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PUBLIC MATTER

STATE BAR COURT
CLERKS OFFICE
LOS ANGELES

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**THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 02-O-13429-AIN 02-O-15384
IAN GEORGE LOCKHON,)	DECISION INCLUDING DISBARMENT
Member No. 170081,)	RECOMMENDATION AND
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER

INTRODUCTION

The Office of the Chief Trial Counsel of the State Bar of California ("OCTC") was represented by Jeannie J. Park initially and, later, by Janet Hunt. Respondent Ian George Lockhon did not appear either in person or through counsel, except as specified below.

After considering the matter, the Court recommends that respondent be disbarred.

SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed on April 9, 2003, and was 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"). The United States Postal Service ("USPS") returned this correspondence to OCTC marked "Attempted. Not known." The declaration of service incorrectly stated respondent's apartment or suite number as "#3" instead of "#C."²

¹All future references to "section" are to the Business and Professions Code.

²In its motion for entry of default, OCTC indicated that the NDC was sent to the correct address but that the proof of service had the incorrect apartment or suite number. The motion further stated that a copy of the correctly-addressed return receipt was attached as exhibit 2;



1 On May 9, 2003, the NDC was properly served on respondent at his official address, by
2 certified mail, return receipt requested. Service was deemed complete as of the time of mailing.
3 (*Lyndon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) A copy was also served on respondent at his
4 official address on that same date by regular mail. On May 14, 2003, both copies of the NDC
5 were returned as undeliverable with the USPS' notation: "Return to sender. Moved, left no
6 address. Unable to forward."

7 On April 16 and May 13, 2003, respondent was served at his official address with a
8 notice advising him, among other things, that a status conference would be held on May 15,
9 2003, which was then rescheduled for June 9, 2003. The Court judicially notices that this
10 correspondence was returned as undeliverable on April 23 and May 19, 2003, respectively,
11 bearing the same notations as set forth above. Respondent did not participate at the June 9 status
12 conference. A status conference order served on respondent on June 9, 2003, at his official
13 address by regular mail advised him that he had until June 21, 2003, to file a response to the
14 NDC. On June 16, 2003, the USPS again returned the correspondence as undeliverable bearing
15 the same notations as set forth above.

16 Respondent did not file a responsive pleading to the NDC

17 On May 5, 2003, a motion for entry of default was filed and properly served on
18 respondent at his official address by certified mail, return receipt requested. The motion advised
19 him that minimum discipline of actual suspension of two years and until he complied with
20 standard 1.4(c)(ii) would be sought if he was found culpable. He did not respond to the motion.

21 On June 27, 2003, the Court entered respondent's default and enrolled him inactive
22 effective three days after service of the order. The order was properly served on him at his
23 official address on that same date by certified mail, return receipt requested. On July 14, 2003,
24 the USPS returned this correspondence as United States Postal Service ("USPS") undeliverable
25 with the notations: "Return to sender. Undeliverable as addressed" and "Forwarding order
26 expired."

27 _____
28 however, there was no exhibit 2 attached to the Court's copy of the motion.

1 The matter was submitted for decision without hearing on June 30, 2003, after OCTC
2 filed a brief regarding the level of discipline and a waiver of hearing.

3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

8 It is the prosecution's burden to establish culpability of the charges by clear and
9 convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.
10 163, 171.)

11 **Jurisdiction**

12 Respondent was admitted to the practice of law in California on May 2, 1994, and has
13 been a member of the State Bar at all times since.

14 **Case No. 02-O-13429 - White Matter - Counts One through Four**

15 **Facts**

16 Allen White was arrested for driving with a suspended license on May 23, 2002. He
17 retained respondent, who agreed to handle the case for \$1200. A hearing was set in the case for
18 June 13, 2002.

19 On May 24, 2002, White paid respondent \$300 toward the \$1200 fee. On May 29, 2002,
20 White gave respondent a DVD player, stereo and digital camera worth \$650 toward the retainer.

21 On June 1, 2002, White called respondent to discuss the upcoming hearing. Respondent
22 told him to call back the next day because he was busy.

