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OCT - 8 2003

STATE BAR COURT  
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LOS ANGELES

# PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of )  
JOSEPH EDWARD SHERIDAN, )  
Member No. 62759, )  
A Member of the State Bar. )

Case No. 02-O-16029-RAH  
03-O-00964 (Cons.)  
DECISION INCLUDING DISBARMENT  
RECOMMENDATION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT

## INTRODUCTION

In this disciplinary matter, the Office of the Chief Trial Counsel of the State Bar of California ("OCTC") was represented by Eli D. Morgenstern. Respondent Joseph Edward Sheridan 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 and properly served on Respondent on April 7, 2003, 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 not returned as undeliverable.

On April 14, 2003, the State Bar Court properly served Respondent by first-class mail,

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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 postage prepaid at his official address with notice scheduling a status conference on May 15,  
2 2003.

3 Respondent did not appear at the May 15, 2003, status conference. On September 16,  
4 2003, Respondent was properly served at his official address with a post-status conference order.

5 On May 15, 2003, a First Amended NDC was filed and properly served on Respondent  
6 by certified mail, return receipt requested, at his official address. This correspondence was not  
7 returned as undeliverable.

8 Respondent did not file a response to the NDC. On June 10, 2003, OCTC filed and  
9 properly served on Respondent a motion for entry of default by certified mail, return receipt  
10 requested, at his official address. (Rule 200(a), (b).) The motion advised Respondent that OCTC  
11 would seek his disbarment if he was found culpable. (Rule 200(a)(3).)

12 Respondent did not respond to the default motion. Orders entering Respondent's default  
13 and involuntarily enrolling him inactive were filed and properly served on him on July 1, 2003,  
14 by certified mail, return receipt requested at his official address. This document advised  
15 Respondent, among other things, that he was enrolled inactive pursuant to section 6007(e)  
16 effective three days after service of the order.

17 The Court judicially notices its records which indicate that the United States Postal  
18 Service did not return mail sent by the Court to Respondent as undeliverable unless otherwise  
19 indicated. (Evidence Code section 452(d).)

20 The case was submitted for decision on July 11, 2003, without hearing after OCTC  
21 waived hearing and filed a brief regarding culpability and discipline.

22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

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1 **Jurisdiction**

2 Respondent was admitted to the practice of law in California on December 20, 1974, and  
3 has been a member of the State Bar at all times since.

4 **Case No. 02-O-16029 - Arquisola Matter - Counts 1 - 4**

5 On June 4, 2001, Antonio A. Arquisola employed Respondent to assist him in preparing  
6 and filing petitions with the Bureau of Citizenship and Immigration Services ("BCIS") for  
7 immigrant visas for Arquisola's wife and two minor children. Arquisola paid Respondent \$500  
8 in advanced fees on June 4. On July 11, 2001, he paid Respondent an additional \$250 in  
9 advanced fees.

10 When Arquisola later went to Respondent's office, Respondent represented to Arquisola  
11 that the petitions had been filed with BCIS. When Arquisola contacted BCIS, he learned that the  
12 petitions had not been filed.

13 Respondent never filed the petitions with BCIS. He never told Arquisola that he was  
14 withdrawing from representing Arquisola's family in the immigration matter. Arquisola  
15 prepared and filed the petitions himself in November 2002.

16 Respondent never returned the advanced fees Arquisola paid him.

17 On January 2, 2003, the State Bar opened an investigation based on Arquisola's  
18 complaint.

19 On January 2 and 21, 2003, a State Bar investigator wrote to Respondent regarding the  
20 Arquisola complaint. The investigator's letters were placed in a sealed envelope correctly  
21 addressed to Respondent at his membership records address and were properly mailed by first-  
22 class mail, postage prepaid, by depositing for collection by the United States Postal Service in the  
23 ordinary course of business. The investigator's letters were not returned as undeliverable or for  
24 any other reason.

