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FEB 17 2005

STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

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In the Matter of)
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THOMAS I. ARMSTRONG,)
)
Member No. 160040,)
)
A Member of the State Bar.)

Case Nos. 03-O-03854-RAH;
03-O-05038 (Cons.)

**DECISION AND
ORDER OF INVOLUNTARY INACTIVE
ENROLLMENT**

I. Introduction

In these two consolidated default matters, Respondent **THOMAS I. ARMSTRONG** is charged with professional misconduct in two client matters, including (1) failure to promptly pay client funds, (2) failure to maintain client funds, (3) failure to notify client of receipt of funds, (4) committing acts of moral turpitude, dishonesty or corruption, (5) commingling client funds, and (6) failure to cooperate with the State Bar.

The Court finds, by clear and convincing evidence, that Respondent is culpable of the charged acts of misconduct. In view of Respondent's serious misconduct and the evidence in aggravation, the Court recommends that Respondent be disbarred.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on Respondent a Notice of Disciplinary Charges (NDC) in case No. 03-O-03854 on August 16, 2004, at his official membership records address. (Rules Proc. of State Bar, rule 60.) The NDC was returned as undeliverable. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On October 8, 2004, the State Bar filed a second Notice of Disciplinary Charges in case No.

1 03-O-05038 and properly served it on Respondent at his official membership records address. The
2 mailing was not returned as undeliverable.

3 On September 14 and November 9, 2004, the State Bar attempted to contact Respondent by
4 telephone at his official membership records phone number. But Respondent was no longer at that
5 number.

6 On October 22, 2004, the Court consolidated the two cases.

7 On the State Bar's motion, Respondent's default was entered on November 29, 2004, and
8 Respondent was enrolled as an inactive member on December 2, 2004, under Business and
9 Professions Code section 6007(e).¹ An order of entry of default was sent to Respondent's official
10 membership records address but was returned as unclaimed.

11 Respondent did not participate in the disciplinary proceedings. The Court took these matters
12 under submission on November 30, 2004, following the filing of the State Bar's brief on culpability
13 and discipline.

14 **III. Findings of Fact and Conclusions of Law**

15 All factual allegations of the NDCs are deemed admitted upon entry of Respondent's default
16 unless otherwise ordered by the Court based on contrary evidence. (Rules Proc. of State Bar, rule
17 200(d)(1)(A).)

18 **A. Jurisdiction**

19 Respondent was admitted to the practice of law in California on November 9, 1992, and has
20 since been a member of the State Bar of California.

21 **B. Case No. 03-O-03854**

22 **1. The Cendant Matter**

23 In May 2001, Cendant Mortgage/PHH Mortgage Services (Cendant) hired Respondent to
24 commence foreclosure proceedings against borrower Timothy Delaney (Loan No. 0001569581).
25 Respondent was retained on an hourly fee basis.

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

1 Respondent prepared a motion for relief from stay on behalf of Cendant in Delaney's
2 bankruptcy proceeding. Between July and September 2001, Cendant paid Respondent \$600 for the
3 preparation of the motion and about \$110 for costs.

4 Respondent began the foreclosure proceedings against Delaney. On September 25, 2001,
5 Respondent told Delaney to pay \$16,931.23 to stop the foreclosure proceedings and reinstate the
6 loan, of which \$15,471.66 represented late fees and \$1,459.57 represented foreclosure fees.

7 On October 29, 2001, Delaney responded to Respondent's demand and paid him \$16,931.23
8 by cashier's check made payable to "Armstrong and Associates."

9 On the same day, Respondent deposited the cashier's check into his client trust account at
10 United California Bank account No. 0785-31555 (CTA). He then immediately withdrew \$15,471.66
11 in the form of a check made payable to Armstrong and Associates. As a result, the balance in the
12 CTA became \$1,901.73 on October 29, 2001, an amount less than the \$16,931.23 which Respondent
13 was required to hold in trust on behalf of Cendant.