23 On June 3, 2002, White tried to call respondent twice, but either the line was busy or
24 there was no answer.

25 On June 7, 2002, White called respondent to confirm that respondent would attend the
26 June 13 hearing. Respondent told White that there remained a \$300 balance on his fee but that
27 he would accept payment after the case was completed.

28 On June 12, 2002, White called respondent's cell phone at least five times to confirm that

1 respondent would attend the June 13 hearing. Respondent either did not answer the telephone of
2 told White that he was too busy to talk.

3 On June 13, 2002, respondent did not appear at White's hearing. White did not appear
4 because respondent had told him that his appearance was not required. White's bail was
5 forfeited and a bench warrant was issued.

6 On June 13, 2002, White called respondent's cell phone 10 - 15 times to find out what
7 happened in court. There was no answer.

8 On June 14, 2002, respondent left four messages at White's sister's house. When White
9 returned the call, respondent told him that his case had been sent to civil assessment. White was
10 suspicious of respondent. He called the bail bondsman who informed him that respondent did
11 not appear in court on June 13. Respondent misrepresented the status of the case and did not tell
12 White that respondent had not appeared at the hearing. By not informing White of his intention
13 not to appear at the June 13 hearing, respondent effectively withdrew from representing White.
14 Respondent did not inform White that he was withdrawing from employment.

15 On June 14, 2002, White went to the court to explain his failure to appear and worked out
16 a resolution of the matter himself. He pled guilty to a violation of California Vehicle Code
17 section 12500(a), was placed on probation and was fined.

18 On June 14, 2002, White confronted respondent in person and demanded the return of the
19 fees he paid. Respondent told White to call him on June 17, 2002.

20 On June 17, 2002, White tried to call respondent but there was no answer. He went to
21 respondent's office and found it empty. Respondent had moved out of his office.

22 On June 20, 2002, White telephoned respondent who told him to call back the next day.

23 On June 27, 2002, White filed a complaint about respondent with the State Bar.

24 **Legal Conclusions**

25 **Count One - RPC 3-110(A) (Failing to Perform Competently)**

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

28 By not appearing at the June 13 hearing, respondent intentionally, recklessly or repeatedly

1 did not perform competently in wilful violation of RPC 3-110(A).

2 **Count Two - Section 6106 (Dishonesty or Moral Turpitude)**

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

6 There is clear and convincing evidence that respondent violated section 6106 of the
7 Business and Professions Code. He misrepresented the status of White's case and did not tell
8 White that respondent had not appeared at the June 13 hearing. Accordingly, he committed an
9 act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

10 **Count Three - RPC 3-700(A)(2) (Improper Withdrawal from Representation)**

11 RPC 3-700(A)(2) prohibits an attorney from withdrawing from employment until he or
12 she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client,
13 including giving due notice to the client, allowing time for employment of other counsel,
14 complying with RPC 3-700(D) and with other applicable laws and rules.

15 By not informing White of his intention not to attend the June 13 hearing or of his
16 intention to withdraw from employment, respondent effectively withdrew from employment. By
17 not informing the client of his intent to withdraw from employment, Respondent failed to take
18 reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of RPC
19 3-700(A)(2).

20 **Count Four - RPC 3-700(D)(2) (Failure to Return Unearned Fees)**

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

25 By not returning the \$300 and electronic equipment to White after respondent did not
26 appear at the June 13 hearing, respondent did not return an advanced, unearned fee in wilful
27 violation of RPC 3-700(D)(2).

28 ///

1 Case No. 02-O-15384 - Malekesmaili Matter - Counts Five and Six

2 Facts

3 On May 23, 2002, Nancy Malekesmaili had a free consultation with respondent to discuss
4 the possibility that respondent would represent her son, Robert Malekesmaili, in a criminal case.
5 Nancy Malekesmaili paid respondent \$500 toward the \$5000 fee. They agreed that she would
6 return to the office the next day with \$4500 to sign the retainer agreement.

7 On that same evening, Nancy Malekesmaili spoke with Robert who refused to hire
8 respondent.

9 On May 24, 2002, Nancy Malekesmaili called respondent and requested the return of the
10 \$500. He became angry and hung up the telephone on her. She called back and left a message
11 on his answering machine requesting a refund. On June 3, 2002, she again left a message on his
12 answering machine requesting a refund.

