

STATE BAR COURT  
REVIEW DEPARTMENT

In the Matter of

**KAREN GOODSON PIERCE**

A Member of the State Bar

No. 92-N-10143

Filed April 6, 1993

SUMMARY

Respondent defaulted in a disciplinary proceeding involving abandonment of a single personal injury client, and received a six-month stayed suspension and probation. She violated her probation, defaulted again in the ensuing proceeding, and received six months actual suspension, resulting in a requirement that she comply with rule 955 of the California Rules of Court. She did not file the declaration required by rule 955 until 21 days after it was due, and then defaulted again in the proceeding arising out of her noncompliance with the rule. In the rule 955 proceeding, because respondent had no clients and the lateness of her declaration was due to illness, the hearing judge recommended a one-year extension of probation in lieu of disbarment. (Hon. Alan K. Goldhammer, Hearing Judge.)

The State Bar requested review, seeking respondent's disbarment. By the time the review department filed its opinion, respondent had defaulted in a fourth disciplinary proceeding arising out of further probation violations. Because of respondent's extended practice of inattention to State Bar discipline proceedings and failure to comply with successive orders of the Supreme Court, the review department recommended that she be disbarred.

COUNSEL FOR PARTIES

For Office of Trials:     Lawrence J. Dal Cerro

For Respondent:         No appearance

HEADNOTES

[1 a, b]   107     **Procedure—Default/Relief from Default**  
           130     **Procedure—Procedure on Review**  
           1911.20 **Rule 955—Failure to Appear**

Because there was no procedure for entering a default in a referral proceeding for alleged wilful violation of rule 955, the respondent was not precluded by lack of participation in the hearing department from filing an opposition brief on review. However, when respondent failed to file such a brief, the review department issued an order precluding respondent from appearing at oral argument.

- [2]      **107      Procedure—Default/Relief from Default**  
           **511      Aggravation—Prior Record—Found**  
           **611      Aggravation—Lack of Candor—Bar—Found**  
           **1911.20 Rule 955—Failure to Appear**  
           **1913.24 Rule 955—Delay—Filing Affidavit**

A short delay in compliance with rule 955, by itself, would not necessitate disbarment. However, where respondent also had failed to appear in the rule 955 violation proceeding, had failed to appear in two prior disciplinary proceedings, and had continued to ignore her obligations thereafter, showing a clear pattern of failure to participate in the disciplinary process and to comply with requirements of Supreme Court, disbarment was clearly appropriate.

- [3]      **175      Discipline—Rule 955**  
           **1913.60 Rule 955—Not in Active Practice**

An attorney who is ordered to comply with rule 955 is required to file an affidavit under the rule whether or not the attorney has clients.

- [4]      **163      Proof of Wilfulness**  
           **204.10 Culpability—Wilfulness Requirement**  
           **1913.11 Rule 955—Wilfulness—Definition**

Bad faith is not a prerequisite to a finding of wilful failure to comply with rule 955.

- [5]      **130      Procedure—Procedure on Review**  
           **146      Evidence—Judicial Notice**  
           **191      Effect/Relationship of Other Proceedings**  
           **1911.30 Rule 955—Record**

It was appropriate for both the hearing judge and the review department to take judicial notice of the status, at the time of their respective decisions, of a separate pending disciplinary matter involving the same respondent.

- [6]      **139      Procedure—Miscellaneous**  
           **165      Adequacy of Hearing Decision**  
           **169      Standard of Proof or Review—Miscellaneous**  
           **191      Effect/Relationship of Other Proceedings**

Where a hearing judge's decision in one matter indicated that if the respondent filed a post-decision declaration in that matter, this would be taken into account in assessing discipline in a second pending matter, the examiner's objections on review to this aspect of the decision were rendered moot by the respondent's failure to file any such declaration, by the State Bar's apparent satisfaction with the result in the second matter, and by the review department's recommendation of disbarment in the first matter based on other grounds.

