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STATE BAR COURT
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**THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES**

PUBLIC MATTER

In the Matter of)	Case No. 02-O-10157-RAH;
THOMAS IRWIN ARMSTRONG,)	03-O-02674-RAH
Member No. 160040,)	(Consolidated)
A Member of the State Bar.)	DECISION

INTRODUCTION

The above-entitled matter was submitted for decision as of May 26, 2004. The State Bar of California, Office of the Chief Trial Counsel ("State Bar") was represented in this matter by Deputy Trial Counsel Gordon L. Grenier ("DTC Grenier").¹ During most of this proceeding, Respondent Thomas Irwin Armstrong ("Respondent") appeared in this matter in propria persona.²

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 six months and until he pays certain sanctions and provides satisfactory proof thereof to the State Bar's Office of Probation, that execution of said suspension be stayed, and that Respondent be placed

¹Earlier in the proceeding, the State Bar was represented by DTC Erin M. Joyce.

²On May 10, 2004, Respondent filed a Notice of Designation to Receive Service indicating that attorney Eric P. Lampel represents Respondent in this matter and designating Mr. Lampel to receive service of any documents related to this proceeding. Neither Respondent nor his counsel, however, appeared for the hearing in Case No. 02-O-10157.

1 on probation for one year with certain conditions.

2 **PERTINENT PROCEDURAL HISTORY**

3 On July 24, 2003, the State Bar filed a Notice of Disciplinary Charges ("NDC") against
4 Respondent in Case No. 02-O-10157.

5 A copy of the NDC was properly served upon Respondent on July 21, 2003, by certified
6 mail, return receipt requested, addressed to Respondent at his official membership records
7 address ("official address") maintained by Respondent pursuant to Business and Professions
8 Code section 6002.1, subdivision (a).

9 On July 30, 2003, a Notice of Assignment and Notice of Initial Status Conference was
10 filed in Case No. 02-O-10157. A copy of that notice was properly served upon Respondent by
11 first-class mail, postage fully prepaid, on July 30, 2003. The copy of this notice was not returned
12 to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

13 On September 15, 2003, the Court held an in-person status conference in Case No. 02-O-
14 10157. Respondent appeared at the status conference. Thereafter, on September 16, 2003, an
15 Order Pursuant to In Person Status Conference was filed which set forth that a further telephonic
16 status conference would be held on December 17, 2003. A copy of that order was properly
17 served upon Respondent by first-class mail, postage fully prepaid, on September 16, 2003,
18 addressed to Respondent at his official address. The copy of this order was not returned to the
19 State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

20 On September 22, 2003, Respondent filed an Answer to Notice of Disciplinary Charges
21 in Case No. 02-O-10157.

22 On October 23, 2003, the State Bar filed a NDC against Respondent in Case No. 03-O-
23 02674.

24 A copy of the NDC in Case No. 03-O-02674 was properly served upon Respondent on
25 October 23, 2003, by certified mail, return receipt requested, addressed to Respondent at his
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1 official address.³ The NDC was not returned by the U.S. Postal Service. On October 27, 2003, a
2 return card was received by the State Bar signed by "Nancy" (last name illegible).

3 On October 23, 2003, the State Bar filed a request to consolidate Case No. 02-O-10157
4 and Case No. 03-O-02674. A copy of that request was properly served upon Respondent by mail
5 on October 23, 2003, addressed to Respondent at his official address.

6 On November 3, 2003, a Notice of Assignment and Notice of Initial Status Conference
7 was filed in Case No. 03-O-02674. A copy of that notice was properly served upon Respondent
8 by first-class mail, postage fully prepaid, on November 3, 2003. The copy of this notice was not
9 returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other
10 reason.

11 On November 3, 2003, a Notice of Advanced Telephonic Status Conference Date was
12 filed in Case No. 02-O-10157 advising the parties that the telephonic status conference scheduled
13 in Case No. 02-O-10157 had been advanced from December 17, 2003 to November 25, 2003. A
14 copy of that notice was properly served upon Respondent by first-class mail, postage fully
15 prepaid, on November 3, 2003, addressed to Respondent at his official address. The copy of this
16 notice was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for
17 any other reason.

18 Despite being served with proper notice of the status conference, Respondent was not
19 present at the telephonic status conference held on November 25, 2003, in Case No. 02-O-10157
20 and Case No. 03-O-02674. Thereafter, on December 1, 2003, a document entitled Trial Dates
21 and Order Pursuant to Status Conference was filed. Noting that Respondent had not filed an
22 opposition to the State Bar's request to consolidated Case No. 02-O-10157 and Case No. 03-O-
23 02674, the Court granted the motion effective immediately. The Court also ordered that trial
24 commence on May 10, 2004, at 9:30 a.m. A copy of that order was properly served upon
25 Respondent by first-class mail, postage fully prepaid, on December 1, 2003, addressed to
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28 ³On September 24, 2003, a 20-day letter was mailed to Respondent at Respondent's
official address. This letter was not returned.

