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In the Matter of)
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RONALD WILLIAM FITZGERALD,)
)
Member No. 80041,)
)
A Member of the State Bar.)

Case No. 04-N-11790-PEM
**DECISION INCLUDING DISBARMENT
RECOMMENDATION AND
INVOLUNTARY INACTIVE
ENROLLMENT ORDER**

INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California ("OCTC") alleging that respondent Ronald William Fitzgerald failed to comply with rule 955, California Rules of Court ("CRC 955") as ordered by the Supreme Court. OCTC was represented by Eric H. Hsu. 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 and properly served on respondent on June 9, 2004, 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)").) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

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

1 This correspondence was returned as undeliverable by the United States Postal Service ("USPS")
2 because the forwarding order had expired.

3 On June 18, 2004, the State Bar Court properly served respondent by first-class mail,
4 postage prepaid at his official address with a notice scheduling a status conference on July 26,
5 2004. The Court judicially notices its records that this correspondence, as was all other
6 correspondence sent by the Court, was returned as undeliverable by the USPS because the
7 forwarding order had expired. On June 22, 2004, a notice indicating that the July 26 status
8 conference would be held telephonically was properly served on respondent. Respondent did not
9 appear at the status conference. On July 27, 2004, an order memorializing the status conference
10 was properly served on respondent at his official address.

11 Respondent did not file a response to the NDC. On July 30, 2004, OCTC properly served
12 on respondent a motion for entry of default by certified mail, return receipt requested, at his
13 official address. The motion was filed on August 3, 2004. (Rule 200(a), (b).) The motion
14 advised respondent that OCTC would seek minimum discipline of disbarment if he was found
15 culpable. (Rule 200(a)(3).)

16 Respondent did not respond to the default motion. Orders entering respondent's default
17 and involuntarily enrolling him inactive were filed and properly served on him on August 19,
18 2004, by certified mail, return receipt requested at his official address. This document advised
19 respondent, among other things, that he was enrolled inactive pursuant to section 6007(e)
20 effective three days after service of the order.

21 OCTC's efforts to locate and contact respondent were fruitless.

22 The case was submitted for decision after OCTC filed a brief and waived hearing.

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 June 23, 1978, and has

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

2 On February 3, 2004, the California Supreme Court filed an order, number S120624
3 ("February 3, 2004, order") in State Bar Court case no. 02-O-10295 in which respondent was
4 ordered, among other things, to be actually suspended for six months and until he disgorged
5 certain compensation and complied with rule 205, Rules Proc. of State Bar. He was also ordered
6 to comply with CRC 955(a) and (c) within 30 and 40 days, respectively, of the effective date of
7 the February 3, 2004, order. The February 3, 2004, order was effective on March 4, 2004. (Rule
8 953(a), Cal. Rules of Court.) Accordingly, respondent was to comply with CRC 955(a) no later
9 than April 3, 2004, and with CRC 955(c) no later than April 13, 2004.

10 Upon filing of the February 3, 2004, order, the Supreme Court sent respondent a copy of
11 the said order imposing discipline and directing his compliance with CRC 955.²

12 A copy of the February 3, 2004, order also was attached to the NDC in the instant
13 proceeding.

14 On March 1, 2004, the State Bar's Probation Office wrote a letter to respondent
15 reminding him of the obligation to comply with rule 955, Cal. Rules of Court, which included a
16 form for reporting compliance therewith and a copy of the Supreme Court's February 3, 2004,
17 order. On April 8, 2004, another letter was sent to respondent reminding him about compliance
18 with CRC 955(c). Each letter indicated that the CRC 955(c) affidavit must be filed by April 13,
19 2004. The letters were sent by first-class mail, postage prepaid, to respondent's State Bar
20 membership records address. The letters were returned as undeliverable.

21 As of June 9, 2004, respondent had not filed with the State Bar Court the affidavit
22 required by CRC 955(c). He still has not done so.³ He has offered no explanation to this Court
23 for his failure to comply with CRC 955(c).

24 Based on the foregoing, it has been proved by clear and convincing evidence that
25

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 do not
28 contain a CRC 955(c) affidavit from respondent.

