



1 certified mail, return receipt requested, as provided in Business and Professions Code section<sup>2</sup>  
2 6002.1(c) ("official address"). Service was deemed complete as of the time of mailing. (*Lydon*  
3 *v. State Bar* (1988) 45 Cal.3d 1181, 1186.) On November 1, 2004, the State Bar received the  
4 signed return receipt for this correspondence.

5 On November 8, 2004, respondent was properly served at his official address with a  
6 notice advising him, among other things, that a status conference would be held on December 14,  
7 2004. He did not appear at the December 14 status conference. On December 17, 2004, he was  
8 properly served at his official address with an order memorializing the status conference and  
9 advising him of another status conference to be held on January 20, 2005.

10 Respondent did not file a responsive pleading to the NDC. On February 3, 2005, a  
11 motion for entry of default was filed and properly served on respondent at his official address by  
12 certified mail, return receipt requested. The motion advised him that minimum discipline of six  
13 months actual suspension would be sought if he was found culpable. He did not respond to the  
14 motion.

15 On February 22, 2004, the court entered respondent's default and enrolled him inactive  
16 effective three days after service of the order. The order was properly served on him at his  
17 official address on that same date by certified mail, return receipt requested. The return receipt  
18 indicates delivery on February 24, 2005, to "Leslie Oliver."

19 **Case Nos. 04-O-13604 and 04-O-14343**

20 The NDC was filed on February 23, 2005, and was properly served on respondent on that  
21 same date at his official address, by certified mail, return receipt requested. On March 3, 2005,  
22 the State Bar received the signed return receipt for this correspondence.

23 On March 9, 2005, respondent was properly served at his official address with a notice  
24 advising him, among other things, that a status conference would be held on April 13, 2005. He  
25 did not appear at the April 13 status conference. On that same date, he was properly served at his  
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27 <sup>2</sup>All future references to "section" are to the Business and Professions Code unless otherwise  
28 specified.

1 official address with an order memorializing the status conference and advising him that all of  
2 the matters addressed in this decision were consolidated.

3 Respondent did not file a responsive pleading to the NDC. On April 27, 2005, a motion  
4 for entry of default was filed and properly served on respondent at his official address by certified  
5 mail, return receipt requested. The motion advised him that minimum discipline of one year  
6 actual suspension would be sought if he was found culpable on the consolidated matters. He did  
7 not respond to the motion.

8 On May 16, 2005, the court entered respondent's default and enrolled him inactive  
9 effective three days after service of the order. The order was properly served on him at his  
10 official address on that same date by certified mail, return receipt requested.

11 The State Bar's efforts to contact respondent were unsuccessful with a few exceptions.  
12 During a January 19, 2005, telephone conversation with the Deputy Trial Counsel, respondent  
13 identified himself as being, at one time, the attorney who had Bar number 83901. He said that he  
14 was in a meeting and would have to call her back. He never did.

15 During the January 20, 2005, status conference, the court called respondent at the same  
16 telephone number as he had been reached the previous day. There was no answer and a message  
17 was left on the voicemail.

18 On April 19, 2005, the Deputy Trial Counsel again reached respondent by telephone.  
19 Respondent confirmed that he was aware of the pending disciplinary matters. He was advised  
20 about the missed status conferences, the entry of default in one of the matters and the default  
21 motion to be filed in the other case. They discussed the matters briefly and he promised to  
22 contact the Deputy Trial Counsel on or before April 22, 2005. As of April 27, 2005, respondent  
23 has not contacted the Deputy Trial Counsel.

24 On its own motion, the court judicially notices its records pursuant to Evidence Code  
25 section 452(d)(1) which indicate that the correspondence the court sent to respondent was not  
26 returned as undeliverable.

27 The matter was submitted for decision without hearing on May 31, 2005, after the State  
28 Bar waived hearing and filed a brief regarding culpability and discipline on the consolidated

1 matters.

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

3 The court's findings are based on the allegations contained in the NDC as they are  
4 deemed admitted and no further proof is required to establish the truth of those allegations.  
5 (Section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).) The findings are also based on any  
6 evidence admitted.

