

PUBLIC MATTER

STATE BAR OF CALIFORNIA
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FILED

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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:) Case No. 12-O-14931
JOSEPH GUY MAIORANO,) NOTICE OF DISCIPLINARY CHARGES
No. 113876,)
A Member of the State Bar)

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:

- (1) YOUR DEFAULT WILL BE ENTERED;
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

The State Bar of California alleges:

JURISDICTION

1. Joseph Guy Maiorano (Respondent) was admitted to the practice of law in the State
of California on June 14, 1984, was a member at all times pertinent to these charges, and is

1 currently a member of the State Bar of California.

2 COUNT ONE

3 Case No. 12-O-14931
4 Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

5 2. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by failing
6 to maintain the balance of funds received for the benefit of a client and deposited in a bank
7 account labeled "Trust Account," "Client's Funds Account" or words of similar import, as
8 follows:
9

10 3. On or about April 25, 2009, a tow truck, owned by RBS Towing (RBS) was the at-
11 fault party in a 3-vehicle accident. The RBS truck crossed the center line, forced an oncoming
12 van into a guardrail, and then struck a car head-on.

13 4. The driver and passenger of the van, John Miller (Miller), William Scanlon
14 (Scanlon), respectively, were injured in the accident. The driver and passenger of the car, Kristin
15 Martindale (Martindale) and O'Dean Negron (Negron), respectively, were seriously injured in
16 the accident.

17 5. RBS was insured by Everest National Insurance Company (Everest).

18 6. On or about April 29, 2009, Negron hired Respondent to represent him regarding his
19 personal injury claims against RBS (RBS claim). They agreed that Respondent would receive a
20 contingent fee equal to one-third (1/3) of all money recovered for his legal services, and that
21 Respondent would be reimbursed for costs that he advanced on Negron's behalf.

22 7. On or about June 14, 2009, Miller and Scanlon hired Respondent to represent them
23 in their claims against RBS.

24 8. Negron, Miller, and Scanlon all signed releases, acknowledging that each of their
25 interests had the potential to conflict and each agreeing that Respondent could jointly represent
26 each of them.

27 9. On or about July 31, 2009, Everest agreed to settle all of the personal injury claims
28 against RBS for a total of \$965,000.

1 10. The terms of the settlement were that Negron and Martindale would each receive
2 \$400,000, that Miller and Scanlon each receive \$15,000, and that the remaining \$135,000 would
3 be distributed to Negron and Martindale in amounts to be determined by a mediator.

4 11. On or about August 13, 2009, Everest issued a settlement check payable to
5 Respondent in the amount of \$965,000, in full settlement of the claims against RBS by Negron,
6 Martindale, Miller and Scanlon. Respondent received the settlement check.

7 12. On or about August 14, 2009, Respondent deposited the settlement check into his
8 Union Bank client trust account, account number xxxxxx2996 (CTA).¹

9 13. On or about August 27, 2009, Respondent disbursed the appropriate amount of funds
10 to Martindale, Miller, and Scanlon.

11 14. On or about August 27, 2009, Respondent prepared a disbursement sheet for
12 Negron's \$400,000 in settlement funds and obtained Negron's signature on it. The disbursement
13 sheet stated that Respondent would receive a total of \$166,431.05 from the settlement (\$133,200
14 for attorney's fees, and \$33,231.05 for advanced costs and expenses), that Respondent would
15 retain \$150,000 in his CTA for payment of Negron's outstanding medical bills, and that Negron
16 would receive \$140,000. (To achieve the payment to Negron, Respondent apparently disbursed
17 some of the money that he said he was holding for medicals.)

18 15. On or about August 27, 2009, Respondent disbursed \$166,431.05 of the settlement
19 proceeds to himself for attorney fees and costs.

20 16. On or about August 27, 2009, Respondent disbursed \$140,000 of the settlement
21 proceeds to Negron in the following manner:

- 22 - Respondent disbursed \$20,000 directly to Negron;
- 23 - Respondent disbursed, via wire transfer, \$99, 232.57 to Claudette Salmon as directed by
24 Negron;
- 25 - Respondent disbursed, via wire transfer, \$20,767.43 of Negron's settlement funds to
26 J.P. Morgan as directed by Negron.