1 respondent wilfully violated the February 3, 2004, order directing his compliance with CRC
2 955.⁴ This constitutes a violation of section 6103, which requires attorneys to obey court orders.

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

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

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

10 Respondent's prior discipline record is an aggravating circumstance. (Standard 1.2(b)(i).)
11 As previously discussed, in S120624, the Supreme Court imposed discipline including actual
12 suspension of six months and until he disgorged certain compensation and complied with rule
13 205. In that matter, respondent was found culpable, in one client matter, of practicing law while
14 suspended for nonpayment of State Bar membership dues as well as violations of Rule of
15 Professional Conduct 4-200(A) and sections 6068(i) and (j), 6103 and 6106. The Court notes
16 that respondent did not participate in this disciplinary proceeding.

17 In BM5705, the Supreme Court imposed discipline consisting of two years stayed
18 suspension and two years probation on conditions, including 60 days actual suspension, among
19 other things. In that matter, respondent and OCTC stipulated to his culpability, in one client
20 matter, of violating sections 6068, 6103 and 6106, as well as Rules of Professional Conduct 8-
21 101(A)(2), (B)(3) and (4).

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

25
26 ⁴"Wilfulness" in the context of CRC 955 does not require actual knowledge of the provision
27 which is violated. The Supreme Court has disbarred an attorney whose failure to keep his
28 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 Respondent's failure to participate in proceedings prior to the entry of default is also an
2 aggravating factor. (Standard 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward
3 disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to
4 participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept.
5 2000) 4 Cal. State Bar Ct. Rptr. 103, 109 - 110.)

6 **LEVEL OF DISCIPLINE**

7 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to
8 protect the public, to preserve public confidence in the profession, and to maintain the highest
9 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;
10 *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

11 Respondent's wilful failure to comply with CRC 955(c) is extremely serious misconduct
12 for which disbarment is generally considered the appropriate sanction. *Bercovich v. State Bar*
13 (1990) 50 Cal.3d 116,131; rule 955(d), Cal. Rules of Court.) Disbarment has been consistently
14 imposed by the Supreme Court as the sanction for noncompliance with CRC 955. *Bercovich v.*
15 *State Bar* (1990) 50 Cal.3d at p. 131; *Lydon v. State Bar* (1988) 45 Cal.3d at p. 1188; *Powers v.*
16 *State Bar* (1988) 44 Cal.3d at p. 342.)

17 Respondent has demonstrated an unwillingness to comply with the professional
18 obligations and rules of court imposed on California attorneys although he has been given the
19 opportunity to do so. He failed to participate in this proceeding and did not comply with CRC
20 955(c). More importantly, respondent's failure to comply with CRC 955 undermines its
21 prophylactic function in ensuring that all concerned parties learn about an attorney's suspension
22 from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d at p. 1187.)

23 Respondent's disbarment is necessary to protect the public, the courts and the legal
24 community, to maintain high professional standards and to preserve public confidence in the
25 legal profession. It would undermine the integrity of the disciplinary system and damage public
26 confidence in the legal profession if respondent were not disbarred for his unexplained wilful
27 disobedience of the Supreme Court 's order.

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DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent RONALD WILLIAM FITZGERALD be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 955, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

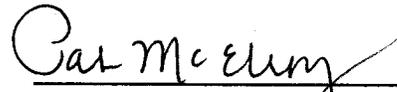
COSTS

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

ORDER REGARDING INACTIVE ENROLLMENT

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

Dated: December 9, 2004



PAT McELROY
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 December 9, 2004, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
INVOLUNTARY INACTIVE ENROLLMENT ORDER**

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

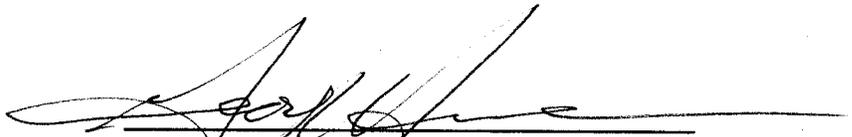
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**RONALD WILLIAM FITZGERALD
3333 S BREA CANYON RD
DIAMOND BAR CA 91765-0000**

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

DESIREE WASHINGTON, Enforcement, Los Angeles

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



George Hue
Case Administrator
State Bar Court