



1 THE STATE BAR OF CALIFORNIA  
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FILED

OCT 28 2004

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

8 THE STATE BAR COURT  
 9 HEARING DEPARTMENT - LOS ANGELES

11 In the Matter of ) Case Nos. 03-O-01299, 03-O-01977,  
 12 KENDALL LEE BYRD, ) 03-O-02153, 03-O-05111, 04-O-10134,  
 13 No. 108173, ) 04-O-10136, 04-O-11400, 04-O-11838,  
 14 A Member of the State Bar. ) 04-O-11945, 04-O-12796, 04-O-12805

NOTICE OF DISCIPLINARY CHARGES

**NOTICE - FAILURE TO RESPOND!**

16 **IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE**  
 17 **TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR**  
 18 **IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR**  
 19 **DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN**  
 20 **INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE**  
 21 **PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE**  
 22 **ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF**  
 23 **THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO**  
 24 **PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR**  
 25 **DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO**  
 26 **ADDITIONAL DISCIPLINE.**

27 **STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN**  
 28 **RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.**

29 **IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY**  
 30 **THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF**  
 31 **ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE**  
 32 **PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED**  
 33 **BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION**  
 34 **WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE**  
 35 **BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE**  
 36 **ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE**  
 37 **ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON**



1 case to substitute himself into the case for Nishino. At no time did Respondent file a substitution  
2 of attorney in Joshua's case.

3 6. During that same telephone conversation, Cyndi informed Larinto that there was a  
4 status conference scheduled in Joshua's matter for March 8, 2002. Larinto assured Cyndi that  
5 Respondent would appear for the status conference.

6 7. On or about March 8, 2002, Respondent failed to appear for the regularly scheduled  
7 status conference in Joshua's case. Joshua was present at the status conference and the Court  
8 continued the matter to May 10, 2002. That day, Cyndi telephoned Larinto and informed her of  
9 the continuance of the status conference. Larinto again assured her that Respondent would be  
10 present in Court for that status conference.

11 8. In or about April 2002, Cyndi began to receive notices from opposing counsel in  
12 Joshua's case that they were going to file a Motion to Dismiss the case due to Respondent's  
13 failure to provide the responses to discovery. Cyndi forwarded each notice to Respondent's  
14 office either by facsimile at the facsimile number which Respondent gave her or by mail to the  
15 address Respondent gave her which was Respondent's membership records address.

16 9. On or about April 17, 2002, opposing counsel in Joshua's case filed a Motion to  
17 Compel Discovery Responses and the Court scheduled a hearing for May 16, 2002. Cyndi  
18 informed Larinto of this date and she assured Cyndi that Respondent would take care of it. In or  
19 about early May 2002, Cyndi stopped by Respondent's office to inquire regarding the status of  
20 the case. Respondent confronted her regarding the discovery that had not been answered. Cyndi  
21 had not received any discovery, so Respondent gave her the discovery requests and she answered  
22 the requests that day in Respondent's office. Respondent informed Cyndi that the discovery  
23 responses would be sent overnight to opposing counsel's office.

24 10. On or about May 10, 2002, Respondent failed to appear for the continued status  
25 conference in Joshua's case. Joshua was present at the continued status conference and the  
26 Court scheduled an Order to Show Cause re Dismissal hearing for June 18, 2002. That day,  
27 Cyndi telephoned Larinto and informed her of the hearing date. Larinto again assured her that  
28 Respondent would be present in Court for the hearing.

1           11. On or about May 16, 2002, Respondent did not appear at the Motion to Compel  
2 hearing. The Court continued the matter to June 18, 2002 and opposing counsel gave notice to  
3 Respondent.

4           12. On or about June 18, 2002, Respondent did not appear at the scheduled hearing,  
5 authorizing Larinto to appear on behalf of Joshua. Larinto appeared with Joshua at the  
6 scheduled hearing. The Court granted opposing counsel's Motion to Compel and ordered Joshua  
7 to submit the responses in 30 days. Larinto was aware of the Court's Order.

8           13. On or about July 30, 2002, opposing counsel faxed a letter to Respondent at the  
9 facsimile number which Respondent gave her. The letter reminded Respondent of the Court's  
10 Order regarding discovery and that she had not received the discovery responses. That same  
11 day, Respondent telephoned opposing counsel and informed her that he would take care of the  
12 discovery responses immediately.

13           14. Although Cyndi provided Respondent with all the information necessary for  
14 Respondent to respond to the discovery propounded by opposing counsel in Joshua's case,  
15 Respondent failed to provide the discovery responses.

16           15. On or about September 6, 2002, opposing counsel filed a Motion to Dismiss Joshua's  
17 case and served Respondent with proper notice of the hearing on October 8, 2002.

18           16. On or about October 8, 2002, Respondent failed to appear for the Motion to Dismiss  
19 hearing in Joshua's case. Joshua's case was dismissed by the Court.

20           17. In or about October, 2002, Cyndi received notification from opposing counsel that  
21 the case had been dismissed. She immediately faxed the notification to Respondent at the  
22 facsimile number which he had given her. Later that day Cyndi spoke to Respondent by  
23 telephone and he assured her that he would file a Motion to Set Aside the Dismissal.

