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5 Attorneys for Respondent
6 CARMEN ANTHONY TRUTANICH

FILED

MAR 10 2017

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

8 **STATE BAR COURT**
9 **HEARING DEPARTMENT - LOS ANGELES**

10 In the Matter of
11 CARMEN ANTHONY TRUTANICH,
no. 86629
12 A member of the State Bar of California.
13

Case No. 16-O-12803 YDR
**RESPONSE TO NOTICE OF DISCIPLINE
CHARGES**

[State Bar Rule of Procedure 5.43]

14
15 **Address for Service**

16 All documents should be served on Respondent's Counsel at the address above.

17 **Response to Allegations**

18 1. Respondent admits the allegations of paragraph 1.

19 *Count One (Section 6068(a))*

20 2. Respondent denies the allegations of paragraph 2. Respondent admits that he was
21 one of four or five criminal prosecutors who worked on People of the State of California v. Barry
22 Glenn Williams, Los Angeles County Superior Court case no. A623377 ("the Williams Matter")
23 between March 1982 and October 1986.

24 *Count Two (Rule 5-220)*

25 3. Respondent denies the allegations of paragraph 3. Respondent admits that he was
26 one of four or five criminal prosecutors who worked on the Williams Matter between March
27 1982 and October 1986.

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1 *Count Three (Section 6106)*

2 4. Respondent denies the allegations of paragraph 4. Respondent admits that he was
3 one of four or five criminal prosecutors who worked on the Williams Matter between March
4 1982 and October 1986.

5 *Count Four (Section 6106)*

6 5. Respondent denies the allegations of paragraph 5. Respondent admits that he was
7 one of four or five criminal prosecutors who worked on the Williams Matter between March
8 1982 and October 1986.

9 *Count Five (Section 6106)*

10 6. Respondent denies the allegations of paragraph 6.

11 7. Respondent denies the allegations of paragraph 7.

12 8. Respondent denies the allegations of paragraph 8.

13 9. Respondent denies the allegations of paragraph 9.

14 10. Respondent denies the allegations of paragraph 10.

15 **Affirmative Defenses**

16 1. *Failure to Plead Disciplinable Offense*

17 The notice of discipline charges (NDC), and every count in it, fails to plead a
18 disciplinable offense.

19 2. *Failure to Provide Adequate Notice*

20 The notice of discipline charges (NDC) and every count in it, fails to provide adequate
21 notice of the conduct alleged to violate the rules and statutes.

22 3. *Lack of Necessary Mens Rea – Section 6068(a)*

23 Respondent, at all relevant times lacked the required *mens rea* to violate section 6068(a),
24 as alleged in Count 1.

25 4. *Lack of Necessary Mens Rea – Rule 5-220*

26 Respondent, at all relevant times lacked the required *mens rea* to violate Rule 5-220, as
27 alleged in Count 2.

28 ///

1 5. *Lack of Necessary Mens Rea- Section 6106*

2 Respondent, at all relevant times lacked the required *mens rea* to violate section 6106, as
3 alleged in Count 3.

4 6. *Lack of Necessary Mens Rea- Section 6106*

5 Respondent, at all relevant times lacked the required *mens rea* to violate section 6106, as
6 alleged in Count 4.

7 7. *Lack of Necessary Mens Rea- Section 6106*

8 Respondent, at all relevant times lacked the required *mens rea* to violate section 6106, as
9 alleged in Count 5.

10 8. *Laches*

11 The matters as pleaded in the notice of discipline charges and each count in it occurred
12 more than 31 years ago. Respondent has been specifically prejudiced by:

- 13 a. the deaths of almost all of the percipient witnesses to the events described in the NDC,
14 including Patricia Lewis, Arlene McKay, LAPD Detective Mejia (the Detective referred
15 to in paragraphs 7 and 8 of the NDC), Mr. Williams's defense counsel at trial, Bernard
16 Gross and George Elbers, and most of the other criminal prosecutors who also worked
17 on the Williams Matter besides Mr. Trutanich;
- 18 b. the inevitable fading of memories after 31 years of those percipient witnesses who remain
19 alive, including Arthur Cox, who testimony in the Federal habeas proceeding was
20 marked by an inability to recall.
- 21 c. the lack of documentary evidence and the uncertain chain of custody through the decades
22 regarding the documentary evidence that does exist.

