

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 09-O-16749-RAP (10-O-01210);
)	10-N-04678 (Cons.)
JOSEPH EDWARD ROWLAND)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND INACTIVE
Member No. 147636)	ENROLLMENT ORDER
)	
A Member of the State Bar.)	

I. Introduction

In this default disciplinary matter, respondent **Joseph Edward Rowland** 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 December 15, 2009, in Supreme Court case no. S176984 (State Bar Court case nos. 06-0-10447 (06-O-11302; 06-0-13676; 06-0-13715; 07-O-11259); 08-0-14786 (Cons.)). He also was found culpable of other misconduct in two client matters.

In view of respondent's serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law and that he be ordered to make restitution as set forth below.

II. Significant Procedural History

The Notices of Disciplinary Charges (NDCs) in the cases were filed and properly served

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

on respondent on December 17, 2010, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar (official address). (Bus. & Prof. Code §6002.1, subd. (c)²; Rules Proc. of State Bar, rules 60(b) and 583.³) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned unclaimed.

On December 27, 2010 and January 4, 2011, the Office of the Chief Trial Counsel (State Bar) sent and respondent received at the email address shown on his State Bar membership records email stating when his responses to the NDCs were due.

On January 11, 2011, respondent and the State Bar had several settlement discussions.

On December 27, 2010, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with notice of a status conference set for January 27, 2011 as to all matters addressed by these NDCs. Respondent participated in the status conference during which the court granted him an extension until February 7, 2011, to file responses to the NDCs. On January 28, 2011, a trial-setting order and order memorializing the status conference was properly served on him at his official address. This order, among other things, required the parties to file pretrial statements on or before May 31, 2011 and scheduled a pretrial conference on June 7, 2011.

Respondent did not file a response to the NDC. On May 26, 2011, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek minimum discipline of disbarment if he was found culpable. (Rules of Procedure, rule 200(a)(3).) Courtesy copies of the motion were also

² All references to section are to this source.

³ All references to the Rules of Procedure are to the rules in effect until January 1, 2011, unless otherwise stated.

sent to two email addresses for respondent, one of which was the email address listed on his State Bar membership records.

On May 31, 2011, the State Bar properly served respondent by first-class mail, postage prepaid at his official address with a pretrial conference statement.

Respondent did not appear at the June 7, 2011, pretrial conference. On that same date, he was properly served at his official address with an order memorializing the pretrial conference, including the court's orders that: (1) he was precluded from presenting evidence other than his own testimony at trial because he did not file a pretrial conference statement; and (2) the trial dates were vacated in the event default was entered.

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on June 13, 2011, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order, and severed the instant cases from other matters he had pending in the State Bar Court. It also severed these matters from other cases respondent had pending with the State Bar Court. The United States Postal Service returned this correspondence as unclaimed.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matters were submitted for decision on July 6, 2011, after the State Bar filed a

closing brief.⁴

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDCs are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules of Procedure, rule 200(d)(1)(A).)

Jurisdiction

Respondent was admitted to the practice of law in California on July 13, 1990, and has since been a member of the State Bar of California.

A. Case No. 10-N-04678 - The California Rules of Court, Rule 9.20 Matter

By order filed on December 15, 2009, in California Supreme Court case no. S176984 (State Bar Court case nos. 06-0-10447 (06-O-11302; 06-0-13676; 06-0-13715; 07-O-11259); 08-0-14786 (Cons.)), the Supreme Court suspended respondent for three years, stayed the execution of that period of suspension, subject to three years' probation on certain conditions, including actual suspension for six months. 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 January 14, 2010. (Cal. Rules of Court, rules 8.532(a) and 9.18(b).) Respondent received the Supreme Court order.

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 or she has fully complied with those provisions of the order entered under this rule."

⁴ Along with the brief, the State Bar filed a binder of exhibits which were not admitted into evidence. Of these items, the court admits into evidence exhibit 27, the declaration of Maria Carmen Alonso, and judicially notices the certified copies of respondent's State Bar membership records address history and prior disciplinary records (exhibits 1, 2, 37 and 38).

