

ORIGINAL 1 THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL SCOTT J. DREXEL, No. 065670 MAR 30 2006 CHIEF TRIAL COUNSEL 3 PATSY J. COBB, No. 107793 STATE BAR COURT DEPUTY CHIEF TRIAL COUNSEL CLERK'S OFFICE JAYNE KIM, No. 174614 LOS ANGELES ASSISTANT CHIEF TRIAL COUNSEL 5 PAUL T. O'BRIEN, No. 171252 SUPERVISING TRIAL COUNSEL WILLIAM F. STRALKA, No. 056147 6 DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, California 90015-2299 Telephone: (213) 765-1091 8 9 10 THE STATE BAR COURT 11 **HEARING DEPARTMENT - LOS ANGELES** 12 In the Matter of 13) Case Nos. 05-O-02245; [05-O-02839; 05-O-04471; TRACY K. PETERLIN, 14 05-O-048251 No. 187604, 15 NOTICE OF DISCIPLINARY CHARGES A Member of the State Bar. 16 17 **NOTICE - FAILURE TO RESPOND!** IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE 18 TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR 19 IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN 20 INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE 21 ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO 22 PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO 23 ADDITIONAL DISCIPLINE. 24 STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE. 25 IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY 26 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

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

The State Bar of California alleges:

JURISDICTION

1. TRACY K. PETERLIN ("Respondent") was admitted to the practice of law in the State of California on February 6, 1997, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No. 05-O-02245
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

- 2. 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:
- 3. On or about March 14, 2005, Robert T. Zamudio ("Zamudio") employed Respondent to file an Order to Show Cause ("OSC") regarding back child support for his grandson who was a ward of the court. Zamudio was at the time, and at all times pertinent to these charges, the child's legal care giver. The OSC was to be filed in Zamudio's daughter's existing paternity case *Zamudio* v. *Barkley, III*, San Diego County Superior Court, case no. ED35988ABC, (the "Zamudio matter"), along with a power of attorney signed by Zamudio's daughter authorizing Zamudio to bring the action for delinquent child support.
- 4. On or about March 14, 2005, Zamudio and Respondent executed a \$2,500 fee agreement, and Zamudio paid Respondent \$500 cash toward that fee.
- 5. On or about March 24, 2005, Zamudio issued a check made payable to Respondent in the amount of \$2,000 to pay the balance due pursuant to the written fee agreement.

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15.

On or about August 11, 2005, Respondent issued and delivered a cashier's check

- 23. On or about February 4, 2005, Gene Monper ("Monper") employed Respondent to represent his son, Kyle Monper, in a juvenile court proceeding. Monper and Respondent executed a written fee agreement and Monper paid Respondent \$2,500.
- 24. In or about February 2005, Monper telephoned Respondent to inform her of a scheduled meeting with the Los Angeles County Probation Department, ("Probation Department") on March 11, 2005, and to seek advice on what to do. Monper left two messages on Respondent's telephone answering machine, Respondent received the two messages, but Respondent did not return either of the two calls.
- 25. On or about February 23, 2005, Monper's father, Eugene Monper, who lived relatively close to Respondent's office, at Monper's direction, personally went to Respondent's law offices and handed a copy of the Probation Department's February 16, 2005 letter to Respondent's secretary. On Monper's behalf, Eugene Monper left a message with Respondent's secretary requesting that Respondent call Monper. Respondent received the message, but Respondent did not contact Monper.
- 26. On or about March 11, 2005, Monper attended the scheduled meeting with a Los Angeles County Probation Deputy. Respondent did not attend this meeting. At the end of the meeting, the case against Kyle Monper was dismissed. Following the meeting, Monper called Respondent and left a message for Respondent requesting a refund of the \$2,500 in fees he had paid Respondent. Respondent received the message, but did not return Monper's telephone call.
- 27. On or about March 18, 2005, Monper again called Respondent's office and left a message for Respondent requesting a refund of the fees he had paid Respondent. Respondent received the message, but did not return Monper's telephone call.
- 28. As of on or about March 30, 2005, Respondent was still unaware that Monper had resolved his son's case with the Probation Department.
- 29. On or about April 7, 2005, and on or about April 14, 2005, Monper went to Respondent's office and spoke with Respondent's secretary. On both occasions, Monper requested a return telephone call from Respondent. Respondent received the messages, but did not respond.

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39. The allegations of paragraphs 23 through 31, 35, and 36 are incorporated by reference.

- 40. On or about August 12, 2005 Respondent submitted a copy of a billing statement to the State Bar regarding the underlying Monper matter. The billing statement indicates that Respondent had a one-hour telephone conference with the Probation Department and charged Monper \$295. However, Respondent did not communicate with the Deputy Probation Officer assigned in the underlying juvenile matter nor any other authorized person at the Probation Department.
- 41. By making a material misrepresentation to the State Bar concerning her telephone conference with the Probation Department, Respondent committed an act involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code, section 6106.

