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1 THE STATE BAR OF CALIFORNIA  
 OFFICE OF THE CHIEF TRIAL COUNSEL  
 2 SCOTT J. DREXEL, No. 65670  
 CHIEF TRIAL COUNSEL  
 3 RUSSELL G. WEINER, No. 94504  
 DEPUTY CHIEF TRIAL COUNSEL  
 4 LAWRENCE J. DAL CERRO, No. 104342  
 ASSISTANT CHIEF TRIAL COUNSEL  
 5 ALLEN BLUMENTHAL, No. 110243  
 SUPERVISING TRIAL COUNSEL  
 6 SUSAN I. KAGAN, No. 214209  
 DEPUTY TRIAL COUNSEL  
 7 MANUEL JIMENEZ, No. 218234  
 ASSIGNED DEPUTY TRIAL COUNSEL  
 8 180 Howard Street  
 San Francisco, California 94105  
 9 (415) 538-2037



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THE STATE BAR COURT  
 HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of ) Case No.: 07-O-12385  
 SCOTT M. KENDALL, )  
 No. 166156 )  
 ) NOTICE OF DISCIPLINARY CHARGES  
 )  
 A Member of the State Bar. )

**NOTICE - FAILURE TO RESPOND!**

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

**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**



1           6. Prior to on or about August 14, 2004, Knudsen and Owens agreed that Knudsen would  
2 retain J.O. until on or about August 16, 2004. Pursuant to the agreement, Knudsen was to return  
3 J.O. to Owens on or about August 16, 2004.

4           7. Prior to on or about August 16, 2004, Knudsen learned from Owens' family that  
5 Owens was back on drugs and had stolen some of her father's checks and his automobile.  
6 Knudsen decided to seek custody of J.O. because he believed Owens would take J.O. and flee to  
7 evade criminal charges.

8           8. On or about August 16, 2004, Knudsen hired respondent to represent him in seeking a  
9 post-judgment modification of child custody, visitation and support in the *Knudsen-Heryford v.*  
10 *Owens* matter. On or about the same date, Knudsen's mother, Carol Heryford ("Heryford"), paid  
11 respondent \$3,000 in advanced fees for his services. Heryford paid an additional \$500 on or  
12 about October 20, 2004, \$250 on or about February 1, 2005, and \$200 on May 23, 2005, for a  
13 total of \$3,950 in advanced fees. In addition to Knudsen and Heryford, Knudsen's then-  
14 girlfriend, Ashley Emery ("Emery"), attended the meeting with respondent.

15           9. As of on or about August 16, 2004, respondent was aware of the Custody Order and  
16 the agreement that Knudsen would return J.O. to Owens on or about August 16, 2004.

17           10. At the August 16, 2004 meeting, respondent informed Knudsen that he would file an  
18 application requesting an *ex parte* hearing on August 18, 2004 to seek full custody of J.O. on  
19 behalf of Knudsen. Respondent advised Knudsen to keep J.O. pending the outcome of the *ex*  
20 *parte* hearing, in violation of the Custody Order. Heryford and Emery witnessed respondent  
21 advise Knudsen to violate the Custody Order. At no time did respondent advise Knudsen of the  
22 possible consequences for violating the Custody Order.

23           11. On or about August 16, 2004, Knudsen called Owens to advise that respondent was  
24 filing an application requesting an *ex parte* hearing to take place on August 18, 2004, and that he  
25 would keep J.O. pending the outcome of the *ex parte* hearing.

26           12. On or about August 17, 2004, respondent called Owens to advise that he was filing  
27 an application requesting an *ex parte* hearing to take place on August 18, 2004, at 1:30 p.m., in  
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1 Department "Win 7", and that Knudsen would keep J.O. pending the outcome of the *ex parte*  
2 hearing.

3 13. On or about August 17, 2004, respondent called the Butte County Sheriff to advise  
4 that Knudsen would keep J.O. pending the outcome of the *ex parte* hearing.

5 14. Prior to on or about August 18, 2004, Owens filed a police report with the Roseville  
6 Police Department due to Knudsen's failure to return J.O., in violation of the Custody Order.

7 15. On or about August 18, 2004, respondent filed an application requesting an *ex parte*  
8 hearing in the *Knudsen-Heryford v. Owens* matter. Respondent appeared for the *ex parte*  
9 hearing on behalf of Knudsen. Knudsen, Owens, Heryford and Emery were also present for the  
10 *ex parte* hearing. Prior to the commencement of the *ex parte* hearing, Knudsen was arrested by  
11 the Roseville Police Department for child abduction.

12 16. At the time of his arrest, respondent promised to defend Knudsen in the criminal  
13 matter, free of charge, and personal pay for Knudsen's bail.

