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In the Matter of
RONALD WILLIAM FITZGERALD,
Member No. 80041,
A Member of the State Bar.

Case No. 02-O-10295-PEM
DECISION

INTRODUCTION

The above-entitled matter was submitted for decision as of May 7, 2003, after the State Bar of California, Office of the Chief Trial Counsel ("State Bar") waived the hearing in this matter and submitted a brief on the issues of culpability and discipline. The State Bar was represented in this matter by Deputy Trial Counsel Jeannie Park ("DTC Park"). Respondent Ronald William Fitzgerald ("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 actually suspended from the practice of law for two years and until he complies with the requirements of Standard 1.4(c)(ii) as set forth more fully *infra*, that execution of said suspension be stayed, and that Respondent be actually suspended from the practice of law for six months 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, rule 205(a)-(c).)

1 **PERTINENT PROCEDURAL HISTORY**

2 This proceeding was initiated by the State Bar's filing of a Notice of Disciplinary Charges
3 ("NDC") against Respondent on September 26, 2002.

4 A copy of the NDC was properly served upon Respondent on September 26, 2002, by
5 certified mail, return receipt requested, addressed to Respondent at his official membership records
6 address ("official address") maintained by Respondent pursuant to Business and Professions Code
7 section 6002.1, subdivision (a).¹ The NDC was returned by the U.S. Postal Service bearing the
8 stamp, "Return To Sender, Authorized Time For Forwarding Has Expired."

9 On September 26, 2002, DTC Park attempted to reach Respondent by telephone at the
10 number Respondent gave to his clients, the Godnicks, 760-326-8878. The number was no longer
11 in service.

12 On October 3, 2002, a Notice of Assignment and Notice of Initial Status Conference was
13 filed in this matter, setting a telephonic status conference for November 18, 2002. A copy of said
14 notice was properly served upon Respondent by first-class mail, postage fully prepaid, on October
15 3, 2002, addressed to Respondent at his official address. The copy of said notice was not returned
16 to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

17 On November 13, 2002, DTC Park attempted to reach Respondent at his membership records
18 number and was told by a woman answering the number that it was the wrong number.

19 On November 13, 2002, DTC Park called directory assistance for Diamond Bar, the area
20 which includes Respondent's official membership records address, and asked for all telephone
21 listings for Respondent. Directory assistance had no listing for Respondent.

22 As of November 13, 2002, the Office of the Chief Trial Counsel has not had any contact with
23 Respondent.

24 As Respondent did not file a response to the NDC as required by rule 103 of the Rules of
25 Procedure of the State Bar of California ("Rules of Procedure"), on November 15, 2002, the State
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27 ¹On July 23, 2002, a 20-day letter was mailed to Respondent at the Respondent's official
28 membership records address. On or about July 31, 2002, the 20-day letter was returned by the
U.S. Postal Service bearing the stamp, "Return to Sender, Forwarding Order Expired."

1 Bar filed a motion for the entry of Respondent's default. The motion also contained a request,
2 pursuant to Evidence Code section 452, subdivision (h), that the court take judicial notice of all of
3 Respondent's official membership addresses,² the declaration of Jeannie J. Park and Exhibit 1. A
4 copy of said motion was properly served upon Respondent on November 13, 2002, by certified mail,
5 return receipt requested, addressed to Respondent at his official address.

6 On November 18, 2002, the court held a telephonic status conference in this matter.
7 Respondent did not appear at the status conference either in-person or through counsel.³ Thereafter,
8 on November 19, 2002, the court filed a Status Conference Order, indicating that the matter was
9 proceeding by default. A copy of said order was properly served upon Respondent by first-class
10 mail, postage fully prepaid, on November 19, 2002, addressed to Respondent at his official address.
11 The copy of said order was returned to the State Bar Court by the U.S. Postal Service bearing the
12 handwritten notation, "RETURN TO SENDER -----ADDRESSEE UNKNOWN."

