

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 10-N-06040-RAP
)
SUSAN ANN MITCHELL) DECISION AND ORDER OF
) INVOLUNTARY INACTIVE
Member No. 158640) ENROLLMENT
)
A Member of the State Bar.)

I. Introduction

In this default disciplinary matter, respondent Susan Ann Mitchell (“respondent”) is found culpable of failing to comply with California Rules of Court, rule 9.20, as ordered by the California Supreme Court on February 24, 2010, in case number S178793 (State Bar Court case nos. 06-O-14210 (06-O-14404; 07-O-14287; 07-O-14717; 07-O-14958)).

The court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”). The Notice of Disciplinary Charges (“NDC”) in case no. 10-N-06040 was filed and properly served via certified mail, return receipt requested, on respondent at her official membership records address on July 26, 2010.

Respondent failed to file a timely response to the NDC. (Rules Proc. of State Bar, rule 103.) Respondent also failed to appear at the scheduled status conference on September 9, 2010.

On motion of the State Bar, respondent's default was entered on October 13, 2010. A copy of the order of entry of default was properly mailed to respondent's official membership records address. Said mailing was subsequently returned to the State Bar Court as undeliverable. Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e),¹ on October 16, 2010.

The court took this matter under submission on November 3, 2010, following the filing of the State Bar's brief on culpability and discipline which requested waiver of a hearing in this matter.

III. Findings of Fact and Conclusions of Law

All factual allegations contained in the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 8, 1992, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

B. Violation of California Rules of Court, Rule 9.20

On or about February 24, 2010, the California Supreme Court filed order no. S178793 ("9.20 Order"). The 9.20 Order included a requirement that respondent comply with rule 9.20 of the California Rules of Court by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the 9.20 Order. On or about February 24, 2010, the Clerk of the Supreme Court of the State of California properly served upon respondent a copy of the 9.20 Order. Respondent received the 9.20 Order.

¹ All references to section(s) are to the Business and Professions Code, unless otherwise indicated.

The Supreme Court Order became effective on March 26, 2010, 30 days after the 9.20 Order was filed. Thus, respondent was ordered to comply with subdivision (a) and/or (b) of the rule 9.20 of the California Rules of Court no later than on or about April 25, 2010, and was ordered to comply with subdivision (c) of rule 9.20 no later than on or about May 5, 2010.

Respondent failed to file with the clerk of the State Bar Court a declaration of compliance with rule 9.20, subdivisions (a) and (b), of the California Rules of Court, as required by rule 9.20, subdivision (c).

Whether respondent is aware of the requirements of rule 9.20 or of her obligation to comply with those requirements is immaterial. “Willfulness” in the context of rule 9.20 does not require actual knowledge of the provision which is violated. 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 [referring to the rule by its previous number designation, rule 955].)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, subdivision (c), as ordered by the Supreme Court.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was offered or received, and none can be gleaned from the record. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.2(e).)²

B. Aggravation

Respondent’s prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has two prior impositions of discipline.

² All further references to standard(s) are to this source.

Effective August 12, 2005, respondent was privately reprimanded with conditions in State Bar Court Case No. 04-O-12160. In this single-client matter, respondent failed to perform legal services competently and cooperate with the State Bar. In mitigation, respondent had no prior record of discipline. No aggravating circumstances were involved.

On February 24, 2010, the California Supreme Court, in the underlying matter, issued an order (S178793) suspending respondent from the practice of law for three years, stayed, subject to a two-year suspension and/until: (1) the State Bar Court grants a motion to terminate her suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California; and (2) respondent provides proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). In this default proceeding, respondent was found culpable of multiple acts of professional misconduct in two client matters and three trust account matters. Respondent's misconduct included failing to deposit client funds in a client trust account, engaging in the unauthorized practice of law, charging an illegal fee, failing to avoid adverse interests, failing to deliver client properties promptly, committing acts of moral turpitude, and commingling. In aggravation, respondent committed multiple acts of misconduct, caused significant harm to her clients, and failed to participate in the disciplinary proceedings. In addition, respondent had a prior record of discipline and her misconduct was surrounded by bad faith, dishonesty, concealment, and overreaching. No mitigating circumstances were found.

V. Discussion

Respondent's willful failure to comply with rule 9.20, subdivision (c), is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure 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* (1988) 45 Cal.3d 1181, 1187.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although she has been given opportunities to do so. Therefore, her 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 willful disobedience of an order of the California Supreme Court.

VI. Recommended Discipline

The court recommends that respondent Susan Ann Mitchell be disbarred from the practice of law in California and that her name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent 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 days, respectively, after the effective date of its order imposing discipline in this matter.³

VII. Costs

The court recommends 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 section 6140.7 and as a money judgment.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar of

³ Respondent is required to file a rule 9.20, subdivision (c), affidavit even if she has no clients to notify. (*Powers v. State Bar, supra*, 44 Cal.3d at p. 341.)

California. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: January 3, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court