

FILED

AUG 17 2005

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

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

In the Matter of

BRET JAY DAVIS,

Member No. 159076,

A Member of the State Bar.

Case No. 05-N-01700-RAP

**DECISION AND ORDER OF
INACTIVE ENROLLMENT**

I. Introduction

In this disciplinary proceeding, which proceeded by default, Deputy Trial Counsel Jean Cha appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Bret Jay Davis¹ 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). Specifically, the State Bar alleges that respondent failed to file, with the Clerk of the State Bar Court, a declaration of his compliance in accordance with rule 955(c). 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 June 8, 1992, and has been a member of the State Bar since that time. He has one prior record of discipline.

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



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II. Procedural History

On May 19, 2005, the State Bar filed the notice of disciplinary charges ("NDC") in this proceeding and, 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"). That service was deemed complete when mailed even if respondent did not receive it.³ (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.)

On June 1, 2005, the State Bar Court Clerk properly served, on respondent at his official address, a notice advising him, inter alia, that an initial status conference in this proceeding would be held on June 30, 2004. But that notice was returned undelivered to the clerk by the United States Postal Service (Postal Service) bearing the handwritten notation "Return to Sender."

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³The record does not indicate whether respondent actually received this copy of the NDC (i.e., the record does not show whether the State Bar received a signed return receipt – i.e., the green card) or whether the copy of the NDC was returned undelivered to the State Bar. Nonetheless, the court presumes that respondent did not receive that copy because, attached to the State Bar's June 15, 2005, motion for entry of default in this proceeding, is a declaration executed by Deputy Trial Counsel Cha in which Cha sets forth the multiple unsuccessful attempts she made to contact respondent. Even though those attempts do not establish that the State Bar exceeded its " 'minimum' " statutory duty under section 6002.1, subdivision (c) and made a meaningful effort to locate respondent attorneys to insure that he has actual knowledge of the existence of this proceeding (*Bowles v. State Bar, supra*, 48 Cal.3d at p. 108, fn. 7; *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1183-1185, 1186 [detailing how State Bar made every reasonable effort to notify the attorney of disciplinary activity]), the court notes that they are not the only attempts that the State Bar made. Cha made numerous other attempts to locate respondent, which laudably included searching for respondent on P-Trak Person Locator service on the Internet, contacting respondent's former landlords, etc. The additional attempts to locate respondent are set forth in the declaration that Cha executed and attached to the State Bar's April 22, 2005, motion for entry of default in *In the Matter of Bret Jay Davis*, State Bar Court case number 04-O-15489-RAP (*Davis II*). A copy of that declaration is attached to the State Bar's June 15, 2005, motion for entry of default in the present proceeding as exhibit 2. When the attempts set forth in Cha's two declarations are viewed together, they clearly establish that the State Bar substantially exceeded its minimum duty and made a meaningful, good faith effort to locate respondent and insure that he has actual knowledge of this disciplinary proceeding. (*Bowles v. State Bar, supra*, 48 Cal.3d at p. 108, fn. 7; *Lydon v. State Bar, supra*, 45 Cal.3d at pp. 1183-1185, 1186.)

1 Respondent's was required to file a response to the NDC no later than June 13, 2005 (Rules
2 Proc. of State Bar, rule 103(a)), but he did not do so. Thereafter, on June 15, 2005, the State Bar
3 filed a motion for the entry of respondent's default and properly served a copy of it on respondent.⁴
4 The motion recited all of the information required by rule 200(a) of the Rules of Procedure of the
5 State Bar, including notification to respondent as to the consequences of the entry of his default and
6 that the State Bar intends to recommend his disbarment if culpability is found.

7 Respondent did not respond to the motion for entry of default. Because all of the statutory
8 and rule prerequisites were met, this court filed an order on July 5, 2005, entering respondent's
9 default and, as mandated in section 6007, subdivision (e)(1), placing him on involuntary inactive
10 enrollment. The Clerk of the State Bar Court properly served a copy of that order on respondent by
11 certified mail, return receipt requested, at his official address. But the Postal Service returned that
12 copy of the order to the clerk undelivered and bearing the handwritten notation of "R.T.S. [for return
13 to sender] Moved."

14 On July 25, 2005, the State Bar filed a request for waiver of default hearing and brief on
15 culpability and discipline.⁵ And the court took the matter under submission for decision without
16 hearing that same day.