1 Respondent at his official address. The copy of this order was not returned to the State Bar Court
2 by the U.S. Postal Service as undeliverable or for any other reason.

3 On January 20, 2004, DTC Grenier attempted to reach Respondent by telephone at
4 Respondent's official membership records telephone number. DTC Grenier spoke with "Phillin"
5 who stated that Respondent was not currently in the office. DTC Grenier left a detailed message
6 requesting a return telephone call. DTC Grenier advised Respondent that the time to file his
7 answer had lapsed in November, but he would give Respondent until 5:00 p.m. on Monday,
8 January 26, 2004, before filing a motion for default. On January 20, 2004, DTC Grenier sent a
9 letter outlining the same information to Respondent's official address. Neither the letter nor the
10 telephone call was returned.

11 Respondent also failed to appear at an in-person status conference held on January 16,
12 2004, despite being served with proper notice of the status conference. Thereafter, on January
13 23, 2004, an Order Pursuant to In Person Status Conference was filed noting that Respondent had
14 not filed a response to the NDC in Case No. 03-O-02674, and that the Court would entertain the
15 State Bar's Motion for Entry of Default. The Court also ordered a telephonic status conference
16 in Case No. 02-O-10157 continued to February 27, 2004. A copy of that order was properly
17 served upon Respondent by first-class mail, postage fully prepaid, on January 23, 2004,
18 addressed to Respondent at his official address. The copy of this order was not returned to the
19 State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

20 On January 26, 2004, DTC Grenier called directory assistance (411) for the area which
21 includes Respondent's official membership records address and asked for all telephone listings
22 for Respondent. Directory assistance had no listings for Respondent.

23 On January 26, 2004, DTC Grenier checked Parker's directory. Parker's did not have any
24 address for Respondent.⁴

25 On February 4, 2004, the State Bar filed a motion for the entry of Respondent's default in
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28 ⁴The State Bar's Office of the Chief Trial Counsel has not had any contact with
Respondent since October 6, 2003.

1 Case No. 03-O-02674. The motion also contained a request that the Court take judicial notice,
2 pursuant to Evidence Code section 452(h), of all of Respondent's official membership
3 addresses,⁵ the declaration of Gordon L. Grenier and Exhibits 1 and 2. A copy of this motion
4 was properly served upon Respondent on February 4, 2004, by certified mail, return receipt
5 requested, addressed to Respondent at his official address.

6 When Respondent failed to file a written response within 10 days after service of the
7 motion for the entry of his default in Case No. 03-O-02674, on February 20, 2004, an Order of
8 Entry of Default (Rule 200-Failure to File Timely Response) and Order of Involuntary Inactive
9 Enrollment⁶ was filed. A copy of that order was properly served upon Respondent on February
10 20, 2004, by certified mail, return receipt requested, addressed to Respondent at his official
11 address. The green return receipt card was returned to the State Bar Court by the U.S. Postal
12 Service bearing what purports to be the signature of someone other than Respondent.

13 Respondent also failed to appear at a telephonic status conference held on February 27,
14 2004, despite being served with proper notice of the status conference. Thereafter, on March 3,
15 2004, an Order Pursuant to Telephonic Status Conference was filed noting that Respondent's
16 default was entered on February 20, 2004, in Case No. 03-O-02674, but that the trial dates
17 previously scheduled remain on calendar for Case No. 02-O-10157. A copy of that order was
18 properly served upon Respondent by first-class mail, postage fully prepaid, on March 3, 2004,
19 addressed to Respondent at his official address. The copy of this order was not returned to the
20 State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

21 The Court ordered the parties to appear for an in-person motion hearing on March 12,
22 2004, to show cause why consolidated Case Nos. 02-O-10157; 03-O-02674 should not be
23 severed. Although Respondent was served with proper notice of the March 12, 2004, motion
24 hearing, Respondent failed to appear at the hearing. The Court ordered that Case No. 02-O-

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26 ⁵The Court grants the State Bar's request and takes judicial notice of all of Respondent's
27 official membership addresses to the date of the filing of this decision.

28 ⁶Respondent'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 10157 and Case No. 03-O-02674 remain consolidated, and that trial in Case No. 02-O-10157
2 commence on May 10, 2004, as previously scheduled. DTC Grenier waived the right to an
3 expeditious hearing regarding Case No. 03-O-02674. A copy of that order was properly served
4 upon Respondent by first-class mail, postage fully prepaid, on March 29, 2004, addressed to
5 Respondent at his official address. The copy of this order was not returned to the State Bar Court
6 by the U.S. Postal Service as undeliverable or for any other reason.

7 On April 23, 2004, the State Bar filed a Notice in Lieu of Subpoena requesting
8 Respondent's attendance at trial on May 10, 2004, in Case No. 02-O-10157. A copy of that
9 notice was properly served upon Respondent by mail on April 23, 2004, addressed to Respondent
10 at his official address.

