

**FILED****FEB - 7 2005****STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES****THE STATE BAR COURT****HEARING DEPARTMENT - LOS ANGELES****PUBLIC MATTER**

In the Matter of

**FRED J. AMBROSE,****Member No. 183564****A Member of the State Bar.****Case No. 03-N-04538-RMT****AMENDED DECISION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT****INTRODUCTION**

The sole issue in this case is whether Respondent Fred J. Ambrose 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 in that he failed to timely file the required affidavit demonstrating his compliance with the rule. 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 in this State.

**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 January 20, 2004. The NDC was properly served upon Respondent on the same date 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 of the Rules

1 of Procedure of the State Bar ("Rules of Procedure").<sup>1</sup>

2 The NDC was returned to the State Bar by the U.S. Postal Service on February 3, 2004. The  
3 envelope containing the NDC was marked with the stamped notation "RETURN TO SENDER,  
4 FORWARD ORDER EXPIRED," along with a handwritten notation stating, "Return to Sender;  
5 Moved, No Forwarding Address."

6 Respondent did not file an answer to the NDC. Therefore, on March 3, 2004, the State Bar  
7 filed a Notice of Motion and Motion for Entry of Default. The Notice of Motion and Motion were  
8 properly served upon Respondent on the same date by certified mail, return receipt requested, at his  
9 official address.

10 The Court entered Respondent's default on April 15, 2004, after Respondent failed to file an  
11 answer to the NDC within ten days after service of the Notice of Motion and Motion for Entry of  
12 Default. (Rule 200(c), Rules Proc. of State Bar.) Notice of Entry of Default was properly served  
13 upon Respondent on the same date by certified mail, return receipt requested, addressed to him at  
14 his official address. The Notice of Entry of Default was returned to the State Bar Court by the U.S.  
15 Postal Service on April 22, 2004. The envelope containing the Notice of Entry of Default was  
16 marked with the stamped notation "RETURN TO SENDER, MOVED, LEFT NO ADDRESS."

17 Since January 22, 2004, the State Bar has been represented in this proceeding by Deputy Trial  
18 Counsel Joy Chantarasompoth and Supervising Trial Counsel Ronald E. Magnuson. Respondent  
19 did not participate in this proceeding, either personally or through counsel, until after a decision was  
20 filed in this matter. (See below.)

21 On April 9, 2004, the State Bar filed its Brief on Culpability and Discipline ("Brief"). In its  
22 Brief, the State Bar expressly waived its right to a default hearing pursuant to rule 202(c) of the  
23 Rules of Procedure. The State Bar's Brief included a copy of Respondent's prior record of  
24 discipline. The State Bar recommended in this proceeding that Respondent be disbarred from the  
25 practice of law in the State of California.

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28 <sup>1</sup> At all times since November 11, 2003, Respondent's official address has been 143  
Hedgerow Lane, West Chester, Pennsylvania 19380.

1 This matter was taken under submission on April 15, 2004. On June 9, 2004, the Court filed  
2 its Decision And Order Of Involuntary Inactive Enrollment, finding that Respondent wilfully failed  
3 to comply with rule 955, California Rules of Court, as ordered by the California Supreme Court, and  
4 thereby violated Business and Professions Code section 6103. The Court recommended that  
5 Respondent be disbarred from the practice of law in this State.

6 On July 27, 2004, Respondent filed a Motion To Set Aside Default, Or In The Alternative,  
7 Grant Leave For Filing Of Rule 955 Compliance Declaration *Nunc Pro Tunc*. On August 6, 2004,  
8 the State Bar filed its opposition to Respondent's motion.

9 On September 17, 2004, this Court, finding good cause, filed an Order Granting Motion To  
10 Set Aside Default, and, therefore, vacated its decision of June 9, 2004, terminated Respondent's  
11 inactive enrollment, and accepted for filing Respondent's proposed response to the NDC. The  
12 matter was returned to the trial calendar for further proceedings.

13 Thereafter, the State Bar sought interlocutory review of this Court's order vacating the June  
14 9, 2004, decision and setting aside Respondent's default. By order filed December 3, 2004, the  
15 Review Department reversed the order setting aside Respondent's default, and remanded this matter  
16 back to the Hearing Department for further action.

17 On January 7, 2005, this Court filed an Order Reinstating Default, wherein this matter was  
18 taken under submission for decision. The Court now issues this amended decision.

