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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

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In the Matter of)
MICHAEL K. MOBERLY,)
Member No. 196374,)
A Member of the State Bar.)

Case No. 03-O-04745; 03-O-05104-RAH
DECISION

The above-entitled matter was submitted for decision as of December 2, 2004, after the State Bar of California, Office of the Chief Trial Counsel ("State Bar"), waived the default hearing in this matter and requested that the matter be submitted. The State Bar was represented in this matter by Deputy Trial Counsel Fumiko D. Kimura¹ ("DTC Kimura"). Respondent Michael K. Moberly ("Respondent") failed to participate in this matter either in-person or through counsel and allowed his default to be entered in this matter.

In light of Respondent's culpability in this proceeding and after considering any and all aggravating and mitigating circumstances surrounding Respondent's misconduct, the Court recommends, inter alia, that Respondent be suspended from the practice of law for one year, that execution of said suspension be stayed, and that Respondent be actually suspended from the practice of law for six months and until the State Bar Court grants a motion to terminate Respondent's actual suspension at its conclusion or upon such later date ordered by the Court. (Rules Proc. of State Bar, rule 205(a)-(c).)

¹Deputy Trial Counsel Geri Von Freymann originally represented the State Bar in this matter.

1 **PERTINENT PROCEDURAL HISTORY**

2 This proceeding was initiated by the State Bar's filing of a Notice of Disciplinary Charges
3 ("NDC") against Respondent on June 10, 2004.

4 A copy of the NDC was properly served upon Respondent on June 10, 2004, by certified
5 mail, return receipt requested, addressed to Respondent at his official membership records
6 address ("official address") maintained by Respondent pursuant to Business and Professions
7 Code section 6002.1, subdivision (a).² On or about August 9, 2004, the copy of the NDC was
8 returned by the U. S. Postal Service bearing the stamp "Unclaimed - Returned to Sender."

9 On June 21, 2004, a Notice of Assignment and Notice of Initial Status Conference was
10 filed in this matter setting an in-person status conference for July 14, 2004. A copy of said notice
11 was properly served upon Respondent by first-class mail, postage fully prepaid, on June 21,
12 2004, addressed to Respondent at his official address. The copy of said notice was returned to
13 the State Bar Court by the U. S. Postal Service bearing a label which read, "RETURN TO
14 SENDER[;] NO FORWARD [sic] ORDER ON FILE[;] UNABLE TO FORWARD[;] RETURN
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16 ²On or about May 6, 2004, a 20-day letter in case no. 03-O-05104 was mailed to
17 Respondent at his official address. On or about May 20, 2004, a 20-day letter in case no. 03-O-
18 04745 was mailed to Respondent at his official address.

19 On July 13, 2004, DTC Kimura attempted to reach Respondent by telephone at his
20 official membership records telephone number: (714) 891-7041. She was greeted by a recorded
21 message which stated, "We are sorry you have reached the number that is no longer in service. If
22 you feel you have reached this recording in error, please check the number and try your call
23 again." (Declaration of Fumiko D. Kimura dated September 16, 2004, attached to the State Bar's
24 motion for the entry of Respondent's default.)

25 On July 22, 2004, upon locating another telephone number [(714) 269-2140] for
26 Respondent, DTC Kimura attempted to reach Respondent and received another recorded
27 message. A recording stated, "Message G3 CR1 22, Welcome to AT&T Wireless - the number
28 you havecalled is no longer in service. If you feel you have reached this recording in error,
please check the number and dial again." (Declaration of Fumiko D. Kimura dated September
16, 2004, attached to the State Bar's motion for the entry of Respondent's default.)

On September 10, 2004, DTC Kimura called directory assistance for the area which
included Respondent's official membership records address and asked for all telephone listings
for Respondent. Directory assistance had no listing for Respondent.

On September 10, 2004, DTC Kimura checked Parker's directory. Parker's had no listing
for Respondent in the area which included his official membership records address.

