

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
2 OFFICE OF CHIEF TRIAL COUNSEL
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4 CHIEF TRIAL COUNSEL
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FILED

APR 01 2016

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

13 In the Matter of:) Case No. 15-O-10294 [15-O-11631; 15-O-
14 ROBERT NORIK KITAY,) 12316; 15-O-12317; 15-O-12596]
15 No. 229966,) NOTICE OF DISCIPLINARY CHARGES
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
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.

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Robert Norik Kitay ("respondent") was admitted to the practice of law in the State of
4 California on January 29, 2004, 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. 15-O-10294
8 Business and Professions Code, section 6106
9 [Moral Turpitude – Issuance of NSF Checks]

10 2. From in or about December 15, 2014, to in or about December 22, 2014, respondent
11 issued the following checks drawn upon respondent's client trust account at Bank of America,
12 account #XXXXXXXX9526 when respondent knew or was grossly negligent in not knowing
13 that there were insufficient funds in the CTA to pay them, and thereby committed an act
14 involving moral turpitude, dishonesty or corruption in willful violation of Business and
15 Professions Code, section 6106:

16	[CHECK NO.]	[CHECK DATE]	[CHECK AMT.]	[RETURNED/PAID]
17	1089	12/15/14	\$3,447.41	PAID
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COUNT TWO

Case No. 15-O-10294
Rules of Professional Conduct, rule 4-100(A)
[Commingling Personal Funds in Client Trust Account]

3. Between on or about September 12, 2014, through February 25, 2015, respondent deposited or commingled funds belonging to respondent into respondent's client trust account at Bank of America, account no. XXXXXXXXX9526, as follows, in wilful violation Rules of Professional Conduct, rule 4-100(A):

<u>DATE OF DEPOSIT</u>	<u>AMT. DEPOSITED</u>	<u>FORM OF DEPOSIT</u>
9/12/14	\$7,500	TXR FR. CHK 9429
9/19/14	\$3,448.76	TXR FR. CHK 9429
10/1/14	\$4,000	TXR FR. CHK 9429
10/7/14	\$4,000	TXR FR. CHK 9429
10/16/14	\$3,000	TXR FR. CHK 9429
10/17/14	\$15	TXR FR. CHK 9429
10/22/14	\$2,500	TXR FR. CHK 9429
11/3/14	\$5,500	TXR FR. CHK 9429
11/3/14	\$2,500	TXR FR. CHK 9429
11/4/14	\$5,000	TXR FR. CHK 9429
11/7/14	\$5,000	TXR FR. CHK 9429
11/12/14	\$2,170	TXR FR. CHK 9429
11/13/14	\$8,000	TXR FR. CHK 9429
12/23/14	\$4,500	TXR FR. CHK 9429
1/2/15	\$430.63	TXR FR. CHK 9429
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1	<u>DATE OF DEPOSIT</u>	<u>AMT. DEPOSITED</u>	<u>FORM OF DEPOSIT</u>
2	1/7/15	\$500	TXR FR. CHK 9429
3	1/9/15	\$1,000	TXR FR. CHK 9429
4	1/12/15	\$8,500	TXR FR. CHK 9429
5	1/21/15	\$1,000	TXR FR. CHK 9429
6	2/4/15	\$225	TXR FR. CHK 9429
7	2/25/15	\$5,199.85	PGC Claims Service Check

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COUNT THREE

Case No. 15-O-10294
Business and Professions Code, section 6068(a)
[Failure to Comply With Laws – Unauthorized Practice of Law]

4. Between on or about December 3, 2014 and May 28, 2015, respondent held himself out as entitled to practice law and actually practiced law when respondent was not an active member of the State Bar by: 1) advising client Elizabeth Upton regarding active litigation; 2) continuing to use rnkitay@rnkitaylaw.com as his email address in correspondence with clients; 3) remaining as counsel of record in six cases; and 4) signing and filing a “Disassociation of Counsel” on December 5, 2014 in Sacramento County Superior Court Case no. 31-2012-00125841, wherein respondent removed attorney Victoria Linder as co-counsel and left himself as sole counsel of record for client Alicia Marrufo; in violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

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COUNT FOUR

Case No. 15-O-11631
Business and Professions Code, section 6068(o)(1)
[Failure to Report Lawsuits]

5. Respondent failed to report to the State Bar of California, in writing, within 30 days of the time respondent had knowledge thereof, the filing of the following three or more lawsuits filed against respondent in a 12-month period alleging malpractice or other wrongful misconduct committed in a professional capacity, in willful violation of Business and Professions Code, section 6068(o)(1):

