

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **07-N-14065-RAP**
)) 07-O-14294 (Cons.)
JOHN WONGOO RHEE,)
)) **DECISION**
Member No. 114109)
))
A Member of the State Bar.)

I. INTRODUCTION

In this contested matter, respondent John Wongoo Rhee is charged with two counts of misconduct relating to his failure to comply with a Supreme Court order and the terms of his disciplinary probation.

The court finds, by clear and convincing evidence, that respondent is culpable of the charged misconduct. In view of respondent’s misconduct in this proceeding, and after considering the aggravating and mitigating circumstances, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of said suspension be stayed, and that he be placed on probation for three years with conditions, including a period of actual suspension of one year.

II. PROCEDURAL HISTORY

The Office of Chief Trial Counsel of the State Bar of California (“State Bar”) initiated this proceeding by filing a Notice of Disciplinary Charges (“NDC”) on December 12, 2007, in Case No. 07-N-14065. Respondent filed his response to the NDC on January 2, 2008. The State Bar filed a second NDC in Case No. 07-O-14294 on June 11, 2008. Respondent filed his

response on August 4, 2008. On June 23, 2008, the court issued an order to consolidate both cases for all purposes.

Trial was held on April 6, 2009. The State Bar was represented by Deputy Trial Counsel Bity Shasty. Respondent represented himself at trial. Respondent, Office of Probation Deputy Maricruz Farfan; Art Segovia; and Kris Yi, PhD, testified at trial.

Following receipt of closing briefs, the court took this matter under submission on May 18, 2009.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the evidence and testimony introduced at this proceeding.

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 13, 1984, and has been a member of the State Bar of California since that time.

B. Credibility Determinations

With respect to the credibility of the witnesses, the court carefully weighed and considered their demeanor while testifying; the manner in which they testified; their personal interest or lack thereof in the outcome of this proceeding; and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See, e.g. Evid. Code section 780 [lists of factors to consider in determining credibility].) The court finds the testimony of the witnesses to be credible.

C. Stipulated Facts – Case No. 07-N-14065

The parties agreed to the following stipulated facts.

On May 4, 2007, the Supreme Court of the State of California filed a disciplinary order in Case No. S150640 (State Bar Case Nos. 05-O-02605; 05-O-00458; 06-O-10082; 06-O-13487

(consolidated)) (“the order”).

The order included a requirement that respondent comply with California Rule of Court 9.20 (“rule 9.20”)¹ by performing the acts specified in subdivisions (a) and (c) of the rule within 30 and 40 days respectively, of the effective date of the order.

On May 4, 2007, the Clerk of the Supreme Court properly served a copy of the order on respondent. Respondent received the order.

The order became effective on June 3, 2007, thirty days after it was filed, and at all times thereafter remained in full force and effect. Pursuant to the order, respondent was required to comply with subdivision (c) of rule 9.20 no later than July 13, 2007.

Respondent failed to comply with subdivision (c) of rule 9.20 by July 13, 2007.

Respondent did not comply with subdivision (c) of rule 9.20 until August 2, 2007.²

D. Stipulated Facts – Case No. 07-O-14294

Pursuant to the order, the terms and conditions of respondent’s probation required, among other things, that:

1. Respondent submit quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the probation period, and a final quarterly report on June 3, 2009, certifying under penalty of perjury whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter;
2. Respondent contact the Office of Probation and schedule a meeting with his assigned probation deputy within 30 days from the effective date of discipline; and,
3. If respondent possessed client funds at any time during the period covered by the required quarterly report, respondent file with each required report a certificate from respondent and/or a certified public accountant or other financial professional (“CPA report”) approved by the Office of Probation.

¹ Rule 9.20 was formerly numbered as rule 955. For the purposes of clarity, the decision will refer to this rule exclusively as rule 9.20.

² Respondent attempted to file his 9.20 affidavit on July 27, 2007, however, it was rejected because he did not list his address as required.

On or about July 9, 2007, a probation deputy with of the Office of Probation of the State Bar of California (“Office of Probation”), sent a letter to respondent enclosing, among other things, a copy of the disciplinary order; the conditions of probation; and a quarterly report form with instructions.

The July 9, 2007 letter specifically warned respondent that failure to timely submit reports or any other proof of compliance would result in a non-compliance referral to the State Bar Court or referral for action by the supervising attorney of the Office of Probation. Respondent received this letter.