13 When Respondent failed to file a written response within 10 days after service of the motion
14 for the entry of his default, on December 2, 2002, the court filed a Notice of Entry of Default (Rule
15 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders.⁴ Pursuant to
16 the further order of the court, the State Bar was to file any further declarations, exhibits or legal
17 argument regarding the level of discipline by no later than December 23, 2002.⁵ A copy of said
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19 ²The court grants the State Bar's request and takes judicial notice of all of Respondent's
20 official membership addresses to the date of the filing of this decision.

21 ³Although the Status Conference Order filed on November 19, 2002, indicates that
22 Respondent appeared by telephone at the status conference on November 18, 2002, this appears
23 to be in error, as the order also indicates that the matter is proceeding by default. Furthermore,
24 pursuant to Evidence Code section 452, subdivision (d), the Court takes judicial notice of the
25 official court file in this matter in which the Case Information Record pertaining to the
26 November 18, 2002, status conference indicates that Respondent did not appear at the time of the
27 status conference either in-person, telephonically or through counsel.

28 ⁴Respondent'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.

⁵Despite the court's order, on January 16, 2003, over three weeks after the deadline set by
the court in its December 2, 2002, order, and without any written request of the court for late
filing, the State Bar filed its brief on the issue of culpability and discipline, attaching a certified

1 notice/order was properly served upon Respondent on December 2, 2002, by certified mail, return
2 receipt requested, addressed to Respondent at his official address. The copy of said notice/order was
3 returned to the State Bar Court by the U.S. Postal Service stamped, "AUTHORIZED TIME FOR
4 FORWARDING HAS EXPIRED."

5 On April 17, 2003, based on the improper entry of Respondent's default on December 2,
6 2002, the court issued an order vacating the entry of Respondent's default nunc pro tunc to
7 December 2, 2002; vacating nunc pro tunc to December 5, 2002; Respondent's inactive enrollment
8 pursuant to Business and Professions Code section 6007(e)(1); striking the State Bar's Request for
9 Waiver of Default Hearing; Brief on Culpability and Discipline filed on January 16, 2003; vacating
10 the original January 16, 2003, submission date; and stating that a Notice of Entry of Default (Rule
11 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders shall be filed
12 forthwith. A copy of said order was properly served upon Respondent on April 17, 2003, by first-
13 class mail, postage fully prepaid, addressed to Respondent at his official address. The copy of said
14 order was returned to the State Bar Court by the U.S. Postal Service stamped, "RETURN TO
15 SENDER FWDG ORDER EXPIRED."

16 On April 17, 2003, the court filed an Order of Entry of Default (Rule 200 - Failure to File
17 Timely Response), Order Enrolling Inactive and Further Orders.⁶ Pursuant to said order, the State
18 Bar was to file any further declarations, exhibits or legal argument regarding the level of discipline
19 by no later than May 7, 2003.⁷ A copy of said order was properly served upon Respondent on April
20 17, 2003, by certified mail, return receipt requested, addressed to Respondent at his official address.
21 The copy of said notice/order was returned to the State Bar Court by the U.S. Postal Service
22 stamped, "AUTHORIZED TIME FOR FORWARDING HAS EXPIRED."

23 _____
24 copy of Respondent's prior record of discipline. As discussed, *infra*, this brief was later stricken
25 by the court.

26 ⁶Respondent's involuntary inactive enrollment pursuant to Business and Professions Code
27 section 6007(e) was effective three days after the service of this order by mail.

28 ⁷Although the order stated the date as May 7, 2002, this was obviously a typographical
error.

1 On April 29, 2003, the State Bar filed its brief on the issues of culpability and discipline,
2 attaching a copy of a certified copy of Respondent's prior record of discipline.⁸ A copy of said brief
3 was properly served upon Respondent on April 29, 2003, by regular mail, addressed to Respondent
4 at his official address.

5 This matter was submitted for decision on May 7, 2003. Exhibit 1 attached to the State Bar's
6 motion for the entry of Respondent's default and Exhibit 1 attached to the State Bar's brief filed on
7 April 29, 2003, are admitted into evidence.

