

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
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7

FILED

MAR 02 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

8 STATE BAR COURT

9 HEARING DEPARTMENT - LOS ANGELES

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11 In the Matter of:) Case No. 14-O-02080
12 DAVID KYLE,)
No. 55821,) NOTICE OF DISCIPLINARY CHARGES
13)
14 A Member of the State Bar)

15
16 **NOTICE - FAILURE TO RESPOND!**

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

- 19 (1) **YOUR DEFAULT WILL BE ENTERED;**
20 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL**
NOT BE PERMITTED TO PRACTICE LAW;
21 (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;
22 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
23 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR**
24 **VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER**
25 **RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER**
26 **HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF**
27 **PROCEDURE OF THE STATE BAR OF CALIFORNIA.**
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1 The State Bar of California alleges:

2 JURISDICTION

3 1. David Kyle (“Respondent”) was admitted to the practice of law in the State of
4 California on June 29, 1973, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No.14-O-02080
8 Business and Professions Code, section 6068(a)
9 [Failure to Comply With Laws – Unauthorized Practice of Law]

10 2. On or about November 18, 2013 and December 30, 2013, Respondent held himself
11 out as entitled to practice law and actually practiced law when Respondent was not an active
12 member of the State Bar, by appearing as counsel in three depositions, and advising and
13 guiding his clients during these depositions for the Los Angeles County Superior Court case,
14 *Smith v. Clemson*, Case No. BC498148, in violation of Business and Professions Code, sections
15 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

16 COUNT TWO

17 Case No. 14-O-02080
18 Business and Professions Code, section 6106
19 [Moral Turpitude]

20 3. On or about November 18, 2013 and December 30, 2013, Respondent held himself
21 out as entitled to practice law and actually practiced law when Respondent knew, or was
22 grossly negligent in not knowing, Respondent was not an active member of the State Bar by
23 appearing as counsel in three depositions for the Los Angeles County Superior Court case,
24 *Smith v. Clemson*, Case No. BC498148, and advising and guiding his clients during these
25 depositions, and thereby committed an act involving moral turpitude, dishonesty or corruption
26 in willful violation of Business and Professions Code, section 6106.

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COUNT THREE

Case No. 14-O-02080
Business and Professions Code, section 6068(k)
[Failure to Comply with Conditions of Probation]

4. Respondent failed to comply with conditions attached to Respondent's disciplinary probation in State Bar Case no. 12-N-16646 by failing to comply with the State Bar Act, the Rules of Professional Conduct and rule 9.20 of the California Rules of Court as follows, in willful violation of Business and Professions Code, section 6068(k):

- a. Failing to give timely and proper notice to his clients and co-counsel of the effective date of his actual suspension and thereby violating the Rules of Professional Conduct and rule 9.20 of the California Rules of Court; and
- b. Failing to give timely and proper notice to opposing counsel and adverse parties in pending matters of the effective date of his actual suspension and thereby violating the Rules of Professional Conduct and rule 9.20 of the California Rules of Court; and
- c. Failing to file with the court before which litigation was pending notice to opposing counsel/adversary parties of the effective date of his actual suspension and thereby violating the Rules of Professional Conduct and rule 9.20 of the California Rules of Court;

COUNT FOUR

Case No 14-O-02080
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

5. On or about July 10, 2013, Respondent stated in writing under penalty of perjury to the State Bar of California that he had notified all opposing counsel, in all matters pending on the date of the order to comply with rule 9.20 was filed, of Respondent's disqualification to act as an attorney after the effective date of his suspension, and that he filed a copy of this notice with the Court before which the matter was pending for inclusion in its files, when Respondent knew or was grossly negligent in not knowing the statements were false, specifically, Respondent did not notify opposing counsel or file with the Superior Court notice of his

1 suspension from the practice of law in the matter, *Smith v. Clemson*, Cause No. BC498148, and
2 thereby committed an act involving moral turpitude, dishonesty or corruption in willful
3 violation of Business and Professions Code, section 6106.

4 COUNT FIVE

5 Case No 14-O-02080
6 Business and Professions Code, section 6106
7 [Moral Turpitude - Misrepresentation]

8 6. On or about October 2, 2013 and January 6, 2014, Respondent stated in writing
9 under penalty of perjury to the Probation Department of the State Bar of California that he was
10 not in violation of the State Bar Act or the Rules of Professional Conduct when Respondent
11 knew or was grossly negligent in not knowing the statements to the Probation Department of
12 the State Bar were false, and thereby committed an act involving moral turpitude, dishonesty or
13 corruption in willful violation of Business and Professions Code, section 6106, specifically
14 because Respondent:

- 15 a. Misrepresented under oath that he had provided notice to his
16 opposing counsel and filed the notice with the Superior Court in Los
17 Angeles County for the civil matter, *Smith v. Clemson*, Case No.
18 BC498148, which was pending during Respondent's suspension, as
19 required by California Rules of Court, rule 9.20, in violation of
20 Supreme Court Order No. S209213; and
- 21 b. Engaged in the unauthorized practice of law by appearing as counsel
22 of record in three depositions, on or about November 18, 2013 and
23 December 30, 2013, for the Los Angeles County Superior Court case,
24 *Smith v. Clemson*, Case No. BC498148, and advising and guiding his
25 clients during these depositions, in violation of Business and
26 Professions Code sections 6068(a) and 6106.

27 COUNT SIX

28 Case No. 14-O-02080
California Rules of Court, rule 9.20
[Failure to Obey Rule 9.20]

7. Respondent failed to provide written notice required by California Rules of Court,
rule 9.20(a)(4), to opposing counsel and file the notice with the Los Angeles Superior Court,
for the matter *Smith v. Clemson*, Cause No. BC498148, which was pending on the day
Respondent was suspended from the practice of law and in which Respondent was a counsel of

1 record, as required by Supreme Court order no. S209213, in willful violation of California
2 Rules of Court, rule 9.20.

3 COUNT SEVEN

4 Case No. 14-O-02080
5 California Rules of Court, rule 9.20
6 [Failure to Obey Rule 9.20]

7 8. Respondent failed to provide written notice as required by California Rules of
8 Court, rule 9.20(a)(4), to his clients, Samuel Redd, Jeffrey V. Smith, Regina Jo Smith, and Kim
9 Stanley, and file the notice with the Los Angeles Superior Court, for the matter *Smith v.*
10 *Clemson*, Cause No. BC498148, which was pending on the day Respondent was suspended
11 from the practice of law and in which Respondent was a counsel of record, as required by
12 Supreme Court order no. S209213, in willful violation of California Rules of Court, rule 9.20.

13 NOTICE - INACTIVE ENROLLMENT!

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

21 NOTICE - COST ASSESSMENT!

22 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE,**
23 **YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE**
24 **STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS**
25 **MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION**
26 **6086.10.**

27 Respectfully submitted,

28 THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED March 2 '15

By: Hugh G. Radigan
Hugh G. Radigan
Deputy 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-02080

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, CA 90017-2515, 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.: 9414 7266 9904 2010 0841 74 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: Susan Lynn Margolis, Margolis & Margolis LLP, 2000 Riverside Dr, Los Angeles, CA 90039, 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: March 2, 2015

SIGNED:

Handwritten signature of JUE FINNILA, Declarant