

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

In the Matter of	)	<b>Case No. 06-N-14491-RAP</b>
<b>ROBERT KARL ANDRES,</b>	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 104018,</b>	)	<b>INVOLUNTARY INACTIVE</b>
<b>A Member of the State Bar.</b>	)	<b>ENROLLMENT</b>

**I. Introduction**

In this default matter, respondent **Robert Karl Andres** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,<sup>1</sup> as ordered by the California Supreme Court on March 23, 2006, in case No. S140347 (State Bar Court case No. 04-J-13938; 04-J-14823; 05-J-01885 (Cons.)).

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 156 College Street, 3<sup>rd</sup> FL, VT 05401, his official membership records address (official address) on October 25, 2006. On November 2, 2006, the mailing was returned by the United States Postal Service (USPS) with the notation "Not deliverable as addressed, unable to forward."

On October 25, 2006, a courtesy copy of the NDC was also served on respondent at 70 South

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<sup>1</sup>All references to rule 955 are to California Rules of Court, rule 9.20 (renumbered effective January 1, 2007.) Because the Notice of Disciplinary Charges was filed prior to the change in the numbering of this court rule, the original numbering will be used in this decision.

Winooski Avenue #191, Burlington, VT 05041, which address was contained in respondent's case file. The courtesy copy was not returned to the State Bar.

On November 3, 2006, the State Bar telephoned respondent at his official membership records telephone number. A recorded message stated that the phone number was no longer in service. On that same date, the State Bar telephoned directory assistance for the area which includes respondent's official address (i.e., Burlington, VT) and asked for all listings for respondent. Directory assistance had no listing for respondent.

The State Bar also conducted a search for respondent on the internet, and found an address for "Robert K. Andres" at "26 Decatur St., Burlington, VT 05401." On November 6, 2006, the State Bar sent a letter to respondent at the Decatur Street address. On November 27, 2006, the letter was returned to the State Bar by the USPS bearing the notation, "Return to Sender, Attempted, Not Known."

On motion of the State Bar, respondent's default was entered on January 5, 2007. 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)<sup>2</sup> on January 8, 2007.

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 initially took this matter under submission on January 24, 2007.

On January 31, 2007, the State Bar filed a "Notice of Motion and Motion for Order Granting an Extension of Time to File Discipline Brief; Memorandum of Points and Authorities in Support Thereof; Declaration of Eli D. Morgenstern; and [Proposed] Discipline Brief."

On February 1, 2007, the court filed its Order Granting Extension of Time to File Discipline Brief, whereby it granted the State Bar's motion for an extension of time in which to file its discipline brief and also ordered that the proposed discipline brief be filed as of February 1, 2007, and be part of the record in this matter.

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

Accordingly, on the court's own motion, the January 24, 2007 submission date in the above-captioned matter is vacated. The court further **ORDERS** that the new submission date for the matter is February 1, 2007.

### **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 July 29, 1982, and has been a member of the State Bar since that time.

#### **B. Violation of California Rules of Court, Rule 955**

On March 23, 2006, in case No. S140347 (State Bar Court case No. 04-J-13938; 04-J-14823; 05-J-01885 (Cons.)), the California Supreme Court suspended respondent from the practice of law for two years, stayed the execution of the suspension, and actually suspended respondent for two years, 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, and until respondent provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. 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, which was duly served on and received by respondent, became effective April 22, 2006.

Respondent was required to file the rule 955 affidavit by June 1, 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.<sup>3</sup>

**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).)<sup>4</sup>

**B. Aggravation**

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

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

1. In 2000, respondent stipulated to a six month stayed suspension and probation for one year subject to conditions. Respondent's discipline was based on his failure to perform legal services competently, his failure to communicate, and his criminal conviction for assault, which occurred while he was practicing law in Vermont. (Supreme Court case No. S090631, effective November 17, 2000; State Bar Court case No. 00-J-10587.)
2. In 2006, respondent was suspended for two years, stayed, and actually suspended for two years 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, and until respondent provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant

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<sup>3</sup>Specifically, 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.

<sup>4</sup>All further references to standards are to this source.

to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. Respondent's discipline was based on his failure to competently perform legal services and his criminal conviction while practicing law in Vermont. (Supreme Court case No. S140347, effective April 22, 2006; State Bar Court case No. 04-J-13938; 04-J-14823; 05-J-01885 (Cons.))

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) 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 **Robert Karl Andres** 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 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective

date of its order imposing discipline in this matter.<sup>5</sup>

#### **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, subdivision (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: April 10, 2007

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**RICHARD A. PLATEL**  
Judge of the State Bar Court

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<sup>5</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)