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PUBLIC MATTER

FILED

JUN 06 2005

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of
MYLIK R. HARRINGTON,
Member No. 213894,
A Member of the State Bar.

Case Nos. **04-O-10556-RMT;**
04-O-11660; 04-O-11575;
04-O-14115 (Cons.)

DECISION

I. Introduction

In these consolidated default matters, respondent **MYLIK R. HARRINGTON** is charged with 17 counts of misconduct in four client matters. The court finds, by clear and convincing evidence, that respondent is culpable of most of those charges, involving (1) failure to perform services, (2) failure to communicate, (3) failure to return unearned fees of \$24,000, (4) failure to return client file, (5) failure to maintain an official address with the State Bar, and (6) failure to cooperate with the State Bar.

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, among others, that respondent be suspended from the practice of law for two years, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for one year and until he makes and provides satisfactory proof of specified restitution and until the State Bar Court grants a motion to terminate respondent's actual suspension at its conclusion or upon such later date ordered by the court. (Rules Proc. of State Bar, rule 205.)

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and

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1 properly served on Respondent four Notices of Disciplinary Charges (NDC) as follows:

- 2 1. Case No. 04-O-10556 on June 22, 2004;
- 3 2. Case No. 04-O-11660 on July 22, 2004;
- 4 3. Case No. 04-O-11575 on November 1, 2004; and
- 5 4. Case No. 04-O-14115 on December 3, 2004.

6 After the first two cases were consolidated on September 9, 2004, respondent, represented
7 by counsel, filed responses on September 16, 2004. However, respondent's counsel withdrew on
8 November 10, 2004, and respondent represented himself thereafter. The third case was then
9 consolidated with the first two matters on November 10, 2004.

10 Respondent did not file a response to either the third or the fourth NDC. (Rules Proc. of
11 State Bar, rule 103.)

12 In the third case (04-O-11575), on State Bar's motion, respondent's default was entered and
13 he was enrolled as an inactive member on January 12, 2005, under Business and Professions Code
14 section 6007(e).¹

15 In the fourth case (04-O-14115), on State Bar's motion, respondent's default was entered and
16 he was enrolled as an inactive member on February 8, 2005.

17 Due to respondent's failure to appear at the February 17, 2005 trial, the court ordered his
18 responses to the first two cases (04-O-10556 and 04-O-11660) stricken and entered his default on
19 February 23, 2005.

20 The four default matters are consolidated for all purposes.

21 Respondent did not participate in the disciplinary proceedings. The court took these matters
22 under submission on March 8, 2005, following the filing of the State Bar's brief on discipline.

23 **III. Findings of Fact and Conclusions of Law**

24 All factual allegations of the NDCs are deemed admitted upon entry of respondent's default
25 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
26

27 ¹All references to section (§) are to the Business and Professions Code, unless otherwise
28 indicated.

1 200(d)(1)(A).)

2 **A. Jurisdiction**

3 Respondent was admitted to the practice of law in California on June 5, 2001, and has since
4 been a member of the State Bar of California.

5 **B. Case No. 04-O-10556 (The Pennix Matter)**

6 **1. Findings of Fact**

7 In October 2002, Loretha Pennix (Loretha), on behalf of her son, Ladaro Pennix (Pennix),
8 employed respondent to file a writ of habeas corpus for Pennix. Respondent was paid \$15,000 as
9 advanced fees. Respondent understood that he was to communicate with both mother and son.

10 Between December 2002 and September 2003, Loretha telephoned respondent's office about
11 eight times to request an update on the status of the writ. She left messages for him to return her
12 calls but he did not respond to any of her calls.

13 On October 29, 2003, Pennix wrote to respondent and provided him with information about
14 visiting Pennix in jail. He also told respondent that he was upset by respondent's lack of
15 communication and requested a reply to his letter. Respondent did not respond and had never
16 contacted Pennix.

17 On November 7, 2003, respondent sent a letter to Loretha, indicating that he was having
18 difficulties obtaining clearance to visit Pennix.² He further stated that he had been researching
19 issues, but that there would be a delay because respondent had personal problems.

