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STATE BAR COURT  
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HC

THE STATE BAR COURT  
HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

In the Matter of

JERALD SCOTT BENNETT,

Member No. 123450,

A Member of the State Bar.

Case No. 03-O-00803; 03-O-01064-RMT

DECISION

I. INTRODUCTION

In this disciplinary matter, Joy Chantarasompoth appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Jerald Scott Bennett (Respondent) did not appear in person or by counsel.

In this default proceeding, Respondent is charged with fifteen counts of professional misconduct, including failing to perform, failing to communicate, failing to refund unearned fees, failing to return client files, failing to maintain client funds in trust, failing to account for client funds, improperly representing clients with potentially adverse interests, failing to cooperate with the State Bar, and committing an act of moral turpitude. After considering the evidence and the law, the court finds by clear and convincing evidence that Respondent is culpable of all but three of the charged counts of misconduct. The court recommends that Respondent be suspended for two years and that the suspension be stayed including a one-year actual suspension and until he provides restitution and complies with rule 205, subdivision (a) and (c) of the Rules of Procedure of the State Bar of California (Rules of Procedure).

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## **II. SIGNIFICANT PROCEDURAL HISTORY**

On November 25, 2003, the State Bar filed a Notice of Disciplinary Charges (NDC) in case numbers 03-O-00803 and 03-O-01064. On that same date the State Bar properly served the NDC on Respondent at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section 6002.1 (c). On December 3, 2003, the State Bar received a return receipt signed by Mylene Green.

On December 2, 2003, Respondent was properly served at his official membership records address with a notice advising him, among other things, that an initial status conference would be held on January 21, 2004. Respondent did not appear at the January 21, 2004, status conference.<sup>1</sup>

Respondent did not file a responsive pleading to the NDC. On February 3, 2004, the State Bar filed a motion for entry of default and on that same day properly served the motion on Respondent at his official membership records address. The motion advised Respondent that minimum discipline of 18 months actual suspension would be sought if he was found culpable. Respondent did not respond to the motion.

On February 23, 2004, the court entered Respondent's default and enrolled him inactive effective three days after service of the order. The order was properly served on Respondent at his official membership records address on that same date by certified mail, return receipt requested.

On March 2, 2004, the State Bar filed a request for waiver of default hearing and a brief on culpability and discipline. The matter was submitted for decision on March 3, 2004.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (Bus. & Prof. Code section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).)

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<sup>1</sup>Earlier that day the State Bar obtained a telephone number for Respondent different from his official membership records telephone number. The State Bar called the new telephone number and an individual who identified herself as Respondent's secretary confirmed that Respondent's official membership records address was current. When the court called Respondent's new telephone number during the initial status conference, the secretary stated that Respondent would be back in his office later that day.

1     **A. Jurisdiction**

2             Respondent was admitted to the practice of law in California on June 10, 1986, was a  
3     member at all times pertinent to the allegations and is currently a member of the State Bar of  
4     California.

5     **B. Case No. 03-O-00803 (The Obando Matter [Counts 1-8])**

6             **Facts**

7             On or about February 5, 2002, Gregory and Sharon Obando, husband and wife, employed  
8     Respondent to represent their interests in the revocable living trust of Viola A. Obando (trust),  
9     created by Gregory's mother who had since deceased. Gregory and Sharon also hired Respondent  
10    to represent them in an unlawful detainer proceeding filed against them by Gregory's sister entitled  
11    *Terri Obando, Executor of the Estate of Viola Amelia Obando v. Gregory Obando & Sharon*  
12    *Obando*, case number LEC006202 in the Riverside County Superior Court.<sup>2</sup> The real property  
13    subject to the unlawful detainer proceeding was Gregory and Sharon's residence, the title to which  
14    was held in the trust.

15            Gregory and Sharon Obando agreed to pay Respondent \$10,000.00 as advanced attorney's  
16    fees. In lieu of said fees, Respondent accepted a promissory note secured by Gregory's insurance  
17    settlement from an unrelated personal injury matter.

