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# PUBLIC MATTER

**FILED**

JUN 18 2003

STATE BAR COURT  
CLERKS OFFICE  
LOS ANGELES

## THE STATE BAR COURT

### HEARING DEPARTMENT - LOS ANGELES

In the Matter of )

**CHARLES EDWARD LINCOLN,** )

**Member No. 171793,** )

A Member of the State Bar. )

Case No. 01-C-04695-AIN  
02-J-11673-AIN

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

### INTRODUCTION

This consolidated proceeding against Respondent Charles Edward Lincoln ("Respondent") was submitted for decision effective March 20, 2003. The Office of the Chief Trial Counsel of the State Bar of California ("State Bar") was represented in this matter by Deputy Trial Counsel Eli Morgenstern. Respondent represented himself in propria persona.

For the reasons indicated below, the Court recommends that Respondent be disbarred from the practice of law and that his name be stricken from the roll of attorneys in this state.

### PERTINENT PROCEDURAL HISTORY

In light of Respondent's September 8, 2000, conviction of violating 42 United States Code section 408(a)(7)(B) (false representation of social security number), a crime which the State Bar Court Review Department has concluded involves moral turpitude *per se*, the Review Department of the State Bar Court issued an order on February 22, 2002, placing Respondent on interim suspension, ordering him to comply with rule 955 of the California Rules of Court and referring this matter to the Hearing Department for a hearing and decision recommending the discipline to be



1 imposed. On February 22, 2002, a copy of the referral order was properly served upon Respondent  
2 by first-class mail, postage fully prepaid, addressed to Respondent at his official address.

3 The State Bar Court issued a Notice of Hearing on Conviction on April 16, 2002 in Case No.  
4 01-C-04695, and a copy of said notice and a Notice of Assignment and Notice of Initial Status  
5 Conference<sup>1</sup> was properly served upon Respondent on that date by certified mail, return receipt  
6 requested, addressed to Respondent at his official membership record address ("official address")  
7 maintained by Respondent pursuant to Business and Professions Code section 6002.1, subdivision  
8 (a). Copies of the Review Department's referral order and documents pertaining to Respondent's  
9 criminal matter were attached to the Notice of Hearing on Conviction. The copy of said documents  
10 served upon Respondent was returned to the State Bar Court by the U.S. Postal Service as  
11 unclaimed.

12 On April 16, 2002, Respondent filed a Rule 955 Compliance Declaration.

13 On June 14, 2002, the State Bar filed a Notice of Disciplinary Charges ("NDC") against  
14 Respondent in Case No. 02-J-11673.

15 A copy of said NDC was properly served upon Respondent on June 14, 2002, by certified  
16 mail, return receipt requested, addressed to Respondent at his official address. A courtesy copy was  
17 also served upon Respondent addressed to Respondent at 13 Valleyview Drive, Lago Vista, Texas  
18 78645.

19 On June 27, 2002, Respondent filed a motion to dismiss the Notice of Hearing on  
20 Conviction. On July 11, 2002, the Court filed an order denying Respondent's motion to dismiss.

21 On July 12, 2002, the Court filed a motion to dismiss the NDC in Case No. 02-J-11673.

22 On August 1, 2002, Respondent filed a Response to the Notice of Hearing on Conviction.

23 On August 5, 2002, the Court filed an order pursuant to a status conference held that same  
24 date, denying Respondent's motion to dismiss the NDC in Case No. 02-J-11673 and setting the trial  
25 in Case No. 02-J-11673 for November 1, 2002.

26 On August 28, 2002, Respondent filed an answer in Case No. 02-J-11673.

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28 <sup>1</sup>An in-person status conference was set for June 24, 2002.

1 On October 16, 2002, Respondent filed a motion for a continuance of the trial date in Case  
2 No. 02-J-11673.

3 On October 23, 2002, the Court issued an order pursuant to a status conference held on  
4 October 21, 2002, consolidating Case No. 02-J-11673 and Case No. 01-C-04695 and granting  
5 Respondent's motion to continue the trial date to February 18-19, 2003.