20 On January 7, 2004, Loretha visited respondent's office and reviewed a portion of Pennix's
21 file. On January 9, 2004, by letter, she terminated respondent's services on behalf of Pennix and
22 requested the return of the client file and the refund of the \$15,000. On January 14, she again
23 requested a refund of the attorney fees.

24 At no time did respondent file a writ of habeas corpus on behalf of Pennix. Respondent
25

26 ²Contrary to the allegation in the NDC that respondent wrote to Pennix, Loretha declared
27 that respondent had sent her the letter instead. (State Bar exhibit 2, Declaration of Loretha
28 Pennix; Rules Proc. of State Bar, rule 200(d)(1)(A).) Pennix also declared that respondent never
contacted him. (State Bar exhibit 1, Declaration of Ladaro Pennix.)

1 provided no services of value to Pennix and did not earn any of the advanced fees paid by Loretha
2 on behalf of Pennix. Respondent did not refund any of the \$15,000 in attorney fees.

3 On March 16, and April 5, 2004, the State Bar wrote to respondent regarding the Pennix
4 matter. The letters were properly sent to respondent's membership records address and were not
5 returned as undeliverable. But he did not respond to either letter or otherwise communicate with the
6 State Bar.

7 **2. Conclusions of Law**

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

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

11 Respondent intentionally and recklessly failed to perform legal services with competence,
12 in wilful violation of rule 3-110(A), by failing to file a writ of habeas corpus on behalf of Pennix.

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

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

17 The State Bar alleges that respondent, by failing to respond to Loretha's communications
18 made on behalf of Pennix, failed to respond to status inquiries of clients in wilful violation of section
19 6068, subdivision (m).

20 Under section 6068, subdivision (m), respondent had a duty to communicate with Pennix –
21 his client. But he did not have a duty to communicate with Loretha, his mother, because she was not
22 his client and he was not representing her. (See *In the Matter of Taylor* (Review Dept. 1991) 1 Cal.
23 State Bar Ct. Rptr. 563, 577-578 [Respondent would not have had a duty to communicate with the
24 father if he were not representing him.]) Therefore, respondent's failure to return Loretha's
25 numerous telephone calls did not violate section 6068, subdivision (m). However, his failure to
26

27 ³References to rule are to the current Rules of Professional Conduct, unless otherwise
28 noted.

1 contact Pennix and respond to his letter was a wilful violation of section 6068, subdivision (m).

2 ***Count 3: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

3 Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly
4 any part of a fee paid in advance that has not been earned. Respondent wilfully violated rule 3-
5 700(D)(2) by failing to return any portion of the \$15,000 advanced fees paid by Loretha when his
6 employment was terminated on January 9, 2004, and he did not perform any services of value on
7 behalf of Pennix.

8 ***Count 4: Failure to Cooperate With the State Bar (§ 6068(i))***

9 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary
10 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's
11 March and April 2004 letters or participate in the investigation of the Pennix matter, Respondent
12 failed to cooperate with the State Bar in wilful violation of section 6068(i).

13 **C. Case No. 04-O-11660 (The Ricks Matter)**

14 **1. Findings of Fact**

15 On October 16, 2003, John and Myrtle Ricks hired respondent to represent them in a pending
16 civil action, *Bank of America v. Ricks*, Los Angeles County Superior Court, case No. 03C02173
17 (*Bank of America* action). The Ricks paid respondent \$3,500 as attorney fees.

18 The Ricks had been acting as in pro per. Respondent did not file a substitution of attorney
19 in the *Bank of America* action, substituting himself in place of the Ricks.

20 In November 2003, the Ricks telephoned respondent three times inquiring about the status
21 of their case and left him messages to return their calls.

22 On December 4, 2003, opposing counsel sent the Ricks a letter informing them that because
23 respondent had not responded to his telephone calls or letters and because respondent had never filed
24 a substitution of attorney, opposing counsel would direct all communications to the Ricks.

25 On December 18, 2003, the Ricks wrote to respondent, terminating his services and
26 requesting a refund of the attorney fees. Respondent received the letter but did not respond. On
27 February 13, 2004, the Ricks met with respondent and requested a refund and the status of the case.
28 Respondent did not provide a refund and stated that he was trying to settle the case.