1 TO SENDER[.]”

2 On July 14, 2004, the Court held a status conference in this matter. Respondent did not
3 appear at the status conference either in-person or through counsel. Thereafter, on July 16, 2004,
4 the Court filed an Order Pursuant to In Person Status Conference. A copy of said order was
5 properly served upon Respondent by first-class mail, postage fully prepaid, on July 16, 2004,
6 addressed to Respondent at his official address. The copy of said order was returned to the State
7 Bar Court by the U. S. Postal Service bearing a label which read, “RETURN TO SENDER[;] NO
8 FORWARD [sic] ORDER ON FILE[;] UNABLE TO FORWARD[;] RETURN TO
9 SENDER[.]”

10 On July 29, 2004, a First Amended Notice of Disciplinary Charges (“First Amended
11 NDC”) was filed. A copy of the First Amended NDC was properly served upon Respondent on
12 July 29, 2004, by certified mail, return receipt requested, addressed to Respondent at his official
13 address. On or about August 21, 2004, the copy of the First Amended NDC was returned by the
14 U. S. Postal Service bearing the stamp “No froward [sic] Order on File, Unable to Forward -
15 Return to Sender.”

16 As Respondent did not file a response to the First Amended NDC as required by rule 103
17 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), on September
18 16, 2004, the State Bar filed a motion for the entry of Respondent’s default. The motion also
19 contained a request that the Court take judicial notice of all of Respondent’s official membership
20 addresses pursuant to Evidence Code sections 452, subdivision (h) and 453 and of the official
21 court file in this matter pursuant to Evidence Code sections 452, subdivision (d) and 453.
22 Furthermore, the motion also contained the declaration of Fumiko D. Kimura and Exhibit 1, a
23 certified copy of Respondent’s address history on file in the Membership Records Department of
24 the State Bar of California from August 14, 1998 to September 14, 2004. A copy of said motion
25 was properly served upon Respondent on September 16, 2004, by certified mail, return receipt

1 requested, addressed to Respondent at his official address.³

2 When Respondent failed to file a written response within 10 days after service of the
3 motion for the entry of his default, on October 4, 2004, the Court filed an Order of Entry of
4 Default (Rule 200-Failure to File Timely Response) and Order of Involuntary Inactive
5 Enrollment.⁴ A copy of said order was properly served upon Respondent on October 4, 2004, by
6 certified mail, return receipt requested, addressed to Respondent at his official address. The copy
7 of said order was returned to the State Bar Court by the U. S. Postal Service bearing the stamped
8 notations, "RETURN TO SENDER" and "ATTEMPTED NOT KNOWN[.]"

9 On November 30, 2004, the State Bar filed a brief on the issues of culpability and
10 discipline. In the brief, the State Bar waived the hearing in this matter and requested that the
11 matter be submitted on the record.

12 On December 2, 2004, the Court issued an order taking this matter under submission
13 immediately.

14 Exhibit 1 attached to the State Bar's motion for the entry of Respondent's default and
15 Exhibits 1-3 attached to the State Bar's brief on culpability and discipline are admitted into
16 evidence.

17 FINDINGS OF FACT AND CONCLUSIONS OF LAW

18 Jurisdiction

19 Respondent was admitted to the practice of law in the State of California on August 14,
20 1998, was a member at all times pertinent to these charges, and is currently a member of the State
21 Bar of California.

22 Counts One Through Three - Case No. 03-O-04745

23 In or about November 2001, Jaafar M. Sibai ("Sibai") hired Respondent to handle some
24 legal matters. There was no retainer agreement for any of the matters. However, Sibai and
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26 ³As of September 16, 2004, Respondent had not filed or served a response to the First
27 Amended NDC.

28 ⁴Respondent's involuntary inactive enrollment pursuant to Business and Professions Code
section 6007(e) was effective three days after the service of this order by mail.

