

PUBLIC MATTER

ORIGINAL

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
MIKE A. NISPEROS, JR., No. 85495
CHIEF TRIAL COUNSEL
RICHARD A. PLATEL, No. 163455
ASSISTANT CHIEF TRIAL COUNSEL
SUZAN J. ANDERSON, No. 1660559
DEPUTY TRIAL COUNSEL
1149 South Hill Street
Los Angeles, California 90015-2299
Telephone: (213) 765-1209

FILED

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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos. 03-O-02563, 03-O-02566,
KENDALL LEE BYRD,) 03-O-02577, 03-O-02578, 03-O-03503,
No. 108173,) 04-O-11078, 04-O-11484
A Member of the State Bar.) NOTICE OF DISCIPLINARY CHARGES

NOTICE - FAILURE TO RESPOND!

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

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

IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH

1 **CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS**
2 **APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE**
3 **BAR COURT PROCEEDINGS.**

4 The State Bar of California alleges:

5 JURISDICTION

6 1. KENDALL LEE BYRD ("Respondent") was admitted to the practice of law in the
7 State of California on June 3, 1983, was a member at all times pertinent to these charges, and is
8 currently a member of the State Bar of California.

9 GENERAL BACKGROUND

10 2. At all times pertinent hereto, Respondent maintained a client trust account at Bank of
11 America, account number 16648-05420 ("Respondent's CTA").

12 COUNT ONE

13 Case No. 03-O-02563
14 Business and Professions Code section 6106
15 [Moral Turpitude]

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

18 4. In or about January 2003 and February 2003, Respondent repeatedly issued checks
19 drawn upon Respondent's CTA against insufficient funds, including:

20	CHECK	CHECK	DATE	BANK	ACCOUNT
21	<u>NUMBER</u>	<u>AMOUNT</u>	<u>PRESENTED</u>	<u>ACTION</u>	<u>BALANCE</u>
22	1072	\$ 26.00	1/22/03	Paid NSF	\$19.56
23	1073	268.46	2/3/03	Ret'd NSF	1.56
24	1075	127.00	2/4/03	Ret'd NSF	29.56

25 5. Respondent issued the checks set forth above when he knew or in the absence of gross
26 negligence should have known that there were insufficient funds in Respondent's CTA to pay
27 them.

28 6. By repeatedly issuing checks drawn upon Respondent's CTA when he knew or should
have known that there were insufficient funds in the account to pay them, Respondent committed
acts involving moral turpitude, dishonesty or corruption.

1 COUNT TWO

2 Case No. 03-O-02563
3 Rules of Professional Conduct, rule 4-100(A)
[Commingling Personal Funds in Client Trust Account]

4 7. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by
5 depositing or commingling funds belonging to Respondent in a bank account labeled "Trust
6 Account," "Client's Funds Account" or words of similar import, as follows:

7 8. The allegations of paragraphs 4 and 5 are incorporated by reference.

8 9. During the period of in or about January 2003 and February 2003, Respondent did not
9 promptly remove funds which he had earned as fees from Respondent's CTA as soon as his
10 interest in the funds became fixed and, instead, left his fees in Respondent's CTA for the
11 payment of office expenses as needed.

12 10. In or about February 2003, Respondent issued a check drawn upon Respondent's
13 CTA to pay his office expenses: check number 1073 in the amount of \$268.46, payable to Hemet
14 Valley Glass to fix a broken door at Respondent's office.

15 11. By leaving his fees in Respondent's CTA for withdrawal as needed to pay office
16 expenses, Respondent commingled funds belonging to Respondent in a client trust account.

17 COUNT THREE

18 Case No. 03-O-02566
19 Business and Professions Code section 6106
[Moral Turpitude]

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

22 13. In or about January 2003 and February 2003, Respondent repeatedly issued checks
23 drawn upon Respondent's CTA against insufficient funds, including:

24	CHECK	CHECK	DATE	BANK	ACCOUNT
25	<u>NUMBER</u>	<u>AMOUNT</u>	<u>PRESENTED</u>	<u>ACTION</u>	<u>BALANCE</u>
26	1061	\$135.65	1/8/03	Paid NSF	\$18.36
27	1062	32.15	1/8/03	Paid NSF	18.36
28	1063	225.00	1/8/03	Paid NSF	18.36

20. By leaving his fees in Respondent's CTA for withdrawal as needed to pay office expenses, Respondent commingled funds belonging to Respondent in a client trust account.

