

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **09-N-13811**
)
DEBRA LOUISE KASTELIC) **DECISION AND ORDER OF**
) **INACTIVE ENROLLMENT**
)
Member No. 144682)
)
A Member of the State Bar.)

INTRODUCTION

Respondent Debra Louise Kastelic 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 her default was entered. The State Bar was represented by Deputy Trial Counsel Melanie J. Lawrence. 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 August 13, 2009, and was properly served on respondent on the same date. Respondent did not file an answer or otherwise participate in the case and her default was entered on October 5, 2009.¹ The matter was submitted for decision on October 26, 2009, after the State Bar waived a hearing and

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.)

submitted a brief on the issues of culpability and discipline. The exhibit attached to the State Bar's brief is 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 December 18, 1989, and has been a member since then.

By order filed May 13, 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 75 days actual suspension. (Supreme Court case no. S161732; State Bar Court case no. 06-O-15104.) The Supreme Court order included a requirement that if respondent's actual suspension exceeded 90 days, she was required to 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 120 and 130 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 June 12, 2008, and at all times thereafter remained in full force and effect. Respondent's actual suspension exceeded 90 days and she was therefore ordered to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than October 10, 2008, and was ordered to comply with subdivision (c) of the rule no later than October 20, 2008. 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 May 13, 2008.

Mitigating and Aggravating Circumstances

No mitigating circumstances have been shown. In aggravation, respondent has been disciplined on one prior occasion, which is the discipline underlying the May 13, 2008, Supreme Court order that gave rise to the present case. Respondent did not participate in this prior case and her default was entered. Respondent represented a single client in an estate planning matter and failed to perform services competently, improperly withdrew from employment, failed to return unearned fees and failed to cooperate with the State Bar in its investigation of the matter.

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 her nor her duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.)

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

RECOMMENDATION

It is recommended that respondent Debra Louise Kastelic be disbarred from the practice of law in the State of California and that her 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 Debra Louise Kastelic, State Bar number 144682, 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

PAT E. McELROY
Judge of the State Bar Court