the attorney’s criminal sentence, did not negate the harm caused by the crime.
- [7]     **1091    Substantive Issues re Discipline—Proportionality**  
**1553.10 Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment**  
**1699    Conviction Cases—Miscellaneous Issues**  
 Before recommending to the Supreme Court that an attorney be summarily disbarred pursuant to Business and Professions Code section 6102 (c), the State Bar Court has a duty to analyze the record in light of the case law to assure that application of section 6102 (c) does not conflict with Supreme Court standards for disbarment. The State Bar Court will only order a hearing if Supreme Court precedent supports a lesser sanction than disbarment for the particular crime depending on circumstances which might be adduced at a disciplinary hearing.

- [8]      **1512      Conviction Matters—Nature of Conviction—Theft Crimes**  
          **1553.10 Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment**  
Where an attorney was convicted of mail fraud arising out of a scheme to defraud an insurance company which retained the attorney to defend its insureds, disbarment would be an appropriate sanction regardless of mitigating circumstances, due to the extremely serious nature of the misconduct and its direct connection with the practice of law.
- [9]      **101          Procedure—Jurisdiction**  
          **193          Constitutional Issues**  
          **194          Statutes Outside State Bar Act**  
          **1553.10 Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment**  
          **1699          Conviction Cases—Miscellaneous Issues**  
Rule 951(a), California Rules of Court, delegating certain powers to the State Bar Court regarding the discipline of attorneys convicted of crimes, limits the State Bar Court to recommending summary disbarment to the Supreme Court, rather than imposing it directly.
- [10]     **175          Discipline—Rule 955**  
          **1549          Conviction Matters—Interim Suspension—Miscellaneous**  
Where respondent had been interimly suspended following a criminal conviction, and had been ordered at that time to comply with rule 955, California Rules of Court, the State Bar Court did not recommend that he be required to comply with rule 955 again upon his disbarment.

ADDITIONAL ANALYSIS

**Discipline**

1610      Disbarment

## OPINION

PEARLMAN, P.J.:

This case arises from the criminal conviction of Steven J. Segall (respondent) of mail fraud (18 U.S.C. § 1341). The Office of Trial Counsel seeks summary disbarment by the State Bar Court under subdivision (c) of section 6102 of the California Business and Professions Code.<sup>1</sup> The California Supreme Court has not yet summarily disbarred an attorney pursuant to section 6102 (c). We have concluded that respondent should be summarily disbarred, but that authority to do so lies only with the Supreme Court. We therefore recommend to the Supreme Court that it summarily disbar respondent.

### PROCEDURAL HISTORY

In December 1989 the Office of Trial Counsel transmitted the original conviction documents to the State Bar Court, which, in turn, transmitted them to the Supreme Court in January 1990. [1a] On January 17, 1990, the Supreme Court ordered the respondent intermily suspended, noting that mail fraud is "a crime involving moral turpitude."<sup>2</sup> [1b - see fn. 2] Respondent has remained on interim suspension ever since.

Effective December 1, 1990, the Supreme Court delegated to the State Bar Court the authority to exercise statutory powers pursuant to Business and

Professions Code sections 6101 and 6102 with respect to the discipline of attorneys convicted of crimes (California Rules of Court, rule 951(a).) On July 19, 1991, the Office of Trial Counsel transmitted the documents evidencing the finality of respondent's criminal conviction to the State Bar Court. On July 26, 1991, we discharged the power delegated to us by the Supreme Court and issued an order directing the respondent to show cause why summary disbarment should not be recommended to the Supreme Court. Respondent's counsel filed a return to the order to show cause on August 20, 1991. The Office of Trial Counsel formally requested respondent's summary disbarment on August 21, 1991. Thereafter, we solicited briefs on several issues related to summary disbarment and heard oral argument on November 20, 1991. Post-argument briefs were thereafter filed and the matter was submitted for decision on December 6, 1991.

### FACTS

On June 30, 1989, respondent and his wife were charged by information with five felony counts of mail fraud. The charges included the following: "Beginning in or about January 1985 and continuing through in or about August 1988, defendants Steven Joseph Segall and Andrea Segall . . . knowingly participated in a scheme to defraud and to obtain money by means of false and fraudulent pretenses . . . Specifically, as part of the scheme to defraud, the defendants knowingly and willfully

1. Business and Professions Code section 6102 (c) provides in relevant part as follows: "After the judgment of conviction of an offense specified in subdivision (a) has become final . . . the Supreme Court shall summarily disbar the attorney if the conviction is a felony under the laws of California or of the United States which meets both of the following criteria: [¶] (1) An element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement. [¶] (2) The offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim."

