

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

In the Matter of)	Case No. 05-N-05169-RAH
)	
ROBERT BRUCE HUTCHINS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 136790,)	ENROLLMENT
)	
<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 Robert Bruce Hutchins (“respondent”), by failing to file with the Clerk of the State Bar Court the compliance affidavit required by rule 955, subdivision (c), of the California Rules of Court (“rule 955”), failed to comply with an order of the California Supreme Court and thereby failed to do acts connected with or in the course of his profession, which he ought in good faith to do, in wilful violation of Business and Professions Code section 6103. The OCTC was represented primarily in this matter by Deputy Trial Counsel Fumiko D. Kimura (“DTC Kimura”). 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, subdivision (c), 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 State Bar’s filing of a NDC against respondent on

February 3, 2006.¹

A copy of the NDC was properly served upon respondent on February 3, 2006, 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). On February 8, 2006, a return receipt was received by the State Bar, and it was signed by “J. Nichols” on February 6, 2006.

On February 9, 2006, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in-person status conference for March 15, 2006. A copy of said notice was properly served upon respondent by first-class mail, postage fully prepaid, on February 9, 2006, addressed to respondent at his official address. The copy of said notice was not returned to the State Bar Court by the USPS as undeliverable or for any other reason.

On March 15, 2006, DTC Kimura called respondent at the official membership records telephone number (818) 545-8285 (“membership telephone number”). She was greeted by a voice recording which said, “Hi, this is Bob Hutchins. I’m not available right now, but please leave a message and I will get back to you as soon as I can. Thank you.” DTC Kimura left a message for respondent to return her call as soon as possible and also informed him of the status conference. DTC Kimura did not hear from respondent.

On March 15, 2006, the court held a status conference in this matter. Respondent failed to appear either in person or through counsel at the status conference. Thereafter, on March 17, 2006, the court filed an Order Pursuant to In Person Status Conference setting forth that as respondent had not filed a Verified Response to the NDC, the court would entertain a motion for the entry of respondent’s default which was to be filed by April 14, 2006. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on March 17, 2006, addressed to respondent at his official address. The copy of said order was not returned to

¹On or about January 6, 2006, a 20-day letter was mailed to respondent, via first-class mail, at his official membership records address: 501 West Glenoaks Boulevard, #34, Glendale, California 91202. This letter was not returned by the United States Postal Service (“USPS”) as undeliverable or for any other reason.

the State Bar Court by the USPS as undeliverable or for any other reason.

On April 10, 2006, DTC Kimura sent an e-mail to respondent at RBHutchins@aol.com regarding this disciplinary matter. DTC Kimura informed respondent that he failed to file his response to the NDC and also missed the status conference before the State Bar Court. DTC Kimura asked respondent to contact her upon receipt of the e-mail, as she was preparing to file a motion for entry of his default.

On April 11, 2006, DTC Kimura called respondent again at his membership telephone number. She was greeted by the same voice recording, “Hi, this is Bob Hutchins. I’m not available right now, but please leave a message and I will get back to you as soon as I can. Thank you” and confirmed that the membership telephone number still belonged to respondent. DTC Kimura left a message for respondent, asking respondent to call her back as soon as possible.

On April 11, 2006, upon conducting a reverse phone search of respondent’s membership telephone number at the 411.COM website, two different addresses were located. One of the addresses was respondent’s official address, without the suite number and with the plus four attachment to the zip code. The other address was 2332 E. Glenoaks Blvd., Glendale, CA 91206-3023 (“E. Glenoaks address”).

On April 11, 2006, DTC Kimura conducted another internet search at the WhitePages.COM website. DTC Kimura entered respondent’s full name and limited the search to California. The search returned his name, membership telephone number, and the address 2332 E. Glenoaks Blvd., Glendale, CA 91206-3023.

Although the NDC sent to respondent’s official address was not returned, on April 11, 2006, DTC Kimura sent a courtesy copy of the NDC to respondent by first-class mail at 2332 E. Glenoaks Blvd., Glendale, CA 91206-3023.

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 April 13, 2006, the OCTC

filed a motion for the entry of respondent's default.² The motion advised respondent that once the court had found culpability, the OCTC would recommend respondent's disbarment. The OCTC also requested in its motion that the court take judicial notice of respondent's official membership address and the official court file in this matter. The court grants the OCTC's request. Also included with the motion was the declaration of DTC Kimura and Exhibits 1-4. The court admits these exhibits into evidence. A copy of said motion was properly served upon respondent by certified mail, return receipt requested, on April 13, 2006, addressed to respondent at his official address. A courtesy copy of the motion was also served upon respondent by regular mail on April 13, 2006, addressed to respondent at the E. Glenoaks address.

