

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-O-14290; 08-N-14266 (Cons.)
)	
DAVID MARK CORDREY)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 136671)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this consolidated default matter, **David Mark Cordrey** (respondent) is charged with probation violations and with failing to comply with California Rules of Court, rule 9.20,¹ as ordered by the California Supreme Court on July 31, 2008, in S163891.

In view of respondent's misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing and properly serving on respondent two Notices of Disciplinary Charges (NDCs), as follows:

1. Case No. 08-O-14290 filed December 18, 2008; and
2. Case No. 08-N-14266 filed January 8, 2009.

¹ All references to rule 9.20 are to California Rules of Court, rule 9.20.

Respondent did not file a response to either of the NDCs. (Rules Proc. of State Bar, rule 103.)

On January 13, February 5, and February 24, 2009, the deputy trial counsel assigned to this matter checked the website for the United States Postal Service (USPS) for the delivery status of the mailing containing the NDC in case No. 08-O-14290. On each of the afore-listed dates, the “status” was shown as “Undeliverable as Addressed.” However, as of February 24, 2009, the envelope containing the NDC had not been returned to the State Bar.

On an unspecified date in January 2009, the NDC in case No. 08-N-14266 was returned to the State Bar by the USPS, marked “[r]eturn to sender” with the additional notation, “[c]losed mailbox (1 year).”

On January 22, 2009, the deputy trial counsel assigned to this matter did a computer search for respondent. She found a listing for “David M. Cordrey” at 152 Peck Drive, Beverly Hills, CA 90212 (the Peck Drive address). She also found a listing for “Law Office of David Cordrey” at 468 N. Camden Dr., Beverly Hills, CA 90210 (the Camden Drive address). The telephone number, (310) 285-5378, was also provided. The Camden Drive address was listed as respondent’s official membership records address from approximately 1997 to 2007. Nonetheless, on January 22, 2009, the deputy trial counsel twice tried to call the (310) 285-5378 phone number; but, the calls automatically disconnected after the first ring.

On January 22, 2009, the assigned deputy trial counsel also sent a letter to respondent at the Peck Drive address, informing him that there were State Bar disciplinary matters pending against him and requesting that he contact her at her office telephone number, which she provided. On January 27, 2009, the January 22nd letter was returned to the State Bar by the USPS.

On January 29, 2009, the assigned deputy trial counsel tried calling the telephone number and the extension listed for respondent in an Office of Probation activity log entry, dated January

11, 2007, but received a recorded announcement indicating that she had reached the “Motion Picture Licensing Corporation.” Upon entering the extension that was listed for respondent in the Office of Probation log, a recording stated that the extension was “invalid.”

On February 5, 2009, because of the filing of the second NDC (case No. 08-N-14266) against respondent, the court ordered that case 08-O-14290 be consolidated with case No. 08-N-14266.

On the State Bar’s motion, respondent’s default was entered on March 12, 2009, in the consolidated matters. Respondent was enrolled as an inactive member under Business and Professions Code section 6007(e)² on May 15, 2009. An order of entry of default was sent to respondent’s official membership records address by certified mail, but was returned by the USPS to the court with the notation, “Attempted Not Known.”

On March 25, 2009, the State Bar filed a brief on culpability and discipline in the consolidated matters.

Respondent did not participate in the disciplinary proceedings. The consolidated matters were submitted for decision on April 1, 2009.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDCs 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).)

Respondent was admitted to the practice of law in California on December 7, 1988, and has been a member of the State Bar of California at all times since that date.

² All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

Background – S163891

Respondent's misconduct in these two consolidated matters arises from his failure to comply with a disciplinary order – S163891. The Supreme Court order was filed on July 31, 2008. On July 31, 2008, the California Supreme Court ordered, among other things, that respondent be suspended from the practice of law for three years, that execution of the suspension be stayed, and that he be placed on probation for four years subject to the conditions of probation, including an actual suspension of nine months and until he makes specified restitution, as recommended by the Hearing Department of the State Bar Court in its Decision filed on April 2, 2008 (the April 2 Decision).³ (Supreme Court case No. S163891; State Bar Court case No. 01-O-03875 et al.) The Supreme Court further ordered respondent to comply with rule 9.20 (a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. The order became effective August 30, 2008, and was properly served on respondent.