2. [1b] The Supreme Court's classification of respondent's offense as a crime of moral turpitude followed well-settled precedent. (See *In re Utz* (1989) 48 Cal.3d 468, 482; *In the Matter of the Conviction of Beecroft* (Bar Misc. No. 4104) min. order filed October 25, 1978.) As of the date respondent was criminally charged, 18 United States Code section 1341 read as follows: "Whoever, having devised or intending to

devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both."

created and caused approximately 750 false invoices for legal services totalling \$350,000 to be processed for payment to the defendants' fictitious company 'Legal Research.' The defendants then caused the related payments for these invoices to be sent through the United States mails to their fictitious company and converted the money to their own personal use."

On August 14, 1989, Steven J. Segall pled guilty to the five felony counts. In his "Factual Basis for Guilty Plea," the respondent admitted that he:

- 1) had been employed as an "insurance claims litigation attorney" by a "Cigna Insurance Company affiliate law firm";
- 2) personally formed a company called "Legal Research";
- 3) referred legal research assignments from his firm to Legal Research without disclosing to the firm that he controlled Legal Research;
- 4) performed the legal research assignments referred to Legal Research while on the firm's payroll without disclosing to the firm that he was doing so; and
- 5) caused bills for the legal research to be sent to Cigna.

The guilty plea related to five specific invoices totaling \$2,113. (Information pp. 3-4.)

[2] In reviewing the record for purposes of determining the propriety of summary disbarment, we do not take into account language in the information unnecessary to the crime to which respondent pled guilty. (Cf. *In re Hallinan* (1954) 43 Cal.2d 243, 249-250.) We therefore cannot assume that respondent created 750 false invoices as alleged in the information from his plea of guilty to creating five false invoices, nor can we assume that the magnitude of the amount involved was \$350,000. However, certain additional undisputed facts are appropriate

for us to consider. Although respondent pled guilty only to obtaining five checks by fraudulent means over a period from October 25, 1985, through June 18, 1986, respondent was ordered to pay restitution "in the amount of \$254,000 or in some other figure set by the probation officer depending upon the outcome of any civil litigation arising from the events underlying this case." (*U.S. v. Segall* (U.S. District Court, C.D. Cal., No. CR-89-560), judgment and probation commitment order filed November 7, 1989.) At oral argument, in response to questions from this department, counsel stated that respondent does not dispute that the total sum billed by Legal Research to Cigna was in the range of \$300,000. Respondent also does not dispute that the time period over which the misconduct occurred exceeded two years.

## DISCUSSION

### The Scope of the Inquiry on the Issue of Summary Disbarment

One of the issues the parties were asked to address is whether our inquiry is limited to the criteria set forth in section 6102 (c) of the Business and Professions Code.<sup>3</sup> If so, then the undisputed fact that fraud was an element of the crime and the determination that the felonious offense was committed in the course of the practice of law or a client was a victim would result in automatic disbarment. If the Legislature did not intend to preclude judicial discretion, then we must also make an independent determination of the propriety of summary disbarment according to established Supreme Court precedent.

Respondent's counsel argue that section 6102 (c) is not binding on the Supreme Court, citing section 6087 and the historic authority of the California Supreme Court to have sole control over the discipline and disbarment of attorneys. (*Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300-301.) The examiner argues that section 6102 (c) expressly removes any discretion on the part of the Supreme

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3. Hereafter all references to sections shall be to the Business and Professions Code, unless otherwise specified.

Court and that, in any event, it precludes the exercise of any discretion by the State Bar Court.

[3a] We agree with respondent's counsel that the statutory scheme reveals the Legislature's intent to defer to the Supreme Court's inherent authority to judge each case on its merits and "disbar or suspend" pursuant to its own view of the record. We note, however, that in exercising that discretion the Supreme Court has always given great weight to Legislative enactments and State Bar rules implementing them, and has indicated its intent to follow section 6102 (c) in appropriate cases. (See, e.g., *In re Utz* (1989) 48 Cal.3d 468, 482.)

