

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

In the Matter of)	Case No. 06-N-12159-JMR
JAMES LEONARD MORIARTY,)	
Member No. 72012,)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

I. Introduction

In this default matter, respondent James Leonard Moriarty 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 September 15, 2005, in case No. S135353 (State Bar Court case No. 02-O-15420).

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 May 25, 2006. The mailing was returned as undeliverable.

On June 29, 2006, the State Bar telephoned respondent at his official membership records number, but a recorded message advised that the phone had been disconnected and was no longer in service. On that same date the State Bar also searched the 2006 Parker's Directory and the July 2005 California Directory of Attorneys (published by the Daily Journal Corporation) for an

¹All references to rule 955 are to California Rules of Court, rule 955.

alternative address and telephone number for respondent. Neither Parker's Directory, nor the California Directory of Attorneys had a listing for respondent.

On June 29, 2006, the State Bar also attempted to locate respondent by doing a computer search. The search yielded a telephone number for "James L. Atty Moriarty" in San Francisco. Additionally, the State Bar attempted to locate respondent by calling AT&T directory assistance. Directory assistance provided the State Bar with the same telephone number that had been found through the computer search. However, when the State Bar telephoned that number, a recorded message required that the caller input a password. Thus, the State Bar could not proceed with that call.

On motion of the State Bar, respondent's default was entered on July 19, 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)² on July 22, 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 August 9, 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 December 22, 1976, and has been a member of the State Bar since that time.

B. Violation of California Rules of Court, Rule 955

On September 15, 2005, in S135353 (State Bar Court case No. 02-O-15420), the California

²All references to sections are to the Business and Professions Code, unless otherwise indicated.

Supreme Court suspended respondent from the practice of law for one year, stayed the execution of the suspension, and actually suspended respondent for 30 days and until he makes restitution and until the State Bar Court grants a motion to terminate his actual suspension under rule 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 120 and 130 days, respectively, after the effective date of the Supreme Court order, if he was actually suspended for 90 days or more. The order became effective October 15, 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.”

Upon filing of the Supreme Court order, under rule 24(a) of the California Rules of Court, the Office of the Clerk of the Supreme Court of California served upon respondent a copy of the order imposing discipline and directing respondent to comply with rule 955. (Evidence Code, §664.)

On September 6, 2005, the State Bar’s Office of Probation wrote a letter to respondent reminding him of his obligation to comply with rule 955. The letter was returned as undeliverable by the United States Postal Service.

Respondent was required to file the rule 955 affidavit by February 22, 2006, 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.³

³Specifically, 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.

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.

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).)⁴

B. Aggravation

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

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) In the underlying matter, California Supreme Court case No. S135353 (State Bar Court case No. 02-O-15420), effective October 15, 2005, respondent was suspended for one year, stayed, and was actually suspended for 30 days and until he makes restitution to Ross Adams (or the Client Security Fund, if it has paid) in the amount of \$2,812.50 plus interest and until the State Bar Court terminates respondent's actual suspension under rule 205 of the Rules of Procedure of the State Bar. His misconduct included improper withdrawal from representation and failure to maintain a current official membership address with the State Bar.

Respondent demonstrated indifference toward rectification of or atonement for the 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))

⁴All further references to standards are to this source.

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. Moreover, he has failed to participate in the underlying matter and in the instant case.

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 **James Leonard Moriarty** 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 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 section 6086.10 and are enforceable both as provided in 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: October 18, 2006

JOANN M. REMKE
Judge of the State Bar Court

