

1 discipline in California and that one or more of the Vermont proceedings lacked fundamental
2 constitutional protection. (*Ibid.*) Unless respondent establishes one or both of these, his three
3 formal records of discipline in Vermont are conclusive evidence that he is culpable of
4 misconduct in California. (§ 6049.1, subs. (a) & (b).)

5 The State Bar contends that the appropriate level of discipline in this case is five years'
6 stayed suspension and three years' actual suspension. For the reasons indicated below, the court
7 recommends that respondent be placed on two years' stayed suspension and two years' actual
8 suspension.

9 II. SIGNIFICANT PROCEDURAL HISTORY

10 On October 1, 2004, the State Bar filed the notice of disciplinary charges (NDC) in case
11 number 04-J-13938-JMR. The day before, September 30, 2004, the State Bar properly served a
12 copy of that NDC on respondent at his latest address shown on the official membership records
13 of the State Bar (official address) by certified mail, return receipt requested (§ 6002.1, subd. (c);
14 Rules Proc. of State Bar, rule 60(b)). On February 4, 2005, the State Bar filed the NDC in case
15 number 04-J-14823-JMR and properly served a copy of that NDC on respondent at his official
16 address by certified mail, return receipt requested. (*Ibid.*) However, each of those copies was
17 returned undelivered to the State Bar by the United States Postal Service (Postal Service) with
18 the notation: "Not Deliverable as Addressed, Unable to Forward." Nonetheless, such service in
19 State Bar Court proceedings is deemed complete when mailed even if the attorney does not
20 receive it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.)

21 In an attempt to give respondent actual notice that California had filed disciplinary
22 charges against him, the State Bar contacted the Vermont Disciplinary Counsel's Office in
23 November 2004 and obtained, from that office, an address for respondent on Winooski Avenue
24 in Burlington, Vermont (Winooski Avenue address). The next day, DTC Grenier mailed a letter
25 to respondent at the Winooski Avenue address notifying respondent of the charges and asking
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1 respondent to contact him.² That letter was not returned to the State Bar by the Postal Service.
2 Nor did respondent reply to it.

3 On March 14, 2005, the court consolidated case numbers 04-J-13938-JMR and
4 04-J-14823-JMR. Respondent never filed a response to the NDC in either case number
5 04-J-13938-JMR or case number 04-J-14823-JMR. Accordingly, on March 30, 2005, the State
6 Bar filed a motion for entry of respondent's default. Thereafter, on April 5, 2005, the State Bar
7 properly served a copy of that motion on respondent at his official address by certified mail,
8 return receipt requested. It also mailed a courtesy copy to him at the Winooski Avenue address.

9 On April 21, 2005, this court filed an order entering respondent's default in the
10 consolidated case and involuntary enrolling respondent inactive (§ 6007, subd. (e)). The clerk
11 properly served a copy of that order on respondent at his official address by certified mail, return
12 receipt requested. That copy, however, was returned undelivered to the clerk by the Postal
13 Service with the notation: "Not Deliverable as Addressed, Unable to Forward."

14 On May 25, 2005, the State Bar filed the NDC in case number 05-J-01885-JMR and
15 properly served a copy of that NDC on respondent at his official address by certified mail, return
16 receipt requested (§ 6002.1, subd. (c); Rules Proc. of State Bar, rule 60(b)). In addition, the State
17 Bar mailed a courtesy copy of that NDC to respondent at the Winooski Avenue address.³

18 The copy of the NDC in case number 05-J-01885-JMR that was served on respondent at
19 his official address was returned undelivered to the State Bar by the Postal Service with the
20 notation: "Not Deliverable as Addressed, Unable to Forward." However, the courtesy copy of
21 the NDC mailed to respondent at the Winooski Avenue address was not returned to the State Bar

22
23 ²In addition to mailing this letter to respondent, the State Bar took other steps to attempt
24 to provide respondent with actual notice that disciplinary charges were pending against him in
25 California. Those other steps, which appear to have been unsuccessful, are set forth in the
26 declaration of DTC Grenier that is attached to the State Bar's March 30, 2005 motion for entry of
27 default.

