

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
 OFFICE OF CHIEF TRIAL COUNSEL
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FILED
 SEP 06 2016
 STATE BAR COURT
 CLERK'S OFFICE
 LOS ANGELES

8
 9 STATE BAR COURT

10 HEARING DEPARTMENT - LOS ANGELES

11
 12 In the Matter of:) Case Nos. 15-O-15656
) 15-O-15667
 13 JOHN MICHAEL HARMATA,) 15-O-15900
 No. 131668,) 16-O-12063
 14)
) NOTICE OF DISCIPLINARY CHARGES
 15 A Member of the State Bar)

16 **NOTICE - FAILURE TO RESPOND!**

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

- 20 (1) **YOUR DEFAULT WILL BE ENTERED;**
 21 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
 22 **WILL NOT BE PERMITTED TO PRACTICE LAW;**
 23 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
 24 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**
 25 **AND THE DEFAULT IS SET ASIDE, AND;**
 26 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
 27 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
 28 **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.



1 The State Bar of California alleges:

2 JURISDICTION

3 1. JOHN HARMATA ("Respondent") was admitted to the practice of law in the State of
4 California on December 14, 1987, 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-15656
8 Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

9 2. Respondent failed to cooperate and participate in a disciplinary investigation pending
10 against Respondent by failing to provide a substantive response to the State Bar's letters of
11 December 15, 2015 and January 6, 2016, which Respondent received, that requested
12 Respondent's response to the allegations of misconduct being investigated in case no. 15-O-
13 15656, in willful violation of Business and Professions Code, section 6068(i).

14 COUNT TWO

15 Case No. 15-O-15667
16 Business and Professions Code, section 6106
[Moral Turpitude - Misappropriation]

17 3. On or about July 1, 2013 and September 2, 2013, Respondent received on behalf of
18 Respondent's client, Brian Wilson ("Wilson"), two checks, each for \$2,625 (a total of \$5,250),
19 which were installment payments of settlement proceeds, that belonged to Wilson. Between on
20 or about July 5, 2013 and on or about September 2, 2013, Respondent deposited the two checks
21 totaling \$5,250 into Respondent's client trust account at U.S. Bank, Account No. xxxxx1705¹ on
22 behalf of the client. Between on or about August 26, 2013 and on or about March 31, 2014,
23 Respondent dishonestly or grossly negligently misappropriated for Respondent's own purposes
24 \$5,250 that Respondent's client, was entitled to receive, and thereby committed an act involving
25 moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code,
26 section 6106.

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28 ¹ Only the last four digits of the account are listed in order to protect the account.

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COUNT THREE

Case No. 15-O-15667
Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

4. On or about July 1, 2013 and September 2, 2013, Respondent received on behalf of Respondent's client, Brian Wilson ("Wilson"), two checks, each for \$2,625 (a total of \$5,250), which were installment payments of settlement proceeds, that belonged to Wilson. Between on or about July 5, 2013 and on or about September 2, 2013, Respondent deposited the two checks totaling \$5,250 into Respondent's client trust account at U.S. Bank, Account No. xxxxx1705² on behalf of the client. Of this sum, the client was entitled to \$5,250. Respondent failed to maintain a balance of \$5,250 on behalf of the client in Respondent's client trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A).

COUNT FOUR

Case No. 15-O-15667
Rules of Professional Conduct, rule 4-100(B)(1)
[Failure to Notify of Receipt of Client Funds]

5. On or about July 1, 2013, Respondent received on behalf of Respondent's client, Brian Wilson ("Wilson"), a check for \$2,625, which was an installment payment of settlement proceeds that belonged to Wilson. On or about September 2, 2013, Respondent received on behalf of Wilson, a second check for \$2,625, which was an installment payment of settlement proceeds that belonged to Wilson. Respondent failed to notify his client Wilson of his receipt of the two settlement checks until on or about August 27, 2015. By failing to notify his client that he received the settlement checks on or about July 1, 2013, and on or about September 2, 2013, until on or about August 27, 2015, Respondent failed to notify the client of Respondent's receipt of funds on the client's behalf, in willful violation of Rules of Professional Conduct, rule 4-100(B)(1).

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² Only the last four digits of the account are listed in order to protect the account.