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on May 1, 2006, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive³ and Further Orders. A copy of said order was properly served upon respondent on May 1, 2006, by certified mail, return receipt requested, addressed to respondent at his official address. The green return receipt card was returned to the State Bar Court by the USPS indicating the order was received by "Mark Rich" on May 2, 2006. A courtesy copy of the order was also served upon respondent by first-class mail, postage fully prepaid, on May 1, 2006, addressed to respondent at the E. Glenoaks address. The courtesy copy was not returned by the USPS as undeliverable or for any other reason.

On May 22, 2006, the OCTC filed a brief on the issues of culpability and discipline and waived the hearing on this matter. The court admits into evidence State Bar Exhibits 1-5 attached to said brief.

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

²As of April 13, 2006, respondent had neither filed or served a response to the NDC nor contacted the State Bar.

³Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after service of this order by mail.

FINDINGS OF FACT AND CONCLUSIONS OF LAW⁴

Respondent was admitted to the practice of law in the State of California on December 7, 1988, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On or about November 30, 2004, the Hearing Department of the State Bar Court issued a decision in case number 03-O-05003 finding respondent culpable of four counts of misconduct and recommending to the Supreme Court that discipline be imposed against respondent. Respondent failed to appear or participate in this matter, which proceeded as a default.

On or about November 30, 2004, the Hearing Department's decision was properly served by mail upon respondent at his official State Bar membership records address.

On or about April 14, 2005, the California Supreme Court issued an order effective May 14, 2005, imposing discipline on respondent in case no. S131117 (State Bar Court Case No. 03-O-05003). The April 14, 2005, Supreme Court order provided that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be actually suspended from the practice of law for sixty days and until he makes restitution to his client, Ralph Stone (or the State Bar's Client Security Fund, if appropriate), until he furnishes satisfactory proof of payment to the State Bar's Office of Probation and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California.

Pursuant to the April 14, 2005, Supreme Court order, if he was actually suspended for 90 days or more, respondent was ordered to comply with California Rules of Court, rule 955, and to perform the acts specified in subdivisions (a) and (c) of rule 955 within 120 and 130 days, respectively, after the effective date of May 14, 2005.

On or about April 14, 2005, the Clerk of the California Supreme Court properly served

⁴As 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 OCTC's brief on the issues of culpability and discipline.

upon respondent a copy of the April 14, 2005, order. Respondent received a copy of the April 14, 2005, order.

Rule 955, subdivision (a), required respondent to notify all clients and any co-counsel of his suspension, deliver to all clients any papers or other property to which the clients were entitled, refund any unearned attorney fees, notify opposing counsel or adverse parties of his suspension, and file a copy of said notice with any court, agency or tribunal before which litigation was pending. Rule 955, subdivision (c), required respondent to file with the Clerk of the State Bar Court an affidavit showing that he had fully complied with the requirements of rule 955, subdivision (a).

Pursuant to the April 14, 2005, Supreme Court order, if respondent remained actually suspended for 90 days or more, respondent was to have complied with subdivision (c) of rule 955 no later than September 21, 2005. At no time did respondent make restitution to Ralph Stone (or the Client Security Fund) or provide proof of same to the Office of Probation. At no time did respondent bring a motion to terminate his suspension pursuant to rule 205. Therefore, respondent did remain actually suspended for more than 90 days. Accordingly, respondent should have filed with the Clerk of the State Bar Court an affidavit showing that he had fully complied with rule 955 by September 21, 2005.

On or about May 27, 2005, Probation Deputy Shuntinee Brinson of the Office of Probation of the State Bar of California sent a letter to respondent informing him that he must comply with rule 955 and informing him that the form affidavit showing that he had fully complied with rule 955 must be filed with the State Bar Court no later than September 21, 2005. Enclosed with the May 27, 2005, letter was a copy of the April 14, 2005, Supreme Court order, a copy of the Hearing Department decision, a copy of rule 955 and a copy of an affidavit of compliance with rule 955. The Probation Deputy's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The May 27, 2005, letter was mailed by first-class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The USPS did not return the Probation Deputy's May 27, 2005, letter as undeliverable or for any other reason. Respondent received the May 27,

2005, letter.

On or about October 31, 2005, Probation Deputy Cheryl Chisholm (“Probation Deputy Chisholm”) wrote respondent regarding his failure to comply with rule 955. The October 31, 2005, letter reminded respondent that his rule 955 affidavit had been due on September 21, 2005. In the October 31, 2005, letter, Probation Deputy Chisholm enclosed another copy of the 955 affidavit form and asked respondent to submit the 955 affidavit immediately. The October 31, 2005, letter with the enclosed 955 affidavit form was mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The USPS did not return the Probation Deputy’s October 31, 2005, letter as undeliverable or for any other reason. Respondent received the October 31, 2005, letter.

