

# PUBLIC MATTER

1 STATE BAR OF CALIFORNIA  
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FILED

MAY 27 2015

STATE BAR COURT  
 CLERK'S OFFICE  
 LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of: ) Case No. 14-O-04346  
 14 DANE PAUL MILLER, )  
 No. 226332, ) NOTICE OF DISCIPLINARY CHARGES  
 15 )  
 16 A Member of the State Bar )

**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.**  
**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. Dane Paul Miller ("respondent") was admitted to the practice of law in the State of California on September 2, 2003, 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. 14-O-04346  
Rules of Professional Conduct, rule 4-100(A)  
[Failure to Maintain Client Funds in Trust Account]

2. On or about March 5, 2013, Richard Fair, respondent's client, at respondent's direction, deposited \$16,000 in advanced costs in connection with Mr. Fair's medical malpractice case into respondent's general account at JP Morgan Chase Bank, account no. xxxxxxxxxxxx27100<sup>1</sup> ("respondent's general account"). On or about March 5, 2013, respondent transferred the \$16,000 in advanced costs to his client trust account at JP Morgan Chase Bank, account no. xxxxx9850<sup>2</sup> ("respondent's client trust account). On or about March 6, 2013, respondent transferred the \$16,000 in advanced costs from respondent's client trust account to respondent's general account. Respondent failed to maintain a balance of \$16,000 on behalf of Mr. Fair in respondent's client trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A).

COUNT TWO

Case No. 14-O-04346  
Business and Professions Code, section 6106  
[Moral Turpitude-Misappropriation]

3. On or about March 5, 2013, Richard Fair, respondent's client, at respondent's direction, deposited \$16,000 in advanced costs in connection with Mr. Fair's medical malpractice case into respondent's general account at JP Morgan Chase Bank, account no.

<sup>1</sup> The full account number is omitted for privacy reasons.  
<sup>2</sup> The full account number is omitted for privacy reasons.

1 xxxxxxxxxxxx27100<sup>3</sup> (“respondent’s general account”). On or about March 5, 2013, respondent  
2 transferred the \$16,000 in advanced costs to his client trust account at JP Morgan Chase Bank,  
3 account no. xxxxxx9850<sup>4</sup> (“respondent’s client trust account). On or about March 6, 2013,  
4 respondent transferred the \$16,000 in advanced costs from respondent’s client trust account to  
5 respondent’s general account. Between on or about March 7, 2013, and on or about March 25,  
6 2013, respondent properly disbursed \$9,045 of the advanced costs on behalf of Mr. Fair.  
7 Thereafter, respondent did not disburse any further funds from respondent’s general account to,  
8 or on behalf of, Mr. Fair. Accordingly, respondent was required to maintain a minimum balance  
9 of \$6,955 (\$16,000-\$9,045) on behalf of Mr. Fair in respondent’s general account. On April 10,  
10 2013, before respondent had disbursed any further funds to, or on behalf of, Mr. Fair, the  
11 balance in respondent’s general account was (-) \$357.39. Respondent dishonestly or grossly  
12 negligently misappropriated for respondent’s own purposes \$6,995 of the advanced costs that  
13 Mr. Fair had provided to respondent, and thereby committed an act of moral turpitude in willful  
14 violation of Business and Professions Code, section 6106.

15 COUNT THREE

16 Case No. 14-O-04346  
17 Rules of Professional Conduct, rule 4-100(B)(3)  
18 [Failure to Render Accounts of Client Funds]

19 4. On or about March 5, 2013, Richard Fair, respondent’s client, at respondent’s  
20 direction, deposited \$16,000 in advanced costs in connection with Mr. Fair’s medical  
21 malpractice case into respondent’s general account at JP Morgan Chase Bank, account no.  
22 xxxxxxxxxxxx27100<sup>5</sup> (“respondent’s general account”). On or about March 5, 2013, respondent  
23 transferred the \$16,000 in advanced costs to his client trust account at JP Morgan Chase Bank,  
24 account no. xxxxxx9850<sup>6</sup> (“respondent’s client trust account). On or about March 6, 2013,  
25 respondent transferred the \$16,000 in advanced costs from respondent’s client trust account to  
26 respondent’s general account. On October 30, 2013, Mr. Fair’s medical malpractice case

27 <sup>3</sup> The full account number is omitted for privacy reasons.

28 <sup>4</sup> The full account number is omitted for privacy reasons.

<sup>5</sup> The full account number is omitted for privacy reasons.

