

SEP 29 2004

**PUBLIC MATTER**

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

**THE STATE BAR COURT  
HEARING DEPARTMENT - SAN FRANCISCO**

8 In the Matter of 9 <b>SUSAN M. ST. AMOUR,</b> 10 <b>Member No. 156657,</b> 11 <b>A Member of the State Bar.</b>	) ) ) ) )	<b>Case No. 02-O-15085-JMR [03-O-01520;</b> <b>03-O-02203; 03-O-02297;</b> <b>03-O-03876; 03-O-04882]</b>  <b>DECISION AND ORDER OF</b> <b>INVOLUNTARY INACTIVE</b> <b>ENROLLMENT</b>
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**I. INTRODUCTION**

The above-entitled matter was submitted for decision as of July 1, 2004, after the State Bar of California, Office of the Chief Trial Counsel ("State Bar") waived the hearing in this matter and submitted a brief on the issues of culpability and discipline. The State Bar was represented in this matter by Deputy Trial Counsel Robin Haffner ("DTC Haffner").<sup>1</sup> Respondent Susan M. St.Amour ("respondent") failed to participate in this matter either in-person or through counsel and allowed her default to be entered in this matter.

In light of respondent's culpability in this proceeding, and after considering any and all aggravating and mitigating circumstances surrounding respondent's misconduct, the court recommends that respondent be disbarred from the practice of law and that her name be stricken from the roll of attorneys in this state. It is also recommended that respondent be ordered to comply with rule 955 of the California Rules of Court.

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<sup>1</sup>The State Bar was represented earlier in this proceeding by Deputy Trial Counsel Esther Rogers ("DTC Rogers").



## II. PERTINENT PROCEDURAL HISTORY

This proceeding was initiated by the State Bar's filing of a Notice of Disciplinary Charges ("NDC") against respondent on April 22, 2004.

A copy of the NDC was properly served upon respondent on April 22, 2004, by certified mail, return receipt requested, addressed to respondent at her official membership records address ("official address") maintained by respondent pursuant to Business and Professions Code section 6002.1, subdivision (a). The NDC was returned by the United States Postal Service bearing the stamp, "BOX CLOSED-NO ORDER."<sup>2</sup>

On April 29, 2004, a Notice of Assignment and Notice of Initial Status Conference was

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<sup>2</sup>The State Bar's Office of the Chief Trial Counsel has not had any contact with respondent regarding Case No. 02-O-15085 since on or about October 11, 2002, when respondent returned a State Bar investigator's telephone call and left a message advising that she could be reached at (510) 548-5277, the telephone number which has been respondent's official membership records telephone number since December 2, 2002.

On August 25, 2003, State Bar investigator Laura Sharek ("Investigator Sharek") spoke with a representative from the Berkeley Main Post Office and was advised that the mail in respondent's post office box was full, that respondent's home mail box was full, and that there was a box of mail at the post office waiting for respondent. The representative also advised that respondent had not requested the post office to hold her mail from delivery, and that there were no other addresses on file for respondent and no change of address form.

On or about August 26, 2003, Investigator Sharek went in-person to 1615 Delaware Street in Berkeley, California, which was believed to be respondent's residence. Investigator Sharek knocked on the door several times but no one answered. Investigator Sharek noticed a small basket on the front porch containing mail and a label on the wall above the basket read, "St. Amour/Massey." Investigator Sharek also dialed the telephone number linked to this residence: (510) 548-5222 which she obtained from an investigative resource. Investigator Sharek heard the telephone ring inside the residence three or four times before an answering machine picked up and identified the line as belonging to "Susan." Investigator Sharek left a message requesting that respondent contact her. Investigator Sharek did not receive a return call from respondent.

Also on or about August 26, 2003, Investigator Sharek spoke with a police officer at the Berkeley Police Department. The police officer agreed to go to respondent's residence to do a "welfare check" on respondent. The officer advised they would post a card requesting that respondent call the police department and the officer would advise Investigator Sharek. Subsequently, Investigator Sharek contacted the Berkeley Police Department and spoke to a police officer who advised that a welfare check had been done, and that respondent was "OK." The police officer also advised that respondent had a "right of privacy" and a "right to not receive mail" and that Investigator Sharek would "not be contacted." (Declaration of Esther Rogers attached to the State Bar's motion for the entry of respondent's default.)

1 filed in this matter, setting an in-person status conference for June 7, 2004. A copy of said notice  
2 was properly served upon respondent by first-class mail, postage fully prepaid, on April 29,  
3 2004, addressed to respondent at her official address. The copy of said notice was returned to the  
4 State Bar Court by the United States Postal Service bearing the stamped notation, "BOX  
5 CLOSED-NO ORDER."

6 On May 24, 2004, DTC Rogers attempted twice to reach respondent by telephone by  
7 calling respondent's official membership records telephone number which is (510) 548-5277.  
8 Each call she made to respondent was answered with an automated message advising that "Your  
9 call cannot be answered at this time. Please try again later. Good-bye."

10 Also on May 24, 2004, DTC Rogers called directory assistance for the Berkeley,  
11 California area which includes respondent's official membership records address. She asked the  
12 directory assistance operator for all telephone listings under the name of Susan St.Amour. DTC  
13 Rogers was informed by the directory assistance operator that there were no listings for that  
14 name.

15 As respondent did not file a response to the NDC as required by rule 103 of the Rules of  
16 Procedure of the State Bar of California ("Rules of Procedure"), on May 25, 2004, the State Bar  
17 filed a motion for the entry of respondent's default. The motion also contained a request that the  
18 court take judicial notice, pursuant to Evidence Code section 452(h), of all of respondent's  
19 official membership addresses,<sup>3</sup> the declaration of Esther Rogers and Exhibit 1.

20 On June 7, 2004, the court held a status conference in this matter. Respondent did not  
21 appear at the status conference either in-person or through counsel. Thereafter, on June 8, 2004,  
22 the court filed a Status Conference Order which set forth that respondent's default would be  
23 entered that week, and that the State Bar was seeking respondent's disbarment. A copy of said  
24 order was properly served upon respondent by first-class mail, postage fully prepaid, on June 8,  
25 2004, addressed to respondent at her official address. The copy of said order was returned to the  
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27  
28 <sup>3</sup>The court grants the State Bar's request and takes judicial notice of all of respondent's  
official membership addresses to the date of the filing of this decision.

1 State Bar Court by the United States Postal Service bearing the stamped notation, "BOX  
2 CLOSED-NO ORDER."

3 When respondent failed to file a written response within 10 days after service of the  
4 motion for the entry of her default, on June 11, 2004, the court filed an Order of Entry of Default  
5 (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders.<sup>4</sup> A  
6 copy of said order was properly served upon respondent on June 11, 2004, by certified mail,  
7 return receipt requested, addressed to respondent at her official address. The copy of said order  
8 was returned to the State Bar Court by the United States Postal Service bearing the stamped  
9 notation, "BOX CLOSED-NO ORDER."

