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PUBLIC MATTER

STATE BAR COURT
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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

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In the Matter of
GARY FREDERIC MYERS,
Member No. 98819,
A Member of the State Bar.

Case No. 00-O-15526-RAH
DECISION

INTRODUCTION

The above-entitled matter was submitted for decision as of June 4, 2003, after the State Bar of California, Office of the Chief Trial Counsel ("State Bar"), waived the hearing in this matter and submitted an amended brief on the issues of culpability and discipline. The State Bar was represented in this matter by Deputy Trial Counsel Nancy Brown ("DTC Brown").¹ Respondent Gary Frederic Myers ("Respondent") failed to participate in this matter either in-person or through counsel and allowed his default to be entered in this matter.

In light of Respondent's culpability in this proceeding, and after considering any and all aggravating and mitigating circumstances surrounding Respondent's misconduct, the Court recommends, inter alia, that Respondent be suspended from the practice of law for 18 months, that execution of said suspension be stayed, and that Respondent be actually suspended from the practice of law for 90 days and until the State Bar Court grants a motion to terminate Respondent's actual suspension at its conclusion or upon such later date ordered by the Court. (Rules Proc. of State Bar,

¹Deputy Trial Counsel Brooke Schafer ("DTC Schafer") originally represented the State Bar in this matter.



1 rule 205(a)-(c.)

2 **PERTINENT PROCEDURAL HISTORY**

3 This proceeding was initiated by the State Bar's filing of a Notice of Disciplinary Charges
4 ("NDC") against Respondent on August 15, 2002.

5 A copy of the NDC was properly served upon Respondent on August 15, 2002, by certified
6 mail, return receipt requested, addressed to Respondent at his official membership records address
7 ("official address") maintained by Respondent pursuant to Business and Professions Code section
8 6002.1, subdivision (a).² On August 17, 2002, a return card was received by the State Bar signed
9 by "Ian Hall." However, the copy of the NDC was returned by the U.S. Postal Service bearing the
10 stamp, "Return to Sender - Mail Box Closed."

11 On September 5, 2002, a Notice of Assignment and Notice of Initial Status Conference was
12 filed in this matter, indicating that the Honorable Paul A. Bacigalupo was assigned the matter and
13 setting an in-person status conference for September 30, 2002. A copy of said notice was properly
14 served upon Respondent by first-class mail, postage fully prepaid, on September 5, 2002, addressed
15 to Respondent at his official address. The copy of said notice was returned to the State Bar Court
16 by the U. S. Postal Service bearing the stamped notation, "MAIL BOX CLOSED."

17 On September 26, 2002, DTC Schafer attempted to reach Respondent by telephone at
18 Respondent's official membership records telephone number, which is the same telephone number

19 _____
20 ²In response to a letter from a State Bar investigator, Respondent sent the investigator a
21 letter dated July 18, 2001. In the July 18, 2001, letter, Respondent explained that he was "in
22 Texas on personal business" but would be returning to California in August 2001. Respondent
23 asked to have additional time to respond to the investigator's request for information. This letter
24 was on letterhead bearing Respondent's official address, and the return envelope also bore the
same address. Respondent did not inform the State Bar of an alternate address or telephone
number.

25 During the course of investigating this case, the State Bar investigator performed an
26 Infotek search for Respondent and located a possible alternate address in Fullerton, California.
27 The investigator sent a letter requesting information to that alternate address on January 30,
28 2002. There was no reply in response to that letter.

On June 19, 2002, a 20-day letter was mailed to Respondent at his official membership
records address. The 20-day letter was returned by the U.S. Postal Service bearing the stamp,
"Not Deliverable as Addressed - Unable to Forward."

1 on his July 18, 2001, letter. There was no answer; however, the voice mail recording said, "You've
2 reached Alex's cell-phone."

