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STATE BAR COURT
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THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES
PUBLIC MATTER

In the Matter of)	Case No. 03-N-00511-RMT
RICHARD JOHN BEHRENS,)	DECISION AND ORDER OF
Member No. 79764,)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT

INTRODUCTION

The sole issue in this case is whether Respondent Richard John Behrens wilfully failed to obey an order of the California Supreme Court requiring him to comply with rule 955 of the California Rules of Court and, if so, the appropriate discipline to be imposed.

For the reasons stated below, this Court finds, by clear and convincing evidence, that Respondent wilfully failed to comply with the requirements of rule 955 as ordered by the Supreme Court. As a result, this Court recommends that Respondent be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

PROCEDURAL HISTORY

This proceeding was initiated by the filing of a Notice of Disciplinary Charges ("NDC") by the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") on April 18, 2003. The NDC was properly served upon Respondent on April 18, 2003, by certified mail, return receipt requested, addressed to Respondent's official membership address ("official address") pursuant to Business and Professions Code section 6002.1, subdivision (c) and rule 60

1 of the Rules of Procedure of the State Bar ("Rules of Procedure").¹ However, the NDC was
2 returned to the State Bar by the U.S. Postal Service with the envelope stamped "RETURN TO
3 SENDER, UNDELIVERABLE AS ADDRESSED, FORWARDING ORDER EXPIRED."²

4 Respondent did not file an answer to the NDC. Thereafter, on May 20, 2003, the State
5 Bar filed a Notice of Motion and Motion for Entry of Default. The motion was properly served
6 upon Respondent on May 20, 2003, by certified mail, return receipt requested, at his official
7 address. A courtesy copy of the motion was served on Respondent at an alternate address
8 provided by a State Bar investigator, which is 1122 E. Green Street, Pasadena, CA 91106.

9 The Court entered Respondent's default on June 13, 2003, after Respondent failed to file
10 an answer to the NDC within ten days after service of the motion for default. (See Rules Proc. of
11 State Bar, rule 200(c).) Notice of Entry of Default was properly served upon Respondent on the
12 same date by certified mail addressed to him at his official address, and by regular mail addressed
13 to his alternate address. The notice sent to his official address was returned by the postal service
14 as undeliverable.

15 On July 2, 2003, the State Bar filed a waiver of default hearing and a brief regarding
16 culpability and discipline. This matter was taken under submission as of July 9, 2003.

17 The State Bar was represented throughout these proceedings by Deputy Trial Counsel
18 Rizamari C. Sutton. Respondent did not participate at any stage of these proceedings, either
19 personally or through counsel.
20
21

22 ¹Pursuant to Evidence Code § 452, the Court takes judicial notice of the membership
23 records of the State Bar, which show that at all times since February 21, 1995, Respondent's
24 official address has been 7100 Hayvenhurst Avenue, #F, Van Nuys, California 91406.

25 ²See the Declaration of Rizamari C. Sutton, Deputy Trial Counsel, submitted in support
26 of the motion for entry of Respondent's default, which explains that mail sent to Respondent's
27 official address was returned by the postal service, and that she made other efforts to contact
28 Respondent, including calling Respondent at a telephone number she obtained from a State Bar
investigator. However, Respondent neither responded to her telephone message nor answered
the charges in this matter.

1 FINDINGS OF FACT AND CONCLUSIONS OF LAW

2 Respondent was admitted to the practice of law in California on June 23, 1978, and has
3 been a member of the State Bar at all times since.³

4 On November 20, 2002, the Supreme Court of California entered a final disciplinary
5 order in *In re Richard John Behrens on Discipline*, Supreme Court Case No. S109988 (State Bar
6 Court Case No(s). 00-O-15174; 01-O-00794 (Cons.)) In its order, the Supreme Court
7 suspended Respondent from the practice of law for one year, stayed execution of the suspension,
8 and placed Respondent on actual suspension for six months and until he made specified
9 restitution and until the State Bar Court grants a motion to terminate his suspension pursuant to
10 rule 205 of the Rules of Procedure of the State Bar of California.

