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PUBLIC MATTER

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

In the Matter of)
)
G. BRUCE SPENCE,)
)
Member No. 139100,)
)
A Member of the State Bar.)

Case No. 07-N-12149-LMA
DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

I. Introduction

In this default disciplinary matter, respondent G. Bruce Spence (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 California Supreme Court on February 14, 2007, in S148498 (State Bar Court Case No. 06-O-10113).

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 June 19, 2007. The mailing was returned as undeliverable.

Efforts to contact or locate respondent, including calling and leaving a message for him at an additional telephone number listed in a pleading filed by respondent in the Mendocino County Small Claims Court on July 17, 2007, were unsuccessful. As of August 3, 2007, the State Bar had not had any contact with respondent.

On motion of the State Bar, respondent's default was entered on August 21, 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 August 24, 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 September 7, 2007, following the filing of the State Bar's brief on culpability and discipline which requested waiver of a 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 December 12, 1988, 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 February 14, 2007, the California Supreme Court filed an order in case number S148498 (State Bar Court Case Number 06-O-10113).

The February 14, 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 the order.

Notice of the order was duly and properly served upon respondent in the manner prescribed by California Rules of Court, rule 8.532, at respondent's address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1.

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

²Pursuant to Evidence Code section 452, subdivision (h), the court grants the State Bar's request that the court take judicial notice of respondent's official membership address history.

The February 14, 2007, order became effective on March 16, 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 25, 2007.

Respondent failed to comply with rule 9.20, paragraph (c) prior to the April 25, 2007, deadline.

Respondent was to have filed the rule 9.20 affidavit by April 25, 2007, but to date, he has not done so and has offered no explanation to this court for his noncompliance.³ Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. “Willfulness” 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 willfully failed to comply with rule 9.20, paragraph (c), as ordered by the Supreme Court.⁴

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.

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

⁴Rule 9.20, paragraph (d), provides that a suspended attorney’s willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

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).)⁵

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has a record of two prior impositions of discipline. In California Supreme Court Case No. S103284, effective April 5, 2002, respondent was suspended for one year, stayed, and was actually suspended for 90 days. His misconduct consisted of engaging in unjust litigation and misleading the court. In aggravation, respondent's misconduct evidenced multiple acts of wrongdoing. In mitigation, respondent had no prior record of discipline.

In the underlying default matter, California Supreme Court Case No. S148498, effective March 16, 2007, respondent was suspended for three years, stayed, and was actually suspended for two years and until the State Bar Court terminates his actual suspension under rule 205 of the Rules of Procedure of the State Bar and he provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). His misconduct consisted of failing to communicate with a client, engaging in the unauthorized practice of law, committing moral turpitude, and failing to participate in a State Bar investigation. In aggravation, the court noted respondent's prior record of discipline, his multiple acts of misconduct, and his failure to participate in the disciplinary proceedings. No mitigating factors were found.

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

⁵All further references to standards are to this source.

is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

Respondent's willful 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. State Bar* (1988) 45 Cal.3d 1181, 1187.)

Furthermore, standard 1.7(b) provides that if an attorney is found culpable of misconduct in any proceeding and the member has a record of two prior impositions of discipline, the degree of discipline to be imposed in the current proceeding must be disbarment, unless the most compelling mitigating circumstances clearly predominate. In this matter, respondent has a record of two prior impositions of discipline, and no mitigating circumstances were found.

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, his 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 willful disobedience of the order of the California Supreme Court.

VI. Recommended Discipline

The court recommends that respondent G. Bruce Spence 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.⁶

⁶Respondent 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 at 341.)

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

Dated: November 26, 2007



LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 29, 2007, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

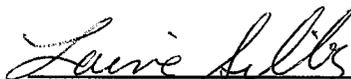
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

G. BRUCE SPENCE
P O BOX 1955
UKIAH, CA 95482

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MARK HARTMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 29, 2007**.



Laine Silber
Case Administrator
State Bar Court