6 On November 27, 2002, the State Bar filed a Motion in Limine for Order that Collateral  
7 Estoppel Principles Apply to Preclude Respondent from Re-Litigating his Constitutional Challenges  
8 to the Western District's Disciplinary Rules. Respondent opposed said motion. On January 17,  
9 2003, the Court issued an order granting the State Bar's motion in limine, and Respondent was  
10 collaterally estopped from re-litigating certain issues in Case No. 02-J-11673.

11 On January 8, 2003, the State Bar filed a request that the Court take judicial notice of certain  
12 documents attached as exhibits to its pre-trial statement.<sup>2</sup>

13 On January 9, 2003, Respondent filed a Renewed Motion for Continuance of trial which was  
14 opposed by the State Bar. On January 17, 2003, the Court issued an Order Denying Respondent's  
15 Renewed Motion for Continuance. On January 17, 2003, a copy of said order was properly served  
16 upon Respondent by first-class mail, postage prepaid, addressed to Respondent at his official address  
17 and to 6102 Valleyview Drive, Lago Vista, Texas 78645<sup>3</sup> ("Valleyview address"). The copy of said  
18 order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any  
19 other reason.

20 At a pretrial conference held on January 27, 2003, Respondent made an oral motion for a  
21 continuance of the trial date which was opposed by the State Bar and denied by the Court. On  
22 January 28, 2003, the Court filed a Minute Order denying Respondent's oral motion for a  
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24 <sup>2</sup>Three of these documents are copies of documents attached to the NDC in Case No. 02-  
25 J-11673. Pursuant to rule 624 of the Rules of Procedure of the State Bar of California ("Rules of  
26 Procedure"), the Court admits into evidence these documents attached to the NDC. With regard  
27 to Exhibit 1 pertaining to Case No. 01-C-04695, the Court takes judicial notice of said statute  
28 pursuant to Evidence Code section 451(a).

<sup>3</sup>This Lago Vista address was initially set forth in a pleading filed by Respondent on July  
11, 2002 in Case No. 01-C-04695.

1 continuance. A copy of said order was properly served upon Respondent on January 28, 2003, via  
2 first-class mail, postage fully prepaid, addressed to Respondent at his official address and the  
3 Valleyview address. The copies of said order were not returned to the State Bar Court by the U.S.  
4 Postal Service as undeliverable or for any other reason.

5 On February 14, 2003, Respondent filed a Second Amended & Renewed Motion for  
6 Continuance Pursuant to Rule 1131 and Alternative Motion to Allow Appearance by Telephone  
7 Pursuant to State Bar Court Rules of Practice Regarding Hearing Set for February 18, 2003. The  
8 State Bar opposed Respondent's motion.

9 At the time of the scheduled hearing on February 18, 2003, the Court denied Respondent's  
10 second amended and renewed motion for a continuance and his request to appear by telephone. In  
11 addition, as Respondent failed to appear at the February 18, 2003, hearing, the Court filed an Order  
12 of Entry of Default (Rule 201-Failure to Appear) and Order of Involuntary Inactive Enrollment.<sup>4</sup>  
13 A copy of said order was properly served upon Respondent on February 18, 2003, via certified mail,  
14 return receipt requested, addressed to Respondent at the Valleyview address. The copy of said order  
15 was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other  
16 reason.

17 On March 12, 2003, Respondent filed a Motion to Set Aside Default Entered February 18,  
18 2003, and Motion for New Trial. The State Bar filed an opposition to said motion on March 19,  
19 2003. On March 20, 2003, the Court issued an Order Denying Both Respondent's Motion to Set  
20 Aside Default Entered February 18, 2003 and Motion for New Trial. A copy of said order was  
21 properly served upon Respondent on March 20, 2003, via first-class mail, postage fully prepaid,  
22 addressed to Respondent at both his official address and the Valleyview address. The copies of said  
23 order were not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any  
24 other reason.

25 Exhibits 1-5 and all attachments to the Notice of Hearing on Conviction were admitted into  
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28 <sup>4</sup>Respondent's involuntary inactive enrollment pursuant to Business and Professions  
Code section 6007(e) was effective three days after the service of this order by mail.

1 evidence.

2 This matter was submitted for decision on March 20, 2003, following the Court's ruling on  
3 Respondent's motion to set aside his default and for a new trial.

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 **Jurisdiction**

6 Respondent was admitted to the practice of law in the State of California on November 1,  
7 1994, was a member at all times pertinent to these charges, and is currently a member of the State  
8 Bar of California.

