

# PUBLIC MATTER

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**FILED**

**FEB 18 2015**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of: ) Case No. 14-J-05671  
14 TREZANAY MICHELLE ATKINS, )  
15 No. 249968, ) NOTICE OF DISCIPLINARY CHARGES  
16 A Member of the State Bar ) (Bus. & Prof. Code, § 6049.1; Rules Proc. Of  
State Bar, rules 5.350 to 5.354)

## **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**  
20 **THE STATE BAR COURT TRIAL:**

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**  
22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**  
23 **WILL 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**  
26 **AND 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. TREZANAY MICHELLE ATKINS ("respondent") was admitted to the practice of  
4 law in the State of California on June 12, 2007, was a member at all times pertinent to these  
5 charges, and is currently a member of the State Bar of California.

6 PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

7 2. On or about September 22, 2014, the Supreme Court of Indiana ordered that  
8 respondent be disciplined upon findings that respondent had committed professional misconduct  
9 in that jurisdiction as set forth in the Decision dated September 22, 2014, entitled *In the Matter*  
10 *of Trezanay M. Atkins*, Indiana Supreme Court, Case Number 49S00-1306-DI-435. Thereafter,  
11 the decision of the foreign jurisdiction became final.

12 3. A certified copy of the final order of disciplinary action of the foreign jurisdiction is  
13 attached, as Exhibit 1, and incorporated by reference.

14 4. A copy of the statutes, rules or court orders of the foreign jurisdiction found to have  
15 been violated by respondent is attached, as Exhibit 2, and incorporated by reference.

16 5. Respondent's culpability as determined by the foreign jurisdiction indicates that the  
17 following California statutes or rules have been violated or warrant the filing of this Notice of  
18 Disciplinary Charges: Business and Professions Code section 6106 for misappropriation of  
19 entrusted funds belonging to the Marion County Bar Association (MCBA); Business and  
20 Professions Code section 6106 for misrepresentation made to the MCBA during the  
21 Respondent's term as Treasurer; and, Business and Professions Code section 6068(a) for  
22 violating Respondent's duty as a fiduciary to support the laws of this state.

23 ISSUES FOR DISCIPLINARY PROCEEDINGS

24 6. The attached findings and final order are conclusive evidence that respondent is  
25 culpable of professional misconduct in this state subject only to the following issues:

26 A. The degree of discipline to impose;

1 B. Whether, as a matter of law, respondent's culpability determined in the  
2 proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of  
3 California under the laws or rules binding upon members of the State Bar at the time the member  
4 committed misconduct in such other jurisdiction; and

5 C. Whether the proceedings of the other jurisdiction lacked fundamental  
6 constitutional protection.

7 7. Respondent shall bear the burden of proof with regard to the issues set forth in  
8 subparagraphs B and C of the preceding paragraph.

9 **NOTICE - INACTIVE ENROLLMENT!**

10 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR  
11 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE  
12 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL  
13 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO  
14 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN  
15 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE  
16 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE  
17 RECOMMENDED BY THE COURT.**

18 **NOTICE - COST ASSESSMENT!**

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

24 Respectfully submitted,

25 THE STATE BAR OF CALIFORNIA  
26 OFFICE OF THE CHIEF TRIAL COUNSEL

27 DATED: February 18, 2015 By: Adriana M. Burger  
28 ADRIANA M. BURGER  
Deputy Trial Counsel

RESPONDENT PRO SE

ATTORNEYS FOR THE INDIANA SUPREME COURT  
DISCIPLINARY COMMISSION  
G. Michael Witte, Executive Secretary  
John P. Higgins, Staff Attorney  
Indianapolis, Indiana

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In the  
**Indiana Supreme Court**

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No. 49S00-1306-DI-435

IN THE MATTER OF:

TREZANAY M. ATKINS,

*Respondent.*

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Attorney Discipline Action  
Hearing Officer Helen W. Marchal

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**September 22, 2014**

**Per Curiam.**

We find that Respondent, Trezanay M. Atkins, engaged in attorney misconduct by committing criminal conversion while acting in a fiduciary capacity and by engaging in conduct involving dishonesty. For this misconduct, we conclude that Respondent should be suspended from the practice of law in this state for at least two years without automatic reinstatement.

This matter is before the Court on the report of the hearing officer appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Verified Complaint for Disciplinary Action," and on the post-hearing briefing by the parties. Respondent's 2009 admission to this state's bar subjects her to this Court's disciplinary jurisdiction. *See* IND. CONST. art. 7, § 4.