3 On September 26, 2002, DTC Schafer called directory assistance for Hemet, California, the
4 location of Respondent's official address. They had no listing for Respondent. He then tried "411"
5 directory assistance for Fullerton, California. DTC Schafer was provided with a number for a "Gary
6 Myers" which he called. DTC Schafer left a message, asking Gary Myers to call him back if he was
7 the attorney with bar number 98819. DTC Schafer left his telephone number. To DTC Schafer's
8 knowledge, the Office of the Chief Trial Counsel has not had any contact with Respondent since he
9 wrote to the investigator on July 18, 2001.

10 As Respondent did not file a response to the NDC as required by rule 103 of the Rules of
11 Procedure of the State Bar of California ("Rules of Procedure"), on September 27, 2002, the State
12 Bar filed a motion for the entry of Respondent's default. The motion also contained a request that
13 the Court take judicial notice, pursuant to Evidence Code section 452(h), of all of Respondent's
14 official membership addresses, the declaration of Brooke Schafer and Exhibit 1. A copy of said
15 motion was properly served upon Respondent on September 27, 2002, by certified mail, return
16 receipt requested, addressed to Respondent at his official address.

17 On September 30, 2002, the Court held a status conference in this matter. Respondent did
18 not appear at the status conference either in-person or through counsel. Thereafter, on September
19 30, 2002, the Court filed an Order Pursuant to Status Conference which set forth that the Court
20 would rule on the State Bar's motion for the entry of Respondent's default on October 16, 2002. A
21 copy of said order was properly served upon Respondent by first-class mail, postage fully prepaid,
22 on September 30, 2002, addressed to Respondent at his official address. The copy of said order was
23 returned to the State Bar Court by the U. S. Postal Service bearing the stamped notation, "MAIL
24 BOX CLOSED."

25 When Respondent failed to file a written response within 10 days after service of the motion
26 for the entry of his default, on October 16, 2002, the Court filed an Order of Entry of Default (Rule
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1 200-Failure to File Timely Response) and Order of Involuntary Inactive Enrollment.³ A copy of said
2 order was properly served upon Respondent on October 16, 2002, by certified mail, return receipt
3 requested, addressed to Respondent at his official address. On October 21, 2002, the return receipt
4 was received by the State Bar Court Clerk's Office indicating that the copy of the order was
5 delivered on October 18, 2002, and received by "Melody M. Schenk." However, the copy of said
6 order was returned to the State Bar Court by the U. S. Postal Service bearing the stamped notation,
7 "MAIL BOX CLOSED."

8 On October 28, 2002, the State Bar filed a brief on the issues of culpability and discipline.
9 In the brief, the State Bar waived the hearing in this matter by requesting that the Court take this
10 matter under submission without a hearing.

11 On October 29, 2002, the Court issued an order taking this matter under submission on that
12 date.

13 On December 27, 2002, Hearing Department General Order 02-19 was filed and a copy of
14 said order was properly served upon Respondent on January 14, 2003, by first-class mail, postage
15 fully prepaid, addressed to Respondent at his official address. Hearing Department General Order
16 02-19 advised the parties that effective January 6, 2003, this matter was reassigned to the Honorable
17 Richard A. Honn. However, the copy of said order was returned to the State Bar Court by the U.S.
18 Postal Service stamped, "RETURN TO SENDER UNDELIVERABLE AS ADDRESSED" and
19 bearing the handwritten notation, "Not Here," with a line towards the street address.

20 Thereafter, on January 22, 2003, the Court held a telephonic status conference in this matter.
21 Respondent failed to appear at the telephonic status conference either in-person or through counsel.
22 At the time of the status conference, the Court indicated on the record to DTC Schafer the problems
23 noticed in the NDC while preparing the decision and the tentative options of the Court.

24 On January 24, 2003, the Court issued an order pursuant to the January 22, 2003, telephonic
25 status conference. On its own motion, with no opposition from DTC Schafer, the entry of
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28 ³Respondent's involuntary inactive enrollment pursuant to Business and Professions
Code section 6007(e) was effective three days after the service of this order by mail.

