

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>10-N-04268</b>
	)	
<b>ANDREW LEVY</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INACTIVE ENROLLMENT</b>
<b>Member No. 153999</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

Respondent Andrew Levy was charged with a single count of misconduct of willfully failing to comply with California Rules of Court, rule 9.20,<sup>1</sup> as ordered by the California Supreme Court. Respondent failed to file a response to the notice of disciplinary charges (NDC) and his default was entered. The court finds by clear and convincing evidence that respondent is culpable of the charged violation. In view of respondent's misconduct, his failure to participate in this case and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

**II. Significant Procedural History**

The NDC in this case was filed on November 1, 2010, and was served on respondent. Respondent appeared at a status conference in December 2010 and the court instructed him to file his response to the NDC. Respondent also had additional discussions regarding the case with the Deputy Trial Counsel. Despite his actual knowledge of the pendency of the case and his

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

obligation to file a response to the NDC, respondent failed to file a response and his default was entered on February 22, 2011. The matter was taken under submission for decision on March 14, 2011, after the State Bar of California, Office of the Chief Trial Counsel (State Bar) waived a hearing and submitted a brief on the issues of culpability and discipline.<sup>2</sup>

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

#### **A. Facts**

Under former rule 200(d)(1)(A) of the Rules of Procedure of the State Bar, upon entry of default the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts.<sup>3</sup> Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Briefly, those facts show that respondent was admitted to the practice of law in the State of California on September 30, 1991, and has been a member since then.

By order filed on January 27, 2010, the California Supreme Court suspended respondent from the practice of law for three years, stayed execution of that suspension, and placed him on probation for three years on conditions, including two-years actual suspension and until he presented proof of his rehabilitation, fitness to practice and learning and ability in the general law under Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. (Supreme Court case no. S178327; State Bar Court case nos. 06-O-14203 et seq.) The Supreme Court also ordered respondent to comply with rule 9.20, and perform the acts specified in subdivisions (a) and (c) of the rule within 30 and 40 days, respectively, after the effective date of the order. Respondent was served with and received a copy of the order.

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<sup>2</sup> Exhibits one through five attached to the brief are admitted into evidence.

<sup>3</sup> On January 1, 2011, new Rules of Procedure of the State Bar of California became effective. However, as the new rules substantially modify the default procedures, the court orders the application of the former Rules of Procedure in this case based on its determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. January 1, 2011), Preface.)

The Supreme Court order became effective on February 26, 2010, and at all times thereafter remained in full force and effect. Respondent was therefore required to comply with subdivision (a) of rule 9.20 no later than March 28, 2010, and with subdivision (c) of the rule no later than April 7, 2010. Rule 9.20(c) mandates that the attorney “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 did not file the affidavit required by rule 9.20(c).

#### **B. Conclusions of Law**

The term “willful” in the context of rule 9.20 does not require bad faith or actual knowledge of the provision which is violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) 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, 341-342.) Based on the foregoing, the court concludes that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court on January 27, 2010.

#### **IV. Mitigation and Aggravation**

No mitigating circumstances have been shown. In aggravation, respondent has been disciplined on two prior occasions. The first discipline was imposed by Supreme Court order filed September 13, 2006. (Supreme Court case no. S144988; State Bar Court case nos. 00-O-14761 et seq.) Respondent was suspended from the practice of law for two years, execution of which was stayed, and he was placed on probation for two years on conditions, including one-year actual suspension. Respondent stipulated to the misconduct in this case, which involved failing to perform competently, negotiating a loan from his former clients that was not fair and

reasonable to them, using his client trust account to pay his personal expenses, and failing to pay unearned fees.

Respondent's second discipline is the discipline underlying the present case, which was imposed by Supreme Court order filed January 27, 2010. Respondent also stipulated to the misconduct in this case, which involved commingling his personal funds in his client trust account, failing to comply with probation conditions imposed in his first discipline case and failing to comply with a domestic relations order which resulted in his misdemeanor conviction for violating Penal Code section 273.6(a).

## **V. 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; std 1.3, Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.) 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."

Respondent's willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Lydon v. State Bar*, supra, 45 Cal.3d at p. 1188; *Powers v. State Bar*, supra, 44 Cal.3d at p. 342.) A violation of the rule undermines the critical prophylactic function of ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar*, supra, 45 Cal.3d at p. 1187.) Moreover, failing to participate in this case shows that respondent comprehends neither the seriousness of the charges against him nor his

duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.)

Respondent's current misconduct, his prior discipline and his failure to participate in this case demonstrate his inability or unwillingness to comply with his professional obligations. As a consequence, 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.

## **VI. Recommendations**

It is recommended that respondent Andrew Levy be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys.

### **A. California Rules of Court, rule 9.20**

The court further recommends that respondent be 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.

### **B. Costs**

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the 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 Andrew Levy, State Bar number 153999, 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. (Rules Proc. of State Bar, former Rule 220(c).)

Dated: June \_\_\_\_\_, 2011

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DONALD F. MILES  
Judge of the State Bar Court