

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 08-N-13625-PEM
)	
G. SCOTT CHRISTENSON)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 135434)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default disciplinary matter, respondent G. Scott Christenson (“respondent”) is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20, as ordered by the California Supreme Court on June 12, 2008, in case number S162725 (State Bar Court Case No. 03-O-02401 (04-O-15650)).

The court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”). The Notice of Disciplinary Charges (“NDC”) was filed and properly served via certified mail, return receipt requested, on respondent at his official membership records address on October 29, 2008.

Respondent appeared before the court, via telephone, at two status conferences on December 8 and 15, 2008. At the first of these two status conferences, respondent was ordered

to file his response to the NDC by December 12, 2008. After failing to do so, the court, at the December 15, 2008 status conference, ordered respondent to file his response to the NDC by December 19, 2008. Respondent failed to file a response to the NDC by December 19, 2008, or anytime thereafter. (Rules Proc. of State Bar, rule 103) Respondent also failed to appear at the next scheduled status conference and did not further participate in these proceedings.

On motion of the State Bar, respondent's default was entered on January 20, 2009. A copy of the order of entry of default was properly mailed to respondent's official membership records address. Said mailing was subsequently returned to the State Bar Court as undeliverable. Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e)¹ on January 23, 2009.

The court took this matter under submission on February 9, 2009, following the filing of the State Bar's brief on culpability and discipline which requested waiver of a hearing in this matter.

III. Findings of Fact and Conclusions of Law

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).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on August 15, 1988, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

¹ All references to section(s) are to the Business and Professions Code, unless otherwise indicated.

B. Violation of California Rules of Court, Rule 9.20

On June 12, 2008, the Supreme Court of California filed an order in case number S162725 (State Bar case number 03-O-02401, et al.). The June 12, 2008 order required respondent to comply with California Rule of Court 9.20 (“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 order.

Notice of the order was duly and properly served upon respondent in the manner prescribed by California Rule of Court 8.532, subdivision (a) at respondent’s address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1

The June 12, 2008 order became effective on or about July 12, 2008, and at all times thereafter remained in full force and effect.

The deadline for respondent to comply with rule 9.20, subdivision (c) expired on or about August 21, 2008. Respondent failed to comply with rule 9.20, subdivision (c) prior to the August 21, 2008 deadline. As of October 29, 2008, respondent still had not complied with rule 9.20, subdivision (c).²

Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. “Willfulness” in the context of rule 9.20 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341 [referring to the rule by its previous number designation, rule 955].)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, subdivision (c), as ordered by the Supreme Court.

² There is no indication in the record that respondent has since complied with rule 9.20, subdivision (c).

C. Violation of Business and Professions Code Section 6103

Respondent's willful failure to comply with rule 9.20, subdivision (c), constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was offered or received, and none can be gleaned from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

B. Aggravation

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has two prior impositions of discipline.

On May 27, 2005, the California Supreme Court issued an order (S132286) suspending respondent from the practice of law for one year, stayed, with a 60-day actual suspension and until (1) restitution and (2) the State Bar Court grants a motion to terminate respondent's actual suspension. In this default proceeding, respondent was found culpable of failing to return unearned fees and failing to cooperate with the State Bar. In aggravation, respondent committed multiple acts of wrongdoing, harmed his client, demonstrated indifference toward rectification, and failed to participate in the disciplinary proceedings. In mitigation, respondent had no prior record of discipline.

On June 12, 2008, the California Supreme Court, in the underlying matter, issued an order (S162725) suspending respondent from the practice of law for one year, stayed, with a three-year period of probation including a 120-day actual suspension and until restitution. In this

³ All further references to standard(s) are to this source.

proceeding, respondent stipulated that, in two client matters, he failed to perform legal services with competence, failed to communicate, failed to provide an accounting, and failed to return unearned fees. In aggravation, respondent committed multiple acts of wrongdoing and had a prior record of discipline. In mitigation, respondent was cooperative and the State Bar delayed the finalization of the stipulation.

Respondent's failure to participate in the present proceedings constitutes an additional factor in aggravation. (Std. 1.2(b)(vi).)

V. Discussion

Respondent's willful failure to comply with rule 9.20, subdivision (c), is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure 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* (1988) 45 Cal.3d 1181, 1187.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given opportunities to do so. Therefore, his 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 willful disobedience of an order of the California Supreme Court.

VI. Recommended Discipline

The court recommends that respondent G. Scott Christenson 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 rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of its order imposing discipline in this matter.⁴

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 section 6140.7 and as a money judgment.

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

Dated: May ____, 2009

PAT McELROY
Judge of the State Bar Court

⁴ Respondent 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 at p. 341.)