24           18. To date, Respondent has failed to file a Motion to Set Aside the Dismissal in  
25 Joshua's case. Respondent has failed to provide any legal services in Joshua's case.

26           19. By failing to appear at the March 8, 2002, May 10, 2002, May 16, 2002, June 18,  
27 2002 and October 8, 2002 hearings in Joshua's case; by failing to respond to opposing counsel's  
28 discovery requests in Joshua's case, failing to file a Motion to Set Aside the Dismissal of

1 Joshua's case, and failing to provide any legal services to Joshua, Respondent intentionally,  
2 recklessly or repeatedly failed to perform legal services with competence.

3 COUNT TWO

4 Case No. 03-O-01299  
5 Rules of Professional Conduct, Rule 1-300(A)  
6 [Aiding the Unauthorized Practice of Law]

7 20. Respondent wilfully violated Rules of Professional Conduct, rule 1-300(A), by  
8 aiding a person or entity in the unauthorized practice of law, as follows:

9 21. The allegations of paragraphs 3 through 18 are incorporated by reference.

10 22. By allowing Larinto to appear in court on behalf of Joshua, Respondent wilfully  
11 aided a person or entity in the unauthorized practice of law.

12 COUNT THREE

13 Case No. 03-O-01299  
14 Business and Professions Code section 6068(m)  
15 [Failure to Inform Client of Significant Development]

16 23. Respondent wilfully violated Business and Professions Code section 6068(m), by  
17 failing to keep a client reasonably informed of significant developments in a matter in which  
18 Respondent had agreed to provide legal services, as follows:

19 24. The allegations of paragraphs 3 through 18 are incorporated by reference.

20 25. Respondent was given notice by opposing counsel at his membership records address  
21 of the dismissal of Joshua's complaint by the Court on October 8, 2002.

22 26. At no time did Respondent inform Cyndi or Joshua of the Court's decision to dismiss  
23 Joshua's case.

24 27. By failing to inform Cyndi or Joshua that the Court had dismissed Joshua's case,  
25 Respondent failed to keep a client reasonably informed of significant developments in a matter  
26 in which Respondent had agreed to provide legal services.

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COUNT FOUR

Case No. 03-O-01299  
Rules of Professional Conduct, rule 3-700(A)(2)  
[Improper Withdrawal From Employment]

28. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(A)(2), by failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, as follows:

29. The allegations of paragraphs 3 through 18 are incorporated by reference.

30. By failing to appear at the March 8, 2002, May 10, 2002, May 16, 2002, June 18, 2002 and October 8, 2002 hearings in Joshua's case; by failing to respond to opposing counsel's discovery requests in Joshua's case and failing to file a Motion to Set Aside the Dismissal of Joshua's case, Respondent effectively withdrew from representation of Joshua.

31. At no time did Respondent inform Cyndi or Joshua that he was withdrawing from employment in Joshua's case.

32. By failing to provide the necessary services with respect to Joshua's case, and failing to inform Cyndi or Joshua of his intent to withdraw from employment, Respondent wilfully failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client.

COUNT FIVE

Case No. 03-O-01299  
Business and Professions Code section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

33. Respondent wilfully violated Business and Professions Code section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:

34. On or about April 1, 2003, the State Bar opened an investigation, case number 03-O-01299, pursuant to a complaint filed by Cyndi and Joshua Whipple (the "Whipple matter").

35. On or about June 19, 2003, State Bar Investigator Lisa Foster wrote to Respondent regarding the Whipple matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar membership records address. The letter was properly

1 mailed by first class mail, postage prepaid, by depositing for collection by the United States  
2 Postal Service in the ordinary course of business. The United States Postal Service did not  
3 return the investigator's letter as undeliverable or for any other reason.

4 36. The investigator's letter requested that Respondent respond in writing to specified  
5 allegations of misconduct being investigated by the State Bar in the Whipple matter by June 30,  
6 2003. Respondent did not respond to the investigator's letter or otherwise communicate with the  
7 investigator.

8 37. On or about July 15, 2003, State Bar Investigator Alma Cueto wrote to Respondent  
9 regarding the Whipple matter. The investigator's letter was placed in a sealed envelope correctly  
10 addressed to Respondent at his State Bar membership records address. The letter was properly  
11 mailed by first class mail, postage prepaid, by depositing for collection by the United States  
12 Postal Service in the ordinary course of business. The United States Postal Service did not  
13 return the investigator's letter as undeliverable or for any other reason.

14 38. The investigator's letter addressed Respondent's failure to respond to Investigator  
15 Lisa Foster's letter of June 19, 2003 and requested that Respondent respond in writing to  
16 specified allegations of misconduct being investigated by the State Bar in the Whipple matter by  
17 July 25, 2003. Respondent did not respond to the investigator's letter or otherwise communicate  
18 with the investigator.

19 39. By not providing a written response to the allegations in the Whipple matter or  
20 otherwise cooperating in the investigation of the Whipple matter, Respondent failed to cooperate  
21 in a disciplinary investigation.

