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PUBLIC MATTERSTATE BAR COURT CLERK'S OFFICE
SAN FRANCISCOSTATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 06-N-11292-PEM
ROBERT EDWARD NOEL,)	DECISION INCLUDING DISBARMENT
Member No. 68477,)	RECOMMENDATION AND ORDER OF
<u>A Member of the State Bar.</u>)	INVOLUNTARY INACTIVE
		ENROLLMENT

I. INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) alleging that respondent Robert Edward Noel failed to comply with rule 955, California Rules of Court¹ as ordered by the Review Department of the State Bar Court. The State Bar was represented by Sherrie B. McLetchie. Respondent did not participate either in person or by counsel.

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

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent on April 28, 2006, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar (official address). (Bus. & Prof. Code §6002.1, subd. (c)²; Rules Proc. of State Bar, rules 60(b) and 583.) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The return receipt was executed by

¹Future references to rule are to this source.

²Unless otherwise stated, all references to section are to this source.

"Christine Arellana, agent"³ and dated April 29, 2006.

On May 4, 2006, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on May 8, 2006. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (d) which indicate that this correspondence was not returned as undeliverable.

Respondent did not appear at the status conference. On May 9, 2006, an order memorializing the status conference was properly served on him at his official address.

Respondent did not file a response to the NDC. On May 24, 2006, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek minimum discipline of disbarment if he was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).)

Respondent did not respond to the default motion.⁴ Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on June 9, 2006, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (d) which contain the return receipt, executed by "C. Abellana" with a delivery date of June 10, 2006.

The case was submitted for decision on June 29, 2006.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (Section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).) The findings are also based upon

³The State Bar believes that this is an employee of a private mailbox location which serves as respondent's official address.

⁴A copy of the draft NDC was transmitted to respondent on April 25, 2006. He advised the State Bar that he intended to allow this matter to proceed by default.

matters admitted into evidence or judicially noticed.

A. Jurisdiction

Respondent was admitted to the practice of law in California on May 6, 1976, and has been a member of the State Bar at all times since.

B. Facts

On March 25, 2002, the Review Department filed an interim suspension order in State Bar Court case no. 01-C-01065 (interim suspension order) ordering respondent to comply with rule 955(a) and (c) within 30 and 40 days, respectively, of the effective date of the interim suspension order. The interim suspension order was effective on April 25, 2002. Accordingly, respondent was to comply with rule 955(a) no later than May 30, 2002, and with rule 955(c) no later than June 10, 2002.

A copy of the interim suspension order was properly served on respondent at his then-official address on March 25, 2002. He received the order shortly thereafter. A copy also was attached to the NDC in the instant proceeding.

As of April 28, 2006, respondent had not filed with the State Bar Court the affidavit required by rule 955(c). He still has not done so.⁵ He has offered no explanation for his noncompliance with rule 955(c).

C. Legal Conclusions

There is clear and convincing evidence that respondent wilfully violated the interim suspension order directing his compliance with rule 955.⁶ This constitutes a violation of rule 955(d), which makes the wilful noncompliance with the provisions of rule 955 a cause for disbarment, suspension or revocation of probation, in relevant part. As a result of respondent's wilful failure to comply with the order of the Supreme Court, he violated section 6103 which

⁵Pursuant to Evidence Code section 452, subdivision (d), the court judicially notices that its records still do not contain a rule 955(c) affidavit from respondent.

⁶Wilfulness in the context of rule 955 does not require actual knowledge of the 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 rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

provides, in relevant 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 or her profession, which the attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

IV. FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁷, std. 1.2(b).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with rule 955(c) even after the NDC in the instant proceeding was filed. (Std.1.2(b)(v).)

V. FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES

Respondent did not participate in these proceedings or present any mitigating circumstances pursuant to standard 1.2(e) other than approximately 25 years of discipline-free practice prior to the time of the misconduct.⁸ (Std. 1.2(e)(i).) Since respondent bears the burden of establishing mitigation by clear and convincing evidence, the court has no other basis for finding mitigating factors.

VI. LEVEL OF DISCIPLINE

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

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*

⁷Future references to standard or std. are to this source.

⁸Case law permits a long record of practice without discipline to be treated as mitigation notwithstanding the seriousness of the present misconduct. (*In the Matter of Stampfer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13.).

(1990) 50 Cal.3d 116,131; rule 955(d).) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 955. (*Bercovich v. State Bar, supra*, 50 Cal.3d at p. 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 44 Cal.3d at p. 342.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given the opportunity to do so. He did not participate in this proceeding and did not comply with rule 955(c). More importantly, respondent's noncompliance with rule 955 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, supra*, 45 Cal.3d at p. 1187.)

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 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 unexplained wilful disobedience of the Review Department's order.

VII. DISCIPLINE RECOMMENDATION

It is hereby recommended that respondent Robert Edward Noel be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

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

VIII. 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.

IX. ORDER REGARDING INACTIVE ENROLLMENT

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

Dated: August 22, 2006

Pat McElroy

PAT McELROY
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 of California. 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 August 22, 2006, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION 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:

**ROBERT EDWARD NOEL
NOEL & KNOLLER
1500 OLIVER RD #K163
FAIRFIELD, CA 94534**

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

SHERRIE McLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 22, 2006.


Lauretta Cramer
Case Administrator
State Bar Court