18            In or about July 2002, Clint Obando, Gregory's younger brother, hired Respondent to  
19    represent him in purchasing the residence in which Gregory and Sharon Obando were living. Clint  
20    Obando agreed to pay Respondent \$5,000.00 as advanced attorney's fees. In addition he agreed to  
21    pay Respondent the \$10,000.00 Gregory and Sharon Obando owed Respondent in advanced  
22    attorney's fees. By July 30, 2002, Clint Obando had paid in full to Respondent the \$15,000.00 in  
23    advanced attorney's fees.<sup>3</sup>

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25            <sup>2</sup>Although the complaint alleges the proceeding was pending in the Riverside County  
26    Municipal Court, the court concludes that this typographical error does not preclude the inference  
27    that the matter was pending in the Riverside County Superior Court.

28            <sup>3</sup>The complaint alleges that final payment of \$8000.00 occurred on July 30, 2000, but all  
prior payments occurred during July 2002. The court concludes that the year of the July 30<sup>th</sup>

1 The interests of Gregory, Sharon and Clint Obando in the unlawful detainer proceeding, the  
2 residence subject to the unlawful detainer proceeding, and the trust could potentially conflict.  
3 Despite the potential conflict, Respondent did not inform any of the Obandos of the relevant  
4 circumstances of their potentially conflicting interests. Neither did Respondent inform any of the  
5 Obandos of the reasonably foreseeable adverse consequences of his representation of all of them.  
6 Respondent did not obtain from any of the Obandos informed written consent to his representation  
7 of their interests in the unlawful detainer proceeding, the residence subject to the unlawful detainer  
8 proceeding, and the trust.

9 On or about March 13, 2002, there was a court hearing to address appointment of a trust  
10 executor. Although Respondent was informed of the court hearing, he failed to appear on behalf of  
11 Gregory and Sharon Obando. At the conclusion of the hearing, Gregory's sister, Terri Obando, was  
12 appointed executor of the trust.

13 Default was entered against Sharon Obando in the unlawful detainer proceeding due to the  
14 fact that Respondent did not timely file an answer on her behalf. Respondent did not inform the  
15 Obandos about the entry of default. Respondent took no action to set aside the default and Sharon  
16 Obando was precluded from presenting a defense at the trial conducted on August 1, 2002.

17 At the conclusion of trial the court ordered the parties to file briefs on or before August 7,  
18 2002. Although Respondent was aware of the court's order, he did not file a brief. Respondent did  
19 not inform the Obandos that he did not file a brief.

20 On or about August 13, 2002, the Obandos met with Respondent and inquired about the  
21 status of the outcome of the unlawful detainer matter, but Respondent did not provide them any  
22 information about the matter's outcome.

23 On or about September 18, 2002, the court entered judgment against Gregory and Sharon  
24 Obando and ordered them to pay \$4,083.17 in rent and damages, plus costs totaling \$193.94.  
25 Although the court served Respondent with a copy of the judgment, Respondent did not inform the  
26 Obandos of the judgment.

27 \_\_\_\_\_  
28 payment is a typographical error.

1 Between August 2, 2002, to August 19, 2002, the Obandos telephoned Respondent at least  
2 six times to discuss the status of their legal matters. Each time, the Obandos left messages for  
3 Respondent to return the telephone calls. Respondent did not return any of the telephone calls.

4 On or about August 21, 2002, the Obandos were served with eviction papers requiring them  
5 to vacate their residence by August 27, 2002. The Obandos telephoned Respondent and left a  
6 message informing him of the eviction papers and requesting him to return their call. Respondent  
7 did not return the telephone call. The Obandos were evicted from their residence on August 27,  
8 2002.

9 On or about September 27, 2002, Cint Obando went to Respondent's office to meet with  
10 Respondent to discuss the eviction matter and the pending probate sale of Gregory's and Sharon's  
11 residence. Respondent did not meet with Clint but promised to call him. Respondent failed to do  
12 so.

