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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

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

Case No. 04-O-13387-RMT; 04-O-13565
04-O-14533; 04-O-15676 (Cons.)
DECISION INCLUDING DISBARMENT
RECOMMENDATION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

INTRODUCTION

In this disciplinary matter, Jean Cha appeared for the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"). Respondent did not appear in person or by counsel.

After considering the evidence and the law, the court recommends that respondent be disbarred.

SIGNIFICANT PROCEDURAL HISTORY

Case Nos. 04-O-13387, 04-O-13565 and 04-O-15676

The Notice of Disciplinary Charges ("NDC") was filed on February 25, 2005, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section¹ 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.) The return receipt was received by the State Bar on March 9, 2005, and was signed by "Erica Romero."

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



1 On March 18, 2005, respondent was properly served at his official address with a notice
2 advising him, among other things, that a status conference would be held on April 19, 2005.
3 This correspondence was returned as undeliverable by the United States Postal Service ("USPS")
4 and bore a sticker containing a new address in Beverly Hills.

5 **Case No. 04-O-14533**

6 The NDC was filed on March 22, 2005, and was properly served on respondent on that
7 same date at his official address. The return receipt was received by the State Bar on April 13,
8 2005, and was signed by "Erica Romero."

9 The notice of assignment properly served on respondent at his official address on April
10 15, 2005, was returned as undeliverable by the USPS and bore a sticker containing a Beverly
11 Hills address.

12 Respondent did not appear at the April 19 status conference. The captioned cases were
13 consolidated. On April 20, 2005, he was properly served with a status conference order at his
14 official address by first-class mail, postage prepaid. The order also advised him that the cases
15 had been consolidated and that a status conference would be held on May 26, 2005. The order
16 was returned as undeliverable by the USPS and bore a sticker containing a Beverly Hills address.

17 Respondent did not appear at the May 26 status conference.

18 Respondent did not file a responsive pleading to the NDCs. On May 18, 2005, a motion
19 for entry of default was filed and properly served on respondent at his official address by certified
20 mail, return receipt requested. The motion advised him that minimum discipline of "a lengthy
21 period of actual suspension" would be sought if he was found culpable. He did not respond to
22 the motion.

23 On June 9, 2005, the court entered respondent's default and enrolled him inactive
24 effective three days after service of the order. The order was properly served on him at his
25 official address on that same date by certified mail, return receipt requested. The order was
26 returned as undeliverable by the USPS and bore a handwritten notation referencing a Beverly
27 Hills address.

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

1 The matter was submitted for decision without hearing on July 1, 2005.

2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3 The court's findings are based on the allegations contained in the NDC as they are
4 deemed admitted and no further proof is required to establish the truth of those allegations.
5 (Section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).²) The findings are also based on any
6 evidence admitted.

7 It is the prosecution's burden to establish culpability of the charges by clear and
8 convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.
9 163, 171.)

10 **Jurisdiction**

11 Respondent was admitted to the practice of law in California on June 5, 2001, and has
12 been a member of the State Bar at all times since.

13 **Case No. 04-O-13387 - The Casillas Matter**

14 **Facts**

15 On March 11, 2004, Alma Solano retained respondent to represent her son Braulio
16 Solano Casillas in a criminal matter and paid him \$2,000 as advanced fees. The retainer
17 agreement stated that both Solano and Casillas were respondent's clients.

18 On March 23, 2004, Solano paid respondent an additional \$1,000 as advanced fees.

19 Respondent did not obtain Casillas' informed written consent to having Solano pay
20 Casillas' legal fees.

21 Respondent appeared at Casillas' April 2, 2004, preliminary hearing. He also appeared at
22 the April 16, 2004, arraignment.

23 In April 2004, Solano told respondent that Casillas was ill and needed respondent to
24 obtain a court order for Casillas' medical treatment. Respondent did not do so. Solano obtained
25 the order on her own.

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²Future references to "Rules of Procedure" are to the Rules of Procedure of the State Bar
unless otherwise specified.

1 In May 2004, Solano and a friend who was more fluent in English called respondent at
2 his office at least once a week. They left messages with one of his employees asking for a return
3 call. He did not respond to her calls.