1 Respondent's default on October 16, 2002,⁴ was set aside effective immediately; the October 29,
2 2002, submission date was vacated; the Court granted DTC Schafer's oral motion to amend the
3 NDC; and the Amended NDC was ordered to be filed within 30 days from January 22, 2003. A copy
4 of said order was properly served upon Respondent by first-class mail, postage fully prepaid, on
5 January 24, 2003, addressed to Respondent at his official address. However, the copy of said order
6 was returned to the State Bar Court by the U.S. Postal Service stamped, "NOT DELIVERABLE AS
7 ADDRESSED UNABLE TO FORWARD" and bearing the handwritten notation, "Not Here," with
8 a line towards the street address.

9 On February 4, 2003, the State Bar filed an Amended NDC. A copy of the Amended NDC
10 was properly served upon Respondent on February 4, 2003, by certified mail, return receipt
11 requested, addressed to Respondent at his official address. The copy of the Amended NDC was
12 returned by the U.S. Postal Service bearing the stamp, "Not Deliverable As Addressed - Unable to
13 Forward, Box Closed - Order Expired."

14 On February 5, 2003, the Court issued a Notice of In-Person Status Conference setting an
15 in-person status conference in this matter for March 18, 2003. A copy of said notice was properly
16 served upon Respondent by first-class mail, postage fully prepaid, on February 5, 2003, addressed
17 to Respondent at his official address. However, the copy of said notice was returned to the State Bar
18 Court by the U.S. Postal Service stamped, "RETURN TO SENDER UNDELIVERABLE AS
19 ADDRESSED" and bearing the handwritten notation, "Not Here," with a line through Respondent's
20 name and full address.

21 On March 10, 2003, DTC Brown attempted to reach Respondent by telephone at his official
22 membership records telephone number (714) 883-0906. The message machine at that number only
23 referred to the telephone number and did not identify any party by name. DTC Brown left her name,
24 telephone number and a request that if this was the telephone for Respondent, he should call her back
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26 ⁴Pursuant to Evidence Code section 452(h), the Court takes judicial notice of
27 Respondent's official membership records maintained by the State Bar of California which
28 indicate that effective January 24, 2003, Respondent was retransferred to active status pursuant to
the Court's order filed on that date.

1 immediately. DTC Brown has not received a return telephone call.

2 On March 10, 2003, DTC Brown called directory assistance for the area which includes
3 Respondent's official membership records address and asked for all telephone listings for
4 Respondent. Directory assistance had no listing for Respondent.

5 On March 10, 2003, DTC Brown checked the Daily Journal's Directory of Attorneys. The
6 directory did not have any listing for Respondent.⁵

7 As Respondent did not file a response to the Amended NDC as required by rule 103 of the
8 Rules of Procedure, on March 11, 2003, the State Bar filed a motion for the entry of Respondent's
9 default. The motion also contained a request that the Court take judicial notice, pursuant to Evidence
10 Code section 452(h), of all of Respondent's official membership addresses,⁶ the declaration of Nancy
11 C. Brown and Exhibit 1. A copy of said motion was properly served upon Respondent on March
12 11, 2003, by certified mail, return receipt requested, addressed to Respondent at his official address.

13 On March 18, 2003, the Court held an in-person status conference in this matter. Respondent
14 failed to appear at the status conference either in-person or through counsel.

15 Thereafter, on March 19, 2003, the Court filed an order pursuant to the March 18, 2003,
16 status conference. A copy of said order was properly served upon Respondent on March 19, 2003,
17 by first-class mail, postage fully prepaid, addressed to Respondent at his official address. However,
18 the copy of said order was returned to the State Bar Court by the U.S. Postal Service stamped,
19 "RETURN TO SENDER UNDELIVERABLE AS ADDRESSED" and bearing the handwritten
20 notation, "NOT HERE."

21 When Respondent failed to file a written response within 10 days after service of the motion
22 for the entry of his default, on April 4, 2003, the Court filed an Order of Entry of Default (Rule 200-

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26 ⁵As of March 10, 2003, the Office of the Chief Trial Counsel has not had any contact with
Respondent since he wrote to the State Bar investigator on July 18, 2001.

