

PUBLIC MATTER

FILED

MAR 21 2016

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

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STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of:) Case No. 15-O-12893
BRIAN GAIL KINDSVATER,)
No. 156315,) NOTICE OF DISCIPLINARY CHARGES
A Member of the State Bar)

NOTICE - FAILURE TO RESPOND!

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

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (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;**
- (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.**

The State Bar of California alleges:



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JURISDICTION

1. BRIAN KINDSVATER ("respondent") was admitted to the practice of law in the State of California on December 17, 1991, 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. 15-O-12893
Rules of Professional Conduct, rule 4-100(B)(1)
[Failure to Notify of Receipt of Client Funds]

2. On or about April 3, 2015, respondent received on behalf of respondent's client, Ronald Novello, a settlement check from Inter-Wire Products made payable to respondent's client trust account in the amount of \$20,000. Respondent failed to notify the client of respondent's receipt of funds on the clients' behalf, in willful violation of Rules of Professional Conduct, rule 4-100(B)(1).

COUNT TWO

Case No. 15-O-12893
Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

3. On or about April 3, 2015, respondent received on behalf of respondent's client, Ronald Novello, a check from Inter-Wire Products, made payable to respondent's client trust account in the amount of \$20,000. On or about April 3, 2015, respondent deposited the check into respondent's client trust account at JPMorgan Chase, Account No. xxxxxxxxxxxx0717, on behalf of the client. Of this sum, the client was entitled to \$20,000. Respondent failed to maintain a balance of \$19,812.76 on behalf of the client in respondent's client trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A).

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COUNT THREE

Case No. 15-O-12893
Business and Professions Code, section 6106
[Moral Turpitude - Misappropriation]

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4 4. On or about April 3, 2015, respondent received on behalf of respondent's client,
5 Ronald Novello, a check from Inter-Wire Products made payable to respondent's client trust
6 account in the amount of \$20,000. On or about April 3, 2015, respondent deposited the check
7 into respondent's client trust account at JPMorgan Chase, Account No. xxxxxxxxxxxx0717, on
8 behalf of the client. Between on or about April 14, 2015, and on or about June 24, 2015,
9 respondent dishonestly or grossly negligently misappropriated for respondent's own purposes
10 \$19,812.76 that respondent's client was entitled to receive, and thereby committed an act
11 involving moral turpitude, dishonesty or corruption in willful violation of Business and
12 Professions Code, section 6106.

COUNT FOUR

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14 Case No. 15-O-12893
15 Rules of Professional Conduct, rule 4-100(B)(4)
16 [Failure to Pay Client Funds Promptly]

17 5. On or about April 3, 2015, respondent received on behalf of respondent's client,
18 Ronald Novello, a settlement check from Inter-Wire Products made payable to respondent's
19 client trust account in the amount of \$20,000. Of this sum, the client was entitled \$20,000. On
20 or about May 12, 2015, the client requested that respondent pay the funds to him. Respondent
21 did not pay the funds to the client until after July 15, 2015. Respondent failed to pay promptly,
22 as requested by respondent's client, any portion of the \$20,000 in funds in respondent's
23 possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

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COUNT FIVE

Case No. 15-O-12893
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

6. On or about April 15, 2015, respondent stated in writing to his client, Ronald Novello, that “[t]he settlement funds will be by check and then will need to clear my account” when respondent knew or was grossly negligent in not knowing that the settlement funds were already received and cleared the account and that 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.

NOTICE - INACTIVE ENROLLMENT!

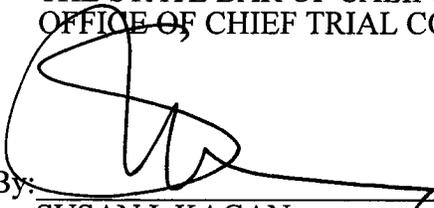
YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR.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

By: 

SUSAN I. KAGAN
Senior Trial Counsel

DATED: March 21, 2016

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DECLARATION OF SERVICE BY CERTIFIED AND REGULAR MAIL

RE: BRIAN KINDSVATER
CASE NO.: 15-O-12893

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that 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; that 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; that I am aware that on motion of 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; and that 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 San Francisco, on the date shown below, a true copy of the within

NOTICE OF DISCIPLINARY CHARGES

in a sealed envelope placed for collection and mailing as *certified mail, return receipt requested*, and in an additional sealed envelope as *regular mail*, at San Francisco, on the date shown below, addressed to:

Article No. 9414 7266 9904 2042 4852 46

Brian Gail Kindsvater
Law Ofc Brian Kindsvater
2377 Gold Meadow Way # 102
Gold River, CA 95670

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

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: March 21, 2016

Signed:


Dawn Williams
Declarant