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STATE BAR COURT
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PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

8 In the Matter of 9 CRAIG ALLRED DECKER, 10 Member No. 55576, 11 <u>A Member of the State Bar.</u>)))))	Case No. 04-J-12813-RAH DECISION
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INTRODUCTION

By order filed on April 23, 2003, the Arizona Supreme Court imposed discipline on respondent Craig Allred Becker consisting of actual suspension of six months and one day and two years probation on conditions. As a result, the State Bar of California initiated the above-entitled proceeding pursuant to Bus. & Prof. Code § 6049.1(b) ("section" or "§") and rules 620 through 625, Rules Proc. of State Bar ("rule(s)").

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon respondent in California; (2) whether, as a matter of law, respondent's culpability in the Arizona proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in Arizona; and (3) whether the Arizona proceeding lacked fundamental constitutional protection. (Section 6049.1(b).)

Pursuant to section 6049.1(b), respondent bears the burden of establishing that the conduct for which he was disciplined in Arizona would not warrant the imposition of discipline in California and/or that the Arizona proceedings lacked fundamental constitutional protection. Since respondent did not participate in this proceeding, the Court focuses on the degree of discipline to be imposed.

The Office of the Chief Trial Counsel ("OCTC") was represented by Timothy G. Byer.

1 For the reasons indicated below, the court recommends, among other things, that respondent
2 be suspended for three years and until he complies with standard 1.4(c)(ii), Standards for Attorney
3 Sanctions for Professional Misconduct ("standards"); that said suspension be stayed; and that he be
4 actually suspended for two years and until he complies with standard 1.4(c)(ii) and with rule 205,
5 among other things.

6 SIGNIFICANT PROCEDURAL HISTORY

7 The Notice of Disciplinary Charges ("NDC") was filed on July 13, 2004, and was
8 properly served on respondent on that same date at his official membership records address by
9 certified mail, return receipt requested, as provided in Business and Professions Code section
10 6002.1(c) ("official address"). Service was deemed complete as of the time of mailing. (*Lydon*
11 *v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The United States Postal Service ("USPS") returned
12 the correspondence as undeliverable.

13 On July 23 and 30, 2004, copies of the NDC were again served on respondent by certified
14 mail, return receipt requested, at two alternate addresses. The copy served on a Post Office box
15 address in Arizona was returned as undeliverable. The return receipt for the other copy was
16 signed by "Alison ___" on August 2, 2004.

17 On July 26, 2004, a notice scheduling a status conference for August 23, 2004, was
18 properly served at respondent's official address. The notice was returned as undeliverable.
19 Respondent did not participate in the status conference. The status conference order filed on
20 August 25, 2004, indicated that a motion to enter respondent's default was to be served on all
21 known addresses for respondent and that a status conference would be held on November 17,
22 2004. A copy of this order was properly served on respondent at his official address. It was
23 returned as undeliverable.

24 Respondent did not file a responsive pleading. On October 6, 2004, a motion for entry of
25 default was properly served on respondent at his official address by certified mail, return receipt
26 requested. Copies were also served at the two alternate addresses. The motion advised him that,
27 if he was found culpable, minimum discipline consisting of six months actual suspension would
28 be sought. He did not respond to the motion

1 Also on October 6, OCTC filed and served on respondent at his official and two alternate
2 addresses a culpability and discipline brief and waiver of hearing.

3 On October 27, 2004, the court entered respondent's default and enrolled him inactive
4 effective three days after service of the order. The order was properly served on him at his
5 official address on that same date by certified mail, return receipt requested. Copies were also
6 sent by regular mail to the two alternate addresses. The correspondence sent to the official
7 address and one of the alternate addresses was returned as undeliverable.

8 The matter was submitted for decision without hearing on November 1, 2004.

9 JURISDICTION

10 Respondent was admitted to the practice of law in California on June 29, 1973, and has
11 been a member of the California State Bar at all times since.

