

PUBLIC MATTER

FILED

AUG 17 2007

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of

PATRICE A. REITZ,

Member No. 82606,

A Member of the State Bar.

Case No. 06-N-15498-PEM

**DECISION INCLUDING DISBARMENT
RECOMMENDATION AND
INVOLUNTARY INACTIVE
ENROLLMENT ORDER**

INTRODUCTION

This matter was initiated by the filing of a Notice of Disciplinary Charges ("NDC") by the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"), alleging that respondent Patrice A. Reitz ("respondent"),¹ failed to file the compliance affidavit required by rule 955, subdivision (c) of the California Rules of Court ("rule 955") (renumbered to 9.20 effective January 1, 2007), with the Clerk of the State Bar Court and thereby failed to obey an order of the California Supreme Court in wilful violation of Business and Professions Code section 6103 and subdivision (c) of rule 955 of the California Rules of Court. The State Bar was represented in this proceeding by Deputy Trial Counsel Tammy Albertsen-Murray ("DTC Albertsen-Murray"). Respondent did not participate in this proceeding either in-person or through counsel.

For the reasons stated below, the court finds that respondent wilfully failed to comply with rule 955, subdivision (c) and thereby wilfully violated Business and Professions Code section 6103 and subdivision (c) of rule 955. The court therefore recommends that respondent be disbarred from the practice of law, and that she be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (c)(4).

¹Respondent is also known as Patrice A. Reitz-Braze.



PERTINENT PROCEDURAL HISTORY

This proceeding was initiated by the State Bar's filing of a NDC against respondent on January 29, 2007.²

A copy of the NDC was properly served upon respondent on January 29, 2007, 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).³ On February 2, 2007, the certified mailing of the NDC was returned to the State Bar unopened bearing a sticker indicating that the Postal Service was unable to forward the copy of the NDC as there was no forwarding order on file.⁴

On February 2, 2007, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for March 5, 2007. A copy of said notice was properly served upon respondent by first-class mail, postage fully prepaid, on February 2, 2007, addressed to respondent at her official address. The copy of said notice was returned to the State Bar Court by the U.S. Postal Service stamped "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD RETURN TO WRITER" and bearing a sticker stating:

UNABLE TO FORWARD
NO FORWARD ORDER ON FILE
RETURN TO POSTMASTER

On March 5, 2007, the court held a status conference in this matter. Neither the State Bar

²On January 10, 2007, a 20-day letter was mailed to respondent at her official membership records address. Respondent did not reply in any way to said letter. On January 17, 2007, the 20-day letter was returned to the State Bar bearing a sticker placed by the U.S. Postal Service indicating the Postal Service was unable to forward the letter as there was no forwarding order on file.

³Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of the State Bar's official membership records pertaining to respondent which reflect her official membership records addresses. These records reflect that effective July 6, 2004, respondent's official address has been and remains 7010 N. Marks, Ste. 103, PMB 133, Fresno, CA 93711 0285.

⁴As the State Bar was unaware of any other address to which a copy of the NDC could have been sent other than those already used to no avail in previous disciplinary matters against respondent, no courtesy copy was mailed to any other address.

nor respondent appeared at the status conference. Thereafter, on March 6, 2007, the court filed a Status Conference Order stating that this matter was to proceed by default. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on March 6, 2007, addressed to respondent at her official address. The copy of said order was returned to the State Bar Court by the U.S. Postal Service bearing a sticker stating:

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

Efforts by DTC Albertsen-Murray to locate or contact respondent were unsuccessful.

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 April 6, 2007, the State Bar filed a motion for the entry of respondent's default. The motion advised respondent that once the court had found culpability, the State Bar would recommend that the court issue a decision recommending respondent's disbarment. Also included with the motion was the declaration of DTC Albertsen-Murray 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 April 6, 2007, addressed to respondent at her official address.

As of April 6, 2007, respondent had not returned any method of contact the State Bar had used to try to reach her.

When respondent failed to file a written response within 10 days after service of the motion for the entry of her default, on May 1, 2007, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive⁵ and Further Orders. A copy of said order was properly served upon respondent on May 1, 2007, by certified mail, return receipt requested, addressed to respondent at her official address. The copy of said order was not returned to the State Bar Court by the U.S. Postal Service.

On May 11, 2007, the State Bar filed a brief on the issue of discipline and waived the hearing

⁵Respondent'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.

on this matter. In its brief, the State Bar also requested that the court take judicial notice of certain documents/files. The court grants the State Bar's request.

This matter was submitted for decision on May 21, 2007.

FINDINGS OF FACT AND CONCLUSIONS OF LAW⁶

Respondent was admitted to the practice of law in the State of California on November 29, 1978, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On September 7, 2006, the Supreme Court of California filed a disciplinary order in Case No. S144701 (State Bar Court Case No. 05-O-00616).

The September 7, 2006 order required respondent to comply with rule 955 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the order.

Notice of the order was duly and properly served upon respondent in the manner prescribed by rule 29.4 subdivision (a)⁷ of the California Rules of Court at respondent's address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1.