11 Respondent failed to appear at the trial held on May 10, 2004, and Respondent's default
12 was entered.

13 On May 10, 2004, Respondent filed a Notice of Designation to Receive Service
14 indicating that Eric P. Lampel represents Respondent and designating Eric P. Lampel to receive
15 service of any documents relating to this matter.

16 On May 10, 2004, an Order Pursuant to Trial was filed noting the entry of Respondent's
17 default, and ordering DTC Grenier to file a motion to amend the NDC to conform to proof. A
18 copy of that order was properly served upon Respondent on May 10, 2004, addressed to Eric P.
19 Lampel who was designated to receive service of any documents related to this matter. The copy
20 of this order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable
21 or for any other reason.

22 On May 10, 2004, an Order of Entry of Default (Rule 201-Failure to Appear) and Order
23 of Involuntary Inactive Enrollment⁷ was filed. A copy of that order was properly served upon
24 Respondent on May 10, 2004, by certified mail, return receipt requested, addressed to
25 Respondent at his official address. The green return receipt card was returned to the State Bar
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28 ⁷Respondent'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 Court by the U.S. Postal Service bearing what purports to be the signature of someone other than
2 Respondent.

3 On May 21, 2004, the State Bar filed a Request for Waiver of Default Hearing; Brief on
4 Culpability and Discipline in Case Nos. 02-O-10157; 03-O-02674. A copy of that request/brief
5 was properly served by mail on Eric Lampel on May 21, 2004.

6 On May 21, 2004, the State Bar filed a Motion to Amend Notice of Disciplinary Charges
7 to Conform to Proof in Case No. 02-O-10157. A copy of that motion was properly served by
8 mail on Eric Lampel on May 21, 2004.⁸ No response to the motion was received by the Court.

9 On May 26, 2004, the State Bar filed a Motion to Admit State Bar's Trial Exhibits 1
10 Through 23 in Case No. 02-O-10157. A copy of that motion was properly served by mail on Eric
11 Lampel on May 26, 2004.⁹ No response to the motion was received by the Court.

12 As the State Bar waived the hearing in this matter, the matter was submitted for decision
13 on May 26, 2004.

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 November 9,
17 1992, was a member at all times pertinent to these charges, and is currently a member of the State
18 Bar of California.

19 Case No. 02-O-10157 - The Strand Matter

20 In early May 2000, Jon and Jeffrey Strand ("the Strands") contacted attorney Stephen C.
21 Durringer ("Durringer") of the Law Offices of Stephen C. Durringer & Associates, regarding a real
22 property eviction. It was determined that the eviction involved an individual who partially
23 owned the property. Therefore, a quiet title or partition action was necessary. Durringer's firm

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25 ⁸The Court grant's the State Bar's motion to amend the NDC in Case No. 02-O-10157 to
26 conform to proof, as the nature of the amendment is such that no due process concerns are raised
by granting such motion.

27 ⁹The State Bar's motion is granted, and Exhibits 1 through 23 are admitted into evidence
28 in Case No. 02-O-10157. In addition, Exhibits 1-2 attached to the State Bar's motion for the
entry of Respondent's default in Case No. 03-O-02674 are admitted into evidence.

1 does not handle this type of litigation, so with the Strands understanding, Duringer associated in
2 Respondent to handle their case. As such, on May 11, 2000, the Strands employed Respondent
3 to represent them in the action to remove their brother, Michael Strand, from a property located
4 at 5724 West Seventy-Fourth Street, Westchester, California ("the quiet title action").

5 On May 11, 2000, Duringer entered into a written attorney-client agreement with the
6 Strands. Respondent was present at this meeting. The Strands consulted with Respondent, and
7 all future communications were to be between the Strands and Respondent. The Strands paid an
8 initial retainer of \$7,500. Because Respondent rented space from Duringer's firm, Duringer
9 forwarded this amount to Respondent in the form of a future rent credit.

10 From May 11, 2000 through August 2000, Respondent did not contact the Strands about
11 the progress or status of the quiet title action.

12 On August 4, 2000, Respondent filed a complaint for declaratory relief, quiet title, and
13 partition of real and personal property on behalf of the Strands in the Los Angeles County
14 Superior Court, Case No. YC038286. The complaint was signed by Respondent, but both
15 Respondent and Duringer were listed above the caption on the first page of the complaint as the
16 attorneys for the Strands.

17 On August 5, 2002, defendant Michael Strand was served with a copy of the summons
18 and complaint in Case No. YC038286.

19 On August 14, 2000, a copy of the summons and complaint was served upon defendant
20 Sherry Strand by substituted service.

21 Proof of service on Michael Strand was filed with the Superior Court on September 7,
22 2000.

23 On September 7, 2000, a Request for Entry of Default against defendant Michael Strand
24 was filed on behalf of the Strands. A copy of the Request for Entry of Default was served by
25 mail upon defendant Michael Strand on September 6, 2000. Default was entered on September
26 7, 2000.