## **Procedural Background and Facts**

The Commission filed a "Verified Complaint for Disciplinary Action" against Respondent on June 19, 2013. The hearing officer filed her report on May 12, 2014. By filing no petition for review, Respondent has foregone the chance to challenge the hearing officer's findings of fact. See Admis. Disc. R. 23(15)(b).

The Marion County Bar Association (the "MCBA") is a local bar association that exists in large part to assist in the professional development of African American attorneys practicing in the Indianapolis area. The MCBA elects and/or appoints officers, including the treasurer, who serves a one-year term. The treasurer of the MCBA serves in a fiduciary capacity.

In 2011, Respondent submitted an application to join the organization and applied for the position of treasurer. Respondent served as treasurer from June 2011 until December 2012. As treasurer, Respondent had signatory authority on the MCBA's checking account at Regions Bank.

Respondent admitted that during her term as treasurer of the MCBA, she misappropriated funds that belonged to the MCBA. She admitted that she converted the proceeds of 30 checks drawn on MCBA's checking account. The memo lines of the unauthorized checks often contained false statements in order to make it appear that the checks were used for legitimate MCBA expenses. Respondent also admitted she converted the proceeds of one debit and the proceeds of 21 counter checks drawn on the MCBA's checking account. The sum of all funds that Respondent admitted she converted was over \$9,100.

During her tenure as treasurer of the MCBA, the Respondent was also responsible for preparing monthly financial reports. These reports were distributed to all officers and board members of the MCBA. Respondent falsified the financial reports to conceal her thefts from the MCBA.

Respondent resigned from her position as MCBA treasurer at the end of 2012. In an attempt to make a partial payment on the amounts she had taken from the MCBA account, Respondent made a deposit on February 5, 2013, of \$2,651.52, creating a balance discrepancy that the incoming treasurer noticed. On March 15, 2013, Respondent contacted the MCBA's president and disclosed that she had taken approximately \$10,000 from the MCBA.

Respondent testified that one particular transaction was the impetus for her disclosure of the unauthorized transactions. Respondent had misrepresented to the MCBA that a scholarship donation had been made to the Indiana University-Indianapolis law school when in fact she had taken those funds for her own use. If she paid the school the scholarship donation out of her personal account, the MCBA would not be able to list it as a tax deduction. Thus, she could not correct this misappropriation without disclosing to the MCBA what had happened. She denied that she disclosed her misappropriations only when their discovery was imminent.

When Respondent disclosed the unauthorized transactions to the MCBA, however, Respondent was aware that the MCBA was considering applying for 501(c)(6) tax exempt status with the Internal Revenue Service, which would have required a comprehensive audit, and that there had been discussions among MCBA officers about hiring an accountant to review the books. The Hearing Officer therefore found that Respondent confessed because her misappropriations were on the verge of being discovered.

### **Discussion and Discipline**

Our analysis of appropriate discipline entails consideration of the nature of the misconduct, the duties violated by the respondent, any resulting or potential harm, the respondent's state of mind, our duty to preserve the integrity of the profession, the risk to the public should we allow the respondent to continue in practice, and matters in mitigation and aggravation. *See Matter of Newman*, 958 N.E.2d 792, 800 (Ind. 2011).

The Court finds that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct:

8.4(b): Committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

8.4(c): Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The following are facts in aggravation: (1) Respondent converted the MCBA funds while serving in the fiduciary position of treasurer; and (2) she committed multiple offenses and engaged in a pattern of misconduct. The following are facts in mitigation: (1) Respondent has no disciplinary history; (2) Respondent was cooperative with the Commission; and (3) Respondent is remorseful.

We note that Respondent made full restitution to the MCBA. Restitution made only after a client has filed a grievance or after disciplinary proceedings are initiated does not qualify as a mitigating circumstance. See Matter of Fairchild, 777 N.E.2d 726, 732 (Ind. 2002); Matter of Brown, 636 N.E.2d 1249, 1250 (Ind. 1994); Matter of Hanley, 627 N.E.2d 800, 801-02 (Ind. 1994). The same is true when restitution is prompted by a desire to avoid or reduce criminal punishment. However, it would have been considered an aggravating circumstance if Respondent had failed to make restitution. See Matter of Baggerly, 954 N.E.2d 447 (Ind. 2011).

Respondent's deliberate theft from an association she served as treasurer in violation of her fiduciary duty is among the most serious types of misconduct. The Court concludes that Respondent should be suspended from the practice of law in this state for a period of not less than two years, without automatic reinstatement.

