

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

In the Matter of)	Case No. 07-N-11698-DFM
)	
JOSEPH F. STONE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 120243,)	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 Joseph F. Stone (respondent) willfully violated rule 955 of the California Rules of Court (rule 955)¹ by failing to file a declaration of compliance with subdivision (a) of rule 955 in conformity with the requirements of subdivision (c) of that rule. The State Bar was represented in this matter by Deputy Trial Counsel Christine Souhrada (DTC Souhrada). 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

This proceeding was initiated by the State Bar's filing of a NDC against respondent on June 15, 2007.

A copy of the NDC was properly served on respondent on June 15, 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 the stamp "RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSES [sic] - UNABLE TO FORWARD." (Declaration of DTC Souhrada attached to the State Bar's motion for the entry of respondent's default.)³

On June 25, 2007, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for July 30, 2007. A copy of said notice was properly served on respondent by first-class mail, postage fully prepaid, on June 25, 2007, addressed to respondent at his official address. The copy of said notice was returned to the State Bar Court by the U.S. Postal Service bearing a sticker stating:

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

Between July 10 and July 12, 2007, DTC Souhrada made attempts to contact or locate respondent. Attempts by DTC Souhrada to contact or locate respondent by telephone, e-mail, Yahoo People Search and through Parker's directory were unsuccessful. Courtesy copies of the NDC, however, were sent to respondent on July 11, 2007, by regular first-class mail to respondent's official address, as well as to six other addresses (two of which were contained in respondent's case file and the other four being obtained through the zabasearch.com directory). However, as of July 12, 2007, DTC Souhrada 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

³According to the declaration of DTC Souhrada, prior correspondence to respondent at this address was returned by the U.S. Postal Service bearing the stamp "RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD." (Declaration of DTC Souhrada attached to the State Bar's motion for the entry of respondent's default.)

Procedure of the State Bar of California (Rules of Procedure), on July 12, 2007, the State Bar filed a motion for the entry of respondent's default. Attached to the motion were the declaration of DTC Souhrada, as well as Exhibits 1 and 2. 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 12, 2007, by certified mail, return receipt requested,⁴ addressed to respondent at his official address, as well as to the six other addresses noted above.

On July 30, 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. The court granted the State Bar's motion for the entry of respondent's default. Thereafter, on July 31, 2007, the court filed a Status Conference Order. A copy of said order was properly served on respondent by first-class mail, postage fully prepaid, on July 31, 2007, 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 sticker stating:

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on July 30, 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

⁴Exhibit 1 attached to the State Bar's motion for the 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 May 11, 2007. Based on this date of preparation, the document by itself is not adequate to establish that documents served on respondent after May 11, 2007, were properly served. However, in her declaration, DTC Souhrada states that she checked respondent's membership address on the AS/400 computer records maintained by the State Bar and on the State Bar's website on July 12, 2007, and respondent's membership records address was the same as in the certified copy of respondent's address history dated May 11, 2007. In addition, the court takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h), which reflect that since January 20, 1998, respondent's official address has been and remains 1445 Los Angeles Ave. #310F, Simi Valley, CA 93065.

permitted the State Bar to file any further declarations, exhibits, or legal argument regarding the level of discipline by no later than August 20, 2007. A copy of said order was properly served on respondent on July 30, 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 the handwritten notation “UTF” and a stamp stating:

RETURN TO SENDER
UNDELIVERABLE AS ADDRESSED
FWDG ORDER EXPIRED

On August 9, 2007, the State Bar filed a brief on the issues of culpability and discipline. The State Bar did not request a hearing, and this matter was therefore submitted for decision on August 9, 2007.

Exhibits 1 and 2 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW⁵

Respondent was admitted to the practice of law in the State of California on December 10, 1985, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On November 28, 2006, the California Supreme Court filed Order No. S149625 (suspension order). The suspension order required respondent to comply with rule 955 by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the suspension order.

On November 28, 2006, the Clerk of the Supreme Court of the State of California properly served on respondent a copy of the suspension order. Respondent received the suspension order.

The suspension order became effective on December 28, 2006, thirty days after the suspension order was filed.

⁵As 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.

Respondent was required to comply with subdivision (a) of rule 955 no later than January 27, 2007, and was ordered to comply with subdivision (c) of rule 955 no later than February 6, 2007.

Respondent failed to file with the clerk of the State Bar Court a declaration of compliance with rule 955, subdivision (a) as required by subdivision (c) of rule 955.

“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 willfully failed to comply with rule 955 as ordered by the Supreme Court in its November 28, 2006, suspension order by failing to file by February 6, 2007, a declaration of compliance with subdivision (a) of rule 955 in conformity with the requirements of subdivision (c) of rule 955.

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 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”).)

On December 28, 2005, the Supreme Court issued an order in Supreme Court matter S138176 (State Bar Court Case No. 04-O-14934) suspending respondent from the practice of law for six months, staying execution of said suspension, and placing respondent on probation for one year subject to certain conditions of probation. In this prior disciplinary matter, in which

respondent's default was also entered, the court found respondent culpable of willfully violating rule 3-700(D)(1) of the Rules of Professional Conduct of the State Bar of California (RPC) by failing, upon termination of employment, to return documents as requested by his client's new attorney and of willfully violating section 6068, subdivision (i) by failing to cooperate with the State Bar. Respondent's failure to participate in the disciplinary matter prior to the entry of his default was found to be a serious aggravating factor. In mitigation, respondent's 20 years of practice prior to any misconduct was found to be a significant mitigating factor.

On November 28, 2006, the Supreme Court issued an order in Supreme Court matter S146925 (State Bar Court Case No. 05-O-00506) suspending respondent from the practice of law for three years and until he makes restitution 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, the execution of said suspension was stayed, and respondent was actually suspended from the practice of law for two years and until he makes and provides proof of 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 and until respondent 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. In this matter, in which respondent's default was also entered, respondent was found culpable of willfully violating rule 4-100(B)(4) of the RPC for failing to promptly pay funds as requested by his client, which the client was entitled to receive; rule 4-100 of the RPC by not maintaining client funds in his trust account; section 6106 for committing an act of moral turpitude, dishonesty or corruption for misappropriation of client funds; and section 6068, subdivision (i), for not participating in a State Bar investigation. In aggravation, respondent had one prior record of discipline which was diminished, as the misconduct in that prior matter overlapped the misconduct in State Bar Court Case No. 05-O-00506. That respondent engaged in multiple acts of misconduct and caused significant harm to client(s) were also aggravating factors. Furthermore, respondent's failure to participate in the proceedings prior to the entry of his default was also considered an aggravating

factor. 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 an 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 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 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 two 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 Joseph F. Stone 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 on 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 7, 2007

DONALD F. MILES
Judge of the State Bar Court