27 On September 11, 2000, a Notice of Errata in Complaint for Declaratory Relief; Quiet
28 Title; Partition of Real and Personal Property was filed with the Superior Court on behalf of the

1 Strands. A copy of that notice was served by mail upon Michael and Sherry Strand on
2 September 6, 2000.¹⁰

3 On September 18, 2000, proof of substituted service on Sherry Strand was filed with the
4 Superior Court, accompanied by a Declaration of Due Diligence.

5 A Request for Entry of Default against defendant Sherry Strand was filed with the
6 Superior Court on September 18, 2000. A copy of the Request for Entry of Default was served
7 by mail upon defendant Sherry Strand on September 15, 2000. Default was entered on
8 September 18, 2000.

9 The court scheduled a status conference for January 31, 2001.

10 On January 31, 2001, Respondent failed to appear for the status conference. At that time,
11 the court issued an order to show cause as to why sanctions/dismissal should not be imposed
12 against Respondent for failure to appear ("the OSC") and scheduled the OSC hearing for
13 February 27, 2001. Notice of the OSC and hearing were properly served on Respondent.¹¹
14 Respondent did not inform the Strands of the court's intent to dismiss the quiet title action and
15 failed to inform the Strands of the OSC hearing date.

16 On February 27, 2001, the OSC was continued to March 22, 2001. Thomas C. Morgan
17 appeared as plaintiffs' counsel at the OSC on February 27, 2001. Counsel for the Strands was to
18 give notice that the OSC was continued to March 22, 2001. Notice of the new OSC hearing date
19 was properly served on Respondent. Respondent failed to inform the Strands of the new OSC
20 hearing date and again Respondent failed to inform the Strands of the court's intent to dismiss
21 the case.

22 On March 22, 2001, Respondent failed to appear for the scheduled OSC. At that time,
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25 ¹⁰Other than the complaint, this is the only document filed on behalf of the Strands in the
26 Superior Court which lists both Respondent and Durringer as attorneys for plaintiffs. All other
27 documents filed on behalf of the Strands in the Superior Court indicate only Respondent as the
28 attorney for the Strands.

¹¹The OSC was served by mail upon Armstrong & Associates and Stephen C. Durringer &
Associates.

1 the court dismissed the case due to Respondent's failure to appear at the status conference.¹²

2 In late March 2001, Respondent received a copy of the minute order dismissing the case.
3 At no time did Respondent inform the Strands of the dismissal of the case. At no time did
4 Respondent take any action to attempt to set aside the dismissal.

5 In April and May 2001, Durringer began receiving calls from the Strands complaining that
6 they could not reach Respondent and inquiring as to the status of the action. Durringer began
7 trying to contact Respondent to ascertain how the case was proceeding.

8 Between April 2001 and May 2001, the Strands called Respondent numerous times and
9 left messages requesting a status report on their case and requesting that Respondent return their
10 calls. Respondent received the messages, but Respondent failed to return any of the Strands'
11 calls.

12 The Strands lost confidence in Respondent's ability to handle the quiet title action and on
13 May 16, 2001, the Strands sent a letter to Respondent terminating his services, requesting a
14 refund of fees and turnover of their files. In their letter, the Strands requested all their client
15 records and documents from Respondent. The letter was sent via United States mail, first-class
16 postage prepaid, to Respondent's State Bar membership records address. The letter was not
17 returned as undeliverable or for any other reason.

18 Also on May 16, 2001, the Strands sent Durringer a letter stating that they were
19 terminating Respondent's services and immediately granting Durringer full authority to handle
20 their legal matters. Starting May 16, 2001, Durringer began a daily routine of walking over to
21 Respondent's offices and requesting a copy of the Strands' file.

22 On May 24, 2001, Durringer sent a letter to Respondent's offices demanding release of the
23 Strands' file. As a courtesy, Durringer attached a copy of the Strands' May 16, 2001, letter.
24 Respondent released a portion of the Strands' file to Durringer on May 29, 2001. However,
25 Respondent failed to turn over all client papers and properties. When Respondent returned the
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28 ¹²Durringer was unaware of the OSC hearings of February 27 and March 22, 2001.
However, he was served with notice of the February 27, 2001 OSC.

1 file, it was incomplete and devoid of any information or court documents reflecting the fact that
2 the Strands' action had been dismissed.

3 Between May 16, 2001 and August 24, 2001, the Strands telephoned Respondent
4 numerous times and left messages requesting to obtain their files. Respondent did not respond to
5 the Strands' requests.

6 Duringer filed a substitution of attorney form, prepared a request for a default prove-up
7 hearing and filed it with the Los Angeles Superior Court.

8 On or about July 3, 2001, Duringer's office staff contacted the default clerk at the Los
9 Angeles Superior Court and inquired as to why a default hearing had not been set as to the Strand
10 action. The default clerk informed Duringer's staff that no hearing was set because the action
11 was dismissed in March 2001. Duringer immediately obtained a copy of the dismissal order and
12 filed a new complaint setting forth the same allegations as in the prior action.

