



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. 160559
 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

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No. 04-O-14176
KENDALL LEE BYRD,)
No. 108173,) NOTICE OF DISCIPLINARY CHARGES
<u>A Member of the State Bar.</u>)

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 COUNT ONE

10 Case No. 04-O-14176
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. In or about December 2001, Robert Bohanon ("Bohanon") employed Respondent to
17 represent him in two lawsuits arising out of the same personal injury matter: one that Bohanon
18 wanted to file against Glen Wolsky ("Wolsky") and one Wolsky had filed against Bohanon. As
19 part of the fee agreement, Bohanon, who owned Hemet Discount Rent-A-Car, rented a car to
20 Respondent's girlfriend, valued at \$7,500 by both Respondent and Bohanon.

21 4. On or about December 6, 2001, Bohanon paid Respondent \$125 in advanced attorney
22 fees. On or about December 10, 2001, Bohanon paid Respondent an additional \$500 in
23 advanced attorney fees. On or about February 23, 2002, Bohanon paid Respondent an additional
24 \$500 in advanced attorney fees. On or about March 6, 2002, Bohanon paid Respondent \$235 for
25 filing fees. On or about March 2, 2002, Bohanon also paid Respondent \$1000 for the costs
26 associated in taking the deposition of Wolsky.

27 5. On or about March 7, 2002, Respondent filed a lawsuit on behalf of Bohanon entitled,
28 *Robert Bohanon, et al. v. Glen Wolsky, et al.* in the Riverside County Superior Court, case
29 number RIC371859.

6. On or about May 6, 2002, the Court issued an Order to Show Cause as to why Bohanon should not be sanctioned for the failure to file the proof of service of Defendants and set a hearing for June 10, 2002. The Court properly served notice of the Order to Show Cause hearing on Respondent at his State Bar membership records address, which was also Respondent's address of record with the Court.

7. On or about June 10, 2002, Respondent failed to appear for the Order to Show Cause hearing on behalf of Bohanon. The Court issued an Order to Show Cause why the matter should not be dismissed and scheduled the hearing on July 10, 2002. The Court properly served notice of the Order to Show Cause hearing on Respondent at his State Bar membership records address.

8. On or about July 10, 2002, Respondent appeared in Court on behalf of Bohanon. The Court dismissed the Order to Show Cause and set a status conference for July 17, 2002. Respondent received notice of the July 17, 2002 hearing date while he was in Court on July 10, 2002.

9. On or about July 17, 2002, Respondent failed to appear on behalf of Bohanon in Court at the scheduled status conference and the Court dismissed Bohanon's case against Wolsky. At no time thereafter did Respondent take any action to reinstate Bohanon's case against Wolsky.

10. By failing to appear at scheduled Court hearings of June 10, 2002 and July 17, 2002 and by allowing Bohanon's case against Wolsky to be dismissed and failing to take any action to reinstate it, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence.

COUNT TWO

Case No. 04-O-14176
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

11. 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:

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

1 13. From in or about September 2001 through February 2003, Bohanon represented
2 himself in the lawsuit entitled, *Glen Wolsky v. Robert Bohanon*, filed in Riverside County
3 Superior Court, case number RIC363349. During this time, an arbitration was held wherein the
4 award was against Bohanon. On or about December 18, 2002, Bohanon filed a Request for Trial
5 de Novo in pro per.

6 14. On or about February 3, 2003, Respondent filed a substitution of attorney
7 substituting himself into the case on behalf of Bohanon. At that time, Bohanon informed
8 Respondent of a status conference scheduled for February 5, 2003. Respondent assured
9 Bohanon that he would appear and that Bohanon would not need to appear.

10 15. On or about February 5, 2003, Respondent failed to appear in court on behalf of
11 Bohanon for the status conference. The Court continued the matter to March 18, 2003 and
12 properly served Respondent with notice of the date of the continued status conference at his
13 State Bar membership records address, which was also Respondent's address of record with the
14 Court.

15 16. On or about March 18, 2003, Respondent failed to appear in court on behalf of
16 Bohanon for the continued status conference. The Court issued an Order to Show Cause why the
17 Request for Trial de Novo should not be stricken and scheduled a hearing for April 22, 2003.
18 The Court properly served Respondent with notice of the date of the hearing at his State Bar
19 membership records address.