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28 ⁶The Court grants the State Bar's request and takes judicial notice of all of Respondent's
official membership addresses to the date of the filing of this decision.

1 Failure to File Timely Response) and Order of Involuntary Inactive Enrollment.⁷ A copy of said
2 order was properly served upon Respondent on April 4, 2003, by certified mail, return receipt
3 requested, addressed to Respondent at his official address. Thereafter, the return receipt was
4 received by the State Bar Court Clerk's Office indicating that the copy of the order was delivered
5 and received by "April Barnes." However, the copy of said order was returned to the State Bar Court
6 by the U.S. Postal Service marked, "UNDELIVERABLE AS ADDRESSED."

7 On June 3, 2003, the State Bar filed an amended brief on the issues of culpability and
8 discipline. In the brief, the State Bar waived the hearing in this matter by requesting that the Court
9 take this matter under submission without a hearing. A copy of said brief was properly served upon
10 Respondent by regular mail on June 3, 2003, addressed to Respondent at his official address.

11 On June 4, 2003, the Court issued an order taking this matter under submission on that date.

12 Exhibit 1 attached to the State Bar's March 11, 2003, motion for the entry of Respondent's
13 default is admitted into evidence.

14 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15 **Jurisdiction**

16 Respondent was admitted to the practice of law in the State of California on September 25,
17 1981, was a member at all times pertinent to these charges, and is currently a member of the State
18 Bar of California.

19 **Counts One Through Five - Case No. 00-O-15526-RAH**

20 In or about September 1998, Respondent was employed by James and Kimberly
21 Hollingsworth and their daughter Carmen (collectively the "Hollingsworths"), following injuries to
22 Carmen and the death of another daughter, Noelle, resulting from an automobile accident occurring
23 the previous month.

24 On October 1, 1998, Carmen turned 18 years of age.

25 On or about October 13, 1998, the Rawlings Company, a collection agency representing the
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27 ⁷Respondent's involuntary inactive enrollment pursuant to Business and Professions
28 Code section 6007(e) was effective three days after the service of this order by mail.

1 Hollingsworths' daughters' medical provider, Health Net, notified Respondent that Health Net had
2 paid medical expenses on behalf of Noelle and Carmen and requested that Respondent not enter into
3 a settlement that included these medical expenses without their consent. Respondent also knew at
4 around the same time that Health Net had a lien on the Hollingsworths' recovery for medical
5 expenses due to a subrogation claim for same. The Hollingsworths asked Respondent to deal with
6 the claims made by the Rawlings Company as part of the settlement of the girls' claims.

7 Respondent filed two lawsuits on behalf of the Hollingsworths. On or about August 9, 1999,
8 Respondent filed *Carmen Hollingsworth v. Carol Elizabeth Lockwood, et al.*, San Diego County
9 Superior Court case no. N82137 (the "personal injury matter.") Also on or about August 9, 1999,
10 Respondent filed a wrongful death action entitled *Kimberly Hollingsworth v. Carol Elizabeth*
11 *Lockwood, et al.*, San Diego County Superior Court case no. N82138 (the "wrongful death matter").
12 The court subsequently consolidated the two cases.

13 In or about June 2000, Respondent settled the wrongful death matter and subsequently sent
14 the Hollingsworths their share of the settlement proceeds for that case. On or about July 9, 2000,
15 Respondent advised them that he was hopeful he would have a settlement offer with respect to the
16 personal injury matter in the next week.

17 On or about August 1, 2000, a settlement conference was held and Respondent settled the
18 personal injury matter in the amount of \$50,000.00. Pursuant to the settlement, the personal injury
19 matter was dismissed with Respondent's consent.

20 On or about August 7, 2000, opposing counsel sent Respondent a Settlement and Release
21 Agreement to be executed by Carmen Hollingsworth, as she was now an adult. Opposing counsel's
22 letter stated that upon receipt of the executed settlement release they would issue a settlement draft
23 for \$50,000.00 payable to Respondent and his client, with the understanding that Respondent would
24 resolve all lien claims before distribution of the settlement proceeds.

