

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 06-N-15111-RAP
RICHARD G. TARLOW,)	DECISION
Member No. 72889,)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this contested matter, respondent **RICHARD G. TARLOW** (“respondent”) is charged with one count of misconduct. The court finds, by clear and convincing evidence, that respondent is culpable of failure to obey a court order. (Bus & Prof. Code, section 6103).¹

The State Bar urges that respondent be disbarred from the practice of law. Respondent argues that the court should not order additional disciplinary action, or at maximum, no more than a thirty (30) day actual suspension. The court concludes and recommends, inter alia, that respondent should be actually suspended from the practice of law for a period of one year.

II. Pertinent Procedural History

The State Bar initiated this proceeding by filing a notice of disciplinary charges (“NDC”) on February 9, 2007. Thereafter, respondent filed a response to the NDC on March 1, 2007.

Trial on culpability was held on July 26, 2007 and August 2, 2007. The State Bar was represented in this proceeding by Deputy Trial Counsel Anthony Garcia. Respondent was represented by attorney Robert K. Tanenbaum. Eight (8) witnesses testified at trial: respondent, attorney Robert Tanenbaum, attorney JoAnne Robbins, attorney Lyle Greenberg, Donna Warner,

¹Unless otherwise noted, all further section(s) references are to this source.

Cory Garson, Lee Garson, and Leslie Tarlow. Three (3) witnesses testified by declaration: Rabbi Steven Jacobs, Leonard Feld, D.D.S., and John Sherman, M.D. At the end of trial, the court rendered a tentative decision. A briefing schedule on culpability was established. The matter was submitted for decision on October 29, 2007.

III. Findings of Fact and Conclusions of Law

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. Findings of Fact

On April 18, 2006, the California Supreme Court filed case number S140846 (State Bar Court case number 04-O-11880), ordering respondent suspended from the practice of law for one year, staying execution of that suspension, and actually suspending respondent from the practice of law for 30 days and until the State Bar Court grants a motion to terminate his actual suspension. In addition, if respondent were to remain actually suspended for a period of 90 days or more, respondent was required to comply with rule 955 (“rule 955”), subdivision (c), of the California Rules of Court by September 25, 2006.²

On June 2, 2006, the Office of Probation of the State Bar of California (“Office of Probation”) mailed respondent a letter informing him that his rule 955 affidavit was to be filed no later than September 25, 2006. The letter was properly addressed to respondent’s membership records address. Respondent was not collecting his mail in a timely manner during June 2006 and cannot recall receiving the letter, however he admitted that he probably did receive it.

Respondent subsequently remained suspended for over 90 days and was therefore required pursuant to rule 955, subdivision (c) to file a rule 955 affidavit³ on or before September 25, 2006.

²Effective January 1, 2007, rule 955 was renumbered and is now rule 9.20. However, as respondent was ordered to specifically comply with rule 955 prior to the effective date of this renumbering, the decision will refer to the rule as rule 955.

³The parties in this matter identified the rule 955 affidavit as a “rule 955 declaration.”

Respondent filed his rule 955 affidavit on November 13, 2006, 49 days after it was due for filing.

On or about December 20, 2005, respondent sought the advice of counsel regarding his looming suspension. However, he did not retain counsel at that time.

In March 2006, respondent retained counsel, attorney JoAnne Robbins (“Robbins”), to represent him concerning three (3) pending matters with the State Bar. Robbins asked respondent if he had complied with rule 955 in case number S140846. Respondent mistakenly told Robbins that he had complied. No other action was taken by Robbins or respondent to confirm that respondent had actually complied with rule 955. Robbins believed respondent was aware of what rule 955 compliance meant because he answered in such a forceful way. Respondent mistakenly believed that he complied with rule 955 when attorney Lyle Greenberg sent a letter to the State Bar, pursuant to rule 1-311 of the California Rules of Professional Conduct (“Rules of Professional Conduct”), notifying the State Bar that he had employed respondent, a suspended attorney. Respondent and Greenberg also met with respondent’s only remaining client and informed the client that respondent was inactive and could no longer represent him, and that Greenberg would substitute in as attorney of record.