9 **Case No. 01-C-04695-AIN**

10 Respondent's culpability is conclusively established by the record of his conviction. (Section  
11 6101(a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) He is presumed to have committed all of the  
12 elements of the crime of which he was convicted. (*In re Duggan* (1976) 17 Cal.3d 416, 423; *In the*  
13 *Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

14 **The Conviction**

15 In December 1999, a five count indictment was filed against Respondent in the United States  
16 District Court, Western District of Texas, Austin Division, charging one count of violating 18 U.S.C.  
17 § 472 [Uttering Counterfeit Obligation of the United States]; 18 U.S.C. § 1014 [False Statement to  
18 Financial Institution]; 18 U.S.C. §1503 [Obstruction of Justice]; 18 U.S.C. §1623 [False Declaration  
19 Under Oath]; and 42 U.S.C. §408(a)(7)(B) [False Representation of Social Security Number].

20 On March 17, 2000, Respondent executed a Plea Agreement in which he agreed, inter alia,  
21 to enter a guilty plea to count three of the indictment which charged Respondent with falsely  
22 representing his social security number in violation of 42 U.S.C. § 408(a)(7)(B) and to resign his  
23 Texas law license in lieu of disciplinary proceedings by the State Bar of Texas.

24 On September 8, 2000, the court dismissed counts 1, 2, 4 and 5 of the indictment on the  
25 motion of the United States. As Respondent had pled guilty to count three of the indictment,  
26 Respondent was adjudged guilty of count three, violating 42 U.S.C. § 408(a)(7)(B), false  
27 representation of a social security number, a felony. Respondent was placed on probation for three  
28 years on certain conditions and payment of a \$7,500 fine and \$100 special assessment.

1 **Facts and Circumstances Surrounding the Conviction**

2 On November 21, 1996, Respondent executed an application for a checking account at the  
3 Wells Fargo Bank, 100 Congress Avenue, Austin, Texas. In executing his application for a non-  
4 interest bearing checking account, which was accepted and approved by the bank, Respondent falsely  
5 represented his Social Security Account Number as a number which he knew had not been assigned  
6 to him by the Commissioner of Social Security.

7 Respondent acted with intent to deceive the bank regarding his true Social Security Account  
8 Number which had been assigned to him by the Social Security Administration. The bank would  
9 not have opened the checking account for Respondent had it been aware that Respondent provided  
10 a false Social Security Account Number on his account application.

11 **Conclusion of Law**

12 As previously indicated, in its referral order filed February 22, 2002, the State Bar Court  
13 Review Department concluded that 42 U.S.C. § 408(a)(7)(B) is a crime which involves moral  
14 turpitude *per se*.

15 **Case No. 02-J-11673-AIN**

16 Respondent Charles Edward Lincoln was disbarred by order of the United States District  
17 Court for the Western District of Texas, Austin Division ("USDC"). As a result, the State Bar of  
18 California initiated the above-entitled proceeding pursuant to Bus. & Prof. Code § 6049.1 and rules  
19 620 through 625 of the Rules of Procedure.

20 Business and Professions Code section 6049.1(a) provides, in pertinent part, that a certified  
21 copy of a final order by any court of record of the United States, determining that a member of the  
22 State Bar committed professional misconduct in that jurisdiction shall be conclusive evidence that  
23 the member is culpable of professional misconduct in this state.

24 The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon  
25 Respondent in California; (2) whether, as a matter of law, Respondent's culpability in the United  
26 States District Court ("USDC") proceeding would not warrant the imposition of discipline in  
27 California under the laws or rules applicable in this State at the time of Respondent's misconduct in  
28 the USDC matter; and (3) whether the USDC proceeding lacked fundamental constitutional

1 protection. (Section 6049.1(b).)

2 Pursuant to section 6049.1(b), Respondent bears the burden of establishing that the conduct  
3 for which he was disciplined in the USDC would not warrant the imposition of discipline in  
4 California and/or that the USDC proceedings lacked fundamental constitutional protection. Since  
5 Respondent did not participate in the trial of this case, he offered no evidence at trial with respect  
6 to either of these issues. The Court therefore focuses on the degree of discipline to be imposed.

