

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

In the Matter of)	Case No. 07-N-11194-DFM
)	
MICHAEL E. CONSIGLIO,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 55550,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

This matter was initiated by the filing of a Notice of Disciplinary Charges (NDC) by the State Bar of California, Office of the Chief Trial Counsel (State Bar), alleging that respondent Michael E. Consiglio (respondent) willfully violated rule 955 of the California Rules of Court (rule 955)¹ by failing to timely file a compliance affidavit as required by rule 955, subdivision (c). The State Bar was represented in this matter by Deputy Trial Counsel Joy Chantarasompoth (DTC Chantarasompoth). Respondent did not participate in this proceeding either in person or through counsel.

For the reasons stated below, the court finds that respondent willfully failed to comply with rule 955. The court therefore recommends that respondent be disbarred from the practice of law and that he be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4).²

¹Effective 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.

²Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

PERTINENT PROCEDURAL HISTORY

A copy of the NDC was properly served on respondent on May 25, 2007, by certified mail, return receipt requested, addressed to the official membership records address (official address) maintained by respondent pursuant to section 6002.1, subdivision (a). The NDC was returned by the U.S. Postal Service bearing a stamp noting that it was unclaimed.

On June 6, 2007, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for July 2, 2007. A copy of said notice was properly served on respondent by first-class mail, postage fully prepaid, on June 6, 2007, addressed to respondent at his official address. This copy of said notice was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

On July 2, 2007, the court held an in person status conference in this matter. Respondent failed to appear either in person or through counsel at the time of the status conference. Thereafter, on July 10, 2007, the court filed an order pursuant to the status conference. A copy of said order was properly served on respondent by first-class mail, postage fully prepaid, on July 10, 2007, addressed to respondent at his official address. The copy of said order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

Between June 28 and July 13, 2007, DTC Chantarasompoth made various attempts to contact or locate respondent. Attempts by DTC Chantarasompoth to contact or locate respondent by telephone, WhitePages.com, Zabasearch.com, and through the Parker Directory were unsuccessful. Courtesy copies of the NDC were sent to respondent by regular first-class mail to respondent's official address, as well as to an additional possible address for respondent found on WhitePages.com. However, as of July 19, 2007, DTC Chantarasompoth had not had any contact from respondent.

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 July 19, 2007, the State Bar filed a motion for the entry of respondent's default. Attached to the motion were the declaration of DTC Chantarasompoth, as well as Exhibits 1 through 5. The motion advised respondent that once the court found culpability, the State Bar would recommend respondent's disbarment. A copy of said

motion was properly served on respondent on July 19, 2007, by certified mail, return receipt requested,³ addressed to respondent at his official address.

Respondent failed to file a written response within 10 days after service of the motion for the entry of his default. Consequently, on August 7, 2007, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders. The order advised that no default hearing would be held unless one was requested by the State Bar. The order also permitted the State Bar to file any further declarations, exhibits, or legal argument regarding the level of discipline by no later than August 27, 2007. A copy of said order was properly served on respondent on August 7, 2007, by certified mail, return receipt requested, addressed to respondent at his official address. The copy of said order was returned to the State Bar Court by the U.S. Postal Service bearing a label stating:

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

On August 27, 2007, the State Bar filed a brief on the issues of culpability and discipline and waived its right to request a hearing in the matter. This matter was therefore submitted for decision on August 27, 2007.

Exhibits 1 through 5 attached to the State Bar's motion for the entry of respondent's default and Exhibits 1 and 2 attached to the State Bar's brief on the issues of culpability and discipline are admitted into evidence.

³ Exhibit 1 attached to the State Bar's motion for entry of respondent's default is a certified copy of respondent's address history maintained by the Membership Records Department of the State Bar of California as of July 9, 2007. Based on this date of preparation, the document by itself is not adequate to establish that documents served on respondent after July 9, 2007, were properly served. The court therefore takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h), which reflect that effective March 26, 1997, respondent's official address has been and remains 7205 Imbach Pl., Moorpark, CA 93021.

FINDINGS OF FACT AND CONCLUSIONS OF LAW⁴

Respondent was admitted to the practice of law in the State of California on June 29, 1973, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On August 11, 2006,⁵ the Supreme Court of California filed a disciplinary order in case number S128821 (State Bar case number 06-PM-11430). The August 11, 2006 order required respondent to comply with rule 955 and to perform 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 on respondent in the manner prescribed by rule 29.4, subdivision (a), of the California Rules of Court ⁶ at respondent's address as maintained by the State Bar in accordance with section 6002.1. The August 11, 2006 order became effective on September 10, 2006, and at all times thereafter remained in full force and effect.