During the next few months, Robbins continued to represent respondent in his three (3) pending matters with the State Bar, meeting with and speaking with Deputy Trial Counsel Shari Sveningson. Respondent cooperated with the State Bar investigation in an attempt to reach a global settlement of all his matters. Robbins called the negotiations difficult, but the parties were headed toward a settlement. Sometime in July 2006, Sveningson asked Robbins for a copy of respondent’s rule 955 affidavit. Robbins did not ask respondent for a copy. In October 2006, the issue of respondent’s rule 955 affidavit came up again when Sveningson asked Robbins for a copy. For the first time, Robbins looked in her file and could not locate a copy of the rule 955 affidavit. On November 2, 2006, Robbins e-mailed Sveningson, asking her to obtain a copy of respondent’s rule 955 affidavit from the court clerk. On November 3, 2006, Sveningson replied by e-mail to Robbins that respondent had not filed a rule 955 affidavit. Robbins was surprised, since respondent had informed her that he complied with rule 955 at their March meeting. Robbins then forwarded this

information to respondent by telephone voice message. That same day, Robbins prepared a rule 955 affidavit for respondent and mailed it to him.

On November 6, 2006, Robbins spoke with a probation deputy from the Office of Probation. Robbins was informed that respondent had until November 8th to serve his rule 955 affidavit. Robbins was unaware that the November 8th date was an actual deadline which, if not met, would lead to a referral of the matter to the State Bar Court. Robbins informed the probation deputy that the November 8th date was probably “not doable,” but that they would do their best.

The probation deputy sent a letter to respondent on November 6th, informing respondent that in order to avoid being referred for non-compliance to the State Bar Court, he would have to file his rule 955 affidavit no later than November 8, 2006. A copy of this letter was not sent to Robbins, even though the Office of Probation was aware that she represented respondent on other pending matters.

According to Robbins, she had no notion of a deadline, and, if she had been aware, she would have advised respondent to go file his rule 955 affidavit. After working so diligently with Sveningson to come to terms on a global settlement, Robbins testified that she did not think a rule 955 case would be filed against respondent. Robbins believes that this matter is not a classic rule 955 violation, such as where the respondent is no where to be found and cannot be monitored. Respondent was being cooperative and candid with the State Bar and the State Bar had oversight of him.⁴

Respondent received the Office of Probation’s November 6, 2006, letter, but does not recall the exact date it was received. He believes that he received the letter about two (2) or three (3) days after it was mailed to his Calabasas address, but he was not checking for his mail everyday. Respondent believes that he received Robbins’ letter with the rule 955 affidavit form on or about November 7, 2006.

Between November 3rd and November 7th, respondent and Robbins had telephone

⁴The court found Robbins’ testimony to be credible. Further, Robbins’ testimony was uncontroverted, as neither the probation officer nor Sveningson testified in these proceedings.

conversations regarding respondent's outstanding rule 955 affidavit. Unaware that the Office of Probation had established a critical time period for filing the rule 955 affidavit, Robbins did not pass this information on to respondent.⁵ Robbins' testimony regarding her belief that November 8th was not an actual deadline is bolstered by the fact that the Office of Probation did not send her a courtesy copy of the November 6th letter or a written confirmation of the November 6th telephone conversation. Neither was done, and from the evidence produced at trial, respondent's counsel was, at this point, kept in the dark as to the critical importance of the November 8th date.

Respondent filed his rule 955 affidavit on November 13, 2006.

Respondent avers that the November 6th letter was not faxed, sent by messenger, or sent by certified mail, and that his attorney never informed him to hurry down and file his affidavit. Respondent believed that this matter would become part of the global settlement with the other three (3) pending matters, which in fact were settled through a stipulation filed on December 19, 2006. However, on November 14, 2006, the State Bar notified respondent's counsel that at the time of agreement in the three (3) pending matters, the instant proceeding was not included in the stipulation.

Respondent also argues that he filed his rule 955 affidavit one (1) day late, not 49 days late as alleged by the State Bar. Respondent's claim is based on the fact that the Office of Probation's probation deputy extended respondent's time to file his rule 955 affidavit to November 8, 2006.⁶ Respondent's claim is without merit. A probation deputy cannot amend, modify, or change in any way an order of the California Supreme Court. However, the Office of Probation does have discretion as to what cases to forward for litigation. That is what occurred in this matter. Respondent's rule 955 affidavit was to be filed by September 25, 2006. Respondent failed to comply with that order. Accordingly, respondent's argument that his rule 955 affidavit was filed only one day late must fail.

⁵The court found respondent's testimony on the subject of his telephone conversations with Robbins between November 3rd and November 7th to be evasive and therefore not credible. However, Robbins testimony on this subject is credible.

