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JAN 29 2004

STATE BAR COURT
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PUBLIC MATTER

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

In the Matter of)	Case No. 03-N-02704
W. THOMAS NOTHERN,)	DECISION INCLUDING DISBARMENT
Member No. 82542,)	RECOMMENDATION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California ("OCTC") alleging that respondent W. Thomas Nothern failed to comply with rule 955, California Rules of Court ("CRC 955") as ordered by the Supreme Court. OCTC was represented by Alan B. Gordon. Respondent did not participate either in person or by counsel.

For the reasons stated below, it is recommended that respondent be disbarred.

PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed on September 2, 2003, and properly served on respondent on September 3, 2003, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar ("official address"). (Business and Professions Code section 6002.1(c)¹; Rules 60(b) and 583, Rules Proc. of State Bar ("rule(s)").) It was also served by certified mail, return receipt requested, at an alternate address. Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45

¹Unless otherwise stated, all future references to "section(s)" are to the California Business and Professions Code.

1 Cal.3d 1181, 1186.) This correspondence was returned as undeliverable by the United States
2 Postal Service ("USPS"). The copy sent to the official address bore the notation "Forwarding
3 order expired." The copy sent to the alternate address was returned "unclaimed."

4 On September 4, 2003, the State Bar Court properly served respondent by first-class mail,
5 postage prepaid at his official address with notice scheduling a status conference on October 2,
6 2003.

7 Respondent did not appear at the October 2 status conference. On October 3, 2003,
8 respondent was properly served at his official address with a post-status conference order
9 indicating that OCTC would file a motion for entry of respondent's default when appropriate if
10 respondent did not appear.

11 Respondent did not file a response to the NDC. On October 23, 2003, OCTC filed and
12 properly served on respondent a motion for entry of default by certified mail, return receipt
13 requested, at his official address. (Rule 200(a), (b).) The motion advised respondent that OCTC
14 would seek minimum discipline of disbarment if he was found culpable. (Rule 200(a)(3).)

15 Respondent did not respond to the default motion. Orders entering respondent's default
16 and involuntarily enrolling him inactive were filed and properly served on him on November 14,
17 2003, by certified mail, return receipt requested at his official address. This document advised
18 respondent, among other things, that he was enrolled inactive pursuant to section 6007(e)
19 effective three days after service of the order. This correspondence was returned with the
20 notation: "Return to sender. Undeliverable as addressed."

21 The case was submitted for decision on November 24, 2003, after OCTC waived hearing
22 and filed a brief regarding discipline.

23 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

24 The Court's findings are based on the allegations contained in the NDC as they are
25 deemed admitted and no further proof is required to establish the truth of those allegations.
26 (Section 6088; Rule 200(d)(1)(A).) The findings are also based upon matters admitted into
27 evidence or judicially noticed.

28 Respondent was admitted to the practice of law in California on November 29, 1978, and

1 has been a member of the State Bar at all times since.

2 On January 24, 2003, the California Supreme Court filed an order ("January 24, 2003,
3 order") in Supreme Court case number S110742 (State Bar Court no. 01-O-03526) imposing
4 discipline on respondent including the following: one year stayed suspension; actual suspension
5 of 60 days and until he complied with rule 205, Rules Proc. of State Bar. If his actual suspension
6 reached two years or more, he was to comply with standard 1.4(c)(ii), Standards for Attorney
7 Sanctions for Professional Misconduct. If his actual suspension exceeded 90 days, the Supreme
8 Court further ordered respondent to comply with CRC 955, subdivisions (a) and (c), within 120
9 and 130 days, respectively, after the effective date of the January 24, 2003, order. The January
10 24, 2003, order was effective on February 23, 2003. (Rule 953(a), Cal. Rules of Court.)
11 Respondent was to comply with CRC 955(a) no later than June 23, 2003, and with CRC 955(c)
12 no later than July 3, 2003.

13 Upon filing of the January 24, 2003, order, the Office of the Clerk of the Supreme Court
14 of California sent respondent a copy of the said order imposing discipline and directing his
15 compliance with CRC 955.²

16 A copy of the January 24, 2003, order also was attached to the NDC in the instant
17 proceeding.

18 As of September 2, 2003, respondent had not filed with the State Bar Court the affidavit
19 required by CRC 955(c). He still has not done so.³ He has offered no explanation to this Court
20 for his failure to comply with CRC 955(c).