25 Thereafter, Respondent had no further contact with the Hollingsworths or with opposing
26 counsel. Respondent never notified the Hollingsworths that the defendant had offered a \$50,000.00
27 settlement, and he did not forward to Carmen a settlement release to be executed by her. Respondent
28 also never notified the Hollingsworths that the personal injury matter was dismissed.

1 On or about October 2, 2000, and expressly on Carmen's behalf, James Hollingsworth wrote
2 a letter to Respondent requesting a status update of the personal injury matter. In his letter, James
3 Hollingsworth told Respondent that both he and Carmen had paged him eight times in the last week
4 but had received no reply. Respondent received the Hollingsworths' pages and letter, but did not
5 respond to the letter or pages or otherwise communicate with the Hollingsworths.

6 On or about June 5, 2001, James Hollingsworth again wrote to Respondent on Carmen's
7 behalf, stating that he had not heard from Respondent in over a year and that he needed to know the
8 status of the personal injury matter. Respondent received the letter, but failed to respond or to
9 otherwise communicate with any of the Hollingsworths.

10 The Hollingsworths have never received any settlement proceeds in the personal injury
11 matter.

12 At no time did Respondent notify the Hollingsworths that he was ceasing work on the
13 personal injury matter or that they should seek new counsel. Respondent never returned the file in
14 the personal injury matter to the Hollingsworths. Respondent took no steps to avoid reasonably
15 foreseeable prejudice to his clients' rights.

16 By letters dated October 13, 1998, August 3, 1999, August 4, 1999, February 29, 2000, April
17 13, 2000, May 15, 2000 and January 22, 2001, the Rawlings Company requested information from
18 Respondent regarding the Hollingsworths, the adverse parties in the lawsuits and their insurance
19 carrier(s). Respondent failed to respond to the Rawlings Company's letters. Furthermore, on or
20 about August 2, 2001, the Hollingsworths received a letter from the Rawlings Company attempting
21 to collect \$91,855.64 for medical care provided to their daughters following the automobile accident.

22 On or about June 14, 2000, the State Bar opened an investigation against Respondent
23 pursuant to a complaint made by the Hollingsworths (the "Hollingsworth matter").

24 On or about May 17, 2001, State Bar investigator Robin Littlefield ("Littlefield") wrote to
25 Respondent regarding the Hollingsworth matter and requested a written response. Although
26 Respondent received this letter, he did not respond to the State Bar investigator.

27 On or about July 5, 2001, State Bar investigator Littlefield again wrote to Respondent
28 regarding the Hollingsworth matter, and requested a substantive written response. Respondent

1 received the investigator's July 5, 2001, letter.

2 On or about July 18, 2001, Respondent sent the State Bar a brief letter in which he stated that
3 he was in Texas on personal business; he would be returning to California the following month; and
4 that the Hollingsworths had "an entirely legitimate grievance" which he did not dispute. He asked
5 for an extension until August 11, 2001, to respond. Thereafter, the State Bar received no further
6 communication from Respondent regarding the Hollingsworth matter.

7 As of February 4, 2003, Respondent had failed to respond substantively to the State Bar
8 investigator's letters or otherwise cooperate or participate in any way in the investigation of the
9 Hollingsworth matter.

10 **Count One - Rules 3-110(A) of the Rules of Professional Conduct**⁸

11 The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule
12 3-110(A). Rule 3-110(A) provides that "[a] member shall not intentionally, recklessly, or repeatedly
13 fail to perform legal services with competence." By failing to: (1) effectuate the settlement of the
14 personal injury matter by failing to forward to Carmen Hollingsworth a settlement release for her
15 execution; (2) complete the legal services for which he was employed; and (3) respond to the
16 Rawlings Company's information requests, Respondent recklessly, repeatedly or intentionally failed
17 to perform legal services with competence in wilful violation of rule 3-110(A).⁹

18 **Count Two - Rule 3-700(A)(2)**

19 The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule
20 3-700(A)(2). Rule 3-700(A)(2) provides that an attorney may not withdraw from employment until
21 taking reasonable steps to avoid reasonably foreseeable prejudice to the client's rights. By failing
22 to have any contact with the Hollingsworths after August 7, 2000, Respondent abandoned his clients
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24 ⁸Unless otherwise indicated, all further references to rules refer to the Rules of
25 Professional Conduct of the State Bar of California.