COUNT FIVE

Case No. 03-O-02577
Business and Professions Code section 6106
[Moral Turpitude]

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

22. In or about March 2003, Respondent repeatedly issued checks drawn upon Respondent's CTA against insufficient funds, including:

CHECK	CHECK	DATE	BANK	ACCOUNT
<u>NUMBER</u>	<u>AMOUNT</u>	<u>PRESENTED</u>	<u>ACTION</u>	<u>BALANCE</u>
1100	\$300.00	3/25/03	Ret'd NSF	\$122.46
1108	320.00	3/25/03	Ret'd NSF	122.46

23. Respondent issued the checks set forth above when he knew or in the absence of gross negligence should have known that there were insufficient funds in Respondent's CTA to pay them.

24. By repeatedly issuing checks drawn upon Respondent's CTA when he knew or should have known that there were insufficient funds in the account to pay them, Respondent committed acts involving moral turpitude, dishonesty or corruption.

COUNT SIX

Case No. 03-O-02578
Business and Professions Code section 6106
[Moral Turpitude]

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

26. In or about April 2003, Respondent repeatedly issued checks drawn upon Respondent's CTA against insufficient funds, including:

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CHECK NUMBER	CHECK AMOUNT	DATE PRESENTED	BANK ACTION	ACCOUNT BALANCE
1113	\$500.00	4/11/03	Ret'd NSF	\$24.46
1114	97.50	4/11/03	Ret'd NSF	24.46
1122	3,000.00	4/28/03	Ret'd NSF	733.46

27. Respondent issued the checks set forth above when he knew or in the absence of gross negligence should have known that there were insufficient funds in Respondent's CTA to pay them.

28. By repeatedly issuing checks drawn upon Respondent's CTA when he knew or should have known that there were insufficient funds in the account to pay them, Respondent committed acts involving moral turpitude, dishonesty or corruption.

COUNT SEVEN

Case No. 03-O-02578
Rules of Professional Conduct, rule 4-100(A)
[Commingling Personal Funds in Client Trust Account]

29. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by depositing or commingling funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as follows:

30. The allegations of paragraphs 26 and 27 are incorporated by reference.

31. In or about April 2003, Respondent did not promptly remove funds which he had earned as fees from Respondent's CTA as soon as his interest in the funds became fixed and, instead, left his fees in Respondent's CTA for the payment of office expenses as needed.

32. In or about April 2003, Respondent issued a check drawn upon Respondent's CTA to pay his office expenses: check number 1114 in the amount of \$97.50, payable to A-1 Lock and Key to replace the locks on Respondent's office.

33. By leaving his fees in Respondent's CTA for withdrawal as needed to pay office expenses, Respondent commingled funds belonging to Respondent in a client trust account.

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1 COUNT EIGHT

2 Case No. 03-O-03503
3 Business and Professions Code section 6106
4 [Moral Turpitude]

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

7 35. In or about July 2003 and August 2003, Respondent repeatedly issued checks drawn
8 upon Respondent's CTA against insufficient funds, including:

9 <u>CHECK</u>	<u>CHECK</u>	<u>DATE</u>	<u>BANK</u>	<u>ACCOUNT</u>
<u>NUMBER</u>	<u>AMOUNT</u>	<u>PRESENTED</u>	<u>ACTION</u>	<u>BALANCE</u>
10 1139	\$800.00	7/11/03	Ret'd NSF	\$783.76
11 1145	75.00	8/4/03	Ret'd NSF	1.76

12 36. Respondent issued the checks set forth above when he knew or in the absence of
13 gross negligence should have known that there were insufficient funds in Respondent's CTA to
14 pay them.

15 37. By repeatedly issuing checks drawn upon Respondent's CTA when he knew or
16 should have known that there were insufficient funds in the account to pay them, Respondent
17 committed acts involving moral turpitude, dishonesty or corruption.

18 COUNT NINE

19 Case No. 03-O-03503
20 Rules of Professional Conduct, rule 4-100(A)
[Commingling Personal Funds in Client Trust Account]

21 38. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by
22 depositing or commingling funds belonging to Respondent in a bank account labeled "Trust
23 Account," "Client's Funds Account" or words of similar import, as follows:

24 39. The allegations of paragraphs 35 and 36 are incorporated by reference.