7 The Court admits into evidence the certified record of the United States District Court for  
8 the Western District of Texas, Austin Division, in *In re: Charles Edward Lincoln, III*, including  
9 Orders of the USDC filed February 13, 1998, in Case No. A 98 CA 071 SS, the opinion of the  
10 United States Court of Appeals for the Fifth Circuit filed February 8, 1999, in Case No. 98-50258,  
11 and the Judgment of the United States Court of Appeals for the Fifth Circuit filed February 8, 1999,  
12 in Case No. 98-50258, copies of which were attached to the NDC and incorporated in the NDC by  
13 reference. In addition, copies of these documents comprise Exhibits 2-4 which were admitted into  
14 evidence in this matter.

15 **Background**

16 On or about August 26, 1997, United States District Court Judge Nowlin was placed on  
17 notice there was a falsified receipt from the United States District Clerk in the possession of  
18 Respondent's clients Timoteo and Marcelina Alvarado.<sup>5</sup>

19 On September 8, 1997, Judge Nowlin requested an investigation by the Admissions  
20 Committee of the falsified receipt.<sup>6</sup>

21 Respondent was notified of the referral and the investigation and was invited to attend an

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23 <sup>5</sup>Prior to August 26, 1997, Judge Nowlin had apparently had difficulties with  
24 Respondent's legal services in Case No. A 97 CA 221, *Walter J. Viola v. John Collins, et al*;  
25 Case No. A 97 CA 290, which was consolidated with Case No. A 97 CA 221; and Case No. A 97  
26 C 164, *Southwest Intelecom v. Walter J. Viola*. In these cases, Judge Nowlin determined  
27 Respondent was involved in discovery abuse, filing duplicative motions, including a last-minute  
28 motion to quash, and destruction of evidence. Judge Nowlin had issued sanctions in this case,  
including the dismissal with prejudice of the lawsuit.

<sup>6</sup>This was the second referral to the Admissions Committee relating to Respondent's  
conduct.

1 evidentiary hearing on October 22, 1997, with his counsel in the event he wished to provide the  
2 Admissions Committee with information relating to the referral.

3       Following this evidentiary hearing where Marcelina Alvarado, J. Solis, and Respondent  
4 testified under oath,<sup>7</sup> the Admissions Committee issued a preliminary report and the transcript of the  
5 hearing, and invited Respondent to respond further should he so desire. On November 7, 1997,  
6 Respondent did respond with correspondence and substantial documentation.

7       The final recommendation of the Admissions Committee was issued on November 26, 1997.  
8 The Admissions Committee recommended that Respondent's privilege of practicing law in the  
9 United States District Court for the Western District of Texas be terminated.

10       Judge Nowlin then set an evidentiary hearing for January 21, 1998, to provide Respondent  
11 with an additional opportunity to state his position and provide an explanation of the existing  
12 circumstances.

13       Prior to the January 21, 1998, hearing, Respondent filed pleadings complaining that Judge  
14 Nowlin was biased and out to get him; that he had no formal charges presented against him; that he  
15 was not provided an opportunity to cross-examine the witnesses against him; and that he had no  
16 meaningful opportunity to clear up the circumstances and his name. Respondent formally filed a  
17 Motion to Suspend or Terminate Disciplinary Proceedings<sup>8</sup> against him. By January 21, 1998, Judge  
18 Nowlin had transferred the case to United States District Court Judge Sparks.

19       On January 21, 1998, Case No. A 98 CA 071 SS came before United States District Judge  
20 Sparks for the evidentiary hearing. Timoteo Alvarado, Marcelina Alvarado, and J. Solis were  
21 subpoenaed and appeared.<sup>9</sup> Respondent and his counsel appeared in response to the order of the  
22 Honorable James R. Nowlin. Respondent testified at the January 21, 1998, hearing. All the  
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24       <sup>7</sup>Respondent was represented by counsel at this hearing.

25       <sup>8</sup>Said motion was overruled and denied by the court in its order filed February 13, 1998.

26       <sup>9</sup>All three individuals were available for questioning under oath by Respondent and/or his  
27 counsel and transcripts of prior testimony under oath were possessed by Respondent and his  
28 counsel. Although Respondent subpoenaed the Alvarados and J. Solis, he and his counsel  
declined to put Marcelina Alvarado or Solis on the stand and ask them questions.



