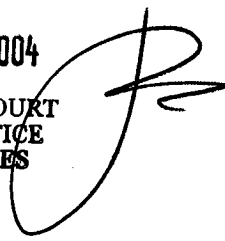


PUBLIC MATTER

FILED

APR 12 2004

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES



THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES

In the Matter of

MICHAEL PAUL FEDYNYSHYN,

Member No. 123566,

A Member of the State Bar.

Case No. 03-N-04422-RMT

DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

INTRODUCTION

The sole issue in this case is whether Respondent Michael Paul Fedynyshyn 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 December 4, 2003. The NDC was properly served upon Respondent on December 4, 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").¹ On December 12,
2 2003, the return receipt was returned to the State Bar, signed by Linan Fedynyshyn as the person
3 receiving the mailing².

4 Respondent did not file an answer to the NDC. Thereafter, on January 2, 2004, the State
5 Bar filed a Notice of Motion and Motion for Entry of Default. The motion was properly served
6 upon Respondent on January 2, 2004, by certified mail, return receipt requested, at his official
7 address.

8 The Court entered Respondent's default on February 5, 2004, after Respondent failed to
9 file 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 February 5, 2004, by certified mail addressed to him at his official address.

12 On February 10, 2004, the State Bar filed a waiver of hearing, and attached thereto was a
13 pre-trial statement and a brief on discipline.

14 The State Bar was represented throughout these proceedings by Deputy Trial Counsel
15 William F. Stralka. Respondent did not participate at any stage of these proceedings, either
16 personally or through counsel.

17 This matter was taken under submission as of February 11, 2004, since the State Bar
18 waived hearing.

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 Respondent was admitted to the practice of law in California on June 20, 1986, and has
21 been a member of the State Bar at all times since.³

22
23 ¹Pursuant to Evidence Code § 452, the Court takes judicial notice of the membership
24 records of the State Bar, which show that at all times since December 17, 2001, Respondent's
official address has been 7561 Center Ave. #52, Huntington Beach, California 92647.

25 ²See the Declaration of William F. Stralka, Deputy Trial Counsel, submitted in support of
26 the motion for entry of default.

27 ³Effective September 1, 2001, Respondent was enrolled as an inactive member as a result
28 of his failure to comply with continuing legal education requirements; effective September 16,
2002, Respondent was suspended from the practice of law for failure to pay annual membership

1 On July 2, 2003, the Supreme Court of California entered a final disciplinary order in *In*
2 *re Michael P. Fedynyshyn on Discipline*, Supreme Court Case No. S114599 (State Bar Court
3 Case No. 02-O-13400.) In its order, the Supreme Court suspended Respondent from the practice
4 of law for three years and until he complies with the probation conditions imposed in two earlier
5 disciplinary matters, stayed execution of the suspension, and placed Respondent on probation for
6 three years on condition that he be actually suspended for 18 months and until he complies with
7 the probation conditions of the earlier disciplinary matters.

8 As relevant to this proceeding, the Supreme Court also ordered Respondent to comply
9 with subdivisions (a) and (c) of rule 955 of the California Rules of Court within 30 and 40 days,
10 respectively, after the effective date of the Supreme Court's order. The order of the Supreme
11 Court became effective on August 1, 2003.

12 Upon filing of the July 2, 2003, order, in accordance with rule 24(a) of the California
13 Rules of Court, the Office of the Clerk of the Supreme Court of California served Respondent
14 with a copy of the Supreme Court's order imposing discipline and directing Respondent's
15 compliance with rule 955. (See Evid. Code, § 664.)

16 Respondent did not file an affidavit with the State Bar Court evidencing his compliance
17 with the requirements of rule 955, as ordered by the Supreme Court, either by the date ordered by
18 the Court or at any time thereafter.

19 The fact that Respondent may not be aware of the requirements of rule 955 or of his
20 obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule
21 955 does not require actual knowledge of the provision which is violated. The Supreme Court
22 has disbarred attorneys whose failure to keep their official addresses current prevented them from
23 learning that they had been ordered to comply with rule 955. (See *Powers v. State Bar* (1988)
24 44 Cal.3d 337, 341.)

25 Accordingly, this Court concludes that the State Bar has established by clear and
26 convincing evidence that Respondent wilfully failed to comply with rule 955 by failing to file an
27 _____
28 dues. Both the inactive enrollment and the suspension remains in effect. (Evidence Code § 452.)

1 affidavit attesting to his compliance with subdivision (a) of that rule, as ordered by the Supreme
2 Court in its July 2, 2003, order. Respondent's failure to comply with rule 955, as ordered by the
3 Supreme Court, also constitutes a wilful violation of Business and Professions Code section 6103
4 which provides that the wilful disobedience or violation of an order of a court constitutes cause
5 for disbarment or suspension.

6 **LEVEL OF DISCIPLINE**

7 **Factors in Mitigation**

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

9 **Factors in Aggravation**

10 Respondent has been disciplined on four previous occasions, which is an aggravating
11 factor pursuant to Standard 1.2(b)(i) of the Standards for Attorney Sanctions for Professional
12 Misconduct.

