

ORIGINAL

PUBLIC MATTER

FILED

OCT 15 2004

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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

1 THE STATE BAR OF CALIFORNIA
2 OFFICE OF THE CHIEF TRIAL COUNSEL
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8 THE STATE BAR COURT

9 HEARING DEPARTMENT - LOS ANGELES

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11 In the Matter of) Case Nos. 04-O-13191, 04-O-14368
12 KENDALL LEE BYRD,)
13 No. 108173,) NOTICE OF DISCIPLINARY CHARGES
14 A Member of the State Bar.)

15 **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.

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 COUNT ONE

10 Case No. 04-O-13191
11 Rules of Professional Conduct, rule 3-110(A)
12 [Failure to Perform with Competence]

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

16 3. On or about December 16, 2004, criminal charges were filed against Frank Polanco
17 ("Polanco") in Riverside Superior Court, *The People of the State of California v. Frank Polanco*,
18 case number SWF002743. Polanco employed Timothy R. Casey, Esq. ("Casey") to represent
19 him with respect to the criminal charges. Casey's office is located in Westminster, California.

20 4. In or about May 2004, Polanco and Casey determined that Polanco should hire local
21 counsel due to the distance Casey was having to travel for each hearing.

22 5. On or about May 20, 2004, Casey met with Respondent and discussed the possibility
23 of Polanco employing Respondent to assist in negotiating Polanco's criminal case and appearing
24 at a regularly scheduled hearing on June 3, 2004 in Polanco's criminal case. Respondent agreed
25 to represent Polanco, negotiate his criminal case and appear at the June 3, 2004 hearing for a fee
26 of \$1000. At that meeting, Casey paid Respondent \$1000 on behalf of Polanco.

27 6. On or about May 22, 2004, Respondent met with Polanco and Casey and discussed
28 Respondent's appearance at the hearing on June 3, 2002, and the fact that a 977 Waiver of
29 Appearance had been filed on behalf of Polanco, which made Polanco's appearance at the

1 hearing not necessary as long as Respondent was there. Casey also informed Respondent which
2 Assistant District Attorney to contact to negotiate Polanco's criminal case.

3 7. On or about June 3, 2004, Respondent failed to appear at the scheduled hearing in
4 Polanco's criminal matter. Accordingly, the Court issued a bench warrant for Polanco.

5 8. At no time did Respondent contact the Assistant District Attorney to negotiate
6 Polanco's case.

7 9. By failing to perform the legal services for which he was hired, Respondent
8 intentionally, recklessly or repeatedly failed to perform legal services with competence.

9 COUNT TWO

10 Case No. 04-O-13191
11 Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

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

14 11. The allegations of paragraphs 3 through 8 are incorporated by reference.

15 12. On or about June 27, 2004, Casey forwarded correspondence to Respondent
16 requesting a refund of the fees he paid Respondent on behalf of Polanco. Casey's
17 correspondence was placed in a sealed envelope correctly addressed to Respondent's
18 membership records address. The letter was properly mailed by first class mail, postage prepaid,
19 by the United States Postal Service in the ordinary course of business. The United States Postal
20 Service did not return the letter as undeliverable or for any other reason. Respondent failed to
21 respond to Casey's letter and failed to refund the unearned fees.

22 13. By not refunding the \$1000 advance fee paid by Casey on behalf of Polanco,
23 Respondent failed to refund promptly any part of a fee paid in advance that had not been earned.

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Rules of Professional Conduct, rule 3-700(A)(2)
[Improper Withdrawal From Employment]

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Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar investigation]

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1 depositing for collection by the United States Postal Service in the ordinary course of business.
2 The United States Postal Service did not return the investigator's letters as undeliverable or for
3 any other reason.

4 22. The investigator's letters requested that Respondent respond in writing to specified
5 allegations of misconduct being investigated by the State Bar in the Polanco matter. Respondent
6 did not respond to the investigator's letters or otherwise communicate with the investigator.

7 23. By not providing a written response to the allegations in the Polanco matter or
8 otherwise cooperating in the investigation of the Polanco matter, Respondent failed to cooperate
9 in a disciplinary investigation.

