

1 THE LAW OFFICE OF ALDON BOLANOS
2 Aldon L. Bolanos, Esq., SBN. 233915
3 Seven Hundred "E" Street
4 Sacramento, California 95814
5 PH. 916.446.2800
6 FX. 916.446.2828
7 WWW.ALDONLAW.COM

8 *In Pro Per*

FILED

MAR 09 2016

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

Filed Per Order of Judge

9 State Bar Court
10 San Francisco

11
12 In the matter of:
13 Aldon Louis Bolanos, SBN.
14 233915,
15 A Member of the State Bar.

Case No. 15-O-10896

**RESPONSE TO AMENDED NOTICE OF
DISCIPLINARY CHARGES**

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20 Respondent, ALDON LOUIS BOLANOS, hereby pleads the
21 Office of Chief Trial Counsel has misguidedely
22 altered/reformed a lawful contract and then claimed
23 that Mr. Bolanos engaged in a misappropriation under
24 the reformed terms imposed by the prosecuting attorney!
25 This is an *ex post facto* violation of Constitutional
26 due process.
27
28

1 the contract was for services related to **insurance**
2 **fraud**, not solely medical malpractice, such that the
3 contract was legal pursuant to the California Supreme
4 Court case of *Waters v. Bourhis*.

5
6 COUNT TWO

7 Business and Professions Code 6068(a)

8 [Failure to Comply with Laws - MICRA Limitations and
9 Disclosure]

10 3. As to Paragraph 3 of the Notice of Disciplinary
11 Charges, Respondent denies the contract on the ground
12 that it may have remained unsigned by him. As to the
13 remaining allegations, Respondent denies, generally and
14 specifically, each and every allegation therein because
15 the contract was for services related to insurance
16 fraud, not solely medical malpractice, such that the
17 contract was legal pursuant to the California Supreme
18 Court case of *Waters v. Bourhis*.

19
20 COUNT THREE

21 Business and Professions Code section 6068(m)

22 [Failure to Inform Client of Significant Development]

23 4. As to Paragraph 4 of the Notice of Disciplinary
24 Charges, Respondent denies, generally and specifically,
25 that he failed to inform Ms. Maharaj of the limitations
26 set forth in Business and Professions Code section 6146
27 as the subject hybrid fee agreement and resulting
28 settlement in the underlying matter resolved medical

1 and non-medical malpractice claims, including
2 specifically and predominately insurance fraud claims,
3 not subject to the limitations set forth in Business
4 and Professions Code section 6146. As to the remaining
5 allegations, Respondent denies, generally and
6 specifically, each and every allegation therein.

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8 COUNT FOUR

9 Rules of Professional Conduct, rule 4-100(A)
10 [Failure to Maintain Client Funds in Trust Account]
11 5. As to Paragraph 5 of the Notice of Disciplinary
12 Charges, Respondent admits that he received settlement
13 checks from the defendants in the underlying matter
14 totaling \$29,997 on August 8th, 11th, and 18th and
15 deposited the same into his client trust account at JP
16 Morgan Chase Bank, account no. XXXXXX6123 on the dates
17 received. As to the remaining allegations in Paragraph
18 5, Respondent denies, generally and specifically, the
19 allegations therein.

20
21 COUNT FIVE

22 Business and Professions Code section 6106
23 [Moral Turpitude - Misappropriation]
24 6. As to Paragraph 6 of the Notice of Disciplinary
25 Charges, Respondent admits that he received settlement
26 checks from the defendants in the underlying matter
27 totaling \$29,997 on August 8th, 11th, and 18th and
28 deposited the same into his client trust account at JP

1 Morgan Chase Bank, account no. XXXXXX6123 on the dates
2 received. As to the remaining allegations in Paragraph
3 6, Respondent denies, generally and specifically, the
4 allegations therein.

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FACTS RELEVANT TO DEFENSE

7

Mr. Bolanos asserts the following facts relevant
8 to his defense:

9

Ms. Maharaj's original counsel was and is a
10 medical malpractice and personal injury specialist.
11 Yet that original counsel was trying to dump Ms.
12 Maharaj as a client a mere six months before trial was
13 scheduled in her lawsuit.

14

Notably, Ms. Maharaj herself also has twenty
15 years' experience working as an administrative
16 personnel for another personal injury and medical
17 malpractice-specialist law firm in Sacramento. Yet
18 that firm declined to take her case. And ostensibly
19 she herself had some knowledge about MICRA contract
20 limits given that extensive experience.