23 9. *Selective Prosecution.*

24 The Office of Chief Trial Counsel ("OCTC") has failed to file or otherwise pursue
25 charges against the criminal prosecutor assigned to the Williams Matter who remains alive and
26 who was subject to the same obligations under *Maryland v. Brady* as Respondent was. OCTC's
27 decision to selectively prosecute Respondent is based on invidious criteria, including, but not
28 limited to, his status as a former City Attorney of Los Angeles and a public figure.

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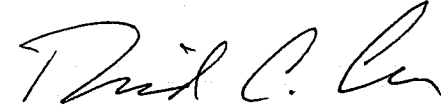
10. *Lack of Duty*

Respondent had no duty to communicate information he did not have or to correct testimony that he did not know was incorrect.

Respectfully submitted,

KLINEDINST PC

DATED: March 9, 2017

By: 
David C. Carr
Attorneys for Respondent
CARMEN ANTHONY TRUTANICH

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11 In the Matter of
12 CARMEN ANTHONY TRUTANICH,
13 NO. 86629
14 A member of the State Bar of California..

Case No. 16-O-12803 YDR

PROOF OF SERVICE

Trial Date: None set

15
16 I declare that:

17 I am and was at the time of service of the papers herein, over the age of eighteen (18)
18 years and am not a party to the action. I am employed in the County of San Diego, and my
19 business address is 501 West Broadway, Suite 600, San Diego, California.

20 On March 9, 2017, I caused to be served the following documents:

RESPONSE TO NOTICE OF DISCIPLINE CHARGES.

- 21 **VIA FACSIMILE TRANSMISSION:** (Code Civ. Proc. §§ 1013(e) and (f)): From fax
22 number (619) 238-8707 to the fax numbers listed below and/or on the attached service list.
23 The facsimile machine I used complied with Rule 2.306 and no error was reported by the
24 machine.
- 25 **VIA ELECTRONIC TRANSMISSION:** Complying with an agreement with all parties, I
26 caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below. I
27 did not receive, within a reasonable time after transmission, any electronic message or other
28 indication that the transmission was unsuccessful. My electronic service address is
khamilton@klinedinstlaw.com. A copy of the sent email will be maintained with the
original document(s) in our office. (Code Civ. Proc. § 1010.6 and Cal. Rules of Court, Rule
2.251)

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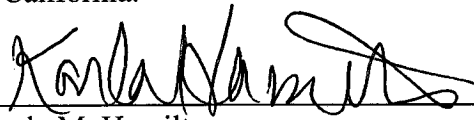
- VIA ELECTRONIC FILING SERVICE:** Complying with Code of Civil Procedure section 1010.6, my electronic business address is khamilton@klinedinstlaw.com and I caused such document(s) to be electronically served through the _____ system for the above-entitled case to those parties on the Service List maintained on its website for this case. The file transmission was reported as complete and a copy of the Filing/Service Receipt will be maintained with the original document(s) in our office.
- VIA MAIL:** By placing a copy thereof for delivery in a separate envelope addressed to each addressee, respectively, as follows:
 - BY FIRST-CLASS MAIL (Code of Civ. Proc. §§ 1013 and 1013(a))**
 - BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c) and (d))**
 - BY CERTIFIED RETURN RECEIPT MAIL (Code of Civ. Proc. §§ 1013 and 1013(a))**

Eli Morgenstern Office of the Chief Trial Counsel The State Bar of California 845 South Figueroa Street Los Angeles CA 90017	
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 9, 2017, at San Diego, California.



Karla M. Hamilton

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