13 On or about October 2, 2002, Gregory's and Sharon's residence was sold by the trust to a  
14 third party. On October 9, 2002, the Obandos faxed a letter to Respondent terminating his services,  
15 requesting their files and a refund of unearned attorney's fees.

16 Beginning on October 10, 2002, until October 23, 2002, the Obandos telephoned Respondent  
17 at least eight times to inquire about their file. Each time, the Obandos were informed that their file  
18 would not be available for another week. On October 23, 2002, the Obandos went to Respondent's  
19 office to pick up their file. The file was not available and the Obandos were told to return to the  
20 office at 7:30 p.m. When the Obandos returned at the designated time, no one was at Respondent's  
21 office. The Obandos returned to Respondent's office on October 24, 2002, and were told that their  
22 file would be ready at 4:00 p.m. that day. That same day the Obandos contacted the State Bar and  
23 reported Respondent's refusal to release their files and papers to them. The State Bar contacted  
24 Respondent who assured the State Bar that the client file would be ready for the Obandos by 4:00  
25 p.m. on October 24, 2002. At approximately 4:00 p.m. on October 24, 2002, the Obandos received  
26 their file from Respondent.

27 Beginning on or about October 31, 2002, until November 19, 2002, the Obandos telephoned  
28 Respondent at least seven times requesting a refund of unearned attorney's fees. Each time, the

1 Obandos were informed that the refund would not be available until the following week.

2 On November 20, 2002, the Obandos sent Respondent a letter, by certified mail, demanding  
3 a refund of unearned attorney's fees. On November 22, 2002, the Obandos received two refund  
4 checks from Respondent. The first check, number 1380, was made payable to Gregory Obando in  
5 the amount of \$4,744.88 and the second check, number 1381, was made payable to Clinton Obando  
6 in the amount of \$2,062.03. Both checks were drawn against Respondent's client trust account,  
7 account number 879-026441-5, maintained with Washington Mutual Bank.

8 On November 27, 2002, Gregory Obando received notice from his bank that Respondent's  
9 check number 1380 was returned unpaid due to insufficient funds. After receiving a telephone call  
10 from Gregory, Respondent issued another check to Gregory on December 2, 2002, drawn against  
11 Respondent's client trust account. This check was honored.

12 On December 5, 2002, Clint Obando received notice from his bank that Respondent's check  
13 number 1381 was returned unpaid due to insufficient funds. Respondent also issued another check  
14 to Clint on December 5, 2002, drawn against Respondent's client trust account. This check was also  
15 honored.

16 On December 3, 2002, the State Bar opened an investigation, case no. 03-O-00803, pursuant  
17 to a complaint filed by Gregory, Sharon, and Clint Obando.

18 On March 11, 2003, and April 1, 2003, a State Bar investigator mailed a letter to Respondent  
19 requesting him to respond in writing to the allegations of misconduct being investigated in the  
20 Obando matter. The State Bar investigator mailed the letters to Respondent at his official  
21 membership records address by first-class mail, postage prepaid. The United States Postal Service  
22 did not return either letter as undeliverable or for any other reason. Respondent did not respond to  
23 either letter or otherwise communicate with the State Bar.

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1           **Legal Conclusions**

2           **Count One: Rule 3-110(A) (Failing to Perform Competently)**

3           Rule 3-110(A) of the Rules of Professional Conduct<sup>4</sup> prohibits an attorney from intentionally,  
4 recklessly or repeatedly failing to perform legal services competently.

5           By not appearing at the March 13, 2002, court hearing, by not timely filing an answer on  
6 behalf of Sharon Obanda, by allowing default to be entered against Sharon Obanda and not taking  
7 any action to set it aside, and by not filing a trial brief, Respondent intentionally, recklessly or  
8 repeatedly did not perform legal services competently, in wilful violation of rule 3-110(A).

9           **Count Two: Rule 3-310(C)(1) (Potential Conflict of Interest - Multiple Clients)**

10          Rule 3-310(C)(1) prohibits an attorney from representation of more than one client in a  
11 matter in which the interests of the clients potentially conflict without the informed written consent  
12 of each client.