12 FINDINGS OF FACT AND CONCLUSIONS OF LAW

13 Business and Professions Code section 6049.1(a) provides, in pertinent part, that a
14 certified copy of a final order by any court of record of any state of the United States,
15 determining that a member of the State Bar committed professional misconduct in that
16 jurisdiction shall be conclusive evidence that the member is culpable of professional conduct in
17 this state.

18 The court admits into evidence the certified record of the disciplinary proceedings in
19 Arizona, a copy of which was attached to the NDC as Exhibits 1 - 3. Further, the court judicially
20 notices the applicable Arizona ethics rules, which were attached to the NDC as Exhibit 4.

21 Respondent was admitted to the practice of law in Arizona on January 12, 1993.

22 The record of the proceeding conclusively establishes that respondent received an actual
23 suspension of six months and one day and two years probation with conditions from the Arizona
24 Supreme Court by order filed on April 25, 2003, which became final 30 days thereafter. This
25 discipline was based on the findings of a Hearing Officer of the Arizona Supreme Court's
26 Amended Report and Recommendation, filed January 2, 2003, and on the Disciplinary
27 Commission's Report, filed February 13, 2003. The following facts formed the basis of the
28 Arizona discipline:

1 **Case no. 99-1778 (The Watters Case)**

2 **Facts**

3 Mary C. and Raymond D. Watters filed a *pro se* petition for bankruptcy in July 1998.

4 In October 1998, the Watters retained respondent to convert the Chapter 7 bankruptcy
5 case to a Chapter 13 proceeding for the principal purpose of allowing the redemption of the
6 Watters' interest in a family-owned building which the Chapter 7 Trustee maintained had been
7 omitted from the original Chapter 7 filing and which the Trustee had noticed for sale.

8 Shortly thereafter, it was determined that conversion to a Chapter 13 proceeding was not
9 feasible and the Watters sought to protect their interest by dismissing the Chapter 7 case. The
10 Trustee would not entertain or approve the dismissal until she was paid her required fee and the
11 claims of the unsecured creditors were satisfied. The fees and claims exceeded \$13,000. To
12 raise the funds, the Watters sought a loan from family members who had an interest in protecting
13 the building from sale.

14 The Watters and the Trustee stipulated to the payment of the unsecured claims and the
15 Trustee's fee. These terms were memorialized in the Bankruptcy Court's November 27, 1998,
16 order.

17 Family members agreed to provide \$6000 as a loan secured by an option on the building.
18 The loan proceeds were disbursed directly to respondent in April 1999 with the understanding
19 that they would be held in respondent's trust account and that any unused portion would be
20 returned to the family members who provided the funds. There was no evidence that respondent
21 misused or misappropriated any of these funds.

22 Since the family loan was less than the amounts claimed by the creditors, respondent was
23 required to contact, negotiate and reach an actual settlement with each of the Watters' unsecured
24 creditors in order to satisfy the November 27, 1998, order. This made the matter much more
25 complicated than anticipated.

26 Respondent successfully settled with Citibank, one of the major creditors in October
27 1999; however, the account of the other major creditor, First Card, had been sold to a Third
28 Party Creditor. The Third Party Creditor was unable to locate the account upon respondent's and

1 the Watters' inquiries because they were using an incorrect account number which appeared in
2 the Watters' bankruptcy forms. Respondent had no part in the creation of this error of the
3 Watters'.

4 By October 1999, respondent had contacted the Third Party Creditor and had made two or
5 three unsuccessful attempts to determine the proper account name and number. This problem
6 prevented the claim from being settled or paid. The Watters were made aware of the problem.

7 Respondent did not contact the Third Party Creditor again until late April 2001 and then
8 again in January 2002, shortly after Arizona Bar Counsel suggested to him that the matter needed
9 to be resolved.

10 Respondent's spouse had a history of poor health. In May 1999, she suffered a household
11 injury that resulted in extended confinement to bed. Respondent was the primary caregiver to his
12 wife during this time. He moved his practice to his home. During the rest of 1999, respondent's
13 time and attention were devoted to the care of his wife and children, resulting in a lack of
14 attention to his law practice.

