

1 THOMAS E. FRANKOVICH (State Bar No. 074414)  
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**FILED** *LS*

FEB 25 2008

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

In Pro Per

THE STATE BAR COURT

HEARING DEPARTMENT-SAN FRANCISCO

In the Matter of

CASE NO. 04-O-15890 PEM

THOMAS EDWARD FRANKOVICH,  
No. 74414

RESPONDENT THOMAS E.  
FRANKOVICH'S ANSWER TO STATE  
BAR OF CALIFORNIA NOTICE OF  
DISCIPLINARY CHARGES

A Member of the State Bar.

Respondent, Thomas E. Frankovich (hereinafter "Respondent"), answers the State Bar of California Notice of Disciplinary Charges alleging violations of Business and Professions Code Section 6106 and 6068 (d). Count One: Moral Turpitude-Scheme to Extort, Count Two: Seeking to Mislead Judge, Count Three: Moral Turpitude.

**GENERAL DENIAL**

Pursuant to Code of Civil Procedure Section 431.30(d), Respondent hereby answers the Notice of Disciplinary Charges by generally denying each and every allegation contained therein by denying that Respondent engaged in any acts which would constitute acts of moral turpitude, dishonesty, corruption or violation of any section of the Business and Professions Code or any Ethics Code, and by asserting the following separate and distinct affirmative defenses:

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1                   **AFFIRMATIVE DEFENSES TO COUNTS ONE, TWO AND THREE**

2                   As separate and distinct affirmative defenses to the State Bar of California’s Notice of  
3 Disciplinary Charges-Counts One, Two and Three, Respondent alleges as follows:

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5                                   **FIRST AFFIRMATIVE DEFENSE**

6                   As a FIRST AFFIRMATIVE DEFENSE, Respondent alleges that Respondent was/and  
7 is denied due process.

8  
9                                   **SECOND AFFIRMATIVE DEFENSE**

10                  As a SECOND AFFIRMATIVE DEFENSE, the STATE BAR has failed to state  
11 sufficient facts to support any ethics violations or to support any disciplinary action or any  
12 other action against Frankovich.

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15                                  **THIRD AFFIRMATIVE DEFENSE**

16                  As a THIRD AFFIRMATIVE DEFENSE, at all times and places mentioned in the  
17 complaint, Frankovich acted in a manner authorized and/or required by the applicable law  
18 which controls plaintiff’s rights, if any, with regard to the matters alleged in the complaint.

19  
20                                  **FOURTH AFFIRMATIVE DEFENSE**

21                  As a FOURTH AFFIRMATIVE DEFENSE, Frankovich’s conduct was not  
22 intimidating, misleading, coercive, extortionist or in conscious disregard of the public’s rights,  
23 if any; Frankovich at all times acted in a reasonable and ethical manner.

24  
25                                  **FIFTH AFFIRMATIVE DEFENSE**

26                  As a FIFTH AFFIRMATIVE DEFENSE, the State Bar’s claims, and each of them, are  
27 barred by the doctrine of laches.

1                                    **SIXTH AFFIRMATIVE DEFENSE**

2                    As a SIXTH AFFIRMATIVE DEFENSE, the State Bar’s claims, and each of them, are  
3 barred by the doctrine of estoppel

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5                                    **SEVENTH AFFIRMATIVE DEFENSE**

6                    As a SEVENTH AFFIRMATIVE DEFENSE, the State Bar’s claims, and each of them,  
7 are barred by the doctrine of waiver.

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9                                    **EIGHTH AFFIRMATIVE DEFENSE**

10                  As a EIGHTH AFFIRMATIVE DEFENSE, any action or inaction by Frankovich with  
11 respect to the allegations contained in the complaint was and is permitted and authorized by  
12 applicable law.

13                                    **NINTH AFFIRMATIVE DEFENSE**

14                  As a NINTH AFFIRMATIVE DEFENSE, Frankovich’s actions, if any there were,  
15 were conducted in good faith.

16                                    **TENTH AFFIRMATIVE DEFENSE**

17                  As a TENTH AFFIRMATIVE DEFENSE, the State Bar’s claims are barred by  
18 applicable statute of limitations.