On or about November 7, 2005, respondent telephoned Probation Deputy Chisholm and left a message stating he would be faxing the form sent by Probation Deputy Chisholm. However, respondent failed to submit the 955 affidavit.

On or about December 6, 2005, Probation Deputy Chisholm called respondent at his State Bar membership telephone number and left a message asking respondent to call her immediately. Respondent failed to respond to Probation Deputy Chisholm’s call.

To date, respondent has failed to file with the Clerk of the State Bar Court the compliance affidavit required by rule 955, subdivision (c).⁵

“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

⁵As of February 3, 2006, the date the NDC in this matter was executed by Deputy Trial Counsel Katherine Kinsey, respondent had not filed with the Clerk of the State Bar Court the compliance affidavit required by rule 955, subdivision (c). Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of its records which reflect that as of the date of the filing of this decision, respondent still has not filed with the Clerk of the State Bar Court the compliance affidavit required by rule 955, subdivision (c).

Cal.3d 337, 341.) The filing of an affidavit pursuant to rule 955, subdivision (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 April 14, 2005, in Supreme Court matter S131117 (State Bar Court Case No. 03-O-05003) by failing to file an affidavit of compliance with rule 955 as required by rule 955, subdivision (c). 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 two prior impositions of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) ("standards").)

A. Effective May 14, 2005, respondent was suspended from the practice of law for two years; the execution of said suspension was stayed; and respondent was actually suspended from the practice of law for 60 days and until he makes restitution to Ralph X. Stone (or the Client Security Fund, if appropriate) in the amount of \$2,500.00 plus 10% interest per annum from April 29, 2003, and furnishes satisfactory proof of such to the State Bar's Office of Probation; and until the State Bar Court grants a motion to terminate respondent's actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California in Supreme Court matter S131117 (State Bar Court Case No. 03-O-05003).

In this prior disciplinary matter involving one client, respondent was found to have recklessly, repeatedly or intentionally failed to perform legal services with competence in

wilful violation of rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California (“RPC”); failed to respond promptly to reasonable status inquiries in wilful violation of section 6068, subdivision (m), of the Business and Professions Code;⁶ failed to take steps to avoid reasonably foreseeable prejudice to his client’s rights in wilful violation of rule 3-700(A)(2) of the RPC; and failed to cooperate with and participate in a State Bar disciplinary investigation in wilful violation of section 6068(i). In aggravation, respondent engaged in multiple acts of wrongdoing; caused significant client harm; demonstrated indifference toward rectification of or atonement for the consequences of his misconduct; and failed to participate in this proceeding prior to the entry of his default which demonstrated a lack of cooperation. In mitigation, it was noted that respondent had no prior record of discipline.

B. On May 4, 2006, the Supreme Court issued an order in Supreme Court matter S141343 (State Bar Court Case No. 04-O-10644) suspending respondent from the practice of law for two years, staying execution of said suspension, and actually suspending respondent from the practice of law for 30 days and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure.

In this second prior disciplinary matter, in which respondent also failed to participate and in which his default was entered, respondent was found to have failed to return any portion of an unearned fee to his client in response to her requests that he do so in wilful violation of rule 3-700(D)(2) of the RPC; failed to account to his client regarding advance fees in response to his client’s requests for an accounting in wilful violation of rule 4-100(B)(3) of the RPC; failed to respond to client inquiries in wilful violation of section 6068, subdivision (m); and failed to cooperate with a State Bar disciplinary investigation in wilful violation of section 6068, subdivision (i). In aggravation, it was noted that respondent had a prior record of discipline; engaged in multiple acts of misconduct; caused significant client harm; demonstrated indifference toward rectification and atonement for the consequences of his misconduct; failed to

⁶Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

file a response to the NDC allowing his default to be entered and failed to participate in the disciplinary proceeding prior to the entry of his default. No mitigating circumstances were found.

In this current proceeding, respondent's failure to file his rule 955 compliance affidavit after being reminded by Probation Deputy Chisholm that his affidavit had been due on September 21, 2005, demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Standard 1.2(b)(v).)

Respondent's failure to participate in this matter prior to the entry of his default is also an aggravating circumstance. (Standard 1.2(b)(vi).)

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, subdivision (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(b) provides that where an attorney has two prior records of discipline, the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate. No mitigating circumstances were found in this matter.

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 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 and by his failure to comply with rule 955, subdivision (c). The court also notes that respondent failed to participate in his prior disciplinary matters, including the disciplinary matter underlying this rule 955 proceeding. More importantly, respondent's failure to comply with rule 955 undermines the basic function that rule 955 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 ROBERT BRUCE HUTCHINS 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: August ____, 2006

RICHARD A. HONN
Judge of the State Bar Court