

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

In the Matter of)	Case No. 06-O-13214-PEM;
)	07-N-10207 (Cons.)
PAUL R. GIDEON,)	
)	DECISION AND ORDER OF
Member No. 211862,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this consolidated default matter, respondent **Paul R. Gideon** is found culpable, by clear and convincing evidence, of (1) failing to perform services competently; (2) failing to cooperate with a State Bar investigation; (3) failing to maintain an official address with the State Bar and (4) failing to comply with California Rules of Court, rule 955,¹ as ordered by the California Supreme Court on May 10, 2006, in S141744 (State Bar Court case No. 01-O-04659 et al.).

In view of respondent's misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

A. First Notice of Disciplinary Charges (Case No. 06-O-13214)

On December 6, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address (official address). The next day, December 7, 2006, the NDC was filed. On December 20, 2006, the United States Postal Service (USPS) returned the NDC as undeliverable.

¹All 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 rule, the original numbering will be used in this decision.

Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On December 20, 2006, the State Bar checked its computer records to determine whether respondent's official address, which was listed as 12 South 1st Street, #420, San Jose, California 95113, had changed. The records showed no change of address.

The State Bar also attempted to reach respondent by telephone on December 20, 2006, at his official membership records phone number. However, a recorded message stated that the phone number was for another person. On that same date the State Bar called directory assistance in an attempt to find a telephone listing for respondent in San Jose, California. Directory assistance had no listing for respondent.

On December 20, 2006, the State Bar also searched the *Parker Directory of Attorneys* (87th ed. 2006) and the Daily Journal's July 2006 *California Directory of Attorneys* for an alternative address and telephone number for respondent. However, there was no listing for respondent in either directory. In addition the State Bar searched two internet sites, but to no avail.

On the State Bar's motion, respondent's default was entered in case No. 06-O-13214 on January 26, 2007, and respondent was enrolled as an inactive member on January 29, 2007, under Business and Professions Code section 6007(e).² An order of entry of default was sent to respondent's official membership records address by certified mail, but was returned to the court as undeliverable.

The State Bar filed a brief on culpability and discipline on February 8, 2007, and the matter was deemed submitted on February 15, 2007.

However, when a second NDC was filed against respondent, the submission date of February 15, 2007, was vacated and the matter was abated on March 23, 2007.

B. Second Notice of Disciplinary Charges (Case No. 07-N-10207)

On February 14, 2007, the State Bar properly filed and served on respondent a second NDC at respondent's official membership records address. On February 28, 2007, the second NDC was

²All references to section (§) are to Business and Professions Code, unless otherwise indicated.

returned to the State Bar as undeliverable. Respondent did not file a response to the NDC.

On March 7, 2007, the State Bar also checked its computer records to determine whether respondent's official address had changed. The records showed no change of address.

The State Bar also attempted to reach respondent by telephone on March 7, 2007, at his official membership records phone number. A recorded message stated that the phone number was for another person. On that same date the State Bar called directory assistance in an attempt to find a telephone listing for respondent in San Jose, California. However, directory assistance had no listing for respondent.

On March 7, 2007, the State Bar also searched the *Parker Directory of Attorneys* (88th ed.) and the January 2007 *California Directory of Attorneys*, published by the Daily Journal, for an alternative address and telephone number for respondent. However, there was no listing for respondent. In addition the State Bar searched two internet sites, but to no avail. On April 2, 2007, the order taking case No. 06-O-13214 out of abatement and consolidating it with case No. 07-N-10207 was filed.

On the State Bar's motion, respondent's default was entered on April 2, 2007, and respondent was enrolled as an inactive member on April 5, 2007, under Business and Professions Code section 6007(e). An order of entry of default was sent to respondent's official membership records address by certified mail, but was returned to the court as undeliverable.

Respondent did not participate in the disciplinary proceedings. Accordingly, this consolidated matter was submitted for decision on April 20, 2007.

III. Findings of Fact and Conclusions of Law

All factual allegations of the two NDCs 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).)

Respondent was admitted to the practice of law in California on December 18, 2000, and has been a member of the State Bar of California at all times since that date.

A. The Rodriguez Matter (Case No. 06-O-13214)

Respondent was retained to represent Jeffrey Rodriguez (Rodriguez) in a criminal

proceeding, entitled *People v. Jeffrey Rodriguez*, Santa Clara County Superior Court, case No. CC 131089 (*People v. Rodriguez*). Rodriguez was charged with second degree robbery. When Rodriguez's matter first went to trial, a mistrial was declared after the jury deadlocked eleven to one in favor of acquittal. Respondent represented Rodriguez in the original trial.

Respondent also represented Rodriguez during the retrial, which commenced on April 16, 2003.

