

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 09-O-13262 -LMA ; 10-N-04426
)	(Cons.)
DANIEL SCOTT BROWN,)	
)	DECISION AND ORDER OF
Member No. 158025,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

I. Introduction

In this consolidated default disciplinary matter, respondent **Daniel Scott Brown** is charged with several acts of professional misconduct in two matters, involving the unauthorized practice of law and failure to comply with California Rules of Court, rule 9.20.¹

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. In view of respondent’s serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

A. First Notice of Disciplinary Charges (Case No. 09-O-13262)

On March 30, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a first Notice of Disciplinary Charges (NDC)

¹ References to rule 9.20 are to California Rules of Court, rule 9.20, unless otherwise noted.

at his official membership records address. The NDC was returned as unclaimed. Respondent did not file a response.

Respondent's default was entered on May 28, 2010, and respondent was enrolled as an inactive member on May 31, 2010. The matter was submitted on June 21, 2010.

B. Second Notice of Disciplinary Charges (Case No. 10-N-04426)

On June 8, 2010, the State Bar filed and properly served a second NDC on respondent at his official membership records address. The NDC was not returned by the U.S. Postal Service. Respondent did not file a response.

On July 12, 2010, the court consolidated the two cases. On August 2, 2010, the court vacated the submission date of June 21, 2010, and entered respondent's default. Respondent was enrolled as an inactive member on August 5, 2010.

Respondent did not participate in the disciplinary proceedings. The matter was submitted for decision on August 23, 2010, following the filing of State Bar's brief on culpability and discipline.

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).)

Respondent was admitted to the practice of law in California on June 8, 1992, and has since been a member of the State Bar of California.

A. Unauthorized Practice of Law (Case No. 09-O-13262)

On or about May 26, 2009, the State Bar Court ordered respondent inactive, effective May 29, 2009, due to his failure to respond to a notice of disciplinary charges filed in court on or about March 13, 2009, in case No. 09-H-10601. The court clerk duly noticed respondent of the

order by mailing it to respondent's membership records address maintained by the State Bar pursuant to Business and Professions Code, section 6002.1. Respondent received the court's order and was aware of its contents.

As a result of case No. 09-H-10601, the Supreme Court issued order No. S178063 on February 21, 2010, suspending respondent for 90 days and until the State Bar Court terminates his suspension under rule 205 of the Rules of Procedure of the State Bar. On or about February 21, 2010, the court clerk duly noticed respondent of the suspension. Respondent received the court's order and was aware of its contents.

Respondent was suspended from May 29, 2009 to the present date.

Respondent knew or should have known that he was suspended from the practice of law from May 29, 2009 to the present.

On or about June 4, 2009, respondent appeared on behalf of Tomason and Vandavelde in the matter of *Nicholas Papadakis v. Northwestern Mutual Life Insurance Company*, case No. BC322788, filed in Los Angeles County Superior Court (*Papadakis v. Northwestern*).

Respondent participated in the proceedings via court call. At the inception of the proceedings on June 4, 2009, respondent identified himself as a party representing Tomason and one other person (later identified as Vandavelde).

Shortly thereafter, opposing counsel, Timothy Morris, advised the court of respondent's suspension.

The court in turn inquired of respondent whether he was suspended.

Respondent responded to the court as follows: "Well, I knew that there was a pending action. I did not know that that date is effective. However, where I'm at right now, I'm not in a position to produce any documents to argue with him."

Count 1: Unauthorized Practice of Law (Bus. & Prof. Code, §§ 6068, Subd. (a), 6125 and 6126)²

Section 6068, subdivision (a), provides that a member of the State Bar has the duty to support the Constitution and laws of the United States and of the State of California.

The State Bar charges that respondent violated section 6068, subdivision (a), by advertising or holding himself out as practicing or entitled to practice law or otherwise practicing law when he was not an active member of the State Bar in violation of sections 6125 and 6126.

Section 6125 provides that no person may practice law in California unless he or she is an active member of the State Bar. Section 6126, subdivision (b), provides that any person who has been involuntarily enrolled as an inactive member of the State Bar or who has been suspended from practice and thereafter practices or attempts to practice law, advertises or holds himself out as practicing or otherwise entitled to practice law is guilty of a crime.

Charging an attorney with a violation of the duty to support the constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of discipline for the unauthorized practice of law. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574-575.)

By appearing in court on behalf of Tomason and Vandavelde in *Papadakis v. Northwestern* on June 4, 2009, and holding himself out as entitled to practice law when he was not an active member of the bar, respondent held himself out as entitled to practice law and actually practiced law when he was not entitled to do so, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in violation of section 6068, subdivision (a).

² References to sections are to the provisions of the Business and Professions Code.

Count 2: Moral Turpitude (Bus. & Prof. Code, § 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

By initially holding himself out to the court and opposing counsel as entitled to practice law in *Papadakis v. Northwestern* when he knew that he was not entitled to practice law, respondent committed an act or acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

B. Violation of California Rules of Court, Rule 9.20 (Case No. 10-N-04426)

On January 22, 2010, in California Supreme Court case No. S178063 (State Bar Court case No. 09-H-10601), the Supreme Court filed an order, suspending respondent for one year, stayed, and actually suspending him for 90 days and until he files and the State Bar court grants a motion to terminate his suspension. Among other things, the Supreme Court ordered respondent to comply with California Rules of Court, 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 February 21, 2010, and was duly served on respondent. (Cal. Rules of Court, rules 8.532(a) and 9.18(b).)

California Rules of Court, 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.”

On February 12, 2010, the Office of Probation mailed a letter to respondent, reminding him of his obligation to comply with rule 9.20 and enclosing an accurate copy of the Supreme Court order as well as a form for reporting compliance with rule 9.20.

Respondent was to have filed the rule 9.20 affidavit by April 2, 2010, 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 S178063.³

Furthermore, 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

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,⁴ stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

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

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

³ 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.

⁴ Future references to standard(s) or std. are to this source.

1. In 2008, respondent stipulated to a public reproof for his failure to comply with numerous court orders in the course of respondent's representation of a client.
(State Bar Court case No. 08-O-10256.)
2. In 2010, in the underlying matter, respondent was suspended for one year, stayed, and actually suspended for 90 days and until the State Bar Court terminates his suspension for violating several of the conditions attached to his public reproof.
(Supreme Court case No. S178063; State Bar Court case No. 09-H-10601.)

Respondent committed multiple acts of wrongdoing by engaging in the unauthorized practice of law and failing to comply with a Supreme Court order. (Std. 1.2(b)(ii).)

Respondent's misconduct harmed significantly a client and the administration of justice when he appeared in court, holding himself out as entitled to practice law when he was not entitled to do so. (Std. 1.2(b)(iv).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with California Rules of Court, rule 9.20(c), even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing answers to the two NDCs, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. 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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*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.) The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.3 and 2.6 apply in this matter.

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has two prior records of discipline and no mitigation.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

The State Bar urges disbarment.

The court agrees. 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 obligations and rules of court imposed on California attorneys although he has been given opportunities to do so.

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An attorney’s failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding.

Therefore, based on the severity of the offense, willful disobedience of the Supreme Court order, the serious aggravating circumstances and the lack of any mitigating factors, it would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred.

VI. Recommendations

A. Discipline

Accordingly, the court recommends that respondent **Daniel Scott Brown** 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.⁵

⁵ 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.)

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 _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court