

# PUBLIC MATTER

**FILED**

JAN 12 2010

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

1 STATE BAR OF CALIFORNIA  
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STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

14 In the Matter of: ) Case No. 07-O-15019  
 15 MATTANIAH EYTAN )  
 No. 68561 ) NOTICE OF DISCIPLINARY CHARGES  
 16 )  
 17 )  
 18 Members of the State Bar

**NOTICE - FAILURE TO RESPOND!**

21 IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE  
 22 TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS,  
 23 OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1)  
 24 YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE  
 25 ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND  
 26 WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE  
 27 DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE  
 28 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.

kwiktag \* 078 543 979



1 IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY  
2 THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD  
3 OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM  
4 THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME  
5 SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL  
6 SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED,  
7 AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR  
8 TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION  
9 FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR  
10 COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO  
11 COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE  
12 BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF  
13 PROCEDURE FOR STATE BAR COURT PROCEEDINGS.

14 The State Bar of California alleges:

15 JURISDICTION

16 1. Mattaniah Eytan ( hereinafter, "Respondent Eytan") was admitted to the practice  
17 of law in the State of California on June 7, 1976, was a member at all times pertinent to these  
18 charges, and is currently a member of the State Bar of California.

19 COUNT ONE

20 Case No. 07-O-15019  
21 Rules of Professional Conduct, rule 3-200(A)  
22 [Malicious Prosecution]

23 2. Respondent wilfully violated Rules of Professional Conduct, rule 3-200(A), by  
24 seeking, accepting, or continuing employment when respondent knew or should have known  
25 that the objective of such employment was to take an appeal without probable cause and for the  
26 purpose of harassing or maliciously injuring any person, as follows:

27 3. On or about March 22, 2002, respondent substituted in as counsel of record for  
28 Terry Kwong, (hereinafter, "Kwong") in Kwong's ongoing family law matter, *Monica Kwong*  
vs. *Terry Kwong*, case no. 375239, filed in Superior Court, County of San Mateo. At issue in  
the litigation was whether or not Kwong had satisfied his obligation for payment of past due  
child support pursuant to an order issued by the Court on or about March 1, 2001.

4. At all times noted hereafter, respondent's associate (hereinafter, "Associate") was  
an employee of respondent and assisted respondent in his representation of Kwong. Associate  
was acting under the direction and authority of respondent. Respondent was personally

1 responsible for all aspects of the appeal and respondent directed and ratified all of the actions of  
2 Associate.

3 5. On or about September 1, 2005, Associate filed a Notice of Motion; Motion for  
4 Order that Respondent Terry Kwong has Satisfied All Obligations Under the March 1, 2001  
5 Order, Attorneys Fees, with supporting declarations, exhibits, and Memorandum of Law.

6 6. On or about May 23, 2006, the Court, the Honorable Judge Clifford Cretan  
7 presiding, denied Kwong's Motion for Order that Respondent Terry Kwong has Satisfied All  
8 Obligations Under the March 1, 2001 Order. In the Court's May 23, 2006 Findings and Order  
9 After Hearing, the Court attached an excerpt of the transcript on the hearing on the Motion, and  
10 stated, "The findings by the Court are set out in the attached transcript."

11 7. A true and correct copy of the Court's May 23, 2006 Findings and Order After  
12 Hearing, with the attached transcript included as it was in the original, is hereby attached an  
13 incorporated as "Exhibit 1" to this Notice of Disciplinary Charges.

14 8. On or about June 21, 2006, respondent filed a notice of appeal on behalf Kwong.  
15 Respondent's appeal on behalf of Kwong was frivolous. Respondent knew or should have  
16 known that the objective of such employment was to take an appeal without probable cause and  
17 for the purpose of harassing or maliciously injuring another person, Monica Kwong (aka  
18 Monica Gong).

19 9. Respondent took the following actions in support of his frivolous appeal:

20 (i) On or about June 21, 2006, respondent filed the notice of appeal in  
21 *Monica Kwong vs. Terry Kwong*, case no. A114589, filed in the Court of Appeal,  
22 First Appellate District;

23 (ii) On or about October 8, 2006, respondent filed an Appellant's Opening  
24 Brief on behalf of Kwong. Respondent (along with Associate) was identified on  
25 the face of the brief as counsel for Kwong.

26 (iii) On or about March 9, 2007, respondent filed an Appellant's Reply Brief.  
27 Respondent (and Associate) were identified as counsel for Kwong. Respondent  
28 signed the Appellant's Reply Brief.

1 (iv) On or about October 3, 2007, respondent appeared at oral argument and  
2 argued on behalf of Kwong.

3 10. Respondent argued, on behalf of Kwong, that the words "current" and "now" in  
4 the March 1, 2001 charging order must have only one interpretation, and must refer only to the  
5 time the order was entered. This argument was objectively and subjectively frivolous because  
6 the words "current" and "now" must be examined within the context of document and the matter  
7 to which it relates.

