

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

In the Matter of)	Case No. 05-N-04413-JMR
)	
OLIVER LEE SAUNDERS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 97300,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) alleging that respondent Oliver Lee Saunders failed to comply with rule 955 of the California Rules of Court as ordered by the Supreme Court. The State Bar was represented by Deputy Trial Counsel Tammy Albertsen-Murray. Respondent represented himself in the proceedings. A hearing was held on April 28, 2006.

For the reasons stated below, it is recommended that respondent be disbarred.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Oliver Lee Saunders ("respondent") was admitted to the practice of law in the State of California on May 7, 1981, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

B. Facts

On February 2, 2005, respondent signed a Stipulation re Facts, Conclusions of Law and Disposition (Stipulation) in State Bar case numbers 00-O-13950 et seq. Prior to signing the Stipulation, respondent acknowledges that the Deputy Trial Counsel told him that as part of the recommended discipline he would be required to comply with California Rules of Court, rule

955 (hereinafter "rule 955"). Respondent contends that he did not read the Stipulation prior to signing it, and therefore, he never saw the rule 955 requirement in the Stipulation. The judge of the Hearing Department approved the Stipulation on March 3, 2005.

On July 1, 2005, the Supreme Court of California filed a disciplinary order in case number S133041 (State Bar case number 00-O-13950 et seq.), approving the stipulated discipline. The July 1, 2005 order required respondent to comply with rule 955 and to perform the acts specified in subdivisions (a) and (c) of the rule within 30 and 40 days, respectively, after the effective date of the order. The order was effective on July 31, 2005. Accordingly, the deadline for respondent to comply with rule 955 subdivision (c) was September 9, 2005. Notice of the order was properly served upon respondent.

Respondent acknowledged receiving the order around July 1, 2005. However, respondent testified that he read only that part of the order that set forth his suspension, i.e., the first sentence. According to respondent, he has a character flaw - he does not "read bad news."

On July 29, 2005, Eddie Esqueda, Probation Deputy with the Office of Probation of the State Bar, wrote to respondent reminding him of his obligations under the Supreme Court order. Respondent was reminded that compliance with rule 955 was due no later than September 9, 2005. Esqueda also attached to this reminder letter, among other things, a copy of the Supreme Court order, rule 955, rules 580-581 of the Rules of Procedure, a rule 955 Compliance Declaration form, and a Quarterly Report form with instructions.

Respondent received the letter and attachments. However, respondent testified that he did not open the letter until after he received a telephone message from Esqueda on October 5, 2005. Respondent could not explain why he waited so long to open the letter. Respondent returned Esqueda's call the same day and during the conversation Esqueda reminded respondent again of his rule 955 requirement.

On October 21, 2005, respondent filed a declaration, but the declaration was defective and did not include the information required by rule 955, subdivision (c).¹ Specifically, the declaration did not state whether, as of the date the Supreme Court order was filed, respondent had (1) any clients (2) any papers or other property to which clients were entitled, or (3) earned all fees. Respondent stated in his declaration:

I have complied with rule five in that I have notified all of my clients that I am on suspension and can not represent them or practice law.

In actual fact, I have notified noone [sic] since I have no clients and am not practicing law.

An additional fact is that the time for my suspension has ended as I understand it, since the ninety days of suspension began on July 1, 2005 and ended on or about October 1, 2005 which would completed the ninety days. Nevertheless, I am not practicing law at this time and will continue to not practice until I have completed my MCLE requirement. (Exhibit 1, at p. 6.²)

Although respondent stated he had no clients in the declaration, he failed to state that he had no clients as of the date the Supreme Court order was filed. Respondent's declaration merely provides that as of October 21, 2005 he had no clients. As for any unearned fees or papers, at trial respondent argued that since he said he had no clients he could not have any unearned fees or papers. Respondent's argument is illogical. Even though he was no longer practicing law, he still could have had papers or unearned fees he had not yet returned.

Respondent's compliance declaration was rejected by the Office of Probation. On November 1, 2005, Esqueda sent respondent a letter notifying him of the rejection and including additional copies of rule 955, rules 580-581 of the Rules of Procedure, and a rule 955 Compliance Declaration form. Respondent received the letter and called Esqueda in response on November 4, 2005. Respondent argues that this was the first time he learned of a form declaration to comply with rule 955. At trial, respondent stated that he still has not read rule 955.

¹Around the same time, respondent also submitted his first Quarterly Report form. The fact that respondent had the form to submit is further evidence that, despite respondent's testimony that there were no attachments with Esqueda's letter, he did receive attachments.

²Respondent's suspension started July 31, 2005, not July 1st. (Cal. Rules of Court, rule 953(a).)

Respondent claims he never read the rule because the research tool on his computer was turned off.³

On December 6, 2005, respondent submitted a rule 955 Compliance Declaration on the form provided by the Office of Probation. The declaration was filed 15 days *after* the Notice of Disciplinary Charges was filed in this matter. This declaration was ultimately approved by the Office of Probation.

C. Conclusion of Law

Even after several reminders by the State Bar, respondent submitted his rule 955 Compliance Declaration almost three months late. The court rejects respondent's unreasonable excuse that he did not file it because he thought he was relieved of the obligation once he divested himself of his clients. Rule 955 is broader than merely requiring notice to clients, and had respondent read the rule, he would have realized he needed to report to the court on the other issues, including the return of any papers and fees. "Wilfulness" in the rule 955 context does not require bad faith; rather, it requires only a "'general purpose or willingness' to commit an act or permit an omission." (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) By failing to comply with rule 955 within the time specified in the July 1, 2005 Supreme Court order, respondent wilfully failed to obey a court order in violation of Business and Professions Code section 6103.

