



PUBLIC MATTER

FILED
DEC 20 2007
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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

In the Matter of)
HAROLD T. ROSS,)
Member No. 58168,)
A Member of the State Bar.)

**Case No. 07-N-12041-DFM
DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT**

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 Harold T. Ross (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 Eli D. Morgenstern (DTC Morgenstern). 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 22, 2007.

A copy of the NDC was properly served on respondent on June 22, 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).³ The copy of the NDC was not returned by the U.S. Postal Service as undeliverable or for any other reason.

On June 26, 2007, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for August 14, 2007. A copy of said notice was properly served on respondent by first-class mail, postage fully prepaid, on June 26, 2007, addressed to respondent at his official address. The copy of said notice was not returned by the U.S. Postal Service as undeliverable or for any other reason.

Between June 1 and July 16, 2007, the State Bar made various attempts to contact or locate respondent. Attempts by the State Bar to contact or locate respondent by mail and telephone were unsuccessful. Such attempts included leaving multiple messages requesting a return call on respondent's voice mail at his official membership records telephone number. Respondent's voice mail contained an out-going message stating in part, "You have reached the office of Harold T. Ross. We are not available to take your call at this time ..." (Declaration of DTC Morgenstern attached to the State Bar's motion for the entry of respondent's default, filed on July 18, 2007.) As of July 18, 2007, the State Bar 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 18, 2007, the State Bar filed a motion for the entry of respondent's default. Attached to the motion was the declaration of DTC Morgenstern, as well as Exhibit 1, a certified copy of respondent's official membership records

³A courtesy copy of the NDC was also mailed to a possible alternative address for respondent at 6819 Sepulveda Blvd., #208, Van Nuys, CA 91405. All pleadings served on respondent in this proceeding, both from the State Bar and the State Bar Court, included a courtesy copy to this possible alternative address. All the pleadings mailed to this address by the court were not returned by the U.S. Postal Service as undeliverable or for any other reason.

address history dated June 5, 2007. 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 18, 2007, by certified mail, return receipt requested, 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 8, 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 31, 2007. A copy of said order was properly served on respondent on August 8, 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 stamp stating, "UNCLAIMED."

On August 15, 2007, the State Bar filed a motion to vacate the entry of respondent's default and for leave to amend the NDC, and simultaneously lodged its Proposed First Amended Notice of Disciplinary Charges (First Amended NDC).⁴ The basis for the State Bar's motion was that the NDC failed to allege a material fact.

On August 17, 2007, the court issued an order: (1) vacating the Order of Entry of Default and Order of Inactive Enrollment filed on August 8, 2007; (2) instructing the court clerk to file the First Amended NDC, thereby making the First Amended NDC the operative pleading in this proceeding; (3) giving respondent twenty (20) days from the date of service of this order to file a response to the First Amended NDC; and (4) ordering that an in person status conference be held on September 25, 2007. A copy of said order was properly served on respondent by first-class mail, postage fully prepaid, on August 17, 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

⁴On August 15, 2007, a copy of the First Amended NDC was properly served on respondent by certified mail, return receipt requested, addressed to respondent at his official address. The copy of said notice was returned by the U.S. Postal Service as unclaimed.

for any other reason.

On August 30, 2007, the State Bar again left a message for respondent at his official membership records telephone number. In its message, the State Bar advised respondent that the First Amended NDC had been filed and requested a return call. As of September 12, 2007, the State Bar had not had any contact from respondent.

As respondent did not file a response to the First Amended NDC as required by rule 103 of the Rules of Procedure, on September 12, 2007, the State Bar filed a motion for the entry of respondent's default. Attached to the motion was the declaration of DTC Morgenstern, as well as Exhibit 1, a certified copy of respondent's official membership records address history dated August 28, 2007.⁵ 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 September 12, 2007, by certified mail, return receipt requested, addressed to respondent at his official address.

On September 25, 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 September 26, 2007, the court filed an order, pursuant to the status conference, stating that if there were no appearance by respondent, default would be entered. A copy of said order was properly served on respondent by first-class mail, postage fully prepaid, on September 26, 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.

