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STATE BAR COURT  
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LOS ANGELES

# PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

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In the Matter of )  
ANDREW J. SPERLING, )  
Member No. 189965, )  
A Member of the State Bar. )

Case No. 02-O-12779-RAH; 02-O-13939;  
02-O-14541 (Cons.)

**Decision**

## 1. Introduction

In these three consolidated default matters, Respondent **Andrew J. Sperling** is charged with misconduct in two client matters and mishandling his client trust account. The court finds, by clear and convincing evidence, that Respondent improperly withdrew from employment and failed to perform services competently, to communicate, to maintain client funds, to return client file, to return \$10,000 in unearned fees, to cooperate with the State Bar and 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 two years 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 three separate matters, case Nos. 02-O-12779, 02-O-13939, and 02-O-14541 on September 19, 2002, October 23, 2002, and April 9, 2003, respectively. (Rules Proc. of State Bar, rule 60.) The NDCs were returned as

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1 undeliverable. Respondent did not file a response to any of the NDCs.

2 On State Bar's motion, Respondent's default was entered in each case and he was enrolled  
3 as an inactive member on November 24, 2002, December 19, 2002, and June 27, 2003, under  
4 Business and Professions Code section 6007(e).<sup>1</sup> The court ordered the three cases consolidated at  
5 the June 18, 2003 status conference.

6 Respondent did not participate in the disciplinary proceedings. The court took these matters  
7 under submission on July 11, 2003, following the filing of the State Bar's brief.

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

9 All factual allegations of the NDCs are deemed admitted upon entry of Respondent's default  
10 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule  
11 200(d)(1)(A).)

#### 12 **A. Jurisdiction**

13 Respondent was admitted to the practice of law in California on October 28, 1997, and has  
14 since been a member of the State Bar of California.

#### 15 **B. Case No. 02-O-12779 (The Oyos Matter)**

16 On April 11, 2001, Judy Oyos employed Respondent to represent her in a real estate matter.  
17 They agreed that Oyos would pay Respondent \$100 per hour and a 15 percent contingency fee on  
18 any recovery. Oyos paid Respondent \$7,500 as advanced fees in three installments – \$100 and  
19 \$7,000 in two checks and \$400 in cash.

20 On April 19, Respondent cashed the first check for \$100 at a check cashing service. On  
21 August 13, Respondent cashed the second check for \$7,000. He did not deposit the funds in a client  
22 trust account.

23 Beginning August through the end of September 2001, Oyos attempted to telephone  
24 Respondent at his office, home and cell phone numbers at least once a day. She left him messages  
25 to contact her regarding her case. Respondent did not respond to any of her phone calls.

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26  
27 <sup>1</sup>All references to section (§) are to the Business and Professions Code, unless otherwise  
28 indicated.

1 On November 19, 2001, Oyos sent Respondent a certified letter to his then official  
2 membership records address. She demanded a refund of the \$7,500 fees paid because he had not  
3 performed any services under their fee agreement. The post office returned her letter, marked  
4 "Attempted – Not Known."

5 At no time did Respondent perform any legal services of value on Oyos' real estate matter.  
6 Because he had retained all of her original documents, Oyos could not pursue her case. Respondent  
7 never informed Oyos that he was withdrawing from employment. He returned neither the file nor  
8 any portion of the \$7,500 to Oyos.

9 On June 10 and 26, 2002, the State Bar wrote to Respondent, inquiring about the Oyos matter  
10 and requesting a written response. The letters were properly sent to Respondent at his official  
11 address. Both letters were not returned as undeliverable or for any other reason. Respondent did  
12 not respond to the letters or communicate with the State Bar.

13 ***Count 1: Business and Professions Code Section 6068(m) (Failure to Communicate)***

14 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries of  
15 clients and to keep clients reasonably informed of significant developments in matters with regard  
16 to which the attorney has agreed to provide legal services. By failing to respond to Oyos' telephone  
17 calls from August through September 2001 regarding her real estate matter and by not providing her  
18 with a current mailing address, Respondent wilfully failed to respond to his client's reasonable status  
19 inquiries in a matter in which he had agreed to provide legal services in wilful violation of section  
20 6068(m).

