

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 06-N-13811-RAP
)	
ROGER ALAN STRONG)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND ORDER OF
Member No. 106390)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

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 Roger Alan Strong failed to comply with rule 9.20 of the California Rules of Court¹ as ordered by the Supreme Court. The State Bar was represented by Melanie J. Lawrence. 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 September 15, 2006 , by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar (official address) at the time. (Bus. & Prof. Code

¹ Future references to rule are to this source. Prior to January 1, 2007, rule 9.20 was numbered rule 955.

§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, signed by “Bill Buer,” was received by the State Bar on September 21, 2006.

On September 20, 2006, the State Bar Court properly served respondent by first-class mail, postage prepaid at his then-official address with a notice scheduling a status conference on October 23, 2006.

In response to a 20-day letter sent to respondent on August 25, 2006, the State Bar received a letter, purportedly from respondent’s brother, indicating that respondent was living in Vietnam indefinitely. On September 29, 2006, the State Bar received a voicemail from respondent confirming that he was living in Vietnam and leaving his email address.

On October 16, 2006, the State Bar emailed to respondent a courtesy copy of the NDC and advised that a status conference had been scheduled for October 23, 2006. In a separate email, the State Bar suggested that respondent retain counsel to represent him in this matter and referred him to the State Bar’s website to view the Rules of Procedure.

On October 20, 2006, the State Bar received an email with his response to the NDC attached. He indicated that he had emailed a copy to the court’s case administrator and asked, in case he was mistaken, that the State Bar file his response with the court. The State Bar emailed respondent that he must properly file and serve his response. Respondent emailed the State Bar that same date advising that he would mail copies of his response to the court and to the State Bar “first thing” tomorrow. The State Bar responded to him by email that, if he had not filed his response with the court by November 6, 2006, a motion for entry of default would be filed.

Respondent did not appear at the October 23, 2006 status conference. The next day, an order memorializing the status conference and setting another one on December 4, 2006 was

²Future references to section are to this source.

properly served on him at his then-official address.

Respondent did not file a response to the NDC. On November 7, 2006, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his then-official address and, by regular mail, at an alternate address in Vietnam. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek disbarment if he was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).) There was no further contact with respondent at the time the motion was filed.

Respondent did not appear at the December 4, 2006, status conference. A copy of the court's order dated December 11, 2006 was properly served on respondent at his then-official address and at his alternate address in Vietnam on that same date. The order advised that: (1) on the court's own motion, the matter was abated; (2) respondent was to file a signed response to the charges by January 31, 2007; and (3) another status conference was scheduled for March 2, 2007.

A response to the NDC was filed on March 2, 2007.

Respondent did not appear at the March 2, 2007 status conference. On March 2 and 6, 2007, he was properly served at his then-official and alternate addresses with an order (and its corrected version) memorializing the March 2, 2007 status conference. The order noted that the case was out of abatement and instructed respondent or his counsel to appear at the next status conference, scheduled for April 10, 2007.

Respondent did not appear at the April 10, 2007 status conference, either in propria persona or by counsel. On April 11, 2007, he was properly served at his then-official and alternate addresses with an order memorializing the status conference and scheduling a pretrial conference on May 9 and trial on June 28, 2007.

Respondent appeared telephonically at the May 9 status conference. On May 14, 2007,

he was properly served at his then-official and alternate addresses with an order memorializing the status conference and scheduling an in-person pretrial conference on June 21 and trial on June 28, 2007.

Respondent did not appear in person (via telephone) at the June 21, 2007, pretrial conference. He was represented by counsel, John Patrick Murphy, who also filed a pretrial statement on his behalf. On June 25, 2005, Murphy was served with an order memorializing the pretrial conference which noted that, if respondent did not appear at trial, his response would be stricken and his default would be entered.

Respondent did not appear for trial on June 28, 2007, although his counsel did. On June 28, 2007, orders striking respondent's response, entering respondent's default and involuntarily enrolling him inactive were filed and properly served on his counsel by certified mail, return receipt requested. The return receipt appears to have been signed by respondent's counsel on June 30, 2007.

