

1 certified mail, return receipt requested, informing him that a NDC had been filed. A receipt signed
2 by "Benigna" was returned.

3 On September 29, 2004, the State Bar again attempted to reach Respondent by telephone and
4 left him a voice mail message. Respondent's official telephone number belonged to "Benigna and
5 Glenn Taylor." The State Bar has not had any contact with Respondent.

6 On motion of the State Bar, Respondent's default was entered on November 2, 2004.
7 Respondent was enrolled as an inactive member under Business and Professions Code section
8 6007(e)¹ on November 5, 2004.

9 On January 19, 2005, the court vacated the original submission date of November 3, 2004,
10 and reopened the record for any brief re level of discipline and/or Respondent's prior record of
11 discipline from the State Bar.

12 Respondent did not participate in the disciplinary proceedings. This matter was taken under
13 submission on February 1, 2005, following the State Bar's filing of a brief on culpability and
14 discipline.

15 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default
17 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
18 200(d)(1)(A).)

19 A. Jurisdiction

20 Respondent was admitted to the practice of law in California on October 5, 1984, and has
21 since been a member of the State Bar of California.

22 B. The Pendergast Matter

23 1. *Marital Dissolution*

24 In May 2001, Linda Pendergast hired Respondent to represent her in a marital dissolution
25 matter, *Pendergast v. Pendergast*, San Bernardino County Superior Court, case No. SBFSS62307.

26 On April 22, 2002, opposing counsel served Respondent a demand for production of
27

28 ¹References to section are to the Business and Professions Code, unless otherwise noted.

1 preliminary declaration of disclosure, which was due within 60 days of the service of the demand.
2 Respondent did not inform Pendergast of the demand or prepare or serve a preliminary declaration
3 on behalf of Pendergast.

4 On October 2, 2002, opposing counsel filed a motion to compel Pendergast's preliminary
5 declaration of disclosure and a motion for monetary sanctions. Respondent neither told Pendergast
6 of the motions nor respond to the motions. At the October 29, 2002, hearing, in which Respondent
7 did not appear, the court granted the motions and ordered Pendergast to produce her declaration of
8 disclosure by November 29, 2002, and to personally pay opposing counsel \$1,673 in attorney fees
9 and costs as sanctions. Respondent did not inform Pendergast of the court's order.

10 On May 8, 2003, opposing counsel filed with the court a declaration and order for issuance
11 of writ of execution/abstract judgment against Pendergast for \$1,673. On May 14, 2003, the court
12 issued the writ of execution or money judgment against Pendergast for \$1,712.54, which included
13 interest accrued to that date.

14 2. *\$700 Appraisal Fees*

15 On June 21, 2002, Pendergast gave Respondent a check for \$350 for her home appraisal,
16 which was needed for her marital dissolution matter. On July 6, 2002, she gave Respondent another
17 check for \$350 for her furniture appraisal. Respondent told Pendergast that he would obtain the
18 appraisal for the house and the furniture; but he never did.

19 Instead, after receiving the two checks, Respondent deposited them into his personal bank
20 account at Cedars Bank, account No. 1010621035. He then closed the account.

21 Thereafter, Pendergast left several telephone messages at Respondent's office regarding the
22 status of the appraisals. Respondent did not return any of her calls. For more than a year,
23 Pendergast left phone messages at Respondent's office, demanding that Respondent refund the \$700.
24 To date, despite repeated demands for the funds by Pendergast, Respondent has not returned any
25 portion of the fund.

26 On December 11, 2003, and January 22, 2004, a State Bar investigator wrote to Respondent
27 regarding the Pendergast matter and requested a written reply. The two letters were properly sent
28 to Respondent at his official address. They were not returned as undeliverable or for any other

1 reason. Respondent did not respond to the letters.

2 ***Count 1: Failure to Perform (Rules Prof. Conduct, Rule 3-110(A))²***

3 Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail
4 to perform legal services with competence.

5 Respondent intentionally, recklessly, and repeatedly failed to perform legal services with
6 competence, in wilful violation of rule 3-110(A), by failing to prepare or serve a preliminary
7 declaration of disclosure on behalf of Pendergast, by failing to file a response to the motion to
8 compel, and by failing to appear at the October 29, 2002 hearing.