22 COUNT SIX

23 Case No. 03-O-01977  
24 Rules of Professional Conduct, rule 3-110(A)  
[Failure to Perform with Competence]

25 40. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
26 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
27 follows:

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1           41. In or about August 2002, David Gurley (“Gurley”) employed Respondent to  
2 represent him in a criminal matter in the Riverside Superior Court entitled *People v. Gurley*, case  
3 number SWF000279 (the “Gurley matter”). On or about that same date, Gurley paid Respondent  
4 \$2,400 as advanced fees for his services. Respondent informed Gurley that he would file a  
5 Pitchess Motion for the filing of a false police report and the planting of drugs. Respondent also  
6 informed Gurley that he would file a Discovery Motion, a 1538.5 Suppression Motion and a  
7 99.5(A) and (B) Motion.

8           42. On or about August 22, 2002, Respondent appeared in the Riverside Superior Court  
9 on the Gurley matter and made an oral motion to relieve the Public Defender and be appointed as  
10 Gurley’s private counsel. The Court granted Respondent’s motion.

11           43. On or about December 13, 2002, at a regularly scheduled hearing in the Gurley  
12 matter, the Court scheduled a trial status conference to be held on December 27, 2002 in the  
13 Gurley matter. Respondent had notice of this date as he was in court for the December 13, 2002  
14 hearing.

15           44. On or about December 27, 2002, Respondent failed to appear at the trial status  
16 conference in the Gurley matter.

17           45. On or about March 21, 2003, at a regularly scheduled hearing in the Gurley matter,  
18 the Court scheduled another trial status conference for April 25, 2003 in the Gurley matter.  
19 Respondent had notice of this date as he was in court for the March 21, 2003 hearing.

20           46. On or about April 25, 2003, Respondent failed to appear at the trial status conference  
21 in the Gurley matter. The Court continued the conference to May 2, 2003 and gave Respondent  
22 proper notice at the address he had given the court, his State Bar membership records address.

23           47. On or about May 2, 2003, Respondent failed to appear at the continued trial status  
24 conference and the Court relieved Respondent as counsel for Gurley at Gurley’s request.

25           48. At no time did Respondent file a Pitchess Motion, a Discovery Motion, a  
26 Suppression Motion and/or a 99.5(A) and (B) Motion on behalf of Gurley in the Gurley matter.  
27 Respondent did not provide any legal services to Gurley other than appearing at the status  
28 conferences.



1 49. By failing to appear at the regularly scheduled hearings of December 27, 2002, April  
2 25, 2003 and May 2, 2003 in the Gurley matter, failing to file the motions he informed Gurley he  
3 would file on his behalf, and failing to perform any legal services on behalf of Gurley,  
4 Respondent intentionally, recklessly or repeatedly failed to perform legal services with  
5 competence.

6 COUNT SEVEN

7 Case No. 03-O-01977  
8 Rules of Professional Conduct, rule 3-700(A)(2)  
9 [Improper Withdrawal From Employment]

10 50. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(A)(2), by  
11 failing, upon termination of employment, to take reasonable steps to avoid reasonably  
12 foreseeable prejudice to his client, as follows:

13 51. The allegations of paragraphs 41 through 48 are incorporated by reference.

14 52. By failing to appear at the December 27, 2002, April 25, 2003 and May 2, 2003  
15 hearings and failing to file the Pitchess Motion, a Discovery Motion, a Suppression Motion  
16 and/or a 99.5(A) and (B) Motion on behalf of Gurley in the Gurley matter, Respondent  
17 effectively withdrew from representation of Gurley.

18 53. At no time did Respondent inform Gurley that he was withdrawing from  
19 employment in Gurley's case.

20 54. By failing to provide the necessary services with respect to Gurley's matter, and  
21 failing to inform Gurley of his intent to withdraw from employment, Respondent wilfully failed,  
22 upon termination of employment, to take reasonable steps to avoid reasonably foreseeable  
23 prejudice to his client.

24 COUNT EIGHT

25 Case No. 03-O-01977  
26 Business and Professions Code section 6068(i)  
27 [Failure to Cooperate in State Bar Investigation]

28 55. Respondent wilfully violated Business and Professions Code section 6068(i), by  
failing to cooperate and participate in a disciplinary investigation pending against Respondent, as  
follows:



1           62. On or about February 14, 2003, Respondent wrote to opposing counsel advising her  
2 that he was now representing Mackessy in the property settlement matter and if she wanted to  
3 discuss the matter, she should contact his paralegal, Scott Henderson.

4           63. On or about March 28, 2003, opposing counsel wrote to Henderson at Respondent's  
5 membership records address, requesting an explanation as to why the case had not been  
6 concluded. Neither Henderson nor Respondent replied to opposing counsel's letter. From on or  
7 about February 12, 2003 to on or about May 20, 2003, Respondent failed to take any substantive  
8 action to resolve Mackessy's matter.