28 ³In addition to mailing this courtesy copy of that NDC to respondent, the State Bar took
other steps in an attempt to provide respondent with actual notice of the charges. Those other
steps, which appear to be unsuccessful, are set forth in the declaration of DTC Grenier that is
attached to the State Bar's June 28, 2005 motion for entry of default.

1 by the Postal Service.

2 Respondent never filed a response to the NDC in case number 05-J-01885-JMR.
3 Accordingly, on June 28, 2005, the State Bar properly served and filed a motion for entry of
4 respondent's default in that case.

5 On July 19, 2005, this court filed an order entering respondent's default, involuntarily
6 enrolling respondent inactive, and consolidating case number 05-J-01885-JMR with case
7 numbers 04-J-13938-JMR and 04-J-14823-JMR. The clerk properly served a copy of that order
8 on respondent at his official address by certified mail, return receipt requested. That copy,
9 however, was returned undelivered to the clerk by the Postal Service with the notation: "Not
10 Deliverable as Addressed, Unable to Forward."

11 On August 5, 2005, the State Bar filed a request for waiver of default hearing and brief on
12 culpability and discipline. On August 6, 2005, the court took the matter under submission for
13 decision without hearing.

14 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

15 Even though the factual allegations contained in the NDC are deemed admitted by the
16 entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A)), there are no
17 factual allegations in the NDC's other than that the Vermont Professional Responsibility Board
18 (Vermont board) and the Vermont Supreme Court have imposed discipline on respondent on
19 various enumerated grounds.

20 The court admits into evidence the certified copies of the orders and decisions of the
21 Vermont Supreme Court and the Vermont board that are attached as exhibits to the three NDC's
22 in this consolidated proceeding. (§ 6049.1, subd. (d).)

23 The court takes judicial notice of the copies of the Vermont Rules of Professional
24 Conduct⁴ and Vermont statute that are attached as exhibits to the NDC's in this proceeding.
25 (Cal. Evid. Code, § 452, subd. (c).) The court also takes judicial notice of the certified copy of
26

27
28 ⁴Unless otherwise noted, all references to Vermont rules are to these Vermont Rules of
Professional Conduct.

1 respondent's prior record of discipline in California that is attached as an exhibit to the State
2 Bar's August 5, 2005, request for waiver of default hearing and brief on culpability and
3 discipline. (*Ibid.*)

4 **A. Jurisdiction**

5 Respondent was admitted to the practice of law in California on July 29, 1982, and has
6 been a member of the State Bar since that time.

7 **B. Admitted in Vermont**

8 Respondent was admitted to practice law in the State of Vermont 1983.

9 **C. Case Number 04-J-13938-JMR**

10 **1. Findings of Fact**

11 In 1997, in accordance with a plea agreement he entered into while he was represented by
12 an attorney other than respondent, Andres Torres pleaded guilty to and was convicted, in a
13 Vermont District Court, of burglary, petty larceny, violation of conditions of release, and second
14 offense of domestic assault. Furthermore, under the plea agreement, five other criminal charges
15 pending against Torres were dismissed.

16 Thereafter, Torres filed pro se a petition for postconviction relief in a Vermont Superior
17 Court. In his petition, Torres attacked the legality of his 1997 conviction in the district court of a
18 second offense domestic assault on the ground that he had never previously been convicted of
19 domestic assault. Torres filed that petition because he was concerned over the Vermont
20 Corrections Department's classification of him "as having a high risk of violence" and because he
21 was denied parole after he failed to complete a violent offenders' program.

22 In the second half of 2000, respondent was appointed to represent Torres with respect to
23 his postconviction petition. In October 2000, respondent filed an amended petition for Torres.
24 Thereafter, respondent undertook an investigation (1) by speaking to the attorney who
25 represented Torres in the district court and (2) by listening to the tape recording of the hearing at
26 which Torres pleaded guilty.