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20                                    **ELEVENTH AFFIRMATIVE DEFENSE**

21                  As a ELEVENTH AFFIRMATIVE DEFENSE, the complaint, to the extent that it  
22 seeks suspension and/or disbarment against Frankovich, violates Frankovich’s right to  
23 procedural due process under the Fourteenth Amendment of the United States Constitution and  
24 the Constitution of the State of California, and therefore fails to state a cause of action upon  
25 which disciplinary action, suspension or disbarment may be granted.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 As a TWELFTH AFFIRMATIVE DEFENSE, the State Bar has failed to state a cause  
3 of action justifying any disciplinary action.  
4

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 As a THIRTEENTH AFFIRMATIVE DEFENSE, the State Bar's claims are barred by  
7 the fact that any decisions made by Frankovich with respect to the public or any access action  
8 filed against a public accommodation were for good cause and were reasonably based on the  
9 facts as Frankovich understood them based upon inspections conducted by Frankovich and/or  
10 authorized by Frankovich.  
11

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 As a FOURTEENTH AFFIRMATIVE DEFENSE, the State Bar's claims in this action  
14 are barred because Frankovich's conduct was, at all times mentioned in the complaint,  
15 absolutely justified and privileged.

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 As a FIFTEENTH AFFIRMATIVE DEFENSE, the State Bar has failed to set out it's  
3 claims with sufficient particularity to permit Frankovich to raise all appropriate defenses and  
4 thus Frankovich reserves the right to add additional defenses as the bases for the State Bar's  
5 purported claims become known.  
6

7 WHEREFORE, Respondent prays for judgment as follows:

- 8 1. That the complaint be dismissed in its entirety, with prejudice, and that  
9 judgment thereon be entered in favor of Frankovich and against the State  
10 Bar.  
11 2. That the State Bar take nothing by reason of its complaint.  
12 3. That Frankovich be awarded its reasonable attorneys' fees and costs of  
13 suit incurred herein; and  
14 4. That Frankovich be awarded all other further legal and equitable relief,  
15 as this Court deems proper.  
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17 Dated: February 25, 2008

THOMAS E. FRANKOVICH  
*A PROFESSIONAL LAW CORPORATION*

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20 By: 

Thomas E. Frankovich  
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1 **CERTIFICATE OR PROOF OF SERVICE**

2 State of California )  
3 County of San Francisco ) ss

4 I, the undersigned, say: I am and was at all times herein mentioned, a resident of the  
5 City and County of San Francisco, over the age of eighteen (18) years and not a party to the  
6 within action or proceeding; that my business address is 2806 Van Ness Avenue, San  
7 Francisco, CA 94109-5460; that on the below date, following normal business practice, I  
8 served the foregoing document, described as:

9 **RESPONDENT THOMAS E. FRANKOVICH'S ANSWER TO STATE BAR OF  
10 CALIFORNIA NOTICE OF DISCIPLINARY CHARGES**

11 on the interested parties in this action, conveyed as follows:

- 12  by depositing true copies thereof, enclosed in a sealed envelope, with postage thereon  
13 fully prepaid:  
14  in first class U.S. Mail  
15  in \_\_\_ priority or \_\_\_ standard overnight mail via Federal Express.

16 I am readily familiar with this office's practice for collection and processing of  
17 correspondence for mailing with the United States Postal Service or Federal Express.  
18 In the ordinary course of business, correspondence, including said envelope, will be  
19 deposited with the United States Postal Service or Federal Express in San Francisco.

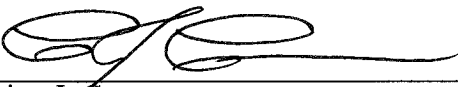
- 20  by transmitting via facsimile to the fax number(s) set forth below.  
21  by causing personal delivery by Western Messenger Service.  
22  by personal hand-delivery.

23 addressed to:

24 **Erica L. Dennings**  
25 **The State Bar of California**  
26 **Office of the Chief Trial Counsel**  
27 **180 Howard Street**  
28 **San Francisco, CA 94105**

**George Hue**  
**Case Administrator**  
**State Bar Court of California**  
**180 Howard Street, 6<sup>th</sup> Flr.**  
**San Francisco, CA 94105**

I declare under penalty of perjury under the laws of the State of California that I am  
employed in the office of a member of the bar of this court at whose direction the service was  
made, and that the foregoing is true and correct. Executed on February 25, 2008, at San  
Francisco, California.

  
\_\_\_\_\_  
Christine J. Cunanan  
(Original signed)