21

Mr. Bolanos is neither a personal injury nor a
22 medical malpractice specialist. Instead he focuses his
23 practice on employment and civil rights matters, which
24 of late has come to include protecting and preserving
25 real property from bank encroachment and assisting
26 small businesses when insurers unjustly deny their
27 claims.

28

1 Yet Mr. and Mrs. Maharaj are family friends with
2 one Kevin Singh, who is also Mr. Bolanos' housepainter
3 and a former client for whom Mr. Bolanos saved the
4 family's home from imminent foreclosure. That action
5 by Mr. Bolanos earned him a front page story in the
6 Sacramento Bee.

7 Mr. Singh, along with Mr. and Ms. Maharaj,
8 practically begged Mr. Bolanos to take up the case.
9 Mr. Bolanos, obviously against his better judgment,
10 relented. Yet from the outset he saw the case not as
11 one for medical malpractice, but as one for essentially
12 insurance fraud. The three dentists being sued had
13 essentially drilled into fifteen of Ms. Maharaj's teeth
14 and inserted crowns and fillings only after they
15 learned she had a premium dental insurance policy
16 providing for lucrative reimbursement.

17 So the first actions Mr. Bolanos took in the case
18 were to move to postpone the trial and prepare and file
19 a first amended complaint with numerous new causes of
20 action all centering around insurance fraud.

21 At the same time, it became increasingly clear
22 that Ms. Maharaj's claim for dental malpractice was
23 totally untenable because no other dentist who examined
24 the case file would concur or testify that any
25 malpractice occurred.

26 With this toxic stew of facts brewing, the parties
27 went to a mandatory settlement conference on the eve of
28 the hearing on the motion for leave to file an amended

1 insurance fraud-based complaint. And the parties
2 settled the case at that conference in part,
3 ostensibly, because the defense did not want to face
4 the specter of what had been to that point a weak case
5 of medical malpractice into a strong case of insurance
6 fraud.

7 Fast forward to the three defendants providing
8 their three checks per three separate settlement
9 agreements with Ms. Maharaj. The agreements were
10 delayed because Ms. Maharaj wanted a carve-out in the
11 agreements so she could make complaints against their
12 medical licenses (this obviously should have been a red
13 flag for Bolanos). Notably, she also indicated
14 repeatedly a desire to make a claim with the bar about
15 her former attorney essentially abandoning her.
16 Another red flag.

17 Regardless, the third check was delayed, so
18 Bolanos intended to advance some funds to Maharaj. But
19 the reality is the third check came in on the 18th of
20 August 2014. Bolanos notified her immediately. And he
21 provided her with her full settlement value - per the
22 express terms of the contract - on the 21st, some three
23 days later.

24 Also notable here is Bolanos' prior case with the
25 State Bar. In that case, which involved Mr. Bolanos's
26 very first client in private practice, the lessons of
27 the discipline had become painfully obvious to Bolanos:
28 1) Notify the client immediately when settlement funds

1 arrive; 2) Turn over the client's file immediately upon
2 her request, even if she is saber-rattling about
3 malpractice and the file is needed to prove competence;
4 3) If there is any fee dispute with the client, place
5 the disputed funds/fees into the trust account until
6 the dispute is resolved.

7 In the McCarthy matter, Bolanos took funds from
8 his trust account he believed were his under the plain
9 language of the original contract. He was then sued
10 for malpractice and proceeded on the assumption that
11 the issue would be adjudicated to a judgment of the
12 parties' respective rights and responsibilities.

13 Of course that was wrong and Bolanos admitted he
14 was unaware of the rule about placing funds in trust
15 until a dispute is resolved, and admitted to his
16 mistake.

17 But that was not enough for the bar prosecutors,
18 who wanted more flesh. So here we are now with this
19 case, which is postured as similar to McCarthy with the
20 theme "Bolanos is at it again" but in reality is the
21 total opposite of McCarthy. Consider the following
22 facts not in dispute by either side here:

23 Bolanos notified the client immediately upon
24 receipt of the settlement funds. She demanded and
25 received her original file immediately. **And she never,**
26 **ever disputed the fees Bolanos earned.** This, despite
27 Bolanos repeatedly reaching out to her in writing to
28 ask her 1) If she believed any portion of the fee was

1 disputed; 2) To state what portion of the fee she was
2 disputing and why; and 3) If she would like Bolanos to
3 place the ostensibly disputed funds into his trust
4 account until the apparent fee dispute was resolved.

5 In short, Bolanos learned his lesson from the
6 prior discipline and tried to put those lessons into
7 practice in dealing with Maharaj.