1 Between February 18 and April 2, 2004, the Ricks attempted to contact respondent by
2 telephone 27 times but were unsuccessful. Although they left messages each time they called,
3 respondent did not return any of the calls.

4 On May 11, 2004, summary judgment was entered against the Ricks in the *Bank of America*
5 action. Respondent did not provide any services of value to the Ricks and did not earn any of the
6 advanced fees paid. At no time did respondent refund any portion of the \$3,500.

7 On June 19, 2003, respondent notified the State Bar of the change of his membership records
8 address to 3350 Wilshire Blvd., #730, Los Angeles, California 90010. On November 11, 2003,
9 respondent again notified the State Bar of the same address.

10 On May 3, and 20, 2004, the State Bar wrote to respondent regarding the Ricks matter and
11 the letters were properly sent to respondent's membership records address. They were returned as
12 undeliverable with a forwarding address. On May 26 and June 14, 2004, the State Bar then sent the
13 letters to respondent at an alternative address provided by the U.S. Postal Service at 9795 Wilshire
14 Blvd., #900, Beverly Hills, California 90212-1624. However, the letters were again returned as
15 undeliverable and there was no forwarding address. Since November 2003, respondent has not
16 notified the State Bar of any other membership records address at which he could be contacted.

17 **2. Conclusions of Law**

18 ***Count 1: Failure to Perform Competently (Rule 3-110(A))***

19 Respondent intentionally, recklessly and repeatedly failed to perform legal services with
20 competence, in wilful violation of rule 3-110(A), by failing to file a substitution of attorney, by
21 failing to respond to opposing counsel's communications, and by failing to perform any services in
22 the *Bank of America* action.

23 ***Count 2: Failure to Communicate (§ 6068, subd. (m))***

24 By failing to respond to the Ricks' numerous telephone messages regarding their case,
25 respondent wilfully violated section 6068, subdivision (m).

26 ***Count 3: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

27 Respondent wilfully violated rule 3-700(D)(2) by failing to return any portion of the \$3,500
28 unearned fees to the Ricks when his employment was terminated on December 18, 2003, and he did

1 not perform any services of value on behalf of his clients. In fact, a few months later, summary
2 judgment was entered against them.

3 ***Count 4: Failure to Maintain Current Official Address (§ 6068(j))***

4 Section 6068(j) states that a member must comply with the requirements of section 6002.1,
5 which provides that respondent must maintain on the official membership records of the State Bar
6 a current address and telephone number to be used for State Bar purposes. By clear and convincing
7 evidence, respondent wilfully violated section 6068(j) when he failed to maintain a current official
8 membership records address. His official address has not been changed since November 2003 and
9 State Bar's letters sent to that address were returned as undeliverable.

10 **D. Case No. 04-O-11575 (The McNeil Matter)**

11 **1. Findings of Fact**

12 On October 10, 2003, respondent was hired to represent Donald McNeil in a criminal matter
13 and was paid \$2,200 as advanced attorney fees by McNeil's girlfriend, Stefani Thomas, with money
14 contributed by McNeil's family.⁴ Respondent did not provide McNeil, Thomas or any of his family
15 members with a retainer agreement. On the same day, respondent was present at McNeil's pretrial
16 conference and was to substitute in by the next court date of October 24, 2003.

17 Sometime after October 10, McNeil terminated respondent's services. Respondent agreed
18 to refund \$2,000, but McNeil agreed that respondent could keep \$750 of the \$2,000 as advanced fees
19 to work on a separate matter – to obtain the release of confiscated money. Respondent also did not
20 provide McNeil, Thomas or McNeil's family with a retainer agreement in this separate matter.

21 At no time did respondent obtain a release of confiscated money on McNeil's behalf or
22 refund the \$750 to McNeil, Thomas or McNeil's family.

23 On November 5, 2003, respondent issued a refund check made payable to McNeil for \$1,250.
24 The check was returned for insufficient funds. Respondent knew or should have known that there
25 were insufficient funds in his account to cover the check.

