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AUG 12 2004 *YK*

**STATE BAR COURT
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LOS ANGELES**

PUBLIC MATTER

STATE BAR COURT

HEARING DEPARTMENT – LOS ANGELES

In the Matter of

**GARY FREDERIC MYERS,
No. 98819**

A Member of the State Bar

Case No. 04-N-11471 RAH

**DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT**

INTRODUCTION

The sole issue in this case is whether Respondent Gary Frederic Myers 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 on January 12, 2004. 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 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 April 27, 2004. The NDC was properly served upon Respondent on the same date by certified mail, return receipt

1 requested, addressed to Respondent's official membership address ("official address") pursuant to
2 Business and Professions Code section 6002.1, subdivision (c) and rule 60 of the Rules of Procedure
3 of the State Bar ("Rules of Procedure").¹

4 The NDC was subsequently returned to the State Bar by the U.S. Postal Service. The
5 envelope containing the NDC was marked with the stamped notation "Not Deliverable As
6 Addressed; Unable to Forward."²

7 Respondent did not file an answer to the NDC. Therefore, on May 28, 2004, the State Bar
8 filed a Notice of Motion and Motion for Entry of Default. The Notice of Motion and Motion were
9 properly served upon Respondent on the same date by certified mail, return receipt requested, at his
10 official address.

11 The Court entered Respondent's default on June 16, 2004, after Respondent failed to file an
12 answer to the NDC within ten days after service of the Notice of Motion and Motion for Entry of
13 Default.³ (Rule 200(c), Rules Proc. of State Bar.) Notice of Entry of Default was properly served
14 upon Respondent on the same date by certified mail, return receipt requested, addressed to him at
15 his official address. The Notice of Entry of Default was returned to the State Bar Court by the U.S.
16 Postal Service on June 22, 2004. The envelope containing the Notice of Entry of Default was
17 marked with the stamped notation "Returned to Sender; Forwarding Order Expired."

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21 ¹ At all times since February 16, 2001, Respondent's official address has been 3337 W. Florida
22 Avenue, # 189, Hemet, California 92545.

23 ² According to a declaration executed by Deputy Trial Counsel Gordon L. Grenier, neither the
24 State Bar nor the Office of Probation have an alternate address for Respondent. The State Bar's efforts
25 to contact Respondent by telephone, e-mail, directory assistance and through yahoo.com were
26 unsuccessful.

27 ³ As a result of the entry of Respondent's default, he was involuntarily enrolled as an inactive
28 member of the State Bar, effective June 19, 2004. (Bus. & Prof. Code, § 6007, subd. (e)(1).) He has also
been suspended from the practice of law since September 4, 2002, as a result of his failure to pay his
annual membership fees. (Bus. & Prof. Code, § 6143.)

1 to comply with rule 955 of the California Rules of Court. (Evid. Code, § 664.)

2 On March 10, 2004, a probation deputy with the State Bar's Office of Probation wrote a letter
3 to Respondent reminding him of his obligation to comply with rule 955 and enclosing a copy of both
4 the Supreme Court's January 12, 2004, Order and a Rule 955 Compliance Affidavit form approved
5 by the State Bar Court Executive Committee. The probation deputy mailed the letter and enclosed
6 documents to Respondent on March 10, 2004, by first-class mail addressed to Respondent at his
7 official membership address. The probation deputy's letter was not returned to the State Bar as
8 undeliverable for any reason.

9 Respondent did not file an affidavit with the State Bar Court evidencing his compliance with
10 the requirements of rule 955, as ordered by the Supreme Court, either by the date ordered by the
11 Court (i.e., March 22, 2004) or at any time thereafter.

12 The fact that Respondent may be unaware of the requirements of rule 955 or of his obligation
13 to comply with those requirements is immaterial. In the context of rule 955, the term "wilful" does
14 not require actual knowledge of the provision that is violated. The Supreme Court has disbarred
15 attorneys whose failure to keep their official State Bar addresses current prevented them from
16 learning that they had been ordered to comply with rule 955. (See, e.g., *Powers v. State Bar* (1988)
17 44 Cal.3d 337, 341.)

