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PUBLIC MATTER

FILED

NOV - 9 2004

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

**THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of

BOBBY O. WHEELER,

Member No. 140726,

A Member of the State Bar.

Case No. 04-N-12909-RAH

**DECISION INCLUDING DISBARMENT
RECOMMENDATION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT**

INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California ("the State Bar") alleging that Respondent Bobby O. Wheeler failed to comply with rule 955, California Rules of Court ("CRC 955") as ordered by the Supreme Court. The State Bar was represented by Gordon Grenier, Deputy Trial Counsel. Respondent did not participate either in person or by counsel.

For the reasons stated below, it is recommended that Respondent be disbarred.

PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed and properly served on Respondent on August 3, 2004, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar ("official address"). (Business and Professions Code section 6002.1(c)¹; Rules 60(b) and 583, Rules Proc. of State Bar ("rule(s)").) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d

¹Unless otherwise stated, all future references to "section(s)" are to the California Business and Professions Code.



1 1181, 1186.) However, the NDC was returned to the State Bar by the United States Postal
2 Service ("USPS") with a notation "Not deliverable as addressed; Unable to forward; Return to
3 Sender."²

4 Respondent did not file a response to the NDC. On, September 8, 2004, the State Bar
5 filed and properly served on Respondent a motion for entry of default by certified mail, return
6 receipt requested, at her official address. The motion advised Respondent that the State Bar
7 would seek minimum discipline of disbarment if he was found culpable. (Rule 200(a)(3).)

8 Respondent did not respond to the default motion. An order entering Respondent's
9 default and involuntarily enrolling him inactive was filed and properly served on Respondent on
10 October 4, 2004, by certified mail, return receipt requested, at his official address. The order,
11 among other things, enrolled Respondent on inactive membership status pursuant to section
12 6007(e), effective three days after service of the order. The Court judicially notices its records
13 which indicate that the postal service returned the order as undeliverable with a notation "Return
14 to Sender; Not Deliverable as Addressed; Unable to Forward."

15 On October 6, 2004, the State Bar filed its brief regarding culpability and discipline, and a
16 waiver of its right to a default hearing pursuant to rule 202(c) of the Rules of Procedure. The
17 State Bar's brief included a certified copy of Respondent's prior record of discipline. The State
18 Bar recommends in this proceeding that Respondent be disbarred.

19 The case was submitted for decision on October 6, 2004.

20 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21 The Court's findings are based on the allegations contained in the NDC as they are deemed
22 admitted and no further proof is required to establish the truth of those allegations. (Section 6088;
23

24
25 ²All efforts by the State Bar to contact Respondent regarding this proceeding have been
26 unsuccessful. Prior to the filing of the NDC, the State Bar sent Respondent a 20-day letter
27 regarding this matter. The letter was returned by the postal service as undeliverable. The State
28 Bar attempted to reach Respondent by telephone at his official membership records telephone
number, but there was no service for that number. In addition, the State Bar attempted to locate
Respondent through directory assistance, Parker's Directory, and an internet search on
Yahoo.com. None of these sources proved fruitful.

1 Rule 200(d)(1)(A.) The findings are also based upon matters admitted into evidence or judicially
2 noticed.

3 Respondent was admitted to the practice of law in California on June 7, 1989, and has
4 been a member of the State Bar at all times since.³

5 On January 23, 2004, the California Supreme Court filed an order, number S120271 (" the
6 January 23, 2004, order") in State Bar Court case no. 02-J-14562, in which Respondent was
7 ordered, among other things, to be actually suspended for 45 days and until this Court granted a
8 motion to terminate his actual suspension pursuant to rule 205, Rules Proc. of State Bar. If he was
9 actually suspended for 90 days or more, he was also ordered to comply with CRC 955(a) and (c)
10 within 120 and 130 days, respectively, of the effective date of the January 23, 2004, order, which
11 was effective on February 22, 2004. (Rule 953(a), Cal. Rules of Court.)

12 Accordingly, if Respondent remained suspended from practice beyond 90 days, that is
13 beyond May 22, 2004, Respondent was to comply with CRC 955(a) no later than June 21, 2004,
14 and with CRC 955(c) no later than July 1, 2004. Upon the filing of the January 23, 2004, order,
15 the Supreme Court sent Respondent a copy of the said order imposing discipline and directing his
16 compliance with CRC 955.⁴

17 A copy of the January 23, 2004, order also was attached to the NDC in the instant
18 proceeding.

19 On February 11, 2004, the State Bar's Office of Probation sent a letter to Respondent
20 reminding him of his obligation to comply with CRC 955, enclosing a copy of the suspension
21 order as well as a form for compliance with CRC 955. The letter was sent by first-class mail,
22 postage prepaid, addressed to Respondent's official address. The letter was not returned as
23 undeliverable.

24 As of August 3, 2004, Respondent had not filed with the State Bar Court the affidavit
25

26 ³Effective September 4, 2002, Respondent was suspended from the practice of law for
27 failure to pay membership fees, and that suspension remains in effect.