11 As relevant to this proceeding, the Supreme Court also ordered Respondent to comply
12 with subdivisions (a) and (c) of rule 955 of the California Rules of Court within 30 and 40 days,
13 respectively, after the effective date of the Supreme Court's order. The order of the Supreme
14 Court became effective on December 20, 2002.

15 Upon filing of the November 20, 2002, order, in accordance with rule 24(a) of the
16 California Rules of Court, the Office of the Clerk of the Supreme Court of California served
17 Respondent with a copy of the Supreme Court's order imposing discipline and directing
18 Respondent's compliance with rule 955. (See Evid. Code, § 664.)

19 On or about December 12, 2002, a probation deputy of the Probation Unit of the State
20 Bar wrote a letter to Respondent reminding Respondent of the obligation to comply with Rule
21 955 and enclosing an accurate copy of the suspension order as well as a form approved by the
22 State Bar Court Executive Committee for reporting compliance with Rule 955. On that same
23 date, the probation deputy mailed the letter and enclosures by placing the documents in a sealed
24 envelope addressed to Respondent at his official address, and depositing it, first-class postage

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26 _____
27 ³Effective September 1, 2001, Respondent was suspended from the practice of law for
28 failure to pay annual membership dues, and enrolled on inactive status for failure to comply with
MCLE requirements. Both the suspension and the administrative inactive enrollment remain in
effect. (Evid. Code § 452.)

1 prepaid, in a facility regularly maintained by the U.S. Postal Service. However, the subject letter
2 was returned by the postal service as undeliverable.⁴

3 Respondent did not file an affidavit with the State Bar Court evidencing his compliance
4 with the requirements of rule 955, as ordered by the Supreme Court, either by the date ordered by
5 the Court (i.e., January 29, 2003) or at any time thereafter.

6 The fact that Respondent may not be aware of the requirements of rule 955 or of his
7 obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule
8 955 does not require actual knowledge of the provision which is violated. The Supreme Court
9 has disbarred attorneys whose failure to keep their official addresses current prevented them from
10 learning that they had been ordered to comply with rule 955. (See *Powers v. State Bar* (1988)
11 44 Cal.3d 337, 341.)

12 Accordingly, this Court concludes that the State Bar has established by clear and
13 convincing evidence that Respondent wilfully failed to comply with rule 955 by failing to file an
14 affidavit attesting to his compliance with subdivision (a) of that rule, as ordered by the Supreme
15 Court in its November 20, 2002, order. Respondent's failure to comply with rule 955, as ordered
16 by the Supreme Court, also constitutes a wilful violation of Business and Professions Code
17 section 6103 which provides that the wilful disobedience or violation of an order of a court
18 constitutes cause for disbarment or suspension.

19 LEVEL OF DISCIPLINE

20 Factors in Mitigation

21 There are no mitigating factors presented by the record in this proceeding.

22 Factors in Aggravation

23 Respondent has been disciplined on one previous occasions, which is an aggravating
24

25 ⁴The NDC alleges that the December 12, 2002, letter from Probation was not returned by
26 the postal service. However, in its brief regarding culpability and discipline, the State Bar
27 indicates that the subject letter was returned by the postal service. In light of the fact the record in
28 this case establishes that all mail sent to Respondent's official address has been returned, the
Court deems the allegation in the NDC to be erroneous, and finds that the letter from Probation
was also returned by the postal service.

1 factor pursuant to Standard 1.2(b)(i) of the Standards for Attorney Sanctions for Professional
2 Misconduct.

3 As previously indicated, by minute order filed November 20, 2002, in Case No.
4 S109988 (State Bar Court Case Nos. 00-O-15174; 01-O-00794 (Cons.)) the Supreme Court
5 suspended Respondent for one year, stayed execution of the suspension, and imposed an actual
6 suspension from the practice of law for six months, among other things. Respondent was found
7 culpable of misconduct in two client matters, in particular, failure to perform services with
8 competence, failure to adequately communicate, improper withdrawal, failure to return unearned
9 fees, and failure to cooperate with the State Bar's investigations.

