

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
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FILED

OCT 27 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

) Case No. 15-O-15888, 16-O-13983

14 AMIR SAM DIBAEI,
15 No. 275798,

) 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. AMIR SAM DIBAEI ("Respondent") was admitted to the practice of law in the State
4 of California on April 26, 2011, 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. 16-O-13983
8 Rules of Professional Conduct, rule 3-300
9 [Business Transaction with a Client]

10 2. On or about July 18, 2013, Nicholas Mitchell-Woods retained Respondent to
11 represent him in a civil rights lawsuit against his high school. On or about August 14, 2015, the
12 case against Woods' high school settled for \$60,000. Pursuant to the fee agreement and after
13 deducting Respondent's purported costs, Woods was entitled to at least \$35,000 of the settlement
14 funds.

15 3. On or about January 28, 2016, Respondent entered into a business transaction with a
16 client, Nicholas Mitchell-Woods, specifically, by extracting Woods signature on a "Settlement
17 Agreement and Mutual Release" which deemed \$20,000 to be paid to Woods in consideration
18 for Woods release of all future and pending claims against Respondent. The terms of the
19 business transaction were not fair and reasonable to Woods in that prior to January 28, 2016,
20 Respondent had not provided Woods with any of Woods settlement funds and Respondent used
21 Woods' own settlement funds as the "consideration" he paid Woods in exchange for the release
22 of all claims. Furthermore, the agreement did not advise Woods in writing that he may seek the
23 advice of an independent lawyer of the client's choice and did not give the client a reasonable
24 opportunity to seek that advice. Respondent thereby willfully violated Rules of Professional
25 Conduct, rule 3-300.

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COUNT TWO

Case No. 16-O-13983
Rules of Professional Conduct, rule 3-400(B)
[Limiting Liability to a Client]

4. On or about January 28, 2016, Respondent settled a claim or potential claim by a client, Nicholas Mitchell-Woods, for Respondent's liability for professional malpractice, namely arising from Respondent's representation of the client in a civil claim filed in the Los Angeles County Superior Court, LC100810, without informing the client in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and giving the client a reasonable opportunity to seek that advice, in willful violation of the Rules of Professional Conduct, rule 3-400(B).

COUNT THREE

Case No. 16-O-13983
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

5. On or about August 25, 2015, Respondent received on behalf of Respondent's client, Nicholas Mitchell-Woods, a check from George Hills Company, Inc. made payable to Respondent in settlement of the claims of four plaintiffs represented by Respondent, of which Woods was one, for \$385,000. Of the total settlement amount, Woods gross settlement was \$60,000. Respondent thereafter failed to render an appropriate accounting to the client regarding those funds following the distribution of only \$20,000 on or about January 28, 2016, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

COUNT FOUR

Case No. 16-O-13983
Rules of Professional Conduct, rule 4-100(B)(4)
[Failure to Pay Client Funds Promptly]

6. On or about August 25, 2015, Respondent received on behalf of Respondent's client, Nicholas Mitchell-Woods, a check from George Hills Company, Inc. made payable to Respondent in settlement of the claims of four plaintiffs represented by Respondent, of which Woods was one, for \$385,000. Of the total settlement amount, Woods gross settlement was \$60,000. Of this sum, the client was entitled to at least \$35,000. Between on or about August

1 26, 2015 and January 28, 2016, the client requested that Respondent disburse his share of the
2 settlement to him. On or about January 28, 2016, Respondent disbursed \$20,000 of the
3 settlement funds to his client. To date, Respondent has failed to pay promptly, as requested by
4 Respondent's client, the additional \$15,000 in Respondent's possession to which his client is
5 entitled, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

6 COUNT FIVE

7 Case No. 16-O-13983
8 Business and Professions Code, section 6106
9 [Moral Turpitude - Overreaching]

10 7. On or about August 25, 2015, Respondent received on behalf of Respondent's client,
11 Nicholas Mitchell-Woods, a check from George Hills Company, Inc. made payable to
12 Respondent in settlement of the claims of four plaintiffs represented by Respondent, of which
13 Woods was one, for \$385,000. Of the total settlement amount, Woods gross settlement was
14 \$60,000. Of this sum, the client was entitled to at least \$35,000. Between on or about
15 September 11, 2015, and on or about January 28, 2016, prior to disbursement of the settlement
16 funds, Respondent repeatedly changed the amount of his fees and costs from 35% contingency
17 plus costs to \$75 per hour plus costs, then assigning the costs of responding to the State Bar
18 complaint filed by Woods, and then assigning the \$5,000 deductible from Respondent's
19 malpractice insurer. Furthermore, Respondent made disbursement of any funds contingent on
20 Woods signing a release of all claims against Respondent. Finally, on or about January 28, 2016,
21 Woods signed a "Settlement Agreement and Mutual Release" so that he could receive some
22 portion of his settlement funds. By repeatedly altering the disbursement amounts and
23 conditioning disbursement on a release of all claims while holding the settlement funds to which
24 Woods was entitled, Respondent thereby committed an act involving moral turpitude, dishonesty
25 or corruption in willful violation of Business and Professions Code, section 6106.

