

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

In the Matter of)	Case No. 06-N-10789-RMT
JUVENAL FEDERICO AGRAVANTE,)	DECISION AND ORDER OF
Member No. 169950,)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT

INTRODUCTION

This matter was initiated by the filing of a Notice of Disciplinary Charges (“NDC”) by the State Bar of California, Office of the Chief Trial Counsel (“State Bar”), alleging that respondent Juvenal Federico Agravante (“respondent”), by failing to file with the Clerk of the State Bar Court the compliance affidavit required by rule 955, subdivision (c), of the California Rules of Court (“rule 955”), wilfully disobeyed or violated an order of the court requiring him to do an act connected with or in the course of his profession, which he ought in good faith to do, in violation of Business and Professions Code section 6103. The State Bar was primarily represented in this matter by Deputy Trial Counsel Melanie Lawrence (“DTC Lawrence”). Respondent did not participate in this proceeding either in-person or through counsel.

For the reasons stated below, the court finds that respondent wilfully failed to comply with rule 955, subdivision (c), of the California Rules of Court and thereby violated Business and Professions Code section 6103. The court therefore recommends that respondent be disbarred from the practice of law and that he be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4).

PERTINENT PROCEDURAL HISTORY

This proceeding was initiated by the State Bar's filing of a NDC against respondent on March 23, 2006.¹

A copy of the NDC was properly served upon respondent on March 23, 2006, by certified mail, return receipt requested, addressed to the official membership records address ("official address") maintained by respondent pursuant to Business and Professions Code section 6002.1, subdivision (a). The copy of the NDC was returned by the United States Postal Service ("USPS") bearing the stamp "Moved, Left No Address."

On April 11, 2006, DTC Lawrence searched whitepages.com, an on-line directory assistance, for "J. Agravante" in California. The only result was a listing for "Jerome T. Agravante."

On April 11, 2006, DTC Lawrence called directory assistance for the area which includes respondent's official membership records address and asked for all telephone listings for respondent. Directory assistance had no listing for respondent.

On April 17, 2006, DTC Lawrence found an address in her file to which courtesy copies of correspondence had been sent to respondent in the past. On April 17, 2006, DTC Lawrence sent a courtesy copy of the NDC by regular, first-class mail, addressed to: Juvenal F. Agravante AKA Leon F. Agravante, 4311 York Boulevard, Los Angeles, CA 90041-3219. As of April 26, 2006, the courtesy copy had not been returned.²

On April 17, 2006, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in-person status conference for May 11, 2006. A copy of said notice was properly served upon respondent by first-class mail, postage fully prepaid, on April 17, 2006, addressed to respondent at his official address. The copy of said notice was returned to the State Bar Court by the USPS bearing a label which stated:

¹On March 2, 2006, a 20-day letter was mailed to respondent at respondent's official membership records address. It was not returned.

²Furthermore, as of April 26, 2006, the State Bar's Office of the Chief Trial Counsel had not had any contact with respondent.

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

As respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), on April 26, 2006, the State Bar filed a motion for the entry of respondent’s default. The motion advised respondent that once the court had found culpability, the State Bar would recommend respondent’s disbarment. The State Bar also requested in its motion that the court take judicial notice of all respondent’s official membership addresses. The court grants the State Bar’s request. Also included with the motion was the declaration of DTC Lawrence and Exhibit 1. The court admits this exhibit into evidence. A copy of said motion was properly served upon respondent by certified mail, return receipt requested, on April 26, 2006, addressed to respondent at his official address.

On May 11, 2006, the court held a status conference in this matter. Respondent failed to appear either in person or through counsel at the status conference. Thereafter, on May 11, 2006, the court filed a Status Conference Order granting the State Bar’s motion for the entry of respondent’s default.³ A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on May 11, 2006, addressed to respondent at his official address. The copy of said notice was returned to the State Bar Court by the USPS bearing a label which stated:

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

On May 11, 2006, the State Bar submitted respondent’s prior record of discipline for the court’s consideration in determining the appropriate level of discipline in this matter.⁴

On May 12, 2006, the court filed an Order of Entry of Default (Rule 200 - Failure to File

³As discussed below, the order should have indicated that the motion was granted effective May 12, 2006.

⁴The prior record of discipline was not served upon respondent, presumably because the court had granted the motion for the entry of respondent’s default.

Timely Response), Order Enrolling Inactive⁵ and Further Orders. A copy of said order was properly served upon respondent on May 12, 2006, by certified mail, return receipt requested, addressed to respondent at his official address. The copy of said order was returned to the State Bar Court by the USPS indicating “Moved, Left No Address.”

