

OCT 07 2003

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 03-N-02045-JMR
EDWARD STUART LEVINSON,)	DECISION AND ORDER OF
Member No. 61886,)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT

I. Introduction

In this default matter, Respondent **EDWARD STUART LEVINSON**, is found culpable, by clear and convincing evidence, of failing to comply with rule 955 of the California Rules of Court,¹ as ordered by the California Supreme Court on January 24, 2003, in case no. S110750.

The court recommends that Respondent be disbarred.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was filed and properly served on Respondent on July 18, 2003, at his official membership records address. (Rules Proc. of State Bar, rules 60(b) and 583.) The NDC was returned to the State Bar as undeliverable. A courtesy copy of the NDC was also sent to an alternate address in Orinda, California, and was not returned to the State Bar as undeliverable.

The State Bar tried to call Respondent at his official membership records telephone number but the number was disconnected. On July 17, 2003, the State Bar also telephoned Respondent at

¹All references to rule 955 are to rule 955 of the California Rules of Court.



1 an alternate telephone number and left a message for Respondent to return the call, but he did not
2 respond. On August 19, 2003, the State Bar again telephoned Respondent at the same alternate
3 phone number. The woman who answered the phone confirmed that she was Respondent's wife and
4 that she would forward the message to Respondent to return the call. Respondent did not return any
5 of the calls.

6 Respondent did not file a response. (Rules Proc. of State Bar, rule 103.) On motion of the
7 State Bar, Respondent's default was entered on September 8, 2003. The order of entry of default
8 was properly mailed to Respondent's official membership records address. A courtesy copy was also
9 sent to the Orinda address. Respondent was enrolled as an inactive member under Business and
10 Professions Code section 6007(e)² on September 11, 2003.

11 Respondent did not participate in the disciplinary proceedings. The court took this matter
12 under submission on September 15, 2003.

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

14 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default
15 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
16 200(d)(1)(A).)

17 **A. Jurisdiction**

18 Respondent was admitted to the practice of law in California on December 18, 1974, and has
19 been a member of the State Bar since that time.

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

21 On January 24, 2003, the California Supreme Court in case no. S110750 (State Bar Court
22 case nos. 00-O-14646 and 00-O-14648) suspended Respondent from the practice of law for two
23 years, stayed the execution of the suspension and actually suspended him for 90 days and until the
24 State Bar Court grants a motion to terminate his actual suspension under rule 205 of the Rules of
25 Procedure. Among other things, the Supreme Court ordered Respondent to comply with rule 955,
26

27 ²All references to sections are to the Business and Professions Code, unless otherwise
28 indicated.

1 subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme
2 Court order. The order became effective February 23, 2003, and was duly served on Respondent.

3 Upon filing of the Supreme Court order, under rule 24(a) of the California Rules of Court,
4 the Office of the Clerk of the Supreme Court of California served upon Respondent a copy of the
5 order imposing discipline and directing Respondent to comply with rule 955. (See Evid. Code, §
6 664.)

7 On March 19, 2003, the Probation Unit of the State Bar properly sent Respondent a copy of
8 the Supreme Court order.

9 Respondent was to have filed the rule 955 affidavit by April 4, 2003, but to date, he has not
10 done so and has offered no explanation to this court for his noncompliance. Whether Respondent
11 is aware of the requirements of rule 955 or of his obligation to comply with those requirements is
12 immaterial. "Wilfulness" in the context of rule 955 does not require actual knowledge of the
13 provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their
14 official addresses current prevented them from learning that they had been ordered to comply with
15 rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

16 Therefore, the State Bar has established by clear and convincing evidence that Respondent
17 wilfully failed to comply with rule 955, as ordered by the Supreme Court.

18 **C. Violation of Business and Professions Code Section 6103**

19 Respondent's failure to comply with rule 955 also constitutes a violation of section 6103,
20 which requires attorneys to obey court orders and provides that the wilful disobedience or violation
21 of such orders constitutes cause for disbarment or suspension.

22 **IV. Mitigating and Aggravating Circumstances**

23 **A. Mitigation**

24 No mitigating evidence was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.
25 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

26 //

27
28 ³All further references to standards are to this source.

1 **B. Aggravation**

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

3 Respondent's one prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)
4 In California Supreme Court case no. S110750, the underlying matter, he was suspended for two
5 years, stayed, and was actually suspended 90 days and until a motion to terminate his actual
6 suspension is granted for his misconduct involving two client abandonments.

7 Respondent demonstrated indifference toward rectification of or atonement for the
8 consequences of his misconduct by failing to comply with rule 955(c) even after the NDC in the
9 instant proceeding was filed. (Std. 1.2(b)(v).)

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

12 **V. Discussion**

13 Respondent's wilful failure to comply with 955(c) is extremely serious misconduct for which
14 disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50
15 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned
16 parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45
17 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional
18 obligations and rules of court imposed on California attorneys although he has been given several
19 opportunities to do so.

20 Therefore, Respondent's disbarment is necessary to protect the public, the courts and the legal
21 community, to maintain high professional standards and to preserve public confidence in the legal
22 profession. It would undermine the integrity of the disciplinary system and damage public
23 confidence in the legal profession if Respondent were not disbarred for his unexplained wilful
24 disobedience of the Supreme Court order.

25 **VI. Recommended Discipline**

26 The court recommends that Respondent **EDWARD STUART LEVINSON** be disbarred
27 from the practice of law in the State of California and that his name be stricken from the rolls of
28 attorneys in this State.

1 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
2 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the
3 effective date of its order imposing discipline in this matter.

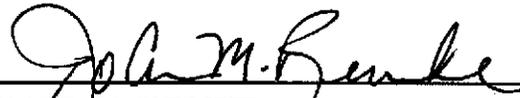
4 **VII. Costs**

5 The court recommends that costs be awarded to the State Bar pursuant to section 6086.10,
6 and that those costs be payable in accordance with section 6140.7.

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

8 It is ordered that Respondent be transferred to involuntary inactive enrollment status under
9 section 6007(c)(4) and rule 220(c) of the Rules of Procedure of the State Bar. The inactive
10 enrollment shall become effective three days after this order is filed.

11
12
13
14
15 Dated: October 7, 2003


16 **JOANN M. REMKE**
17 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. 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 San Francisco, on October 7, 2003, 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 San Francisco, California, addressed as follows:

EDWARD STUART LEVINSON
P O BOX 20932
OAKLAND CA 94620

EDWARD STUART LEVINSON
64 VALENCIA ROAD
ORINDA CA 94563

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

MARIA OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 7, 2003**.



Bernadette C. O. Molina
Case Administrator
State Bar Court