14 By November 5, 2001, the CTA's balance dipped to \$582.73. On the same day, Respondent
15 deposited a cashier's check made payable to Cendant in the amount of \$15,471.66 into his CTA.
16 The memo area of the cashier's check noted that the check was for "Delaney/Loan No.:
17 0001569581." Also, on the same day, Respondent made two telephonic transfers of funds to other
18 accounts, bringing the balance of the CTA to \$14,134.39, which was below the amount Respondent
19 was required to hold in trust for Cendant.

20 After he had deposited the payment of \$16,931.23 from Delaney, Respondent never notified
21 Cendant of his receipt of the funds or paid any portion of the funds to Cendant.

22 By the end of November 2001, the CTA's balance fell to \$13,844.39.

23 On December 13, 2001, Respondent filed a bankruptcy petition under Chapter 7 for
24 Armstrong and Associates in the United States Bankruptcy Court, Central District of California, case
25 No. SA01-20203 RA. He did not list Respondent's CTA in the bankruptcy schedules and did not
26 list Cendant as a creditor.

27 //

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1 The balance in Respondent's CTA at United California Bank was as follows:

2 <i>End of Month/Year</i>	<i>Balance</i>
3 December 2001	\$2,156.23
4 January 2002	\$ 851.23
5 February 2002	\$ 86.41

6 After learning that Delaney had paid Armstrong and Associates to reinstate his mortgage,
7 Cendant's attorney Suzanne Hankins wrote to Respondent, requesting that he turn over the funds.
8 Respondent did not forward the funds to Cendant or respond to attorney Hankins's letter.

9 **2. The United California Bank Client Trust Account**

10 Between February 8 and July 22, 2002, Respondent withdrew more than \$8,200 from his
11 CTA for his personal use and business expenses. He withdrew cash on six occasions and wrote at
12 least 16 CTA checks that were made payable to Sprint PCS, San Diego Gas & Electric, Coast
13 Property Management (rent), Pearle Vision Care, Cox Communications, Cingular Wireless,
14 American Mini-Storage, and himself.

15 **3. The State Bar Investigation**

16 On November 7 and 24, 2003, the State Bar wrote to Respondent regarding the Cendant
17 matter. The letters were properly sent to Respondent's membership records address and they were
18 not returned as undeliverable or for any other reason.

19 Sometime after November 24, 2003, Respondent faxed a letter to the State Bar, requesting
20 a two-week extension to respond to the Cendant matter allegations.² Despite the extended deadline,
21

22 ²There is a minor discrepancy between the alleged fact in the August 26, 2004 Notice of
23 Disciplinary Charges and the declaration in the State Bar's motion for entry of default.

24 The Notice of Disciplinary Charges alleged that Respondent sent a fax to the State Bar in
25 response to its letter dated November 24, 2003 (August 26, 2004, Notice of Disciplinary
26 Charges, 8:13-14). At the same time, the State Bar declared in its motion for entry of default that
27 it had not had any contact with Respondent since October 6, 2003 (Declaration of Gordon L.
28 Grenier, 6:20).

Based on the NDC, the Court finds that Respondent had sent a fax to the State Bar in
response to its November 2003 letter (Rules Proc. of State Bar, rule 200(d)(1)(A)). Therefore,
the State Bar's last contact with Respondent was not on October 6, 2003, but sometime on or
after November 24, 2003.

1 Respondent did not respond to either letter or participate in the investigation.

2 ***Count 1: Failure to Promptly Pay Client Funds (Rule 4-100(B)(4) of the Rules of Professional***
3 ***Conduct***³

4 Rule 4-100(B)(4) requires an attorney to promptly pay or deliver any funds or properties in
5 the possession of the attorney which the client is entitled to receive.

6 By failing to forward the payment of \$16,931.23 to Cendant, which Respondent received
7 from Delaney on behalf of Cendant, Respondent, by clear and convincing evidence, wilfully failed
8 to promptly deliver client funds in Respondent's possession which Cendant was entitled to receive
9 in wilful violation of rule 4-100(B)(4). Despite Cendant's attorney Hankins's demand that he turn
10 over the funds, Respondent ignored her request. Respondent has yet to return the funds of
11 \$16,931.23.

12 ***Count 2: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))***

13 Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited
14 in a client trust account and that no funds belonging to the attorney shall be deposited therein or
15 otherwise commingled therewith. It further provides that when the right of the attorney to receive
16 a portion of trust funds is disputed by the client, the disputed portion must not be withdrawn until
17 the dispute is finally resolved.

