

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

In the Matter of	)	<b>Case No. 06-N-11134-RAH</b>
	)	
<b>ROBERT STANLEY SHATZEN,</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND ORDER OF</b>
<b>Member No. 54542,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<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 Robert Stanley Shatzen failed to comply with rule 955, California Rules of Court<sup>1</sup> as ordered by the Supreme Court. The State Bar was represented by Shari Sveningson. Respondent did not participate either in person or by counsel.

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

**II. SIGNIFICANT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent on April 5, 2006, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar (official address) and at an alternate address. (Bus. & Prof. Code<sup>2</sup> §6002.1, subd. (c); Rules Proc. of State Bar, rules 60(b) and 583.) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence sent to the official address was returned as undeliverable. The return receipt for the copy sent to the alternate address was returned, executed by "Robert Shatzen."

On April 10, 2006, the State Bar Court properly served respondent by first-class mail,

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<sup>1</sup>Future references to rule are to this source.

<sup>2</sup>Future references to section are to this source.

postage prepaid at his official address with a notice scheduling a status conference on June 5, 2006. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (d) which indicate that this correspondence was returned as undeliverable and that it bore the handwritten notation “not at this address.”

Respondent did not file a response to the NDC. On May 17, 2006, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address and, by regular mail, at an alternate address. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek minimum discipline of disbarment if he was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).)

Respondent did not appear at the June 5 status conference. On June 6, 2006, an order memorializing the status conference was properly served on him at his official and alternate addresses.

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 June 8, 2006, by certified mail, return receipt requested at his official and alternate addresses. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (d) which indicate that the correspondence sent to the official address was returned as undeliverable and that the copy sent to the alternate address was returned unclaimed.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (April 26, 2006, No. 04-1477) 547 U.S. \_\_\_\_ <<http://www.supremecourtus.gov/opinions/05slipopinion.html>>.)

The case was submitted for decision on June 15, 2006, after the State Bar submitted a closing brief.

### **III. 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; Rules Proc. of State Bar, rule 200(d)(1)(A).) The findings are also based upon matters admitted into evidence or judicially noticed.

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 13, 1972, and has been a member of the State Bar at all times since.

#### **B. Facts**

On November 3, 2005, the California Supreme Court filed an order, number S136739 (Supreme Court order or 955 order), in State Bar Court case no. 04-J-14374 in which respondent was ordered, among other things, to be actually suspended for four months and until he complied with rule 205 of the Rules of Procedure of the State Bar (rule 205). He was also ordered to comply with rule 955(a) and (c) within 30 and 40 days, respectively, of the effective date of the Supreme Court order. The Supreme Court order was effective on December 3, 2005. (Rule 953(a).) Accordingly, respondent was to comply with rule 955(a) no later than January 2, 2006, and with rule 955(c) no later than January 11, 2006.

Upon filing of the 955 order, the Supreme Court sent respondent a copy of it.<sup>3</sup>

A copy of the Supreme Court order also was attached to the NDC in the instant proceeding.

As of April 5, 2006, respondent had not filed with the State Bar Court the affidavit

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<sup>3</sup>Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 29.4(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

required by rule 955(c). He still has not done so.<sup>4</sup> He has offered no explanation for his noncompliance with rule 955(c).

### **C. Legal Conclusions**

There is clear and convincing evidence that respondent wilfully violated the Supreme Court order directing his compliance with rule 955.<sup>5</sup> This constitutes a violation of rule 955(d), which makes the wilful noncompliance with the provisions of rule 955 a cause for disbarment, suspension or revocation of probation, in relevant part. As a result of respondent's wilful failure to comply with the order of the Supreme Court, he violated section 6103 which provides, in relevant 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 or her profession, which the attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

### **IV. FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct<sup>6</sup>, std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(i).) As previously discussed, in S136739, the Supreme Court imposed discipline consisting of three years' stayed suspension and actual suspension for four months and until he complied with rule 205, among other things. In that matter, respondent was found culpable of violating sections 6068, subdivision (i), and 6106 as well as rule 1-400(D)(1) of the rules of Professional Conduct. In mitigation, the court found more than 20 years of law practice without discipline. In

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

<sup>5</sup>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.)

<sup>6</sup>Future references to standard or std. are to this source.

aggravation, the court found a pattern of misconduct, failure to cooperate in the disciplinary proceedings and lack of insight.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with rule 955(c) even after the NDC in the instant proceeding was filed. (Std.1.2(b)(v).)

Respondent's failure to participate in proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109-110.)

#### **V. 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 respondent bears the burden of establishing mitigation by clear and convincing evidence, the court has no basis for finding mitigating factors.

#### **VI. 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; std. 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, supra*, 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 did not participate in this proceeding and did not comply with rule

955(c). More importantly, respondent's noncompliance 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.

## **VII. DISCIPLINE RECOMMENDATION**

It is hereby recommended that respondent Robert Stanley Shatzen 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(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 rule 955(c) within 40 days of the effective date of the order showing his compliance with said order.

## **VIII. 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.

## **IX. ORDER REGARDING INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (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: August \_\_\_, 2006

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RICHARD A. HONN  
Judge of the State Bar Court