9 ***Count 2: Failure to Communicate (Bus. & Prof. Code, § 6068(m))***

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

13 Respondent wilfully violated section 6068(m) by failing to respond to Pendergast's
14 numerous phone messages seeking information about the status of her appraisals and by failing to
15 inform Pendergast of the following significant events: (1) that opposing counsel had served a
16 demand for a preliminary declaration of disclosure; (2) that motions to compel and for monetary
17 sanctions were filed; (3) that Respondent would not oppose the motions; (4) that Respondent was
18 not going to appear at the October 2002 hearing; (5) that \$1,712.54 in sanctions were imposed
19 against Pendergast; and (6) that the court ordered Pendergast to respond to the demand by November
20 29, 2002.

21 ***Count 3: Failure to Perform (Rule 3-110(A))***

22 Respondent recklessly failed to perform legal services competently in wilful violation of rule
23 3-110(A) by failing to obtain the appraisal for the house and the furniture as promised.

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

25 Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited
26

27 ²References to rule are to the current Rules of Professional Conduct, unless otherwise
28 noted.

1 in a client trust account and that no funds belonging to the attorney must be deposited therein or
2 otherwise commingled therewith. It further provides that when the right of the attorney to receive
3 a portion of trust fund is disputed by the client, the disputed portion must not be withdrawn until the
4 dispute is finally resolved.

5 By depositing the advanced costs in his personal bank account, instead of a trust account,
6 and then by closing the account, Respondent's failure to hold in trust the \$700 in his client trust
7 account clearly and convincingly violated rule 4-100(A).

8 ***Count 5: Failure to Promptly Pay Client Funds (Rule 4-100(B)(4))***

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

11 By failing to refund the \$700 to Pendergast, despite Pendergast's repeated demands for more
12 than a year, Respondent wilfully failed to pay promptly client funds in Respondent's possession in
13 wilful violation of rule 4-100(B)(4).

14 ***Count 6: Misappropriation (§ 6106)***

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

17 The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the
18 attorney's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.
19 113.) Respondent had a fiduciary duty not to misuse client funds. "Thus the funds in his
20 possession are impressed with a trust, and his conversion of such funds is a breach of the trust."
21 (*Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156.)

22 Here, Pendergast paid Respondent \$700 as advanced costs for the appraisal fees. But
23 Respondent deposited the two checks into his personal bank account without obtaining the
24 appraisals and then closed the account. Therefore, Respondent misappropriated \$700 from
25 Pendergast, an act of moral turpitude, in wilful violation of section 6106.

26 ***Count 7: Failure to Cooperate With the State Bar (§ 6068(i))***

27 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary
28 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's

1 December 2003 and January 2004 letters or participate in the investigation of the Pendergast matter,
2 Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

3 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

4 **A. Mitigation**

5 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.
6 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

7 **B. Aggravation**

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

9 Respondent has four prior records of discipline. (Std. 1.2(b)(i).)

- 10 1. On February 9, 2001, Respondent, upon stipulation, was privately reprovved for
11 failure to perform services and failure to communicate (State Bar Court case No. 00-
12 O-13382);
- 13 2. On March 13, 2002, Respondent, upon stipulation, was suspended for 30 days,
14 stayed, and placed on probation for two years for failure to maintain at least \$2,625
15 of client funds in trust (Supreme Court case No. S102459, State Bar Court case No.
16 00-O-14880);
- 17 3. On October 23, 2003, upon stipulation, Respondent's probation previously imposed
18 in S102459 was extended for one year for violating his probation conditions – failure
19 to submit certain quarterly reports and failure to comply with the continuing legal
20 education requirements (State Bar Court case No. 03-PM-02320); and
- 21 4. On September 25, 2004, Respondent's probation was revoked and was actually
22 suspended for 30 days for failure to comply with his probation conditions by failing
23 to submit written quarterly reports and by failing to complete his continuing legal
24 education requirements (State Bar Court case No. 04-PM-11192). Respondent
25 defaulted in the proceeding.

