

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **08-N-14812-DFM**
)
ANA MARIA PATINO,)
) **DECISION & ORDER OF**
Member No. 86606,) **INACTIVE ENROLLMENT**
)
A Member of the State Bar.)

1. Introduction

In this rule 9.20 proceeding, which proceeded by default, Deputy Trial Counsel Mia R. Ellis (DTC Ellis) appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent **ANA MARIA PATINO** did not appear in person or by counsel.

In the notice of disciplinary charges (NDC), the State Bar charges that respondent willfully failed to comply with California Rules of Court, rule 9.20 (rule 9.20) as ordered by the State Bar Court Review Department in its October 14, 2008, interim suspension order in *In the Matter of Ana Maria Patino*, State Bar Court case number 06-C-13424 (*Patino III*). Specifically, the State Bar charges that respondent failed to file a rule 9.20(c) compliance affidavit with the State Bar Court.¹

¹ 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.”

As set forth *post*, the court finds that respondent willfully failed to file a rule 9.20(c) compliance affidavit as charged. Furthermore, the court concludes that the appropriate level of discipline is disbarment. Because the court recommends respondent's disbarment, it also orders that she be involuntarily enrolled as an inactive member of the State Bar of California. (Bus. & Prof. Code, § 6007, subd. (c)(4).)²

II. Pertinent Procedural History

On February 5, 2009, the State Bar filed the NDC in this proceeding. On February 17, 2009, the State Bar properly served a copy of the NDC on respondent by certified mail, return receipt requested, at her latest address shown on the official membership records of the State Bar of California (official address). The United States Postal Service (Postal Service), however, returned that service copy of the NDC to the State Bar undelivered and stamped “Unable to Forward” and “No Forwarding Order on File.”

Even though respondent did not receive the service copy of the NDC, service on respondent was complete when the State Bar mailed the service copy to respondent at her official address by certified mail, return receipt requested. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [service in a State Bar Court proceeding is deemed complete when mailed even if the attorney does not receive the pleading]; 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 (now rule 9.20)].) Moreover, because the State Bar made multiple additional efforts to locate respondent so as to provide her with has actual notice of this proceeding, the court finds that all

² Unless otherwise noted, all further statutory references are to the Business and Professions Code.

due process requirements have been satisfied.³ (*Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent was required to file a verified response to the NDC no later than March 16, 2009. (Rules Proc. of State Bar, rules 103(a), 584; see also Rules Proc. of State Bar, rule 63 [computation of time].) Respondent failed to do so. Therefore, on March 17, 2009, the State Bar filed a motion for the entry of respondent's default and properly served a copy of that motion on respondent at her official address by certified mail, return receipt requested. Respondent never filed a response to the State Bar's motion for entry of default. Nor did respondent ever file a verified response to the NDC.

Because all of the statutory and rule prerequisites were met, this court filed an order on April 6, 2009, in which it entered respondent's default and, as mandated by section 6007, subdivision (e)(1), ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California.

On April 23, 2009, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. The next day, the court took the case under submission for decision without a hearing.

III. Findings of Fact and Conclusions of Law

The court's findings are based on (1) the allegations contained in the NDC, which have been deemed admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule

³ Initially, on February 5, 2009, the State Bar mailed a courtesy copy of the NDC to respondent at an alternative address that it has for her on Lindsey Lane in Cypress, California. The courtesy copy of the NDC was not returned to the State Bar by the Postal Service. Accordingly, the court finds that respondent actually received that copy of the NDC. (Evid. Code, § 641 [mailbox rule].) The State Bar also took a number of other measures to notify respondent of this proceeding. Those measures are set forth in the declaration of DTC Ellis, which declaration is attached to the State Bar's March 17, 2009, motion for entry of respondent's default.

200(d)(1)(A)); (2) exhibits 1 and 2 to the State Bar's April 23, 2009, request for waiver of hearing and brief on culpability and discipline (which exhibits are copies of respondent's two prior records of discipline); and (3) the facts in this court's official file in this matter (Rules Proc. of State Bar, rule 585).

Jurisdiction

Respondent was admitted to the practice of law in this state on May 31, 1979, and has been a member of the State Bar of California since that time.

Rule 9.20 Violation

In its October 14, 2008, order in *Patino III*, the review department placed respondent on interim suspension effective November 3, 2008, because she was convicted of violating Penal Code section 646.9, subdivision (a) (stalking), a felony that may or may not involve moral turpitude. (§ 6102, subs. (a), (b).) That order has remained in effect since it was filed on October 14, 2008. In the order, the review department also ordered respondent 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 to 40 days, respectively, after the November 3, 2008, effective date of her interim suspension.⁴

On October 14, 2008, a case administrator for the State Bar Court properly served a copy of the review department's October 14, 2008, order on respondent, and respondent actually received that copy of the order.