Respondent failed to file a written response within 10 days after service of the motion for the entry of his default. Consequently, on October 3, 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

⁵Based on this date of preparation, this address history by itself is not adequate to establish that documents served on respondent after August 28, 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 October 7, 2005, respondent's official address has been and remains P.O. Box 3427, Thousand Oaks, CA 91359.

order also permitted the State Bar to file any further declarations, exhibits, or legal argument regarding the level of discipline by no later than October 22, 2007. A copy of said order was properly served on respondent on October 3, 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 stamp stating, "UNCLAIMED."

On October 5, 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 October 5, 2007.

Exhibit 1 attached to the State Bar's September 12, 2007 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 LAW⁶

Respondent was admitted to the practice of law in the State of California on December 20, 1973, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On October 13, 2006, the Supreme Court of California filed a disciplinary order in Case No. S145771 (State Bar Court Case No. 05-O-02574). Pursuant to this order, respondent was suspended from the practice of law for one year, execution of the suspension was stayed, and respondent was actually suspended from the practice of law for 30 days and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure. In the event that respondent remained actually suspended for 90 or more days, the October 13, 2006 order further required respondent to comply with rule 955 and to perform acts specified in subdivisions (a) and (c) of that rule within 120 and 130 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

⁶Pursuant to Evidence Code section 452, subdivision (a), the court takes judicial notice of rule 955. Additionally, as respondent's default was entered in this matter, the factual allegations contained in the First Amended NDC are deemed admitted pursuant to rule 200(d)(1)(A) of the Rules of Procedure.

rule 29.4, subdivision (a), of the California Rules of Court ⁷ at respondent's address as maintained by the State Bar in accordance with section 6002.1. The October 13, 2006 order became effective on November 12, 2006, and at all times thereafter remained in full force and effect.

As of August 15, 2007, respondent had not brought a motion before the State Bar Court to terminate his suspension pursuant to rule 205 of the Rules of Procedure. Respondent has been actually suspended from the practice of law since November 12, 2006, the effective date of the October 13, 2006 order.

The deadline for respondent to comply with rule 955, subdivision (c), expired on March 22, 2007. As of August 15, 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 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 respondent willfully failed to comply with rule 955, subdivision (c), by failing to file the compliance affidavit within the time specified in the October 13, 2006 order.

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.

⁷Effective January 1, 2007, rule 29.4(a) was renumbered as rule 8.532(a), but the language of the rule did not change.

AGGRAVATING CIRCUMSTANCES

Respondent's Prior Record of Discipline

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 October 13, 2006, in a default proceeding, the Supreme Court issued an order in Supreme Court matter S145771 (State Bar Court Case No. 05-O-02574) suspending respondent from the practice of law for one year, the execution of said suspension was stayed, and respondent was actually suspended for 30 days 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 matter, respondent was found culpable of willfully violating rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California (Rules of Professional Conduct) by failing to competently perform legal services for his client, section 6068, subdivision (m), by failing to communicate with his client; rule 3-700(D)(1) of the Rules of Professional Conduct by failing to return his client's file, and section 6068, subdivision (i), by failing to cooperate with a State Bar investigation. In mitigation, respondent had no prior record of discipline over many years of practice. In aggravation, respondent engaged in multiple acts of wrongdoing and failed to participate in the disciplinary proceeding.

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."

Timely compliance with rule 955 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 Harold T. Ross 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 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 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: December 20, 2007



DONALD F. MILES
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 Los Angeles, on December 20, 2007, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

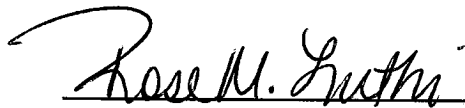
**HAROLD T ROSS
PO BOX 3427
THOUSAND OAKS, CA 91359**

**HAROLD T. ROSS
6819 SEPULVEDA BLVD #208
VAN NUYS, CA 91405**

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

ELI MORGENSTERN, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 20, 2007.**



Rose M. Luthi
Case Administrator
State Bar Court