⁶November 10, 2006, was a holiday and the State Bar offices were closed.

Respondent further argues that he did not file the rule 955 affidavit timely out of ignorance or misunderstanding. The court finds this argument unpersuasive. The court found that the Office of Probation's June 2, 2006, letter was properly mailed to respondent at his membership records address. Respondent admitted that he probably received the letter. It is respondent's responsibility to collect and read the mail sent to his membership records address. He therefore cannot escape responsibility for his failure to timely file his rule 955 affidavit due to his failure to collect and read his mail.

C. Conclusions of Law

Count 1: Failure to Obey a Court Order (Bus. & Prof. Code, section 6103)

Section 6103 provides that "[a] wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

The court finds, by clear and convincing evidence, that respondent willfully violated section 6103, by failing to timely file an affidavit of compliance with rule 955 in conformity with the Supreme Court Order and the requirements of rule 955, subdivision (c), thereby wilfully disobeying or violating an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Nine (9) witnesses testified regarding respondent's good character. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct ("standards"), std. 1.2(e)(vi).) The following witnesses testified regarding respondent's good character.

Robert Tanenbaum, Esq.

Robert Tanenbaum⁷ ("Tanenbaum") was admitted to the State Bar of California in 1978. He

⁷Tanenbaum is respondent's co-counsel in this matter.

was admitted to practice in the State of New York in 1968 and admitted to practice law in the Commonwealth of Pennsylvania in 1980. Tanenbaum served in the New York County District Attorney's Office where he tried over 200 major felony cases and at one time ran the Homicide Bureau. Tanenbaum has appeared as a television news commentator, taught advanced criminal procedure at Boalt Hall School of Law, served on several presidential commissions, served two terms as mayor of Beverly Hills, and has had approximately 21 books published. Tanenbaum has known respondent for 52 years, since their childhood in New York. He has known respondent professionally as an attorney since approximately 1976. Tanenbaum has referred many cases to respondent over a 20 year period and never heard a complaint from a client. Tanenbaum is aware of respondent's distinguished military career. Respondent served in the United States Marine Corp where he was awarded several medals for his bravery while stationed in Vietnam.

Tanenbaum became aware of respondent's problems with the State Bar when he called to refer a matter to respondent. He was surprised when he learned that respondent could not handle the matter due to his inactive status. Tanenbaum is aware of the recent difficulties in respondent's life: the death of respondent's father, the fire in respondent's house, and the loss of his secretary, and the effect all of this had on respondent.

Tanenbaum believes that respondent is a man of impeccable integrity and a loyal American due to his service in Vietnam. Respondent has helped many people and is a rare, special person. These State Bar proceedings do not alter his opinion of respondent.

Lyle Greenberg, Esq.

Lyle Greenberg ("Greenberg") is a member of the State Bar of California. He has known respondent since 1981/82 and they have been friends ever since. During their friendship, Greenberg and respondent have worked together on cases; the last case being a severe burn case where the client had 3rd degree burns over 40% of his body. Respondent had filed the case and Greenberg came on to help. The case is complex and includes six (6) defendants. Due to respondent's suspension, Greenberg took over the case, with respondent assisting in a paralegal capacity. Greenberg testified that sometime in early 2006, respondent informed Greenberg of his State Bar problems. Greenberg

referred respondent to attorney JoAnne Robbins.⁸ After respondent's meeting with Robbins, respondent informed Greenberg that he had to comply with rule 1-311. Greenberg prepared and mailed the document to the State Bar and sent a copy to the client.

Greenberg is aware of the recent difficulties in respondent's personal life: the death of his father, the illness of respondent's daughter, the smoke loss at his home, and the passing of his secretary, whom he described as respondent's right hand person. Greenberg also testified as to how respondent was supportive to him during the illness of Greenberg's daughter.

Greenberg believes respondent is honest and possesses integrity and candor. To him, respondent has extraordinary character. Greenberg is aware of respondent's State Bar problems, but his opinion of respondent has not changed.

Donna Warner

Donna Warner ("Warner") has known respondent for 25 years, both socially and professionally. Respondent has represented her daughter and other family members, and she has referred clients to respondent. Warner's and respondent's children grew up together.

Warner is aware of the recent difficulties in respondent's personal life: the death of his father, the fire/smoke problem with his home, the death of his secretary, Sandy, and the effect of all of this on respondent.

Warner believes that respondent possesses integrity and is an honest person. She holds him in high esteem.