17 III. Findings of Fact and Conclusions of Law

18 The Court's findings are based (1) on the allegations contained in the NDC, which are
19 deemed admitted by the entry of Respondent's default (§ 6088; Rules Proc. of State Bar, rule
20 200(d)(1)(A)); (2) exhibits 1 and 2 to the State Bar's July 25, 2005, request for waiver of default
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22 ⁴The record does not indicate whether respondent received this copy of the State Bar's
23 motion for entry of default or whether the Postal Service returned it undelivered to the State Bar.
24 Nonetheless, as noted in footnote 3, *ante*, the State Bar has substantially exceeded its statutory
duty to locate respondent to insure that he has actual knowledge of the present proceeding.

25 ⁵In accordance with the State Bar's request, exhibits 1 and 2 to this pleading are admitted
26 into evidence. (Rules Proc. of State Bar, rule 202(c).) Having admitted these exhibits into
27 evidence, the court denies the State Bar's request that it also judicially notice them, noting that
28 there is clear distinction between admitting a document into evidence and taking judicial notice
of it. The State Bar also requests that exhibit 3 also be admitted into evidence and judicially
noticed; however, there is no exhibit 3 attached to that pleading.

1 hearing and culpability and discipline brief; and (3) the facts in this court's official file.

2 **A. Findings of Facts**

3 On January 20, 2005, the Supreme Court filed an order in *In re Bret Jay Davis*, case number
4 S128998 (State Bar Court case numbers 02-O-15575-PEM, et al.) (*Davis I*) in which it disciplined
5 respondent by placing him on two years' stayed suspension and two years' probation on conditions,
6 including a one-year period of actual suspension that continues until respondent makes restitution
7 to six clients for a combined total of \$20,150 in unearned legal fees and to one client for a \$950 fee
8 he charged and collected illegally and, if he is remains actually suspended for two or more years, he
9 establishes his rehabilitation, fitness to practice, and legal learning in accordance with standard
10 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.⁶ In that same order,
11 the Supreme Court also ordered respondent "to comply with rule 955 of the California Rules of
12 Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40
13 calendar days, respectively, after the effective date of this order. [Fn. omitted.]"

14 Notably, the Supreme Court imposed this discipline on respondent in accordance with a
15 stipulation regarding facts, conclusions of law, and disposition that the parties filed and that the State
16 Bar Court approved in an order filed on September 22, 2004, in State Bar Court case numbers
17 02-O-15575-PEM, et al. Even though the parties did not include a rule 955 requirement in that
18 stipulation, the State Bar Court sua sponte modified the stipulation to include a rule 955 requirement,
19 requiring respondent to "comply with the provision of s subdivisions (a) and (c) of rule 955,
20 California Rules of Court, within 30 and 40 days, respectively, from the effective date of the
21 Supreme Court order . . ." And neither party filed an objection to that modification, and it became
22 final. (Rules Proc. of State Bar, rule 135(a)&(b).) Accordingly, it is clear that respondent knew that
23 Supreme Court would order him to comply with rule 955.

24 The deemed allegations in the NDC establish that, on January 20, 2005, the Clerk of the
25 Supreme Court promptly mailed a copy of the Supreme Court's January 20, 2005, order to
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28 ⁶The 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 respondent. (See, generally, Cal. Rules of Court, rule 29.4(a).) However, there is no allegation or
2 evidence establishing that respondent actually received that copy of the order or that respondent
3 otherwise had actual notice of the order.⁷ Nonetheless, because there is no evidence to the contrary,
4 the court finds that respondent actually received the copy of the order that the Supreme Court Clerk
5 mailed him. (Cf. Evid. Code, §§ 604, 630, 641 [mailbox rule – correctly addressed and properly
6 mailed letter is presumed to have been received in the ordinary course of mail].)

7 The Supreme Court's January 20, 2005, order became effective February 19, 2005, (Cal.
8 Rules of Court, rule 953(a)) and has consistently remained in effect since that time. Thirty days
9 after February 19, 2005, was March 21, 2005. And 40 days after February 19, 2005, was March 31,
10 2005. Accordingly, no later than March 21, 2005, respondent was required to comply with rule
11 955(a) by, inter alia, giving notice of his actual suspension and resulting disqualification to act as
12 an attorney to all clients; opposing counsel or, if none, opposing parties; courts, agencies, and
13 tribunals before which he represented clients. And, no later than March 31, 2005, respondent was
14 required to comply with rule 955(c) by filing, with the Clerk of the State Bar Court, a declaration
15 showing that he had fully and timely complied with the requirements in rule 955(a) and setting forth
16 an address where communications may be sent to him.

17 The record does not establish whether respondent complied with rule 955(a) by March 21,
18 2005, but it does establish that respondent failed to comply with rule 955(c) because he did not file
19 the required declaration before, on, or after March 31, 2005.