Among other probation conditions, respondent was required to:

1. Contact the Office of Probation within 30 days after the effective date of discipline and schedule a meeting with respondent's assigned probation deputy to discuss the terms and conditions of probation;

2. Submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation;

³ Paragraph three, subparagraphs (a), (b), and (d) of the NDC in case No. 08-O-14290, incorrectly states that the hearing department's April 2 Decision requires certain of respondent's probation conditions to commence "30 days after the effective date of the April 2 Decision." However, the April 2 Decision only includes "recommended discipline," and does not state that any probation condition must commence "30 days after the effective date of the April 2 Decision." As correctly stated in paragraph four of the NDC, it is Supreme Court order S163891, which requires respondent to comply with the conditions of probation, recommended in the April 2 Decision; and, as stated in paragraph six of the NDC, that Supreme Court order became effective on August 30, 2008. August 30, 2008 is the "effective date of discipline."

3. (a) Obtain, within 30 days after the effective date of the Supreme Court's final disciplinary order an examination of his mental and physical condition with respect to his substance abuse and mental health issue from a qualified practitioner approved by the Office of Probation; (b) commence any help/treatment/monitoring, recommended by the afore-referenced qualified practitioner no later than 30 days after that examination; (c) furnish evidence of his compliance with this condition of probation (examination proof) with each of his quarterly reports; and (d) provide the Office of Probation, upon its request, with medical and confidentiality waivers and access to all of his medical records necessary to monitor this probation condition (waivers and records);

4. Comply with all conditions of parole imposed in the underlying criminal matter, which included the filing of a criminal probation statement (criminal probation statement) concurrently with his quarterly reports; and

5. Provide, with each quarterly report, a description of the status of the legal malpractice judgments of the Achui family against him and all acts respondent has taken to satisfy those judgments (judgment satisfaction proof), in the event that respondent has not previously satisfied the legal malpractice judgments of the Achui family against him.

A. First NDC (Case No. 08-O-14290)

On September 10, 2008, and again on November 3, 2008, the Office of Probation sent letters to respondent, requesting that he provide to the Office of Probation his proof of waivers and records (see paragraph 3, *ante*). Respondent received both the September 10 and November 3, 2008 letters.

Respondent did not contact the Office of Probation to schedule an initial meeting with a probation deputy. Respondent did not file his October 2008 quarterly report. Respondent did not provide his examination proof in October 2008. Additionally, respondent did not provide his

waivers and records to the Office of Probation in response to the September 10 and November 3, 2008 requests sent to him by the Office of Probation. Respondent did not file his criminal probation statement in October 2008. Nor did respondent provide his judgment satisfaction proof in October 2008.

Count 1: Failure to Comply With Probation Conditions (§ 6068, Subd. (k))

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

By not filing the October 2008 quarterly report and the October 2008 criminal probation statement; by not providing to the Office of Probation the October 2008 examination proof, the waivers and records as requested by the Office of Probation, and the October 2008 judgment satisfaction proof; and by not contacting the Office of Probation to schedule an initial meeting with his probation deputy, respondent failed to comply with conditions attached to his probation under S163891 in willful violation of section 6068, subdivision (k).

B. Second NDC (Case No. 08-N-14266) – Violation of Rule 9.20

As stated under “Background – S163891,” *ante*, in California Supreme Court case No. S163891, the Supreme Court ordered, among other things, that respondent comply with rule 9.20, subdivision (a) and (c), within 30 and 40 days, respectively, after the effective date of Supreme Court Order. The order, which was filed on July 31, 2008, became effective August 30, 2008, and was duly served upon respondent.

Rule 9.20(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered under this rule.”