13          By representing Gregory, Sharon, and Clint Obanda in matters where their interests could  
14 potentially conflict without first obtaining informed, written consent from each of them, Respondent  
15 wilfully violated rule 3-310(C)(1).

16          **Count Three: Section 6068(m) (Failure to Respond to Client Inquiries)**

17          Section 6068(m) of the Business and Professions Code<sup>5</sup> requires an attorney to respond  
18 promptly to reasonable status inquiries of clients and to keep clients reasonably informed of  
19 significant developments in matters with regard to which the attorney has agreed to provide legal  
20 services.

21          By not responding to the Obandas' telephone inquiries regarding the status of their matters,  
22 and by failing to respond to Clint Obanda's office visit, Respondent did not respond to his clients'  
23 reasonable status inquiries, in wilful violation of section 6068(m).

24          **Count Four: Section 6068(m) (Failure to Communicate Significant Developments)**

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26          <sup>4</sup>Unless otherwise noted, all further references to "rule(s)" refer to the Rules of  
27 Professional Conduct.

28          <sup>5</sup>Unless otherwise noted, all further references to "section" refer to the Business and  
Professions Code.

1 Section 6068(m) requires an attorney to keep clients reasonably informed of significant  
2 developments in matters with regard to which the attorney has agreed to provide legal services.

3 By not notifying Sharon Obando about the entry of default, not notifying the Obandos that  
4 he did not file a trial brief, and by not notifying the Obandos that judgment had been entered against  
5 them, Respondent failed to keep his clients reasonably informed of significant developments and  
6 wilfully violated section 6068(m).

7 **Count Five: Rule 3-700(D)(1) (Failure to Return File)**

8 Rule 3-700(D)(1) requires an attorney, whose employment has terminated, to promptly  
9 release to the client, at the request of the client, all the client papers and property.

10 By repeatedly postponing the date when the Obandas' file would be available and by not  
11 releasing their file until after the State Bar had to contact him, Respondent failed to promptly release  
12 all client papers and property at the client's request after termination of employment in wilful  
13 violation of rule 3-700(D)(1).

14 **Count Six: Rule 3-700(D)(2) (Failure to Refund Unearned Fees)**

15 Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly  
16 refund any part of a fee paid in advance that has not been earned.

17 By not refunding unearned attorney's fees until after approximately two months of requests  
18 from the Obandas, Respondent did not promptly refund a fee paid in advance that had not been  
19 earned, in wilful violation of rule 3-700(D)(2).

20 **Count Seven: Rule 4-100(A) (Failure Maintain Client Funds in Trust)**

21 Rule 4-100(A) requires an attorney to deposit in a bank account labeled "Trust Account,"  
22 "Client's Funds Account" or words of similar import all funds received or held for the benefit of  
23 clients.

24 The NDC alleges that Respondent's failure to maintain at least \$6,806.00<sup>6</sup> in his client trust  
25 account between July 30, 2002, and December 2, 2002, on behalf of the Obandos constitutes a  
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28 <sup>6</sup>The court considers this amount to be a typographical error since Respondent refunded a  
total of \$6,806.91 to the Obandas.

1 violation of rule 4-100(A). The NDC further alleges that these funds were the unearned portion of  
2 advanced attorney's fees. Such funds are not required to be maintained in a client trust account.  
3 Therefore the court finds there is a lack of clear and convincing evidence that Respondent failed to  
4 maintain client funds in trust in violation of rule 4-100(A).

5 **Count Eight: Section 6106 (Moral Turpitude)**

6 Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude,  
7 dishonesty or corruption.

8 The NDC alleges that by failing to maintain at least \$6,806.00 in his client trust account  
9 between July 30, 2002, to December 2, 2002, Respondent misappropriated client funds, an act  
10 involving moral turpitude, dishonesty or corruption.