15 In mid-1999, respondent obtained the help of another attorney on a part-time basis,
16 including for following up on the Watters' case. This assistance proved ineffective in the
17 Watters' matter, however. There was no proof that respondent appropriately monitored the work
18 of the other attorney or ensured that there was follow-up on the matters assigned.

19 Respondent contacted the bankruptcy Trustee in April 2001, explained the inability to
20 resolve the Third Party Creditor's account and asked her to stipulate to a court order for the
21 return of the funds to the Watters' family. The Trustee refused to stipulate but indicated that she
22 would not oppose a motion provided that respondent could demonstrate payment of or adequate
23 and continuing efforts to pay all creditors.

24 In January 2002, the Third Party Creditor found the Watters' account and a settlement
25 was negotiated.

26 In late January 2002, respondent wrote to the Watters for approval to settle the account as
27 negotiated. Although they did not respond directly to respondent's letter, they let it be known
28 that Mrs. Watters did not wish to pay a fee for the work outlined therein. Respondent did not

1 take immediate action to complete the settlement negotiated with the Third Party Creditor.

2 Shortly thereafter, respondent's spouse became ill again and underwent heart surgery.
3 This diverted respondent's attention from the Watters' matter for a time. By the time of the final
4 hearing on the case, respondent had resumed his efforts to accomplish the January 2002
5 negotiations.

6 The matters about which the Watters originally complained occurred between June and
7 September 1999. The Watters were concerned about the status of the payment to their creditors.
8 The Watters made repeated attempts to obtain a status report from respondent but he repeatedly
9 did not respond their numerous telephone calls and written inquiries.

10 In June 1999, the Watters specifically requested that respondent provide them with a
11 billing statement or an accounting with regard to the funds they had advanced. Respondent did
12 not provide them with an accounting or statement.

13 Respondent continued to have poor communications with the Watters. He refused to
14 return telephone calls or returned them only after considerable delay.

15 Thereafter, Mrs. Watters continued to ask that respondent pay the remaining creditors and
16 provide her with an accounting through September 1999. On September 2, 1999, the Watters
17 went to respondent's office and learned for the first time that he had moved. They were not
18 given a forwarding address. On September 6, 1999, Mrs. Watters filed a complaint with the
19 State Bar of Arizona.

20 On April 13, 2000, Mrs. Watters faxed respondent a memorandum again requesting an
21 accounting or billing statement. She also tried to discharge respondent and asked that he return
22 the balance of the funds being held in trust.

23 Respondent's failures in 1999 to communicate with the Watters, to provide them with
24 documentation as requested and to resolve their legal problems are explained by the distractions
25 created by respondent's spouse's health problems. His similar failures in 2000 and 2001 are not
26 explained by her health problems.

27 Respondent believed that he could not return the balance of the funds because he had a
28 continuing obligation to hold them and to use them to pay the remaining creditor pursuant to the

1 November 27, 1998, court order. However, he did not petition the court for instructions or ask to
2 be released from the requirements of the order.

3 Respondent did not return the funds and took few meaningful steps toward resolving the
4 the obligation to pay the remaining creditor. Arizona Bar Counsel mediated a resolution between
5 respondent and Mrs. Watters on October 8, 2002.

6 Just prior to the final hearing on the Arizona disciplinary matter, respondent disbursed the
7 remaining funds. He reestablished contact with the Third Party Creditor and wrote a letter on
8 October 23, 2003, to that creditor to resolve that claim. He also provided the Watters with an
9 accounting on April 24, 2001.

10 Although respondent did not act with reasonable diligence and promptness representing
11 his clients, it did not cause tangible economic damage to the Watters. The delay actually resulted
12 in an unintentional benefit to the Watters as the Third Party Creditor was willing to accept a
13 smaller amount in satisfaction of its claim than it would have accepted in the past.

14 Respondent did not promptly reply to requests for information and did not keep his
15 clients reasonably informed about the status of their case.