[3b] In adopting the State Bar Act, the Legislature itself recognized the inherent control of the Supreme Court over the admission, discipline, and reinstatement of attorneys in this state. (See, e.g., Bus. & Prof. Code, §§ 6066, 6075, 6077, 6082, 6087 and 6107.) Section 6087 provides, in part, as follows: "Nothing in this chapter shall be construed as limiting or altering the powers of the Supreme Court of this State to disbar or discipline members of the bar as this power existed prior to the enactment of Chapter 34 of the Statutes of 1927, relating to the State Bar of California."

In article 6 of the same chapter of the State Bar Act the Legislature specifically addressed the disciplinary authority of the courts, categorically stating: "6100. *Disbarment or Suspension.* For any of the causes provided in this article, arising after an attorney's admission to practice, he or she may be *disbarred or suspended* by the Supreme Court. *Nothing in this article limits the inherent power of the Supreme Court to discipline*, including to summarily disbar any attorney." (Emphasis added.)

[3c] The Legislature clearly intended section 6102 to be read in light of sections 6087 and 6100. (7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 94, pp. 146-147.) In so limiting the effect of this statutory scheme, the Legislature expressly recognized the separation of powers between the Supreme Court and the Legislature and did not wish to exceed its constitutional role.

Thirty years ago, in *Brotsky v. State Bar*, *supra*, 57 Cal.2d at pp. 300-301, the Supreme Court re-

viewed the role of the Legislature in the area of attorney discipline, and explained it as follows: "Historically, *the courts, alone, have controlled admission, discipline and disbarment of persons entitled to practice before them* [citations]." (*Id.* at p. 300, emphasis added.) The Court also stated that "In disciplinary matters (and in many of its other functions) [the State Bar] proceeds as an arm of this court. *If the Legislature had not recognized this fact, and made provision therefor, the constitutionality of those portions of the State Bar Act which provide for the admission, discipline and disbarment of attorneys could have been seriously challenged on the ground of legislative infringement on the judicial prerogative.*" (*Ibid.*, emphasis added.)

Nearly twenty years later, in *Hustedt v. Workers' Compensation Appeals Board* (1981) 30 Cal.3d 329, it was determined that a Labor Code provision granting the Workers' Compensation Appeals Board disciplinary power over attorneys appearing before it was an unconstitutional interference with the inherent power of the courts, and that it violated the constitutional doctrine of separation of powers embodied in article III, section 3 of the California Constitution. The Court stated, in part, as follows: ". . . [T]hat the discipline of attorneys is a judicial function, is undisputed. Article VI, section 1, of the California Constitution vests the judicial power of this state in the Supreme Court, Courts of Appeal, superior courts, municipal courts and justice courts. Since the 'courts are set up by the Constitution without any special limitations' on their power, they 'have . . . all the inherent and implied powers necessary to properly and effectively function as a separate department in our scheme of our state government. [Citations.]' [Citations.] [¶] In California, the power to regulate the practice of law, including the power to admit and to discipline attorneys, has long been recognized to be among the inherent powers of the article VI courts. Indeed, every state in the United States recognizes that the power to admit and to discipline attorneys rests in the judiciary. (Martyn, *Lawyer Competence and Lawyer Discipline: Beyond the Bar?* (1981) 69 Geo. L.J. 705, 707, fn 4.) 'This is necessarily so. An attorney is an officer of the court and whether a person shall be admitted [or disciplined] is a judicial, and not a legislative, question.' [Citations.]" (*Hustedt, supra*, 30 Cal.3d at pp. 336-337, fns. omitted.)

Nonetheless, in both *Brotsky* and *Hustedt*, the Supreme Court recognized the important role of the legislative police power, stating in *Hustedt* that despite the ultimate power of the Court: “Nevertheless, this court has respected the exercise by the Legislature, under the police power, of ‘a reasonable degree of regulation and control over the profession and practice of law . . .’ in this state. [Citations.] This pragmatic approach is grounded in this court’s recognition that the separation of powers principle does not command ‘a hermetic sealing off of the three branches of Government from one another.’ [Citation.] Although the doctrine defines a system of government in which the powers of the three branches are to be kept largely separate, it also comprehends the existence of common boundaries between the legislative, judicial, and executive zones of power thus created. [Citation.] Its mandate is ‘to protect any one branch against the overreaching of any other branch. [Citations.] [Citations.] [¶] . . . [¶] The standard for assessing whether the Legislature has overstepped its authority and thereby violated the separation of powers principle has been summarized as follows. ‘[T]he legislature may put reasonable restrictions upon constitutional functions of the courts provided they do not defeat or materially impair the exercise of those functions.’ [Citations.]” (*Id.* at pp. 337-338, emphasis added, fn. omitted.) “This principle, which was first recognized in California in 1850 [citation], has been reaffirmed on numerous occasions. [Citations.]” (*Id.* at p. 336, fn. 5.)