11 Since Respondent was not required to maintain the advanced fees in trust, no  
12 misappropriation occurred. No other evidence supporting misappropriation is provided. Therefore  
13 there is no basis for charging a section 6106 violation, and the court finds there is a lack of clear and  
14 convincing evidence that Respondent committed an act involving moral turpitude, dishonesty, or  
15 corruption in violation of section 6106.

16 **C. Case No. 03-O-01064 (The McClarman Matter [Counts 9-15])**

17 **Facts**

18 On or about August 24, 2002, Inge Johnson-McClarman hired Respondent to handle a  
19 probate matter involving beneficiary designations in her deceased husband's insurance policy with  
20 Conseco Insurance Companies and bank account held at Washington Mutual Bank. McClarman paid  
21 Respondent \$2,000.00 as advanced attorney's fees.

22 McClarman's sons, Jerry Johnson and John Johnson, assisted her with her legal and financial  
23 affairs. McClarman authorized each son to act on her behalf during Respondent's representation of  
24 her.

25 In or about October 2002, Respondent informed McClarman and Jerry Johnson that he had  
26 sent letters to Conseco and Washington Mutual. In December 2002, McClarman learned that  
27 Respondent did not send any correspondence to either Conseco Insurance Companies or Washington  
28 Mutual Bank or otherwise contact either entity regarding McClarman's probate matter. Respondent

1 did not perform any services involving the beneficiary designations in McClarman's deceased  
2 husband's insurance policy or bank account.

3 On December 27, 2002, McClarman terminated Respondent's services, requested an  
4 accounting of fees, a refund of all unearned fees, and all documents relating to her probate matter.  
5 On that same date, Respondent informed McClarman that he expended one hour of work on her  
6 probate matter, that his billing rate was \$200/hour, and that he would refund the unearned portion  
7 of advanced attorney's fees to McClarman by the second week of January 2003.

8 On January 14, 15, 16, 17, and 20, 2003, McClarman telephoned Respondent and left  
9 messages requesting Respondent to either refund the unearned fees or call her back. At the time the  
10 NDC was filed Respondent still had not refunded any portion of the unearned advanced attorney's  
11 fees or released any documents related to the probate matter or provided a written accounting of the  
12 advanced attorney's fees to McClarman.

13 On January 28, 2003, the State Bar opened an investigation, case no. 03-O-01064, pursuant  
14 to a complaint filed by McClarman.

15 On March 27, 2003, and April 15, 2003, a State Bar investigator mailed a letter to  
16 Respondent requesting him to respond in writing to the allegations of misconduct being investigated  
17 in the McClarman matter. The State Bar investigator mailed the letters to Respondent at his official  
18 membership records address by first-class mail, postage prepaid. The United States Postal Service  
19 did not return either letter as undeliverable or for any other reason. Respondent did not respond to  
20 either letter or otherwise communicate with the State Bar.

21 **Legal Conclusions**

22 **Count Nine: Rule 3-110(A) (Failing to Perform Competently)**

23 Rule 3-110(A) of the Rules of Professional Conduct prohibits an attorney from intentionally,  
24 recklessly or repeatedly failing to perform legal services competently.

25 By not performing any services involving the beneficiary designations in McClarman's  
26 deceased husband's insurance policy or bank account, Respondent recklessly or repeatedly did not  
27 perform legal services competently in wilful violation of rule 3-110(A).

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1           **Count Ten: Section 6068(m) (Failure to Respond to Client Inquiries)**

2           Section 6068(m) of the Business and Professions Code requires an attorney to respond  
3 promptly to reasonable status inquiries of clients and to keep clients reasonably informed of  
4 significant developments in matters with regard to which the attorney has agreed to provide legal  
5 services.

