

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case Nos.: 08-N-13737-PEM
)
QUINCY N. HOANG,)
)
Member No. 219421,) DECISION AND ORDER OF
) INVOLUNTARY INACTIVE
) ENROLLMENT¹
A Member of the State Bar.)

I. Introduction

In this rule 9.20 proceeding (former rule 580 et seq., Rules Proc. of State Bar), which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges that respondent **QUINCY N. HOANG** willfully failed to comply with California Rules of Court, rule 9.20 (rule 9.20) as ordered by the Supreme Court. Specifically, the State Bar charges that respondent failed to file a rule 9.20(c) compliance affidavit with the State Bar Court.²

¹ The Rules of Procedure of the State Bar of California were amended effective January 1, 2011. Nonetheless, the court orders the application of the former Rules of Procedure of the State Bar based on a determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 3.)

² Rule 9.20(c) provides: “Within such time as the order may prescribe after the effective date of the member's disbarment, suspension, or resignation, the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully [performed the acts specified in rule 9.20(a)]. The affidavit must also specify an address where communications may be directed to the disbarred, suspended, or resigned member.”

For the reasons set forth *post*, the court finds respondent culpable of the charged misconduct and concludes that the appropriate level of discipline is disbarment. Accordingly, the court will recommend that respondent be disbarred. Moreover, in light of its disbarment recommendation, the court must order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding. (Bus. & Prof. Code, § 6007, subd. (c)(4).)³

The State Bar was represented by Deputy Trial Counsel Mark Hartman. Respondent initially appeared and participated in this proceeding in *propria persona*, but as noted in more detail *post*, respondent's default was entered because he failed to appear at trial.

II. Pertinent Procedural History

On November 3, 2008, the State Bar filed the notice of disciplinary charges (NDC) in this proceeding and, in accordance with section 6002.1, subdivision (c), properly served a copy of the NDC on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar of California (official address).

Respondent filed a response to the NDC on January 5, 2009. Then, on January 9, 2009, respondent filed a first amended response to the NDC.

At a status conference on January 12, 2009, which respondent attended, the court set April 8 and 9, 2009, as the dates of a two-day trial in this proceeding. And, on January 14, 2009, the court properly served the parties with written notice of the April 8 and 9, 2009 trial dates. Thus, respondent was given substantially more than the required 30-day advance written notice of the trial setting. (Former rule 212(a), Rules Proc. of State Bar.) On March 18, 2009, the State Bar served on respondent a notice to attend trial in person. (Former rule 210, Rules Proc. of State Bar.) Respondent, however, failed to appear on April 8, 2009, when his case was called

³ Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

for trial. Accordingly, on April 8, 2009, the court filed an order entering respondent's default (former rule 201(b), Rules Proc. of State Bar) and, in accordance with section 6007, subdivision (e)(1), ordering respondent be involuntarily enrolled as an inactive member of the State Bar of California effective April 11, 2009.⁴

On April 14, 2009, respondent tendered his written resignation from membership in the State Bar of California with disciplinary charges pending. Accordingly, on April 16, 2009, the court filed an order directing the parties to show cause why the present proceeding should not be abated pending the Supreme Court's action on respondent's resignation with charges pending.

On April 16, 2009, the State Bar filed a brief on culpability and discipline. On April 21, 2009, the State Bar filed an objection to the abatement of this proceeding.

On April 27, 2009, over the State Bar's objection, the court filed an order abating this proceeding pending the Supreme Court's action on respondent's resignation.

On January 12, 2011, the Supreme Court filed an order declining to accept respondent's resignation. Accordingly, this court unabated the present proceedings and took the case under submission for decision on February 8, 2011.

III. Findings of Fact and Conclusions of Law

Under section 6088 and former rules 200(d)(1)(A) and 201(c) of the Rules of Procedure of the State Bar, upon the entry of respondent's default, the factual allegations (but not the charges or conclusions) set forth in the NDC were deemed admitted and no further proof was required to establish the truth of those facts. Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Those factual findings establish the following disciplinary violations by clear and convincing evidence.