10 On June 30, 2004, the State Bar filed a brief on the issues of culpability and discipline  
11 and requested waiver of a hearing pursuant to rule 202(c) of the Rules of Procedure.

12 As the State Bar did not request a hearing, this matter was submitted for decision on July  
13 1, 2004, following the filing of the State Bar's brief on the issues of culpability and discipline.

### 14 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### 15 **A. Jurisdiction**

16 Respondent was admitted to the practice of law in the State of California on December  
17 23, 1991, was a member at all times pertinent to these charges, and is currently a member of the  
18 State Bar of California.

#### 19 **B. General Fact Applicable to All Counts**

20 Prior to March 2001, respondent maintained attorney client trust account number  
21 022430300 ("trust account") at Wells Fargo Bank.

#### 22 **C. Count 1 (Apollon Matter) - Case No. 03-O-03876**

23 Prior to March 2001, Leo Apollon ("Apollon") received a \$27,000 settlement that needed  
24 to be placed in a special needs trust.

25 On or about March 9, 2001, Apollon and his attorney, Larry Beach Becker ("Beach  
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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 Becker”), met with respondent to discuss arranging for a special needs trust. On or about March  
2 9, 2001, Apollon employed respondent to create a special needs trust. They agreed that  
3 respondent would be compensated at the rate of \$225 per hour for her services.

4 On or about April 4, 2001, Beach Becker sent respondent a letter. The letter enclosed a  
5 check for \$27,000 made payable to respondent’s trust account. The letter stated that respondent  
6 was to establish a special needs trust into which the \$27,000 would be deposited.

7 On or about April 18, 2001, respondent deposited the check into her trust account.

8 On or about June 22, 2001, Apollon requested that respondent provide him with a small  
9 portion of his money so that he could pay some bills.

10 On or about July 5, 2001, respondent sent Apollon a letter enclosing a draft of a special  
11 needs trust. Respondent stated in the letter that she would send Apollon a petition to establish  
12 the trust the following week. The letter also enclosed a \$500 check, drawn on respondent’s  
13 business bank account, not the trust account. At the time respondent wrote the check from her  
14 business account, she continued to maintain Apollon’s funds in her trust account.

15 Subsequently, respondent did not send Apollon the petition to establish the trust the  
16 following week, or at all.

17 On or about September 13, 2001, respondent sent Apollon a letter enclosing a check for  
18 \$1,000. The check was not drawn on respondent’s trust account. At the time respondent wrote  
19 the check to Apollon, she continued to maintain Apollon’s funds in her trust account. The letter  
20 stated that respondent would send the petition to establish the trust the following week.

21 Subsequently, respondent did not send Apollon the petition to establish the trust the following  
22 week, or at all.

23 On or about January 26, 2002, respondent sent Apollon a letter enclosing a check for  
24 \$1,600. The check was not drawn on respondent’s trust account. At the time respondent wrote  
25 the check to Apollon, she continued to maintain Apollon’s funds in her trust account. The  
26 January 26, 2002, letter stated that respondent would send Apollon the petition to establish the  
27 trust by the end of the week. Subsequently, respondent did not send Apollon the petition to  
28 establish the trust.

1 As of January 26, 2002, respondent had issued checks totaling \$3,100. Therefore,  
2 respondent should have maintained \$23,900 in her trust account for Apollon until the time it was  
3 paid out to Apollon.

4 On or about April 11, 2002, the balance in respondent's trust account dropped to  
5 \$23,535.38.

6 On or about June 15, 2002, respondent sent Apollon a letter enclosing a check for \$1,400.  
7 The check was not drawn on respondent's trust account.

8 As of on or about June 15, 2002, respondent had paid Apollon a total of \$4,500.  
9 Therefore, respondent should have maintained \$22,500 in trust for Apollon until the time it was  
10 paid out to Apollon.

11 On or about June 17, 2002, the balance in respondent's trust account was \$20,385.38.

12 On or about March 6, 2003, the balance in respondent's trust account was \$15,419.54.

13 Between approximately June 2002 and March 2003, Apollon telephoned respondent on  
14 several occasions and left her a message each time requesting a status update on his matter and a  
15 confirmation that respondent continued to hold the remainder of his funds in trust. Subsequently,  
16 respondent failed to respond to any of the telephone calls, failed to provide Apollon with a status  
17 update on his matter and failed to provide Apollon with confirmation that respondent continued  
18 to maintain the remainder of Apollon's funds in trust.

19 On or about March 4, 2003, Beach Becker left respondent a telephone message requesting  
20 that respondent provide Apollon with a status update on his matter and with confirmation that  
21 respondent continued to maintain the remainder of Apollon's funds in trust. Subsequently,  
22 respondent failed to respond to the telephone call, failed to provide Apollon with a status update  
23 on his matter and failed to provide confirmation that respondent continued to maintain the  
24 remainder of Apollon's funds in trust.

25 Sometime after March 2003, respondent abandoned her law office. Respondent failed to  
26 inform Apollon that she no longer was performing any services on his behalf. Respondent failed  
27 to give notice to Apollon of her intent to withdraw and failed to allow Apollon time to employ  
28 other counsel.

1 On or about April 16, 2003, Beach Becker sent respondent an e-mail message requesting  
2 that respondent contact Apollon immediately to provide him with a status update and with an  
3 accounting of Apollon's money. Subsequently, respondent failed to respond to the e-mail  
4 message, failed to provide Apollon with a status update on his matter and failed to provide an  
5 accounting of Apollon's funds.

6 On or about July 29, 2003, Beach Becker sent respondent a letter requesting that  
7 respondent provide Apollon with a status update on his matter and with an accounting of  
8 Apollon's funds. The letter was properly mailed by first-class mail, postage prepaid, by  
9 depositing for collection by the United States Postal Service in the ordinary course of business on  
10 or about the date on the letter. The United States Postal Service did not return the letter sent to  
11 respondent as undeliverable or for any other reason.

12 Subsequently, respondent failed to respond to the letter, failed to provide Apollon with a  
13 status update and failed to provide an accounting of Apollon's funds.

14 On or about February 27, 2004, the balance in respondent's trust account was \$15,414.54.

15 Respondent paid Apollon a total of \$4,500. Therefore, respondent should have  
16 maintained \$22,500 in her trust account for Apollon from June 15, 2002, the date of the last  
17 payment, through the date of the filing of the NDC.

18 By failing to maintain \$22,500 in trust from June 15, 2002, to the date of the filing of the  
19 NDC, respondent misappropriated at least \$7,085.46 from Apollon.

20 Regarding the special need trust, while respondent did prepare a draft of the special needs  
21 trust, she did not complete the trust. Respondent's work resulted in no benefit to Apollon since  
22 Apollon did not obtain a finalized special needs trust.