1 Respondent verbally agreed that the attorney fees would be \$20,800 for all matters.

2 In or about November 2001, Sibai's friend, Mohammed Elshehawy, paid Respondent
3 \$5,800 in cash as attorney fees on behalf of Sibai.

4 In or about December 2002, the bail bondsman returned \$25,000 posted by Sibai's
5 brother, Huissen Sibai, for Sibai. Sibai's brother signed the check over to Respondent.

6 On or about January 14, 2003, Respondent deposited the \$25,000 check into his Union
7 Bank of California Client Trust Account number 0650018079 ("CTA"). Respondent then met
8 with Sibai's brother and gave him \$8,100 in cash. Respondent kept the balance of \$16,900 for
9 attorney fees. The \$16,900 was kept by Respondent in case Sabai could not pay him the rest of
10 the attorney fees.

11 On or about March 3, 2003, the Federal Bureau of Investigation returned \$44,596.47 of
12 seized currency to Sibai in care of Respondent while Sibai was in prison. Respondent came to
13 see Sabai in prison. Since Respondent kept \$16,900 of the \$25,000 bail money when it was
14 returned to Sabai's brother, Huissen, Sabai asked Respondent to return the \$16,900 to Sabai's
15 brother first before Sabai endorsed the \$44,596.47 check over to Respondent. Respondent
16 refused to return the monies to Sabai's brother unless Sabai endorsed the \$44,596.47 check over
17 to Respondent first, so Sibai signed the check over to Respondent and told him to take \$15,000,
18 the balance of his attorney fees since he was already paid \$5,800, from the \$44,596.47. Sabai
19 asked Respondent to give the rest to Sabai's brother to hold for Sabai.

20 On or about April 11, 2003, Respondent deposited the check in the amount of \$44,596.47
21 in his CTA.

22 On or about April 18, 2003, Respondent withdrew \$21,600 from his CTA and paid
23 \$21,000 to Sibai's brother.

24 As Sabai's brother only received a total of \$21,000 from Respondent, on or about May 5,
25 2003, Sibai wrote to Respondent, and asked Respondent to pay Sabai back \$25,496.⁵ On or

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⁵Respondent should have returned \$29,596, but since Sabai's brother was overpaid by \$4,100, Sabai deducted \$4,100 from \$29,596 and asked Respondent to pay Sabai back \$25,496.

1 about May 5, 2003, Sibai first disputed monies taken by Respondent in the amount of \$25,496.

2 Between on or about March 29, 2003 through May 20, 2003, Respondent repeatedly
3 issued checks drawn on his CTA to pay for Respondent's personal or business expenses as
4 follows:

5	CHECK	DATE	CHECK	PAYEE
6	NUMBER	ISSUED	AMOUNT	
7	1578	3/29/03	\$429	State Bar of California
8	1664	4/12/03	\$2,413	Stanton Office Plaza
9	1756	5/20/03	\$833	Stanton Office Plaza
10	1793	5/1/03	\$135.48	Verizon
11	1794	5/1/03	\$75	State Bar of California
12	1795	5/5/03	\$754	Stanton Office Plaza

13 Respondent wilfully issued checks on his CTA to pay for personal or business expenses.

14 On or about May 28, 2003, Sibai wrote to Respondent and again asked Respondent to pay
15 him back \$25,496.

16 The disputed funds should have been maintained in Respondent's CTA. However, on
17 May 30, 2003, Respondent's CTA balance was a negative \$792.83. On June 30, 2003,
18 Respondent's CTA balance was a negative \$842.83. On July 31, 2003, Respondent's CTA
19 balance was a negative \$842.83. On August 29, 2003, Respondent's CTA balance was zero.

20 Respondent failed to keep the disputed portion of the trust funds in the CTA and
21 withdrew the disputed funds before the dispute was resolved.

