

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 08-N-11333-LMA
)	
LELAND DALE STEPHENSON,)	
)	DECISION & ORDER OF
Member No. 37713,)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this disciplinary proceeding, which proceeded by default, Deputy Trial Counsel Treva R. Stewart (hereafter “DTC Stewart”) appeared for the Office of the Chief Trial Counsel of the State Bar of California (hereafter “State Bar”). Respondent **LELAND DALE STEPHENSON**¹ did not appear in person or by counsel.

In the notice of disciplinary charges (hereafter “NDC”), the State Bar charges respondent with willfully violating his duty, under Business and Professions Code section 6103,² to obey court orders “requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear.” More Specifically, the State Bar charges that respondent violated section 6103 by disobeying a Supreme Court order directing

¹ Respondent was admitted to the practice of law in the State of California on December 11, 1966, and has been a member of the State Bar since that time.

² Unless otherwise indicated, all further statutory references are to this code.

him to comply with California Rules of Court, rule 9.20 (hereafter “rule 9.20”).³ After considering the evidence, this court finds, by clear and convincing evidence, that respondent willfully failed to comply with rule 9.20 as ordered by the Supreme Court. Furthermore, the court concludes that the appropriate discipline recommendation is disbarment.

II. Key Procedural History

On May 7, 2008, the State Bar filed the NDC in this proceeding and, in accordance with section 6002.1, subdivision (c), properly served a copy of it on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar (hereafter “official address”). Even though that copy of the NDC was not returned to the State Bar by the United States Postal Service (hereafter “Postal Service”), a letter the State Bar mailed to respondent at his official address in April 2008 was returned to the State Bar by the Postal Service marked “Return to Sender, Attempted – Not Known, Unable to Forward.” Thus, it is unlikely that respondent actually received the copy of the NDC that the State Bar served on him. However, the declaration of DTC Stewart, which is attached to the State Bar's July 1, 2008, motion for entry of default establishes that the State Bar undertook additional measures in an attempt to locate respondent and to provide him with actual notice of this proceeding, but those additional measures were unsuccessful. In any event, the court finds that

³ It is unclear why the State Bar elected to charge respondent's failure to comply with rule 9.20 as ordered by the Supreme Court as a violation of section 6103. In the past, the State Bar has also charged such failures as violations of, inter alia, section 6068, subdivision (b), which requires attorneys “To maintain the respect due to the courts of justice and judicial officers.” (E.g., *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 498.) Without question, the addition of a section 6103 charge (or a section 6068, subdivision (b) charge or any other charge) adds *nothing* to the simple (and more direct) charge that respondent willfully failed to comply with rule 9.20 as ordered by the Supreme Court. (Cal. Rules of Court, rule 9.20(d); see also *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 128, 148 [appropriate level of discipline for an act of misconduct does not depend upon how many rules or statutes proscribe the misconduct]; *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787-788 & fn. 18 [noting the differences in proof necessary to establish a violation of section 6103 and to establish a violation of former California Rules of Court, rule 955 (hereafter “former rule 955”) (now rule 9.20)].)

respondent was properly given adequate notice of this proceeding (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; see also *Powers v. State Bar* (1988) 44 Cal.3d 337, 341 [attorney disbarred when his failure to keep his official address current prevented him from learning that he had been ordered to comply with former rule 955]) particularly in light of the additional measures the State Bar took in an attempt to provide respondent with actual notice of this proceeding (*Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234).

Respondent was required to file a response to the NDC no later than June 1, 2008, (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time]), but did not do so. Therefore, on July 1, 2008, the State Bar filed a motion for the entry of respondent's default and properly served a copy of it on respondent at his official address by certified mail, return receipt requested. Respondent, however, never filed a response to that motion or to the NDC.

Because all of the statutory and rule prerequisites were met, this court filed an order on July 17, 2008, in which it entered respondent's default and, as mandated by section 6007, subdivision (e)(1), ordered respondent's involuntary inactive enrollment. This court's case administrators properly served a copy of the court's July 17, 2008, order on respondent at his official address by certified mail, return receipt requested.

On August 8, 2008, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. And the court took the case under submission for decision without a hearing on that same day.

III. Findings of Fact and Conclusions of Law

The court's findings are based on (1) the allegations contained in the NDC, which are deemed admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A)); (2) exhibit 1 to the State Bar's August 8, 2008, request for waiver of hearing and

brief on culpability and discipline (which exhibit is a copy of respondent's prior record of discipline); and (3) the facts in this court's official file in this matter.

A. Findings of Facts

On January 16, 2008, the Supreme Court filed an order in *In re Leland Dale Stephenson on Discipline*, case number S158219 (State Bar Court case number 00-O-13808, et al.) (hereafter “Supreme Court’s January 16, 2008, order”) in which it placed respondent on two years' stayed suspension, five years' probation, and one year's actual suspension. In its January 16, 2008, order, the Supreme Court also ordered respondent to perform the acts specified in rule 9.20(a) and then file, in the State Bar Court, the proof of compliance affidavit provided for in rule 9.20(c) within 30 and 40 days, respectively, after the effective date of the Supreme Court's order.

The deemed allegations in the NDC establish that, “Notice of the order was duly and properly served upon respondent in the manner prescribed by California Rule of Court 8.532 at respondent’s address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1.” Moreover, even though there is no allegation in the NDC establishing that respondent actually received that notice, the court finds that respondent actually received it. (Evid. Code, § 641 [the mailbox rule]; see also Evid. Code, §§ 604, 630.)

