

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

In the Matter of	)	<b>Case No. 06-N-12157-RAP</b>
	)	
<b>LAWRENCE GORDON SMITH,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 83901,</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 Lawrence Gordon Smith (“respondent”), by failing to file with the Clerk of the State Bar Court a declaration of compliance with rule 955 of the California Rules of Court,<sup>1</sup> as required by his disciplinary suspension order, wilfully disobeyed or violated an order of the Supreme Court requiring him to do an act connected with or in the course of his profession which he ought in good faith to do in violation of Business and Professions Code section 6103.<sup>2</sup> Following the filing of the NDC, the OCTC was represented in this proceeding by Deputy Trial Counsel Anthony Garcia (“DTC Garcia”). Respondent did not participate in this proceeding either in-person or through counsel.

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<sup>1</sup>Effective January 1, 2007, rule 955 of the California Rules of Court was renumbered 9.20.

<sup>2</sup>Unless otherwise indicated, all further references to section(s) refer to provisions of the California Business and Professions Code.

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 wilfully violated 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 July 28, 2006.

A copy of the NDC was properly served upon respondent on July 28, 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). The return receipt indicates that the copy of the NDC was delivered on July 31, 2006, and was received by "ALEJANDRA."

On August 16, 2006, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, assigning this matter to the Honorable Robert M. Talcott and setting an in person status conference for September 11, 2006. A copy of said notice was properly served upon respondent by first-class mail, postage fully prepaid, on August 16, 2006, addressed to respondent at his official address. The copy of said notice was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

On September 11, 2006, the court held a status conference in this matter. Respondent failed to appear either in person or through counsel at the status conference.

On September 13, 2006, DTC Garcia mailed a certified letter to respondent informing him of the hearing held on September 11, 2006, and of the September 27, 2006, hearing date in this matter. The letter also advised respondent that if he failed to attend the hearing, the OCTC would proceed by seeking his default. On that same date,

DTC Garcia called respondent at the number listed on his membership records address. However, there was no answer.

Thereafter, on September 18, 2006, the court filed a Status Conference Order setting a further in person status conference for September 27, 2006. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on September 18, 2006, addressed to respondent at his official address. The copy of said order was returned to the State Bar Court by the U.S. Postal Service for postage.

On September 27, 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 October 2, 2006, the court filed a Status Conference Order setting a further in person status conference for November 28, 2006, and setting forth that Trial Counsel would file a Motion to Enter Default. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on October 2, 2006, addressed to respondent at his official address. The copy of said order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

Effective November 22, 2006, this matter was reassigned to the Honorable Richard A. Platel. A copy of the order reassigning this matter to Judge Platel was properly served upon respondent by first-class mail, postage fully prepaid, on November 27, 2006, addressed to respondent at his official address. The copy of said order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.<sup>3</sup>

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 December 15, 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’s minimum

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<sup>3</sup>As a result of the reassignment, the status conference scheduled for November 28, 2006, was not held.

discipline recommendation would likely be disbarment. The OCTC also requested in its motion that the court take judicial notice of the records and pleadings contained in the official file maintained by the court in this matter. The court grants said request.<sup>4</sup> Also included with the motion was the declaration of DTC Garcia and Exhibits 1 and 2. The court admits these exhibits into evidence. A copy of said motion was properly served upon respondent by certified mail, return receipt requested, on December 15, 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 January 5, 2007, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive<sup>5</sup> and Further Orders. A copy of said order was properly served upon respondent on January 5, 2007, by certified mail, return receipt requested, addressed to respondent at his official address. The return receipt indicates delivery of the copy of said order on January 8, 2007, although the signature on the return receipt is illegible.

On January 25, 2007, the OCTC filed a supplemental brief on the issues of culpability and discipline and waived the default hearing in this matter.<sup>6</sup>

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<sup>4</sup>However, OCTC's also requested that the court take judicial notice of certain specific facts. The facts set forth in DTC Garcia's request are not completely accurate. Nevertheless, after taking judicial notice of the pleadings and records contained in the official file in this matter, the court will take judicial notice that the NDC, with an attached Declaration of Service by Certified Mail, was filed in this matter on July 28, 2006; that the original Declaration of Service by Certified Mail, which was attached to the NDC, states that *a copy of* the NDC was served upon respondent *Lawrence Gordon Smith* on July 28, 2006, by certified mail, return receipt requested, as certified Article No. 7160 3901 98443983 8124, at 1105 Chapala Street, Santa Barbara, CA 93101, respondent's official membership records address; and that as of December 15, 2006, respondent had not filed a response to the NDC in the State Bar Court.