13 On August 29, 2002, Malekesmaili sent respondent a letter requesting a refund. The
14 letter was addressed to the address listed on the business card that he had given her. The USPS
15 returned the letter to Malekesmaili marked "Insufficient address. Return to sender."

16 On September 10, 2002, Malekesmaili sent respondent another letter requesting a refund.
17 The USPS returned the letter marked "Moved. Left no forwarding address."

18 On September 30, 2002, the State Bar opened an investigation on case number 02-O-
19 15834 pursuant to a complaint filed by Malekesmaili regarding allegations of misconduct by
20 respondent in this matter. On October 24 and November 27, 2002, State Bar investigators sent
21 respondent letters requesting that respondent answer in writing specific allegations of misconduct
22 regarding the Malekesmaili complaint. The letters were addressed to respondent's official
23 membership records address and sent by first-class mail, postage prepaid. Neither was returned
24 to the State Bar as undeliverable or for any other reason. Respondent did not answer either letter
25 or otherwise communicate with the investigators.

26 On December 20, 2002, respondent sent a fax to a State Bar investigator requesting an
27 unspecified extension of time to respond to the allegations of misconduct. On December 23,
28 2002, the investigator wrote back to respondent giving him until January 8, 2003, to respond in

1 writing to the Malekesmaili complaint. The letter was addressed to respondent's official
2 membership records address and sent by first-class mail, postage prepaid. It was not returned to
3 the State Bar as undeliverable or for any other reason. Respondent did not answer the letter or
4 otherwise communicate with the investigator.

5 **Legal Conclusions**

6 **Count Five - RPC 3-700(D)(2) (Failure to Return Unearned Fees)**

7 By not returning the \$500 to Malekesmaili, respondent did not return an advanced,
8 unearned fee in wilful violation of RPC 3-700(D)(2).

9 **Count Six - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

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

12 By not responding to the investigators' letters or otherwise cooperating in the Stat Bar's
13 investigation, respondent did not participate in the investigation of the allegations of misconduct
14 regarding the Malekesmaili case in wilful violation of 6068(i).

15 **LEVEL OF DISCIPLINE**

16 **Aggravating Circumstances**

17 Respondent has two prior records of discipline. (Standard 1.2(b)(i), Rules of Procedure
18 of the State Bar of California, Title IV, Standards for Attorney Sanctions for Professional
19 Misconduct ("standards").) On June 9, 2000, the Supreme Court filed an order in case number
20 SO87120 (State Bar Court case numbers 97-O-17508; 98-O-2790 (Cons.) in which discipline
21 was imposed on respondent which included the following: Stayed suspension of six months and
22 until he made restitution; two years probation with conditions including 90 days actual
23 suspension and until he made restitution. Respondent stipulated to culpability of using his client
24 trust account for personal and business expenses in violation of RPC 4-100(A) and section 6106;
25 issuing checks against insufficient funds in violation of section 6106; and abandoning one client
26 and not returning unearned fees in violation of RPCs 3-700(A)(2) and 3-700(D)(2).

27 In State Bar Court case numbers 01-O-03522; 02-O-10311 (Cons.), filed May 7, 2003,
28

1 and modified on July 1, 2003, discipline was recommended³ including the following: one year
2 stayed suspension; 90 days actual suspension and until he made restitution and complied with
3 rule 205. In that default matter, respondent was found culpable of, in one client matter, not
4 performing competently (RPC 3-100(A); abandoning the client and not returning unearned fees
5 (RPCs 3-700(A)(2) and 3-700(D)(2); and, in two client matters, of not cooperating in the State
6 Bar's investigation of misconduct (section 6068(i).)

7 The misconduct in both prior cases is similar to that in the instant case. In this and the
8 last prior disciplinary matter, respondent defaulted in the proceedings.

9 Respondent has engaged in multiple acts of misconduct. (Standard 1.2(b)(ii).

10 Respondent's misconduct significantly harmed a client and the administration of justice.
11 (Standard 1.2(b)(iv).) As a result of respondent's misconduct, White had to represent himself in
12 court and was subject to bail forfeiture and the issuance of a bench warrant.

