

# PUBLIC MATTER

**FILED** 

MAY 10 2005

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

**STEVEN MARK ALEXANDER,**

**Member No. 224393,**

A Member of the State Bar.

**Case No. 04-O-11166-PEM**

**DECISION**

## INTRODUCTION

In this disciplinary matter, Tammy Albertsen-Murray appeared for the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"). Respondent Steven Mark Alexander did not appear in person or by counsel.

After considering the evidence and the law, the Court recommends, among other things, that respondent be suspended for two years and that the suspension be stayed on conditions including actual suspension of 90 days and until he pays certain sanctions and complies with rule 205, Rules Proc. of State Bar ("rule(s)").

## SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed on June 21, 2004, and was properly served on respondent on that same date at his then-official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section<sup>1</sup> 6002.1(c) ("official address"). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned as undeliverable

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<sup>1</sup> All future references to "section(s)" are to the Business and Professions Code unless otherwise specified.



1 by the United States Postal Service ("USPS").

2 On June 25, 2004, respondent was properly served at his then-official address with a  
3 notice advising him, among other things, that a status conference would be held on August 9,  
4 2004.

5 Respondent did not appear at the August 9 status conference. On August 10, 2004, he  
6 was properly served at his then-official address with an order memorializing the status  
7 conference. This order was returned as undeliverable by he USPS.

8 Respondent did not file a responsive pleading to the NDC. On January 5, 2005, a motion  
9 for entry of default was properly filed and served on respondent at his official address by certified  
10 mail, return receipt requested. The motion advised him that minimum discipline of six months  
11 actual suspension would be sought if he was found culpable. He did not respond to the motion.

12 On January 21, 2005, the Court entered respondent's default and enrolled him inactive  
13 effective three days after service of the order. The order was properly served on him at his  
14 official address on that same date by certified mail, return receipt requested. It also was returned  
15 as undeliverable by the USPS bearing a stamp indicating "Attempted - Not Known."

16 The State Bar's efforts to locate and contact respondent were fruitless.

17 The matter was submitted for decision without hearing on February 10, 2005.

18 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19 The Court's findings are based on the allegations contained in the NDC as they are  
20 deemed admitted and no further proof is required to establish the truth of those allegations.  
21 (Section 6088; Rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

22 It is the prosecution's burden to establish culpability of the charges by clear and  
23 convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.  
24 163, 171.)

25 **Jurisdiction**

26 Respondent was admitted to the practice of law in California on February 21, 2003, and  
27 has been a member of the State Bar at all times since.

28

1 **Facts**

2 On October 29, 2003, respondent became attorney of record for Judy Van Cleave in the  
3 matter entitled *In re Marriage of Van Cleave*, Monterey County Superior Court case no. DR  
4 39533 ("family law matter") by filing a substitution of attorney form with the court. On  
5 November 6, 2003, respondent and counsel for Mr. Van Cleave filed a stipulation with the court  
6 vacating the trial date in the case and setting it for hearing on November 21, 2003, for the  
7 purpose of scheduling new dates for a settlement conference and a trial setting conference.

8 On November 6, 2003, Mr. Van Cleave's counsel also filed with the court a motion for  
9 modification of spousal support ("modification motion") which had a November 21, 2003,  
10 hearing date. This hearing was later continued to December 5, 2003, to trail a settlement  
11 conference being held in the family law matter also set for that day.

12 On December 5, 2003, respondent appeared at the settlement conference in the family law  
13 matter. No settlement was reached. He also appeared at the hearing on the modification motion.  
14 The court modified the spousal support and set the family law matter for trial on January 27,  
15 2004, at 8:30 a.m. Respondent was present when the trial date was set.

16 On December 8, 2003, the court also sent a notice of trial date to respondent at his  
17 address of record pursuant to Code of Civil Procedure, sections 1013a and 2015.5. The notice  
18 was not returned to the court as undeliverable or for any other reason.

19 On January 27, 2004, respondent did not appear at the trial although he had informed his  
20 client the night before that he would be there. Judy Van Cleave was left unrepresented at trial.  
21 The court tried unsuccessfully to reach respondent at his cell telephone, which was disconnected.  
22 Because of respondent's failure to appear at trial, the court vacated the trial and continued the  
23 matter until January 30, 2004, at 9:00 a.m. to set a new trial date. The court also sanctioned  
24 respondent \$500, payable to Mr. Van Cleave's counsel, for respondent's failure to appear at trial.