16 Respondent did not provide a prompt or timely accounting to his clients upon their
17 requests.

18 Respondent did not abide by his clients' decisions concerning the objectives of the scope
19 of the representation.

20 The Watters filed a complaint with the State Bar of Arizona on September 6, 1999.

21 On September 27, 1999, Bar Counsel asked respondent to answer the charges in the
22 complaint within 20 days, but he did not do so.

23 On November 3, 1999, Bar Counsel sent respondent another letter reminding him of the
24 deadline; that his response was overdue; and allowing him an additional 10 days to respond.
25 Respondent did not answer the charges during the period of the extension.

26 On November 30, 1999, respondent forwarded a letter to Bar Counsel seeking an
27 additional 10 days to respond. Bar Counsel agreed and sent respondent a letter stating that his
28 response was now due on December 10, 1999. Respondent did not respond during the period of

1 the extension.

2 On March 22, 2000, the Probable Cause Panelist signed an order of probable cause.

3 On March 27, 2000, respondent hand-delivered his response. Thereafter, Bar counsel
4 sent respondent a letter asking him to provide relevant documents; however, respondent did not
5 provide those documents promptly or within the timeline requested by Bar Counsel.

6 Respondent did not furnish information or respond promptly to an inquiry and request
7 from Bar Counsel. He initially failed to cooperate with the Arizona State Bar and to comply with
8 the Rules of the Arizona Supreme Court regarding lawyer misconduct. He engaged in conduct
9 that was prejudicial to the administration of justice.

10 On the basis of the foregoing facts, respondent was found culpable by clear and
11 convincing evidence of violating the following Arizona ethics rules:

12 (1) ER 1.2, Rule 42, Rules of the Arizona Supreme Court¹ (competence): By not
13 consulting sufficiently with the Watters regarding the negotiation and settlement of the
14 outstanding Third Party Creditor's account; the delays involved in the negotiation and settlement;
15 and in not withdrawing from representation as requested;

16 (2) ER 1.3 (diligence): By not diligently and promptly resolving the Watters' account
17 with the Third Party Creditor or, absent such resolution, seeking a modification of the conditions
18 attached to the dismissal of the Watters' bankruptcy;

19 (3) ER 1.4 (communication): By not consulting sufficiently with the Watters regarding
20 the negotiation and settlement of the Third Party Creditor's account; the delays involved in the
21 negotiation and settlement; and discussing the Watters' options regarding the dismissal of their
22 bankruptcy; and by not responding to numerous telephone calls and written inquiries from the
23 Watters for status reports, other information and financial reports;

24 (4) ER 1.15(b) (safekeeping property): By not promptly resolving the account held by
25 the Third Party Creditor; by not keeping the Watters sufficiently informed regarding the
26 resolution of that creditor's claim; and in not providing a written accounting of the funds held in
27

28 ¹The Arizona rules will hereafter be referenced as "ER" or "Rule".

1 trust when the Watters requested it;

2 (5) ER 1.16(a)(3) (declining or terminating representation): By not withdrawing from
3 representation when the Watters asked him to do so;

4 (6) Rule 44(b)(3), Rules of the Arizona Supreme Court (accounting): By not providing a
5 written accounting of the entrusted funds when the Watters requested it;

6 (7) ER 8.4(d) (failure to cooperate): By not responding to the State Bar's multiple
7 requests for information and response after the Watters filed their informal complaint;

8 (8) Rule 51(h) (failure to cooperate): By not responding to the multiple requests for
9 information and response made by Bar Counsel;

10 (9) Rule 51(i) (failure to cooperate): By not cooperating with Bar Counsel during the
11 initial stages of the Watters' complaint.

12 **Case no. 00-1281 (Unnamed Complainant)**

13 **Facts**

14 On June 12, 2000, the Complainant filed a charge with the State Bar of Arizona against
15 respondent for alleged misconduct.

16 On July 10, 2000, Bar Counsel sent respondent correspondence asking him to address the
17 allegations in writing. Respondent did not respond to that letter or to the allegations of
18 misconduct.

19 On September 6, 2000, Bar Counsel drafted another letter to respondent and referenced
20 the July 10 letter, asking respondent for a response in 10 days. Respondent did not respond to
21 the September 6 letter.

