

PUBLIC MATTER

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FILED

JUL 06 2015

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

13 In the Matter of:) Case No. 12-O-18163
14 DAVID ALAN SHAFER,)
15 No. 86436,) NOTICE OF DISCIPLINARY CHARGES
16 A Member of the State Bar)

NOTICE - FAILURE TO RESPOND!

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

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**
- 22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL**
23 **NOT BE PERMITTED TO PRACTICE LAW;**
- 24 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
25 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND**
26 **THE DEFAULT IS SET ASIDE, AND;**
- 27 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
28 **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.



1 The State Bar of California alleges:

2 JURISDICTION

3 1. DAVID ALAN SHAFER ("respondent") was admitted to the practice of law in the
4 State of California on May 5, 1979, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 12-O-18163
8 Rules of Professional Conduct, rule 3-310(B)(1)
[Conflict - Relationship with a Party or Witness]

9 2. On or about February 2, 2010, respondent accepted representation of his client
10 Strategic Tax Solutions ("STS") to assist with incorporation and to provide general legal
11 advice, without providing written disclosure to the client that respondent had an existing legal,
12 business, professional and personal relationship with Christopher Mann, John Urrutia and
13 Mann, Urrutia and Nelson, CPA's and Associates, LLP, a party in STS's same matter, in
14 willful violation of the Rules of Professional Conduct, rule 3-310(B)(1).

15 COUNT TWO

16 Case No. 12-O-18163
17 Rules of Professional Conduct, rule 3-310(B)(1)
[Conflict - Relationship with a Party or Witness]

18 3. On or about March 22, 2010, respondent accepted representation of his client
19 Strategic Tax Solutions ("STS") regarding the formation of a joint venture with Mann, Urrutia
20 and Nelson, CPA's and Associates, LLP ("MUN"), without providing written disclosure to the
21 client that respondent had an existing legal, business, professional and personal relationship
22 Christopher Mann, John Urrutia and MUN, parties in STS's joint venture with MUN, in
23 willful violation of the Rules of Professional Conduct, rule 3-310(B)(1).

24 COUNT THREE

25 Case No. 12-O-18163
26 Rules of Professional Conduct, rule 3-310(B)(3)
[Conflict - Relationship with an Interested Person or Entity]

27 4. On or about March 22, 2010, respondent continued representation of a client,
28

1 Strategic Tax Solutions ("STS") regarding the formation of a joint venture with Mann, Urrutia
2 and Nelson, CPA's and Associates, LLP ("MUN") without providing written disclosure to the
3 client that respondent has and had a legal, professional and business relationship with persons
4 or entities Christopher Mann, John Urrutia and MUN, which respondent knew or reasonably
5 should have known would be affected substantially by the resolution of the matter in that
6 respondent was acting as the attorney for both STS and MUN in their joint venture
7 negotiations, in willful violation of the Rules of Professional Conduct, rule 3-310(B)(3).

8 COUNT FOUR

9 Case No. 12-O-18163
10 Rules of Professional Conduct, rule 3-310(B)(4)
11 [Conflict - Interest in Subject Matter]

12 5. On or about March 22, 2010, respondent continued representation of a client,
13 Strategic Tax Solutions ("STS") in the formation of a joint venture with Mann, Urrutia and
14 Nelson, CPA's and Associates, LLP ("MUN") without providing written disclosure to the
15 client that respondent had a business and financial interest in the subject matter of the
16 representation, specifically respondent was to become an STS shareholder, in willful violation
17 of the Rules of Professional Conduct, rule 3-310(B)(4).

18 COUNT FIVE

19 Case No. 12-O-18163
20 Rules of Professional Conduct, rule 3-310(C)(1)
21 [Potential Conflict - Representing Multiple Clients]

22 6. On or about March 22, 2010, respondent accepted representation of multiple clients,
23 Strategic Tax Solutions ("STS") and Mann, Urrutia and Nelson, CPA's and Associates, LLP
24 ("MUN") in joint representation regarding the formation of a joint venture. At that time, the
25 interests of the clients potentially conflicted in that the goals of STS and MUN both were to
26 optimize their return from the joint venture. Respondent failed to inform the clients of the
27 relevant circumstances and of the actual and reasonably foreseeable adverse consequences to
28 the clients and failed to obtain the written consent of each client, in willful violation of the
Rules of Professional Conduct, rule 3-310(C)(1).

