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PUBLIC MATTER

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

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In the Matter of)	Case No. 04-N-10378-JMR
MICHAEL E. O'KEEFE,)	DECISION AND ORDER OF
Member No. 51267,)	INVOLUNTARY INACTIVE
<u>A Member of the State Bar.</u>)	ENROLLMENT

I. INTRODUCTION

In this disciplinary matter which proceeded by default, Timothy G. Byer appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Michael E. O'Keefe (Respondent) did not appear in person or by counsel.

Respondent is charged with failing to obey an order of the California Supreme Court requiring him to comply with rule 955 of the California Rules of Court.¹ After considering the evidence and the law, the court finds by clear and convincing evidence that Respondent is culpable of violating section 6103 of the Business and Professions Code.²

Accordingly, the court recommends that Respondent be disbarred.

II. PROCEDURAL HISTORY

On February 6, 2004, the State Bar filed a Notice of Disciplinary Charges (NDC) in case number 04-N-10378. On that same date the State Bar properly served the NDC on Respondent at

¹Unless otherwise noted, all further references to "rule 955" are to rule 955 of the California Rules of Court.

²Unless otherwise noted, all further references to "section" refer to the Business and Professions Code.

1 his official membership records address, by certified mail, return receipt requested, as provided in
2 Business and Professions Code section 6002.1 (c). On or about February 18, 2004, the NDC was
3 returned to the State Bar as undeliverable.

4 On February 26, 2004, Respondent was properly served at his official membership records
5 address with a notice advising him, among other things, that an initial status conference would be
6 held on March 22, 2004. Respondent did not appear at the March 22, 2004, status conference.

7 Respondent did not file a responsive pleading to the NDC. On April 3, 2004, the State Bar
8 filed and properly served a motion for entry of default on Respondent at his official membership
9 records address. The motion advised Respondent that minimum discipline of disbarment would be
10 sought if he was found culpable. Respondent did not respond to the motion.

11 On April 21, 2004, the court entered Respondent's default and enrolled him inactive effective
12 three days after service of the order. The order was served on Respondent at his membership records
13 address.

14 On May 26, 2004, the State Bar filed a request for waiver of default hearing and a brief on
15 culpability and discipline and recommended that Respondent be disbarred from the practice of law
16 in California. On July 15, 2004, the State Bar filed a certified copy of Respondent's prior record of
17 discipline. The matter was ordered to stand submitted on all issues on July 21, 2004.

18 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

19 Unless ordered by the court based on contrary evidence, the factual allegations set forth in
20 the NDC are deemed admitted upon entry of default and no further proof is required to establish the
21 truth of such facts. (Bus. & Prof. Code § 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).) The
22 court's factual findings are based on the allegations contained in the NDC and the certified copy of
23 Respondent's prior record of discipline.

24 A. Facts

25 Respondent was admitted to the practice of law in California on January 5, 1972, and has
26 been a member of the State Bar at all times since.

27 On November 18, 2003, the California Supreme Court filed a final disciplinary order in *In*
28 *re Michael Edward O'Keefe*, Supreme Court Case No. S11857 (State Bar Court Case No. 02-O-

1 14788).³ In its order the Supreme Court suspended Respondent from the practice of law for two
2 years, stayed execution of the suspension, and actually suspended Respondent for 90 days and until
3 he makes restitution and the State Bar Court grants a motion to terminate his actual suspension.

4 The Supreme Court also ordered Respondent to comply with subdivisions (a) and (c) of rule
5 955 within 30 and 40 days, respectively, after the effective date of the Supreme Court's order. The
6 order became effective on December 18, 2003.

7 Upon filing of the November 18, 2003 Supreme Court order, in accordance with rule 24(a)
8 of the California Rules of Court, the Office of the Clerk of the Supreme Court of California served
9 Respondent with a copy of the Supreme Court's order imposing discipline and directing
10 Respondent's compliance with rule 955. (Evid. Code, § 664.)

11 On November 25, 2003, the Office of Probation of the State Bar sent, among other things,
12 a copy of the Supreme Court order by first-class mail, postage prepaid, to Respondent at his official
13 membership records address. The U.S. Postal Service returned the mailing as undeliverable.

14 Respondent was obligated to comply with subdivision (a) of rule 955 by January 17, 2004,
15 and to comply with subdivision (c) of rule 955 by January 27, 2004. To date, Respondent has not
16 complied with rule 955 and has offered no explanation to this court for his non-compliance.

