

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

In the Matter of)	Case No. 07-N-12921-RAP
)	
NANCY WILSON REID,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 131796,)	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 Nancy Wilson Reid 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 Geri Von Freymann. 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 31, 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 as undeliverable. A courtesy copy was also served at respondent's official address

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.

by regular mail on September 17, 2007. It was not returned as undeliverable.

On September 7, 2007, the State Bar Court properly served respondent by first-class mail, postage prepaid at her official address with a notice scheduling a status conference on October 12, 2007. Respondent did not appear at the status conference. On October 12, 2007, an order memorializing the status conference was properly served on her at her official address. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (h) which indicate that this correspondence was returned as undeliverable.

Respondent did not file a response to the NDC. On October 12, 2007, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at her official address and, by regular mail, at an alternate address in Louisiana. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek disbarment if she 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 her inactive were filed and properly served on her on October 30, 2007, by certified mail, return receipt requested at her official address, and by regular mail to the alternate address in Louisiana. This document advised respondent, among other things, that she was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order. The correspondence sent to respondent's official address was returned as undeliverable.

The court convened a status conference on February 4, 2008, during which the original submission date of November 14, 2007, was vacated, and the State Bar was asked to provide a declaration as to whether respondent was still actually suspended. The court unsuccessfully tried to reach respondent by telephone to attend the status conference. An order memorializing the February 4 status conference was filed on February 4, 2008.

On February 19, 2008, the State Bar filed a declaration indicating that respondent was still actually suspended as of February 19, 2008. This declaration was served on respondent on February 19, 2008 by regular mail to her official address.

The State Bar's and the court's efforts to locate and contact respondent were fruitless.

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 14, 1987, and has been a member of the State Bar at all times since.

B. Facts

On February 14, 2007, the California Supreme Court filed an order, number S148497 (February 14 order), in State Bar Court case no. 05-O-03046 in which respondent was ordered, among other things, to be actually suspended for 30 days and until she complied with rule 205, Rules Proc. of State Bar. If she was actually suspended for 90 days or more, she was also ordered to comply with rule 9.20(a) and (c) within 120 and 130 days, respectively, of the effective date of the order. The order was effective on March 16, 2007. (Rule 9.18(a).³) Accordingly, respondent was to comply with rule 9.20(c) no later than July 24, 2007. if she remained actually suspended for 90 days or more after the effective date of the Supreme Court's order imposing discipline.

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.

Respondent has remained actually suspended from March 16, 2007 until at least February 19, 2008.⁵ Accordingly, she was required to comply with rule 9.20(c) by July 24, 2007.

As of August 31, 2007, respondent had not filed with the State Bar Court the affidavit required by rule 9.20(c). She still has not done so.⁶ She has offered no explanation for her noncompliance with rule 9.20(c).

C. Legal Conclusions

There is clear and convincing evidence that respondent wilfully violated the February 14 order directing her 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.

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 her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

⁵The NDC did not contain an allegation that respondent had remained actually suspended for 90 days or more thereby triggering the requirement to comply with rule 9.20. Thus, at the February 4, 2008, status conference, the court asked for evidence regarding the status of respondent's actual suspension.

⁶Pursuant to Evidence Code section 452, subdivision (d), the court judicially notices that its records still do not contain a rule 9.20(c) affidavit from respondent.

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.)

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 S148497, the Supreme Court imposed discipline consisting of actual suspension for 30 days and until respondent complied with rule 205, Rules Proc. of State Bar, among other things. In that matter, respondent was found culpable, in one client matter, of violating rule 3-700(A)(2) of the rules of Professional Conduct as well as sections 6068, subdivisions (i) and (j). In aggravation, the court found multiple acts of misconduct and failure to participate in the disciplinary proceedings prior to the entry of default.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct by not complying with rule 9.20(c) even after the NDC in the instant proceeding was filed. (Std.1.2(b)(v).)

Respondent's failure to participate in proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) She has demonstrated her contemptuous attitude toward disciplinary proceedings as well as her 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.)

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

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

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* (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 she has been given the opportunity to do so. She 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 NANCY WILSON REID be disbarred from the practice of law in the State of California and that her 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 her 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: May 12, 2008

RICHARD A. PLATEL
Judge of the State Bar Court