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COUNT SIX

Case No. 12-O-18163
Rules of Professional Conduct, rule 3-310(C)(2)
[Actual Conflict - Representing Multiple Clients]

7. On or about March 22, 2010, respondent accepted representation of multiple clients, Strategic Tax Solutions (“STS”) and Mann, Urrutia and Nelson, CPA’s and Associates, LLP (“MUN”) in joint representation regarding the formation of a joint venture. At that time, the interests of the clients actually conflicted in that the goals of STS and MUN both were to optimize their return from the joint venture. Respondent failed to inform the clients of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the clients and failed to obtain the written consent of each client, in willful violation of the Rules of Professional Conduct, rule 3-310(C)(2).

COUNT SEVEN

Case No. 12-O-18163
Rules of Professional Conduct, rule 3-300
[Acquiring Interest Adverse to Client]

8. On or about April 26, 2010, respondent acquired an interest adverse to respondent’s client, Strategic Tax Solutions (“STS”), in willful violation of the Rules of Professional Conduct, rule 3-300 when:

- Respondent acquired the adverse interest on terms which were not fair and reasonable to STS in that respondent accepted compensation of ten percent of STS’s shares in exchange for the legal and marketing work respondent agreed to provide STS without conducting any evaluation of the value of the shares respondent accepted and without agreeing on the nature of the services respondent agreed to provide to STS in exchange for the shares;
- Respondent did not fully disclose in writing to STS the terms of the acquisition or the adverse interest in a manner which should reasonably have been understood by STS;

1 inform the clients of the relevant circumstances and of the actual and reasonably foreseeable
2 adverse consequences to the clients and failed to obtain the written consent of each client, in
3 willful violation of the Rules of Professional Conduct, rule 3-310(C)(2).

4 COUNT TEN

5 Case No. 12-O-18163
6 Rules of Professional Conduct, rule 3-310(B)(3)
7 [Conflict - Relationship with an Interested Person or Entity]

8 11. In or about May 2011, respondent continued representation of a client, Strategic
9 Tax Solutions ("STS") regarding the modification of an April 22, 2010 joint venture agreement
10 to a more permanent strategic alliance agreement in which STS and Mann, Urrutia and Nelson,
11 CPA's and Associates, LLP ("MUN") would swap shares, without providing written disclosure
12 to the client that respondent has and had a legal, professional and business relationship with
13 persons or entities Christopher Mann, John Urrutia and MUN, which respondent knew or
14 reasonably should have known would be affected substantially by the resolution of the matter
15 in that respondent was acting as the attorney for both STS and MUN in their strategic alliance
16 agreement negotiations, in willful violation of the Rules of Professional Conduct, rule 3-
17 310(B)(3).

18 COUNT ELEVEN

19 Case No. 12-O-18163
20 Rules of Professional Conduct, rule 3-310(B)(4)
21 [Conflict - Interest in Subject Matter]

22 12. In or about May 2011, respondent continued representation of a client, Strategic
23 Tax Solutions ("STS") regarding the modification of an April 22, 2010 joint venture agreement
24 to a more permanent strategic alliance agreement in which STS and Mann, Urrutia and Nelson,
25 CPA's and Associates, LLP ("MUN") would swap shares without providing written disclosure
26 to the client that respondent had a business and financial interest in the subject matter of the
27 representation, specifically respondent was an STS shareholder, in willful violation of the
28 Rules of Professional Conduct, rule 3-310(B)(4).

