

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 09-N-15871-RAH
)	
JAMES MARTIN COOSE,)	
)	DECISION AND ORDER OF
Member No. 154099,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this disciplinary matter, respondent **James Martin Coose** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20,¹ as ordered by the California Supreme Court on June 12, 2009 in case number S148083, based on State Bar Court case number 08-PM-14255 (“the Order”).

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 on respondent at his official membership records address on November 12, 2009. Respondent filed a response to the NDC on December 4, 2009.

The parties entered into a joint stipulation as to facts and admission of documents, which was filed on April 12, 2010. After the hearing on May 7, 2010, the matter was submitted.

¹ References to rules are to the California Rules of Court, unless otherwise noted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in California on October 3, 1991, and has been a member of the State Bar since that time.

B. Violation of California Rules of Court, Rule 9.20

On June 12, 2009, in California Supreme Court case No. S148083 (State Bar Court case No. 08-PM-14255), the Supreme Court revoked respondent's probation and suspended respondent from the practice of law for one year. Among other things, the Supreme Court ordered respondent to comply with rule 9.20, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the Order. The Order became effective July 12, 2009, and was duly served on respondent. Respondent received the Order.

Rule 9.20, subdivision (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."

Respondent was to have filed the rule 9.20 affidavit by August 21, 2009. On July 1, 2009, a probation deputy with the Office of Probation of the State Bar of California, sent a letter to respondent enclosing a copy of the Order, a copy of rule 9.20, rules 580 and 581 of the Rules of Procedure of the State Bar of California, and an affidavit form. The probation deputy informed respondent that his declaration of compliance must be filed with the Review Department of the State Bar Court no later than August 21, 2009.

Respondent did not file a declaration of compliance with the Clerk of the State Bar Court by August 21, 2009.

On September 2, 2009, the probation deputy again sent a letter to respondent reminding him that his declaration was due August 21, 2009, and that if respondent did not file it within one week of the date of the letter, he would be referred to the Office of the Chief Trial Counsel for further disciplinary action. The probation deputy enclosed the same documents as she had previously mailed to respondent on July 1, 2009. Respondent received both these letters from the probation deputy.

On October 21, 2009, the State Bar, by deputy trial counsel Bitu Shasty, sent a letter to respondent, advising him of its intent to file a Notice of Disciplinary Charges based on his failure to comply with rule 9.20. Respondent received deputy trial counsel Shasty's letter.

On December 3, 2009, respondent filed his rule 9.20 declaration.

At trial, respondent credibly explained that, at the relevant times, he moved to Angels Camp, California, from his official membership records address in Texas and his mail was being handled by his former roommate, Sara Musachia. She did not timely provide the mail to him.

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 the Order.²

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ stds. 1.2(e) and (b).)

² Specifically, rule 9.20, subsection (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.

³ Future references to standard(s) or std. are to this source.

A. Mitigation

Respondent cooperated with the State Bar of California by entering into a stipulation as to facts and admission of documents. (Std. 1.2(e)(v).)

Respondent did offer evidence of his good character, but it was not an extraordinary demonstration attested to by a wide range of references in the legal and general communities, and was, therefore, not given any weight. (Std. 1.2(e)(vi).)

Respondent expressed remorse for his failure to comply with rule 9.20, and is therefore, entitled to some mitigation. (Std. 1.2(e)(vii))

B. Aggravation

Respondent's prior record of discipline is a serious aggravating circumstance. (Std. 1.2(b)(i).) Respondent has three prior instances of discipline.

1. On June 12, 2009, in the underlying discipline, respondent's probation was ordered revoked and he was ordered suspended from the practice of law for a period of one year for violating probation conditions in a previous discipline of January 18, 2007 (Supreme Court case No. S148083.) His discipline in this case resulted from multiple failures to comply with the terms of probation, including the failure to contact the Office of Probation, failure to timely submit seven quarterly reports, failure to comply with his restitution obligations and the failure to provide proof of attendance and passage of Ethics School.

2. On January 18, 2007, in the disciplinary matter which underlay the above probation violation, respondent was ordered suspended for one year, stayed, with two years' probation and six months' actual suspension for misconduct involving the violation of rules 3-310(F)(3), 1-320(A), and 3-700(D)(2) of the Rules of Procedure of the State Bar of California; and Business and Professions Code section 6103. (Supreme Court case No. S148083; State Bar Court case No. 05-O-01227.)

3. On April 14, 2005, in Supreme Court case No. S131119, (State Bar Court case No. 04-O-10538), respondent was ordered suspended for one year, stayed, placed on probation for two years, and actually suspended for 30 days, arising out of a violation of Business and Professions Code sections 6068, subdivision (a), 6125 and 6126 and rule 4-200(A) of the Rules

of Procedure of the State Bar of California, as a result of his unauthorized practice of law during an administrative suspension, and the related collection of an illegal fee.

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.) In light of respondent's three prior records of discipline, 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, 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. Recommended Discipline

The court recommends respondent **James Martin Coose** 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, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁴

⁴Respondent 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.)

VII. Costs

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

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under Business and Professions Code 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: July _____, 2010

RICHARD A. HONN
Judge of the State Bar Court