

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 10-N-03344-DFM
)	
JEFFREY S. MINTZ,)	
)	DECISION AND ORDER OF
Member No. 113467,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this default disciplinary matter, Respondent **Jeffrey S. Mintz** (Respondent) is found culpable of failing to comply with California Rules of Court, rule 9.20,¹ as ordered by the California Supreme Court on November 10, 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 September 10, 2010, the Office of the Chief Trial Counsel of the State Bar of California filed a Notice of Disciplinary Charges (NDC) in this matter. The NDC consists of a single count alleging that Respondent failed to comply with an order from the Supreme Court, requiring him 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 September 10, 2010, by certified mail, return receipt requested, addressed to Respondent at his official membership

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

records address (official address).² Respondent received the NDC. (See certified mail receipt signed by Respondent, dated September 18, 2010, attached as exhibit 5 to the declaration of Deputy Trial Counsel Jessica A. Lienau in support of the State Bar's Motion for Entry of Default.)

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 courtesy copies to Respondent at various alternative addresses, 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) and 584.)³ He did not do so.

On October 18, 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 October 18, 2010, by certified mail, return receipt requested, addressed to Respondent at his official address. A courtesy copy of that motion was also sent to an alternative address for Respondent. Respondent failed to respond to the motion.

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 On January 1, 2011, new Rules of Procedure of the State Bar of California became effective. However, the court orders the application of the former Rules of Procedure in this hearing department matter based on its determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. January 1, 2011), Preface.) Therefore, all references to the Rules of Procedure in this decision are to the former rules of procedure, which were in effect prior to January 1, 2011, unless otherwise stated.

On November 10, 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 November 13, 2010.⁴

On November 17, 2010, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. On November 29, 2010, the court took the case under submission for decision without a hearing.

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 13, 1984, and has been a member at all times since that date.

Case No. 10-N-03344

On November 10, 2009, the California Supreme Court filed its order in case No. S176307 (State Bar case Nos. 07-O-13891 (07-O-14911, 08-O-10877, 08-O-13771)), (the Supreme Court Order). The Supreme Court 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 order's effective date.

On or about November 12, 2009, the Clerk of the State Bar Court properly served upon Respondent a copy of the Supreme Court Order. Respondent received the Supreme Court Order.

⁴ All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

The Supreme Court Order became effective on December 10, 2009, thirty days after it was filed. Respondent was ordered to comply with subdivision (c) of rule 9.20 no later than January 19, 2010. To date, no compliance statement has been filed by Respondent with this court. Respondent willfully failed to timely file a declaration of compliance in conformity with the requirements of rule 9.20(c), as ordered by the Supreme Court in S176307.

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 Order in case No. S176307 (State Bar case Nos. 07-O-13891 (07-O-14911, 08-O-10877, 08-O-13771)). By the foregoing conduct, Respondent willfully violated rule 9.20 of the California Rules of Court.

//

//

//

//

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).)⁵

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.)

In the instant matter, Respondent has a prior record of two previous impositions of discipline, a serious aggravating circumstance.

On October 31, 2007, in Supreme Court case No. S155923 (State Bar Court case Nos. 06-O-10595; 07-O-10251 (07-O-11126) (Cons.)), the Supreme Court of California issued an order suspending Respondent from the practice of law for six months, stayed, with a two-year period of probation. This discipline stemmed from Respondent's misconduct in three separate matters. Respondent stipulated to misconduct, which included his failure to: competently perform legal services, refund unearned fees, keep clients informed of significant developments, promptly return client papers and property, obey court orders, and report the imposition of judicial sanctions to the State Bar. In mitigation in that action, Respondent was candid and cooperative with the State Bar and had no prior record of discipline. No aggravating circumstances were involved.

On November 10, 2009, the California Supreme Court filed its order in case No. S176307 (State Bar case Nos. 07-O-13891 (07-O-14911, 08-O-10877, 08-O-13771)), the underlying matter. The court ordered, among other things, that Respondent be suspended from the practice of law for five years, stayed the execution of that period of suspension subject to certain

⁵ All further references to standard(s) are to this source.

conditions, including that Respondent be suspended for a minimum of two years and will remain suspended until: (1) he makes specified restitution to three individuals; (2) the State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure and he complies with the conditions of probation, if any, imposed by the State Bar Court; and (3) he presents proof of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). Respondent was found culpable of more than a dozen counts of misconduct in three client matters, which included failing to perform services with competence, failing to communicate with clients, improperly withdrawing from employment, failing to release a client file, failing to return unearned fees, and failing to cooperate with the State Bar. Respondent was also found culpable of failing to comply with probation conditions. In aggravation, Respondent had a prior record of discipline, engaged in multiple acts of misconduct, caused significant harm to clients, and demonstrated indifference toward rectification. As in the instant matter, Respondent failed to participate in the disciplinary proceedings. No mitigating factors were found.

Failure to Participate in Disciplinary Proceeding

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 disciplinary proceeding prior to the entry of his default, including his failure to file an answer to the NDC, is a serious 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 **Jeffrey S. Mintz**, member No. 113467, 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.⁶

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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that **Jeffrey S. Mintz**, member No. 113467, be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment will become effective three calendar days after service of this order.

Dated: March _____, 2011

DONALD F. MILES
Judge of the State Bar Court

⁶ 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.)