26 _____
27 ⁴The NDC erroneously alleged that respondent was paid by "Respondent's girlfriend" (p.
28 2, line 16). Since the NDC later alleged that McNeil's girlfriend was the payor, the typographical
error was confusing but harmless.

1 In November and December 2003, McNeil's cousin, Ayana Brown, telephoned respondent
2 twice regarding the refund and left messages for respondent to return the calls. Respondent never
3 issued a sufficiently funded check of \$1,250 or responded to the phone calls. He knew he was to
4 communicate with Brown and Thomas because of McNeil's incarceration and had done so in the
5 past.

6 **2. Conclusions of Law**

7 ***Count 1: Failure to Perform Competently (Rule 3-110(A))***

8 The State Bar alleges that respondent violated rule 3-110(A) by failing to substitute into
9 McNeil's case, failing to provide McNeil with retainer agreements and failing to do a release of
10 confiscated money.

11 The court concludes that respondent intentionally and recklessly failed to perform legal
12 services with competence, in wilful violation of rule 3-110(A), by failing to obtain a release of
13 confiscated money as agreed.

14 However, since respondent was hired on October 10 and appeared at McNeil's pretrial
15 conference and his employment was then terminated in less than a month, there is no clear and
16 convincing evidence that he failed to perform services for McNeil in the criminal matter. Moreover,
17 failure to provide a retainer agreement for services over \$1,000 is not a violation of rule 3-110(A),
18 but rather a violation of Business and Professions Code section 6148, which provides that attorney
19 fees exceeding \$1,000 requires a written fee contract.

20 But, here, respondent was not charged with violating section 6148 and the Notice of
21 Disciplinary Charges was not amended. A respondent needs to be adequately apprised of the precise
22 nature of the charges. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163.)
23 Therefore, Respondent could not be held culpable of an uncharged violation with respect to the lack
24 of a retainer agreement in the criminal matter. As for the matter involving the release of confiscated
25 money, the lack of a retainer agreement for services not to exceed \$1,000 is not a violation under the
26 State Bar Act.

27 //

28 //

1 ***Count 2: Avoiding the Representation of Adverse Interests and Accepting Compensation***
2 ***From a Non-Client (Rule 3-310(F))***

3 To avoid any conflict of interest, rule 3-310(F) provides, in part, that a member must not
4 accept compensation for representing a client from one other than the client unless the member
5 obtains the client's informed written consent.

6 The State Bar alleges that although respondent knew that Thomas was paying respondent
7 with money contributed by McNeil's family, respondent did not obtain McNeil's informed written
8 consent to respondent's acceptance of the compensation. As a result, the State Bar alleges that
9 respondent violated rule 3-310(F) by accepting money from Thomas and McNeil's family without
10 McNeil's written consent.

11 The purpose of this rule is to prohibit representation of multiple clients with conflicting
12 interests. Here, respondent was representing only McNeil and not multiple clients, such as his family
13 or Thomas. Absent evidence of any potential or actual conflicting interests among McNeil, his
14 family and Thomas, rule 3-310(F) is inapplicable in this case and is therefore dismissed with
15 prejudice.⁵

16 ***Count 3: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

17 Respondent wilfully violated rule 3-700(D)(2) by failing to return any portion of the \$2,000
18 in unearned fees to McNeil when his employment was terminated on November 5, 2003, and he did
19 not perform any services regarding the release of confiscated money. Although respondent
20 attempted to refund the fees, his check was returned due to insufficient funds in the account.

21 ***Count 4: Moral Turpitude (§ 6106)***

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

24 The State Bar alleges that respondent violated section 6106 by issuing an insufficiently
25 funded check of \$1,250 when respondent knew or should have known that there were insufficient
26 funds in his account to cover the check and by failing to make good on that check.

27 _____
28 ⁵The State Bar's closing brief was silent as to the culpability issue of rule 3-310(F).

1 It is well settled that the “conduct of issuing numerous checks with insufficient funds
2 ‘manifests an abiding disregard of the fundamental rule of ethics—that of common honesty—without
3 which the profession is worse than valueless in the place it holds in the administration of justice.’”
4 (*Bambic v. State Bar* (1985) 40 Cal.3d 314, 324, citing *Tomlinson v. State Bar* (1975) 13 Cal.3d 567,
5 577.)