22 In or about September 2003, after Sibai's release, Respondent and Sibai met at
23 Respondent's office. Sibai asked Respondent to pay \$25,496 back to him. Respondent
24 presented Sibai with two different proposals for the attorney fees in his legal matters. In both of
25 the proposals, Respondent requested fees considerably greater than the \$20,800 fee which was
26 originally verbally agreed upon. Sibai told Respondent that they had a verbal agreement for
27 \$20,800 for all matters. Respondent refused to return any monies to Sibai.

28 On or about November 20, 2003, the State Bar opened investigation case number 03-O-

1 04745 pursuant to a complaint made by Sibai.

2 On or about December 10, 2003, Investigator Podina C. Brown ("Investigator Brown") of
3 the State Bar of California, Office of the Chief Trial Counsel, wrote to Respondent regarding the
4 complaint by Sibai. The investigator's letter was placed in a sealed envelope, correctly addressed
5 to Respondent at his State Bar of California membership address. The letter was properly mailed
6 by first-class mail, postage prepaid, by depositing for collection by the U. S. Postal Service in the
7 ordinary course of business.

8 On or about January 3, 2003, Respondent sent a letter, via facsimile, to Investigator
9 Brown requesting an extension.

10 On or about January 5, 2004, Investigator Brown wrote Respondent granting the
11 extension.

12 On or about January 10, 2004, Respondent provided his response to Investigator Brown.

13 On or about February 4, 2004, Investigator Brown wrote to Respondent requesting
14 additional documents. The investigator's letter was placed in a sealed envelope, correctly
15 addressed to Respondent at his State Bar of California membership address. The letter was
16 properly mailed by first-class mail, postage prepaid, by depositing for collection by the U. S.
17 Postal Service in the ordinary course of business. The letter was not returned as undeliverable or
18 for any other reason. Respondent failed to respond to the letter.

19 On May 27, 2004, a fee arbitration hearing was held before the Orange County Bar
20 Association Mandatory Fee Arbitration Committee. Respondent was present at the hearing. On
21 August 31, 2004, Sibai was served with a copy of the arbitration panel's finding and award. The
22 arbitration panel awarded Sibai \$25,496, which was the total disputed amount, plus \$394.50 for
23 one-half of the filing fee for the arbitration.⁶

24 As of November 27, 2004, Sibai has not been able to find Respondent. Respondent has
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26 ⁶At the time of the fee arbitration, Respondent claimed the \$20,800 fee was for his
27 representation of Sibai in only one legal matter. However, Respondent did not have any
28 accounting of time or time sheets for work on any other legal matter. Thus, the Court does not
find Respondent's claim credible.

1 not paid any portion of the \$25,496 back to Sibai.

2 **Count One - Rule 4-100(A)(2) of the Rules of Professional Conduct**⁷

3 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
4 rule 4-100(A)(2). Rule 4-100(A)(2) provides, in relevant part, that all funds received or held for
5 the benefit of clients, including advances for costs and expenses, must be deposited and
6 maintained in an identifiable bank account which is properly labeled as a client trust account and,
7 with respect to funds belonging in part to a client and in part to an attorney, the portion belonging
8 to the attorney must be withdrawn at the earliest reasonably time after the attorney's interest in
9 that portion becomes fixed. However, when an attorney's right to receive a portion of the trust
10 funds is disputed by the client, the disputed portion must not be withdrawn until the dispute is
11 finally resolved. Respondent wilfully violated rule 4-100(A)(2) by withdrawing the \$25,496 in
12 disputed funds from his client trust account thereby failing to maintain the disputed funds in his
13 client trust account until the dispute was resolved.

14 **Count Two - Rule 4-100(A)**

15 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
16 rule 4-100(A). Rule 4-100(A) requires that all funds received or held for the benefit of clients,
17 including advances for costs and expenses, must be deposited and maintained in an identifiable
18 bank account which is properly labeled as a client trust account and, with limited exceptions, no
19 funds belonging to the attorney or law firm can be deposited in said account or commingled
20 therewith. By issuing six checks drawn on his CTA for personal or business expenses between
21 March 29 and May 5, 2003, Respondent misused his client trust account for personal or business
22 purposes in wilful violation of rule 4-100(A). "The rule [8-101 (the predecessor to rule 4-100)]
23 absolutely bars use of the trust account for personal purposes, even if client funds are not on
24 deposit." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.)

