

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Apr-12-2016 10:54 am

Case Number: CPF-08-508880

Filing Date: Apr-12-2016 10:54

Filed by: SEAN KANE

Image: 05352009

ORDER

RICHARD SANDER et al VS. STATE BAR OF CALIFORNIA et al

001C05352009

Instructions:

Please place this sheet on top of the document to be scanned.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F I L E D
Superior Court of California
County of San Francisco

APR 12 2016

CLERK OF THE COURT

BY: *Alan K...*
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 305

RICHARD SANDER, JOE HICKS and the
CALIFORNIA FIRST AMENDMENT
COALITION,

Petitioners,

v.

STATE BAR OF CALIFORNIA and the
BOARD OF GOVERNORS OF THE STATE
BAR,

Respondents.

DWIGHT AARONS; CHARLENE
BELLINGER HONIG; PETER L. CARR, IV;
EUGENE CLARK-HERRERA; FRANCISCO
CORTES; REBECCA HALL; ANGEL
HORACEK; SARA JACKSON; ANDREAS
LUQUETTA; XOCHITL MARZUEZ;
LETITIA D. MOORE; ANTHONY J.
TOLBERT; ERIKA K. WOODS; ANGEL
HORACEK, BLACK WOMEN LAWYERS
ASSOCIATION OF LOS ANGELES, INC.;
JOHN M. LANGSTON BAR ASSOCIATION
OF LOS ANGELES; and DOE 1,

Intervenors.

Case No. CPF-08-508880

**ORDER DENYING RESPONDENTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Respondents State Bar of California and the Board of Governors of the State Bar (collectively
"State Bar"), joined by Intervenors, moved for judgment on the pleadings pursuant to Code of Civil

1 Procedure section 438. Petitioners opposed the motion. The motion came on for hearing on April 11,
2 2016 and appearances are as noted in the record. Having duly considered the matter, the Court denies the
3 State Bar's motion.

4 **REQUESTS FOR JUDICIAL NOTICE**

5 As a preliminary matter, the Court rules on Petitioners' requests for judicial notice as follows:

6 Petitioners' requests for judicial notice of the documents listed as numbers (1) through (15) are
7 GRANTED pursuant to Evidence Code sections 452, subd. (c), (d), or (h). *See* Petitioners' Request for
8 Judicial Notice in Support of Opposition to Respondents' Motion for Judgment on the Pleadings ("RJN"),
9 p. 1-2.

10 Petitioners' requests for judicial notice of the documents listed as numbers (16) through (19) are
11 DENIED. "Letters to individual legislators, including the bill's author, are not matters constituting
12 cognizable legislative history if they were not communicated to the Legislature as a whole." *Cequel III*
13 *Communications I, LLC v. Local Agency Formation of Comm'n of Nevada County* (2007) 149
14 Cal.App.4th 310, 326, n.3; Compare, *Borikas v. Alameda Unified School District* (2013) 214 Cal.App.4th
15 135, 154-57 (letters from supporters of the legislation constituted legislative history where Committee
16 Report on proposed bill discussed the concerns expressed by the supporters). Here, it does not appear that
17 the communications between the State Bar and staff members of the Legislature were communicated to
18 the Legislature as a whole. Thus, these communications do not constitute proper legislative history, and
19 are not matters subject to judicial notice. The Court also rejects Petitioners' argument that the Court
20 should take judicial notice of the documents numbered 16 through 19 on the grounds they constitute
21 judicial admissions. The statements, in and of themselves do not constitute admissions.

22 **I. BACKGROUND**

23 Petitioners filed a Petition for Writ of Mandate in 2008, seeking to compel the State Bar to provide
24 them with access to information contained in its bar admissions database, including applicants' bar exam
25 scores, law schools attended, grade point averages, Law School Admissions Test scores, and race, gender
26 or ethnicity information. The trial court denied the petition. The California Supreme Court reversed
27 holding that under a common law right of public access, there is sufficient public interest in the
28

1 information such that the State Bar is required to provide access to it if (1) the information can be
2 provided in a form that protects the privacy of applicants, and if (2) no countervailing interest outweighs
3 the public's interest in disclosure. *Sander v. State Bar* ("Sander") (2013) 58 Cal.4th 300, 304. The case
4 was remanded to the trial court for further proceedings on these two issues.

5
6 In the interim, in 2015, the California Legislature enacted Senate Bill 387 which, among other
7 things, in section 8, added Business and Professions Code section 6060.25 (hereafter "section 6060.25").