Cory Beth Garson

Cory Beth Garson ("Garson") has known respondent for 18 years and is a close friend. Respondent has represented Garson and other members of her family. After the fire/smoke problem at his home, respondent and his family moved in with Garson's family. Garson is aware of other recent problems in respondent's personal life: the death of his father, the passing of Sandy, his secretary, and the devastating effect all of these events had on respondent.

⁸Both Robbins and respondent testified that respondent first met with Robbins in December 2005.

Garson believes respondent to be an honest person. Garson is aware of respondent's problems with the State Bar and her opinion of respondent is not changed. Garson was not aware that respondent had admitted in a prior disciplinary matter to the misappropriation of funds until her court appearance in this matter.

Lee Garson

Lee Garson has been respondent's friend for 18 years. Respondent has represented him and several other family members. Lee Garson is aware of the recent difficulties in respondent's personal life: the death of his father, the smoke/fire loss of his home, his daughter's illness, and the death of his secretary. After the smoke/fire loss of his home, respondent lived with Lee Garson.

Lee Garson believes respondent to be honest and a man of integrity. Lee Garson is aware of respondent's problems with the State Bar.

Leslie Tarlow

Leslie Tarlow ("Tarlow") has been married to respondent for almost 30 years. They have three (3) children. During the time of the passing his father, respondent became very emotional, could not sleep, and cried a lot, but he had to be strong for his family, especially his elderly mother and his siblings.

The following witnesses testified by way of declaration:

Rabbi Steven B. Jacobs

Rabbi Steven B. Jacobs ("Rabbi Jacobs") is respondent's family's rabbi and has known respondent and his family for over 20 years. Rabbi Jacobs believes respondent to be a good husband, father, and friend, and that the community respects him. Although respondent may be stubborn at times, he is honorable and has acknowledged his choices that have been in error. Rabbi Jacobs hopes that respondent can continue to represent his clients and continue to practice law.

John Sherman, M.D., F.C.C.P.

Dr. John Sherman ("Dr. Sherman") has been a physician since 1974 and is currently in private practice at Cedars-Sinai Medical Center. Dr. Sherman has known respondent since 1981, first socially and more recently as respondent's and his family's treating physician. Dr. Sherman

finds that despite an incredible string of severe personal life stresses, respondent has always maintained a calm, reasonable demeanor and has never “lost it” in situations where most others may well have. Over the years, Dr. Sherman has asked respondent for legal advice and found his advice to be wise and dependable.

Dr. Sherman describes respondent as honest to a fault and believes that respondent gives all attorneys a good name. Dr. Sherman attests that he can give respondent his unqualified highest recommendation that he is able to bestow. Dr. Sherman is aware of some of the issues raised before the court.

Leonard Feld, D.D.S.

Dr. Leonard Feld (“Dr. Feld”) is a dentist and practices in California and Arizona. He is also a clinical professor at the University of Southern California School of Dentistry. He has been in practice for over 30 years.

Dr. Feld has known respondent for about 30 years, both socially and professionally, treating respondent and his family. Respondent has represented Dr. Feld and many of his family members. Dr. Feld values respondent’s advice. Without reservation, Dr. Feld holds respondent in such high regard that he would place the well-being of his family in respondent’s hands. Dr. Feld believes that respondent will go the extra mile for his clients.

B. Aggravation

The court finds one factor in aggravation. (Std. 1.2(b).) Respondent has a prior record of discipline. (Std. 1.2(b)(i).) On April 18, 2006, the California Supreme Court issued an order (S140846) suspending respondent from the practice of law for one year, stayed, with an actual suspension of 30 days 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. Respondent was found to be in violation of rule 3-110(A) of the California Rules of Professional Conduct; section 6068, subdivision (m); and section 6068, subdivision (i). In mitigation, the court found that respondent had no prior record of discipline in almost 22 years of practice. In aggravation, the court found that respondent committed multiple acts of wrongdoing, harmed the

client, and failed to participate in the disciplinary proceeding.

On May 29, 2007, the California Supreme Court issued an order (S151375) suspending respondent from the practice of law for two years, stayed, with four years probation, and six months actual suspension. Respondent was further ordered to pay restitution in the amount of \$14,443.00 plus interest. In three separate matters, respondent was found culpable of nine counts of misconduct, including violations of rules 4-100(B)(4), 4-100(B)(3) [three counts], and 4-100(A) [two counts] of the Rules of Professional Conduct; section 6068, subdivision (i) [two counts]; and section 6068, subdivision (m). In mitigation, respondent demonstrated candor and cooperation in stipulating to the misconduct. In aggravation, respondent harmed his clients, committed misconduct involving a trust account, and had a prior record of discipline.

