

FILED

OCT 17 2003

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

In the Matter of

**ROBERT KEITH LONG,**

**Member No. 103344,**

A Member of the State Bar.

Case No. 02-O-11509-RMT;  
02-O-11922 (02-O-14254)(Cons.)

**Decision**

**1. Introduction**

In these two consolidated default cases, Respondent **Robert Keith Long** is charged with misconduct in three client matters. The court finds, by clear and convincing evidence, that Respondent failed to perform services competently, failed to communicate, failed to maintain client funds, failed to notify receipt of client funds, committed acts of moral turpitude, failed to cooperate with the State Bar and failed to maintain a current address.

In view of Respondent's misconduct and the aggravating factors, the court recommends, among other things, that Respondent be suspended from the practice of law for two years, that execution of suspension be stayed, and that Respondent be actually suspended from the practice of law for one year and until he makes restitution and until the State Bar Court grants a motion to terminate Respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

**2. Pertinent Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on Respondent a Notice of Disciplinary Charges (NDC) in two separate matters, case No. 02-O-11509 on August 29, 2002, and case No. 02-O-11922 (02-O-14254) on May 2, 2003. (Rules Proc. of State Bar, rule 60.)

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1 In the first matter, case No. 02-O-11509, the NDC was mailed to Respondent's official  
2 membership records address in Anaheim, California, but was returned as undeliverable. On March  
3 7, 2003, a courtesy copy was sent to Respondent at his new membership records address, effective  
4 October 15, 2002, in Costa Mesa, California. Respondent did not file a response to the NDC. (Rules  
5 Proc. of State Bar, rule 103.)

6 In the second matter, case No. 02-O-11922 (02-O-14254), the NDC was mailed to  
7 Respondent's official membership records address in Costa Mesa, California, but was also returned  
8 as undeliverable. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule  
9 103.)

10 The State Bar attempted to telephone Respondent at his official membership records  
11 telephone number and at an alternate telephone number given by his ex-wife but was unsuccessful.

12 On State Bar's motion, Respondent's default was entered in each case and he was enrolled  
13 as an inactive member on July 19, 2002, under Business and Professions Code section 6007(e).<sup>1</sup> The  
14 court ordered the cases consolidated at the July 16, 2003 status conference.

15 Respondent did not participate in the disciplinary proceedings. The court took these matters  
16 under submission on July 17, 2003, following the filing of the State Bar's brief.

### 17 **3. Findings of Fact and Conclusions of Law**

18 All factual allegations of the NDCs are deemed admitted upon entry of Respondent's default  
19 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule  
20 200(d)(1)(A).)

#### 21 **A. Jurisdiction**

22 Respondent was admitted to the practice of law in California on June 10, 1982, and has since  
23 been a member of the State Bar of California.

#### 24 **B. Case No. 02-O-11509 (The Kempik Matter)**

25 In December 1999, Suzanne Kempik employed Respondent to represent her in a personal  
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27 <sup>1</sup>All references to section (§) are to the Business and Professions Code, unless otherwise  
28 indicated.

1 injury matter, which arose out of an auto accident on November 5, 1999.

2 On November 6, 2000, Respondent filed a complaint on behalf of Kempik in the Orange  
3 County Superior Court entitled *Suzanne Kempik v. Alan B. Hamersley*, case No. 00CC13300.  
4 Opposing party filed an answer to the complaint.

5 On March 12, 2001, Respondent settled Kempik's action and signed her name on a release  
6 of all claims without her knowledge, authorization or consent. On the following day, he signed a  
7 request for dismissal of Kempik's complaint, again without her knowledge, authorization or consent,  
8 and sent it to the opposing party, who then filed it.

9 On March 19, 2001, Respondent received a settlement check for \$12,500 payable to  
10 Respondent, City of Downey and Kempik from Mercury Insurance Company. He did not deposit  
11 the check into a client trust account. Respondent did not have authority to agree to the settlement.<sup>2</sup>

12 Between May and October 2001, Kempik on many occasions attempted to telephone  
13 Respondent at his office, leaving him messages, and sent him numerous e-mail messages, regarding  
14 her case. Respondent did not respond to any of her phone calls or e-mail messages.

