

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of |) | Case Nos.: 10-N-4777-LMA |
| |) | 10-O-06122 (Cons.) |
| COLLEEN MARIE QUINN |) | DECISION INCLUDING DISBARMENT |
| |) | RECOMMENDATION AND ORDER OF |
| Member No. 87608 |) | INVOLUNTARY INACTIVE |
| |) | ENROLLMENT |
| A Member of the State Bar. |) | |

I. INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) alleging that respondent Colleen Marie Quinn failed to comply with rule 9.20 of the California Rules of Court¹ as ordered by the Supreme Court. The State Bar was represented by Treva R. Stewart. Respondent did not participate either in person or by counsel.

For the reasons stated below, it is recommended that respondent be disbarred.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) in case no. 10-N-4777 was filed and properly served on respondent on June 24, 2010, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar (official address). (Bus. & Prof. Code

¹Future references to rule are to this source. Prior to January 1, 2007, rule 9.20 was numbered rule 955.

§6002.1, subd. (c)²; Rules Proc. of State Bar, rules 60(b) and 583.) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned unclaimed.

On June 30, 2010, the State Bar Court properly served respondent by first-class mail, postage prepaid at her official address with a notice scheduling a status conference on July 26, 2010.

The NDC in case no. 10-O-06122 was filed and properly served on respondent on July 16, 2010, by certified mail, return receipt requested, at here official address. This correspondence was returned unclaimed.

On July 20, 2010, the State Bar Court properly served respondent by first-class mail, postage prepaid at her official address with a notice scheduling a status conference on July 26, 2010.

Respondent did not appear at the status conference. On July 27, 2010, an order memorializing the status conference was properly served on her at her official address. The order noted that the two cases had been consolidated, among other things.

Respondent did not file a response to the NDCs. On August 11, 2010, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at her official address and, by regular mail, at an alternate address in El Dorado, California. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek minimum discipline of disbarment if she was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).) Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling her inactive were filed and properly served on her on August 27, 2010, by certified mail, return receipt requested at her official address. This

²Future references to section are to this source.

document advised respondent, among other things, that she was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order. The return receipt indicated delivery on August 28, 2010 to someone whose signature was illegible.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The case was submitted for decision after the State Bar filed a closing brief on September 17, 2010.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (Section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).) The findings are also based upon matters admitted into evidence or judicially noticed.

A. Jurisdiction

Respondent was admitted to the practice of law in California on November 29, 1979, and has been a member of the State Bar at all times since.

B. Case no. 10-N-4777 (The California Rules of Court Matter)

1. Facts

On January 14, 2010, the California Supreme Court filed an order, number S177930 in State Bar Court case nos. 02-O-12884; 02-C-13218; 03-C-03058; 03-C-04659; 03-O-01003 (03-O-02645; 03-O-03494); 03-O-01971; 04-C-10041; 04-C-15787 (Cons.), in which respondent was ordered, among other things, to be actually suspended for three years and until she complied with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions

for Prof. Misconduct³ and to comply with specified probation conditions. She was also ordered to comply with rule 9.20(a) and (c) within 30 and 40 days, respectively, of the effective date of the order. The order was effective on February 13, 2010. (Rule 9.18(a).⁴) Accordingly, respondent was to comply with rule 9.20(c) no later than March 25, 2010.

The Supreme Court promptly sent respondent a copy of its order upon filing.⁵ A copy of it also was attached to the NDC in this proceeding.

On February 10, 2010, the State Bar's Office of Probation (OP) wrote a letter to respondent reminding her of the obligation to comply with rule 9.20 which included a form for reporting compliance therewith. She received the letter shortly thereafter.

On May 7, 2010, the OP sent respondent a letter noting that the deadline for compliance with rule 9.20 had expired. She received the letter shortly thereafter.

On June 8, 2010, respondent made her first and only attempt to comply with rule 9.20(c) by filing an 9.20 compliance declaration with the State Bar Court. However, the compliance declaration was defective because respondent checked both the box indicating that she had notified clients and co-counsel of her suspension and the box indicating that she had no clients as of the date the rule 9.20 order was issued. As a result, respondent still has not provided the information required by rule 9.20.

On June 11, 2010, the OP sent respondent a letter rejecting the 9.20 compliance

³Future references to standard or std. are to this source.

⁴Prior to January 1, 2007, this rule was numbered rule 953(a).

⁵Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires the Clerk to promptly transmit a copy of opinions and orders to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

declaration because of the above-mentioned defect. Respondent received this letter shortly thereafter but has not submitted a corrected rule 9.20 compliance declaration.

As of June 23, 2010, respondent had not filed with the State Bar Court the affidavit required by rule 9.20(c). She still has not done so.⁶ She has offered no explanation for her noncompliance with rule 9.20(c).

2. Legal Conclusions

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him or her to do or to forbear an act connected with or in the course of his or her profession, which he or she ought in good faith to do or forbear.

