

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

In the Matter of)
) **Case No. 06-N-12158-RAH**
LAWRENCE A. MERRYMAN,)
)
Member No. 28984,)
)
A Member of the State Bar.)

I. Introduction

In this default matter, respondent **Lawrence A. Merryman** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,¹ as ordered by the California Supreme Court on October 21, 2005, in case No. S121225 (State Bar Court case No. 05-PM-03111).

The court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was filed and properly served via certified mail, return receipt requested, on respondent at his official membership records address (official address) on July 11, 2006.² On August 7, 2006, the mailing was returned by the United

¹All references to rule 955 are to California Rules of Court, rule 955. Rule 955 is renumbered to rule 9.20, effective January 1, 2007.

²On June 13, 2006, the State Bar served respondent with the NDC. However an error was made in addressing the envelope, resulting in the NDC being returned to the State Bar as unclaimed. Thus, the State Bar re-served respondent with the NDC at his official address on July 11, 2006.

States Postal Service (USPS) as unclaimed.

On August 7, 2006, the State Bar telephoned respondent at his official membership records telephone number. The call was sent to a voice-mail box. The State Bar left a message informing respondent of the charges that had been filed against him and that his response was due. The message also stated that respondent's response had not been received by the State Bar, and that the State Bar would shortly be filing a motion for his default. The deputy trial counsel (DTC), who called respondent on behalf of the State Bar, provided respondent with her direct telephone number and the case number.

As respondent had recently been on disciplinary probation, the State Bar's DTC contacted the assigned probation deputy to ascertain whether respondent's probation file contained an alternative address or phone number. However, respondent's probation deputy reported that there was no other address or phone number for respondent in the probation file.

The State Bar also attempted to reach respondent by e-mail by leaving an e-mail message at the e-mail address for respondent contained in the computer records maintained by the State Bar. The DTC provided her contact information in her e-mail to respondent and asked that respondent contact her immediately.

On August 7, 2006, the State Bar conducted internet searches for additional contact information regarding respondent. Two telephone numbers were found which matched respondent's name. However, at one number a woman informed the State Bar that there was no one by respondent's name at that number. The State Bar left a message for respondent at the second number, stating that charges had been filed against respondent in the State Bar Court and that the State Bar would be requesting his default. Although the DTC who left the message, left her contact information and requested that respondent return her call immediately, no return phone call was received by the State Bar.

On August 8, 2006, the DTC again telephoned respondent at his official membership records telephone number. The call was sent to a voice-mail box. The assigned DTC again provided her name and title, stating that she worked for the State Bar. She stated that charges had been filed against respondent in the State Bar Court, that respondent's response to the charges was overdue,

and that the State Bar would be filing its request for respondent's default that same day. The DTC, who provided her direct telephone number, also requested that respondent contact her immediately.

The State Bar also again mailed a copy of the NDC to respondent on August 8, 2006. The accompanying cover letter informed respondent that charges had been filed against him in the State Bar Court, that his response was overdue, and that the State Bar would be moving for his default. The State Bar also attempted to fax the cover letter and the NDC to respondent at the fax number provided by respondent to State Bar Membership Records. However, the number was disconnected.

On motion of the State Bar, respondent's default was entered on August 31, 2006. The order of entry of default was properly mailed to respondent's official address. Respondent was enrolled as an inactive member under Business and Professions Code section 6007(e)³ on September 3, 2006.

Respondent never filed a response to the NDC. (Rules Proc. of State Bar, rule 103.)

Respondent did not participate in the disciplinary proceedings. The court took this matter under submission on September 19, 2006, following the filing of the State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on January 7, 1959, and has been a member of the State Bar since that time.

B. Violation of California Rules of Court, Rule 955

On October 21, 2005, in S121225 (State Bar Court case No. 05-PM-03111), the California Supreme Court revoked respondent's probation and actually suspended him for one year from the practice of law. Credit toward the period of actual suspension was given for the period of

³All references to sections are to the Business and Professions Code, unless otherwise indicated.

involuntary inactive enrollment which commenced on August 26, 2005. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. The order became effective November 20, 2005, and was duly served on respondent.

Rule 955(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered pursuant to this rule.”

On October 21, 2005, the Office of the Clerk of the Supreme Court of California served upon respondent a copy of the Supreme Court order imposing discipline and directing respondent to comply with rule 955.

Respondent was to have filed the rule 955 affidavit by December 30, 2005, but to date, he has not done so and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 955 or of his obligation to comply with those requirements is immaterial. “Wilfulness” in the context of rule 955 does not require actual knowledge of the provision which is violated. 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.)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Supreme Court.⁴

C. Violation of Business and Professions Code Section 6103

Accordingly, respondent’s failure to comply with rule 955 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

⁴Specifically, rule 955(d) provides that a suspended attorney’s wilful failure to comply with rule 955 constitutes cause for disbarment or suspension and for revocation of any pending probation.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁵

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent's four prior records of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

1. On August 12, 2000, in State Bar Court case No. 97-O-11601, respondent was privately reprovved for violation of rules 3-110(A), 3-700(D)(2), and 4-100(B)(3) of the Rules of Professional Conduct.
2. In California Supreme Court case No. S106726 (State Bar Court case No. 01-H-03535), effective August 17, 2002, respondent, upon stipulation, was suspended for one year, stayed, and was placed on probation for two years subject to conditions, including that he be actually suspended for 30 days, for his failure to comply with the conditions of his private reprovval.
3. In California Supreme Court case No. S121225 (State Bar Court case No. 03-O-02651), effective April 11, 2004, respondent, upon stipulation, was suspended for one year, stayed, and was placed on probation for one year on condition that he be actually suspended for 90 days, commencing consecutively to that imposed in Supreme Court case No. S106726 for his failure to comply with the probation conditions as ordered in his second prior disciplinary case.
4. In California Supreme Court case No. S121225 (State Bar Court case No. 05-PM-03111), effective November 20, 2005, the underlying matter, respondent's probation was revoked, the previously stayed suspension was lifted and he was actually suspended for one year for violating his probation conditions.

Respondent demonstrated indifference toward rectification of or atonement for the

⁵All further references to standards are to this source.

consequences of his misconduct by failing to comply 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 this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

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.) Such failure 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* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given opportunities to do so.

Therefore, 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 order.

VI. Recommended Discipline

The court recommends that respondent **Lawrence A. Merryman** 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 California Rule of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

VII. Costs

The court recommends 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.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007(c)(4) and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: December ___, 2006

RICHARD A. HONN
Judge of the State Bar Court