

**STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY PROGRAM**

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

**RESPONDENT’S ANSWER TO PETITION OF MISCONDUCT**

**I. Background**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

**II. The Divorce Hearing**

5. Admitted with the clarification that the Notice of Hearing stated that “[i]f any side wishes to present documents or other proposed exhibits to the Court, it shall file them 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 the proposed exhibits by that same time.”

6. Admitted.

7. Admitted that the letter attached an Affidavit of Defendant Rustum Sam Boyce; Denied as to the characterizations of the Affidavit, the content of which speaks for itself.

8. Admitted.

9. Admitted.

10. Admitted with clarification that the Hearing took place on June 3, 2021, not June 6, 2021.

11. Admitted.

**III. Post-Hearing Submissions**

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Denied as stated; *Defendant's Reply to the Plaintiff's Proposed Findings of Fact and Conclusions of Law and Requests for Relief* referenced factual information and legal arguments, some of which was contained in the Docket, including information from Defendant Boyce's Affidavits. Moreover, Defendant Boyce's May 11, 2021 *Request for Discovery Conference* was denied; thus, much of the evidence that Respondent Kennedy and his client, Defendant Boyce, sought to submit in support of his assertions had not been produced.

17. Denied as stated; *Defendant's Reply to the Plaintiff's Proposed Findings of Fact and Conclusions of Law and Requests for Relief* referenced factual information and legal arguments, some of which was contained in the Docket, including information from Defendant Boyce's Affidavits. Moreover, Defendant Boyce's May 11, 2021 *Request for Discovery Conference* was denied; thus, much of the evidence that Respondent Kennedy and his client, Defendant Boyce, sought to submit in support of his assertions had not been produced.

18. Admitted that Respondent Kennedy and his client, Defendant Boyce, did not attend the final divorce hearing, as set forth in Respondent Kennedy's June 1, 2021 letter to the Court, with attached Affidavit of Defendant Boyce, and Respondent Kennedy's June 2, 2021 email to the Court, which informed the Court of Defendant Boyce's intention to not attend the hearing as well as Respondent Kennedy's intention to not attend the hearing and to not withdraw as counsel for Defendant Boyce. Otherwise, denied as stated, with the clarification that neither Respondent Kennedy nor his client, Defendant Boyce, introduced evidence at the hearing.

19. Denied.

#### **IV. Filings Regarding Jurisdiction**

20. Admitted that one of the defenses raised by Respondent Kennedy in representing his client, Defendant Boyce, was that the Vermont Courts did not have jurisdiction to adjudicate and decide the matrimonial dispute, and related issues, between Plaintiff Khambatta and Defendant Boyce, pursuant to Parsi Matrimonial Jurisdiction and rulings by the Hon'ble Surat District Court and Supreme Court of India. Otherwise, denied as stated.

21. Admitted.

22. Admitted with the clarification that Respondent Kennedy's understanding was that he had leave from the Family Court to file the Notice of Appeal and Respondent Kennedy believed the Court's 3/22/18 denial of Defendant Boyce's Motion to Dismiss was a final judgment from which he could appeal pursuant to V.R.A.P. 4(a)(1).

23. Admitted, with the clarification that as stated in Paragraph 22, above, Respondent Kennedy's understanding was that he had leave from the Family Court to file the Notice of Appeal and that the Court's 3/22/18 denial of Defendant Boyce's Motion to Dismiss was a final judgment from which he could appeal pursuant to V.R.C.A.P. 4(a)(1).

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted that Defendant Boyce's *Motion for Permission to Appeal, Alternative Motion for Reconsideration, and Motion for Permission to Leave with the Minor Children*, dated May 4, 2018, was two pages long. Otherwise, denied.

29. Denied as stated. Defendant Boyce's *Motion for Permission to Appeal, Alternative Motion for Reconsideration, and Motion for Permission to Leave with the Minor Children*, dated May 4, 2018, included factual and legal grounds for the relief sought and was filed with a basis in law and in fact.

30. Denied as stated. Defendant Boyce's *Motion for Permission to Appeal, Alternative Motion for Reconsideration, and Motion for Permission to Leave with the Minor Children*, dated May 4, 2018, included factual and legal grounds for the relief sought and was filed with a basis in law and in fact.

31. Denied as stated. Defendant Boyce's *Motion for Permission to Appeal, Alternative Motion for Reconsideration, and Motion for Permission to Leave with the Minor Children*, dated May 4, 2018, included factual and legal grounds for the relief sought and was filed with a basis in law and in fact.

32. Admitted that Petition ¶ 32 accurately quotes excerpts from the Superior Court's June 13, 2018 Entry Regarding Motion.

