

**FILED**

FEB 06 2004

STATE BAR COURT  
CLERKS OFFICE  
LOS ANGELES

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of )  
MELVYN CHARLES EMBREE, )  
Member No. 92622, )  
A Member of the State Bar. )

Case No. 02-O-10495-AIN  
DECISION INCLUDING DISBARMENT  
RECOMMENDATION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT

INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California ("OCTC") alleging that respondent Melvyn Charles Embree.

OCTC was represented by Charles Weinstein. Respondent did not participate either in person or by counsel.

For the reasons stated below, it is recommended that respondent be disbarred.

PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed on June 27, 2003, and properly served on respondent on that same date by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar ("official address"). (Business and Professions Code section 6002.1(c)<sup>1</sup>; Rules 60(b) and 583, Rules Proc. of State Bar ("rule(s)").) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned as undeliverable by the United States Postal

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<sup>1</sup>Unless otherwise stated, all future references to "section(s)" are to the California Business and Professions Code.



1 Service ("USPS").

2 On July 7, 2003, the State Bar Court properly served respondent by first-class mail,  
3 postage prepaid at his official address with notice scheduling a status conference on August 18,  
4 2003.

5 Respondent did not appear at the August 18 status conference. On August 19, 2003,  
6 respondent was properly served at his official address with a post-status conference order  
7 indicating that OCTC would file a motion for entry of respondent's default and scheduling  
8 another status conference for October 9, 2003.

9 On September 22, 2003, respondent was properly served at his official address with a  
10 notice advising that the October 9 status conference was rescheduled to October 15, 2003.

11 Respondent did not file a response to the NDC. On October 14, 2003, OCTC filed and  
12 properly served on respondent a motion for entry of default by certified mail, return receipt  
13 requested, at his official address. (Rule 200(a), (b).) The motion advised respondent that OCTC  
14 would seek minimum discipline of disbarment or, in the alternative, 18 months actual  
15 suspension<sup>2</sup> if he was found culpable. (Rule 200(a)(3).)

16 Respondent did not respond to the default motion. Orders entering respondent's default  
17 and involuntarily enrolling him inactive were filed and properly served on him on November 30,  
18 2003, by certified mail, return receipt requested at his official address. This document advised  
19 respondent, among other things, that he was enrolled inactive pursuant to section 6007(e)  
20 effective three days after service of the order.

21 The Court judicially notices its file which indicates that all correspondence sent to  
22 respondent by the State Bar Court regarding this matter was returned as undeliverable by the  
23 Postal Service.

24 The case was submitted for decision on December 16, 2003, after OCTC waived hearing

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26 <sup>2</sup>The 18-month actual suspension recommendation was made in the event that the  
27 California Supreme Court did not impose the discipline previously recommended in State Bar  
28 Court case nos. 01-O-04515 and 02-H-13621 (Cons.). By order filed on November 18, 2003, the  
Supreme Court accepted this Court's discipline recommendation. (Supreme Court case no.  
S118408.)

1 and filed a brief regarding discipline.

2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3 The Court's findings are based on the allegations contained in the NDC as they are  
4 deemed admitted and no further proof is required to establish the truth of those allegations.  
5 (Section 6088; Rule 200(d)(1)(A).) The findings are also based upon matters admitted into  
6 evidence or judicially noticed.

7 Respondent was admitted to the practice of law in California on May 30, 1980, and has  
8 been a member of the State Bar at all times since.

9 **Counts One and Two - Section 6106**

10 **Facts**

11 In June 2000, Cy Kennedy retained respondent to represent him in real estate and contract  
12 litigation entitled *Crusader Insurance Company v. Kennedy*, Los Angeles Superior Court case  
13 no. 00T02265. Kennedy paid respondent \$3000. Respondent agreed to prepare a cross-  
14 complaint and to properly prepare and argue opposition to Crusader's summary judgment  
15 motion.

16 In early December 2001, Kennedy informed respondent that he would be in Hawaii from  
17 December 7 through 18, 2001.

18 Before leaving for Hawaii, Kennedy tried to contact respondent several times to obtain  
19 the status of the case. Respondent did not contact Kennedy.

