

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

In the Matter of)	Case No. 05-N-04911-RAH
SHEILA ANN WHARTON,)	
Member No. 52005,)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

I. Introduction

In this default matter, respondent **SHEILA ANN WHARTON** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,¹ as ordered by the California Supreme Court on July 1, 2005, in case No. S133239 (State Bar Court case No. 04-J-10201).

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). The Notice of Disciplinary Charges (NDC) was properly served on respondent via certified mail, return receipt requested, at her official membership records address (official address) on January 5, 2006, and filed on that same date. The mailing was returned bearing the stamp, "no such number." A courtesy copy was also sent to respondent at P.O. Box 52323, Shreveport LA 71135, which address was contained in the State Bar's case file for respondent. The mailing, containing the courtesy copy, was not returned as undeliverable or for any other reason.

On February 1, 2006, the State Bar checked respondent's membership records for a telephone

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

number. However, no phone number was listed for respondent. On the same day, the State Bar searched on-line directory assistance on the internet for Sheila Wharton in Louisiana, and found a phone number, (318) 868-4526, and an address, 3215 Knight St., Shreveport, LA 71105 (Knight Street address). The telephone number was one which was already contained in respondent's case file. The State Bar called the number, reached an answering machine, and left a message requesting that Sheila Wharton return the phone call upon receipt of the message. The State Bar received no response.

On February 1, 2006, the State Bar sent a letter to respondent at her official address, advising her that a motion for entry of her default would be filed unless she responded by February 14, 2006. The State Bar also sent a courtesy copy to the Knight Street address and to another possible address for respondent based on its research. As of the February 21, 2006, respondent had not replied to the State Bar.

On February 15, 2006, the State Bar called directory assistance for the area which includes respondent's official address and requested all telephone listings for respondent. Directory assistance had no listings for respondent.

On motion of the State Bar, respondent's default was entered on March 16, 2006. The order of entry of default was properly mailed to respondent's official address. Respondent was enrolled as an inactive member under Business and Professions Code section 6007(e)² on March 19, 2006.

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 April 4, 2006, 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

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

200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on February 14, 1972, and has been a member of the State Bar since that time.

B. Violation of California Rules of Court, Rule 955

On July 1, 2005, in California Supreme Court case No. S133239 (State Bar Court case No. 04-J-10201), the Supreme Court suspended respondent from the practice of law for two years, stayed the execution of the suspension, and actually suspended her for 60 days and until the State Bar Court grants a motion to terminate her actual suspension under rule 205 of the Rules of Procedure of the State Bar. Respondent was ordered to show proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, if the period of her suspension were to extend for two years or more. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 120 and 130 days respectively, if she were actually suspended for 90 days or more. The order became effective July 31, 2005, 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 . . .she has fully complied with those provisions of the order entered pursuant to this rule.”

On June 1, 2005, the Office of the Clerk of the California Supreme Court served upon respondent a copy of the Supreme Court order imposing discipline and directing respondent to comply with rule 955.

On July 27, 2005, the State Bar’s Office of Probation properly sent respondent a copy of the Supreme Court order, reminding her of the obligations to comply with rule 955. The mailing was returned as undeliverable.

Respondent was to have filed the rule 955 affidavit by December 8, 2005; but to date she has not done so, and has offered no explanation to this court for her noncompliance. Whether respondent is aware of the requirements of rule 955 or of her obligation to comply with those

requirements is immaterial. “Wilfulness” 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 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.)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Supreme Court.³

C. Violation of Business and Professions Code Section 6103

Accordingly, respondent’s failure to comply with rule 955 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

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).) In the underlying matter, California Supreme Court case No. S133239 (State Bar Court case No. 04-J-10201), effective July 31, 2005, the Supreme Court suspended respondent from the practice of law for two years, stayed the execution of the suspension, and actually suspended her for 60 days and until the State Bar Court terminates her actual suspension under rule 205 of the Rules of Procedure of the State Bar. Her misconduct included an act involving moral turpitude, failure to cooperate with disciplinary investigations, failure to communicate with a client, failure to perform legal services competently, and failure to return unearned fees.

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

⁴All further references to standards are to this source.

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

V. Discussion

Respondent's wilful 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 she has been given opportunities to do so. Moreover, she has failed to participate in the underlying matter and in the instant case.

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 profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for her wilful disobedience of the Supreme Court order.

VI. Recommended Discipline

The court recommends that respondent **Sheila Ann Wharton** be disbarred from the practice of law in the State of California and that her 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 Rule of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

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 Business and Professions Code 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(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: June 12, 2006

RICHARD A. HONN
Judge of the State Bar Court