1 witnesses who gave testimony against Respondent were available for any questioning he desired.  
2 On January 21, 1998, Respondent had transcripts of all previous testimony regarding the falsified  
3 receipt; and the purpose of the January 21, 1998, hearing was to provide Respondent with a full  
4 opportunity to present his version of the facts.

5 On February 13, 1998, the recommendation of disbarment made by the Admissions  
6 Committee of the USDC was accepted. The USDC ordered that the privileges of practicing law in  
7 the USDC heretofore extended to Respondent be terminated. An order terminating Respondent's  
8 privileges of practicing law in the Western District of Texas was entered simultaneously.

9 On or about February 8, 1999, the United States Court of Appeals for the Fifth Circuit  
10 affirmed the judgment of the lower court on appeal. Thereafter, the decision of that other  
11 jurisdiction became final.

12 The record of the proceeding conclusively establishes the following facts:

13 **The Misconduct**

14 Mr. Richmond and the Alvarados entered into a contract of sale on a residence where the  
15 Alvarados were the buyers, and they were to pay monthly payments until the amount under the  
16 contract of sale was satisfied. The substance of the lawsuits and the legal representation by  
17 Respondent was that he was trying to convert the contract of sale to a promissory note with a  
18 mortgage to place the legal title in the real estate in the name of the Alvarados.

19 Respondent provided his legal services--without a written contract--on agreement with Mrs.  
20 Alvarado that he would provide legal services for her legal dispute with Mr. Richmond in  
21 consideration for her working free as his housekeeper one to two times per week for a period of one  
22 year. Then, in the middle of litigation, Respondent's version of the facts is that he changed this  
23 arrangement and decided to take, as fee, the required monthly payments to be made under the  
24 contract of sale, which was the basis of the litigation, and his rationalization was that the buyer to  
25 whom the payments were to be made could not possibly win the lawsuit.

26 Respondent expressly represented to Mrs. Alvarado that the "judge" wanted proof the  
27 Alvarados could pay the amounts due under the contract of sale, and this was the reason Mrs.  
28 Alvarado took \$3,512.74 out of their savings account where they had been escrowing the monthly

1 payments and gave this amount of money to Respondent on April 17, 1997.

2 On April 18, 1997, Respondent deposited the \$3,512.74 given to him by Mrs. Alvarado into  
3 checking account number 0763-492394 at Well Fargo Bank, the account which Respondent opened  
4 in November 1996 with the false social security number.

5 Mrs. Alvarado declined to give Respondent any further payments until she received a receipt  
6 for the payment of \$3,512.74. When Respondent gave her the falsified receipt bearing the  
7 description of the United States District Clerk, Mrs. Alvarado proceeded to comply with  
8 Respondent's instructions, giving him four monthly payments of \$501.82. These were the months  
9 of May, June, July and August.

10 The Alvarados believed that Respondent was depositing their monthly payments due under  
11 their contract of sale in escrow with the Court and never authorized Respondent to use the funds  
12 personally.

13 Respondent presented to the Alvarados a false document purporting to be a receipt from the  
14 United States District Clerk to satisfy Mrs. Alvarado's <sup>10</sup>demand for a receipt and for the purpose  
15 to obtain the monthly payments under the Alvarados' contract of sale for the months of May, June,  
16 July and August.

17 Respondent learned that the Alvarados had contacted the Clerk, and after September 8, 1997,  
18 knew that Judge Nowlin had requested an investigation by the Admissions Committee.

19 Respondent was advised of the hearing relating to his continued representation of the  
20 Alvarados and the falsified receipt which was set for September 25, 1997. On the evening of  
21 September 23, 1997, he went to the Alvarados' residence, instructed Mrs. Alvarado not to tell the  
22 "judge" that he gave her the receipt in question, instructed her that he had not given her the receipt  
23 in question, and left a cashier's check for \$6,000.<sup>11</sup> Respondent did not appear at the hearing on  
24 September 25, 1997.

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26 <sup>10</sup>Although Judge Sparks' findings in his February 13, 1998, Order refer to Mrs.  
27 Alvarado, this appears to be a typographical error. It is clear that it was Mrs. Alvarado who  
28 demanded a receipt.

<sup>11</sup>However, prior to September 23, 1997, Respondent's checking account was overdrawn.