<sup>5</sup>Respondent'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.

<sup>6</sup>In its brief, the OCTC requests that the court take judicial notice of the court files. The court will therefore take judicial notice of the court file in this matter.

This matter was submitted for decision on January 25, 2007.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On or about December 28, 2005, the California Supreme Court filed Order No. S138194 (“suspension order”) requiring that respondent comply with rule 955 of the California Rules of Court, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the suspension order. The suspension order became effective on January 27, 2006, thirty days after the suspension order was filed.

On or about December 28, 2005, the Clerk of the California Supreme Court properly served a copy of the suspension order upon respondent.

The suspension order required that respondent comply with subdivision (a) of rule 955 of the California Rules of Court no later than February 26, 2006, by notifying all clients and any co-counsel of his suspension, delivering to all clients any papers or other property to which the clients are entitled, refunding any unearned attorney fees, notifying opposing counsel and adverse parties of his suspension, and filing a copy of said notice with the court, agency, or tribunal before which the litigation is pending.

The suspension order required that respondent comply with subdivision (c) of rule 955 of the California Rules of Court no later than March 8, 2006, by filing with the Clerk of the State Bar Court an affidavit showing that he fully complied with those provisions of the suspension order regarding rule 955.

Respondent did not file, with the Clerk of the State Bar Court, an affidavit stating compliance with rule 955 (“955 declaration”) by March 8, 2006. As of July 28, 2006, respondent had not filed a valid 955 declaration.

“Wilfullness” 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, 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 and the Supreme Court's order filed December 28, 2005, in Supreme Court matter S138194 by failing to file the 955 declaration of compliance with rule 955 as required subdivision (c) of said rule and the suspension order. As a result of respondent's wilful failure to comply with the suspension order, he violated section 6103 which provides, in pertinent part, that the wilful violation or disobedience of a court order which requires an attorney to do an act connected with or in the court of his profession, which the attorney ought in good faith to do, 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 one prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) ("standards").)<sup>7</sup> On December 28, 2005, the Supreme Court issued an order in matter S138194 (State Bar Court Case No. 03-O-02664; 04-O-10458; 04-O-13604; 04-O-14343 (Cons.)) 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 one year 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.

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<sup>7</sup>Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of respondent's prior record of discipline in Supreme Court matter S138194 (State Bar Court Case No. 03-O-02664; 04-O-10458; 04-O-13604; 04-O-14343 (Cons.).)

In this prior disciplinary matter which also preceded by default, respondent was found culpable of intentionally, recklessly or repeatedly not performing competently in wilful violation of rule 3-110(A) of the Rules of Professional Conduct (“RPC”) (one matter); not returning a client’s file, or not promptly returning clients’ complete file, in wilful violation of RPC 3-700(D)(1) (three matters); not participating in a State Bar investigation in wilful violation of section 6068, subdivision (i) (three matters); holding himself out as entitled to practice law when he was not entitled to do so in violation of section 6125 and 6126(a) and failed to support California law in violation of section 6068, subdivision (a) (one matter); and not responding promptly to a client’s reasonable status inquiries in wilful violation of section 6068, subdivision (m) (two matters). In aggravation, respondent engaged in multiple acts of misconduct; his misconduct significantly harmed the administration of justice and clients; he demonstrated indifference toward atonement for or rectification of the consequences of his misconduct; and he failed to participate in the proceedings prior to the entry of his default. In mitigation, respondent had no prior record of discipline in nearly 23 years of practice prior to the commencement of his misconduct.

Respondent’s failure to participate in this current 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.)

Standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions. In this matter, no mitigating circumstances were found. In aggravation, respondent has one prior record of discipline and failed to participate in this matter prior to the entry of his default.

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 2.6 provides that a member’s culpability of a violation of section 6103 must result in suspension or disbarment, depending on the gravity of the offense or the harm, if any, to the victim, with regard to the purposes of imposing discipline which are set forth in standard 1.3.

In addition, 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 must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was 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-counsel, 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 matter. 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 LAWRENCE GORDON SMITH 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 9.20 (formerly 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: April 25, 2007

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RICHARD A. PLATEL  
Judge of the State Bar Court