FILED SEPTEMBER 28, 2006

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **MARK W. DEL MORAL**, **Member No. 171129**, A Member of the State Bar.	)))))))	**Case No. 04-O-10133; 05-O-01173-RAH** **DECISION**

INTRODUCTION

The above-entitled matter was submitted for decision as of June 30, 2006, after the State Bar of California, Office of the Chief Trial Counsel ("State Bar") waived the hearing in this matter and submitted a brief on the issues of culpability and discipline. The State Bar was represented throughout most of this proceeding by Deputy Trial Counsel Eric H. Hsu ("DTC Hsu"). Respondent Mark W. Del Moral ("respondent") failed to participate in this matter either in person or through counsel and allowed his default to be entered in this matter.

In light of respondent's culpability in this proceeding, and after considering any and all aggravating and mitigating circumstances surrounding respondent's misconduct, the court recommends, inter alia, that respondent be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

PERTINENT PROCEDURAL HISTORY

On July 16, 2004, a 20-day letter was mailed to respondent at respondent's official membership records address ("official address") and was not returned by the United States Postal Service ("USPS") as undeliverable for any reason.

On February 7, 2005, a letter regarding the State Bar's intent to file a Notice of Disciplinary Charges ("NDC") was mailed to respondent at his official address and was not returned by the USPS

as undeliverable for any reason.

On March 9, 2006, another letter regarding these matters was mailed to respondent at his official address and was not returned by the USPS as undeliverable for any reason.

On March 22, 2006, another letter regarding the State Bar's intent to file a NDC was mailed to respondent at his official address and was not returned by the USPS as undeliverable for any reason.

On March 28, 2006, the State Bar initiated this formal disciplinary proceeding by filing a NDC against respondent.

A copy of the NDC was properly served upon respondent on March 28, 2006, by certified mail, return receipt requested, addressed to respondent at his official address maintained by respondent pursuant to Business and Professions Code section 6002.1, subdivision (a). There is no evidence as to whether the copy of the NDC was returned to the State Bar by the USPS as undeliverable or for any other reason.

On April 4, 2006, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in-person status conference for May 9, 2006. A copy of said notice was properly served upon respondent by first-class mail, postage fully prepaid, on April 4, 2006, addressed to respondent at his official address. The copy of said notice was not returned to the State Bar Court by the USPS as undeliverable or for any other reason.

On May 5, 2006, DTC Hsu attempted to contact respondent at his office membership records telephone number (619) 977-6713. DTC Hsu left a telephonic voice-mail message for respondent and requested that he return DTC Hsu's call regarding these matters.

On May 9, 2006, the court held a status conference in this matter. Respondent did not appear at the status conference either in-person or through counsel.

On May 10, 2006, DTC Hsu received and reviewed a telephonic voice-mail message from respondent, who informed DTC Hsu that he could be reached at (619) 890-2843. Thereupon, DTC Hsu returned respondent's call and spoke with respondent on that date. In his conversation with respondent, DTC Hsu informed him that the State Bar Court had ordered the State Bar to file its motion to enter respondent's default in these matters by May 26, 2006, and that DTC Hsu would

withhold from filing such a motion for two weeks from May 10, 2006.[1]

Thereafter, on May 11, 2006, the court filed an Order Pursuant to In Person Status Conference which set forth that as respondent had not filed a response to the NDC , which was due April 24, 2006, the court would entertain a motion for the entry of respondent's default. The court ordered that the State Bar file such a motion by May 26, 2006. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on May 11, 2006, addressed to respondent at his official address.[2] The copy of said order was not returned to the State Bar Court by the USPS as undeliverable or for any other reason.

As of May 24, 2006, DTC Hsu had not received a written response from respondent or anyone on his behalf.

As respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California ("Rules of Procedure"), on May 26, 2006, the State Bar filed a motion for the entry of respondent's default. The motion also contained a request that the court take judicial notice of all records of this proceeding, including all pleadings in the court file, pursuant to Evidence Code section 452, subdivision (d)(1), and that the court take judicial notice of all respondent's official membership addresses pursuant to Evidence Code section 452, subdivision (h).[3] Also attached to said motion were the declaration of DTC Hsu and Exhibit 1. A copy of said motion was properly served upon respondent on May 26, 2006, by certified mail, return receipt requested, addressed to respondent at his official address. There is no evidence as to whether the copy of said

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[1]As of May 24, 2006, the Office of the Chief Trial Counsel had not had any contact with respondent since May 10, 2006.