1 Respondent's accusation of a conspiracy composed of the Alvarados, Mr. Richmond and Ms.  
2 Solis framing him is not credible.<sup>12</sup>

3 **Legal Conclusions.**

4 **Business and Professions Code Section 6106 (Dishonesty or Moral Turpitude)**<sup>13</sup>

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

8 By making a misrepresentation to his clients, taking his clients' money without authority and  
9 giving his clients a falsified document purporting to be a receipt for funds deposited in the registry  
10 of the United States Clerk's Office with the intent of obtaining monies for his own personal use,  
11 misappropriated his client's money, and by instructing his client not to tell the "judge" that he gave  
12 her the receipt in question and instructing his client that he had not given her the receipt in question,  
13 when he knew that such was not true, Respondent engaged in acts of moral turpitude, dishonesty or  
14 corruption in wilful violation of section 6106.

15 **Rule 4-100(A) of the Rules of Professional Conduct**<sup>14</sup>

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17  
18 <sup>12</sup>The court also noted that in his pleadings, Respondent and his counsel continue to  
19 complain of lack of a "formal complaint"; the language of the Admissions Committee's report is  
20 "vague and imprecise"; the proceedings for disbarment "are unconstitutionally void for  
21 vagueness"; and Judge Nowlin was not objective, but was prejudiced against Respondent.  
22 However, the truth of the matter is this inquiry was a simple factual determination: did  
23 Respondent take his clients' money without authority and give to his clients a falsified document  
24 purporting to be a receipt for funds deposited in the registry of the United States Clerk's Office  
25 with the intent of obtaining monies. There is nothing vague about this issue nor has there been  
26 since August 26, 1997. The members of the Admissions Committee investigated these  
27 circumstances and provided Respondent with two separate opportunities to respond and present  
28 his side of the case. An evidentiary hearing was set and there was no limitation to Respondent's  
presentation. Respondent could have called the Alvarados and Ms. Solis to the stand and  
questioned them to his contentment.

<sup>13</sup>Unless otherwise indicated, all further references to sections pertain to provisions of the  
California Business and Professions Code.

<sup>14</sup>Unless otherwise indicated, all further references to rules refer to the Rules of  
Professional Conduct of the State Bar of California.

1 Rule 4-100(A) provides that all funds received or held for the benefit of clients, including  
2 advances for costs and expenses, must be deposited in an identifiable bank account which is properly  
3 labeled as a client trust account, and no funds belonging to the attorney or law firm can be deposited  
4 therein or otherwise commingled therewith. By depositing the Alvarados funds into his personal  
5 checking account and unilaterally converting said funds for his own use and purpose, Respondent  
6 wilfully violated rule 4-100(A).<sup>15</sup>

#### 7 MITIGATING/AGGRAVATING CIRCUMSTANCES

8 In mitigation, no client was harmed by Respondent's action which resulted in his criminal  
9 conviction. (Standard 1.2(e)(iii); *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct.  
10 Rptr. 406, 413 ["The lack of client harm is a relevant mitigating circumstance in the context of a  
11 criminal conviction."].)

12 In aggravation, Respondent engaged in multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

13 In addition, the misconduct by Respondent which led to his disbarment by the USDC  
14 significantly harmed his clients and the administration of justice. (Standard 1.2(b)(iv).)

#### 15 DISCUSSION

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

21 In addition, standard 1.6(b) provides that the specific discipline for the particular violation  
22 found must be balanced with any mitigating or aggravating circumstances, with due regard for the  
23 purposes of imposing disciplinary sanctions. If two or more acts of professional misconduct are  
24 found in a single disciplinary proceeding and different sanctions are prescribed by the standards for  
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26 <sup>15</sup>However, the Court will not attach additional weight to the findings of both violations  
27 (section 6106 and rule 4-100(A)), in determining the appropriate discipline to recommend in this  
28 matter. [L]ittle, if any, purpose is served by duplicative allegations of misconduct. (*Bates v.*  
*State Bar* (1990) 51 Cal3d. 1056, 1060.)

1 those acts, the sanction recommended shall be the most severe.