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22 ⁷The allegation in the NDC that, on February 25, 2005, “the Probation Unit of the Office
23 of the Chief Trial Counsel of the State Bar of California sent to Respondent at his official State
24 Bar Membership Records address a true and correct copy of the [Supreme Court’s January 20,
25 2005, order]” cannot be relied on as a deemed admission that establish respondent had actual
26 knowledge of the Supreme Court’s January 20, 2005, order because on February 25, 2005, there
27 was no Probation Unit of the Office of the Chief Trial Counsel. At least two years ago, the
28 disciplinary probation function was removed from the Office of the Chief Trial Counsel and
transferred to the new State Bar Office of Probation, which was completely independent of the
Office of the Chief Trial Counsel until late Spring of this year. Accordingly, it is clear that the
Office of the Chief Trial Counsel's probation unit did not send respondent a copy of the Supreme
Court’s order on February 25, 2005.

1 **B. Legal Conclusions**

2 The court finds that the State Bar has proved, by clear and convincing evidence, that
3 respondent failed to comply with the provision of rule 955(c) as alleged in the NDC because he never
4 filed, with the Clerk of the State Bar Court, a declaration (1) showing that he fully complied with
5 the provision in the Supreme Court's January 20, 2005, order directing him to comply with rule 955
6 and (2) setting forth an address where communications may be sent to him.⁸ Accordingly, the court
7 holds that respondent violated his duty, under section 6103, to obey court orders requiring him to
8 do an act connected with the and in the course of his of his profession, which he ought in good faith
9 do. This is true even if respondent is not aware of the requirements of rule 955 or of his obligation
10 to comply with them as the Supreme Court has disbarred attorneys whose failure to keep their
11 official addresses current prevented them from learning that they had been ordered to comply with
12 rule 955. (See, e.g., *Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

13 **IV. Level of Discipline**

14 **A. Factors in Mitigation**

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

16 **B. Factors in Aggravation**

17 **1. Prior Record of Discipline**

18 In its July 25, 2005, brief on culpability and discipline, the State Bar not only erroneously
19 contends that respondent has two prior records of discipline, but it fails to outline or discuss the
20 nature and extent of respondent's prior record of discipline. Respondent has only one prior record
21 of discipline. (Std. 1.2(b)(i).) That prior record was the Supreme Court order in *Davis I.*

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25 ⁸The court rejects the State Bar contention in its July 25, 2005, brief on culpability and
26 discipline that respondent somehow "failed to meet with the requirements of his probation
27 conditions in willful violation of Business and Professions Code section 6103." No such
28 probation violation was alleged in the NDC. It would be improper to expand the charges or to
even consider any such unpleaded misconduct as aggravation after the entry of respondent's
default. (*In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59, 67; *In the
Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207, 217.)

1 It is true that respondent has another disciplinary proceeding currently pending against him
2 in this court. That proceeding is *In the Matter of Bret Jay Davis*, State Bar Court case number
3 04-O-15489-RAP (*Davis II*). Even though respondent defaulted in *Davis II* and even though the
4 factual allegations of the notice of disciplinary charges in *Davis II* are, thereby, deemed admitted,
5 *Davis II* is not a prior record of discipline because the court has not filed a decision finding
6 respondent culpable of misconduct in that proceeding. (Std. 1.2(f); Rules Proc. of State Bar, rule
7 216(c).) Moreover, because the court recommends that respondent be disbarred in the present
8 proceeding, the court will, after it files the present decision, file an order staying the proceedings in
9 *Davis II* pending the Supreme Court's ruling on the disbarment recommendation in this proceeding.
10 If the Supreme Court adopts the disbarment recommendation, *Davis II* will become "moot," and this
11 court will dismiss it for want of jurisdiction.

12 As noted *ante*, the Supreme Court disciplined respondent in *Davis I* in accordance with a
13 stipulation that respondent entered into with the State Bar and the State Bar Court approved in State
14 Bar Court case numbers 02-O-15575-PEM, et al. Moreover, the Supreme Court imposed that
15 discipline because respondent engaged in extensive misconduct in 17 separate client matters, which
16 alone could have resulted in respondent's disbarment. As the parties stipulated, respondent's
17 misconduct in *Davis I* "demonstrated habitual disregard for [respondent's] client's [sic.] interests and
18 therefore constituted moral turpitude, particularly in light of the similarity of misconduct, the
19 frequency thereof and its pattern, in willful violation of Business and Professions Code . . . section
20 6106."

21 According the parties' stipulation in *Davis I*, respondent effectively abandoned his clients 12
22 client matters in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct of the
23 State Bar⁹ by failing to competently perform legal services (see rule 3-110(A)) and by failing to
24 adequately communicate with the clients (see § 6068, subd. (m)). In addition, he failed to
25 competently perform and adequately communicate with his client in one client matter in violation
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27 ⁹Unless otherwise noted, all further references to rules are to these Rules of Professional
28 Conduct.

