

PUBLIC MATTER

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SAN FRANCISCO

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THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

13 In the Matter of) Case No.: 05-O-04079; 06-O-10664;
14 SCOTT MICHAEL KENDALL,) 06-O-12682
15 No. 166156)
16 A Member of the State Bar.) NOTICE OF DISCIPLINARY CHARGES

NOTICE - FAILURE TO RESPOND!

17 IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE
18 TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR
19 IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR
20 DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN
21 INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE
22 PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE
23 ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF
24 THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO
25 PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR
26 DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO
27 ADDITIONAL DISCIPLINE.

28 STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN
RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY
THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF
ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE
PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED
BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION
WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE
BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE

1 6. Subsequently, Mr. Ndudim failed to return the agreement, despite several
2 telephone calls by respondent to Mr. Ndudim requesting that Mr. Ndudim return the signed
3 settlement agreement. Despite Mr. Ndudim's failure to return the signed settlement agreement,
4 respondent failed to take any action to enforce the settlement or protect Mr. Wisco's interests.

5 7. In or about November 2004, Mrs. Wisco substituted attorney Cheri Simmons in
6 place of Mr. Ndudim. On or about December 6, 2004, respondent sent Ms. Simmons a new
7 marital settlement agreement for her and her client's signature. Subsequently, Mrs. Wisco and
8 her new attorney failed to return the new settlement agreement. Between on or about December
9 6, 2004 and on or about April 27, 2005, respondent failed to perform any services for Mr. Wisco
10 and failed to complete this matter, including failing to seek to enforce the settlement agreement.

11 8. On or about April 27, 2005, almost five months after sending Ms. Simmons the
12 new marital settlement agreement, respondent filed a Motion to Enforce the Settlement and
13 Enter Judgement. Subsequently, on or about July 1, 2005, respondent and Ms. Simmons
14 renegotiated the settlement agreement. Respondent agreed to prepare a second revised marital
15 settlement agreement.

16 9. On or about August 12, 2005, respondent sent the second revised marital
17 settlement to Mr. Wisco. On or about August 28, 2005, Mr. Wisco sent the signed second
18 revised marital settlement agreement to respondent. On or about September 2, 2005,
19 respondent sent Ms. Simmons the second revised marital settlement agreement with instructions
20 to file it. However, respondent failed to prepare or file a status only judgement as required
21 when there is a settlement with reserved issues.

22 10. Subsequently, Ms. Simmons filed the second revised marital settlement
23 agreement and the judgement in this matter. On or about October 28, 2005, the court clerk
24 rejected and returned the judgment to Ms. Simmons because a status judgement had not been
25 prepared and a judgement on reserved issues cannot be entered until after a status only
26 judgement has been entered by the court. On or about November 4, 2005, Ms. Simmons faxed
27 the clerk's letter rejecting the judgement to respondent and requested that respondent draft a
28

1 status only judgement. Respondent received this fax and the clerk's letter, but failed to inform
2 his client of the court's rejection of the judgement.

3 11. Subsequently, respondent failed to promptly prepare the status only judgement.
4 On or about December 21, 2005, forty-seven days after learning that the court had rejected the
5 judgement because there was no status only judgement, respondent sent a Status Only Judgement
6 for filing to Ms. Simmons' office. He failed to include a Notice of Entry of Status Only and a
7 stipulation for nunc pro tunc order for status only or a declaration showing good cause for a nunc
8 pro tunc order. On or about February 14, 2006, the clerk's office rejected the status only
9 judgement and the entry of Judgement because there was no Notice of Entry for Status Only and
10 no stipulation for a nunc pro tunc order or declaration showing good cause for a nunc pro tunc
11 order.

12 12. In or about mid-February 2006, respondent received notice of the court's rejection
13 of the status only judgement and the revised judgement. Respondent, however, failed to inform
14 Mr. Wisco that the court had rejected the judgement. Subsequent to on or about December 21,
15 2005, respondent failed to communicate with Mr. Wisco or inform him of the status of his
16 matter, despite Mr. Wisco's numerous requests that he communicate with him. Respondent
17 failed to inform Mr. Wisco that on or about October 28, 2005, the court clerk rejected the
18 judgment and returned it to Ms. Simmons because a status judgement had not been prepared or
19 that on or about February 14, 2006, the clerk's office rejected the status only judgement and the
20 revised judgement because there was no Notice of Entry for Status Only and no stipulation for
21 nunc pro tunc order or declaration showing good cause for a nunc pro tunc order

