

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 07-N-11695-LMA
)	
PHILIP MAXIMUS VAN AELSTYN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 220844,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default disciplinary matter, respondent Philip Maximus Van Aelstyn (respondent) is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20, as ordered by the Review Department of the State Bar Court on January 23, 2007, in State Bar Court Case No. 05-C-05089.

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 May 16, 2007. The mailing was returned as undeliverable.

Courtesy copies of the NDC were also served on respondent via first-class mail to his official membership records address and to two other addresses in Auburn, California which were contained in respondent's case file. Each mailing was returned as undeliverable. A copy of the NDC was also served on Jeff A. Denner of Denner Pellegrino, LLP in Boston, Massachusetts.

Efforts to contact or locate respondent by telephone, through various internet-based directory assistance websites, through the Lexis database's Martindale-Hubbell Lawyer Search feature,

through a relative of respondent, and through respondent's former and current counsel were unsuccessful. As of July 10, 2007, the State Bar had not had any contact with respondent.

On motion of the State Bar, respondent's default was entered on July 26, 2007. A copy of the order of entry of default was properly mailed to respondent's official membership records address. The mailing was returned as undeliverable. Respondent was enrolled as an inactive member under Business and Professions Code section 6007(e)¹ on July 29, 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 August 15, 2007, following the filing of the State Bar's brief on culpability and discipline which waived the hearing in this matter.²

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).) Pursuant to Evidence Code section 452, subdivision (e), the court also takes judicial notice of California Rules of Court, rule 9.20.

A. Jurisdiction

Respondent was admitted to the practice of law in California on November 25, 2002, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

B. Violation of California Rules of Court, Rule 9.20

On January 23, 2007, in State Bar Court Case No. 05-C-05089, the Review Department of the State Bar Court issued an interim suspension order following respondent's criminal conviction.

¹All references to sections are to the Business and Professions Code, unless otherwise indicated.

²The court grants the State Bar's requests that the court take judicial notice of all of respondent's official membership addresses, the State Bar's motion for the entry of respondent's default, and the court's order granting the motion.

The January 23, 2007, order required respondent to comply with California Rules of Court, rule 9.20, and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of respondent's interim suspension.

On January 23, 2007, a copy of the order was properly served on respondent at his official membership records address. The mailing was returned as undeliverable.³

The January 23, 2007, order became effective on February 21, 2007, and at all times thereafter remained in full force and effect.

Rule 9.20, paragraph (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 under this rule."

The deadline for respondent to comply with rule 9.20, paragraph (c), expired on April 2, 2007.

Respondent failed to comply with rule 9.20, paragraph (c) prior to the April 2, 2007, deadline.⁴

Respondent was to have filed the rule 9.20 affidavit by April 2, 2007, 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 9.20 or of his obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule 9.20 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 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341 [referring to the rule by its previous number designation, rule 955].)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 9.20, paragraph (c), as ordered by the Review Department of the

³Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of its court records.

⁴Although the NDC alleges this date as April 3, 2007, this appears to be incorrect. The correct date is April 2, 2007.

State Bar Court.⁵

C. Violation of Business and Professions Code Section 6103

Respondent's failure to comply with rule 9.20, paragraph (c), constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the willful 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).)⁶ However, pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice that respondent has no prior record of discipline. However, respondent lack of a prior record of discipline is given little weight in mitigation as respondent has only been in practice for a little over four years at the time of his misconduct in this matter. (*In re Demergian* (1989) 48 Cal.3d 284, 294.)

B. Aggravation

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with rule 9.20, paragraph (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 9.20, paragraph (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.*

⁵Rule 9.20, paragraph (d) provides that a suspended attorney's wilful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

⁶All further references to standards are to this source.

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 order of the Review Department of the State Bar Court.

VI. Recommended Discipline

The court recommends that respondent Philip Maximus Van Aelstyn 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, after the effective date of its order imposing discipline in this matter.⁷

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 of

⁷Respondent 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.)

California. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: November ___, 2007

LUCY ARMENDARIZ
Judge of the State Bar Court