This matter was originally submitted for decision on May 12, 2006.⁶

On August 7, 2006, the court filed an order: (1) correcting the May 11, 2006, Status Conference Order to reflect that the State Bar’s motion for the entry of respondent default is granted effective May 12, 2006;⁷ (2) rescinding the May 11, 2006, filed document entitled “The State Bar’s Submission of Evidence Re: Level of Discipline after Entry of Default” as prematurely filed and ordering the State Bar to re-file this evidence with the court and waive the hearing in this matter within 10 days after service of this order; (3) vacating the May 12, 2006, submission date; and (4) directing, in pertinent part, that a copy of this order be served upon respondent by mail addressed to respondent at his official address, and that a copy of this order also be served upon respondent Juvenal F. Agravante AKA Leon F. Agravante, 4311 York Boulevard, Los Angeles, CA 90041-3219. The order also advised the parties that if they had any questions or concerns regarding the order, they must contact the court’s case administrator to schedule a status conference with the court. A copy of said order was properly served upon respondent by first-class mail, postage fully prepaid, on August 7, 2006, addressed to respondent at his official address. A copy of said order was also served upon Leon F. Agravante, 4311 York Blvd., Los Angeles, CA 90041-3219.⁸ The copy of said

⁵Respondent’s involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after service of this order by mail.

⁶As will be discussed below, the May 12, 2006, submission date was subsequently vacated.

⁷Pursuant to the Rules of Procedure, the earliest respondent’s default could properly be entered was May 12, 2006.

⁸As stated in its order, the court intended the copy of the order sent to the York Boulevard address to specifically be addressed to “Juvenal F. Agravante AKA Leon F. Agravante.” However, the court finds the fact that it was not addressed as specifically set forth in the court’s August 7, 2006, order to be inconsequential.

order addressed to respondent at his official address was returned to the State Bar Court by the USPS bearing a label which stated:

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

The copy of said order served upon the York Boulevard address was not returned by the USPS as undeliverable or for any other reason.

On August 9, 2006, the State Bar filed a Request for Waiver of Default Hearing; Brief on Culpability and Discipline. The court admits into evidence State Bar Exhibit 1, respondent's prior record of discipline, which was attached to said brief.⁹

This matter was submitted for decision on August 9, 2006, following the filing of the State Bar's brief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW¹⁰

Respondent was admitted to the practice of law in the State of California on March 10, 1994, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On or about December 9, 2005, the California Supreme Court filed Order No. S137731 ("suspension order") requiring that respondent comply with California Rules of Court, rule 955, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the suspension order. The suspension order became effective on January 8, 2006, thirty days after the suspension order was filed.

On or about December 9, 2005, the Clerk of the California Supreme Court properly served

⁹DTC Lawrence submitted a copy of a certified copy of respondent's prior record of discipline. The original certified copy of respondent's prior record of discipline was attached to the State Bar's document filed May 11, 2006, which was rescinded pursuant to the court's August 7, 2006, order. The court finds that the copy of the certified copy of respondent's prior record of discipline will satisfy the requirements of rule 216 of the Rules of Procedure.

¹⁰As respondent's default was entered in this matter, the factual allegations contained in the NDC are deemed admitted pursuant to rule 200(d)(1)(A) of the Rules of Procedure. The findings of fact are therefore based on the deemed admissions as well as the exhibits which have specifically been admitted into evidence.

a copy of the suspension order upon respondent.

The suspension order required that respondent comply with subdivision (a) of rule 955 of the California Rules of Court no later than February 7, 2006, by notifying all clients and any co-counsel of his suspension, delivering to all clients any papers or other property to which the clients are entitled, refunding any unearned attorney fees, notifying opposing counsel and adverse parties of his suspension, and filing a copy of said notice with the court, agency or tribunal before which the litigation is pending.

The suspension order required that respondent comply with subdivision (c) of rule 955 of the California Rules of Court no later than February 17, 2006, by filing with the Clerk of the State Bar Court an affidavit showing that he fully complied with those provisions of the suspension order regarding rule 955.

Respondent did not file, with the Clerk of the State Bar Court, an affidavit stating compliance with rule 955 (“955 declaration”) by February 17, 2006. To date, respondent has not filed a valid 955 declaration.¹¹

“Willfulness” in the context of rule 955 implies simply a purpose or willingness to commit the act, or make the omission, referred to. It requires neither bad faith nor an intent to violate the rule. (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.) 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.) The filing of an affidavit pursuant to rule 955, subdivision (c), is required even if the respondent does not have any clients to notify. (*Id.*)

Based upon the foregoing, the court concludes that the State Bar has proven by clear and convincing evidence that respondent wilfully failed to comply with rule 955 of the California Rules

¹¹As of March 23, 2006, the date the NDC in this matter was executed by Deputy Trial Counsel William F. Stralka, respondent had not filed with the Clerk of the State Bar Court the compliance affidavit required by rule 955, subdivision (c). Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of its records which reflect that as of the date of the filing of this decision, respondent still has not filed with the Clerk of the State Bar Court the compliance affidavit required by rule 955, subdivision (c).

of Court, as ordered by the Supreme Court in its order filed December 9, 2005, in Supreme Court matter S137731 (State Bar Court Case No. 04-O-12504) by failing to file an affidavit of compliance with rule 955 as required by rule 955, subdivision (c). As a result of respondent's wilful failure to comply with the order of the Supreme Court, he violated Business and Professions Code section 6103 which provides, in pertinent part, that the wilful violation or disobedience of a court order which requires an attorney to do or forbear an act connected with or in the course of his profession, which the attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

MITIGATING/AGGRAVATING CIRCUMSTANCES

_____As respondent's default was entered in this matter, respondent failed to introduce any mitigating evidence on his behalf, and none can be gleaned from the record.