23 On or about September 22, 2003, the State Bar opened an investigation in Case No. 03-O-  
24 03876.

25 On or about December 17, 2003, State Bar Investigator Willis Shalita ("Investigator  
26 Shalita") wrote to respondent regarding respondent's misappropriation in Apollon's matter and  
27 placed the letter in a sealed envelope correctly addressed to respondent at her official address.  
28 The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection

1 by the United States Postal Service in the ordinary course of business on or about the date on the  
2 letter. The United States Postal Service did not return the letter sent to respondent as  
3 undeliverable or for any other reason.

4 The investigator's letter requested that respondent respond in writing to specified  
5 allegations of misconduct being investigated by the State Bar in this matter on or before January  
6 1, 2004. Respondent did not respond to this letter.

7 **Count 1(A) - Business and Professions Code Section 6106<sup>5</sup>**

8 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
9 section 6106. Section 6106 provides that the commission of any act involving moral turpitude,  
10 dishonesty or corruption constitutes a cause for suspension or disbarment. Respondent engaged  
11 in an act involving moral turpitude, dishonesty or corruption by misappropriating at least  
12 \$7,085.46 of Apollon's funds.

13 **Count 1(B) - Rule 3-110(A) of the Rules of Professional Conduct<sup>6</sup>**

14 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
15 rule 3-110(A). Rule 3-110(A) provides that "[a] member shall not intentionally, recklessly, or  
16 repeatedly fail to perform legal services with competence." By failing to complete the special  
17 needs trust, respondent did not perform services of any value to respondent. By failing to  
18 perform services of any value to her Apollon, respondent recklessly, repeatedly or intentionally  
19 failed to perform legal services with competence in wilful violation of rule 3-110(A).

20 **Count 1(C) - Section 6068(m)**

21 The State Bar proved by clear and convincing evidence that Respondent wilfully violated  
22 section 6068(m). Section 6068(m) provides that it is an attorney's duty "[t]o respond promptly  
23 to reasonable status inquiries of clients and to keep clients reasonably informed of significant  
24 developments in matters with regard to which the attorney has agreed to provide legal services."

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26 <sup>5</sup>Unless otherwise indicated, all further references to sections refer to provisions of the  
California Business and Professions Code.

27  
28 <sup>6</sup>Unless otherwise indicated, all further references to rules refer to the Rules of  
Professional Conduct of the State Bar of California.



1 Respondent wilfully violated section 6068(m) by: (1) failing to inform Apollon of the significant  
2 development that she was no longer performing any services on his behalf; and (2) failing to  
3 respond to the telephone messages, e-mail and letter from Apollon and/or Beach Becker.

4 **Count 1(D) - Rule 3-700(A)(2)**

5 The State Bar proved by clear and convincing evidence that Respondent wilfully violated  
6 rule 3-700(A)(2). Rule 3-700(A)(2) provides that an attorney may not withdraw from  
7 employment until taking reasonable steps to avoid reasonably foreseeable prejudice to the  
8 client's rights. By abandoning her law office and ceasing to perform any services on Apollon's  
9 behalf, respondent constructively terminated her services. She was therefore required to take  
10 steps to avoid reasonably foreseeable prejudice to Apollon's rights. By failing to give notice to  
11 Apollon of her intent to withdraw and by failing to allow Apollon time to employ other counsel,  
12 respondent failed to take steps to avoid reasonably foreseeable prejudice to her client's rights in  
13 wilful violation of rule 3-700(A)(2).

14 **Count 1(E) - Section 6068(i)**

15 The State Bar proved by clear and convincing evidence that Respondent wilfully violated  
16 section 6068(i). Section 6068(i) requires an attorney to cooperate with and participate in a State  
17 Bar disciplinary investigation or proceeding. Respondent wilfully violated section 6068(i) by  
18 failing to respond to the December 17, 2003, letter from Investigator Shalita requesting that  
19 respondent respond in writing to specified allegations of misconduct being investigated by the  
20 State Bar.

21 **D. Count 2 (Lin Matter) - Case No. 03-O-02297**

22 On or about November 4, 2000, Janet Lin ("Lin") employed respondent to prepare a  
23 special needs trust for Lin's son. At the time she employed respondent, Lin paid respondent  
24 \$1,000 in advanced fees. The fee agreement respondent provided Lin stated that respondent  
25 would deposit the \$1,000 in her attorney client trust account and withdraw the money as earned.

26 During the initial meeting, Lin explained to respondent that she wanted to wait to decide  
27 whether she actually needed the trust. Respondent provided Lin with forms that Lin would need  
28 to complete for respondent to create the trust.

1 Subsequently, Lin decided to hold off on creating the special needs trust.

2 Prior to January 2003, Lin decided that she required the special needs trust.

3 On or about January 6, 2003, Lin sent respondent the executed fee agreement and forms  
4 that respondent had provided at the initial meeting in November 2000.

5 In or about mid-January 2003, Lin and respondent exchanged telephone messages  
6 regarding the creation of the trust.

7 In or about mid-January 2003, respondent spoke with Lin. Respondent informed Lin that  
8 she was able to create the special needs trust.

9 Respondent constructively terminated her services soon after January 2003. Respondent  
10 abandoned her law office sometime after January 2003. Respondent failed to inform Lin that she  
11 no longer was performing any services on Lin's behalf. Respondent failed to give notice to Lin  
12 or her intent to withdraw, failed to allow Lin time to employ other counsel, failed to return Lin's  
13 papers and failed to return the advanced fees Lin paid respondent.

14 On or about February 13, February 20, and March 3, 2003, Lin telephoned respondent and  
15 left a message on respondent's answering machine, each time requesting that respondent provide  
16 Lin with a status update. Respondent failed to respond to the telephone messages and failed to  
17 provide Lin with a status update.

18 On or about March 3, 2003, Lin sent respondent a letter via facsimile requesting a status  
19 update on her matter. Respondent failed to respond to the letter and failed to provide a status  
20 update.

21 On or about March 4, 2003, Lin sent respondent a letter to her official membership  
22 records address. The letter was properly mailed by certified mail, postage prepaid, return receipt  
23 requested, by depositing for collection by the United States Postal Service in the ordinary course  
24 of business on or about the date on the letter. In or about April 2003, the United States Postal  
25 Service returned the letter to Lin marked "unclaimed."

26 On or about March 13, 2003, Lin telephoned respondent and left a message stating that  
27 Lin had not received a response to her fax or her previous telephone messages. Lin left a  
28 message requesting that respondent call her with a status update on her matter. Subsequently,

1 respondent failed to respond to this message and failed to provide Lin with a status update.

2 On or about April 7, 2003, Lin asked her friend, attorney Jeffrey Karlin ("Karlin"), to  
3 contact respondent on Lin's behalf.