On November 7, 2007, a probation deputy met with respondent in-person at the State Bar. This meeting was past due, as respondent was to have met with the probation deputy on or before July 3, 2007.

Respondent was late in filing his October 10, 2007 quarterly report, which was received by the Office of Probation on November 5, 2007. Respondent was late in filing his October 10, 2007 CPA report, which was also received by the Office of Probation on November 5, 2007.

E. Additional Findings of Fact

Respondent concedes that he was less than timely in filing his rule 9.20 affidavit and complying with some of the conditions of his probation. Respondent’s failure to timely comply with these requirements was partly due to his relationship with his then live-in girlfriend who was bipolar. Caring for her caused respondent to suffer from stress and depression, and demanded that he spend a significant amount of time away from his practice.³

³ Respondent also presented testimony that he instructed his office manager to calendar his rule 9.20 and probationary compliance dates; however, due to a problem with his calendaring system the dates did not appear on the calendar. This fact, however, demonstrates complacency on respondent’s part in that he should have been on notice that the calendaring system was flawed when he failed to timely file his 9.20 affidavit. Yet, despite his failure to timely file his 9.20 affidavit, the calendaring error was not rectified prior to respondent’s late filing of his October 10, 2007 quarterly and CPA reports.

F. Conclusions of Law

1. Case No. 07-N-14065

Bad faith is not a prerequisite to finding a willful failure to comply with rule 9.20. (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.) A general purpose or willingness to commit an act or permit an omission is sufficient. (*Ibid.*)

The State Bar has shown, by clear and convincing evidence, that respondent willfully violated California Rule of Court 9.20, subdivision (c), by failing to file his compliance affidavit with the State Bar Court by July 13, 2007.

2. Case No. 07-O-14294

Violations of probation require the same mental state to justify discipline as violations of rule 9.20. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

The State Bar has shown, by clear and convincing evidence, that respondent willfully violated Business and Professions Code, section 6068, subdivision (k),⁴ by filing his October 10, 2007 quarterly and CPA reports on November 5, 2007; and not scheduling his meeting with his assigned probation deputy within 30 days of the effective date of the Supreme Court order.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)⁵

A. Mitigation

The court finds two factors in mitigation. (Std. 1.2(e).)

First, the evidence shows that during the period of his misconduct, respondent was

⁴ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

⁵ All further references to standard(s) are to this source.

suffering from stress and depression relating to his live-in girlfriend's bipolar disorder. Extreme emotional difficulties or physical disabilities can constitute mitigating evidence. (Std. 1.2(e)(iv).) Accordingly, the court finds that respondent's emotional difficulties at the time of his misconduct constitute a mitigating circumstance.

Second, respondent demonstrated candor and cooperation with the State Bar during the disciplinary proceedings. (Std. 1.2(e)(v).) Respondent entered into an extensive stipulation of facts and undoubtedly shortened the trial time in this proceeding.

In addition to the aforementioned mitigating circumstances, respondent also presented testimony regarding his good character. An extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities may be considered as a mitigating circumstance. (Std. 1.2(e)(vi).) Here, however, respondent presented character testimony from only one witness.⁶ The testimony of a single character witness is insufficient to constitute a mitigating circumstance. (See *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88.) Accordingly, the court does not assign any weight to respondent's character testimony.

B. Aggravation

The court finds two factors in aggravation. (Std. 1.2(b).)

First, respondent has two prior instances of discipline. (Std. 1.2(b)(i).)

On January 12, 1995, the Supreme Court filed Order No. SO43171 (State Bar Court Case No. 91-O-08964), suspending respondent from the practice of law for one year, stayed, with two years' probation, including 30 days actual suspension, for failing to perform, failing to promptly release a client's file, and failing to maintain client funds in trust.

⁶ Art Segovia, respondent's office manager, testified to respondent's good character and to his community service/pro bono service on behalf of a local rehabilitation center and his church.

On May 4, 2007, the Supreme Court filed Order No. S150640 (State Bar Court Case Nos. 05-O-02605; 05-O-00458; 06-O-10082; 06-O-13487 (Cons.)) suspending respondent from the practice of law for one year, stayed, with two years' probation, including six months' actual suspension, for failing to perform, failing to maintain client funds in trust, and commingling personal funds in his client trust account.