⁴ The review department filed its October 14, 2008, order in *Patino III* under the authority assigned to it in California Rules of Court, rule 9.10(a) and Rules of Procedure of the State Bar, rule 320(a). Under those two rules, the review department “exercises statutory powers under Business and Professions Code sections 6101 and 6102 with respect to the discipline of attorneys convicted of crimes.” (Cal. Rules of Court, rule 9.10(a).) The assigned power “includes the power to place attorneys on interim suspension under subdivisions (a) and (b) of section 6102, and the power to vacate, delay the effective date of, and temporarily stay the effect of such orders.” (Cal. Rules of Court, rule 9.10(a).)

Under the terms of the review department's October 14, 2008, order, respondent was required to perform the acts specified in rule 9.20(a) no later than December 3, 2008, and to file a rule 9.20(c) compliance declaration in the State Bar Court no later than December 13, 2008.

The record establishes, by clear and convincing evidence, that respondent willfully failed to comply with rule 9.20(c) as ordered because she never filed with the State Bar Court a rule 9.20(c) compliance affidavit (i.e., an affidavit stating that she performed the acts specified in rule 9.20(a) and setting forth an address for future communications). (Cal. Rules of Court, rule 9.20(d).) Respondent was required to file a rule 9.20(c) compliance affidavit even if she had no law practice, clients, or pending cases on October 14, 2008, which is the date on which the review department 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)].)

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)⁵

Prior Discipline

Respondent has two prior records of discipline. These two prior records of discipline are aggravating circumstances. (Std. 1.2(b)(i).)

Respondent's first prior record of discipline is the public reproof with conditions that the State Bar Court imposed on her on March 17, 1993, in case number 90-O-17497 (*Patino I*). That public reproof was imposed on respondent because, in a single client matter, respondent (1) failed to promptly release to the client, upon the client's request, all the client's papers and

⁵ All further references to standards are to this source.

property and (2) wilfully and without authority appeared as attorney for a party to an action or proceeding.

Respondent's second prior record of discipline is the Supreme Court's order issued on May 10, 2006, in which the Supreme Court placed respondent on one year's stayed suspension, three years' probation, and thirty days' actual suspension. (*In re Ana Maria Patino on Discipline*, case number S141743 (State Bar Court case number 01-O-04948) (*Patino II*)). In that same order, the Supreme Court also ordered respondent to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the order.

The Supreme Court imposed this discipline on respondent because, in June, July, and August 2001, she engaged in acts involving moral turpitude by misappropriating another attorney's identity and then using it to gain access to Claralaw.net, which is a private subscription service operated under the auspices of the California Public Defenders Association.

Failure to File a Response to the NDC

Respondent's failure to file a response to the NDC in the present proceeding, which allowed her default to be entered, is an aggravating circumstance. (See *Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.)

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) There is no evidence of any mitigating circumstance.

IV. Discussion

In determining the appropriate level of discipline, the court 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.) However, as the review department noted more than 14 years ago, the standards do not directly address the appropriate level of discipline for

violating rule 9.20. (Cf. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295 [applying former California Rules of Court, rule 955 -- now rule 9.20].) Instead, rule 9.20(d) does. In that regard, rule 9.20(d) provides, in relevant part, that an attorney's willful failure to comply with rule 9.20 constitutes cause for disbarment or suspension and for revocation of any pending probation.

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)]; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296, and cases there cited [applying former rule 955(d)].) What is more, at least in the present case, disbarment under rule 9.20(d) is consistent with standard 1.7(b), which provides:

If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

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, this court cannot 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)].)

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, on January 11, 2008, the review department filed an order placing respondent on actual suspension because she failed to take and pass the MPRE within the time period set forth in the Supreme Court's May 10, 2006, order in *Patino II*. Respondent's MPRE suspension became effective on January 28, 2008, and has continuously continued since that time.

Respondent's MPRE suspension is not a prior record of discipline under standard 1.2(b)(i). (*In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 331.) Nonetheless, respondent's MPRE suspension is yet another indication that she is either unwilling or unable to comply with court orders regarding her professional conduct. Therefore, her MPRE suspension is relevant to this court's determination of the appropriate level of discipline to recommend to the Supreme Court in this proceeding. (*Ibid.*; cf. std. 1.2(b)(iii).)

Finally, 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

Disbarment

The court recommends that respondent **ANA MARIA PATINO** be disbarred from the practice of law in the State of California and that her name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

Rule 9.20

The court further recommends that ANA MARIA PATINO 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.

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 they be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **ANA MARIA PATINO** 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: July ____, 2009.

DONALD F. MILES
Judge of the State Bar Court