

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 08-N-13141-LMA
	)	08-O-13788-LMA (Cons.)
<b>JORGE EDUARDO PORTUGAL LEON</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND</b>
<b>Member No. 117055</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT ORDER</b>
A Member of the State Bar.	)	

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**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 JORGE EDUARDO PORTUGAL LEON did not comply with rule 9.20 of the California Rules of Court<sup>1</sup> and with certain probation conditions as ordered by the Supreme Court. The State Bar was represented by Maria Oropeza. 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**

**A. Case no. 08-N-13141**

The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent on October 2, 2008, 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,

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<sup>1</sup>Future references to rule are to this source. Prior to January 1, 2007, rule 9.20 was numbered rule 955.

subd. (c)<sup>2</sup>; 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.

On October 8, 2008, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on November 17, 2008. Respondent did not appear at the status conference. On November 18, 2008, an order memorializing the status conference was properly served on him at his official address.

Respondent did not file a response to the NDC. On October 28, 2008, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek minimum discipline of disbarment if he was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).) On October 29, 2008, the State Bar filed and properly served on respondent an amended notice of motion for entry of default by certified mail, return receipt requested, at his official address.

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on November 18, 2008, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order. This correspondence was returned marked "Returned to Sender. Unclaimed."

**B. Case no. 08-O-13788**

The NDC was filed and properly served on respondent on November 3, 2008, by certified mail, return receipt requested, at his official address.

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<sup>2</sup>Future references to section are to this source.

On November 6, 2008, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on November 17, 2008. Respondent did not appear at the status conference. On November 18, 2008, an order memorializing the status conference was properly served on him at his official address.

Respondent did not file a response to the NDC. On December 9, 2008, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. The motion advised respondent that the State Bar would seek minimum discipline of disbarment if he was found culpable.

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on December 26, 2008, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order.

On January 6, 2009, the court issued an order consolidating the two cases.

The court's and the State Bar's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process.

*(Jones v. Flowers, et al. (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)*

The case was submitted for decision on January 20, 2008.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The court's findings are based on the allegations contained in the NDCs 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.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

**A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 3, 1984, and has been a member of the State Bar at all times since.

**B. Case no. 08-N-13141 (The Rule 9.20 Matter)**

**1. Facts**

On April 15, 2008, the California Supreme Court filed order number S161064 (April 15 order) in State Bar Court case numbers 02-O-12537; 02-O-14286; 04-O-14285; 06-O-10060 (Cons.) in which respondent was ordered, among other things, to be actually suspended for two years and until he made restitution and complied with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.<sup>3</sup> He was also ordered to comply with rule 9.20(a) and (c) of the California Rules of Court within 30 and 40 days, respectively, of the effective date of the order. The Supreme Court promptly sent respondent a copy of its order upon filing.<sup>4</sup> A copy of it also was attached to the NDC in this proceeding. The order was effective on May 15, 2008. (Rule 9.18(a).<sup>5</sup>) Accordingly, respondent was to comply with rule 9.20(c) no later than June 24.

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<sup>3</sup> Future references to standard or std. are to this source.

<sup>4</sup> Although 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 his duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

<sup>5</sup> Prior to January 1, 2007, this rule was numbered rule 953(a).

On June 20, 2008, respondent submitted a defective rule 9.20 compliance declaration to the State Bar. It was defective because he checked off two boxes in answer to each question on the compliance declaration form, leading to inconsistent statements that did not show that respondent had complied with rule 9.20(a). In answer to question number one, he checked the box stating that he had notified all clients as well as the box stating that he had no clients. In answer to question number two, he checked the box stating that he had returned client papers or property but also checked the box stating that he had no clients entitled to the return of papers or property. In response to question number three, he checked the box stating that he had refunded unearned fees and the one stating that he had earned all of the fees paid to him. In question number four, he checked the box stating that he had notified opposing counsel in pending cases and also the box stating that he did not represent clients in pending matters. The instructions to the compliance declaration form specifically state: “Answer each question by checking one box per question.” (Emphasis in original.)