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⁷Unless otherwise indicated, all further references to rules refer to the Rules of Professional Conduct of the State Bar of California.

1 **Count Three - Business and Professions Code Section 6068(i)**⁸

2 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
3 section 6068(i). Section 6068(i) requires an attorney to cooperate with and participate in State
4 Bar disciplinary investigations or proceedings. Respondent wilfully violated section 6068(i) by
5 failing to respond to Investigator Brown's February 2004 letter requesting additional documents
6 thereby failing to cooperate in a State Bar investigation.

7 **Counts Four and Five - Case No. 03-O-05104**

8 On or about May 20, 2003, Respondent issued a check drawn upon Respondent's Union
9 Bank of California Client Trust Account number 0650018079 ("CTA") against insufficient funds
10 as follows:

11 CHECK NUMBER	DATE ISSUED	CHECK AMOUNT	DATE PRESENTED	ACCOUNT BALANCE
13 1756	5/20/03	\$833.00	5/29/03	-\$773.83

14 Respondent issued the check set forth above when he knew or should have known that
15 there were insufficient funds in his CTA to pay it.

16 On or about December 16, 2003, the State Bar opened investigation case number 03-O-
17 05104 pursuant to a reportable action by Union Bank of California under Business and
18 Professions Code section 6091.1.

19 On or about January 8, 2004 and April 13, 2004, Investigator Podina C. Brown of the
20 State Bar of California, Office of the Chief Trial Counsel ("Investigator Brown") wrote to
21 Respondent regarding the reportable action by Union Bank of California. The investigator's
22 letters were placed in a sealed envelope, correctly addressed to Respondent at his State Bar of
23 California membership address. The letters were properly mailed by first-class mail, postage
24 prepaid, by depositing for collection by the U. S. Postal Service in the ordinary course of
25 business. The January 8, 2004, letter was not returned as undeliverable or for any other reason.

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28 ⁸Unless otherwise indicated, all further references to sections refer to provisions of the
California Business and Professions Code.

1 The April 13, 2004, letter was returned marked as "Returned to Sender. Unclaimed."

2 The investigator's letters requested that Respondent respond in writing to specific
3 allegations of misconduct being investigated by the State Bar in the reportable action matter.
4 Respondent failed to respond to the letters and failed to cooperate or participate in any way in the
5 investigation of the reportable action matter.

6 **Count Four - Section 6106**

7 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
8 section 6106. Section 6106 provides that the commission of any act involving moral turpitude,
9 dishonesty or corruption constitutes a cause for suspension or disbarment. Respondent engaged
10 in an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106 by
11 issuing a check on his CTA when he knew or should have known that there were insufficient
12 funds in his CTA to cover the check.

13 **Count Five - Section 6068(i)**

14 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
15 section 6068(i). Respondent wilfully violated section 6068(i) by failing to respond to
16 Investigator Brown's January 8, 2004, letter requesting that Respondent respond in writing to
17 specific allegations of misconduct being investigated by the State Bar in the reportable action
18 matter and by failing to cooperate or participate in any way in the investigation of the reportable
19 action matter.

20 **MITIGATING/AGGRAVATING CIRCUMSTANCES**

21 As Respondent's default was entered in this matter, Respondent did not have an
22 opportunity to introduce any mitigating evidence on his behalf and none was offered by the State
23 Bar. However, pursuant to Evidence Code section 452, subdivision (h), the Court takes judicial
24 notice of Respondent's official membership records maintained by the State Bar of California
25 which reveal that Respondent has no prior record of discipline. (Rules Proc. of State Bar, tit. IV,
26 Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(i) ("standard").) However, as
27 Respondent had only been admitted to practice law for a little over four and one-half years at the
28 time his misconduct commenced, Respondent's lack of a prior record of discipline is given only

1 little weight in mitigation. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 [seven and one-half
2 years of practice without discipline afforded minimal weight.])

