



PUBLIC MATTER

1 THE STATE BAR OF CALIFORNIA  
 2 OFFICE OF THE CHIEF TRIAL COUNSEL  
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FILED

SEP 10 2008

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

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THE STATE BAR COURT

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HEARING DEPARTMENT - LOS ANGELES

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In the Matter of	)	Case No. 06-O-14198
BRIAN DINSMORE GARD,	)	
No. 118457,	)	NOTICE OF DISCIPLINARY CHARGES
A Member of the State Bar.	)	

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**NOTICE - FAILURE TO RESPOND!**

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**IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BARRULES, 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.**

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

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**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**

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1           5.       At some time prior to Respondent refiling the application for the OSC on  
2 September 7, 2004, the court set a hearing for an OSC for October 12, 2004. Respondent then  
3 continued that hearing to November 22, 2004.

4           6.       On September 10, 2004, Respondent e-mailed Agahan that a hearing was  
5 scheduled for November 22, 2004.

6           7.       As it turned out, Respondent had not initiated nor accomplished personal service  
7 on the ex-spouse.

8           8.       On or about October 17, 2004, the ex-spouse sold the home and was in an escrow.  
9 Respondent was unable to file a lien for Agahan because there was no court order, due to failure  
10 of service on the ex-spouse.

11          9.       On November 22, 2004, Respondent did not show up at the hearing and he  
12 obtained a continuance to December 28, 2004. On December 22, 2004, Respondent e-mailed  
13 Agahan that the court had rescheduled a court date when in fact Respondent had requested the  
14 continuance.

15          10.      On or about December 28, 2004, Respondent continued the OSC hearing to  
16 January 26, 2005. On January 26<sup>th</sup> he continued it to March 29<sup>th</sup>.

17          11.      On or about March 25, 2005, Respondent e-mailed Agahan that he had learned  
18 that the service of process on the ex-spouse was never completed.

19          12.      On or about April 12, 2005, Agahan requested by e-mail that Respondent provide  
20 her with a detailed itemization of all events and charges related to the matter for which  
21 Respondent agreed to represent her.

22          13.      On or about April 18, 2005, Respondent e-mailed Agahan that he no longer would  
23 represent Agahan in the matter.

24          14.      On or about April 18, 2005, Agahan requested by e-mail that Respondent send  
25 her file to her address. She also asked, again, for an itemized bill. Respondent never gave  
26 Agahan her file, never provided an accounting of the fees, nor refund any of the fees.

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1 23. Respondent willfully violated Business and Professions Code, section 6106, by  
2 committing an act involving moral turpitude, dishonest or corruption, as follows:

3 24. The allegations of paragraphs 2 through 19 are incorporated by reference.

4 25. Respondent stated to Agahan that on December 22, 2004, the court had  
5 rescheduled the court hearing on the Application of the OSC.

6 26. On December 22, 2004, the Respondent had requested the continuance.

7 27. At the time he made the statement on December 22<sup>nd</sup>, the Respondent knew that  
8 his statement to Agahan regarding the continuance was a half truth. He intended Agahan to  
9 believe the court had, on its own volition, continued the hearings.

10 28. During the entire time of the representation, Respondent knew that his failure to  
11 disclose that he was unable to obtain a hearing for the OSC, was misleading and not truthful to  
12 his client, Agahan.

13 29. The status of the OSC hearing in Agahan's case was an important and significant  
14 event in the matter.

15 30. By representing to Agahan that the court continued the hearing when Respondent  
16 knew that his statement to Agahan was a half truth, and by not telling Agahan that he had  
17 requested the continuance, and, not reporting the true status of Agahan's matter, Respondent  
18 intended to mislead Agahan and thereby committed an act involving moral turpitude, dishonesty  
19 and corruption.

20 **COUNT THREE**

21 **Case No. 06-O-14198**  
22 **Rules of Professional Conduct, rule 3-700(D)(2)**  
**[Failure to Refund Unearned Fees]**

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

26 32. The allegations of paragraphs 2 through 19 are incorporated by reference.

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**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.**

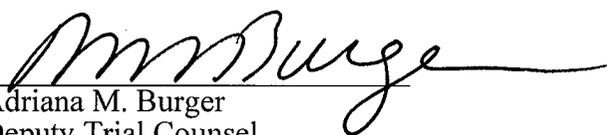
Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL

Dated:

9/10/08

By:

  
Adriana M. Burger  
Deputy Trial Counsel

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**DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 06-O-14198**

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 9848 5950 7389, at Los Angeles, on the date shown below, addressed to:

**ALBERT W. ARENA  
ARENA & SCHNITZER, APLC  
110 W. "C" STREET, SUITE #1709  
SAN DIEGO, CA 92101-3909**

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: 9-10-08

SIGNED:   
SANDRA JONES  
Declarant