On July 31, 2007, the case was abated pending on a ruling by the Supreme Court regarding respondent's submission, on July 25, 2007, of his resignation as a member of the State Bar with disciplinary charges pending.

On March 14, 2008, the court filed an order terminating the abatement and dismissing the case without prejudice because the Supreme Court had accepted respondent's resignation on February 21, 2008.

Because, on March 26, 2008, the Supreme Court vacated its order accepting respondent's resignation, the court filed an order vacating its March 14 order and, if no objections were filed, abating the case until further order of the Supreme Court regarding respondent's resignation with charges pending. Copies of the order were served on respondent at his then-official and alternate addresses as well as on his counsel.

On June 6, 2008, the court filed an order and served it on respondent at his then-official and alternate addresses as well as on his counsel. The order overruled the State Bar's objections to the abatement of the case.

On September 4, 2008, the court filed an order and served it on respondent at his then-official address as well as on his counsel terminating the abatement and taking the matter under submission on that date because the Supreme Court had filed an order declining to accept respondent's resignation with charges pending.

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 matters admitted into evidence or judicially noticed.

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 3, 1982, and has been a member of the State Bar at all times since.

B. Facts

On March 1, 2006, the California Supreme Court filed an order, number S139935, in State Bar Court case no. 04-O-12377 in which respondent was ordered, among other things, to be actually suspended for two years and until he complied with rule 205 and with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct. He was ordered to comply with rule 9.20(a) and (c) within 30 and 40 days, respectively, of the effective date of the order. The order was effective on March 31, 2006. (Rule 9.18(a).³) Accordingly, respondent was to comply with rule 9.20(c) no later than May 10, 2006.

³Prior to January 1, 2007, this rule was numbered rule 953(a).

The Supreme Court promptly sent respondent a copy of its order upon filing.⁴ A copy of it also was attached to the NDC in this proceeding.

On April 4, 2006, the State Bar's Probation Office wrote a letter to respondent reminding him of the obligation to comply with rule 9.20 which included a form for reporting compliance therewith and a copy of the Supreme Court's order. The letter indicated that the rule 9.20(c) affidavit must be filed by May 10, 2006. It was sent by first-class mail, postage prepaid, to respondent's then-official address and was not returned as undeliverable.

Respondent filed with the State Bar Court the affidavit required by rule 9.20(c) on September 17, 2007.⁵

C. Legal Conclusions

There is clear and convincing evidence that respondent wilfully violated section 6103 of the Business and Professions Code by disobeying the Supreme Court's March 1, 2006, order directing his compliance with rule 9.20.⁶

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.

⁴Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires the Clerk to promptly transmit a copy of opinions and orders to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

⁵Pursuant to Evidence Code section 452, subdivision (d), the court judicially notices that its records contain a rule 9.20(c) affidavit from respondent.

⁶Wilfulness in the context of rule 9.20 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 (now rule 9.20). (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Misconduct,⁷ std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(i).) As previously discussed, in S139935, the Supreme Court imposed discipline consisting of to be actually suspended for two years and until he complied with rule 205 and with standard 1.4(c)(ii), among other things. In that matter, respondent was found culpable, in one client matter, of violations of rules 4-100(A) and (B)(4) of the Rules of Professional Conduct and section 6106 of the Business and Professions Code. Multiple acts of misconduct were an aggravating factor in this default matter. Mitigating factors included no prior discipline and restitution.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with rule 9.20(c) for nearly a year 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 appear at trial or present any mitigating circumstances pursuant to standard 1.2(e). Since respondent bears the burden of establishing mitigation by clear and convincing evidence, the court has no 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 9.20(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar*

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

(1990) 50 Cal.3d 116,131; rule 9.20(d).) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 9.20. (*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 9.20(c). More importantly, respondent's noncompliance with rule 9.20 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 Supreme Court 's order.

VII. DISCIPLINE RECOMMENDATION

It is hereby recommended that respondent Roger Alan Strong 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 9.20(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 9.20(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: October 30, 2008

RICHARD A. PLATEL
Judge of the State Bar Court