27 17. As of August 27, 2009, Respondent was required to retain \$93,568.95 of Negron's

28 ¹ The complete account number is omitted due to privacy concerns.

1 \$400,000 in settlement funds in his CTA.

2 18. On or about September 21, 2009, a mediator allocated the remaining \$135,000
3 between Negron and Martindale. The mediator determined that Negron would receive \$66,500
4 and that Martindale would receive the remainder of the funds.

5 19. On or about September 21, 2009, Respondent disbursed Negron's share of the
6 \$135,000 (\$66,500) as follows:

- 7 - Respondent disbursed 22,144.50 to himself as his legal fee (about one-third of \$66,500);
- 8 - Respondent disbursed \$24,000 to Negron; and
- 9 - Respondent, with Negron's written authority, retained \$20,000 for other litigation
10 involving Negron.
- 11 - Respondent did not disburse the remaining \$355.50 of Negron's funds and was required
12 to retain that amount in his CTA.

13 20. On or about September 21, 2009, Respondent was required to maintain \$93,924.45
14 (\$93,568.95 + \$355.50) of Negron's settlement funds in his CTA.

15 21. Between on or about September 21, 2009, and on or about November 9, 2009,
16 Respondent did not disburse any of Negron's settlement funds to Negron's medical providers or
17 to anyone else on Negron's behalf.

18 22. On or about October 5, 2009, the balance in Respondent's CTA dipped to \$81,496.93.

19 23. On or about October 23, 2009, the balance in Respondent's CTA dipped to
20 \$23,622.20.

21 24. On or about November 9, 2009, the balance in Respondent's CTA dipped to
22 \$13,394.20.

23 25. When Respondent's CTA dipped to \$13,622.20, Respondent, failed to maintain
24 \$80,302.25 of Negron's settlement funds in his CTA.

25 26. By failing to maintain \$80,302.25 of Negron's settlement funds in his CTA,
26 Respondent failed to maintain the balance of funds received for the benefit of a client and
27 deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of
28 similar import.

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COUNT TWO

Case No. 12-O-14931
Business and Professions Code, section 6106
[Moral Turpitude - Misappropriation]

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

28. The allegations of Count One are incorporated by reference.

29. Respondent dishonestly or with gross negligence misappropriated \$80,302.25 of Negron's settlement funds.

30. By misappropriating \$80,302.25 of Negron's settlement funds, Respondent committed an act involving moral turpitude, dishonesty or corruption

COUNT THREE

Case No. 12-O-14931
Rules of Professional Conduct, rule 4-100(B)(4)
[Failure to Pay Client Funds Promptly]

31. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4), by failing to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive, as follows:

32. The allegations of Counts One and Two are incorporated by reference.

33. On or about September 21, 2009, Respondent was required to maintain \$93,924.45 of Negron's settlement funds in his CTA.

34. Between on or about November 29, 2009 and on or about February 7, 2011, Respondent disbursed \$77,710.00 to Negron as follows:

- On or about November 29, 2009, Respondent disbursed \$10,000 to Negron;
- On or about January 15, 2010, Respondent disbursed \$3,000 to Negron;
- On or about January 29, 2010, Respondent disbursed \$5,000 to Negron;
- On or about March 2, 2010, Respondent disbursed \$7,500 to Negron;
- On or about April 1, 2010, Respondent disbursed \$7,500 to Negron;
- On or about May 13, 2010, Respondent disbursed \$7,500 to Negron;
- On or about June 23, 2010, Respondent disbursed \$15,000 to Negron;

- On or about October 28, 2010, Respondent disbursed \$2,000 to Negron;
- On or about November 18, 2010, Respondent disbursed \$4,800 to Negron (by paying Negron's rent at 1530 Maui Street);
- On or about November 19, 2010, Respondent disbursed \$2,410 to Negron;
- On or about December 15, 2010, Respondent disbursed \$3,000 to Negron;
- On or about December 23, 2010, Respondent disbursed \$5,000 to Negron (by issuing a check to a party named "Pease");
- On or about February 7, 2011, Respondent disbursed \$5,000 to Negron (by issuing a check to a party named "Harrison").

35. To date, Respondent has not distributed the remaining \$16,214.45 of Negron's settlement to him, or to anyone on his behalf.