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COUNT TWELVE

Case No. 12-O-18163
Rules of Professional Conduct, rule 3-300
[Acquiring Interest Adverse to Client]

On or about June 1, 2011, respondent acquired an interest adverse to respondent's client, Strategic Tax Solutions ("STS"), and thereby willfully violated Rules of Professional Conduct, rule 3-300 by:

- Respondent acquired the adverse interest on terms which were not fair and reasonable to STS in that respondent maintained his ten percent equity interest in STS while the remaining shareholders' equity interest decreased to approximately 55 percent due to a modified fee sharing agreement with MUN wherein STS and Mann, Urrutia and Nelson, CPA's and Associates, LLP ("MUN") would enter into a strategic alliance agreement that involved a swap of shares between STS and MUN;
- Respondent did not fully disclose in writing to STS the terms of the acquisition or the adverse interest in a manner which should reasonably have been understood by STS;
- Respondent did not advise STS in writing that STS may seek the advice of an independent lawyer of the client's choice and did not give the client a reasonable opportunity to seek that advice;
- STS did not consent in writing to the terms of the adverse interest.

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COUNT THIRTEEN

Case No. 12-O-18163
Business and Professions Code, section 6068(a)
[Breach of Fiduciary Duties and Duty of Loyalty]

13. Between in or about February 2010 and continuing to the present, respondent willfully violated Business and Profession Code section 6068(a) by breaching his common law fiduciary duties and duty of loyalty to his clients Smith and Yvonne Miller and Strategic Tax

1 Solutions ("STS") by:

- 2 • Considering Mann, Urrutia and Nelson, CPA's and Associates, LLP ("MUN")
- 3 his client in the formation of the joint venture agreement between STS and
- 4 MUN;
- 5 • Favoring MUN over STS when the interests of the clients conflicted in the
- 6 formation of the joint venture agreement;
- 7 • Diluting Smith and Yvonne Miller's equity stake in STS from 80 percent to
- 8 approximately 55 percent in a share swap with MUN, but continuing to
- 9 maintain his ten percent equity interest;
- 10 • Failing to advise STS that respondent likely benefitted from a share swap
- 11 between STS and MUN;
- 12 • Failing to reduce to writing the June 1, 2011 strategic alliance agreement;
- 13 • Advocating for MUN over STS after conflict developed;
- 14 • Billing STS for legal services respondent claimed he performed on behalf of
- 15 MUN and STS;
- 16 • Submitting to the United States Patent and Trademark Office the trademark
- 17 MUN favored over the trademark STS preferred;
- 18 • Concealing from STS that respondent submitted the trademark MUN preferred;
- 19 • Concealing from STS that respondent submitted to the California Secretary of
- 20 State a Statement of Information identifying respondent, Christopher Mann and
- 21 John Urrutia as additional directors of STS;
- 22 • Failing to obtain the consent of STS's only board members, Smith and Yvonne
- 23 Miller, to add respondent, Christopher Mann and John Urrutia as additional
- 24 board members;
- 25 • Failing to notify STS's board members Smith and Yvonne Miller that
- 26 respondent, Christopher Mann and John Urrutia had been identified as
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additional board members and thereby transforming the Millers into a minority on STS's board;

- Permitting MUN to unilaterally cease making its monthly draws to STS;
- Waiting until May 2012 to terminate the attorney client relationship with STS;
- Disclosing STS's confidential information to MUN;
- Utilizing STS's confidential and proprietary information to create an entity with MUN that directly competes with STS;
- Creating the new entity to compete with STS;
- Permitting the new entity to solicit STS's client current clients; and
- Presently continuing to compete with STS through the new entity.

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.

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.**

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: July 6, 2015

By: _____

Esther Rogers
ESTHER J. ROGERS
Senior Trial Counsel

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DECLARATION OF SERVICE

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

CASE NUMBER(s): 12-O-18163

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, 180 Howard Street, San Francisco, California 94105, 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))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at San Francisco, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2011 9757 47 at San Francisco, 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)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to:
Row 1: Russell Samuel Roeca, Roeca Haas Hager LLP, 250 Montgomery St., Suite 1410, San Francisco, CA 94104, Electronic Address

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

N/A

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 San Francisco, California, on the date shown below.

DATED: July 6, 2015

SIGNED:

Dawn Williams
Dawn Williams
Declarant