

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **10-N-03951-RAH**
)
BRUCE LEWIS BRIGGS,)
) **DECISION & ORDER OF**
Member No. 196750,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
)
A Member of the State Bar.)

1. INTRODUCTION

In this disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (hereafter OCTC) charges respondent **BRUCE LEWIS BRIGGS**¹ with failing to comply with California Rules of Court, rule 9.20 (hereafter rule 9.20) as he was ordered to do by the Supreme Court in its January 8, 2010 order in *In re Bruce Lewis Briggs on Discipline*, case number S177714 (State Bar Court case number 06-O-12655, etc.) (hereafter Supreme Court's January 8, 2010 order). (See Rules Proc. of State Bar, rule 580 et seq.) Specifically, OCTC charges that respondent willfully violated rule 9.20 by failing to file a declaration of compliance as required under rule 9.20(c).²

¹ Respondent was admitted to the practice of law in this state on November 12, 1998, and has been a member of the State Bar of California since that time. He has two prior records of discipline.

² 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 Melanie J. Lawrence represented OCTC. Respondent, however, did not appear in this proceeding 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)).³

2. PERTINENT PROCEDURAL HISTORY

On May 10, 2010, OCTC 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 his latest address shown on the official membership records of the State Bar (hereafter official address). That service was deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.) On that same day, OCTC also mailed a courtesy copy of the NDC to respondent at his official address by first class mail, regular delivery.

Thereafter, the United States Postal Service (hereafter Postal Service) returned both the service copy of the NDC and courtesy copy of the NDC to OCTC undelivered and stamped, respectively, “Return to Sender” and “Not Deliverable as Addressed.”

The declaration of an OCTC clerk, which is attached to OCTC's June 15, 2010 motion for entry of respondent's default, establishes that, in addition to serving a copy of the NDC on respondent by certified mail, OCTC undertook a number of additional steps to insure that respondent has actual notice of this disciplinary proceeding. In fact, on June 7, 2010, the clerk

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

(1) telephoned respondent at the telephone number that respondent listed as his on the stipulation that was filed on August 5, 2009, in State Bar Court case number 06-O-12655, etc. and (2) spoke to respondent about the present proceeding. Later that same day, the clerk mailed a letter and a copy of the NDC in this proceeding to respondent at an address on Center Street in Orange, California, which the clerk previously verified with respondent was his current address.⁴ Needless to say, respondent was clearly given adequate notice of this proceeding. (*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 June 4, 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 15, 2010, OCTC filed, and properly served on respondent, a motion for the entry of respondent's default. In addition, OCTC mailed a courtesy copy of its motion to respondent at his address on Center Street in Orange. 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 2, 2010, in which it entered respondent's default and, as mandated by section 6007, subdivision (e)(1), ordered that respondent be involuntarily enrolled as an inactive member of the State Bar effective July 5, 2010.⁵

On July 12, 2010, OCTC filed a request for waiver of default hearing and brief on culpability and discipline. Thereafter, the court took the case under submission for decision without a hearing.

⁴ Respondent previously listed this Center Street address as his address on the stipulation filed on August 5, 2009, in State Bar Court case number 06-O-12655, etc.

⁵ 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.)

3. 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.⁶ Accordingly, the court adopts the facts alleged (but not the charges or the conclusions) in the NDC as its factual findings. Briefly, those facts together with the certified copies of respondent's two prior records of discipline (which are attached to the State Bar's July 12, 2010 request for waiver of default hearing and brief on culpability and discipline and which are admitted into evidence) establish the following facts by clear and convincing evidence.

A. Culpability

The Clerk of the Supreme Court promptly mailed a copy of the Supreme Court's January 8, 2010 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. (See also Evid. Code, § 641 [mailbox rule].)

In the Supreme Court's January 8, 2010 order, respondent was, among other things, directed to "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 30 and 40 calendar days, respectively, after the effective date of this order."

The Supreme Court's January 8, 2010 order became effective on February 7, 2010, 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

⁶ 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.)

rule 9.20(a) no later than March 9, 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 19, 2010. Of course, respondent was required to file a rule 9.20(c) declaration of compliance even if he had no law practice, clients, or pending cases as of January 8, 2010 (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.)

Respondent never filed a rule 9.20(c) declaration (or affidavit) of compliance 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 will disbar an attorney whose failure to keep his State Bar official address current prevented him from learning that he had been directed to comply with rule 9.20. (*Powers v. State Bar, supra*, 44 Cal.3d at pp. 341-342.) Accordingly, the court holds that respondent willfully violated rule 9.20(c) by failing to file a declaration (or affidavit) of compliance. (Rule 9.20(d).)

B. AGGRAVATION

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).)⁷

1. Prior Discipline

Respondent has two prior records of discipline. (Std. 1.2(b)(i).) Respondent’s first prior record of discipline (hereafter *Briggs I*) is the Supreme Court's July 18, 2006 order in *In re Bruce Lewis Briggs on Discipline*, case number S143354 (State Bar Court case number 04-O-14938, etc.). In *Briggs I*, the Supreme Court placed respondent on two years’ stayed suspension and

⁷ All further references to standards are to this source.

three years' probation on conditions, including that respondent make restitution totaling \$14,640 to four clients, but no period of actual suspension. In *Briggs I*, respondent stipulated to the following 10 counts of misconduct in four separate client matters: three counts of failing to perform competently (Rules Prof. Conduct, rule 3-110(A)); two counts of failing to account (Rules Prof. Conduct, rule 4-100(B)(3)); one count of failing to return client file or property (Rules Prof. Conduct, rule 3-700(D)(1)); two counts of failing to refund unearned fees (Rules Prof. Conduct, rule 3-700(D)(2)); and one count of failing to communicate (§ 6068, subd. (m)).

Respondent's second prior record of discipline (hereafter *Briggs II*) is the discipline imposed on him in the Supreme Court's January 8, 2010 order. In *Briggs II*, the Supreme Court placed respondent on three years' stayed suspension and three years' probation on conditions, including that respondent be suspended for two years and until respondent made restitution totaling \$26,940 to six clients and until respondent established his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii).

In *Briggs II*, respondent stipulated to violating most, if not all of the probation conditions imposed on him in *Briggs I* (§ 6068, subd. (k)) and to failing to maintain a current official address with the State Bar (§ 6068, subd. (j)). In addition, respondent stipulated to the following nine counts of misconduct in three separate client matters: two counts of failing to perform competently (Rules Prof. Conduct, rule 3-110(A)); one count of client abandonment (Rules Prof. Conduct, rule 3-700(A)(2)); one count of failing to return client file or property (Rules Prof. Conduct, rule 3-700(D)(1)); two counts of failing to refund unearned fees (Rules Prof. Conduct, rule 3-700(D)(2)); and three counts of failing to communicate (§ 6068, subd. (m)).

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 his 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.)

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.

4. 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 in rule 9.20 proceedings. (*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 absence of 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).

5. DISCIPLINE RECOMMENDATION

The court recommends that respondent **BRUCE LEWIS BRIGGS** be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

6. RULE 9.20 & COSTS

The court further recommends that **BRUCE LEWIS BRIGGS** 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.

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7. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that BRUCE LEWIS BRIGGS 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.

RICHARD A. HONN
Judge of the State Bar Court