8 FINDINGS OF FACT AND CONCLUSIONS OF LAW

9 Jurisdiction

10 Respondent was admitted to the practice of law in the State of California on June 23, 1978,
11 was a member at all times pertinent to these charges, and is currently a member of the State Bar of
12 California.

13 Counts One Through Six - Case No. 02-O-10295

14 As a result of Respondent's failure to pay State Bar of California membership fees, the
15 California Supreme Court entered an order (S018555), effective on September 27, 1999, suspending
16 Respondent from the practice of law. On or about September 10, 1999, said Supreme Court Order
17 was properly served on Respondent at his State Bar membership records address. Respondent
18 received the order. Respondent has remained suspended since September 27, 1999.

19 On or about August 1, 2001, David and Susan Godnick ("Godnicks") employed Respondent
20 to represent them in a Chapter 7 bankruptcy. The Godnicks paid Respondent \$350.00 of his \$700.00
21 fee. At a time when he was not entitled to practice law in the State of California, Respondent
22 accepted employment and charged fees to represent the interests of the Godnicks in a Chapter 7
23 bankruptcy filing. Respondent thereafter filed Chapter 7 documents with the Bankruptcy Court on
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25 ⁸The court notes, however, that rule 216(a) states, "A prior record of discipline consists of
26 an **authenticated** copy of all charges, stipulations, findings and decisions . . . reflecting or
27 recommending imposition of discipline on a party who is presently the subject of a State Bar
28 Court proceeding. . . ." (Emphasis added.) The State Bar, however, did attach a certified copy of
Respondent's prior record of discipline to its brief filed on January 16, 2003, which was stricken
pursuant to the court's April 17, 2003, order.

1 behalf of the Godnicks.

2 On or about September 5, 2001, Respondent filed a voluntary Chapter 7 bankruptcy petition
3 with the United States Bankruptcy Court, Central District ("Bankruptcy Court"), *In re: David and*
4 *Susan Godnick*, Case Number RS 01-24953-JR.

5 On or about September 18, 2001, Respondent filed a Notice of Available Chapters and a
6 Declaration with the Bankruptcy Court.

7 On or about October 2, 2001, the Bankruptcy Court filed an Order to Show Cause Why [*In*
8 *re: David and Susan Godnick*, Case Number RS 01-24953-JR] Should Not be Dismissed Pursuant
9 to 11 U.S.C. § 707(b), i.e., a determination was sought whether the granting of relief would be a
10 substantial abuse of the provisions of Chapter 7. A hearing regarding this order was scheduled for
11 October 30, 2001. Respondent received the order.

12 On or about October 24, 2001, the Office of the United States Trustees filed a motion to
13 determine whether the compensation paid to Respondent to handle the Chapter 7 bankruptcy was
14 excessive. The motion noted that in addition to being not entitled to practice law, Respondent did
15 not appear to have adequately provided services for preparing a Chapter 7 petition. A hearing
16 regarding this motion was scheduled for November 21, 2001. Respondent received the motion.

17 On or about November 21, 2001, the Office of the United States Trustees prepared an Order
18 Determining Fees Are Excessive and Disgorgement of Excessive Fees to the Debtor. The Order
19 noted that there was no filed opposition to the motion regarding excessive fees. On or about
20 December 3, 2001, the Bankruptcy Court signed and filed the Order which required Respondent to
21 disgorge all compensation received from the debtors ("Godnicks") and deliver it to the United States
22 Trustee's office in Riverside within 30 days of the entry of the Order. The Order was entered on
23 December 5, 2001. Respondent received the order. The Bankruptcy Court determined that
24 Respondent charged and collected an excessive fee pursuant to its Order entered on December 5,
25 2001.

26 On or about November 21, 2001, the Bankruptcy Court filed an order dismissing the
27 Godnicks' Chapter 7 bankruptcy. The order cited, among other things, the Debtor's failure to
28 respond in writing to the Order to Show Cause, and the Debtor's failure to appear in opposition to

1 the Order. Respondent received the dismissal.