- [7]      **142      Evidence—Hearsay**  
           **159      Evidence—Miscellaneous**

Declarations can be admitted into evidence in lieu of live testimony when no objection is raised. Where a declaration by the respondent was introduced into evidence by the State Bar without limiting the purpose for which the declaration was admitted, the declaration was admissible for all purposes, including the truth of the respondent's hearsay statements contained therein.

- [8 a, b]    175      **Discipline—Rule 955**  
               591      **Aggravation—Indifference—Found**  
               621      **Aggravation—Lack of Remorse—Found**  
               1913.19 **Rule 955—Wilfulness—Other Issues**  
 Disbarment is generally ordered for wilful breach of rule 955, and is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court.
- [9]            511      **Aggravation—Prior Record—Found**  
               802.21 **Standards—Definitions—Prior Record**  
 Prior discipline includes discipline imposed for violation of probation.
- [10]          204.90 **Culpability—General Substantive Issues**  
               582.50 **Aggravation—Harm to Client—Declined to Find**  
               720.30 **Mitigation—Lack of Harm—Found but Discounted**  
               1911.20 **Rule 955—Failure to Appear**  
 Attorneys who engage in an extended practice of inattention to official actions should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them.
- [11]          204.90 **Culpability—General Substantive Issues**  
               220.00 **State Bar Act—Section 6103, clause 1**  
               511      **Aggravation—Prior Record—Found**  
               611      **Aggravation—Lack of Candor—Bar—Found**  
 An attorney's failure to comply with successive orders of the Supreme Court is of concern to the State Bar Court because it repeatedly burdens the resources of the State Bar Court and the disciplinary system.

#### ADDITIONAL ANALYSIS

#### Culpability

##### Found

1915.10 Rule 955

#### Aggravation

##### Declined to Find

545      Bad Faith, Dishonesty

588.50   Harm—Generally

#### Mitigation

##### Found

791      Other

#### Standards

806.10   Disbarment After Two Priors

#### Discipline

1921      Disbarment

## OPINION

PEARLMAN, P.J.:

This case illustrates the extreme risk involved in repeatedly ignoring disciplinary proceedings and related Supreme Court orders. Respondent Karen Goodson Pierce first became involved with the disciplinary system because of her abandonment of a single personal injury client. She defaulted in that proceeding and received a Supreme Court order of six months stayed suspension conditioned on compliance with certain conditions of probation. Had she complied with those conditions she would not have had any actual suspension and would not be facing disbarment today. Instead, she violated the conditions of her probation, and in a second proceeding based on those probation violations, she again defaulted. She received six months actual suspension and was ordered to comply with rule 955 of the California Rules of Court (hereafter "rule 955"). After two reminders from the probation department, she filed the required declaration 21 days late stating that she had had no clients for over 3 years. She then failed to show up at the hearing below. The hearing judge warned her in his ensuing decision that despite the minor nature of the current violation she was risking disbarment by continued inattention to State Bar proceedings. He found wilful violation of rule 955 and recommended extending probation for another year.

The Office of Trials requested review, seeking disbarment of respondent. [1a] Respondent did not file any opposition thereto<sup>1</sup> [1b - see fn. 1] and was thereby precluded by order of this court from appearing at oral argument. In the interim, respondent failed to move to set aside her default in a second proceeding for violation of probation. We take judicial notice that the hearing judge has recommended in that second matter (State Bar Court case number 92-O-13816) that she be actually suspended for one year in that proceeding, the full amount of stayed suspension that could be imposed therein.

[2] Had respondent's short delay in compliance with rule 955 been the only issue before us we would

agree with the hearing judge that disbarment is unnecessary. But this was respondent's third disciplinary proceeding in which she failed to appear and respondent continued to ignore her obligations thereafter. We have here a clear pattern of failure to participate in the disciplinary process and to comply with the requirements of the Supreme Court in order to maintain respondent's license to practice law. Respondent has now been found culpable in a fourth disciplinary proceeding in which she again defaulted and has exhibited extreme indifference to the outcome of the current proceeding by her failure to participate despite a request for disbarment. We agree with the Office of Trials that disbarment is clearly appropriate under the circumstances and we so recommend to the Supreme Court.