Similarly, in *Merco Construction Engineers v. Municipal Court* (1978) 21 Cal.3d 724, the Supreme Court stated: “We deem it established without serious challenge that legislative enactments relating to

admission to practice law are valid only to the extent they do not conflict with rules for admission adopted or approved by the judiciary. *When conflict exists, the legislative enactment must give way.*” (*Id.* at pp. 728-729, emphasis added.)

History of Business and Professions  
Code Section 6102

The predecessor of section 6102 was enacted in 1872.<sup>4</sup> Section 6102 itself was adopted in 1939<sup>5</sup> and amended in 1941.<sup>6</sup> Section 6102 historically used mandatory language for disbarment after criminal convictions involving moral turpitude. In 1955, section 6102 was again amended. (Stats. 1955, ch. 1190, § 2, p. 2201.) The effect of such amendment was summarized in *In re Smith* (1967) 67 Cal.2d 460, 462: “Prior to 1955, petitioner’s conviction of either grand theft or forgery would have resulted in his automatic disbarment. (Stats. 1939, ch. 34, p. 357.) In 1955 section 6102 was amended to do away with summary disbarment and, among other changes, to substitute the present language of the statute requiring disbarment or suspension ‘according to the gravity of the crime and the circumstances of the case.’ . . . Sponsored by the State Bar, the amendments give greater flexibility and in substance (a) affirm this court’s established policy of referring cases where the question of moral turpitude was doubtful upon the ‘record of conviction’ to the State Bar for hearing, report and recommendation [citations]; (b) provide a means of obtaining a better record than provided under the former law by the bare ‘record of conviction’ (which consists of indictment, information or complaint, pleas of guilty and other minute orders); (c) permit disciplinary investigation where

4. Code of Civil Procedure section 299 (enacted 1872, repealed 1939).

5. When enacted in 1939, section 6102 read as follows: “Upon the receipt of the certified copy of the record of conviction of an attorney of a crime involving moral turpitude, the court shall suspend the attorney until the judgment in the case becomes final. When a judgment of conviction becomes final, the court shall order the attorney disbarred. [¶] The other provisions of this article providing a procedure for the disbarment and suspension of an attorney do not apply to an attorney convicted of a crime involving moral turpitude, unless expressly made applicable.” (Stats. 1939, ch. 34, § 1, p. 357.)

6. In 1941 the first paragraph of section 6102 was amended to read, in pertinent part, as follows: “Upon the receipt of the certified copy of the record of conviction of an attorney of a crime involving moral turpitude, the court shall suspend the attorney until the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal. The court shall order the attorney disbarred when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence . . .” (Stats. 1941, ch. 1183, § 1, p. 2942.)

the crime itself does not involve moral turpitude [citations]; (d) remove the legislative mandate that disbarment is mandatory upon the final conviction of any crime involving moral turpitude; and (e) permit this court to take into account unusual situations even in the case of more serious crimes.”

The Supreme Court was not limited during this time by the lack of a legislative provision for summary disbarment. Thus, in *In re Hardeman*, S.F. 21997, a municipal court judge convicted of conspiracy to obstruct justice (Pen. Code, § 182(5)) and conspiracy to commit arson (Pen. Code, § 182(1)) was removed from the bench and disbarred by Supreme Court minute order issued December 7, 1966.

The Supreme Court also did not hesitate to use its inherent and plenary powers to avoid the operation of statutes that would have otherwise limited the Court in carrying out its disciplinary functions. For instance, in *Stratmore v. State Bar* (1975) 14 Cal.3d 887, an attorney’s misconduct occurred prior to his admission to practice. In defense, the attorney pointed to section 6100 which provides that the Court may suspend or disbar an attorney for specified causes “‘arising after his admission to practice.’” (*Id.* at p. 889, emphasis added.) Concluding that “‘a statute cannot limit the inherent power of the court,’” the Supreme Court suspended the attorney. (*Id.* at p. 890, quoting *In re Bailey* (1926) 30 Ariz. 407 [248 P. 29, 31]; *In re Bogart* (1973) 9 Cal.3d 743, 749; *Emslie v. State Bar* (1974) 11 Cal.3d 210, 230.)