26 ⁹The Court will not base its finding of a wilful violation of rule 3-110(A) on
27 Respondent's failure to inform the Hollingsworths that the defendant had offered a settlement in
28 the personal injury matter, as such misconduct will be used to support the violation of section
6068(m).

1 and withdrew from their representation without taking reasonable steps to avoid reasonably
2 foreseeable prejudice to his clients' rights in wilful violation of rule 3-700(A)(2).

3 **Count Three and Count Four - Business and Professions Code Section 6068(m)**¹⁰

4 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
5 section 6068(m). Section 6068(m) provides that it is an attorney's duty "[t]o respond promptly to
6 reasonable status inquiries of clients and to keep clients reasonably informed of significant
7 developments in matters with regard to which the attorney has agreed to provide legal services." By
8 failing to respond to James Hollingsworth's letters of October 2, 2000 and June 5, 2001, or to the
9 pages of James and Carmen Hollingsworth, Respondent failed to respond promptly to reasonable
10 status inquiries of his clients in wilful violation of section 6068(m). Furthermore, by failing to notify
11 Carmen Hollingsworth that the defendant had offered a \$50,000.00 settlement in the personal injury
12 matter, and by failing to notify her that the personal injury matter was dismissed, Respondent failed
13 to keep his client informed of significant developments in her legal matter.

14 **Count Five - Section 6068(i)**

15 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
16 section 6068(i). Section 6068(i) requires an attorney to cooperate with and participate in a State Bar
17 disciplinary investigation or proceeding. Respondent wilfully violated section 6068(i) by failing to
18 respond substantively to the State Bar investigator's letters or otherwise cooperate in any way in the
19 investigation of the Hollingsworth matter.

20 **MITIGATING/AGGRAVATING CIRCUMSTANCES**

21 As Respondent's default was entered in this matter, Respondent failed to introduce any
22 mitigating evidence on his behalf. However, pursuant to Evidence Code section 452(h), the Court
23 takes judicial notice of Respondent's official membership records maintained by the State Bar of
24 California, which indicate that Respondent was admitted to the practice of law in the State of
25 California on September 25, 1981, and has no prior record of discipline. (Rules Proc. of State Bar,
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27 ¹⁰Unless otherwise indicated, all further references to sections refer to provisions of the
28 California Business and Professions Code.

1 tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(i) ("standard"). Respondent
2 therefore practice law for over 18 years prior to the first act of misconduct in this matter. This is
3 therefore a significant factor in mitigation.

4 In aggravation, Respondent engaged in multiple acts of misconduct. (Standard 1.2(b)(ii).)

5 Respondent's misconduct also significantly harmed Carmen Hollingsworth. (Standard
6 1.2(b)(iv).) Respondent failed to notify his client that the defendant had offered a \$50,000.00
7 settlement; failed to effectuate the settlement by failing to forward to his client a settlement release
8 to be executed by his client; and failed to notify his client that the personal injury matter was
9 dismissed. Furthermore, Respondent's abandonment of his clients and his failure to respond to
10 information requests from the Rawlings Company led to the Hollingsworths receiving a letter from
11 the Rawlings Company attempting to collect \$91,855.64 for medical care provided to Carmen and
12 Noelle following the automobile accident.

13 Respondent's failure to participate in this disciplinary proceeding prior to the entry of his
14 default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

15 DISCUSSION

16 In determining the appropriate discipline to recommend in this matter, the Court looks at the
17 purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of
18 disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal
19 profession; the maintenance of high professional standards by attorneys and the preservation of
20 public confidence in the legal profession."