The Supreme Court's January 16, 2008, order became effective on February 15, 2008, (Cal. Rules of Court, rule 9.18(a)) and has remained in effect since that time. Forty days after February 15, 2008, was March 26, 2008. Accordingly, respondent was required to file, in the State Bar Court, the proof of compliance affidavit provided for in rule 9.20(c)⁴ no later than March 26, 2008.⁵

⁴ (i.e., an affidavit stating that he performed the acts specified in rule 9.20(a) and setting forth an address for future communications).

⁵ In paragraph 8 of the NDC, the State Bar incorrectly refers to deadline of March 16, 2008. As noted, the deadline was March 26, 2008.

Respondent never filed a rule 9.20(c) compliance affidavit with the State Bar Court.

B. Conclusions of Law

The record establishes, by clear and convincing evidence, that respondent failed to comply with the Supreme Court's January 16, 2008, order because he never filed, with the Clerk of the State Bar Court, a rule 9.20(c) compliance affidavit (i.e., an affidavit stating that he performed the acts specified in rule 9.20(a) and setting forth an address for future communications). Respondent was required to file a compliance affidavit even if he had no law practice, clients, or pending cases on January 16, 2008, when the Supreme Court filed its order directing respondent to comply with rule 9.20. (Cf. *Powers v. State Bar*, *supra*, 44 Cal.3d at p. 341 [applying former rule 955 (now rule 9.20)].) Accordingly, the court holds that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to do an act connected with and in the course of his profession, which he ought in good faith do, when he failed to file a rule 9.20(c) compliance affidavit.

IV. Level of Discipline

A. Factors in Mitigation

There are no factors in mitigation.

B. Factors in Aggravation

1. Prior Record of Discipline

Respondent has one prior record of discipline. (Std. 1.2(b)(i).) Respondent's prior record of discipline is the Supreme Court's January 16, 2007, order in which, as noted *ante*, respondent was placed on two years' stayed suspension, five years' probation, and one year's actual suspension. The Supreme Court imposed that discipline on respondent because respondent stipulated to 13 counts of professional misconduct in seven different client matters, including failing to perform legal services, failing to communicate with his clients, failing to

refund unearned fees, failing to maintain client funds in a trust account, engaging in the unauthorized practice of law, and violating a court order.

2. Failure to File a Response to the NDC

Respondent's failure to file a response to the NDC in the present proceeding, which allowed his default to be entered, is an aggravating circumstance. (See *Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.) First, it indicates that he fails to appreciate the seriousness of the charges against him. (*Ibid.*) Second, it indicates "that he does not comprehend the duty as an officer of the court to participate in disciplinary proceedings. [Citation.]" (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109, citing *Conroy v. State Bar* (1992) 53 Cal.3d 495, 507-508; but see *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1080 [failure to participate after entry of default is not an aggravating circumstance].)

C. Discussion

Because the State Bar has charged respondent's violation of the Supreme Court's January 16, 2008, order as a violation of section 6103, the State Bar contends that this court must look to standard 2.6 to determine the appropriate level of discipline.⁶ The court disagrees. More than 13 years ago, the review department held that the standards do not address the appropriate level of discipline for violating former rule 955 (now rule 9.20). (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.) Instead, former rule 955(d) (now rule 9.20(d)) did. In that regard, former rule 955(d) provided and rule 9.20(d) now provides, in relevant part, that an attorney's willful failure to comply with the rule constitutes cause for disbarment or suspension and for revocation of any pending probation.

⁶ Standard 2.6 provides that a violation of section 6103 is to "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."

Moreover, at least in the absence of *compelling* mitigating circumstances, case law makes clear that the most consistently imposed sanction under rule 9.20(d) is disbarment. (Cf. *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131 [applying former rule 955(d) (now rule 9.20(d))]; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296, and cases there cited [applying former rule 955(d) (now rule 9.20(d))].)

Among other things, a suspended attorney's timely compliance with rule 9.20(a) performs the critical function of ensuring that all concerned parties, including clients, cocounsel, opposing counsel, courts, agencies, and other tribunals, promptly learn of the attorney's actual suspension and consequent disqualification to act as an attorney. When an attorney fails to file a rule 9.20(c) compliance affidavit, neither this court nor the Supreme Court can determine whether this critical function has been performed. In addition, compliance with rule 9.20(c) keeps this court and the Supreme Court apprised of the location of attorneys who are subject to their disciplinary authority. (Cf. *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187 [construing former rule 955(c) (now rule 9.20(c))].) Respondent's unexplained failure to file a rule 9.20(c) compliance affidavit strongly suggests a conscious disregard for both this court's and the Supreme Court's efforts to fulfill their respective responsibilities to oversee the practice of law in the State of California. Moreover, there are no mitigating circumstances, much less compelling mitigating circumstances, that would warrant a departure from the ordinary sanction of disbarment under rule 9.20(d).

V. Discipline Recommendation

Accordingly, the court recommends that respondent **LELAND DALE STEPHENSON** be **DISBARRED** from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

VI. Rule 9.20 and Costs

The court further recommends that **LELAND DALE STEPHENSON** again 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.

The court further 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.

VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **LELAND DALE STEPHENSON** be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: October __, 2008.

LUCY ARMENDARIZ
Judge of the State Bar Court