[2]The court notes that some documents were addressed to respondent at his law office, although respondent's official address does not reflect that this address is actually respondent's law office. Nevertheless, the court finds the error de minimus, and that service of these documents was proper. All documents served upon respondent at his law office were considered by the court properly served upon respondent at his official address if the street address, city, state and zip code were correct.

[3]The court grants the State Bar's requests and takes judicial notice of all records of this proceeding, including all pleadings in the court file, and all respondent's official membership addresses to the date of the filing of this decision.

motion was returned to the State Bar by the USPS as undeliverable or for any other reason.

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on June 13, 2006, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders.[4] A copy of said order was properly served upon respondent on June 13, 2006, by certified mail, return receipt requested, addressed to respondent at his official address. The green return receipt was returned to the State Bar Court by the USPS bearing a signature[5] and a delivery date of on or about June 14, 2006.[6]

On June 30, 2006, the State Bar filed its brief on the issues of culpability and discipline.

As the State Bar did not request a hearing in this proceeding, this matter was submitted for decision on June 30, 2006, following the filing of the State Bar's brief on the issues of culpability and discipline.[7]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 13, 1994, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Counts One Through Four - Case No. 04-O-10133 - The Amster Matter

On or about June 26, 2002, Steven Amster ("Amster") employed respondent to represent him in a civil action against his former business partner pending in San Diego County Superior Court

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

[5]The first name on the signature is illegible, but the middle initial appears to be "A" and the surname appears to be "Del Moral."

[6]The court notes that respondent's address on the green return receipt states an incorrect city. Nevertheless, as the Certificate of Service attached to said order bears respondent's correct official address, the order was not returned by the USPS as undeliverable or for any other reason, and the order was received by someone with the surname "Del Moral," the court finds that the order was properly served upon respondent.

[7]Exhibit 1 attached to the State Bar's motion for the entry of respondent's default is admitted into evidence.

entitled *Amster v. Locricchio*, Case No GIN021674 ("partnership dispute").

In or about early 2003, a resolution was reached in the partnership dispute wherein Amster agreed to purchase his partner's interest in the business.

On or about February 10, 2003, Amster gave respondent a check in the amount of $40,000 to hold in trust for the purchase of his partner's interest.

On or about February 10, 2003, respondent deposited Amster's $40,000 check into respondent's client trust account no. 065-8045505 at Wells Fargo Bank ("CTA").

On or about August 1, 2003, pursuant to Amster's instructions, respondent paid $11,313.92 in rent to the partnership's landlord on behalf of Amster. Accordingly, $28,686.08 should have remained in trust on behalf of Amster.

Thereafter, respondent stopped communicating with Amster.

On or about August 1, 2003, respondent effectively withdrew from representation without notifying Amster that he had ceased working on his case or of his intent to withdraw from representation. Thereafter, respondent took no steps to avoid reasonably foreseeable prejudice to Amster.

Effective August 18, 2003, the California Supreme Court suspended respondent from the practice of law as a result of respondent's noncompliance with court-ordered chid and family support obligations. At no time did respondent inform Amster that he was suspended from the practice of law.

After failing to receive any communications from respondent, on or about August 26, 2003, Amster employed attorney Stephen Soden ("Soden") to assist him in recovering the $28,686.08 that respondent was still holding in trust.

On or about August 27, 2003, Soden sent respondent a letter requesting that he return the $28,686.08 to Amster. The letter was sent to respondent at his State Bar of California membership records address. Respondent received this letter.

On or about September 5, 2003, Soden was able to reach respondent by telephone and requested that respondent return the $28,686.08 to Amster. Respondent indicated that he would resolve this issue on September 8, 2003.

On or about September 8, 2003, Soden attempted to call respondent at his office and his cellular phones but was unable to reach him.

On or about September 9, 2003, Soden sent respondent another letter requesting that he return the trust funds to Amster by September 12, 2003, or he would seek court intervention to have the funds released. The letter was sent to respondent at his State Bar of California membership records address. Respondent received the letter but did not respond to the letter.

After failing to receive any communications from respondent, on or about October 16, 2003, Soden filed a complaint against respondent on behalf of Amster in San Diego County Superior Court entitled *Amster v. Del Moral*, Case No. GIN033324 ("Del Moral action").

