

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 07-N-11195-RAP
	)	
<b>CARLETON S. MILLS,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 84854,</b>	)	<b>ENROLLMENT</b>
	)	
<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 Carleton S. Mills (respondent) failed to comply with a Supreme Court order requiring compliance with rule 955, subdivision (c) of the California Rules of Court (rule 955)<sup>1</sup> and thereby wilfully violated rule 955 of the California Rules of Court.

The State Bar was represented in this proceeding by Supervising Trial Counsel Geri von Freymann (STC von Freymann). Respondent did not participate in this proceeding either in person or through counsel.

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<sup>1</sup> Effective January 1, 2007, rule 955 was renumbered as rule 9.20, but the rule did not substantively change. However, as respondent was ordered to comply with rule 955 pursuant to a Supreme Court order filed on July 18, 2006, the court will refer to the rule as rule 955 throughout this decision.

For the reasons stated below, the court finds that respondent failed to comply with a Supreme Court order requiring compliance with rule 955, subdivision (c), by failing to file the compliance affidavit within the time specified in the Supreme Court's order, thereby wilfully violating rule 955 of the California Rules of Court. 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).

### **PERTINENT PROCEDURAL HISTORY**

This proceeding was initiated by the State Bar's filing of a NDC against respondent on August 13, 2008. A copy of the NDC was properly served on respondent on August 13, 2008, 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). The NDC served on respondent at his official address by certified mail, return receipt requested, was returned by the U.S. Postal Service bearing the stamp "not deliverable, unable to forward".<sup>2</sup> A courtesy copy of the NDC was also sent to respondent by regular first-class mail to his official address.<sup>3</sup>

Also on August 13, 2008, a courtesy copy of the NDC was served on respondent by certified mail, return receipt requested, addressed to 28392 La Pradera, Laguna Niguel, CA 92677 (Laguna Niguel address). That receipt was returned to the State Bar signed "C. Mills".

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<sup>2</sup> A 20-day letter was mailed to respondent at his official address on July 18, 2008.

<sup>3</sup> Although both the NDC sent by regular first class mail and the NDC served by certified mail, return receipt requested, did not bear the four digit zip code extension contained in respondent's official address, the court finds that both copies of the NDC were properly addressed to respondent, as both bore the correct five digit main zip code number for respondent's official address.

Additional efforts to contact or locate respondent were to no avail or did not yield any new information.

On August 20, 2008, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for September 24, 2008. A copy of the notice was properly served on respondent by first-class mail, postage fully prepaid, on August 20, 2008, addressed to respondent at his official address. The copy of the notice was returned to the court by the U.S. Postal Service bearing a handwritten notation that respondent had not been at that address for at least two to three years.

On September 24, 2008, the court held an in person status conference in this matter. Respondent failed to appear either in person or through counsel at the status conference.

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 September 26, 2008, 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 respondent's disbarment. The State Bar also requested in its motion that the court take judicial notice of all respondent's official membership addresses.<sup>4</sup> Also included with the motion was the declaration of STC von Freymann and exhibits 1 and 2.<sup>5</sup> A copy of the motion was properly served on respondent by certified mail, return receipt requested, on September 26, 2008, addressed to respondent at his official address.

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<sup>4</sup> In its motion, the State Bar claims that attached as exhibit 2 to the motion is a printout of the official membership records address history screen reflecting respondent's official membership records addresses. A careful review of exhibit 2, however, reflects that it is a copy of respondent's public record on file in the State Bar's Membership Records Department, not a printout of respondent's official membership address history. Nevertheless, the court grants the State Bar's request and takes judicial notice of all of respondent's official membership addresses pursuant to Evidence Code section 452, subdivision (h).

<sup>5</sup> The declaration of STC von Freymann, as well as exhibits 1 and 2 attached to the motion for the entry of respondent's default, are admitted into evidence.

As of September 26, 2008, the State Bar had not had any contact with respondent.

On September 29, 2008, the court filed a Status Conference Order which set forth that the State Bar was to file a motion for the entry of respondent's default. A copy of the order was properly served on respondent by first-class mail, postage fully prepaid, on September 29, 2008, addressed to respondent at his official address. The copy of the order was returned to the State Bar Court by the U. S. Postal Service bearing a sticker indicating that it was unable to be forwarded and bearing handwritten notations that respondent was no longer at this address and had moved many years ago.

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on October 16, 2008, the court filed an Order of Entry of Default (Rule 200 – Failure to File Timely Response), Order Enrolling Inactive<sup>6</sup> and Further Orders. A copy of the order was properly served on respondent on October 16, 2008, by certified mail, return receipt requested, addressed to respondent at his official address. The copy of the order was returned to the State Bar Court by the U. S. Postal Service bearing a sticker indicating that it was refused and unable to be forwarded.

On October 30, 2008, the State Bar filed a brief on the issues of culpability and discipline and requesting waiver of the hearing in this matter. Exhibit 1 attached to the brief is admitted into evidence. A copy of the brief was properly served on respondent on October 30, 2008, by certified mail, return receipt requested, addressed to respondent at his official address.<sup>7</sup>

This matter was submitted for decision on November 5, 2008.

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<sup>6</sup> Respondent'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.

