

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 10-N-01428-RAH
)	
HOWARD MICHAEL COHEN,)	
)	DECISION AND ORDER OF
Member No. 170490,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default disciplinary matter, respondent **Howard Michael Cohen** 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 October 6, 2009, in Supreme Court case No. S175508 (State Bar Court case Nos. 05-O-03369 (06-O-12712; 07-O-11810; 08-O-12212)).

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 March 25, 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

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

his official membership records address. Respondent did not file a response. (Rules Proc. of State Bar, rule 103.)

By order of the court on May 19, 2010, respondent's default was entered and respondent was enrolled as an inactive member on May 22, 2010.

Respondent did not participate in the disciplinary proceedings. The matter was submitted on May 28, 2010, following the filing of the State Bar's brief on culpability and discipline.

Thereafter, on July 23, 2010, respondent submitted the original and duplicate copies of his Notice of Motion and Motion to Set Aside the Default, without a proposed response to the NDC as required under rule 203(c) of the Rules of Procedure of the State Bar. The State Bar filed an opposition to respondent's motion. On July 28, 2010, respondent submitted his Proposed Response to Notice of Disciplinary Charges; and, his motion to set aside the default was filed as of July 28, 2010.

On August 4, 2010, the court, finding no good cause to set aside the default in this matter had been shown, denied respondent's motion for relief from default.

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 6, 1994, and has since been a member of the State Bar of California.

Violation of California Rules of Court, Rule 9.20

On October 6, 2009, in California Supreme Court case No. S175508 (State Bar Court case Nos. 05-O-03369 (06-O-12712; 07-O-11810; 08-O-12212)), the Supreme Court suspended respondent for four years, stayed the execution of that period of suspension, subject to certain

conditions, including that he be suspended from the practice of law for a minimum of two years and remain suspended until he makes specified restitution and until he satisfies certain other 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, which was duly served on respondent on or about October 6, 2009, became effective November 5, 2009. (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.”

Respondent was to have filed the rule 9.20 affidavit by December 15, 2009, 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 S175508.²

² 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.

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,³ 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).)

In the underlying matter, another default matter, the California Supreme Court ordered that respondent be suspended for four years, stayed the execution of that period of suspension, subject to certain conditions, including among others, that he be suspended from the practice of law for a minimum of two years and remain suspended until he makes specified restitution and until the State Bar Court terminates his suspension under rule 205 of the Rules of Procedure of the State Bar, and until he provides satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Rules of Procedure of the State Bar. (Supreme Court case No. S175508 (State Bar Court case Nos. 05-O-03369 (06-O-12712; 07-O-11810; 08-O-12212).) Respondent's misconduct included failing to perform competently, failing to communicate, failing to return unearned fees, failing to cooperate in a disciplinary investigation, failing to return client files, and failing to update his membership records address.

³ Future references to standard(s) or std. are to this source.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his 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 his 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 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 **Howard Michael Cohen** 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.⁴

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: September ____, 2010

RICHARD A. HONN
Judge of the State Bar Court

⁴ 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.)