

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 05-N-03357-RAP
)	
TERRENCE McGUIRE,)	ORDER INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 90675,)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
<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 Terrence McGuire failed to comply with rule 955, California Rules of Court (rule 955) as ordered by the Supreme Court. OCTC was represented by Eric H. Hsu. 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 30, 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)¹; Rules 60(b) and 583, Rules Proc. of State Bar (Rules of Procedure).) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned unclaimed by the United States Postal Service (USPS).

On September 2, 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 October 13,

¹Future references to section are to the Business and Professions Code unless stated otherwise.

2005. The court judicially notices its records that this correspondence was not returned as undeliverable by the USPS.

Respondent did not file a response to the NDC. On September 27, 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 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 13, 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 unclaimed.

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

The case was submitted for decision on November 2, 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 December 4, 1975, 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 S130824² (April 8 order), as modified by its order filed May 19, 2005, in which respondent was ordered, among other things, to be actually suspended for two years and until he complied with standard 1.4(c)(ii),

²State Bar Court case nos. 99-O-12702; 00-O-13380; 01-O-01087; 01-O-02669; 02-O-11569; 02-O-11613; 02-O-11618; 02-O-13175; 02-O-15163; 03-O-00808; 03-O-00943; 03-O-01582; 03-O-02717; 03-O-03687; 0-O-11344; 04-O-12848; 04-O-11881; 04-O-10019; 04-O-11283 (Cons.)

Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct (standards). 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 it.³

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

On May 6, 2005, the State Bar's Probation Office wrote a letter to respondent reminding him of the obligation to comply with rule 955 which included a form for reporting compliance therewith and a copy of the Supreme Court's April 8 order. The letter was sent by regular mail with adequate postage, to respondent's official address. The letter was not returned as undeliverable or for any other reason.

As of August 30, 2005, respondent had not filed with the State Bar Court the affidavit required by rule 955(c). He still has not done so.⁴ 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, 2005, order directing his compliance with rule 955.⁵ 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

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

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

⁵"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.)

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). Since 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 prior discipline record is an aggravating circumstance. (Standard 1.2(b)(i).) As previously discussed, in S130824, the Supreme Court imposed discipline consisting of stayed suspension for five years and until he complied with standard 1.4(c)(ii); and five years' probation on conditions, including actual suspension for two years and until he complied with standard 1.4(c)(ii), among other things. In that matter, respondent was found culpable, in 19 client matters, of multiple violations of Rules of Professional Conduct 3-100(A) and 3-700(A) and (D)(2) and section 6068(m) and one count of violating section 6068(e). Judicial economy was recognized as a mitigating factor since respondent entered into a stipulation to resolve the case. Aggravating factors included one prior instance of discipline; multiple acts of misconduct; and harm to clients, the public and the administration of justice.

Pursuant to a stipulation, in respondent's first disciplinary case, discipline was imposed for violations of sections 6103 and 6068(b) (two counts each), and rule 4-100(A) and (B)(4) of the Rules of Professional Conduct. There were no mitigating or aggravating factors. (Supreme Court case no. S122089 [State Bar Court case nos. 97-O-17233; 98-O-01862; 98-O-01059 (Cons.)], filed April 8, 2004.)

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).)

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).) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 955. (*Bercovich v. State Bar, supra*, 50 Cal.3d at p. 131; *Lydon v. State Bar* (1988) 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 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, supra*, 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 Terrence McGuire 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: January ____, 2006

RICHARD A. PLATEL
Judge of the State Bar Court