9           64. On or about May 20, 2003, opposing counsel's paralegal telephoned Mackessy and  
10 informed her that an Ex Parte hearing had been scheduled for the next day regarding the  
11 settlement funds. The paralegal also informed Mackessy that her presence at the hearing was  
12 required and that she would be charged the costs of opposing counsel having to attend the  
13 hearing. The paralegal also telephoned Respondent's office and left the same message for  
14 Respondent.

15           65. That same day, Mackessy telephoned Respondent's office and spoke to Respondent.  
16 Respondent assured her that he would take care of it and if there were any costs from the Ex  
17 Parte hearing that he would cover them himself.

18           66. That same day, Mackessy received a telephone call from Kevin Spier, Esq. ("Spier")  
19 on behalf of Respondent to discuss the matter and whether she had a cashier's check to pay the  
20 judgment. Mackessy informed Spier that she had informed Henderson on February 12, 2003 at  
21 their first meeting that she had the cashier's check to pay the judgment.

22           67. By failing to take any actions to negotiate the settlement terms of the judgment  
23 against Mackessy and accomplish the payoff, which she employed Respondent's office to do,  
24 Respondent intentionally, recklessly, or repeatedly failed to perform legal services with  
25 competence.

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COUNT TEN

Case No. 03-O-02153  
Rules of Professional Conduct, Rule 1-300(A)  
[Aiding the Unauthorized Practice of Law]

68. Respondent wilfully violated Rules of Professional Conduct, rule 1-300(A), by aiding a person or entity in the unauthorized practice of law, as follows:

69. The allegations of paragraphs 61 through 66 are incorporated by reference.

70. By permitting Henderson to meet with Mackessy, give her legal advice, determine whether to accept her case, set legal fees and hold himself out as an attorney, Respondent wilfully aided a person or entity in the unauthorized practice of law.

COUNT ELEVEN

Case No. 03-O-02153  
Rules of Professional Conduct, rule 3-110(A)  
[Failure to Perform with Competence]

71. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

72. The allegations of paragraphs 61 through 66 are incorporated by reference.

73. By delegating authority to a non-attorney employee to meet with clients, assess their legal problems, give legal advice and to set legal fees; failing to be present during meetings with clients; and failing to adequately supervise employees, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence.

COUNT TWELVE

Case No. 03-O-02153  
Rules of Professional Conduct, rule 3-700(D)(2)  
[Failure to Refund Unearned Fees]

74. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

75. The allegations of paragraphs 61 through 66 are incorporated by reference.





1 88. The investigator's letter requested that Respondent respond in writing to specified  
2 allegations of misconduct being investigated by the State Bar in the Gibbs matter. Respondent  
3 did not respond to the investigator's letter or otherwise communicate with the investigator.

4 89. By not providing a written response to the allegations in the Gibbs matter or  
5 otherwise cooperating in the investigation of the Gibbs matter, Respondent failed to cooperate in  
6 a disciplinary investigation.

7 COUNT FIFTEEN

8 Case No. 04-O-10134  
9 Rules of Professional Conduct, rule 3-110(A)  
[Failure to Perform with Competence]

10 90. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
11 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
12 follows:

13 91. On or about December 13, 2001, Mitzi L. Miller ("Miller") employed Respondent on  
14 behalf of her son, Paul Wise ("Wise"), to represent him in a criminal matter filed against him in  
15 the Riverside County Superior Court, *People v. Alcaraz, et al.*, case number SWM004810  
16 ("Wise's criminal case").

17 92. On or about December 14, 2001, Miller paid Respondent \$1,500 in advanced  
18 attorney fees for Wise's representation. On or about March 15, 2002, Miller paid Respondent  
19 another \$1,500 in advanced attorney fees for Wise's representation. Miller informed  
20 Respondent that Wise's trial was scheduled to start on April 14, 2003.

21 93. On or about April 14, 2003, Respondent did not appear at the scheduled jury trial on  
22 behalf of Wise without informing the Court, Wise or opposing counsel that he would be unable  
23 to appear. The Court continued the trial to April 16, 2003. Respondent appeared on April 16,  
24 2003 for trial on behalf of Wise.

25 94. On or about April 17, 2003, Respondent appeared for the morning session of Wise's  
26 trial, but failed to appear for the afternoon session without notifying the Court, Wise or opposing  
27 counsel that he would be unable to appear. At that time, the Court continued the hearing to April  
28 21, 2003.





1 103. At no time did Respondent inform Wise or Miller that he was withdrawing from  
2 employment in Wise's criminal case or that he would not be filing an appeal.

3 104. By failing to provide the necessary services with respect to Wise's criminal case  
4 and failing to inform Wise or Miller of his intent to withdraw from employment, Respondent  
5 wilfully failed, upon termination of employment, to take reasonable steps to avoid reasonably  
6 foreseeable prejudice to his client.