### I. PROCEDURAL BACKGROUND

On October 16, 1991, the Supreme Court filed an order suspending respondent for one year for violation of probation conditions, staying that suspension on conditions including six months actual suspension and directing respondent, inter alia, to comply with subdivisions (a) and (c) of rule 955 of the California Rules of Court. (*In the Matter of Pierce* (S022260), order filed Oct. 16, 1991 [State Bar Court case number 90-O-17816].) Pursuant thereto, respondent should have filed with the clerk of the State Bar Court an affidavit showing that she had fully complied with the provisions of the Supreme Court order on or before December 25, 1991. The order was duly served on respondent by the Supreme Court clerk's office.

On January 9, 1992, the State Bar Court Probation Department notified the Presiding Judge by letter with a copy to respondent of the fact that the probation department had itself notified respondent on November 6, 1991, at her membership records address of the provisions of the Supreme Court order of October 16, 1991, and that she had failed to file any affidavit in compliance with rule 955. On January 14, 1992, this court issued an order referring the matter for a hearing as to whether respondent wilfully failed to comply with the October 16, 1991,

1. [1b] Although respondent did not participate at the hearing, there is no current procedure for entering a default in a referral proceeding for alleged wilful violation of rule 955. Respon-

dent was therefore not precluded by her lack of participation below from filing a brief in opposition to the Office of Trials' opening brief on review.

order and if so, for a recommendation as to the discipline to be imposed.

On January 15, 1992, respondent filed the required declaration with the State Bar Court executed on January 13, 1992, under penalty of perjury, stating, among other things, that she did not have any clients and had not actively practiced law for three years; that she had been informed by her probation monitor on December 20, 1991, that she should be sure to make the rule 955 declaration in a timely fashion and that he gave her the dates by which it should be made and that she was ill at the time and forgot in her letter dated December 20, 1991, to make the declaration in compliance with rule 955.

On January 28, 1992, the clerk's office of the State Bar Court served respondent with a copy of the review department referral order and a notice of hearing re compliance with rule 955 and related documents. Respondent thereafter failed to appear at a duly noticed status conference held on May 14, 1992, or at the trial held on August 6, 1992, which was also preceded by written notice served on May 15, 1992. The hearing judge found that respondent had due notice of the Supreme Court order of October 16, 1991, and wilfully failed to timely comply with rule 955, but that her affidavit filed January 15, 1992, did provide the required information 21 days late. The hearing judge further found that respondent had due notice of the referral order and failed to cooperate with or participate in the instant disciplinary proceeding.

## II. MITIGATING AND AGGRAVATING CIRCUMSTANCES

In aggravation, the hearing judge noted that respondent, who was admitted to the State Bar in June of 1978, had two prior disciplinary cases, both stemming from one client matter, which constituted an aggravating circumstance under standard 1.2(b)(i) of the Standards for Attorney Sanctions for Professional Misconduct ("standard(s)"). (Trans. Rules Proc. of State Bar, div. V.)

In the first proceeding (State Bar Court case number 88-O-15352) respondent defaulted and was found to have abandoned a client by failing to communicate with the client, failing to perform the legal services for which she was employed and failing to turn over the client's file upon termination of respondent's employment in violation of Business and Professions Code section 6068 (m) and former Rules of Professional Conduct 2-111(A)(2) and 6-101(A)(2).<sup>2</sup> She was also found culpable in a second count of failing to cooperate with the State Bar in the investigation of the matter in violation of Business and Professions Code section 6068 (i) based on her failure to reply to two letters and multiple telephone calls from the State Bar investigator. In his findings in that case, the hearing judge specifically found respondent did not respond to discovery demands in the personal injury case she agreed to take over on behalf of Gayle Thorne in November of 1985; that she did not respond to numerous telephone messages and letters from her client or successor counsel in 1987 and 1988; and that in a conversation with her client in November of 1989 she stated that she was no longer practicing law and admitted she had not been opening any mail "that looked official" for a long time.