27 In June 2001, respondent received notice, from the Vermont Superior Court, that a
28 pretrial conference was set in Torres's postconviction proceeding for July 13, 2001. Respondent,

1 however, failed to appear at the pretrial conference.

2 Moreover, even though Vermont law provides that the judge who sentences a criminal
3 defendant shall not hear any petition for postconviction relief filed by the defendant, Torres's
4 petition was assigned to the judge who sentenced Torres in 1997. Even though Torres sent
5 respondent a letter questioning the sentencing judge's impartiality and even though respondent
6 admittedly knew that the law prohibited the sentencing judge from ruling on Torres's petition,
7 respondent never asked the superior court to reassign Torres's petition to another judge.

8 In July 2001, the State of Vermont filed a motion for summary judgement in which it
9 sought the dismissal of Torres's petition. Respondent decided not to file a response to the State's
10 motion because he did not believe that Torres had a defense to the motion. Further, respondent
11 never sought to withdraw as Torres's counsel. In September 2001, the superior court granted the
12 State's motion and dismissed Torres's petition with prejudice.

13 After respondent notified Torres that the superior court dismissed his petition, Torres
14 appealed the dismissal. Respondent did not represent Torres on appeal. As noted by the
15 Vermont Supreme Court, on appeal, "the parties stipulated to vacating the superior court's
16 summary judgment ruling and remanding the case for consideration on the merits by a different
17 judge. Torres's new attorney then filed an opposition to the State's summary judgment motion."

18 In September 2002, the Vermont board filed a decision in which it found that respondent
19 violated rule 1.3 of the Vermont Rules of Professional Conduct, which provides that "A lawyer
20 shall act with reasonable diligence and promptness in representing a client," based on
21 respondent's failure to attend the pretrial conference and his failure to file a response to the
22 State's summary judgment motion. In that decision, the Vermont board also actually suspended
23 respondent from the practice of law in Vermont for two months. Respondent appealed.
24 However, in August 2004, the Vermont Supreme Court adopted the Vermont board's September
25 2002 decision and actually suspended respondent from practice in Vermont for two months. (*In*
26 *re Andres* (Vt. 2004) 857 A.2d 803.)

27 2. Conclusions of Law

28 Contrary to the State Bar's contention, rule 3-110(A) of the California Rules of

1 Professional Conduct, which addresses the intentional, reckless, and repeated failure to
2 competently perform, is not substantially identical to Vermont rule 1.3, which addresses attorney
3 negligence. Nevertheless, this court finds respondent culpable of wilfully violating rule 3-110(A)
4 of the California Rules of Professional Conduct because the formal record of respondent's
5 discipline in Vermont establishes that respondent was more than just negligent in failing to file a
6 response to the summary judgment motion and to ask that Torres's petition be reassigned to
7 another judge.

8 As the Vermont Supreme Court noted, there were several nonfrivolous arguments
9 respondent could and should have made to oppose the summary judgment motion. In short,
10 regardless of whether he honestly believed that Torres did not have a defense to the summary
11 judgment motion, respondent's intentional failure to file a response to the motion was, at best,
12 the reckless failure to competently perform the legal services for which he was retained. As the
13 Vermont Supreme Court aptly concluded, "respondent was not entitled to intentionally abandon
14 his client's case" by failing to file a response. As the Vermont board found, respondent's failure
15 to file a response to the summary judgment motion was not "a tactical decision"; it "was a
16 complete abdication of his responsibility to his client."

17 Moreover, the record clearly establishes that respondent intentionally failed to
18 competently perform legal services when he failed to ask that Torres's petition be reassigned in
19 accordance with Vermont law.

20 **D. Case Number 04-J-14823-JMR**

21 **1. Findings of Fact**

22 In 2001, respondent had a girlfriend who was the ex-wife of Warren Brooks. Even
23 though respondent did not know Warren Brooks, he knew that Brooks was in a wheelchair. In
24 addition, respondent believed that Brooks had been harassing him and his girlfriend.