8 Indeed when the bar's prosecutor wrote an "early
9 neutral evaluation statement" in this matter finally
10 articulating his theory of misappropriation and the
11 dollar amount he believed was misappropriated, Bolanos
12 immediately sent that amount to Maharaj with a letter
13 stating he did not want a fee dispute again!

14
15 In sum, this began as a fabricated malpractice
16 action seeking to extort funds by Maharaj. She then
17 deployed the willing state bar prosecutor to perform a
18 free investigation for her. That prosecutor has now
19 advanced a tenuous legal theory about reforming
20 contracts and crying "misappropriation" and "moral
21 turpitude" because Bolanos ostensibly did not honor the
22 reformed terms imposed by the prosecutor *after the fact*
23 and never articulated to Bolanos until he was summoned
24 again before the Bar Court.

25
26 Tellingly, the bar prosecutor filed his charges
27 *the day after* its appeal to the California Supreme
28 Court was dismissed. He is a supervisor, not a line

1 prosecutor, and has obviously taken a personal interest
2 in Bolanos. Thus it appears this new matter is as much
3 sour grapes over McCarthy as it is a legitimate effort
4 to protect the public. Conversely, Bolanos protects
5 the public every day from overreaching banks and
6 insurers. He has dedicated his career to helping the
7 "little guy" against big money and vested interests in
8 a stratified society. Thus, these charges and these
9 proceedings are very much against the public's interest
10 and the bar's mission.

11
12 **AFFIRMATIVE DEFENSES**

13 FIRST AFFIRMATIVE DEFENSE

14 1. Respondent alleges that the Notice of Disciplinary
15 Charges, and each count contained therein, fails to
16 state facts sufficient to constitute a disciplinable
17 offense.

18
19 SECOND AFFIRMATIVE DEFENSE

20 2. Respondent is informed and believes and
21 thereon alleges that Counts One and Three fail to state
22 a disciplinable offense as the settlement in the
23 underlying matter resolved medical and non-medical
24 claims that are not subject to Business and Professions
25 Code section 6146 pursuant to the authority set forth
26 in *Waters v. Bourhis* (1985) 40 Cal.3d 424 and its
27 progeny.

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THIRD AFFIRMATIVE DEFENSE

3. Respondent is informed and believes and thereon alleges that Count Two of the Notice of Disciplinary Charges fails to state a disciplinable offense as Business and Professions Code sections 6068(a), 6146 and 6147 are not disciplinable offenses and otherwise duplicative of other charges alleged as set forth in Baker v. State Bar (1989) 49 Cal.3d 804, and its progeny.

FOURTH AFFIRMATIVE DEFENSE

4. Respondent alleges that charges asserted against relating to Business and Professions Code section 6068(a) are unconstitutionally vague.

FIFTH AFFIRMATIVE DEFENSE

5. Respondent is informed and believe and thereon alleges that this Court lacks jurisdiction over this matter insofar as the fee dispute giving rise to these charges are subject to mandatory contractual arbitration.

SIXTH AFFIRMATIVE DEFENSE

5. Respondent is informed and believes and thereon alleges that the charges against him are a violation of the U.S. Constitution's *ex post facto* clause in that the overzealous bar prosecutor, eager to secure discipline against Bolanos, has essentially reformed a

1 written contract to contain new and different terms.
2 Then he has charged Bolanos with essentially
3 misappropriating money per the new and different terms
4 of the new "contract" that the prosecutor himself
5 fancied. This, despite the money at issue being earned
6 by Bolanos under both the express terms of the original
7 contract and as *quantum meruit* after Ms. Maharaj
8 retained new counsel who demanded, on her behalf, that
9 he engage in additional legal services on her behalf.

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PRAYER FOR RELIEF

Respondent ALDON LOUIS BOLANOS prays for a private reproof and a waiver of any cost assessment, because the Bar has only ever offered disbarment in exchange for dropping this case, thereby forcing Bolanos into another lengthy proceeding before this Court if he is to preserve his livelihood and provide for his family of four.

Dated: March 4, 2016

THE LAW OFFICE OF ALDON BOLANOS


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Case No. 15-O-10896

PROOF OF SERVICE

18
19 On the date below I caused to be served on R.
20 Henderson, Esq., with the Office of Chief Trial Counsel
21 of the State Bar at 180 Howard Street, San Francisco,
22 California 94105, by U.S. Mail, the RESPONSE TO AMENDED
23 DISCIPLINARY CHARGES. I declare on penalty of perjury
24 the foregoing is true and correct.

25
26 Dated: March 4, 2016


Aldon Bolanos, Esq.