15 On October 30, 2001, Kempik sent Respondent a certified letter inquiring about her case  
16 status. On November 8, 2001, Respondent wrote to Kempik, indicating that he would contact her  
17 within the week. At no time did Respondent contact her.

18 Between November 2001 and March 2002, Kempik again left Respondent many telephone  
19 messages but he did not respond to any of her messages. On March 18, 2002, Kempik telephoned  
20 opposing counsel regarding her case and was informed that her case had been settled for \$12,500 and  
21 dismissed a year ago on March 20, 2001.

22 On June 20, 2002, the State Bar wrote to Respondent, inquiring about the Kempik matter and  
23 requesting a written response. The letter was properly sent to Respondent at his official address and  
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26 <sup>2</sup>Although the NDC alleges that Respondent was not entitled to receive a fee from the  
27 funds received from Mercury Insurance Company, this allegation contradicts the fact that  
28 Respondent had performed some services on her behalf (i.e., filing a complaint and negotiating a  
settlement, albeit without his client's consent or knowledge). Therefore, there is no clear and  
convincing evidence that he was not entitled to receive a fee.

1 was not returned as undeliverable or for any other reason. Respondent did not respond to the letter  
2 or communicate with the State Bar.

3 ***Count 1: Rule 4-100(A) of the Rules of Professional Conduct<sup>3</sup> (Failure to Preserve Client Funds)***

4 Rule 4-100(A) provides that all funds received for the benefit of clients shall be deposited  
5 in a client trust account and that no funds belonging to the attorney shall be deposited therein or  
6 otherwise commingled therewith. By failing to deposit Kempik's settlement check of \$12,500 in  
7 a client trust account, Respondent was culpable of failing to deposit client funds in a trust account  
8 in wilful violation of rule 4-100(A).

9 ***Count 2: Rule 4-100(B)(1) (Failure to Notify Client Re Funds)***

10 Rule 4-100(B)(1) requires an attorney to notify a client promptly of the receipt of the client's  
11 funds. Kempik did not find out about the settlement payment until a year later. By failing to notify  
12 Kempik of his receipt of the \$12,500 settlement check from the insurer, Respondent wilfully violated  
13 rule 4-100(B)(1).

14 ***Count 3: Business and Professions Code Section 6068(m) (Failure to Communicate)***

15 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries of  
16 clients and to keep clients reasonably informed of significant developments in matters with regard  
17 to which the attorney has agreed to provide legal services. Other than replying to Kempik's  
18 November letter, Respondent failed to respond to Kempik's telephone calls and e-mail messages  
19 between May and October 2001, failed to return her telephone calls between November 2001 and  
20 March 2002, and failed to contact her as indicated in his letter. As a result, Respondent wilfully  
21 failed to respond to his client's reasonable status inquiries in a matter in which he had agreed to  
22 provide legal services in wilful violation of section 6068(m).

23 ***Count 4: Section 6106 (Moral Turpitude)***

24 Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude,  
25 dishonesty or corruption. By settling Kempik's personal injury claim, signing her name on the  
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27 <sup>3</sup>References to rule are to the current Rules of Professional Conduct, unless otherwise  
28 noted.

1 release of all claims, and signing the request for dismissal without Kempik's knowledge,  
2 authorization or consent, Respondent committed acts involving dishonesty and moral turpitude in  
3 wilful violation of section 6106.

4 ***Count 5: Section 6106 (Misappropriation)***

5 Respondent's failure to deposit the settlement funds in a client trust account and failure to  
6 notify his client of the receipt of the funds is clear and convincing evidence that Respondent had  
7 misappropriated the funds, which is an act of dishonesty and moral turpitude, in wilful violation of  
8 section 6106.

9 ***Count 6: Section 6068(i) (Failure to Cooperate With the State Bar)***

10 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary  
11 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's  
12 letter or participate in the investigation of the Kempik matter, Respondent failed to cooperate with  
13 the State Bar in wilful violation of section 6068(i).

14 **C. Case No. 02-O-11922 (The Toprakjian Matter)**

15 On May 16, 2000, Lucy and Krikor Toprakjian, husband and wife, employed Respondent to  
16 represent them in a pending civil action in the Riverside County Superior Court entitled *Lucy*  
17 *Toprakjian and Krikor Toprakjian v. Newcourt Premium Finance, Inc., et al.*, case No. 336008.

