

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

In the Matter of)	Case No. 07-N-11197-RAP
)	
DAVID JEFFREY EARLE,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 98968,)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
<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 DAVID JEFFREY EARLE 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 August 3, 2007, 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.) This correspondence was returned to the State Bar unclaimed.

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

²Future references to section are to this source.

On August 29, 2007, the State Bar sent respondent a courtesy copy of the NDC by first-class mail to his official address. This correspondence was not returned.

On August 15, 2007, 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 September 13, 2007.³

On September 4, 2007, the deputy trial counsel (DTC) for the State Bar had a telephone conversation with respondent, who indicated that he did not regularly check his mail but would do so if he was expecting something. He noted that he had not received the NDC. The DTC said that he would send respondent another copy of it. On that same date, he did so along with a cover letter warning respondent about the consequences of not filing a response. The DTC has had no further contact with respondent since September 4, 2007.

Respondent did not appear at the September 13 status conference. On that same date, 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 September 13, 2007, 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 disbarment if he was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).)

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on October 1, 2007, 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 case was submitted for decision on October 4, 2007, after the State Bar filed a brief.

³The court judicially notices its records pursuant to Evidence Code section 452, subdivision (h) which indicate that none of the correspondence mailed to respondent by the court was returned as undeliverable.

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 1, 1981, and has been a member of the State Bar at all times since.

B. Facts

On December 12, 2006, the California Supreme Court filed an order, number S147170 (December 12 order), in State Bar Court case no. 05-O-1322 in which respondent 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 January 11, 2007.⁴ (Rule 9.18(a).⁵) Accordingly, respondent was to comply with rule 9.20(c) no later than February 20, 2007.

The Supreme Court promptly sent respondent a copy of its order upon filing.⁶ A copy of it also was attached to the NDC in this proceeding.

Respondent did not file with the State Bar Court the affidavit required by rule 9.20) until April 6, 2007. He has offered no explanation for his untimely compliance with rule 9.20).

C. Legal Conclusions

There is clear and convincing evidence that respondent wilfully violated the December 12,

⁴The NDC incorrectly sets forth the effective date of the order as January 7, 2007.

⁵Prior to January 1, 2007, this rule was numbered rule 953(a).

⁶Although 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.

2006, order directing his compliance with rule 9.20.⁷ This constitutes a violation of rule 9.20(d), which makes the wilful noncompliance with the provisions of rule 9.20 a cause for disbarment, suspension or revocation of probation, in relevant part.

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. Misconduct⁸, std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(I).) As previously discussed, in S147170, the Supreme Court imposed discipline consisting of one year's stayed suspension and actual suspension for six months and until respondent complied with rule 205, Rules Proc. of State Bar, among other things. In that matter, respondent was found culpable of violating Business and Professions Code sections 6106, 6068, subdivisions (a),⁹ (I) and (j). In aggravation, the court found multiple acts of misconduct and not participating in the disciplinary proceedings prior to the entry of default. In mitigation, the court considered 23 years of discipline-free practice.

Respondent's failure to participate in proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109-110.)

⁷Wilfulness 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.)

⁸Future references to standard or std. are to this source.

⁹This charge was found because respondent engaged in the unauthorized practice of law in violation of Business and Professions Code sections 6125 and 6126.

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). 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) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (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 timely 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 DAVID JEFFREY EARLE 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 (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: December 04, 2007

RICHARD A. PLATEL
Judge of the State Bar Court