7 COUNT SEVENTEEN

8 Case No. 04-O-10136  
9 Rules of Professional Conduct, rule 3-110(A)  
[Failure to Perform with Competence]

10 105. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
11 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
12 follows:

13 106. On or about August 21, 2003, Kevin Vogel ("Vogel") employed Respondent to  
14 represent him in a criminal matter filed against him in Riverside Superior Court, *People v.*  
15 *Vogel*, case number SWF005176 ("Vogel's criminal case"). At that time, Vogel paid  
16 Respondent \$3,000 in advanced legal fees to represent him in Vogel's criminal case.  
17 Respondent informed Vogel that his rights had been violated regarding the search in his criminal  
18 case and that Respondent would file the appropriate motions to suppress the evidence.

19 107. At no time did Respondent file any motions on behalf of Vogel in Vogel's criminal  
20 case or perform any legal services for Vogel.

21 108. On or about October 17, 2003, the Court continued the trial readiness conference in  
22 Vogel's criminal matter to October 31, 2003. The Court gave proper notice to Respondent.

23 109. On or about October 31, 2003, Respondent failed to appear at the continued trial  
24 readiness conference in Vogel's criminal case. At that time, the Court continued the conference  
25 to November 21, 2003 and served Respondent with proper notice.

26 110. On or about November 21, 2003, Respondent did not appear at the trial readiness  
27 conference.

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1 111. On or about January 29, 2004, another attorney, Reza Khanjun appeared on behalf  
2 of Vogel and made an oral motion to be substituted into Vogel's criminal case. The Court  
3 granted the motion.

4 112. By failing to perform any legal services of value on behalf of Vogel, failing to file  
5 the appropriate motions in Vogel's criminal case and failing to appear for scheduled hearings in  
6 Vogel's criminal matter, Respondent intentionally, recklessly, or repeatedly failed to perform  
7 legal services with competence.

8 COUNT EIGHTEEN

9 Case No. 04-O-11400  
10 Rules of Professional Conduct, rule 3-110(A)  
[Failure to Perform with Competence]

11 113. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
12 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
13 follows:

14 114. On or about February 20, 2004, Michael Gomez ("Gomez") contacted Respondent  
15 regarding representing his sons, Ian and Iseah, with respect to a potential criminal matter. Ian  
16 and Iseah had been seen by neighbors setting off home-made explosives with another juvenile,  
17 Ryan Hall ("Ryan"), and the police had been called to the scene. Respondent agreed to represent  
18 Ian and Iseah through a trial settlement conference for total fees of \$1,100. Gomez paid  
19 Respondent \$50 in cash that day.

20 115. That same day, at approximately 5:00 P.M. the police went to Gomez's home to  
21 question Ian and Iseah. Respondent was present throughout the questioning and identified  
22 himself as Ian and Iseah's attorney.

23 116. On or about March 5, 2004, Ian was arrested for possession of destructive devices.  
24 Gomez attempted unsuccessfully to reach Respondent at all the telephone numbers which  
25 Respondent had given him: Respondent's office, Respondent's home and Respondent's cell.  
26 Between March 5, 2004 and March 9, 2004, Gomez attempted to reach Respondent by telephone  
27 always leaving a message for Respondent to contact him immediately. Respondent failed to  
28 return Gomez's telephone calls.

1 117. On or about March 10, 2004, Gomez wrote a letter to Respondent correctly  
2 addressed to Respondent's membership records address. In the letter, Gomez inquired as to why  
3 Respondent was not returning his telephone calls and why Respondent did not inform them that  
4 Ian was to be arrested.

5 118. On or about March 11, 2004, Respondent contacted Gomez and informed him that  
6 Respondent knew on March 3, 2004 that the police were going to arrest Ian, but he had been too  
7 busy to inform Gomez of that fact and to return Gomez's telephone messages. Gomez  
8 terminated Respondent's services during that telephone conversation.

9 119. By failing to provide any further legal services to Ian other than being present when  
10 the police questioned him at his home, Respondent intentionally, recklessly or repeatedly failed  
11 to perform legal services with competence.

12 COUNT NINETEEN

13 Case No. 04-O-11400  
14 Business and Professions Code section 6068(m)  
[Failure to Respond to Client Inquiries]

15 120. Respondent wilfully violated Business and Professions Code section 6068(m), by  
16 failing to respond promptly to reasonable status inquiries of a client, as follows:

17 121. The allegations of paragraphs 114 through 118 are incorporated by reference.

18 122. By failing to respond to Gomez's telephone messages of March 5, 2004 through  
19 March 9, 2004, Respondent failed to respond to a client's reasonable status inquiries.

20 COUNT TWENTY

21 Case No. 04-O-11400  
22 Business and Professions Code section 6068(m)  
[Failure to Inform Client of Significant Development]

23 123. Respondent wilfully violated Business and Professions Code section 6068(m), by  
24 failing to keep a client reasonably informed of significant developments in a matter in which  
25 Respondent had agreed to provide legal services, as follows:

26 124. The allegations of paragraphs 114 through 118 are incorporated by reference.

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1 125. By failing to inform Gomez that Ian was going to be arrested prior to his arrest,  
2 Respondent failed to keep a client reasonably informed of significant developments in a matter  
3 in which Respondent had agreed to provide legal services.