7 It is the prosecution's burden to establish culpability of the charges by clear and  
8 convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.  
9 163, 171.)

10 **Jurisdiction**

11 Respondent was admitted to the practice of law in California on November 29, 1978, and  
12 has been a member of the State Bar at all times since.

13 **Case Nos. 03-O-02664 and 04-O-10458 - The Meniketti Matter**

14 **Facts**

15 On April 2, 2001, Donelle V. Meniketti retained respondent to represent her, her husband  
16 Keith and her minor children, Kyle and Ryan, in a personal injury matter on a contingent-fee  
17 basis.

18 On July 5, 2001, respondent filed an action entitled *Keith Meniketti, et al. v. California*  
19 *State Automobile Association, et al.*, Alameda County Superior Court case no. CV020893-8.  
20 Respondent did not file the application for appointment of guardian ad litem as required by Code  
21 of Civil Procedure section 372 on behalf of Kyle and Ryan.

22 On September 25, 2001, respondent filed a first amended complaint in the case but, again,  
23 did not seek appointment of a guardian ad litem for the two minor children.

24 On July 29, 2002, defendant California State Automobile Association ("CSAA")  
25 propounded written discovery on respondent for the Menikettis. Respondent did not serve  
26 responses to the discovery.

27 On August 16, 2002, the California Supreme Court entered an order no. S108829,  
28 effective September 4, 2002, actually suspending respondent from the practice of law for

1 nonpayment of the State Bar annual membership fees. On that same date, the State Bar's  
2 membership billing services properly served respondent with a copy of this order at his then-  
3 official address on State Street in Santa Barbara. This correspondence was sent by first-class  
4 mail with postage prepaid. This suspension ended on May 2, 2003.

5 Effective September 3, 2002, respondent was placed on administrative inactive status for  
6 noncompliance with Minimum Continuing Legal Education requirements. The inactive status  
7 ended on April 23, 2003.

8 On October 3, 2002, respondent appeared at a case management conference on the  
9 Menikettis' behalf although he was not entitled to practice law at that time. The superior court  
10 scheduled another case management conference for January 9, 2003, and also referred the case to  
11 alternate dispute resolution for completion by that same date.

12 On December 17, 2002, CSAA filed and served a motion for judgment on the pleadings.  
13 At the January 14, 2003, hearing on the motion, the court's tentative ruling, which was  
14 published, was not contested by any party. Accordingly, the motion for judgment on the  
15 pleadings was granted and an order to that effect was filed on January 21, 2003. The next day,  
16 CSAA filed and served on all parties a notice of order granting this motion.

17 the ruling granted leave to amend for plaintiffs to demonstrate that the incompetency of the  
18 minor plaintiffs to appear in the action had been cured.

19 On January 22, 2003, CSAA filed and served a motion for an order compelling discovery  
20 responses by the Menikettis and for monetary sanctions. A hearing was scheduled for February  
21 19, 2003, on the motion.

22 On February 13, 2003, respondent, who was not entitled to practice law, filed applications  
23 for the appointment of a guardian ad litem for Ryan and Kyle.

24 On February 19, 2003, the superior court granted CSAA's motion to compel responses to  
25 discovery and for monetary sanctions.

26 Respondent appeared at the case management conference on February 24, 2003, although  
27 he was not entitled to practice law. The court continued the conference until May 22, 2003.

28 On March 17, 2003, the superior court entered an order denying the applications for

1 appointment of a guardian ad litem for Kyle and Ryan because respondent was not entitled to  
2 practice law.

3 On May 3, 2003, respondent resumed active status with the State Bar.

4 In the spring of 2003, the Menikettis began to worry about the progress of their lawsuit  
5 and unsuccessfully tried to contact respondent at his office. They hired attorney Matthew  
6 Righetti to ascertain the status of their case since respondent was not responding to their  
7 inquiries.