22 13. Mr. Wisco telephoned respondent's office on January 19, 2006 because opposing
23 counsel had informed him that the final decree had not been filed with the court. Respondent
24 made telephone appointments with Mr. Wisco for January 26, 2006 and February 2, 2006, but
25 when Mr. Wisco telephoned for these appointments, respondent did not answer the telephone
26 calls. Mr. Wisco left phone messages for respondent on January 26, 2006, January 31, 2006, and
27 February 2, 2006 requesting that respondent contact him regarding the status of his case.
28 Respondent received the messages. Respondent, however, failed to contact Mr. Wisco or

1 provide him with information on the status of his case. Mr. Wisco also sent respondent a letter
2 on February 6, 2006 by certified mail sent to respondent's membership address requesting that
3 respondent contact him and provide him with the status of his case. Respondent received this
4 letter. Respondent, however, failed to contact or communicate with Mr. Wisco and failed to
5 inform Mr. Wisco of the status of his matter.

6 14. Subsequent to on or about February 16, 2006, respondent and Ms. Simmons filed the
7 appropriate papers and documents in this matter. On or about March 3, 2006, the court filed a
8 Notice of Entry of Judgement. Subsequently, respondent received notice of that Entry of
9 Judgement, but failed to inform Mr. Wisco of the Entry of the Judgement.

10 15. By not returning Mr. Wisco's telephone calls to respondent requesting a status report,
11 by failing to respond to Mr. Wisco's February 6, 2006 letter requesting that respondent
12 communicate with him and provide him with the status of his case, by not informing Mr. Wisco
13 that the court had rejected two filings for judgement in this matter, and by not informing Mr.
14 Wisco that the court filed and entered a final judgement of divorce and that his divorce was
15 complete, respondent wilfully failed to respond promptly to reasonable status inquiries of a client
16 and wilfully failed to keep a client reasonably informed of significant developments in a matter in
17 which Respondent had agreed to provide legal services.

18 COUNT ONE (B)

19 Case No. 06-O-12682
20 Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

21 16. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
22 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
23 follows:

24 17. The allegations of paragraphs 2 through 15 are incorporated by reference.

25 18. By failing to take any action for at least two months when Mr. Ndumdim failed to
26 return the marital settlement agreement, by failing to take any action for almost five additional
27 months when Ms. Simons failed to return the marital settlement agreement, and by failing to
28 promptly prepare or file a status only judgement and obtain a final judgement in this matter,

1 respondent failed to act competently and use reasonable diligence and his best judgement to
2 accomplish with reasonable speed the purpose for which he was hired. Respondent, thereby,
3 intentionally, recklessly, and repeatedly failed to perform legal services with competence.
4

5 **COUNT TWO (THE FLYNT MATTER)**

6 **COUNT TWO (A)**

7 Case No. 06-O-10664
8 Rules of Professional Conduct, rule 3-110(A)
9 [Failure to Perform with Competence]

10 19. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
11 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
12 follows:

13 20. In or about early 2003, James Flynt ("Flynt") hired Aames Paralegal Clinics to
14 assist him in filing for divorce. Subsequently, Aames Paralegal Clinic prepared a Marital
15 Settlement Agreement and Escrow Settlement Statement which Mr. Flynt and his exwife signed.

16 21. On or about February 4, 2003, Mr. Flynt filed a petition for dissolution of marriage
17 in a matter entitled *James G. Flynt v. Teena Marie Flynt*, Sacramento Superior Court, Case No.
18 03FL00702.

19 22. On or about February 11, 2003, respondent met with Mr. Flynt regarding Mr.
20 Flynt's divorce and reviewed Mr. Flynt's Marital Settlement agreement and Escrow Settlement
21 Statement. Respondent advised Mr. Flynt that he could assist Mr. Flynt with the property
22 settlement.

23 23. On or about March 20, 2003, Mr. Flynt hired respondent to represent him in his
24 divorce action. Mr. Flynt signed a written fee agreement for respondent to represent Mr. Flynt in
25 his pending divorce.

