



PUBLIC MATTER

FILED

DEC 01 2008

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 07-N-12150-DFM; 07-O-10851
DAVID MATTHEW SMITHSON)	DECISION INCLUDING DISBARMENT
Member No. 118338)	RECOMMENDATION AND
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER

I. INTRODUCTION

In this disciplinary matter, Hugh G. Radigan appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent David Matthew Smithson did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred and that he be ordered to make restitution.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on May 1, 2008, 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, subdivision (c) (official address). Service was deemed complete as of the time of mailing.

¹Future references to section are to the Business and Professions Code.

(*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned as undeliverable.

A courtesy copy of the NDC was also sent by regular mail to an alternate address on May 1, 2008. It was not returned as undeliverable or for any other reason.

On May 6, 2008, respondent was properly served at his official address and at an alternate address with a notice advising him, among other things, that a status conference would be held on June 5, 2008. At respondent's request, the status conference was continued to June 24, 2008.

On May 27, 2008, at respondent's request, the State Bar mailed to him a proposed stipulation to extend his time to respond to the NDC until June 4, 2008. As of July 28, 2008, he had not returned the executed stipulation.

Respondent did not appear at the June 24, 2008 status conference. On June 25, 2008, he was properly served with a status conference order at his official address and at an alternate address by first-class mail, postage prepaid. The order notified the parties about upcoming court dates, among other things.

Respondent did not file a responsive pleading to the NDC. On July 28, 2008, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested and at an alternate address by regular mail. The motion advised him that minimum discipline of significant actual suspension, if not disbarment, would be sought if he was found culpable. Respondent did not respond to the motion.

On August 13, 2008, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested. A copy was also sent to him at an alternate address by first-class mail, postage prepaid.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing after the State Bar filed a brief on September 2, 2008

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar², rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

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

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 11, 1985, and has been a member of the State Bar at all times since.

B. Case no. 07-N-12150 (The Rule 955 Matter)

1. Facts

On or about July 21, 2006, the Hearing Department of the State Bar Court issued a decision in case number 04-O-15101 finding respondent culpable of four counts of misconduct and recommending to the Supreme Court that discipline be imposed against him. Despite the fact that he had actual knowledge of the disciplinary proceeding, respondent failed to appear or

²Future references to the Rules of Procedure are to this source.

participate in the matter, which proceeded as a default.

On or about July 21, 2006, the Hearing Department decision was properly served by mail upon respondent at his official address.

On or about November 28, 2006, the California Supreme Court filed disciplinary order number S146931 (State Bar Court case number 04-O-15101) ordering that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be actually suspended from the practice of law for 60 days and until: (1) he obeys the superior court's December 2002 sanctions order by paying the \$500 sanctions imposed on him therein together with interest thereon at the rate of 10% per annum from February 1, 2003 until paid; (2) he provides satisfactory proof of such payment to the State Bar's Office of Probation; and (3) the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure. The November 28, 2006 Supreme Court order further ordered that if respondent remained actually suspended for 90 days or more, he was to comply with former rule 955 of the California Rules of Court³ and perform the acts specified in subdivisions (a) and (c) of rule 955 within 120 and 130 days, respectively, after the effective date of the order. A true and correct copy of the November 28, 2006 Supreme Court order containing the rule 955 order was attached to the NDC.

Notice of the November 28, 2006 Supreme Court order was duly and properly served upon respondent in the manner prescribed by former rule 29.4(a) of the California Rules of Court at respondent's official address.⁴

³Future references to rule 955 are to this source. Effective January 1, 2007, rule 955 was renumbered rule 9.20.

⁴Rule 29.4 was renumbered rule 8.532 effective January 1, 2007. Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires the Clerk to promptly transmit a copy of opinions and orders to the parties upon filing. Moreover, it is presumed pursuant to Evidence

The November 28, 2006 Supreme Court order became effective on or about December 28, 2006, thirty days after it was entered, and at all times thereafter remained in full force and effect.

