

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case No.: 10-N-03794-LMA  
)  
KAREN J. HAMILTON, )  
) DECISION & ORDER OF  
Member No. 71093, ) INVOLUNTARY INACTIVE  
) ENROLLMENT  
)  
A Member of the State Bar. )

I. Introduction

In this disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) charges respondent **KAREN J. HAMILTON**<sup>1</sup> with failing to comply with California Rules of Court, rule 9.20 (hereafter rule 9.20) as she was ordered to do by the Supreme Court in its October 14, 2009 order in *In re Karen J. Hamilton on Discipline*, case number S175525 (State Bar Court case number 08-O-12050) (hereafter Supreme Court's October 14, 2009 order). (See Rules Proc. of State Bar, rule 580 et seq.) Specifically, the State Bar charges that respondent willfully violated rule 9.20 by failing to file a declaration of compliance in accordance with rule 9.20(c).<sup>2</sup>

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<sup>1</sup> Respondent was admitted to the practice of law in this state on December 22, 1976, and has been a member of the State Bar of California since that time. She has one prior record of discipline.

<sup>2</sup> Rule 9.20(c) provides: “Within such time as the order may prescribe . . . , the member must file with the Clerk of the State Bar Court [a declaration] showing that he or she has fully [performed the acts specified in rule 9.20(a)]. The [declaration] must also specify an address where communications may be directed to the disbarred, suspended, or resigned member.”

Deputy Trial Counsel Treva R. Stewart represented the State Bar. Respondent, however, did not appear either in person or through counsel.

As set forth *post*, the court finds that respondent willfully failed to file a rule 9.20(c) declaration of compliance as charged and that the appropriate level of discipline is disbarment. Accordingly, the court will recommend that respondent be disbarred and will order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding (Bus. & Prof. Code, § 6007, subd. (c)(4)).<sup>3</sup>

## **II. Pertinent Procedural History**

On May 4, 2010, the State Bar filed the notice of disciplinary charges (NDC) in this proceeding and, in accordance with section 6002.1, subdivision (c), properly served a copy of the NDC on respondent by certified mail, return receipt requested, at her latest address shown on the official membership records of the State Bar (hereafter official address). However, not long thereafter, the United States Postal Service returned the service copy of the NDC to the State Bar undelivered and stamped: “Unable to Forward; Forwarding Order Expired.” Even though respondent never received the service copy of the NDC, service on respondent was deemed complete when it was mailed on May 4, 2010.<sup>4</sup> (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see also *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent’s response to the NDC was to have been filed no later than May 29, 2010. (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time].) Respondent, however, did not file a response. And, on June 17, 2010, the State Bar filed

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<sup>3</sup> Unless otherwise noted, all further statutory references are to the Business and Professions Code.

<sup>4</sup> In addition to serving a copy of the NDC on respondent by mail on May 4, 2010, the State Bar took four or five rather nominal steps in an attempt to give respondent actual notice of this proceeding. (See the declaration of DTC Stewart that is attached to the State Bar's June 17, 2010 motion for entry of respondent’s default.)

a motion for the entry of respondent's default. Thereafter, respondent did not file a response to that motion or to the NDC.

Because all of the statutory and rule prerequisites were met, the court filed an order on July 7, 2010, entering respondent's default and, as mandated by section 6007, subdivision (e)(1), ordering that she be involuntarily enrolled as an inactive member of the State Bar effective July 10, 2010.<sup>5</sup>

On July 28, 2010, the court took the case under submission for decision without a hearing.

### **III. Findings of Fact and Conclusions of Law**

Under section 6088 and Rules of Procedure of the State Bar, rules 200(d)(1)(A) and 201(c), upon the entry of respondent's default, the factual allegations (but not the charges or conclusions) set forth in the NDC were deemed admitted and no further proof was required to establish the truth of those facts.<sup>6</sup> Accordingly, the court adopts the facts alleged (but not the charges or the conclusions) in the NDC as its factual findings.