The court finds no other aggravating circumstances. The State Bar alleges that respondent practiced law while he was not entitled to practice and urges the court to find additional uncharged misconduct. The court does not agree. The State Bar has not met its burden of proving this allegation by clear and convincing evidence. Therefore, this allegation must fail.

Additionally, the State Bar argues that the court should find respondent's lackadaisical attitude toward his duty to comply with court orders and obey the laws governing the behavior of attorneys in California as an additional aggravating circumstance. The court again disagrees. The State Bar failed to meet its burden of proving this allegation by clear and convincing evidence. Therefore, this allegation must fail.

The State Bar further argues that the court should find respondent's lack of credibility while testifying in this matter an aggravating circumstance. The court does not agree. The court did find that respondent was evasive in answering questions concerning his telephone conversations with counsel during the November 3rd to November 7th time period. However, considering respondent's testimony as a whole, the court did not find that respondent lacked credibility.

V. Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of

disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

In addition, 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 case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.6 and 1.7(b).) Standard 2.6 pertains to cases involving a violation of section 6103. It states that culpability of a member of a violation of section 6103 “shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

Due to respondent’s prior record of discipline, the court also looks to standard 1.7(b) for guidance. Standard 1.7(b) provides that when an attorney has two prior records of discipline, “the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.”

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silvertown*, (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be disbarred. Disbarment is generally considered to be the appropriate sanction for a willful violation of rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) The imposition of disbarment in rule 955 matters, however, is not absolute. Over the years, the courts have weighed the facts and circumstances of each case individually. In a smattering of published decisions, the California Supreme Court and the Review Department of the State Bar

Court have found that, due to various extenuating circumstances, an attorney's breach of rule 955 may warrant a discipline significantly less than disbarment. (See *Shapiro v. State Bar* (1990) 51 Cal.3d 251 [Rule 955 affidavit filed 146 days late; resulted in one year actual suspension]; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192 [Rule 955 affidavit filed two weeks late; attorney had two prior disciplines; resulted in nine months' actual suspension]; and *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527 [Rule 955 affidavit filed two weeks late; attorney had two prior disciplines; resulted in 30 days' actual suspension].)

The court finds the Supreme Court's decision in *Shapiro v. State Bar, supra*, 51 Cal.3d 251, to be particularly instructive. In that case, the Supreme Court recommended a discipline including a one year actual suspension for the attorney's failure to timely comply with the requirements of rule 955, subdivision (c). That discipline recommendation was based on several factors, including the fact that the attorney's late filing was partially due to inadequate guidance from his probation monitor, and that the attorney had timely notified his clients and others of his suspension. Additionally, when the attorney learned his affidavit was deemed insufficient by the court, he contacted his probation monitor and retained a law firm to assist him with compliance.

In mitigation, the Supreme Court considered the attorney's lack of prior discipline over a 16 year period to be a mitigating factor. The attorney was also awarded mitigation for presenting favorable character testimony and for the fact that he was undergoing physical and psychological difficulties.

The instant case contains many similarities to *Shapiro*. Here, unlike many cases involving a violation of rule 955, respondent was not running away from his obligation to comply with rule 955. During the same time period that respondent's rule 955 affidavit was due, respondent, through Robbins, was in the process of settlement negotiations with the State Bar in three (3) unrelated matters. It appears that it was respondent's request for a copy of his rule 955 affidavit that ultimately brought light to the fact that no such affidavit had ever been filed.

Clearly, respondent's late filing of his rule 955 affidavit constitutes a violation of section 6103. However, it is not lost on the court that had respondent filed his rule 955 compliance affidavit

just five days earlier, this matter would not even have been referred for discipline. This fact, coupled with Robbins' uncontroverted testimony that the probation officer did not inform her that the November 8th date was an actual deadline, demonstrates that the imposition of disbarment in these proceedings would be both inequitable and not necessary to accomplish the goals of attorney discipline.