³The court takes judicial notice of its records that show not only did respondent have a prior rule 955 requirement pursuant to the Supreme Court order in case number S012211, but respondent also was previously charged with misconduct in State Bar Court case number 91-N-03839 based on allegations that he failed to properly submit his rule 955 declaration pursuant to that order. (Evid. Code, § 452(d).) Although the prior rule 955 proceeding was ultimately dismissed based on a stipulation between the parties, the case put respondent on notice of his obligations under rule 955 and the potential consequences of failing to comply. The court finds it extremely troubling for respondent to contend at this trial that he still has not read rule 955. The court rejects any attempt by respondent to blame the Office of Probation for his failure to timely and adequately comply with rule 955.

III. Mitigation and Aggravation

A. Mitigation

Respondent called one character witness, Debra Kroon. Kroon is a former client of respondent's, who has worked with him for about 25 years. Respondent has handled about 10 cases for Kroon. Respondent won every case for Kroon and she is very happy with respondent's work. She believes that respondent cares about his clients, which is different from other attorneys she has worked with in the past. According to Kroon, respondent has saved her business. Kroon also testified that respondent told her in April or May of 2005 that he could not represent her because he was dealing with the State Bar and could not practice. At the time, respondent was not holding any unearned fees for Kroon.

While Kroon's testimony establishes some evidence in mitigation, it does not rise to the level of "an extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities" required by the standards. (Rules Proc. of the State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(vi).⁴) (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387.) Accordingly, the court gives little weight to her testimony in mitigation.

B. Aggravation

Respondent has three prior records of discipline; a serious aggravating circumstance. (Standard 1.2(b)(i).)

1. On February 14, 1991, the California Supreme Court entered an order in case number S012211, suspending respondent from the practice of law for three years, execution stayed, and placing respondent on probation for three years subject to conditions, including six months actual suspension. As discussed above, respondent also was ordered to comply with rule 955 as part of this discipline. Respondent stipulated to: (1) misconduct in three client matters from 1984 to

⁴All further references to standard are to this source.

1988, including improperly withdrawing from representation and failing to perform competently; (2) improper fee sharing from 1984 to 1987; and (3) the conclusion that his five misdemeanor violations for practicing law while suspended during 1988 to 1989 involved other misconduct warranting discipline. In mitigation, respondent did not have a prior record of discipline.

2. On June 15, 1992, respondent stipulated to a private reproof, with public disclosure, based on his wilful failure to comply with the conditions of his probation in Supreme Court case number S012211. In particular, respondent failed to properly submit his probation reports.

3. On July 1, 2005, the Supreme Court of California filed a disciplinary order in case number S133041 (State Bar case number 00-O-13950 et al.), suspending respondent for one year, execution stayed, and placing him on probation for two years subject to conditions, including 90 days actual suspension. Respondent stipulated to failing to perform competently in five client matters between 1999 and 2001; and to appearing in court on two separate cases in September of 2002 while he was not entitled to practice. In mitigation, the parties stipulated to respondent's willingness to enter into a stipulation; respondent's refund of fees to one client; and that respondent suffered from significant medical problems throughout the time frame of the matters at issue. In aggravation, respondent consistently failed to provide written fee agreements to his clients; he failed to retrieve and/or respond to mail from the State Bar; and he was negligent in calendaring many litigation matters, resulting in numerous failed appearances.

As an additional factor in aggravation, the court finds that respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Standard 1.2(b)(v).) Respondent's testimony and conduct at trial was extremely troubling. Respondent's statements that he did not read the underlying stipulation prior to signing it, did not read the Supreme Court order and did not read rule 955, are indefensible. Respondent's conduct

and his indifference to his responsibilities as an officer of the court demonstrate that he does not fully appreciate the seriousness of his conduct and cast serious doubt on his fitness to practice. Respondent's attitude toward the disciplinary system establishes that he does not have the ability or willingness to conform to professional norms for the protection of the public and the administration of justice. This is corroborated by his failure to timely file his rule 955 compliance declaration, to timely file his answer to the NDC, and to timely file a pretrial conference statement.⁵

IV. 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.)

Standard 1.7(b) provides that if an attorney is found culpable of professional misconduct and the attorney has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has three prior records of discipline and failed to offer any compelling mitigating circumstances.

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, supra*, 50 Cal.3d at p. 131; *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1188; *Powers v. State Bar* (1988) 44 Cal.3d 337, 342.) There are no mitigating circumstances warranting deviation from the norm.

⁵The court takes judicial notice of the official file in this matter as to respondent's late filing of his answer and pretrial statement. (Evid. Code, § 452(d).)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given several opportunities to do so. Most recently, he did not comply with rule 955. 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 failure to accept responsibility for his misconduct and to rectify it are of great concern to this court, particularly in this proceeding - his fourth discipline matter.

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 wilful disobedience of the Supreme Court's order.

V. Discipline Recommendation

IT IS HEREBY RECOMMENDED that respondent OLIVER LEE SAUNDERS 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) of the rule within 40 days of the effective date of the order showing his compliance with said order.

VI. Order Regarding Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to Business and Professions Code section 6007(c)(4). The inactive enrollment will become effective five days from the date this order is filed and will 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.

VII. Costs

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

Dated: August 22, 2006

JOANN M. REMKE
Judge of the State Bar Court