

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>09-N-10045-RAP</b>
	)	
<b>GARY MICHAEL SEGAL</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND</b>
<b>Member No. 116200</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT ORDER</b>
<u>A Member of the State Bar.</u>	)	

**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 Gary Michael Segal failed to comply with rule 9.20 of the California Rules of Court<sup>1</sup> as ordered by the Supreme Court. The State Bar was represented by Brandon K. Tady. 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**

The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent on January 29, 2010, 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,

---

<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 by the United States Postal Service as undeliverable, marked “Attempted – Not Known.”<sup>3</sup>

On February 9, 2010, 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 March 11, 2010. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (h) which indicate that this correspondence was returned as undeliverable.

Respondent did not appear at the status conference. On March 11, 2010, an order memorializing the status conference was properly served on him at his official address. It, too, was returned as undeliverable.

Respondent did not file a response to the NDC. On April 6, 2010, 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).)

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 May 17, 2010, 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 as undeliverable.

---

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

<sup>3</sup> All of the correspondence returned as undeliverable described below bore this notation.

On June 18, 2010, the State Bar filed and properly served its closing brief on respondent by certified mail, return receipt requested, at his official address and at an alternate address in Las Vegas, Nevada.

The State Bar's efforts to locate and 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.)

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

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

#### **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. Facts**

On August 27, 2008, the California Supreme Court filed an order, number S164736 (August 27 order), in State Bar Court case no. 06-J-14297 in which respondent was ordered, among other things, to be actually suspended for 90 days and until he complied with rule 205, Rules Proc. of State Bar. He was also ordered to comply with rule 9.20(a) and (c) within 30 and 40 days, respectively, of the effective date of the order. The order was effective on September 26, 2008. (Rule 9.18(a).<sup>4</sup>) Accordingly, respondent was to comply with rule 9.20(c) no later than November 5, 2008.

---

<sup>4</sup> Prior to January 1, 2007, this rule was numbered rule 953(a).

The Supreme Court promptly sent respondent a copy of its order upon filing.<sup>5</sup> A copy of it also was attached to the NDC in this proceeding.

As of January 29, 2010, respondent had not filed with the State Bar Court the affidavit 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).

### **C. Legal Conclusions**

There is clear and convincing evidence that respondent wilfully violated the Supreme Court's August 27, 2008, order directing his compliance with rule 9.20.<sup>7</sup> This constitutes a violation of rule 9.20(d)<sup>8</sup>, which makes the wilful noncompliance with the provisions of rule 9.20 a cause for disbarment, suspension or revocation of probation, in relevant part.

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

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof.

---

<sup>5</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>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.)

<sup>8</sup>The NDC erroneously referenced a violation of rule It is also recommended that respondent be ordered to comply with the requirements of rule 9.20 (c) instead of (d). (NDC, 2:14 and 3:7.) As the NDC otherwise gives sufficient notice of the violation alleged, this is deemed an insignificant error.

Misconduct,<sup>9</sup> std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(i).) As previously discussed, in S164736, the Supreme Court imposed discipline consisting of two years' stayed suspension with actual suspension for 90 days and until he complied with rule 205, Rules Proc. of State Bar, among other things. In that default matter, respondent, a Nevada attorney, was disciplined in California based on discipline in Nevada for equivalent violations of rules 3-110(A) and 3-700(D)(1) of the Rules of Professional Conduct and section 6068, subdivisions (i), (l) and (m). In aggravation, the court found multiple acts of misconduct and client harm. In mitigation, the court found nearly 16 years of discipline-free practice.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying 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 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

---

<sup>9</sup> Future references to standard or std. are to this source.

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 Gary Michael Segal 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: September 8, 2010

---

RICHARD A. PLATEL  
Judge of the State Bar Court