4 On or about April 7 and 8, 2003, Karlin telephoned respondent on Lin's behalf and left  
5 respondent a telephone message requesting a status update and stating that Lin would like her  
6 files and unearned fees returned immediately. Subsequently, respondent failed to respond to the  
7 telephone messages and failed to return Lin's file or advance fee.

8 On or about April 14, 2003, Karlin sent respondent a letter via facsimile and certified  
9 mail, return receipt requested, to respondent's official membership records address requesting  
10 that respondent immediately return Lin's client file and the \$1,000 respondent received in  
11 advanced fees. The letter was properly mailed by certified mail, postage prepaid, return receipt  
12 requested, by depositing for collection by the United States Postal Service in the ordinary course  
13 of business on or about the date on the letter. On or about April 29, 2003, the United States  
14 Postal Service returned the letter to Karlin marked "unclaimed." Respondent did not respond to  
15 Karlin's faxed letter of April 14, 2003.

16 On or about April 28, 2003, Lin left respondent a telephone message requesting that  
17 respondent return her call and provide her with a status update. Respondent failed to respond to  
18 the message and failed to provide Lin with a status update.

19 Subsequently, respondent failed to provide a status update, failed to refund any unearned  
20 fees and failed to return Lin's client file.

21 Respondent performed no services for Lin. Respondent did not earn any of the \$1,000  
22 she was paid in advanced fees because she did not perform any services for Lin. As of April 22,  
23 2004, respondent has failed to return any money to Lin.

24 Respondent failed to promptly release Lin's client file after respondent constructively  
25 terminated her services.

26 In or about mid-2003, Lin employed attorney Stephen Dale to prepare the trust.

27 On or about April 30, 2003, the State Bar opened an investigation in Case No. 03-O-  
28 02297.

1 On or about July 15, 2003, State Bar Investigator Sharek wrote to respondent regarding  
2 respondent's failure to perform in Lin's matter by placing the letter in a sealed envelope correctly  
3 addressed to respondent at her official membership records address. The letter was properly  
4 mailed by first-class mail, postage prepaid, by depositing for collection by the United States  
5 Postal Service in the ordinary course of business on or about the date on the letter. The United  
6 States Postal Service did not return the letter sent to respondent as undeliverable or for any other  
7 reason.

8 The investigator's letter requested that respondent respond in writing to specified  
9 allegations of misconduct being investigated by the State Bar in this matter on or before July 25,  
10 2003. Respondent did not respond to this letter.

11 **Count 2(A) - Rule 3-110(A)**

12 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
13 rule 3-110(A). By failing to perform any services for Lin, respondent recklessly, repeatedly or  
14 intentionally failed to perform legal services with competence in wilful violation of rule 3-  
15 110(A).

16 **Count 2(B) - Section 6068(m)**

17 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
18 section 6068(m). Respondent wilfully violated section 6068(m) by: (1) failing to inform Lin of  
19 the significant development that she was no longer performing any services on her behalf; and (2)  
20 failing to respond to the telephone messages and letters from Lin and Karlin.

21 **Count 2(C)-Rule 3-700(D)(1); Count 2(D)-Rule 3-700(D)(2); Count 2(E)-Rule 3-700(A)(2)**

22 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
23 rule 3-700(A)(2) as alleged in Count 2(E) of the NDC. Rule 3-700(A)(2) states, "A member  
24 shall not withdraw from employment until the member has taken reasonable steps to avoid  
25 reasonably foreseeable prejudice to the rights of the client, including giving due notice to the  
26 client, allowing time for employment of other counsel, complying with rule 3-700(D), and  
27 complying with applicable laws and rules." By abandoning her law office and ceasing to perform  
28 any services on Lin's behalf, respondent constructively terminated her services. She was

1 therefore required to take steps to avoid reasonably foreseeable prejudice to Lin's rights. By  
2 failing to: (1) give notice to Lin of her intent to withdraw; (2) allow Lin time to employ other  
3 counsel; (3) return Lin's papers; and (4) return unearned advanced fees paid by Lin, respondent  
4 failed to take steps to avoid reasonably foreseeable prejudice to her client's rights in wilful  
5 violation of rule 3-700(A)(2).

6 However, as the court has already found respondent culpable of wilfully violating rule 3-  
7 700(A)(2), the court declines to find respondent also culpable of wilfully violating rule 3-  
8 700(D)(1) and 3-700(D)(2) as alleged in Counts 2(C) and 2(D), respectively. Rule 3-700(D)(1)  
9 requires an attorney whose employment has terminated to promptly release to a client, at the  
10 client's request, all the client's papers and property. Rule 3-700(D)(2) requires an attorney, upon  
11 termination of employment, to promptly refund unearned fees. However, the rule prohibiting  
12 prejudicial withdrawal from employment, rule 3-700(A)(2), is more comprehensive than either  
13 rule 3-700(D)(1) or rule 3-700(D)(2). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State  
14 Bar Ct. Rptr. 269, 280.) The rule prohibiting prejudicial withdrawal mandates compliance with  
15 the rule requiring return of unearned fees *and* the prompt release of all the client's papers and  
16 property. Thus, an attorney's failure to promptly return unearned fees and/or papers may be a  
17 portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal.  
18 (*In the Matter of Dahlz, supra*, 4 Cal. State Bar Ctr. Rptr. at p. 280.) Because Respondent's  
19 failure to return unearned fees and client papers is relied on as part of the basis for finding that  
20 respondent violated the rule prohibiting prejudicial withdrawal, the court rejects of separate  
21 finding of culpability under either rule 3-700(D)(1) or rule 3-700(D)(2). (*Ibid.*) The court  
22 therefore dismisses Count 2(C) and Count 2(D) with prejudice.

23 **Count 2(F) - Section 6068(i)**

24 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
25 section 6068(i). Respondent wilfully violated section 6068(i) by failing to respond to the July  
26 15, 2003, letter from Investigator Sharek requesting that respondent respond in writing to  
27 specified allegations of misconduct being investigated by the State Bar.

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1 **E. Count 3 - (LaRock Matter) - Case No. 02-O-15085**

2 On or about March 10, 2000, Richard LaRock ("LaRock") and respondent met to discuss  
3 a special needs trust. At the end of the meeting, respondent stated that she would send LaRock a  
4 fee retainer agreement.

5 In or about June 2000, LaRock telephoned respondent to obtain the fee agreement.  
6 During the discussion, respondent stated to LaRock that the reason she delayed sending the fee  
7 agreement was her sister had died in the interim, and she was out of the office for an extended  
8 period of time.

9 On or about June 12, 2000, respondent sent LaRock a fee retainer agreement and estate  
10 planning questionnaire. Respondent and LaRock agreed that LaRock would pay \$1,000 in  
11 advanced fees.

12 The fee agreement respondent provided LaRock stated that respondent would deposit the  
13 \$1,000 in her attorney client trust account and withdraw the money as earned.