28 ⁴See, rule 24(a), California Rules of Court, and Evidence Code section 664.

1 required by CRC 955(c). He still has not done so.⁵ He has offered no explanation to this Court
2 for his failure to comply with CRC 955(c).

3 Based on the foregoing, it has been proved by clear and convincing evidence that
4 Respondent wilfully violated the January 23, 2004, order directing his compliance with CRC
5 955.⁶ This constitutes a violation of section 6103, which requires attorneys to obey court orders.

6 **FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES**

7 Respondent did not participate in these proceedings or present any mitigating
8 circumstances pursuant to standard 1.2(e), Rules of Procedure of the State Bar of California, Title
9 IV, Standards for Attorney Sanctions for Professional Misconduct, ("standards"). Since
10 Respondent bears the burden of establishing mitigation by clear and convincing evidence, the
11 Court has been provided no basis for finding mitigating factors.

12 **FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

13 Respondent has one prior discipline matter, which is an aggravating circumstance.
14 (Standard 1.2(b)(i).)

15 The underlying matter was a reciprocal discipline case involving Respondent's formal
16 reprimand by the Disciplinary Board of the Washington State Bar, on September 13, 2002. The
17 subject reprimand was for misconduct that included filing an action that he knew to be without a
18 basis in law, not adequately communicating with his client and for not handling his client's case
19 diligently.

20 Respondent demonstrated indifference toward rectification of or atonement for the
21 consequences of his misconduct by failing to comply with CRC 955(c) even after the NDC in the
22 instant proceeding was filed. (Standard 1.2(b)(v).)

23 Respondent's failure to participate in this proceeding prior to the entry of default is also an

24
25 ⁵Pursuant to Evidence Code section 452(d), the Court judicially notices that its records
26 still do not contain a CRC 955(c) affidavit from Respondent.

27 ⁶"Wilfulness" in the context of CRC 955 does not require actual knowledge of the
28 provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep
his official address current prevented him from learning that he had been ordered to comply with
CRC 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

1 aggravating factor. (Standard 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward
2 disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to
3 participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000)
4 4 Cal. State Bar Ct. Rptr. 103, 109 - 110.)

5 LEVEL OF DISCIPLINE

6 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to
7 protect the public, to preserve public confidence in the profession, and to maintain the highest
8 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;
9 *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

10 Respondent's wilful failure to comply with CRC 955(c) is extremely serious misconduct for
11 which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990)
12 50 Cal.3d 116,131; rule 955(d), Cal. Rules of Court.) Disbarment has been consistently imposed
13 by the Supreme Court as the sanction for noncompliance with CRC 955. (*Bercovich v. State Bar*
14 (1990) 50 Cal.3d at p. 131; *Lydon v. State Bar* (1988) 45 Cal.3d at p. 1188; *Powers v. State Bar*
15 (1988) 44 Cal.3d at p. 342.)

16 Respondent has demonstrated an unwillingness to comply with the professional obligations
17 and rules of court imposed on California attorneys although he has been given the opportunity to
18 do so. He failed to participate in this proceeding and did not comply with CRC 955(c). More
19 importantly, Respondent's failure to comply with CRC 955 undermines its prophylactic function in
20 ensuring that all concerned parties learn about an attorney's suspension from the practice of law.
21 (*Lydon v. State Bar* (1988) 45 Cal.3d at p. 1187.)

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

27 DISCIPLINE RECOMMENDATION

28 IT IS HEREBY RECOMMENDED that Respondent Bobby O. Wheeler be DISBARRED

1 from the practice of law in the State of California and that his name be stricken from the rolls of
2 attorneys in this state.

3 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
4 paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the
5 Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph
6 (c) within 40 days of the effective date of the order showing his compliance with said order.

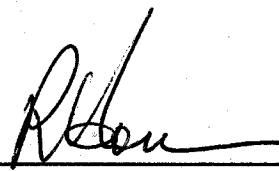
7 **COSTS**

8 The Court recommends that costs be awarded to the State Bar pursuant to Business and
9 Professions Code section 6086.10, and that those costs be payable in accordance with section
10 6140.7.

11 **ORDER REGARDING INACTIVE ENROLLMENT**

12 It is ordered that Respondent be transferred to involuntary inactive enrollment status
13 pursuant to section 6007(c)(4). The inactive enrollment shall become effective three days from
14 the date of service of this order and shall terminate upon the effective date of the Supreme Court's
15 order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its
16 plenary jurisdiction.

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20 Dated: November 8, 2004



RICHARD A. HONN
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 Los Angeles, on November 9, 2004, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT, filed November
9, 2004**

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

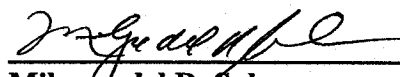
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**BOBBY O WHEELER JR
9423 CALIFORNIA SW
SEATTLE, WA 98136**

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

Gordon Grenier, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 9, 2004.



Milagro del R. Salmeron
Case Administrator
State Bar Court