

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No.: <b>09-N-10730-RAH</b>
	)	
<b>JAMES BRIAN MARKUM</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 170326</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent James Brian Markum (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 December 4, 2008, in S167222 (State Bar Court Case No. 08-O-10471).

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 April 1, 2009. The mailing was returned as undeliverable.

Efforts to contact or locate respondent, both by telephone and through email, were unsuccessful. On motion of the State Bar, respondent's default was entered on June 11, 2009. A

copy of the order of entry of default was properly mailed to respondent's official membership records address.<sup>1</sup> The mailing was subsequently returned as undeliverable. Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e)<sup>2</sup> on June 14, 2009.

Respondent never filed a response to the NDC (Rules Proc. of State Bar, rule 103) and did not participate in the disciplinary proceedings. The court took this matter under submission on July 1, 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 June 2, 1994, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

#### **B. Violation of California Rules of Court, Rule 9.20**

On December 4, 2008, the California Supreme Court filed an order in case number S167222 (Supreme Court order). The Supreme Court order included a requirement that respondent comply with California Rules of Court, rule 9.20 (rule 9.20), by performing 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.

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<sup>1</sup> The State Bar's request that the court take judicial notice of respondent's official membership addresses is hereby granted.

<sup>2</sup> All references to section(s) are to the Business and Professions Code, unless otherwise indicated.

On December 4, 2008, the Clerk of the Supreme Court of the State of California properly served upon respondent a copy of the Supreme Court order. Respondent received the Supreme Court order.

The Supreme Court order became effective on or about January 3, 2009, 30 days after it was filed. Thus respondent was ordered to comply with subdivision (a) and/or (b) of rule 9.20 no later than February 2, 2009, and was ordered to comply with subdivision (c) of rule 9.20 no later than February 12, 2009.

Respondent has failed to file with the clerk of the State Bar Court a declaration of compliance with rule 9.20, subdivisions (a) and (b), as required by rule 9.20, subdivision (c).

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.

#### **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).)<sup>3</sup>

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<sup>3</sup> All further references to standard(s) are to this source.

## **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 August 29, 2006, the California Supreme Court issued an order (S144526) suspending respondent from the practice of law for one year, stayed, with a three-year probationary period for failing to competently perform legal services and failing to refund unearned fees in six client matters. In mitigation, respondent had no prior record of discipline. In aggravation, respondent's misconduct significantly harmed his clients.

On December 4, 2008, the California Supreme Court, in the underlying matter, issued an order (S167222) suspending respondent from the practice of law for 18 months, stayed, with a one-year actual suspension and until: (i) respondent makes restitution, and (ii) the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California. In this default matter, respondent was found culpable of failing to comply with the conditions of his disciplinary probation in S144526. In aggravation, respondent committed multiple acts of wrongdoing, demonstrated indifference toward rectification of or atonement for the consequences of his misconduct, failed to participate prior to the entry of his default, and had a prior record of discipline. No mitigating circumstances were found.

## **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.)

Furthermore, standard 1.7(b) provides that if an attorney is found culpable of misconduct in any proceeding and the member has a record of two prior impositions of discipline, the degree of discipline to be imposed in the current proceeding must be disbarment, unless the most compelling mitigating circumstances clearly predominate. In this matter, respondent has a record of two prior impositions of discipline, and no mitigating circumstances were found.

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 James Brian Markum 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, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of its order imposing discipline in this matter.<sup>4</sup>

## **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.

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<sup>4</sup> 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.)

### **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: September \_\_\_\_\_, 2009

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RICHARD A. HONN  
Judge of the State Bar Court