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

In the Matter of
THOMAS SCOTT TANANA,
Member No. 147892,
A Member of the State Bar.

Case No. 04-N-12116-JMR

**DECISION AND ORDER OF
INACTIVE ENROLLMENT**

I. INTRODUCTION

In this disciplinary matter which proceeded by default, Deputy Trial Counsel Fumiko D. Kimura appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Thomas Scott Tanana¹ did not appear in person or by counsel.

Respondent is charged with violating his duty, under section 6103 of the Business and Professions Code,² to comply with court orders in the course of his profession by willfully disobeying a California Supreme Court order directing him to comply with rule 955 of the California Rules of Court (rule 955). After considering the evidence and the law, the court finds, by clear and convincing evidence, that respondent is culpable of wilfully violating section 6103 as charged. The court concludes that respondent should be disbarred.

¹Respondent was admitted to the practice of law in California on September 20, 1990, and has been a member of the State Bar since that time. He has one prior record of discipline, which also proceeded by default.

²Unless otherwise noted, all further statutory references are to this code.

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II. PROCEDURAL HISTORY

The State Bar filed the notice of disciplinary charges (NDC) in this proceeding on September 21, 2004. The day before, i.e., September 20, 2004, the State Bar, in accordance with section 6002.1, subdivision (c), properly served a copy of the NDC on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar (official address).³ That service was deemed complete when mailed even if respondent did not receive it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.)

Moreover, according to the declaration of a State Bar deputy trial counsel that is attached to the State Bar's December 3, 2004 motion for entry of default ("trial counsel declaration"), the copy of the NDC mailed to respondent at his official address on September 20, 2004, was not returned (undelivered or otherwise) to the State Bar by the Postal Service. In fact, according to that declaration, "[o]n or about September 27, 2004, [trial counsel] received a signed return receipt" for that copy of the NDC from the Postal Service.⁴

On September 30, 2004, the State Bar Court Clerk properly served on respondent a notice advising him, inter alia, that an initial status conference in this proceeding would be held on November 15, 2004. This notice was not returned (undelivered or otherwise) to the State Bar Court Clerk by the Postal Service. Respondent, however, did not appear at that conference either in person or through counsel.

Respondent's was required to file a response to the NDC no later than October 15, 2004 (Rules Proc. of State Bar, rule 103(a)), but he did not do so. Thereafter, on November 15, 2004, as a courtesy to respondent, the State Bar mailed a copy of the NDC to respondent by certified mail,

³Ever since October 24, 1991, respondent's official address has been 4019 Goldfinch Street, #176, San Diego, California 92103; effective November 4, 1991, that address was updated to add the four digit extension of 1802 to respondent's zip code (now 92103-1802). However, as this court found in its November 22, 2002, decision in respondent's prior record of discipline in State Bar Court case number 01-O-02075-JMR, this address is a mailbox service called MAILCALL Plus and, in October 2001, the manager of that service told a State Bar investigator that respondent's rental of box #176 expired in September 2001.

⁴Unfortunately, the record does not indicate who signed the return receipt particularly in light of the facts recited in footnote 3 *ante*.

1 return receipt requested, at 3595 Mercer Court, San Diego, California 92111 ("Mercer Court
2 address"). The Mercer Court address is shown as an alternative addresses for respondent in this
3 court's November 22, 2002, decision in case number 01-O-02075-JMR. The Mercer Court address
4 was also respondent's official address for a little longer than one month from September 20, 1990,
5 through October 25, 1990.⁵ The Postal Service returned the copy of the NDC that was sent to the
6 Mercer Court address to the State Bar as undelivered and marked "Attempted - Not Known,
7 Returned to Sender."

8 On December 3, 2004, the State Bar filed a motion for the entry of respondent's default.⁶ On
9 December 2, 2004, the State Bar properly served a copy of the motion on respondent by certified
10 mail, return receipt requested, at his official address, and as a courtesy to respondent, the State Bar
11 also mailed a copy of the motion to respondent at the Mercer Court address.

12 According to the State Bar, on December 9, 2004, the Postal Service returned both of these
13 copies of the motion for entry of default to the State Bar undelivered: the copy that was mailed to
14 respondent's official address is marked "Undeliverable as Addressed, Returned to Sender," and the
15 copy that was mailed to the Mercer Court address is marked "Refused, Returned to Sender."

16 Respondent did not respond to the motion for entry of default. Because all of the statutory
17 and rule prerequisites were met, this court filed an order on December 20, 2004, entering
18 respondent's default and, as mandated in section 6007, subdivision (e)(1), placing him on
19 involuntary inactive enrollment. The Clerk of the State Bar Court properly served a copy of that
20 order on respondent at his official address. In addition, the clerk sent a courtesy copy of the order
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22 ⁵The State Bar undertook a couple of other minor steps to locate respondent and give him
23 actual notice of this proceeding, which are set forth in the trial counsel declaration. The most
24 meaningful of those steps and the results were the trial counsel obtaining a telephone number for
25 respondent from directory assistance for San Diego, calling that number on November 15, 2004,
26 and speaking to a woman who identified herself as respondent's mother. She told the trial
27 counsel that the telephone number he had called was not respondent's, but respondent's "Dad's
28 number." She also told the trial counsel that she did not have a telephone number for her son,
but that she would take a message for her son and would give it to him *if* she spoke with him.