21 ***Count 2: Rule 3-110(A) of the Rules of Professional Conduct<sup>2</sup> (Failure to Perform)***

22 Rule 3-110(A) provides that a member shall not intentionally, recklessly or repeatedly fail  
23 to perform legal services with competence. By failing to perform any legal services on the real  
24 estate matter for Oyos, Respondent recklessly failed to competently perform services in wilful  
25 violation of rule 3-110(A).

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26  
27 <sup>2</sup>References to rule are to the current Rules of Professional Conduct, unless otherwise  
28 noted.

1     **Count 3: Rule 3-700(A)(2) (Improper Withdrawal From Employment)**

2             Rule 3-700(A)(2) provides that an attorney shall not withdraw from employment until he has  
3 taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.  
4 Respondent, in effect, withdrew from Oyos' case since he never performed any services on her  
5 behalf. Respondent had wilfully violated rule 3-700(A)(2) by withdrawing from employment  
6 without taking any steps to avoid foreseeable prejudice to the rights of Oyos. Because he failed to  
7 return her original documents, Oyos could not pursue the matter.

8     **Count 4: Rule 3-700(D)(2) (Failure to Return Unearned Fees)**

9             Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly  
10 any part of a fee paid in advance that has not been earned. Since Respondent failed to perform any  
11 legal services for Oyos and his employment had terminated, Respondent wilfully violated rule 3-  
12 700(D)(2) by failing to return any portion of the \$7,500 in advanced fees paid by Oyos.

13     **Count 5: Rule 4-100(A) (Failure to Preserve Client Funds)**

14             Rule 4-100(A) provides that all funds received for the benefit of clients shall be deposited  
15 in a client trust account and that no funds belonging to the attorney shall be deposited therein or  
16 otherwise commingled therewith. By failing to deposit the two personal checks and cash from Oyos  
17 in his client trust account when he had not yet earned the funds, Respondent was culpable of failing  
18 to deposit client funds in a trust account in wilful violation of rule 4-100(A).

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

20             Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary  
21 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's  
22 letters or participate in the investigation of the Oyos matter, Respondent failed to cooperate with the  
23 State Bar in wilful violation of section 6068(i).

24     **C. Case No. 02-O-13939 (The Little Matter)**

25             On July 5, 2000, Shawn Little employed Respondent to represent him in an employment  
26 contract matter and paid him \$1,500 as advanced fees. Little agreed to pay Respondent \$125 an  
27 hour and an 18 percent contingency fee on any recovery.

28             On August 17, Respondent filed an action in the San Diego Superior Court entitled *Little v.*

1 *Raffco*, case No. GIC753183.

2 On September 24, Little paid Respondent an additional \$1,000.

3 On December 28, the San Diego Superior Court served Respondent a notice of early case  
4 management conference, requiring him to appear in court on February 9, 2001, on behalf of Little.  
5 Respondent did not appear at the conference. On that day, as a result of his failure to appear and for  
6 lack of prosecution, the court dismissed the Little case without prejudice.

7 From January through August 2001, Little telephoned Respondent weekly, inquiring about  
8 his case. Respondent did not return any of the phone calls.

9 On October 18, 2001, Little wrote to Respondent, complaining that he had not heard from  
10 him in more than a year, since August 2000, and demanding a refund of \$2,500. Respondent  
11 received the letter but again did not reply.

12 Respondent never informed Little that he was withdrawing from employment and did no  
13 further work after filing the Little action.

14 On May 15, 2002, Little hired a new attorney, Richard Leuthold, to substitute in as attorney  
15 of record in the Little action. On May 23, 2002, attorney Leuthold sent a substitution of attorney  
16 form to Respondent, requesting him to execute it and return the client file. Respondent did not  
17 respond to the letter.

18 In July 2002, attorney Leuthold asked the court to discharge Respondent as attorney of  
19 record and order him to release the client file. On September 16, 2002, the court granted the request.

20 In September 2002, Respondent provided attorney Leuthold an accounting of the services  
21 Respondent had performed in the Little action. According to Respondent's accounting, he claimed  
22 to have performed \$2,171 worth of services through August 30, 2000, and that Little had paid only  
23 \$1,000. Neither of these claims was accurate. At no time did Respondent release the client file to  
24 Little or attorney Leuthold or refund any unearned portion of the \$2,500.

