

**PUBLIC MATTER**

**FILED**

**APR 14 2016**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

1 STATE BAR OF CALIFORNIA  
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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of: ) Case No. 15-O-13848  
14 KENNETH L. GROSS, )  
No. 52081, ) 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.**  
24 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**  
25 **OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**  
26 **ORDER RECOMMENDING YOUR DISBARMENT WITHOUT**  
27 **FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,**  
28 **RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**



1 The State Bar of California alleges:

2 JURISDICTION

3 1. Kenneth L. Gross ("Respondent") was admitted to the practice of law in the State of  
4 California on April 24, 1972, 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-13848  
8 Business and Professions Code, section 6106  
9 [Moral Turpitude - Misappropriation]

10 2. On or about August 10, 2012, Respondent received on behalf of Tirza Geib ("Geib")  
11 funds which were Geib's net profit from the sale of her condominium in the sum of \$268,252.53,  
12 and funds that belonged to Geib, which Respondent agreed to hold as a fiduciary for safekeeping  
13 until Geib determined what she wanted to do with the funds. On or about August 10, 2012,  
14 Respondent deposited the \$268,252.53 into Respondent's client trust account at Comerica Bank,  
15 account no. xxxx5253<sup>1</sup> on behalf of Geib. Between on or about August 12, 2012 and on or about  
16 December 17, 2012, Respondent dishonestly or grossly negligently misappropriated for  
17 Respondent's own purposes at least approximately \$268,206.75 that Geib, was entitled to  
18 receive, and thereby committed an act involving moral turpitude, dishonesty or corruption in  
19 willful violation of Business and Professions Code, section 6106.

20 COUNT TWO

21 Case No. 15-O-13848  
22 Rules of Professional Conduct, rule 4-100(A)  
23 [Failure to Maintain Client Funds in Trust Account]

24 3. On or about August 10, 2012, Respondent received on behalf of Tirza Geib ("Geib")  
25 funds which were Geib's net profit from the sale of her condominium in the sum of \$268,252.53,  
26 and funds that belonged to Geib, which Respondent agreed to hold as a fiduciary for safekeeping  
27 until Geib determined what she wanted to do with the funds. On or about August 10, 2012,  
28 Respondent deposited the \$268,252.53 into Respondent's client trust account at Comerica Bank,

<sup>1</sup> Only the last four digits of the account number are listed to protect the account.

1 account no. xxxx5253<sup>2</sup> on behalf of Geib. Of this sum, Geib was entitled to at least  
2 approximately \$268,206.75 . Respondent failed to maintain a balance of at least approximately  
3 \$268,206.75 on behalf of Geib in Respondent's client trust account, in willful violation of Rules  
4 of Professional Conduct, rule 4-100(A).

5 COUNT THREE

6 Case No. 15-O-13848  
7 Business and Professions Code, section 6106  
8 [Moral Turpitude – Breach of Fiduciary Duty]

8 4. On or about August 10, 2012, while acting in his capacity as both an attorney and a  
9 fiduciary for his client, Tirza Geib ("Geib"), regarding the sale of Geib's condominium,  
10 Respondent received a \$268,252.53 wire transfer from the purchaser of Geib's condominium,  
11 which Respondent deposited into to his client trust account at Comerica Bank, account no.  
12 xxxx5253<sup>3</sup>. Pursuant to an oral agreement entered into between Respondent and Geib on or  
13 about August 10, 2012, Respondent agreed to deposit the \$268,252.53 into his client trust  
14 account, to disburse approximately \$50,000 of the funds to Geib so that she could pay off credit  
15 cards and have some spending money, to maintain the principal balance of \$218,252.53 in his  
16 client trust account for Geib until she determined what she wanted to do with the funds, to permit  
17 Geib the option of withdrawing the funds every four months, and to pay Geib 8% interest on the  
18 principal amount of the funds while he was holding them in his client trust account. Respondent  
19 did not deposit Geib's funds into a separate client trust account for Geib, which could earn  
20 interest for Geib, but instead deposited the funds into his IOLTA client trust account where Geib  
21 would not earn any interest. Between on or about August 12, 2012 and on or about December  
22 17, 2012, Respondent without authority and without advising Geib, disbursed at least  
23 \$268,206.75 from his client trust account to pay his own personal expenses and thereafter failed  
24 to safeguard the funds entrusted to him as an attorney and fiduciary, thereby breaching his  
25 fiduciary duties owed to Geib. By breaching his fiduciary duties owed to Geib to maintain her  
26 funds in a client trust account whereby Geib could accrue interest, and by disbursing

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28 <sup>2</sup> Only the last four digits of the account number are listed to protect the account.