10 COUNT FIVE

11 Case No. 04-O-14368
12 Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

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

16 25. On or about November 14, 2003, Jack Albertson ("Albertson") went to Respondent's
17 office and met with Rita Whisenand ("Whisenand"), Respondent's paralegal regarding
18 preparation of documents for his divorce. Whisenand informed Albertson that they could
19 prepare the documents for a fee of \$500. At that meeting Albertson paid Whisenand \$500 in
20 advanced fees for Respondent.

21 26. In or about March 2004, Albertson again went to Respondent's office to check on the
22 status of his divorce documents and Whisenand admitted that they had not yet prepared his
23 documents and would prepare them right away.

24 27. On or about March 15, 2004, Albertson went to Respondent's office, picked up his
25 divorce documents and attempted to file them with the Riverside Superior Court. The
26 documents were rejected by the Court as incomplete. That same day, Albertson took the
27 documents back to Whisenand and requested that the proper corrections be made. Whisenand
28 assured him that they would make the corrections.

28. In or about April 2004, Respondent called Albertson regarding his documents. Albertson requested the corrected copies. Respondent did not know if the documents had been corrected and informed Albertson that he usually charged \$1700 for divorce matters instead of the \$500 that Whisenand had quoted him and that Albertson needed to pay an additional \$1200 to receive his corrected documents. Albertson informed Respondent that he would not pay anything further and he just wanted his corrected documents.

29. To date, Albertson has not received his corrected divorce documents from Respondent.

30. By failing to perform the legal services for which he was hired, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence.

COUNT SIX

Case No. 04-O-14368
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

31. 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:

32. The allegations of paragraphs 25 through 29 are incorporated by reference.

33. In or about May 2004, Albertson called Respondent's office at the telephone number which Whisenand and Respondent had given him. Albertson first spoke with Whisenand and requested a refund of the fees he had paid Respondent. Whisenand then transferred him to Respondent and Albertson again requested a refund of the fees he paid Respondent. Respondent refused to speak further with Albertson and ended the telephone call.

34. To date, Albertson has not received a refund of the advanced fees he paid Respondent.

35. By not refunding the \$500 advance fee paid by Albertson, Respondent failed to refund promptly any part of a fee paid in advance that had not been earned.

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Case No. 04-O-14368
Rules of Professional Conduct, rule 3-700(A)(2)
[Improper Withdrawal From Employment]

36. 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:

38. The allegations of paragraphs 25 through 29 are incorporated by reference.

Respondent effectively withdrew from representation of Albertson.

41. By failing to provide the necessary services with respect to Albertson's matter, Respondent wilfully failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client.

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Case No. 04-O-14368
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar investigation]

42. 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:

44. On or about September 27, 2004, State Bar Investigator Joy Nunley wrote to Respondent regarding the Albertson 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 mailed by first class mail, postage prepaid, by depositing for collection by the

1 United States Postal Service in the ordinary course of business. The United States Postal Service
2 did not return the investigator's letter as undeliverable or for any other reason.

3 45. The investigator's letter requested that Respondent respond in writing to specified
4 allegations of misconduct being investigated by the State Bar in the Albertson matter.
5 Respondent did not respond to the investigator's letters or otherwise communicate with the
6 investigator.

7 46. By not providing a written response to the allegations in the Albertson matter or
8 otherwise cooperating in the investigation of the Polanco matter, Respondent failed to cooperate
9 in a disciplinary investigation.

10 **NOTICE - INACTIVE ENROLLMENT!**

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


20 **NOTICE - COST ASSESSMENT!**

21 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE,**
22 **YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY**
23 **THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF**
24 **THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE**
25 **SECTION 6086.10. SEE RULE 280, RULES OF PROCEDURE OF THE**
26 **STATE BAR OF CALIFORNIA.**

27 Respectfully submitted,

28 THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

Dated: October 15, 2004

By: 
SUZAN J. ANDERSON
Deputy Trial Counsel

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