

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

In the Matter of	)	<b>Case No. 05-N-04379-RAH</b>
	)	
<b>CRAIG A. DECKER,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 55576,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

This matter was initiated by the filing of a Notice of Disciplinary Charges (“NDC”) by the State Bar of California, Office of the Chief Trial Counsel (“OCTC”), alleging that respondent Craig A. Decker (“respondent”) wilfully violated Business and Professions Code section 6103 by failing to comply with a Supreme Court order requiring compliance with rule 955 of the California Rules of Court (“rule 955”) by failing to timely file a declaration of compliance with rule 955 in conformity with the requirements of rule 955(c). At the time this matter was submitted for decision, the OCTC was represented in this proceeding by Deputy Trial Counsel Christine A. Souhrada (“DTC Souhrada”). Respondent did not participate in this proceeding either in-person or through counsel.

For the reasons stated below, the court finds that respondent wilfully failed to comply with rule 955 of the California Rules of Court and thereby violated Business and Professions Code section 6103. The court therefore recommends that respondent be disbarred from the practice of law and that he be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4).

### **PERTINENT PROCEDURAL HISTORY**

This proceeding was initiated by the OCTC's filing of a NDC against respondent on October 25, 2005.

A copy of the NDC was properly served upon respondent on October 25, 2005, by certified mail, return receipt requested, addressed to the official membership records address ("official address") maintained by respondent pursuant to Business and Professions Code section 6002.1, subdivision (a) and to 1053 S. Maple, Mesa, AZ 85205 ("S. Maple address").

On November 1, 2005, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting a telephonic status conference for December 7, 2005. A copy of said notice was properly served upon respondent by first-class mail, postage fully prepaid, on November 1, 2005, addressed to respondent at his official address. The copy of said notice was not returned to the State Bar Court by the United States Postal Service ("USPS").

On December 7, 2005, the court held a telephonic status conference in this matter. Respondent failed to participate either in person or through counsel at the status conference. Thereafter, on December 9, 2005, the court filed an Order Pursuant to Telephonic Status Conference setting forth that the Deputy Trial Counsel will file a motion for the entry of respondent's default by January 6, 2006. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on December 9, 2005, addressed to respondent at his official address and to the S. Maple address. Neither copy of said order was returned to the State Bar Court by the USPS as undeliverable or for any other reason.

On December 9, 2005, Deputy Trial Counsel Timothy G. Byer ("DTC Byer"), who was at one time assigned to the prosecution of this matter, spoke to respondent by telephone.<sup>1</sup> Respondent

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<sup>1</sup>DTC Byer had obtained a telephone number for a "Decker" with a residence address on Maple Street in Mesa, Arizona. When DTC Byer spoke with respondent by telephone, respondent confirmed that he was the California attorney referred to in this matter, and that he had received the NDC.

confirmed that he had received the NDC but was unaware of the need to file a response. When DTC Byer informed respondent that he was preparing to file a request for entry of respondent's default in this matter, respondent told DTC Byer that he would like to file a response. DTC Byer told respondent where to file his response, and that the court had asked that the default request be filed by January 6, 2006. Respondent informed DTC Byer that he would file the response as soon as possible.

Having not received a copy of respondent's responsive pleading, sometime during the first week of January 2006, DTC Byer again called the telephone number at which he had reached respondent in December. A recording informed DTC Byer that the number was disconnected or was no longer in service.

As respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California ("Rules of Procedure"), on January 24, 2006, the OCTC filed a motion for the entry of respondent's default. The motion advised respondent that once the court had found culpability, the OCTC would recommend respondent's disbarment. Also included with the motion were the declarations of DTC Byer and DTC Souhrada and Exhibit 1. The court admits this exhibit into evidence. A copy of said motion was properly served upon respondent by certified mail, return receipt requested, on January 24, 2006, addressed to respondent at his official address.