14 On or about July 5, 2000, LaRock paid respondent \$1,000 and returned the estate  
15 planning questionnaire to respondent. Soon after July 5, 2000, respondent deposited the check  
16 into her trust account.

17 Between July 2000 and January 2002, respondent performed no services for LaRock.

18 On or about January 28, 2002, LaRock telephoned respondent to determine the status of  
19 his matter. Respondent stated to LaRock that she would send out drafts of the estate planning  
20 documents in two or three days. During the discussion, respondent stated that she was having a  
21 difficult time and was caring for her sister's children.

22 Subsequently, respondent failed to provide LaRock with any documents.

23 Sometime after January 2002, respondent stopped performing services for LaRock.  
24 Respondent failed to inform LaRock that she no longer was performing any services on his  
25 behalf. Respondent failed to give notice to LaRock of her intent to withdraw, failed to allow  
26 LaRock time to employ other counsel, failed to return LaRock's papers and failed to return the  
27 advanced fees LaRock paid respondent.

28 On or about June 3 and 10, 2002, LaRock left respondent a telephone message requesting

1 a status update on his matter. Subsequently, respondent failed to return LaRock's telephone calls  
2 and failed to provide a status update.

3 On or about June 14, 2002, LaRock left respondent a telephone message terminating  
4 respondent and requesting that respondent return the \$1,000 LaRock paid in advanced fees.  
5 Respondent failed to refund any money to LaRock and failed to respond to LaRock's telephone  
6 call on June 14, 2002, requesting a refund.

7 Respondent performed no services for LaRock. Respondent did not earn any of the  
8 \$1,000 she was paid in advanced fees because she did not perform any services for LaRock. As  
9 of April 22, 2004, respondent has failed to return any money to LaRock.

10 On or about August 27, 2002, the State Bar opened an investigation in Case No. 02-O-  
11 15085.

12 On or about March 26, 2003, State Bar Investigator Sharek wrote to respondent regarding  
13 respondent's failure to perform in LaRock's matter by placing the letter in a sealed envelope  
14 correctly addressed to respondent at her official membership records address. The letter was  
15 properly mailed by first-class mail, postage prepaid, by depositing for collection by the United  
16 States Postal Service in the ordinary course of business on or about the date on the letter. The  
17 United States Postal Service did not return the letter sent to respondent as undeliverable or for  
18 any other reason.

19 The investigator's letter requested that respondent respond in writing to specified  
20 allegations of misconduct being investigated by the State Bar in this matter on or before April 5,  
21 2003. Respondent did not respond to this letter.

22 **Count 3(A) - Rule 3-110(A)**

23 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
24 rule 3-110(A). By failing to perform any services for LaRock, respondent recklessly, repeatedly  
25 or intentionally failed to perform legal services with competence in wilful violation of rule 3-  
26 110(A).

27 **Count 3(B) - Section 6068(m)**

28 The State Bar proved by clear and convincing evidence that respondent wilfully violated

1 section 6068(m). Respondent wilfully violated section 6068(m) by: (1) failing to inform  
2 LaRock of the significant development that she was no longer performing any services on his  
3 behalf; and (2) failing to respond to the telephone messages from LaRock.

4 **Count 3(C) - Rule 3-700(D)(2) and Count 3(D) - Rule 3-700(A)(2)**

5 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
6 rule 3-700(A)(2). By ceasing to perform any services on LaRock's behalf, respondent  
7 constructively terminated her services. She was therefore required to take steps to avoid  
8 reasonably foreseeable prejudice to LaRock's rights. By failing to: (1) give notice to LaRock of  
9 her intent to withdraw; (2) allow LaRock time to employ other counsel; (3) return LaRock's  
10 papers; and (4) return unearned advanced fees paid by LaRock, respondent failed to take steps to  
11 avoid reasonably foreseeable prejudice to her client's rights in wilful violation of rule 3-  
12 700(A)(2).

13 However, for the reasons discussed above in the LaRock matter, the court rejects a  
14 separate finding of culpability under rule 3-700(D)(2). Count 3(C) is therefore dismissed with  
15 prejudice.

16 **Count 3(E) - Section 6068(i)**

17 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
18 section 6068(i). Respondent wilfully violated section 6068(i) by failing to respond to the March  
19 26, 2003, letter from Investigator Sharek requesting that respondent respond in writing to  
20 specified allegations of misconduct being investigated by the State Bar.

21 **F. Count 4 - (Benzon Matter) - Case No. 03-O-02203**

22 Prior to March 2002, Noemi Benzon ("Benzon") employed attorney Allan Schuman  
23 ("Schuman") to represent her for injuries she suffered in an automobile accident. Benzon  
24 suffered brain damage as a result of the accident. In or about March 2002, Benzon received a  
25 structured settlement in her personal injury case that was to be placed in a special needs trust.

26 On or about March 29, 2002, Benzon employed respondent to advise her regarding the  
27 special needs trust. Schuman recommended respondent to Benzon.

28 On or about March 29, 2002, Benzon and respondent executed a fee agreement. The



1 agreement provided that Benzou would pay respondent \$3,500 in advanced fees. The agreement  
2 stated that respondent would place the \$3,500 in her attorney client trust account, and respondent  
3 would withdraw the fees as earned.

4 On or about April 1, 2002, Schuman provided respondent with a check for \$3,500. On or  
5 about June 11, 2002, respondent deposited the check into her trust account.

6 On or about October 22, 2002, respondent sent Schuman the Special Needs Trust and an  
7 Order Establishing Special Needs Trust.

8 On or about November 8, 2002, respondent sent Schuman a letter indicating that the  
9 hearing on the special needs trust was on calendar for November 18, 2002. The letter also stated  
10 that respondent would follow up with the Probate Examiner and then report to Schuman the  
11 status of the matter.

12 On or about March 13, 2003, Schuman sent respondent a letter via facsimile and first-  
13 class mail requesting that respondent finalize the trust documents immediately. The letter also  
14 requested that respondent contact Schuman immediately to provide a status update on the matter.

15 On or about March 25, 2003, respondent sent Schuman a letter enclosing documents that  
16 Schuman needed to have notarized.

17 Sometime after March 2003, respondent abandoned her law office. Respondent failed to  
18 inform Benzou that she no longer was performing any services on Benzou's behalf. Respondent  
19 failed to give notice to Benzou of her intent to withdraw, failed to allow Benzou time to employ  
20 other counsel and failed to return the advanced fees Benzou paid respondent.

21 On or about April 7, 2003, Schuman responded to respondent's March 25, 2003, letter  
22 providing respondent with the original, notarized documents respondent enclosed in her March  
23 25, 2003, letter. The documents were inadvertently sent to respondent's old address.

24 On or about April 17, 2003, Schuman sent respondent a letter via facsimile requesting  
25 that respondent contact him immediately to advise Schuman on the distribution of the settlement  
26 proceeds. Subsequently, respondent failed to respond to the letter and failed to advise Schuman  
27 on the distribution of the settlement proceeds.