26 24. On or about April 1, 2003, respondent filed a Substitution of Attorney form
27 substituting himself in as Mr. Flynt's attorney. On or about April 1, 2003, respondent also filed
28 on behalf of Mr. Flynt an Amended Petition for Dissolution of Marriage. Attorney Terri D.
Newman represented Ms. Flynt in this matter.

1 25. On or about August 2, 2004, Ms. Newman served respondent with both a demand
2 for production of documents and a separate request to answer form interrogatories. The responses
3 to the production demand and the responses to the interrogatories were due by September 5, 2004.
4 Respondent received the production demand and the form interrogatories.

5 26. Subsequently, respondent failed to serve or provide Ms. Newman with the response to
6 the production demand or the interrogatories.

7 27. On or about September 9, 2004, Ms. Newman sent respondent a letter demanding
8 that the document production and responses to interrogatories be provided within 10 days or she
9 would file a motion to compel. Respondent received this letter. Subsequently, respondent failed
10 to provide the document production or the responses to the interrogatories, or even respond to Mr.
11 Newman's letter.

12 28. On or about October 21, 2004, Ms. Newman filed and served respondent with a
13 Notice of Motion and Motion to Compel and Request for Sanctions. Respondent received this
14 motion. On or about November 18, 2004, respondent filed and served his Response to the Motion
15 to Compel. In his Response to the Motion to Compel, respondent wrote that he did not consent to
16 the order requested by Ms. Newman, but respondent failed to explain why he had not responded
17 to the requests for production of documents or responses to the interrogatories. He also did not
18 provide the requested interrogatory and document production responses or the requested
19 documents.

20 29. Subsequently, respondent failed to perform any other services for or on behalf of Mr.
21 Flynt.

22 30. On November 22, 2004, the court granted Ms. Newman's motion and ordered
23 sanctions against Mr. Flynt for not responding to discovery and ordered that he provide the
24 responses to the interrogatories and the production of documents by December 10, 2004. The
25 hearing was then continued to December 13, 2004. Respondent received notice of this order.

26 31. Subsequently, respondent failed to provide the documents demanded and the
27 responses to the interrogatories.

28

1 32. On December 13, 2004 the continued hearing on the motion to compel and sanctions
2 occurred. Respondent failed to appear. The court found that no documents or answers or
3 responses were provided. The court granted Ms. Newman's motion for issue sanctions. The
4 court ordered that Mr. Flynt was precluded from presenting evidence at trial regarding the
5 existence, characterization, and/or value of property. It also precluded Mr Flynt from presenting
6 evidence concerning income or other factors regarding spousal support. The order was filed on
7 December 13, 2004. Respondent received the order. On or about January 26, 2005, Ms. Newman
8 sent to respondent at his membership address a letter enclosing the findings and Order after
9 hearing that she had prepared for the court. Respondent received this letter and the enclosed
10 findings and Order. Subsequently, respondent failed to inform Mr. Flynt of the order granting
11 issue sanctions.

12 33. On or about January 5, 2005, Mr. Flynt telephoned respondent and was told by
13 respondent's secretary that respondent was no longer representing him. Respondent refused to
14 speak to Mr. Flynt. Prior to January 5, 2005, respondent had not informed Mr. Flynt that he
15 would no longer represent him and respondent had not filed any motion to withdraw as Mr.
16 Flynt's attorney. Respondent did not obtain Mr. Flynt's consent to his withdrawal, he did not file
17 a motion to withdraw, and he did not obtain the court's permission to withdraw as Mr. Flynt's
18 attorney.

19 34. Subsequently, respondent performed no services for Mr Flynt, even though he was
20 still attorney of record for Mr. Flynt.

21 35. On or about February 22, 2005, the court filed the Findings and Order granting the
22 issue sanctions against respondent and his client. Respondent received notice of this Order.
23 Respondent failed to inform Mr. Flynt of this Order granting issue sanctions against Mr. Flynt.

24 36. On March 10, 2005, the trial in this matter commenced. Prior to the trial, respondent
25 had received notice of the trial date. Respondent did not appear at the trial, even though he had
26 notice of the trial date. Respondent also had not provided Mr. Flynt with notice of the trial date
27 and so Mr. Flynt was not present at the trial either. At the trial, the court granted the requests
28 made by Mr. Flynt's ex-wife in her Statement of Issues.

1 Flynt to oppose, respondent wilfully failed to take reasonable steps to avoid foreseeable prejudice
2 to the rights of the client and failed to provide Mr. Flynt with due notice allowing him time for
3 employment of other counsel.