The second proceeding was an original proceeding (State Bar Court case number 90-O-17816) alleging respondent's failure to file a written report within the first 60 days of probation indicating respondent's intention to comply with all the provisions of the State Bar Act and Rules of Professional Conduct over the period of her probation and to verify that she had instituted a law office management plan. Respondent again defaulted, was found culpable and was ordered suspended for one year with execution of suspension stayed on conditions including two years probation and a six-month actual suspension. It was this order that required compliance with rule 955, respondent's violation of which resulted in the instant proceeding.

Finally, in aggravation the hearing judge noted respondent's lack of cooperation in the instant case. (Std. 1.2(b)(vi).)

2. The hearing judge also found a violation of Business and Professions Code section 6068 (a) under both counts, but observed that it was superfluous and also found that the charge of violating Business and Professions Code section 6103 was

not appropriate on the ground that section 6103 was not a charging provision, but authorization to sanction an attorney for violation of the attorney's oath. (See *Baker v. State Bar* (1989) 49 Cal.3d 804, 815-816.)

In mitigation, the hearing judge noted that the declaration was only 21 days late and was accompanied by an explanation of illness, and that respondent had no pending cases and thus did not harm any client or person by the delay.<sup>3</sup> (Std. 1.2(e)(iii).)

[3] The hearing judge correctly noted that respondent was required to file the rule 955 affidavit whether or not she had clients (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131) and that the late filing was not in bad faith, but that [4] bad faith was not a prerequisite to a finding of wilful failure to comply with rule 955(c). In light of her attempt to comply with the rule 955 requirement and the fact that all of the proceedings stemmed from minor misconduct involving one client, the hearing judge declined to recommend disbarment and instead recommended that the probationary period in case number 90-O-17816 be extended for one year on the same terms and conditions except that if respondent provided a declaration under penalty of perjury that she continued not to have any clients, he would not appoint a monitor and would excuse her from the requirement that she develop a law office management plan. If she resumed the practice of law, a monitor would be appointed and she would be required to submit a written report regarding a law office plan within 60 days. Costs were recommended to be awarded to the State Bar pursuant to Business and Professions Code section 6086.10.

### III. DISCUSSION

On review, the Office of Trials seeks disbarment and also objects to language in the decision below by which the hearing judge took judicial notice of respondent's default in case number 92-P-13816 also pending before him and stated that "if Respondent

either has the default set aside or writes me in this matter (92-N-10143) prior to a decision being reached in 92-P-13816 and assures me that she intends to cooperate with a further period of probation I would take notice of such assurance and would, in all likelihood, afford respondent an opportunity to be on probation rather than to be suspended from law practice."

The examiner did not seek reconsideration by the hearing judge of the challenged language, but argues on review that by inviting respondent to write to the court, the hearing judge solicited the submission of post-trial evidence in this matter by respondent in violation of the California Evidence Code and Transitional Rules of Procedure of the State Bar. The examiner points out that rule 555.1, which provides the procedure for a member whose default has been entered pursuant to rule 555, would require a motion to be filed in case number 92-P-13816 in order for respondent to seek to participate therein. The examiner also argues that a declaration of intent to cooperate would be self-serving and "virtually impossible to evaluate in the absence of cross-examination," citing *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187. The examiner does not argue that the language objected to has any bearing on the decision reached in *this case*. Respondent did not in fact file any declaration or other writing.

