

1 of the Rules of Procedure of the State Bar ("Rules of Procedure").¹ On August 15, 2003, the
2 NDC was returned to the State Bar by the U.S. Postal Service with the envelope stamped
3 "RETURN TO SENDER, UNCLAIMED." However, other mailings to Respondent's official
4 address were not returned by the postal service.²

5 Respondent did not file an answer to the NDC. Thereafter, on August 26, 2003, the State
6 Bar filed a Notice of Motion and Motion for Entry of Default, wherein it recommended
7 disbarment once Respondent was found culpable of the alleged misconduct. The motion was
8 properly served upon Respondent on August 26, 2003, by certified mail, return receipt requested,
9 at his official address.

10 The Court entered Respondent's default on September 10, 2003, after Respondent failed
11 to file an answer to the NDC within ten days after service of the Motion for Entry of Default.
12 (See Rules Proc. of State Bar, rule 200(c).) Notice of Entry of Default was properly served upon
13 Respondent on the same date by certified mail addressed to him at his official address.

14 The State Bar was represented throughout these proceedings by Deputy Trial Counsel Eli
15 D. Morgenstern. Respondent did not participate at any stage of these proceedings, either
16 personally or through counsel.

17 This matter was taken under submission as of September 10, 2003.

18 FINDINGS OF FACT AND CONCLUSIONS OF LAW

19 Respondent was admitted to the practice of law in California on December 4, 1990, and
20 has been a member of the State Bar at all times since.³

21
22 ¹Pursuant to Evidence Code § 452(h), the Court takes judicial notice of the membership
23 records of the State Bar, which show that at all times since October 26, 2001, Respondent's
24 official address has been 729 Olmsted Drive, Glendale, CA 91202.

25 ²See the Declaration of Eli Morgenstern, Deputy Trial Counsel, submitted in support of
26 the motion for entry of Respondent's default, which explains that a letter sent to Respondent on
27 July 9, 2003, regarding this matter was not returned by the postal service. In addition, see the
28 NDC which indicates a letter sent to Respondent by the Office of Probation was not returned by
the postal service.

³Effective September 16, 2002, Respondent was suspended from the practice of law for
failure to pay membership fees, and the suspension remains in effect. (Evid. Code §452(h).)

1 On April 3, 2003, the Supreme Court of California entered a final disciplinary order in *In*
2 *re John Hyonsub Shim on Discipline*, Supreme Court Case No. S112919 (State Bar Court Case
3 No. 02-O-10441). In its order, the Supreme Court suspended Respondent from the practice of
4 law for two years, stayed execution of the suspension, and actually suspended Respondent from
5 the practice of law for one year and until he made a motion to terminate his actual suspension
6 and the motion is granted.

7 As relevant to this proceeding, the Supreme Court also ordered Respondent to comply
8 with subdivisions (a) and (c) of rule 955 of the California Rules of Court within 30 and 40 days,
9 respectively, after the effective date of the Supreme Court's order. The order of the Supreme
10 Court became effective on May 3, 2003.

11 Upon filing of the April 3, 2003 order, in accordance with rule 24(a) of the California
12 Rules of Court, the Office of the Clerk of the Supreme Court of California served Respondent
13 with a copy of the Supreme Court's order imposing discipline and directing Respondent's
14 compliance with rule 955. (See Evid. Code, § 664.)

15 On or about April 29, 2003, a probation deputy of the Office of Probation of the State Bar
16 wrote a letter to Respondent reminding Respondent of the obligation to comply with Rule 955
17 and enclosing an accurate copy of the suspension order as well as a form approved by the State
18 Bar Court Executive Committee for reporting compliance with Rule 955. On that same date, the
19 probation deputy mailed the letter and enclosures by placing the documents in a sealed envelope
20 addressed to Respondent at his address maintained on the official membership records of the
21 State Bar and depositing it, first-class postage prepaid, in a facility regularly maintained by the
22 U.S. Postal Service. The U.S. Postal Service did not return the letter as undeliverable.

23 Respondent did not file an affidavit with the State Bar Court evidencing his compliance
24 with the requirements of rule 955, as ordered by the Supreme Court, either by the date ordered by
25 the Court (i.e., June 12, 2003) or at any time thereafter.

26 The fact that Respondent may not be aware of the requirements of rule 955 or of his
27 obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule
28 955 does not require actual knowledge of the provision which is violated. The Supreme Court

1 has disbarred attorneys whose failure to keep their official addresses current prevented them from
2 learning that they had been ordered to comply with rule 955. (See *Powers v. State Bar* (1988)
3 44 Cal.3d 337, 341.)

4 Accordingly, this Court concludes that the State Bar has established by clear and
5 convincing evidence that Respondent wilfully failed to comply with rule 955 by failing to file an
6 affidavit attesting to his compliance with subdivision (a) of that rule, as ordered by the Supreme
7 Court in its April 3, 2003, order. Respondent's failure to comply with rule 955, as ordered by the
8 Supreme Court, also constitutes a wilful violation of Business and Professions Code section 6103
9 which provides that the wilful disobedience or violation of an order of a court constitutes cause
10 for disbarment or suspension.

11 LEVEL OF DISCIPLINE

12 Factors in Mitigation

13 There are no mitigating factors presented by the record in this proceeding.

14 Factors in Aggravation

15 Respondent has been disciplined on four previous occasions, which is an aggravating
16 factor pursuant to Standard 1.2(b)(i) of the Standards for Attorney Sanctions for Professional
17 Misconduct.

18 Effective May 29, 1997, in State Bar Court Case No. 95-C-13843, Respondent was
19 privately reprovved as a result of his conviction for reckless driving involving alcohol and his
20 failure to comply with an agreement entered into with the State Bar in lieu of discipline.