26 Respondent committed multiple acts of wrongdoing. (Std 1.2(b)(ii).) He failed to perform

27
28 ³All further references to standards are to this source.

1 services competently, committed an act of moral turpitude, failed to communicate with his client,
2 failed to deposit client funds in a client trust account, and failed to return \$700 to his client.

3 Respondent's failure to return the unused costs of \$700 demonstrates indifference toward
4 rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

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

7 V. DISCUSSION

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

12 Respondent's misconduct involved one client matter. The standards provide a broad range
13 of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and
14 the harm to the client. (Stds. 1.6, 1.7(b), 2.2(b), 2.3, 2.4(b), and 2.6.)

15 Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline,
16 the degree of discipline in the current proceeding must be disbarment unless the most compelling
17 mitigating circumstances clearly predominate. Respondent has four prior records of discipline and
18 no mitigation.

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

23 The State Bar urges disbarment or at the very least a two-year actual suspension and until
24 Respondent makes restitution. In support of its recommended discipline, the State Bar cited *In the*
25 *Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269 [one year actual suspension for
26 failure to perform in one client matter], *Chang v. State Bar* (1989) 49 Cal.3d 114 [disbarment for
27 misappropriation of \$7,000], and *Grim v. State Bar* (1991) 53 Cal.3d 21 [disbarment for
28 misappropriation of \$5,500].

1 In *In the Matter of Dahlz, supra*, 4 Cal. State Bar Ct. Rptr. 269, the attorney was found
2 culpable, in one client matter, of failing to perform and communicate, improperly withdrawing from
3 representation and committing an act of moral turpitude, namely misrepresenting to an insurance
4 adjuster that his client no longer wanted to pursue her claim. In aggravation, the court found
5 multiple acts of misconduct, one prior instance of discipline, client harm and lack of candor toward
6 the court and the State Bar investigator. In mitigation, the court afforded slight weight to *pro bono*
7 services rendered because his involvement was not great and was remote in time. As a result, the
8 attorney was suspended for four years, stayed, and was placed on probation for four years on
9 conditions including one year actual suspension.

10 In *Grim v. State Bar, supra*, 53 Cal.3d 21, the Supreme Court disbarred an attorney for
11 misappropriating \$5,546 from a client. The attorney did not make restitution until after the State Bar
12 had commenced disciplinary proceedings. In aggravation, he was previously disciplined for
13 commingling funds, took advantage of the client residing in another state and mismanaged his trust
14 account. In mitigation, character witnesses testified to his good moral character and the attorney
15 cooperated with the State Bar.

16 Here, although Respondent's misconduct also involved one client matter, his aggravating
17 factors are much more significant than that of the attorney in *Dahlz*. This is Respondent's fifth
18 disciplinary proceeding in the past five years, as compared to *Dahlz's* one prior disciplinary record.
19 And Respondent has no mitigation. The gravamen of Respondent's misconduct was depositing
20 client funds into his personal bank account and abandoning his client, despite the client's repeated
21 attempts to contact him for more than a year.

22 Like the attorney in *Grim*, the "misappropriation in this case . . . was not the result of
23 carelessness or mistake; [Respondent] acted deliberately and with full knowledge that the funds
24 belonged to his client. Moreover, the evidence supports an inference that [Respondent] intended to
25 permanently deprive his client of her funds." (*Grim v. State Bar, supra*, 53 Cal.3d at p. 30.) Instead
26 of using the funds to pay for appraisal services, Respondent took the money and never returned any
27 portion of the fund to Pendergast.

28 Furthermore, Respondent committed his misconduct while he was on probation for his

1 second prior record of discipline. He had clearly demonstrated indifference to the importance of his
2 discipline. In view of his past disciplinary records in the past six years, his misconduct had involved
3 three client matters, misappropriation of client funds, and repeated probation violations.

4 Accordingly, disbarment is particularly appropriate when a respondent repeatedly
5 demonstrates indifference to successive disciplinary orders of the Supreme Court. (*Morgan v. State*
6 *Bar* (1990) 51 Cal.3d 598, 607.)