21 Based on the foregoing, it has been proved by clear and convincing evidence that
22 respondent wilfully violated the January 24, 2003, order directing his compliance with CRC
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26 ²See, rule 24(a), California Rules of Court, and Evidence Code section 664.

27 ³Pursuant to Evidence Code section 452(d), the Court judicially notices that its records
28 still do not contain a CRC 955(c) affidavit from respondent.

1 955.⁴ This constitutes a violation of section 6103, which requires attorneys to obey court orders.

2 **FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES**

3 Respondent did not participate in these proceedings or present any mitigating
4 circumstances pursuant to standard 1.2(e), Rules of Procedure of the State Bar of California,
5 Title IV, Standards for Attorney Sanctions for Professional Misconduct, ("standards"). Since
6 respondent he bears the burden of establishing mitigation by clear and convincing evidence, the
7 Court has been provided no basis for finding mitigating factors.

8 **FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

9 Respondent's prior discipline record is an aggravating circumstance. (Standard 1.2(b)(i).)
10 As previously discussed, in S110742, the Supreme Court imposed discipline including actual
11 suspension of 60 days and until he complied with rule 205, among other things. In one matter,
12 respondent was found culpable of violating rules 5-200(B) of the Rules of Professional Conduct,
13 and sections 6068(i) and (j), 6106 and 6068(a)/6125 - 6126(b). Multiple acts of misconduct were
14 found in aggravation. The only, but substantial, mitigating circumstance was respondent's
15 discipline-free record in over 22 years of practice.

16 Respondent demonstrated indifference toward rectification of or atonement for the
17 consequences of his misconduct by failing to comply with CRC 955(c) even after the NDC in the
18 instant proceeding was filed. (Standard 1.2(b)(v).)

19 Respondent's failure to participate in proceedings prior to the entry of default is also an
20 aggravating factor. (Standard 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward
21 disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to
22 participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept.
23 2000) 4 Cal. State Bar Ct. Rptr. 103, 109 - 110.)

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26 ⁴"Wilfulness" in the context of CRC 955 does not require actual knowledge of the
27 provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep
28 his official address current prevented him from learning that he had been ordered to comply with
CRC 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

1 the Supreme Court order in the present proceeding, and to file the affidavit provided for in
2 paragraph (c) within 40 days of the effective date of the order showing his compliance with said
3 order.

4 **COSTS**

5 The Court recommends that costs be awarded to the State Bar pursuant to Business and
6 Professions Code section 6086.10, and that those costs be payable in accordance with section
7 6140.7.

8 **ORDER REGARDING INACTIVE ENROLLMENT**

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

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17 Dated: January 27, 2004

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19 _____
20 ALBAN I. NILES
21 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 January 29, 2004, I deposited a true copy of the following document(s):

Decision, filed January 29, 2004

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

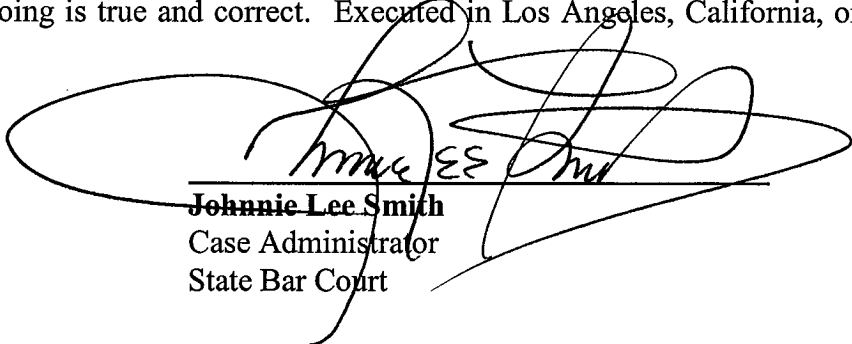
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**W. THOMAS NOTHERN
SHINEY & FARGO
13400 VENTURA BLVD 2FL
SHERMAN OAKS**

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

ALAN B. GORDON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 29, 2004.**


Johnnie Lee Smith
Case Administrator
State Bar Court