25 40. In or about August 2003, Respondent did not promptly remove funds which he had
26 earned as fees from Respondent's CTA as soon as his interest in the funds became fixed and,
27 instead, left his fees in Respondent's CTA for the payment of office expenses as needed.

41. In or about August 2003, Respondent issued a check drawn upon Respondent's CTA to pay his office expenses: check number 1145 in the amount of \$75, payable to PC Mobile for computer service at Respondent's office.

42. By leaving his fees in Respondent's CTA for withdrawal as needed to pay office expenses, Respondent commingled funds belonging to Respondent in a client trust account.

COUNT TEN

Case No. 04-O-11078
Rule of Professional Conduct 1-300(A)
[Aiding the Unauthorized Practice of Law]

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

44. On or about October 31, 2003, Dean and Jayne Wade (“the Wades”) met with Respondent’s legal secretary, Rita Whisenand (“Whisenand”), at Respondent’s law office, to discuss the preparation of documents for a mutual divorce. After discussing the divorce case with the Wades and advising them what they needed to do to proceed, Whisenand advised them that Respondent would charge them a flat fee of \$400.00 to prepare the divorce. At that time, the Wades paid Whisenand \$200 in advanced legal fees for Respondent to begin the preparation of the paperwork. Whisenand advised them that she would be doing all the paper work and filings and that Respondent would only check her work for errors to ensure the work was complete. As proof of payment, the Wades received a receipt from Whisenand, stating that the payment made by the Wades was only for legal typing.

45. On or about November 8, 2003, the Wades met with Whisenand once again at Respondent's office to sign Jayne's petition for dissolution and Dean's response. At that time, the Wades paid Whisenand an additional \$200.00 in advanced legal fees for Respondent, as the remaining balance of the fees. As proof of payment, the Wades received a receipt from Whisenand, stating that the payment made by the Wades was only for legal typing.

46. On or about November 14, 2003, Whisenand requested an additional \$305.00 to pay the filing fee for Dean's response. At that time, the Wades paid Whisenand an additional

1 \$305.00, but this time, Respondent's employee, Susan Gregoire ("Gregoire"), provided the
2 Wades with a receipt stamped, "Law Offices of Kendall L. Byrd". The receipt stated that the
3 payment was for a filing fee.

4 47. On or about January 9, 2004, Whisenand filed Jayne's petition for dissolution, in pro
5 per, in the Riverside County Superior Court and served Dean with the paperwork.

6 48. Between on or about January 9 and January 30, 2004, the Wades called Whisenand
7 requesting a status report on their case. However, Whisenand did not return their calls or
8 otherwise communicate with them.

9 49. On or about January 30, 2004, Whisenand finally filed Dean's response, in pro per, in
10 the Riverside County Superior Court and served Jayne with the paperwork.

11 50. On or about February 2, 2004, Jayne received a rejection notice from the Superior
12 Court of California, County of Riverside, notifying her that the documents Whisenand had
13 attempted to file were incomplete and were being rejected by the court. On or about the same
14 day, Jayne went to Respondent's office to inform Whisenand of the notification. Whisenand
15 assured Jayne that she would take care of it.

16 51. On or about March 8, 2004, the Wades went to Respondent's office to meet with
17 Whisenand to discuss the incomplete paperwork, but Whisenand failed to show up. While the
18 Wades were waiting for Whitseand to show up, Respondent called in to the office. At that time,
19 Respondent was informed by Gregorie of the situation regarding the Wades' divorce.
20 Respondent advised the Wades that the paperwork would be completed and filed by the end of
21 the day. At that time, the Wades orally requested a refund of the \$400 they had paid.

22 52. By allowing Whisenand to meet with the Wades; give legal advice about their
23 divorce matter; determine whether to accept their case; set the legal fees; and draft and file
24 documents on their behalf, Respondent wilfully aided a person or entity in the unauthorized
25 practice of law.

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1 COUNT ELEVEN

2 Case No. 04-O-11078
3 Rule of Professional Conduct 3-110(A)
[Failure to Perform with Competence]

4 53. Respondent wilfully violated Rule of Professional Conduct 3-110(A), by
5 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
6 follows:

7 54. The allegations of paragraphs 44 through 51 are incorporated by reference.

