

1 of the Rules of Procedure of the State Bar (“Rules of Procedure”).¹ There is no evidence before
2 the Court showing that the NDC was returned to the State Bar by the U.S. Postal Service as
3 undeliverable, but there is evidence that other mailings to Respondent’s official address were
4 returned by the postal service. ²

5 Respondent did not file an answer to the NDC.³ Thereafter, on July 8, 2003, the State Bar
6 filed a Notice of Motion and Motion for Entry of Default. The motion was properly served upon
7 Respondent on July 8, 2003, by certified mail, return receipt requested, at his official address.

8 The Court entered Respondent’s default on July 28, 2003, after Respondent failed to file
9 an answer to the NDC within ten days after service of the Motion for Entry of Default. (See
10 Rules Proc. of State Bar, rule 200(c).) Notice of Entry of Default was properly served upon
11 Respondent on the same date by certified mail addressed to him at his official address.

12 On July 22, 2003, the State Bar filed a brief recommending disbarment as the appropriate
13 sanction for Respondent’s failure to comply with the Supreme Court’s order requiring
14 compliance with rule 955.

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16 ¹Pursuant to Evidence Code § 452, the Court takes judicial notice of the membership
17 records of the State Bar, which show that at all times since March 10, 2000, Respondent’s
18 official address has been 5250 Bellingham Avenue, #6, Valley Village, CA 91607.

19 ²See the Declarations of Erin McKeown Joyce, Deputy Trial Counsel, submitted in
20 support of the motion for entry of Respondent’s default and in support of the brief recommending
21 disbarment..

22 ³ See the Declaration of Erick Estrada, a paralegal with the State Bar. The Court is
23 satisfied that the State Bar made a diligent effort to locate Respondent. In connection with this
24 proceeding and another pending disciplinary proceeding, Case No. 02-O-18467, Mr. Estrada
25 went to extraordinary measures to try to locate Respondent. He called Respondent at the
26 telephone number listed on his official membership record, and left a message asking
27 Respondent to return the call. In addition, Mr. Estrada sent an e-mail message to the e-mail
28 address listed on the membership record. Neither of these efforts proved successful. Mr. Estrada
also conducted a person locator search through Lexis, seeking other addresses Respondent had
previously used. In addition to Respondent’s official address, the locator supplied three
additional addresses. Mr. Estrada wrote to Respondent at the additional address, and while none
of the letters were returned by the postal service, Respondent did not respond to the letter. Mr.
Estrada also did searches through Parker’s Directory and directory assistance. None of these
efforts proved successful.

1 The State Bar was represented throughout these proceedings by Deputy Trial Counsel
2 Erin McKeown Joyce. Respondent did not participate at any stage of these proceedings, either
3 personally or through counsel.

4 This matter was taken under submission as of August 5, 2003.

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6 Respondent was admitted to the practice of law in California on August 15, 1994, and
7 has been a member of the State Bar at all times since.⁴

8 On January 6, 2003, the Supreme Court of California entered a final disciplinary order in
9 *In re Kooros James Khavarian on Discipline*, Supreme Court Case No. S097113 (State Bar
10 Court Case No. 02-PM-11217). In its order, the Supreme Court revoked Respondent's
11 probation, lifted the previously ordered stay of execution of suspension, and suspended
12 Respondent from the practice of law for 12 months.

13 As relevant to this proceeding, the Supreme Court also ordered Respondent to comply
14 with subdivisions (a) and (c) of rule 955 of the California Rules of Court within 30 and 40 days,
15 respectively, after the effective date of the Supreme Court's order. The order of the Supreme
16 Court became effective on February 5, 2003.

17 Upon filing of the January 6, 2003 order, in accordance with rule 24(a) of the California
18 Rules of Court, the Office of the Clerk of the Supreme Court of California served Respondent
19 with a copy of the Supreme Court's order imposing discipline and directing Respondent's
20 compliance with rule 955. (See Evid. Code, § 664.)

21 On or about January 24, 2003, a probation deputy of the Probation Unit of the State Bar
22 wrote a letter to Respondent reminding Respondent of the obligation to comply with Rule 955
23 and enclosing an accurate copy of the suspension order as well as a form approved by the State
24 Bar Court Executive Committee for reporting compliance with Rule 955. On that same date, the
25 probation deputy mailed the letter and enclosures by placing the documents in a sealed envelope

26
27 ⁴Effective September 19, 2002, Respondent was suspended from the practice of law for
28 failure to pass the professional responsibility examination as ordered by the Supreme Court on
July 2, 2001, and that suspension remains in effect. (Evidence Code § 452.)

1 addressed to Respondent at his address maintained on the official membership records of the
2 State Bar and depositing it, first-class postage prepaid, in a facility regularly maintained by the
3 U.S. Postal Service. The U.S. Postal Service returned the letter with a notation that Respondent
4 had moved and left no forwarding address.

5 Respondent did not file an affidavit with the State Bar Court evidencing his compliance
6 with the requirements of rule 955, as ordered by the Supreme Court, either by the date ordered by
7 the Court (i.e., March 17, 2003) or at any time thereafter.

8 The fact that Respondent may not be aware of the requirements of rule 955 or of his
9 obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule
10 955 does not require actual knowledge of the provision which is violated. The Supreme Court
11 has disbarred attorneys whose failure to keep their official addresses current prevented them from
12 learning that they had been ordered to comply with rule 955. (See *Powers v. State Bar* (1988)
13 44 Cal.3d 337, 341.)

