

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
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FILED
OCT 03 2014
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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10 STATE BAR COURT
11 HEARING DEPARTMENT - LOS ANGELES

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13 In the Matter of:) Case No. 13-O-16105
14 DONALD WILLIAM MCVAY,) NOTICE OF DISCIPLINARY CHARGES
No. 103882,)
15)
16 A Member of the State Bar)

17 **NOTICE - FAILURE TO RESPOND!**

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

- 20 (1) **YOUR DEFAULT WILL BE ENTERED;**
21 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
WILL NOT BE PERMITTED TO PRACTICE LAW;
22 (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;
23 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
24 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
25 **OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**
26 **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. DONALD WILLIAM MCVAY ("Respondent") was admitted to the practice of law
4 in the State of California on July 21, 1982, was a member at all times pertinent to these charges,
5 and is currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 13-O-16105
8 Business and Professions Code, section 6068(a)
9 [Failure to Comply With Laws]

10 2. On or about August 19, 2011 through June 26, 2012, Respondent held himself out as
11 entitled to practice law and actually practiced law when Respondent was not an active member
12 of the State Bar by accepting Thomas M. Fath as a client, agreeing to refile his civil suit, hiring a
13 paralegal to conduct legal research and draft a summary of that research, and communicating
14 with the client regarding the status of his case in violation of Business and Professions Code,
15 sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section
16 6068(a).

17 COUNT TWO

18 Case No. 13-O-16105
19 Business and Professions Code, section 6106
[Moral Turpitude]

20 3. On or about August 19, 2011 through June 26, 2012, Respondent held himself out as
21 entitled to practice law and actually practiced law when Respondent knew or was grossly
22 negligent in not knowing, Respondent was not an active member of the State Bar by accepting
23 Thomas M. Fath as a client, agreeing to refile his civil suit, hiring a paralegal to conduct legal
24 research and draft a summary of that research, and communicating with client regarding status of
25 his case, and thereby committed an act involving moral turpitude, dishonesty or corruption in
26 willful violation of Business and Professions Code, section 6106.

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COUNT THREE

Case No. 13-O-16105
Rules of Professional Conduct, rule 4-200(A)
[Illegal Fee]

4. On or about November 15, 2011, Respondent entered into an agreement for, charged, and collected an illegal fee from Thomas M. Fath between November 15, 2011 and June 26, 2012 totaling \$11,010 to perform legal services while Respondent was inactive and not entitled to practice law, in willful violation of Rules of Professional Conduct, rule 4-200(A).

COUNT FOUR

Case No. 13-O-16105
Rules of Professional Conduct, rule 4-100(A)
[Failure to Deposit Client Funds in Trust Account]

5. On or about November 28, 2011, Respondent received on behalf of Respondent's client, Thomas M. Fath, a check for filing fees made payable to Respondent by client in the amount of \$510. Respondent failed to deposit \$510 in funds received for the benefit of the client in a bank account labelled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

COUNT FIVE

Case No. 13-O-16105
Rules of Professional Conduct, rule 3-700(D)(1)
[Failure to Release File]

6. On or about November 1, 2012, Respondent failed to release promptly, after termination of employment, to Respondent's client, Thomas M. Fath, all of the client's papers and property following the client's request for the client's file on or about November 1, 2012, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

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COUNT SIX

Case No. 13-O-16105
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

7. On or about November 15, 2011 through June 26, 2012, Respondent received advanced fees of \$11,010, from client, Thomas M. Fath, for the purpose of re-filing Mr. Fath's case. Respondent received illegal, and therefore, unearned fees from Mr. Fath during that time. Respondent failed to refund any part of the \$11,010 fee promptly to Mr. Fath upon Respondent's termination of employment on or about August 21, 2012 in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

COUNT SEVEN

Case No. 13-O-16105
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

8. On or about June 20, 2011 through July 2, 2012 Respondent received from Respondent's client, Thomas M. Fath, the sum of \$15,760 as advanced fees for legal services to be performed. Respondent thereafter failed to render an appropriate accounting to the client regarding those funds following the termination of Respondent's employment and Mr. Fath's request for a refund on or about November 1, 2012 in willful violation Rules of Professional Conduct, rule 4-100(B)(3).

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.

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NOTICE - COST ASSESSMENT!

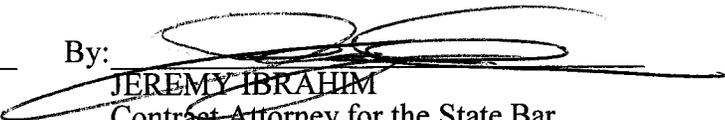
IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: October 3, 2014

By:


JEREMY IBRAHIM
Contract Attorney for the State Bar

DECLARATION OF SERVICE

by

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

CASE NUMBER(s): 13-O-16105

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))
- 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 practice of the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service (UPS).

By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
- I am readily familiar with the practice of 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)
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.: 9414 7266 9904 2010 0893 22 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 to:
DONALD WILLIAM MCVAY, Rancho Santa Fe Law Group, APC, PO Box 103, Rancho Santa Fe, CA 92067, 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 Los Angeles, California, on the date shown below.

DATED: October 3, 2014

SIGNED: KIM WIMBISH
Declarant