8 11. Respondent's interpretation of the March 1, 2001 Order was also subjectively and  
9 objectively frivolous because, if respondent's interpretation of the Order was adopted, it would  
10 have had the effect of modifying the 1994 child support order by wiping out, retroactively, nine  
11 months of support and interest, and such a retroactive modification of the child support order  
12 was beyond the Court's jurisdiction, absent a motion to modify or order to show cause.

13 12. On or about May 29, 2008, the First District Court of Appeal, issued an opinion in  
14 *Gong v. Kwong*, case no. A114589. The Court of Appeal found respondent's argument to be  
15 meritless and both subjectively and objectively frivolous, and brought in bad faith to delay  
16 payment of Kwong's obligations. The Court of Appeal dismissed the appeal and sanctioned the  
17 respondent. The Court of Appeal further ordered the respondent to forward a copy of the Court  
18 of Appeal's opinion to the State Bar.

19 13. A true and correct copy of the May 29, 2008 Opinion of the Court of Appeal,  
20 cited at 163 Cal. App. 4<sup>th</sup> 510; 77 Cal. Rptr. 3d. 540, is hereby attached and incorporated as  
21 "Exhibit 2" to this Notice of Disciplinary Charges.

22 14. By subjectively and objectively filing a frivolous appeal in the *Gong v. Kwong*  
23 appellate matter, as more fully set forth in respondents' Appellate Brief and Reply Brief, and as  
24 more fully described in the Opinion of the Court of Appeal, respondent accepted or continued  
25 employment when respondent knew or should have known that the objective of such  
26 employment was to take an appeal without probable cause and for the purpose of harassing or  
27 maliciously injuring any person, in willful violation of Rules of Professional Conduct,  
28 rule 3-200(A).

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COUNT TWO

Case No. 07-O-15019  
Rules of Professional Conduct, rule 3-200(B)  
[Presenting an Unwarranted Claim or Defense]

15. Respondent wilfully violated Rules of Professional Conduct, rule 3-200(B), by continuing employment when respondent knew or should have known that the objective of such employment was to present a claim or defense in litigation that was not warranted under existing law, and was not supported by a good faith argument for an extension, modification, or reversal of an existing law, as follows:

16. The allegations of Count One are hereby incorporated by reference.

17. By subjectively and objectively filing a frivolous appeal in the *Gong v. Kwong* appellate matter; as more fully set forth in respondent's Appellate Brief and Reply Brief, and as more fully described in the Opinion of the Court of Appeal, respondent accepted or continued employment, when respondent knew or should have known that the objective of such employment was to present a claim or defense in litigation that was not warranted under existing law, and was not supported by a good faith argument for an extension, modification, or reversal of an existing law, in willful violation of Rules of Professional Conduct, rule 3-200(B).

COUNT THREE

Case No. 07-O-15019  
Business and Professions Code, section 6068(c)  
[Maintaining an Unjust Action]

18. Respondent wilfully violated Business and Professions Code, section 6068(c), by failing to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just, as follows:

19. The allegations of Counts One and Two are hereby incorporated by reference.

20. Commencing on or about June 21, 2006, the date respondent filed the appeal, until on or about March 5, 2007, when new counsel substituted into the case on behalf of Kwong, respondent counseled and maintained the frivolous action on behalf of Kwong.

1 21. By counseling and maintaining the frivolous action on behalf of Kwong,  
2 respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to  
3 him legal or just, in willful violation of Business and Professions Code, section 6068(c).

4  
5 **NOTICE - INACTIVE ENROLLMENT!**

6 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR  
7 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE  
8 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL  
9 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO  
10 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN  
11 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE  
12 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE  
13 RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF  
14 PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

15  
16 **NOTICE - COST ASSESSMENT!**

17 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC  
18 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS  
19 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING  
20 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND  
21 PROFESSIONS CODE SECTION 6086.10. SEE RULE 280, RULES OF  
22 PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

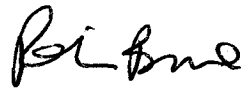
23 Respectfully submitted,

24 THE STATE BAR OF CALIFORNIA  
25 OFFICE OF THE CHIEF TRIAL COUNSEL

26 DATED: \_\_\_\_\_

27 1/12/10

28 By: \_\_\_\_\_



29 Robin Brune  
30 Deputy Trial Counsel

31 ASSIGNED DEPUTY TRIAL COUNSEL:

32 Sherrie B. McLetchie

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**DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 07-O-15019; 07-O-10520**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that 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; that 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; that I am aware that on motion of 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. That 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 San Francisco, on the date shown below, a true copy of the within

**Notice of Disciplinary Charges**

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7160 3901 9845 9595 4522 at San Francisco, on the date shown below, addressed to:

**Mattaniah Eytan  
21 Tamal Vista Blvd., #219  
Corte Madera, CA 94925**

**Courtesy Copy  
Jonathan Arons  
221 Main St., Ste. 740  
San Francisco, CA 94105**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: 1/12/10

SIGNED: Kathleen N. Kehoe  
Kathleen N. Kehoe  
Declarant