4 When Solano went to respondent's office in the end of May 2004, she was informed that
5 he had moved. He did not tell her about his change of address.

6 On May 13, 2004, respondent called Solano to inform her that he was sending another
7 attorney to Casillas' hearing because he was too busy to attend. She asked him whether he was
8 going to continue working on the case and, if he was not, she wanted a refund. He told her not to
9 call him again and hung up on her. There were no further communications between respondent
10 and Solano or Casillas thereafter. At that time, Solano retained other counsel, Patrick Aguirre, to
11 represent Casillas.

12 In May 2004, Aguirre called respondent's office at least three times and left messages
13 with his staff asking to speak with respondent and for the return of Casillas' file. Respondent
14 did not return the file or communicate with Solano, Casillas or Aguirre.

15 Respondent did not provide services of any value to Casillas. He did not earn any of the
16 advanced fees Solano paid him nor did he refund any of the fees.

17 On June 21, 2004, the State Bar opened an investigation on case no. 04-O-13387 pursuant
18 to a complaint filed by Solano regarding allegations of misconduct by respondent in this matter.
19 On August 5 and December 15, 2004, a State Bar investigator sent respondent letters requesting
20 that respondent answer in writing specific allegations of misconduct regarding the Solano
21 complaint. The August 5 letter was addressed to respondent's official address, as well as to a
22 Beverly Hills address. The December 15 letter was only sent to the Beverly Hills address.
23 Solano had found respondent at the Beverly Hills address and the State Bar investigator was
24 informed that he was practicing law there. The letters were sent by first-class mail, postage
25 prepaid. Neither letter was returned to the State Bar as undeliverable or for any other reason.
26 Respondent did not answer the letters or otherwise communicate with the investigator.

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1 **Conclusions of Law**

2 **Count One - Rule of Professional Conduct³ 3-110(A) (Failing to Perform Competently)**

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

5 By not seeking an order to obtain medical treatment for Casillas, respondent intentionally,
6 recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

7 **Count Two - Rule 3-700(D)(1) (Failure to Return Client Papers or Property)**

8 Rule 3-700(D)(1) requires an attorney whose employment has been terminated to
9 promptly release to the client, at the client's request, all client papers and property, subject to any
10 protective order or non-disclosure agreement. This includes correspondence, pleadings,
11 deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably
12 necessary to the client's representation, whether the client has paid for them or not.

13 By not returning Casillas' file after being asked to do so when his employment was
14 terminated, respondent wilfully violated rule 3-700(D)(1).

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

16 Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly
17 return any part of a fee paid in advance that has not been earned. This rule does not apply to true
18 retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a
19 matter.

20 By not returning the \$3,000 to Solano, respondent did not return an advanced, unearned
21 fee in wilful violation of rule 3-700(D)(2).

22 **Count Four - Rule 3-310(F) (Accepting Fees from Nonclient)**

23 Rule 3-310(F) prohibits an attorney from accepting compensation for representing a client
24 from one other than the client unless, in relevant part, the attorney obtains the client's informed
25 written consent. No disclosure or consent is required if such nondisclosure is otherwise
26 authorized by law or if the attorney is rendering legal services on behalf of any public agency

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28 ³Future references to "rule" are to the Rules of Professional Conduct.

1 which provides legal services to other public agencies or to the public.

2 There is clear and convincing evidence that respondent accepted \$3000 from Solano
3 for Casillas' legal fees without Casillas' informed written consent in wilful violation of rule 3-
4 310(F).

5 **Count Five - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

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

8 By not responding to the August 5 and December 15 letters, respondent did not
9 participate in the investigation of the allegations of misconduct regarding the Solano complaint
10 in wilful violation of section 6068(i).

11 **Case No. 04-O-13565 - The Bonville Matter**

12 **Facts**

13 On May 15, 2004, Wilbur Bonville retained respondent to represent his friend, Robert
14 Newman, in a criminal proceeding.

15 On May 22, 2004, Bonville paid respondent \$3,500 in advanced legal fees. Respondent
16 did not prepare a retainer agreement. He also did not obtain Newman's informed written consent
17 to his legal fees being paid for by Bonville.