18 Respondent substituted in as attorney of record.

19 But on September 21, 2001, he filed a motion to withdraw as counsel and a hearing was set  
20 for November 2, 2001. Respondent failed to appear at the hearing and the court continued it to  
21 December 5. When Respondent again failed to appear at that hearing, the court took the matter off  
22 calendar.

23 At the January 7, 2002 hearing regarding opposing party's motion to strike the Toprakjians'  
24 second amended complaint, Respondent did not appear or file any opposition to the motion. Ms.  
25 Toprakjian advised the court that she had been unable to locate Respondent. The matter was  
26 continued to March 8, 2002.

27 Respondent again failed to appear at the March 8 hearing and Ms. Toprakjian still could not  
28 locate Respondent. The court continued it to May 7, 2002, and mailed a notice of an order to show

1 cause to Respondent at his address of record.

2 Respondent did not appear at the May 7 hearing. The court then granted the motion to  
3 dismiss the second amended complaint and dismissed the entire action without prejudice.

4 Between January and May 2002, Ms. Toprakjian attempted to telephone Respondent on  
5 numerous occasions but was informed that the number was no longer in service. In March 2002, she  
6 went to his Anaheim office and discovered that his office had moved.

7 On April 11 and July 12, 2002, the State Bar wrote to Respondent, inquiring about the  
8 Toprakjian matter and requesting a written response. The letters were properly sent to Respondent  
9 at his official address but were returned as undeliverable. Respondent did not respond to the two  
10 letters or communicate with the State Bar.

11 ***Count 1: Rule 3-110(A) (Failure to Perform)***

12 By failing to appear at his motion to withdraw as counsel, at the opposing party's motion  
13 to strike the second amended complaint, and at the order to show cause hearing re dismissal,  
14 Respondent recklessly failed to competently perform services in wilful violation of rule 3-110(A).

15 ***Count 2: Section 6068(m) (Failure to Communicate)***

16 By failing to keep the Toprakjians informed of his current address and phone number,  
17 Respondent wilfully failed to keep his clients reasonably informed of significant case developments  
18 in a matter in which he had agreed to provide legal services in wilful violation of section 6068(m).

19 ***Count 3: Section 6068(j) (Failure to Maintain a Current Address)***

20 Section 6068(j) states that a member shall comply with the requirements of section 6002.1,  
21 which provides that Respondent shall maintain on the official membership records of the State Bar  
22 a current address to be used for State Bar purposes.

23 The State Bar's April and July 2002 letters to Respondent were returned as undeliverable.  
24 Therefore, Respondent wilfully violated section 6068(j) by failing to maintain a current official  
25 membership records address with the State Bar.

26 ***Count 4: Section 6068(i) (Failure to Cooperate With the State Bar)***

27 By failing to respond to the State Bar's letters or participate in the investigation of the  
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1 Toprakjian matter, Respondent failed to cooperate with the State Bar in wilful violation of section  
2 6068(i).

3 **D. Case No. 02-O-14254 (The McCully Matter)**

4 In October 2000, Charly McCully employed Respondent to represent her in a civil action.

5 On February 11, 2002, Respondent filed a complaint on behalf of McCully in the Orange  
6 County Superior Court entitled *Charly McCully v. Hong's Painting Corp.*, case No. 02CC02757.

7 At the May 14 evaluation conference, Respondent did not appear or file an evaluation  
8 conference statement.

9 On May 30, 2002, Respondent filed a notice of change of address and telephone number in  
10 the Orange County Superior Court.

11 Respondent again did not appear at a case management conference on August 15. The court  
12 scheduled an order to show cause hearing re dismissal for September 17 and a notice was sent to  
13 Respondent. At the September 17 hearing, Respondent again did not appear or file any opposition.  
14 McCully advised the court that she had not heard from Respondent since July 2002 and had been  
15 unable to reach Respondent. The court then continued the hearing.

16 Between July and September 2002, McCully tried to contact Respondent by telephone on  
17 several occasions but was informed by a recorded message that Respondent was not available. The  
18 telephone number was the same number that Respondent provided to the court in May.