26 8. A violation of section 6106 may result from intentional conduct or grossly negligent
27 conduct. Respondent is charged with committing intentional misrepresentation. However,
28 should the evidence at trial demonstrate that respondent committed misrepresentation as a result
of gross negligence, respondent must still be found culpable of violating section 6106 because

1 misrepresentation through gross negligence is a lesser included offense of intentional
2 misrepresentation.

3 COUNT SIX

4 Case No. 16-O-13983
5 Business and Professions Code, section 6106
6 [Moral Turpitude – Improper Taking of Funds]

7 9. On or about August 25, 2015, Respondent received on behalf of Respondent's client,
8 Nicholas Mitchell-Woods, a check from George Hills Company, Inc. made payable to
9 Respondent in settlement of the claims of four plaintiffs represented by Respondent, of which
10 Woods was one, for \$385,000. Of the total settlement amount, Woods gross settlement was
11 \$60,000. Of this sum, the client was entitled to at least \$35,000. On or about January 28, 2016,
12 Respondent coerced his client into signing a "Settlement Agreement and Mutual Release"
13 whereby the client agreed to relinquish all claims to the \$60,000 settlement and would accept
14 only \$20,000 as consideration for this mutual release of claims. Respondent made distribution of
15 any amount of settlement funds contingent on Woods signing this waiver. To date, Respondent
16 has not disbursed to Woods the additional \$15,000 to which Woods is entitled. By forcing
17 Woods to sign a release of claims in order to receive any portion of the settlement funds,
18 Respondent committed an act involving moral turpitude, dishonesty or corruption in willful
19 violation of Business and Professions Code, section 6106.

20 10. A violation of section 6106 may result from intentional conduct or grossly negligent
21 conduct. Respondent is charged with committing intentional misrepresentation. However,
22 should the evidence at trial demonstrate that respondent committed misrepresentation as a result
23 of gross negligence, respondent must still be found culpable of violating section 6106 because
24 misrepresentation through gross negligence is a lesser included offense of intentional
25 misrepresentation.

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COUNT SEVEN

Case No. 15-O-15888
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

11. On or about August 25, 2015, Respondent received on behalf of Respondent's client, Corey Randall, a check from George Hills Company, Inc. made payable to Respondent in settlement of the claims of four plaintiffs represented by Respondent, of which Mr. Randall was one, for \$385,000. Of the total settlement amount, Mr. Randall's gross settlement was \$250,000. Respondent thereafter failed to render an appropriate accounting to the client regarding those funds following the client's requests for such accounting on or about August 17, 2015, August 31, 2015, September 1, 2015, and September 7, 2015, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

COUNT EIGHT

Case No. 15-O-15888
Rules of Professional Conduct, rule 4-100(B)(4)
[Failure to Pay Client Funds Promptly]

12. On or about August 25, 2015, Respondent received on behalf of Respondent's client, Corey Randall, a check from George Hills Company, Inc. made payable to Respondent in settlement of the claims of four plaintiffs represented by Respondent, of which Mr. Randall was one, for \$385,000. Of the total settlement amount, Mr. Randall's gross settlement was \$250,000. Of this sum, the client was entitled to at least \$158,000. On or about August 17, 2015, August 31, 2015, September 1, 2015, September 7, 2015 and October 8, 2015, the client requested that Respondent disburse the \$158,000 of undisputed funds. Respondent failed to pay promptly, as requested by Respondent's client, any portion of the \$158,000 in Respondent's possession until on or about July 13, 2016, when the Los Angeles Superior Court ordered Respondent to pay his client the undisputed funds. By delaying payment of the client funds for nearly 11 months and after repeated requests, Respondent acted in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

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1 settlement funds to which Mr. Randall was entitled, and thereafter suing his client for his client's
2 entire settlement, Respondent thereby committed an act involving moral turpitude, dishonesty or
3 corruption in willful violation of Business and Professions Code, section 6106.

4 15. A violation of section 6106 may result from intentional conduct or grossly negligent
5 conduct. Respondent is charged with committing intentional misrepresentation. However,
6 should the evidence at trial demonstrate that respondent committed misrepresentation as a result
7 of gross negligence, respondent must still be found culpable of violating section 6106 because
8 misrepresentation through gross negligence is a lesser included offense of intentional
9 misrepresentation.

10 **NOTICE - INACTIVE ENROLLMENT!**

11 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
12 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
13 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL
14 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
15 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
16 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
17 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
18 RECOMMENDED BY THE COURT.**

16 **NOTICE - COST ASSESSMENT!**

17 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC
18 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS
19 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING
20 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND
21 PROFESSIONS CODE SECTION 6086.10.**

20 Respectfully submitted,

21 THE STATE BAR OF CALIFORNIA
22 OFFICE OF CHIEF TRIAL COUNSEL



24 DATED: October 27, 2017

25 By: _____
26 KIM KASRELIOVICH
27 Senior Trial Counsel
28

DECLARATION OF SERVICE

by

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

CASE NUMBER(s): 15-O-15888, 16-O-13983

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.: 7196 9008 9111 1006 6605 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:.

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: October 27, 2017

SIGNED:

NATALIE FLORES Declarant

Handwritten signature of Natalie Flores