1 of rule 3-110(A) and of section 6068, subdivision (m), respectively (these were independent
2 violations that, unlike the other 12 client matters, did not rise to the level of effective client
3 abandonment); failed to refund unearned fees in eight client matters in violation of rule 3-700(D)(2);
4 failed to give one client the client's file in violation of 3-700(D)(1); failed to account for advanced
5 fees in one client matter in violation of rule 4-100(B)(3); failed to comply with a client's request to
6 payout client funds in violation of rule 4-100(B)(4); represented a client and collected a *illegal* fee
7 while he was involuntarily enrolled inactive in violation of section 6103 (see also § 6126, subd. (b))
8 and of rule 4-200(A), respectively, and failed to cooperate in five State Bar disciplinary
9 investigations in violation of section 6068, subdivision (i).

10 2. Failure to File a Response to the NDC

11 Respondent's failure to file a response to the NDC, which allowed his default to be entered
12 in this proceeding, is an aggravating circumstance. (See *Conroy v. State Bar* (1990) 51 Cal.3d 799,
13 805.) First, it indicates that he fails to appreciate the seriousness of the charges against him. (*Ibid.*)
14 And, second, it indicates "that he does not comprehend the duty as an officer of the court to
15 participate in disciplinary proceedings. [Citation.]" (*In the Matter of Stansbury* (Review Dept.
16 2000) 4 Cal. State Bar Ct. Rptr. 103, 109, citing *Conroy v. State Bar* (1992) 53 Cal.3d 495, 507-508;
17 but see *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1080 [failure to participate in a default hearing
18 is not an aggravating circumstance].)

19 C. Discussion

20 The primary purpose of disciplinary proceedings conducted by the State Bar is to protect the
21 public, the courts and the legal profession, the maintenance of high professional standards and the
22 preservation of public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989)
23 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

24 Rule 955(d) provides in relevant part that a suspended attorney's "wilful failure to comply
25 with the provisions of [rule 955] constitutes cause for disbarment or suspension and for revocation
26 of any pending probation." Even though rule 955(d) provides for the sanction of suspension and for
27 the revocation of disciplinary probation for an attorney's willful violation of rule 955, disbarment
28 is ordinarily the appropriate degree of discipline in the absent compelling mitigating circumstances.

1 (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3
2 Cal. State Bar Ct. Rptr. 287, 296.)

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

13 Respondent's unexplained failure to file a rule 955(c) compliance declaration suggests a
14 conscious disregard for both this court's and the Supreme Court's efforts to fulfill their respective
15 responsibilities to oversee the practice of law in the State of California. Moreover, there are no
16 mitigating circumstances, much less compelling mitigating circumstances, that would warrant a
17 departure from the ordinary sanction of disbarment for respondent's willful failure to comply with
18 rule 955(c). What is more, the court concludes that only disbarment will adequately fulfill the
19 purposes of attorney discipline. Anything short of disbarment for respondent's willful and
20 unexplained failure to comply with rule 955(c) as ordered by the Supreme Court would certainly
21 undermine the integrity of the disciplinary system and damage public confidence in the legal
22 profession.

23 **V. Discipline Recommendation**

24 Accordingly, the court recommends that respondent Bret Jay Davis be disbarred from the
25 practice of law in the State of California and that his name be stricken from the Roll of Attorneys
26 of all persons admitted to practice in this state.

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VI. Rule 955 and Costs

The court further recommends that Davis again be ordered to comply with the provisions of rule 955 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

The court further recommends that the costs incurred by the State Bar in this matter be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be payable in accordance with Business and Professions Code section 6140.7.

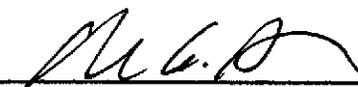
VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that Bret Jay Davis be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail. (Accord, Rules Proc. of State Bar, rule 220(c).)

VIII. Directive to Clerk Regarding Service

In addition, to serving a copy of this decision and order on Davis at his official address, the Clerk of the State Bar Court is directed to mail, by first class mail, regular delivery, a courtesy copy of the decision and order on Davis at: 5136 Garden Grove Ave., Tarzana, California 91356-4339.

Dated: August 16, 2005.



RICHARD A. PLATEL
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 August 17, 2005, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INACTIVE ENROLLMENT, filed AUGUST 17,
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:

**BRET J. DAVIS
DAVIS & DAVIS
1875 CENTURY PARK E #700
LOS ANGELES CA 90067**

**BRET J DAVIS
5136 GARDEN GROVE AVE
TARZANA CA 91356 4339**

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

JEAN CHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 17, 2005**.



Johnnie Lee Smith
Case Administrator
State Bar Court