

**FILED****SEP -1 2004****STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

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

PUBLIC MATTER

In the Matter of

**ALLEN CHRISTOPHER
JORGENSEN,**

Member No. 97647,

A Member of the State Bar.

Case No. 04-N-12117-RMT

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

INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California ("OCTC") alleging that respondent Allen Christopher Jorgensen 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 22, 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.) This correspondence was returned as undeliverable by the United States Postal Service ("USPS")

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

1 with the notation "Return to sender. Moved. Left no address."

2 On June 28, 2004, the State Bar Court properly served respondent by first-class mail,
3 postage prepaid at his official address with notice scheduling a status conference on August 17,
4 2004. This correspondence was returned as undeliverable with the notation "Return to sender.
5 Undeliverable as addressed."

6 Respondent did not file a response to the NDC. On August 2, 2004, OCTC filed and
7 properly served on respondent a motion for entry of default by certified mail, return receipt
8 requested, at his official address. (Rule 200(a), (b).) The motion advised respondent that OCTC
9 would seek minimum discipline of disbarment if he was found culpable. (Rule 200(a)(3).)

10 Respondent did not appear at the August 17 status conference. On August 19, 2004,
11 respondent was properly served at his official address with a post-status conference order
12 indicating that a status conference would be held on August 23, 2004.²

13 Respondent did not respond to the default motion. Orders entering respondent's default
14 and involuntarily enrolling him inactive were filed and properly served on him on August 23,
15 2004, by certified mail, return receipt requested at his official address. This document advised
16 respondent, among other things, that he was enrolled inactive pursuant to section 6007(e)
17 effective three days after service of the order.

18 Respondent did not appear at the August 23 status conference; however, the Court
19 recognizes that the order setting it may not have reached respondent in time to allow him to do
20 so. On August 23, 2004, respondent was properly served at his official address with a post-status
21 conference order that also advised him that the motion for entry of default had been granted and
22 that the case had been submitted for decision.

23 OCTC's efforts to locate respondent were fruitless.

24 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

25 The Court's findings are based on the allegations contained in the NDC as they are
26

27 ²The Court notes a clerical error on this order. The file stamp bears the date of August
28 16, 2004, although the status conference was held and the Court executed the order on August
17, 2004.

1 deemed admitted and no further proof is required to establish the truth of those allegations.
2 (Section 6088; Rule 200(d)(1)(A).) The findings are also based upon matters admitted into
3 evidence or judicially noticed.

4 Respondent was admitted to the practice of law in California on May 29, 1981, and has
5 been a member of the State Bar at all times since.

6 On November 4, 2003, the California Supreme Court filed an order ("November 4, 2003,
7 order") in Supreme Court case number S118235 (State Bar Court nos. 02-O-11444; 03-H-00881
8 (Cons.)) imposing discipline on respondent including the following: two years and until
9 restitution stayed suspension; two years probation on conditions including actual suspension of
10 75 days and until restitution. If his actual suspension reached two years or more, he was to
11 comply with standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
12 The Supreme Court further ordered respondent to comply with CRC 955, subdivisions (a) and
13 (c), within 120 and 130 days, respectively, if the period of his actual suspension extended for 90
14 days or more. The November 4, 2003, order was effective on December 4, 2003. (Rule 953(a),
15 Cal. Rules of Court.) Respondent's actual suspension has exceeded 90 days. Accordingly,
16 Respondent was to comply with CRC 955(c) no later than April 12, 2004.

17 Upon filing of the November 4, 2003, order, the Office of the Clerk of the Supreme Court
18 of California sent respondent a copy of the said order imposing discipline and directing his
19 compliance with CRC 955.³

20 On December 19, 2003, a deputy from the State Bar's Office of Probation wrote
21 respondent a letter reminding him of the terms and conditions of his probation. He was
22 specifically reminded that the CRC 955(c) affidavit was due by April 14, 2004. A copy of the
23 Supreme Court's order, a CRC 955 Compliance Declaration form and other materials were
24 enclosed with the letter. The letter was sent to respondent's official address in a sealed envelope
25 with first-class postage prepaid. It was not returned as undeliverable.

26 On March 26, 2004, a probation deputy wrote to respondent advising him that his CRC
27

28 ³See, rule 24(a), California Rules of Court, and Evidence Code section 664.

1 955(c) affidavit must be filed by April 12, 2004, not April 14 as previously stated. The letter was
2 sent to respondent's official address in a sealed envelope with first-class postage prepaid. It was
3 not returned as undeliverable.