The prosecution's case in *People v. Rodriguez* relied primarily on the victim's eyewitness identification of Rodriguez. At the original trial, respondent called an expert witness, Dr. Robert Shomer (Shomer), to testify about the unreliability of stranger eyewitness testimony. At the original trial, Shomer's testimony was persuasive and provided the jury with a basis for questioning the reliability of the victim's testimony. However, without good cause, respondent did not present the testimony of Shomer or any other expert concerning the unreliability of eyewitness testimony during the Rodriguez retrial.

Respondent also called several alibi witnesses at the original trial, including Eileen Navarro (Navarro). Navarro not only survived cross-examination at the original trial, but provided plausible and substantial alibi testimony, which provided the jury with a basis for questioning the whereabouts of Rodriguez at the time of the robbery. Yet, without good cause, respondent did not call Navarro or any other alibi witnesses at the Rodriguez retrial.

Moreover, prior to retrial, respondent did not move the court for indigent funds to obtain a complete transcript of the testimony presented at the original trial. Nor did respondent obtain a complete transcript of the testimony presented at the original trial.

At the original trial, respondent called witness Jeff Moyers (Moyers) who presented uncontroverted testimony that Rodriguez lacked the motive to commit robbery. However, respondent did not call Moyers as a witness at the retrial, or otherwise present evidence of Rodriguez's lack of motive to commit robbery.

Prior to the retrial, respondent and the prosecution agreed to keep Rodriguez's parole status from the jury. Nevertheless, during the retrial respondent affirmatively elicited evidence before the jury of Rodriguez's parole status from a prosecution witness.

At the original trial, respondent called defense investigator, Keith Norman (Norman), who testified that the victim had once been less certain about his identification of Rodriguez as the robber than he was at the time of the original trial. Notwithstanding, respondent failed to call Norman as a witness or otherwise present evidence concerning the victim's lack of certainty regarding his identification of Rodriguez.

The prosecution contended that tangible evidence incriminating Rodriguez existed. It was the prosecutor's contention that oil, which was found on Rodriguez's pants, came from the scene of the robbery. At the original trial, respondent presented two witnesses, Julie Rodriguez and Ofelia Rodriguez O'Brien, both of whom presented plausible exculpatory explanations for the presence of the oil on Rodriguez's pants. Yet, despite the value of their testimony on behalf of his client at the original trial, respondent did not call Julie Rodriguez or Ofelia Rodriguez O'Brien as witnesses at the retrial. Nor did respondent otherwise present exculpatory explanations for the oil on Rodriguez's pants.

Rodriguez was convicted at the conclusion of his retrial. However, the Court of Appeal reversed Rodriguez's conviction due to respondent's ineffective assistance during the retrial.

Thereafter, State Bar Investigator Francoise Jacobs (Jacobs) spoke with respondent by telephone with the intention of obtaining his response to allegations of misconduct related to his representation of Rodriguez during the retrial of *People v. Rodriguez*. Jacobs asked respondent to provide her with a valid mailing address, so that she could mail him a letter concerning the allegations of misconduct and obtain his response. Respondent told Jacobs that he did not have a current mailing address, but that he would arrange one and provide it to her. Respondent, however, never provided Jacobs with a valid mailing address, nor did he otherwise provide any information concerning his conduct in relation to the retrial of *People v. Rodriguez*.

At all times relevant to the instant proceeding, respondent's "current" contact address, as maintained on the official membership records of the State Bar, was 12 S. 151 St., #420, San Jose, CA 95113, referred to herein as "the First Street address." However, on or before August 11, 2006, respondent vacated the premises at the First Street address and had otherwise ceased receiving mail at that address. Yet, at no time did respondent change or attempt to change his current office address

as maintained on the official membership records of the State Bar of California from the First Street address. As of the December 7, 2006 filing date of the NDC, the First Street address remained respondent's current office address as maintained on the official membership records of the State Bar.

Count 1: Failure to Perform with Competence (Rules Prof. Conduct, Rule 3-110(A))³

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

Respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A) by: (1) failing to move the court for indigent funds to pay for Shomer's services; (2) failing to present expert testimony concerning the unreliability of eyewitness testimony; (3) failing to present the testimony of alibi witnesses, especially that of Navarro; (4) failing to move the court for indigent funds to pay for a complete transcript of the original trial testimony in *People v. Rodriguez*; (5) failing to obtain a complete transcript of the original trial testimony in *People v. Rodriguez*; (6) failing to call Moyers as a witness or otherwise present testimony of lack of motive to commit the robbery; (7) eliciting unauthorized evidence of Rodriguez's parole status before the jury; (8) failing to call Norman as a witness or otherwise present evidence concerning the victim's lack of certainty concerning his identification of Rodriguez; and (9) failing to call Julie Rodriguez or Ofelia Rodriguez O'Brien as witnesses or otherwise present exculpatory explanations for the oil on Rodriguez's pants.

Count 2: Failure to Cooperate with the State Bar (Bus. & Prof. Code, §6068, Subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

By failing to provide State Bar Investigator Jacobs with a valid mailing address, after she requested that he do so, in order that she could mail him a letter concerning the allegations of misconduct and obtain his response to the allegations, respondent failed to cooperate and participate

³References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

in a State Bar disciplinary investigation, in wilful violation of section 6068, subdivision (i).