3 In aggravation, Respondent engaged in multiple acts of misconduct in this matter.
4 (Standard 1.2(b)(ii).)

5 Respondent's misconduct significantly harmed his client, as Sibai has never received the
6 \$25,496 owed to him by Respondent. (Standard 1.2(b)(iv).)

7 Respondent's failure to participate in this matter prior to the entry of his default is a
8 further aggravating circumstance. (Standard 1.2(b)(vi).)

9 DISCUSSION

10 In determining the appropriate discipline to recommend in this matter, the Court looks at
11 the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of
12 disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal
13 profession; the maintenance of high professional standards by attorneys and the preservation of
14 public confidence in the legal profession."

15 In addition, standard 1.6(b) provides that the specific discipline for the particular
16 violation found must be balanced with any mitigating or aggravating circumstances, with due
17 regard for the purposes of imposing disciplinary sanctions.

18 In this case, the standard provide for the imposition of sanctions ranging from suspension
19 to disbarment. (Standards 2.2(b), 2.3, 2.6.) In addition, standard 1.6(a) states, in pertinent part,
20 "If two or more acts of professional misconduct are found or acknowledged in a single
21 disciplinary proceeding, and different sanctions are prescribed by these standards for said acts,
22 the sanction imposed shall be the more or most severe of the different applicable sanctions."

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

27 The State Bar recommends, inter alia, that Respondent be actually suspended for six
28 months. In support of its discipline recommendation, the State Bar cites to *In the Matter of*

1 *Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47. As in the instant proceeding, the
2 attorney in *Heiser* failed to answer the charges against him and his default was entered. The
3 attorney was found culpable of committing acts involving dishonesty and moral turpitude in
4 violation of section 6106 by: (1) issuing four checks on his personal bank accounts over a ten
5 month period when there were insufficient funds in the accounts to cover the checks; and (2)
6 issuing three checks on client trust accounts over a five month period when the accounts either
7 contained insufficient funds to cover the checks or the accounts were closed. He was also found
8 to have violated rule 8-101(A)⁹ by using his client trust accounts for personal purposes by issuing
9 three checks from his client trust accounts for personal obligations; violated section 6068(j) by
10 failing to maintain his current office address on the State Bar's official membership records; and
11 violated section 6068(i) by failing to cooperate in the State Bar's investigation by failing to
12 respond to a letter from a State Bar investigator seeking information concerning a complaint. In
13 aggravation, the Review Department of the State Bar Court found multiple acts of misconduct;
14 harm to victims; indifference toward atonement for or rectification of the consequences of his
15 misconduct; and lack of cooperation or candor to victims of his misconduct. In mitigation, it was
16 found that the attorney did not have a prior record of discipline over many years of practice. The
17 Review Department recommended that Heiser be suspended from the practice of law for one
18 year; that execution of suspension be stayed; and that Heiser be placed on probation for two years
19 on conditions including that he be actually suspended during the first six months of his probation
20 and until he makes and provides proof of restitution.

21 In this matter, Respondent has been found culpable of wilfully violating rule 4-100(A)(2)
22 by withdrawing disputed funds from his client trust account thereby failing to maintain disputed
23 funds in his client trust account until the dispute was resolved with his client; wilfully violating
24 rule 4-100(A) by issuing six checks drawn on his CTA for personal or business expenses over
25 approximately a six week period; engaging in an act of moral turpitude, dishonesty or corruption
26 in wilful violation of section 6106 by issuing a check on his CTA when he knew or should have
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28 ⁹Rule 8-101(A) was the predecessor of rule 4-100(A).