The September 7, 2006 order became effective on or about October 7, 2006, and at all times thereafter remained in full force and effect.

The deadline for respondent to comply with rule 955, subdivision (c) expired on November 17, 2006.⁸

Respondent failed to comply with rule 955, subdivision (c) prior to the November 17, 2006, deadline. To date, respondent has failed to comply with rule 955, subdivision (c).

⁶As respondent's default was entered in this matter, the factual allegations contained in the NDC are deemed admitted pursuant to rule 200(d)(1)(A) of the Rules of Procedure.

⁷Rule 29.4 was renumbered as rule 8.532 effective January 1, 2007.

⁸Although the NDC alleged that the deadline to comply with rule 955, subdivision (c) was November 16, 2006, this is an error, as 40 days from the effective date of the order was actually November 17, 2006. Nevertheless, the error is de minimus. Thus, the court finds that respondent had sufficient notice of the charges against her and thus was accorded sufficient due process.

“Willfulness” 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, subdivision (c) of the California Rules of Court and disobeyed the Supreme Court’s Order filed September 7, 2006, in Supreme Court Case No. S144701 (State Bar Court Case No. 05-O-00616) by failing to file the affidavit of compliance with rule 955 as required by rule 955, subdivision (c). As a result of respondent’s wilful failure to comply with the order of the Supreme Court, she violated Business and Professions Code section 6103 which provides, in pertinent part, that the wilful violation or disobedience of a court order which requires an attorney to do or forbear an act connected with or in the course of her profession, which the attorney ought in good faith to do or forbear, 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 her behalf, and none can be gleaned from the record.

In aggravation, respondent has a record of two prior impositions of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) (“standards”).)⁹

A. On March 18, 2005, the Supreme Court issued an order in matter S130414 (State Bar Court Case No. 02-O-11804; 02-O-15213; 03-O-02702) suspending respondent from the practice of law for one year; staying execution of said suspension; and placing respondent on

⁹Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of respondent’s prior record of discipline.

probation for two years on condition that she be actually suspended from the practice of law for 60 days.

In this prior disciplinary matter, in which respondent participated, respondent was found culpable of wilfully violating: sections 6068, subdivision (m), 6133 and 6103 of the Business and Professions Code¹⁰ and rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California (“RPC ____”). In aggravation, respondent engaged in multiple acts of wrongdoing and her misconduct resulted in harm. In mitigation, respondent had no prior record of discipline and suffered extreme emotional difficulties at the time of the misconduct which expert testimony would establish was directly responsible for the misconduct.

B. On September 7, 2006, the Supreme Court issued an order in Supreme Court matter S144701 (State Bar Court Case No. 05-O-00616) suspending respondent from the practice of law for two years, staying execution of said suspension, and actually suspending respondent for six months and until the State Bar Court grants a motion, under rule 205 of the Rules of Procedure, to terminate her actual suspension.

In this second prior disciplinary matter, which proceeded by default, respondent was found to have violated RPC 3-110(A), and section 6068, subdivisions (i) and (m). In aggravation, respondent had a prior record of discipline and her misconduct involved multiple acts of wrongdoing. In addition, respondent’s failure to participate in the disciplinary proceeding prior to the entry of her default was an aggravating circumstance, although given little weight. No mitigating circumstances were found.¹¹

Respondent’s failure to participate in this matter prior to the entry of her default is also an aggravating circumstance. (Standard 1.2(b)(vi).)

¹⁰Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

¹¹Although it does not constitute a prior record of discipline (see Rules Proc. of State Bar, rule 216), the court notes there is another matter currently pending against respondent in the State Bar Court. In that matter, respondent’s default was entered, and the matter is presently abated.

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.)

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 1.7(b) provides that where an attorney has two prior records of discipline, the degree of discipline imposed in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. No mitigating circumstances were found in this matter.

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-counsels, 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 her professional obligations and the rules of conduct imposed on lawyers. This is exemplified by her failure to participate in these State Bar proceedings and by her failure to comply with rule 955, subdivision (c). The court also notes that respondent also failed to participate in her last 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. Her 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 her wilful and unexplained disobedience of an order of the California Supreme Court.

RECOMMENDED DISCIPLINE

Based on the foregoing, it is hereby recommended that respondent PATRICE A. REITZ be disbarred from the practice of law in the State of California and that her 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 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 her compliance with said order.

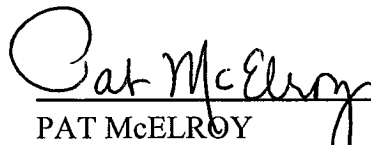
ORDER REGARDING INACTIVE ENROLLMENT

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: August 16, 2007


PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 17, 2007, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
INVOLUNTARY INACTIVE ENROLLMENT ORDER**

in a sealed envelope for collection and mailing on that date as follows:


- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**PATRICE A. REITZ
PATRICE A. REITZ-BRAZE,
ATTORNEY AT LAW
7010 N. MARKS, STE. 103
PMB 133
FRESNO, CA 93711 - 0285**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TAMMY ALBERTSEN-MURRAY , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **August 17, 2007.**


Laretta Cramer
Case Administrator
State Bar Court