18 Accordingly, this Court concludes that the State Bar has established, by clear and convincing
19 evidence, that Respondent wilfully failed to comply with rule 955 of the California Rules of Court,
20 by failing to file an affidavit attesting to his compliance with subdivision (a) of that rule, as ordered
21 by the California Supreme Court in its January 12, 2004, Order. Respondent's failure to comply with
22 rule 955, as ordered by the Supreme Court, also constitutes a wilful violation of Business and
23 Professions Code section 6103, which provides that the wilful disobedience or violation of a court
24 order constitutes cause for disbarment or suspension.

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1 **LEVEL OF DISCIPLINE**

2 **Factors in Mitigation**

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

4 **Factors in Aggravation**

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

8 As previously indicated, by order filed January 12, 2004, in Case No. S120139 (State Bar
9 Court Case No. 00-O-15526), the Supreme Court suspended Respondent from the practice of law
10 for a period of eighteen months, stayed execution of the order of suspension and actually suspended
11 him for a period of 90 days and until the State Bar Court grants a motion to terminate his actual
12 suspension pursuant to rule 205 of the Rules of Procedure. In that default proceeding, Respondent
13 was found culpable in one client matter of failing to competently perform legal services in violation
14 of rule 3-110(A) of the Rules of Professional Conduct, the improper withdrawal from employment
15 in violation of rule 3-700(A)(2) and the failure to communicate with his clients in violation of
16 Business and Professions Code section 6068, subdivision (m). In addition, Respondent was found
17 culpable of failing to cooperate in the State Bar’s disciplinary investigation of the client complaint
18 in violation of Business and Professions Code section 6068, subdivision (i). Respondent’s
19 misconduct in this proceeding occurred between June 2000 and July 2001.

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

22 **Discussion**

23 Rule 955(d) of the California Rules of Court provides, in part, that “[a] suspended member’s
24 wilful failure to comply with the provisions of this rule constitutes a cause for disbarment or
25 suspension and for revocation of any pending probation.”

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

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

8 Respondent has exhibited a disregard for both the Supreme Court and the State Bar Court
9 in their efforts to fulfill their respective responsibilities to oversee the practice of law in California.
10 Respondent's disregard is exemplified by (1) his failure to participate in the prior disciplinary
11 proceeding; (2) his failure to comply with rule 955; and (3) his failure to participate in the current
12 proceeding.

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

18 Respondent's disbarment is necessary to protect the public, the courts and the legal
19 profession, to maintain high professional standards for attorneys and to preserve public confidence
20 in the legal profession. It would seriously undermine the integrity of the disciplinary system and
21 damage public confidence in the legal profession if Respondent were not disbarred for his wilful,
22 persistent and unexplained disobedience of the Supreme Court's January 12, 2004, Order.

23 **RECOMMENDED DISCIPLINE**

24 This Court recommends that Respondent **GARY FREDERIC MYERS** be disbarred from
25 the practice of law in the State of California and that his name be stricken from the roll of attorneys
26 in this State.

1 It is also recommended that the Supreme Court order Respondent to comply with rule 955
2 of the California Rules of Court and that he be ordered to comply with the requirements of rule
3 955(a) within 30 calendar days of the effective date of the final disciplinary order of the Supreme
4 Court in this matter and to file the compliance affidavit required by rule 955(c) within 40 calendar
5 days of the effective date of the Supreme Court's final disciplinary order.

6
7 **COSTS**

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

11
12 **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

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

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21 Dated: August 9, 2004



RICHARD A. HONN
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 Los Angeles, on August 12, 2004, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed August 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:

**Gary Frederic Myers
3337 W Florida Ave #189
Hemet, CA 92545**

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

GORDON GRENIER, Enforcement, Los Angeles

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



Tammy R. Cleaver
Case Administrator
State Bar Court