<u>CASE NAME</u>	<u>CASE NO.</u>	<u>JURISDICTION OF CASE</u>	<u>FILED</u>
1. <i>Stanzler v. Kitay</i>	34-2012-00118766	Sacramento Co. Superior	2/15/12
2. <i>Gonzalez v. Kitay</i>	34-2012-00134527	Sacramento Co. Superior	10/29/12
3. <i>Saecho v. Kitay</i>	34-2012-00134639	Sacramento Co. Superior	10/31/12

COUNT FIVE

Case No. 15-O-11631
Business and Professions Code, section 6068(o)(3)
[Failure to Report Judicial Sanctions]

6. Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time respondent had knowledge of the imposition of judicial sanctions against respondent by failing to report to the State Bar the \$2,200 in sanctions the court imposed jointly and severally on respondent on or about February 8, 2011 in connection with *Martin v. Kitay*, Sacramento County Superior Court, case no. 34-2010-00067795, in willful violation of Business and Professions Code section, 6068(o)(3).

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COUNT SIX

Case No. 15-O-11631
Business and Professions Code, section 6103
[Failure to Obey a Court Order]

7. Respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with, or in the course of, respondent's profession which respondent ought in good faith to do or forbear by failing to comply with the February 8, 2011 non-discovery sanction issued against respondent and his attorney jointly-and-severally, in *Martin v. Kitay*, Sacramento Superior Court case no. #34-2010-00067795 in willful violation of Business and Professions Code, section 6103.

COUNT SEVEN

Case No. 15-O-11631
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

8. On or about May 18, 2015, respondent stated to/stated in writing to State Bar Investigator Laura Sharek that i) Respondent was not aware of the *Stanzler v. Kitay* lawsuit until the State Bar contacted him by letter dated April 20, 2015 on the present matter; ii) Respondent was not aware of the *Gonzalez v. Kitay* lawsuit until "late 2013"; iii) Respondent did not "realize" that *Saecho v. Kitay* was the third case filed against respondent within 12 months for malpractice or other misconduct; when respondent knew, or was grossly negligent in not knowing, the statement(s) were false, 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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COUNT EIGHT

Case No. 15-O-11631
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

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4 9. On or about August 11, 2011, respondent stated to/stated in writing under penalty of
5 perjury to U.S. Bankruptcy Court, Eastern District of California, case no. 11-39593, that
6 respondent had completed the requisite credit counseling within 180 days before filing a
7 bankruptcy petition when respondent's Certificate of Credit Counseling stated respondent's
8 requisite credit counseling occurred on August 24, 2011, when respondent knew, or was grossly
9 negligent in not knowing, the statement(s) were false, and thereby committed an act involving
10 moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code,
11 section 6106.

COUNT NINE

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14 Case No. 15-O-12316
15 California Rules of Court, rule 9.20
16 [Failure to Obey Rule 9.20]

17 10. Respondent failed to file a declaration of compliance with California Rules of Court,
18 rule 9.20 in conformity with the requirements of rule 9.20(c) with the clerk of the State Bar
19 Court by January 7, 2015, as required by Supreme Court order no. S202084, in willful violation
20 of California Rules of Court, rule 9.20. (A true and correct copy of the rule 9.20 order is
21 attached hereto as Exhibit 1 and is incorporated by reference.)

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COUNT TEN

Case No. 15-O-12316
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

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4 11. On or about January 12, 2015, respondent stated to/stated in writing to the Clerk of
5 the State Bar Court that respondent had complied with rule 9.20(b), which required respondent to
6 give notices required by Supreme Court Order S202084 by registered or certified mail, return
7 receipt requested, when respondent knew, or was grossly negligent in not knowing, the
8 statement(s) were false, and thereby committed an act involving moral turpitude, dishonesty or
9 corruption in willful violation of Business and Professions Code, section 6106.
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11 COUNT ELEVEN

12 Case No. 15-O-12317
13 Business and Professions Code, section 6068(a)
[Failure to Comply With Laws – Unauthorized Practice of Law]

14 12. Between on or about November 28, 2014 and May 28, 2015, respondent held
15 himself out as entitled to practice law when respondent was not an active member of the State
16 Bar, by remaining as counsel of record for Petitioner in *Lawson v. Lawson*, Sacramento County
17 Superior Court case no. 11FL06082, in violation of Business and Professions Code, sections
18 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

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DECLARATION OF SERVICE

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

CASE NUMBERS: 15-O-10294 [15-O-11631; 15-O-12316; 15-O-12317; 15-O-12596]

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, 180 Howard Street, San Francisco, California 94105, 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)

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at San Francisco, 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 2042 4867 24 at San Francisco, 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: Robert N. Kitay, 5150 Fair Oaks Blvd., #101-326 Carmichael, CA 95608, 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).

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 San Francisco, California, on the date shown below.

DATED: April 1, 2016

SIGNED:

Handwritten signature of Paula H. D'Oyen, Paula H. D'Oyen Declarant