18 Although respondent was physically present for Newman's preliminary hearing on June
19 23, 2004, he did not enter an appearance. A public defender represented Newman.

20 On July 7, 2004, the public defender left a message for respondent inquiring whether
21 respondent was going to substitute in on the Newman matter. Respondent did not substitute in to
22 the Newman matter. He also did not appear for hearings on that case on July 7 and 21 and
23 August 23, 2004. At the August 23, 2004, hearing, Newman had other counsel substitute in to
24 represent him. Respondent did not perform any legal services for Newman.

25 On July 12, 2004, after numerous telephone calls to respondent, Bonville left him a note
26 at his office asking for a refund of the \$3,500 advanced fee.

27 On July 14, 2004, respondent sent Bonville a letter by Federal Express returning
28 \$2,737.50. Respondent's letter explained that he was charging Bonville \$150 for the initial

1 consultation. He also charged \$1000 for a four-hour visit/interview with Newman in jail and
2 \$375 for a one and one-half hour meeting/appearance with the public defender at the preliminary
3 hearing. Respondent waived half of these charges and so deducted \$762.50 from the \$3,500
4 advanced fee.

5 Originally, respondent told Bonville that the initial consultation would be free.

6 The jail visit was, at most, 45 minutes, and took place at a county jail near respondent's
7 office.

8 Respondent was retained to represent Newman at the preliminary hearing, not to meet
9 with a public defender. Moreover, the combined hearing and meeting did not last one and one-
10 half hours.

11 Accordingly, the amount of the fee charged was excessive in proportion to the value of
12 the services performed. It was not likely that respondent would be precluded from working on
13 other cases by completing the work for Newman. Respondent obtained no results for or provide
14 services of value to Newman. He did not earn any of the fees paid on Newman's behalf.
15 respondent has not refunded the remaining \$762.50.

16 On July 14, 2004, the State Bar opened an investigation on case no. 04-O-13565 pursuant
17 to a complaint filed by Bonville regarding allegations of misconduct by respondent in this matter.
18 On August 10, 2004, a State Bar investigator sent respondent a letter to his official address
19 regarding the Bonville complaint. On that same date and on January 19, 2005, the investigator
20 sent respondent a letter to the previously-mentioned Beverly Hills address regarding the Bonville
21 complaint. The letters requested that respondent answer in writing specific allegations of
22 misconduct regarding the Bonville complaint. The letters were sent by first-class mail, postage
23 prepaid. They were not returned to the State Bar as undeliverable or for any other reason.
24 Respondent did not answer the letters or otherwise communicate with the investigator.

25 **Conclusions of Law**

26 **Count Six - Rule 3-110(A) (Failing to Perform Competently)**

27 By not substituting in as counsel or appearing at several hearings, respondent
28 intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-

1 110(A).

2 **Count Seven - Rule 3-310(F)**

3 There is clear and convincing evidence that respondent accepted \$3,500 from Bonville
4 for Newman's legal fees without Newman's informed written consent in wilful violation of rule
5 3-310(F).

6 **Count Eight - Section 6106 (Dishonesty or Moral Turpitude)**

7 Section 6106 makes it a cause for disbarment or suspension to commit any act involving
8 moral turpitude, dishonesty or corruption, whether the act is committed in the course of his or her
9 relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

10 There is clear and convincing evidence that respondent violated section 6106 of the
11 Business and Professions Code. He told Bonville that the initial consultation was free and then
12 charged for it. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in
13 wilful violation of section 6106.

14 **Count Nine - Rule 4-200 (Illegal or Unconscionable Fee)**

15 Rule 4-200(A) prohibits an attorney from entering into an agreement for, charging or
16 collecting an illegal or unconscionable fee.

17 By charging \$1,525 and collecting \$762.50 in fees for a free consultation and for tasks
18 that did not take as long as stated and that did not benefit Newman, respondent wilfully violated
19 rule 4-200(A).

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

21 There is clear and convincing evidence that respondent did not return an advanced,
22 unearned fee of \$762.50 in wilful violation of rule 3-700(D)(2).

23 **Count Eleven - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

24 By not responding to the State Bar investigator's letters, respondent did not participate in
25 the investigation of the allegations of misconduct regarding the Bonville complaint in wilful
26 violation of section 6068(i).