On or about July 31, 2008, the Clerk of the California Supreme Court properly served upon respondent a copy of the Supreme Court order imposing discipline and directing respondent to comply with rule 9.20. Respondent received the Supreme Court order.

Respondent was to have filed the rule 9.20 affidavit (i.e., a declaration of compliance) no later than October 9, 2008, but to date he has not done so and has offered no explanation to this court for his noncompliance. 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.)

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

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

1. In his first prior record, the underlying matter, the California Supreme Court ordered respondent suspended from the practice of law for three years, stayed, with a four-year probationary period, including a nine-month actual suspension

⁴ All further references to standards are to this source.

and until he pays specified restitution. (Supreme Court case No. S163891, filed July 31, 2008; State Bar Court case No. 01-O-03875 et al.) The discipline stemmed from respondent's misconduct in seven matters, involving six different clients. The misconduct included failing to perform legal services competently, failing to return unearned fees, failing to communicate, failing to return a client's file, engaging in the unauthorized practice of law, and driving under the influence of alcohol resulting in a criminal conviction. In mitigation, respondent had no prior record of disciplinary misconduct; promptly took objective steps to spontaneously demonstrate remorse and recognition of wrongdoing; and suffered extreme difficulties in his personal life at the time of the misconduct. In aggravation, respondent's misconduct evidenced multiple acts of wrongdoing.

2. In his second prior record of misconduct, the Hearing Department of the State Bar Court filed its Decision on December 11, 2008, recommending that respondent be suspended for four years, stayed, and that he be actually suspended for two years and until he files and the State Bar Court grants a motion to terminate his actual suspension. Respondent was found culpable of maintaining an unjust action. In aggravation, respondent had a prior record of discipline and his misconduct significantly harmed the administration of justice. There were no mitigating circumstances. (State Bar Court case No. 04-O-14136, filed December 11, 2008.)

Respondent committed multiple acts of wrongdoing, including violating several probation conditions and violating rule 9.20 of the California Rules of Court. (Std. 1.2(b)(ii).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with rule 9.20(c), even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

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 misconduct involved failing to comply with conditions attached to his probation and failing to comply with rule 9.20. The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7, and 2.6.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has two prior records of discipline and no mitigation.

Standard 2.6 provides that culpability of violating section 6068, subdivision (k) will result in suspension or disbarment, depending on the gravity of the offense or the harm to the client.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid

standards.” (*Id.* at p. 251.) The court will look to applicable case law for guidance.

Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment, citing *In the Matter of Babero* (Review Dept. 1993) 2 Cal.State Bar Ct. Rptr. 322 and *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563 in support of its recommendation.

The court agrees with the recommendation of disbarment.

In these two consolidated matters, respondent violated rule 9.20 and failed to comply with several conditions of his probation, in violation of section 6068, subdivision (k). Among his probation violations, respondent failed to submit a quarterly report.

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.) Thus, respondent’s failure to file a quarterly report and comply with several other probation conditions warrants significant discipline.

Moreover, respondent’s willful 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.) 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, supra*, 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.

As noted, *ante*, this is the second disciplinary proceeding in which respondent has failed to participate. Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him, nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

Further, respondent has two prior records of discipline. Under standard 1.7(b), if a member has two prior records of discipline, the degree of discipline in the current proceeding should be disbarment unless the most compelling mitigating circumstances predominate. In the instant matter, respondent did not submit any mitigating evidence.

Accordingly, lesser discipline than disbarment is not warranted. In view of the serious and unexplained nature of respondent's misconduct, the lack of participation in these proceedings, the lack of any mitigating factors, the existence of a prior disciplinary record, and respondent's failure to comply with orders of the California Supreme Court, the court recommends disbarment as the only adequate means of protecting the public and the integrity of the legal profession.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **David Mark Cordrey** 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 California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁵

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 Business and Professions Code 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. (Bus. & Prof. Code, § 6007(c)(4), and Rules Proc. of State Bar, rule 220(c).) The inactive enrollment will become effective three calendar days after service of this order.

Dated: June 9, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court

⁵ 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 337, 341.)