13 On July 3, 2001, the Strands learned that the quiet title action had been dismissed.

14 In August 2001, the Strands hired new counsel, Robert Marc Hindin ("Hindin"), to
15 handle the quiet title action.

16 On August 15, 2001, Hindin wrote a letter to Duringer, requesting the clients' file and the
17 return of the \$7,600 retainer.¹³

18 On August 24, 2001, Respondent wrote to Hindin. In the letter, Respondent indicated
19 that he was forwarding check number 5303 in the sum of \$7,600 as a refund of the retainer paid
20 by the Strands to Stephen C. Duringer & Associates. However, Respondent's check was
21 returned by the bank for insufficient funds.

22 On October 23, 2001, Hindin sent Respondent a letter at his membership records address,
23 via United States mail, first-class postage prepaid. In the letter, Hindin advised Respondent that
24 check number 5303 in the sum of \$7,600 was returned by the bank because of insufficient funds.
25 In addition, Hindin requested a cashier's check in the sum of \$7,600 be sent via messenger to
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28 ¹³The Court notes that the Strands initially paid Duringer \$7,500 pursuant to the written
attorney-client agreement between Duringer and the Strands.

1 Hindin's office no later than 5:00 p.m. on October 25, 2001. Although he received Hindin's
2 letter, Respondent did not comply with Hindin's request.

3 On November 6, 2001, Hindin sent Respondent a second letter at his membership records
4 address, via United States mail, first-class postage prepaid. In the second letter, Hindin reminded
5 Respondent that on October 23, 2001, he had requested Respondent pay the sum of \$7,600 to the
6 Strands, because the check issued in August 2001 was returned due to insufficient funds. In
7 addition, Hindin requested a cashier's check in the sum of \$7,600 be sent via messenger to
8 Hindin's office no later than 5:00 p.m., on November 8, 2001. Respondent received Hindin's
9 second letter. However, Respondent did not comply with Hindin's request.

10 To date, Respondent has failed to refund the unearned fees to the Strands.

11 Respondent agreed to handle the quiet title action on behalf of the Strands, but took no
12 further action after September 2000. As such, he effectively withdrew from his representation of
13 the Strands. At no time did Respondent inform the Strands that he was withdrawing from
14 employment. Moreover, Respondent failed to take any steps to prevent the reasonably
15 foreseeable prejudice to the Strands, which resulted from his withdrawal from employment.

16 **Count One - Rule 3-110(A) of the Rules of Professional Conduct**¹⁴

17 The State Bar failed to prove by clear and convincing evidence that Respondent wilfully
18 violated rule 3-110(A). Rule 3-110(A) provides that "[a] member shall not intentionally,
19 recklessly, or repeatedly fail to perform legal services with competence." The State Bar alleges
20 that Respondent wilfully violated rule 3-110(A) by failing to attend court appearances which
21 resulted in the dismissal of the quiet title action and by failing to perform services of any value to
22 the Strands. The Court finds, however, that Respondent did perform services of value to the
23 Strands. He not only filed the complaint, but defendants Michael and Sherry Strand were served
24 with the summons and complaint, proof of service on defendants Michael and Sherry Strand was
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¹⁴Unless otherwise indicated, all further references to rules refer to the Rules of
Professional Conduct of the State Bar of California.

1 filed with the Superior Court,¹⁵ Request for Entry of Default against defendant Michael Strand
2 was filed and served on defendant Michael Strand resulting in the entry of Michael Strand's
3 default, a Notice of Errata in Complaint for Declaratory Relief; Quiet Title; Partition of Real and
4 Personal Property was filed and served upon Michael and Sherry Strand, and Request for Entry
5 of Default against defendant Sherry Strand was filed and served on defendant Sherry Strand
6 resulting in the entry of Sherry Strand's default.

7 Regarding the allegation that Respondent wilfully violated rule 3-110(A) by failing to
8 attend court appearances, the Court notes that there is no factual allegation in the NDC or any
9 evidence to support a finding that Respondent had notice of the January 31, 2001, status
10 conference. The Court also notes that Thomas Morgan appeared as counsel for the Strands at the
11 February 27, 2001, OSC. While the Court finds that Respondent had notice of and failed to
12 appear for the March 22, 2001, OSC, the Court finds such failure to be negligent, but there is no
13 evidence to support a finding that it rises to the legal of reckless or intentional misconduct. As
14 such, the Court finds that the State Bar failed to prove by clear and convincing evidence that
15 Respondent wilfully violated rule 3-110(A).

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

17 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
18 rule 3-700(A)(2). Rule 3-700(A)(2) states "A member shall not withdraw from employment
19 until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the
20 rights of the client, including giving due notice to the client, allowing time for employment of
21 other counsel, complying with rule 3-700(D), and complying with applicable laws and rules." By
22 agreeing to handle the quiet title action on behalf of the Strands but taking no further action after
23 September 2000, Respondent effectively withdrew from his representation of the Strands.
24 However, at no time did Respondent inform the Strands that he was withdrawing from
25 employment. He also failed to promptly release to the Strands, upon their requests, all the
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28 ¹⁵Proof of substituted service upon defendant Sherry Strand was accompanied by a
Declaration of Due Diligence.

