

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-N-10445-DFM
)	
PHILIP J. GIRARDIN)	
)	DECISION AND ORDER OF
Member No. 142664,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this disciplinary matter, Deputy Trial Counsel Melanie Lawrence appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Philip J. Girardin (respondent) represented himself until the entry of his default for failing to file a response.

PROCEDURAL HISTORY

On April 8, 2008, the State Bar filed its First Amended Notice of Disciplinary Charges (NDC)¹ consisting of a single count alleging that respondent failed to comply with a California Supreme Court order that he perform the acts set out in subdivision (c) of rule 9.20 of the California Rules of Court. A copy of the NDC was properly served on respondent on April 8, 2008, by certified mail, return receipt requested, addressed to the official membership records address (official address) maintained by respondent pursuant

¹ The original Notice of Disciplinary Charges was filed on April 1, 2008.

to section 6002.1, subdivision (a).² The NDC was not returned to the State Bar as undeliverable, or for any other reason.

On April 18, 2008, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for May 6, 2008. A copy of said notice was properly served on respondent by first-class mail, postage fully prepaid, on April 18, 2008, addressed to respondent at his official address. The copy of said notice was not returned to the State Bar Court as undeliverable, or for any other reason.

On May 5, 2008, the State Bar called respondent at the telephone number listed on respondent's official membership records. The State Bar spoke with respondent and advised him of the status conference scheduled for May 6, 2008. Respondent requested that a courtesy copy of the NDC be sent to him at 4101 Baywood St., #8, Los Angeles, CA 90039 (Baywood address). On May 6, 2008, the State Bar sent respondent a courtesy copy of the NDC as requested.

On May 6, 2008, the previously scheduled status conference was held and respondent attended telephonically. During this status conference, the court set a trial date of September 18, 2008, and a pretrial conference date of September 10, 2008. The court also extended the time for respondent to file a response to the NDC to May 28, 2008. The parties were further advised that if a response was not filed by that date, then the State Bar was to file a motion for entry of default. Thereafter, a trial-setting order, setting forth each of the above obligations and dates, was filed on May 28, 2008. A copy

² Pursuant 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 records address history.

of said order was properly served on respondent by first-class mail, postage fully prepaid, on May 28, 2008, addressed to respondent at his official address.³ The copy of said order was not returned to the State Bar Court as undeliverable, or for any other reason.

Respondent subsequently did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California (Rules of Procedure). Therefore, on June 3, 2008, the State Bar filed a motion for the entry of respondent's default. The motion advised respondent that once the court found culpability, the State Bar would recommend respondent's disbarment. A copy of said motion was properly served on respondent on June 3, 2008, by certified mail, return receipt requested, addressed to respondent at his official address.⁴

Respondent failed to file a written response within 10 days after service of the motion for the entry of his default. Consequently, on June 24, 2008, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders. The order advised that all scheduled court dates were vacated and that no default hearing would be held unless one was requested by the State Bar. The order also permitted the State Bar to file any further declarations, exhibits, or legal argument regarding the level of discipline by no later than July 14, 2008. A copy of said order was properly served on respondent on June 24, 2008, by certified mail, return receipt requested, addressed to respondent at his official address.⁵ The copy of said order was not returned to the State Bar Court as undeliverable, or for any other reason.

³ A courtesy copy was mailed to respondent's Baywood address that same day. Said copy was not returned to the State Bar Court as undeliverable, or for any other reason.

⁴ A courtesy copy was mailed to respondent's Baywood address that same day.

⁵ A courtesy copy was mailed to respondent's Baywood address that same day. Said copy was not returned to the State Bar Court as undeliverable, or for any other reason.

On July 16, 2008, the State Bar filed a brief on the issues of culpability and discipline and waived its right to request a hearing in the matter. This matter was therefore submitted for decision on July 16, 2008.

Exhibit 1 attached to the State Bar's motion for the entry of respondent's default, and Exhibits 1 through 4 attached to the State Bar's brief on the issues of culpability and discipline are admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to practice law in California on December 11, 1989; was a member of the State Bar of California at all times pertinent to these charges; and is currently a member of the State Bar of California.

Factual Background

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).) The factual allegations of the NDC are as follows:

On or about October 31, 2007, the California Supreme Court filed Order No. S085747 [State Bar Case No. 06-PM-10697] (the Supreme Court Order). The Supreme Court Order included a requirement that respondent comply with Rule 9.20, California Rules of Court, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Supreme Court Order.

On or about October 31, 2007, the Clerk of the Supreme Court of the State of California properly served upon respondent a copy of the Supreme Court Order. Respondent received the Supreme Court Order.

The Supreme Court Order became effective on November 30, 2007, thirty days after it was filed. Thus respondent was ordered to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than on or about December 30, 2007, and was ordered to comply with subdivision (c) of Rule 9.20 no later than on or about January 9, 2008.