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on February 16, 2006, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders. A copy of said order was properly served upon respondent on February 16, 2006, by certified mail, return receipt requested, addressed to respondent at his official address. A courtesy copy of said order was also served upon respondent by first-class mail, postage fully prepaid, on February 16, 2006, addressed to respondent at the S. Maple address.<sup>2</sup> The copy of said order served upon respondent at his official

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<sup>2</sup>With respect to the copy of said order addressed to respondent at his official address, both the Certificate of Service and the envelope containing said order (which was returned to the State Bar Court by the USPS) bore the address 1320 Broadway #101, rather than 1320 East

address was returned to the State Bar Court by the USPS bearing a label which read:

RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD

but the copy addressed to respondent at the S. Maple address as not returned as undeliverable or for any other reason by the USPS.

On March 22, 2006, the OCTC filed a brief on the issues of culpability and discipline and requested the waiver of the hearing on this matter. A copy of said brief was properly served upon respondent on March 22, 2006, addressed to respondent at his official address<sup>3</sup> and the S. Maple address. The court admits into evidence State Bar Exhibits 1-3 attached to said brief.

This matter was submitted for decision on March 22, 2006.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**<sup>4</sup>

Respondent was admitted to the practice of law in the State of California on June 29, 1973, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On June 28, 2005, the California Supreme Court filed Order No. S132866 ("955 Order").

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Broadway #101. In addition, the Certificate of Service indicates that the courtesy copy of the order was addressed to respondent at the S. Maple address, Meza, AZ, rather than Mesa, AZ. Nevertheless, the court finds these errors de minimus and harmless. The court finds no due process issues in this matter, and finds that respondent was properly served with a copy of the order of the entry of his default and his involuntary inactive enrollment.

<sup>3</sup>The certified copy of respondent address history as of March 21, 2006, which is Exhibit 2 attached to the OCTC's brief on the issues of culpability and discipline is not competent evidence to establish that a document served after March 21, 2006, was properly served upon respondent. The court therefore takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h). These records indicate that as of February 24, 1995, respondent's official address has been, and remains, 1320 E. Broadway #101, Mesa, AZ 85204.

<sup>4</sup>As respondent's default was entered in this matter, the factual allegations contained in the NDC are deemed admitted pursuant to rule 200(d)(1)(A) of the Rules of Procedure. The findings of fact are therefore based on the deemed admissions as well as the exhibits attached to the State Bar's motion for the entry of respondent's default and the State Bar's brief on the issues of culpability and discipline.

The 955 Order included a requirement that respondent comply with rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) within 30 and 40 days , respectively, after the effective date of the Supreme Court order.

On or about June 28, 2005, the clerk of the Supreme Court of the State of California properly served upon respondent a copy of the 955 Order. Respondent received the 955 Order.

The Supreme Court order became effective on July 28, 2005, thirty days after the 955 Order was filed. Thus, respondent was ordered to comply with subdivision (a) of Rule 955 of the California Rules of Court no later than August 27, 2005, and was ordered to comply with subdivision (c) of Rule 955 no later than September 6, 2005.

Respondent has failed to file with the clerk of the State Bar Court a declaration of compliance with Rule 955, California Rules of Court.

“Willfulness” in the context of rule 955 implies simply a purpose or willingness to commit the act, or make the omission, referred to. It requires neither bad faith nor an intent to violate the rule. (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.) The Supreme Court has disbarred attorneys whose failure to keep their official address current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) The filing of an affidavit pursuant to rule 955(c) is required even if the respondent does not have any clients to notify. (*Id.*)

Based upon the foregoing, the court concludes that the State Bar has proven by clear and convincing evidence that respondent wilfully failed to comply with Rule 955 of the California Rules of Court, as ordered by the Supreme Court in its order filed June 28, 2005, in Supreme Court matter S132866 (State Bar Court Case No. 04-J-12813) by failing to file a declaration of compliance with Rule 955. As a result of respondent’s wilful failure to comply with the order of the Supreme Court, he violated Business and Professions Code section 6103 which provides, in pertinent part, that the wilful violation or disobedience of a court order which requires an attorney to do or forbear an act connected with or in the course of his profession, which the attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

### **MITIGATING/AGGRAVATING CIRCUMSTANCES**

As respondent's default was entered in this matter, respondent failed to introduce any mitigating evidence on his behalf, and none can be gleaned from the record.