8 That section reads:

9 Notwithstanding any other law, any identifying information submitted by an applicant to
10 the State Bar for admission and a license to practice law and all State Bar admission
11 records, including, but not limited to, bar examination scores, law school grade point
12 average (GPA), undergraduate GPA, Law School Admission Test scores, race or ethnicity,
13 and any information contained within the State Bar Admissions database or any file or
14 other data created by the State Bar with information submitted by the applicant that may
15 identify an individual applicant, shall be confidential and shall not be disclosed pursuant to
16 any state law, including, but not limited to, the California Public Records Act (Chapter 3.5
17 commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

18 Following enactment of section 6060.25, the State Bar filed the instant Motion for Judgment on
19 the Pleadings, asserting that section 6060.25 absolutely prohibits the disclosure of the information sought
20 by Petitioners, and that this Court is no longer permitted to inquire whether the information can be
21 provided in an anonymous form, or whether there is a countervailing interest that outweighs the public's
22 interest in disclosure. Petitioners do not dispute that section 6060.25 should be applied here. However,
23 Petitioners contend that section 6060.25 prohibits disclosure only of identifying information submitted by
24 an applicant, or State Bar admission records that may identify an individual applicant. Opp. p. 2. In other
25 words, Petitioners assert that section 6060.25 does not create an absolute bar to the disclosure of the
26 information sought in this case.

27 **II. LEGAL STANDARD**

28 Code of Civil Procedure section 438(c) provides that a motion for judgment on the pleadings may
be brought on the grounds that the complaint fails to state facts sufficient to constitute a cause of action.

1 The grounds for a judgment on the pleadings must appear on the face of the complaint or upon matters
2 judicially noticed.

3 **III. ANALYSIS**

4 As discussed below, the statutory language and legislative history of section 6060.25 demonstrates
5 that the statute prohibits disclosure only of identifying information submitted by a bar applicant and all
6 State Bar admission records that may identify any individual applicant. Accordingly, the State Bar's
7 motion is denied and this Court must still apply the test the Supreme Court set forth in *Sander* to
8 determine whether the information sought by Petitioners can be produced without disclosing any
9 identifying information.

10 **A. The Plain Language of Section 6060.25 Prohibits Disclosure Only of** 11 **Identifying Information.**

12 Petitioners contend that section 6060.25 does not create an absolute prohibition on the disclosure
13 of State Bar admission records because the phrase "that may identify an individual applicant" qualifies
14 each of the preceding terms, thereby precluding the disclosure of the information sought only to the extent
15 such information may identify an individual applicant. The State Bar contends, however, that the same
16 phrase only qualifies the preceding category of records identified in the statute, i.e. "...and any
17 information contained within the State Bar Admissions database or any file or other data created by the
18 State Bar with information submitted by the applicant," and that the remaining categories of State Bar
19 admissions records, i.e. bar examination scores, law school GPA, undergraduate GPA, LSAT scores, and
20 race or ethnicity, are absolutely confidential. For the reasons stated below, the Court agrees with
21 Petitioners.

22 The "last antecedent rule" of statutory construction provides that "qualifying words, phrases and
23 clauses are to be applied to the words or phrases immediately preceding and are not to be construed as
24 extending to or including others more remote." *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680
25 (citation omitted). There are two exceptions to the "last antecedent rule." The first exception provides
26 that "when several words are followed by a clause which is applicable as much to the first and other
27 words as to the last, the natural construction of the language demands that the clause be read as applicable
28 to all." *Id.* (citation omitted). The second exception provides that "where the sense of the entire act

1 requires that a qualifying word or phrase apply to several preceding words...[its application] will not be
2 restricted.” *Id.* at 681 (citation omitted).

3 The Court finds that both exceptions to the “last antecedent rule” are applicable in this case. First,
4 the phrase “that may identify an individual applicant” is equally applicable to all the preceding terms.
5 Second, the thrust of section 6060.25 is to proscribe disclosure of information or records “that may
6 identify an individual applicant,” and therefore applying such restriction to each of the preceding terms in
7 the statute is consistent with the statute’s purpose. The first clause of the statute provides that “any
8 *identifying information* submitted by an applicant . . . shall be confidential”. The second clause of the
9 statute provides that “any information contained within the state Bar Admissions database or any file or
10 other data created by the State Bar with information submitted by the applicant that may identify an
11 individual applicant, shall be confidential”. Thus, both clauses are restricted by precluding disclosure of
12 identifying information. Under the State Bar’s construction, only the last category of State Bar
13 admissions records specified in the statute are qualified by the phrase “that may identify an individual
14 applicant.” Even if the Court accepted this argument, which it does not, this construction ignores the
15 initial clause. Moreover, it makes little sense, to say that these two clauses are meant to qualify the
16 confidentiality of “information submitted by an applicant” and the last category of State Bar admission
17 records, but to not so qualify the confidentiality of the other categories of State Bar admission records that
18 appear in between these two clauses. Accordingly, the Court finds that a plain reading of the statute
19 reveals that section 6060.25 prohibits disclosure only of identifying information contained in State Bar
20 admission records.
21
22
23

24 **B. The Legislative History of Section 6060.25 Supports Petitioners’ Construction of**
25 **Section 6060.25**

26 For the reasons stated below, the Court finds that the legislative history behind section 6060.25
27 lends further support for Petitioners’ construction of the statute.