COUNT EIGHT

Case No. 05-O-04471
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

- 42. 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:
- 43. On or about July 26, 2005, Adriana Zamora ("Zamora") employed Respondent to substitute into her child custody matter and to file a modification of child custody pleading by July 29, 2005. Zamora paid Respondent \$2,500.
- 44. Respondent assured Zamora that the child custody modification pleading would be filed by July 29, 2005. Respondent's assurance was crucial to Zamora, who sought an order that her ex-husband's visits be supervised before the end of August when he had a planned vacation with their two girls.
- 45. On or about July 27, 2005, Zamora telephoned Respondent and left a message for Respondent with the dissolution court case number and prior attorney information, with one of Respondent's staff members, Jamie, requesting that Respondent call her back so that she

could arrange to sign her declaration. Respondent received the message and Respondent did not respond.

- 46. On or about August, 2, 2005, and August 3, 2005, Zamora again telephoned Respondent and left messages with Respondent's staff person, Jamie, requesting that Respondent call her back regarding the modification. Respondent received the message and Respondent did not respond.
- 47. On or about August 4, 2005, Zamora telephoned Respondent and left a message on Respondent's answering machine requesting that Respondent call her back regarding the modification. Respondent received the message and Respondent did not respond.
- 48. On or about August 9, 2005, Zamora telephoned Respondent and left a message with Respondent's staff person, Jamie, requesting that Respondent call her back regarding the modification. Respondent received the message and Respondent did not respond.
- 49. On or about August 30, 2005, Zamora telephoned Respondent and was told by one of Respondent's staff, Laurie, that Zamora's child custody modification pleading was ready to be signed. Zamora asked to speak to Respondent, but was told that Respondent was not available.
- 50. On or about September 13, 2005, Zamora telephoned Respondent and was able to finally speak to Respondent. Zamora fired Respondent over the telephone and requested a refund of the \$2,500 Zamora had paid.
- 51. By failing to prepare and file a modification of child custody pleading for Zamora, and by unnecessarily delaying the filing of Zamora's child custody matter, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

COUNT NINE

Case No. 05-O-04471
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

- 52. Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client, as follows:
 - 53. The allegations of paragraphs 43 through 50 are incorporated by reference.

or prosecution conducted by the disciplinary agency, as follows:

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demanded that Respondent replace check no. 2031 with a cashier's check or cash including a \$6.00 service charge from Fleming Bank. In response to Fleming's demand, Respondent paid Fleming and Ashkar \$2,050 on or about October 27, 2005, with a cashier's check.

- 70. On or about December 15, 2005, Respondent replied to a State Bar investigation inquiry from Investigator Podina Brown ("Brown") regarding the *Ashkar* case. In her reply to Brown, Respondent stated that she had stopped payment on Wells Fargo Bank check no. 2031 and had notified Fleming's office of the stop payment.
- 71. Respondent's bank records for Wells Fargo Bank, account no. 076-1882539 show that on June 30, 2005, Respondent had a balance of \$279.30, and that on July 1, 2005, Respondent's account did not have funds on deposit to cash check no. 2031. Therefore, on July 5, 2005, Wells Fargo Bank posted a "check reversal transaction" and charged Respondent's account an "NSF Return Check Fee" of \$30.00.
- 72. Respondent failed to perform the legal services for which she was employed and when she constructively withdrew from Ashkar's case and Respondent failed to promptly refund \$2,050 of Ashkar's unearned advanced fees from June 29, 2005 until October 27, 2005, and failed to refund \$450 of Ashkar's fees paid in advance but not earned.

COUNT THIRTEEN

Case No. 05-O-04825
Business and Professions Code, section 6106
[Moral Turpitude]

- 73. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act or acts involving moral turpitude, dishonesty or corruption, as follows:
 - 74. The allegations of paragraphs 66 through 71 are incorporated by reference.
- 75. By failing to refund all of her client's unearned fees after her constructive withdrawal, by paying a refund check to her client from an account that did not contain sufficient funds to cash her check, and by intentionally misrepresenting to a State Bar investigator that her check was not honored because she put a stop payment on the check, Respondent committed an act or acts involving moral turpitude, dishonestly or corruption.

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN 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.

NOTICE - COST ASSESSMENT!

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

Respectfully submitted,

THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL

By: William F. Stralka

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Deputy Trial Counsel

Dated: March ________, 2006

Dated: March _____, 200

DECLARATION OF SERVICE BY CERTIFIED MAIL

CASE NUMBER: 05-O-02245; [05-O-02839; 05-O-04471; 05-O-04825]

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 3983 9299, at Los Angeles, on the date shown below, addressed to:

Tracy K. Peterlin 39340 Calle Contento Temecula, CA 92591

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: March 30, 2006

SIGNED: VALERIE WILD

Declarant