

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

In the Matter of	)	<b>Case No. 07-N-10226-RAH</b>
<b>JAMES HOWARD WHARTON,</b>	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 64718,</b>	)	<b>INVOLUNTARY INACTIVE</b>
<b>A Member of the State Bar.</b>	)	<b>ENROLLMENT</b>

**I. Introduction**

In this default disciplinary matter, respondent **James Howard Wharton** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,<sup>1</sup> as ordered by the California Supreme Court on May 31, 2006, in S142142 (State Bar Court case No. 04-C-15593).

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 filed and properly served via certified mail, return receipt requested, on respondent at his official membership records address on February 16, 2007. The mailing was returned as undeliverable. The State Bar also served respondent with a courtesy copy of the NDC at 14995 River Road, Corona, California 92880 8935, which address was found in respondent's case file. The courtesy copy was not returned as undeliverable or for any other reason.

On motion of the State Bar, respondent's default was entered on May 7, 2007. The order of

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<sup>1</sup>All references to rule 955 are to California Rules of Court, rule 9.20 (renumbered effective January 1, 2007). Because the Notice of Disciplinary Charges was filed prior to the change in the numbering of this rule, the original numbering will be used in this decision.

entry of default was properly mailed to respondent's official membership records address. Respondent was enrolled as an inactive member under Business and Professions Code section 6007(e)<sup>2</sup> on May 10, 2007.

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 May 8, 2007, 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 200(d)(1)(A).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on June 27, 1975, and has been a member of the State Bar since that time.

#### **B. Violation of California Rules of Court, Rule 955**

On May 31, 2006, in California Supreme Court case No. S142142 (State Bar Court case No. 04-C-15593), the Supreme Court suspended respondent from the practice of law for six months, stayed the execution of the suspension, and actually suspended him for 60 days and until the State Bar Court grants a motion to terminate his actual suspension under rule 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 120 and 130 days, respectively, after the effective date of the Supreme Court order, if he were actually suspended for 90 days or more. The order became effective June 30, 2006, 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 he . . . has fully complied with those provisions of the order entered pursuant to this

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

rule.”

On March 31, 2006, 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. Respondent received a copy of the order.

Respondent was to have filed the rule 955 affidavit by November 7, 2006, but to date, he has not done so and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 955 or of his 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 addresses 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.<sup>3</sup>

### **C. Violation of Business and Professions Code Section 6103**

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 offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>4</sup>

### **B. Aggravation**

There are several aggravating factors. (Std. 1.2(b).)

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

<sup>4</sup>All further references to standards are to this source.

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) In the underlying matter, California Supreme Court case No. S142142 (State Bar Court case No. 04-C-15593), effective June 30, 2006, respondent was suspended for six months, stayed, and was actually suspended for 60 days and until the State Bar Court terminates his actual suspension under rule 205 of the Rules of Procedure of the State Bar. The court found that the facts and circumstances surrounding respondent's criminal violation constituted other misconduct warranting discipline.

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

Respondent's failure to participate in this disciplinary matter prior to the entry of his 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 he has been given opportunities to do so.

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 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 disobedience of the Supreme Court order.

#### **VI. Recommended Discipline**

The court recommends that respondent **James Howard Wharton** 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 the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.<sup>5</sup>

#### **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 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, subdivision (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: August \_\_\_, 2007

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**RICHARD A. HONN**  
Judge of the State Bar Court

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<sup>5</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar, supra*, 44 Cal.3d 337, 341.)