1 Strands' papers and property and by failing to return any portion of the \$7,500 in advanced fees
2 paid by the Strands which were unearned. Respondent therefore withdrew from employment
3 without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of his
4 clients in wilful violation of rule 3-700(A)(2).

5 **Count Three - Rule 3-700(D)(1) and Count Four - Rules 3-700(D)(2)**

6 As the Court has already found Respondent culpable of wilfully violating rule 3-
7 700(A)(2), the Court declines to find Respondent also culpable of wilfully violating rules 3-
8 700(D)(1) and 3-700(D)(2). Rule 3-700(D)(1) requires an attorney whose employment has
9 terminated to promptly release to a client, at the client's request, all the client's papers and
10 property. Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly
11 refund unearned fees. The rule prohibiting prejudicial withdrawal from employment, rule 3-
12 700(A)(2), is more comprehensive than either rule 3-700(D)(1) (*In the Matter of Dahlz* (Review
13 Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280) or rule 3-700(D)(2). (Cf. *Ibid.*) The rule
14 prohibiting prejudicial withdrawal mandates compliance with the rule requiring return of
15 unearned fees *and* the prompt release of all the client's papers and property. Thus, an attorney's
16 failure to promptly return unearned fees or papers may be a portion of the conduct disciplinable
17 as a violation of the rule prohibiting prejudicial withdrawal. (*In the Matter of Dahlz* (Review
18 Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) Because Respondent's failure to return
19 unearned fees and client papers is relied on as part of the basis for finding that Respondent
20 violated the rule prohibiting prejudicial withdrawal, the Court rejects a separate finding of
21 culpability under either rule 3-700(D)(1) or rule 3-700(D)(2). (*Ibid.*)

22 **Case No. 03-O-02674 - Violation of Court Order**

23 On July 12, 2002, Hon. Judge David Thompson of the Superior Court of California,
24 County of Orange, entered an order directing Respondent to pay sanctions in the amount of \$718
25 to Mitchell Samuelson ("Samuelson"), defendant's counsel, in the matter entitled *Vincent K.*
26 *Rubalcava v. Tori West Shernoff; Mitchell Samuelson*, Case No. 02CC06376. The court order
27 required Respondent to do an act connected with or in the course of his profession. Pursuant to
28 the order, Respondent was ordered to pay the sanctions to Samuelson within 20 days of the order,

1 or by August 7, 2002. Respondent was present in the courtroom when the judge entered the
2 order.¹⁶

3 On July 18, 2002, Samuelson served upon Respondent a Notice of Ruling giving notice to
4 Respondent of the July 12, 2002, order.

5 Subsequently, Respondent failed to comply with the order to pay the sanctions. As of
6 October 23, 2003, Respondent had failed to comply with the court's order.

7 **Count One - Business and Professions Code Section 6103**¹⁷

8 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
9 section 6103. Section 6103 provides, in pertinent part, that the wilful disobedience or violation
10 of a court order requiring an attorney to do or forbear an act connected with or in the course of
11 the attorney's profession, which the attorney ought in good faith to do or forbear constitutes
12 cause for suspension or disbarment. Respondent wilfully violated section 6103 by failing to pay
13 sanctions to Mitchell Samuelson as ordered by Judge Thompson in his July 12, 2002, order.

14 **MITIGATING/AGGRAVATING CIRCUMSTANCES**

15 As Respondent's default was entered in this matter, Respondent failed to introduce any
16 mitigating evidence on his behalf. However, pursuant to Evidence Code section 452(h), the
17 Court takes judicial notice of Respondent's official membership records maintained by the State
18 Bar of California which indicate that Respondent was admitted to the practice of law in the State
19 of California on November 9, 1992, and has no prior record of discipline. (Rules Proc. of State
20 Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(i) ("standard").) The
21 Court therefore gives some limited weight in mitigation to Respondent's nearly eight years of
22 blemish-free practice prior to his misconduct. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 658
23 [seven an one-half years of practice without discipline afforded minimal weight.])

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25 ¹⁶Although not particularly well drafted, the Court finds that the NDC sufficiently alleges
26 the factual allegation that Judge Thompson's sanction order required Respondent to do an act
27 connected with or in the course of his profession.

28 ¹⁷Unless otherwise indicated, all further references to sections refer to provisions of the
California Business and Professions Code.

1 In aggravation, Respondent engaged in multiple acts of misconduct in this matter.
2 (Standard 1.2(b)(ii).)

3 Respondent's demonstrated indifference toward atonement for or rectification of the
4 consequences of his misconduct by failing to return all client papers to the Strands and by failing
5 to provide the requested cashier's check to the Strands new counsel after Respondent's original
6 check was returned for insufficient funds. (Standard 1.2(b)(v).)