22 On December 26, 2000, the Probable Cause Panelist found probable cause to exist to
23 issue a formal complaint against respondent for violation of ER's 1.8 and 8.4 and Rules 51(h)
24 and (i).

25 Respondent engaged in conduct prejudicial to the administration of justice. The first
26 count of the complaint against respondent was dismissed at the request of the State Bar; however,
27 the dismissal was based on information and documents obtained from respondent only after he
28 failed to respond to two requests for information from the State Bar and after a formal complaint

1 was filed. Respondent's neglect resulted in the unnecessary use of disciplinary resources and
2 undue delay in resolution of a complaint filed against an attorney.

3 Respondent knowingly failed to respond to a lawful demand for information from a
4 disciplinary authority. He also did not furnish information or respond promptly to an inquiry and
5 to a request from Bar Counsel. Respondent initially refused to cooperate with State Bar staff
6 during the disciplinary process.

7 On the basis of the foregoing facts, respondent was found culpable of violating the
8 following Arizona ethics rules:

9 (1) ER 8.1(b) (failure to respond to a lawful demand for information from disciplinary
10 authority): By failing to respond to requests for information from disciplinary authorities;

11 (2) ER 8.4(d) (conduct prejudicial to the administration of justice): By knowingly failing
12 to respond to requests for information from disciplinary authorities resulting in the unnecessary
13 use of disciplinary resources and undue delay in the resolution of a complaint filed against an
14 attorney;

15 (3) Rule 51(h) (failure to furnish information): By knowingly failing to respond to
16 requests for information from disciplinary authorities;

17 (4) Rule 51(i) (failing to cooperate): By failing to cooperate with Bar Counsel.

18 **Legal Conclusions**

19 **RPC 4-100(B)(3) (Failure to Account)**

20 RPC 4-100(B)(3) of the Rules of Professional Conduct ("RPC") requires, in relevant part,
21 that an attorney maintain complete records of all client funds, securities or other property coming
22 into the attorney's or law firm's possession and render appropriate accounts to the clients
23 regarding them. The attorney is to preserve such records for no less than five years after final
24 appropriate distribution of the funds or property.

25 By not providing the Watters with an accounting of the settlement funds, respondent
26 wilfully violated RPC 4-100(B)(3).

27 **RPC 3-500 and Section 6068(m)(Failure to Communicate)**

28 RPC 3-500 requires an attorney to keep a client reasonably informed about significant

1 developments relating to the employment or representation, including promptly complying with
2 reasonable requests for information and copies of significant documents when necessary to keep
3 the client so informed.

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

7 Respondent did not respond promptly to the Watters' reasonable and repeated status
8 inquiries nor did he keep them reasonably informed of significant developments regarding their
9 case in wilful violation of section 6068(m).

10 It is generally inappropriate to find redundant charged allegations. The appropriate level
11 of discipline for an act of misconduct does not depend on how many rules of professional
12 conduct or statutes proscribe the misconduct. "There is 'little, if any, purpose served by
13 duplicative allegations of misconduct.'" (*In the Matter of Torres* (Review Dept. 2000) 4 Cal.
14 State Bar Ct. Rptr. 138, 148.) Accordingly, the charge that respondent violated RPC 3-500 is
15 dismissed with prejudice.

16 **Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

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

19 By not responding to Arizona Bar Counsel's repeated requests for information and
20 responses, respondent did not participate in the investigation of the allegations of misconduct
21 regarding the Watters case in wilful violation of 6068(i).

22 **Sections 6068(a) (Noncompliance with Laws) and 6103 (Violation of Court Order)**

23 Section 6068(a) requires an attorney to support the Constitution and laws of the United
24 States and of this State.

25 In relevant part, section 6103 makes it a cause for disbarment or suspension for an
26 attorney to wilfully disobey or violate a court order requiring him or her to do or to forbear an act
27 connected with or in the course of his or her profession, which he or she ought in good faith to do
28 or forbear.