28 On or about April 18, 2003, Schuman sent respondent a letter via facsimile again

1 requesting that respondent contact him and finalize the trust. Subsequently, respondent failed to  
2 finalize the trust documents and failed to respond to the letter.

3 On or about April 24, 2003, Schuman received back from the United States Postal  
4 Service the documents he sent on April 7, 2003, to respondent's old address.

5 On or about April 24, 2003, Schuman resent by certified mail, return receipt requested,  
6 the notarized documents to respondent at her official membership records address.

7 On or about April 30, 2003, Schuman sent respondent a letter via facsimile requesting  
8 that respondent advise Schuman on how to proceed. The letter requested that respondent contact  
9 Schuman immediately. Subsequently, respondent failed to respond to the letter and failed to  
10 advise Schuman on how to proceed.

11 On or about May 21, 2003, Schuman sent respondent a letter via facsimile requesting that  
12 respondent contact Schuman immediately.

13 On or about May 24, 2003, respondent telephoned Schuman and left a message indicating  
14 that respondent had been in an accident and would have the documents ready by the end of the  
15 following week. Subsequently, respondent failed to complete the documents.

16 Respondent did not earn all of the \$3,500 she was paid in advanced fees because she  
17 failed to complete the trust documents.

18 On or about July 1, 2003, Schuman received back from the United States Postal Service  
19 the documents he resent on April 24, 2003, with the envelope marked "unclaimed."

20 On or about July 29, 2003, attorney Robert Weaver ("Weaver") agreed to complete the  
21 documents necessary to finalize the trust. Benzon paid Weaver to complete the trust documents.

22 On or about June 2, 2003, the State Bar opened an investigation in Case No. 03-O-02203.

23 On or about June 20, 2003, State Bar Investigator Sharek wrote to respondent regarding  
24 respondent's failure to perform in Benzon's matter by placing the letter in a sealed envelope  
25 correctly addressed to respondent at her official membership records address. The letter was  
26 properly mailed by first-class mail, postage prepaid, by depositing for collection by the United  
27 States Postal Service in the ordinary course of business on or about the date on the letter. The  
28 United States Postal Service did not return the letter sent to respondent as undeliverable or for

1 any other reason.

2 The investigator's letter requested that respondent respond in writing to specified  
3 allegations of misconduct being investigated by the State Bar in this matter on or before June 30,  
4 2003. Respondent did not respond to this letter.

5 **Count 4(A) - Rule 3-110(A)**

6 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
7 rule 3-110(A). By failing to complete the trust documents, respondent recklessly, repeatedly or  
8 intentionally failed to perform legal services with competence in wilful violation of rule 3-  
9 110(A).

10 **Count 4(B) - Section 6068(m)**

11 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
12 section 6068(m). Respondent wilfully violated section 6068(m) by failing to: (1) inform Benzon  
13 of the significant development that she was no longer performing any services on her behalf; and  
14 (2) failing to respond to the attorney Schuman's letters.

15 **Count 4(C) - Rule 3-700(D)(2) and Court 4(D) - Rule 3-700(A)(2)**

16 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
17 rule 3-700(A)(2). By abandoning her law office and failing to complete the trust, respondent  
18 constructively terminated her services. She was therefore required to take steps to avoid  
19 reasonably foreseeable prejudice to Benzon's rights. By failing to: (1) give notice to Benzon of  
20 her intent to withdraw; (2) allow Benzon time to employ other counsel; and (3) return unearned  
21 advanced fees paid by Benzon, respondent failed to take steps to avoid reasonably foreseeable  
22 prejudice to her client's rights in wilful violation of rule 3-700(A)(2).

23 However, for the reasons discussed above in the Lin matter, the court rejects a separate  
24 finding of culpability under rule 3-700(D)(2), and Count 4(C) is therefore dismissed with  
25 prejudice.

26 **Count 4(E) - Section 6068(i)**

27 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
28 section 6068(i). Respondent wilfully violated section 6068(i) by failing to respond to the June

1 20, 2003, letter from Investigator Sharek requesting that respondent respond in writing to  
2 specified allegations of misconduct being investigated by the State Bar.

3 **G. Count 5 (Rodriguez Matter) - Case No. 03-O-04882**

4 On or about January 18, 1997, Shirley Rodriguez employed respondent to prepare a  
5 special needs trust. They agreed that respondent would be compensated upon completion of the  
6 special needs trust.

7 Between approximately January 1997 and June 2000, respondent communicated with  
8 Rodriguez regarding information she needed to create the special needs trust.

9 On or about July 13, July 25, August 22, August 29, September 19, September 26,  
10 September 28, October 5 and November 8, 2000, Rodriguez telephoned respondent to determine  
11 whether respondent had finalized the special needs trust. Respondent failed to return any of the  
12 telephone calls, failed to provide Rodriguez with a status update and failed to provide Rodriguez  
13 with a finalized version of the special needs trust.

14 On or about April 5, 2001, Rodriguez filed a complaint with the State Bar regarding  
15 respondent's failure to respond to Rodriguez's telephone calls and failure to finalize the special  
16 needs trust.

17 On or about August 6, 2001, State Bar complaint analyst Michael Chavez ("Chavez")  
18 wrote to respondent regarding Rodriguez's complaint.

19 On or about September 10, 2001, respondent sent Chavez a letter in which she stated that  
20 she had performed substantial services for Rodriguez. Respondent also stated that she had re-  
21 established communication with Rodriguez, and they had agreed that respondent would complete  
22 the special needs trust. Respondent stated that the special needs trust would be completed  
23 shortly.

24 On or about September 28, 2001, the State Bar closed the matter based upon respondent's  
25 representation that she would continue to work on the special needs trust and keep Rodriguez  
26 reasonably informed as to the progress of Rodriguez's matter.

27 Between September 2001 and October 2002, respondent communicated with Rodriguez.

28 On or about January 9, 10, 13, 15, 16, 17, February 4, March 12, August 11, and

1 September 10, 2003, Rodriguez telephoned respondent to obtain a status update on her matter.  
2 Respondent failed to respond to the telephone calls and failed to provide Rodriguez with a status  
3 update.

4 On or about December 1, 2003, Rodriguez asked the State Bar to re-open her complaint  
5 against respondent since respondent had failed to complete the special needs trust and had failed  
6 to keep Rodriguez informed of the progress of her matter.

7 On or about December 3, 2003, the State Bar re-opened the investigation.

8 Subsequently, respondent failed to communicate with Rodriguez and failed to finalize the  
9 special needs trust.

10 Respondent constructively terminated her services in or about November 2002, when she  
11 stopped communicating with Rodriguez. Respondent failed to inform Rodriguez that she no  
12 longer was performing services for Rodriguez. Respondent failed to give notice to Rodriguez of  
13 her intent to withdraw and failed to allow Rodriguez time to employ other counsel.

