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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

JOSEPH MARIOTT HARTLEY,**Member No. 97610,**A Member of the State Bar.**Case No. 04-N-14578-JMR****DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT****I. Introduction**

In this default matter, **Respondent JOSEPH MARIOTT HARTLEY** is found culpable, by clear and convincing evidence, of failing to comply with rule 955 of the California Rules of Court,¹ as ordered by the California Supreme Court on May 19, 2004, in case No. S104452 (State Bar Court case No. 03-PM-04401).

The court recommends that Respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was properly served on Respondent on October 28, 2004, at his official membership records address and filed on November 2, 2004. The State Bar received the return receipt, signed by "Meda Whitley."

On November 8, 2004, the State Bar sent a letter to Respondent at an alternate address at 1517 Grant Street, Santa Monica, California 90405-1615, regarding the NDC. The letter was not returned as undeliverable or for any other reason.

¹All references to rule 955 are to rule 955 of the California Rules of Court.

1 On November 29, 2004, the State Bar telephoned Respondent at his official membership
2 records number. A voice mail answered and identified the number as "Hartley and Hartley." The
3 State Bar left a message. The State Bar also telephoned Respondent at an alternate phone number²
4 and left Respondent a message. Respondent did not return either call.

5 On motion of the State Bar, Respondent's default was entered on December 15, 2004. The
6 order of entry of default was properly mailed to Respondent's official membership records address.
7 Respondent was enrolled as an inactive member under Business and Professions Code section
8 6007(e)³ on December 18, 2004.

9 Respondent never filed a response to the NDC. (Rules Proc. of State Bar, rule 103.)

10 Respondent did not participate in the disciplinary proceedings. The court took this matter
11 under submission on January 4, 2005, following the filing of State Bar's brief on culpability and
12 discipline.

13 **III. Findings of Fact and Conclusions of Law**

14 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default
15 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
16 200(d)(1)(A).)

17 **A. Jurisdiction**

18 Respondent was admitted to the practice of law in California on May 29, 1981, and has been
19 a member of the State Bar since that time.

20 **B. Violation of California Rules of Court, Rule 955**

21 On May 19, 2004, the California Supreme Court in case No. S104452 (State Bar Court case
22 No. 03-PM-04401) revoked Respondent's probation and actually suspended him for one year from
23 the practice of law. Credit toward the period of actual suspension was given for the period of
24

25 ²The alternate telephone number was confirmed by Respondent on August 9, 2004,
26 during a conversation with the State Bar, regarding another disciplinary matter currently abated,
State Bar Court case No. 03-O-04977-JMR.

27 ³All references to sections are to the Business and Professions Code, unless otherwise
28 indicated.

1 involuntary inactive enrollment which commenced on February 7, 2004. Among other things, the
2 Supreme Court ordered Respondent to comply with rule 955, subdivisions (a) and (c), within 30 and
3 40 days, respectively, after the effective date of the Supreme Court order. The order became
4 effective June 18, 2004, and was duly served on Respondent.

5 Rule 955(c) mandates that Respondent "file with the Clerk of the State Bar Court an affidavit
6 showing that he ... has fully complied with those provisions of the order entered pursuant to this
7 rule."

8 On May 19, 2004, the Office of the Clerk of the California Supreme Court served upon
9 Respondent a copy of the Supreme Court order imposing discipline and directing Respondent to
10 comply with rule 955.

11 Respondent was to have filed the rule 955 affidavit by July 28, 2004, but to date, he has not
12 done so and has offered no explanation to this court for his noncompliance. Whether Respondent
13 is aware of the requirements of rule 955 or of his obligation to comply with those requirements is
14 immaterial. "Wilfulness" in the context of rule 955 does not require actual knowledge of the
15 provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their
16 official membership record addresses current prevented them from learning that they had been
17 ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

18 Therefore, the State Bar has established by clear and convincing evidence that Respondent
19 wilfully failed to comply with rule 955 as ordered by the Supreme Court.⁴

20 **C. Violation of Business and Professions Code Section 6103**

21 Accordingly, Respondent's failure to comply with rule 955 constitutes a violation of section
22 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or
23 violation of such orders constitutes cause for disbarment or suspension.

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26
27 ⁴Specifically, rule 955(d) provides that a suspended attorney's wilful failure to comply
28 with rule 955 constitutes a cause for disbarment or suspension and for revocation of any pending
probation.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁵

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent's two prior records of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

1. In California Supreme Court case No. S104452 (State Bar Court case No. 98-O-02754), effective May 12, 2002, Respondent, upon stipulation, was suspended for one year, stayed, and was placed on probation for three years on condition that he be actually suspended for 60 days, for his misconduct in a single client matter.
2. In California Supreme Court case No. S104452 (State Bar Court case No. 03-PM-04401), effective June 18, 2004, the underlying matter, Respondent's probation was revoked and he was actually suspended for one year for violating his probation conditions.

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

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

Respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the

⁵All further references to standards are to this source.

1 professional obligations and rules of court imposed on California attorneys although he has been
2 given opportunities to do so. Moreover, he had repeatedly failed to participate in these disciplinary
3 proceedings by defaulting in the underlying matter and in the instant case.

4 Therefore, Respondent's disbarment is necessary to protect the public, the courts and the
5 legal community, to maintain high professional standards and to preserve public confidence in the
6 legal profession. It would undermine the integrity of the disciplinary system and damage public
7 confidence in the legal profession if Respondent were not disbarred for his wilful disobedience of
8 the Supreme Court order.

9 **VI. Recommended Discipline**

10 The court recommends that Respondent **JOSEPH MARIOTT HARTLEY** be disbarred
11 from the practice of law in the State of California and that his name be stricken from the roll of
12 attorneys in this state.

13 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
14 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the
15 effective date of its order imposing discipline in this matter.

16 **VII. Costs**

17 The court recommends that costs be awarded to the State Bar pursuant to section 6086.10,
18 and that those costs be payable in accordance with section 6140.7.

19 **VIII. Order of Involuntary Inactive Enrollment**

20 It is ordered that Respondent be transferred to involuntary inactive enrollment status under
21 section 6007(c)(4) and rule 220(c) of the Rules of Procedure of the State Bar. The inactive
22 enrollment will become effective three calendar days after this order is filed.

23
24
25
26 Dated: March 29, 2005

27 
28 **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 March 29, 2005, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed March 29, 2005**

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

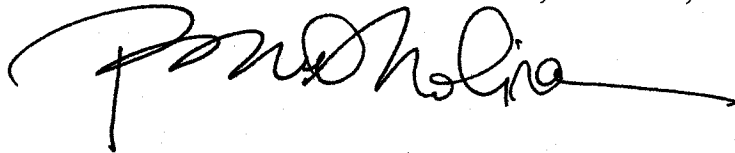
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JOSEPH MARIOTT HARTLEY
HARTLEY & HARTLEY
2118 WILSHIRE BLVD #352
SANTA MONICA CA 90403**

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

KIMBERLY ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **March 29, 2005.**



Bernadette C. O. Molina
Case Administrator
State Bar Court