There is clear and convincing evidence that respondent wilfully violated the order directing her compliance with rule 9.20⁷ in wilful violation of section 6103.

C. Case no. 10-O-06122 (The Probation Matter)

1. Facts

As noted above, on January 14, 2010, the California Supreme Court filed an order, number S177930 in which respondent was ordered, among other things, to be actually suspended for three years and until she complied with standard 1.4(c)(ii) and to comply with specified probation conditions. The order was effective on February 13, 2010. The Supreme Court promptly sent respondent a copy of its order upon filing. Respondent was on actual notice of the Supreme Court's order and of the probation conditions.

⁶Pursuant to Evidence Code section 452, subdivision (d), the court judicially notices that its records still do not contain a rule 9.20(c) affidavit from respondent.

⁷Wilfulness in the context of rule 9.20 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep his official address current prevented him from learning that he had been ordered to comply with rule 955 (now rule 9.20). (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Respondent did not comply with the following probation conditions:

1) Quarterly reporting:

"Respondent must submit written quarterly reports to the Office of Probation no later than each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct and the conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than 20 days before the last day of the probation period and no later than the last day of such period."

Respondent did not timely submit the quarterly report that was due no later than April 10, 2010; and

2) Substance testing:

"Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory such blood and/or urine samples as may be required to show that respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at respondent's expense, a screening report on or before the 10th day of each month of the probation period, containing an analysis of respondent's blood and/or urine obtained not more than 10 days earlier."

Respondent did not select a licensed medical laboratory or timely cause screening reports to be submitted to the Office of Probation on or before the tenth of March, April, May and June 2010.

Respondent was fully aware of her duty to comply with the disciplinary order. The Office of Probation notified her of her duty to comply with the disciplinary order by letters dated February 10 and May 18, 2010. Respondent received both letters but, as of July 16, 2010, has not filed her April 10 quarterly report or caused any screening reports to be submitted to the Office of Probation.

2. Conclusion of Law

Section 6068, subdivision (k) requires an attorney to comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

By not filing her April 2010 quarterly report or causing any lab screening reports to be filed with the OP between March and June 2010, respondent did not comply with disciplinary probation conditions in wilful violation of section 6068, subdivision (k).

IV. FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(i).) As previously discussed, in S177930, the Supreme Court imposed discipline consisting of four years' stayed suspension; five years' probation on conditions including actual suspension for three years and until she complied with standard 1.4(c)(ii), among other things. In that matter, respondent and the State Bar stipulated to: (1) three felony and one misdemeanor convictions involving obtaining controlled substance by fraud and driving under the influence, which did not involve moral turpitude; (2) professional misconduct in three client matters, including not obtaining informed written consent, not depositing funds in client trust account, obtaining an illegal fee, not communicating with a client, not performing services competently and not promptly refunding unearned fees; and (3) unauthorized practice of law. Multiple acts of misconduct was the aggravating circumstance. Mitigation included no prior disciplinary record; candor and cooperation; and prejudicial delay in prosecution of the matter.

Respondent significantly harmed the administration of justice as his failure to comply with the conditions of her probation made it more much difficult for the State Bar to appropriately monitor her in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct by not complying with rule 9.20(c) or by filing the quarterly or lab screening reports even after being reminded by the OP to do so or after the NDCs in the instant proceeding were filed. (Std.1.2(b)(v).)

Respondent's failure to participate in proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) She has demonstrated her contemptuous attitude toward disciplinary proceedings as well as her failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109-110.)

V. FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES

Respondent did not participate in these proceedings or present any mitigating circumstances pursuant to standard 1.2(e). Since respondent bears the burden of establishing mitigation by clear and convincing evidence, the court has no basis for finding mitigating factors.

VI. LEVEL OF DISCIPLINE

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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of

imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standard 2.6 applies in this matter. It recommends suspension or disbarment depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of noncompliance with an order of the Supreme Court and noncompliance with probation conditions.

The State Bar recommends disbarment. The court agrees.

Respondent's wilful 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; rule 9.20(d).) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 9.20. (*Bercovich v. State Bar, supra*, 50 Cal.3d at p. 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 44 Cal.3d at p. 342.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although she has been given the opportunity to do so. She did not participate in this proceeding and did not comply with rule

9.20(c) or with probation conditions. More importantly, respondent's noncompliance with rule 9.20 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, supra*, 45 Cal.3d at p. 1187.)

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 her unexplained wilful disobedience of the Supreme Court's order.

VII. DISCIPLINE RECOMMENDATION

It is hereby recommended that respondent Colleen Marie Quinn be disbarred from the practice of law in the State of California and that her name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in rule 9.20(c) within 40 days of the effective date of the order showing her compliance with said order.

VIII. COSTS

It is 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.

IX. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the

Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: December _____, 2010

LUCY ARMENDARIZ
Judge of the State Bar Court