In aggravation, respondent has a record of one prior imposition of discipline in California. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) ("standards").) On June 28, 2005, the Supreme Court issued an order in Supreme Court matter S132866 (State Bar Court Case No. 04-J-12813) suspending respondent from the practice of law for three years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, staying execution of said suspension, and actually suspending respondent from the practice of law for two years and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. In this prior disciplinary matter, in which respondent also failed to participate and in which his default was also entered, respondent was found to have failed to provide his clients with an accounting of settlement funds in wilful violation of rule 4-100(B)(3) of the Rules of Professional Conduct of the State Bar of California; failed to respond promptly to his clients' repeated and reasonable status inquiries and failed to keep his clients reasonably informed of significant developments regarding their matter in wilful violation of Business and Professions Code section 6068, subdivision (m); and failed to respond to Arizona Bar Counsel's repeated requests for information and responses thereby failing to participate in the investigation of allegations of misconduct in wilful violation of Business and Professions Code section 6068, subdivision (i), based upon misconduct committed in Arizona and for which he was actually suspended by the Arizona Supreme Court for six months and one day and placed on two years' probation with conditions. Several factors in aggravation were found, including two prior

instances of discipline in Arizona, and the court noted some mitigating factors were found in Arizona, though some were not given much weight in mitigation.<sup>5</sup>

Respondent's lack of candor and cooperation with the State Bar during this disciplinary proceeding is evidenced by his failure to participate in this matter prior to the entry of his default. (Standard 1.2(b)(vi).)

Respondent's failure to file a response to the NDC after being informed by DTC Byer that he was preparing to file a request for the entry of respondent's default; after being informed where to file his response by DTC Byer; and after being informed that the court had asked that the default request be filed by January 6, 2006, is an aggravating circumstance, as it demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Standard. 1.2(b)(v).)

### **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. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

Rule 955(d) provides in part that "[a] suspended member's wilful failure to comply with the provisions of this rule constitutes cause for disbarment or suspension and for revocation of any pending probation." Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity. Respondent's prior discipline was neither remote in time nor minimal in severity.

Timely compliance with rule 955 of the California Rules of Court performs the critical function of ensuring that all concerned parties, including clients and co-counsels, opposing attorneys

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<sup>5</sup>This court also noted that the mitigating effect of respondent's discipline-free practice in California for approximately 21 years prior to his commencement of misconduct in Arizona was undercut by respondent's two unreported prior Arizona disciplinary matters.

and the courts, learn about an attorney's actual suspension from the practice of law. Compliance with this rule also keeps the State Bar Court and the Supreme Court apprised of the location of attorneys who are subject to their respective disciplinary authorities. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Disbarment is generally the appropriate sanction imposed for wilful violation of rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Similar discipline has been recommended by the State Bar Court Review Department. (*In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.)

Respondent has demonstrated an unwillingness or an inability to comply with his professional obligations and the rules of conduct imposed on lawyers. This is exemplified by his failure to participate in these State Bar proceedings even though he was aware of such proceedings and by his failure to comply with rule 955. The court also notes that respondent failed to participate in his prior California disciplinary matter. More importantly, respondent's failure to comply with rule 955 undermines the basic function that the rule serves, i.e., 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 profession. His disbarment is also important to the maintenance of high professional standards and to the preservation of 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 wilful and unexplained disobedience of an order of the California Supreme Court.

### **RECOMMENDED DISCIPLINE**

Based on the foregoing, it is hereby recommended that respondent CRAIG A. DECKER be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in this matter and file the affidavit provided for in paragraph (c) within 40 days after the



effective date of the order showing his compliance with said order.

**ORDER REGARDING INACTIVE ENROLLMENT**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Said inactive enrollment will be effective three days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

**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.

Dated: June \_\_\_, 2006

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RICHARD A. HONN  
Judge of the State Bar Court