⁶The motion contains a request that the court take judicial notice of all of respondent's
official membership addresses. That request is granted.

1 to respondent at the Mercer Court address. But the Postal Service returned both copies of this order
2 to the State Bar Court Clerk undelivered.

3 On January 28, 2005, the State Bar filed a request for waiver of default hearing and brief on
4 culpability and discipline.⁷ And the court took the matter under submission for decision without
5 hearing that same day.

6 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7 The court's findings are based on the allegations contained in the NDC, which are deemed
8 admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A)),
9 on the facts in court's official case file in this proceeding and on exhibits 1 through 7 that are
10 attached to the State Bar's January 28, 2005, request for waiver of default hearing.

11 A. Findings of Facts

12 On June 5, 2003, the Supreme Court of California filed an order in *In re Thomas Scott*
13 *Tanana*, case number S114227 (State Bar Court case number 01-O-02075), placing respondent on
14 one year's stayed suspension and 30 days' actual suspension that continues until he files and the
15 State Bar Court grants a motion, under rule 205 of the Rules of Procedure of the State Bar, to
16 terminate his actual suspension and, if he is remains actually suspended for two or more years, until
17 he establishes his rehabilitation, fitness to practice, and legal learning in accordance with standard
18 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.⁸ The Supreme Court
19 order also directs that, if respondent is actually suspended for 90 days or more, he must comply with
20 rule 955 and to perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130
21 days, respectively, after the effective date of the order. The Supreme Court order became effective
22 July 5, 2003, and has remained in effect since that time. (Cal. Rules of Court, rule 953(a).)

23 The Clerk of the Supreme Court promptly mailed a copy of the Supreme Court's June 5,
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26 ⁷Exhibits 1 through 7 to this pleading are admitted into evidence. (Rules Proc. of State
27 Bar, rule 202(c).)

28 ⁸The standards are found in title IV of the Rules of Procedure of the State Bar. All further
references to standards are to this source.

1 2003, order to respondent once the order was filed. (Cal. Rules of Court, rule 29.4(a).)⁹

2 On July 10, 2003, the State Bar's Office of Probation mailed to respondent at his official
3 address a letter reminding him of his duty, under the Supreme Court order, to comply with rule 955.¹⁰
4 The Office of Probation enclosed with its letter (1) a copy of the Supreme Court's order and (2) a
5 copy of the State Bar Court Executive Committee approved Rule 955 Compliance Declaration form.
6 The July 10, 2003, letter was never returned (undelivered or otherwise) to the Office of Probation
7 by the Postal Service.

8 As of October 3, 2003, respondent had been on actual suspension for 90 days. Accordingly,
9 no later than November 2, 2003, respondent was required to comply with the requirements in rule
10 955(a) by, inter alia, notifying his clients; opposing counsel or, if none, opposing parties; and all
11 courts, agencies, and tribunal before which he represented clients of his actual suspension and
12 resulting disqualification to act. Then, no later than November 12, 2003, respondent was required
13 to file, with the Clerk of the State Bar Court, a rule 955(c) declaration showing that he had fully and
14 timely complied with the requirements in rule 955(a).

15 The record does not establish whether respondent complied with rule 955(a) by November
16 2, 2003, but it does establish that respondent did not file a rule 955(c) declaration by the November
17 12, 2003, deadline or at anytime thereafter.

18 **B. Legal Conclusions**

19 The court finds that the State Bar has proved, by clear and convincing evidence, that
20 respondent failed to comply with the provision of rule 955(c) as alleged in the NDC because he never
21 filed, with the Clerk of the State Bar Court, a declaration showing that he fully complied with the
22 provision in the Supreme Court order directing him to comply with rule 955. Accordingly, the court
23

24 ⁹Even though there is evidence suggesting that respondent may not have received the
25 copy of the order that the Supreme Court Clerk mailed to him because he failed to update his
26 official address (see footnote 3 *ante*), that evidence will not preclude a finding of culpability.
(See discussion at p. 6, *post*.)

27 ¹⁰As the State Bar notes, this letter erroneously notified respondent that the due date for
28 him to file a rule 955(c) declaration was February 22, 2004. The correct due date was November
12, 2003.