4 A copy of the November 4, 2003, order also was attached to the NDC in the instant
5 proceeding.

6 As of June 22, 2004, respondent had not filed with the State Bar Court the affidavit
7 required by CRC 955(c). He still has not done so.⁴ He has offered no explanation to this Court
8 for his failure to comply with CRC 955(c).

9 Based on the foregoing, it has been proved by clear and convincing evidence that
10 respondent wilfully violated the November 4, 2003, order directing his compliance with CRC
11 955.⁵ This constitutes a violation of section 6103, which requires attorneys to obey court orders.

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

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

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

19 Respondent's prior discipline record is an aggravating circumstance. (Standard
20 1.2(b)(i).)⁶ As previously discussed, in S118235, the Supreme Court imposed discipline
21

22 ⁴Pursuant to Evidence Code section 452(d), the Court judicially notices that its records
23 still do not contain a CRC 955(c) affidavit from respondent.

24 ⁵"Wilfulness" in the context of CRC 955 does not require actual knowledge of the
25 provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep
26 his 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.)

27 ⁶The prosecution did not submit a certified copy of respondent's prior discipline record as
28 is the better practice. Accordingly, the Court judicially notices its records with regard to
respondent's prior discipline.

1 including actual suspension of 75 days and until he made restitution, among other things. The
2 parties stipulated to culpability, in nine client matters, of violating Rules of Professional Conduct
3 ("RPC") rules 3-110(A) (seven counts), 3-700(A)(2) (four counts), 3-700(D)(1) and (2) (three
4 charges each) and 1-110 (one count), and sections 6068(m) (seven counts) and 6103 (one count).
5 Client harm was agreed to as an aggravating factor. Respondent's candor and cooperation was a
6 mitigating factor.

7 In State Bar Court case no. 00-O-15183), effective December 30, 2001, respondent
8 received a public reproof for, in one client matter, agreeing that he violated sections 6068(i) and
9 (m) and RPCs 3-700(D)(1) and (2). Lack of cooperation was an aggravating factor. In
10 mitigation, it was agreed that respondent returned the client's files and fees, albeit after the State
11 Bar's intervention.

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

15 Respondent's failure to participate in proceedings prior to the entry of default is also an
16 aggravating factor. (Standard 1.2(b)(vi).) He did not participate in the August 17, 2004, status
17 conference. He has demonstrated his contemptuous attitude toward disciplinary proceedings as
18 well as his failure to comprehend the duty of an officer of the court to participate therein, a
19 serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct.
20 Rptr. 103, 109 - 110.)

21 LEVEL OF DISCIPLINE

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

26 Respondent's wilful failure to comply with CRC 955(c) is extremely serious misconduct
27 for which disbarment is generally considered the appropriate sanction. *Bercovich v. State Bar*
28 (1990) 50 Cal.3d 116,131; rule 955(d), Cal. Rules of Court.) Disbarment has been consistently

1 imposed by the Supreme Court as the sanction for noncompliance with CRC 955. *Bercovich v.*
2 *State Bar* (1990) 50 Cal.3d at p. 131; *Lydon v. State Bar* (1988) 45 Cal.3d at p. 1188; *Powers v.*
3 *State Bar* (1988) 44 Cal.3d at p. 342.)

4 Respondent has demonstrated an unwillingness to comply with the professional
5 obligations and rules of court imposed on California attorneys although he has been given several
6 opportunities to do so. He failed to participate in this proceeding and did not comply with CRC
7 955(c). More importantly, respondent's failure to comply with CRC 955 undermines its
8 prophylactic function in ensuring that all concerned parties learn about an attorney's suspension
9 from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d at p. 1187.)

10 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
12 legal 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's order.

15 DISCIPLINE RECOMMENDATION

16 IT IS HEREBY RECOMMENDED that respondent Allen Christopher Jorgensen be
17 DISBARRED from the practice of law in the State of California and that his name be stricken
18 from the rolls of attorneys in this state.

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

24 COSTS


25 The Court recommends that costs be awarded to the State Bar pursuant to Business and
26 Professions Code section 6086.10, and that those costs be payable in accordance with section
27 6140.7.

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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: August 30, 2004


ROBERT M. TALCOTT
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 September 1, 2004, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT, filed
September 1, 2004**

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

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**Allen Christopher Jorgensen
Butterfield Center
3088 West Ramsey
Banning CA. 92220**

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

ERIC HSU, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 1, 2004.



Tammy R. Cleaver
Case Administrator
State Bar Court