Rule 955, subdivision (c), requires that a member file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered pursuant to this rule. The deadline for respondent to comply with rule 955, subdivision (c), expired on October 20, 2006.

Respondent failed to comply with rule 955, subdivision (c), prior to the October 20, 2006 deadline. As of May 25, 2007, respondent had not complied with rule 955, subdivision (c).

"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

⁴Pursuant to Evidence Code section 452, subdivision (a), the court takes judicial notice of Rule 955 of the California Rules of Court. Additionally, as 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.

⁵The NDC contains an obvious typographical error stating that the suspension order was filed on August 11, 1006. Attached to the NDC, as Exhibit 1, is a copy of the suspension order which correctly reflects the true filing date of August 11, 2006.

⁶Effective January 1, 2007, rule 29.4(a) was renumbered as rule 8.532(a), but the language of the rule did not change.

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 on the foregoing, the court concludes that the State Bar has proven by clear and convincing evidence that by failing to file the compliance affidavit within the time specified in the August 11, 2006 order, respondent willfully failed to comply with rule 955, subdivision (c).

MITIGATING CIRCUMSTANCES

No Mitigating Factors

As respondent's default was entered in this matter, respondent failed to introduce any mitigating evidence on his behalf, and none can be gleaned from the record.

AGGRAVATING CIRCUMSTANCES

Respondent's Prior Record of Discipline

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

Effective June 9, 2001, respondent was privately reprovved with conditions in State Bar Court Case No. 01-O-00896 for failing to support the laws of California, in violation of section 6068(a), by practicing law when he was not an active member of the State Bar of California in violation of sections 6125 and 6126. In mitigation, respondent had no prior record of discipline over many years of practice and his misconduct did not harm the client. No aggravating factors were involved.

Effective April 16, 2003, respondent was publicly reprovved with conditions in State Bar Court Case No. 02-H-13222 for failing to comply with certain terms and conditions of his private reprovval in State Bar Court Case No. 01-O-00896 in willful violation of rule 1-110 of the Rules of Professional Conduct (RPC). In aggravation, respondent had a prior record of discipline. No mitigating factors were involved.

On January 13, 2005, the Supreme Court issued an order in Supreme Court matter S128821 (State Bar Court Case No. 04-H-11689) suspending respondent from the practice of law for one year,

staying execution of said suspension, and placing respondent on probation for two years subject to conditions of probation for failing to comply with certain conditions attached to his public reproof in State Bar Court Case No. 02-H-13222 in willful violation of rule 1-110 of the RPC. In aggravation, respondent had two prior records of discipline. In mitigation, respondent cooperated with the State Bar.

On August 11, 2006, the Supreme Court issued an order in Supreme Court matter S128821 (State Bar Court Case No. 06-PM-11430) actually suspending respondent from the practice of law for one year and until he 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 for willfully violating the terms of his probation imposed in Supreme Court matter S128821 (State Bar Court Case No. 04-H-11689). In aggravation, it was found that respondent had a record of discipline consisting of three priors; and that he committed multiple acts of misconduct and demonstrated indifference towards rectification. No mitigating factors were found.

Lack of Cooperation with State Bar During Disciplinary Proceedings

In addition to respondent's prior record of discipline, respondent's failure to participate in this disciplinary proceeding prior to the entry of his default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

DISCUSSION

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve 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 willful 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 if an attorney is found culpable of misconduct in any proceeding and the member has a record of two prior impositions of discipline, the degree of discipline to be imposed in the current proceeding must be

disbarment, unless the most compelling mitigating circumstances clearly predominate. In this matter, respondent has a record of four prior impositions of discipline, and no mitigating circumstances were found.

Timely compliance with rule 955 of the California Rules of Court performs the critical function of ensuring that all concerned parties (including clients, co-counsel, 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. (See *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Disbarment is generally the appropriate sanction imposed for willful violation of rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Similar discipline has been recommended in the past by the State Bar Court Review Department. (See, e.g., *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.)

Respondent has demonstrated an unwillingness to comply with his professional obligations and the rules of conduct imposed on lawyers. His disbarment is necessary to protect the public, the courts, and the legal profession; maintain high professional standards; and 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 willful disobedience of an order of the California Supreme Court.

RECOMMENDED DISCIPLINE

Based on the foregoing, it is hereby recommended that respondent Michael E. Consiglio 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 respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his 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

Costs are 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: November 14, 2007

DONALD F. MILES
Judge of the State Bar Court