19 On October 7, 2002, the State Bar wrote to Respondent regarding the McCully matter.  
20 Although it was properly sent to Respondent at his official address, the letter was returned as  
21 undeliverable. On October 10, 2002, the State Bar sent another letter to Respondent at an alternate  
22 address in Costa Mesa, California, and requesting a written response. The letter was not returned  
23 as undeliverable or for any other reason. Respondent did not respond to the two letters or  
24 communicate with the State Bar.

25 ***Count 5: Rule 3-110(A) (Failure to Perform)***

26 By failing to appear at the evaluation conference, to prepare an evaluation conference  
27 statement, to appear at the case management conference, to appear at the order to show cause hearing  
28 and to prepare an opposition to the order to show cause re dismissal, Respondent recklessly failed

1 to competently perform services in the McCully matter in wilful violation of rule 3-110(A). //

2 ***Count 6: Section 6068(m) (Failure to Communicate)***

3 By failing to provide his client with a telephone number or address where Respondent could  
4 be reached at and not advising her that he would not appear at the case management conference,  
5 Respondent wilfully failed to keep his client reasonably informed of significant developments in a  
6 matter in which he had agreed to provide legal services in wilful violation of section 6068(m).

7 ***Count 7: Section 6068(j) (Failure to Maintain a Current Address)***

8 Since the State Bar's October 7, 2002 letter to Respondent was returned as undeliverable,  
9 Respondent wilfully violated section 6068(j) by failing to maintain a current official membership  
10 records address with the State Bar.

11 ***Count 8: Section 6068(i) (Failure to Cooperate With the State Bar)***

12 By failing to respond to the State Bar's letters or participate in the investigation of the  
13 McCully matter, Respondent failed to cooperate with the State Bar in wilful violation of section  
14 6068(i).

15 **4. Mitigating and Aggravating Circumstances**

16 **A. Mitigation**

17 Respondent has no prior disciplinary record in 19 years of practice at the time of his  
18 misconduct in 2001, which is a significant mitigating factor. (Rules Proc. of State Bar, tit. IV, Stds.  
19 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>4</sup> "Absence of a prior disciplinary record is an  
20 important mitigating circumstance when an attorney has practiced for a significant period of time."  
21 (*In re Young* (1989) 49 Cal.3d 257, 269.)

22 **B. Aggravation**

23 There are several aggravating factors. (Std. 1.2(b).)

24 Respondent committed multiple acts of wrongdoing, including failing to deposit client  
25 funds, failing to notify client of receipt of funds, failing to respond to clients' status inquiries, failing  
26 to perform services, misappropriation and entering into a settlement without a client's authorization

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28 <sup>4</sup>All further references to standards are to this source.



1 or knowledge. (Std. 1.2(b)(ii).)

2 Respondent significantly harmed his clients and the administration of justice. (Std.  
3 1.2(b)(iv).) Respondent's misappropriation of the settlement funds deprived his client of the funds  
4 she was entitled to receive. Respondent's failure to appear in court on numerous occasions harmed  
5 the administration of justice.

6 Respondent demonstrated indifference toward rectification of or atonement for the  
7 consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to return the settlement funds to  
8 Kempik.

9 Respondent's failure to participate in this disciplinary matter prior to the entry of his default  
10 is also a serious aggravating factor. (Std. 1.2(b)(vi).)

## 11 5. Discussion

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; std. 1.3.)

16 Respondent's misconduct involved three clients. The standards for Respondent's  
17 misconduct provide a broad range of sanctions ranging from reproof to disbarment, depending upon  
18 the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.2, 2.3, 2.4(b), and 2.6.)

19 The State Bar urges a one-year actual suspension and until restitution. In support of its  
20 recommendation, the State Bar relies on five cases: *Carter v. State Bar* (1988) 44 Cal.3d 1091,  
21 *Conroy v. State Bar* (1991) 53 Cal.3d 495, *Davis v. State Bar* (1983) 33 Cal.3d 231, *Magee v. State*  
22 *Bar* (1975) 13 Cal.3d 700, and *Levin v. State Bar* (1989) 47 Cal.3d 1140. These cases all involved  
23 client deceit and acts of moral turpitude, resulting in a level of discipline ranging from six months  
24 to two years of actual suspension. The court finds the cases helpful in recommending the appropriate  
25 level of discipline.

