PUBLIC MATTER

FILED

OCT 13 2005

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **LESLIE LAYTON HARTWELL,** **Member No. 66139,** A Member of the State Bar.	**Case No. 05-N-01517-RAH** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this default matter, respondent **LESLIE LAYTON HARTWELL** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,[1] as ordered by the California Supreme Court on January 13, 2005, in S128823 (State Bar Court case No. 04-O-10158).

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 at his official membership records address and filed on May 6, 2005. The mailing was returned as undeliverable.

On June 7, 2005, the State Bar telephoned respondent at his official membership records number and left a voice mail for respondent to return the call. Respondent did not return the call.

On motion of the State Bar, respondent's default was entered on July 5, 2005. The order of

[1]All references to rule 955 are to California Rules of Court, rule 955.

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entry of default was properly mailed to respondent's official membership records address. Respondent was enrolled as an inactive member under Business and Professions Code section 6007(e)[2] on July 8, 2005.

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

Respondent did not participate in the disciplinary proceedings. The court took this matter under submission on July 18, 2005, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

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

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 18, 1975, and has been a member of the State Bar since that time.

B. Violation of California Rules of Court, Rule 955

On January 13, 2005, the California Supreme Court in S128823 (State Bar Court case No. 04-O-10158) suspended respondent from the practice of law for three years, stayed the execution of the suspension and actually suspended him for one year and until he makes restitution and until the State Bar Court grants a motion to terminate his actual suspension under rule 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. The order became effective February 12, 2005, and was duly served on respondent.

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

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[2]All references to sections are to the Business and Professions Code, unless otherwise indicated.

rule."

On January 13, 2005, the Office of the Clerk of the California Supreme Court served upon respondent a copy of the Supreme Court order imposing discipline and directing respondent to comply with rule 955.

Respondent was to have filed the rule 955 affidavit by March 24, 2005, but to date, he has not done so and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 955 or of his obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Supreme Court.[3]

C. Violation of Business and Professions Code Section 6103

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

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).)[4]

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).)

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

[4]All further references to standards are to this source.

1. In California Supreme Court case No. S105458 (State Bar Court case No. 99-C-12292), effective June 16, 2002, respondent, upon stipulation, was suspended for six months, stayed, and was placed on probation for 18 months, subject to the conditions of probation, including 30 days actual suspension and restitution, for his 1999 felony conviction for vandalism in violation of California Penal Code section 594(a). In the disciplinary proceeding, the parties stipulated that the circumstances surrounding respondent's criminal conviction did not involve moral turpitude, but constituted other misconduct warranting discipline. Respondent was found not to be responsible for his actions because of a previously undiagnosed disorder.

2. In California Supreme Court case No. S128823 (State Bar Court case No. 04-O-10158), effective February 12, 2005, the underlying matter, respondent was suspended for three years, stayed, and was actually suspended for one year and until he makes restitution and until the State Bar Court terminates his actual suspension under rule 205 of the Rules of Procedure of the State Bar for violating the probation conditions imposed in the first disciplinary matter.

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.) Like the misconduct in the underlying matter, respondent violated a Supreme Court order. Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given

opportunities to do so. Moreover, he had repeatedly failed to participate in these disciplinary proceedings by defaulting in the underlying matter and in the instant case.

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

VI. Recommended Discipline

The court recommends that respondent **LESLIE LAYTON HARTWELL** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

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

VII. Costs

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

VIII. Order of Involuntary Inactive Enrollment

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

Dated: October 13, 2005

RICHARD A. HONN
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 of California. 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 October 13, 2005, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

LESLIE L HARTWELL ESQ
P O BOX 2385
HOLLYWOOD, CA 90078-2385

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

Eric H. Hsu, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 13, 2005**.

Julieta E. Gonzales

Julieta E. Gonzales
Case Administrator
State Bar Court