

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

|                                   |   |                                 |
|-----------------------------------|---|---------------------------------|
| In the Matter of                  | ) | Case No.: <b>09-N-13309-DFM</b> |
|                                   | ) |                                 |
| <b>ALAN PETER DOVE,</b>           | ) |                                 |
|                                   | ) | <b>DECISION AND ORDER OF</b>    |
| <b>Member No. 168582,</b>         | ) | <b>INVOLUNTARY INACTIVE</b>     |
|                                   | ) | <b>ENROLLMENT</b>               |
| <u>A Member of the State Bar.</u> | ) |                                 |

**INTRODUCTION**

In this default disciplinary matter, respondent **Alan Peter Dove** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20,<sup>1</sup> as ordered by the California Supreme Court on April 3, 2009. In view of respondent’s misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be disbarred from the practice of law.

**PERTINENT PROCEDURAL HISTORY**

On July 17, 2009, the Office of the Chief Trial Counsel of the State Bar of California filed its Notice of Disciplinary Charges (NDC) in this matter. It consists of a single count alleging that respondent failed to comply with a California Supreme Court order requiring respondent to perform the acts set out in paragraph (c) of rule 9.20 of the California Rules of Court.

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<sup>1</sup> All references to rule 9.20 are to California Rules of Court, rule 9.20.

A copy of the NDC was properly served on respondent on July 17, 2009, by certified mail, return receipt requested, addressed to respondent at his official membership records address (official address).<sup>2</sup> On July 24, 2009, the return receipt was returned to the State Bar by the United States Postal Service as undeliverable.

The State Bar subsequently made additional efforts to communicate with respondent, including calling the telephone number listed in respondent's official membership records, and conducting internet searches using Whitepages.com and Google.com. All the State Bar's additional efforts to communicate with respondent proved unsuccessful.

The court finds respondent was properly served with a copy of the NDC and that all due process requirements have been adequately satisfied. (See *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent was required to file a response to the NDC no later than August 11, 2009. (Rules Proc. of State Bar, rules 103(a), 584.) Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.) On August 13, 2009, the State Bar filed a motion for the entry of respondent's default. A copy of said motion was properly served on respondent on August 13, 2009, by certified mail, return receipt requested, addressed to respondent at his official address.

On August 31, 2009, respondent's default was entered. The order of entry of default was properly mailed to respondent's official membership records address. Respondent was enrolled as an inactive member under Business and Professions Code § 6007, subdivision (e), effective September 3, 2009.<sup>3</sup>

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<sup>2</sup> Pursuant to Evidence Code 452, subdivision (h), the court takes judicial notice of respondent's official membership records contact information and address history.

<sup>3</sup> All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

On September 8, 2009 the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. On September 21, 2009, the court took the case under submission for decision without a hearing.

### **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).)

#### **Jurisdiction**

Respondent was admitted to the practice of law in the State of California on December 21, 1993, and has been a member at all times since that date.

#### **Factual Background**

On or about April 3, 2009, the California Supreme Court filed disciplinary Order No. S170199 (the Supreme Court order). The Supreme Court order included a requirement that respondent comply with rule 9.20, California Rules of Court, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Supreme Court order.

On or about April 3, 2009, 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 May 3, 2009, 30 days after it was filed, and at all times thereafter remained in full force and effect. Thus respondent was ordered to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than June 2, 2009, and was ordered to comply with subdivision (c) of rule 9.20 no later than June 12, 2009.

Respondent failed to comply with subdivision (c) of rule 9.20 prior to the June 12, 2009 deadline. In fact, as of the date the NDC was filed—July 17, 2009—respondent had still not complied with subdivision (c) of rule 9.20.<sup>4</sup>

### **Failure to Obey Supreme Court Order to Comply with Rule 9.20**

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.” The term “willful” in the context of rule 9.20, formerly rule 955, does not require bad faith or any evidence of intent. It is not necessarily even dependent on showing the respondent’s knowledge of the Supreme Court’s order requiring compliance. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342; *Hamilton v. State Bar* (1979) 23 Cal.3d 868, 873-874.) 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, supra*, 44 Cal.3d 337, 341.)

Based on the foregoing, the court concludes that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in disciplinary Order No. S170199.

### **Aggravating Circumstances**

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).)<sup>5</sup>

Respondent’s prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has been disciplined once before in the underlying matter, and currently has a

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<sup>4</sup> There is no indication in the record that respondent has since complied with subdivision (c) of rule 9.20.

<sup>5</sup> All further references to standard(s) are to this source.

second disciplinary recommendation pending before the California Supreme Court. (State Bar Court Case Nos. 07-O-12238 and 08-O-13216.)

Respondent's failure to participate in this proceeding, is also an aggravating factor.

### **Mitigating Circumstances**

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.

### **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.)

The standard here for assessing discipline is set out in the first instance in the rule itself. Rule 9.20(d) 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 and for revocation of any pending probation."

Respondent's willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

Respondent has repeatedly demonstrated an unwillingness to comply with his professional obligations. He has also demonstrated an unwillingness to participate in the disciplinary process. As a consequence, 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.

## RECOMMENDED DISCIPLINE

### Disbarment

The court hereby recommends that respondent **Alan Peter Dove** 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.

### Rule 9.20

The court recommends 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.<sup>6</sup>

### 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.

## ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after service of this order.

Dated: November \_\_\_\_\_, 2009

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DONALD F. MILES  
Judge of the State Bar Court

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<sup>6</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 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)