20 17. On or about April 22, 2003, Respondent failed to appear in court on behalf of
21 Bohanon for the Order to Show Cause hearing. The Court struck the Request for Trial de Novo
22 and told Wolsky to proceed to enter the arbitration award as a judgment. Wolsky's counsel
23 properly served Respondent with notice at his State Bar membership records address. At no
24 time did Respondent inform Bohanon that the Court had struck the Request for Trial de Novo.

25 18. On or about May 8, 2003, Respondent filed a Petition for Rehearing with the Court.
26 The Court rejected the Petition because Respondent utilized procedures for a Small Claims Case
27 when Bohanon's case was a Superior Court case. Thereafter, Respondent failed to take any
28 action to reinstate Bohanon's Request for Trial de Novo.

1 19. On or about July 14, 2003, Wolsky had the arbitration award entered as a Judgment
2 against Bohanon. Wolsky's counsel properly served notice of Entry of Judgement on
3 Respondent at his State Bar membership records address.

4 20. At no time did Respondent take the deposition of Wolsky.

5 21. By failing to appear at scheduled Court hearings of February 5, 2003; March 18,
6 2003; April 22, 2003 on behalf of Bohanon; by failing to file a proper Petition for Rehearing; by
7 allowing Bohanon's Request for Trial de Novo to be dismissed in Wolsky's case against
8 Bohanon and failing to take any action to reinstate it; and failing to take Wolsky's deposition,
9 Respondent intentionally, recklessly or repeatedly failed to perform legal services with
10 competence.

11 COUNT THREE

12 Case No. 04-O-14176
13 Business and Professions Code section 6068(m)
[Failure to Inform Client of Significant Development]

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

17 23. The allegations of paragraphs 3 through 9 are incorporated by reference.

18 24. At no time did Respondent inform Bohanon that his case against Wolsky had been
19 dismissed.

20 25. By failing to inform Bohanon that his case against Wolsky had been dismissed,
21 Respondent failed to keep a client reasonably informed of significant developments in a matter
22 in which Respondent had agreed to provide legal services.

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Business and Professions Code section 6068(m)
[Failure to Inform Client of Significant Development]

27. The allegations of paragraphs 3 through 9 and 13 through 20 are incorporated by reference.

29. By failing to inform Bohanon that his Request for Trial de Novo had been stricken, the case dismissed and that there was a judgment entered against him in the case Wolsky brought against him, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services.

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

31. The allegations of paragraphs 3 through 9 and 13 through 20 are incorporated by reference.

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33. At no time did Respondent inform Bohanon that he was withdrawing from employment in Bohanon's cases.

34. By failing to provide the necessary services with respect to Bohanon's cases, and failing to inform Bohanon 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 SIX

Case No. 04-O-14176
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

35. 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:

36. The allegations of paragraphs 3 through 9 and 13 through 20 are incorporated by reference.

37. On or about November 6, 2002, Bohanon sent a letter to Respondent requesting the return of the fees he had paid Respondent including the amount of the rental car agreement. Bohanon'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 United States Postal Service in the ordinary course of business. The United States Postal Service did not return Bohanon's letter as undeliverable or for any other reason.

38. Respondent provided no services of value to Bohanon. Respondent did not earn any of the advanced fees paid by Bohanon. To date, Respondent has not refunded any portion of the fees paid by Bohanon.

39. By not refunding any portion of the advanced fees paid by Bohanon, Respondent failed to refund promptly any part of a fee paid in advance that had not been earned.

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1 COUNT SEVEN

2 Case No. 04-O-14176
3 Business and Professions Code section 6068(i)
[Failure to Cooperate in State Bar investigation]

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

7 41. On or about August 31, 2004, the State Bar opened an investigation, case number 04-
8 O-14176, pursuant to a complaint filed by Robert Bohanon (the "Bohanon matter").

9 42. On or about October 3, 2004, State Bar Investigator Joy Nunley wrote to Respondent
10 regarding the Bohanon matter. The investigator's letter was placed in a sealed envelope
11 correctly addressed to Respondent at his State Bar of California membership records address.
12 The letter was promptly mailed by first class mail, postage prepaid, by depositing for collection
13 by the United States Postal Service in the ordinary course of business. The United States Postal
14 Service did not return the investigator's letter as undeliverable or for any other reason.

15 43. The investigator's letter requested that Respondent respond in writing to specified
16 allegations of misconduct being investigated by the State Bar in the Bohanon matter.
17 Respondent did not respond to the investigator's letter or otherwise communicate with the
18 investigator.

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

22 NOTICE - INACTIVE ENROLLMENT!

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

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