25 The January 2 and 21 letter asked Respondent to respond in writing by February 28, 2001,  
26 to the allegations of misconduct being investigated by the State Bar in the Arquisola matter. He  
27 did not do so or otherwise communicate with the investigator regarding the Arquisola matter.  
28

1 **Count 1 - RPC 3-110(A) (Failing to Perform Competently)**

2 RPC 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to  
3 perform legal services competently.

4 By not preparing and filing the immigration petitions for Arquisola's wife and children,  
5 Respondent intentionally, recklessly or repeatedly did not perform competently in wilful  
6 violation of RPC 3-110(A).

7 **Count 2 - RPC 3-700(A)(2) (Improper Withdrawal from Representation)**

8 RPC 3-700(A)(2) prohibits an attorney from withdrawing from employment until he or  
9 she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client,  
10 including giving due notice to the client, allowing time for employment of other counsel,  
11 complying with RPC 3-700(D) and with other applicable laws and rules.

12 By not informing Arquisola that he was withdrawing from the immigration matter and by  
13 not preparing and filing the petitions for Arquisola's wife and children, Respondent effectively  
14 withdrew from employment. Respondent's withdrawal prejudiced Arquisola in that Arquisola  
15 prepared the petitions himself five months later. By not informing the client of his intent to  
16 withdraw from employment, Respondent failed to take reasonable steps to avoid reasonably  
17 foreseeable prejudice to the client in wilful violation of RPC 3-700(A)(2).

18 **Count 3 - Section 6106 (Dishonesty or Moral Turpitude)**

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

22 There is clear and convincing evidence that Respondent violated section 6106 of the  
23 Business and Professions Code. He misrepresented to Arquisola that the petitions had been filed  
24 when, in reality, they had not been. Accordingly, he she committed an act of moral turpitude,  
25 dishonesty or corruption in wilful violation of section 6106.

26 **Count 4 - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

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

1 By not responding to the State Bar's January 2 and 21, 2003, letters, Respondent did not  
2 participate in the investigation of the allegations of misconduct regarding the Arquisola matter in  
3 wilful violation of 6068(i).

4 **Case No. 03-O-00964 - Probation Violation Matter - Count 5**

5 On December 17, 2001, the California Supreme Court filed an order in case no. S101208  
6 ("Supreme Court order") accepting the State Bar Court's discipline recommendation and  
7 ordering Respondent to comply with the conditions of probation recommended.

8 Pursuant to the Supreme Court order, Respondent was ordered to comply with the  
9 following terms and conditions of probation, among others:

10 (a) During the period of probation, to submit a written report on January 10, April  
11 10, July 10 and October 10 of each year or part thereof during which the probation is in effect to  
12 the Probation Unit, stating under penalty of perjury that he has complied with all provisions of  
13 the State Bar Act and Rules of Professional Conduct during said period;

14 (b) With each quarterly report, provide evidence of compliance with medical  
15 conditions of probation requiring treatment with a mental health professional two times per  
16 month; and

17 (c) Successfully complete Ethics School within one year of the effective date of  
18 discipline.

19 The Supreme Court order became effective on January 16, 2002, thirty days after it was  
20 entered. (Rule 953(a), California Rules of Court.) It was properly served on Respondent.<sup>2</sup>

21 On February 1, 2002, the Probation Unit wrote a letter to Respondent reminding him of  
22 certain terms and conditions of his suspension and probation imposed pursuant to the Supreme  
23

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24 <sup>2</sup>Although no proof was offered that the Clerk of the Supreme Court served the Supreme  
25 Court's order upon Respondent, rule 24(a) of the California Rules of Court requires clerks of  
26 reviewing courts to immediately transmit a copy of all decisions of those courts to the parties  
27 upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties  
28 have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in  
the absence of evidence to the contrary, this Court finds that the Clerk of the Supreme Court  
performed his or her duty and transmitted a copy of the Supreme Court's order to Respondent  
immediately after its filing.

1 Court's order. The letter reminded Respondent of his obligations to file quarterly reports, with  
2 the first one due on April 10, 2002; to submit proof of compliance with the medical conditions  
3 with his quarterly reports; and to complete Ethics School by January 16, 2003, among other  
4 things. The letter also warned Respondent that failure to comply with the probation conditions  
5 could lead to further disciplinary proceedings. Enclosed with the letter were copies of the  
6 Supreme Court's order, the probation conditions portion of the stipulation and an instruction  
7 sheet and form to use in submitting quarterly reports.