#### **A. Culpability**

The Clerk of the Supreme Court promptly mailed a copy of the Supreme Court's October 14, 2009 order to respondent once the order was filed. (Cal. Rules of Court, rule 8.532(a); Evid. Code, § 664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) And respondent received that copy of the order. (Evid. Code, § 641 [mailbox rule].)

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<sup>5</sup> Of course, an inactive member of the State Bar of California cannot lawfully practice law in this state. (§ 6126, subd. (b); see also § 6125.) Moreover, an inactive member cannot lawfully represent others before a state agency or in a state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

<sup>6</sup> Notwithstanding the entry of respondent's default, "All reasonable doubts must [still] be resolved in [his] favor . . . , and if equally reasonable inferences may be drawn from a proven fact, the inference which leads to a conclusion of innocence rather than guilt [must] be accepted [by the court]. [Citation.]" (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

In the Supreme Court's October 14, 2009 order, the Supreme Court ordered, inter alia, that, if respondent “remains suspended for 90 days or more, she must also comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of this order.”

The Supreme Court's October 14, 2009 order became effective on November 13, 2009, which was 30 days after the order was filed (Cal. Rules of Court, rule 9.18(a)), and has continuously been in effect since that time. Thus, respondent was required to perform the acts specified in rule 9.20(a) no later than March 13, 2010, and to file the declaration (or affidavit) of compliance required in rule 9.20(c) with the State Bar Court Clerk no later than March 23, 2010. Of course, respondent was required to file a rule 9.20(c) declaration of compliance even if she had no law practice, clients, or pending cases as of October 14, 2009 (i.e., the date on which the Supreme Court order directing respondent to comply with rule 9.20 was *filed*). (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

As of the date of this decision, respondent had still not filed a rule 9.20(c) compliance declaration with the State Bar Court Clerk. In the context of rule 9.20, the term “willful” does not require bad faith or even actual knowledge of the provision violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) In fact, the Supreme Court disbarred an attorney whose failure to keep his State Bar official address current prevented him from learning that he had been ordered to comply with former rule 955 (which is the predecessor of rule 9.20). (*Powers v. State Bar, supra*, 44 Cal.3d at pp. 341-342.) In sum, the court holds that respondent willfully violated rule 9.20(c) by failing to file a compliance declaration with the State Bar Court Clerk as charged in the NDC. (Rule 9.20(d).)

In the NDC, the State Bar also charges respondent's failure to file a compliance declaration as a violation of his duty, under section 6103, to obey court orders "requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear." The court cannot agree. Without question, the appropriate level of discipline for an act of misconduct does not depend on how many rules or statutes proscribe the misconduct; therefore, it is unnecessary, if not inappropriate, to find redundant/duplicative violations. (*In the Matter of Van Sickle* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 980, 992; *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) The charged violation of section 6103 is dismissed with prejudice because it is redundant of the found rule 9.20(c) violation.

## **B. Aggravation**

### **1. Prior Record of Discipline**

Respondent has a prior record of discipline, which is an aggravating circumstance under standard 1.2(b)(i) of the Standards for Attorney Sanctions for Professional Misconduct.<sup>7</sup> Respondent's prior discipline is the Supreme Court's October 14, 2009 order in which respondent was placed on one year's stayed suspension and thirty days' suspension continuing until (1) respondent makes restitution with interest for \$2,500 in unearned fees, (2) she makes and the State Bar Court grants a motion to terminate the suspension (Rules Proc. of State Bar, rule 205), and (3) if she remains suspended for two years or more as a result of not satisfying the two preceding requirements, she establishes her rehabilitation, fitness to practice, and legal learning.<sup>8</sup>

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<sup>7</sup> The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

<sup>8</sup> The State Bar has the burden of proving all aggravating circumstances by clear and convincing evidence. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 932-933; *In the Matter of*

That discipline was imposed on respondent because, in a single client matter, she failed to perform legal services competently (Rules Prof. Conduct, rule 3-110(A)); failed to adequately communicate (§ 6068, subd. (m)); failed to refund \$2,500 in unearned fees (Rules Prof. Conduct, rule 3-700(D(2))); and failed to update her official address (§ 6068, subd. (j)). In mitigation, respondent had 31 years of discipline free practice. In aggravation, she engaged in multiple acts of misconduct, was indifferent towards rectification of the consequences of her misconduct, and failed to cooperate with the State Bar disciplinary investigation.

