PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed November 29, 2007

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **JOEL ANDREW DRUM**, A Member of the State Bar.	))))))	**05-N-05322** **OPINION ON REVIEW AND ORDER**

THE COURT*

The only issue in this matter is the level of discipline for respondent, Joel A. Drum, who willfully failed to obey a Supreme Court order directing him to comply with the requirements of California Rules of Court, rule 9.20 (hereafter rule 9.20), in violation of section 6103 of the Business and Professions Code.[1] As we discuss more fully *post*, the Supreme Court ordered respondent to comply with rule 9.20 as a result of his misconduct in disciplinary case number 98-O-03791. Respondent stipulated that he disobeyed the Supreme Court order and that he failed to comply with various conditions of probation. After considering respondent's testimony that he did not intend to comply now or in the future, the hearing judge recommended that respondent be disbarred from the practice of law.

Respondent seeks our review asserting that no discipline is warranted for his willful conduct and that to impose discipline would only add "insult to injury." Respondent insists that we revisit his prior disciplinary matter in case number 98-O-03791 that resulted in the rule 9.20 order. That case was decided on July 7, 2002, by a hearing judge who recommended respondent's disbarment. The record was then reviewed de novo by this court and adjudicated on

*Before Remke, P. J., Watai, J., and Epstein, J.

[1]Unless noted otherwise, all further references to section(s) are to the Business and Professions Code.

April 7, 2005. We found no merit to respondent's arguments of bias and prejudice on the part of the hearing judge, but based on our independent review of respondent's misconduct (Cal. Rules of Court, rule 9.12.) and on prior case law, we found disbarment to be excessive. Instead, we recommended five years' stayed suspension, five years' probation and three years' actual suspension to continue until respondent made restitution and provided satisfactory proof of his 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.[2] The Supreme Court denied review and imposed the recommended discipline, which became effective October 28, 2005.

Respondent refuses to accept the outcome of his unsuccessful litigation of the issue of alleged bias and prejudice on the part of the hearing judge in his original disciplinary proceeding and raises that contention again in this proceeding. He asserts that because the hearing judge in that case was prejudiced against him, the judge's decision was therefore void, thus rendering our opinion and recommendation on review void as well. Respondent argues that it was error for the hearing judge in the present case to find him culpable of misconduct because the Supreme Court had no basis to order his suspension and compliance with rule 9.20. Presenting no new facts or issues of law, and relying solely on his well-worn but unavailing claim that the hearing judge in case number 98-O-03791 was biased, respondent requests that we recognize our previous error and refrain from recommending additional discipline. We decline to do so. Instead, we incorporate our opinion of April 7, 2005, by reference and will not revisit the issues respondent raises with respect to his prior disciplinary matter.

As we shall discuss, we uphold the hearing judge's finding that respondent willfully violated rule 9.20. We further find that respondent's rule 9.20 violation and additional uncharged misconduct strongly demonstrate that he is either unwilling or unable to obey

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[2]These standards are found in the Rule of Procedure of the State Bar, Title IV. All further references to standard(s) are to this source.

Supreme Court orders, making him an unsuitable candidate for further disciplinary probation. As a result, we are compelled to conclude that disbarment is the only appropriate discipline in order to ensure protection of the public and the courts and preservation of the integrity of the legal profession.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are few and were stipulated to by the parties. On September 28, 2005, the Supreme Court filed order S134802 (Order) in State Bar Court case number 98-O-03791 and ordered that respondent be suspended from the practice of law for five years, that execution of the suspension be stayed and that he be placed on probation for five years on condition that he be actually suspended for three years. The Supreme Court further ordered respondent to comply with rule 9.20 by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Order. In essence, rule 9.20 requires an attorney to provide notice of his or her suspension to clients, opposing counsel, and the court; to return all papers and unearned fees; and to file an affidavit with the court confirming compliance. Respondent received, and had actual notice of the Order, no later than October 5, 2005. The Order became effective on October 28, 2005, thus requiring respondent to comply with rule 9.20(a) and (c) no later than November 27, 2005, and December 7, 2005, respectively. Respondent stipulated not only that he received the Order but that he also received a reminder of the Order from the State Bar's Office of Probation. Respondent failed to file a declaration of compliance in accordance with rule 9.20(c) and admitted that by failing to do so, he disobeyed a court order in willful violation of section 6103.[3] He also stipulated as a factor in aggravation that he failed to comply with the Order by not filing at least two required quarterly probation reports.

At trial, respondent testified that he intentionally did not comply with rule 9.20 and willfully violated the Order. Furthermore, on cross-examination, respondent stated he had no

[3]It is unclear on this record whether respondent complied with the requirements of rule 9.20(a).

intention of complying with rule 9.20. When asked by the hearing judge why he selectively chose to comply with the Order's requirement that he be suspended from the practice of law but not the requirement that he comply with rule 9.20, respondent explained: "It's clear the Supreme Court doesn't want me . . . out there doing great damage to the public. So I'll go along with that. [¶] So . . . frankly the big differen[ce] is if I had gone to court, it would have been a crime." Respondent's rationalization calls into question his fitness to practice law since failure to comply with rule 9.20 is also punishable as a crime. (Cal. Rules of Court, rule 9.20(d).)