8 During the last week of May 2003, Donelle Meniketti asked respondent to return their  
9 files and to sign substitution of attorney forms.

10 On May 22, 2003, respondent did not appear at a case management conference on the  
11 Menikettis' case although he was still the attorney of record on the matter. Attorney Righetti  
12 specially appeared on the Menikettis' behalf and informed the court about respondent's  
13 suspension and other problems the Menikettis were having with him, including his refusal to turn  
14 over their files and to sign the substitution of attorney forms. The court issued an order requiring  
15 respondent to sign the substitution of attorney forms and to return the files to the Menikettis. The  
16 case management conference was continued until July 7, 2003.

17 On May 22, 2003, Donelle Meniketti sent via facsimile the May 22 superior court order  
18 to respondent. Respondent did not respond to the order.

19 After two weeks passed, Righetti sent respondent an email demanding that he honor the  
20 May 22 order.

21 On June 6, 2003, Righetti hired a process server to serve the May 22 order on respondent.  
22 The process server could not serve the order because respondent's address turned out to be a  
23 "gentlemen's club." The process server did manage to arrange a meeting with respondent,  
24 however. The May 22 order was hand-delivered to him on June 10, 2003.

25 On June 13, 2003, Righetti filed an ex parte application on behalf of the Menikettis to  
26 obtain an order compelling respondent's appearance in court to sign the substitution of attorney  
27 forms and to deliver the clients' files or be held in contempt.

28 On July 8, 2003, respondent signed the substitution of attorney form for Donelle

1 Meniketti. On July 10, 2003, he signed a similar form for Keith Meniketti.

2 In July 2003, respondent turned over a part of the Menikettis' files to Donelle Meniketti.

3 On June 23, 2003, the State Bar opened an investigation on case no. 03-O-02664 pursuant  
4 to a complaint filed by Donelle Meniketti regarding allegations of misconduct by respondent in  
5 this matter. On August 21, 2003, a State Bar investigator sent respondent a letter requesting that  
6 respondent answer in writing by September 5, 2003, specific allegations of misconduct regarding  
7 the Meniketti complaint. The letter was addressed to respondent's then-official address on State  
8 Street in Santa Barbara and sent by first-class mail, postage prepaid.

9 On August 28, 2003, respondent called the State Bar investigator and provided his new  
10 (current official) address on Chapala Street in Santa Barbara. He was informed to update his  
11 official address by contacting the membership records office of the State Bar.<sup>3</sup> He did not  
12 request an extension of time in which to respond to the August 21 letter.

13 On September 17, 2003, the State Bar investigator wrote to respondent again regarding  
14 the Meniketti matter and asking that he respond in writing by October 1, 2003, to the allegations  
15 of misconduct in that matter. The letter was addressed to respondent's current official address on  
16 Chapala Street in Santa Barbara, rather than to his then-current official address. The letter was  
17 sent by first-class mail, postage prepaid, and was not returned as undeliverable. Respondent did  
18 not answer this letter.

19 On January 22, 2004, the State Bar opened an investigation on case no. 04-O-10458  
20 pursuant to a complaint filed by the Honorable Steven A. Brick, Judge of the Alameda County  
21 Superior Court, regarding allegations of misconduct by respondent in the Meniketti matter. On  
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23 <sup>3</sup>On its own motion and pursuant to Evidence Code section 452(h), the court judicially notices  
24 the State Bar's membership records which indicate that respondent's State Street official address  
25 was effective from March 7, 2001, until the Chapala Street official address became effective on  
26 May 10, 2004. From the facts deemed admitted, it is evident that respondent had a new address  
27 since at least August 28, 2003, and did not report it to the State Bar until May 2004. However,  
28 respondent was not charged with wilfully violating section 6068(j) which, in relevant part,  
essentially requires an attorney to maintain a current address and telephone number with the State  
Bar and to notify the State Bar within 30 days of any change in same.