25 In August 2001, respondent and his girlfriend went to a bar in Burlington, Vermont. At
26 the time they entered the bar, Warren Brooks and Brooks's girlfriend were in the bar. Shortly
27 thereafter, Brooks and Brook's girlfriend left the bar. Respondent asked someone if the man in
28 the wheelchair was Warren Brooks. Respondent was told that it was.

1 Respondent followed Brooks outside into the parking lot and confronted and punched
2 Brooks as he was getting into his van. In April 2002, respondent was convicted of simple
3 assault. The next month, respondent was sentenced to three to twelve months in prison, which
4 was suspended except for three months. The district court stayed the three months' incarceration
5 and placed respondent on probation on conditions.

6 Even though respondent's probation conditions prohibited him from entering into
7 establishments that primarily served alcohol (i.e., bars) and from purchasing, possessing, or
8 drinking alcoholic beverages, respondent entered and drank alcohol in a bar in Burlington,
9 Vermont in July 2002. Thus, in August 2002, respondent's probation was revoked, and he was
10 ordered to serve and did serve the incarceration period of his sentence. In addition, disciplinary
11 charges followed in Vermont.

12 In September 2002, respondent was placed on interim suspension in Vermont pending the
13 final resolution of those disciplinary charges.

14 After a hearing in February 2003, the Vermont board issued a decision in which it found
15 that respondent's assault on Brooks and respondent's probation violation violated rule 8.4(h) of
16 the Vermont Rules of Professional Conduct, which prohibits attorneys from engaging in conduct
17 that adversely reflects on their fitness to practice law. The Vermont board also found that, over a
18 thirteen-year period, respondent had been convicted of four separate crimes involving assaultive
19 behavior. In fact, the Vermont Supreme Court had previously disciplined respondent in part
20 because of one of those convictions. (*In re Andres* (Vt. 2000) 749 A.2d 618.)

21 Moreover, the Vermont board found that, when respondent testified before it, he misled it
22 to believe that the appeal and motion for new trial in his criminal matter were still pending.
23 According to the Vermont board, even "Putting the best light on Respondent's testimony, it was
24 deceptive and calculated to" mislead the board into believing that case was still pending before
25 the Vermont Supreme Court and the Vermont District Court.

26 In conclusion, the Vermont board found that respondent's assault on Brooks and
27 probation violation "indicate substantial disregard for both the criminal law in general as well as
28 explicit judicial orders directed at him personally" and violated Vermont rule 8.4(h). In light of

1 the aggravating factors (which included his deceptive testimony before the board, the
2 vulnerability of the victim and his pattern of misconduct), the Vermont board ordered respondent
3 actually suspended for three years *without* credit for the period of his interim suspension.
4 Respondent appealed. However, in September 2004, in an unpublished decision, the Vermont
5 Supreme Court adopted the board's three-year suspension without credit for interim suspension.

6 **2. Conclusions of Law**

7 The State Bar asserts that discipline can be imposed on respondent in California under
8 section 6068, subdivision (a), which provides that attorneys have a duty "To support the
9 Constitution and laws of the United States and of this state." The court agrees.

10 Had respondent committed his criminal conduct in this state, he could have been
11 disciplined for it, in an original disciplinary proceeding, as a section 6068, subdivision (a)
12 violation. Moreover, had the State Bar sought to discipline respondent for his Vermont
13 conviction in a conviction referral proceeding in the State Bar Court (§§ 6101, 6102) instead of
14 in a proceeding under section 6049.1, he would have been disciplined because it is clear that his
15 conviction involved other misconduct warranting discipline.

16 Moreover, respondent's deceptive testimony before the Vermont board is serious
17 misconduct. Even though the Vermont court relied on that deceptive testimony for purposes of
18 aggravation, this court notes that the California Supreme Court has repeatedly held that false
19 testimony in an attorney disciplinary proceeding may well constitute a greater offense than
20 misappropriation, which ordinarily results in disbarment. (*Olguin v. State Bar* (1980) 28 Cal.3d
21 195, 200.)