2 On or about December 6, 2001, the Office of the United States Trustees referred to the State
3 Bar the December 5, 2001, Bankruptcy Court Order ordering Respondent to disgorge all excessive
4 fees within 30 days of the entry of that Order.

5 To date, Respondent has failed to disgorge to the United States Trustees' Office the fees paid
6 by the Godnicks. Respondent failed to obey the Bankruptcy Court's December 5, 2001, Order to
7 disgorge all excessive fees.

8 On or about January 18, 2002, the State Bar opened an investigation, Case No. 02-O-10295,
9 pursuant to a complaint filed by the Godnicks and due to the Office of the United States Trustees'
10 referral to the State Bar of the December 5, 2001, Bankruptcy Court order ordering Respondent to
11 disgorge all excessive fees.

12 On or about February 14, 2002, State Bar Investigator Elizabeth Ditman wrote to Respondent
13 regarding the Godnick matter. The investigator's letter was placed in a sealed envelope correctly
14 addressed to Respondent at his State Bar of California membership records address. The letter was
15 properly mailed by first-class mail, postage prepaid, by depositing for collection by the United States
16 Postal Service in the ordinary course of business. The United States Postal Service did not return
17 this letter as undeliverable or for any other reason.

18 The investigator's letter requested that Respondent respond in writing to specified allegations
19 of misconduct being investigated by the State Bar in the Godnick matter. Respondent did not
20 respond to the investigator's letter or otherwise communicate with the investigator.

21 On or about March 11, 2002, and March 25, 2002, State Bar Investigator Elizabeth Ditman
22 again wrote to Respondent regarding the Godnick matter. The investigator's letters were placed in
23 sealed envelopes correctly addressed to Respondent at his State Bar of California membership
24 records address. The letters were properly mailed by first-class mail, postage prepaid, by depositing
25 for collection by the United States Postal Service in the ordinary course of business. The United
26 States Postal Service returned both of these letters as undeliverable. In these letters, Investigator
27 Ditman again requested Respondent to provide a written explanation regarding the allegations set
28 forth in this Notice of Disciplinary Charges.

1 On or about March 27, 2002, copies of the February 14, 2002, March 11, 2002 and March
2 25, 2002, letters that Investigator Ditman sent to Respondent at his State Bar of California address,
3 were mailed to Respondent at six different addresses listed for him on the Lexis Nexis website on
4 the Internet. The investigator's letters were placed in sealed envelopes and properly mailed by first-
5 class mail, postage prepaid, by depositing for collection by the United States Postal Service in the
6 ordinary course of business. The United States Postal Service returned three of these letters as
7 undeliverable. However, three of the letters addressed to: (1) 1406 POB 1406, Lake Havasu City,
8 AZ 86405; (2) 1519 Queens Bay, Lake Havasu City, AZ 86403; and (3) 21233 Running Branch Rd.,
9 Diamond Bar, CA 91765, were not returned by the United States Postal Service as undeliverable or
10 for any other reason.

11 Respondent failed to maintain on the official membership records of the State Bar, his current
12 office address or an address to be used for State Bar purposes.

13 **Count One - Business and Professions Code Sections 6068(a), 6125 and 6126⁹**

14 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
15 section 6068(a). Section 6068(a) provides that it is an attorney's duty "[t]o support the Constitution
16 and laws of the United States and of this state." By accepting employment by the Godnicks and by
17 filing a voluntary Chapter 7 bankruptcy petition on behalf of the Godnicks, a Notice of Available
18 Chapters and a declaration with the Bankruptcy Court, Respondent held himself out as practicing
19 or entitled to practice law, and did, in fact, practice law when he was not an active member and
20 therefore not entitled to practice law in the State of California, thereby engaging in the unauthorized
21 practice of law in wilful violation of sections 6125 and 6126 of the Business and Professions Code.
22 Violations of sections 6125 and 6126 are made disciplinable offenses through section 6068(a). (*In*
23 *the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 236.)

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⁹Unless otherwise indicated, all further references to sections refer to provisions of the California Business and Professions Code.