Rule 955(a) required respondent to notify all clients and any co-counsel of his suspension, deliver to all clients any papers or other property to which the clients were entitled, refund any unearned attorney fees, notify opposing counsel or adverse parties of his suspension, and file a copy of said notice with any court, agency or tribunal before which litigation was pending. Rule 955(c) required respondent to file with the State Bar Court an affidavit showing that he fully complied with the requirements of rule 955(a).

Pursuant to the November 28, 2006 Supreme Court order, if respondent remained actually suspended for 90 days or more, he was to have complied with subdivision (a) of rule 955 no later than on or about April 27, 2007 and was to have complied with subdivision (c) of rule 955 no later than on or about May 7, 2007. If he remained actually suspended for 90 days or more, respondent should have filed with the State Bar Court an affidavit showing that he had fully complied with rule 955 by May 7, 2007.

On or about December 28, 2006, the Office of Probation of the State Bar of California (OP) wrote a letter to respondent reminding him of the terms of the discipline imposed pursuant to the November 28, 2006 Supreme Court order. In the December 28, 2006 letter, the OP also advised respondent that the Supreme Court had ordered him to comply with rule 955 of the California Rules of Court if his suspension exceeded 90 days. Respondent was specifically advised that his affidavit required by rule 955 was due to be filed with the State Bar Court no later than May 7, 2007. Enclosed with the December 28, 2006 letter to respondent were, among

Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his or her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

other things, a copy of the November 28, 2006 Supreme Court order, a copy of rule 955, and a Rule 955 Compliance Declaration form for respondent to use in complying with rule 955(c).

The December 28, 2006 letter to respondent with the enclosures thereto was mailed on or about December 28, 2006 via the United States Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to respondent at his official State Bar membership records address. The December 28, 2006 letter was returned as undeliverable by the United States Postal Service, stamped "Returned to Sender Attempted Address Not Known." Respondent was no longer at his State Bar membership records address and had not updated his State Bar membership records address as required by Business and Professions Code section 6002.1.

Respondent never met the conditions to lift the actual suspension imposed by the November 28, 2006 Supreme Court order. Therefore, he remained actually suspended for more than 90 days and was required to comply with rule 955.

Respondent failed to timely comply with rule 955. Pursuant to the November 28, 2006 Supreme Court order, the affidavit required by rule 955(c) was to have been filed no later than May 7, 2007. Respondent failed to file the affidavit with the State Bar Court as required by rule 955(c) until on or about November 5, 2007, almost six months late and only after the State Bar notified him that charges would be filed in this matter.

On or about February 4, 2008, respondent and the State Bar entered into a stipulation to extend the period of limitations set forth in rule 582 of the Rules of Procedure to May 1, 2008.

2. Conclusions of Law

a. Count One – Rule of Court 955 (Not Filing Compliance Affidavit)

There is clear and convincing evidence that respondent wilfully violated the November 28, 2006 Supreme Court, order directing his compliance with rule 955 by not timely filing the affidavit required by rule 955(c). This constitutes a violation of rule 955(d), which makes the

wilful noncompliance with the provisions of rule 955 a cause for disbarment, suspension or revocation of probation, in relevant part.

B. Case no. 07-O-10851 (The Linder Matter)

1. Facts

In the fall of 2001, the State Bar's Office of Membership Services (Membership Services) sent respondent his 2002 membership fee statement indicating that his membership fees for 2002 were due by February 1, 2002. With the fee statement, Membership Services also sent respondent a Minimum Continuing Legal Education (MCLE) compliance card and notified him that he was required to report his MCLE compliance no later than February 1, 2002. The 2002 membership fee statement and MCLE compliance card were properly mailed to respondent via the United States Postal Service, first-class postage prepaid, in a sealed envelope addressed to him at his then-official address.

Respondent failed to submit his MCLE compliance card showing that he had complied with MCLE requirements by February 1, 2002 as required.