21 In addition, standard 1.6(b) provides that the specific discipline for the particular violation
22 found must be balanced with any mitigating or aggravating circumstances, with due regard for the
23 purposes of imposing disciplinary sanctions.

24 In this case, the standards provide for the imposition of sanctions ranging from reproof to
25 disbarment. (Standards 2.4(b), 2.6, and 2.10.) In addition, standard 1.6(a) states, in pertinent part,
26 "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary
27 proceeding, and different sanctions are prescribed by these standards for said acts, the sanction
28 imposed shall be the more or most severe of the different applicable sanctions."

1 The standards, however, are only guidelines and do not mandate the discipline to be imposed.
2 (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach
3 case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at
4 p. 251.)

5 The State Bar recommends, inter alia, that Respondent be actually suspended from the
6 practice of law for six months and until the State Bar Court grants a motion to terminate
7 Respondent’s actual suspension pursuant to rule 205 of the Rules of Procedure. In support of its
8 discipline recommendation, the State Bar cites to *Conroy v. State Bar* (1991) 53 Cal.3d 495 and *In*
9 *the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131. The Court, however, does
10 not concur with the State Bar’s discipline recommendation. The Court finds both *Conroy* and *Miller*
11 distinguishable as both the attorneys in those matters had prior records of discipline, and both cases
12 involved acts in violation of section 6106. Thus, although the State Bar’s discipline
13 recommendation in this matter is less than that imposed in either *Conroy* or *Miller*, and there are
14 aggravating factors found in this matter that were not found in *Conroy* or *Miller*, the Court concludes
15 that neither case is sufficiently analogous to the instant proceeding to support the State Bar’s
16 discipline recommendation in this matter.

17 In this proceeding, Respondent has been found culpable in one matter of intentionally,
18 recklessly, or repeatedly failing to perform legal services with competence, withdrawing from
19 representation without taking reasonable steps to avoid reasonably foreseeable prejudice to his
20 clients’ rights, failing to respond promptly to reasonable status inquiries of his clients and to keep
21 his client reasonably informed of significant developments with respect to his client’s legal matter,
22 and failing to cooperate with and participate in a State Bar disciplinary investigation. In mitigation,
23 Respondent has no prior record of discipline and had been a member of the State Bar for over 18
24 years at the time of his first act of misconduct. In aggravation, Respondent engaged in multiple acts
25 of misconduct; the misconduct resulted in significant harm to Respondent’s client; and Respondent
26 failed to participate in this disciplinary proceeding prior to the entry of his default.

27 Of particular concern to this Court is Respondent’s failure to participate in this disciplinary
28 proceeding. Respondent’s failure to participate in this proceeding leaves the Court without any

1 understanding as to the underlying cause or causes for Respondent's misconduct or from learning
2 of any other mitigating circumstances which would justify this Court's departure from the discipline
3 recommended by the standards.

4 In determining the appropriate discipline to recommend in this matter, the Court is guided
5 by *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476 and *Harris v. State Bar*
6 (1990) 51 Cal.3d 1082.

7 In *Lilley*, the attorney was suspended from the practice of law for one year, the execution of
8 said suspension was stayed; and the attorney was placed on probation for one year subject to
9 conditions of probation including a 30-day period of actual suspension. The attorney in *Lilley*
10 defaulted and was found culpable of failing to perform the work for which he was employed, failing
11 to turn over his client's file, and abandoning his client in violation of section 6068(m), former rule
12 2-111(A)(2) and 6-101(A)(2);¹¹ failed to respond to a written inquiry of the State Bar and failed to
13 cooperate in a State Bar investigation in violation of section 6068(i); and vacated his law office,
14 abandoned his official address and failed to timely submit to the State Bar a change of address in
15 violation of section 6002.1(a)(i). In aggravation, the attorney's misconduct resulted in harm to his
16 client and a beneficiary of an estate. In mitigation, the attorney had practiced law for 13 years prior
17 to the misconduct and had no prior record of discipline.