36. From in or about August 2009 through the present, Negron has repeatedly requested that Respondent disburse his settlement funds.

37. By failing to distribute the remaining \$16,214.45 of Negron's settlement funds, Respondent, failed to pay funds promptly, as requested by a client, any funds in Respondent's possession.

COUNT FOUR

Case No. 12-O-14931
Rules of Professional Conduct, rule 4-100(A)
[Commingle Personal Funds in Client Trust Account]

38. 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:

39. The allegations of Count(s) One through Four are incorporated by reference.

40. Between on or about July 28, 2009, and on or about September 15, 2010, Respondent paid personal expenses from his CTA including, but not limited to, the following:

Transaction	Date	Amount	Payee
Wire transfer	7-28-09	\$9,000	Mt. Resorts Rentals

Transaction	Date	Amount	Payee
Wire transfer	7-28-09	\$6,750	Mt. Resorts Rentals
Wire transfer	8-28-09	\$9,000	Mt. Resorts Rentals
Wire transfer	8-28-09	\$6,750	Mt. Resorts Rentals
Wire transfer	9-25-09	\$9,000	Mt. Resorts Rentals
Wire transfer	10-5-09	\$6,750	Mt. Resorts Rentals
Wire transfer	11-9-09	\$9,000	Mt. Resorts Rentals
Wire transfer	11-12-09	\$6,750	Mt. Resorts Rentals
Wire transfer	11-18-09	\$9,000	Mt. Resorts Rentals
Wire transfer	12-23-09	\$9,000	Mt. Resorts Rentals
Wire transfer	2-10-10	\$6,750	Mt. Resorts Rentals
Wire transfer	3-1-10	\$9,000	Mt. Resorts Rentals
Wire transfer	3-29-10	\$50,000	Mt. Resorts Rentals
Wire transfer	5-12-10	\$6,750	Mt. Resorts Rentals
Wire transfer	6-1-10	\$7,000	Mt. Resorts Rentals
Wire transfer	6-28-10	\$6,750	Mt. Resorts Rentals
Wire transfer	7-2-10	\$7,000	Mt. Resorts Rentals
Wire transfer	9-3-10	\$2,000	Mt. Resorts Rentals
Wire transfer	9-15-10	\$6,750	Mt. Resorts Rentals

41. Between on or about April 28, 2010, and on or about September 1, 2010, Respondent deposited personal funds into his CTA, including, but not limited to, the following deposits:

Transaction	Date	Amount	Payor
Check no. 126	4-28-10	\$14,000	Respondent
Check no. 1003	6-15-10	\$9,500	Respondent
Bank of America Cashier's Check no. 428532672	8-11-10	\$15,000	Respondent

1 and its terms were fully disclosed and transmitted in writing to the client in a manner which
2 should reasonably have been understood by the client; the client was advised in writing that the
3 client may seek the advice of an independent lawyer of the client's choice; and that the client was
4 given a reasonable opportunity to seek that advice.

5
6 **NOTICE - INACTIVE ENROLLMENT!**

7 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
8 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
9 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
10 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
11 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
12 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
13 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**
14 **RECOMMENDED BY THE COURT.**

15
16 **NOTICE - COST ASSESSMENT!**

17 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**
18 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**
19 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**
20 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**
21 **PROFESSIONS CODE SECTION 6086.10.**

22 Respectfully submitted,

23 THE STATE BAR OF CALIFORNIA
24 OFFICE OF THE CHIEF TRIAL COUNSEL

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DATED: 2/21/13

By: 

Anthony Garcia
Deputy Trial Counsel

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **12-O-14931**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

☐ By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
- 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.

☒ By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for collection and mailing in the City and County of Los Angeles.

☐ By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").

☐ By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐ By Electronic Service: (CCP § 1010.6) to:
Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

☒ (for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: 7196-9008-9111-0442-9690 at Los Angeles, addressed to: (see below)

☐ (for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: addressed to: (see below)

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
Samuel C. Bellicini	Fishkin & Slatter, LLP 1575 Treat Blvd Ste 215 Walnut Creek, CA 94598		

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

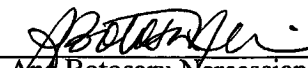
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the 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.

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: February 21, 2013

SIGNED:


And Botosaru Nercessian
Declarant