6           Although the NDC alleges that between November 16, 2002, and December 19, 2002,  
7 McClarman, and her sons telephoned Respondent at least thirty-three times to inquire about case  
8 status and left messages requesting Respondent to call back to discuss the status of the probate  
9 matter, there is no allegation that Respondent failed to respond to any of these status inquiries. Since  
10 the allegations of the NDC are deemed admitted as a result of Respondent's default, the absence of  
11 the allegation regarding Respondent's failure to respond to the status inquiries, precludes a finding  
12 of a violation of section 6068(m). Thus, the court finds there is a lack of clear and convincing  
13 evidence that Respondent failed to respond to reasonable client inquiries in violation of section  
14 6068(m).

15           **Count Eleven: Rule 3-700(D)(2) (Failure to Refund Unearned Fees)**

16           Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly  
17 refund any part of a fee paid in advance that has not been earned.

18           By not refunding the advanced attorney's fees, after McClarman terminated Respondent's  
19 employment, Respondent did not refund a fee paid in advance that had not been earned, in wilful  
20 violation of rule 3-700(D)(2).

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

22           Rule 3-700(D)(1) requires an attorney, whose employment has terminated, to promptly  
23 release to the client, at the request of the client, all the client papers and property.

24           By not releasing any documents related to the probate matter to McClarman, Respondent  
25 failed to promptly release all client papers and property at the client's request after termination of  
26 employment in wilful violation of rule 3-700(D)(1).

27           **Count Thirteen: Rule 4-100(B)(3) (Failure to Render Accounting)**

28           Rule 4-100(B)(3) requires an attorney to maintain complete records of all client funds in the

1 member's possession and render appropriate accounts to the client regarding them.

2 By not providing McClarman a written accounting of the fees she advanced to him,  
3 Respondent failed to render an appropriate accounting of client funds in wilful violation of 4-  
4 100(B)(3).

5 **Count Fourteen: Section 6106 (Moral Turpitude)**

6 Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude,  
7 dishonesty or corruption.

8 By informing McClarman and Jerry Johnson that he had sent letters to Conseco and  
9 Washington Mutual when he had not, Respondent misrepresented material facts to his client and  
10 committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

11 **Count Fifteen: Section 6068(i) (Failure to Cooperate in State Bar Investigation)**

12 Section 6068(i) requires an attorney to cooperate and participate in any disciplinary  
13 investigation or proceeding pending against him.

14 By not responding to the State Bar investigator's letters of March 11, 2003, and April 1,  
15 2003, with respect to the Obando matter, and by not responding to the State Bar investigator's letters  
16 of March 27, 2003, and April 15, 2003, with respect to the McClarman matter, Respondent did not  
17 cooperate in a disciplinary investigation, in wilful violation of section 6068(i).

18 **IV. LEVEL OF DISCIPLINE**

19 **A. Aggravating Circumstances**

20 Respondent's multiple acts of misconduct are an aggravating factor. (Standard 1.2(b)(ii),  
21 Rules Proc. Of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct (Standards).)

22 Respondent's conduct significantly harmed his clients since his failure to competently  
23 perform, resulted in the entry of default against one client, an adverse judgment against two clients,  
24 and the eviction of two clients. (Standard 1.2(b)(iv).)

25 Respondent made no attempt to rectify or atone for the consequences of his misconduct in  
26 the McClarman matter. (Standard 1.2(b)(v).)

27 Respondent's lack of candor and cooperation with the State Bar during a disciplinary  
28 proceeding, evidenced by his failure to participate prior to entry of default, is an aggravating

1 circumstance. (Standard 1.2(b)(vi).) The court notes that the conduct relied on for this finding  
2 closely equals the misconduct giving rise to the finding of culpability under 6068(i) and  
3 correspondingly assigns little weight to this factor in aggravation. (*In the Matter of Bailey* (Review  
4 Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225 [Respondent's failure to participate in disciplinary  
5 proceeding before entry of default found to be aggravating factor warranting little weight since  
6 conduct relied upon for the finding in aggravation so closely resembled the conduct relied upon for  
7 culpability finding under section 6068(i)].)