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1 **Case No. 04-O-15676 - The Martinez Matter**

2 **Facts**

3 On November 14, 2003, Armando Martinez retained respondent to incorporate his
4 business and told him that, for bookkeeping purposes, the incorporation needed to be done by
5 January 2004. Martinez paid respondent \$1000 in advanced fees and agreed to "pay" respondent
6 an additional \$500 through print jobs performed by Martinez's company. Respondent did not
7 prepare a retainer agreement.

8 On November 21, 2003, respondent faxed Martinez a partnership agreement which
9 respondent claimed needed to be completed before the incorporation could be accomplished.

10 Between November 24, 2003, and January 29, 2004, Martinez telephoned respondent at
11 his office over 20 times and left a message each time with the receptionist requesting a return
12 call. Respondent did not answer these calls.

13 Between February 5 and March 22, 2004, Martinez called respondent at his office over 10
14 times. Each time, he left a message with the receptionist asking for a return call and a refund of
15 fees. Respondent did not answer these calls.

16 Respondent did not incorporate Martinez's business. He did not provide any services of
17 any value to Martinez or earn any of the advanced fees. He did not refund any of the fees.

18 On December 9, 2004, the State Bar opened an investigation on case no. 04-O-15676
19 pursuant to a complaint filed by Martinez regarding allegations of misconduct by respondent in
20 this matter.

21 On December 15, 2004, and January 3, 2005, a State Bar investigator sent respondent a
22 letter requesting that respondent answer in writing specific allegations of misconduct regarding
23 the Martinez complaint. The letters were sent to the previously-mentioned Beverly Hills address
24 first-class mail, postage prepaid. Neither of the letters was returned to the State Bar as
25 undeliverable or for any other reason.

26 On February 4, 2005, the investigator sent respondent a letter requesting that respondent
27 answer in writing specific allegations of misconduct regarding the Martinez complaint. The
28 letter was addressed to respondent's official address and sent by first-class mail, postage prepaid.

1 The letter was returned as undeliverable and provided a new address for respondent in Beverly
2 Hills.

3 Respondent did not answer the letters or otherwise communicate with the investigator.

4 **Conclusions of Law**

5 **Count Twelve - Rule 3-110(A) (Failing to Perform Competently)**

6 By not incorporating Martinez's business, respondent intentionally, recklessly or
7 repeatedly did not perform competently in wilful violation of rule 3-110(A).

8 **Count Thirteen - Section 6068(m) (Failure to Communicate)**

9 By not returning Martinez's calls, respondent did not respond promptly to his reasonable
10 status inquiries in wilful violation of section 6068(m).

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

12 There is clear and convincing evidence that respondent did not return an advanced,
13 unearned fee of \$1000 in wilful violation of rule 3-700(D)(2).

14 **Count Fifteen - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

15 By not responding to the State Bar investigator's letters, respondent did not participate in
16 the investigation of the allegations of misconduct regarding the Martinez complaint in wilful
17 violation of section 6068(i).

18 **Case No. 04-O-14533 - The Nelson Matter**

19 **Facts**

20 On May 14, 2004, Patricia Chambers retained respondent to represent Peter Nelson
21 regarding a probation violation. Respondent knew that the bulk of his communications regarding
22 this case would be with Chambers since Nelson was incarcerated and she communicated with
23 him continuously. Respondent charged a \$15,000 flat fee for representation "to the conclusion of
24 trial."

25 On May 20, 2004, Nelson signed a document permitting respondent to "handle, operate,
26 and control all matters pertaining to [Nelson's] personal and financial affairs" while Nelson was
27 in custody.

28 On May 26, 2004, Chambers paid respondent \$5,000 as advanced legal fees for Nelson.

1 he deposited the funds in his client trust account ("CTA").

2 On June 17, 2004, Chambers paid respondent \$10,000 as advanced legal fees for Nelson.
3 Respondent never obtained Nelson's written consent to accept compensation from
4 Chambers on Nelson's behalf.

5 On June 17, 2004, Nelson signed a document authorizing respondent to release all
6 ownership in Nelson's vehicle to Chambers and to complete all documents for the sale of the
7 vehicle to the person Chambers designated. The next day, the vehicle was sold for \$20,500.