18 Respondent had a fiduciary duty to hold in trust Delaney's payment of \$16,931.23 in the
19 CTA. But Respondent withdrew the funds on the same day that he had deposited the check and the
20 CTA's balance fell to \$1,901.73. By the end of November 2001, the CTA's balance was \$13,844.39.
21 The balance continued to fluctuate. But in the next three months, the ending balance continued to
22 drop. By the end of February 2002, the CTA's balance fell to \$86.41. Thus, Respondent's failure
23 to hold in trust Delaney's payment received for the benefit of Cendant in the CTA was clearly and
24 convincingly in violation of rule 4-100(A).

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27 ³References to rule are to the current Rules of Professional Conduct, unless otherwise
28 noted.

1 **Count 3: Failure to Notify Client Re Funds (Rule 4-100(B)(1))**

2 Rule 4-100(B)(1) requires an attorney to notify a client promptly of the receipt of the client's
3 funds. By failing to notify Cendant of his receipt of the \$16,931.23 check from Delaney in October
4 2001, Respondent wilfully violated rule 4-100(B)(1).

5 **Count 4: Misappropriation (Bus. & Prof. Code, § 6106)**

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

8 The mere fact that the balance in an attorney's trust account has fallen below the total of
9 amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation.
10 (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of
11 entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker*
12 (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

13 Here, Delaney paid Respondent \$16,931.23 to reinstate his mortgage. But as soon as
14 Respondent deposited the check into his CTA, he began withdrawing funds from the account until
15 the balance dropped to \$86.41 in February 2002. Therefore, because the balance in Respondent's
16 CTA fell below the amount of entrusted funds of \$16,931.23 from October 2001 through February
17 2002 and he had never the paid the funds to Cendant, Respondent misappropriated the money and
18 committed an act of moral turpitude in wilful violation of section 6106.

19 **Count 5: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))**

20 By withdrawing more than \$8,200 from his CTA for personal use and business expenses,
21 Respondent is culpable of commingling funds in his CTA in wilful violation of rule 4-100(A).

22 **Count 6: Failure to Cooperate With the State Bar (§ 6068(i))**

23 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary
24 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's
25 November 7 and 24, 2003 letters or participate in the investigation of the Cendant matter,
26 Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

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1 **C. Case No. 03-O-05038**

2 **1. The Tice Matter**

3 In April 2003, Joanne Tice employed Respondent to prepare estate planning documents on
4 behalf of her parents. Respondent also agreed to deposit insurance and annuity checks made payable
5 to Tice's mother, Evelyn Garrison, into his client trust account and disburse the funds to Tice, who
6 has a general power of attorney to handle her mother's business and personal affairs.

7 On May 8, 2003, Tice paid Respondent \$750 in advanced fees for his services.

8 On July 14, 2003, Tice gave Respondent a check from National Western made payable to
9 Garrison for \$10,827.95 to deposit into his client trust account.

10 On July 18, 2003, Respondent deposited the \$10,827.95 check into his client trust account
11 at Bank of the West, account No. 660-019845 (former account No. 0785-31555).

12 In August 2003, by three separate e-mails, Tice asked Respondent whether the National
13 Western check had cleared the bank so that Respondent may disburse the funds. Respondent
14 received the e-mails but did not respond to or communicate with Tice.

15 A month after he had deposited the National Western check into his client trust account,
16 Respondent still did not disburse the funds to Tice or to anyone on her behalf. On August 29, 2003,
17 the balance in Respondent's client trust account fell to \$4,551.06.

18 On September 2, 2003, Respondent told Tice that he would mail her a check for \$10,827.95
19 and requested that she call him when she received the check. Respondent did not mail the check to
20 Tice.

21 On September 8, 2003, Tice informed Respondent, by e-mail, that she still had not received
22 the check. Respondent received the e-mail but did not respond.

23 On September 16, 2003, after several unsuccessful attempts to contact Respondent at his
24 office, Tice met with Respondent and demanded the return of \$10,827.95. In response, Respondent
25 issued her a check for \$10,827.95 from his client trust account.