⁴ Unless respondent's default is set aside, respondent will remain on involuntary inactive enrollment until the effective date of the Supreme Court order in this proceeding. (§ 6007, subd. (e)(2).) Of course, inactive members of the State Bar of California, like respondent, cannot lawfully practice law. (§ 6126, subd. (b); see also § 6125.)

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 4, 2002, and has been a member of the State Bar of California since that time.

B. Failure to File a Compliance Affidavit

1. Findings of Fact

On January 10, 2008, the Supreme Court filed an order in case number S157880 (State Bar Court case number 06-O-12856), styled *In re Quincy N. Hoang on Discipline (Hoang I)* in which the Supreme Court, inter alia, placed respondent on one year's stayed suspension and seventy-five days' (actual) suspension that continues until (1) respondent pays \$1,405 in restitution (plus interest) to a former client for unearned fees respondent failed to return and (2) respondent makes and the State Bar Court grants a motion to terminate his suspension (rule 205, Rules Proc. of State Bar). In its January 10, 2008 order in *Hoang I*, the Supreme Court also ordered that, if respondent remained suspended for 90 or more days, respondent must comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court's order.

After the Supreme Court filed its January 10, 2008 order in *Hoang I*, the Clerk of the Supreme Court promptly served a copy of the order on respondent by mail to his official address. (Cal. Rules of Court, rules 8.532(b), 9.18(b).) Shortly thereafter, respondent actually received that service copy of the Supreme Court's order. (See Evid. Code, § 641 [mailbox rule].)

The Supreme Court's January 10, 2008 order became effective on February 9, 2008 (Cal. Rules of Court, rule 9.18(b)) and has continuously remained in effect since that time. And respondent's deadlines for performing the acts specified in subdivisions (a) and (c) of rule 9.20 were June 8, 2008, and June 18, 2008, respectively.

As of November 3, 2008, the date on which the State Bar filed the NDC in this proceeding, respondent had still not filed a rule 9.20(c) compliance affidavit (i.e., an affidavit stating that he had performed the acts specified in rule 9.20(a) and setting forth an address for future communications).

2. Conclusions of Law

In the NDC, the State Bar charges that, “By failing to file the compliance affidavit within the time specified in the [Supreme Court’s] January 10, 2008 order, respondent failed to obey the order in willful violation of Business and Professions Code section 6103 and California Rule of Court 9.20 subdivision (c).” Section 6103 provides: “A willful disobedience or violation of an order of the court 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. . . [constitutes cause] for disbarment or suspension.”

Without question, respondent was required to file a rule 9.20(c) compliance affidavit even if he had no law practice, clients, or pending cases on January 10, 2008 -- the date on which the order directing respondent’s compliance with rule 9.20 was filed. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341 [applying former rule 955 of the California Rules of Court (now rule 9.20)].) In the context of rule 9.20, the term “willful” does not require bad faith or even actual knowledge of the provision violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

The record clearly establishes that respondent willfully violated both section 6103 and rule 9.20(c) when he failed to file a compliance affidavit with the Clerk of the State Bar Court no later than June 18, 2008. However, the section 6103 violation is duplicative of the rule 9.20(c) violation, which is the only violation that is specifically and comprehensively addressed by rule 9.20 itself. Rule 9.20(d) expressly provides, inter alia, that “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. Additionally, such failure may be punished as a contempt or a crime.” In sum, because the section 6103 and the rule 9.20(c) violations are duplicative, the court gives no additional weight to the section 6103 violation in determining the appropriate level of discipline. (*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”].)

IV. Aggravation and Mitigation

A. Aggravation

1. Prior Records of Discipline

Respondent has two prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁵

Respondent’s first prior record of discipline is the Supreme Court’s January 10, 2008 order in *Hoang I*. Even though respondent had actual knowledge of the underlying State Bar Court disciplinary proceeding in *Hoang I*, respondent permitted his default to be entered in that proceeding because he failed to file a response to the NDC in that case.