22 **E. Case Number 05-J-01885-JMR**

23 **1. Findings of Fact**

24 When respondent was charged with assaulting Brooks in 2001, the charges were filed in
25 Chittenden County, Vermont. At that time, the judge in the Chittenden County District Court
26 was Judge Helen Toor. She recused herself from respondent's case without giving a reason, and
27 respondent's case was transferred to the Vermont District Court of Addison County. As noted
28 *ante*, respondent was convicted, sentenced, and placed on probation for assaulting Brooks.

1 In March and May 2003, respondent was again charged with violating his criminal
2 probation. Judge Toor, who was then sitting in the Addison County District Court, presided over
3 the hearings on both of those occasions without respondent objecting. Thereafter, Judge Toor
4 was assigned to hear a motion for new trial that respondent had filed. In February 2004, Judge
5 Toor set a status conference in that matter. The day before that conference, respondent filed a
6 motion to recuse Judge Toor alleging, inter alia, that Judge Toor should be recused because she
7 had previously recused herself from the case in 2001 when she was sitting in Chittenden County.
8 Soon thereafter, in March 2004, respondent filed a request for hearing with the administrative
9 judge on the issue of Judge Toor's recusal. In his request, respondent wrote:

10 "No reasonable person in [Respondent's] shoes would believe for a
11 moment, that a fair hearing was possible with Judge Toor.

12 I have represented crack cocaine addicts who are able to
13 sufficiently focus to comprehend that if at one point you indicate you
14 cannot be fair, then it would be reasonable to conclude that you could not
15 be fair."

16 In the Vermont disciplinary proceeding, respondent admitted that he intended his
17 statement about crack cocaine addicts to refer to Judge Toor. The Vermont board found that
18 respondent's statement "was intended to suggest to the Administrative Judge that Judge Toor did
19 not have the perceptual or reasoning ability of a crack cocaine addict. This comparison was
20 disrespectful, discourteous and degrading to the tribunal." That board further found that, by
21 making the statement, respondent violated rule 3.5 of the Vermont Rules of Professional
22 Conduct, which prohibits attorneys from engaging in "undignified or discourteous conduct which
23 is degrading or disrupting to a tribunal," and publicly reprimanded respondent.

24 2. Conclusions of Law

25 The State Bar asserts that respondent's violation of Vermont rule 3.5 establishes that
26 respondent violated section 6068, subdivision (b), which provides that California attorneys have
27 a duty "To maintain the respect due to the courts of justice and judicial officers." This court
28 cannot agree.

In this state, it is improper to discipline an attorney under section 6068, subdivision (b),
for statements personally attacking or impugning the honesty or integrity of a judge or other court

1 official unless the statements are *false*. (*In the Matter of Anderson* (Review Dept. 1997) 3 Cal.
2 State Bar Ct. Rptr. 775, 782-783.) There is no evidence that respondent made any false
3 statement of fact. Moreover, the record is insufficient to establish a violation of section 6068,
4 subdivision (b), because respondent's statement was rhetorical hyperbole, loose and figurative,
5 and a statement of opinion. (*Id.* at pp.783, 785, 786.) The charges in State Bar Court case
6 number 05-J-01885 are dismissed with prejudice.