## **2. Failure to File a Response to the NDC**

Respondent's failure to file a response to the NDC in the present proceeding, which allowed her default to be entered, is an aggravating circumstance. (Std. 1.2(b)(vi); *Conroy v. State Bar* (1990) 51 Cal.3d 799, 805; *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109.)

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*Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128, 148.) Rules of Procedure of the State Bar, rule 216(a) provides, in pertinent part, that a prior record of discipline is more than the Supreme Court's disciplinary order, it consists of an authenticated (i.e., certified) copy of all charges, stipulations, findings and decisions reflecting or recommending imposition of discipline. Rule 216(a) further provides that, if part or all of a prior record of discipline is lost or destroyed, the record may be established by clear and convincing evidence.

Rule 216 clearly anticipates that the State Bar will introduce certified copies of documents reflecting a respondent's prior record of discipline. Such practice makes the prior record of discipline a part of the official record of the State Bar Court proceeding and enhances the ability of the Supreme Court to conduct its independent, *de novo* review of the State Bar Court's decision and of the record supporting that decision. (*In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87, 93.)

In this proceeding, the State Bar did not proffer certified copies of the documents reflecting respondent's prior disciplinary record into evidence. Although the court has independently obtained copies of respondent's prior disciplinary record from its official court files and taken judicial notice of and considered respondent's prior record in making its decision in this proceeding, the court insists that the State Bar fully meet its evidentiary obligations in the future.

The court hereby directs the Clerk to mark respondent's prior disciplinary record as a court exhibit in this proceeding and to include that exhibit as a part of the record that is transmitted to the Supreme Court.

### **C. Mitigation**

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.

### **IV. Discussion**

In determining the appropriate level of discipline, the court ordinarily looks to the standards first (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and to caselaw second (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580). However, the standards do not address the appropriate level of discipline for violating rule 9.20. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.) Instead, rule 9.20(d) does.

Under rule 9.20(d), an attorney's willful failure to comply with the provisions of rule 9.20 "is a cause for disbarment or suspension and for revocation of any pending probation." Even though rule 9.20(d) provides for the sanctions of suspension and revocation of probation, caselaw makes clear that, in the absent compelling mitigating circumstances, disbarment is the ordinary and appropriate level of discipline for violating a provision of rule 9.20. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296.)

Among other things, a suspended attorney's timely compliance with rule 9.20(a) performs the critical function of ensuring that all concerned parties, including clients, cocounsel, opposing counsel, courts, agencies, and other tribunals, promptly learn of the attorney's suspension and consequent disqualification to act as an attorney. When the attorney fails to file a rule 9.20(c) declaration of compliance, this court and the Supreme Court cannot determine whether this critical function has been performed. In addition, compliance with rule 9.20(c) keeps this court

and the Supreme Court apprised of the location of attorneys who are subject to their disciplinary authority. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

Respondent's unexplained failure to file a rule 9.20(c) declaration of compliance strongly suggests a conscious disregard for this court's and the Supreme Court's efforts to fulfill their respective responsibilities to oversee the practice of law in the State of California.

Finally, there are no mitigating circumstances, much less compelling mitigating circumstances, that would warrant a departure from the ordinary sanction of disbarment under rule 9.20(d).

#### **V. Discipline Recommendation**

The court recommends that respondent **KAREN J. HAMILTON** be disbarred from the practice of law in the State of California and that her name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

#### **VI. Rule 9.20 & Costs**

The court further recommends that Karen J. Hamilton be again ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

#### **VII. Order of Involuntary Inactive Enrollment**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Karen J. Hamilton be involuntary enrolled as an inactive member of the State

Bar of California effective three calendar days after the service of this decision and order by mail  
(Rules Proc. of State Bar, rule 220(c)).

Dated: October \_\_\_\_, 2010.

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**LUCY ARMENDARIZ**  
Judge of the State Bar Court