1 The prosecution urges a finding of culpability of sections 6068(a) and 6103 on the
2 grounds that respondent violated these statutes by the mere fact that he violated the Arizona
3 ethical rules. (Closing Brief, page 7:18-23.) The court dismisses these charges with prejudice
4 because the misconduct does not amount to a wilful violation of respondent's oath and duties to
5 support the law as defined in section 6068(a). Further, section 6103 does not define any duties
6 that respondent could have violated. (Cf., *Sands v. State Bar* (1989) 49 Cal.3d 919, 931; *Baker v.*
7 *State Bar* (1989) 49 Cal.3d 804, 814-815.)

8 LEVEL OF DISCIPLINE

9 Factors in Mitigation

10 Since respondent did not participate in these proceedings, no mitigating evidence was
11 presented and the Court could glean none other than those found in the Arizona proceeding,
12 discussed below, and his discipline-free practice in California for approximately 21 years
13 between the time of his admission in California and the commencement of misconduct in 1994 in
14 Arizona in one of his prior disciplinary matters there. (Standard 1.2(e).) The mitigating effect of
15 this factor is undercut by the two unreported prior Arizona disciplinary cases, however. These
16 cases are discussed below in the section entitled "Factors in Aggravation."

17 The mitigating factors found in Arizona were:

18 Respondent had no selfish or dishonest motive. (Arizona standard 9.32(b).)

19 Respondent had personal and emotional problems. (Arizona standard 9.32(c).)
20 (California standard 1.2(e)(iv).) These factors were not given much weight in mitigation as will
21 be explained below.

22 Respondent was the primary caregiver for his wife who suffered from serious health
23 problems. Those health problems clearly diverted respondent's attention from the practice of
24 law. He was, unquestionably, a devoted husband and father. Respondent himself suffered from
25 depression and was under the care of a psychiatrist and on anti-depressant medication.

26 Respondent conceded suffering anxiety when confronted with communications from Bar
27 Counsel regarding the complaints. This anxiety resulted in respondent freezing and taking no
28 action. Although respondent believed that he did not suffer similar anxiety and inability to act

1 with regard to client issues, the record demonstrated otherwise. However, the Arizona Hearing
2 Officer concluded that respondent's depression and anxiety had more wide-ranging effects and
3 posed a danger to clients in future matters.

4 Respondent took some steps to prevent future misconduct, including limiting the number
5 and nature of cases and engaged other counsel to replace him in some pending matters. He
6 actively participated in the Arizona State Bar's Member Assistance Program.

7 However, little mitigating weight was afforded to these factors. The Arizona Hearing
8 Officer considered the entire record, including the quality of respondent's representation of
9 himself during the disciplinary proceedings, and found that respondent had not taken sufficient
10 measures to protect clients and the public from future misconduct. Respondent relied heavily on
11 his wife's medical condition as a mitigating circumstance, but only provided sketchy testimony
12 and documentation about her medical condition and the effect it had on his practice.

13 Respondent also relied on his own depression as a mitigating circumstance, but provided
14 no acceptable explanation for his failure to obtain a statement or other evidence from his treating
15 psychiatrist. The Disciplinary Commission's December 12, 2001, report rejecting an Agreement
16 for Discipline by Consent filed earlier in the instant case specifically noted that any future
17 consent agreement should address the issue of whether respondent was undergoing adequate
18 treatment for depression and its effect on respondent's practice of law. Considering the interest
19 in this issue, the lack of evidence on this point was very troubling to the Arizona Hearing Officer.

20
21 Respondent also admitted that he was not familiar with the evidentiary distinctions
22 between the relevant mitigating factors.

23 On the basis of respondent's unfamiliarity with the standards for mitigating and his
24 insufficient presentation of evidence on mitigating factors, the Hearing Officer concluded that
25 respondent, in representing a client, may fail to determine the applicable legal standards for the
26 client's matter and fail to marshal sufficient evidence to support the client's position.

27 Respondent demonstrated remorse and a full and free disclosure to the Disciplinary Board
28 or a cooperative attitude toward the Arizona proceedings. (Arizona standards 9.32(e) and (l).)