<sup>7</sup> Although the Declaration of Service by Certified Mail reflects that respondent's middle name was incorrectly spelled, this error is de minimis. Furthermore, the Declaration of Service by Certified Mail reflects that the document did not bear the four digit zip code extension contained in respondent's official address, although it did bear the correct five digit main zip code number for respondent's official address. Thus, the court finds that proper service of the brief was made on respondent.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent was admitted to the practice of law in the State of California on December 27, 1978, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On July 18, 2006, the Supreme Court of California filed a disciplinary order in case number S143356 (State Bar Court case number 05-O-01465). Among other things, the order provided that respondent was to be actually suspended from the practice of law for 30 days and until he makes specified restitution and until the State Bar Court grants a motion to terminate respondent's actual suspension pursuant to rule 205 of the Rules of Procedure. The order also provided that if respondent was actually suspended for 90 days or more, he was ordered to comply with rule 955 of the California Rules of Court (rule 955) and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order.

On or about July 18, 2006, notice of the order was duly and properly served by the Clerk of the Supreme Court upon respondent in the manner prescribed by California Rule of Court 29.4, subdivision (a),<sup>8</sup> at respondent's address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. Respondent's official membership address maintained with the Office of Membership Records from January 29, 2007 to the present date has been at 444 W. 10<sup>th</sup> Street, Santa Ana, California 92701 3403.

The July 18, 2006 order became effective on or about August 17, 2006, thirty days after the 955 order was filed and at all times thereafter remained in full force and effect.

Respondent has been actually suspended for more than 90 days pursuant to the Supreme Court's July 18, 2006 disciplinary order in case number S143356 (State Bar Court case number

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<sup>8</sup> Effective January 1, 2007, rule 29.4 was renumbered as rule 8.532, but the rule did not substantively change. (The renumbered rule cited in the NDC is incorrect).

05-O-01465).<sup>9</sup> Thus, he was ordered to comply with subdivision (a) of rule 955 of the California Rules of Court no later than December 15, 2006, and was ordered to comply with subdivision (c) of rule 955 no later than December 25, 2006.<sup>10</sup>

Respondent failed to comply with rule 955, subdivision (c), prior to the December 25, 2006 deadline,<sup>11</sup> by failing to file with the Clerk of the State Bar Court an affidavit of compliance with rule 955, subdivision (a) of the California Rules of Court.

By failing to file the compliance affidavit within the time specified in the July 18, 2006 Supreme Court order, respondent failed to comply with Supreme Court order S143356 requiring compliance with rule 955, subdivision (c).

“Wilfulness” 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. (*Ibid.*)

Based on 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 of the California

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<sup>9</sup> Exhibit 2, attached to the motion for the entry of respondent’s default, reflects that respondent’s suspension in S143356 has been in effect for more than 90 days after the effective date of the Supreme Court’s disciplinary order.

<sup>10</sup> The NDC alleges these dates as December 26, 2007 and January 4, 2007, respectively. However, the effective date of the Supreme Court’s July 18, 2006, order was August 17, 2006. (See rule 29.4, subdivision (b) [renumbered 8.532, subdivision (b) effective January 1, 2007].) Thus, 120 days and 130 days from August 17, 2006 are December 15, 2006 and December 25, 2006, respectively.

<sup>11</sup> Although the NDC alleged this date as January 4, 2007, as noted in footnote 10, above, this date is incorrect. The correct date is December 25, 2006. Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice that respondent has not filed an affidavit as required by rule 955, subdivision (c) as of the date of this decision.

Rules of Court by failing to comply with the Supreme Court's July 18, 2006 disciplinary order in case number S143356 (State Bar Court case number 05-O-01465) by failing to file an affidavit of compliance with rule 955, subdivision (a), as required by rule 955, subdivision (c), within the time specified in the Supreme Court's July 18, 2006 disciplinary order.

### **MITIGATING/AGGRAVATING CIRCUMSTANCES**

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.

In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) (standards).) On July 18, 2006, the Supreme Court filed an order suspending respondent from the practice of law for one year and until he makes and furnishes satisfactory proof of specified restitution, the execution of the suspension was stayed, and respondent was actually suspended from the practice of law for 30 days and until he makes and furnishes satisfactory proof of specified restitution and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure. In this prior disciplinary matter, in which respondent's default was also entered, respondent was found culpable of willfully violating rule 3-700(A)(2) of the Rules of Professional Conduct of the State Bar of California and Business and Professions Code section 6068, subdivision (i). In mitigation, respondent had no prior record of discipline. In aggravation, respondent engaged in multiple acts of misconduct; his misconduct harmed his client; and his failure to participate in the disciplinary proceeding prior to the entry of his default was a further aggravating circumstance.

In this present disciplinary matter, respondent's failure to participate in this proceeding prior to the entry of his default is a further aggravating circumstance.

## 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) provided 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 an pending probation.” Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

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-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. (*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 his professional obligations and the rules of conduct imposed on lawyers. This is exemplified by his failure to participate in this matter and in his prior disciplinary matter and by his failure to



comply with rule 955, subdivision (c). 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. His 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 his willful and unexplained disobedience of an order of the California Supreme Court.

#### **RECOMMENDED DISCIPLINE**

Based on the foregoing, it is hereby recommended that respondent CARLETON S. MILLS 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 rule 9.20 of the California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this 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: January 20, 2009.

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RICHARD A. PLATEL  
Judge of the State Bar Court