

FILED

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**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

THE STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT

SAN FRANCISCO

In the Matter of:

) **Case Number 13-O-10692**

) **13-O-11454**

DALE I. GUSTIN, SBN 76642

) **ANSWER TO COMPLAINT**

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COMES NOW DALE IRVING GUSTIN, in response to the Notice of Disciplinary Charges

alleging as follows to those charges:

1. As to paragraph 1 the Respondent, without agreeing that this Court has Jurisdiction, does hereby admit the allegations as stated in paragraph 1 of said complaint.

COUNT ONE

2. As to paragraph 2 the Respondent, without agreeing that this Court has Jurisdiction, does hereby deny the allegations as stated in paragraph 2 of said complaint including the allegations that the Respondent violated any of the Rules of Professional Conduct and if fact this allegation is proof that the Attorney for the State Bar is guilty of Prosecutorial Misconduct as the Respondent has alleged since Ms. Joyce's involvement in any of the investigations or allegations made by said Attorney that involved this Respondent/Attorney, (because, in this instance, there was never any

COPY



1 allegations of a violation of the Statute of Limitations or delay in prosecuting of the case against
2 Atascadero Ford or Wells Fargo).

3 Additionally, answering the subparagraphs as follows:

4 a. Respondent was diligently pursuing a Fraud Claim with Wells Fargo in an attempt get
5 them to rescind their separately executed contract for the financing of the subject vehicle while the
6 client continued to retain possession and control of said vehicle and it was not until Wells Fargo
7 concluded their investigation and alleged that they could not find any Fraud on behalf of
8 Atascadero Ford was discovered by them that the matter became a concern to the client or the
9 Attorney because the Client still maintained the use of the vehicle that he had purchased from
10 Atascadero Ford and contrary to the allegation in a. the Breach of Contract based upon Fraud did
11 not occur until after the subject vehicle was repossessed by Wells Fargo.
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13 b. This is the only allegation that is true, because, by the time that Wells Fargo was
14 threatening to Repossess the subject vehicle, it was discovered that Allen Yarborough as the owner
15 of Atascadero Ford was having financial problems, and after the Client refused to make the
16 payments to Wells Fargo, Wells Fargo was prevented from obtaining Atascadero Ford's
17 cooperation to prevent a repossession. On top of that the Client was claiming that payments were
18 made directly to Atascadero Ford and not credited towards payments for the purchase of the
19 subject vehicle. Then, Allen Yarborough, not only lost his Ford Franchise, but he went into hiding
20 and then closed the dealership, (allegedly by a Trustee in Bankruptcy), and all efforts to locate him
21 proved futile, and if the Attorney doing the investigation of this case had done a proper
22 investigation of this case, the matter would not have resulted in a frivolous complaint against this
23 Respondent/Attorney. After settling with Wells Fargo, and it becoming an impossibility to obtain
24 service on Allen Yarborough, (with Atascadero Ford being a dissolved or inactive with no agent for
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1 service of process being available), the case was dismissed by the Judge for that reason, not because
2 of any other reason.

3 As to c. through e. These allegations are not true and in fact, the only defendant left in the
4 matter, Wells Fargo, was preparing to file a summary judgment to avoid further litigation, (which
5 due to the Client's refusal to make any payments after his fiduciary advised him that he should
6 make the payments led this Respondent to form the opinion that the best that could be done is to
7 try to settle with Wells Fargo). After advising the Client that the Respondent had negotiated a
8 settlement up from \$1,000.00 to \$3,000.00 which made the Client happy, he agreed to accept same
9 in exchange for dismissing Wells Fargo from the suit. The Client fully cooperated with no
10 complaints as to same until he became unhappy with not getting a new car for free, which was
11 never promised by the Respondent. The Client, has apparently developed unreasonable
12 expectations of believing that he should have gotten a new car for free, and if the Attorney doing
13 the investigation of this case had done a proper investigation of this case, the matter would not
14 have resulted in a frivolous complaint against this Respondent/Attorney.
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17 f. Having failed to locate Allen Yarborough, the last owner of Atascadero Ford, and the only
18 remaining Defendant, the Court advised the Attorney on September 5, 2012 when he appeared late
19 to court due to being double calendared, that the case would be dismissed if it was not brought to a
20 trial by September 26, 2012. With Allen Yarborough as the owner of Atascadero Ford having been
21 in hiding for years, the case could not go forward and thus the Court dismissed the case without
22 prejudice, and that ended the case with the Client being informed of same.
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25 COUNT TWO

26 3. As to paragraph 3 the Respondent, without agreeing that this Court has Jurisdiction, does
27 not admit the allegations as stated in paragraph 3 of said complaint including the allegations that
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1 Complainant is in possession of copies of all of the documents that came into possession of the
2 Respondent/Attorney while said Respondent/Attorney was representing Frances Bone.

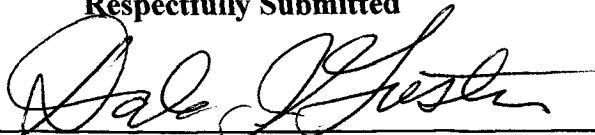
3 **AFFIRMATIVE DEFENSE**

4 The Respondent, without agreeing that this Court has Jurisdiction, does hereby incorporate
5 the responses as set forth in paragraphs 1 through 4 of this Answer and further alleges that the
6 Parties to the alleged basis for the Complaint as set forth above have violated their ethical and
7 legal duties to be truthful with the allegations and hereby demands that the complaining parties
8 submit to a deposition with the Respondent/Attorney to be conducted at the offices of the State Bar
9 Chief Trial Counsel at the San Francisco offices, as the Complainant, Linda Carol Bone, resides in
10 Northern California, and because it is alleged that both complainants have made false allegations
11 that are without merit and as such all charges should be dismissed absent those allegations being
12 reaffirmed under oath as requested, and only after the Respondent/Attorney is permitted to cross-
13 examine these complainants should these matters be allowed to go forward.

14 It is further requested that the Attorney who filed this Complaint be personally liable for
15 any legal fees incurred by the Respondent because the allegations are without merit and the true
16 facts of these allegations were made known to said Attorney before the filing of the Complaint and
17 they were explained to her by another competent Attorney, against whom said State Bar Attorney
18 has made false allegations against that Attorney. The same standard of conduct should apply to a
19 State Bar Attorney as apply to other members of the State Bar.

20 Dated: February 11, 2014

21 Respectfully Submitted

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23 DALE I. GUSTIN

PROOF OF SERVICE

I am employed in the county of San Luis Obispo, State of California. I am over the age of 18 years and am not a party within this action; my address is; 620 13th Street, Paso Robles, California.

On February 12, 2014, I served the foregoing document(s) described as follows:

ANSWER TO COMPLAINT

on the following interested parties in this action:

JUDGE PATRICE E. MCELROY
180 Howard Street, 6th Floor
San Francisco, CA 94105-1639

MANUEL JIMENEZ
Assigned Counsel
180 Howard Street, 6th Floor
San Francisco, CA 94105-1639

 BY PRIORITY EXPRESS MAIL WITH TRACER – I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that day with postage thereon fully prepaid at Paso Robles, California, in the ordinary course of business.

 BY PERSONAL SERVICE – I caused to be delivered such envelope by hand to the offices(s) addressed above.

 BY UNITED PARCEL SERVICE NEXT COURT DAY SERVICE

 FACSIMILE

XX BY US MAIL

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on February 12, 2014, Paso Robles, California.


Mary Ann Kalvans