Count 3: Failure to Update Membership Address (§ 6068, Subdivision (j))

Section 6068, subdivision (j), states that a member must comply with the requirements of section 6002.1, which provides that respondent must maintain on the official membership records of the State Bar a current address and telephone number to be used for State Bar purposes, and notify the membership records office of the State Bar of any change in that information within 30 days of such change.

Respondent failed to maintain a current official membership records address and did not provide the State Bar with an alternative address to be used for State Bar purposes. Respondent also failed to change his official membership records address within thirty days of vacating the premises at the First Street address, thus failing to comply with the requirements of Business and Professions Code section 6002.1, in wilful violation of section 6068, subdivision (j).

B. Violation of California Rules of Court, Rule 955 (Case No. 06-N-14328)

On May 30, 2006, in California Supreme Court case No. S141920 (State Bar Court case No. 04-O-15806), the Supreme Court suspended respondent from the practice of law for one year, stayed the execution of the suspension and actually suspended him for 60 days and until he files and the State Bar Court grants a motion to terminate his actual suspension. 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 were actually suspended for 90 days or more. The order became effective June 29, 2006, 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.”

Notice of the May 30, 2006 order was properly served upon respondent in the manner

prescribed by California Rules of Court, rule 29.4 (a),⁴ at his address as maintained by the State Bar in accordance with section 6002.1.

Respondent was to have filed the rule 955 affidavit by November 6, 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 addresses 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.⁵

Violation of 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 offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁶

B. Aggravation

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

⁴All references to rule 29.4(a) are to California Rules of Court, rule 8.532(a) (renumbered effective January 1, 2007). Because the Notice of Disciplinary Charges was filed prior to the change in the numbering of this rule, the original numbering will be used in this decision.

⁵Specifically, rule 955(d) provides that a suspended attorney’s wilful failure to comply with rule 955 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

⁶All further references to standards are to this source.

Respondent has a prior record of discipline. (Std. 1.2(b)(i).) On May 30, 2006, in Supreme Court case No. S141920, the underlying matter, respondent was suspended for one year, stayed, and was actually suspended for 60 days and until the State Bar Court grants a motion to terminate his actual suspension. His misconduct involved engaging in the unauthorized practice of law, engaging in conduct involving moral turpitude, failing to cooperate with a disciplinary investigation, and failing to update his current membership address. He also defaulted in the proceeding.

Respondent committed multiple acts of wrongdoing, including failing to perform competently, failing to cooperate with the State Bar, and failing to update his membership address. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed the client and the administration of justice. (Std. 1.2(b)(iv).) His failure to competently perform in the retrial of *People v. Rodriguez* resulted in his client's conviction, thus necessitating an appeal.

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 second NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

Respondent's failure to participate in this disciplinary matter before the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's misconduct involved his failure to perform services competently, his failure to cooperate with a State Bar investigation, his failure to maintain a current membership records address, and failure to comply with rule 955. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7, 2.4, and 2.6.)

The standards, however, are only guidelines and do not mandate the discipline to be imposed.

(*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) The court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment, citing several cases, including *Bercovich v. State Bar* (1990) 50 Cal.3d 116; *Lydon v. State Bar* (1988) 45 Cal.3d 1181; and *Powers v. State Bar* (1988) 44 Cal.3d 337 in support of its recommendation.

The court agrees with the recommendation of disbarment.

Here respondent failed to perform competently causing significant harm to his client. The harm to his client and to the administration of justice weigh heavily in assessing the appropriate level of discipline. Additionally, respondent’s rule 955 violation is extremely serious. “[D]isbarment is generally the appropriate sanction for a willful violation of rule 955.” (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) “Absent strong mitigating circumstances, a rule 955 violation warrants disbarment. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

As discussed, *ante*, 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. Moreover, he has repeatedly failed to participate in these disciplinary proceedings by defaulting in the underlying matter and in the instant case.

Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to

participate in this proceeding leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct. These facts reflect respondent's disdain and contempt for the orderly process and rule of law and clearly demonstrate that the risk of future misconduct is great.

Accordingly, lesser discipline than disbarment is not warranted. In view of the serious and unexplained nature of respondent's misconduct, the lack of participation in these proceedings, the lack of any mitigating factors, and the existence of a prior disciplinary record, the court recommends disbarment as the only adequate means of protecting the public and the integrity of the legal profession.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Paul R. Gideon** 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 Rules 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.⁷

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.

⁷Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar, supra*, 44 Cal.3d 337, 341.)

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status. (Bus. & Prof. Code, § 6007(c)(4), and Rules Proc. of State Bar, rule 220(c).) The inactive enrollment will become effective three calendar days after service of this order.

Dated: July 16, 2007

PAT McELROY
Judge of the State Bar Court