On or about February 17, 2004, the court entered a default against respondent in the Del Moral action.

On or about March 3, 2004, the court entered a judgment in favor of Amster and against respondent in the Del Moral action.

On or about March 16, 2004, Amster obtained a writ of execution against respondent in the Del Moral action.

On or about April 29, 2004, attorney Jason Coberly of Soden's office spoke with respondent on the telephone. In this telephone conversation, respondent stated that he would send a check to Amster on April 30, 2004.

On or about May 6, 2004, respondent returned $27,000 of the $28,686.08 to Amster. Respondent suggested, and Amster agreed, that respondent could keep the difference of $1,686.08 as attorney fees related to the partnership dispute.

By not giving Amster notice of his termination of employment and that he was going to be suspended from the practice of law, and by failing to return the $28,686.08 that he was holding in trust, respondent improperly withdrew from employment with a client.

During the period of on or about August 1, 2003, and May 6, 2004, respondent was required to maintain in his CTA the sum of $28,686.08 on behalf of Amster.

Between on or about August 15, 2003, and April 30, 2004, the balance in the CTA fell below $28,686.08 on repeated dates, including, but not limited to, the following:

DATE	BALANCE
08/15/03	$28,507.33
08/26/03	27,307.33
09/23/03	27,007.33
04/30/04	27,007.33

Respondent dishonestly or with gross negligence misappropriated Amster's funds.

Count Five - Case No. 05-O-01173 - Check Issued on Insufficient Funds

Respondent issued the following check drawn upon respondent's CTA against insufficient funds:

Check Number	Date Issued	Check Amount	Date Presented	Account Balance on Date Presented
1037	12/5/04	$20.00	2/1/05	$9.46

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

Count Six - Case No 05-O-01173 - Commingling

During the period between in or about May 2003 and December 2004, respondent did not promptly remove funds which he had earned as fees from the CTA as soon as his interest in the funds became fixed and, instead, left his fees in the CTA for the payment of his personal expenses as needed.

During the period between in or about May 2003 and December 2004, respondent issued checks drawn upon his CTA to pay his personal expenses, including, but not limited to, the following:

Check Number	Date Issued	Payee	Check Amount	Date Issued
1008	5/06/03	State Bar of California	$10.00	5/14/03
1037	12/5/04	Longfellow PTA	20.00	2/01/05

Count Seven - Case No. 05-O-01173 - Failing to Cooperate in State Bar Investigation

On or about March 8, 2005, the State Bar opened an investigation, Case No. 05-O-01173, concerning respondent's issuance of insufficient funds checks ("NSF checks matter").

On or about March 24, 2005, a State Bar Investigator wrote to respondent regarding the NSF checks matter. On or about May 24, 2005, the investigator wrote to respondent again regarding the

NSF checks matter.

Both the March 24 and May 24, 2005, letters were placed in sealed envelopes addressed to respondent at his State Bar of California membership records address. The letters were mailed by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business on or about the date on each letter. The USPS did not return the investigator's letters as undeliverable or for any other reason. Respondent received these letters.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the NSF checks matter. Respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

Count One - Case No. 04-O-10133 - Rule 3-700(A)(2) of the Rules of Professional Conduct[8]

The State Bar proved by clear and convincing evidence that respondent wilfully violated rule 3-700(A)(2). Rule 3-700(A)(2) provides that an attorney may not withdraw from employment until taking reasonable steps to avoid reasonably foreseeable prejudice to a client's rights. By failing to: (1) notify Amster of his intent to withdraw from Amster's matter; (2) inform Amster of his suspension from the practice of law; and (3) return the $28,686.08 to Amster which respondent was holding in his CTA, respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to his client's rights in wilful violation of rule 3-700(A)(2).

Count Two - Case No. 04-O-10133 - Rule 4-100(B)(4)

The State Bar proved by clear and convincing evidence that respondent wilfully violated rule 4-100(B)(4). Rule 4-100(B)(4) provides that an attorney must promptly pay or deliver, as requested by a client, the funds, securities or other properties in the attorney's possession which the client is entitled to receive. Respondent wilfully violated rule 4-100(B)(4) by failing to promptly return the $28,686.08 to Amster after being requested by Amster's counsel to do so, and by returning the funds to Amster only after Amster obtained a default judgment against respondent.