The Supreme Court also specifically rejected the apparently mandatory use of the word “shall” in imposing discipline under former section 6102. The case of *In re Cooper* (1971) 5 Cal.3d 256 involved an attorney convicted of the crime of contempt which was classified as a crime which “may or not involve moral turpitude.” Under the circumstances, Cooper was found to have committed an act of moral turpitude. At that time, section 6102 provided that in such cases, the Court “shall” disbar or suspend the attorney. Yet, in *Cooper*, the Court ordered a public

reproval. Similarly, in the case of *In re Battin* (1980) 28 Cal.3d 231, 236, the attorney was convicted of the misuse of public funds, and the surrounding circumstances involved moral turpitude. Despite the provision of section 6102 appearing to call for mandatory suspension or disbarment, the Supreme Court exercised its inherent power and imposed a public reproval.

#### Supreme Court Cases Interpreting Business and Professions Code Section 6102 (c)

[3d] Effective January 1, 1986, statutory summary disbarment was legislatively restored. (Stats. 1985, ch. 453, § 15.) Although section 6102 (c) again appears to use mandatory language prescribing a fixed formula for requiring disbarment regardless of the circumstances, the Legislature, in also reenacting section 6100, clearly expressed its recognition that the Supreme Court retained ultimate authority to determine the appropriate discipline in any proceeding.<sup>7</sup>

In *In re Ford* (1988) 44 Cal.3d 810, the conviction was not transmitted to the Supreme Court by the Office of the State Bar Court with a recommendation that he be summarily disbarred because Ford was convicted of a violation of Penal Code section 506, embezzlement by fiduciary,<sup>8</sup> on January 23, 1985, prior to the effective date of section 6102 (c). The Office of Trial Counsel argued for disbarment at the hearing, citing as support for its position standard 3.3, Standards for Attorney Sanctions for Professional Misconduct (“standards”) (Trans. Rules Proc. of State Bar, div. V) which provides that “Final conviction of a felony defined by section 6102 (c) shall result in summary disbarment, irrespective of any mitigating circumstances.” In the Supreme Court, Ford argued that application of section 6102 (c) and/or standard 3.3 would have an illegal ex post facto effect. The Court said that although there was “an absence of an express legislative mandate” to make section 6102 (c) retroactively applicable, it was not “necessarily precluded.” (*Id.* at p. 816, fn. 6.) The

7. The operative language in Section 6100 expressly recognizing the inherent authority of the Supreme Court was enacted in 1951.

8. Ford misappropriated more than \$20,000 in life insurance proceeds that he collected as an attorney on behalf of the beneficiary, a minor.

Supreme Court had recently given similar retroactive effect to the guidance provided by the State Bar's adoption of the Standards for Attorney Sanctions for Professional Misconduct. (See *Kapelus v. State Bar* (1987) 44 Cal.3d 179, 198, fn. 14.) Ford was disbarred based on the complete record following hearing that had been presented to the Supreme Court on review.

In *In re Ewaniszyk* (1990) 50 Cal.3d 543, the Office of the State Bar Court transmitted a recommendation to the Supreme Court that Ewaniszyk be summarily disbarred, but the Supreme Court referred the case to the State Bar Court for hearing and recommendation as to discipline. Ewaniszyk had been convicted on October 12, 1984, "of two counts of felony grand theft, both of which arose out of misappropriation of client funds." (*Id.* at p. 544.) The theft totaled approximately \$11,000. A full hearing was conducted in which suspension was recommended followed by review by the former volunteer review department which recommended disbarment. Appearing before the Supreme Court, Ewaniszyk made the same ex post facto argument as Ford had with respect to section 6102 (c). Again, as in *Ford*, the State Bar contended that the Legislature must have intended retroactive effect on the grounds of public protection. The Supreme Court concluded that the "serious nature" of Ewaniszyk's misconduct warranted disbarment without reference to the summary disbarment provision of section 6102 (c). (*Id.* at p. 550.) In its discussion regarding the appropriate degree of discipline, the Court said that "*We also find guidance in the Standards for Attorney Sanctions for Professional Misconduct . . . [which] provide for summary disbarment upon a felony conviction for theft of client funds. (Std. 3.3.)*" (*Id.* at p. 549, emphasis added.) Justices Mosk and Broussard would have followed the hearing panel's recommendation of a one-year actual suspension and five years probation. Again, the Supreme Court did not summarily disbar Ewaniszyk prior to hearing, but disbarred him only in light of the record after a full evidentiary hearing.