On June 12, 2002, the Office of Certification of the State Bar of California (Office of Certification) sent respondent a letter entitled "MCLE Non-Compliance 60-Day Notice." In the June 12, 2002 notice, the Office of Certification notified respondent that State Bar records showed that he was not in compliance with MCLE rules and regulations for the period ending January 31, 2002 and that if he failed to provide adequate proof of compliance with the MCLE requirements by August 30, 2002, he would be enrolled as an inactive member of the State Bar and would not be permitted to practice law until adequate proof of compliance was received. The June 12, 2002 notice was properly mailed to respondent via the United States Postal Service, first-class postage prepaid, in a sealed envelope addressed to him at his official address at that time.

On August 6, 2002, the Office of Certification sent respondent a letter entitled "MCLE Non-Compliance Final Notice." In the August 6, 2002 final notice, the Office of Certification notified respondent that State Bar records showed that he was not in compliance with MCLE rules and regulations for the periods ending January 31, 1999 and January 31, 2002 because he owed MCLE compliance cards for those periods as well as a \$75 non-compliance fee. In the August 6, 2002 final notice, the Office of Certification again notified respondent that if he failed to provide adequate proof of compliance with the MCLE requirements by August 30, 2002, he would be enrolled as an inactive member of the State Bar and would not be permitted to practice law until adequate proof of compliance was received. The August 6, 2002 final notice was properly mailed to respondent via the United States Postal Service, certified mail, return receipt requested, postage prepaid, in a sealed envelope addressed to him at his then-official address. The final notice was not returned as undeliverable or for any other reason. In fact, the certified mail return receipt was received by the Office of Certification on or about August 14, 2002, indicating that someone at respondent's firm received the final notice on August 8, 2002.

Respondent failed to submit to the State Bar by August 30, 2002 his MCLE compliance cards for the periods ending January 31, 1999 and January 31, 2002 and failed to pay the MCLE non-compliance fee of \$75. As a result, respondent was placed on an involuntary inactive not entitled status effective September 3, 2002.

On or about September 16, 2002, the Office of Certification sent respondent a letter entitled "MCLE Non-Compliance Notice of Enrollment on Not Entitled Status." In the letter, the Office of Certification notified respondent that State Bar records showed that he was not in compliance with MCLE rules and regulations for the periods ending January 31, 1999 and January 31, 2002 because he owed MCLE compliance cards for those periods, documentation of compliance, a \$75 non-compliance fee, and a reinstatement fee of \$200. In the September 16,

2002 letter, the Office of Certification notified respondent that, as a result, he was not entitled to practice law as of September 3, 2002 and would not be eligible to practice law until he was reinstated to active status. The September 16, 2002 letter was properly mailed to respondent via the United States Postal Service, first-class mail postage prepaid, in a sealed envelope addressed to him at his then-official address. The September 16, 2002 letter was not returned as undeliverable or for any other reason by the United States Postal Service.

Respondent has remained enrolled on involuntary inactive status and has not been entitled to practice law continuously since September 3, 2002 for failure to comply with MCLE requirements.

Respondent has also been suspended for failure to pay State Bar membership fees since September 16, 2003.

On or about January 6, 2006, Jeri C. Linder hired respondent to represent her in a civil matter against her former employer, Bloomingdale's.

When Ms. Linder hired respondent and at all times thereafter, he was not entitled to practice law in California. At the time that she hired respondent, Ms. Linder did not know this, nor did he ever tell Ms. Linder that he was not entitled to practice law.

On or about January 28, 2006, Ms. Linder gave respondent a check in the amount of \$300.00, made payable to respondent, for court filing fees. Respondent cashed the check. At no time did respondent place the funds advanced by Ms. Linder into a client trust account. Respondent misappropriated for his own use and purposes the \$300.00 that Ms. Linder advanced to him to pay court filing fees. As of May 1, 2008, respondent had not refunded the money to Ms. Linder.

Respondent gave Ms. Linder legal advice about her case against Bloomingdale's.