Respondent has failed to file with the clerk of the State Bar Court a declaration of compliance with subdivisions (a) and (b) of rule 9.20 of the California Rules of Court, as required by rule 9.20, subdivision (c).

Failure to Obey Court Order to Comply with Rule 9.20, subd. (c)

The court finds that respondent is culpable of willfully failing to comply with his obligation under subdivision (c) of rule 9.20.

Unlike some other contexts, the term “willful” in the context of rule 9.20, formerly rule 955, does not require bad faith or any evidence of intent. It is not necessarily even dependent on showing the respondent’s knowledge of the Supreme Court’s order requiring compliance. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342; *Hamilton v. State Bar* (1979) 23 Cal.3d 868, 873-874.) Based on the foregoing, the court concludes that the State Bar has proven by clear and convincing evidence that by failing to file the compliance affidavit within the time specified in the October 31, 2007 Supreme Court Order, respondent willfully failed to comply with rule 9.20, subdivision (c).

Aggravating Circumstances

The State Bar of California must prove aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)⁶

Multiple aggravating factors are present in this matter. (Std. 1.2(b).)

Respondent's four prior impositions of discipline constitute a serious aggravating circumstance. (Std. 1.2(b)(i).)

Effective May 18, 1993, respondent was publicly reprovved with conditions in State Bar Court Case No. 92-C-18568 for his 1992 criminal conviction for driving under the influence of alcohol. In aggravation, the underlying arrest occurred within eight months of a prior arrest for driving under the influence of alcohol; at the time of respondent's arrest, he was still on probation for his previous conviction for driving under the influence of alcohol; respondent's later conviction involved a blood-alcohol level of .18 percent; and respondent had been cited on three previous occasions for reckless driving and speeding. In mitigation, respondent was suffering extreme emotional difficulties at the time of the misconduct and took objective steps to spontaneously demonstrate recognition of his wrongdoing.

On April 19, 2000, the Supreme Court issued an order in Supreme Court matter S085747 (State Bar Court Case Nos. 98-C-03098; 98-C-03099), suspending respondent from the practice of law for two years, staying execution of said suspension, and placing respondent on probation for five years subject to conditions of probation, including six months actual suspension, for his two 1998 felony convictions for driving under the

⁶ All further references to standards are to this source.

influence of alcohol. In aggravation, respondent had a prior record of discipline. In mitigation, respondent cooperated with the State Bar and took objective steps to demonstrate his remorse and recognition of his wrongdoing.

On January 8, 2002, the Supreme Court issued an order in Supreme Court matter S085747 (State Bar Court Case No. 00-PM-15161), revoking and reinstating respondent's probation with new conditions for his willful violation of the terms of his probation imposed in Supreme Court matter S085747 (State Bar Court Case Nos. 98-C-03098; 98-C-03099). In aggravation, respondent had two prior impositions of discipline. In mitigation, respondent was suffering from severe financial stress and extreme emotional/physical difficulties at the time of the misconduct.

On June 2, 2006, the Supreme Court issued an order in Supreme Court matter S085747 (State Bar Court Case No. 06-PM-10697), revoking and reinstating respondent's probation on the same conditions as previously imposed in Supreme Court matter S085747. The previously ordered stay of execution of suspension was lifted and respondent was actually suspended for 90 days.⁷ Said revocation was based on respondent's failure to timely comply with conditions of his probation. In aggravation, respondent had three prior impositions of discipline. There was no mitigation.

⁷ This order inadvertently omitted that respondent must comply with the new conditions of probation and the provisions of rule 955 (effective January 1, 2007, rule 955 was renumbered 9.20) of the California Rules of Court, as recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation in Case No. 06-PM-10697. Therefore, on October 31, 2007, the Supreme Court issued an order requiring that respondent comply with the new conditions of probation and rule 9.20 of the California Rules of Court, as recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed March 23, 2006.

Respondent's failure to participate in this disciplinary matter is also an aggravating factor. (Std. 1.2(b)(vi).) Although he was aware of the present proceeding, respondent chose not to participate after the initial status conference.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Standard 1.2(e).) No mitigating evidence was offered or received.

DISCUSSION

The standard here for assessing discipline is set out in the first instance in the rule itself. As set forth in subparagraph (d) of rule 9.20, "A suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation." In addition, standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

Respondent's willful 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.) Although respondent is charged here only with violating his obligations under rule 9.20(c), his failure to adhere to the explicit order of the Supreme Court, when coupled with his failure to satisfy his obligations in the instant proceeding, evidence an unwillingness on his part to comply with the professional obligations imposed on California attorneys. Under such circumstances, 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. (*In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.)

RECOMMENDED DISCIPLINE

The court recommends that respondent **PHILIP J. GIRARDIN** 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, of the effective date of its order imposing discipline in this matter.⁸

COSTS

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and be enforceable both as provided in section 6140.7 and as a money judgment.

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

Dated: September 25, 2008

DONALD F. MILES
Judge of the State Bar Court

⁸Respondent 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.)