[5] To the extent that the hearing judge took judicial notice of the status of case number 92-P-13816, we note that the examiner also invites us, pursuant to Evidence Code section 451, et seq., to take judicial notice of the hearing judge's subsequent decision in case number 92-P-13816, in which respondent again defaulted; findings of noncompliance were made;<sup>4</sup> six months actual suspension was recommended; and on reconsideration was changed to a one-year

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3. The examiner stated on the record at the hearing that respondent had been suspended for almost three years for failure to pay dues, and that the examiner had received no evidence that respondent was currently practicing law or that she posed any kind of danger to the public. We take judicial notice that the membership records of the State Bar reflect that respondent has been suspended since July 24, 1989, for failure to pay dues.

4. The hearing judge found that respondent's probation monitor wrote to her on December 12, 1991, and notified her that she was to contact him. On December 20, 1991, respondent showed that she had actual knowledge of the conditions of probation in a letter to the probation department reflecting a meeting with the monitor in which the terms of probation and suspension were discussed. The letter could not be filed as a quarterly report because it failed to include any statement that she had complied with the State Bar Act and Rules of Professional Conduct. Respondent never filed any quarterly reports, nor did she communicate thereafter with her probation monitor.

actual suspension—the full amount of stayed suspension originally ordered by the Supreme Court. We deem judicial notice to be appropriate. (Cf. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646.) No request for review was filed in that case, which appears to signal the Office of Trials' satisfaction with the result therein.

[6] To the extent that the examiner objects to the hearing judge indicating that he would take into account in assessing discipline in case number 92-P-13816 the subsequent filing of a declaration in this matter, that appears to be an issue which potentially could have affected the result in case number 92-P-13816, but not the current proceeding. We deem the issue moot in light of subsequent events and the recommendation we make herein.<sup>5</sup> [7 - see fn. 5]

[8a] As we discussed in our very recent decision in *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, disbarment is generally ordered for wilful breach of rule 955. (See, e.g., *Bercovich v. State Bar*, *supra*, 50 Cal.3d at p. 131.) Disbarment is also the presumptively appropriate discipline if a member found culpable of professional misconduct has a record of two prior impositions of discipline. (Std. 1.7(b).) [9] Prior discipline includes discipline imposed for violation of probation. (Std. 1.2(f); see *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113; *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 539.) [8b] Disbarment is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court. (Cf. *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607 [ordering disbarment].)

A finding was made in the first of the disciplinary proceedings in which this respondent has been

found culpable that as of 1989 she had already for some time been ignoring any mail that looked official. Apparently she continued that extremely dangerous practice for the next four years as well. Respondent, by her ostrich-like behavior, may well not even be aware of the disbarment recommendation of the Office of Trials in this proceeding, the warning contained in the hearing judge's decision or the recommendation of this review department until long after it is acted upon by the Supreme Court.

[10] Attorneys who engage in this extended practice of inattention to official actions, as respondent did, should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them. (Compare *In re Kelley* (1990) 52 Cal.3d 487 [alcohol-related problems of an attorney need not wait until harm results to clients before discipline is imposed to protect the public]). [11] Moreover, respondent's failure to comply with successive orders of the Supreme Court has repeatedly burdened the resources of this court and the State Bar disciplinary system, also a matter of great concern to us. (Cf. *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508 [contemptuous attitude toward disciplinary proceedings is relevant to determination of appropriate sanction].)

We recommend that respondent Karen Goodson Pierce be disbarred from the practice of law in this state and that costs of this proceeding be awarded the State Bar pursuant to Business and Professions Code section 6086.10. Our recommendation is independent of the recommended discipline in case number 92-P-13816 becoming final.

We concur:

NORIAN, J.  
STOVITZ, J.

5. [7] We do note, however, that declarations can be admitted into evidence in lieu of live testimony when no objection is raised. In this proceeding, respondent's declaration filed on January 15, 1992, was introduced into evidence by the Office of Trials as an attachment to one of its trial exhibits. This included respondent's hearsay explanation of the delay in

filing the declaration of compliance with rule 955. Since the examiner did not offer the declaration for the limited purpose of acknowledging its receipt, it was admissible for all purposes, including the truth of the hearsay contained therein. (Evid. Code, §§ 353, 355.)