According to respondent, he prepared a complaint against Bloomingdale's for Ms. Linder

to file in pro per. Ms. Linder never received the complaint from respondent.

At no time did respondent file a lawsuit on behalf of Ms. Linder. At no time was respondent required to pay any filing fees on behalf of Ms. Linder. However, at no time has respondent refunded to Ms. Linder the \$300 that she advanced to him to pay for court filing fees.

On or about February 13, 2007, the State Bar of California opened an investigation, case number 07-O-10851, pursuant to a complaint filed by Linder (Linder matter).

On or about June 7, 2007, a State Bar investigator wrote to respondent regarding the Linder matter and requested a written response by June 21, 2007 to specified allegations of misconduct being investigated by the State Bar in that matter. Copies of the June 7, 2007 letter were placed in sealed envelopes properly addressed to respondent at his official address as well as to his home address. The letters were mailed via the United States Postal Service, first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on or about the date on the letter. The United States Postal Service did not return the copy of the letter that was sent to respondent at his home address as undeliverable or for any other reason. Respondent received the letter that was sent to his home address. However, the United States Postal Service did return the letter that was sent to respondent at his official address marked "Return to Sender, Attempted-Not Known, Unable to Forward."

Respondent called the investigator on or about July 6, 2007 and stated that he had been out of town but would respond to the letter regarding the Linder matter.

Thereafter, respondent failed to respond in any way to the June 7, 2007 letter. Respondent failed to provide a written response to the allegations being investigated in the Linder matter.

Since on or about November 11, 2003, respondent has maintained the following address

on the official membership records of the State Bar as his address to be used for State Bar purposes: 725 S. Figueroa St., #1050, Los Angeles, CA 90017. This was the address of the law firm of Berman & Aiwasian where respondent was formerly employed. However, respondent has not been employed by that firm for several years. According to respondent, he ceased the active practice of law in or about November 2002.

When respondent left the Berman & Aiwasian firm, he failed to change his official address. To date, respondent's official address remains as set forth above.

2. Conclusions of Law

a. Count Two - Section 6068(a) (Unauthorized Practice of Law)

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By holding himself out to Ms. Linder as entitled to practice law, by agreeing to handle Ms. Linder's case against Bloomingdale's, by giving Ms. Linder legal advice about her case against Bloomingdale's, and by drafting a complaint on behalf Ms. Linder, respondent held himself out as practicing or entitled to practice law and actually engaged in the practice of law when he was not an active member of the State Bar. In so doing, he violated sections 6125 and 6126, subdivision (b) and failed to support the laws of California in wilful violation of section 6068, subdivision (a).

b. Count Three – Rule of Professional Conduct⁵ 4-100(A)(Maintaining Client Funds in Trust Account)

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

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not placing the \$300.00 check that Ms. Linder gave him to pay for court filing fees in the trust account.

c. Count Four - Section 6106 (Moral Turpitude)

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

There is clear and convincing evidence that respondent violated section 6106 by misappropriating the \$300.00 that Ms. Linder advanced for court filing fees. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

d. Count Five - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

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

By not responding to the State Bar's June 7, 2007 letter, respondent did not participate in the investigation of the allegations of misconduct regarding the Linder matter in wilful violation of 6068, subdivision (i).

⁵Future references to rule are to this source.

e. Count Six - Section 6068, subd. (j) (Maintaining Address)

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

By not maintaining a current address and telephone number with the State Bar as required by section 6002.1, respondent wilfully violated section 6068, subdivision (j).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁶, std. 1.2(b).)

Respondent has one prior instance of discipline. (Std. 1.2(b)(i).) As previously noted, in Supreme Court order no. S146931, discipline was imposed consisting of two years' stayed suspension and actual suspension for 60 days and until respondent provided proof of payment of specified sanctions and complied with rule 205 of the Rules of Procedure, among other things. In that default matter, he was found culpable of engaging in the unauthorized practice of law in violation of section 6068, subdivision (a)⁷ as well as violations of sections 6106, 6103 and 6068, subdivision (j). In aggravation, the court found multiple acts of misconduct. The sole mitigating factor was more than 11 years of blemish-free practice prior to the commencement of the misconduct.