8 **B. Mitigating Circumstances**

9 Respondent bears the burden of establishing mitigation by clear and convincing evidence,  
10 and since he did not participate in these proceedings, no mitigating evidence was presented.  
11 However, for the purpose of mitigation, the court takes judicial notice, pursuant to Evidence Code  
12 section 452(h), of the membership records of the State Bar and the fact that Respondent has no prior  
13 record of discipline. (Standard 1.2(e)(i).) Respondent had been in practice approximately fifteen  
14 and one-half years prior to the start of his misconduct in the Obando matter. The court, therefore,  
15 considers as an appropriate factor in mitigation Respondent's absence of a prior record of discipline.

16 **Discussion**

17 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the  
18 public, to preserve public confidence in the profession, and to maintain the highest possible  
19 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; Standard  
20 1.3.)

21 Standard 1.6 provides that the appropriate sanction for the misconduct found must be  
22 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of  
23 imposing discipline. If two or more acts of professional misconduct are found in a single  
24 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions.  
25 (Standard 1.6(a).) The standards, however, are guidelines from which the court may deviate in  
26 fashioning the most appropriate discipline considering all the proven facts and circumstances of a  
27 given matter. (*Howard v. State Bar* (1990) 51 Cal.3d 215.) They are not mandatory sentences  
28 imposed in a blind or mechanical manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

Standards 2.3, 2.4(b), 2.6(a), and 2.10 also apply in this matter. The most severe sanction is suggested by standard 2.3 which provides for actual suspension or disbarment.

Respondent has been found culpable in two client matters of various violations of the rules and statutes governing attorney conduct, specifically committing an act of moral turpitude, failing to competently perform legal services in two matters, multiple failures to communicate with clients, failing to refund unearned fees in two matters, representing clients with potentially adverse interests in one matter, failing to properly render an accounting in one matter, and failing to cooperate in the State Bar's investigation of client complaints in two matters. There is mitigation for the lack of a prior record of discipline for approximately fifteen and one-half years. In aggravation, the court has found multiple acts of misconduct, client harm, indifference toward rectification or atonement, and failure to participate in the proceeding prior to the entry of default.

Based on a finding of culpability on all charged counts, the State Bar recommends Respondent's disbarment. This recommendation is excessive in light of the fact that the court has not found Respondent culpable of three charged counts.<sup>7</sup>

Although the court did not find case law involving misconduct identical to that of Respondent's, the court has reviewed a number of cases involving misconduct closely similar in arriving at its discipline recommendation.

In *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343, discipline consisting of two years stayed suspension with one-year actual suspension was imposed. In this default proceeding involving two client matters, the attorney failed to communicate, failed to competently perform and improperly withdrew from employment in both matters, collected an illegal fee in one matter, practiced law while suspended and committed an act of moral turpitude by intentionally deceiving a client in one matter, and failed to cooperate with the State Bar investigation in both matters. The attorney's thirteen years of practice without prior discipline was a factor in mitigation. In aggravation, the court found client harm, multiple acts of wrongdoing, and

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<sup>7</sup>This recommendation also exceeds the 18-month actual suspension the State Bar recommended in its motion for entry of default.

1 indifference toward rectification of misconduct. Although the attorney had a prior record of  
2 discipline, the misconduct occurred contemporaneously with the offenses of the current proceeding  
3 and was afforded minimal weight.

4 In *Bernstein v. State Bar* (1990) 50 Cal.3d 221, an attorney received a five-year stayed  
5 suspension with a two-year actual suspension for misconduct involving three client matters. In each  
6 matter the attorney failed to competently perform, failed to return client files and failed to return  
7 unearned fees. There were no factors in mitigation. In aggravation, the attorney was previously  
8 disciplined for misappropriation, clients were harmed, and the attorney displayed indifference toward  
9 rectification as well as a lack of candor.

