

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case No.: 09-N-14491-PEM  
)  
DONALD EUGENE ROY, ) DECISION AND ORDER OF  
) INVOLUNTARY INACTIVE  
Member No. 96043, ) ENROLLMENT  
)  
)  
A Member of the State Bar. )

I. Introduction

In this default disciplinary matter, respondent **Donald Eugene Roy** 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 S170193 (State Bar Court case No. 07-O-11542).

In view of respondent’s misconduct and the evidence in aggravation, 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

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

address (official address) on October 6, 2009. On November 9, 2009, the mailing was returned by the U.S. Postal service to the State Bar as unclaimed.

On October 15, 2009, Deputy Trial Counsel Treva Stewart (Stewart) caused a letter plus a courtesy copy of the NDC to be sent to respondent by regular first class mail at his official address. On that same date, Stewart attempted to reach respondent by telephone at his official membership records telephone number. The telephone number was out-of-order. Stewart also called directory assistance for the area that includes respondent's official address and requested all telephone listings for respondent. Directory assistance had no alternative phone number for respondent. Finally, Stewart also conducted an internet search on October 15, 2009, but no viable alternative address or phone number was obtained.

On motion of the State Bar, respondent's default was entered on December 2, 2009. The order of entry of default was properly mailed to respondent's official address. Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e),<sup>2</sup> on December 5, 2009.

Respondent never filed a response to the NDC. (Rules Proc. of State Bar, rule 103.)

Respondent did not participate in the disciplinary proceedings. On December 8, 2009, the State Bar filed its brief on discipline. The court took this matter under submission on December 28, 2009.

### **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).)

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<sup>2</sup> All references to sections are to Business and Professions Code, unless otherwise indicated.

**A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 16, 1980, and has been a member of the State Bar since that time.

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

On April 3, 2009, in California Supreme Court case No. S170193 (State Bar Court case No. 07-O-11542), the Supreme Court suspended respondent from the practice of law for one year, stayed the execution of the suspension, and actually suspended him for 180 days and until he makes specified restitution and until the State Bar Court grants a motion to terminate his actual suspension under rule 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered respondent to comply with rule 9.20(a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. The order became effective 30 days after it was filed, i.e., May 3, 2009. Notice of the Supreme Court order was duly served on respondent.

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 pursuant to this rule.”

Notice of the order was properly served upon respondent. (Cal. Rules of Court, rule 9.18(b).)

Respondent was to have filed the rule 9.20 affidavit by June 12, 2009, but to date he has not done so and has offered no explanation to this court for his noncompliance. 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.)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in S170193.<sup>3</sup>

**C. Violation of Business and Professions Code Section 6103**

Respondent's failure to comply with rule 9.20 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

**IV. Mitigating and Aggravating Circumstances**

**A. Mitigation**

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>4</sup>

**B. Aggravation**

There are several aggravating factors. (Std. 1.2(b).)

Respondent's prior record of discipline is an aggravating circumstance. (St. 1.2(b)(i).) In the underlying matter, respondent was suspended for one year, stayed, and was actually suspended for 180 days and until respondent makes specified restitution and until the State Bar Court terminates his actual suspension under rule 205 of the Rules of Procedure of the State Bar. His misconduct included engaging in the unauthorized practice of law, collecting an illegal fee, and committing acts of dishonesty. (Supreme Court case No. 170193, filed April 3, 2009; State Bar Court case No. 07-O-11542.)

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<sup>3</sup> Specifically, rule 9.20(d) provides that a suspended attorney's willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.

<sup>4</sup> All further references to standards are to this source.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply 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 this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

## **V. Discussion**

Respondent's willful 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.) 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.) Respondent has demonstrated an unwillingness to comply with the professional obligation and rules of court imposed on California attorneys, although he has been given opportunities to do so.

Therefore, 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 willful disobedience of the Supreme Court order.

## **VI. Recommendations**

### **A. Discipline**

Accordingly, the court recommends that respondent **Donald Eugene Roy**, 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.

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

It is also recommended 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>5</sup>

**C. Costs**

It is further 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.

**VII. 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. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: March \_\_\_\_\_, 2010

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PAT McELROY  
Judge of the State Bar Court

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<sup>5</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)