

**STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM**

**In Re: PRB File No. 021-2022
Theodore Kennedy, Esq., Respondent**

Stipulated Findings of Fact and Recommended Conclusions of Law and Sanctions

Now Comes special disciplinary counsel, Ian P. Carleton, and Respondent, Theodore Kennedy, and stipulate to the following findings of fact and recommended conclusions of law and sanctions.

Stipulated Findings of Fact

I. Background

1. Attorney Theodore Kennedy is an attorney who is admitted to practice law in Vermont. He was admitted to the Vermont Bar in September 2000.
2. On August 9, 2017, Ms. Delna Khambatta (formerly Boyce) filed for divorce from her then-husband, Mr. Rustum Boyce.
3. Ms. Khambatta was represented in that action by Christopher Davis and Eliza van Lennep of Langrock Sperry & Wool.
4. Attorney Kennedy represented Mr. Boyce in the divorce proceeding.

II. The Divorce Hearing

5. On May 6, 2021, the Court scheduled a final contested divorce hearing for June 3, 2021. The hearing notice provided that the parties should file any proposed exhibits “with the Court at least 7 days prior to the hearing and shall send copies to the other parties in sufficient time for that side to have copies of those proposed exhibits by that same time.”

6. On June 1, 2021, two days before the hearing, Attorney Kennedy filed a letter addressed to Cheri Goldstein at the Vermont Superior Court stating:

Please note that following this Honorable Court's recent decisions: refusing to hear from the minor children; denying a necessary and promised discovery hearing that was properly detailed and pled on the record; ordering sale of the real property to a third party, thereby permanently severing the [Mr. Boyce's] and his children's ties to the property that they had wished to retain, while stranding in situ valuable personal property belonging to [Mr. Boyce]; [Mr. Boyce] wrote to me, on the day exhibits were Ordered to have been exchanged in advance of the presently scheduled Dissolution Hearing on 6/3/21: "Please find attached my affidavit. On advice of Indian counsel, I will not participate in the Dissolution Hearing for the reasons outlined in the affidavit. Please file this affidavit in court." As such, please find attached for filing [Mr. Boyce's] 5/28/21 Affidavit, along with a Certificate of Service in the above-referenced matter. Thank you and please contact me should you have any questions or concerns.

7. The letter attached an affidavit signed by Mr. Boyce, in which he averred that he would not participate in the final divorce hearing in Vermont Superior Court because he did not believe the Court had jurisdiction over the matter.¹

8. The following day, on June 2, 2021, Attorney Kennedy sent an email to Shannon Maloney, Donna Waters, and Cheri Goldstein at the Washington Superior Court reiterating his intentions not to appear for the final hearing. The email stated:

Good morning. I hope this e-mail finds you each well. Pursuant to my Odyssey filing yesterday on behalf of my client, Rustum Boyce, in the above-referenced matter, as noted in my cover letter and by my client in his Affidavit, I want to please make doubly sure that his Honor and this Honorable Court know that I have been recently instructed (on 5/28) by my client, who relied on the advice of his Indian counsel, not to participate in the Dissolution Hearing scheduled for tomorrow starting at 9 am for six hours. I very much regret the short notice and deeply respect that this Honorable Court is very busy and could likely have used these blocked-off hours tomorrow on other matters. I will nonetheless remain the attorney of record

¹ Mr. Boyce and Ms. Khambatta were both Parsis, an ethnoreligious group in India that descend from Persian immigrants. The two were married in India under the Parsi Marriage and Divorce Act, 1936 (the "Act"). It was Mr. Boyce's contention that the Act governed their marriage and divorce. As such, Mr. Boyce filed for divorce from Ms. Khambatta in India in 2017, while represented by separate Indian counsel. Likewise, Ms. Khambatta was represented by separate, Indian counsel, in the India divorce proceeding.

for Mr. Boyce for purposes of Court communications/Orders, Ex Parte or otherwise, going forward. Thank you. Sincerely, Theo Kennedy.

9. Later that same day, the Court entered an order stating the following:

The court understands [Mr. Boyce] does not intend to attend the hearing. As to his attorney, attention should be given to Rule 15(f) [of the] V.R.F.P. Leave to withdraw has not been given, nor sought.

10. Attorney Kennedy understood the Entry Order to direct that, if Attorney Kennedy intended to withdraw, he should follow the procedure set forth in V.R.F.P. 15(f).

