

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 05-N-03834-PEM
)	
ROGER DANIEL PRICE,)	DECISION; ORDER OF INACTIVE
)	ENROLLMENT & DIRECTIVE TO
Member No. 106203,)	CLERK REGARDING SERVICE
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this disciplinary proceeding, which proceeded by default, Deputy Trial Counsel Robin B. Brune appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Roger Daniel Price did not appear in person or by counsel.

Respondent is charged with violating his duty, under Business and Professions Code section 6103,¹ to comply with court orders in the course of his profession by willfully disobeying a California Supreme Court order directing him to comply with California Rules of Court, rule 955 (rule 955). Specifically, respondent is charged with failing to file, with the Clerk of the State Bar Court, a declaration of his compliance with rule 955(a) as required by 955(c). After considering the evidence and the law, the court finds, by clear and convincing evidence, that respondent willfully violated section 6103 as charged. And the court concludes that the appropriate discipline recommendation is disbarment.

II. Procedural History

On October 28, 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 it on respondent by certified mail, return receipt requested, at his latest address shown on the official

¹Unless otherwise noted, all further statutory references are to this code.

membership records of the State Bar (official address). That service was deemed complete when mailed even if respondent did not receive it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.) On that same day, the State Bar exceeded its minimum statutory duty to mail a copy of the NDC to respondent's official address (§ 6002.1, subd. (c)) by also mailing a courtesy copy of the NDC to respondent at 2714 South Encina Street, Visalia, California 93277, which is an alternative address that the State Bar has for respondent.²

Thereafter, the United States Postal Service (Postal Service) returned, to the State Bar, the copy of the NDC that was mailed to respondent's official address. On that returned copy, the Postal Service marked: "Forward Time Exp. Rtn to Send. 2714 S Encina Street Visalia Ca 93277-6719." However, as noted in footnote 2, the courtesy copy that was mailed to respondent at the South Encina Street address was not returned.

Respondent was required to file a response to the NDC no later than November 22, 2005 (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time]), but he did not do so. Therefore, on November 30, 2005, the State Bar filed a motion for the entry of respondent's default and properly served a copy of it on respondent at his official address. As a further courtesy to respondent, the State Bar also mailed a copy of its motion to respondent at the South Encina Street address.³ Respondent, however, never filed a response to that motion. Because all of the statutory and rule prerequisites were met, this court filed an order on December

²As the State Bar admirably notes in its November 30, 2005, motion for entry of default, it incorrectly sent this courtesy copy of the NDC to respondent at "2714 South Encinal [sic.] Street." The Postal Service did not return this courtesy copy to the State Bar as undeliverable or otherwise. Accordingly, it is clear that the State Bar's erroneous addition of an "l" at the end of "Encina" was an immaterial "typo."

In addition to mailing a courtesy copy of the NDC to respondent at the South Encina Street address, the State Bar further exceeded its minimum statutory duty by taking other steps in an attempt to provide respondent with actual notice of this proceeding. Those other steps, which were unsuccessful, are set forth in the declaration of DTC Brune that is attached to the State Bar's November 30, 2005, motion for entry of default.

³When it mailed this courtesy copy to respondent, the State Bar correctly spelled "Encina."

16, 2005, entering respondent's default and, as mandated by section 6007, subdivision (e)(1), placing him on involuntary inactive enrollment. The Clerk of the State Bar Court properly served a copy of that order on respondent by certified mail, return receipt requested, at his official address. But, on December 29, 2005, the Postal Service returned that copy to the clerk marked: "Return to Sender, Not Deliverable as Addressed, Unable to Forward."

On December 23, 2005, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. And, on January 10, 2006, the court took the matter under submission for decision without a hearing.

III. Findings of Fact and Conclusions of Law

The court's findings are based on (1) the allegations contained in the NDC, which are deemed admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A)); (2) exhibit 1 to the State Bar's December 23, 2005, request for waiver of default hearing and culpability and discipline brief;⁴ and (3) the facts in this court's official file in this matter.

