



PUBLIC MATTER

FILED

JAN 12 2005

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

Case No. 04-N-13567-RAH

HELEN LOUISE DELANEY,

DECISION INCLUDING DISBARMENT
RECOMMENDATION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

Member No. 105560,

A Member of the State Bar.

INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California ("the State Bar") alleging that Respondent Helen Louise Delaney failed to comply with rule 955, California Rules of Court ("CRC 955") as ordered by the Supreme Court. The State Bar was represented by Eli Morgenstern, Deputy Trial Counsel. 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 September 1, 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

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

1 1181, 1186.) However, on October 5, 2004, the mailing was returned to the State Bar by the
2 United States Postal Service (“USPS”) with a notation “RETURN TO SENDER,
3 UNCLAIMED.”

4 Respondent did not file a response to the NDC. On September 28, 2004, the State Bar
5 filed and properly served on Respondent a motion for entry of default by certified mail, return
6 receipt requested, at her official address. The motion advised Respondent that the State Bar
7 would seek minimum discipline of disbarment if she was found culpable. (Rule 200(a)(3).)

8 Respondent did not respond to the default motion. An order entering Respondent's
9 default and involuntarily enrolling her inactive was filed and properly served on Respondent on
10 October 15, 2004, by certified mail, return receipt requested, at her official address. This
11 document advised Respondent, among other things, that she was enrolled inactive pursuant to
12 section 6007(e) effective three days after service of the order. The Court judicially notices its
13 records which indicate that the postal service returned the order as undeliverable.

14 On October 21, 2004, the State Bar filed its brief regarding discipline, and a waiver of its
15 right to a default hearing pursuant to rule 202(c) of the Rules of Procedure. The State Bar's brief
16 included a certified copy of Respondent's prior record of discipline. The State Bar recommends
17 in this proceeding that Respondent be disbarred.

18 The case was submitted for decision on October 21, 2004.

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 The Court's findings are based on the allegations contained in the NDC as they are deemed
21 admitted and no further proof is required to establish the truth of those allegations. (Section 6088;
22 Rule 200(d)(1)(A).) The findings are also based upon matters admitted into evidence or judicially
23 noticed.

24 Respondent was admitted to the practice of law in California on December 3, 1982, and
25 has been a member of the State Bar at all times since.²

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27
28 ²Effective September 4, 2002, Respondent was suspended from the practice of law for
failure to pay membership fees, and that suspension remains in effect.

1 On October 16, 2003, the California Supreme Court filed an order, number S117863 (" the
2 October 16, 2003, order") in State Bar Court case no. 01-O-05085, in which Respondent was
3 ordered, among other things, to be actually suspended for 60 days and until this Court granted a
4 motion to terminate her actual suspension pursuant to rule 205, Rules Proc. of State Bar. If she
5 was actually suspended for 90 days or more, she was also ordered to comply with CRC 955(a) and
6 (c) within 120 and 130 days, respectively, of the effective date of the October 16, 2003, order,
7 which was effective on November 15, 2003.³ (Rule 953(a), Cal. Rules of Court.)

8 Accordingly, if Respondent remained suspended beyond 90 days, that is beyond February
9 13, 2004, Respondent was to comply with CRC 955(a) no later than March 15, 2004, and with
10 CRC 955(c) no later than March 25, 2004. Upon filing of the October 16, 2003, order, the
11 Supreme Court sent Respondent a copy of the said order imposing discipline and directing her
12 compliance with CRC 955.⁴

13 A copy of the October 16, 2003, order also was attached to the NDC in the instant
14 proceeding.

15 On November 3, 2003, the State Bar's Office of Probation sent a letter to Respondent
16 reminding her of her obligation to comply with CRC 955, enclosing with the letter a copy of the
17 suspension order as well as a form for compliance with CRC 955. The letter was sent by first-
18 class mail, postage prepaid, addressed to Respondent's official address. The letter was not
19 returned as undeliverable.