13 Effective July 9, 1997, Respondent was privately reprovved by the State Bar Court in case
14 no. 93-O-12761 et.al. It was determined that Respondent was culpable of the following
15 misconduct: in one client matter he failed to promptly refund unearned fees; in two client matters
16 he failed to promptly respond to reasonable status inquiries; without written consent, he
17 represented a party with an adverse interest to a former client; and he failed to cooperate with the
18 State Bar's investigation in three matters.

19 On August 25, 1999, the State Bar Court imposed a public reprovral in case no.
20 98-H-00602, as a result of Respondent's failure to comply with conditions attached to the private
21 reprovral imposed effective July 9, 1997. It was determined that Respondent failed to comply
22 with the following conditions: to file quarterly reports, including a final report; to complete 3
23 hours of continuing legal education courses; to complete ethics school; and to complete the
24 Multistate Professional Responsibility Examination.

25 On June 13, 2001, in Supreme Court case no. S096369 (State Bar Court Case No.
26 00-H-14102), Respondent was suspended for 90 days, execution stayed, and he was placed on
27 probation for one year, as a result of his failure to comply with conditions attached to a public
28 reprovral imposed effective October 6, 1999. It was determined that Respondent failed to

1 comply with the following conditions: to file a final quarterly report; to attend ethics school; to
2 complete the Multistate Professional Responsibility Examination; and to complete 3 hours of
3 continuing legal education courses.

4 As previously indicated, by minute order filed July 2, 2003, in Case No. S114599
5 (State Bar Court Case Nos. 02-O-13400) the Supreme Court suspended Respondent for three
6 years and until he complied with the probation conditions of two prior disciplinary matters,
7 stayed execution of the suspension, and placed him on probation for three years on condition he
8 be suspended for 18 months and until he complied with the earlier probation conditions.
9 Respondent was found culpable of failing to comply with probation conditions imposed in two
10 earlier disciplinary matters, specifically, the Supreme Court order in case no. S096369 (State Bar
11 Court Case No. 00-H-14102), and the State Bar Court order in case no 98-H-00602, imposing a
12 public reproof.

13 Respondent's failure to file the rule 955 compliance affidavit with the Clerk of the State
14 Bar Court significantly harmed the public and the administration of justice. (Standard
15 1.2(b)(iv).)

16 Respondent's failure to participate in the this matter prior to the entry of his default
17 demonstrates a lack of cooperation, and is an aggravating circumstance pursuant of standard
18 1.2(b)(vi).

19 **Discussion**

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

23 Timely compliance with rule 955 is essential to ensure that all concerned parties
24 (including clients, co-counsel, opposing counsel and all courts in which the attorney has pending
25 litigation) learn about the attorney's actual suspension from the practice of law. Compliance
26 with rule 955 also keeps the State Bar Court and the Supreme Court informed of the location of
27 attorneys who are subject to their respective disciplinary authority. (*Lydon v. State Bar* (1988)
28 45 Cal.3d 118, 1187.)

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

3 Respondent has exhibited a disregard for both the Supreme Court and the State Bar Court
4 in their efforts to fulfill their respective responsibilities to oversee the practice of law in the State
5 of California. Respondent's disregard is exemplified by (1) his failure to comply with rule 955;
6 and (2) his failure to participate in this disciplinary matter.

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

12 Respondent's disbarment is necessary to protect the public, the courts and the legal
13 profession, to maintain high professional standards and to preserve public confidence in the
14 profession. It would seriously undermine the integrity of the disciplinary system and damage
15 public confidence in the legal profession if Respondent were not disbarred for his wilful and
16 unexplained disobedience of the Supreme Court's July 2, 2003, order.

17 RECOMMENDED DISCIPLINE

18 This Court recommends that Respondent **MICHAEL PAUL FEDYNYSHYN** be
19 disbarred from the practice of law in the State of California and that his name be stricken from
20 the roll of attorneys in this State.

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

25 COSTS

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

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Dated: April 2nd, 2004

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CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1913a(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 April 12, 2004, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed April 12, 2004**

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

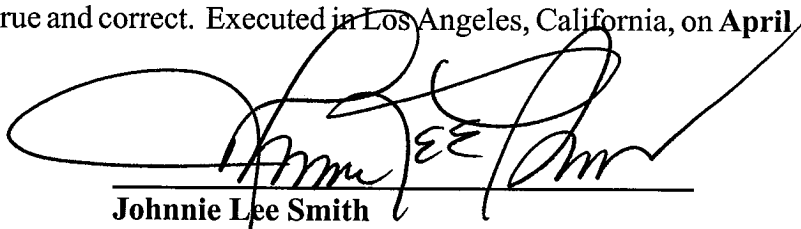
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MICHAEL P. FEDYNYSHYN
12209 BRASSICA ST
SAN DIEGO CA 92129**

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

William Stralka , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 12, 2004**.



Johnnie Lee Smith
Case Administrator
State Bar Court