1 holds that respondent violated his duty, under section 6103, to obey court orders requiring him to
2 do an act connected with the and in the course of his of his profession, which he ought in good faith
3 do. This is true even if respondent is not aware of the requirements of rule 955 or of his obligation
4 to comply with them. In the context of rule 955, the term wilful does not require actual knowledge
5 of the provision violated. Furthermore, the Supreme Court has disbarred attorneys whose failure to
6 keep their official addresses current prevented them from learning that they had been ordered to
7 comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

8 IV. LEVEL OF DISCIPLINE

9 A. Factors in Mitigation

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

11 B. Factors in Aggravation

12 1. Prior Record of Discipline

13 As noted above, respondent has one prior record of discipline, which is an aggravating
14 circumstance. (Std. 1.2(b)(i).) That prior record was the Supreme Court order under which
15 respondent was placed on one year's stayed suspension and on 30 days' actual suspension continuing
16 until he files and the State Bar Court grants a motion, under rule 205 of the Rules of Procedure of
17 the State Bar, to terminate his actual suspension. That discipline was imposed because respondent:
18 (1) violated his duty, under section 6068, subdivision (a), to obey the laws of this state when he
19 wilfully and intentionally held himself out to the public and potential clients as being entitled to
20 practice law while he was on involuntary inactive enrollment and actual suspension in violation of
21 sections 6125 and 6126, subdivision (b); (2) violated his duty, under section 6068, subdivision (i),
22 to participate in the State Bar's investigation of a client's complaints against him; and (3) violated
23 his duty, under section 6068, subdivision (j), to maintain a current office address and telephone
24 number on the official membership records of the State Bar as required by section 6002.1.

25 2. Harm to Administration of Justice

26 Respondent's failure to file the rule 955(c) compliance declaration with the Clerk of the State
27 Bar Court significantly harmed the administration of justice. (Std. 1.2(b)(iv).)

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1 **C. Discussion**

2 The primary purpose of disciplinary proceedings conducted by the State Bar is to protect the
3 public, the courts and the legal profession, the maintenance of high professional standards and the
4 preservation of public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989)
5 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

6 Rule 955(d) provides in relevant part that a suspended attorney's "wilful failure to comply
7 with the provisions of [rule 955] constitutes cause for disbarment or suspension and for revocation
8 of any pending probation." Even though rule 955(d) provides for the sanction of suspension and for
9 the revocation of disciplinary probation for an attorney's wilful violation of rule 955, disbarment is
10 ordinarily the appropriate degree of discipline in the absent compelling mitigating circumstances.
11 (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3
12 Cal. State Bar Ct. Rptr. 287, 296.)

13 Among other things, a suspended attorney's timely compliance with rule 955(a) performs the
14 critical function of ensuring that all concerned parties, including clients, co-counsel, opposing
15 counsel, courts, agencies, and other tribunals, promptly learn of the attorney's actual suspension and
16 consequent disqualification to act as an attorney. And when an attorney fails to file a rule 955(c)
17 compliance declaration, neither this court nor the Supreme Court can determine whether this critical
18 function has been performed. Thus, it is not surprising that a suspended attorney is required to file
19 a rule 955(c) compliance declaration even if he does not have any clients to notify. (*Powers v. State*
20 *Bar, supra*, 44 Cal.3d at p. 341.) In addition, compliance with rule 955(c) keeps this court and the
21 Supreme Court apprised of the location of attorneys who are subject to their disciplinary authority.
22 (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.)

23 Respondent's unexplained failure to file a rule 955(c) compliance declaration suggests a
24 conscious disregard for both this court and the Supreme Court's efforts to fulfill their respective
25 responsibilities to oversee the practice of law in the State of California. Moreover, there are no
26 mitigating circumstances, much less compelling mitigating circumstances, that would warrant a
27 departure from the ordinary sanction of disbarment for respondent's wilful failure to comply with
28 rule 955(c). What is more, the court concludes that only disbarment will adequately fulfill the

1 purposes of attorney discipline. Anything short of disbarment for respondent's wilful and
2 unexplained failure to comply with rule 955(c) as ordered by the Supreme Court would certainly
3 undermine the integrity of the disciplinary system and damage public confidence in the legal
4 profession.

5 **V. DISCIPLINE RECOMMENDATION**

6 Accordingly, it is hereby recommended that respondent Thomas Scott Tanana be disbarred
7 from the practice of law in the State of California and that his name be stricken from the roll of
8 attorneys of all persons admitted to practice in this state.

9 **VI. RULE 955 AND COSTS**

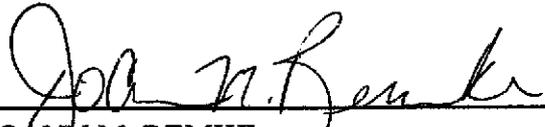
10 It is further recommended that respondent be ordered to comply with the provisions of rule
11 955 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of
12 that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court
13 order in this matter.

14 It is further recommended that the costs incurred in this matter be awarded to the State Bar
15 in accordance with section 6086.10 and that such costs be payable in accordance with section 6140.7.

16 **VII. ORDER OF INACTIVE ENROLLMENT**

17 In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is
18 ordered that respondent Thomas Scott Tanana is involuntary enrolled as an inactive member of the
19 State Bar of California effective three calendar days after the date this order is filed. (Accord, Rules
20 Proc. of State Bar, rule 220(c).)

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24 Dated: April 28, 2005



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 April 28, 2005, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INACTIVE ENROLLMENT, filed April 28, 2005

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

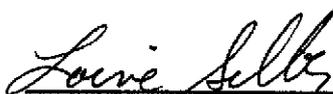
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**THOMAS S. TANANA
4019 GOLDFINCH ST #176
SAN DIEGO CA 92103 1820**

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

FUMIKO KIMURA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 28, 2005.



Laine Silber
Case Administrator
State Bar Court