Second, respondent committed multiple acts of wrongdoing, including failing to timely submit his rule 9.20 affidavit and probation reports. (1.2(b)(ii).)

V. DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.6 and 1.7(b).) Standard 2.6 pertains to cases involving a violation of section 6068. It states that culpability of a member of a violation of section 6068 “shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

Due to respondent's prior record of discipline, the court also looks to standard 1.7(b) for guidance. Standard 1.7(b) provides that when an attorney has two prior records of discipline,

“the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.”

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton*, (2005) 36 Cal.4th 81, 92.)

Disbarment is generally considered to be the appropriate sanction for a willful violation of rule 9.20. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) The imposition of disbarment in rule 9.20 matters, however, is far from absolute. Over the years, the courts have weighed the facts and circumstances of each case individually. In several published decisions, the California Supreme Court and the Review Department of the State Bar Court have found that, due to various extenuating circumstances, an attorney’s breach of rule 9.20 may warrant a discipline significantly less than disbarment. (See *Shapiro v. State Bar* (1990) 51 Cal.3d 251; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; and *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.)

In the present matter, the State Bar urges the court to impose an actual suspension of two years. Respondent, on the other hand, argues that his current period of probation in the underlying matter be continued.

In determining the proper level of discipline, the court finds *In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 192, to be particularly instructive.

In *Rose*, the attorney was found culpable of failing to comply with the conditions of his disciplinary probation and, in a consolidated matter, failing to timely comply with rule 9.20. In the probation matter, the attorney failed to timely file three quarterly reports and two client trust account audits. In the rule 9.20 matter, the attorney submitted his rule 9.20(c) affidavit twelve days late.

In aggravation, the attorney committed multiple acts of misconduct and had two prior records of discipline.⁷ In mitigation, the attorney's late submission of his 9.20 affidavit did not result in harm and demonstrated his recognition of wrongdoing. In addition, the attorney received mitigating credit for his pro bono and volunteer work.

The Review Department made the following separate recommendations. In the probation matter, it was recommended that the attorney's probation be revoked and that he receive a five-year suspension, stayed, with five years' probation, including a two-year actual suspension. In the 9.20 matter, it was recommended that the attorney be suspended for two years, stayed, with two years' probation, including a nine-month actual suspension. It was further recommended that these two separate disciplines run concurrently.

While the two cases are similar, the court finds that the present case involves less egregious misconduct and less aggravation than *Rose*. For the attorney in *Rose* failed to timely file two additional quarterly reports and one additional audit. In addition, the attorney in *Rose* had a much more extensive prior record of discipline. (See Std. 1.7(a).) Consequently, a lower level of discipline is warranted in the present matter.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

⁷ The attorney's first discipline included a two-year actual suspension. His second discipline included an additional year of actual suspension, consecutive to his first period of actual suspension.

The court is certainly concerned with respondent's inability to comply with professional standards. It is particularly worrisome that respondent was unable to satisfy his probation conditions despite his good faith efforts.

Notwithstanding, the court finds that the State Bar's recommendation of a two-year actual suspension, is excessive in light of the present facts and circumstances and respondent's compelling mitigation. In addition, respondent's actions following his misconduct demonstrate that he "has awakened to his responsibilities to the discipline system." (*In the Matter of Friedman*, supra, 2 Cal. State Bar Ct. Rptr. 527, 533.)

Therefore, after weighing the evidence, including the factors in aggravation and mitigation, and considering the standards and the case law, the court finds that the appropriate discipline should include, among other things, an actual suspension of one year.

VI. RECOMMENDED DISCIPLINE

Accordingly, it is recommended that **John Wongoo Rhee** be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first year of probation;
2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Within 30 days from the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than twenty (20) days before the last day of the probationary period and no later than the last day of the probationary period;

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

7. Unless respondent has completed the State Bar Ethics School within two years prior to the effective date of the discipline herein, respondent must, within one year of the effective date of the discipline herein, provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los

Angeles, California, 90015, and passage of the test given at the end of the session.

Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fees. This requirement is separate from any Minimum Continuing Legal Education (“MCLE”) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules of Proc. of State Bar, rule 3201.);

8. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and

9. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

The court also recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁸

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination since he was previously ordered to do so in Case No. S150640.

⁸ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 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 Business and Professions Code section 6140.7 and as a money judgment.

Dated: July 21, 2009

RICHARD A. PLATEL
Judge of the State Bar Court