6 In order for the court to conclude that the \$1,250 check was made to deceive the client
7 beyond the level of suspicion, there must be clear and convincing evidence of respondent’s deliberate
8 dishonesty or corruption or an act involving moral turpitude. Here, the alleged facts demonstrate that
9 respondent wrote one bounced check and not numerous checks with insufficient funds. There is no
10 evidence of deception or dishonesty. Thus, respondent’s issuance of one bad check is not clear and
11 convincing evidence of moral turpitude or dishonesty with an intent to mislead the client. Such an
12 error does not rise to the level of moral turpitude in violation of section 6106.

13 Moreover, respondent has already been found culpable of failing to return unearned fees in
14 wilful violation of rule 3-700(D)(2). Charging him for issuing an insufficiently funded check in
15 violation of section 6106 is duplicative, which serves little purpose. (*Bates v. State Bar* (1990) 51
16 Cal.3d 1056.)

17 **E. Case No. 04-O-14115 (The Badger Matter)**

18 **1. Findings of Fact**

19 On February 10, 2004, Annette Badger hired respondent to handle a potential criminal matter
20 on her behalf and paid him a total of \$3,500 in advanced attorney fees.

21 In April 2004, Badger provided respondent with her original medical records at his request.
22 On April 26, Badger wrote to respondent and inquired about the status of her case, stating that she
23 had been unable to reach him by telephone. Respondent received the letter but did not respond.

24 During May and June 2004, Badger telephoned respondent at least 28 times, leaving
25 messages for him to return her calls and again inquiring about the status of her case. She also asked
26 the return of her original medical records. Respondent never returned her calls.

27 On June 30, 2004, Badger again wrote to respondent and requested a refund of the attorney
28 fees since she had determined that there was no criminal matter to handle. Respondent received the

1 letter but ignored it. On July 14, 2004, Badger wrote to respondent, terminating his services because
2 respondent had refused to call or write her. She requested that he return the \$3,500 with an
3 accounting. Respondent did not respond.

4 To date, respondent did not earn or refund any of the \$3,500 advanced fees to Badger. He
5 also did not return her file.

6 On September 14, and October 19, 2004, the State Bar wrote to respondent regarding the
7 Badger matter. The letters were properly sent to respondent's membership records address and were
8 not returned as undeliverable. But respondent did not respond to either letter or otherwise
9 communicate with the State Bar.

10 2. Conclusions of Law

11 *Count 1: Failure to Perform Competently (Rule 3-110(A))*

12 The State Bar alleges that respondent intentionally, recklessly and repeatedly failed to
13 perform legal services with competence, in wilful violation of rule 3-110(A), by failing to provide
14 an accounting to Badger and by failing to perform any services on Badger's behalf.

15 In this instance, there is no clear and convincing evidence as to what services respondent was
16 hired to perform, other than that he was to "represent her in a matter that could have resulted in
17 criminal charges being filed against her." (NDC, p. 2, lines 14-15.) While Badger hired respondent
18 in February to handle a potential criminal matter, she had determined in June that no criminal
19 charges had been filed against her and requested respondent to refund her fees. And by July, she had
20 terminated respondent's employment. Therefore, it has not been shown by clear and convincing
21 evidence that respondent failed to competently perform services in wilful violation of rule 3-110(A).

22 Moreover, failure to render an accounting is not a violation of rule 3-110(A) but a violation
23 of rule 4-100(B)(3), which provides that an attorney must maintain records of all funds of a client
24 in his possession and render appropriate accounts to the client. Here, respondent failed to render an
25 accounting to Badger. Again, as discussed above in the McNeil matter, respondent must be
26 adequately apprised of the precise nature of the charges. Thus, respondent could not be held
27 culpable of an uncharged violation. Therefore, respondent's failure to provide an accounting to
28 Badger was not a violation of rule 3-110(A).

1 **Count 2: Failure to Communicate (§ 6068, subd. (m))**

2 By failing to respond to Badger's numerous telephone messages and three letters regarding
3 her case, respondent wilfully violated section 6068, subdivision (m).