14 On or about December 31, 2003, State Bar Investigator Shalita wrote to respondent  
15 regarding respondent's failure to communicate in Rodriguez's matter by placing the letter in a  
16 sealed envelope correctly addressed to respondent at her official membership records address.  
17 The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection  
18 by the United States Postal Service in the ordinary course of business on or about the date on the  
19 letter. The United States Postal Service did not return the letter sent to respondent as  
20 undeliverable or for any other reason.

21 The investigator's letter requested that respondent respond in writing to specified  
22 allegations of misconduct being investigated by the State Bar in this matter on or before January  
23 16, 2004. Respondent did not respond to this letter.

24 **Count 5(A) - Section 6068(m)**

25 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
26 section 6068(m). Respondent wilfully violated section 6068(m) by failing to inform Rodriguez  
27 of the significant development that she was no longer performing any services on her behalf.  
28 Although the NDC also alleged that respondent wilfully violated section 6068(m) by failing to

1 respond to Rodriguez's telephone calls and letters, the court notes that there is no evidence that  
2 Rodriguez either sent any letters to respondent or left messages for respondent to return her  
3 telephone calls. Thus, the court bases its culpability finding in this matter solely on respondent's  
4 failure to inform Rodriguez of the significant development that she was no longer performing any  
5 services on her behalf.

6 **Count 5(B) - Rule 3-700(A)(2)**

7 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
8 rule 3-700(A)(2). By failing to finalize the special needs trust and by failing to communicate  
9 with Rodriguez, respondent constructively terminated her services. She was therefore required to  
10 take steps to avoid reasonably foreseeable prejudice to Rodriguez's rights. By failing to give  
11 notice to Rodriguez of her intent to withdraw and by failing to allow Rodriguez time to employ  
12 other counsel, respondent failed to take steps to avoid reasonably foreseeable prejudice to her  
13 client's rights in wilful violation of rule 3-700(A)(2).

14 **Count 5(C) - Section 6068(i)**

15 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
16 section 6068(i). Respondent wilfully violated section 6068(i) by failed to respond to the  
17 December 31, 2003, letter from Investigator Shalita requesting that respondent respond in writing  
18 to specified allegations of misconduct being investigated by the State Bar.

19 **H. Count 6 (Johnson Matter) - Case No. 03-O-01520**

20 Prior to April 2002, attorney John Collins ("Collins") represented Kelly Johnson  
21 ("Johnson") on various matters. Collins recommended to Johnson that she employ respondent to  
22 provide Johnson advice regarding a family trust.

23 On or about April 2, 2002, Johnson employed respondent to provide legal advice  
24 regarding a family trust. At the time she employed respondent, Johnson paid respondent \$1,000  
25 in advance fees and executed a fee agreement.

26 The fee agreement stated that respondent would place the \$1,000 in her attorney client  
27 trust account and the fees would be deducted from the account as they were earned. Respondent  
28 stated in the fee agreement that her fee would be \$250 per hour.

1 Respondent failed to deposit the \$1,000 into her trust account.

2 On or about June 13, 2002, respondent participated in a 45 minute telephone call with  
3 Johnson and Collins.

4 On or about December 10, 2002, Collins sent respondent a letter via certified mail on  
5 Johnson's behalf terminating respondent. The letter was sent to P.O. Box 1283, Berkeley, CA  
6 94701, respondent's official membership records address and the address which respondent  
7 provided Johnson.

8 At the time Johnson terminated respondent, respondent had worked for approximately  
9 one hour on Johnson's matter and therefore had earned approximately \$250.

10 The letter requested that respondent refund the unused portion of the \$1,000 advanced fee  
11 that Johnson paid respondent.

12 On or about January 27, 2003, the United States Postal Service returned the letter to  
13 Collins. The envelope was marked, "return to sender-unclaimed."

14 On or about January 29, 2003, Collins sent respondent a letter to her official membership  
15 records address enclosing a copy of the December 10, 2002, letter and requesting that respondent  
16 refund the unused portion of the \$1,000 advanced fee Johnson paid respondent. The letter was  
17 properly mailed by first-class mail, postage prepaid, by depositing for collection by the United  
18 States Postal Service in the ordinary course of business on or about the date on the letter. The  
19 United States Postal Service did not return the letter sent to respondent as undeliverable or for  
20 any other reason.

21 Respondent failed to respond to the January 29, 2003, letter and failed to refund the  
22 unearned fee.

23 At the time respondent received the January 29, 2003, letter, respondent had earned only  
24 approximately \$250 of the \$1,000 she collected as an advance fee.

25 On or about April 11, 2003, the State Bar opened an investigation in Case No. 03-O-  
26 01520.

27 On or about June 30, 2003, State Bar Investigator Sharek wrote to respondent regarding  
28 respondent's failure to return unearned fees in the Johnson matter by placing the letter in a sealed

1 envelope correctly addressed to respondent at her official membership records address. The  
2 letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the  
3 United States Postal Service in the ordinary course of business on or about the date on the letter.  
4 The United States Postal Service did not return the letter sent to respondent as undeliverable or  
5 for any other reason.

6 The investigator's letter requested that respondent respond in writing to specified  
7 allegations of misconduct being investigated by the State Bar in this matter on or before July 10,  
8 2003. Respondent did not respond to this letter.

9 **Count 6(A) - Rule 3-700(D)(2)**

10 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
11 rule 3-700(D)(2). Respondent wilfully violated rule 3-700(D)(2) by failing to promptly refund  
12 \$750 in unearned fees to Johnson after her services were terminated.

13 **Count 6(B) - Section 6068(i)**

14 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
15 section 6068(i). Respondent wilfully violated section 6068(i) by failing to respond to the June  
16 30, 2003, letter from Investigator Sharek requesting that respondent respond in writing to  
17 specified allegations of misconduct being investigated by the State Bar.

18 **I. Count 7 - Case No. 02-O-15085, etc.**

19 The findings of fact set forth above in Counts 1-6 are incorporated by reference as if fully  
20 set forth herein.

21 Respondent habitually disregarded the interest of her clients.

22 **Count 7 - Section 6106**

23 The State Bar proved by clear and convincing evidence that respondent wilfully violated  
24 section 6106. In five separate client matters, respondent withdrew from employment without  
25 taking reasonable steps to avoid reasonably foreseeable prejudice to her client's rights and failed  
26 to communicate with her client. She also failed to perform legal services with competence in  
27 four client matters; misappropriated client funds in one matter; and failed to return unearned fees  
28 in another matter. The court therefore finds that respondent habitually disregarded the interests



1 of her clients thereby engaging in an act of moral turpitude in wilful violation of section 6106.