10 Respondent's failure to file the rule 955 compliance affidavit with the Clerk of the State
11 Bar Court significantly harmed the public and the administration of justice. (Standard
12 1.2(b)(iv).)

13
14 **Discussion**

15 Rule 955(d) provides in part that "[a] suspended member's wilful failure to comply with
16 the provisions of this rule constitutes a cause for disbarment or suspension and for revocation of
17 any pending probation."

18 Timely compliance with rule 955 is essential to ensure that all concerned parties
19 (including clients, co-counsel, opposing counsel and all courts in which the attorney has pending
20 litigation) learn about the attorney's actual suspension from the practice of law. Compliance
21 with rule 955 also keeps the State Bar Court and the Supreme Court informed of the location of
22 attorneys who are subject to their respective disciplinary authority. (*Lydon v. State Bar* (1988)
23 45 Cal.3d 118, 1187.)

24 Disbarment is generally the appropriate sanction to be imposed for a wilful violation of
25 rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116,131.)

26 Respondent has exhibited a disregard for both the Supreme Court and the State Bar Court
27 in their efforts to fulfill their respective responsibilities to oversee the practice of law in the State
28 of California. Respondent's disregard is exemplified by (1) his failure to comply with rule 955;

1 and (2) his failure to participate in either the current proceeding or the prior underlying
2 disciplinary matter.

3 This Court is unaware of any facts or circumstances that would justify a departure from
4 the usual sanction of disbarment for Respondent's wilful violation of rule 955 and his resulting
5 violation of Business and Professions Code section 6103. One of this Court's obligations is to
6 ensure that its disciplinary recommendations to the Supreme Court are fair and consistent. (*In re*
7 *Young* (1989) 49 Cal.3d 257, 268.)

8 Respondent's disbarment is necessary to protect the public, the courts and the legal
9 profession, to maintain high professional standards and to preserve public confidence in the
10 profession. It would seriously undermine the integrity of the disciplinary system and damage
11 public confidence in the legal profession if Respondent were not disbarred for his wilful and
12 unexplained disobedience of the Supreme Court's November 20, 2002 order.

13
14 **RECOMMENDED DISCIPLINE**

15 This Court recommends that Respondent **RICHARD JOHN BEHRENS** be disbarred
16 from the practice of law in the State of California and that his name be stricken from the roll of
17 attorneys in this State.

18 It is also recommended that the Supreme Court order Respondent to comply with rule
19 955(a) of the California Rules of Court within 30 calendar days of the effective date of the
20 Supreme Court order in this matter and to file the compliance affidavit required by rule 955(c)
21 within 40 days of the effective date of the Court's order.

22 **COSTS**

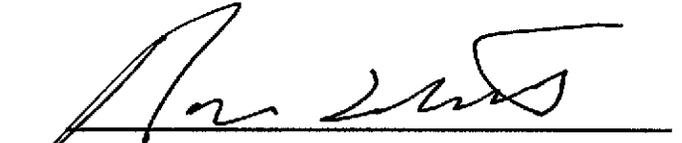
23 It is further recommended that costs be awarded to the State Bar pursuant to Business and
24 Professions Code section 6086.10 and that such costs be made payable in accordance with
25 Business and Professions Code section 6140.7.

26 **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

27 In light of this Court's recommendation that Respondent be disbarred from the practice of
28 law, pursuant to the provisions of Business and Professions Code section 6007, subdivision

1 (c)(4) and rule 220(b) of the Rules of Procedure, it is hereby ordered that Respondent
2 **RICHARD JOHN BEHRENS** be involuntarily enrolled as an inactive member of the State
3 Bar. The order of involuntary enrollment shall be effective three days after the date upon which
4 this Decision is served.

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7 Dated: September 24, 2003


ROBERT M. TALCOTT
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 September 25, 2003, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed September 25, 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:

**RICHARD J. BEHRENS
7100 HAYVENHURST AVE #F
VAN NUYS, CA 91406**

**COURTESY COPY:
RICHARD J. BEHRENS
1122 E. GREEN ST.
PASADENA, CA 91106**

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

SUSAN JACKSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 25, 2003**.



Tammy R. Cleaver
Case Administrator
State Bar Court