25 Pursuant to the standing order of the Monterey County Superior court, located at  
26 Appendix C of the Monterey County Superior Court Rules, respondent was ordered to file a trial  
27 brief in the family law matter. He did not do so. As a result, at the January 27 hearing, the court  
28 sanctioned him \$100, payable to the court.

1 Respondent did not tell Judy Van Cleave that he was not going to appear at the January  
2 27 and 30 hearings or that he was not going to file a trial brief. He had not contact with her after  
3 leaving her a message on January 27, 2004.

4 On January 27, 2004, the court sent a notice of the January 30 hearing date to respondent  
5 at his address of record pursuant to CCP 1013a and 2015.5. The notice was not returned to the  
6 court as undeliverable or for any other reason.

7 Respondent did not appear at the January 30 hearing. The court called respondent at  
8 home and was informed that respondent was in the shower and would call the court. Respondent  
9 never called. Judy Van Cleave was unrepresented at the hearing. Respondent had no contact  
10 with his client between January 27 and 30, 2004. Before January 27, 2004, respondent  
11 disconnected the telephone number and moved from the address he had provided to Judy Van  
12 Cleave and did not notify her he was doing so. He also did not give her another telephone  
13 number or address where he could be located.

14 Because of respondent's failure to appear at the January 30 hearing, the court removed  
15 him as attorney of record for Judy Van Cleave, with her consent, and again continued the case  
16 until February 13, 2004. She thereafter represented herself.

17 Respondent never contacted the court prior to or after his failures to appear to provide an  
18 explanation or to express regret. These nonappearances caused unnecessary delay, burden and  
19 expense to the court, respondent's client and the opposing party and counsel.

20 Respondent did not pay any of the court-ordered sanctions.

21 On March 12, 2004, the State Bar opened an investigation in case no. 04-O-11166,  
22 relating to respondent's performance in the family law matter.

23 On April 28, 2004, a State Bar investigator sent respondent a letter requesting that  
24 respondent answer in writing specific allegations of misconduct regarding the family law matter.  
25 The letter was addressed to respondent's then-official membership records address and sent by  
26 first-class mail, postage prepaid. It was returned to the State Bar as undeliverable by the USPS  
27 with a notation stating "Attempted Not Known" and a handwritten note stating "5/3/04 person no  
28 longer at this address." As of the time the NDC herein was filed, respondent had not changed his

1 official address.<sup>2</sup>

2 **Conclusions of Law**

3 **Count One - Section 6068(b) (Failure to Maintain Respect Due Court)**

4 Section 6068(b) requires an attorney to maintain the respect due to the courts of justice  
5 and to judicial officers.

6 There is not clear and convincing evidence that respondent did not maintain the respect  
7 due to courts and judicial officers. Some facts used in supporting this allegation support the  
8 culpability findings of other charges and others are inherent in those findings of misconduct (see  
9 below).

10 **Count Two - Section 6103 (Violation of Court Order)**

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

15 By not filing the trial brief as ordered and by not paying court-ordered sanctions,  
16 respondent wilfully disobeyed a court order in wilful violation of section 6103.

17 **Count Three - RPC 3-110(A) (Failing to Perform Competently)**

18 RPC 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to  
19 perform legal services competently.

20 By not appearing at two scheduled court hearings of which he had notice, respondent  
21 intentionally, recklessly or repeatedly did not perform competently in wilful violation of RPC 3-  
22 110(A).

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26 <sup>2</sup> On its own motion and pursuant to Evidence Code section 452(h), the Court judicially notices the  
27 State Bar's membership records which indicate that respondent changed his official address effective  
28 November 4, 2004. It is noted that the Court's order of entry of default, which was served on the new  
address, was returned as undeliverable.

1 **Count Four - RPC 3-700(A)(1) (Withdrawal from Representation without Tribunal's**  
2 **Permission)**

3 RPC 3-700(A)(2) provides that, if permission for termination of employment is required  
4 by the rules of a tribunal, an attorney shall not withdraw from employment in a proceeding before  
5 that tribunal without obtaining its permission. As attorney of record in the Van Cleave matter,  
6 respondent was required to withdraw from representation either by obtaining the client's consent  
7 or by obtaining a court order permitting the withdrawal. (Section 284, Code Civ. Proc.; Rule  
8 376, Cal. Rules of Court.)<sup>3</sup> He did neither. Accordingly, he wilfully violated RPC 3-700(A)(1).