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

Count Three - Case No. 04-O-10133 - Rule 4-100(A)

The State Bar proved by clear and convincing evidence that respondent wilfully violated rule 4-100(A). Rule 4-100(A) requires that all funds received or held for the benefit of clients, including advances for costs and expenses, must be deposited and maintained in an identifiable bank account which is properly labeled as a client trust account, and no funds belonging to the attorney or law firm may be deposited therein or otherwise commingled with such client funds. Respondent wilfully violated rule 4-100(A) by failing to maintain $28,686.08 belonging to Amster in respondent's CTA between August 15, 2003 and April 30, 2004.

Count Four - Case No. 04-O-10133 - Business and Professions Code Section 6106[9]

The State Bar proved by clear and convincing evidence that respondent wilfully violated section 6106. Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption constitutes a cause for suspension or disbarment. Respondent engaged in an act involving dishonesty, moral turpitude or corruption by wilfully misappropriating $1,678.75 in funds belonging to Amster.

Count Five - Case No. 05-O-01173 - Section 6106

The State Bar failed to prove by clear and convincing evidence that respondent violated section 6106 by committing an act of moral turpitude, dishonesty or corruption by issuing a check drawn upon his CTA when he knew or should have known that there were insufficient funds in the account to cover the check. "Knowledge that a check was issued without sufficient funds is an integral element of a charge of moral turpitude premised on writing a bad check. (See *Rhodes* v. *State Bar* (1989) 49 Cal.3d 50, 60 [260 Cal.Rptr. 266, 775 P.2d 1035.)" (*Read v. State Bar* (1991) 53 Cal.3d 394, 409.) If respondent knew the check was issued without sufficient funds, it would be proper for the court to find that in issuing such check, respondent committed an act of moral turpitude in violation of section 6106. However, the NDC charges that respondent either "knew or should have known" [emphasis added] that there were insufficient funds." (NDC, page 6, lines 10-

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[9]Unless otherwise indicated, all further references to section(s) refer to provisions of the California Business and Professions Code.

11.) A finding that respondent should have known that there were insufficient funds in the account, however, does not mean that respondent was grossly negligent or otherwise rise to the level of an act of moral turpitude, dishonesty or corruption, as respondent could have been merely negligent in issuing such check. (Cf. *Geffen v. State Bar* (1975) 14 Cal.3d 843, 856, fn. 4.) "[A]ll reasonable doubts must be resolved in favor of the accused attorney. ([Citations omitted].) If equally reasonable inferences may be drawn from a proven fact, the inference leading to innocence must be chosen. ([Citation omitted.)]" (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 240.) Accordingly, there is no clear and convincing evidence that respondent violated section 6106 by issuing one check against insufficient funds. Accordingly, count five is dismissed with prejudice.

Count Six - Case No. 05-O-01173 - Rule 4-100(A)

The State Bar proved by clear and convincing evidence that respondent wilfully violated rule 4-100(A). By failing to promptly remove his fees from the CTA as soon as his interest in the funds became fixed, leaving such fees in his CTA to be withdrawn to pay for his personal expenses, respondent commingled his personal funds in his CTA in wilful violation of rule 4-100(A).

Count Seven - Case No. 05-O-01173 - Section 6068, Subdivision (i)

The State Bar proved by clear and convincing evidence that respondent wilfully violated section 6068, subdivision (i). Section 6068, subdivision (i), requires an attorney to cooperate with and participate in a State Bar disciplinary investigation or proceeding. Respondent wilfully violated section 6068, subdivision (i), by failing to provide a written response to the allegations in the NSF checks matter or otherwise cooperating in the State Bar disciplinary investigation of such matter.

MITIGATING/AGGRAVATING CIRCUMSTANCES

As respondent's default was entered in this matter, respondent did not have an opportunity to introduce any mitigating evidence of his behalf, and none can be gleaned from the record in this proceeding.

In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) ("standard").) Effective October 19, 2001, respondent was publicly reproved with conditions for one year in State Bar Court Case

No.(s) 00-O-12186; 00-O-12331. In this prior disciplinary matter, in which respondent's default was initially entered, respondent was found culpable of wilfully violating rule 4-100(A) in two counts by issuing checks in November 1999 and April and June 2000 from his CTA for his personal use and business expenses and of wilfully violating section 6068, subdivision (i), for failing to cooperate in a disciplinary investigation. In aggravation, respondent displayed a lack of cooperation to the State Bar during disciplinary investigation or proceedings. In mitigation, respondent had no prior disciplinary record, and his misconduct did not result in any harm to any client or other person.[10]

The fact that respondent engaged in multiple acts of misconduct is also an aggravating circumstance in this matter. (Standard 1.2(b)(ii).)

