

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
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FILED

OCT 07 2014
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

9
10 STATE BAR COURT

11 HEARING DEPARTMENT - LOS ANGELES

12
13 In the Matter of:

Case Nos.: 14-O-00765; 14-O-01236

14 KIMBERLY RENAE BURKE,
No. 248051,

NOTICE OF DISCIPLINARY CHARGES

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16 A Member of the State Bar.

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19 **NOTICE - FAILURE TO RESPOND!**

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

- 22 (1) **YOUR DEFAULT WILL BE ENTERED;**
23 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
WILL NOT BE PERMITTED TO PRACTICE LAW;
24 (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;
25 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
26 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
27 **OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
28 **FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,**
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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NOTICE OF DISCIPLINARY CHARGES

1 The State Bar of California alleges:

2 JURISDICTION

3 1. KIMBERLY RENAE BURKE ("Respondent") was admitted to the practice of law
4 in the State of California on January 4, 2007, 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. 14-O-00765
8 Business and Professions Code, section 6068(m)
9 [Failure to Respond to Client Inquiries]

10 2. Respondent failed to respond promptly to reasonable status inquiries made by
11 Respondent's client, Edelmira Garcia, between in or about January 2013 and in or about
12 January 2014, failed to respond to three telephonic reasonable status inquiries made by client
13 Garcia between in or about February 2014 and in or about March 2014 and failed to respond to
14 one written reasonable status inquiry made by client Garcia on or about April 1, 2014, all of
15 which Respondent received in a matter that Respondent had agreed to provide legal services, in
16 willful violation of Business and Professions Code, section 6068(m).

16 COUNT TWO

17 Case No. 14-O-00765
18 Business and Professions Code, section 6068(m)
19 [Failure to Inform Client of Significant Development]

20 3. Respondent failed to keep Respondent's client, Edelmira Garcia, reasonably
21 informed of significant developments in a matter in which Respondent had agreed to provide
22 legal services, in willful violation of Business and Professions Code, section 6068(m), by failing
23 to inform the client of the following:

24 A) that on or about January 16, 2013 Respondent had moved her law office to a new
25 location;

26 B) that Respondent was suspended from the practice of law and ineligible to act as an
27 attorney in California after March 26, 2014; and

28 C) that after March 26, 2014 Ms. Garcia needed to urgently seek legal advice elsewhere
and seek the substitution of another attorney to represent Ms. Garcia in the then-pending

1 case entitled *Edelmira Garcia v. Roberto S. Duarte*, filed in Los Angeles Superior
2 Court, bearing case number BD557364.

3 COUNT THREE

4 Case No. 14-O-00765
5 Rules of Professional Conduct, rule 3-700(A)(2)
6 [Improper Withdrawal from Employment]

7 4. Respondent failed, upon termination of employment, to take reasonable steps to
8 avoid reasonably foreseeable prejudice to Respondent's client, Edelmira Garcia, by
9 constructively terminating Respondent's employment on or about January 16, 2013 by failing to
10 take any action on the client's behalf after January 16, 2013 and thereafter failing to inform the
11 client that Respondent was withdrawing from employment, in willful violation of Rules of
12 Professional Conduct, rule 3-700(A)(2).

13 COUNT FOUR

14 Case No. 14-O-00765
15 Business and Professions Code, section 6068(j)
16 [Failure to Update Membership Address]

17 5. On or about January 16, 2013, Respondent moved out of Respondent's office at the
18 address maintained on the official membership records of the State Bar and thereafter failed to
19 comply with the requirements of Business and Professions Code section 6002.1, by failing to
20 notify the State Bar of the change in Respondent's address within 30 days, in willful violation
21 of Business and Professions Code, section 6068(j).

22 COUNT FIVE

23 Case No. 14-O-00765
24 Business and Professions Code, section 6068(i)
25 [Failure to Cooperate in State Bar Investigation]

26 6. Respondent failed to cooperate and participate in a disciplinary investigation
27 pending against Respondent by failing to provide a substantive response to the State Bar's
28 letters of March 27, 2014 and April 16, 2014, which Respondent received, that requested
Respondent's response to the allegations of misconduct being investigated in case no. 14-O-
00765, in willful violation of Business and Professions Code, section 6068(i).

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COUNT SIX

Case No. 14-O-01236
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

7. On or about March 1, 2013, Respondent received advanced fees of \$2,500 from a client, Richard Salvaggio for purposes of representing Mr. Salvaggio in the then-pending case entitled *Olga Fabrick v. Richard Salvaggio*, filed in San Bernardino Superior Court, bearing case number CIVRS 1301433. Respondent performed no services of value on behalf of the client and therefore earned none of the advanced fees paid. Respondent failed to refund promptly, upon Respondent's termination of employment on or about March 7, 2013 any part of the \$2,500 fee, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

COUNT SEVEN

Case No. 14-O-01236
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

8. On or about March 1, 2013, Respondent received from Respondent's client, Richard Salvaggio, the sum of \$2,500 as advanced fees for legal services to be performed. Respondent thereafter failed to render an appropriate accounting to the client regarding those funds following upon the termination of Respondent's employment on or about March 7, 2013, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

COUNT EIGHT

Case No. 14-O-01236
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

9. Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent by failing to provide a substantive response to the State Bar's letters of April 3, 2014 and June 17, 2014, which Respondent received, that requested Respondent's response to the allegations of misconduct being investigated in case no. 13-O-12680, in willful violation of Business and Professions Code, section 6068(i).

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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: October 7, 2014

By: 
ASHOR MOORADIAN
Senior Trial Counsel

DECLARATION OF SERVICE

by

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

CASE NUMBER(s): 14-O-00765; 14-O-01236

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 8214 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: Kimberly Renae Burke, Law Office Of Kimberly R Burke, 387 N 2nd Ave, Upland, CA 91786, 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 7, 2014

SIGNED:

Handwritten signature of Charles C. Bagai, Declarant.