1 known that there were insufficient funds in his CTA to cover the check; and in two matters
2 wilfully violated section 6068(i) by failing to cooperate in a State Bar investigation. In
3 aggravation, the Court found multiple acts of misconduct; that the misconduct significantly
4 harmed Respondent's client; and Respondent's failure to participate in this matter prior to the
5 entry of his default is a further aggravating circumstance. Although Respondent has no prior
6 record of discipline, this is given only little weight in mitigation as Respondent had only been
7 admitted to practice law for a little over four and one-half years at the time his misconduct
8 commenced.

9 The Court is also particularly concerned about Respondent's failure to participate in this
10 disciplinary proceeding. Respondent's failure to participate in this proceeding leaves the Court
11 without any understanding as to the underlying cause or causes for Respondent's misconduct or
12 from learning of any other mitigating circumstances which would justify this Court's departure
13 from the discipline recommended by the standards.

14 In determining the appropriate discipline to recommend in this matter, the Court notes
15 that the misconduct in this case is quite similar to that in *In the Matter of Heiser*. While the
16 misconduct is somewhat more egregious in *Heiser*, the evidence in mitigation in *Heiser* is also
17 much greater. Thus, after considering the misconduct in this matter, the aggravating and
18 mitigating circumstances, and *In the Matter of Heiser*, the Court finds that the appropriate
19 discipline to recommend in this matter is similar to that recommended in *In the Matter of Heiser*.

20 **RECOMMENDED DISCIPLINE**

21 Accordingly, the Court hereby recommends that Respondent MICHAEL K. MOBERLY
22 be suspended from the practice of law for one year; that execution of said suspension be stayed,
23 and that Respondent be actually suspended from the practice of law for six months and until the
24 State Bar Court grants a motion to terminate Respondent's actual suspension at its conclusion or
25 upon such later date ordered by the Court. (Rules Proc. of State Bar, rule 205(a)-(c).)

26 If the period of actual suspension reaches or exceeds two years, it is further recommended
27 that Respondent remain actually suspended until he has shown proof satisfactory to the State Bar
28 Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant

1 to standard 1.4(c)(ii). (See also, Rules Proc. of State Bar, rule 205(b).)

2 It is also recommended that Respondent be ordered to comply with any probation
3 conditions reasonably related to this matter that may hereinafter be imposed by the State Bar
4 Court as a condition for terminating Respondent's actual suspension. (Rules Proc. of State Bar,
5 rule 205(g).)

6 It is also recommended that Respondent be ordered to take and pass the Multistate
7 Professional Responsibility Examination given by the National Conference of Bar Examiners
8 within one year after the effective date of the discipline imposed herein or during the period of
9 his actual suspension, whichever is later, and furnish satisfactory proof of such to the State Bar's
10 Office of Probation within said period.

11 It is further recommended that Respondent be ordered to comply with the requirements of
12 rule 955 of the California Rules of Court within 30 calendar days after the effective date of the
13 Supreme Court order imposing discipline in this matter, and file the affidavit provided for in
14 paragraph (c) within 40 days after the effective date of the order showing Respondent's
15 compliance with said order.¹⁰

16 **COSTS**

17 It is further recommended that costs be awarded to the State Bar pursuant to section
18 6086.10, and that such costs be payable in accordance with section 6140.7.

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21 Dated: February 15, 2005


22 _____
23 RICHARD A. HONN
24 Judge of the State Bar Court

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26 _____
27 ¹⁰Failure to comply with rule 955 of the California Rules of Court ("CRC 955") could
28 result in disbarment. (*Bercovich v. State Bar* (1990) 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. 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 16, 2005, I deposited a true copy of the following document(s):

DECISION, filed February 16, 2005

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

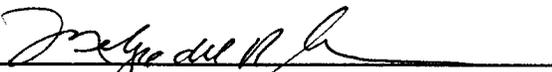
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MICHAEL K MOBERLY
ATTORNEY AT LAW
12362 BEACH BLVD #14A
STANTONN, CA 90680 3944**

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

Fumiko Kimura, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 16, 2005**.



Milagro del R. Salmeron
Case Administrator
State Bar Court