

FILED *YJC*

JUL 30 2003

STATE BAR COURT  
CLERKS OFFICE  
LOS ANGELES

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

In the Matter of

BARBARA BROWN-SIMMONS,

Member No. 107565,

A Member of the State Bar.

Case No. 03-N-00512-RMT

DECISION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT

INTRODUCTION

The sole issue in this case is whether Respondent Barbara Brown-Simmons wilfully failed to obey an order of the California Supreme Court requiring her 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 her 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 March 14, 2003. The NDC was properly served upon Respondent on March 14, 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)

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1 and rule 60 of the Rules of Procedure of the State Bar ("Rules of Procedure").<sup>1</sup> Neither the NDC  
2 nor the return receipt has been returned by the postal service.

3 On March 20, 2003, the Deputy Trial Counsel Jeannie J. Park made the following  
4 attempts to contact Respondent: she called the telephone number listed on Respondent's official  
5 membership record, but the number is disconnected; she called directory assistance and asked for  
6 a listing for Respondent in Carson, but there was no residential or business listing; she  
7 telephoned Respondent's former counsel and asked for a telephone number for Respondent, but  
8 received only the number that is listed on Respondent's membership record, which is  
9 disconnected. (See the Declaration of Jeannie J. Park, Deputy Trial Counsel, in support of the  
10 State Bar's motion for entry of default.)

11 On March 26, 2003, a courtesy copy of the NDC was mailed by regular first class mail to  
12 Respondent at her official address.

13 Respondent did not file an answer to the NDC. Thereafter, on April 9, 2003, the State  
14 Bar filed a Notice of Motion and Motion for Entry of Default. The motion for default was  
15 properly served upon Respondent on April 9, 2003, by certified mail, return receipt requested, at  
16 her official address. As part of its moving papers, the State Bar waived its right to request a  
17 default hearing pursuant to rule 202(c) of the Rules of Procedure.

18 The Court entered Respondent's default on May 12, 2003, after Respondent failed to file  
19 an answer to the NDC within ten days after service of the motion for default. (See Rules Proc. of  
20 State Bar, rule 200(c).) Notice of Entry of Default was properly served upon Respondent on May  
21 14, 2003, by certified mail addressed to her at her official address.

22 On May 13, 2003, the State Bar filed a waiver of default hearing and brief on culpability  
23 and discipline, wherein it recommended disbarment as the appropriate sanction in this matter.

24 The State Bar was represented throughout these proceedings by Deputy Trial Counsel  
25 Jeannie J. Park. Respondent did not participate at any stage of these proceedings, either  
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28 <sup>1</sup>At all times since November 29, 2001, Respondent's official address has been P. O. Box  
11148, Carson, California 90749.

1 personally or through counsel.

2 This matter was taken under submission on May 15, 2003.

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

4 Respondent was admitted to the practice of law in California on January 24, 1983, and  
5 has been a member of the State Bar at all times since.

6 On November 20, 2002, the Supreme Court of California entered a final disciplinary  
7 order in *In re Barbara Brown-Simmons on Discipline*, Supreme Court Case No. S109859 (State  
8 Bar Court Case No(s). 01-N-02518; 01-O-00934 and 02-O-12924). In its order, the Supreme  
9 Court suspended Respondent from the practice of law for one year, stayed execution of the  
10 suspension, and placed Respondent on probation for two years subject to conditions including 90  
11 days actual suspension.

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

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

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

23 The fact that Respondent may not be aware of the requirements of rule 955 or of her  
24 obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule  
25 955 does not require actual knowledge of the provision which is violated. The Supreme Court  
26 has disbarred attorneys whose failure to keep their official addresses current prevented them from  
27 learning that they had been ordered to comply with rule 955. (See *Powers v. State Bar* (1988)  
28 44 Cal.3d 337, 341.)



1 rule 955, which was part of the discipline in her prior matter. (S091020).<sup>2</sup> In addition,  
2 Respondent was found culpable of failing to competently perform legal services in two matters of  
3 a client, and of violating certain conditions of her disciplinary probation.

4 Respondent's failure to file the rule 955 compliance affidavit with the Clerk of the State  
5 Bar Court significantly harmed the public and the administration of justice. (Standard  
6 1.2(b)(iv).)

7 Respondent demonstrated indifference toward rectification of or atonement for the  
8 consequences of her misconduct. (Standard 1.2(b)(v).)

9 **Discussion**

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

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

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

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

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25 <sup>2</sup>The discipline in that matter included an actual suspension of 60 days and until  
26 Respondent made specified restitution. Therefore, compliance with rule 955 was conditional,  
27 that is, required only if Respondent's suspension continued for 90 days or more. While  
28 Respondent paid the restitution within the 60-day period, the proof she provided to the Probation  
Unit was inadequate, and she remained suspended for more than 90 days and was required to  
comply with rule 955, and failed to timely do so.

1 and (2) her failure to participate in the current proceeding.

2 This Court is unaware of any facts or circumstances that would justify a departure from  
3 the usual sanction of disbarment for Respondent's wilful violation of rule 955 and her resulting  
4 violation of Business and Professions Code section 6103. In fact, this Court is convinced that  
5 disbarment is appropriate in this instance, in light of the fact that this is the second time  
6 Respondent has violated an order of the Supreme Court requiring her to comply with rule 955.  
7 Further, there can be no doubt that Respondent was aware of her obligation to comply with rule  
8 955 since she stipulated to not only the facts and conclusions, but also the disposition in the  
9 underlying matter.

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

15 **RECOMMENDED DISCIPLINE**

16 This Court recommends that Respondent **BARBARA BROWN-SIMMONS** be  
17 disbarred from the practice of law in the State of California and that her name be stricken from  
18 the roll of attorneys in this State.

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

23 **COSTS**

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

27 **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

28 In light of this Court's recommendation that Respondent be disbarred from the practice of

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law, pursuant to the provisions of Business and Professions Code section 6007, subdivision (c)(4) and rule 220(b) of the Rules of Procedure, it is hereby ordered that Respondent **BARBARA BROWN-SIMMONS** be involuntarily enrolled as an inactive member of the State Bar. The order of involuntary enrollment shall be effective three days after the date upon which this Decision is served.

Dated: July 29<sup>th</sup> 2003

  
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ROBERT M. TALCOTT  
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 July 30, 2003, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,  
filed July 30, 2003**

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

[X] by certified mail, No. 7160 3901 9844 8570 3872, with return receipt requested, through the United States Postal Service at Los Angeles, California, addressed as follows:

**BARBARA BROWN-SIMMONS  
P.O. BOX 11148  
CARSON, CA 90749**

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

**JEANNIE PARK, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 30, 2003.



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**Tammy R. Cleaver**  
Case Administrator  
State Bar Court