A. Findings of Facts

1. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 3, 1982, and has been a member of the State Bar since that time.

2. Violation of Section 6103

On April 14, 2005, the Supreme Court filed an order in *In re Roger Daniel Price on Discipline*, case number S130675 (State Bar Court case numbers 04-O-10024-PEM)⁵ in which it

⁴This exhibit 1, which is a certified copy of respondent's prior record of discipline, is admitted into evidence. (Rules Proc. of State Bar, rule 202(c).)

⁵Even though respondent participated in two status conferences in State Bar Court case number 04-O-10024-PEM (the first one on June 28, 2004, and the second on August 2, 2004), he never filed a response to the NDC or to the State Bar's motion for entry of default in that case. Accordingly, in an order filed on August 13, 2004, this court entered respondent's default in that case and involuntarily enrolled him as an inactive member of the State Bar under section 6007, subdivision (e). Moreover, even though, on August 30, 2004, respondent actually received the copy of this court's August 13, 2004, order that this court's clerk served on him, respondent never

disciplined respondent by placing him on one year's stayed suspension and ninety days' actual suspension continuing until (1) respondent pays two superior court sanction orders totaling \$1,037; (2) respondent makes and the State Bar Court grants a motion to terminate his actual suspension under Rules of Procedure of the State Bar, rule 205; and (3) if he remains actually suspended for two or more years, until he establishes his rehabilitation, fitness to practice, and legal learning in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.⁶ In addition, in its April 14, 2005, order, the Supreme Court ordered respondent to comply with California Rules of Court, rule 955 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 order.

The deemed allegations in the NDC establish that, on April 14, 2005, the Clerk of the Supreme Court promptly mailed, to respondent, a copy of the Supreme Court's April 14, 2005, order (Cal. Rules of Court, rule 29.4(a)). Even though there is no allegation or direct evidence establishing that respondent actually received that copy of the Supreme Court's order or that respondent otherwise had actual notice of that order, the court finds that respondent actually received it under the mailbox rule (Evid. Code, § 641, see also Evid. Code, §§ 604, 630).

The Supreme Court's April 14, 2005, order became effective on May 14, 2005 (Cal. Rules of Court, rule 953(a)) and has remained in effect since that time. Thirty days after May 14, 2005, was June 13, 2005. And 40 days after May 14, 2005, was June 23, 2005. Accordingly, respondent was required to comply with rule 955(a) by, inter alia, giving notice of his actual suspension and disqualification to act as an attorney to all clients; opposing counsel or, if none, opposing parties; courts, agencies, and tribunals before which he represented clients no later than June 13, 2005.⁷ And

sought to set aside his default in that proceeding.

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.

⁷The State Bar erroneously pleaded in the NDC that respondent was to have complied with rule 955(a) no later than June 14, 2005.

respondent was required to comply with rule 955(c) by filing, with the Clerk of the State Bar Court no later than June 23, 2005,⁸ a declaration (1) showing that he had fully and timely complied with the requirements in rule 955(a) and (2) setting forth an address where communications may be sent to him.

The record does not establish whether respondent ever gave notice of his suspension and disqualification to act as an attorney to his clients and the others individuals specified in rule 955(a). However, the record clearly establishes that respondent did not file, with the State Bar Court Clerk on or before June 23, 2005, a rule 955(c) compliance declaration (i.e., a declaration showing that he fully complied with the provisions of rule 955(a) and setting forth an address where communications may be sent to him in the future). And, as of the date of this decision, respondent has still not filed such a declaration.

