

# THE RECORDER

## State Bar disaster team overreaches

Richard Zitrin

**O**n Aug. 6, the Chevron refinery fire in Richmond billowed clouds of black smoke that could be seen across the bay. The next day, Richmond attorney Nick Haney arrived at his storefront office at 8 a.m. to discover a long line of prospective clients waiting. After giving some thought to whether he wanted to get involved, Haney decided he'd take on some clients if they had what he considered provable harm. He added some staff and put two handwritten signs in his storefront window saying "Chevron Fire Claims Here." By Aug. 8,



Haney's window displayed a printed sign saying "Chevron Claims Filed Here," and the line of people seeking Haney's services had gotten so long that his assistants had moved out to the sidewalk to speed up the intake process, "asking hopeful claimants to show proof they had seen a doctor," according to the Aug. 9 *San Francisco Chronicle*. Accompanying that *Chronicle* article, on the front page above the fold, was a picture of the line in front of Haney's office.

Later that day, the State Bar showed up.

While Haney attended to business in his Bolinas office, State Bar investigators from the Office of Trial Counsel, wearing identifying windbreakers, descended on the Macdonald Avenue corner that houses Haney's storefront. They went into the crowd lined up in front and handed out a flier on State Bar letterhead that said "Office of the Chief Trial Counsel/Enforcement," and was headed "IMPORTANT NOTICE." The notice ended like this:

"If you need a lawyer, consult the be-

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ginning of the 'Attorney' listings in the yellow pages for the names of State Bar certified lawyer referral services ... You may call the State Bar of California toll-free ... to obtain names of certified lawyer referral services or to report lawyer solicitation."

The investigators refused to speak with the press to explain their presence. So when they then physically entered Haney's office, it appeared at least on one news report that evening, KTVU, that the State Bar had "raided" Haney.

**By going inside Haney's storefront with TV cameras rolling — and by refusing to explain their presence or purpose to the press — the investigators not only interfered with Haney's attorney-client relationships, but gave the appearance, at least to some, of a mini-invasion.**

Haney told me later that at least a couple of clients asked him for their papers back, thinking that he was being investigated by the bar.

There is certainly an appropriate role for State Bar investigators at the scenes of disasters or in the halls of nearby hospitals. As the bar's flier itself states, California ethics rules "prohibit lawyers or others on behalf of the lawyer from:

- Soliciting clients at an accident scene, at a hospital, or on the way to a hospital.
- Soliciting clients who, because of their emotional, physical or mental state, are unable to exercise reasonable judgement [sic]."

State Bar ethics standards 1-400(3) and (4) say almost the exact same thing.

OTC has long sent out investigators to disaster scenes, according to State Bar deputy executive director Robert Hawley. Hawley asserts that there are no specific protocols, guidelines or limitations on the investigators' responsibilities beyond "educating the public," and notes that the investigators most often learn of disasters from media coverage. Although no particular person orders them into the field or gives them specific instructions, Hawley says the investigators who respond are the "most senior" people, implying that these folks know how to handle such situations.

But they don't know, at least in this case. The investigators didn't go to the disaster scene, but to the environs of the law office pictured in the newspaper. Although the *Chronicle* clearly stated that Haney's assistants were out on the sidewalk getting information from prospective clients, the investigators directly contacted the people in line. By going inside Haney's storefront with TV cameras rolling — and by refusing to explain their presence or purpose to the press — they not only interfered with Haney's attorney-client relationships, but gave the appearance, at least to some, of a mini-invasion. And that may have had a chilling effect on those seeking counsel, resulting in the collateral (albeit unintended) consequence of driving some people to participate in Chevron's own claims process rather than hiring their own lawyer.

Hawley says investigators "always ask for permission" when entering a hospital or "community center." But when asked whether they needed permission to hand out fliers to Haney's potential clients or even to enter his office, he said "no." When asked whether Haney's storefront qualified as an accident "scene," he argued that the term should be interpreted broadly, and that investigators should report to any "sites where solicitation was taking place." But while there were indications of "runners" for other lawyers handing out fliers across the street, the crowd in front of Haney's office was soliciting his services, not the other way around. When asked why the

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investigators failed to understand this. Hawley, who had touted their experience, noted that they are not lawyers.

How would the Office of Trial Counsel have responded? I don't know. I attempted first to communicate with chief trial counsel Jayne Kim or her special adviser, former San Mateo County district attorney James Fox, but got a call back from Hawley that he would be my "contact person."

**Haney has consistently insisted that in his 30 years of practice he has "never solicited a client" and never would. And there is no evidence that he did that here.**

Putting a sign in a storefront window that says "Chevron Claims Filed Here" is not unlawful advertising, and doesn't even fall within the definition of "solicitation" (Cal. Rule of Prof'l conduct 1-400(B)), much less an unlawful solicitation. Perhaps caution flags about Haney were raised at OTC because he's a solo practitioner with two offices and a Richmond storefront; he seemed to be signing up a high volume of clients; and his website sets forth 16 different kinds of injury cases he handles, from wrongful death to dog bites. But none of those

matters warrant discipline, nor do they — or should they — allow trial counsel investigators to apply any different standards to Haney than they would to a 1,000-lawyer downtown San Francisco firm.

For his part, Haney told KPIX-TV reporter Joe Vazquez that he was glad the investigators had responded to shoo away those handing out fliers for other lawyers; that may be unlawful solicitation. But he remains nonplussed at their affirmative acts involving him and his prospective clients. He has consistently insisted that in his 30 years of practice he has "never solicited a client" and never would. And there is no evidence that he did that here.

The investigators' actions are coupled with a cone of silence and opacity that has long surrounded OTC. Although they claim they protect lawyers under investigation, sometimes it seems they're just protecting themselves. Haney, upset and concerned when he learned that the investigators had been inside his office, called the bar and eventually got a call back from one of the investigators who had been at the scene. "Am I being investigated by the bar?" he asked. "I can't tell you that," said the investigator. When I asked Hawley the same thing, I got the same response: "We can't comment on specific investigations."

Maybe OTC lawyers need to develop some guidelines for these situations. At the least, it seems that they owe Nick Haney a phone call to tell him he's in the clear.

*The Recorder welcomes submissions to Viewpoint. Contact Vitally Gashpar at [vgashpar@alm.com](mailto:vgashpar@alm.com).*