7 Respondent has displayed total indifference and lack of remorse by ignoring both his present
8 and his fourth disciplinary proceedings. Such failure to participate leaves the court without
9 information about the underlying cause of Respondent's offense or of any mitigating circumstances
10 surrounding his misconduct. His lack of participation indicates that far more severe discipline is
11 required to achieve the purposes of attorney discipline set forth in standard 1.3.

12 In *Baca v. State Bar* (1990) 52 Cal.3d 294, the Supreme Court disbarred the attorney for one
13 client abandonment and misappropriation in another matter, stating, "Baca's failure to cooperate
14 until the recommendation of disbarment was made reflects a disdain and contempt for the orderly
15 process and rule of law on the part of an attorney who has sworn to uphold the law." (*Id.* at p. 305.)

16 In *Barnum v. State Bar* (1990) 52 Cal.3d 104, the Supreme Court disbarred the attorney for
17 collecting an unconscionable fee and disobeying court orders to return the fee and refusing to
18 participate in the disciplinary proceeding. The Court concluded that Barnum was "not a good
19 candidate for suspension and/or probation. He has breached two separate terms of our prior
20 disciplinary order, leading to the imposition of additional sanctions. He also defaulted before the
21 State Bar here and in one other proceeding." (*Id.* at p. 106.)

22 Similarly, Respondent here is not a candidate for suspension and/or probation. He has
23 repeatedly failed to comply with his probation conditions and has failed to participate in two
24 disciplinary proceedings. These facts reflect Respondent's disdain and contempt for the orderly
25 process and rule of law and clearly demonstrate that the risk of future misconduct is great.

26 Moreover, Respondent's failure to comply with successive orders of the Supreme Court has
27 repeatedly burdened the resources of this court and the State Bar disciplinary system, also a matter
28 of great concern to the court. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508 [contemptuous

1 attitude toward disciplinary proceedings is relevant to determination of appropriate sanction].)
2 Respondent had ample opportunity to conform his conduct to the ethical requirements of the
3 profession, but has repeatedly failed or refused to do so. Probation and suspension have proven
4 inadequate in the past to prevent continued misconduct. (See *In the Matter of Rose* (Review Dept.
5 1997) 3 Cal. State Bar Ct. Rptr. 646.)

6 In conclusion, in view of his extensive prior disciplinary record, his acts of client
7 abandonment and misappropriation, and the lack of any mitigating factors, the court recommends
8 disbarment to protect the public and the integrity of the legal profession.

9 VI. RECOMMENDED DISCIPLINE

10 Accordingly, the court hereby recommends that Respondent **GLENN EDWARD TAYLOR**
11 be disbarred from the practice of law in the State of California and that his name be stricken from
12 the rolls of attorneys in this State.

13 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
14 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the
15 effective date of its order imposing discipline in this matter.

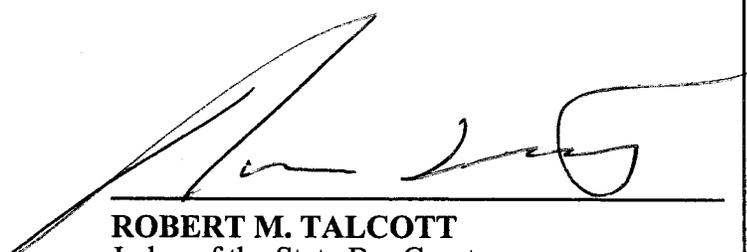
16 VII. COSTS

17 The court recommends that costs be awarded to the State Bar pursuant to Business and
18 Professions Code section 6086.10, and paid in accordance with section 6140.7.

19 VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

24
25
26 Dated: March 1st, 2005


27 **ROBERT M. TALCOTT**
28 Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court 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 March 1, 2005, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed March 1, 2005**

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

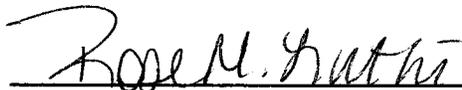
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**GLENN EDWARD TAYLOR
14025 COUNTRY WALK LN
CHINO HILLS CA 91709**

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

ERIC HSU, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 1, 2005**.



Rose M. Luthi
Case Administrator
State Bar Court