Prior to the entry of his default, respondent's failure to participate in this matter after he had actual knowledge of these matters and was informed that the State Bar Court had ordered the State Bar to file its motion to enter respondent's default by a date certain is a further aggravating circumstance. (Standard 1.2(b)(vi).)

DISCUSSION

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

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

In this case, the standards provide for the imposition of sanctions ranging from reproval to disbarment. (Standards 2.2(a), 2.2(b), 2.3, 2.6 and 2.10.) In addition, standard 1.6(a) states, in

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[10]As requested by the State Bar in its brief on the issues of culpability and discipline, the court takes judicial notice of the certified copy of respondent's prior record of discipline which is attached as Exhibit 1 to said brief. Exhibit 1 attached to said brief is therefore admitted into evidence.

pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions." In this case, the most severe sanction is set forth in standard 2.2(a), which provides for disbarment for wilful misappropriation of client funds, unless the amount of funds misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate.

Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id*. at p. 251.) Nevertheless, while the standards are not binding, they are entitled to significant weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) The Supreme Court will reject a recommendation consistent with the standards only when the court entertains "grave doubts as to its propriety." (*In re Naney* (1990) 51 Cal.3d 186, 190.) Even though the standards are merely guidelines for the imposition of discipline, there is "no reason to depart from them in the absence of a compelling reason to do so. ([Citation].)" (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar urges, inter alia, that respondent be suspended from the practice of law for three years, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law in this state for18 months and until he makes specified restitution and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure. In support of its discipline recommendation, the State Bar cites to *Boehme v. State Bar* (1988) 47 Cal.3d 448, *Edwards v. State Bar* (1990) 52 Cal.3d 28, and *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. However, each of these cases is distinguishable from the present proceeding, as each matter has substantial mitigating circumstances not found in the instant matter. The court therefore does not concur with the State Bar's discipline

recommendation.

Respondent has been found culpable in this matter of wilfully misappropriating $1,678.75 in client funds, withdrawing from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to his client's rights, failing to promptly return client funds upon his client's request, failing to maintain client funds in his CTA, commingling his personal funds in his CTA, and failing to cooperate in a State Bar disciplinary investigation. In aggravation, respondent has a prior record of discipline involving similar misconduct to that found in this proceeding (to wit, issuing checks in 1999 and 2000 from his CTA for his personal use and business expenses and failing to cooperate in a disciplinary investigation). No mitigating circumstances were found in this matter.

Furthermore, the court is particularly concerned about respondent's failure to participate in this disciplinary proceeding, even after he had actual notice of this matter. Respondent's failure to participate in this proceeding leaves this court without any understanding as to the underlying cause or causes for respondent's misconduct or from learning of any mitigating circumstances which would justify this court's departure from the discipline recommended by the standards.

Thus, given the seriousness of the misconduct in this matter, the nature of the aggravating circumstances (particularly the fact that respondent again used his CTA for personal expenses 18 months after being disciplined for doing so in 1999 and 2000), and the complete lack of mitigating circumstances, the court finds that disbarment, the discipline which is recommended by the standards, is appropriate. Given the fact that respondent has continued to engage in misconduct even after being disciplined for similar misconduct, the court finds that respondent is not a candidate for suspension and/or probation. Respondent has demonstrated disdain and contempt for the orderly process and rule of law. The court therefore finds that the risk of future misconduct is great. Accordingly, the court finds that lesser discipline than disbarment is not warranted, as disbarment is the only adequate means of protecting the public and the integrity of the legal profession.

RECOMMENDED DISCIPLINE

Based on the foregoing, it is hereby recommended that respondent Mark W. Del Moral be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

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

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is ordered transferred to involuntary inactive status pursuant to section 6007, subdivision (c)(4). Said inactive enrollment will be effective three days after this order is served by mail, and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

COSTS

It is recommended that costs be awarded to the State Bar in accordance with section 6086.10 and are enforceable both as provided in section 6140.7 and as a money judgment.

Dated: September ___, 2006

RICHARD A. HONN
Judge of the State Bar Court

[11]Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)