

PUBLIC MATTER

FILED

JUL 08 2013

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

1 STATE BAR OF CALIFORNIA
 OFFICE OF THE CHIEF TRIAL COUNSEL
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8 STATE BAR COURT

9 HEARING DEPARTMENT - LOS ANGELES

10

11 In the Matter of:) Case No. 12-O-10816
)
 12 JAMES PAUL MCGOWAN,) NOTICE OF DISCIPLINARY CHARGES
 No. 35754,)
 13)
)
 14 A Member of the State Bar.)

15 **NOTICE - FAILURE TO RESPOND!**

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

- 18 (1) **YOUR DEFAULT WILL BE ENTERED;**
 19 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
WILL NOT BE PERMITTED TO PRACTICE LAW;
 20 (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;
 21 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
 22 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
 23 **OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
 24 **FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,**
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

25 The State Bar of California alleges:

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1 JURISDICTION

2 1. James Paul McGowan ("Respondent") was admitted to the practice of law in the State
3 of California on June 9, 1964, was a member at all times pertinent to these charges, and is
4 currently a member of the State Bar of California.

5 COUNT ONE

6 Case No. 12-O-10816
7 Business and Professions Code, section 6068(a)
8 [Failure to Comply With Laws]

9 2. Respondent wilfully violated Business and Professions Code, section 6068(a), by
10 failing to support the Constitution and laws of the United States and of this state, as follows:

11 3. In or about 2001, Henry Thackwell (Henry) hired Respondent to draft his will and
12 trust. On or about April 17, 2001, Henry passed away. Pursuant to his will, Henry's wife,
13 Hildegard Thackwell (Hildegard), was the beneficiary of fifty percent (50%) of Henry's estate.
14 Henry named Respondent and Hildegard as the trustees and executors of his trust (the Henry
15 Trust).

16 4. At the time of his death, Hildegard's share of the Henry Trust was at least
17 \$934,443.00.

18 5. In or about 2001, Hildegard hired Respondent to draft her will and trust. She named
19 Respondent and Terence Allen (Allen), a family friend, as co-executors and co-trustees of her
20 estate. On or about October 7, 2001, Hildegard passed away.

21 6. When Hildegard passed away, Respondent became the sole trustee and executor of
22 the Henry Trust.

23 7. When Hildegard passed away, Respondent had still not transferred Hildegard's share
24 of the Henry Trust, at least \$934,443.00, to Hildegard.

25 8. In or about April 2002, Respondent filed a Petition for Probate of Hildegard's will in
26 the San Diego County Superior Court, case number P181794 (the probate case).

27 9. In or about June 2007, Respondent filed with the court in the probate case the First
28 Account of Hildegard's estate (First Account), which Respondent signed under penalty of
perjury.

1 10. In the First Account, Respondent stated that he had received no compensation for
2 legal services performed in connection with Hildegard's estate. This was not true, and
3 Respondent knew it was not true at the time he signed the First Account under penalty of perjury
4 and filed it with the court in the probate case. In fact, by the time he signed the First Account
5 under penalty of perjury and filed it with the court, Respondent had disbursed \$130,473.00 to
6 himself as attorney fees from the assets of Hildegard's estate. Respondent had paid himself legal
7 fees from Hildegard's estate without court approval.

8 11. Further, in the First Account, Respondent failed to disclose Hildegard's estate's share
9 of the assets of the Henry Trust, despite the fact that at the time he signed the First Account
10 under penalty of perjury and filed it with the court, Respondent knew that Hildegard's estate was
11 entitled to at least \$934,443.00 from the Henry Trust.

12 12. In or about July of 2007, Respondent still had not completed the probate for
13 Hildegard's estate, and Respondent still had not distributed Hildegard's share of the assets of the
14 Henry Trust to Hildegard's estate.

15 13. In or about 2007, Allen requested that Respondent provide an accounting of
16 Hildegard's estate, but Respondent never produced one to him.

17 14. In or about 2007, Allen informed the American Cancer Society (ACS) that
18 Respondent failed to provide an accounting of Hildegard's estate to him. ACS was the residual
19 beneficiary of Hildegard's estate.

20 15. On or about December 17, 2007, ACS filed a petition in the probate case seeking an
21 accounting of Hildegard's estate, among other things.

22 16. In or about December 2009, Respondent filed with the court in the probate case the
23 Second and Final Account of Hildegard's estate (Second Account), which Respondent signed
24 under penalty of perjury.

25 17. In the Second Account, Respondent requested \$8,806.24 in statutory fees for legal
26 services performed in connection with Hildegard's estate. In the Second Account, Respondent
27 again stated that he had received no compensation for legal services performed in connection
28 with Hildegard's estate. This was not true, and Respondent knew it was not true at the time he

1 signed the Second Account under penalty of perjury and filed it with the court in the probate
2 case. By the time he signed the Second Account under penalty of perjury and filed it with the
3 court, Respondent had disbursed \$135,573.00 to himself as attorney fees from the assets of
4 Hildegard's estate. Respondent had paid himself legal fees from Hildegard's estate without court
5 approval.

