

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case No.: 10-N-05697  
 )  
ROBERT DUANE GEORGE ) DECISION AND ORDER OF  
 ) INACTIVE ENROLLMENT  
 )  
Member No. 185306 )  
 )  
A Member of the State Bar. )

INTRODUCTION

Respondent Robert Duane George 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 August 17, 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 October 26, 2010.<sup>1</sup> The matter was taken under submission for decision on

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<sup>1</sup> 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.)

November 15, 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 former rule 200(d)(1)(A) of the Rules of Procedure of the State Bar,<sup>2</sup> 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 10, 1996, and has been a member since then.

By order filed on February 18, 2010, the California Supreme Court suspended respondent from the practice of law for three years, stayed execution of that suspension on conditions, including that respondent be suspended for a minimum of 90 days and until a motion to terminate the actual suspension was granted under the Rules of Procedure of the State Bar. (Supreme Court case no. S178567; State Bar Court case no. 08-O-12789.) The Supreme Court also ordered respondent to comply with California Rules of Court, rule 9.20,<sup>3</sup> 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 this order.

The Supreme Court order became effective on March 20, 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 April 19, 2010, and with subdivision (c) of the rule no later than

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<sup>2</sup> The Rules of Procedure of the State Bar were amended effective January 1, 2011. However, the amended rules do not apply to this proceeding. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 1.)

<sup>3</sup> All further references to “rules” are to these rules unless otherwise noted.

April 29, 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).

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 February 18, 2010.

#### **Mitigating and Aggravating Circumstances**

No mitigating circumstances have been shown. In aggravation, respondent has been disciplined on one prior occasion, which is the discipline underlying the Supreme Court’s February 18, 2010, order in this case. Respondent did not participate in this prior case and his default was entered. In a single client matter, respondent was found to have failed to: communicate with his client, perform services competently, provide an accounting to his client, returned an unearned fee of \$5,000, release the client’s file to the client, and cooperate with the State Bar in its investigation of the case.

#### **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.

### **RECOMMENDATION**

It is recommended that respondent Robert Duane George be disbarred from the practice of law in the State of California and that his name be stricken from the rolls 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.<sup>4</sup>

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 Robert Duane George, State Bar number 185306, 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: February \_\_\_\_\_, 2011

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RICHARD A. HONN  
Judge of the State Bar Court

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<sup>4</sup> 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.)