4
5 COUNT TWO (D)

6 Case No. 06-O-06-O-10664
7 Business and Professions Code, section 6068(m)
8 [Failure to Inform Client of Significant Development]

9 51. Respondent wilfully violated Business and Professions Code, section 6068(m),
10 by failing to keep a client reasonably informed of significant developments in a matter in
11 which Respondent had agreed to provide legal services, and by failing to respond promptly
12 to reasonable inquiries of a client, as follows:

13 52. The allegations of paragraphs 19 through 50 are incorporated by reference.

14 53. Subsequent to in or about November 2004, respondent failed to communicate with
15 Mr. Flynt, despite his numerous attempts to contact him. Respondent failed to inform Mr. Flynt
16 of the order compelling interrogatory responses and production of documents, of the order
17 granting issue sanctions, of the date of the trial, of the motion for garnishment of his wages, of the
18 order granting garnishment of his wages, and of the Entry of Judgement in this matter.

19 54. By failing to communicate with Mr. Flynt, despite his numerous attempts to
20 contact respondent and by failing to inform Mr. Flynt of the order compelling interrogatory
21 responses and production of documents, of the order granting issue sanctions, of the date of the
22 trial, of the motion for garnishment of his wages, of the order granting garnishment of his wages,
23 and of the Entry of Judgement in this matter, respondent wilfully failed to respond promptly to
24 reasonable status inquiries of a client and wilfully failed to keep a client reasonably informed of
25 significant developments in a matter in which Respondent had agreed to provide legal services.

26 COUNT THREE (THE LICCIARDELLO MATTER)

27 COUNT THREE (A)

28 Case No. 05-O-04079
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

1
2 55. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
3 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
4 follows:

5 56. In or about early 1999, respondent was hired by Theresa Constance Licciardello to
6 represent her in a personal injury matter.

7 57. On or about April 29, 1999, respondent filed on behalf of Ms. Licciardello a matter
8 entitled *Theresa Constance Licciardello v. Jerry Wallace Fowler and the County of Sacramento*,
9 El Dorado Superior Court, Case No. PV4974.

10 58. On or about July 13, 2001, defendants served on respondent at his membership
11 records address form interrogatories and a request for production of documents. Respondent
12 received these discovery requests.

13 59. Subsequently, there was a trial. After trial, the court granted a motion for a new trial.
14 The matter was subsequently set for a new trial on February 25, 2003.

15 60. On or about February 25, 2003, the court met with respondent and the defendant's
16 attorney. The court continued the trial set for that day to June 3, 2003. The court issued an order
17 that counsel may request answers to previously propounded interrogatories. Respondent was
18 present when the court issued it order. The court also served respondent with the order.
19 Respondent received this order.

20 61. In or about March 27, 2003, the defendants, through attorney Demond L. Philson,
21 sent respondent a letter requesting responses to the previously propounded interrogatories and the
22 production of documents within ten days of March 27, 2003. The responses were due by March
23 11, 2003. Respondent received this letter. He failed to inform his client of the letter.

24 62. Subsequently, respondent failed to provide the requested discovery.

25 63. In or about April 21, 2003, defendants filed a motion to compel answers to the
26 interrogatories and production of the requested documents. They also requested the imposition of
27 sanctions against plaintiff. The defendants served respondent at his membership records address.
28

1 Respondent received the motion to compel. Respondent failed to inform his client of the motion
2 to compel.

3 64. Subsequently, respondent failed to respond to the motion to compel.

4 65. On May 19, 2003, the court issued an order directing respondent to answer the
5 interrogatories and produce the requested documents within ten days. The court also ordered
6 respondent's client to pay sanctions of \$850. Respondent was served with the order at his
7 membership address. Respondent received the order. Respondent failed to inform his client of
8 the order.

9 66. Subsequently, respondent failed to comply with the order. He failed to produce the
10 documents requested and the responses to the interrogatories. He also failed to have his client
11 pay the monetary sanctions.

12 67. On or about June 16, 2003, the defendants filed a motion requesting sanctions against
13 plaintiff for failure to obey a discovery order. The defendants served respondent at his
14 membership records address. Respondent received this motion. Respondent failed to inform his
15 client of this motion.

16 68. Subsequently, respondent failed to file a response to the defendants' June 16, 2003
17 motion for sanctions for failure to obey a discovery order.