4 **Count 3: Failure to Return Unearned Fees (Rule 3-700(D)(2))**

5 Respondent wilfully violated rule 3-700(D)(2) by failing to return any portion of the \$3,500
6 in unearned fees to Badger when she requested a refund on June 30, 2004.

7 **Count 4: Failure to Return Client File (Rule 3-700(D)(1))**

8 Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release
9 to a client, at the client's request, all the client's papers and property. Respondent wilfully violated
10 rule 3-700(D)(1) by failing to return the client file to Badger when his employment was terminated
11 in July 2004.

12 **Count 5: Failure to Cooperate With the State Bar (§ 6068(i))**

13 By failing to respond to the State Bar's September and October 2004 letters or participate in
14 the investigation of the Badger matter, respondent failed to cooperate with the State Bar in wilful
15 violation of section 6068(i).

16 **IV. Mitigating and Aggravating Circumstances**

17 **A. Mitigation**

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

20 **B. Aggravation**

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

22 Respondent committed multiple acts of wrongdoing, including failing to perform services,
23 failing to communicate, failing to refund unearned fees and failing to return client file. (Std.
24 1.2(b)(ii).)

25 Respondent's failure to return unearned fees of \$24,000 caused his four clients substantial
26 harm. (Std. 1.2(b)(iv).) Moreover, his failure to pursue the matter on behalf of the Ricks resulted

27 _____
28 ⁶All further references to standards are to this source.

1 in a summary judgment entered against them.

2 Respondent demonstrated indifference toward rectification of or atonement for the
3 consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to return the unearned fees to Pennix,
4 the Ricks, McNeil and Badger.

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

7 V. Discussion

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

12 Respondent's misconduct involved four client matters. The standards for respondent's
13 misconduct provide a broad range of sanctions ranging from reproof to disbarment, depending upon
14 the gravity of the offenses and the harm to the client. (Stds.1.6, 2.4(b), and 2.6.) The standards,
15 however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of*
16 *Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be
17 resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.)

18 The State Bar urges one year actual suspension, citing several supporting cases, including
19 *Lester v. State Bar* (1976) 17 Cal.3d 547, *Segal v. State Bar* (1988) 44 Cal.3d 1077, and *Bledsoe v.*
20 *State Bar* (1991) 52 Cal.3d 1074, whose level of discipline ranges from six months to two years
21 actual suspension.

22 In *Lester*, the Supreme Court actually suspended an attorney for six months for failing to
23 perform services in four matters, failing to refund any portion of advanced fees, failing to
24 communicate with clients and with misrepresentation. Aggravation included his lack of candor
25 before the State Bar and general lack of insight into the wrongfulness of his actions.

26 In *Segal*, the attorney was actually suspended for one year for his misconduct in four matters,
27 including failure to perform services, failure to return unearned fees, failure to communicate
28 promptly, and issuance of two bad checks. He also had a prior record of discipline involving bad

1 checks.

2 The Supreme Court in *Bledsoe* imposed a two-year actual suspension on an attorney who had
3 abandoned four clients, failed to return unearned fees, failed to communicate with three clients, made
4 misrepresentations to a client regarding her case status, and failed to cooperate with the State Bar.
5 The attorney had also defaulted in the disciplinary proceeding

6 In this matter, the gravamen of respondent's misconduct is his failure to perform services in
7 three client matters in two years and failure to return unearned fees of \$24,000 to four clients.
8 Respondent's misconduct reflects a blatant disregard of professional responsibilities. He had
9 flagrantly breached his fiduciary duties to his clients and abandoned their causes.

10 In recommending discipline, the "paramount concern is protection of the public, the courts
11 and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An
12 attorney's failure to accept responsibility for actions which are wrong or to understand that
13 wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-
14 1101.) The court is seriously concerned about the possibility of similar misconduct recurring.
15 Respondent has offered no indication that this will not happen again, particularly since his
16 misconduct began only a year after his admission to the practice of law. Instead of cooperating with
17 the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding.

18 Respondent's client abandonments and default in this matter weigh heavily in assessing the
19 appropriate level of discipline. Respondent had not returned any portion of the unearned fees to four
20 clients.