8 On July 1, 2004, respondent deposited the \$20,500 sale proceeds into his CTA at
9 Washington Mutual Bank as he was required to do.

10 On July 8, 2004, Chambers spoke with respondent about the sale proceeds. Respondent
11 informed her that, according to the bank, only a portion of the funds would be available on July
12 21, 2004.

13 On July 19, 2004, Nelson's brother, Michael, told respondent that Nelson wanted to
14 terminate respondent's services.

15 On July 21 - 24 and 26, Chambers left voicemail messages for respondent on both of his
16 cell telephones and asked that he give her the sale proceeds from Nelson's vehicle. Chambers
17 tried to call respondent at his office but that line was disconnected.

18 On July 28, 2004, Nelson hired new counsel to replace respondent. About that same date,
19 Chambers mailed respondent a letter to respondent at his official address terminating his services
20 in Nelson's matter and seeking an accounting, a refund of fees and the sale proceeds. The letter
21 was properly mailed in a sealed envelope and sent by first-class mail with postage prepaid. The
22 letter was not returned.

23 On July 29, 2004, Chambers handed respondent a copy of her July 28 letter. Nelson was
24 present in the courtroom when Chambers handed respondent the letter.

25 On July 29, 2004, respondent gave Chambers \$10,000 of the sale proceeds. As of March
26 22, 2005, respondent has not disbursed the balance of these funds to Nelson or Chambers.

27 Respondent did not provide services of any value to Nelson. He did not earn any of the
28 \$15,000 advanced fees Chambers paid him on Nelson's behalf. He has not returned any part of

1 these fees to Chambers or to Nelson.

2 Respondent did not maintain the remaining \$10,500 in his CTA. The balance in the CTA
3 fell to \$73.81 on July 31, 2004. He dishonestly or with gross negligence misappropriated the
4 remaining \$10,500 of the sale proceeds.

5 On August 4, 2004, Chambers left four voicemail messages for respondent asking that he
6 contact her. She also left other voicemail messages asking him to contact her: two each on
7 August 9 and 22 and one on August 20. Although he received all of the messages, he did not
8 contact her.

9 On August 26, 2004, the State Bar opened an investigation on case no. 04-O-14533
10 pursuant to a complaint filed by Chambers regarding allegations of misconduct by respondent in
11 this matter. On October 4, 2004, a State Bar investigator sent respondent's counsel a letter
12 regarding the Chambers complaint. The next day, respondent's counsel sent the State Bar a letter
13 indicating that he no longer represented respondent.

14 On October 18 and November 4, 2004, and on February 18, 2005, the State Bar wrote to
15 respondent regarding allegations of misconduct in the Chambers complaint and asking for a
16 written response to the allegations. The letters were addressed to respondent's official
17 membership records address and sent by first-class mail, postage prepaid. The October 18 and
18 November 4 letters were not returned to the State Bar as undeliverable or for any other reason.
19 Respondent did not answer these letters or otherwise communicate with the investigator. The
20 February 18 letter was returned as undeliverable.

21 **Conclusions of Law**

22 **Count One - Rule 3-310(F) (Accepting Fees from Nonclient)**

23 There is clear and convincing evidence that respondent accepted \$15,000 from Chambers
24 for Nelson's legal fees without Nelson's informed written consent in wilful violation of rule 3-
25 310(F).

26 **Count Two - Rule 4-100(A) (Failure to Maintain Client Funds in Trust Account)**

27 Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the
28 benefit of clients, including advances for costs and expenses, in a client trust account.

1 There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by
2 not maintaining \$10,500 of Nelson's funds in the client trust account.

3 **Count Three - Rule 4-100(B)(4) (Failure to Promptly Pay)**

4 Rule 4-100(B)(4) requires that an attorney promptly pay or deliver, as requested by the
5 client, any funds, securities or other properties in the possession of the attorney which the client
6 is entitled to receive.

7 There is clear and convincing evidence that respondent failed to promptly pay the balance
8 of the sale proceeds, as requested by Chambers for Nelson, which Nelson was entitled to receive
9 and, therefore, wilfully violated rule 4-100(B)(4).