11. Attorney Kennedy did not attend the final divorce hearing on June 6, 2021.

12. Attorney Kennedy did not move to withdraw from his representation of Mr. Boyce at any point before the hearing or thereafter.

III. Post-Hearing Submissions

13. On June 17, 2021, following the final hearing, Ms. Khambatta filed her Proposed Findings of Fact and Conclusions of Law and Requests for Relief (“Plaintiff’s Proposed Findings”).

14. On June 21, 2021, Attorney Kennedy filed a response to Ms. Khambatta’s Proposed Findings, titled “[Mr. Boyce’s] Reply to the Plaintiff’s Proposed Findings of Fact and Conclusions of Law and Requests for Relief.”

15. Attorney Kennedy asserted that the pleading was filed “[w]ithout submitting to this jurisdiction of this Court and without participating in the above proceedings” The pleading further stated that “[Mr. Boyce] is constrained to file this response” because [Ms. Khambatta’s] filing “is replete with false statements at [Mr. Boyce’s] assets and the value thereof [and Ms. Khambatta]has also made totally untrue statements about her own financial status and assets.”

16. The brief disputed many of the facts set forth by Ms. Khambatta in her Proposed Findings. For example, the brief asserted:

- “The Steinway piano was not purchased in 2019. [Ms. Khambatta] broke into [Mr. Boyce’s] house in Vermont which contained valuable personal affects and laboratory equipment and samples, and [Mr. Boyce] is unaware of their present location. In all probability they have been siphoned away by [Ms. Khambatta].”
- “There is no rental property worth 10M in Mumbai. [Mr. Boyce] puts [Ms. Khambatta] to the strict proof thereof.”
- “The Jersey Account has not appreciated much since [Mr. Boyce] inherited the same. However, since the pandemic the funds in the investments have depreciated significantly in value.”
- “This court’s order is completely perverse, bad in law and [Mr. Boyce] has obtained protection from enforcement thereof from the Hon’ble Bombay High Court since it is against the children’s interest.”

17. Neither Attorney Kennedy nor his client had attended the final divorce hearing or offered any evidence at that hearing.

18. There was no admitted evidence to support the facts set forth in the post-hearing pleadings filed by Attorney Kennedy, because his client did not submit any evidence at, or even attend, the final hearing.

IV. Filings Regarding Jurisdiction

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Recommended Conclusions of Law

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VIII. Violation Of Vermont Rule Of Professional Conduct 3.4

56. Rule 3.4 of the Vermont Rules of Professional Conduct provides “[a] lawyer shall not: . . . (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.”

57. As set forth *infra* ¶¶ 5-11, by failing to attend the final divorce hearing, or withdrawing from his representation prior to hearing, Attorney Kennedy violated Rule 3.4(c) because he knowingly disobeyed an obligation under the rules of the tribunal.

Recommended Sanctions

IX. Background

58. When sanctioning attorney misconduct, the Supreme Court has “adopted the ABA Standards for Imposing Lawyer Discipline” which require the Board to weigh “the duty violated, the attorney’s mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors.” *In re Andres*, 2004 VT 71, 14; *see also* ABA Standard 3.0.

59. As set forth below, the parties have agreed to recommend that Attorney Kennedy be sanctioned with a public reprimand with respect to certain violations and with a private admonition with respect to others.

60. Specifically, the parties agree that a **public reprimand** may be imposed with respect to:

- The violation of Rule 3.4(c) for failing to attend the final divorce hearing, or withdrawing from his representation prior to the hearing; and
- The violation of Rule 3.1 for filing post-hearing submissions asserting facts without any supporting evidence.

A public reprimand is appropriate for these violations because the Rule 3.1 violation was committed with knowledge and both violations had the potential to or did cause interference with a legal proceeding and injury to other parties.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

X. Duty Violated

[REDACTED]

[REDACTED]

[REDACTED]



XI. Public Reprimand

65. As noted above, the parties agree that a public reprimand may be imposed for: (1) failure to attend the final hearing in violation of Rule 3.4(c); and (2) filing post-hearing submissions with no basis in law or fact in violation of Rule 3.1.