2 In this case, the standards provide for the imposition of sanctions ranging from actual  
3 suspension to disbarment. (Standards 2.2, 2.3 and 3.2.) The most severe sanction is found at  
4 standard 3.2 which states:

5 Final conviction of a member of a crime which involves moral  
6 turpitude, either inherently or in the facts and circumstances  
7 surrounding the crime's commission shall result in disbarment. Only  
8 if the most compelling mitigating circumstances clearly predominate,  
9 shall disbarment not be imposed. In those latter cases, the discipline  
10 shall not be less than a two-year actual suspension, prospective to any  
11 interim suspension imposed, irrespective of mitigating circumstances.

12 The standards, however, are only guidelines and do not mandate the discipline to be imposed.  
13 (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach  
14 case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at  
15 p. 251.)

16 In a conviction referral proceeding, "discipline is imposed according to the gravity of the  
17 crime and the circumstances of the case." (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State  
18 Bar Ct. Rptr. 502, 510.)

19 Furthermore, conviction of a crime involving moral turpitude, either inherently or in the facts  
20 and circumstances, warrants disbarment absent the existence of compelling mitigating  
21 circumstances. (*In re Prantil* (1989) 48 Cal.3d 227, 234.)

22 Respondent has been found culpable of serious misconduct involving multiple acts of moral  
23 turpitude. In Case No.01-C-04695, Respondent was found to have falsely, and with an intent to  
24 deceive, represented his Social Security Account Number in his application for a checking account  
25 as a number which he knew had not been assigned to him by the Commissioner of Social Security.  
26 In Case No. 02-J-11673, Respondent made a misrepresentation to his clients, took his clients' money  
27 without authority and gave his clients a falsified document purporting to be a receipt for funds  
28 deposited in the registry of the United States Clerk's Office with the intent of obtaining monies for  
his own personal use, misappropriated his client's money, and instructed his client not to tell the  
"judge" that he gave her the receipt in question and instructed his client that he had not given her the  
receipt in question, when he knew that such was not true.

1 "Misappropriation is more than a grievous breach of professional ethics. It violates basic  
2 notions of honesty and endangers public confidence in the legal profession. ([Citations omitted].)"  
3 (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29.) Unless "clearly extenuating circumstances" are  
4 present, misappropriation generally warrants disbarment. (*Waysman v. State Bar* (1986) 41 Cal.3d  
5 452, 457 [22 Cal.Rptr. 101, 714 P.2d 1239].) (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.)  
6 Furthermore, as the Supreme Court noted in *Edwards v. State Bar* (1990) 52 Cal.3d 28:

7 "[W]illful misappropriation" covers a broad range of conduct varying  
8 significantly in the degree of culpability. An attorney who  
9 deliberately takes a client's funds, intending to keep them  
10 permanently, and answers the clients' inquiries with lies and  
11 evasions, is deserving of more severe discipline than an attorney who  
12 has acted negligently, without intent to deprive and without acts of  
13 deception.

14 (*Id.* at p. 38.)

15 "Honesty is one of the most fundamental rules of ethics for attorneys. ([Citations omitted].)  
16 Indeed, an attorney who intentionally deceives his client is culpable of an act of moral turpitude.  
17 ([Citations omitted].) Consequently, because the ends of attorney discipline are remedial and not  
18 punitive, an act of dishonesty toward a client warrants actual suspension or disbarment from the  
19 practice of law even if no harm results to the client. ([Citations omitted].)" (*Gold v. State Bar* (1989)  
20 49 Cal.3d 908, 914.)

21 The State Bar recommends that Respondent be disbarred. In support of its disbarment  
22 recommendation, the State Bar cites to several cases in its Pretrial Statement. The Court finds the  
23 most instructive of these cases to be *Grim v. State Bar* (1991) 53 Cal.3d 21. In *Grim*, the attorney  
24 misappropriated over \$5,500 from a client and did not make restitution until after the State Bar's  
25 evidentiary hearing. In mitigation, the attorney was candid and cooperative with the State Bar and  
26 presented favorable character evidence. In aggravation, the attorney had a prior record of discipline  
27 consisting of a private reproof for commingling and failing to perform services for a client; took  
28 advantage of his client's move to another state; and exhibited gross neglect in the management of  
his office and trust funds accounts. The Supreme Court ordered the attorney disbarred.

