

# PUBLIC MATTER

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THE STATE BAR COURT STATE BAR COURT CLERK'S OFFICE  
HEARING DEPARTMENT - LOS ANGELES SAN FRANCISCO

In the Matter of  
**ERIC L. HOLT,**  
Member No. 176153,  
A Member of the State Bar.

Case No. 05-N-02147-PEM  
**DECISION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT**

## I. Introduction

In this default matter, respondent **Eric L. Holt** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,<sup>1</sup> as ordered by the California Supreme Court on February 4, 2005, in S129321 (State Bar Court case No. 03-O-04330 and 04-H-10326 (Cons.)).

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 June 9, 2005. The mailing was not returned as undeliverable.

The State Bar telephoned respondent at his official membership records number on several occasions and each time left a voice mail for respondent to return the call. Respondent did not return any of the calls.

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<sup>1</sup>All references to rule 955 are to California Rules of Court, rule 955.

1 On motion of the State Bar, respondent's default was entered on August 5, 2005. The order  
2 of entry of default was properly mailed to respondent's official membership records address.  
3 Respondent was enrolled as an inactive member under Business and Professions Code section  
4 6007(e)<sup>2</sup> on August 8, 2005.

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

6 Respondent did not participate in the disciplinary proceedings. The court took this matter  
7 under submission on August 20, 2005, following the filing of State Bar's brief on culpability and  
8 discipline.

### 9 III. Findings of Fact and Conclusions of Law

10 All factual allegations of the NDC are deemed admitted upon entry of respondent's default  
11 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule  
12 200(d)(1)(A).)

#### 13 A. Jurisdiction

14 Respondent was admitted to the practice of law in California on February 8, 1995, and has  
15 been a member of the State Bar since that time.

#### 16 B. Violation of California Rules of Court, Rule 955

17 On February 4, 2005, the California Supreme Court in S129321 (State Bar Court case No. 03-  
18 O-04330 and 04-H-10326 (Cons.)) suspended respondent from the practice of law for two years,  
19 stayed the execution of the suspension and actually suspended him for six months and until he makes  
20 restitution and until the State Bar Court grants a motion to terminate his actual suspension under rule  
21 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered  
22 respondent to comply with rule 955, subdivisions (a) and (c), within 30 and 40 days, respectively,  
23 after the effective date of the Supreme Court order. The order became effective March 6, 2005, and  
24 was duly served on respondent.

25 Rule 955(c) mandates that respondent "file with the Clerk of the State Bar Court an affidavit  
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27 <sup>2</sup>All references to sections are to the Business and Professions Code, unless otherwise  
28 indicated.

1 showing that he ... has fully complied with those provisions of the order entered pursuant to this  
2 rule.”

3 On February 4, 2005, the Office of the Clerk of the California Supreme Court served upon  
4 respondent a copy of the Supreme Court order imposing discipline and directing respondent to  
5 comply with rule 955.

6 Respondent was to have filed the rule 955 affidavit by April 15, 2005, but to date, he has not  
7 done so and has offered no explanation to this court for his noncompliance. Whether respondent is  
8 aware of the requirements of rule 955 or of his obligation to comply with those requirements is  
9 immaterial. “Wilfulness” in the context of rule 955 does not require actual knowledge of the  
10 provision which is violated. 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. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

13 Therefore, the State Bar has established by clear and convincing evidence that respondent  
14 wilfully failed to comply with rule 955, as ordered by the Supreme Court.<sup>3</sup>

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

16 Accordingly, respondent’s failure to comply with rule 955 constitutes a violation of section  
17 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or  
18 violation of such orders constitutes cause for disbarment or suspension.

19 **IV. Mitigating and Aggravating Circumstances**

20 **A. Mitigation**

21 No mitigating evidence was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.  
22 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>4</sup>

23 **B. Aggravation**

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

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26 <sup>3</sup>Specifically, rule 955(d) provides that a suspended attorney’s wilful failure to comply  
27 with rule 955 constitutes a cause for disbarment or suspension and for revocation of any pending  
28 probation.

<sup>4</sup>All further references to standards are to this source.

1 Respondent's three prior records of discipline is an aggravating circumstance. (Std.  
2 1.2(b)(i).)

- 3 1. Respondent stipulated to a private reproof for his failure to perform services  
4 competently in one client matter, attached with a probation condition to make  
5 restitution to Sandra Plascope in the amount of \$7,913.32 plus interest (State Bar  
6 Court case No. 00-O-12924, effective January 18, 2002).
- 7 2. Respondent stipulated to a private reproof for violating his probation condition to  
8 make restitution to Sandra Plascope in the amount of \$7,913.32 plus interest. As  
9 a probation condition, he stipulated to making restitution in installment payments to  
10 Plascope within two years (State Bar Court case No. 03-H-00826, effective  
11 December 16, 2003).
- 12 3. In the underlying matter, which respondent defaulted, respondent was suspended for  
13 two years, stayed, and was actually suspended for six months and until he makes  
14 restitution and until the State Bar Court terminates his actual suspension under rule  
15 205 of the Rules of Procedure of the State Bar for violating the probation condition  
16 imposed in the previous disciplinary matter and for his misconduct in a single client  
17 matter (failure to perform services competently and failure to communicate with a  
18 client). (California Supreme Court case No. S129321(State Bar Court case No. 03-  
19 O-04330 and 04-H-10326 (Cons.)), effective March 6, 2005).

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

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

#### 25 **V. Discussion**

26 Respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for  
27 which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990)  
28 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned

1 parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45  
2 Cal.3d 1181, 1187.) Like the misconduct in the underlying matter, respondent violated a Supreme  
3 Court order. Respondent has demonstrated an unwillingness to comply with the professional  
4 obligations and rules of court imposed on California attorneys although he has been given  
5 opportunities to do so. Moreover, he had repeatedly failed to participate in these disciplinary  
6 proceedings by defaulting in the underlying matter and in the instant case.

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

#### 12 **VI. Recommended Discipline**

13 The court recommends that respondent **Eric L. Holt** be disbarred from the practice of law  
14 in the State of California and that his name be stricken from the roll of attorneys in this state.

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

#### 18 **VII. Costs**

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

#### 21 **VIII. Order of Involuntary Inactive Enrollment**

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

25  
26  
27 Dated: November 8, 2005

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\_\_\_\_\_  
**PAT McELROY**  
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 San Francisco, on November 8, 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 San Francisco, California, addressed as follows:

**ERIC L. HOLT**  
**23657 VIA DELICIA**  
**VALENCIA CA 91355**

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

**JEAN H. CHA, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 8, 2005**.

  
**Laurretta Cramer**  
Case Administrator  
State Bar Court