7 IV. LEVEL OF DISCIPLINE

8 A. Factors in Aggravation

9 1. Prior Record of Discipline

10 Respondent has one prior record of discipline in California. (Rules Proc. of State Bar,
11 tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).⁵) In October 2000, the
12 California Supreme Court, in case number S090631 (State Bar Court case number 00-J-10587),
13 placed respondent on six months' stayed suspension and one year's probation with conditions,
14 which did not include a period of actual suspension. That discipline was imposed on respondent
15 in accordance with a stipulation as to facts, conclusions of law, and disposition that respondent
16 entered into with the State Bar. Like each of the cases in the present consolidated proceeding,
17 respondent's prior record of discipline was based on discipline imposed on respondent in
18 Vermont. More specifically, it was based on the public reprimand that the Vermont Supreme
19 Court imposed on respondent in 2000 in *In re Andres, supra*, 749 A.2d 618. As noted *ante*, that
20 reprimanded was based in part on one of respondent's convictions. That conviction was for
21 simple assault by mutual affray (for street fighting) in June 1998. The 2000 reprimand was also
22 based on respondent's culpability for neglect in one client matter in 1994 and 1995, and in
23 another client matter in 1996.

24 2. Multiple Acts of Misconduct

25 Respondent committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

26 ///

27 _____
28 ⁵All further references to standards are to this source.

1 **3. Failure to File a Response to the NDC**

2 Respondent's failures to file responses to the three NDC's, which allowed his defaults
3 to be entered, are aggravating circumstance. (*Conroy v. State Bar* (1990) 51 Cal.3d 799, 805;
4 but see *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1080 [failure to participate after entry of
5 default hearing is not an aggravating circumstance].) They establish that he fails to
6 appreciate the seriousness of the charges against him. (*Conroy v. State Bar, supra*, 51 Cal.3d
7 at pp. 805-806.) They establish "that he does not comprehend the duty as an officer of the
8 court to participate in disciplinary proceedings. [Citation.]" (*In the Matter of Stansbury*
9 (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109.)

10 **B. Factors in Mitigation**

11 Because respondent failed to participate in this proceeding, there is no evidence of any
12 mitigating factors.

13 **C. Discussion**

14 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the
15 public, to preserve public confidence in the profession, and to maintain the highest possible
16 professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103,
17 111.) In determining the appropriate level of discipline, the court first looks to the standards for
18 guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090.) However, the standards are not
19 to be applied in a talismanic fashion. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Next, the
20 court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302,
21 1310-1311.)

22 Looking to the standards first, standard 1.6(a) provides that, when two or more acts of
23 misconduct are found in a single disciplinary proceeding and different sanctions are prescribed
24 for those acts, the recommended sanction is to be the most severe of the different sanctions. In
25 the present proceeding, the most severe sanction for respondent's misconduct is found in standard
26 2.6(a), which provides that an attorney's violation of section 6068 "shall result in disbarment or
27 suspension depending on the gravity of the offense or the harm, if any, to the victim, with due
28 regard for the purposes of imposing discipline set forth in standard 1.3." Also relevant is

1 standard 1.7(a), which provides that, when an attorney has one prior record of discipline, the
2 discipline imposed in the current proceeding shall be greater than that imposed in the prior
3 proceeding.

4 Next, looking to case law, the court is unaware of any reported case similar to the present,
5 which involves a pattern of assaultive conduct spanning 13 years. The court views the following
6 cases as instructive.

7 In *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, an attorney
8 engaged in an altercation with police who had been summoned when he refused to leave his
9 estranged wife's apartment. Specifically, the attorney got into a brawl with a police officer after
10 putting that officer in a "bear hug." The attorney was convicted of misdemeanor battery on a
11 police officer. There the court found that the attorney provoked a dangerous and risky
12 confrontation with the police in a domestic dispute when he should have known better given that
13 he had his extensive experience as an attorney in handling family law matters. The discipline
14 imposed for this single instance of assaultive conduct was two years' stayed suspension, two
15 years' probation, and sixty days' actual suspension.

16 Then, in *In re Otto* (1989) 48 Cal.3d 970, the attorney was convicted of felony assault
17 likely to produce great bodily injury and of felony corporal punishment on a cohabitant of the
18 opposite sex. The criminal court reduced both of the convictions to misdemeanors. The
19 discipline imposed was two years' stayed, two years' probation, and six months' actual
20 suspension.

