

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No. <b>10-N-00039-LMA</b>
	)	
<b>CHERYL PARKINSON MARTINSEN,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 104678,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent **Cheryl Parkinson Martinsen** is charged with failure to comply with California Rules of Court, rule 9.20.<sup>1</sup>

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of 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**

On February 5, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at her official membership records address. Respondent did not file a response.

By order of the court on April 2, 2010, respondent’s default was entered and respondent was enrolled as an inactive member on April 5, 2010. The court further ordered the State Bar

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<sup>1</sup> References to rules are to the California Rules of Court, unless otherwise noted.

that any additional evidence or legal argument re level of discipline must be filed no later than April 23, 2010.

Respondent did not participate in the disciplinary proceedings. The matter was thus submitted on April 26, 2010.

On May 14, 2010, deputy trial counsel Treva R. Stewart of the State Bar filed a motion for late filing of her brief on culpability and discipline because of a mistaken belief that the brief had already been filed. **Absent any good cause shown, the State Bar's motion is hereby DENIED and its brief is rejected for filing.** The submission date of April 26, 2010, stands.

### **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 December 3, 1982, and has since been a member of the State Bar of California.

#### **Violation of California Rules of Court, Rule 9.20**

On October 14, 2009, in California Supreme Court case No. S175518 (State Bar Court case No. 07-O-12851), the Supreme Court suspended respondent for two years, stayed, and actually suspended her for 90 days and until she satisfied certain requirements. 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 November 13, 2009, 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 or she has fully complied with those provisions of the order entered under this rule.”

Respondent was to have filed the rule 9.20 affidavit by December 23, 2009, but to date, she has not done so and has offered no explanation to this court for her noncompliance. Whether respondent is aware of the requirements of rule 9.20 or of her 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 S175518.<sup>2</sup>

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.

#### **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,<sup>3</sup> stds. 1.2(e) and (b).)

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<sup>2</sup> 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.

<sup>3</sup> Future references to standard(s) or std. are to this source.

**A. Mitigation**

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

**B. Aggravation**

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

The court takes judicial notice of respondent's one prior record of discipline, the underlying matter (Supreme Court case No. S175518). (Std. 1.2(b)(i).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct by failing to comply with 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 her default, including filing an answer to the NDC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

**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.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although she 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 her willful disobedience of the Supreme Court order.

## **VI. Recommendations**

### **A. Discipline**

Accordingly, the court recommends that respondent **Cheryl Parkinson Martinsen** be disbarred from the practice of law in the State of California and that her 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.<sup>4</sup>

### **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 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

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LUCY ARMENDARIZ  
Judge of the State Bar Court

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<sup>4</sup> Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)