1 **Count Two - Section 6106**

2 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
3 section 6106. Section 6106 provides that the commission of any act involving moral turpitude,
4 dishonesty or corruption constitutes a cause for suspension or disbarment. Respondent engaged in
5 an act involving dishonesty, moral turpitude or corruption in wilful violation of section 6106 by
6 misrepresenting to the Godnicks and the Bankruptcy Court that he was entitled to practice law when
7 he knew or should have known that he, in fact, was not an active member and therefore not entitled
8 to practice law in the State of California.

9 **Count Three - Rules 4-200(A) of the Rules of Professional Conduct**¹⁰

10 The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule
11 4-200(A). Rule 4-200(A) states, "A member shall not enter into an agreement for, charge, or collect
12 an illegal or unconscionable fee." By charging and collecting fees for legal services when he knew
13 or should have known that he was not an active member of the State Bar and therefore not entitled
14 to practice law in the State of California, Respondent entered into an agreement for, charged or
15 collected an illegal fee in wilful violation of rule 4-200(A).

16 **Count Four - Section 6103**

17 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
18 section 6103. Section 6103 provides, in pertinent part, "A wilful disobedience or violation of an
19 order of the court requiring him to do or forbear an act connected with or in the course of his
20 profession, which he ought in good faith to do or forbear . . . constitute causes for disbarment or
21 suspension." Respondent wilfully violated section 6103 by failing to obey the Bankruptcy Court's
22 December 5, 2001, Order to disgorge all excessive fees.

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

24 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
25 section 6068(i). Section 6068(i) requires an attorney to cooperate with and participate in a State Bar
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27 ¹⁰Unless otherwise indicated, all further references to rules refer to the Rules of
28 Professional Conduct of the State Bar of California.

1 disciplinary investigation or proceeding. Respondent wilfully violated section 6068(i) by failing to
2 respond to Investigator Ditman's February 14, 2002, letter or by otherwise failing to communicate
3 with the investigator regarding the allegations of misconduct being investigated in the Godnick
4 matter.

5 **Count Six - Section 6068(j)**

6 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
7 section 6068(j). Section 6068(j) provides that it is the duty of an attorney to comply with the
8 requirements of section 6002.1 which requires, in pertinent part, that attorneys maintain on the
9 official membership records of the State Bar the attorney's current office address and telephone
10 number, or if the attorney does not maintain an office, the address to be used for State Bar purposes.
11 Respondent wilfully violated section 6068(j) by failing to maintain his current office address or an
12 address to be used for State Bar purposes on the State Bar's official membership records as required
13 by section 6002.1.

14 **MITIGATING/AGGRAVATING CIRCUMSTANCES**

15 As Respondent's default was entered in this matter, Respondent did not have an opportunity
16 to introduce any mitigating evidence on his behalf, and none can be gleaned from the record in this
17 proceeding.

18 In aggravation, Respondent has a record of one prior imposition of discipline. (Rules Proc.
19 of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(i) ("standard").)
20 Effective September 9, 1988, the Supreme Court suspended Respondent from the practice of law for
21 two years, the execution of said suspension was stayed, and Respondent was placed on probation for
22 two years on conditions including that he be actually suspended for 60 days. In this prior
23 disciplinary matter, Respondent stipulated that he was employed to represent a woman in a marital
24 dissolution action and, pursuant to a Stipulation and Order of the court, he was authorized to deposit
25 all money into his trust account collected from the parties' commercial property. Thereafter,
26 Respondent, with his client's consent, withdrew funds from the trust account in payment of legal
27 services rendered to his client. However, Respondent did not have the written consent or
28 authorization of his client's husband or the husband's counsel to withdraw any portion of the trust

1 funds and did not seek court approval to withdraw said funds from his trust account. Furthermore,
2 Respondent did not furnish the court, his client's husband or the husband's counsel with an
3 accounting of the funds he withdrew from trust. Respondent stipulated that he wilfully violated his
4 oath and duties as set forth in Business and Professions Code sections 6068, 6103, 6106 and rules
5 8-101(A)(2), 8-101(B)(3) and 8-101(B)(4) of the Rules of Professional Conduct which were in effect
6 prior to May 27, 1989. However, Respondent's misconduct in this prior disciplinary matter occurred
7 in the fall of 1983, over 17 years prior to the first act of misconduct involved in the present
8 proceeding. As such, the court does not give significant weight in aggravation to Respondent's prior
9 record of discipline. (Cf. *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr.
10 703, 713.)