20 As of September 1, 2004, Respondent had not filed with the State Bar Court the affidavit
21 required by CRC 955(c). She still has not done so.⁵ She has offered no explanation to this Court
22 for her failure to comply with CRC 955(c).

23
24 ³The NDC alleges that the Supreme Court order was effective November 17, 2003, but
25 the correct date is November 15, 2003, which is thirty days after the order was filed. Therefore,
26 on the Court's own motion the NDC is amended to conform to proof.

27 ⁴See, rule 24(a), California Rules of Court, and Evidence Code section 664.

28 ⁵Pursuant to Evidence Code section 452(d), the Court judicially notices that its records
still do not contain a CRC 955(c) affidavit from Respondent.

1 Based on the foregoing, it has been proved by clear and convincing evidence that
2 Respondent wilfully violated the October 16, 2003, order directing her compliance with CRC
3 955.⁶ This constitutes a violation of section 6103, which requires attorneys to obey court orders.

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

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

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

11 Respondent has one prior discipline matter, which is an aggravating circumstance.
12 (Standard 1.2(b)(i).)

13 In the underlying matter, Respondent was found culpable of a trust account violation and
14 the commission of an act of moral turpitude, specifically, commingling personal funds in her client
15 trust account, and issuing a check from her trust account when she knew, or should have known,
16 that there were insufficient funds in the trust account to cover the check. In addition, Respondent
17 was found culpable of failing to cooperate with the State Bar's investigation relating to the trust
18 account violations.

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

22 Respondent's failure to participate in this proceeding prior to the entry of default is also an
23 aggravating factor. (Standard 1.2(b)(vi).) She has demonstrated her contemptuous attitude toward
24 disciplinary proceedings as well as her failure to comprehend the duty of an officer of the court to
25

26 ⁶"Wilfulness" in the context of CRC 955 does not require actual knowledge of the
27 provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep
28 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.)

1 participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000)
2 4 Cal. State Bar Ct. Rptr. 103, 109 - 110.)

3 LEVEL OF DISCIPLINE

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

8 Respondent's wilful failure to comply with CRC 955(c) is extremely serious misconduct for
9 which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990)
10 50 Cal.3d 116,131; rule 955(d), Cal. Rules of Court.) Disbarment has been consistently imposed
11 by the Supreme Court as the sanction for noncompliance with CRC 955. (*Bercovich v. State Bar*
12 (1990) 50 Cal.3d at p. 131; *Lydon v. State Bar* (1988) 45 Cal.3d at p. 1188; *Powers v. State Bar*
13 (1988) 44 Cal.3d at p. 342.)

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

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

25 DISCIPLINE RECOMMENDATION

26 IT IS HEREBY RECOMMENDED that Respondent Helen Louise Delaney be
27 DISBARRED from the practice of law in the State of California and that her name be stricken
28 from the rolls of attorneys in this state.

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


5 **COSTS**

6 The Court recommends that costs be awarded to the State Bar pursuant to Business and
7 Professions Code section 6086.10, and that those costs be payable in accordance with section
8 6140.7.

9 **ORDER REGARDING INACTIVE ENROLLMENT**

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

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18 Dated: January 12 2005

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20 _____
21 RICHARD A. HONN
22 Judge of the State Bar Court
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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 January 12, 2005, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
ORDER OF INVOLUNTAR INACTIVE ENROLLMENT, filed January 12, 2005**

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

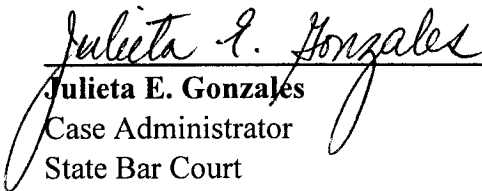
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**HELEN L DELANEY ATTORNEY AT LAW
1561 S BARRINGTON AVE #308
LOS ANGELES CA 90025**

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 12, 2005**.



Julieta E. Gonzales
Case Administrator
State Bar Court