10 In *In the Matter of Peterson* (1990) 1 Cal. State Bar Ct. Rptr. 73, a defaulting attorney  
11 received a three-year stayed suspension with one-year actual suspension for misconduct involving  
12 three clients. The attorney failed to perform and improperly withdrew in each matter, and failed to  
13 cooperate with the State Bar investigations. Although the attorney had no prior record of discipline,  
14 this was not considered a mitigating factor since the attorney practiced only six years before his  
15 misconduct commenced. In aggravation, the matter involved client harm, multiple acts of  
16 wrongdoing, indifference toward rectification, and a lack of candor and cooperation.

17 In *Carter v. State Bar* (1988) 44 Cal.3d 1091, the attorney received a two-year stayed  
18 suspension with six months actual suspension for misconduct related to two matters involving a  
19 single client. The attorney failed to competently perform, failed to return unearned fees, failed to  
20 return client files, and improperly withdrew from employment in both matters. In addition the  
21 attorney committed an act of moral turpitude by intentionally deceiving the client. There were no  
22 factors in mitigation. In aggravation, Respondent had a prior incident of discipline for similar  
23 misconduct and displayed indifference toward rectification.

24 Because Respondent failed to communicate, failed to provide an accounting, failed to  
25 cooperate with the State Bar investigations, and represented clients with potentially conflicting  
26 interests, his misconduct is more extensive than that described in *Carter* and thus, warrants more  
27 severe discipline. Since Respondent practiced for over 15 years with no prior record of discipline  
28 and his misconduct involves two client matters, rather than three, Respondent's misconduct warrants

1 less severe discipline than that in *Bernstein*.

2 Although the facts involved in *Burckhardt* and *Peterson* are not identical to the facts involved  
3 in Respondent's matter, in balance, the misconduct, the factors in aggravation, and the factors in  
4 mitigation are sufficiently similar to the facts in this matter to offer the court guidance in its  
5 discipline recommendation.

6 After considering Respondent's misconduct and the law, and balancing the aggravating and  
7 mitigating factors, the court recommends, among other things, actual suspension of one year and  
8 until Respondent makes restitution, and complies with rule 205.

9 **V. DISCIPLINE RECOMMENDATION**

10 Accordingly, it is hereby recommended that Respondent JERALD SCOTT BENNETT be  
11 suspended from the practice of law for two years, that said suspension be stayed, and that he be  
12 actually suspended from the practice of law for one year and until he provides satisfactory proof to  
13 the State Bar's Office of Probation of payment of restitution to Inge Johnson-McClarman (or the  
14 Client Security Fund, if appropriate) in the amount of \$2,000.00 plus 10% interest per annum from  
15 December 27, 2002, and until the State Bar Court grants a motion to terminate Respondent's actual  
16 suspension at its conclusion or upon such later date ordered by the court. (Rules Proc. of State Bar,  
17 rule 205(a), (c).)

18 It is also recommended that Respondent be ordered to comply with any probation conditions  
19 reasonably related to this matter that may hereinafter be imposed by the State Bar Court as a  
20 condition for terminating his actual suspension.

21 If the period of actual suspension reaches or exceeds two years, it is further recommended  
22 that Respondent remain actually suspended until he has shown proof satisfactory to the State Bar  
23 court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to  
24 Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (Rules Proc. of  
25 State Bar, rule 205(b).)

26 It is further recommended that Respondent be ordered to comply with the requirements of  
27 rule 955 of the California Rules of Court within 30 calendar days of the effective date of the  
28 Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days

1 of the effective date of the order showing her compliance with said order.

2 It is further recommended that Respondent be ordered to take and pass the Multistate  
3 Professional Responsibility Examination given by the National Conference of Bar Examiners during  
4 the period of his actual suspension and furnish satisfactory proof of such to the State Bar's Office  
5 of Probation within said period.

6 **VI. COSTS**

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

9  
10  
11 Dated: June 3<sup>rd</sup>, 2004

  
ROBERT M. TALCOTT

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 June 8, 2004, I deposited a true copy of the following document(s):

**DECISION, filed June 8, 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:

**JERALD S. BENNETT  
506 W. GRAHAM AVE #104  
LAKE ELSINORE CA 92330**

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

**JOY CHANTARASOMPOTH, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 8, 2004.**



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