11 The fact that Respondent engaged in multiple acts of misconduct in this matter is also an
12 aggravating circumstance. (Standard 1.2(b)(ii).)

13 Respondent's failure to participate in this disciplinary proceeding prior to the entry of his
14 default is a further aggravating circumstance. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508;
15 standard 1.2(b)(vi).)

16 DISCUSSION

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

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

25 In this case, the standards provide for the imposition of a broad range of sanctions ranging
26 from reproof to disbarment. (See standards 2.3, 2.6 and 2.10.) In addition, standard 1.6(a) states,
27 in pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a
28 single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts,

1 the sanction imposed shall be the more or most severe of the different applicable sanctions.”

2 Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in
3 any proceeding and the member has a record of one prior imposition of discipline, the degree of
4 discipline imposed in the current proceeding shall be greater than that imposed in the prior
5 proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

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

10 In this matter, Respondent has been found culpable of engaging in the unauthorized practice
11 of law, the commission of an act of moral turpitude, entering into an agreement for, charging or
12 collecting an illegal fee, failing to obey a court order, failing to cooperate in a State Bar investigation
13 and failing to update his membership records address. In aggravation, Respondent engaged in
14 multiple acts of misconduct and failed to participate in this disciplinary proceeding prior to the entry
15 of his default. Respondent also has a prior record of discipline, but it is not given significant weight
16 in aggravation. No mitigating circumstances were established.

17 The State Bar recommends that Respondent be actually suspended from the practice of law
18 for two years and until he has shown proof satisfactory to the State Bar Court of rehabilitation,
19 fitness to practice, and learning and ability in the general law pursuant to Standard 1.4(c)(ii), Rules
20 Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, and that he be ordered to
21 comply with rule 955 of the California Rules of Court. However, the court does not concur with the
22 State Bar’s discipline recommendation. In support of its discipline recommendation, the State Bar
23 cites *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. However, a review
24 of *Boyne* reveals that its facts are distinguishable from the instant proceeding.

25 In determining the appropriate discipline to recommend in this proceeding, the court is
26 guided by *Farnham v. State Bar* (1976) 17 Cal.3d 605 and *In the Matter of Burckhardt* (Review
27 Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343. In *Farnham*, the Supreme Court suspended the attorney
28 for two years on conditions of probation including six months of actual suspension for abandoning

1 the interests of two separate clients and, as to one of those clients, for holding himself out as entitled
2 to practice law while he was, in fact, actually suspended. The Supreme Court stated that the
3 attorney's actions "evidence a serious pattern of misconduct whereby he wilfully deceived his
4 clients, avoided their efforts to communicate with him and eventually abandoned their causes."
5 (*Farnham v. State Bar, supra*, 17 Cal.3d at p. 612.) The attorney also had a prior record of discipline
6 based on four separate instances of abandonment of his clients' interests which resulted in a three
7 month suspension. The Supreme Court also found that the attorney lacked insight into his
8 misconduct.

9 In *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343, the
10 Review Department of the State Bar Court recommended that an attorney be suspended from the
11 practice of law for two years, consecutive to his previously imposed suspension; that execution of
12 said suspension be stayed; that the attorney be placed on probation for three years concurrent with
13 his previously imposed probation; and that the attorney be actually suspended for one year
14 consecutive to the one year actual suspension imposed in his prior disciplinary matter. The
15 attorney's misconduct was based on two counts of failing to communicate with clients, one count
16 of the unauthorized practice of law; two counts of failing to perform competently; two counts of
17 improper withdrawal from representation; one count of engaging in acts involving moral turpitude,
18 dishonesty or corruption for lying to clients and wrongfully holding himself out as entitled to practice
19 law; one count of acceptance of an illegal fee; and one count of failing to cooperate with a State Bar
20 disciplinary investigation. In aggravation, the attorney had a prior record of discipline. However,
21 the misconduct was contemporaneous with the instant matter and involved similar misconduct.¹¹
22 Additional aggravating circumstances found by the Review Department were harm to clients and the
23 administration of justice, multiple acts of misconduct, and that the attorney was indifferent to
24 rectification of the misconduct. In mitigation, the Review Department found that the attorney had
25 practiced law for 13 years without prior discipline.