1 (California standards 1.2(e)(v) and (vii).) Not much weight was afforded to these factors because
2 of respondent's late cooperation after the filing of a formal complaint against him. This court
3 agrees.

4 **Factors in Aggravation**

5 In Arizona, the following aggravating factors were found:

6 Respondent had two prior instances of discipline. (Arizona standard 9.22(a).) In File No.
7 99-1013, respondent was informally reprimanded by order for violation of ER 8.1 and of rules
8 51(h) and (i) for not responding to Bar Counsel's repeated requests for relevant documents which
9 prevented the further investigation of fee issues raised by a client.

10 In Supreme Court No. SB-01-0099 (D.C. 95-0361, *et seq.*), an Order of Censure,
11 Probation (for one year) and Costs was entered on May 16, 2001, for violations of ER's 1.1
12 (competence), 1.2 (scope of representation), 1.3 (diligence), 1.5 (fees), 1.15 (safekeeping
13 property), 4.1(a) (false statement of material fact to a third party), 8.1(b) (failure to respond to a
14 lawful demand for information from disciplinary authority), 8.4(d) (conduct prejudicial to the
15 administration of justice), and Rules 43 (trust account verification), 44 (trust account interest),
16 51(h) (failure to furnish information), 51(i) (evading service) and 51(k) (wilful violation of court
17 order).

18 Respondent's prior disciplinary record was afforded particular importance since he had
19 recently been reprimanded and censured for misconduct similar to that in the instant case.

20 Respondent misconduct consisted of a pattern and of multiple offenses. (Arizona
21 standards 9.22(c) and (d).)

22 Respondent had substantial experience in the law. (Arizona standard 9.22(i).)
23 Respondent had been an attorney for more than 20 years and an Arizona attorney since 1993.

24 This court finds the following aggravating factors:

25 Two prior instances of discipline in Arizona as discussed above. (Standard 1.2(b)(i).)

26 Respondent engaged in multiple acts of wrongdoing. (Standard 1.2(b)(ii).) There is a
27 pattern of misconduct in that respondent failed to cooperate in all of the Arizona disciplinary
28 investigations as well as in the California disciplinary investigation.

1 In relevant part, standard 1.2(b)(iii) makes consideration as an aggravating circumstance
2 whether respondent's misconduct was surrounded or followed by bad faith, dishonesty,
3 concealment, overreaching or other violations of the State Bar Act or Rules of Professional
4 Conduct. The evidence demonstrates that, as of May 20, 2004, respondent had not reported the
5 three instances of discipline in Arizona to the State Bar of California as required by section
6 6068(o)(6). (*Cf., In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr.
7 862, 866-867 [purpose of section 6068(o)(3) is to inform the State Bar promptly of events which
8 could warrant disciplinary investigation so it may investigate on its own initiative any conduct
9 which might be a violation of the State Bar Act].)

10 By not maintaining a current address and telephone number with the State Bar,
11 respondent wilfully violated section 6068(j). Correspondence sent to his official address by the
12 court was returned as undeliverable.

13 Respondent's lack of participation prior to the entry of default in this proceeding is an
14 aggravating circumstance. (Standard 1.2(b)(vi).) He did not participate in the August 23, 2004,
15 status conference.

16 **Discussion**

17 The primary purposes of attorney disciplinary proceedings are the protection of the
18 public, the courts and the legal profession; the maintenance of high professional standards by
19 attorneys; and the preservation of public confidence in the legal profession. (Standard 1.3;
20 *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

21 Standard 1.6(b) provides that the appropriate sanction for the misconduct must be
22 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
23 imposing discipline. If two or more acts of professional misconduct are found in a single
24 disciplinary proceeding and different sanctions are prescribed by the standards for those acts, the
25 sanction recommended shall be the most severe. The standards, however, are only guidelines
26 and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept.
27 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own
28 particular facts and not by application of rigid standards." (*Id.* at p. 251.)