In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) ("standards").) Effective January 8, 2006, respondent was suspended from the practice of law in California for five years; the execution of said suspension was stayed; and respondent was actually suspended from the practice of law in California for three years and until he: (1) makes restitution to Jesus C. Tria Sr. (or the Client Security Fund, if it has paid) in the amount of \$1,240 plus 10% simple interest per annum from June 20, 2003, and furnishes satisfactory proof of such to the State Bar's Office of Probation; (2) files and the State Bar Court grants a motion under rule 205 of the Rules of Procedure of the State Bar to terminate his actual suspension; and (3) provides proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

In this prior disciplinary matter involving two clients, respondent was found, with respect to one client matter, to have intentionally and repeatedly failed to competently perform legal services in wilful violation of rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California ("RPC"); failed to respond to reasonable inquiries of his clients in wilful violation of

section 6068, subdivision (m), of the Business and Professions Code;¹² engaged in acts of moral turpitude and dishonesty in wilful violation of section 6106 by (1) deliberately failing to provide his client with requested status reports to deceive her and conceal from her the fact that he had not filed her application to obtain a work permit as he had told her he had done, and (2) repeatedly lying to his client that he had filed her application; and wilfully violated his duty under section 6068, subdivision (i), to participate and cooperate in a State Bar disciplinary investigation. In the second client matter, respondent was found to have wilfully violated section 6068, subdivision (m), by failing to respond to his client's letter and telephone calls; wilfully violated section 6106 by misappropriating \$1,240 from his client; and wilfully violated his duty under section 6068, subdivision (i), to participate and cooperate in a State Bar disciplinary investigation. In aggravation, respondent was found culpable of multiple acts of misconduct; his misconduct caused significant client harm; and his failure to participate in this proceeding before the entry of his default was considered an aggravating circumstance but given little weight. In mitigation, it was noted that respondent had no prior record of discipline.

Respondent's failure to participate in this matter prior to the entry of his default is also an aggravating circumstance. (Standard 1.2(b)(vi).)

DISCUSSION

_____The primary purpose of disciplinary proceedings conducted by the State Bar is to protect the public, the courts and the legal profession, the maintenance of high professional standards and the preservation of public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

_____Rule 955, subdivision (d), provides in part that “[a] suspended member’s wilful failure to comply with the provisions of this rule constitutes cause for disbarment or suspension and for revocation of any pending probation.” Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition

¹²Unless otherwise indicated, all further references to section(s) refer to provisions of the California Business and Professions Code.

of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

___ Timely compliance with rule 955 of the California Rules of Court performs the critical function of ensuring that all concerned parties, including clients and co-counsels, opposing attorneys and the courts, learn about an attorney's actual suspension from the practice of law. Compliance with this rule also keeps the State Bar Court and the Supreme Court apprised of the location of attorneys who are subject to their respective disciplinary authorities. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Disbarment is generally the appropriate sanction imposed for wilful violation of rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Similar discipline has been recommended by the State Bar Court Review Department. (*In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.)

Respondent has demonstrated an unwillingness or an inability to comply with his professional obligations and the rules of conduct imposed on lawyers. This is exemplified by his failure to participate in these State Bar proceedings and by his failure to comply with rule 955, subdivision (c). The court also notes that respondent failed to participate in his prior disciplinary matter which underlies this rule 955 proceeding. More importantly, respondent's failure to comply with rule 955 undermines the basic function that rule 955 serves, i.e., ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

Respondent's disbarment is necessary to protect the public, the courts and the legal profession. His disbarment is also important to the maintenance of high professional standards and to the preservation of 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 wilful and unexplained disobedience of an order of the California Supreme Court.

RECOMMENDED DISCIPLINE

Based on the foregoing, it is hereby recommended that respondent JUVENAL FEDERICO AGRAVANTE 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 respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in this matter and file the affidavit provided for in paragraph (c) within 40 days after the effective date of the order showing his compliance with said order.

ORDER REGARDING INACTIVE ENROLLMENT

_____ Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Said inactive enrollment will be effective three days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

COSTS

It is recommended 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.

Dated: October 19, 2006

ROBERT M. TALCOTT
Judge of the State Bar Court