20 On December 10, 2001, respondent filed opposition to Crusader's summary judgment  
21 motion, including a memorandum of points and authorities; a separate statement of disputed and  
22 undisputed facts and supporting evidence; and a declaration of Kennedy in support of the  
23 opposition. The declaration purportedly was signed by Kennedy on December 7, 2001, under  
24 penalty of perjury.

25 Kennedy had seen this declaration prior to leaving for Hawaii but did not sign it. After  
26 December 18, 2001, Kennedy reviewed the opposition to the summary judgment motion and  
27 noticed that his signature had been forged. Respondent forged or caused Kennedy's signature to  
28 be forged on the declaration and filed it with the court.

1 In another case, on July 30, 2001, respondent filed an appeal on Kennedy's behalf in the  
2 Appellate Division of the Los Angeles Superior Court. (*Rapaport v. Kennedy*, case no.  
3 BV023518.)

4 On January 2, 2002, respondent filed an application for extension of time in which to file  
5 appellant's opening brief. He filed a declaration which he executed that same date in support of  
6 the application.

7 The declaration included a statement that respondent had had to travel out of California in  
8 order to handle his mother's on-going personal and business matters and that he was traveling  
9 from December 14 through 20, 2001. The latter statement was false. Respondent was not out of  
10 California at any time between December 14 and 20, 2001.

### 11 **Legal Conclusions**

12 Section 6106 makes it a cause for disbarment or suspension to commit any act involving  
13 moral turpitude, dishonesty or corruption, whether the act is committed in the course of his or her  
14 relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

15 There is clear and convincing evidence that respondent violated section 6106 of the  
16 Business and Professions Code. Respondent forged or caused Kennedy's signature to be forged  
17 on the declaration in the *Crusader* litigation and then filed it with the court. He also made a false  
18 statement in his declaration in the *Rapaport* matter and filed it with the court in order to obtain  
19 an extension of time. Accordingly, he committed acts of moral turpitude, dishonesty or  
20 corruption in wilful violation of section 6106.

### 21 **Count Three - Section 6068(i)**

#### 22 **Facts**

23 On January 29, 2002, the State Bar opened an investigation on case no. 02-O-10495  
24 pursuant to a complaint filed by Kennedy regarding allegations of misconduct by respondent in  
25 this matter. On February 5, 2002, a State Bar investigator sent respondent a letter asking him to  
26 answer in writing by February 21, 2002, specific allegations of misconduct regarding the  
27 Kennedy complaint. The letter was addressed to Respondent's official membership records  
28 address and a copy was also sent to an alternate address in Toluca Lake. Both were sent by first-

1 class mail, postage prepaid. Neither was returned to the State Bar as undeliverable or for any  
2 other reason. Respondent received the letters but did not answer either of them or otherwise  
3 communicate with the investigator.

4 On February 26, 2002, the State Bar investigator sent respondent a second letter to an  
5 alternate address in West Hollywood by first-class mail, postage prepaid. It was not returned to  
6 the State Bar as undeliverable or for any other reason. Respondent received the letter but did not  
7 answer it or otherwise communicate with the investigator.

### 8 **Legal Conclusions**

9 Section 6068(i) requires an attorney to participate and cooperate in any disciplinary  
10 investigation or other disciplinary or regulatory proceeding pending against him- or herself.

11 By not responding to the State Bar investigator's letters, respondent did not participate in  
12 the investigation of the allegations of misconduct regarding the Kennedy case in wilful violation  
13 of 6068(i).

### 14 **FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES**

15 Respondent did not participate in these proceedings or present any mitigating  
16 circumstances pursuant to standard 1.2(e), Rules of Procedure of the State Bar of California, Title  
17 IV, Standards for Attorney Sanctions for Professional Misconduct, ("standards"). Since  
18 respondent he bears the burden of establishing mitigation by clear and convincing evidence, the  
19 Court has been provided no basis for finding mitigating factors.

### 20 **FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

21 Respondent's prior discipline record is an aggravating circumstance. (Standard 1.2(b)(i).)  
22 Respondent was publicly reprovved with conditions effective June 7, 2001, in case no. 00-O-  
23 13812 for violating section 6068(m) (two counts) and RPC 3-110(A) (one count) in two client  
24 matters.