18 In *Harris*, the attorney was suspended from the practice of law for three years; the execution
19 of said suspension was stayed, and the attorney was placed on probation for three years on conditions
20 including a 90-day period of actual suspension. The attorney abandoned her client, doing virtually
21 nothing for over four years with respect to the duties for which she had been retained, and repeatedly
22 failed to communicate with her client and his family attorney. In mitigation, the attorney had no
23 prior record of discipline, and the Supreme Court noted the attorney's illness, but found that such
24 illness did not excuse the long course of the attorney's misconduct. In aggravation, the Supreme
25 Court noted the substantial prejudice suffered by the attorney's client, the attorney's lack of remorse,
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28 ¹¹Former rule 2-111(A)(2) is the precursor of current rule 3-700(A)(2); former rule 6-
101(A)(2) is the precursor of current rule 3-110(A).

1 and her failure to understand the wrongfulness of her actions.

2 In this matter, Respondent never notified his client that the defendant had offered a
3 \$50,000.00 settlement; settled the personal injury case without his client's consent; failed to
4 effectuate the settlement by forwarding the settlement release to his client for execution; dismissed
5 the lawsuit without his client's consent; his client never received any settlement proceeds; and he
6 abandoned his client without taking steps to avoid reasonably foreseeable prejudice to his client's
7 rights. Thus, the Court finds that the harm to Respondent's client in this matter weighs in favor of
8 a period of actual suspension similar to that imposed in the *Harris* matter.

9 **RECOMMENDED DISCIPLINE**

10 Accordingly, the Court hereby recommends that Respondent GARY FREDERIC MYERS
11 be suspended from the practice of law for 18 months; that execution of said suspension be stayed,
12 and that Respondent be actually suspended from the practice of law for 90 days and until the State
13 Bar Court grants a motion to terminate Respondent's actual suspension at its conclusion or upon
14 such later date ordered by the Court. (Rules Proc. of State Bar, rule 205(a)-(c).)

15 If the period of actual suspension reaches or exceeds two years, it is further recommended
16 that Respondent remain actually suspended until he has shown proof satisfactory to the State Bar
17 Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to
18 standard 1.4(c)(ii). (See also, Rules Proc. of State Bar, rule 205(b).)

19 It is also recommended that Respondent be ordered to comply with any probation conditions
20 reasonably related to this matter that may hereinafter be imposed by the State Bar Court as a
21 condition for terminating Respondent's actual suspension. (Rules Proc. of State Bar, rule 205(g).)

22 It is also recommended that Respondent be ordered to take and pass the Multistate
23 Professional Responsibility Examination given by the National Conference of Bar Examiners within
24 one year after the effective date of the discipline imposed herein or during the period of his actual
25 suspension, whichever is later, and furnish satisfactory proof of such to the State Bar's Probation
26 Unit within said period.

27 It is further recommended that Respondent be ordered to comply with the requirements of
28 rule 955 of the California Rules of Court within 30 calendar days after the effective date of the

1 Supreme Court order imposing discipline in this matter, and file the affidavit provided for in
2 paragraph (c) within 40 days after the effective date of the order showing Respondent's compliance
3 with said order.¹²

4 COSTS

5 It is further recommended that costs be awarded to the State Bar pursuant to section 6086.10,
6 and that such costs be payable in accordance with section 6140.7.

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12 Dated: September 7, 2003


13 RICHARD A. HONN
14 Judge of the State Bar Court

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27 ¹²Failure to comply with rule 955 of the California Rules of Court ("CRC 955") could
28 result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is
required to file a CRC 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar*
(1988) 44 Cal.3d 337, 341.)

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 2, 2003, I deposited a true copy of the following document(s):

DECISION, filed September 2, 2003

in a sealed envelope for collection and mailing on that date as follows:

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**GARY FREDERIC MYERS ESQ
3337 W FLORIDA AVE #189
HEMET, CA 92545**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Nancy Brown, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 2, 2003.


Milagro del R. Salmeron
Case Administrator
State Bar Court