

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: 09-N-16927-PEM
)
WAYNE BUNCH,)
)
Member No. 103093,) DECISION & ORDER OF
) INVOLUNTARY INACTIVE
) ENROLLMENT
)
A Member of the State Bar.)

I. INTRODUCTION

In this rule 9.20 proceeding (Rules Proc. of State Bar, rule 580 et seq.), which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges that respondent **WAYNE BUNCH** willfully failed to comply with California Rules of Court, rule 9.20 (rule 9.20)¹ as directed in the Supreme Court's July 22, 2009 order in *In re Wayne Bunch on Discipline*, case number S173411 (State Bar Court case number 07-O-14169) (Supreme Court's July 22, 2009 order). (Rules Proc. of State Bar, rule 580(b).) Specifically, the State Bar charges that respondent willfully violated rule 9.20(c) by failing to file a rule 9.20(c) compliance affidavit.²

Respondent did not appear in this proceeding either in person or through counsel. The State Bar was represented by Deputy Trial Counsel Erica L. M. Dennings (DTC Dennings).

¹ Rule 9.20 was formerly rule 955 of the California Rules of Court.

² Rule 9.20(c) provides: “Within such time as the order may prescribe . . . , the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully [performed the acts specified in rule 9.20(a)]. The affidavit must also specify an address where communications may be directed to the disbarred, suspended, or resigned member.”

As set forth *post*, the court finds that respondent willfully failed to file a rule 9.20(c) compliance affidavit as charged. Furthermore, the court concludes that the appropriate level of discipline is disbarment. Because the court recommends respondent's disbarment, the court must order that respondent be involuntarily enrolled as an inactive member of the State Bar of California. (Bus. & Prof. Code, § 6007, subd. (c)(4).)³

II. PERTINENT PROCEDURAL HISTORY

On November 19, 2009, the State Bar filed the notice of disciplinary charges (NDC) in this proceeding and, in accordance with section 6002.1, subdivision (c), properly served a copy of the NDC on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar. That service was deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.)

The declaration of DTC Dennings, which is attached to the State Bar's December 21, 2009 motion for entry of respondent's default, establishes that, in addition to serving a copy of the NDC on respondent by certified mail, the State Bar undertook two or three other steps in an attempt to insure that respondent has actual notice of this disciplinary proceeding. Accordingly, respondent was given adequate notice of this proceeding. (*Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent's response to the NDC was to have been filed no later than December 14, 2009. (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time].) Respondent, however, did not file a response. Thus, on December 21, 2009, the State Bar filed, and properly served on respondent, a motion for the entry of

³ Unless otherwise noted, all further statutory references are to the Business and Professions Code.

respondent's default. Thereafter, respondent did not file a response to that motion or to the NDC.

Because all of the statutory and rule prerequisites were met, the court filed an order on January 5, 2010, in which it entered respondent's default and, as mandated by section 6007, subdivision (e)(1), ordered respondent be involuntarily enrolled as an inactive member of the State Bar of California effective January 8, 2010.⁴

On February 1, 2010, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. Thereafter, the court took the case under submission for decision without a hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under Rules of Procedure of the State Bar, rule 200(d)(1)(A), upon entry of default, "The factual allegations set forth in the notice of disciplinary charges [are] deemed admitted. . . and no further proof [is] required to establish the truth of such facts." Accordingly, the court adopts the facts alleged (not the charges) in the NDC as its factual findings. Briefly, those facts together with the certified copy of respondent's prior record of discipline (which is attached to the State Bar's February 1, 2010, request for waiver of hearing and brief on culpability and discipline and which is now admitted into evidence in this proceeding) establish the following facts by clear and convincing evidence.

A. Jurisdiction

Respondent was admitted to the practice of law in this state on June 10, 1982, and has been a member of the State Bar of California since that time.

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⁴ Of course, only active members of the State Bar of California may lawfully practice law in this state. (§§ 6125, 6126.)

B. Culpability

The Clerk of the Supreme Court promptly mailed a copy of the Supreme Court's July 22, 2009 order to respondent once the order was filed. (Cal. Rules of Court, rule 8.532(a); Evid. Code, § 664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) And respondent received that copy of the order. (Evid. Code, § 641 [mailbox rule].)

In the Supreme Court's July 22, 2009 order, respondent was directed to “comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.”