9 **Count Five - Section 6068(j) (Failure to Maintain Address)**

10 Section 6068(j) requires an attorney to comply with the requirements of section 6002.1,  
11 which, among other things, requires him or her to maintain a current address and telephone  
12 number with the State Bar and to notify the State Bar within 30 days of any change in same.

13 By not maintaining a current address with the State Bar, respondent wilfully violated  
14 section 6068(j).

15 **Count Six - Section 6068(m) (Failure to Communicate)**

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

19 By not telling his client about his change of telephone and address or that he was not  
20 going to attend two court hearings or file a trial brief, respondent did not keep Judy Van Cleave  
21 reasonably informed of significant developments in wilful violation of section 6068(m).

22 **LEVEL OF DISCIPLINE**

23 **Aggravating Circumstances**

24 Respondent's multiple acts of misconduct are an aggravating factor. ( Rules of Proc. of  
25

26 \_\_\_\_\_  
27 <sup>3</sup> Although the NDC gave respondent sufficient notice of the charge, it did not reference the cited  
28 statute and court rule which require the tribunal's permission to withdraw. Accordingly, on the court's  
own motion, they are judicially noticed.

1 the State Bar of California, tit. IV, Stds for Atty. Sanctions for Prof.Misconduct, std. 1.2(b)(ii).<sup>4</sup>

2 Respondent's misconduct significantly harmed clients and the administration of justice.  
3 (Standard 1.2(b)(iv).) Judy Van Cleave had to represent herself and the court had to continue the  
4 matter several times because respondent did not appear at the two hearings.

5 Respondent's failure to participate in these proceedings prior to the entry of default is also  
6 an aggravating factor. (Standard 1.2(b)(vi).) He has demonstrated his contemptuous attitude  
7 toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the  
8 court to participate therein, a serious aggravating factor. ((Standard 1.2(b)(vi); Cf. *In the Matter*  
9 *of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

#### 10 Mitigating Circumstances

11 Since respondent did not participate in these proceedings and he bears the burden of  
12 establishing mitigation by clear and convincing evidence, the Court has been provided no basis  
13 for finding mitigating factors.

#### 14 Discussion

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

19 Standard 1.6 provides that the appropriate sanction for the misconduct found must be  
20 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of  
21 imposing discipline. If two or more acts of professional misconduct are found in a single  
22 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable  
23 sanctions. (Standard 1.6(a).) The level of discipline is progressive. (Standard 1.7(b).) The  
24 standards, however, are guidelines from which the Court may deviate in fashioning the most  
25 appropriate discipline considering all the proven facts and circumstances of a given matter. (*In*  
26 *re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They

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27  
28 <sup>4</sup> All future references to standard are to this source.

1 are "not mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar*  
2 (1988) 44 Cal.3d 820, 828.)

3 Standards 2.4(b), 2.6(a) and (b) and 2.10 apply in this matter. The most severe sanction is  
4 found at standard 2.6 which recommends suspension or disbarment for violations of sections  
5 6068 and 6103, depending on the gravity of the offense or harm, if any to the victim, with due  
6 regard to the purposes of imposing discipline.

7 Respondent has been found culpable of disobeying court orders, not performing  
8 competently or communicating with his client, improperly withdrawing from representation and  
9 not maintaining a current address with the State Bar. Aggravating factors include multiple acts  
10 of misconduct, harm to his client and to the administration of justice and not participating in  
11 these proceedings prior to the entry of default. Respondent presented no mitigating  
12 circumstances.

13 The State Bar recommends 90 days actual suspension and the Court agrees.

14 In decisions of the Supreme Court and State Bar Court involving abandonment of a  
15 client's case, where the attorney has no prior record of discipline, the discipline ranges for no  
16 actual to 90 days actual suspension. (*In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State  
17 Bar Ct. Rptr. 196, 206.) In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, the attorney, with five  
18 years of practice, failed to perform services for a client, but without causing substantial harm.  
19 The Court imposed no actual suspension. In *Layton v. State Bar* (1990) 50 Cal.3d 889, involving  
20 an attorney with 30 years of practice without prior discipline, the Supreme Court imposed 30  
21 days actual suspension. The attorney, acting as attorney for a trust and an estate for which he was  
22 also the executor, failed through neglect and inattention to fulfill important and material  
23 requirements of his office as executor for over five years, which ultimately resulted in his  
24 removal from office by the probate court. In *Wren v. State Bar* (1983) 34 Cal.3d 81, the attorney  
25 was suspended for two years, stayed, with two years of probation and 45 days of actual  
26 suspension for failing to perform in one client matter over a two-year period and for  
27 misrepresenting the status of the case to the client. The attorney had no prior discipline in 22  
28 years of practice and participated in the disciplinary proceeding but attempted to mislead the

