

PUBLIC MATTER

FILED

JUL 31 2014

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

12 In the Matter of:) Case No. 13-O-12380
 13 TIMOTHY DUNCAN NAEGELE,) NOTICE OF DISCIPLINARY CHARGES
 14 No. 39297,)
 15)
 16 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.



1 The State Bar of California alleges:

2 JURISDICTION

3 1. Respondent Timothy Duncan Naegele was admitted to the practice of law in the
4 State of California on December 23, 1966, was a member at all times pertinent to these
5 charges, and is currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 13-O-12380
8 Rules of Professional Conduct, rule 4-200(A)
9 [Unconscionable Fee]

10 2. On or about December 18, 1998, Respondent entered into an attorney client fee
11 agreement with Ray and Deanna Albers for legal services related to a lawsuit and appeal.
12 Between approximately December 18, 1998 and March 2004, Respondent charged and
13 collected attorney fees of \$735,481.25 from the Alberses that were unconscionable for the
14 following reasons, in willful violation of Rules of Professional Conduct, rule 4-200(A):

- 15 a. The amount of the fee in was not in proportion to the value of the services
16 performed;
- 17 b. The Alberses were not sophisticated clients, and relied on Respondent's
18 expertise to guide them in the failed litigation he pursued on their behalf;
- 19 c. The novelty and difficulty of the questions involved and the skill requisite to
20 perform the legal services properly did not warrant the amount of the fees
21 charged and collected by Respondent;
- 22 d. The amount involved as potential damages and the dismal results obtained by
23 Respondent did not support the amount of fees charged and collected by
24 Respondent;
- 25 e. The nature and length of the professional relationship with the Alberses did
26 not warrant the amount of fee charged and collected by Respondent;
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- f. The time and labor involved did not warrant the amount of attorney fees Respondent charged and collected from the Alberses; and
- g. Respondent did not properly inform the Alberses of the prospects for recovery in the litigation or recoupment of the attorney fees he collected from the clients.

COUNT TWO

Case No. 13-O-12380
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Attorney Fees]

3. Between on or about December 18, 1998 and March 2004, Respondent received advanced fees of \$726,981.25 from his clients, Ray and Deanna Albers, for litigation he initiated on behalf of Ray Albers and his mother Marcella Albers. Respondent did not earn any part of the \$726,981.25 received from the Alberses. Respondent failed to refund promptly, upon Respondent's termination of employment, any part of the \$726,981.25 unearned advanced attorney fees, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

COUNT THREE

Case No. 13-O-12380
Business and Professions Code section 6068(j)
[Failure to Update Membership Address]

4. On or about August 15, 2013, Respondent discontinued using the mail box located at P.O. Box 6408, Malibu, CA 90264, which was the address maintained on the official membership records of the State Bar for Respondent, and thereafter failed to comply with the requirements of Business and Professions Code section 6002.1, by failing to notify the State Bar of the change in Respondent's address within 30 days, in willful violation of Business and Professions Code section 6068(j).

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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 29, 2014

By: 
Erin McKeown Joyce
SENIOR TRIAL COUNSEL

DECLARATION OF SERVICE

by

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

CASE NUMBER(s): 13-O-12380

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, 845 South Figueroa Street, Los Angeles, California 90017, 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) to:

- (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.: 7196-9008-9111-6410-9280 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)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy via US Mail to. Row 1: Timothy Duncan Naegele, Timothy D. Naegele & Associates, P.O. Box 6408, Malibu, CA 90264, CC via electronic address: tdnagele.associates@gmail.com

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').

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: July 29, 2014

SIGNED:

Ana Botosaru Nercessian
Declarant

7196-9008-9111-6410-9280