10 **Count Four - Section 6106 (Dishonesty or Moral Turpitude)**

11 There is clear and convincing evidence that respondent violated section 6106 of the
12 Business and Professions Code. He dishonestly or with gross negligence misappropriated
13 \$10,500 of Nelson's funds. Accordingly, he committed an act of moral turpitude, dishonesty or
14 corruption in wilful violation of section 6106.

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

16 By not responding to Chambers' several voicemail messages, respondent did not respond
17 promptly to her reasonable status inquiries in wilful violation of section 6068(m).

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

19 There is clear and convincing evidence that respondent did not return the advanced
20 unearned fee paid in Nelson's case in wilful violation of rule 3-700(D)(2).

21 **Count Seven - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

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

24 By not responding to the October 18 and November 4, 2004, letters from the State Bar,
25 respondent did not participate in the investigation of the allegations of misconduct regarding the
26 Chambers complaint in wilful violation of section 6068(i).

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1 LEVEL OF DISCIPLINE

2 Aggravating Circumstances

3 Respondent has one prior instance of discipline. (Rules Proc. of State Bar, tit. IV, Stds.
4 for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).⁴) In the State Bar Court's decision in
5 case nos. 04-O-10556, 04-O-11660, 04-O-11575, 04-O-14115 (Cons.), filed June 6, 2005,
6 discipline was recommended consisting of two years' stayed suspension and actual suspension of
7 one year and until he makes restitution and complies with rule 205 of the Rules of Procedure.⁵ In
8 that default matter, respondent was found culpable of misconduct in four client matters. The
9 misconduct, which occurred between approximately December 2002 and October 2004⁶,
10 included not performing services or communicating with clients; not returning \$24,000 in
11 unearned fees or client files; not maintaining an official address with the State Bar; and not
12 cooperating with the State Bar's disciplinary process. Aggravating factors included multiple acts
13 of misconduct; client harm; indifference toward rectification; and not participating in the
14 proceedings prior to the entry of default.

15 Respondent's multiple acts of misconduct are an aggravating factor. Moreover,
16 considering the misconduct in the present matter and the prior instance of discipline, respondent
17 has demonstrated a pattern of not performing services or communicating with clients or returning
18 unearned fees or cooperating with the State Bar's investigation of alleged misconduct. (Std.
19 1.2(b)(ii).)

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21 ⁴Future references to "standard" or "std." are to these standards.

22 ⁵This discipline recommendation is pending before the California Supreme Court. A prior
23 record of discipline includes recommended discipline that has not yet been approved by the court
24 of last resort in the jurisdiction. (Std. 1.2(f); Rules of Procedure, rule 216.)

25 ⁶The court notes that the time period during which the misconduct in the present cases and the
26 prior case overlap. The misconduct in the present cases occurred approximately between
27 November 2003 and February 2005. Accordingly, the aggravating effect of this prior discipline
28 is diminished as it is not indicative of respondent's inability to conform to ethical norms and the
court will consider the totality of the findings in both cases to ascertain what the discipline would
have been had all of the matters been brought as one case. (*In the Matter of Sklar* (Review Dept.
1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

1 Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) Clients or others
2 on behalf of clients had to call repeatedly to try to obtain the status of their cases or their files or
3 refunds of unearned fees. Casillas, Newman and Nelson had to retain other counsel.

4 Respondent has demonstrated indifference toward rectification of or atonement for the
5 consequences of the misconduct. (Std. 1.2(b)(v).) He has not returned the unearned fees in these
6 cases.

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

12 **Mitigating Circumstances**

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

16 **Discussion**

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

21 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
22 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
23 imposing discipline. If two or more acts of professional misconduct are found in a single
24 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable
25 sanctions. (Std. 1.6(a).) The level of discipline is progressive. (Std. 1.7(b).) The standards,
26 however, are guidelines from which the court may deviate in fashioning the most appropriate
27 discipline considering all the proven facts and circumstances of a given matter. (*In re Young*
28 (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They are "not

1 mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar* (1988) 44
2 Cal.3d 820, 828.)