The Supreme Court imposed the discipline in *Hoang I* because, in a single client matter, respondent (1) failed to perform legal services competently (Rules Prof. Conduct, rule 3-110(A)); (2) failed to adequately communicate with the client (§ section 6068, subd. (m)); (3) failed to refund about \$1,400 in unearned fees (Rules Prof. Conduct, rule 3-700(D)(2)); and (4) failed to obey a superior court order to appear at a sanctions hearing (§ 6103).

Respondent’s second prior record of discipline is the Supreme Court’s October 7, 2008 order in case number S165780 (State Bar Court case number 07-O-13740, etc.), styled *In re Quincy N. Hoang on Discipline (Hoang II)*. In that October 7, 2008 order, the Supreme Court,

⁵ All further references to standards are to this source.

inter alia, placed respondent on two years' stayed suspension and two years' probation on conditions, including one year's actual suspension. In *Hoang II*, the Supreme Court imposed the discipline on respondent in accordance with a stipulation as to facts, conclusions of law, and disposition which respondent and the State Bar entered into and that the State Bar Court approved in an order filed on June 11, 2008, in case number 07-O-13740, etc. That June 2008 stipulation establishes that, in four separate client matters, respondent was culpable of the following 11 counts of misconduct: two counts of engaging in the unauthorized practice of law while he was involuntarily enrolled as an inactive member of the State Bar (§§ 6068, subd. (a), 6126, subd. (b), 6106); two counts of failing to adequately communicate with the clients (§ 6068, subd. (m)); two counts of failing to refund unearned fees (Rules Prof. Conduct, rule 3-700(D)(2)); one count of failing to perform legal services competently (Rules Prof. Conduct, rule 3-110(A)); and four counts of failing to cooperate in State Bar disciplinary investigations (§ 6068, subd. (i)).

B. Mitigation

Because respondent did not appear in this proceeding, he did not establish any mitigating circumstances. Nor is any mitigating circumstance otherwise apparent from the record.

V. Discussion

In determining the appropriate level of discipline, the court ordinarily looks first to the standards for guidance (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and then looks to caselaw (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580) However, as the review department aptly noted more than 15 years ago, the standards do not address the appropriate level of discipline in rule 9.20

proceedings. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.)
Instead, rule 9.20(d) does. (*Ibid.*)

Even though rule 9.20(d), which is quoted in part *ante*, provides for the lesser sanctions of suspension and probation revocation, caselaw makes clear that, at least in the absence of *compelling* mitigation, disbarment is ordinarily the appropriate degree of discipline for violating a provision of rule 9.20. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 296, and cases there cited.)

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 suspension and consequent disqualification to act as an attorney. When the attorney fails to file a rule 9.20(c) compliance affidavit, this court and the Supreme Court cannot readily determine whether this critical function has been performed. In addition, compliance with rule 9.20(c) ensures that this court and the Supreme Court are apprised of the locations of attorneys who are subject to their disciplinary authority. (*Lydon v. State Bar*, *supra*, 45 Cal.3d at p. 1187.)

Respondent's unexplained failure to file a rule 9.20(c) compliance affidavit strongly suggests a conscious disregard for 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 is no mitigation, much less *compelling* mitigation, that would warrant a departure from the ordinary and most consistently imposed sanction for violating a provision of rule 9.20 -- disbarment.

///

///

VI. Recommendations

A. Discipline

The court recommends that respondent **QUINCY N. HOANG**, State Bar Number 219421, 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.

B. California Rules of Court, Rule 9.20

The court further recommends that **QUINCY N. HOANG** be ordered to again 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 proceeding.

C. Costs

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

VII. Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **QUINCY N. HOANG** be involuntarily 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 5.111(D)(1)).

Dated: April ____, 2011.

PAT McELROY
Judge of the State Bar Court