26 When Tice deposited the check into her account at Wells Fargo Bank, the bank notified her
27 on September 26, 2003, that the check was returned due to insufficient funds. By e-mail, Tice
28 informed Respondent about the insufficiently funded check and asked him to contact her.

1 Respondent did not.

2 In October 2003, Tice hired attorney Todd Brisco to assist her in obtaining the funds from
3 Respondent. On October 21, 2003, attorney Brisco wrote to Respondent and demanded the return
4 of the funds by October 27, 2003. Respondent received the letter but ignored the demand.

5 On December 8, 2003, attorney Brisco sent a second demand letter to Respondent but to no
6 avail. On December 12, 2003, Tice filed a complaint with the State Bar regarding Respondent's
7 failure to disburse the funds.

8 In June 2004, attorney Mitchell B. Hannah contacted attorney Brisco on behalf of Respondent
9 to discuss the \$10,827.95. On July 30, 2004, attorney Hannah sent a check to attorney Brisco made
10 payable to Tice for \$12,000 drawn from attorney Hannah's client trust account on behalf of
11 Respondent. Attorney Hannah asked Tice to sign a document stating that Tice was satisfied with
12 the restitution received and did not want to pursue a criminal matter against Respondent. Tice
13 refused to sign the document. Absent contrary evidence, the Court finds that Respondent had
14 reimbursed Tice with attorney Hannah's client trust account check in the amount of \$12,000 on July
15 30, 2004.⁴

16 The balance in Respondent's client trust account at Bank of the West was as follows:

<i>Date</i>	<i>Balance</i>
18 August 29, 2003	\$4,551.06
19 September 15, 2003	\$8,085.69
20 December 31, 2003	\$ 672.13

21 **2. The Bank of the West Client Trust Account**

22 Between June and November 2003, Respondent withdrew more than \$2,400 from his client
23 trust account for his personal use and business expenses. He wrote at least 11 client trust account
24 checks that were made payable to DMV Renewal, Fry's Electronics, American Mini-Storage, and
25

26 ⁴The facts in the Notice of Disciplinary Charges alleged that Tice had refused to sign the
27 document. But there is no clear and convincing evidence that Tice had rejected the payment or
28 that the \$12,000 check was not valid. Therefore, the Court finds that Respondent had paid Tice
\$12,000 on July 30, 2004.

1 Crest Cleaners. He also paid AOL Online Services and ATT Wireless by electronic debit.

2 **3. The State Bar Investigation**

3 On December 29, 2003, and January 14, 2004, the State Bar wrote to Respondent regarding
4 the Tice matter and requesting a written response. The letters were properly sent to Respondent's
5 membership records address and were not returned as undeliverable or for any other reason.
6 Respondent did not respond to the letters or participate in the investigation.

7 ***Count 1: Failure to Promptly Pay Client Funds (Rule 4-100(B)(4))***

8 Although Respondent had received and deposited the \$10,827.95 check in July 2003, Tice
9 had to wait a year before finally receiving the funds from Respondent in July 2004. Thus, by failing
10 to promptly disburse the \$10,827.95 to Tice, Respondent, by clear and convincing evidence, wilfully
11 failed to promptly deliver client funds in Respondent's possession which Tice was entitled to receive
12 in wilful violation of rule 4-100(B)(4).

13 ***Count 2: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))***

14 Respondent had a fiduciary duty to hold in trust the National Western check for \$10,827.95
15 in the client trust account at Bank of the West. The August 29, 2003 balance in the client trust
16 account was \$4,551.06 and Respondent issued an insufficiently funded check to Tice in September
17 2003. By December 31, 2003, the balance in the account dropped to \$672.13. Thus, Respondent's
18 failure to hold in trust the \$10,827.95 received for the benefit of Tice in the Bank of the West client
19 trust account was clearly and convincingly in violation of rule 4-100(A).

20 ***Count 3: Failure to Respond to Status Inquiries (§ 6068(m))***

21 Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly
22 to reasonable status inquiries of clients with regard to which the attorney has agreed to provide legal
23 services.