#### 2 IV. MITIGATING/AGGRAVATING CIRCUMSTANCES

3 As respondent's default was entered in this matter, respondent failed to introduce any  
4 mitigating evidence on her behalf. However, pursuant to Evidence Code section 452(h), the  
5 court takes judicial notice of respondent's official membership records maintained by the State  
6 Bar of California which indicate that she was admitted to the practice of law in the State of  
7 California on December 23, 1991, and has no prior record of discipline. (Rules Proc. of State  
8 Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(i) ("standard").)  
9 Respondent therefore practiced law for over eight years prior to the first act of misconduct in this  
10 matter.

11 In aggravation, respondent's misconduct significantly harmed the following clients:  
12 Apollon, Lin, LaRock, Benzon and Johnson. Respondent misappropriated over \$7,000 of  
13 Apollon's funds. Lin and Benzon were required to employ other counsel to handle their legal  
14 matter. Respondent also failed to return unearned fees to Lin, LaRock, Benzon and Johnson.  
15 (Standard 1.2(b)(iv).)

16 Respondent's failure to participate in this disciplinary proceeding prior to the entry of her  
17 default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

#### 18 V. DISCUSSION

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

24 In addition, standard 1.6(b) provides that the specific discipline for the particular  
25 violation found must be balanced with any mitigating or aggravating circumstances, with due  
26 regard for the purposes of imposing disciplinary sanctions.

27 In this case, the standards provide for the imposition of sanctions ranging from reproof  
28 to disbarment. (Standards 2.2(a), 2.3, 2.4(a), 2.6, .) In addition, standard 1.6(a) states, in

1 pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a  
2 single disciplinary proceeding, and different sanctions are prescribed by these standards for said  
3 acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

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

8 The State Bar recommends that respondent be disbarred from the practice of law as a  
9 result of her misconduct. The court concurs with the State Bar's discipline recommendation. In  
10 determining that disbarment is the appropriate discipline to recommend in this matter, the court  
11 is guided by *Cooper v. State Bar* (1987) 43 Cal.3d 1016.

12 In *Cooper*, the Supreme Court disbarred an attorney based on findings that over a four  
13 year period the attorney had, on several occasions, wilfully breached his fiduciary obligation to  
14 one client; failed to perform services for another client; misappropriated funds; withdrew from  
15 employment and failed to turn over client files to subsequent counsel for two other clients; and,  
16 with respect to other clients, failed to deliver papers and property to which the client was entitled  
17 and/or failed to use reasonable diligence and his best judgment in the exercise of his skills with  
18 reasonable speed for the purpose for which he had been employed. While the attorney had  
19 suffered a period of depression during which he had lost interest in practicing law, the Supreme  
20 Court did not consider this in mitigation, noting that there was no clear medical evidence that  
21 emotional or mental problems had caused the attorney to abandon his clients and that the attorney  
22 had now overcome these problems. Although the attorney had no prior record of discipline,  
23 under the circumstances, the court did not find a sanction less than disbarment appropriate. The  
24 Supreme Court found harm to clients, and that the attorney had a lack of awareness of the  
25 seriousness of his misconduct and the purpose of disciplinary proceedings. The Supreme Court  
26 found that disbarment was warranted as "the record contains nothing to support a conclusion that  
27 probationary supervision would be adequate to protect the public from a continuation of the  
28 pattern of misconduct . . . ." (*Cooper v. State Bar, supra*, 43 Cal.3d at p. 1020.)

1 In this matter, respondent has been found culpable of misconduct involving six clients  
2 between 2000-2004. In five separate client matters, respondent withdrew from employment  
3 without taking reasonable steps to avoid reasonably foreseeable prejudice to her client's rights  
4 and failed to communicate with her client. She also was found culpable of failing to perform  
5 legal services with competence in four client matters; failing to participate and cooperate in a  
6 State Bar investigation in six matters; failing to return unearned fees in one client matter; and the  
7 misappropriation of client funds in one matter. Furthermore, the court found that respondent  
8 engaged in an act of moral turpitude in wilful violation of section 6106 by habitually disregarding  
9 the interests of her clients. "[H]abitual disregard by an attorney of the interests of his or her  
10 clients combined with failure to communicate with such clients constitute acts of moral turpitude  
11 justifying disbarment." (*McMorris v. State Bar* (1983) 35 Cal.3d 77, 85.)

12 Also of particular concern to this court is respondent's failure to participate in this  
13 disciplinary proceeding. Respondent's failure to participate in this proceeding leaves the court  
14 without any understanding as to the underlying cause or causes for respondent's misconduct or  
15 from learning of any other mitigating circumstances which would justify this court's departure  
16 from the discipline recommended by the standards.

17 Therefore, after considering the nature of respondent's misconduct, the aggravating and  
18 mitigating circumstances, the court finds that nothing in the record suggests that a period of  
19 actual suspension and probation would prevent respondent from engaging in misconduct in the  
20 future. The court therefore finds that the need to protect the public and the legal profession  
21 warrants the recommendation that respondent be disbarred for her misconduct in this matter.

## 22 VI. RECOMMENDED DISCIPLINE

23 Based on the foregoing, it is hereby recommended that respondent Susan M. St.Amour be  
24 disbarred from the practice of law in the State of California and that her name be stricken from the  
25 roll of attorneys in this state.

26 It is further recommended that respondent be ordered to comply with the requirements of  
27 rule 955 of the California Rules of Court within 30 calendar days of the effective date of the  
28 Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40

1 days of the effective date of the order showing her compliance with said order.<sup>7</sup>

2 **VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

3 Respondent is ordered transferred to involuntary inactive status pursuant to Business and  
4 Professions Code section 6007(c)(4). Said inactive enrollment will be effective three days after  
5 this order is filed and will terminate upon the effective date of the Supreme Court's order  
6 imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure of the State  
7 Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary  
8 jurisdiction.

9 **VIII. COSTS**

10 It is further recommended that costs be awarded to the State Bar pursuant to Business and  
11 Professions Code section 6086.10, and that such costs be payable in accordance with Business and  
12 Professions Code section 6140.7.

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15  
16 Dated: September 29, 2004

  
\_\_\_\_\_  
JOANN M. REMKE  
Judge of the State Bar Court

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27 <sup>7</sup>Respondent is required to file a rule 955(c) affidavit even if she has no clients to notify.  
28 (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) Failure to comply with rule 955 is a proper  
consideration in reinstatement proceedings. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1097.)

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on September 29, 2004, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

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

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

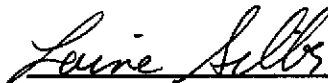
**SUSAN M. ST.AMOUR**  
**P O BOX 1283**  
**BERKELEY CA 94701**

**COURTESY COPY**  
**SUSAN M. ST.AMOUR**  
**1615 DELAWARE ST**  
**BERKELEY CA 94703**

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

**ROBIN HAFFNER, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 29, 2004.**



\_\_\_\_\_  
**Laine Silber**  
Case Administrator  
State Bar Court