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

20 Respondent was admitted to the practice of law in California on August 9, 1996, and has  
21 been a member of the State Bar at all times since that date.<sup>2</sup>

22 On July 2, 2003, the California Supreme Court entered a final disciplinary order in *In re Fred*  
23 *J. Ambrose on Discipline*, Supreme Court Case No. S114605 (State Bar Court Case No. 01-O-  
24 02112). In its order, the Supreme Court suspended Respondent from the practice of law for a period  
25 of one year, stayed execution of the order of suspension, and actually suspended Respondent from  
26 the practice of law for a period of 60 days and until the State Bar Court grants a motion to terminate

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28 <sup>2</sup> As reflected in this Court's decision in Respondent's prior discipline matter, Respondent  
was also admitted to practice law in Pennsylvania on October 31, 1979. (Decision, at p. 4.)

1 his actual suspension pursuant to rule 205 of the Rules of Procedure. Among other things, the  
2 Supreme Court ordered that, in the event the period of Respondent's actual suspension continues for  
3 90 days or more, he must comply with rule 955 of the California Rules of Court and to perform the  
4 acts specified in subdivisions (a) and (c) of rule 955 within 120 and 130 calendar days, respectively,  
5 after the effective date of the Supreme Court's order.

6 The Supreme Court's final disciplinary order in Case No. S114605 became final on August  
7 1, 2003.

8 Upon filing of the July 2, 2003, order, and in accordance with rule 24(a) of the California  
9 Rules of Court, the Office of the Clerk of the Supreme Court of California served Respondent with  
10 a copy of the Supreme Court's order imposing discipline and directing Respondent to comply with  
11 rule 955 of the California Rules of Court. (Evid. Code, § 664.)

12 Respondent did not file an affidavit with the State Bar Court evidencing his compliance with  
13 the requirements of rule 955, as ordered by the Supreme Court, by the date ordered by the Court (i.e.,  
14 December 6, 2003). However, Respondent filed the subject affidavit on July 28, 2004,<sup>3</sup> which was  
15 after the filing of this disciplinary proceeding, the entry of Respondent's default for not responding  
16 to the charges, and the filing of this Court's decision recommending disbarment as a result of  
17 Respondent's failure to comply with rule 955. Respondent, therefore, did not file the affidavit for  
18 more than seven months.

19 This Court concludes that the State Bar has established, by clear and convincing evidence,  
20 that Respondent wilfully failed to comply with rule 955 of the California Rules of Court, by failing  
21 to timely file an affidavit attesting to his compliance with subdivision (a) of that rule, as ordered by  
22 the California Supreme Court in its July 2, 2003, order. Respondent's failure to timely comply with  
23 rule 955, as ordered by the Supreme Court, also constitutes a wilful violation of Business and  
24 Professions Code section 6103, which provides that the wilful disobedience or violation of a court  
25 order constitutes cause for disbarment or suspension.

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28 <sup>3</sup> Pursuant to Evid. Code §452, the Court takes judicial notice of its records which show  
that a "Compliance Declaration" was received by the State Bar on July 28, 2004.

## LEVEL OF DISCIPLINE

### Factors in Mitigation

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

### Factors in Aggravation

Respondent has a prior record of discipline, which is an aggravating circumstance pursuant to Standard 1.2(b)(i) of the Standards for Attorney Sanctions for Professional Misconduct ("Standards").

As previously indicated, by order filed July 2, 2003, in Case No. S114605 (State Bar Court Case No. 01-O-02112), the Supreme Court suspended Respondent from the practice of law for a period of one year, stayed execution of the order of suspension and actually suspended him for a period of 60 days and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure. In that proceeding, Respondent was found culpable in one client matter of failing to perform legal services competently in violation of rule 3-110(A) of the Rules of Professional Conduct, and of the improper withdrawal from employment, in violation of rule 3-700(A)(2). In addition, Respondent was found culpable of failing to cooperate in the State Bar's disciplinary investigation of the client's complaint, in violation of Business and Professions Code section 6068, subdivision (i). Respondent's misconduct in this proceeding occurred between March and June 2001.

Respondent's failure to timely file the rule 955 compliance affidavit with the Clerk of the State Bar Court significantly harmed the public and the administration of justice because. (Standard 1.2(b)(iv).) Respondent was required to file the subject affidavit by December 6, 2003, yet, Respondent did not file the affidavit until July 28, 2004. Therefore, for more than seven months, Respondent did not comply with the subject rule, which is no ministerial act, but rather to give assurance that all concerned parties are aware of Respondent's suspension and ineligibility to practice law.