1 April 27, 2004, a State Bar investigator sent respondent a letter requesting that respondent  
2 answer in writing by May 11, 2004, specific allegations of misconduct regarding this complaint.  
3 The letter was addressed to respondent's then-official address and sent by first-class mail,  
4 postage prepaid. On May 11, 2004, the letter was returned to the State Bar as undeliverable and  
5 bore an alternate address on Chapala Street, now respondent's official address.

6 On May 12, 2004, the investigator wrote to respondent again regarding Judge Brick's  
7 complaint as to the Meniketti matter and asking that he respond in writing by May 28, 2004, to  
8 the allegations of misconduct. The letter also asked respondent to update his official address  
9 with the State Bar's membership records office. The letter was addressed to respondent's  
10 current official address on Chapala Street in Santa Barbara, and sent by first-class mail with  
11 postage prepaid. It was not returned as undeliverable or for any other reason.

12 On June 8, 2004, the investigator wrote to respondent again regarding Judge Brick's  
13 complaint and asking that he respond in writing by June 22, 2004, to the allegations of  
14 misconduct. The letter was addressed to respondent's current official address and was not  
15 returned as undeliverable or for any other reason.

16 Respondent did not answer any of the investigator's letters regarding Judge Brick's  
17 complaint or otherwise communicate with the investigator regarding it.

18 **Conclusions of Law**

19 **Count One - Rule 3-110(A) of the Rules of Professional Conduct<sup>4</sup> (Failing to Perform**  
20 **Competently)**

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

23 By not responding to discovery on his clients' behalf; not seeking the appointment of a  
24 guardian ad litem for the minor plaintiffs; and not appearing at the May 22, 2003, case  
25 management conference, respondent intentionally, recklessly or repeatedly did not perform  
26 competently in wilful violation of Rule 3-110(A).

27 \_\_\_\_\_  
28 <sup>4</sup>Future references to "rule" are to the Rules of Professional Conduct.



1 **Count Two - Rule 3-700(D)(1) (Failure to Return Client Papers or Property)**

2 Rule 3-700(D)(1) requires an attorney whose employment has been terminated to  
3 promptly release to the client, at the client's request, all client papers and property, subject to any  
4 protective order or non-disclosure agreement. This includes correspondence, pleadings,  
5 deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably  
6 necessary to the client's representation, whether the client has paid for them or not.

7 By not promptly returning the Menikettis' complete file as requested after his services  
8 were terminated in May 2003 and as ordered by the superior court<sup>5</sup>, respondent wilfully violated  
9 rule 3-700(D)(1).

10 **Counts Three and Five - Section 6068(i) (Failure to Participate in a Disciplinary**  
11 **Investigation)**

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

14 By not responding to the investigator's August 21, 2003, letter regarding the Meniketti  
15 complaint and to the letters sent on April 27, May 12 and June 8, 2004, regarding Judge Brick's  
16 complaint, respondent did not participate in the investigation of the allegations of misconduct  
17 regarding the Meniketti case in wilful violation of 6068(i).

18 **Count Four - Section 6068(a) (Engaging in the Unauthorized Practice of Law)**

19 Section 6068(a) requires an attorney to support the Constitution as well as state and  
20 federal laws.

21 Section 6125 requires an individual to be a member of the State Bar in order to practice  
22 law in California.

23 Section 6126(a) makes it a misdemeanor for an individual to advertise or to hold him- or  
24 herself out as practicing or entitled to practice law or otherwise practicing law when he or she is

25 \_\_\_\_\_  
26 <sup>5</sup>Respondent was not charged with wilfully violating section 6103, which, in relevant part,  
27 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a  
28 court order requiring him or her to do or to forbear an act connected with or in the course of his  
or her profession, which he or she ought in good faith to do or forbear.

1 not an active member of the State Bar of California.

2 By making two court appearances and filing applications for appointment of a guardian  
3 ad litem while he was suspended, respondent held himself out as entitled to practice law when he  
4 was not so entitled. In so doing, he violated sections 6125 and 6126(a) and failed to support  
5 California law in wilful violation of section 6068(a).