### **Conclusion**

The Court concludes that Respondent violated the Indiana Rules of Professional Conduct by committing a criminal act that reflects adversely on her honesty, trustworthiness, and fitness as a lawyer and by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

For Respondent's professional misconduct, the Court suspends Respondent from the practice of law in this state for a period of not less than two years, without automatic reinstatement, beginning November 3, 2014. Respondent shall not undertake any new legal matters between service of this order and the effective date of the suspension, and Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of the minimum period of suspension, Respondent may petition this Court for reinstatement to the practice of law in this state, provided Respondent pays the costs of this proceeding, fulfills the duties of a suspended attorney, and satisfies the requirements for reinstatement of Admission and Discipline Rule 23(4) and (18). Reinstatement is discretionary and requires clear and convincing evidence of the attorney's remorse, rehabilitation, and fitness to practice law. See Admis. Disc. R. 23(4)(b).

The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged.

The Clerk of this Court is directed to give notice of this opinion to the hearing officer, to the parties or their respective attorneys, and to all other entities entitled to notice under Admission and Discipline Rule 23(3)(d). Thomson Reuters is directed to publish a copy of this opinion in the bound volumes of this Court's decisions.

All Justices concur.

I, Kevin S. Smith, Clerk of the Indiana Supreme Court, do hereby certify, pursuant to Ind. Code 33-5-40-41, that the foregoing is a full, true, complete and correct copy of the original Per Curiam as the same appears upon the record of said Court, and in my custody as Clerk. In testimony whereof I have subscribed by name and affixed the seal of said Court this 23rd day of Oct, 2014.

Kevin S. Smith Clerk  
By Dana J. Little Deputy

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\*\*\* Rule updates current through May 23, 2014. \*\*\*

RULES OF PROFESSIONAL CONDUCT  
MAINTAINING THE INTEGRITY OF THE PROFESSION

Ind. Rules of Prof'l Conduct 8.4 (2014)

Review Court Orders which may amend this Rule.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection. A trial judge's finding that preemptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

**HISTORY:** Amended December 21, 2001, effective April 1, 2002; amended September 30, 2004, effective January 1, 2005.

**NOTES: COMMENT**

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[4] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

**AMENDMENTS.** The 2001 amendment, effective April 1, 2002, added subdivision (g).

The 2004 amendment, effective January 1, 2005, added "or to achieve results by means that violate the Rules of Professional Conduct or other law" in subsection (e); and added the last sentence of subsection (g).

**INDIANA LAW JOURNAL.** The Death of an Honorable Profession, 71 Ind. L.J. 911 (1996).

**INDIANA LAW REVIEW.** Survey of 1992 Developments in the Indiana Law of Professional Responsibility, 26 Ind. L. Rev. 1097 (1993).

Survey of 1994 Developments in the Law of Professional Responsibility, 28 Ind. L. Rev. 1013 (1995).

Survey of the Law of Professional Responsibility, 34 Ind. L. Rev. 921 (2001).

Survey: Professional Responsibility: Survey of the Law of Professional Responsibility, 35 Ind. L. Rev. 1477 (2002).

Survey: Professional Responsibility: Survey of the Law of Professional Responsibility: Prosecuting Attorneys and Breaching the Public's Trust, 39 Ind. L. Rev. 1199 (2006).

Survey: Professional Responsibility: Survey of the Law of Professional Responsibility: You Say You Want an Evolution?: An Overview of the Ethics 2000 Amendments to the Indiana Rules of Professional Conduct, 38 Ind. L. Rev. 1255 (2005).

Survey of the Law of Professional Responsibility: Prosecuting Attorneys and Breaching the Public's Trust, 39 Ind. L. Rev. 1199 (2006).

Survey of the Law of Professional Responsibility: Prosecuting Attorneys and Breaching the Public's Trust, 39 Ind. L. Rev. 1199 (2006).

Survey of the Law of Professional Responsibility, 41 Ind. L. Rev. 1213 (2008).

**RES GESTAE.** Complying with the Fair Debt Collection Practices Act, 40 (No. 6) Res Gestae 24

DECLARATION OF SERVICE

by

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

CASE NUMBER(s): 14-J-05671

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))

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.: 7196 9008 9111 6410 6197 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. Row 1: TREZANAY MICHELLE ATKINS, 133 W Market St # 310 Indianapolis, IN 46204, 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: February 18, 2015

SIGNED: Kim Wimbish, KIM WIMBISH, Declarant