8 The February 1, 2002 letter was mailed on that same date to Respondent's official State  
9 Bar membership records address via the United States Postal Service with first-class postage  
10 prepaid. The letter was not returned as undeliverable.

11 Respondent has not submitted the quarterly report or proof of mental health treatment due  
12 on January 10, 2003. He also has not submitted proof of attendance at Ethics School on or  
13 before January 16, 2003.

14 As of May 15, 2003, Respondent has not complied with the aforementioned provisions of  
15 the Supreme Court's order.

16 **Count 5 - Section 6103 (Violation of Court Order)**

17 In relevant part, section 6103 makes it a cause for disbarment or suspension for an  
18 attorney to wilfully disobey or violate a court order requiring him or her to do or to forbear an act  
19 connected with or in the course of his or her profession, which he or she ought in good faith to do  
20 or forbear.

21 By not submitting the quarterly report or proof of mental health treatment due on January  
22 10, 2003, and not submitting proof of attendance at Ethics School on or before January 16, 2003,  
23 Respondent wilfully disobeyed a court order in wilful violation of section 6103.

24 **FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES**

25 Respondent did not participate in these proceedings or present any mitigating  
26 circumstances pursuant to standard 1.2(e), Rules of Procedure of the State Bar of California, Title  
27 IV, Standards for Attorney Sanctions for Professional Misconduct, ("standards").

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1                   **FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

2                   Respondent's four prior discipline records are an aggravating circumstance. (Standard  
3 1.2(b)(i).) By order filed on November 2, 1994, in case no. SO41844 (State Bar Court case nos.  
4 92-O-16897; 93-O-11851; 94-O-10365 (Cons.)), the California Supreme Court imposed  
5 discipline consisting of six months stayed suspension and two years probation with conditions  
6 for violations of sections 6068(i) and (m) and 6103 and RPCs 3-110(A), 3-700(D)(1) and 4-  
7 100(B)(3)

8                   By order filed November 16, 1998, in case no. SO73069 (State Bar Court case nos. 96-O-  
9 06986; 97-O-12572 (Cons.)), the Supreme Court ordered discipline consisting of one year stayed  
10 suspension and one year probation on conditions including 45 days actual suspension for  
11 violations of sections 6068(i) and (m) and RPCs 3-110(A), 3-700(A)(2).

12                   By order filed December 17, 2001, in case no. S101208 (State Bar Court case nos. 00-O-  
13 11315; 01-O-01222 (Cons.)), the Supreme Court imposed discipline consisting of one year  
14 stayed suspension and two years probation on conditions including 120 days actual suspension  
15 for violations of sections 6068(i) and (m) and RPC 3-110(A).

16                   By order filed March 18, 2003, in case no. S112438 (State Bar Court case no. 02-N-  
17 11325), the Supreme Court imposed discipline consisting of 150 days actual suspension for  
18 violating section 6103 by not complying with California Rules of Court, rule 955, as previously  
19 ordered by the Supreme Court.

20                   The Court notes that the prior disciplinary matters were all resolved by stipulation.

21                   Respondent engaged in multiple acts of misconduct by the above-described conduct in  
22 the Arquisola matter and by failing to comply with multiple conditions of probation. (Standard  
23 1.2(b)(ii).)

24                   Respondent significantly harmed the administration of justice as his failure to comply  
25 with the conditions of his probation made it more much difficult for the State Bar to  
26 appropriately monitor him in seeking to insure the protection of the public and the courts.  
27 (Standard 1.2(b)(iv).)

28                   Respondent's failure to comply with the probation conditions after being reminded by the

1 Probation Unit demonstrates indifference toward rectification of or atonement for the  
2 consequences of his misconduct. (Standard 1.2(b)(v).)