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28 ¹¹In the prior disciplinary matter, the attorney was suspended for two years; the execution
of said suspension was stayed; and the attorney was actually suspended for one year.

1 After reviewing and considering the instant matter, as well as *Farnham* and *Burckhardt*
2 discussed *supra*, the court finds that Respondent's misconduct is less egregious than that of the
3 attorney in *Burckhardt*, but more egregious than the misconduct in *Farnham*. However, the attorney
4 in *Farnham* had a much more recent prior discipline record which involved an actual suspension for
5 similar misconduct.

6 Respondent herein has been found culpable of serious misconduct in this matter. In addition,
7 the court is particularly troubled by the fact that Respondent permitted his default to be entered in
8 this matter. Respondent's failure to participate in this proceeding leaves the court without any
9 understanding as to the underlying cause or causes for Respondent's misconduct or from learning
10 of any mitigating circumstances which would justify lesser discipline.

11 Accordingly, the court finds that the appropriate discipline to recommend in this matter
12 includes a significant period of actual suspension which will last until the State Bar Court grants a
13 motion to terminate his actual suspension at its conclusion or upon such later date ordered by the
14 court. The court finds that the recommended discipline is consistent with prior case law, and that
15 it adequately protects the court, public and legal profession.

16 **RECOMMENDED DISCIPLINE**

17 Accordingly, the court hereby recommends that Respondent be suspended from the practice
18 of law for two years and until he has shown proof satisfactory to the State Bar Court of rehabilitation,
19 fitness to practice, and learning and ability in the general law pursuant to Standard 1.4(c)(ii), Rules
20 Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, that execution of said
21 suspension be stayed, and that Respondent be actually suspended from the practice of law for six
22 months and until he disgorges all compensation received from the Godnicks and delivers it to the
23 United States Trustees Office in Riverside, California and provides satisfactory proof of such to the
24 State Bar's Probation Unit; and until the State Bar Court grants a motion to terminate Respondent's
25 actual suspension at its conclusion or upon such later date ordered by the court. (Rule 205(a), (c),
26 Rules Proc. of State Bar, tit. II, State Bar Court Proceedings.)

27 If the period of actual suspension reaches or exceeds two years, it is further recommended
28 that Respondent remain actually suspended until he has shown proof satisfactory to the State Bar

1 Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to
2 Standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.
3 (See also, rule 205(b).)

4 It is also recommended that Respondent be ordered to comply with the requirements of rule
5 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme
6 Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the
7 effective date of the order showing his compliance with said order.¹²

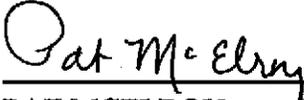
8 It is also recommended that Respondent be ordered to comply with any probation conditions
9 reasonably related to this matter that may hereinafter be imposed by the State Bar Court as a
10 condition for terminating Respondent's actual suspension. (Rule 205(g), Rules Proc. of State Bar.)

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

16 **COSTS**

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

19
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21
22
23 Dated: July 28, 2003

24 
25 _____
26 PAT MCELROY
27 Judge of the State Bar Court

28 _____
¹²Failure to comply with rule 955 of the California Rules of Court ("CRC 955") could 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 San Francisco, on July 31, 2003, I deposited a true copy of the following document(s):

DECISION

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 San Francisco, California, addressed as follows:

RONALD WILLIAM FITZGERALD
3333 S BREA CANYON RD
DIAMOND BAR CA 91765 0000

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

JEANNIE PARK, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 31, 2003.



Laretta Cramer
Case Administrator
State Bar Court