In *In re Utz, supra*, 48 Cal.3d 468, Utz was disbarred after having been convicted of seven counts of mail fraud (18 U.S.C. § 1341) and two counts of using interstate transportation to defraud individuals

(18 U.S.C. § 2314), also crimes involving moral turpitude per se, in connection with a land fraud scheme. The Supreme Court noted that "In May 1986, this court issued petitioner an order to show cause why discipline should not be imposed. In response to the order, petitioner requested a hearing before the State Bar. In July 1986, we referred this matter to the State Bar . . ." (*Id.* at p. 478.) The referral order was made even though the State Bar Court recommended summary disbarment under section 6102 (c).

The Supreme Court concluded that the first part of the summary disbarment test was satisfied because petitioner's offenses required proof of specific intent to defraud, but that he did not commit the misrepresentations and abuses in the course of practicing law. "Petitioner's activities as an attorney were only circumstances related to his offenses. Therefore section 6102, subdivision (c) was an inappropriate basis for recommending disbarment." (*Id.* at p. 483, first emphasis original; second emphasis added.) The Court noted that most of petitioner's misrepresentations and abuses which resulted in his conviction occurred while he was lending credibility to the financial status of his partner as a credit reference and while he acted as a silent partner in a land sale project. Since the thrust of his misconduct was not committed in his capacity as attorney, the Court rejected the application of the second prong of section 6102 (c). Nonetheless, after carefully considering all of the mitigating and aggravating factors, the Court considered disbarment appropriate. (*In re Utz, supra*, 48 Cal.3d at p. 485.)

In *In re Basinger* (1988) 45 Cal.3d 1348, Basinger was disbarred following his conviction of grand theft of client trust account funds and law office operating funds. This matter was not recommended to the Supreme Court as eligible for summary disbarment by the Office of the State Bar Court, nor argued for at hearing in the State Bar Court by the Office of Trial Counsel, although when the matter came before the Supreme Court, the General Counsel of the State Bar argued for summary disbarment. The Court noted the existence of the summary disbarment provision of section 6102 (c), but quoted *Ford, supra*, 44 Cal.3d at p. 816, fn. 6, to the effect that "the same result obtains even if his mitigating evidence is consid-

ered.” (*In re Basinger, supra*, 45 Cal.3d at p. 358, fn. 3.) Thus, each of these potential summary disbarment cases was disposed of on a full record developed at trial. We therefore will address both the statutory criteria and the case law in assessing the propriety of summary disbarment without a State Bar Court trial.

#### Application of the Criteria for Summary Disbarment to the Instant Proceeding

Although some of respondent’s criminal conduct predated the effective date of section 6102 (c), respondent concedes that a substantial part of the criminal conduct for which he was convicted occurred after the effective date of section 6102 (c).<sup>9</sup> In his “Return to Order to Show Cause Re Discipline After Conviction of Crime,” respondent nevertheless requests that he not be summarily disbarred and that the review department exercise its discretion to refer the matter for hearing and a recommendation as to discipline pursuant to subdivisions (d) and (e) of section 6102. In addition to mentioning certain potential evidence in mitigation including remorse, rehabilitation, and medical, emotional, economic and family difficulties, he alleges that his criminal conduct was inconsistent with his good character. Respondent also claims that his activities as an attorney were only circumstantially related to his offenses, citing *In re Utz, supra*, 48 Cal.3d at pp. 481-483. He further claims that there was no loss either to “the insured clients,” i.e., Cigna’s insureds, or to his law firm, due to restitution.

Counsel for respondent state “[w]hether the crime was committed in the course of the practice of law or in a manner such that a client was a victim, generally cannot be determined by the record which establishes merely the fact of conviction.” (Emphasis added.) His counsel also argue that: 1) because *United States v. Frick* (5th Cir. 1979) 588 F.2d 531, 536 and *United States v. Love* (9th Cir. 1976) 535 F.2d 1152, 1158 hold that violation of 18 United States Code section 1341 may require only “reckless

indifference to the truth” rather than fraudulent intent, the respondent’s conviction for mail fraud lacks the necessary element of “specific intent to deceive, defraud, . . . or make . . . a false statement.” However, it was conceded at oral argument that respondent did not contend that his guilty plea was based on recklessness rather than specific intent.