26 In particular, *Levin v. State Bar, supra*, 47 Cal.3d 1140, is very similar to the instant case.  
27 There, the attorney who had no prior record of discipline in his 18 years of practice was found  
28 culpable of making misrepresentations to opposing counsel, communicating with a represented party,

1 settling a case without his client's permission, and failing to promptly deliver the settlement funds.  
2 The Supreme Court found his dishonest acts reprehensible, which manifest a total disregard of "the  
3 fundamental rule of ethics – that of common honesty – without which the profession is worse than  
4 valueless in the place it holds in the administration of justice." (*Id.* at p. 1147.) As a result, the  
5 attorney was suspended for three years, stayed, and placed on probation for three years and actually  
6 suspended for six months.

7 Similarly, Respondent deceived his client by settling and dismissing her case without her  
8 consent or knowledge, misappropriated the \$12,500 settlement funds, and abandoned three client  
9 matters. His misconduct, however, was more egregious than that of the attorney in *Levin*.  
10 Respondent has yet to return the client funds whereas the attorney in *Levin* had at least paid a portion  
11 of the settlement proceeds to the client. The misappropriation of client funds is a grievous breach  
12 of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public  
13 confidence in the legal profession. In all but the most exceptional cases, it requires the imposition  
14 of the harshest discipline – disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21.)

15 The court finds Respondent's lack of a prior record of discipline in his 19 years of practice  
16 as substantial mitigating evidence. While disbarment is not warranted at this time, a long period of  
17 actual suspension is justified.

18 Moreover, failing to appear and participate in this hearing shows that Respondent  
19 comprehends neither the seriousness of the charges against him nor his duty as an officer of the court  
20 to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.)  
21 Such failure to participate in this proceeding leaves the court without information about the  
22 underlying cause of Respondent's offense or of any mitigating circumstances surrounding his  
23 misconduct.

24 Therefore, in view of Respondent's misconduct in three client matters, the case law and the  
25 aggravating factors, the court agrees that a one-year actual suspension and until Respondent makes  
26 restitution is warranted to protect the public and to preserve public confidence in the profession.

27 "Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49  
28 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant

1 attorneys because it forces an attorney to confront the harm caused by his misconduct in real,  
2 concrete terms. (*Id.* at p. 1093.)

### 3 **6. Recommended Discipline**

4 ACCORDINGLY, the court hereby recommends that Respondent **Robert Keith Long** be  
5 suspended from the practice of law for two years, that said suspension be stayed, and that  
6 Respondent be actually suspended from the practice of law for one year and until he makes  
7 restitution to Suzanne Kempik or the Client Security Fund, if appropriate, in the amount of \$12,500,  
8 plus 10% interest per annum from March 19, 2001, and provide proof thereof to the Probation Unit;  
9 and until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules  
10 Proc. of State Bar, rule 205.)

11 It is also recommended that Respondent be ordered to comply with any probation conditions  
12 hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.  
13 (Rules Proc. of State Bar, rule 205(g).)

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

18 It is recommended that Respondent be ordered to comply with rule 955, California Rules  
19 of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40  
20 days, respectively, from the effective date of the Supreme Court order herein. **Wilful failure to**  
21 **comply with the provisions of rule 955 may result in revocation of probation, suspension,**  
22 **disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.**<sup>5</sup>

23 It is further recommended that Respondent take and pass the Multistate Professional  
24 Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners,  
25 MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287)

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27 <sup>5</sup>Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify.  
28 (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

1 and provide proof of passage to the Probation Unit during the period of his actual suspension.  
2 Failure to pass the MPRE within the specified time results in actual suspension by the Review  
3 Department, without further hearing, until passage.

4 **7. Costs**

5 The court recommends that costs be awarded to the State Bar pursuant to Business and  
6 Professions Code § 6086.10, and paid in accordance with § 6140.7.

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12 Dated: October 15<sup>th</sup>, 2003

  
13 **ROBERT M. TALCOTT**  
14 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 October 17, 2003, I deposited a true copy of the following document(s):

**DECISION, filed October 17, 2003**

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:

**ROBERT K. LONG  
P.O. BOX 11973  
COSTA MESA CA 92627**

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

**MICHAEL GLASS, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 17, 2003.**



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**Tammy R. Cleaver**  
Case Administrator  
State Bar Court