13 Respondent's failure to participate in these proceedings prior to the entry of default
14 demonstrates his contemptuous attitude toward disciplinary proceedings and his failure to
15 comprehend the duty of an officer of the court to participate therein, a serious aggravating factor.
16 Standard 1.2(b)(vi); Cf. *In the Matter of Stansbury* Review Dept. (2000) 4 Cal. State Bar Ct.
17 Rptr. 104, 109.)

18 **Mitigating Circumstances**

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

22 **Discussion**

23 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect
24 the public, to preserve public confidence in the profession, and to maintain the highest possible
25 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v.*
26

27
28 ³A discipline recommendation pending before the Supreme Court, such as in this case, is
considered a prior record of discipline. (Standard 1.2(f).)

1 *State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

2 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
3 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
4 imposing discipline. If two or more acts of professional misconduct are found in a single
5 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions.
6 Standard 1.6(a.) The level of discipline is progressive. Standard 1.7(b.) The standards, however,
7 are guidelines from which the Court may deviate in fashioning the most appropriate discipline
8 considering all the proven facts and circumstances of a given matter. (*In re Young* (1989) 49 Cal.3d
9 257, 267 fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences'
10 imposed in a blind or mechanical manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

11 In the instant case, the recommended level of discipline ranges from reproof to disbarment.
12 Standards 2.3, 2.4(b), 2.6(a) and 2.10.) The most severe sanction, actual suspension or disbarment,
13 is prescribed by standard 2.3, which recommends actual suspension or disbarment for culpability of
14 an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a
15 court, client or other person, depending on the extent to which the victim of the misconduct is
16 harmed or misled and depending upon the magnitude of the act of misconduct and the degree to
17 which it relates to the attorney's acts within the practice of law.

18 OCTC recommends five years stayed suspension, five years probation on conditions
19 including two years actual suspension and until he makes restitution and complies with rule 205.
20 After considering the misconduct and balancing the serious aggravating and the absence of
21 mitigating circumstances, the Court recommends disbarment.

22 The Court is very disturbed by respondent's persistent failure to comply with the ethics rules.
23 He was admitted to the practice of law in this State in May 1994. From about January 1997, less
24 than three years post-admission, to April 2002, he has engaged in a continuous course of misconduct
25 which has resulted in three disciplinary matters, including the instant case. He has failed to perform,
26 abandoned clients, misrepresented the status of the case, refused to return unearned fees,
27 mismanaged his client trust account and failed to cooperate with the State Bar's investigation of his
28 misconduct. No explanation has been offered that might render disbarment inappropriate in this, his

1 third disciplinary matter, and the Court can glean none. With this track record, the Court has no
2 reason to believe that respondent could or would conform to the ethics rules if he was given another
3 chance. It would undermine the integrity of the disciplinary system and damage public confidence
4 in the legal profession if respondent were not disbarred. If he desires to practice law again, he will
5 bear the heavy burden of demonstrating by the most clear and convincing evidence his rehabilitation
6 and fitness to practice. Accordingly, the Court recommends disbarment.

7 **DISCIPLINE RECOMMENDATION**

8 IT IS HEREBY RECOMMENDED that respondent IAN GEORGE LOCKHON be
9 DISBARRED from the practice of law in the State of California and that his name be stricken from
10 the rolls of attorneys in this state.

11 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
12 paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the
13 Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph
14 (c) within 40 days of the effective date of the order showing his compliance with said order.

15 **COSTS**

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

18 **ORDER REGARDING INACTIVE ENROLLMENT**

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

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27 Dated: September 22, 2003

28 
ALBAN I. NILES
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. 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 23, 2003, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
INVOLUNTARY INACTIVE ENROLLMENT ORDER, filed September 23,
2003**

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

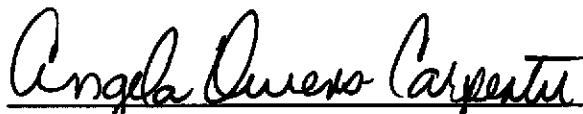
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**IAN G LOCKHON
721 QUEENSTOWN CT #C
SAN DIEGO CA 92109 7148**

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

JANET HUNT, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 23, 2003.


Angela Owens-Carpenter
Case Administrator
State Bar Court