3 **Discussion**

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

8 Standard 1.6 provides that the appropriate sanction for the misconduct found must be  
9 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of  
10 imposing discipline. If two or more acts of professional misconduct are found in a single  
11 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions.  
12 Standard 1.6(a.) The level of discipline is progressive. Standard 1.7(b.) The standards, however,  
13 are guidelines from which the Court may deviate in fashioning the most appropriate discipline  
14 considering all the proven facts and circumstances of a given matter. (*In re Young* (1989) 49 Cal.3d  
15 257, 267 fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences'  
16 imposed in a blind or mechanical manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

17 In the instant case, the recommended level of discipline ranges from reproof to disbarment.  
18 Standards 2.3, 2.4(b), 2.6(a) and (b) and 2.10.) The most severe sanction is found at standard 2.3  
19 which recommends actual suspension or disbarment for culpability of an act of moral turpitude,  
20 fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person,  
21 depending on the extent to which the victim of the misconduct is harmed or misled and depending  
22 upon the magnitude of the act of misconduct and the degree to which it relates to the attorney's acts  
23 within the practice of law.

24 OCTC recommends disbarment. After considering the misconduct and balancing the serious  
25 aggravating and the absence of mitigating circumstances, the Court so recommends.

26 Respondent has engaged in a continuous course of misconduct since 1991 and this course  
27 of conduct has resulted in five disciplinary matters. In determining its recommended degree of  
28 discipline in *McMorris v. State Bar*, the Supreme Court considered the respondent's prior

1 disciplinary record and the harm resulting from his misconduct. "Significantly, in examining the  
2 combined record of this disciplinary proceeding and [Respondent's] prior discipline, we are  
3 confronted not by isolated or uncharacteristic acts but by 'a continuing course of serious professional  
4 misconduct extending over a period of several years.' (Citation omitted.) We are therefore concerned  
5 with what appears to have become an habitual course of misconduct. We believe that the risk of  
6 petitioner repeating this misconduct would be considerable if he were permitted to continue in  
7 practice. (Citation omitted.) As [Respondent] has previously demonstrated, the public and the legal  
8 profession would not be sufficiently protected if we merely, once again, suspended [him] from the  
9 practice of law. (Citation omitted.)" (*McMorris v. State Bar* (1983) 35 Cal.3d 77, 85.) The Supreme  
10 Court's reasoning is equally applicable in this case.

11 Moreover, no explanation has been offered that might render disbarment inappropriate and  
12 the Court can glean none. The Court has no reason to believe that Respondent could or would  
13 conform his behavior to the ethical rules, particularly in light of his failure to participate herein.

14 It would undermine the integrity of the disciplinary system and damage public confidence  
15 in the legal profession if Respondent were not disbarred for his misconduct. If he desires to practice  
16 law again, he will bear the heavy burden of demonstrating by the most clear and convincing evidence  
17 his rehabilitation and fitness to practice. Accordingly, the Court recommends disbarment.

#### 18 DISCIPLINE RECOMMENDATION

19 **IT IS HEREBY RECOMMENDED** that Respondent **JOSEPH EDWARD SHERIDAN**  
20 be **DISBARRED** from the practice of law in the State of California and that his name be stricken  
21 from the rolls of attorneys in this state.

22  
23 It is also recommended that the Supreme Court order Respondent to comply with rule 955,  
24 paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the  
25 Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph  
26 (c) within 40 days of the effective date of the order showing his compliance with said order.

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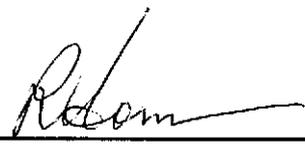
**COSTS**

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: October 7, 2003

  
\_\_\_\_\_  
RICHARD A. HONN  
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 October 8, 2003, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND  
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT, filed October 8,  
2003**

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

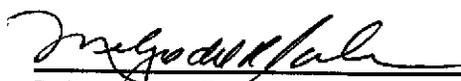
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOSEPH EDWARD SHERIDAN ESQ  
200 OCEANGATE #400  
LONG BEACH, CA 90802**

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

**Eli Morgenstern, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 8, 2003**.

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