21 Failing to appear and participate in this hearing shows that respondent comprehends neither
22 the seriousness of the charges against him nor his duty as an officer of the court to participate in
23 disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Although
24 respondent may have been experiencing personal problems, as he told Loretha in his November 2003
25 letter, his failure to participate in this proceeding leaves the court without information about the
26 underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his
27 misconduct.

28 In view of respondent's misconduct, the case law and the mitigating and aggravating

1 evidence, placing respondent on an actual suspension for one year and until he makes restitution
2 would be appropriate to protect the public and to preserve public confidence in the profession.

3 Moreover, it has long been held that “[r]estitution is fundamental to the goal of
4 rehabilitation.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of
5 protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the
6 harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.) Therefore, respondent
7 should refund all legal fees to his clients if he had not done so.

8 **VI. Recommended Discipline**

9 Accordingly, the court hereby recommends that respondent **MYLIK R. HARRINGTON**,
10 be suspended from the practice of law for two years, that said suspension be stayed, and that
11 respondent be actually suspended from the practice of law for one year and until he makes restitution
12 to Loretha Pennix or the Client Security Fund, if appropriate, in the amount of \$15,000, plus 10%
13 interest per annum from January 9, 2004; to John and Myrtle Ricks or the Client Security Fund, if
14 appropriate, in the amount of \$3,500, plus 10% interest per annum from December 18, 2003; to
15 Stefani Thomas and/or Donald McNeil or the Client Security Fund, if appropriate, in the amount of
16 \$2,000, plus 10% interest per annum from November 5, 2003; and to Annette Badger or the Client
17 Security Fund, if appropriate, in the amount of \$3,500, plus 10% interest per annum from June 30,
18 2004, and provide proof thereof to the Office of Probation; and until he files and the State Bar Court
19 grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

20 It is recommended that respondent be ordered to comply with any probation conditions
21 hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.
22 (Rules Proc. of State Bar, rule 205(g).)

23 If the period of actual suspension reaches or exceeds two years, it is recommended that he
24 remain actually suspended until he has shown proof satisfactory to the State Bar Court of his
25 rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard
26 1.4(c)(ii).

27 It is also recommended that the Supreme Court order respondent to comply with rule 955,
28 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the

1 effective date of its order imposing discipline in this matter. Wilful failure to comply with the
2 provisions of rule 955 may result in revocation of probation; suspension; disbarment; denial of
3 reinstatement; conviction of contempt; or criminal conviction.⁷

4 It is further recommended that respondent take and pass the Multistate Professional
5 Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners,
6 MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287)
7 and provide proof of passage to the Office of Probation, within one year of the effective date of the
8 discipline herein or during the period of his actual suspension, whichever is longer. Failure to pass
9 the MPRE within the specified time results in actual suspension by the Review Department, without
10 further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State
11 Bar, rule 321(a)(1) and (3).)

12 VII. Costs

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

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19 Dated: June 6th, 2005


20 **ROBERT M. TALCOTT**
21 Judge of the State Bar Court

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27 _____
28 ⁷Respondent 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.)

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 6, 2005, I deposited a true copy of the following document(s):

Decision, filed June 06, 2005

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

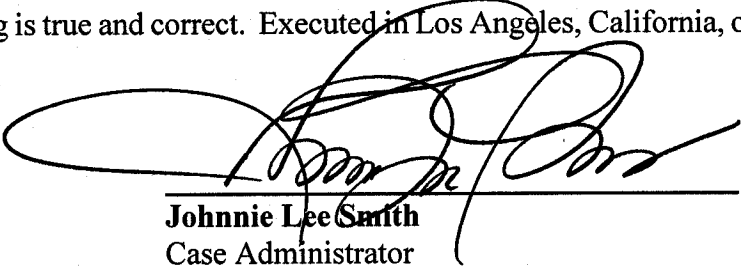
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MYLIK R. HARRINGTON
3350 WILSHIRE BLVD #730
LOS ANGELES CA 90010

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

CECILIA HORTON-BILLARD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 6, 2005**.



Johnnie Lee Smith
Case Administrator
State Bar Court