The examiner argues that the statutory criteria for summary disbarment have been met. We agree. The respondent’s “Factual Basis for Guilty Plea” provides both the fact that the crime was one of intentional fraud committed in the practice of law and that a client was a victim.

[4] As to the intentional fraud aspect of respondent’s conviction of mail fraud, the Supreme Court’s discussion in *In re Utz, supra*, 48 Cal.3d at p. 482 conclusively establishes the presence of that element. We also find that the second element was satisfied.

[5a] As explained in *In re Utz, supra*, 48 Cal.3d 468, “Courts have generally defined the term [practice of law] as follows: ‘[t]he practice of law is the doing and performing of services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure. But in a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matters may or may not be pending in a court.’ [Citations.]” (*Id.* at p. 483, fn. 11.) Respondent stipulated that he performed the legal research assignments referred to Legal Research and caused the bills to be sent to Cigna while employed as a litigation attorney by Cigna’s affiliate law firm. Most of the misconduct by attorney Utz was nonlegal in nature—acting as a credit reference and a silent partner in a real estate fraud scheme. Utz’s activity contrasts with respondent’s whose very practice of law in performing legal research referred by Cigna to his undisclosed legal research

9. The effective date of the legislation providing for the current summary disbarment provision of section 6102 (c) was January 1, 1986. The charging information alleged that the scheme took place “[b]eginning in or about January 1985 and continuing

through in or about August 1988 . . . .” Respondent concedes that much of the conduct postdated the effective date of section 6102 (c).

company while on Cigna's law firm's payroll was fraudulent.

Respondent's conduct also contrasts with that of the respondent in *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96. Stamper embezzled funds from his law partnership in breach of his fiduciary duties as a partner, not as a lawyer, and his criminal conviction therefor was held by the Court of Appeal to be unrelated to the fact that he was an attorney. In the subsequent disciplinary proceeding, we agreed with the Court of Appeal's analysis of this issue, noting that no clients were affected, nor were any of the forged documents intended for dissemination. They were internal to the law firm and were created solely for the purpose of deceiving his partner.

[5b] Here, in contrast, respondent created a separate corporation for the purpose of fraudulently obtaining payment for legal work performed for clients, legal work that, presumably, if not farmed out, would have been performed by the law firm employing respondent. We cannot see any basis for concluding that this elaborate fraud was not perpetrated in the practice of law.

[6] Section 6102 (c) provides, as an alternative basis for summary disbarment, that the fraud be perpetrated in any manner such that a client was a victim, even if not perpetrated "in the course of the practice of law." We also reject respondent's argument that the insureds, as clients of respondent, were not victimized by the fact that Cigna was fraudulently billed for attorney's services performed on behalf of the insureds. Respondent argues that the insureds were never billed for the fraudulent research and Cigna received restitution. Respondent's reliance on *In the Matter of Stamper, supra*, 1 Cal. State Bar Ct. Rptr. 96 is misplaced. There, no clients were ever affected. We did not conclude there was no harm, but simply found in mitigation that the victimized business partner was not permanently harmed because Stamper voluntarily made full restitution to his partner before the crime ever came to light. Here, restitution ordered as part of respondent's criminal conviction does not negate harm, it demonstrates the magnitude of the economic harm which was only redressed by court order.

