

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 05-N-03275-RMT
	)	
<b>ROBERT ERICK HOLZINGER,</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND ORDER OF</b>
<b>Member No. 200278,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California (OCTC) alleging that respondent ROBERT ERICK HOLZINGER failed to comply with rule 955, California Rules of Court (Rule 955) as ordered by the Supreme Court. OCTC was represented by Gordon L. Grenier. 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 August 9, 2005, 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)<sup>1</sup>; Rules 60(b) and 583, Rules Proc. of State Bar.<sup>2</sup>) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned as undeliverable by the United States Postal Service (USPS).

On August 19, 2005, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on September 27, 2005. Respondent did not appear at the status conference. On that same date, an order memorializing the status conference was properly served on respondent at his official address. The court judicially notices its records which indicate that the United States Postal Service (USPS) returned this correspondence as undeliverable.

Respondent did not file a response to the NDC. On September 30, 2005, OCTC filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. (Rule 200(a), (b).) The motion advised respondent that OCTC would seek minimum discipline of disbarment if he was found culpable. (Rule 200(a)(3).)

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on October 25, 2005, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007(e) effective three days after service of the order. The court judicially notices its records which indicate that the USPS returned this correspondence as undeliverable.

OCTC's efforts to locate and contact respondent were fruitless.

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<sup>1</sup>Unless otherwise stated, future references to section are to the California Business and Professions Code.

The case was submitted for decision November 14, 2005, after OCTC submitted a brief.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

Respondent was admitted to the practice of law in California on January 14, 1999, and has been a member of the State Bar at all times since.

On April 8, 2005, the California Supreme Court filed an order, number S130676, (April 8 order) in State Bar Court case nos. 03-O-03169 and 04-N-13264 in which respondent was ordered, among other things, to be actually suspended for 90 days. He was also ordered to comply with rule 955(a) and (c) within 30 and 40 days, respectively, of the effective date of the April 8 order. The April 8 order was effective on May 8, 2005. (Rule 953(a), Cal. Rules of Court.) Accordingly, respondent was to comply with rule 955(a) no later than June 7, 2005, and with rule 955(c) no later than June 17, 2005.

Upon filing of the April 8 order, the Supreme Court sent respondent a copy of the said order imposing discipline and directing his compliance with rule 955.<sup>3</sup>

A copy of the April 8 order also was attached to the NDC in the instant proceeding.

On May 19, 2005, the State Bar's Probation Office wrote a letter to respondent reminding him of the obligation to comply with rule 955, Cal. Rules of Court, which included a form for

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<sup>2</sup>Future references to Rules of Procedure are to this source unless otherwise indicated.

<sup>3</sup>See, rule 24(a), California Rules of Court, and Evidence Code section 664.

reporting compliance therewith and a copy of the Supreme Court's April 8 order. The letter indicated that the rule 955(c) affidavit must be filed by June 17, 2005. The letter was sent by first-class mail, postage prepaid, to respondent's State Bar membership records address. The letter was returned as undeliverable and bore the notations "return to sender" and "not at this address".

As of August 9, 2005, respondent had not filed with the State Bar Court the affidavit required by rule 955(c). He still has not done so.<sup>4</sup> He has offered no explanation to this court for his failure to comply with rule 955(c).

Based on the foregoing, it has been proved by clear and convincing evidence that respondent wilfully violated the April 8 order directing his compliance with rule 955.<sup>5</sup> This constitutes a violation of rule 955(d), which makes the wilful failure to comply with the provisions of rule 955 a cause for disbarment, suspension or revocation of probation, in relevant part. Accordingly, respondent wilfully disobeyed a court order requiring him to do an act connected with or in the course of his profession, which he or she ought in good faith to do, in violation of section 6103.

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

Respondent did not participate in these proceedings or present any mitigating circumstances pursuant to standard 1.2(e), Rules of Procedure of the State Bar of California,

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<sup>4</sup>Pursuant to Evidence Code section 452(d), the court judicially notices that its records still do not contain a rule 955(c) affidavit from respondent.

<sup>5</sup>"Wilfulness" in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep his official address current prevented him from learning that he had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Title IV, Standards for Attorney Sanctions for Professional Misconduct, ("standards"). Since respondent he bears the burden of establishing mitigation by clear and convincing evidence, the Court has been provided no basis for finding mitigating factors.

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

Respondent's two prior discipline records are an aggravating circumstance. (Standard 1.2(b)(i).) As previously discussed, in order no. S130676, the Supreme Court imposed discipline consisting of one year's stayed suspension and two years' probation on conditions including 90 days' actual suspension, running consecutively to the actual suspension imposed in order no. S121458, among other things. In that matter, respondent and OCTC stipulated to culpability of violations, in one client matter, of rules 3-700(A)(2) and 3-700(D)(2) of the Rules of Professional Conduct. The parties also stipulated to respondent's culpability of section 6103 for untimely filing a declaration of compliance with rule 955. The court notes that this misconduct is nearly identical to the misconduct found in the instant case. One prior record of discipline was the sole aggravating factor. In mitigation, the parties agreed that respondent was candid and cooperative and that he had unsuccessfully attempted to untimely file the rule 955 affidavit.

In order no. S121458 ( State Bar Court case nos. 01-O-04057; 01-O-05282; 02-O-10182; 2-O-11112; 02-O-13332; 02-O-15558; 02-O-15667 (Cons.)), filed March 12, 2004, the Supreme Court imposed discipline consisting of, among other things, stayed suspension of two years and until he complied with standard 1.4(c)(ii) and three years' probation on conditions including six months' actual suspension. Respondent and OCTC stipulated to culpability of violations, in six client matters, of rules 1-400(D)(2), 3-110(A) (four counts), 4-100(A) and 4-100(B)(3) as well as sections 6068(m) and 6068(a)/6125-6126(b). Aggravating factors included misconduct that involved trust funds and harm to clients, the public or the administration of justice. In

mitigation, the parties agreed that respondent had taken objective steps to prevent a reoccurrence of the misconduct.

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. (Standard 1.2(b)(v).)

Respondent's failure to participate in proceedings prior to the entry of default is also an aggravating factor. (Standard 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109 - 110.)

### **LEVEL OF DISCIPLINE**

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

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; rule 955(d), Cal. Rules of Court.) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 955. *Bercovich v. State Bar* (1990) 50 Cal.3d at p. 131; *Lydon v. State Bar* (1988) 45 Cal.3d at p. 1188; *Powers v. State Bar* (1988) 44 Cal.3d at p. 342.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given the

opportunity to do so. He failed to participate in this proceeding and did not comply with rule 955(c). More importantly, respondent's failure to comply with rule 955 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 at p. 1187.)

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 unexplained wilful disobedience of the Supreme Court 's order.

### **DISCIPLINE RECOMMENDATION**

IT IS HEREBY RECOMMENDED that respondent ROBERT ERICK HOLZINGER be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

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

### **COSTS**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and **are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.**

**ORDER REGARDING INACTIVE ENROLLMENT**

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

Dated: February \_\_\_\_, 2006

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ROBERT M. TALCOTT  
Judge of the State Bar Court