21 In *In re Larkin* (1989) 48 Cal.3d 236, the attorney was convicted of misdemeanor assault
22 with a deadly weapon and of misdemeanor conspiracy to commit assault with a deadly weapon.
23 In that case, the attorney and his wife were separated. The attorney's eight-year-old son told him
24 that the wife's boyfriend hit her and drank excessively. The attorney used his connections with
25 various law enforcement officers to obtain personal information on the wife's boyfriend and
26 conspired with one of his clients to assault the boyfriend. Thereafter, the client and another
27 individual went to the boyfriend's place of employment and hit him in the chin with a metal
28 flashlight, causing minor injury. There the court noted the serious nature of the misconduct and

1 the harm to the victim. In mitigation, the court found no prior record of discipline in seven years
2 of practice, community service, good character established by sixteen witnesses and twenty
3 affidavits, and emotional and physical disability. Even though the court found that the attorney's
4 misconduct was aberrational, it placed him on three years' stayed suspension, three years'
5 probation, and one year's actual suspension.

6 In light of standards 2.6 and 1.7(a), the foregoing case law, and all the other relevant
7 factors, the court concludes that the appropriate discipline to recommend is two years' stayed
8 suspension and two years' actual suspension continuing until respondent files and the State Bar
9 Court grants a motion to terminate his actual suspension and he establishes the requirements of
10 standard 1.4(c)(ii).

11 **VI. DISCIPLINE RECOMMENDATION**

12 This court recommends that respondent Robert Karl Andres be suspended from the
13 practice of law in the State of California for a period of two years, that execution of the two-year
14 suspension be stayed, and that he be actually suspended from the practice of law for two years
15 and until:

- 16 (1) he files and the State Bar Court grants a motion, under rule 205 of the
17 Rules of Procedure of the State Bar, to terminate his actual suspension;
18 and
- 19 (2) he shows proof satisfactory to the State Bar Court of his
20 rehabilitation, present fitness to practice, and present learning and
21 ability in the general law in accordance with standard 1.4(c)(ii) of
22 the Standards for Attorney Sanctions for Professional Misconduct.

23 Furthermore, the court recommends that respondent be ordered to comply with any
24 conditions of probation imposed on him by the State Bar Court as a condition for terminating his
25 actual suspension.

26 **VII. PROFESSIONAL RESPONSIBILITY EXAM, RULE 955, AND COSTS**

27 The court further recommends that respondent take and pass the Multistate Professional
28 Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners

1 (MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, and provide proof of
2 passage to the State Bar's Office of Probation in Los Angeles during the period of actual
3 suspension. Failure to pass the MPRE within the specified time results in actual suspension by
4 the review department without a hearing until passage.

5 The court further recommends that respondent be ordered to comply with California
6 Rules of Court, rule 955, and to perform the acts specified in subdivisions (a) and (c) of that rule
7 within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order
8 in this matter.⁶

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

12 **VIII. DIRECTIVE REGARDING SERVICE OF DECISION**

13 In addition to serving a copy of this decision on respondent at his official address, the
14 clerk is directed to mail a copy of it, by first class mail, to respondent at 70 S. Winooski Ave.
15 #191, Burlington, VT 05401.

16
17
18 Dated: November 4, 2005


19 **JOANN M. REMKE**
20 Judge of the State Bar Court

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27 ⁶Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify.
28 (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being a crime, an attorney's
failure to comply with rule 955 is also grounds for disbarment or suspension and for revocation
of any pending probation. (Cal. Rules of Court, rule 955(d).)

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 San Francisco, on November 4, 2005, I deposited a true copy of the following document(s):

DECISION

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

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

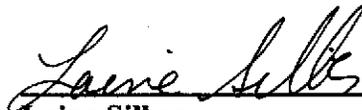
ROBERT KARL ANDRES
156 COLLEGE ST 3FL
BURLINGTON, VT 05401

ROBERT KARL ANDRES
70 S. WINOOSKI AVE #191
BURLINGTON, VT 05401

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

GORDON GRENIER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 4, 2005.**



Laine Silber
Case Administrator
State Bar Court