28 First, the legislative history behind section 6060.25 demonstrates a clear intent to increase

1 transparency within the State Bar while also protecting applicants' privacy expectations. Section 6060.25
2 was enacted as part of Senate Bill No. 387 (2015-2016 Regular Session) (hereafter "SB 387"), which
3 made the State Bar subject to the California Public Records Act ("PRA") and the Bagley-Keene Open
4 Meeting Act, thereby establishing a statutory right of access to records and meetings of the State Bar. §§
5 6026.7, 6026.11. As evidenced by language found throughout the bill's legislative history, the purpose of
6 SB 387 is to increase the overall transparency of the State Bar. *See* Declaration of David Snyder ("Snyder
7 Decl."), Exs. 3-15; RJN pp. 4-5. Under the State Bar's construction, section 6060.25 would completely
8 prohibit the disclosure of State Bar admission records, regardless of whether their production would
9 violate applicants' privacy rights or not. The Court finds that such a construction of the statute is wholly
10 inconsistent with the Legislature's purpose for SB 387. On the other hand, Petitioner's construction of
11 section 6060.25 is consistent with both the Legislature's goal of increasing transparency in the State Bar
12 and the need to protect applicants' privacy rights.

13
14
15 The Court rejects the State Bar's argument that the overall legislative intent behind SB 387 is
16 irrelevant to this Court's interpretation of section 6060.25. Under basic rules of statutory construction,
17 "the words of the statute should be given their ordinary and usual meaning *and should be construed in*
18 *their statutory context.*" *Borikas v. Alameda Unified School District* (2013) 214 Cal.App.4th 135, 146
19 (emphasis added). Thus, the exception created by section 6060.25 must be viewed in light of the overall
20 purpose of SB 387.

21
22 Second, the legislative history behind section 6060.25 demonstrates a clear intent to make SB 387
23 consistent with the Supreme Court's holding in *Sander*. *Sander* held that Petitioners have a common law
24 right of access to the records sought in this case, subject to a balancing test that takes into consideration
25 whether the information can be provided in a form that protects the privacy of applicants. *Sander, supra*,
26 58 Cal.4th at 304. The bill's Third Reading Floor Analysis states:

27
28 Given that the State Bar is already subject to a common law right of access to its records,
subjecting the State Bar to disclosure requirements under PRA should not entail a
substantial change when it comes to balancing individual privacy rights and the public

1 interest in disclosure. The Court in *Sander* set forth a balancing test between privacy and
2 public access by limiting the right of access to “de-identified” records in order to protect
3 the privacy interest of individual applicants...*Thus, an individual’s privacy rights should
be at least as protected under the PRA as under the common law’s balancing test.*

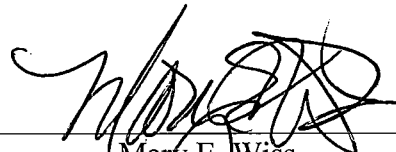
4 Snyder Decl. Ex. 13 (emphasis added). It is clear from the legislative history materials that
5 section 6060.25 was not intended to supersede the balancing test set forth in *Sander* by making the
6 records sought in this case absolutely confidential, as the State Bar contends; rather, it appears that section
7 6060.25, by stating that applicants’ privacy rights “should be at least as protected under the PRA as under
8 the common law,” was intended to codify the requirement set forth in *Sander* that no identifying
9 information in State Bar records be disclosed to the public. Moreover, the Court finds that nothing in
10 section 6060.25 clearly demonstrates an intent by the Legislature to depart from *Sander*. Accordingly, the
11 legislative history behind section 6060.25 demonstrates a clear intent by the Legislature to make SB 387
12 and section 6060.25 consistent with *Sander*, and Petitioners’ construction of section 6060.25 is consistent
13 with such intent.
14

15 **IV. CONCLUSION**

16 For the reasons set forth above, the State Bar’s Motion for Judgment on the Pleadings is denied.
17 Because both the plain language and legislative history of section 6060.25 suggest that only identifying
18 information contained in State Bar admission records are confidential, this Court must still determine
19 whether the information sought by Petitioners can be produced without disclosing any identifying
20 information as set forth by the Supreme Court in *Sander*.

21 IT IS SO ORDERED.

22 Dated: April 12, 2016

23 
24 _____
25 Mary E. Wiss
26 Judge of the Superior Court
27
28

Superior Court of California
County of San Francisco

RICHARD SANDER, et al.,
Petitioners

vs.

STATE BAR OF CALIFORNIA, et al,
Respondents

Case Number: CPF-08-508880

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Sean Kane, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 12, 2016, I electronically served the ORDER DENYING RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS via File&ServeXpress® on the recipients designated on the Transaction Receipt located on the File&ServeXpress® website.

Dated: April 12, 2016

T. Michael Yuen, Clerk

By: Sean Kane
Sean Kane, Deputy Clerk