18 69. On July 28, 2003, the court issued an order granting in part and denying in part the
19 defendant's June 16, 2003 motion. The court ordered respondent's client to answer the
20 interrogatories and produce the documents requested within ten days. It also ordered
21 respondent's client to pay \$1,425 in additional monetary sanctions within ten days. Respondent
22 was served with this order. Respondent received the order. Respondent failed to inform his
23 client of this order.

24 70. Subsequently, respondent failed to comply with the order. He failed to produce the
25 documents requested and the responses to the interrogatories. He also failed to have his client
26 pay the monetary sanctions.

27 71. On or about August 21, 2003, defendants filed a motion to impose sanctions against
28 plaintiff for failure to obey a discovery order. The defendants served respondent with this motion

1 at his membership records address. Respondent received this motion. Respondent failed to
2 inform his client of this motion.

3 72. Subsequently, respondent failed to file a response within the time limits required by
4 the rules.

5 73. On or about September 26, 2003, respondent filed a declaration asserting that he had
6 provided the discovery responses in 2000. This declaration was not part of any response and it
7 was after the time for filing a response, with no request for late filing. Further, respondent had an
8 obligation to provide updated responses to the discovery requests, as ordered by the court.

9 74. On or about September 29, 2003 the court continued the hearing on this motion to
10 October 27, 2003. On or about October 27, 2003, the hearing on the motion for sanctions for
11 failure to comply with the court order was heard. Respondent was present at the hearing. The
12 court ordered terminating sanctions, dismissing Ms. Licciardello's matter and imposing \$1,425 in
13 monetary sanctions on her. Respondent was served with this order. Respondent received the
14 order.

15 75. On or about December 11, 2003, defendants served respondent with a Notice of Order
16 granting their motion for imposition of sanctions and dismissing action. Respondent received this
17 Notice of Order.

18 76. On or about January 23, 2004, attorney Angelo Vitale filed on behalf of Ms.
19 Licciardello a notice of motion and motion to set aside dismissal sanction and judgement. In that
20 motion, Ms. Vitale alleged respondent's neglect in this matter. On or about March 11, 2004, the
21 court denied the motion to set aside the dismissal sanction and judgement.

22 77. On or about May 17, 2004, the Notice of Entry of Judgement was filed and served on
23 respondent. Respondent received this motion. On or about July 12, 2004, respondent appealed
24 the judgement on behalf of Ms. Licciardello .

25 78. On or about August 23, 2005, the Court of Appeals reversed the judgement and set
26 aside the termination sanctions based on respondent's neglect. The Appeals court found that the
27 failure to comply with the discovery requests and the court orders was a result of respondent's
28

1 neglect. The court ordered respondent to pay reasonable compensatory legal fees and costs to
2 defendants and their attorneys.

3 79. By failing to respond to the defendant's discovery requests, by failing to respond
4 to motions to compel discovery and impose sanctions on respondent's client, causing monetary
5 sanctions and resulting in dismissal of his client's matter that had to be reversed on appeal,
6 respondent intentionally, recklessly, or repeatedly failed to perform legal services with
7 competence.

8 COUNT THREE (B)

9 Case No. 05-O-04079
10 Business and Professions Code, section 6068(m)
[Failure to Inform Client of Significant Development]

11 80. Respondent wilfully violated Business and Professions Code, section 6068(m), by
12 failing to keep a client reasonably informed of significant developments in a matter in which
13 Respondent had agreed to provide legal services, as follows:

14 81. The allegations of paragraphs 55 through 79 are incorporated by reference.

15 82. By failing to advise Ms. Licciardello of the requests for discovery, the motions to
16 compel and impose sanctions, and two of the orders imposing sanctions, respondent wilfully
17 failed to keep a client reasonably informed of significant developments in a matter in which
18 Respondent had agreed to provide legal services.

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23 NOTICE - INACTIVE ENROLLMENT!

24 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
25 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
26 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
27 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE**
28 **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. SEE RULE 101(c), RULES OF PROCEDURE OF THE STATE
BAR OF CALIFORNIA.

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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. SEE RULE 280, RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

Dated: August 29, 2007

By: *Allen Blumenthal*
Allen Blumenthal
Supervising Trial Counsel

Assigned Deputy Trial Counsel:
Cydney Batchelor