DISCUSSION

After our de novo review of the record in this matter (Cal. Rules of Court, rule 9.12; *In re Morse* (1995) 11 Cal.4th 184, 207; Rules Proc. of State Bar, rule 305(a)), we find no basis to question the validity of the Order requiring respondent to comply with rule 9.20, despite respondent's assertion to the contrary. There is no evidence that respondent sought review of the Order or attempted to prevent it from becoming final. Furthermore, he tacitly affirmed the validity of the Order when he acknowledged at trial that he refrained from the practice of law as a result of the suspension imposed by the court.[4] We find that the record establishes clearly and convincingly that respondent willfully failed to comply with rule 9.20(c) by never filing with the Clerk of the State Bar Court a declaration certifying his compliance with rule 9.20(a). Accordingly, we affirm the hearing judge's determination that respondent willfully violated his duty under section 6103 to obey court orders requiring him to do an act connected with and in the course of his profession which he ought in good faith to do.

[4]Had respondent's actions corroborated his subjective belief that the Order was invalid, it would not affect our culpability determination because in order to support a finding of a willful failure to comply with rule 9.20(c), "Only a general purpose or willingness to commit the act or permit the omissions is necessary." (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.)

LEVEL OF DISCIPLINE

A. Mitigating Circumstances

We agree with the hearing judge that respondent's stipulation with respect to facts and culpability is a mitigating circumstance. (Std. 1.2(e)(v).)

B. Aggravating Circumstances

Respondent has a prior record of discipline. (Std. 1.2(b)(i).) Case number 98-O-03791 is the underlying disciplinary matter which resulted in the rule 9.20 Order that is the subject of this proceeding. In that case, respondent received a three-year actual suspension for misconduct as a result of his refusal to promptly return hundreds of litigation files to two clients (Rules Prof. Conduct, rule 3-700(D)(1)) and of his improper appearance on behalf of these clients without authority (§ 6104). Additionally, in the underlying case, respondent failed to timely report judicial sanctions of $3,320 for filing a frivolous appeal and delay (§ 6068, subd. (o)(3)), and disobeyed court orders (§ 6103). Although respondent had practiced law for 19 years before his misconduct began, his ethical transgressions were surrounded by bad faith and significantly harmed his clients and the administration of justice. Furthermore, respondent dishonestly testified that he did not know of his requirement to report judicial sanctions. Worse, he was unrepentant, displaying utter indifference toward rectification of the consequences of his actions.

We agree with the hearing judge that respondent's admission in the instant case that he intentionally failed to comply with rule 9.20 and his obdurate refusal to bring himself in compliance with the rule in the future establish indifference towards rectification. (Std. 1.2(b)(v).) The hearing judge was also correct in considering as an aggravating circumstance respondent's admission that he committed additional uncharged misconduct by not timely filing two probation reports that were due no later than January 10 and April 10, 2006. (Std. 1.2(b)(iii).)

C. Discipline

Fundamentally, the purpose of discipline is not to punish the attorney, but to protect the public. (Std. 1.3; *Bach v. State Bar* (1987) 43 Cal.3d 848, 856.) In assessing the proper level of discipline, we consider the standards, prior decisional law, and the facts and circumstances unique to this case. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.)

Standard 2.6 provides that respondent's violation of section 6103 "shall result in disbarment or suspension depending on the gravity of the offense . . . ." Since respondent has a prior record of discipline, standard 1.7 requires, with certain exceptions inapplicable here, that the discipline we recommend "shall be greater than that imposed in the prior . . . ."

In addition to the standards, ample case law offers further guidance on the appropriate discipline to recommend. Decisions of the Supreme Court "reflect the view that disbarment is generally the appropriate sanction for a willful violation of rule [9.20]. [Citations.]" (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Our opinions accordingly recognize that disbarment is the most consistently imposed sanction for violations of rule 9.20. (See generally *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287; *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 599, and cases cited therein, disapproved on other grounds in *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 916, fn. 6.) Thus, absent strong mitigating circumstances, a rule 9.20 violation warrants a disbarment recommendation. (*In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 498.)

Respondent's justification for complying with his suspension, on the one hand, and deliberately failing and adamantly refusing to file a rule 9.20(c) compliance affidavit, on the other hand, manifests his disdain for the Supreme Court's authority to oversee the practice of law in the State of California and calls into question respondent's fitness to practice law. Such contempt for a Supreme Court order, coupled with respondent's uncharged probation violations,

lead us to conclude that he is unsuitable for probationary suspension. We find that respondent's aggravating circumstances, particularly his indifference toward rectification, which he also displayed in his prior disciplinary matter, overshadow the cooperation he provided the State Bar by stipulating to facts and culpability. His continuing assertion that he is the one wronged and his refusal to comply with the Supreme Court order go beyond tenacity to truculence. (*In re Morse, supra,* 11 Cal.4th at p. 209.) "In assessing what discipline is warranted by [respondent's] conduct, our paramount concern is protection of the public, the courts, and the integrity of the legal profession. [Citation.]" (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1307.) Under these circumstances, we find no justification to depart from the ordinary sanction of disbarment for respondent's deliberate failure and continuing refusal to comply with rule 9.20(c).

DISCIPLINE RECOMMENDATION

For the foregoing reasons, we recommend that respondent, Joel A. Drum, 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.

We also recommend that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in paragraphs (a) and (c) within 30 and 40 days, respectively, after the effective date of the order imposing discipline in this matter.

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Pursuant to the provisions of section 6007, subdivision (c)(4), respondent is ordered enrolled inactive upon personal service of this opinion or three days after service by mail, whichever is earlier.