6 **Case No. 04-O-13604 - The French Matter**

7 **Facts**

8 In the early 1990s, John W. French first employed respondent to represent him in a  
9 marital dissolution matter. (*French v. French*, Contra Costa County Superior Court case no.  
10 D89-07004.) It was an extremely complicated case because of the distribution of substantial  
11 property from the marriage which continued for several years.

12 Mediation and trial were scheduled for May 24 and June 10, 2004, respectively.

13 Respondent stopped communicating with French. Between November 2003 and April  
14 2004, French repeatedly called him to obtain a status report on the case and each time left a  
15 detailed message to that effect. Respondent received the messages but did not return any of  
16 French's calls. French was becoming increasingly concerned since the mediation and trial dates  
17 were approaching.

18 In May 2004, French employed attorney Peter A. Mankin to represent him in the  
19 dissolution case and to request his file from respondent.

20 During May 2004, French repeatedly called respondent at his office telephone number to  
21 request that respondent release his file to Mankin. Respondent received the calls but did not  
22 return the file.

23 On May 19, 2004, Mankin wrote to respondent asking him to sign an enclosed  
24 substitution of attorney form and to release French's file to him as indicated on the also enclosed  
25 authorization form. This letter was sent to respondent at his official address by first-class mail  
26 with postage prepaid. The letter was not returned as undeliverable or for any other reason.  
27 Respondent received the letter. He did not return the French file to Mankin nor did he sign and  
28 return the substitution of attorney form.

1 On June 2, 2004, Mankin sent respondent a letter again enclosing an authorization to turn  
2 over the French file to Mankin and a substitution of attorney form. The letter was sent to  
3 respondent's official address by certified mail, return receipt requested, and by facsimile to the  
4 fax number set forth on respondent's letterhead. Respondent received this letter but did not  
5 respond to it.

6 Between May and August 2004, Mankin called respondent at his office in order to obtain  
7 French's file and to have respondent execute the substitution of attorney form. Respondent  
8 received these calls but did not turn over the French file or sign the substitution of attorney form.

9 On August 6, 2004, the State Bar opened an investigation on case no. 04-O-13604  
10 pursuant to Mankin's complaint. On August 26, 2004, a State Bar investigator sent respondent a  
11 letter requesting that respondent answer in writing specific allegations of misconduct regarding  
12 Mankin's complaint. The letter also asked respondent to turn over French's file within 10 days  
13 and to send the investigator a copy of the transmittal letter doing so. The letter was addressed to  
14 respondent's official address and sent by first-class mail, postage prepaid. It was not returned to  
15 the State Bar as undeliverable or for any other reason. It was also sent by facsimile to  
16 respondent's fax number. Respondent received the letter but did not answer it. He also did not  
17 return the French file to Mankin.

18 On August 26, 2004, Mankin sent respondent a third letter to an alternate address in Santa  
19 Barbara. The letter asked that respondent sign the substitution of attorney form and turn over the  
20 French file for the upcoming mediation.<sup>6</sup> The letter was sent to respondent by first-class mail  
21 with postage prepaid. The letter was not returned as undeliverable or for any other reason.  
22 Respondent did not answer this letter.

### 23 **Conclusions of Law**

#### 24 **Count One - Section 6068(m) (Failure to Communicate)**

25 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries  
26 of clients and to keep clients reasonably informed of significant developments in matters with  
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28 <sup>6</sup>Mankin had obtained a continuance of the mediation and trial.

1 regard to which the attorney has agreed to provide legal services.

2 Respondent did not respond promptly to French's reasonable status inquiries between  
3 November 2003 and April 2004 in wilful violation of section 6068(m).

4 **Count Two - Rule 3-700(D)(1) (Failure to Return Client Papers or Property)**

5 Rule 3-700(D)(1) requires an attorney whose employment has been terminated to  
6 promptly release to the client, at the client's request, all client papers and property, subject to any  
7 protective order or non-disclosure agreement. This includes correspondence, pleadings,  
8 deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably  
9 necessary to the client's representation, whether the client has paid for them or not.

