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STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of:)	Case No. 11-O-16347- LMA
)	
AFTON L. HARRINGTON,)	
No. 155095,)	PROPOSED AMENDED NOTICE OF
)	DISCIPLINARY CHARGES
)	
A Member of the State Bar.)	

NOTICE - FAILURE TO RESPOND!

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

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



1 The State Bar of California alleges:

2 JURISDICTION

3 1. AFTON L. HARRINGTON ("respondent") was admitted to the practice of law in
4 the State of California on December 17, 1991, was a member at all times pertinent to these
5 charges, and is currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 11-O-16347

8 Rules of Professional Conduct, Rule 3-110
[Failure to Perform with Competence]

9 2. Respondent wilfully violated Rules of Professional Conduct, rule 3-110 (A), by
10 intentionally, recklessly, or repeatedly failing to act competently in a matter in which
11 respondent had agreed to provide legal services, as follows:

12 3. In May 2006, Susan Phelps ("Phelps") employed respondent to represent her
13 in the marital dissolution matter *In the Marriage of Phelps*, Placer County Superior
14 Court, case number SDR-27240.

15 4. Prior to on or about June 11, 2008, Mr. Phelps's counsel sent respondent a draft
16 marital settlement agreement ("MSA".) The 2008 MSA was an offer to settle, *inter alia*, the
17 following issues: child custody, child support, spousal support, and division of community
18 property. Respondent received the MSA, but did not inform Phelps that she had received it, did
19 not inform Phelps of its terms, and did not provide Phelps with a copy of it. At no time during
20 her representation of Phelps did respondent advise Phelps about the existence of the MSA.

21 5. By failing to inform Phelps of the MSA, respondent intentionally, recklessly, and
22 repeatedly failed to perform legal services with competence.

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COUNT TWO
Case No. 11-O-16347
Business and Professions Code, section 6068(m)
[Failure to Inform Client of Significant Developments]

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

7. The allegations in Count One are incorporated by reference as if fully set forth herein.

8. By failing to inform Phelps of the MSA, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services.

COUNT THREE
Case No. 11-O-16347
Rules of Professional Conduct 3-510
[Failure to Communicate Settlement Offer]

9. Respondent wilfully violated Rules of Professional Conduct, rule 3-510, by failing to promptly communicate a settlement offer in a matter which respondent had agreed to provide legal services, as follows:

10. The allegations in Count One are incorporated by reference as if fully set forth herein.

11. By failing to promptly communicate the MSA to Phelps, respondent failed to promptly communicate a settlement offer in a matter which respondent had agreed to provide legal services.

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Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

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COUNT FIVE
Case No. 11-O-16347
Business and Professions Code, section 6106
[Moral Turpitude]

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

20. The allegations in Count One are incorporated by reference as if fully set forth herein.

21. On or about December 31, 2009, Phelps received an invoice from respondent requesting \$49,522.37 for services allegedly rendered by respondent. The invoice did not provide a full accounting including an itemization of all services, did not identify who performed each task, and did not identify the billing rate for the person performing the task.

22. Thereafter, Phelps paid respondent in full based on the December 31, 2009 invoice.

23. Phelps paid the invoice in full because, as of in and around December 31, 2009, she was unaware that respondent was billing her for work that respondent did not perform.

24. Phelps did not become aware that respondent had billed her for work not performed by respondent or anyone at her office until in and around June 2010, when she received a copy of her file from respondent and was able to review respondent's December 24, 2009 pre-bill worksheet, which corresponded with the December 31, 2009 invoice.

25. The December 31, 2009 invoice billed Phelps for \$6,499 in services that Phelps herself performed on or about December 10-11, 2009, on or about December 15-16, 2009, and on or about December 22-24, 2009. In truth and in fact, respondent knew or should have known that these services billed to and paid for by Phelps were not performed by respondent or anyone employed by respondent.

26. The December 31, 2009 invoice billed Phelps \$1,800 for a December 12, 2009 six-hour conference between Phelps, respondent and Phelps' tax advisor that did not occur. In

1 truth and in fact, respondent knew or should have known that these services billed and
2 paid for by Phelps were not performed by respondent or anyone employed by respondent.

3 27. The December 31, 2009 invoice billed Phelps \$600 for work that Phelps' friend
4 performed on or about December 11, 2009. In truth and in fact, respondent knew or
5 should have known that these services billed to and paid for by Phelps were not performed
6 by respondent or anyone employed by respondent.

7 28. Respondent billed Phelps \$600 for a January 15, 2010 court appearance at which
8 respondent did not appear. Phelps paid respondent based on this invoice. In truth and in
9 fact, respondent knew or should have known that this service billed to and paid for by
10 Phelps was not performed by respondent.

11 29. Respondent billed Phelps \$300 for a January 22, 2010 court appearance at which
12 respondent did not appear. Phelps paid respondent based on this invoice. In truth and in
13 fact, respondent knew or should have known that this service billed and paid for by Phelps
14 was not performed by respondent.

15 30. Respondent billed Phelps \$2,850, or portion thereof, for a March 3, 2010
16 conference between Phelps and Phelps' tax expert, which did not occur. Phelps paid
17 respondent based on this invoice. In truth and in fact, respondent knew or should have
18 known that this service billed to and paid for by Phelps was not performed by respondent.

19 31. To date, respondent has not refunded to Phelps any fees she obtained under false
20 pretenses to Phelps.

21 32. By obtaining payments for services under false pretenses, respondent
22 intentionally or by gross negligence, committed acts involving moral turpitude, dishonesty
23 or corruption.

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COUNT SIX

Case No. 11-O-16347

Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

33. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against respondent, as follows:

34. The allegations of Count One are incorporated by reference as if fully set forth herein.

35. On or about May 27, 2011, Phelps filed a complaint against respondent with the State Bar ("Phelps Complaint"). On or about August 22, 2011 a State Bar complaint analyst sent a letter to respondent regarding the Phelps Complaint. On or about November 4, 2011, a State Bar investigator sent a letter to respondent's counsel, Bruce Ebert, regarding the Phelps Complaint. Both letters requested that respondent respond in writing to the specified allegations of misconduct being investigated by the State Bar in the Phelps Complaint. Soon after the State Bar complaint analyst and investigator's letters were sent, respectively; respondent received the letters, but failed to provide a written response to the allegations of misconduct in the Phelps Complaint.

36. By not providing any written response to the State Bar investigator's letter regarding the allegations in the Phelps Complaint, or otherwise cooperate in the investigation of the Phelps Complaint, respondent failed to cooperate in a disciplinary investigation

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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.

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

1 **THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE**
2 **SECTION 6086.10.**

3 Respectfully submitted,

4 THE STATE BAR OF CALIFORNIA
5 OFFICE OF THE CHIEF TRIAL COUNSEL

6 DATED: May 30, 2012

7 By: _____

8 LINDA I. YEN
9 Deputy Trial Counsel