4 COUNT TWENTY-ONE

5 Case No. 04-O-11400  
6 Rules of Professional Conduct, rule 3-310(B)(1)  
[Conflict - Relationship With a Party or Witness]

7 126. Respondent wilfully violated Rules of Professional Conduct, rule 3-310(B)(1), by  
8 accepting or continuing representation of a client without providing written disclosure to the  
9 client that Respondent has a professional relationship with a party or witness in the same matter,  
10 as follows:

11 127. The allegations of paragraphs 114 through 118 are incorporated by reference.

12 128. On or about February 23, 2004, Respondent met with Ryan Hall's grandmother and  
13 mother regarding his representation of Ryan in the same criminal matter. Respondent agreed to  
14 represent Ryan for a total fee of \$1,500. On or about February 25, 2004, Ryan's grandmother  
15 paid Respondent \$1,500 in advanced fees.

16 129. At no time did Respondent advise Gomez orally or in writing, that he met with  
17 Ryan's family or that he agreed to represent Ryan in the same criminal matter as he had agreed  
18 to represent Ian and Iseah.

19 130. By accepting and continuing representation of Ian in the criminal matter without  
20 disclosing in writing to Gomez that Respondent also accepted representation of Ryan in the same  
21 criminal matter, Respondent continued representation of a client without providing written  
22 disclosure to the client that Respondent had a professional relationship with a party or witness in  
23 the same matter.

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COUNT TWENTY-TWO

Case No. 04-O-11400  
Rules of Professional Conduct, rule 3-310(C)(1)  
[Potential Conflict - Representing Multiple clients]

131. Respondent wilfully violated Rules of Professional Conduct, rule 3-310(C)(1), by accepting representation of more than one client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client, as follows:

132. The allegations of paragraphs 114 through 118 and 128 through 129 are incorporated by reference.

133. By accepting representation of Ian and Ryan in the same matter without the informed written consent of each client, Respondent accepted representation of more than one client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client.

COUNT TWENTY-THREE

Case No. 04-O-11838  
Business and Professions Code section 6106  
[Moral Turpitude]

134. Respondent wilfully violated Business and Professions Code section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

135. In or about February 2002, the Alcaraz family employed Respondent to represent Alejandro Alcaraz ("Alcaraz") in a criminal matter filed against him in the Riverside Superior Court, *People v. Alcaraz*, case number RIF99759 ("Alcaraz's criminal matter"). At that time, Alcaraz's family paid Respondent \$3,000 in advanced fees.

136. In or about October 2002, Respondent informed Alcaraz's family that he needed to hire a private investigator to work on Alcaraz's criminal matter and requested an additional \$600 for the investigator. On or about that same date, Alcaraz's family paid Respondent the additional \$600.

137. In or about April 2003, during Alcaraz's trial, Alcaraz asked Respondent for information regarding the private investigator and what evidence the investigator had found and

1 what evidence they would be presenting. Respondent did not answer any of Alcaraz's questions  
2 regarding the investigator.

3 138. At no time did Respondent hire an investigator for Alcaraz's criminal matter.

4 139. By misrepresenting to Alcaraz and his family that he would be hiring a private  
5 investigator for Alcaraz's criminal matter and accepting an additional \$600 from Alcaraz's  
6 family to hire the private investigator, Respondent committed acts involving moral turpitude,  
7 dishonesty or corruption.

8 COUNT TWENTY-FOUR

9 Case No. 04-O-11945  
10 Business and Professions Code section 6106  
[Moral Turpitude]

11 140. Respondent wilfully violated Business and Professions Code section 6106, by  
12 committing an act involving moral turpitude, dishonesty or corruption, as follows:

13 141. On or about July 26, 2002, Robert Svidergol ("Svidergol") employed Respondent  
14 to represent him in a criminal matter filed against him in the Riverside Superior Court, *People v.*  
15 *Svidergol*, case number PEF007081 ("Svidergol's criminal matter"). On or about August 9,  
16 2002, Svidergol paid Respondent \$3,000 in advanced fees.

17 142. On or about September 15, 2002, Svidergol paid Respondent an additional \$1,500  
18 in advanced fees. On or about October 19, 2002, Svidergol paid Respondent an additional  
19 \$3,000 in advanced fees. On or about July 14, 2003, Svidergol paid Respondent an additional  
20 \$500 in advanced fees.

21 143. In or about July 2003, Respondent informed Svidergol's family that he needed an  
22 additional \$2,000 in advanced fees and that he needed to hire a private investigator to work on  
23 Svidergol's criminal matter and \$1,200 of that amount would be paid to the investigator. On or  
24 about that same date, Svidergol's family paid Respondent the additional \$2,000.

25 144. In or about November 2003, Svidergol learned that Respondent had not hired a  
26 private investigator for his criminal matter. In or about December 2003, Svidergol terminated  
27 Respondent's legal services and employed a new attorney, Wayne Rozenberg.

28 145. At no time did Respondent hire an investigator for Svidergol's criminal matter.

1 146. By misrepresenting to Svidergol and his family that he would be hiring a private  
2 investigator for Svidergol's criminal matter and accepting an additional \$1,200 from Svidergol's  
3 family to hire the private investigator, Respondent committed acts involving moral turpitude,  
4 dishonesty or corruption.