10 By not returning the French file after his services were terminated and after being asked  
11 to do so, respondent wilfully violated rule 3-700(D)(1).

12 **Count Three - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

13 By not responding to the investigator's August 26, 2004, letter, respondent did not  
14 participate in the investigation of the allegations of misconduct regarding the French case in  
15 wilful violation of 6068(i).

16 **Case No. 04-O-14343 - The Laube Matter**

17 **Facts**

18 In January 2004, William C. Laube retained respondent to represent him in a lawsuit  
19 against his restaurant's landlord for damages resulting from having to replace the kitchen floor in  
20 the restaurant. Respondent had represented Laube regarding the restaurant for 20 years without  
21 incident.

22 On May 17, 2004, respondent sent Laube by facsimile a draft civil complaint and a cover  
23 sheet asking that Laube let respondent know if he wanted to make any changes to the document  
24 before it was filed and served.

25 On May 18, 2004, Laube called respondent about the complaint. During the call,  
26 respondent agreed to file the complaint and to contact the landlord's attorneys about accepting  
27 service of the complaint or otherwise arranging for service on the landlord.

28 From May 10 through early July 2004, Laube left repeated messages for respondent at his

1 office seeking a status report on the case. Respondent received the messages but did not  
2 communicate with Laube.

3 In July 2004, Laube went to the courthouse to try to find out the status of his case. He  
4 learned for the first time that respondent had not filed the complaint.

5 On July 23, 2004, Laube sent respondent a letter to his official address by certified mail,  
6 return receipt requested, asking that respondent contact him about the status of the case by  
7 August 6, 2004. Respondent received the letter on July 26, 2004, but did not respond.

8 On August 17, 2004, Laube sent respondent a letter to his official address by certified  
9 mail, return receipt requested, terminating his services and asking him to return his file.  
10 Respondent received this letter but did not return the file.

11 On September 14, 2004, the State Bar opened an investigation on case no. 04-O-14343  
12 pursuant to Laube's complaint regarding allegations of misconduct by respondent in this matter.  
13 On September 30, 2004, a State Bar investigator sent respondent a letter requesting that  
14 respondent answer in writing specific allegations of misconduct regarding Laube's complaint.  
15 The letter was addressed to respondent's official address and sent by first-class mail, postage  
16 prepaid. It was not returned to the State Bar as undeliverable or for any other reason.  
17 Respondent did not answer the letter or otherwise communicate with the investigator.

18 **Conclusions of Law**

19 **Count Four - Section 6068(m) (Failure to Communicate)**

20 By not answering to Laube's repeated calls or to his two letters, respondent did not  
21 respond promptly to Laube's reasonable status inquiries in wilful violation of section 6068(m).

22 **Count Five - Rule 3-700(D)(1) (Failure to Return Client Papers or Property)**

23 By not returning the file as Laube requested after terminating respondent's services,  
24 respondent wilfully violated rule 3-700(D)(1).

25 **Count Six - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

26 By not responding to the investigator's September 30, 2004, letter, respondent did not  
27 participate in the investigation of the allegations of misconduct regarding the Laube case in  
28 wilful violation of 6068(i).

1 **LEVEL OF DISCIPLINE**

2 **Aggravating Circumstances**

3 Respondent's multiple acts of misconduct are an aggravating factor. (Rules Proc. of State  
4 Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).<sup>7</sup>)

5 Respondent's misconduct significantly harmed clients and the administration of justice.  
6 (Std. 1.2(b)(iv).) In the Meniketti case, respondent's misconduct caused delay and unnecessary  
7 extra efforts for his clients and for the court. A motion on the pleadings was granted against  
8 them without opposition. The guardian ad litem applications were denied because he was not  
9 entitled to practice law when he filed them. They had to retain other counsel. Extra efforts were  
10 required to try to locate and serve respondent with the superior court's May 22, 2003, order. A  
11 court order had to be obtained to have respondent return the Menikettis' file and to sign  
12 substitution of attorney forms. Similarly, in the French matter, other counsel had to be retained  
13 and additional efforts and delays occurred because of respondent's misconduct.