3 Standards 2.2(b), 2.3, 2.4(a), 2.6(a), 2.7 and 2.10 apply in this matter. The most severe
4 sanction is prescribed by standard 2.4(a) which suggests disbarment for culpability of a pattern of
5 wilfully failing to perform services demonstrating the attorney's abandonment of the causes for
6 which he or she was retained.

7 Respondent has been found culpable of serious misconduct in four client matters.
8 Moreover, considering the misconduct in the present matter and the prior instance of discipline,
9 during his brief tenure as a California attorney, respondent has demonstrated a pattern of not
10 performing services or communicating with clients or returning unearned fees or cooperating
11 with the State Bar's investigation of alleged misconduct. His misconduct has resulted in harm to
12 clients. He has demonstrated an indifference toward rectifying or atoning for his misconduct.
13 He did not participate in this or the prior disciplinary case.

14 The State Bar recommends disbarment and the court agrees. There is no evidence
15 supporting a deviation from the standard.

16 The court found *McMorris v. State Bar* (1983) 35 Cal.3d 77 instructive. In *McMorris*,
17 the attorney was disbarred for habitually disregarding his clients' interests. In seven matters for
18 five clients over a period of nine years, Respondent McMorris was found culpable of failing to
19 perform and to communicate, improperly withdrawing from representation and committing an act
20 of moral turpitude in violation of section 6106. Client harm was found in aggravation, including
21 the entry of a default judgment and the need for the client to retain other counsel to have it set
22 aside. He did not participate in the discipline hearing and had three prior instances of discipline.

23 The Supreme Court noted: "As we have repeatedly stated, willful failure to perform legal
24 services for which an attorney has been retained in itself warrants disciplinary action, constituting
25 a breach of the good faith and fiduciary duty owed by the attorney to his clients. [Citations.]'
26 (Citation omitted.) Moreover, habitual disregard by an attorney of the interests of his or her
27 clients combined with failure to communicate with such clients constitute acts of moral turpitude
28 justifying disbarment. (Citations omitted.)" (*McMorris v. State Bar, supra*, 35 Cal.3d at p. 85.)

1 In determining its recommended degree of discipline, the Supreme Court considered
2 respondent's prior disciplinary record and the harm resulting from his misconduct.
3 "Significantly, in examining the combined record of this disciplinary proceeding and
4 [respondent's] prior discipline, we are confronted not by isolated or uncharacteristic acts but by 'a
5 continuing course of serious professional misconduct extending over a period of several years.'
6 (Citation omitted.) We are therefore concerned with what appears to have become an habitual
7 course of misconduct. We believe that the risk of petitioner repeating this misconduct would be
8 considerable if he were permitted to continue in practice. (Citation omitted.) As [respondent] has
9 previously demonstrated, the public and the legal profession would not be sufficiently protected
10 if we merely, once again, suspended [him] from the practice of law. (Citation omitted.)"
11 (*McMorris v. State Bar, supra*, 35 Cal.3d at p. 85.) The Supreme Court's reasoning is equally
12 applicable in this case.

13 Respondent's misconduct and lack of participation in this matter raises concerns about
14 his ability or willingness to comply with his ethical responsibilities to the public and to the State
15 Bar. No explanation has been offered that might persuade the court otherwise and the court can
16 glean none. Having considered the evidence and the law, the court believes that disbarment will
17 protect the public and is proportionate to the misconduct found and the court so recommends.

18 DISCIPLINE RECOMMENDATION

19 IT IS HEREBY RECOMMENDED that respondent **MYLIK R. HARRINGTON** be
20 **DISBARRED** from the practice of law in the State of California and that his name be stricken from
21 the rolls of attorneys in this state.

22 It is also recommended that the Supreme Court order respondent to comply with rule 955,
23 paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the
24 Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph
25 (c) within 40 days of the effective date of the order showing compliance with said order.

26 COSTS

27 The court recommends that costs be awarded to the State Bar pursuant to Business and
28 Professions Code section 6086.10, and that those costs be payable in accordance with section


1 6140.7.

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ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: September 20th, 2005



ROBERT M. TALCOTT
Judge of the State Bar Court

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 September 20, 2005, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

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
Harrington & Associates
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:

JEAN CHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 20, 2005**.



Tammy R. Cleaver
Case Administrator
State Bar Court