### Discussion

Rule 955(d) of the California Rules of Court provides, in part, that "[a] suspended member's wilful failure to comply with the provisions of this rule constitutes a cause for disbarment or

1 suspension and for revocation of any pending probation.”

2 Timely compliance with rule 955 is essential to ensure that all concerned parties (including  
3 clients, co-counsel, opposing counsel and all courts in which the attorney has pending litigation)  
4 learn about the attorney’s actual suspension from the practice of law. Compliance with rule 955 also  
5 keeps the Supreme Court and the State Bar Court informed of the location of attorneys who are  
6 subject to their respective disciplinary authority. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.)

7 Disbarment is generally the appropriate sanction to be imposed for an attorney’s wilful  
8 violation of rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

9 Respondent has exhibited a disregard for both the Supreme Court and the State Bar Court  
10 in their efforts to fulfill their respective responsibilities to oversee the practice of law in California.  
11 Respondent’s disregard is exemplified by (1) his failure to participate in the prior disciplinary  
12 proceeding; (2) his failure to timely comply with rule 955; and (3) his failure to participate in the  
13 current proceeding until after a decision finding him culpable of the charged misconduct and  
14 recommending his disbarment.<sup>4</sup>

15 After considering the totality of the evidence, the Court finds no reason to depart from the  
16 usual sanction of disbarment for Respondent’s wilful violation of rule 955 and his resulting violation  
17 of Business and Professions Code section 6103. One of this Court’s obligations is to ensure that its  
18 disciplinary recommendations to the Supreme Court are fair and consistent. (*In re Young* (1989) 49  
19 Cal.3d 257, 268.)

20 Respondent’s disbarment is necessary to protect the public, the courts and the legal  
21 profession, to maintain high professional standards for attorneys and to preserve public confidence  
22 in the legal profession. It would seriously undermine the integrity of the disciplinary system and  
23 damage public confidence in the legal profession if Respondent were not disbarred for his wilful and  
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25 <sup>4</sup> In this Court’s decision filed January 8, 2003, in State Bar Court Case No. 01-O-02112, it was  
26 found that Respondent simply disappeared on or about April 20, 2001. Respondent’s wife last heard  
27 from him on that date, when she received a letter containing the keys to a rental car and instructions from  
28 Respondent directing her to retrieve the rental car from the Amtrak station in Wilmington, Delaware.  
(Decision, at p. 2.) Respondent physically abandoned his law practice in April 2001. By his own  
admission in the motion he filed to set aside his default in this matter, he was living outside the United  
States, and there was no contact until he returned to the country some three-and-a-half years later.

1 inexcusable delay in complying with the Supreme Court's July 2, 2003, order.

2 **RECOMMENDED DISCIPLINE**

3 This Court recommends that Respondent **FRED J. AMBROSE** be disbarred from the  
4 practice of law in the State of California and that his name be stricken from the roll of attorneys in  
5 this State.

6 It is also recommended that the Supreme Court order Respondent to comply with rule 955(a)  
7 of the California Rules of Court within thirty (30) calendar days of the effective date of the final  
8 disciplinary order of the Supreme Court in this matter and that it order Respondent to file the  
9 compliance affidavit required by rule 955(c) within forty (40) days of the effective date of the  
10 Supreme Court's final disciplinary order.

11 **COSTS**

12 It is recommended that costs be awarded to the State Bar pursuant to Business and  
13 Professions Code section 6086.10, and that such costs be made payable or enforceable in accordance  
14 with Business and Professions Code sections 6086.10, subdivision (a) and 6140.7.

15 **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

16 In light of this Court's recommendation that Respondent be disbarred from the practice of  
17 law, pursuant to the provisions of Business and Professions Code section 6007, subdivision (c)(4)  
18 and rule 220(b) of the Rules of Procedure, **IT IS HEREBY ORDERED** that Respondent **FRED**  
19 **J. AMBROSE** be involuntarily enrolled as an inactive member of the State Bar. The order of  
20 involuntary inactive enrollment shall be effective three court days after the date upon which this  
21 Decision is served.

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24 Dated: February 3, 2005

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26 ROBERT M. TALCOTT  
27 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 February 7, 2005, I deposited a true copy of the following document(s):

**AMENDED DECISION AND ORDER OF INVOLUNTARY INACTIVE  
ENROLLMENT, filed February 7, 2005**

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:

**Fred J. Ambrose  
3843 Tilden Ave #1  
Culver City, CA 90232**

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

**JOY CHANTARASOMPOTH, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 7, 2005.



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