5 COUNT TWENTY-FIVE

6 Case No. 04-O-11945  
7 Rules of Professional Conduct, rule 3-700(D)(1)  
8 [Failure to Release File]

9 147. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(1), by  
10 failing to release promptly, upon termination of employment, to the client, at the request of the  
11 client, all the client papers and property, as follows:

12 148. The allegations of paragraphs 138 through 142 are incorporated by reference.

13 149. On or about January 30, 2004, Svidergol's new attorney, Wayne Rozenberg  
14 ("Rozenberg") requested Svidergol's file from Respondent on behalf of Svidergol orally in  
15 Court.

16 150. At no time did Respondent release Svidergol's file to Rozenberg or to Svidergol.

17 151. By not releasing the client file to Rozenberg or Svidergol at Rozenberg's request,  
18 Respondent failed, upon termination of employment, to release promptly to a client, at the  
19 request of the client, all the client's papers.

20 COUNT TWENTY-SIX

21 Case No. 04-O-12796  
22 Rules of Professional Conduct, rule 3-110(A)  
23 [Failure to Perform with Competence]

24 152. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
25 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
26 follows:

27 153. On or about February 24, 2004, Mary Connell ("Connell") met with Respondent's  
28 secretary, Rita Whisenand ("Whisenand"), at Respondent's office to discuss the possibility of  
filing for grandparent's rights on her behalf. After informing Connell what needed to be done on  
her case, Whisenand informed Connell that the fees would be \$1,000 for Respondent to take the

1 case. At that time, Connell paid Whisenand \$1,000 in advanced fees for Respondent.

2 Whisenand also informed Connell that it would be possible to have the filing fees waived with  
3 regard to the grandparents rights filing and requested several pay stubs from Connell.

4 154. On or about March 5, 2004, Connell gave Whisenand some of her original pay  
5 stubs as requested.

6 155. Between on or about March 8, 2004 and March 25, 2004, every time Connell called  
7 Respondent's office, she was only able to speak to Whisenand who assured her that Respondent  
8 was working on her case. On or about March 26, 2004, Connell called Respondent's office and  
9 was only able to speak to Whisenand again. Whisenand informed Connell that her case had been  
10 scheduled for May 26, 2004 and that Respondent would call her with all the details.

11 156. Between in or about April 2004 and July 2004, Connell attempted to reach  
12 Respondent, but was unable to contact him as his office had moved and whenever she went by  
13 the new office, it was closed. Connell left many messages for Respondent at the telephone  
14 number where she had contacted Whisenand, but Respondent did not return any of her messages.

15 157. On or about July 28, 2004, Connell called the Riverside County Superior Court to  
16 find out the status of her case. At the time, Connell was informed that there were no documents  
17 on file concerning her rights as a grandparent.

18 158. At no time did Respondent perform any legal services for Connell.

19 159. By failing to perform any legal services for Connell, Respondent intentionally,  
20 recklessly or repeatedly failed to perform legal services with competence.

21 COUNT TWENTY-SEVEN

22 Case No. 04-O-12796  
23 Rules of Professional Conduct, Rule 1-300(A)  
24 [Aiding the Unauthorized Practice of Law]

25 160. Respondent wilfully violated Rules of Professional Conduct, rule 1-300(A), by  
26 aiding a person or entity in the unauthorized practice of law, as follows:

27 161. The allegations of paragraphs 150 through 155 are incorporated by reference.  
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COUNT THIRTY

Case No. 04-O-12796  
Business and Professions Code section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

170. Respondent wilfully violated Business and Professions Code section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:

171. On or about July 1, 2004, the State Bar opened an investigation, case number 04-O-12796, pursuant to a complaint filed by Mary Connell (the “Connell matter”).

172. On or about July 16, 2004, State Bar Investigator Joy Nunley wrote to Respondent regarding the Connell matter. The investigator’s letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership records address. The letter was promptly mailed by first class mail, postage prepaid, by depositing for collection by the United State Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator’s letter as undeliverable or for any other reason.

173. The investigator’s letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Connell matter. Respondent did not respond to the investigator’s letter or otherwise communicate with the investigator.

174. By not providing a written response to the allegations in the Connell matter or otherwise cooperating in the investigation of the Connell matter, Respondent failed to cooperate in a disciplinary investigation.

COUNT THIRTY-ONE

Case No. 04-O-12805  
Rules of Professional Conduct, rule 3-110(A)  
[Failure to Perform with Competence]

175. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

176. On or about February 25, 2004, Sally Hall (“Sally”) and Pamela Hall (“Pamela”) met with Respondent’s secretary, Rita Whisenand (“Whisenand”), at Respondent’s office to

1 discuss a criminal matter involving their son and grandson, Ryan Hall ("Ryan"), and two other  
2 boys, Ian Gomez ("Ian") and Iseah Gomez ("Iseah"). Whisenand informed Sally and Pamela  
3 that she and Respondent knew about the incident involving the boys, because Respondent and  
4 Ian and Iseah's father were friends. Whisenand informed Sally and Patricia that this was not a  
5 concern and that the fee for Respondent to handle Ryan's case would be \$1,500. At that meeting  
6 Sally and Pamela gave Whisenand \$1,500 in advanced fees for Respondent to handle Ryan's  
7 case.