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COUNT FIVE

Case No. 15-O-15667
Rules of Professional Conduct, rule 4-100(B)(4)
[Failure to Pay Client Funds Promptly]

6. On or about July 1, 2013 and September 2, 2013, Respondent received on behalf of Respondent's client, Brian Wilson ("Wilson"), two checks for \$2,625 (a total of \$5,250), which were installment payments from the settlement of a case that were owed to Wilson. Of this sum, the client was entitled \$5,250. Between in or about August 2015 and in or about October 2015, the client requested that Respondent pay him the \$5,250. To date, Respondent has failed to pay promptly, as requested by Respondent's client, any portion of the \$5,250 in Respondent's possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

COUNT SIX

Case No. 15-O-15667
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

7. Respondent failed to respond promptly to numerous email messages requesting reasonable status inquiries made by Respondent's client, Brian Wilson ("Wilson"), between in or about June 2014 and in or about October 2015, that Respondent received in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

COUNT SEVEN

Case No. 15-O-15667
Business and Professions Code, section 6068(m)
[Failure to Inform Client of Significant Development]

8. Respondent failed to keep Respondent's client, Brian Wilson ("Wilson"), reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m), by failing to inform the client that he intended to close his law practice on or about September 1, 2015.

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COUNT EIGHT

Case No. 15-O-15667
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

9. Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent by failing to provide a substantive response to the State Bar's letters of December 15, 2015 and January 6, 2016, which Respondent received, that requested Respondent's response to the allegations of misconduct being investigated in case no. 15-O-15667, in willful violation of Business and Professions Code, section 6068(i).

COUNT NINE

Case No. 15-O-15900
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

10. On or about July 9, 2015, Glenda Rolle ("Rolle") employed Respondent to perform legal services, namely to prepare and file all of the necessary paperwork with the California Secretary of State to incorporate Rolle's business, which Respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by failing to perform any of the necessary work to incorporate Rolle's business, and by unilaterally terminating his employment by Rolle without telling her, on or about September 1, 2015.

COUNT TEN

Case No. 15-O-15900
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

11. On or about July 9, 2015, Respondent received advanced fees of \$1,200 from a client, Glenda Rolle ("Rolle"), for the purpose of incorporating Rolle's business. Respondent failed to complete the necessary paperwork to incorporate Rolle's business and he failed to submit the necessary paperwork to the California Secretary of State, or perform any legal services for the client, and therefore earned none of the advanced fees paid. Respondent failed to refund promptly or at any time, upon Respondent's termination of employment on or about September

1 1, 2015 any part of the \$1,200 fee to the client, in willful violation of Rules of Professional
2 Conduct, rule 3-700(D)(2).

3 COUNT ELEVEN

4 Case No. 15-O-15900
5 Business and Professions Code, section 6068(m)
6 [Failure to Respond to Client Inquiries]

7 12. Respondent failed to respond promptly to approximately 13 telephonic messages and
8 four text messages seeking reasonable status inquiries made by Respondent's client, Glenda
9 Rolle, between on or about June 22, 2015 and on or about October 1, 2015, that Respondent
10 received, in a matter in which Respondent had agreed to provide legal services, in willful
11 violation of Business and Professions Code, section 6068(m).

12 COUNT TWELVE

13 Case No. 15-O-15900
14 Business and Professions Code, section 6068(m)
15 [Failure to Inform Client of Significant Development]

16 13. Respondent failed to keep Respondent's client, Glenda Rolle ("Rolle"), reasonably
17 informed of significant developments in a matter in which Respondent had agreed to provide
18 legal services, in willful violation of Business and Professions Code, section 6068(m), by failing
19 to inform the client that he intended to close his law practice on or about September 1, 2015, and
20 that he did not intend to complete the legal services for which Rolle had hired him.

21 COUNT THIRTEEN

22 Case No. 15-O-15900
23 Business and Professions Code, section 6068(i)
24 [Failure to Cooperate in State Bar Investigation]

25 14. Respondent failed to cooperate and participate in a disciplinary investigation pending
26 against Respondent by failing to provide a substantive response to the State Bar's letter of
27 January 8, 2016 and emails of January 13, 2016, February 11, 2016, February 24, 2016, March 8,
28 2016 and March 22, 2016, which Respondent received, that requested Respondent's response to
the allegations of misconduct being investigated in case no. 15-O-15900, in willful violation of
Business and Professions Code, section 6068(i).

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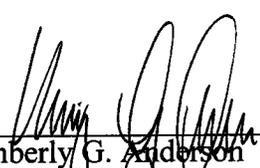
NOTICE - COST ASSESSMENT!

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

DATED: September 6, 2016

By: 

Kimberly G. Anderson
Senior Trial Counsel

DECLARATION OF SERVICE

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

CASE NUMBER(s): 15-O-15656, 15-O-15667, 15-O-15900 16-O-12063

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)

(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 0627 14 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 to. Row 1: JOHN HARMATA, 993 S. Santa Fe Ave, Ste. C #265 Vista, CA 92083-6995, 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 Los Angeles, California, on the date shown below.

DATED: September 6, 2016

SIGNED:

Handwritten signature of Kim Wimbish, KIM WIMBISH, Declarant