1 State Bar by giving false and misleading testimony. In *Harris v. State Bar* (1990) 51 Cal.3d  
2 1082, the Court imposed a 90-day actual suspension for protracted inattention to a client's case,  
3 resulting in a large financial loss to the client's estate. Aggravating factors included lack of  
4 candor to her client and lack of remorse and insight. In mitigation, she had approximately 10  
5 years of practice with no prior discipline. Also, her illness with typhoid fever after the  
6 misconduct commenced was considered. The attorney participated in the proceedings.

7 The instant case is distinguishable from *Van Sloten, Wren* and *Layton* in various ways,  
8 including his lack of participation in these proceedings, his very limited time in practice and the  
9 harm he caused to the client and to the administration of justice through his misconduct. *Harris*  
10 presents both greater misconduct and mitigation than the present case.

11 The Court is very troubled by the nature and extent of respondent's misconduct, which  
12 commenced a scant 11 months after being licensed to practice law in California. Respondent's  
13 premature misconduct, his failure to keep the State Bar apprized of his whereabouts and his lack  
14 of participation in this matter raises concerns about his ability or willingness to comply with his  
15 ethical responsibilities to the public and to the State Bar. He has offered no explanation that  
16 might persuade the Court otherwise and the Court can glean none. Having considered the  
17 evidence and the law, the Court believes that a 90-day actual suspension to remain in effect until  
18 he pays the court-ordered sanctions and explains to this Court the reasons for not participating  
19 herein and demonstrates his willingness to comply fully with probation conditions that may  
20 hereafter imposed, among other things, is adequate to protect the public and proportionate to the  
21 misconduct found and the Court so recommends.

#### 22 DISCIPLINE RECOMMENDATION

23 Accordingly, it is hereby recommended that Respondent be suspended from the practice  
24 of law for two years; that said suspension be stayed; and that he be actually suspended from the  
25 practice of law for 90 days and until he pays the \$600 in sanctions ordered in *In re Marriage of*  
26 *Van Cleave*, Monterey County Superior Court case no. DR 39533, on January 27, 2004, and  
27 submits satisfactory proof thereof to the State Bar Office of Probation; and until the State Bar  
28 Court grants a motion to terminate Respondent's actual suspension at its conclusion or upon such

1 later date ordered by the Court. (Rule 205(a), (c), Rules Proc. of State Bar.)

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

5 If the period of actual suspension reaches or exceeds two years, it is further recommended  
6 that Respondent remain actually suspended until he has shown proof satisfactory to the State Bar  
7 Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to  
8 Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (See also,  
9 rule 205(b).)

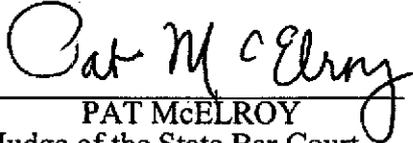
10 It is also recommended that Respondent be ordered to comply with the requirements of  
11 rule 955 of the California Rules of Court within 30 calendar days of the effective date of the  
12 Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40  
13 days of the effective date of the order showing his compliance with said order.<sup>5</sup>

14 It is further recommended that Respondent be ordered to take and pass the Multistate  
15 Professional Responsibility Examination given by the National Conference of Bar Examiners  
16 within one year from the effective date of the Supreme Court's order or during the period of his  
17 actual suspension, whichever is longer, and furnish satisfactory proof of such to the State Bar  
18 Office of Probation within said period.

19 **COSTS**

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

23  
24 Dated: May 9, 2005

25   
26 PAT McELROY  
27 Judge of the State Bar Court

28 <sup>5</sup> Failure to comply with CRC 955 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a CRC 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on May 10, 2005, I deposited a true copy of the following document(s):

**DECISION, filed MAY 10, 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 San Francisco, California, addressed as follows:

**STEVEN M. ALEXANDER  
P O BOX 548  
MERCED CA 95341**

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

**TAMMY ALBERTSEN-MURRAY, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **May 10, 2005**.



**Laurretta Cramer  
Case Administrator  
State Bar Court**