To gage the proper level of discipline in the instant case, the court also looks to *Rose*, *Friedman*, and *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382. In *In the Matter of Rose*, *supra*, 3 Cal. State Bar Ct. Rptr. 192, the attorney was found culpable of failing to comply with rule 955 and violating the terms of his disciplinary probation.⁹ The attorney had two prior disciplines and attempted to file his rule 955 affidavit two weeks late.¹⁰ The attorney argued that he did not timely file his rule 955 affidavit due to his beliefs that: (1) he was not required to file a rule 955 affidavit because he had no clients and had no one to notify, and (2) he had already filed a rule 955 affidavit in his first discipline and he had nothing to report.

In aggravation, the attorney had two prior disciplines. In mitigation, the attorney had demonstrated recognition of wrongdoing, there was a lack of harm, and the attorney had engaged in pro bono activities. The attorney received, inter alia, an actual suspension of nine months.¹¹

In *In the Matter of Friedman*, *supra*, 2 Cal. State Bar Ct. Rptr. 527, the attorney filed his rule 955 affidavit two weeks late but before disciplinary action was commenced. The attorney had notified his clients and complied with the requirements of rule 955, subdivision (a). In aggravation, the attorney had two prior disciplines. In mitigation, the attorney participated in the disciplinary matter, cooperated with the State Bar, recognized his mistakes, and was working on rectifying his

⁹Rose's probation violations consisted of failing to file required quarterly reports and client trust account audits.

¹⁰A rule 955 proceeding had already been initiated and the court clerk refused to accept the affidavit for filing.

¹¹The Review Department disciplined the attorney separately for the probation violations.

misconduct. The attorney was actually suspended for 30 days.¹²

In *In the Matter of Pierce, supra*, 2 Cal. State Bar Ct. Rptr. 382, the attorney filed her rule 955 affidavit 21 days late. The Review Department noted that if the short delay had been the only issue, then disbarment would not have been necessary. (*Id.* at p. 385.) However, the attorney had never participated in any of the disciplinary proceedings filed against her and demonstrated extreme indifference to successive disciplinary orders. (*Ibid.*) As a result, the attorney was disbarred.

Based on the facts and circumstances in the instant case, the imposition of disbarment would be excessive. Similar to the findings in *Friedman* and *Shapiro*, respondent gave his only client timely notice of his inactive status.¹³ Unlike *Rose* and *Friedman*, however, respondent's filing of his rule 955 affidavit came significantly later than two weeks after the required date of compliance. Additionally, respondent did not demonstrate the level of mitigation reflected in *Friedman*.

The court further notes that, unlike in *Pierce* and *Rose*, there is no indication that respondent has previously failed to comply with probation orders. And while respondent's first discipline proceeded by default, his subsequent two (including the instant matter) have not. This gives the court reason to believe that respondent "has awakened to his responsibilities to the discipline system." (*In the Matter of Friedman, supra*, 2 Cal. State Bar Ct. Rptr. 527, 533.)

Finally, there is no indication that the instant matter resulted in any harm. This finding is bolstered by the fact that the Office of Probation would not have even referred this matter for discipline if respondent's rule 955 affidavit had been filed just five days earlier.

Therefore, after weighing the evidence, including the factors in aggravation and mitigation, and considering the standards and the case law, the court finds that the appropriate discipline should include, among other things, an actual suspension of one year.

¹²The Review Department noted that the attorney was currently suspended on two other grounds and that the 30-day actual suspension would not begin until the expiration of the current suspensions.

¹³Said notice was given orally, prior to the commencement of respondent's actual suspension.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Richard G. Tarlow** be suspended from the practice of law for two years, that execution of said suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first year of his probation;
2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
3. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
4. Respondent must submit written quarterly reports to the Office of Probation of the State Bar of California on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;
5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;
6. Within ten (10) days of any change, respondent must report to the Membership Records

Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

7. Within one year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar of California.);
8. The period of probation will commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and
9. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (“MPRE”), administered by the National Conference of Bar Examiners, and to provide proof of passage of the MPRE to the Office of Probation, within one year after the effective date of the discipline herein. Failure to pass the MPRE within the specified time will result in actual suspension by the State Bar Court Review Department, without further hearing, until respondent provides the required proof of passage. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn.8.)

It is further recommended that the Supreme Court order respondent to comply with rule 9.20, paragraphs (a) and (c) of the California Rules of Court, within 30 and 40 days, respectively, after the effective date of its order imposing discipline in this matter. **Willful failure to comply with the**

provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.

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.

Dated: January 25, 2008.

RICHARD A. PLATEL
Judge of the State Bar Court