

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **09-N-11616**
)
HOWARD LAWRENCE RIFKIN) **DECISION AND ORDER OF**
) **INACTIVE ENROLLMENT**
)
Member No. 82671)
)
A Member of the State Bar.)

INTRODUCTION

Respondent Howard Lawrence Rifkin was charged with a single count of misconduct, failing to comply with rule 9.20 of the California Rules of Court as ordered by the California Supreme Court. Respondent failed to participate either in-person or through counsel and his default was entered. The State Bar was represented by Deputy Trial Counsel Mia R. Ellis. The court finds by clear and convincing evidence that respondent is culpable of the charged violation. In view of respondent’s misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

PROCEDURAL HISTORY

The notice of disciplinary charges (NDC) in this case was filed on May 29, 2009, and was properly served on respondent on the same date. Respondent did not file an answer or otherwise participate in the case and his default was entered on September 16, 2009.¹ The matter

¹ As detailed in the declaration attached to the State Bar’s motion for entry of default, in addition to service of the NDC by certified mail, the State Bar took several reasonable steps to notify respondent of this proceeding. (See *Jones v. Flowers* (2006) 547 U.S. 220.)

was submitted for decision on October 6, 2009, after the State Bar waived a hearing and submitted a brief on the issues of culpability and discipline. The exhibits attached to the State Bar's brief are admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Culpability

Pursuant to rule 200(d)(1)(A) of the Rules of Procedure of the State Bar, upon entry of default the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Briefly, those facts show that respondent was admitted to the practice of law in the State of California on November 29, 1978, and has been a member since then.

By order filed December 10, 2008, the California Supreme Court suspended respondent from the practice of law for one year, stayed execution of that suspension on conditions, including a minimum of six months actual suspension. (Supreme Court case no. S167430; State Bar Court case no. 06-O-14390.) The Supreme Court order included a requirement that respondent comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of the rule within 30 and 40 days, respectively, after the effective date of the order. The order was served on, and received by, respondent.

The Supreme Court order became effective on January 9, 2009, and at all times thereafter remained in full force and effect. Respondent was therefore ordered to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than February 8, 2009, and was ordered to comply with subdivision (c) of the rule no later than February 18, 2009. Respondent failed to comply with subdivision (c) of rule 9.20.

The term "willful" in the context of rule 9.20 does not require bad faith or actual knowledge of the provision which is violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

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, 341-342.) Based on the foregoing, the court concludes that respondent willfully failed to comply with rule 9.20 of the California Rules of Court, as ordered by the Supreme Court on December 10, 2008.

Mitigating and Aggravating Circumstances

No mitigating circumstances have been shown. In aggravation, respondent has been disciplined on three prior occasions. By order filed February 14, 1991, the California Supreme Court suspended respondent from the practice of law for 90 days, stayed execution of that suspension and placed him on probation for one year on conditions, including 30 days actual suspension. (Supreme Court case no. S017538; State Bar Court case no. 88-O-12948.) This discipline stemmed from respondent's misconduct in a single client personal injury matter. Respondent stipulated that he failed to perform legal services competently, failed to communicate with his client and made false representations to the client.

The second prior case is the discipline underlying the December 10, 2008, Supreme Court order that gave rise to the present case. Respondent did not participate in this case and his default was entered. Respondent represented a single client in a worker's compensation case and failed to perform services competently, failed to communicate with his client and failed to cooperate with the State Bar in its investigation of the matter.

After the submission of the present case for decision, the Supreme Court disciplined respondent for a third time by order filed November 17, 2009. (Supreme Court case no. S176723; State Bar Court case no. 07-O-13100.)² Respondent did not participate in the case and

² The State Bar did not identify this third prior discipline case in its brief on the issues of culpability and discipline in the present case. However, the court presided over the case and issued the decision. Accordingly, the court will take judicial notice of the case and has

his default was entered. Respondent represented a single client in a worker's compensation case and he failed to perform services competently, failed to communicate with his client, improperly withdrew from representing the client and failed to cooperate with the State Bar in its investigation of the matter. The Supreme Court suspended respondent for four years, stayed execution of that suspension on conditions, including a minimum of two years actual suspension.

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; std 1.3, Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.) Rule 9.20(d) of the California Rules of Court states, in pertinent part: "A suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension."

Respondent's willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Lydon v. State Bar*, supra, 45 Cal.3d at p. 1188; *Powers v. State Bar*, supra, 44 Cal.3d at p. 342.) A violation of the rule undermines the critical prophylactic function of 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.) Moreover, failing to participate in this case 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.)

considered it in determining the appropriate discipline to recommend in the present case. Nevertheless, the court notes that the discipline recommendation here, disbarment, is fully warranted without consideration of this additional aggravating circumstance. A true and correct copy of this court's decision and the Supreme Court's order in this prior case is admitted into evidence as exhibit four.

Respondent's current misconduct, his prior discipline and his failure to participate in this case demonstrate his inability or unwillingness to comply with his professional obligations. As a consequence, disbarment is necessary to protect the public, the courts and the profession.

RECOMMENDATION

It is recommended that respondent Howard Lawrence Rifkin be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys. The court further recommends that respondent 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.

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

ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Howard Lawrence Rifkin, State Bar number 82671, 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. (Rule 220(c), Rules Proc. of State Bar.)

Dated: December _____, 2009

RICHARD A. HONN
Judge of the State Bar Court