

PUBLIC MATTER

FILED

FEB 13 2017

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

14 In the Matter of:) Case No. 16-O-12803
 15 CARMEN ANTHONY TRUTANICH,)
 16 No. 86629,) FIRST AMENDED NOTICE OF
 17) DISCIPLINARY CHARGES
 18)
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 20)
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 22)
 23)
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 25)
 26)
 27)
 28)
 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.**

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Carmen Anthony Trutanich ("respondent") was admitted to the practice of law in the
4 State of California on May 31, 1979, 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-12803
8 Business and Professions Code, section 6068(a)
9 [Failure to Support Laws-*Brady v. Maryland* (1963) 373 U.S. 83]

10 2. At all times relevant to this charge, respondent represented the People of the State of
11 California in the capital murder case titled *People of the State of California v. Barry Glenn*
12 *Williams*, Los Angeles County Superior Court case no. A623377 (the "criminal matter").
13 Respondent failed to comply with his constitutional obligation under *Brady v. Maryland* (1963)
14 373 U.S. 83 to provide defense counsel with: (i) the correct home address of Arlene McKay, an
15 eyewitness to the murder allegedly committed by the defendant in the criminal matter; and
16 (ii) information showing that the true identity of "Jean Rivers" was Arlene McKay. Respondent
17 thereby failed to uphold the laws of the United States, in willful violation of Business and
18 Professions Code, section 6068(a).

18 COUNT TWO

19 Case No. 16-O-12803
20 Rules of Professional Conduct, Rule 5-220
21 [Suppression of Evidence]

22 3. At all times relevant to this charge, respondent represented the People of the State of
23 California in the capital murder case titled *People of the State of California v. Barry Glenn*
24 *Williams*, Los Angeles County Superior Court case no. A623377 (the "criminal matter").
25 Respondent intentionally failed to comply with his constitutional obligation under *Brady v.*
26 *Maryland* (1963) 373 U.S. 83 to provide defense counsel with: (i) the correct home address of
27 Arlene McKay, an eyewitness to the murder allegedly committed by the defendant in the
28 criminal matter; and (ii) information showing that the true identity of "Jean Rivers" was Arlene

1 McKay. Respondent thereby suppressed evidence in willful violation of Rules of Professional
2 Conduct, rule 5-220.

3 COUNT THREE

4 Case No. 16-O-12803
5 Business and Professions Code, section 6106
6 [Moral Turpitude-Suppression of Evidence]

7 4. At all times relevant to this charge, respondent represented the People of the State of
8 California in the capital murder case titled *People of the State of California v. Barry Glenn*
9 *Williams*, Los Angeles County Superior Court case no. A623377 (the "criminal matter").
10 Respondent intentionally, or with gross negligence, failed to comply with his constitutional
11 obligation under *Brady v. Maryland* (1963) 373 U.S. 83 to provide defense counsel with: (i) the
12 correct home address of Arlene McKay, an eyewitness to the murder allegedly committed by the
13 defendant in the criminal matter; and (ii) information showing that the true identity of "Jean
14 Rivers" was Arlene McKay. Respondent thereby committed an act(s) of moral turpitude,
15 dishonesty, or corruption in willful violation of Business and Professions Code, section 6106.

16 COUNT FOUR

17 Case No. 16-O-12803
18 Business and Professions Code, section 6106
19 [Moral Turpitude-Prosecutor Presenting False Testimony of a Witness]

20 5. Respondent represented the People of the State of California during the trial in the
21 capital murder case titled *People of the State of California v. Barry Glenn Williams*, Los Angeles
22 County Superior Court case no. A623377 (the "criminal matter"). On or about January 9, 1986,
23 respondent conducted the direction examination of Patricia Lewis. Ms. Lewis testified that she
24 witnessed the murder of the victim in the criminal matter from the passenger seat of a station
25 wagon driven by "Jean Rivers." At the time that Ms. Lewis testified in the criminal matter,
26 respondent knew, or was grossly negligent in not knowing, that Ms. Lewis' testimony regarding
27 the identity of the woman in the station wagon with her on the night of the murder was actually
28 false. At the time that Ms. Lewis testified in the criminal matter, respondent knew, or was
grossly negligent in not knowing, that "Jean Rivers'" true name was Arlene McKay, or at the

1 very least that "Jean Rivers" was an alias. Respondent intentionally, or with gross negligence,
2 failed to correct Ms. Lewis' false testimony regarding the identity of the driver during the trial in
3 the criminal matter. By intentionally or with gross negligence failing to correct Ms. Lewis'
4 testimony with regard to the true identity of the driver of the station wagon, respondent
5 committed an act involving moral turpitude, dishonesty or corruption in willful violation of
6 Business and Professions Code, section 6106.

7 COUNT FIVE

8 Case No. 16-O-12803
9 Business and Professions Code, section 6106
10 [Moral Turpitude-Prosecutor Presenting False Testimony of a Witness]

11 6. Respondent represented the People of the State of California during the trial in the
12 capital murder case titled *People of the State of California v. Barry Glenn Williams*, Los Angeles
13 County Superior Court case no. A623377 (the "criminal matter"). On or about December 18,
14 1985, the court in the criminal matter held a pretrial hearing (the "*Massiah* hearing") on whether
15 the prosecution had obtained incriminating statements purportedly made by the defendant to
16 Arthur Cox, a fellow inmate at the Los Angeles County Jail, in violation of the rule in the
17 Supreme Court case of *Massiah v. United States* (1964) 377 U.S. 201. At issue at the *Massiah*
18 hearing was whether Mr. Cox: (i) was acting on behalf of the government when the defendant
19 made the purported incriminating statements to him; and (ii) deliberately elicited the purported
20 incriminating statements from the defendant outside the presence of counsel.

21 7. In response to questions asked of him by respondent during the *Massiah* hearing, the
22 Detective testified, among other things, that: (i) Mr. Cox initiated the first contact with the
23 Detective; (ii) the Detective's first meeting with Mr. Cox occurred after the July 7 and 8, 1982
24 preliminary hearing in the criminal matter, and probably on July 10, 1982; at which time Mr.
25 Cox had already been moved into the defendant's module at Los Angeles County Jail; and (iii)
26 law enforcement's first interview with Mr. Cox occurred on July 15, 1982.

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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



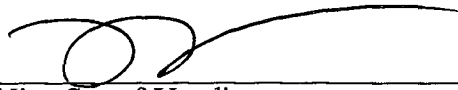
DATED: February 13, 2017

By: _____

Eli D. Morgenstern
Senior Trial Counsel

DATED: February 13, 2017

By: _____



Nina Sarraf-Yazdi
Deputy Trial Counsel

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DECLARATION OF SERVICE

by

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

CASE NUMBER(s): 16-O-12803

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:

FIRST AMENDED 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 0823 61 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: DAVID CAMERON CARR, KLINEDINST PC, 501 W. BROADWAY, STE 600, SAN DIEGO, CA 92101, Electronic Address, dcarr@klinedinstlaw.com

- 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: February 13, 2017

SIGNED:

NATALIE FLORES
Declarant