Mental State

66. Attorney Kennedy's mental state with respect to these two violations was knowledge. Attorney Kennedy must have known that failing to attend the final divorce hearing was a

violation of his professional responsibilities. After Attorney Kennedy sent a letter to the Court explaining that neither he nor his client would be attending the final hearing, the Court entered an order later that same day which stated:

The court understands [Mr. Boyce] does not intend to attend the hearing. As to his attorney, attention should be given to Rule 15(f) [of the] V.R.F.P. Leave to withdraw has not been given, nor sought.

This order made it clear that, whether or not his client attended, Attorney Kennedy was expected to attend the hearing, and Attorney Kennedy knowingly ignored that instruction. Moreover, Attorney Kennedy was obligated to attend the hearing based on the Notice of Hearing that he received on May 6, 2021, setting the final contested divorce hearing.

67. With respect to the filing of the post-hearing brief, Attorney Kennedy also acted knowingly. Attorney Kennedy should have known that the post-hearing submissions he filed on behalf of his client would not result in the introduction of admissible evidence, given that his client had not attended the final hearing or presented any evidence or exhibits (and had, indeed, consistently disavowed any involvement in the process notwithstanding the Court's orders regarding its own jurisdiction). Attorney Kennedy stated in his answer that the filing "referenced factual information and legal arguments, some of which was contained in the Docket, including information from Defendant Boyce's affidavits." (Answer to ¶ 17.) Even assuming those affidavits would have been admissible at the final divorce hearing (despite the fact that they were hearsay), there were virtually no citations to any "information from Defendant Boyce's affidavits" in the post-hearing briefs, leaving the Court to guess as to the supposed evidentiary basis for those allegations.

68. Factual assertions in post-hearing briefs must be supported by citations to admissible evidence. Attorney Kennedy should have known that making these filings was a violation of his

professional responsibilities as the briefs had no support in law and were without citation to any admissible evidence. Indeed, there was no admissible evidence that could have supported the factual assertions because Attorney Kennedy and his client did not attend the evidentiary hearing.

Injury

69. As to injury, ABA Standard 6.2 explicitly acknowledges that the injury may be to either the client “or other party.” Here, it is clear from Ms. Khambatta’s complaint that she was extremely distressed and anxious about these improper filings. Ms. Khambatta presumably paid legal fees for her attorneys to review the filings, consider whether to respond, and discuss the filings with her. There was also potential interference with Court proceedings, because the Court incurred time to respond to Attorney Kennedy’s post-hearing filings which were without factual or legal support given his failure to attend the hearing.

Aggravating and Mitigating Factors

70. As to aggravating factors, arguably there was a pattern of misconduct in this case. Attorney Kennedy filed a series of unsupported pleadings in the case, including the post-hearing brief and multiple motions for reconsideration. . Additionally, Attorney Kennedy has been admitted to practice law since September 2000 and therefore has substantial experience in the practice of law.

71. As to mitigating factors, Attorney Kennedy has no prior disciplinary record. Additionally, Attorney Kennedy has been cooperative throughout the disciplinary proceedings.

72. On balance, the aggravating factors likely outweigh any mitigation.

73. Taking into account the mental state, injury, and aggravating/mitigating factors, the parties have agreed that the appropriate discipline for these violations under ABA Standards 4.5 and 6.2 is a public reprimand.

74. This sanction is not inconsistent with past disciplinary decisions involving a public reprimand in which there was actual injury or the potential risk for injury. See *In re Gregory Vigue*, PRB No. 2018-034, at *20 (issuing a public reprimand where respondent failed to attend a hearing on behalf of his client and follow procedural requirements, resulting in the issuance of a deportation order, and noting that the fact that the deportation order was ultimately vacated did not mitigate the fact of potential injury to the client); *In re Andres*, 170 Vt. 599 (2000) (approving a public reprimand where, in one case, the respondent had neglected the filing requirements associated with a client’s appeal resulting in dismissal of the appeal and, in another case, the respondent’s conduct had resulted in delays in a family law proceeding); *In re Blais*, File No. 2015-084 (issuing a public reprimand where respondent failed to respond to initial discovery requests and a subsequent motion to compel discovery and for sanctions and failed to comply with the Court’s discovery orders, resulting in preclusion of an expert witness); *In re Farrar*, File No. 2005-203 (issuing a public reprimand where respondent failed to attend a contempt hearing that resulted in a ruling against his client and the imposition of a financial penalty which, though it was ultimately lifted, caused the client anxiety, stress, and frustration).

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Dated at Burlington, Vermont this 28th day of April, 2023.

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