14 Respondent has demonstrated indifference toward rectification of or atonement for the  
15 consequences of his misconduct. (Standard 1.2(b)(v).) He was aware of the disciplinary  
16 proceedings and promised, on several occasions, to contact the State Bar about them but did not  
17 do so.

18 Respondent's failure to participate in these proceedings prior to the entry of default is also  
19 an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward  
20 disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to  
21 participate therein, a serious aggravating factor. ((Std. 1.2(b)(vi); Cf. *In the Matter of Stansbury*  
22 (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

23 **Mitigating Circumstances**

24 Since respondent did not participate in these proceedings and he bears the burden of  
25 establishing mitigation by clear and convincing evidence, the court has been provided no basis  
26 for finding mitigating factors except for the absence of a prior record of discipline over many

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28 <sup>7</sup>Future references to "standard" or "std." are to these standards.

1 years of practice prior to the commencement of the misconduct (nearly 23 years). (Standard  
2 1.2(e)(i).) This is a significant mitigating factor.

3 **Discussion**

4 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to  
5 protect the public, to preserve public confidence in the profession, and to maintain the highest  
6 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;  
7 *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 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  
12 sanctions. (Std. 1.6(a).) The level of discipline is progressive. (Std. 1.7(b).) The standards,  
13 however, are guidelines from which the court may deviate in fashioning the most appropriate  
14 discipline considering all the proven facts and circumstances of a given matter. (*In re Young*  
15 (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They are "not  
16 mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar* (1988) 44  
17 Cal.3d 820, 828.)

18 Standards 2.4(b), 2.6(a) and (d) and 2.10 apply in this matter. The most severe sanction is  
19 found at standard 2.6(a) and (d) which recommends suspension or disbarment for violations of  
20 sections 6067, 6068, 6125 and 6126, depending on the gravity of the offense or harm, if any to  
21 the victim, with due regard to the purposes of imposing discipline.

22 Respondent has been found culpable, in three client matters, of not performing or  
23 communicating with clients or returning their files; not cooperating in four disciplinary  
24 investigations; and practicing law while suspended. Respondent presented no mitigating  
25 circumstances in this default case although the court recognized mitigation for nearly 23 years of  
26 practicing law without discipline. Aggravating circumstances included multiple acts of  
27 misconduct; harm to the administration of justice and to clients; indifference toward rectification  
28 of or atonement for the consequences of misconduct; and not participating in these proceedings

1 prior to the entry of default.

2 The State Bar recommends two years stayed suspension and one year actual suspension,  
3 among other things.

4 The court turned to precedent for guidance in ascertaining the level of discipline in the  
5 present matter.

6 In *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, the attorney, whose default had been  
7 entered and who was unable to obtain relief therefrom, was found culpable of misconduct  
8 involving four clients. In four matters, the attorney failed to perform services; in two matters he  
9 failed to communicate; in two matters he failed to refund legal fees; and in one matter, he  
10 withdrew from employment without giving sufficient notice or delivering necessary papers to his  
11 client. The attorney was also found culpable of failing to cooperate in a State Bar investigation.  
12 The attorney in *Bledsoe* had no prior record of discipline and had practiced law for 17 years. No  
13 pattern of misconduct was found. Nevertheless, the attorney's misconduct resulted in harm to  
14 three of his clients. The Supreme Court suspended the attorney for five years, stayed execution  
15 of his suspension, and placed him on probation for five years on conditions including a two-year  
16 actual suspension and payment of restitution. The dissenting Justices would have disbarred  
17 respondent for this misconduct on the basis of respondent's pattern of abandonment and his  
18 knowing election not to participate in the default hearing. *Bledsoe* presents somewhat more  
19 misconduct and less aggravating and mitigating factors than the present case.