The Supreme Court's July 22, 2009 order became effective on August 21, 2009, which was 30 days after the order was filed (Cal. Rules of Court, rule 9.18(a)), and has continuously been in effect since that time. Thus, respondent was required to perform the acts specified in rule 9.20(a) no later than September 20, 2009, and to file a rule 9.20(c) compliance declaration with the State Bar Court Clerk no later than September 30, 2009. Of course, respondent was required to file a rule 9.20(c) compliance affidavit even if he had no law practice, clients, or pending cases as of July 22, 2009 (i.e., the date on which the Supreme Court order directing respondent to comply with rule 9.20 was filed). (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Respondent never filed a rule 9.20(c) compliance affidavit with the State Bar Court Clerk. In the context of rule 9.20, the term “willful” does not require bad faith or even actual knowledge of the provision violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) In fact, the Supreme Court will disbar an attorney whose failure to keep his State Bar official address current prevented him from learning that he had been directed to comply with rule 9.20. (*Powers v. State Bar, supra*, 44 Cal.3d at pp. 341-342.) Accordingly, the court holds that respondent

willfully violated rule 9.20(c) by failing to file a rule 9.20(c) compliance affidavit.⁵ (Rule 9.20(d).)

C. Aggravation

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).)⁶

Prior Discipline

Respondent has one prior record of discipline. (Std. 1.2(b)(i).) Respondent's prior record of discipline is the Supreme Court's July 22, 2009 order in which it ordered, inter alia, that respondent be suspended for two years, that execution of the two-year suspension be stayed, and that respondent be suspended for a minimum of 120 days and until the State Bar Court grants a motion to terminate his suspension under Rules of Procedure of the State Bar, rule 205. The Supreme Court imposed that discipline on respondent because, in a single client matter, respondent failed to perform legal services competently, improperly withdrew from employment, engaged in the unauthorized practice of law, failed to communicate, failed to account, and failed to cooperate with a State Bar disciplinary investigation.

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⁵ In addition to charging respondent's failure to file a rule 9.20(c) compliance declaration as a willful violation of rule 9.20(c), the State Bar also charges that failure as a willful violation of his duty, under section 6103, to obey court orders requiring him to or forbear an act connected with or in the course of his profession, which he ought in good faith do or forebear. Without question, the section 6103 charge is duplicative and redundant of the rule 9.20(c) charge, which is expressly authorized by rule 9.20(d). (Cf. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 237.) Accordingly, the court declines to find respondent culpable of the charged section 6103 violation. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148 ["It is generally inappropriate to find redundant charged violations. (Citations.)"].)

⁶ All further references to standards are to this source.

Failure to File a Response to the NDC

Respondent's failure to file a response to the NDC in the present proceeding, which allowed his default to be entered, is an aggravating circumstance. (See *Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.) First, it indicates that respondent fails to appreciate the seriousness of the charges against him. (*Ibid.*) Second, it indicates that he “does not comprehend the duty as an officer of the court to participate in disciplinary proceedings. [Citation.]” (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109, citing *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508; but see *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1080 [failure to participate after entry of default is not an aggravating circumstance].)

D. Mitigation

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.

IV. DISCUSSION

In determining the appropriate level of discipline, the court ordinarily looks to the standards first (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and to caselaw second (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580). However, it is clear that the standards do not address the appropriate level of discipline in rule 9.20 proceedings. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.) Instead, rule 9.20(d) does.

In relevant part, rule 9.20(d) provides that an attorney's willful failure to comply with the provisions of rule 9.20 “is a cause for disbarment or suspension and for revocation of any pending probation.” Even though rule 9.20(d) provides for the sanctions of suspension and revocation of probation, caselaw makes clear that disbarment is the ordinary and appropriate

level of discipline in the absent compelling mitigating circumstances. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296.)

Among other things, a suspended attorney's timely compliance with rule 9.20(a) performs the critical function of ensuring that all concerned parties, including clients, cocounsel, opposing counsel, courts, agencies, and other tribunals, promptly learn of the attorney's suspension and consequent disqualification to act as an attorney. When the attorney fails to file a rule 9.20(c) compliance affidavit, this court cannot determine whether this critical function has been performed. In addition, compliance with rule 9.20(c) keeps this court and the Supreme Court apprised of the location of attorneys who are subject to their disciplinary authority. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

Respondent's unexplained failure to file a rule 9.20(c) compliance affidavit strongly suggests a conscious disregard for this court's and the Supreme Court's efforts to fulfill their respective responsibilities to oversee the practice of law in the State of California.

Finally, there are no mitigating circumstances, much less compelling mitigating circumstances, that would warrant a departure from the ordinary sanction of disbarment under rule 9.20(d).

V. DISCIPLINE RECOMMENDATION

The court recommends that respondent WAYNE BUNCH be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

VI. RULE 9.20, COSTS & CLIENT SECURITY FUND

The court further recommends that Wayne Bunch be again 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.

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

The court further recommends that Wayne Bunch be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

VII. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that WAYNE BUNCH 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 by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: May 3, 2010.

PAT McELROY
Judge of the State Bar Court