25 As previously discussed, in Supreme Court case no. S118408, discipline was imposed  
26 consisting of 18 months stayed suspension and six months actual suspension and until respondent  
27 successfully completed State Bar Ethics School and complied with rule 205. Respondent did not  
28 participate in this matter in which he was found culpable of failing to perform and to

1 communicate, abandoning a client and not returning the client's files and papers. He did not  
2 participate in the disciplinary investigation. Further, he was found culpable of not complying  
3 with conditions of his reproof and of not maintaining a current address and telephone number  
4 with the State Bar.<sup>3</sup>

5 Respondent's misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

6 Respondent's failure to participate in proceedings prior to the entry of default is also an  
7 aggravating factor. (Standard 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward  
8 disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to  
9 participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept.  
10 2000) 4 Cal. State Bar Ct. Rptr. 103, 109 - 110.)

#### 11 LEVEL OF DISCIPLINE

12 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to  
13 protect the public, to preserve public confidence in the profession, and to maintain the highest  
14 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;  
15 *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

16 Standard 1.6 provides that the appropriate sanction for the misconduct found must be  
17 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of  
18 imposing discipline. If two or more acts of professional misconduct are found in a single  
19 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable  
20 sanctions. (Standard 1.6(a).) The level of discipline is progressive. (Standard 1.7(b).) The  
21 standards, however, are guidelines from which the Court may deviate in fashioning the most  
22 appropriate discipline considering all the proven facts and circumstances of a given matter. (*In*  
23 *re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They  
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25 <sup>3</sup>The Court notes that the misconduct in the instant case took place in between the times  
26 in which the misconduct took place in each case of the prior consolidated disciplinary matter.  
27 Considering the seriousness of the misconduct herein as well as the aggravating and lack of  
28 mitigating factors, the Court would nonetheless recommend disbarment even if the misconduct in  
the immediately prior cases and that in this case were considered together. (*In the Matter of*  
*Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.)

1 are "not mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar*  
2 (1988) 44 Cal.3d 820, 828.)

3 In the instant case, the recommended level of discipline ranges from suspension to  
4 disbarment. (Standards 2.3 and 2.6(a).) The most severe sanction is found at standard 2.3 which  
5 recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud,  
6 intentional dishonesty or of concealment of a material fact from a court, client or other person,  
7 depending on the extent to which the victim of the misconduct is harmed or misled and  
8 depending upon the magnitude of the act of misconduct and the degree to which it relates to the  
9 attorney's acts within the practice of law.

10 OCTC recommends disbarment. After considering the misconduct and balancing the  
11 serious aggravating and the absence of mitigating circumstances, the Court agrees.

12 Respondent has demonstrated an unwillingness to comply with the professional  
13 obligations and rules of court imposed on California attorneys although he has been given several  
14 opportunities to do so. No explanation has been offered that might render disbarment  
15 inappropriate and the Court can glean none. The Court has no reason to believe that respondent  
16 could or would conform his behavior to the ethical rules, particularly in light of his repeated  
17 failure to participate in disciplinary investigations and proceedings and his failure to comply with  
18 conditions of a reproof.

19 Respondent's disbarment is necessary to protect the public, the courts and the legal  
20 community, to maintain high professional standards and to preserve public confidence in the  
21 legal profession. It would undermine the integrity of the disciplinary system and damage public  
22 confidence in the legal profession if respondent were not disbarred, considering the substantial  
23 aggravating factors present and the absence of mitigating circumstances. If he desires to practice  
24 law again, he will bear the heavy burden of demonstrating by the most clear and convincing  
25 evidence his rehabilitation and fitness to practice. Accordingly, the Court recommends  
26 disbarment under the circumstances. The protection of the public, the courts and the legal  
27 profession demands no less.

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**DISCIPLINE RECOMMENDATION**

IT IS HEREBY RECOMMENDED that respondent Melvyn Charles Embree be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 955, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

**COSTS**

The Court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and that those costs be payable in accordance with section 6140.7.

**ORDER REGARDING INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: February *p*, 2004

  
ALBAN I. NILES  
Judge of the State Bar Court



**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 February 6, 2004, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND  
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT, filed February 6,  
2004**

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:

**MELVYN CHARLES EMBREE  
8052 MELROSE AVENUE 2FL  
LOS ANGELES CA 90046**

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

**CHARLES WEINSTEIN, ESQ., Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 6, 2004**.



**Angela Owens-Carpenter**  
Case Administrator  
State Bar Court