6 18. Further, in the Second Account, Respondent again failed to disclose Hildegard's
7 estate's share of the assets of the Henry Trust, despite the fact that at the time he signed the
8 Second Account under penalty of perjury and filed it with the court, Respondent knew that
9 Hildegard's estate was entitled to at least \$934,443.00 from the Henry Trust.

10 19. In or about February 2010, ACS filed objections to Respondent's Second Account
11 and pointed out that one of Respondent's billing statements contained evidence that Respondent
12 had paid attorneys fees to himself from Hildegard's estate. ACS noted out that Respondent paid
13 himself the attorney fees without court permission.

14 20. In Respondent's response to ACS's objections, Respondent acknowledged that he had
15 paid himself a total of \$135,573.00 in attorney fees from Hildegard's estate prior to obtaining
16 court permission to do so.

17 21. Respondent never provided an adequate accounting of the legal fees that he paid
18 himself from Hildegard's estate.

19 22. Respondent failed to timely distribute the assets of the Henry Trust to Hildegard's
20 estate and instead left them in the Henry Trust, where, as the sole executor and trustee,
21 Respondent paid himself \$378,900.00 from the Henry Trust.

22 23. Respondent claims that he paid himself \$378,900.00 from the Henry Trust for legal
23 fees. However, to date, Respondent has not provided an accounting of the legal work he
24 purportedly did to earn legal fees that he paid himself from the Henry Trust.

25 24. On or about July 9, 2010, ACS sued Allen and Respondent as co-trustees of
26 Hildegard's estate. The lawsuit went to mediation. At mediation, the parties agreed that ACS
27 would receive \$200,000.00, and that ACS would not pursue any other issues against Allen and
28 Respondent.

1 25. California Probate Code section 16002 provides, in relevant part, that a trustee has a
2 duty to administer the trust solely in the interest of the beneficiaries.

3 26. California Probate Code section 16004 provides in relevant part that a trustee has a
4 duty not to use or deal with trust property for the trustee's own profit or for any purpose
5 unconnected with the trust, and not to take part in any transaction in which the trustee has an
6 interest adverse to the beneficiary.

7 27. California Probate Code sections 10830 and 10831 provide in relevant part that a
8 court order is a necessary prerequisite prior to disbursing estate funds to the attorney or
9 representative.

10 28. California Rule of Court 7.700(a) states in relevant part that the attorney for the
11 personal representative/executor of an estate in probate must not receive statutory commissions,
12 or fees, or fees for extraordinary services in advance of an order of the court authorizing their
13 payment.

14 29. By not transferring Hildegard's share of the Henry Trust to Hildegard's estate, by
15 enriching himself from the assets of the Henry Trust, and by distributing assets of Hildegard's
16 estate to himself without obtaining court approval to do so, Respondent failed to support the
17 Constitution and laws of the United States and of this state.

18 COUNT TWO

19 Case No. 12-O-10816
20 Business and Professions Code, section 6106
[Moral Turpitude]

21 30. Respondent wilfully violated Business and Professions Code, section 6106, by
22 committing an act, or acts, involving moral turpitude, dishonesty or corruption, as follows:

23 31. The allegations of Count One are incorporated by reference.

24 32. By paying himself \$514,473.00 (\$378,900.00 from the Henry Trust and \$135,573.00
25 from Hildegard's estate) from his clients' trusts and estates in violation of the law, and by
26 maintaining exclusive control of Hildegard's share of the Henry Trust so that he could enrich
27 himself from the assets of the Henry Trust, Respondent committed an act, or acts, involving
28 moral turpitude, dishonesty or corruption.

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COUNT THREE

Case No. 12-O-10816
Business and Professions Code, section 6106
[Moral Turpitude]

33. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act, or acts, involving moral turpitude, dishonesty or corruption, as follows:

34. The allegations of Count One are incorporated by reference.

35. By knowingly omitting from the First Account and Second Account the fact that Hildegard's estate was entitled to at least \$934,443.00 from the Henry Trust, by knowingly misrepresenting in the First Account and Second Account that Respondent had received no compensation for legal services performed in connection with Hildegard's estate, by knowingly omitting from the First Account and Second Account the fact that Respondent had disbursed funds to himself from Hildegard's estate for attorney fees, and by signing the First Account and Second Account under penalty of perjury and filing those documents with the court in the probate case, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption.

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.

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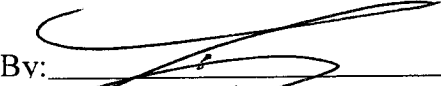
NOTICE - COST ASSESSMENT!

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 THE CHIEF TRIAL COUNSEL

DATED: July 5, 2013

By: 

Anthony Garcia
Senior Trial Counsel

DECLARATION OF SERVICE

by

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

CASE NUMBER(s): 12-O-10816

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, 1149 South Hill Street, Los Angeles, California 90015, 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.: 7196 9008 9111 0444 0022 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: Paul Virgo, 9909 Topanga Boulevard, #282 Chatsworth, CA 91311, 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: July 8, 2013

SIGNED:

Handwritten signature of Charles C. Bagai, Charles C. Bagai Declarant