B. Conclusions of Law

The court concludes that the State Bar has proved, by clear and convincing evidence, that respondent failed to comply with the provision of rule 955(c) as alleged in the NDC because he never filed, with the Clerk of the State Bar Court, a rule 955(c) compliance declaration. Accordingly, the court holds that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to do an act connected with and in the course of his profession, which he ought in good faith do. This is true even if respondent was not aware of the requirements of rule 955 or of his obligation to comply with them. 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. (See, e.g., *Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

IV. Level of Discipline

A. Factors in Mitigation

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

⁸The State Bar erroneously pleaded in the NDC that respondent was to have complied with rule 955(c) no later than June 24, 2005.

B. Factors in Aggravation

1. Prior Records of Discipline

Respondent has two prior records of discipline. (Std. 1.2(b)(i).) It is true that respondent has yet a fourth disciplinary proceeding currently pending against him in this court.⁹ But that other proceeding cannot be considered to be a prior record of discipline because this court has not filed a decision finding respondent culpable of misconduct in it. (Std. 1.2(f); Rules Proc. of State Bar, rule 216(c).)

Respondent's first prior record of discipline is the Supreme Court's April 14, 2005, order, in case number S130675 (State Bar Court case number 04-O-10024-PEM). As noted *ante*, in that order, the Supreme Court placed respondent on one year's stayed suspension and ninety days' actual suspension continuing until he makes and the State Bar Court grants a motion, under Rules of Procedure of the State Bar, rule 205, to terminate his actual suspension. The Supreme Court imposed that discipline on respondent because this court found respondent culpable of six counts of misconduct. Five of the six counts involved a single client matter, in which the court found that respondent willfully violated (1) his duty, under section 6103, to obey court orders by not complying with a superior court discovery order; (2) his duty, under section 6068, subdivision (m), to adequately communicate with his client; (3) Rules of Professional Conduct of the State Bar, rule 3-100(A)¹⁰ by failing to competently perform the legal services for which he was retained; (4) rule 3-700(A)(2) by improperly withdrawing from representation; and (5) rule 3-700(D)(1) by failing to return the client's file. In the sixth count, the court found that respondent willfully violated his duty, under section 6068, subdivision (i), to participate in State Bar disciplinary investigations by not responding to two requests for information sent to him by the State Bar. In aggravation, this court

⁹This additional case is State Bar Court case number 05-N-04971-PEM. Of course, if the Supreme Court adopts the disbarment recommendation in the present proceeding, case number 05-N-04971-PEM will become moot, and this court will dismiss it for want of jurisdiction.

¹⁰Except where otherwise noted, all references to rules are to these Rules of Professional Conduct.

found that respondent misrepresented, to the court, that he had mailed a response to the NDC in that case and that respondent's misconduct caused significant client harm. The court did not find any mitigating circumstances.

Respondent's second prior record of discipline is the Supreme Court's September 7, 2005, order in *In re Roger Daniel Price on Discipline*, case number S135052 (State Bar Court case number 03-O-01049-PEM)¹¹ in which it placed respondent on one year's stayed suspension and 120 days' actual suspension continuing until respondent makes and the State Bar Court grants a motion to terminate his actual suspension and, if he remains actually suspended for two or more years, he establishes his rehabilitation, fitness to practice, and legal learning in accordance with standard 1.4(c)(ii). The Supreme Court imposed that discipline because this court found respondent culpable of three counts of misconduct, which involved his conduct as trustee of a testamentary trust. Specifically, this court found that respondent violated (1) his duty, under section 6068, subdivision (a), to obey the law by not complying with four Probate Code sections requiring him to account to the beneficiaries of the trust; (2) his duty, under section 6103, to obey court orders by failing to pay \$1,200 in court ordered sanctions; and (3) his duty, under section 6068, subdivision (o)(2), to report the entry of a civil judgment against him for, inter alia, conversion, breach of fiduciary duty, fraud, and deceit. In aggravation, this court found that respondent had a prior record of discipline, that respondent committed multiple acts of misconduct, that respondent's misconduct caused significant harm to the beneficiaries, indifference towards rectification, failure to participate before the entry of his default in that case. The court did not find any mitigating circumstances.