8 177. On or about February 27, 2004, Respondent called Sally and briefly discussed the  
9 matter with her. At that time, Respondent told Sally he would appear in Court on March 2, 2004  
10 on Ryan's behalf.

11 178. On or about March 2, 2004, Respondent appeared in Court on behalf of Ryan. The  
12 Court scheduled a probation meeting for March 3, 2004. Respondent was aware of this date.

13 179. On or about March 3, 2004, Respondent failed to appear in Court for the scheduled  
14 probation meeting on behalf of Ryan. The hearing was conducted without Ryan having counsel  
15 present.

16 180. That same day, Sally called Respondent at his office, but only was able to speak to  
17 Whisenand. Sally left a message with Whisenand for Respondent to call her back.

18 181. On or about March 4, 2004, Sally wrote to Respondent at his membership records  
19 address terminating his services and requesting a refund. Additionally, Pamela advised  
20 Respondent by telephone that she had employed another attorney for Ryan to replace  
21 Respondent.

22 182. By failing to appear in court for the probation hearing and failing to perform any  
23 legal services for Ryan, Respondent intentionally, recklessly or repeatedly failed to perform  
24 legal services with competence.

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1 COUNT THIRTY-TWO

2 Case No. 04-O-12805  
3 Rules of Professional Conduct, rule 3-310(B)(1)  
4 [Conflict - Relationship With a Party or Witness]

5 183. Respondent wilfully violated Rules of Professional Conduct, rule 3-310(B)(1), by  
6 accepting or continuing representation of a client without providing written disclosure to the  
7 client that Respondent has a professional relationship with a party or witness in the same matter,  
8 as follows:

9 184. The allegations of paragraphs 114 through 118 and 173 through 178 are  
10 incorporated by reference.

11 185. At no time did Respondent disclose orally or in writing to Sally or Pamela that he  
12 was representing Ian and Iseah in the same criminal matter.

13 186. By accepting and continuing representation of Ryan in the criminal matter without  
14 disclosing in writing to Sally or Pamela that Respondent had been contacted by Michael Gomez  
15 and was representing Ian and Iseah in the same criminal matter, Respondent accepted  
16 representation of a client without providing written disclosure that he had a professional  
17 relationship with a party or witness in the same matter.

18 COUNT THIRTY-THREE

19 Case No. 04-O-12805  
20 Rules of Professional Conduct, rule 3-310(C)(1)  
21 [Potential Conflict - Representing Multiple clients]

22 187. Respondent wilfully violated Rules of Professional Conduct, rule 3-310(C)(1), by  
23 accepting representation of more than one client in a matter in which the interests of the clients  
24 potentially conflicted without the informed written consent of each client, as follows:

25 188. The allegations of paragraphs 114 through 118 and 176 through 181 are  
26 incorporated by reference.

27 189. By accepting representation of Ian and Ryan in the same matter without the  
28 informed written consent of each client, Respondent accepted representation of more than one  
client in a matter in which the interests of the clients potentially conflicted without the informed  
written consent of each client.



1 198. By not providing a written response to the allegations in the Hall matter or  
2 otherwise cooperating in the investigation of the Hall matter, Respondent failed to cooperate in a  
3 disciplinary investigation.

4 **NOTICE - INACTIVE ENROLLMENT!**

5 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**  
6 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**  
7 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**  
8 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**  
9 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**  
10 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**  
11 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**  
12 **RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF**  
13 **PROCEDURE OF THE STATE BAR OF CALIFORNIA.**


14 **NOTICE - COST ASSESSMENT!**

15 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE,**  
16 **YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY**  
17 **THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF**  
18 **THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE**  
19 **SECTION 6086.10. SEE RULE 280, RULES OF PROCEDURE OF THE**  
20 **STATE BAR OF CALIFORNIA.**

21 Respectfully submitted,

22 THE STATE BAR OF CALIFORNIA  
23 OFFICE OF THE CHIEF TRIAL COUNSEL

24 Dated: October 28, 2004

25 By:   
26 SUZAN J. ANDERSON  
27 Deputy Trial Counsel  
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**DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 03-O-01299 et al**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that 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 Los Angeles, on the date shown below, a true copy of the within

**NOTICE OF DISCIPLINARY CHARGES**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7160 3901 9844 3982 3625, at Los Angeles, on the date shown below, addressed to:

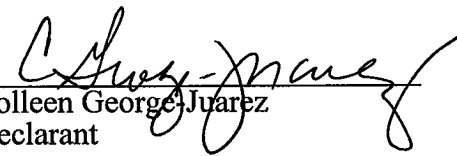
**Kendall Lee Byrd  
115 Juanita St.  
Hemet, CA 92543-4215**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: 10/28/04

SIGNED:   
Colleen George Juarez  
Declarant