<sup>6</sup> The full account number is omitted for privacy reasons.

1 settled. Respondent thereafter failed to render an appropriate accounting of the \$16,000 in  
2 advanced costs that Mr. Fair provided to respondent in willful violation of Rules of Professional  
3 Conduct, rule 4-100(B)(3).

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5 COUNT FOUR

6 Case No. 14-O-04346  
7 Rules of Professional Conduct, rule 4-100(A)  
8 [Failure to Deposit Client Funds in Trust Account]

9 5. Between on or about December 18, 2013, and on or about February 13, 2014,  
10 respondent received on behalf of respondent's client, Richard Fair, settlement funds from Steven  
11 Sutherland, DDS on behalf of Mr. Fair in the total sum of \$18,412.02. Respondent did not  
12 deposit any of the \$18,412.02 that he received from Dr. Sutherland on behalf of Mr. Fair in a  
13 bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in  
14 violation of Rules of Professional Conduct, rule 4-100(A).

15 COUNT FIVE

16 Case No. 14-O-04346  
17 Business and Professions Code, section 6068(m)  
18 [Failure to Respond to Status Inquiries]

19 6. Respondent failed to respond promptly to numerous telephonic reasonable status  
20 inquiries made by Respondent's client, Richard Fair, between on or about March 13, 2014, and  
21 on or about July 21, 2014, that respondent received with respect to the status of Mr. Fair's  
22 settlement funds in a matter in which respondent had agreed to provide legal services, in willful  
23 violation of Business and Professions Code, section 6068(m).

24 COUNT SIX

25 Case No. 14-O-04346  
26 Rules of Professional Conduct, rule 4-100(B)(4)  
27 [Failure to Pay Client Funds Promptly]

28 7. Between on or about October 30, 2013, and on or about February 13, 2014,  
respondent received on behalf of respondent's client, Richard Fair, a settlement check from  
Intercare Insurance in the sum of \$9,999, as well as three payments from Steven Sutherland,

1 DDS, totaling \$18,412.02, for a total of \$28,411.02. Of this sum, Mr. Fair was entitled to  
2 \$17,047.20. Between on or about March 13, 2014, and on or about July 21, 2014, Mr. Fair  
3 requested payment of his funds. Respondent did not pay Mr. Fair any portion of the \$17,047.20  
4 until on or about January 21, 2015, and thereby failed to pay promptly, as requested by Mr. Fair,  
5 any portion of the \$17,047.20 in willful violation of Rules of Professional Conduct, rule 4-  
6 100(B)(4).

7 COUNT SEVEN

8 Case No. 14-O-04346  
9 Rules of Professional Conduct, rule 4-100(A)  
[Commingling – Payment of Personal Expenses from Client Trust Account]

10 8. Between on or about March 3, 2014, and on or about November 18, 2014, respondent  
11 used funds from respondent's client trust account at JP Morgan Chase Bank, account no.  
12 xxxxx9850<sup>7</sup> ("respondent's client trust account) to purchase the following cashier's checks made  
13 payable to Newberry Lofts, payments of personal expenses, in willful violation of Rules of  
14 Professional Conduct, rule 4-100(A):

15	<u>DATE OF CASHIER'S CHECK</u>	<u>\$ AMT OF CASHIER'S CHECK</u>
16	03/03/14	\$2,750
17	05/03/14	\$2,750
18	06/03/14	\$2,800
19	07/03/14	\$2,800
20	08/02/14	\$2,800
21	09/03/14	\$2,650
22	10/02/14	\$2,650
23	11/03/14	\$2,750
24	11/18/14	\$750

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28 <sup>7</sup> The full account number is omitted for privacy reasons.

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**NOTICE - INACTIVE ENROLLMENT!**

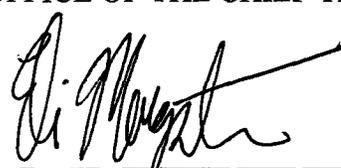
**YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE 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: May 27, 2015

By: \_\_\_\_\_

Eli D. Morgenstern  
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-04346

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))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6) to:

- (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.: 9414-7266-9904-2010-0722-56 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 via US Mail to:
Row 1: Dane P. Miller, Miller & Associates, 355 S Grand Ave Ste 2450, Los Angeles, CA 90071, CC via electronic address: DaneMiller@DaneMillerLaw.com, Dane@ymail.com

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

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').

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: May 27, 2015

SIGNED: [Signature]
Ana Botosaru-Nercessian
Declarant