25 On August 19, 2002, the State Bar wrote to Respondent, inquiring about the Little matter and  
26 requesting a written response. The letter was properly sent to Respondent at his official address and  
27 was not returned as undeliverable or for any other reason.

28 On September 3, 2002, the State Bar again wrote to Respondent regarding the Little matter.

1 It was properly sent to Respondent at his official address. The letter, however, was returned as  
2 undeliverable. Respondent did not respond to the two letters or communicate with the State Bar.

3 ***Count 1: Section 6068(m) (Failure to Communicate)***

4 By failing to respond to Little's telephone calls from January through August 2001 and to  
5 his October 2001 letter regarding his case, Respondent wilfully failed to respond to his client's  
6 reasonable status inquiries in a matter in which he had agreed to provide legal services in wilful  
7 violation of section 6068(m).

8 Although Respondent had not returned Little's phone calls since August 2000 and the case  
9 was dismissed in February 2001, Respondent could not be found culpable of failing to keep Little  
10 reasonably informed of this significant case development since the misconduct was not alleged in  
11 the NDC. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 36.)

12 ***Count 2: Rule 3-110(A) (Failure to Perform)***

13 By failing to appear at the February 9, 2001, case management conference and by failing to  
14 prosecute the case, Respondent recklessly failed to competently perform services in wilful violation  
15 of rule 3-110(A).

16 ***Count 3: Rule 3-700(A)(2) (Improper Withdrawal From Employment)***

17 Due to Respondent's failure to appear in court and failure to pursue the matter, the case was  
18 dismissed without prejudice. Other than filing an action in the Little matter, Respondent, in effect,  
19 withdrew from employment without taking any steps to avoid foreseeable prejudice to the rights of  
20 Little, in wilful violation of rule 3-700(A)(2).

21 ***Count 4: Rule 3-700(D)(1) (Failure to Promptly Return Client File)***

22 Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release  
23 to the client, at the client's request, all the client papers and property. Upon Respondent's  
24 employment termination and attorney Leuthold's request, Respondent was obligated to return  
25 Little's file but failed to do so, in wilful violation of rule 3-700(D)(1).

26 Although Respondent failed to comply with the September 2002 court order to return the  
27 client file to either attorney Leuthold or Little, Respondent could not be found culpable of this  
28 uncharged misconduct in violation of section 6103 (failure to comply with a court order). (*Edwards*

1 v. *State Bar, supra*, 52 Cal.3d 28.)

2 ***Count 5: Rule 3-700(D)(2) (Failure to Return Unearned Fees)***

3 Other than filing a complaint, Respondent did not pursue the Little case any further. Despite  
4 Little's demand on October 18, 2001 that he refunds the unearned fees, Respondent did not return  
5 any portion of the \$2,500. Instead, Respondent provided an inaccurate accounting to attorney  
6 Leuthold, claiming that his legal bill was \$2,171 and that he received only \$1,000 from Little. His  
7 services, however, were of minimal value since the case was dismissed due to his failure to pursue  
8 the matter and Little had to hire a new attorney to take over the case.

9 Because Respondent defaulted in this disciplinary proceeding and the facts alleged in the  
10 NDC are deemed admitted, the court concludes that Respondent's accounting was inaccurate and  
11 that he wilfully violated rule 3-700(D)(2) by failing to refund any part of the \$2,500 fee received  
12 from his client.

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

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

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

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

20 The State Bar's September 2002 letter to Respondent was returned as undeliverable.  
21 Therefore, Respondent wilfully violated section 6068(j) by failing to maintain a current official  
22 membership records address with the State Bar.

23 **D. Case No. 02-O-14541 (Client Trust Account)**

24 From October 11, 2000 to about August 31, 2002, Respondent maintained a client trust  
25 account at California Federal Bank, No. 362-403-6756. On May 9, 2002, the bank returned a check  
26 for \$1,925 for insufficient funds because the account balance was \$89.81.

27 On September 24, 2002, the State Bar wrote to Respondent regarding the client trust account  
28 matter. Although it was properly sent to Respondent at his official address, the letter was returned

1 as undeliverable.