24 By failing to respond to Tice's numerous e-mails from August through December 2003
25 regarding the status of her mother's check, Respondent failed to respond to Tice's reasonable status
26 inquiries in wilful violation of section 6068, subdivision (m).

27 ***Count 4: Misappropriation (§ 6106)***

28 The mere fact that the client trust account balance has fallen below the total of amounts

1 deposited in and purportedly held in trust supports a conclusion of misappropriation.

2 Here, Tice gave Respondent the \$10,827.95 check to deposit into his client trust account and
3 to later disburse the funds to her. But after depositing the check into his client trust account,
4 Respondent began withdrawing funds from the account until the balance dropped to \$672.13 in
5 December 2003. Therefore, because the balance in Respondent's client trust account fell below the
6 amount of entrusted funds of \$10,827.95 from August through December 2003, Respondent
7 misappropriated the money and committed an act of moral turpitude in wilful violation of section
8 6106.

9 Furthermore, in September 2003, by issuing an insufficiently funded check to Tice when he
10 knew or should have known that there were insufficient funds in his client trust account, Respondent
11 committed an act of moral turpitude in wilful violation of section 6106.

12 ***Count 5: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))***

13 By withdrawing more than \$2,400 from his client trust account for personal use and business
14 expenses, Respondent is culpable of commingling client funds in his client trust account with his
15 personal and business expenditures in wilful violation of rule 4-100(A).

16 ***Count 6: Failure to Cooperate With the State Bar (§ 6068(i))***

17 By failing to respond to the State Bar's December 2003 and January 2004 letters or
18 participate in the investigation of the Tice matter, Respondent failed to cooperate with the State Bar
19 in wilful violation of section 6068(i).

20 **IV. Mitigating and Aggravating Circumstances**

21 **A. Mitigation**

22 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.
23 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁵

24 **B. Aggravation**

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

26 Respondent has a prior record of discipline. (Std. 1.2(b)(i).) On January 22, 2005,
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28 ⁵All further references to standards are to this source.

1 Respondent was suspended for six months and until he pays certain sanctions, execution of the
2 suspension stayed, and Respondent was placed on probation for one year for improperly withdrawing
3 from employment and violating a court order to pay sanctions (Supreme Court case No. S128318,
4 State Bar Court case No. 02-O-10157 and 03-O-02674 (Cons.)).⁶

5 Respondent committed multiple acts of wrongdoing, including failing to communicate,
6 failing to maintain client funds, commingling at least \$10,600 in the two client trust accounts, failing
7 to promptly pay client funds, and misappropriating \$16,931 from a client. (Std. 1.2(b)(ii).)

8 Respondent's misconduct was clearly surrounded by bad faith by commingling his client
9 funds as his personal funds and misusing his client trust account as his personal bank account.⁷ (Std.
10 1.2(b)(iii).) In the Tice matter, Respondent falsely promised the client that the check was in the mail.
11 After repeated requests from Tice, he finally wrote her a check but only to be returned by the bank
12 for insufficient funds.

13 Respondent's misappropriation of at least \$16,931 caused his client, Cendant, substantial
14 harm. His misappropriation deprived Cendant of the very funds that it had employed him to recover
15 from Delaney. Tice also suffered substantial harm in that Respondent kept her funds of \$10,827 for
16 a year and forced her to hire another attorney for assistance in obtaining the funds from Respondent.
17 (Std. 1.2(b)(iv).)

18 Respondent demonstrated indifference toward rectification of or atonement for the
19 consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to return the funds to Cendant.

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

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23 ⁶The Court takes judicial notice of the Supreme Court case No. S128318 which was filed
24 on December 23, 2004, effective January 22, 2005, and which occurred after this matter had been
submitted. (Rules Proc. of State Bar, rule 216(a); Evid. Code, § 452.)

25 ⁷The State Bar submitted a "Police Bulletin" out on Respondent as further evidence in
26 aggravation, alleging that the arrest warrant stemmed from the same charges as in this
27 disciplinary proceedings. However, absent a certified copy of the arrest warrant or a declaration
28 of relevance with a date certain, there is no clear and convincing evidence that the arrest warrant
attached as State Bar exhibit 2 is current or relevant to the issues in this case. Therefore, the
arrest warrant is vague and ambiguous and is not considered as an aggravating factor.