Respondent was to have filed the rule 9.20 affidavit by February 23, 2010, but he did not do so until July 14, 2010 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 S176984.⁵

B. Case No. 09-O-16749 - The Phillips Matter

Facts

On July 1, 2008, Jeffery L. Phillips hired respondent to represent him in the matter entitled the matter entitled *Phillips v. USA* in the United States District Court for the District of Arizona. Phillips paid respondent \$200, and respondent requested a \$2,500 deposit to begin the action.

Respondent drafted and signed the complaint on October 12, 2008, but did not file it with the court, nor did he seek to gain *pro hac vice* admission or status with that federal court. He misrepresented that the complaint had been filed in the United States District Court in the District of Arizona, Phoenix Division.

⁵ 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.

Furthermore, respondent’s failure to comply with rule 9.20 constitutes a violation of Business and Professions Code 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. Although this violation was charged, the court dismisses it with prejudice as duplicative of the violation of rule 9.20.

Respondent drafted but did not file a motion to proceed in forma pauperis for Phillips. Phillips had signed the motion on October 21, 2008. He misrepresented that the motion had been filed.

Between October 1, 2008 and July 22, 2009, Phillips sent 36 e-mails and made numerous phone calls wherein he left his contact information and requested a status update.

Respondent did not inform Phillips that he had not filed the complaint or sought or obtained *pro hac vice* admission or status and the need for him to do so.

On February 26, 2009, respondent made misrepresentations to Phillips regarding the status of the case.

In July 2009, Phillips hired a new attorney, Joey N. Hamdi, to represent him and so informed respondent in a July 5, 2009, letter. The letter also asked respondent to forward Phillips's entire file to Hamdi and provided Hamdi's address and phone number. Respondent, however, never sent the file.

On July 23, 2009, Phillips again asked respondent to return his file. Subsequently, Phillips sent respondent nine e-mails and two letters asking for his file. Respondent did not return it until May 1, 2010.

Hamdi withdrew as Phillips's attorney because he could not review Phillips's file.

In a September 21, 2009, letter to respondent, Phillips again requested his file. He also informed him of Hamdi's withdrawal and reminded him that the relevant statute of limitations would expire on October 19, 2009.

Conclusions of Law

1. Count One – (Rules Prof. Conduct, rule 3-110(A)⁶ [Failure to Perform Competently])

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not seeking *pro hac vice* admission or status and not filing Phillips's complaint and in forma pauperis motion, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

2. Count Two – (Bus. & Prof. Code, § 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not informing Phillips that the complaint was not filed and about the accompanying *pro hac vice* issues, respondent did not respond promptly to Phillips's reasonable status inquiries in wilful violation of section 6068, subdivision (m).

3. Count Three – (Rule 3-700(D)(1)) [Failure to Return Client Property])

Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

Respondent wilfully violated rule 3-700(D)(1) by not promptly returning Phillips's file as requested after his employment had been terminated.

⁶ Unless otherwise indicated, all further references to rules refer to the State Bar Rules of Professional Conduct.

4. Count Four – (Section 6106) [Moral Turpitude]

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by making misrepresentations to Phillips. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

C. Case No. 10-O-01210 - The Alonso Matter

Facts

On April 14, 2008, Maria Alonso hired respondent to substitute in as her counsel in litigation. (*USA v. Maria Carmen Alonso*, United States District Court, Central District of California, 2:05-cr-008980-CAS-1, filed on September 14, 2005) He did so on September 8, 2008.

Alonso paid respondent \$22,000 in attorney fees. He did not earn that entire amount. Alonso believes that he did not perform work of value for her in the federal criminal matter. (Alonso Declaration at p. 2:20-21.)⁷

On April 22, 2010, Alonso sent and respondent received a letter requesting a refund but he did not answer it.