<sup>3</sup> Only the last four digits of the account number are listed to protect the account.

1 approximately \$268,206.75 from his client trust account to pay his own personal expenses  
2 Respondent thereby committed an act involving moral turpitude, dishonesty or corruption in  
3 willful violation of Business and Professions Code section 6106.

4 COUNT FOUR

5 Case No. 15-O-13848  
6 Rules of Professional Conduct, rule 3-300  
[Business Transaction with a Client]

7 5. On or about August 10, 2012, Respondent entered into a business transaction with a  
8 client, Tirza Geib ("Geib"), specifically, Respondent advised Geib to deposit \$268,206.75 from  
9 the sales proceeds of her condominium into his client trust account, where Respondent agreed to  
10 disburse \$50,000 of the funds to Geib to pay off personal expenses, to maintain the principal  
11 balance of \$218,252.53 in his client trust account for Geib until she determined what she wanted  
12 to do with the funds, to permit Geib the option of withdrawing the funds every four months, and  
13 to pay Geib 8% interest on the principal amount of the funds while he was holding them in his  
14 client trust account. The terms of the business transaction were not fair and reasonable to Geib  
15 in that Respondent deposited the funds into his IOLTA trust account as opposed to a trust  
16 account that netted interest to Geib, Respondent failed to maintain all \$268,206.75 in the trust  
17 account as agreed upon, and there was no security or other collateral for the funds to protect the  
18 funds or to ensure that Respondent paid interest in the funds; Respondent did not fully disclose in  
19 writing to Geib the terms of the business transaction in a manner which should reasonably have  
20 been understood by Geib; Respondent did not advise Geib in writing that she may seek the  
21 advice of an independent lawyer of the client's choice and did not give the client a reasonable  
22 opportunity to seek that advice; and the client did not consent in writing to the terms of the  
23 transaction, and Respondent thereby willfully violated Rules of Professional Conduct, rule 3-  
24 300.

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COUNT FIVE

Case No. 15-O-13848  
Rules of Professional Conduct, rule 4-100(B)(3)  
[Failure to Render Accounts of Client Funds]

6. On or about August 10, 2012, Respondent received on behalf of Tirza Geib (“Geib”), funds which were Geib’s net profit from the sale of her condominium and which belonged to Geib, in the sum of \$268,252.53. Respondent thereafter failed to render an appropriate accounting to Geib regarding those funds following Geib’s multiple email requests for such accounting for the funds between on or about April 5, 2013 and on or about March 19, 2014, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

COUNT SIX

Case No. 15-O-13848  
Rules of Professional Conduct, rule 4-100(B)(4)  
[Failure to Pay Client Funds Promptly]

7. On or about August 10, 2012, Respondent received on behalf of Tirza Geib (“Geib”), funds which were Geib’s net profit from the sale of her condominium in the sum of \$268,252.53. Of this sum, Geib was entitled to at least approximately \$268,252.53. Between on or about April 5, 2013 and on or about March 19, 2014, Geib made multiple requests both orally and by email for the return of her principal funds in the approximate sum of \$268,252.53. To date, Respondent has failed to pay promptly, as requested by Geib, any portion of the \$268,252.53 in Respondent’s possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

**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!**

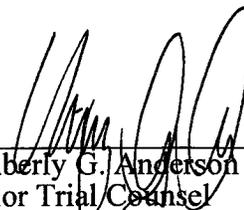
**IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**

1 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**  
2 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**  
3 **PROFESSIONS CODE SECTION 6086.10.**

4 Respectfully submitted,

5 THE STATE BAR OF CALIFORNIA  
6 OFFICE OF CHIEF TRIAL COUNSEL

7 DATED: April 14, 2016

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Kimberly G. Anderson  
Senior Trial Counsel

DECLARATION OF SERVICE

by

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

CASE NUMBER(s): 15-O-13848

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))

- 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 0742 05 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)

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
MARISSA E. BUCK	Holland & Knight 400 S Hope St Fl 8 Los Angeles, CA 90071	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: April 14, 2016

SIGNED:

*Kim Wimbish*

KIM WIMBISH  
Declarant