17 **B. Legal Conclusions**

18 **Section 6103 (Failure to Obey Court Order)**

19 Section 6103 prohibits an attorney from wilfully disobeying or violating an order of the court
20 requiring him to do or forbear an act connected with or in the course of his profession, which he
21 ought in good faith to do or forbear.

22 Whether Respondent is aware of the requirements of rule 955 or of his obligation to comply
23 with those requirements is immaterial. "Wilfulness" in the context of rule 955 does not require
24 actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys
25 whose failure to keep their official addresses current prevented them from learning that they had
26

27 ³Although the NDC incorrectly alleges the Supreme Court Order Number as 02-O-14788,
28 the order attached as exhibit 1 to the NDC indicates the Supreme Court Case Number is S118571.

1 been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

2 Thus, the State Bar has established by clear and convincing evidence that Respondent
3 wilfully failed to comply with rule 955, as ordered by the Supreme Court in its November 18, 2003,
4 order. Respondent's failure to comply with rule 955 constitutes a violation of section 6103, which
5 provides for disbarment or suspension for attorneys who wilfully disobey court orders.

6 IV. LEVEL OF DISCIPLINE

7 A. Factors in Mitigation

8 There are no factors in mitigation presented by the record in this proceeding. (Standard
9 1.2(e), Rules of Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct
10 (Standards).)

11 B. Factors in Aggravation

12 1. Respondent's prior record of discipline is an aggravating circumstance. (Standard
13 1.2(b)(i).)

14 In Supreme Court case number S118571, the underlying matter, Respondent was suspended
15 for two years, stayed, and was actually suspended for 90 days. Respondent defaulted in the
16 proceeding and was found culpable of engaging in the unauthorized practice of law during his
17 administrative suspension, committing an act of dishonesty, failing to provide an accounting and
18 failing to return unearned fees.

19 2. Respondent demonstrated indifference toward rectification of or atonement for the
20 consequences of his misconduct by failing to comply with rule 955 even after the NDC in this
21 proceeding was filed. (Standard 1.2(b)(v).)

22 3. Respondent's failure to participate in this disciplinary matter prior to the entry of his
23 default is a serious aggravating factor. (Standard 1.2(b)(vi); *Conroy v. State Bar* (1991) 53 Cal.3d
24 495, 507.)

25 C. Discussion

26 Respondent's wilful failure to comply with rule 955 is extremely serious misconduct for
27 which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990)
28 50 Cal.3d 116, 131.) Such failure undermines the rule's prophylactic function of ensuring that all

1 concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar*
2 (1988) 45 Cal.3d 1181, 1187.)

3 Respondent has demonstrated an unwillingness to comply with the professional obligations
4 and rules of court imposed on California attorneys. By failing to comply with rule 955 and failing
5 to participate in this proceeding, Respondent also exhibits a disregard for both the Supreme Court's
6 and the State Bar Court's efforts to fulfill their respective responsibilities to oversee the practice of
7 law in the State of California.

8 The court is unaware of any facts or circumstances justifying a departure from the usual
9 sanction of disbarment for Respondent's wilful violation of rule 955 and his concurrent violation of
10 section 6103. Respondent's disbarment is necessary to protect the public, the courts and the legal
11 community, to maintain high professional standards and to preserve public confidence in the legal
12 profession. It would undermine the integrity of the disciplinary system and damage public
13 confidence in the legal profession if Respondent were not disbarred for his unexplained wilful
14 disobedience of the Supreme Court order.

15 V. DISCIPLINE RECOMMENDATION

16 Accordingly, it is hereby recommended that Respondent MICHAEL E. O'KEEFE be
17 disbarred from the practice of law in the State of California and that his name be stricken from the
18 rolls of attorneys in this State.

19 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
20 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the
21 effective date of its order imposing discipline in this matter.

22 VI. COSTS

23 The court recommends that costs be awarded to the State Bar pursuant to section 6086.10 and
24 that those costs be payable in accordance with section 6140.7.

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VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(c)(4) and rule 220(c), Rules of Procedure of the State Bar of California. The inactive enrollment shall become effective three days after service of this order.

Dated: September 9, 2004



JOANN M. REMKE
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 San Francisco, on September 9, 2004, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

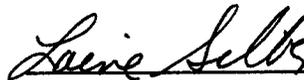
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MICHAEL EDWARD O'KEEFE
12321 OCEAN PARK BLVD #6
LOS ANGELES CA 90064

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 9, 2004.**



Laine Silber
Case Administrator
State Bar Court