2. Failure to File a Response to the NDC

Respondent's failure to file a response to the NDC in the present proceeding, which allowed his default to be entered, is an aggravating circumstance. (See *Conroy v. State Bar* (1990) 51 Cal.3d

¹¹Even though respondent filed a response to the NDC in State Bar Court case number 03-O-01049-PEM, this court struck his response and entered his default in that case on September 24, 2005, because he failed to obey this court's August 3, 2004, order directing him to answer the interrogatories propounded to him by the State Bar. In light of the entry of his default, the court also involuntarily enrolled respondent inactive under section 6007, subdivision (e).

799, 805.) First, it indicates that he fails to appreciate the seriousness of the charges against him. (*Ibid.*) And, second, it indicates "that he does not comprehend the duty as an officer of the court to participate in disciplinary proceedings. [Citation.]" (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109, citing *Conroy v. State Bar* (1992) 53 Cal.3d 495, 507-508; but see *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1080 [failure to participate after entry of default is not an aggravating circumstance].)

C. Discussion

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

Rule 955(d) provides in relevant part that a suspended attorney's "wilful failure to comply with the provisions of [rule 955] constitutes cause for disbarment or suspension and for revocation of any pending probation." Even though rule 955(d) provides for the sanction of suspension and for the revocation of disciplinary probation for an attorney's willful violation of rule 955, disbarment is ordinarily the appropriate degree of discipline in the absence of compelling mitigating circumstances. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.) What is more, because respondent has two prior records of discipline, standard 1.7(b) is applicable. That standard provides that, when an attorney has two prior records of discipline, the discipline imposed in the current proceeding "shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

Among other things, a suspended attorney's timely compliance with rule 955(a) performs the critical function of ensuring that all concerned parties, including clients, cocounsel, opposing counsel, courts, agencies, and other tribunals, promptly learn of the attorney's actual suspension and consequent disqualification to act as an attorney. And when an attorney fails to file a rule 955(c) compliance declaration, neither this court nor the Supreme Court can determine whether this critical function has been performed. In addition, compliance with rule 955(c) keeps this court and the

Supreme Court apprised of the location of attorneys who are subject to their disciplinary authority. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.) Thus, it is not surprising that a suspended attorney is required to file a rule 955(c) compliance declaration even if he does not have any clients to notify. (*Powers v. State Bar, supra*, 44 Cal.3d at p. 341.)

Respondent's unexplained failure to file a rule 955(c) compliance declaration suggests a conscious disregard for both this court's and the Supreme Court's efforts to fulfill their respective responsibilities to oversee the practice of law in the State of California. Moreover, there are no mitigating circumstances, much less compelling mitigating circumstances, that would warrant a departure from the ordinary sanction of disbarment for respondent's willful failure to comply with rule 955(c) or from the disbarment provided for in standard 1.7(b). Furthermore, the court concludes that only disbarment will adequately fulfill the purposes of attorney discipline. Anything short of disbarment for respondent's willful and unexplained failure to comply with rule 955(c) as ordered by the Supreme Court would certainly undermine the integrity of the disciplinary system and damage public confidence in the legal profession.

V. Discipline Recommendation

Accordingly, the court recommends that respondent Roger Daniel Price be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

VI. Rule 955 and Costs

The court further recommends that respondent again be ordered to comply with the provisions of California Rules of Court, rule 955 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 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.

VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that Roger Daniel Price 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 (Rules Proc. of State Bar, rule 220(c)).

VIII. Directive to Clerk Regarding Service

In addition, to serving a copy of this decision, order, and directive on respondent at his official address, the Clerk of the State Bar Court is directed to mail a courtesy copy of it to respondent at 2714 S. Encina St., Visalia, CA 93277-6719 by first class mail, regular delivery.

Dated: April 7, 2006

PAT McELROY
Judge of the State Bar Court