

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No. 07-N-12042-DFM
<b>ROBERT M. RADESKI,</b>	)	
Member No. 174280,	)	<b>DECISION AND ORDER OF</b>
A Member of the State Bar.	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>

**I. Introduction**

In this default disciplinary matter, respondent **Robert M. Radeski** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,<sup>1</sup> as ordered by the California Supreme Court on September 26, 2006 in S145176.

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**

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). An Amended Notice of Disciplinary Charges (NDC) was filed and properly served via certified mail, return receipt requested, on respondent at his official membership records address on September 14, 2007. The mailing was returned by the U.S. Postal Service (USPS) stamped, “Return to Sender, Attempted Unknown.”

Respondent’s default was entered on January 16, 2008. The order of entry of default was properly mailed to respondent’s official membership records address. Respondent was enrolled as

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<sup>1</sup>Effective January 1, 2007, rule 955 was renumbered and is now 9.20. Because the September 26, 20006 Supreme Court Order required that respondent comply with rule 955, the original numbering will be used in this decision.

an inactive member under Business and Professions Code section 6007, subdivision (e),<sup>2</sup> on January 19, 2008.

Respondent never filed a response to the NDC. (Rules Proc. of State Bar, rule 103.)

Respondent did not participate in the disciplinary proceedings. The court took this matter under submission on January 18, 2008, following the filing of the State Bar's brief on culpability and discipline.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC 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).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 13, 1994, and has been a member of the State Bar since that time.

#### **B. Violation of California Rules of Court, Rule 955**

On September 26, 2006, in California Supreme Court case No. S145176 (State Bar Court case No. 05-H-03308), 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 the State Bar Court grants a motion to terminate his actual suspension under rule 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered respondent to comply with rule 955(a) and (c), within 120 and 130 days, respectively, after the effective date of the Supreme Court order, if his actual suspension exceeded 90 days. The order became effective October 26, 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."

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<sup>2</sup>All references to sections are to the Business and Professions Code, unless otherwise indicated.

Notice of the order was properly served upon respondent. (Cal. Rules of Court, rule 8.532(a).)

Respondent was to have filed the rule 955 affidavit by March 5, 2007, 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. “Willfulness” 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 willfully failed to comply with rule 955, as ordered by the Supreme Court in S145176.<sup>3</sup>

#### **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).)<sup>4</sup>

##### **B. Aggravation**

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

Respondent’s prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

1. On October 28, 2003, respondent was publicly reprovved with a one year condition period for advising a client to violate a ruling of a tribunal in willful violation of rule 3-210 of the Rules of Professional Conduct of the State Bar of California.<sup>5</sup> (State Bar Court case No. 02-O-14822.)

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<sup>3</sup>Specifically, rule 955(d) provides that a suspended attorney’s willful failure to comply with rule 955 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

<sup>4</sup>All further references to standards are to this source.

<sup>5</sup>Unless otherwise indicated, all further references to rules refer to the Rules of Professional Conduct of the State Bar of California.

2. On September 26, 2006, the Supreme Court ordered, among other things, that respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be actually suspended from the practice of law for 60 days and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 for his willful failure to comply with the reproof conditions ordered in State Bar Court case No. 02-O-14822. Specifically, respondent failed to file quarterly reports and provide proof that he had complied with the MCLE requirement ordered in State Bar Court case No. 02-O-14822, in willful violation of rule 1-110. (Supreme Court order No. 145176.)

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

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

#### **V. Discussion**

Respondent's willful 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.

Therefore, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to 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 the Supreme Court order.

## **VI. Recommended Discipline**

The court recommends that respondent **Robert M. Radeski** 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.<sup>6</sup>

## **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 section 6140.7 and as a money judgment.

## **VIII. Order of Involuntary Inactive Enrollment**

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: March 24, 2008

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**DONALD F. MILES**  
Judge of the State Bar Court

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<sup>6</sup>Respondent 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.)