7 Respondent's failure to participate in this matter prior to the entry of his default is a
8 further aggravating circumstances. (Standard 1.2(b)(vi).)

9 DISCUSSION

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

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

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

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

27 The State Bar recommends, inter alia, that Respondent be suspended from the practice of
28 law for one year, that execution of said suspension be stayed, and that Respondent be actually

1 suspended from the practice of law for 90 days. However, in light of the fact that Respondent
2 has not been found culpable of all the charged rule violations, the Court does not concur with the
3 State Bar's discipline recommendation.

4 In this case, Respondent has been found culpable of misconduct in two matters. In the
5 Strand matter, Respondent has been found culpable of one violation of rule 3-700(A)(2) for
6 withdrawing from employment without taking reasonable steps to avoid reasonably foreseeable
7 prejudice to the rights of his clients. In the Superior Court matter, Respondent has been found
8 culpable of one violation of section 6103 for wilfully violating a court order to pay sanctions.
9 The Court also notes the nature of the aggravating circumstances surrounding Respondent's
10 misconduct and the limited weight in mitigation given to nearly eight years of blemish-free
11 practice prior to his misconduct in this matter.

12 Of particular concern to this Court is Respondent's failure to fully participate in this
13 disciplinary proceeding. Respondent never filed a responsive pleading to the NDC in Case No.
14 03-O-02674 and allowed his default to be entered. Furthermore, while Respondent did file an
15 answer in Case No. 02-O-10157 and initially participated in that matter, he stopped participating
16 and failed to appear at the time of trial.¹⁸ Respondent's failure to participate in this disciplinary
17 proceeding leaves the Court without any understanding as to the underlying cause or causes for
18 Respondent's misconduct or from learning of any other mitigating circumstances which would
19 justify this court's departure from the discipline recommended by the standards.

20 In determining the appropriate discipline to recommend in this matter, the Court is guided
21 by *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862 and *Van*
22 *Sloten v. State Bar* (1989) 48 Cal.3d 921.

23 In *Respondent Y*, the respondent was sanctioned \$1,000 by the superior court for bad faith
24 actions and tactics. The respondent received notice of the sanctions and appealed the sanctions
25 order. The appeal was thereafter dismissed. However, the respondent did not report the
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28 ¹⁸Although on the day of trial he filed a notice designating that service of documents be
made upon his counsel.

1 sanctions to the State Bar until three months after he learned that sanctions were ordered and 21
2 days after the appeal was dismissed. The respondent also did not pay the sanctions. The Review
3 Department of the State Bar Court found the respondent culpable of wilfully violating section
4 6068(o)(3) for failing to timely report the sanctions order to the State Bar and wilfully violating
5 section 6103 for failing to pay the sanctions ordered. The Review Department, noting the
6 respondent's lack of prior discipline and the narrow violations before the Court, imposed a
7 private reproof with conditions, including prompt compliance with the sanction order if the
8 respondent had not yet so complied. No aggravating circumstances were noted by the Review
9 Department.

10 In *Van Sloten*, the Supreme Court found the petitioner culpable of failing to adequately
11 perform the legal services for which he was retained. The petitioner failed to use reasonable
12 diligence to obtain a dissolution for his client, failed to withdraw from the matter, and failed to
13 communicate with his client after a certain time, with the possible exception of two telephone
14 calls. It was noted that the petitioner had no prior record of discipline.¹⁹ In aggravation, the
15 Supreme Court found that the petitioner's unexplained failure to appear at the Review
16 Department hearing, when the State Bar was requesting increased discipline, demonstrated a
17 failure to appreciate the seriousness of the disciplinary charges against him and a lack of concern
18 for the disciplinary process. In addition, some weight in aggravation was given to the petitioner's
19 failure to admit full responsibility for his misconduct. The Supreme Court suspended the
20 petitioner from the practice of law for six months, stayed the execution of said suspension, and
21 placed the petitioner on probation for one year with conditions.

22 Therefore, after considering the nature of Respondent's misconduct, the aggravating and
23 mitigating circumstances found by the Court, the State Bar's discipline recommendation and *In*
24 *the Matter of Respondent Y* and *Van Sloten v. State Bar*, the Court shall recommend, inter alia, a
25 period of stayed suspension and a period of probation with conditions for the misconduct found
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28 ¹⁹The petitioner in *Van Sloten* had over five years of blemish-free practice prior to his
misconduct.

1 in this proceeding.