## **V. Filings Regarding The Marital Home And Representation Of The Children**

33. Admitted.

34. Admitted.

35. Admitted that, on July 15, 2020, the Superior Court denied Plaintiff Khambatta's Motion for Temporary Relief. Denied that the Superior Court "not[ed] that the 'real estate taxes on the property are delinquent and there is no money remaining in the two bank accounts in the

United States.” Rather, the Court’s Entry Regarding Motion states that “Plaintiff [Khambatta] avers the real estate taxes on the property are delinquent and there is no money remaining in the two bank accounts in the United States.”

36. Admitted, with the clarification that the Court ordered that “[a]ny net proceeds from the sale of the home shall be held in escrow.”

37. Admitted.

38. Admitted that Defendant Boyce’s *Request to Reconsider the Court’s 7/15/20 Entry Order and Motion to Appoint an Attorney for the Children*, dated July 24, 2020, was two pages long. Otherwise, denied; the pleading included factual and legal grounds for the relief sought and was filed with a basis in law and in fact.

39. Admitted.

40. Denied as stated. Defendant Boyce’s *Request to Reconsider the Court’s 7/15/20 Entry Order and Motion to Appoint an Attorney for the Children*, dated July 24, 2020, included factual and legal grounds for the relief sought and was filed with a basis in law and in fact.

41. Admitted as to Sentence 1; otherwise, denied because there were factual and legal bases for the relief sought.

42. Denied as stated; Respondent Kennedy and the undersigned counsel are not aware of a pleading fitting the description in Petitioner’s Complaint at Paragraph 42. Moreover, Plaintiff Khambatta, represented by Attorneys Davis and van Lennep, opposed the Motion in a pleading dated July 29, 2020. The Court denied the Motion in an Entry Regarding Motion dated August 19, 2020, but the Entry was filed by the Court on September 2, 2020.

43. Admitted, with the clarification that Plaintiff Khambatta’s May 6, 2021 Motion sought to modify the Court’s July 15, 2020 Entry Order.

44. Admitted.

45. Admitted that Defendant Boyce’s Motion in Opposition to Plaintiff’s Motion to Modify Entry Order (To Allow Plaintiff to have a POA to Sell the Marital Residence), dated May 11, 2011, is two pages long; otherwise, denied.

46. Denied as stated.

47. Denied.

48. Denied.

49. Admitted that the last paragraph of the motion requested that the Court appoint an attorney to represent the children. Otherwise, denied.

50. Admitted.

51. As to Sentence 1, admitted that the Court denied Defendant Boyce's motion to appoint an attorney for the children and admitted that Petition ¶ 51 accurately quotes excerpts from the Superior Court's May 13, 2021 Entry. As to Sentence 2, admitted.

## **VI. Filing Of Affidavits From The Boyce Children**

52. Admitted, with the clarification that the content of the Court's October 29, 2019 Entry speaks for itself.

53. Denied as stated; the content of the Court's October 29, 2019 Entry speaks for itself.

54. Admitted that, on November 5, 2019, Respondent Kennedy filed Defendant Boyce's *Renewed Motion to Honor the Stay with Memorandum of Law*, with the clarification that the Motion included multiple exhibits, including Affidavits from Defendant Boyce as well as the children, Feroza Boyce (then age 15) and Arnavaz Boyce (then age 13), dated October 21, 2019, an Order from the Supreme Court of India, and a letter from Defendant Boyce's attorney in India, dated October 30, 2019, which were provided by Defendant Boyce's counsel in India and were filed at the request of Defendant's Boyce and his counsel in India. Admitted that, in their Affidavits, Feroza Boyce and Arnavaz Boyce express their stated desire to remain in India and to limit their contact with their mother, Plaintiff Khambatta, with the clarification that the content of these documents speak for themselves.

55. Denied as stated and denied as to all characterizations.

## **VII. Violation Of Vermont Rule of Professional Conduct 1.1**

56. See Responses 1-55 above.

57. Admitted that ¶ 57 sets forth an excerpt from Rule 1.1 of the Rules of Professional Conduct, with the clarification that the Rule speaks for itself.

58. Denied.

## **VIII. Violation Of Vermont Rule Of Professional Conduct 3.1**

59. See Responses 1-58 above.

60. Admitted.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

**IX. Violation Of Vermont Rule of Professional Conduct 3.4**

65. See Responses 1-64 above.

66. Admitted.

67. Denied.

68. Denied.

Wherefore Respondent, Attorney Theodore Kennedy, respectfully requests that the Panel hold a hearing and dismiss the Petition in its entirety. In the alternative, Respondent respectfully submits that even if adjudicated in violation of the Rules of Professional Conduct, the facts and mitigating circumstances warrant only a private admonition.

Dated at Burlington, Vermont this 20<sup>th</sup> day of July, 2022.

HEILMANN, EKMAN, COOLEY & GAGNON, INC.

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