

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: **10-N-05499**
)
STEWART WILLIAM LENZ) **DECISION AND ORDER OF**
) **INACTIVE ENROLLMENT**
)
Member No. 129758)
)
A Member of the State Bar.)

INTRODUCTION

Respondent Stewart William Lenz was charged with a single count of misconduct of willfully failing to comply with California Rules of Court, rule 9.20, 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 and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

PROCEDURAL HISTORY

The NDC in this case was filed on July 12, 2010, and was served on respondent. Respondent did not file a response to the NDC or otherwise participate in the case and his default was entered on September 9, 2010.¹ The matter was taken under submission for decision on

¹ As detailed in the declaration attached to the State Bar’s motion for entry of default, in addition to service of the NDC by certified mail, the State Bar took several other reasonable steps to notify respondent of this proceeding. (See *Jones v. Flowers* (2006) 547 U.S. 220.)

October 4, 2010, after the State Bar waived a hearing and submitted a brief on the issues of culpability and discipline. Exhibit one attached to the brief is admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Culpability

Pursuant to 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. 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 December 11, 1987, and has been a member since then.

By order filed on December 15, 2009, the California Supreme Court suspended respondent from the practice of law for one year, stayed execution of that suspension on conditions, including that respondent be suspended for a minimum of 75 days and until a motion to terminate the actual suspension was granted under rule 205 of the Rules of Procedure of the State Bar. (Supreme Court case no. S177206; State Bar Court case nos. 08-O-11182; 08-O-13367.) The Supreme Court also ordered that if respondent remained suspended for 90 days or more, he was to comply with California Rules of Court,² rule 9.20, and perform the acts specified in subdivisions (a) and (c) of the rule within 120 and 130 days, respectively, after the effective date of the order. Respondent was served with, and received, a copy of this order.

The Supreme Court order was effective on January 14, 2010, and at all times thereafter remained in full force and effect. Respondent was therefore required to comply with rule 9.20(a) no later than May 14, 2010, and with rule 9.20(c) no later than May 24, 2010. Rule 9.20(c) mandates that the attorney “file with the Clerk of the State Bar Court an affidavit showing that he

² All further references to “rules” are to these rules unless otherwise noted.

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).

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 December 15, 2009.

Mitigating and Aggravating Circumstances

No mitigating circumstances have been shown. In aggravation, the discipline underlying the Supreme Court’s December 15, 2009, order in this case is a record of prior discipline. Respondent did not participate in this prior case and his default was entered. Respondent represented three separate clients in two separate estate matters and was found culpable of failing to perform legal service competently, failing to communicate with his client, failing to return client files after termination (two counts), and failing to cooperate and participate in disciplinary investigation (two counts).

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

RECOMMENDATION

It is recommended that respondent Stewart William Lenz be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys. 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.³

³ An attorney's failure to comply with rule 9.20 may be punished as a crime or a contempt. (Cal. Rules of Court, rule 9.20(d).) In addition, 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 at p. 341.)

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.

ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Stewart William Lenz, State Bar number 129758, 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, rule 220(c).)

Dated: January _____, 2011

PAT McELROY
Judge of the State Bar Court