2 **RECOMMENDED DISCIPLINE**

3 The Court hereby recommends that Respondent THOMAS I. ARMSTRONG be
4 suspended from the practice of law for six months and until he pays to Mitchell Samuelson the
5 \$718.00 in sanctions ordered by Judge David Thompson of the Superior Court of California,
6 County of Orange, on July 12, 2002, in the matter entitled *Vincent K. Rubalcava v. Tori West*
7 *Sherhoff; Mitchell Samuelson*, Case No. 02CC06376, and furnishes satisfactory proof thereof to
8 the State Bar's Office of Probation, that execution of said suspension be stayed, and that
9 Respondent be placed on probation for one year with the following conditions:

10 1. During the probation period, Respondent shall comply with the State Bar Act and the
11 Rules of Professional Conduct;

12 2. Within ten (10) days of any change, Respondent shall report to the Membership
13 Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and
14 to the Office of Probation,²⁰ all changes of information, including current office address and
15 telephone number, or if no office is maintained, the address to be used for State Bar purposes, as
16 prescribed by section 6002.1 of the Business and Professions Code;

17 3. Respondent shall submit written quarterly reports to the Office of Probation on each
18 January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of
19 perjury, Respondent shall state whether Respondent has complied with the State Bar Act, the
20 Rules of Professional Conduct, and all conditions of probation during the preceding calendar
21 quarter. If the first report will cover less than thirty (30) days, that report shall be submitted on
22 the next following quarter date, and cover the extended period.

23 In addition to all quarterly reports, a final report, containing the same information, is due
24 no earlier than twenty (20) days before the last day of the probation period and no later than the

25 _____
26 ²⁰Please Note: Any reports or other information required by these conditions to be
27 sent to the Office of Probation shall be sent to: State Bar of California, Office of Probation,
28 1149 South Hill Street, Los Angeles, California, 90015.

1 last day of the probation period;

2 4. Subject to the assertion of applicable privileges, Respondent shall answer fully,
3 promptly, and truthfully, any inquiries of the Office of Probation which are directed to
4 Respondent personally or in writing, relating to whether Respondent is complying or has
5 complied with the conditions contained herein;

6 5. Within one (1) year of the effective date of the discipline herein, Respondent shall
7 provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics
8 School, given periodically by the State Bar at either 180 Howard Street, San Francisco,
9 California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage
10 of the test given at the end of that session. Arrangements to attend Ethics School must be made
11 in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate
12 from any Minimum Continuing Legal Education Requirement ("MCLE"), and Respondent shall
13 not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State
14 Bar.);

15 6. Within six months of the effective date of the discipline herein, Respondent shall
16 develop a law office management/organization plan which must be approved by the Office of
17 Probation. This plan must include procedures to send periodic reports to clients, the
18 documentation of telephone messages received and sent, file maintenance, the meeting of
19 deadlines, the establishment of procedures to withdraw as attorney, whether of record or not,
20 when clients cannot be contacted or located, and for the training and supervision of support
21 personnel.

22 7. Within six months of the effective date of the discipline herein, Respondent shall pay
23 to Mitchell Samuelson the \$718.00 in sanctions ordered by Judge David Thompson of the
24 Superior Court of California, County of Orange, on July 12, 2002, in the matter entitled *Vincent*
25 *K. Rubalcava v. Tori West Shernoff; Mitchell Samuelson*, Case No. 02CC06376, and furnish
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1 satisfactory proof thereof to the State Bar's Office of Probation;²¹

2 8. The period of probation shall commence on the effective date of the order of the
3 Supreme Court imposing discipline in this matter;

4 9. At the expiration of the period of this probation, if Respondent has complied with all
5 the terms of probation, the order of the Supreme Court suspending Respondent from the practice
6 of law for six months and until he pays to Mitchell Samuelson the \$718.00 in sanctions ordered
7 by Judge David Thompson of the Superior Court of California, County of Orange, on July 12,
8 2002, in the matter entitled *Vincent K. Rubalcava v. Tori West Shernoff; Mitchell Samuelson*,
9 Case No. 02CC06376, and furnishes satisfactory proof thereof to the State Bar's Office of
10 Probation, shall be satisfied and that suspension shall be terminated.

11 It is further recommended that Respondent take and pass the Multistate Professional
12 Responsibility Examination ("MPRE") administered by the National Conference of Bar
13 Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone
14 319-337-1287) and provide proof of passage to the Office of Probation within one year of the
15 effective date of the discipline herein. **Failure to pass the MPRE within the specified time**
16 **results in actual suspension by the Review Department, without further hearing, until**
17 **passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of**
18 **Procedure of the State Bar.**

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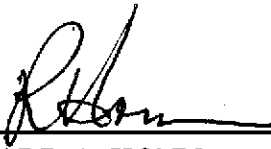
26 _____

27 ²¹The Court does not recommend that restitution be paid in the Strand matter. The Court
28 notes that the State Bar did not request restitution in the Strand matter, and there is no clear and
convincing evidence as to whom restitution should be made.

COSTS

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

Dated: August 24, 2004



RICHARD A. HONN
Judge of the State Bar Court

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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 August 24, 2004, I deposited a true copy of the following document(s):

DECISION, filed August 24, 2004

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

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

**ERIC PAUL LAMPEL
THE LAMPEL FIRM
2601 MAIN ST #340
IRVINE, CA 92614 4209**

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

Gordon Grenier, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 24, 2004.

Milagro del R. Salmeron

Milagro del R. Salmeron
Case Administrator
State Bar Court