#### ANALYSIS OF THE SUPREME COURT STANDARDS FOR DISBARMENT

[7] Because we construe our duty to include assurance that application of section 6102 (c) does not conflict with Supreme Court standards for disbarment, we have also analyzed the record in light of the case law. Respondent's counsel argue that despite the statutory change, the Supreme Court has continued to balance all relevant factors including mitigating circumstances on a case-by-case basis. (See, e.g., *Sugarman v. State Bar* (1990) 51 Cal.3d 609, 618.) They, therefore, seek an opportunity for a trial to put on mitigating evidence in an effort to convince the court that disbarment is inappropriate under all of the circumstances. This is contrary to the very purpose of section 6102 (c)—to impose summary disbarment for certain categories of felonies without a hearing. The Legislature itself recognized that such a blanket rule might be deemed inappropriate in particular cases where the Supreme Court would likely exercise its inherent power not to disbar. Our interpretation of our duty in a case meeting the statutory criteria for summary disbarment is that we should only order a hearing if Supreme Court precedent supports a lesser sanction than disbarment for the particular crime depending on circumstances which might be adduced at a disciplinary hearing. [8] We conclude, after analyzing the relevant case law that not only does this case meet the statutory criteria for summary disbarment, it is also similar to other conviction-based attorney discipline cases in which the Supreme Court has disbarred the attorney regardless of mitigating factors due to the extremely serious nature of the misconduct and its direct connection with the practice of law. (See *In re Aquino* (1989) 49 Cal.3d 1122 [participating in sham marriage scheme to contravene immigration law]; *In re Lamb* (1989) 49 Cal.3d 239 [false personation of bar examinee]; *In re Rivas* (1989) 49 Cal.3d 794 [false statements made in documents regarding domicile by judicial candidate]; *In re Basinger, supra*, 45 Cal.3d 1348 [theft of client and partnership funds].)

As in *In re Lamb, supra*, 49 Cal.3d 239 and *In re Aquino, supra*, 49 Cal.3d 1122, Segall's misconduct cannot be considered aberrational given the elaborate nature of the scheme evident from the guilty plea. For purposes of this determination, we assume

that respondent might have very strong mitigating evidence. In the cases cited above, very substantial mitigation was offered to no avail. In fact, in *In re Aquino* the concurring opinion of three justices expressly stated that Aquino would “appear to be an excellent candidate for reinstatement” upon eligibility to apply six months following his disbarment. (*Id.* at p. 1134.) In *In re Rivas*, *supra*, 49 Cal.3d 794, the Court similarly noted that Rivas would soon be eligible to apply for reinstatement due to his lengthy interim suspension. (*Id.* at p. 802, fn. 8.) Here, too, respondent’s interim suspension allows him to be eligible to apply for reinstatement five years from the effective date of his interim suspension—February 16, 1995. (See rule 662, Trans. Rules Proc. of State Bar.) We have no basis for evaluating his chances of success. However, respondent would be gaining no benefit and incurring great expense if we were to allow him to proceed to a hearing only to conclude upon review of the entire record that the magnitude of his fraud in the course of his practice called for disbarment irrespective of mitigating circumstances.

#### APPROPRIATE DISPOSITION

Counsel for respondent argue that even if the State Bar Court considers summary disbarment appropriate, it does not have the power to impose summary disbarment directly, as urged by the Office of Trial Counsel, but only to recommend summary disbarment to the Supreme Court. In support they cite, among other authorities, rule 951(a) of the California Rules of Court: “The State Bar Court shall impose or recommend discipline in conviction matters *as in other disciplinary proceedings*.” (Emphasis added.) They also cite rule 952(a): “Unless otherwise ordered, if no petition for review is filed within the time allowed . . . as to a *recommendation* of the State Bar Court for disbarment or suspension of a member, . . . the *recommendation* of the State Bar Court shall be filed as an order of the Supreme Court . . . .” (Emphasis added.)

The examiner argues that the State Bar Court has been delegated the authority under section 6102 (c) to summarily disbar respondent by its own action. In support of her position, she cites to the first sentence of rule 951(a): “The State Bar Court shall exercise statutory powers pursuant to Business and

Professions Code section 6101 and 6102 with respect to the discipline of attorneys convicted of crimes.” [9] We agree with respondent’s counsel that rule 951(a), read as a whole, must be construed to limit the State Bar Court to recommending summary disbarment, rather than imposing it directly. The rules expressly contemplate recommendations in all other cases warranting suspension or disbarment and it would be anomalous to construe our authority in the case of summary disbarment to be greater than our general authority after a full evidentiary hearing is conducted. We believe that the Supreme Court did not delegate to us the power to summarily disbar, but merely the power to consider such issue in the first instance and either make a recommendation for summary disbarment or refer the matter for hearing.

#### FORMAL RECOMMENDATION

For the reasons stated above, we recommend to the Supreme Court that it summarily disbar Steven J. Segall from the practice of law. [10] As the respondent was interimly suspended by the Supreme Court effective February 16, 1990, and ordered to comply with rule 955 of the California Rules of Court within 30 and 40 days, respectively, from that date, we do not include a recommendation of compliance with rule 955. An award of costs in favor of the State Bar is recommended pursuant to Business and Professions Code section 6086.10.

We concur:

NORIAN, J.  
STOVITZ, J.