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FILED

SEP 18 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of: GREGORY MOLINA BURKE, No. 188891, A Member of the State Bar.	Case No. 13-O-17664, 14-O-05895 NOTICE OF DISCIPLINARY CHARGES

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.

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The State Bar of California alleges:

JURISDICTION

1. GREGORY MOLINA BURKE ("respondent") was admitted to the practice of law in the State of California on June 3, 1997, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No.13-O-17664
Business and Professions Code, section 6068(d)
[Seeking to Mislead a Judge]

2. On or about August 28, 2013, Respondent filed a declaration in support of a Notice of Errata on Motion for Attorney Fees and Costs in *Jeffery Bergman v. J.P. Morgan Chase Bank, N.A.; Cal-Western Reconveyance Corp.; Mark Mraz*, Riverside Superior Court, case no. RIC 10014015, in which Respondent declared under penalty of perjury the truthfulness and accuracy of the attached billing statements which included a bill for attending an ex parte hearing on October 19, 2012, when the statement was false because Respondent did not attend the hearing and Respondent knew the statement was false, and thereby sought to mislead the judge or judicial officer by an artifice or false statement of fact or law, in willful violation of Business and Professions Code, section 6068(d).

COUNT TWO

Case No.13-O-17664
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

3. On or about August 28, 2013, Respondent stated in writing to the court and opposing counsel in the form of a pleading filed with the court and served on the parties in *Jeffery Bergman v. J.P. Morgan Chase Bank, N.A.; Cal-Western Reconveyance Corp.; Mark Mraz,*, Riverside Superior Court, case no. RIC 10014015 that he had attended an ex parte hearing on behalf of his client on October 19, 2012 and was therefore owed $2,295 in attorney's fees when Respondent knew or was grossly negligent in not knowing the statement was false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

COUNT THREE

Case No. 13-O-17664
Business and Professions Code, section 6068(d)
[Seeking to Mislead a Judge]

4. On or about November 18, 2011, Respondent signed and filed a proof of service of his Motion for Reconsideration in *Jeffery Bergman v. J.P. Morgan Chase Bank, N.A.; Cal-Western Reconveyance Corp.; Mark Mraz,* Riverside Superior Court, case no. RIC 10014015, in which Respondent declared under penalty of perjury that he had personally served opposing counsel, S. Christopher Yoo, when in fact he had not personally opposing counsel and Respondent knew the statement was false, and thereby sought to mislead the judge or judicial officer by an artifice or false statement of fact or law, in willful violation of Business and Professions Code, section 6068(d).

COUNT FOUR

Case No.13-O-17664
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

5. On or about November 18, 2011, Respondent stated in writing to the court in the form of a pleading filed with the court in *Jeffery Bergman v. J.P. Morgan Chase Bank, N.A.; Cal-Western Reconveyance Corp.; Mark Mraz,* Riverside Superior Court, case no. RIC 10014015 that he had personally served opposing counsel, S. Christopher Yoo, with his Motion for Reconsideration when Respondent knew or was grossly negligent in not knowing the statement was false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

COUNT FIVE

Case No. 14-O-05895
Rules of Professional Conduct, rule 3-300
[Business Transaction with a Client]

6. On or about November 10, 2010, Respondent entered into a business transaction with clients, Michael Hermanns and Erwin Hermanns, specifically, to invest $35,000 of the client's funds into Respondent's law firm to pay for costs and expenses of its litigation cases. The terms of the business transaction were not fair and reasonable to Michael Hermanns nor to Erwin

Hermanns in that, among other things, the investment was not secured and there were no provisions for the recovery of the funds by the Hermanns and Respondent thereby willfully violated Rules of Professional Conduct, rule 3-300.

COUNT SIX

Case No. 14-O-05895
Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

7. On or about October 14, 2010, Respondent received on behalf of Respondent's clients, Michael Hermanns and Erwin Hermanns, a settlement check from Ronald Rivlin made payable to Respondent on behalf of his clients in the sum of $23,750. On or about October 14, 2010, Respondent deposited the $23,750 into Respondent's client trust account at Bank of America, account number xxx4747[1] on behalf of the clients. Of this sum, the client was entitled to $15,250. Between on or about October 14, 2010 and on or about November 10, 2010, Respondent failed to maintain a balance of $15,250 on behalf of the client in Respondent's client trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A).

COUNT SEVEN

Case No. 14-O-05895
Business and Professions Code, section 6106
[Moral Turpitude - Misappropriation]

8. On or about October 14, 2010, Respondent received on behalf of Respondent's clients, Michael and Erwin Hermanns, a settlement check from Ronald Rivlin made payable to Respondent on behalf of his clients in the sum of $23,750. On or about October 14, 2010, Respondent deposited the $23,750 into Respondent's client trust account at Bank of America, account number xxx4747 on behalf of the clients. Between on or October 14, 2010 and November 10, 2010, Respondent dishonestly or grossly negligently misappropriated for Respondent's own purposes approximately $4,988.19 that Respondent's client, was entitled to receive, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

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[1] The full account number is omitted for privacy reasons.

COUNT EIGHT

Case No. 14-O-05895
Business and Professions Code, section 6106
[Moral Turpitude – Deceit/Misappropriation]

9. In or about November 2010, Respondent proposed and offered to his clients, Michael Hermanns and Erwin Hermanns ("the Hermanns"), a financial investment in Respondent's law practice whereby the Hermanns would entrust Respondent with approximately $35,000, for the express intent and purpose of advancing costs and expenses for litigation incurred by Respondent's clients, in exchange for the following: (1) that Respondent would provide an option in all of Respondent's retainer agreements for the client to have certain costs advanced by the Hermanns at the simple rate of 12% interest; (2) that Respondent would provide the Hermanns with an annual simple rate of 12% interest on all monies being held in trust; and (3) that, after a favorable resolution of each case in which the Hermanns invested, Respondent would provide an accounting and payout of the interest on funds advanced. At the time Respondent made the investment proposal and offer to the Hermanns, Respondent did not intend to honor the terms of the agreement and the representations that he made were false. In reliance on Respondent's representations, the Hermanns entered into an agreement ("investment agreement") to invest in Respondent's law firm, and entrusted Respondent with approximately $35,000, as a financial investment in his litigation practice. At the time he entered into the investment agreement, Respondent did not intend to honor the terms of the agreement, and he had made the representations in order to induce the Hermanns to entrust him with their funds. Thereafter, Respondent misappropriated for his own purposes the $35,000 that the Hermanns entrusted to him. By inducing the Hermanns to entrust him with approximately $35,000, based on false pretenses and deceit and thereafter misappropriating the funds, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

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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: September 18, 2015

By: _____
KIM KASRELIOVICH
Deputy 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-17664, 14-O-05895**

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))**

- 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 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)**

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 0680 37 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:
Gregory Molina Burke	3419 Via Lido, Ste. 360 Newport Beach, CA 92663	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: September 18, 2015

SIGNED: Sandra Reynolds
Sandra Reynolds
Declarant