20 In *In the Matter of Trillo* (Review Dept.1990) 1 Cal. State Bar Ct. Rptr. 59, the attorney  
21 was hired to represent two clients in a civil matter and a wage claim for one of the clients against  
22 the same parties. The attorney performed no services with regard to the civil matter and, after  
23 getting a judgment in the labor claim, did not pursue the matter further despite being requested to  
24 do so. The attorney also misrepresented to the clients that he was a partner in the law firm and he  
25 misappropriated approximately \$2,500 in unearned fees and costs. The attorney practiced for 14  
26 years without prior discipline. In aggravation, there were multiple acts of misconduct, client harm  
27 and acting in bad faith toward his clients. Attorney Trillo defaulted in the disciplinary  
28 proceeding. The Review Department recommended that the attorney be suspended from the



1 practice for three years, stayed, on conditions of a three-year probation with actual suspension for  
2 the first year and until he restored the \$2,500 of unearned fees and costs to his clients. *Trillo*  
3 presents somewhat comparable misconduct but less mitigation and aggravation than the present  
4 case.

5 Having considered the evidence and the law, the court recommends, among other things,  
6 a one-year actual suspension from the practice of law. Respondent's misconduct and lack of  
7 participation in this matter raises concerns about his ability or willingness to comply with his  
8 ethical responsibilities to the public and to the State Bar. He has demonstrated disregard for the  
9 welfare of his clients, his profession, the courts and the disciplinary system. No explanation has  
10 been offered that might persuade the court otherwise. It is also recommended that this  
11 suspension remain in effect until respondent explains to this court the reasons for not  
12 participating herein and manifests his willingness to comply fully with probation conditions that  
13 may hereafter imposed. The court believes that these and other provisions set forth below are  
14 adequate to protect the public and proportionate to the misconduct found and so recommends.

#### 15 **DISCIPLINE RECOMMENDATION**

16 Accordingly, it is hereby recommended that respondent LAWRENCE GORDON SMITH  
17 be suspended from the practice of law for two years; that said suspension be stayed; and that he  
18 be actually suspended from the practice of law for one year and until the State Bar Court grants a  
19 motion to terminate respondent's actual suspension at its conclusion or upon such later date  
20 ordered by the court. (Rule 205(a), (c), Rules of Proc. of State Bar.)

21 It is also recommended that he be ordered to comply with the conditions of probation, if  
22 any, hereinafter imposed by the State Bar Court as a condition for terminating his actual  
23 suspension.

24 If the period of actual suspension reaches or exceeds two years, it is further recommended  
25 that respondent remain actually suspended until he has shown proof satisfactory to the State Bar  
26 Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to  
27 standard 1.4(c)(ii). (See also, rule 205(b), Rules of Proc. of State Bar.)

28 It is also recommended that respondent be ordered to comply with the requirements of


1 rule 955 of the California Rules of Court within 30 calendar days of the effective date of the  
2 Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40  
3 days of the effective date of the order showing his compliance with said order.<sup>8</sup>

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

8 COSTS

9 The court recommends that costs be awarded to the State Bar pursuant to Business and  
10 Professions Code section 6086.10, and that those costs be payable in accordance with section  
11 6140.7.

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14  
15 Dated: August 29, 2005

  
16 ROBERT M. TALCOTT  
17 Judge of the State Bar Court

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27 <sup>8</sup>Failure to comply with CRC 955 could result in disbarment. (*Bercovich v. State Bar* (1990)  
28 50 Cal.3d 116, 131.) Respondent is required to file a CRC 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 of California. 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 August 29, 2005, I deposited a true copy of the following document(s):

**DECISION**

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

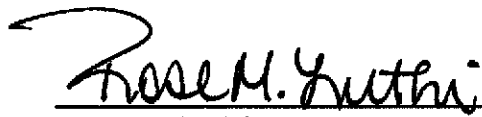
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**LAWRENCE G SMITH, ESQ.**  
**1105 CHAPALA ST**  
**SANTA BARBARA CA 93101**

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

**FUMIKO KIMURA, A/L, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 29, 2005**.

  
\_\_\_\_\_  
**Rose M. Luthi**  
Case Administrator  
State Bar Court