21 Effective November 18, 2001, in State Bar Court Case No. 00-O-12810, Respondent was
22 publicly reprovved in connection with a single client matter where it found that he failed to
23 competently perform legal services, adequately communicate and to cooperate in the disciplinary
24 investigation..

25 As previously indicated, by minute order filed April 3, 2003, in Case No. S112919 (State
26 Bar Court Case No. 02-O-10441), the Supreme Court suspended Respondent from the practice of
27 law for two years, stayed execution, and actually suspended Respondent for one year. In
28 connection with a single client matter, Respondent was found to have violated a court order,

1 maintained an illegal or unjust action, and failed to cooperate with the disciplinary investigation.

2 On June 23, 2003, in State Bar Court Case No. 03-H-00078, this Court filed a decision
3 recommending to the Supreme Court of California that Respondent be suspended from the
4 practice of law for two years, that said suspension be stayed, and that Respondent be actually
5 suspended for 120 days and until he files a motion to terminate his actual suspension, and the
6 motion is granted. Respondent was found culpable of failing to comply with the conditions
7 attached to his earlier public reproof (State Bar Court Case No. 00-O-12810), specifically,
8 failing to submit proof of attendance at the State Bar Ethics School and passage of the Multistate
9 Professional Responsibility Examination. The State Bar Court transmitted its discipline
10 recommendation to the Supreme Court on August 20, 2003, and the recommendation is still
11 pending before the Supreme Court. Nevertheless, while the discipline is not final, it constitutes
12 a prior record of discipline. (Rule 216 of the Rules of Procedure.)

13 Respondent's failure to file the rule 955 compliance affidavit with the Clerk of the State
14 Bar Court significantly harmed the public and the administration of justice. (Standard
15 1.2(b)(iv).)

16 **Discussion**

17 Rule 955(d) provides in part that "[a] suspended member's wilful failure to comply with
18 the provisions of this rule constitutes a cause for disbarment or suspension and for revocation of
19 any pending probation."

20 Timely compliance with rule 955 is essential to ensure that all concerned parties
21 (including clients, co-counsel, opposing counsel and all courts in which the attorney has pending
22 litigation) learn about the attorney's actual suspension from the practice of law. Compliance
23 with rule 955 also keeps the State Bar Court and the Supreme Court informed of the location of
24 attorneys who are subject to their respective disciplinary authority. (*Lydon v. State Bar* (1988)
25 45 Cal.3d 118, 1187.)

26 Disbarment is generally the appropriate sanction to be imposed for a wilful violation of
27 rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116,131.)

28 Respondent has exhibited a disregard for both the Supreme Court and the State Bar Court

1 in their efforts to fulfill their respective responsibilities to oversee the practice of law in the State
2 of California. Respondent's disregard is exemplified by (1) his failure to comply with rule 955;
3 and (2) his failure to participate in either the current proceeding or his two most recent priors.

4 This Court is unaware of any facts or circumstances that would justify a departure from
5 the usual sanction of disbarment for Respondent's wilful violation of rule 955 and his resulting
6 violation of Business and Professions Code section 6103, especially in light of the fact that this is
7 Respondent's fifth time before the disciplinary authority. One of this Court's obligations is to
8 ensure that its disciplinary recommendations to the Supreme Court are fair and consistent. (*In re*
9 *Young* (1989) 49 Cal.3d 257, 268.)

10 Respondent's disbarment is necessary to protect the public, the courts and the legal
11 profession, to maintain high professional standards and to preserve public confidence in the
12 profession. It would seriously undermine the integrity of the disciplinary system and damage
13 public confidence in the legal profession if Respondent were not disbarred for his wilful and
14 unexplained disobedience of the Supreme Court's April 3, 2003 order.

15 RECOMMENDED DISCIPLINE

16 This Court recommends that Respondent **JOHN HYONSUB SHIM** be disbarred from
17 the practice of law in the State of California and that his name be stricken from the roll of
18 attorneys in this State.

19 It is also recommended that the Supreme Court order Respondent to comply with rule
20 955(a) of the California Rules of Court within 30 calendar days of the effective date of the
21 Supreme Court order in this matter and to file the compliance affidavit required by rule 955(c)
22 within 40 days of the effective date of the Court's order.

23 COSTS

24 It is further recommended that costs be awarded to the State Bar pursuant to Business and
25 Professions Code section 6086.10 and that such costs be made payable in accordance with
26 Business and Professions Code section 6140.7.

27 ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

28 In light of this Court's recommendation that Respondent be disbarred from the practice of

1 law, pursuant to the provisions of Business and Professions Code section 6007, subdivision
2 (c)(4) and rule 220(b) of the Rules of Procedure, it is hereby ordered that Respondent **JOHN**
3 **HYONSUB SHIM** be involuntarily enrolled as an inactive member of the State Bar. The order
4 of involuntary enrollment shall be effective three days after the date upon which this Decision is
5 served.

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8 Dated: September 30th, 2003


9 ROBERT M. TALCOTT
10 Judge of the State Bar Court
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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 Los Angeles, on October 6, 2003, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed October 6, 2003**

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

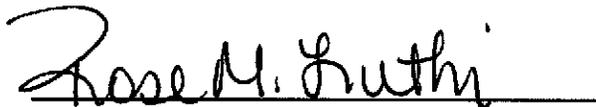
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOHN H. SHIM, ESQ.
729 OLMSTED DR
GLENDALE CA 91202**

[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 **October 6, 2003**.


Rose M. Luthi
Case Administrator
State Bar Court