The State Bar opened an investigation pursuant to a complaint filed by Alonso regarding allegations of misconduct by respondent in this matter. On April 13 and 22, 2010, the State Bar

⁷ On its own motion, the court judicially notices its records which indicate that respondent was actually suspended from the practice of law from May 6, 2009 until April 20, 2010 for failing to pass the Multistate Professional Responsibility Examination in connection with Supreme Court case no. S152727 (State Bar Court case no. 04-O-13932), filed July 17, 2007. Since he could not legally represent Alonso after May 6, 2009, it will be recommended that interest on restitution to Alonso accrue from that date.

sent respondent letters to his official address⁸ asking him to respond in writing to specific allegations of misconduct regarding the Alonso complaint. The April 13 letter was returned to the State Bar as undeliverable. Respondent received the April 22 letter but did not answer it despite having had a reasonable time to do so.

Conclusions of Law

1. Count Five – (Rule 3-700(D)(2) [Failure to Refund Unearned Fees])

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter.

By not performing work of value for Alonso prior to his termination as her counsel and not returning to her \$22,000 in advanced, unearned fees, respondent wilfully violated rule 3-700(D)(2).

2. Count Six – (Section 6068, subd. (i)) [Failure to Participate in State Bar Investigation]

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not responding to the State Bar's April 22, 2010 letter, respondent did not participate in the investigation of the allegations of misconduct regarding the Alonso case in wilful violation of 6068, subdivision (i).

⁸ Respondent updated his official address on April 14, 2010.

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,⁹ 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's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) As previously noted, the underlying matter, the California Supreme Court ordered that respondent be suspended for three years, stayed the execution of the suspension, subject to three years' probation on certain conditions, including actual suspension for six months. (Supreme Court case no. S176984.) In five client matters, respondent and the State Bar agreed that he violated rule 1-300(B) (two counts) and sections 6103 (four counts) and 6068, subdivisions (a) (unauthorized practice of law – one count), (k) and (m) (one count each) and (o)(3) (three counts). Aggravating factors included a prior disciplinary record and multiple acts of misconduct. Mitigating factors were candor and cooperation, remorse, family problems and good character.

In Supreme Court case no. S152727 (State Bar Court case no. 04-O-13932), filed July 17, 2007, discipline was imposed consisting of stayed suspension for two years and until he complied with standard 1.4(c)(ii), and two years' probation. In one client matter, respondent and the State Bar agreed that he violated rules 3-110(A) and 3-700(D)(2) and section 6068,

⁹ Future references to standard(s) or std. are to this source.

subdivision (m). Lack of cooperation was the aggravating factor. No prior disciplinary record was the mitigating factor.

Respondent's misconduct significantly harmed a client, the public or the administration of justice. (Standard 1.2(b)(iv).) Hamdi withdrew as counsel because he could not review Phillips's file.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with rule 9.20(c), even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

V. Discussion

Respondent's willful noncompliance 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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.3, 2.4(b), 2.6(a) and 2.10 apply in this matter. The most severe sanction is found at standard 2.3 which recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person, depending on the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to

which it relates to the attorney's acts within the practice of law.

Standard 1.7(b) also applies. It provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of noncompliance with rule 9.20 of the California Rules of Court, and, in two client matters, of violating rules 3-110(A), 3-700(D)(1) and (D)(2) and sections 6106 and 6068, subdivisions (i) and (m) (one count each). In aggravation, the court considered respondent’s two prior disciplinary records, indifference and client harm. There were no mitigating factors.

The State Bar recommends disbarment. The court agrees.

Standard 1.7(b) supports a disbarment recommendation.

Moreover, respondent’s willful noncompliance 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.

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 **Joseph Edward Rowland** 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. Restitution

It is recommended that respondent make restitution to Maria Carmen Alonso in the amount of \$22,000 plus 10% interest per annum from May 6, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Maria Carmen Alonso, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Restitution is to be made within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, *new* rule 5.136). Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

C. 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.¹⁰

D. 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 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: September 23, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court

¹⁰ 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.)