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

12 COUNT TWELVE

13 Case No. 04-O-11078
14 Rule of Professional Conduct 3-310(C)(1)
[Potential Conflict - Representing Multiple clients]

15 56. Respondent wilfully violated Rule of Professional Conduct 3-310(C)(1), by accepting
16 or continuing representation of more than one client in a matter in which the interests of the
17 clients potentially conflicted without the informed written consent of each client, as follows:

18 57. The allegations of paragraphs 44 through 51 are incorporated by reference.

19 58. At the time Whisenand undertook the Wades's divorce matter, Respondent was or
20 reasonably should have been aware that there was a potential conflict of interest between Jayne
21 and Dean Wade. Respondent failed to obtain informed written consent from either client.

22 59. By allowing Whisenand to undertake and continue with the Wades' divorce matter
23 and failing to obtain informed written consent from either of them, in which their interests
24 potentially conflicted, Respondent accepted representation of more than one client in a matter in
25 which the interests of the clients potentially conflicted without their informed consent.

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

62. At no time did Respondent refund to the Wades any portion of the \$400 in advanced fees paid by the Wades.

COUNT FOURTEEN

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

66. On or about March 5, 2004, Steel went to Respondent's office to employ him for her son's criminal case. Steel met with Rita Whisenand ("Whisenand"). At that time, Steel gave Whisenand \$1,000 in advanced attorney fees for Respondent to represent her son in the criminal case. Whisenand provided Steel with a receipt stating that the payment was for legal fees to Respondent. Steel signed a release to allow the Public Defender to release the documents with regard to her son's case to Respondent.

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1 office that day and informed Whisenand that she wanted a refund of the \$1,000. Whisenand
2 refused to give Steel a refund. Steel orally terminated Respondent's representation of her son.
3 Whisenand claimed that Steel could not terminate Respondent's services. At that time, Steel
4 also requested a copy of the release she had signed, but Whisenand asked her to return on March
5 8, 2004 to pick up a copy.

6 68. On or about March 8, 2004, Steel went to Respondent's law office pick up a copy of
7 the release. At that time, Whisenand told Steel that she could not find the file and that Steel had
8 to come back later. Steel left the office to run some errands. Thereafter, Steel called Whisenand
9 and this time Whisenand told Steel to come back to the office to pick up her copy of the release.
10 When Steel arrived at the office, she found a closed sign on the door.

11 69. On or about March 9, 2004, Steel wrote a letter to Respondent. In the letter, Steel
12 terminated Respondent's legal services, requested a copy of her file and requested a refund of
13 the \$1,000 she had paid. The letter was placed in a sealed envelope correctly addressed to
14 Respondent at his State Bar membership records address. The letter was properly mailed by first
15 class mail, postage prepaid, via the United States Postal Service. The United States Postal
16 Service did not return the letter as undeliverable or for any other reason.

17 70. On or about March 19, 2004, Whisenand sent Steel a letter on Respondent's letter
18 head. In the letter, Whisenand informed Steel that no refund would be issued and to pursue fee
19 arbitration.

20 71. At no time did Respondent perform any legal services for Steel or her son.
21 Respondent did not earn any portion of the \$1000 in advanced paid by Steel.

22 72. At no time did Respondent refund any portion of the \$1,000 in advanced attorney
23 fees paid by Steel.

24 73. By failing to refund to Steel the \$1,000.00, which he had not earned, Respondent
25 wilfully failed to refund earned fees.

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1 COUNT FIFTEEN

2 Case No. 04-O-11484
3 Rule of Professional Conduct 3-700(D)(1)
4 [Failure to Release File]

5 74. Respondent wilfully violated Rule of Professional Conduct 3-700(D)(1), by failing
6 to release promptly, upon termination of employment, to the client, at the request of the client,
7 all the client papers and property, as follows:

8 75. The allegations of paragraphs 65 through 72 are incorporated by reference.

9 76. At no time did Respondent release Steel's file, including the release signed by Steel,
10 to Steel or communicate with Steel how Steel could obtain the file and release.

11 77. By not releasing the client file to Steel, Respondent failed, upon termination of
12 employment, to release promptly to a client; at the request of the client, all the client papers.

13 NOTICE - INACTIVE ENROLLMENT!

14 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
15 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
16 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
17 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
18 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
19 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
20 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**
21 **RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF**
22 **PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

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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

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7160 3901 9844 3982 4172, at Los Angeles, on the date shown below, addressed to:

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

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.

SIGNED: Lupe Pacheco-Granados
Declarant