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V. Discussion

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

Respondent's misconduct involved two client matters and trust account violations. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 1.7(a), 2.2, 2.3, 2.4, and 2.6.) Standard 2.2(a) provides that wilful misappropriation of entrusted funds must result in disbarment absent compelling mitigation. Respondent's misappropriation of more than \$16,931 in the Cendant matter is significant and there is no compelling mitigation.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment. As discussed above, Respondent's misappropriation was an act of moral turpitude.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.)

The State Bar urges disbarment, arguing that Respondent has exhibited an inability or unwillingness to uphold his professional obligations and conform his conduct to the requirements of the law and that there is a serious risk that Respondent will engage in additional professional misconduct if he was allowed to continue to practice law.

The Court agrees. Respondent's misconduct reflects a blatant disregard of professional responsibilities. He flagrantly breached the fiduciary duties owed to his clients and abused their trust as their attorney.

It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.)

1 The misappropriation of client funds is a grievous breach of an attorney's ethical
2 responsibilities, violates basic notions of honesty and endangers public confidence in the legal
3 profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline
4 – disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21.) In *Kaplan v. State Bar* (1991) 52 Cal.3d
5 1067, the Supreme Court disbarred an attorney who intentionally misappropriated \$29,000 from his
6 law firm. In *In the Matter of Spauth, supra*, 3 Cal. State Bar Ct. Rptr. 511, the attorney was disbarred
7 for misappropriating \$40,000 from a client's personal injury settlement funds and misled the client
8 over a year as to the status of the money.

9 Here, Respondent's misappropriation of more than \$16,900 and commingling of more than
10 \$10,600 of client funds weigh heavily in assessing the appropriate level of discipline.

11 In recommending discipline, the "paramount concern is protection of the public, the courts
12 and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An
13 attorney's failure to accept responsibility for actions which are wrong or to understand that
14 wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-
15 1101.) Instead of cooperating with the State Bar or rectifying his misconduct, Respondent defaulted
16 in this disciplinary proceeding. The State Bar's last contact with Respondent was on or about
17 November 24, 2003.

18 Respondent "is not entitled to be recommended to the public as a person worthy of trust, and
19 accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605,
20 615.) Respondent's failure to participate in this hearing leaves the court without information about
21 the underlying cause of Respondent's offense or of any mitigating circumstances surrounding his
22 misconduct. Therefore, based on the severity of the offense, the serious aggravating circumstances
23 and the lack of mitigating factors, the Court recommends disbarment.

24 **VI. RECOMMENDED DISCIPLINE**

25 Accordingly, the Court hereby recommends that Respondent **THOMAS I. ARMSTRONG**
26 be disbarred from the practice of law in the State of California and that his name be stricken from
27 the rolls of attorneys in this State.

28 It is also recommended that the Supreme Court order Respondent to comply with rule 955,

1 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the
2 effective date of its order imposing discipline in this matter.

3 **VII. COSTS**

4 The Court recommends that costs be awarded to the State Bar pursuant to Business and
5 Professions Code section 6086.10 and payable in accordance with Business and Professions Code
6 section 6140.7.

7 **VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

8 It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant
9 to Business and Professions Code section 6007(c)(4) and rule 220(c) of the Rules of Procedure of
10 the State Bar. The inactive enrollment will become effective three calendar days after service of this
11 order.

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14 Dated: February 16, 2005

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16 _____
17 **RICHARD A. HONN**
18 Judge of the State Bar Court
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CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 17, 2005, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed February 17, 2005**

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

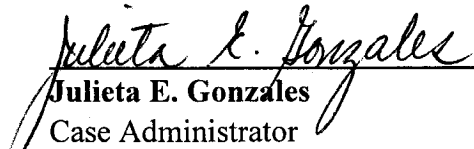
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**THOMAS I ARMSTRONG ESQ
2601 MAIN ST #340
IRVINE CA 92614-4209**

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

Gordon L. Grenier, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 17, 2005**.



Julieta E. Gonzales
Case Administrator
State Bar Court