⁶Future references to standard or std. are to this source.

⁷The court notes that this is similar conduct to that found in the present case.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).)

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

C. Discussion

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

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive. (Std. 1.7.)

Standards 2.6 and 2.2 apply in this matter. Further, rule 9.20(d) of the California Rules of Court provides that noncompliance with the provisions of rule 9.20 is a cause for disbarment or suspension, among other things.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of not complying with the provisions of rule 955 as well as, in one client matter, engaging in the unauthorized practice of law and violating rule 4-100(A) and sections 6106 and 6068, subdivisions (i) and (j). In aggravation, the court considered one prior instance of discipline and multiple acts of misconduct. There were no mitigating factors in this default proceeding.

The State Bar recommends disbarment. The court agrees.

Respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; rule 9.20(d) (formerly rule 955(d).) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 9.20. (*Bercovich v. State Bar, supra*, 50 Cal.3d at p. 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 44 Cal.3d at p. 342.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given the opportunity to do so. He did not participate in this proceeding and did not comply with rule 9.20(c). More importantly, respondent's noncompliance with rule 9.20 undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

Respondent did not return unearned fees to Ms. Linder. The court recommends that respondent be ordered to make restitution to her as set forth below. Restitution is fundamental to the goal of rehabilitation.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.)

Under rule 291 of the Rules of Procedure, effective January 1, 2007, (1) respondent must reimburse the Client Security Fund (CSF) to the extent that the misconduct found in the proceeding results in the payment of funds pursuant to section 6140.5; and (2) unless otherwise ordered by the Supreme Court or unless relief has been granted under these rules, any reimbursement so ordered must be paid within 30 days following the effective date of the final disciplinary order or within 30 days following the CSF payment, whichever is later.

Respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his unexplained wilful disobedience of the Supreme Court's order. Accordingly, the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent DAVID MATTHEW SMITHSON be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is recommended that respondent make restitution to the following client within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291): to Jeri C. Linder in the amount of \$300 plus 10% interest per annum from January 28,

2006 (or to the Client Security Fund to the extent of any payment from the fund to Jeri C. Linder, plus interest and costs, in accordance with Business and Professions Code section 6140.5)

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

VI. COSTS

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

VII. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (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: December 1, 2008


DONALD F. MILES
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 December 2, 2008, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION AND
INVOLUNTARY INACTIVE ENROLLMENT ORDER

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:

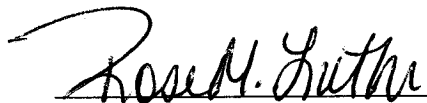
DAVID MATTHEW SMITHSON
BERMAN & AIWASIAN
725 S FIGUEROA ST #1050
LOS ANGELES, CA 90017

DAVID MATTHEW SMITHSON
12733 MILBANK STREET
STUDIO CITY, CA 91604

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

KRISTIN RITSEMA & HUGH RADIGAN, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 2, 2008.



Rose Luthi
Case Administrator
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 December 2, 2008, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION AND
INVOLUNTARY INACTIVE ENROLLMENT ORDER

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:

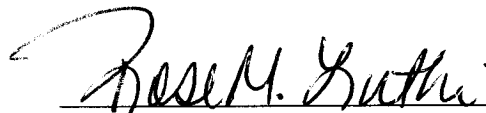
DAVID MATTHEW SMITHSON
BERMAN & AIWASIAN
725 S FIGUEROA ST #1050
LOS ANGELES, CA 90017

DAVID MATTHEW SMITHSON
12733 MILBANK STREET
STUDIO CITY, CA 91604

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

KRISTIN RITSEMA & HUGH RADIGAN, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 2, 2008.



Rose Luthi
Case Administrator
State Bar Court