On June 24 and July 28, 2008, the State Bar’s Office of Probation (OP) sent respondent letters notifying him that his rule 9.20 compliance declaration had been rejected, explaining the defects and advising him that he could file a corrected declaration. Respondent received each of these letters shortly after they were mailed.

On August 26 and 27 and September 3, 2008, respondent had conversations with the OP about the rejection of his compliance declaration. On August 27, 2008, the OP explained the reasons for the rejection. On September 3, 2008, he was encouraged to file a corrected declaration.

On August 29, 2008, the OP mailed and respondent received additional copies of the June 24 and July 28 letters.

As of October 2, 2008, respondent had not filed with the State Bar Court the declaration required by rule 9.20(c). He still has not done so.<sup>6</sup> He has offered no explanation for his noncompliance with rule 9.20(c).

## **2. Legal Conclusions**

There is clear and convincing evidence that respondent wilfully violated the April 15 order directing his compliance with rule 9.20.<sup>7</sup> 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.

Respondent was also charged with violating section 6103. It is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct. “There is ‘little, if any, purpose served by duplicative allegations of misconduct.’” (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Accordingly, this charge is dismissed with prejudice.

## **C. Case no. 08-O-13788 (The Probation Violation Matter)**

### **1. Facts**

As previously noted, on April 15, 2008, the California Supreme Court filed order S161064 imposing discipline including conditions of probation. The order, issued subsequent to disciplinary proceedings in which respondent participated, was properly served on respondent at

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<sup>6</sup>Pursuant 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.

<sup>7</sup>Wilfulness 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.)

his official address pursuant to rule 8.532(a) of the California Rules of Court and became effective on May 15, 2008.

Respondent had notice and was aware of the April 15 order and of the conditions of probation, including the following, with which respondent did not comply:

(a) During the period of probation, submitting a written report to the OP on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). Respondent has not submitted the quarterly reports due on the 10<sup>th</sup> of July and October 2008; and, in relevant part,

(b) Provide evidence to the OP with each quarterly report that he is obtaining psychiatric or psychological treatment at a minimum of two times per month. Respondent has not provided any evidence to the OP that he has complied with this requirement.

On May 29, 2008, the OP sent and respondent received a letter reminding him of all of the conditions of probation.

On June 12, 2008, respondent and the OP had a conversation in which they reviewed all of the conditions of probation.

During an August 27, 2008, telephone conversation, the OP advised respondent to file the missing probation report and evidence of mental health treatment.

On August 29, 2008, the OP sent and respondent received a letter requesting that he immediately submit the missing probation report and evidence of mental health treatment.

During a September 3, 2008, telephone conversation, the OP and respondent discussed his duty to submit the missing probation report and evidence of mental health treatment.

Respondent did not comply with the conditions of probation as set forth above.

## **2. Legal Conclusions**

Section 6068, subdivision (k) requires an attorney to comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

By not submitting the July 10 and October 10, 2008 quarterly reports along with evidence of mental health treatment, respondent did not comply with disciplinary probation conditions in wilful violation of section 6068, subdivision (k).

## **IV. FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(i).) As previously discussed, in S161064, the Supreme Court imposed discipline consisting of actual suspension for two years and until respondent complied with standard 1.4(c)(ii) and made restitution, among other things. In that matter, respondent was found culpable of misconduct in 13 client matters, including not performing services; not communicating with clients; and not returning unearned fees. In aggravation, the court considered multiple acts of misconduct and client harm. Mitigating factors included no prior discipline; candor and cooperation; commencement of restitution; changes in office staff; participating in the Lawyers' Assistance Program; and assisting some clients by initiating ineffective assistance of counsel complaints to secure new hearings for them.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with rule 9.20(c) or submitting the missing quarterly reports and evidence of mental health treatment even after the OP tried to obtain his cooperation and 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).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his 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 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 he has been given the opportunity to do so. He 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 JORGE EDUARDO PORTUGAL LEON be disbarred from the practice of law in the State of California and that his 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 his 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: April \_\_\_\_\_, 2009

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LUCY ARMENDARIZ  
Judge of the State Bar Court