1 In this instance, the standards provide for the imposition of discipline ranging from
2 reproof to disbarment. (Standards 2.2(b), 2.4(b), 2.6(a) and (b).) The more severe sanction is
3 suggested by standard 2.2(b): at least three months actual suspension regardless of mitigating
4 circumstances for commingling entrusted funds or property with personal property or committing
5 another violation of rule 4-100, none of which result in the wilful misappropriation of entrusted
6 funds or property.

7 OCTC seeks actual suspension of six months. Having considered the facts and the law,
8 the court recommends actual suspension of two years and until respondent complies with
9 standard 1.4(c)(ii) and with rule 205, among other things, as sufficient for the protection of the
10 public.

11 Respondent has been engaged in a course of misconduct in Arizona since about 1994. He
12 has not cooperated in the disciplinary process in Arizona or California. Since respondent did not
13 participate in this proceeding, there has been no explanation offered to account for his
14 misconduct. Further, he has not reported the three Arizona discipline records to the State Bar of
15 California. He has not even maintained a current address with the State Bar of California.
16 Accordingly, it appears that respondent is not concerned about his ethical duties here. His
17 misconduct and his lack of appreciation for his ethical duties in California merit a much more
18 lengthy suspension than six months. It is recommended that he remain actually suspended until
19 he provides proof satisfactory to this court of his rehabilitation, fitness to practice and learning
20 and ability in the general law pursuant to standard 1.4(c)(ii). Since respondent defaulted in these
21 proceedings, it is also recommended that he also explain his lack of participation and commit to
22 complying with probation conditions before he is allowed to practice law again.

23 **DISCIPLINE RECOMMENDATION**

24 **IT IS HEREBY RECOMMENDED** that respondent CRAIG ALLRED DECKER, be
25 suspended from the practice of law for three years and until he provides proof satisfactory to the
26 State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the
27 general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional
28 Misconduct; that said suspension be stayed; and that he be actually suspended from the practice

1 of law for the first two years and until the State Bar Court grants a motion to terminate
2 respondent's actual suspension at its conclusion or upon such later date ordered by the court.
3 (Rule 205(a), (c), Rules Proc. of State Bar.)

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

7 It is further recommended that respondent remain actually suspended until he has shown
8 proof satisfactory to the State Bar Court of rehabilitation, fitness to practice, and learning and
9 ability in the general law pursuant to Standard 1.4(c)(ii), Standards for Attorney Sanctions for
10 Professional Misconduct. (See also, rule 205(b).)

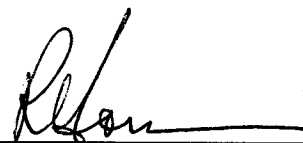
11 It is also recommended that respondent be ordered to comply with the requirements of
12 rule 955 of the California Rules of Court within 30 calendar days of the effective date of the
13 Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40
14 days of the effective date of the order showing his compliance with said order.²

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

19 COSTS

20 The Court recommends that costs be awarded to the State Bar pursuant to Business and
21 Professions Code section 6086.10, and that those costs be payable in accordance with section
22 6140.7.

23
24 Dated: January 28, 2005



25 RICHARD A. HONN
26 Judge of the State Bar Court

27 ²Failure to comply with CRC 955 could result in disbarment. (*Bercovich v. State Bar*
28 (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 January 28, 2005, I deposited a true copy of the following document(s):

DECISION, filed January 28, 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:

**CRAIG ALLRED DECKER
ATTORNEY AT LAW
1320 E BROADWAY #101
MESA, AZ 85204**

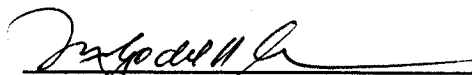
**CRAIG ALLRED DECKER
ATTORNEY AT LAW
P O BOX 2970
MEZA, AZ 85214-2970
(courtesy copy)**

**CRAIG ALLRED DECKER
ATTORNEY AT LAW
1053 S MAPLE
MESA, AZ 85205
(courtesy copy)**

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

Timothy G. Byer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 28, 2005**.



Milagro del R. Salmeron
Case Administrator
State Bar Court