In this consolidated matter, the Court finds that Respondent's misconduct was much more  
egregious than the attorney's misconduct in *Grim*. The Respondent misappropriated over \$5,500

1 from his clients and engaged in other acts of moral turpitude including making a misrepresentation  
2 to his clients, giving his clients a falsified document, instructing his client not to tell the "judge" that  
3 he gave her the receipt in question and instructing his client that he had not given her the receipt in  
4 question, when he knew that such was not true. In addition, Respondent was criminally convicted  
5 of another act of moral turpitude for falsely, and with an intent to deceive, representing his Social  
6 Security Account Number in his application for a checking account as a number which he knew had  
7 not been assigned to him by the Commissioner of Social Security. Although the aggravating  
8 circumstances in *Grim* are more extensive than in this instant matter, the mitigating circumstances  
9 in *Grim* far outweigh those in this matter. In addition, the Court notes that Respondent's misconduct  
10 in this matter began less than two years after he was licensed to practice law in California.

11 Therefore, in light of the seriousness of the misconduct, including the multiple acts of moral  
12 turpitude and the amount of the funds misappropriated, and the lack of compelling mitigating  
13 circumstances in this matter, the Court recommends Respondent's disbarment as the only means to  
14 protect the public from the risk of similar future misdeeds.

#### 15 RECOMMENDED DISCIPLINE

16 Based on the foregoing, it is hereby recommended that Respondent Charles Edward Lincoln  
17 be disbarred from the practice of law in the State of California and that his name be stricken from  
18 the roll of attorneys in this state.

19 It is not recommended that Respondent be ordered to comply with rule 955 of the California  
20 Rules of Court, as Respondent was previously ordered to comply with rule 955 pursuant to the  
21 February 22, 2002, order of the State Bar Court Review Department which ordered that Respondent  
22 be placed on interim suspension, and Respondent filed a Rule 955 Compliance Declaration on April  
23 16, 2002.

#### 24 ORDER REGARDING INACTIVE ENROLLMENT

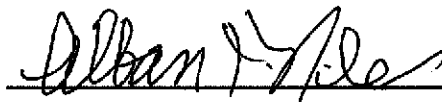
25 Respondent is ordered transferred to involuntary inactive status pursuant to Business and  
26 Professions Code section 6007(c)(4). Said inactive enrollment will be effective three days after this  
27 order is served by mail, and will terminate upon the effective date of the Supreme Court's order  
28 imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure of the State Bar

1 of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

2 **COSTS**

3 It is further recommended that costs be awarded to the State Bar pursuant to Business and  
4 Professions Code section 6086.10.

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7  
8 Dated: June 18, 2003



ALBAN I. NILES  
Judge of the State Bar Court

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**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 Los Angeles, on June 18, 2003, I deposited a true copy of the following document(s):

**Decision, filed June 18, 2003**

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

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

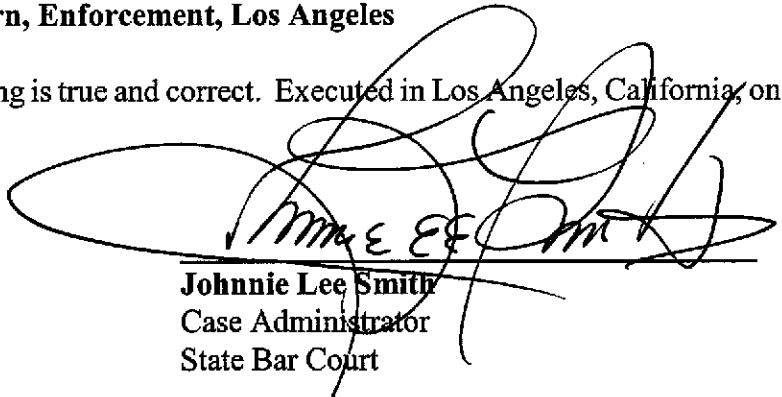
**CHARLES E. LINCOLN**  
1313 MULBERRY WAY  
CEDAR PARK TX 78613

**CHARLES E. LINCOLN**  
6102 VALLEYVIEW DR  
LAGO VISTA TX 78645

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

**Eli Morgenstern, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 18, 2003.

  
\_\_\_\_\_  
**Johnnie Lee Smith**  
Case Administrator  
State Bar Court