

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 10-N-00036-DFM
)	
JASON PAUL MOORE,)	
)	DECISION AND ORDER OF
Member No. 214225,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this default disciplinary matter, respondent **Jason Paul Moore** (Respondent) 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 August 26, 2009. In view of Respondent’s misconduct and the evidence in aggravation, the court recommends, among other things, that Respondent be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

On April 6, 2010, the Office of the Chief Trial Counsel of the State Bar of California filed its Notice of Disciplinary Charges (NDC) in this matter. It consists of a single count alleging that Respondent failed to comply with an order from the Supreme Court, requiring Respondent to file with the clerk of this court a declaration of timely compliance with rule 9.20.

A copy of the NDC was properly served on Respondent on April 6, 2010, by certified mail, return receipt requested, addressed to Respondent at his official membership records

¹ All references to rule 9.20 are to California Rules of Court, rule 9.20.

address (official address).² The letter was returned to the State Bar by the United States Postal Service as undeliverable.

The court finds that Respondent was properly served with a copy of the NDC and that all due process requirements have been adequately satisfied. (See *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.) Both before and after the service of the NDC, the State Bar made additional efforts to communicate with Respondent regarding the disciplinary matter, including mailing to him by regular mail a copy of the NDC, sending letters to him at various alternative addresses, and seeking to reach him by telephone. All of these State Bar efforts to communicate with Respondent proved unsuccessful in getting him to participate in this disciplinary process.

Respondent was required to file a response to the NDC. (Rules Proc. of State Bar, rules 103(a), 584.) He did not. Nor did he appear at the initial status conference ordered by the court and conducted on May 26, 2010. On June 3, 2010, the State Bar filed a motion for the entry of Respondent's default. A copy of that motion was properly served on Respondent on June 3, 2010, by certified mail, return receipt requested, addressed to Respondent at his official address. Respondent failed to respond to that motion.

On July 1, 2010, Respondent's default was entered. The order of entry of default was properly mailed to Respondent's official membership records address. Respondent was enrolled as an inactive member under Business and Professions Code § 6007, subdivision (e), effective July 4, 2010.³

On July 19, 2010, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. On July 20, 2010, the court took the case under submission for decision without a hearing.

² Pursuant to Evidence Code 452, subdivision (h), the court takes judicial notice of respondent's official membership records contact information and address history.

³ All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

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).)

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 24, 2001, and has been a member at all times since that date.

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On or about August 26, 2009, the California Supreme Court filed its Order in Case No. S174151 (State Bar Case Nos. 05-O-05113, 06-O-10021) (hereinafter "the 9.20 Order"). The 9.20 Order included a requirement that Respondent comply with Rule 9.20 by performing the acts specified in subdivisions (a) and (c) of the rule within 30 and 40 days, respectively, after the effective date of the 9.20 Order.

On or about August 26, 2009, the Clerk of the State Bar Court properly served upon Respondent a copy of the 9.20 Order. Respondent received the 9.20 Order.

The 9.20 Order became effective on September 25, 2009, thirty days after it was filed. Respondent was ordered to comply with subdivision (c) of Rule 9.20 no later than November 4, 2009. To date, no compliance statement has been filed by Respondent with this court.

By failing to timely file a declaration of compliance with Rule 9.20 in conformity with the requirements of Rule 9.20(c), Respondent failed to comply with the provisions of the 9.20 Order. By the foregoing conduct, Respondent willfully violated rule 9.20, California Rules of Court.

Failure to Obey Court Order to Comply with Rule 9.20

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.” The term “willful” in the context of rule 9.20, formerly rule 955, does not require bad faith or any evidence of intent. It is not necessarily even dependent on showing the respondent’s knowledge of the court’s order requiring compliance. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342; *Hamilton v. State Bar* (1979) 23 Cal.3d 868, 873-874.) 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, supra*, 44 Cal.3d 337, 341.)

By failing to timely file a declaration of compliance with Rule 9.20 in conformity with the requirements of Rule 9.20(c), Respondent failed to comply with the provisions of the Supreme Court’s order. By the foregoing conduct, Respondent willfully violated Rule 9.20.

Aggravating Circumstances

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).)⁴

Prior Discipline

Standard 1.2(b)(i) provides that the existence of prior record of discipline and the nature and extent of that record is an aggravating circumstance. (See also standard 1.7); (Std. 1.2(b)(i).)

On or about August 26, 2009, the California Supreme Court filed its Order in Case No. S174151 (State Bar Case Nos. 05-O-05113, 06-O-10021), imposing discipline as to Respondent. That discipline included three years of stayed suspension and a minimum of two

⁴ All further references to standard(s) are to this source.

actual suspension. The actual suspension would continue until Respondent made restitution to three individuals and presented proof of his rehabilitation, fitness to practice and learning and ability under the general law.

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

Lack of Cooperation

A member's failure to participate in the disciplinary process may be an aggravating factor. (Std. 1.2(b)(vi).) Respondent's failure to participate in this proceeding is such an aggravating factor.

Mitigating Circumstances

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.

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.)

The standard here for assessing discipline is set out in the first instance in the rule itself. Rule 9.20(d) states, in pertinent part: "A suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation."

Respondent's willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

Respondent has repeatedly demonstrated an unwillingness to comply with his professional obligations. He has also demonstrated an unwillingness to participate in the disciplinary process. As a consequence, his 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.

RECOMMENDED DISCIPLINE

Disbarment

The court hereby recommends that respondent **Jason Paul Moore**, Member No. 214225, 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.

Rule 9.20

The court recommends 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

Costs

The court recommends 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. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5. (Rules Proc. of State Bar, rule 291.)

⁵ Respondent 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.)

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that **Jason Paul Moore**, Member No. 214225, be transferred to involuntary inactive enrollment status pursuant to 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 service of this order.

Dated: July _____, 2010

DONALD F. MILES
Judge of the State Bar Court