14 Accordingly, this Court concludes that the State Bar has established by clear and
15 convincing evidence that Respondent wilfully failed to comply with rule 955 by failing to file an
16 affidavit attesting to his compliance with subdivision (a) of that rule, as ordered by the Supreme
17 Court in its January 6, 2003, order. Respondent's failure to comply with rule 955, as ordered by
18 the Supreme Court, also constitutes a wilful violation of Business and Professions Code section
19 6103 which provides that the wilful disobedience or violation of an order of a court constitutes
20 cause for disbarment or suspension.

21 LEVEL OF DISCIPLINE

22 Factors in Mitigation

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

24 Factors in Aggravation

25 Respondent has been disciplined on three previous occasions, which is an aggravating
26 factor pursuant to Standard 1.2(b)(i) of the Standards for Attorney Sanctions for Professional
27 Misconduct.

28 Effective August 1, 2001, in Case No. S097113 (State Bar Court Case No. 99-O-13254,

1 the Supreme Court suspended Respondent from the practice of law for 12 months, stayed
2 execution of the suspension, and placed Respondent on probation for 24 months on conditions
3 which included 30 days actual suspension. In connection with a single client matter, Respondent
4 failed to competently perform legal services, failed to adequately communicate with the client,
5 improperly withdrew from employment and misrepresented to the client the status of her case.

6 As previously indicated, by minute order filed January 6, 2003, in Case No. S097113
7 (State Bar Court Case No. 02-PM-11217), the Supreme Court revoked Respondent's probation,
8 lifted the stay of execution of suspension, and suspended Respondent for 12 months. Respondent
9 was found to have violated the probation imposed effective August 1, 2001. Specifically,
10 Respondent failed to file quarterly reports and to contact and meet with his assigned probation
11 monitor.

12 Effective June 22, 2003, in Case No. S113855 (State Bar Court Case No. 02-O-11765)
13 the Supreme Court suspended Respondent from the practice of law for two years, stayed
14 execution of the suspension, and actually suspended Respondent from the practice of law for one
15 year and until he made a motion to terminate his actual suspension and the motion is granted.
16

17 Respondent's failure to file the rule 955 compliance affidavit with the Clerk of the State
18 Bar Court significantly harmed the public and the administration of justice. (Standard
19 1.2(b)(iv).)

20 **Discussion**

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

24 Timely compliance with rule 955 is essential to ensure that all concerned parties
25 (including clients, co-counsel, opposing counsel and all courts in which the attorney has pending
26 litigation) learn about the attorney's actual suspension from the practice of law. Compliance
27 with rule 955 also keeps the State Bar Court and the Supreme Court informed of the location of
28 attorneys who are subject to their respective disciplinary authority. (*Lydon v. State Bar* (1988))

1 45 Cal.3d 118, 1187.)

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

4 Respondent has exhibited a disregard for both the Supreme Court and the State Bar Court
5 in their efforts to fulfill their respective responsibilities to oversee the practice of law in the State
6 of California. Respondent's disregard is exemplified by (1) his failure to comply with rule 955;
7 and (2) his failure to participate in either the current proceeding or his most recent prior.

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

13 Respondent's disbarment is necessary to protect the public, the courts and the legal
14 profession, to maintain high professional standards and to preserve public confidence in the
15 profession. It would seriously undermine the integrity of the disciplinary system and damage
16 public confidence in the legal profession if Respondent were not disbarred for his wilful and
17 unexplained disobedience of the Supreme Court's January 6, 2003 order.

18 RECOMMENDED DISCIPLINE

19 This Court recommends that Respondent **KOOROS JAMES KHAVARIAN** be
20 disbarred from the practice of law in the State of California and that his name be stricken from
21 the roll of attorneys in this State.

22 It is also recommended that the Supreme Court order Respondent to comply with rule
23 955(a) of the California Rules of Court within 30 calendar days of the effective date of the
24 Supreme Court order in this matter and to file the compliance affidavit required by rule 955(c)
25 within 40 days of the effective date of the Court's order.

26 COSTS


27 It is further recommended that costs be awarded to the State Bar pursuant to Business and
28 Professions Code section 6086.10 and that such costs be made payable in accordance with

1 Business and Professions Code section 6140.7.

2 **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

3 In light of this Court's recommendation that Respondent be disbarred from the practice of
4 law, pursuant to the provisions of Business and Professions Code section 6007, subdivision
5 (c)(4) and rule 220(b) of the Rules of Procedure, it is hereby ordered that Respondent **KOOROS**
6 **JAMES KHAVARIAN** be involuntarily enrolled as an inactive member of the State Bar. The
7 order of involuntary enrollment shall be effective three days after the date upon which this
8 Decision is served.

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11 Dated: September 5th, 2003

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14 **ROBERT M. TALCOTT**
15 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 11, 2003, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed September 11, 2003**

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 Los Angeles, California, addressed as follows:

**KOOROS J. KHAVARIAN
5250 BELLINGHAM AVE. #6
VALLEY ILLAGE, CA 91607**

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

ERIN M. JOYCE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 11, 2003**.



Tammy R. Cleaver
Case Administrator
State Bar Court