14 17. On or about August 18, 2004, respondent paid Knudsen's bail in the amount of  
15 \$1,615. On or about the same date, respondent advised Knudsen that he would file a civil suit  
16 against the Roseville Police Department for the arrest and would keep track of the fees in  
17 relation to the *People v. Knudsen* matter for the civil suit. Respondent also advised that he  
18 would not file the civil suit until one year after the criminal charges were dropped.

19 18. There is no written fee agreement between respondent and Knudsen for respondent's  
20 representation in the *People v. Knudsen* matter.

21 19. On or about August 18, 2004, the court issued an order denying Knudsen's *ex parte*  
22 application on the merits in the *Knudsen-Heryford v. Owens* matter.

23 20. On or about September 3, 2004, the Placer County District Attorney's Office filed a  
24 Specified Misdemeanor Complaint against Knudsen in the matter, *People v. Knudsen*, Placer  
25 County Superior Court Case No. 62-045877. The two-count complaint alleged that Knudsen  
26 committed child stealing on or about August 18, 2004, in violation of California Penal Code

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1 section 278, and disobeyed a court order on or about August 15, 2004, in violation of California  
2 Penal Code section 166(a)(4).

3 21. Hearings in the *People v. Knudsen* matter were held on or about September 8,  
4 September 29, October 13, November 3 and December 8, 2004. Respondent appeared on behalf  
5 of Knudsen at the hearings on or about September 8, September 29, and December 8, 2004.  
6 Respondent's colleague, attorney Jonathan Huber ("Huber"), appeared on behalf of Knudsen at  
7 the hearings on or about October 13 and November 3, 2004.

8 22. On or about November 3, 2004, the court issued a Temporary Restraining Order  
9 ("TRO") prohibiting Knudsen from contact with Minor Child, subject to court-ordered visitation  
10 in the *Knudsen-Heryford v. Owens* matter.

11 23. On or about December 8, 2004, the Placer County District Attorney's Office  
12 dismissed the charges against Knudsen, in the interests of justice. On or about the same date, the  
13 TRO issued against Knudsen was lifted.

14 24. By advising Knudsen to keep J.O. pending the outcome of the *ex parte* hearing,  
15 which respondent knew violated the Custody Order, respondent wilfully advised his client to  
16 violate the Custody Order without believing in good faith that the law, rule, or ruling was  
17 invalid.

18 COUNT TWO

19 Case No. 07-O-12385

20 Rules of Professional Conduct, rule 3-110(A)  
21 [Failure to Perform with Competence]

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

25 26. The allegations contained in Count One are hereby incorporated by reference.

26 27. By advising Knudsen to violate the Custody Order, without informing him of the  
27 possible consequences for violating the Custody Order, respondent intentionally, recklessly, or  
28 repeatedly failing to perform legal services with competence.

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COUNT THREE  
Case No. 07-O-12385  
Business and Professions Code, section 6106  
[Moral Turpitude]

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

29. The allegations contained in Count One are hereby incorporated by reference.

30. Approximately one year after the charges in the *People v. Knudsen* matter were dropped, Knudsen scheduled an appointment with respondent to discuss the civil suit against the Roseville Police Department. At that meeting, respondent advised Knudsen that the case had little value and would pose a huge financial risk to pursue. Upon hearing respondent's assessment, Knudsen advised respondent that he would not pay any fees in relation to the work performed on the *People v. Knudsen* matter.

31. Respondent's billing statements to Knudsen reflecting charges for work performed in the *Knudsen-Heryford v. Owens* matter and *People v. Knudsen* matter during the period of on or about August 14, 2004 through on or about April 11, 2005. Included in the billing statements were charges of at least \$2,127.50 in fees for work performed in the *People v. Knudsen* matter, plus \$1,615 for Knudsen's bail.

32. Respondent's August 31, 2004 billing statement reflects charges of at least \$77.50 in fees in relation to the *People v. Knudsen* matter. It also reflects a charge of \$1,615 for Knudsen's bail.

33. Respondent's October 5, 2004 billing statement reflects charges of at least \$1,425 in fees in relation to the *People v. Knudsen* matter. Of the \$1,425 charge, respondent charged Knudsen \$612.50, at a rate of \$175 per hour for 3.5 hours, for Huber's appearance at the October 13, 2004 hearing. However, Huber submitted a bill to respondent, dated October 13, 2004, charging only \$210, at a rate of \$60 per hour for 3.5 hours, in relation to the appearance at the October 13, 2004 hearing. Respondent charged Knudsen \$402.50 more than Huber charged respondent for attendance at the October 13, 2004 hearing.

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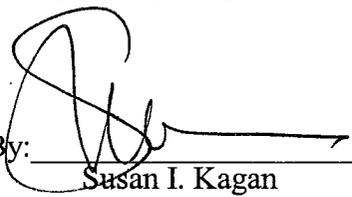
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**NOTICE - COST ASSESSMENT!**

**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: October 27, 2008

By: \_\_\_\_\_  
Susan I. Kagan  
Deputy Trial Counsel

Manuel Jimenez  
Assigned Deputy Trial Counsel