2 ***Count 1: Rule 4-100(A) (Failure to Preserve Client Funds)***

3 By issuing a check from his client trust account when he knew or should have known that  
4 there were insufficient funds, Respondent failed to maintain client funds in a client trust account in  
5 wilful violation of rule 4-100(A). An attorney violates this rule if he fails to manage funds as  
6 required, regardless of the attorney's intent or the absence of injury to anyone. (See *Guzzetta v.*  
7 *State Bar* (1987) 43 Cal.3d 962, 976.)

8 ***Count 2: Section 6068(j) (Failure to Maintain a Current Address)***

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

12 **4. Mitigating and Aggravating Circumstances**

13 **A. Mitigation**

14 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.  
15 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>3</sup>

16 **B. Aggravation**

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

18 Respondent committed multiple acts of wrongdoing, including failing to return unearned fees  
19 and a client file, failing to respond to clients' status inquiries, failing to perform services, improperly  
20 withdrawing from employment, and failing to maintain client funds in his client trust account. (Std.  
21 1.2(b)(ii).)

22 Respondent significantly harmed his clients. (Std. 1.2(b)(iv).) Respondent's failure to return  
23 the unearned fees of \$7,500 to Oyos and \$2,500 to Little caused his clients financial harm.

24 Respondent demonstrated indifference toward rectification of or atonement for the  
25 consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to refund the unearned fees to his  
26 clients or the client file to Oyos.

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28 <sup>3</sup>All further references to standards are to this source.





1 obtaining money by false pretenses.” (*Hulland v. State Bar* (1972) 8 Cal.3d 440, 449.)

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

8 Therefore, in view of Respondent’s misconduct in two client matters and mishandling his  
9 trust account, the case law and the aggravating factors, the court agrees that a two-year actual  
10 suspension and until Respondent makes restitution is warranted to protect the public and to preserve  
11 public confidence in the profession.

12 “Restitution is fundamental to the goal of rehabilitation.” (*Hippard v. State Bar* (1989) 49  
13 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant  
14 attorneys because it forces an attorney to confront the harm caused by his misconduct in real,  
15 concrete terms. (*Id.* at p. 1093.)

## 16 6. Recommended Discipline

17 ACCORDINGLY, the court hereby recommends that Respondent **Andrew J. Sperling** be  
18 suspended from the practice of law for two years, that said suspension be stayed, and that  
19 Respondent be actually suspended from the practice of law for two years and until he makes  
20 restitution to Judy Oyos or the Client Security Fund, if appropriate, in the amount of \$7,500, plus  
21 10% interest per annum from November 19, 2001; to Shawn Little or the Client Security Fund, if  
22 appropriate, in the amount of \$2,500, plus 10% interest per annum from October 18, 2001, and  
23 provide proof thereof to the Probation Unit; and until he has shown proof satisfactory to the State  
24 Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant  
25 to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct; and until he  
26 files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of  
27 State Bar, rule 205.)

28 It is also recommended that Respondent be ordered to comply with any probation conditions

1 hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.  
2 (Rules Proc. of State Bar, rule 205(g).)

3 It is recommended that Respondent be ordered to comply with rule 955, California Rules of  
4 Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days,  
5 respectively, from the effective date of the Supreme Court order herein. **Wilful failure to comply**  
6 **with the provisions of rule 955 may result in revocation of probation, suspension, disbarment,**  
7 **denial of reinstatement, conviction of contempt, or criminal conviction.**<sup>4</sup>

8 It is further recommended that Respondent take and pass the Multistate Professional  
9 Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners,  
10 MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287)  
11 and provide proof of passage to the Probation Unit during the period of his actual suspension.  
12 Failure to pass the MPRE within the specified time results in actual suspension by the Review  
13 Department, without further hearing, until passage.

#### 14 7. Costs

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

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22 Dated: October 7, 2003

  
\_\_\_\_\_  
23 RICHARD A. HONN  
24 Judge of the State Bar Court

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28 <sup>4</sup>Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify.  
(*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 7, 2003, I deposited a true copy of the following document(s):

**DECISION, filed October 7, 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:

**ANDREW J SPERLING ESQ  
3841 4TH AVE #283  
SAN DIEGO, CA 92103**

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

**Shari Sveningson, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 7, 2003**.

  
\_\_\_\_\_  
**Milagro del R. Salmeron**  
Case Administrator  
State Bar Court