

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of |) | Case No.: 10-N-06479-RAH |
| |) | |
| YEFIM MANDEL SHLIONSKY |) | DECISION INCLUDING DISBARMENT |
| |) | RECOMMENDATION AND |
| Member No. 237892 |) | INVOLUNTARY INACTIVE |
| |) | ENROLLMENT ORDER |
| <u>A Member of the State Bar.</u> |) | |

I. Introduction

In this default disciplinary matter, respondent **Yefim Mandel Shlionsky** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20,¹ as ordered by the California Supreme Court on April 1, 2010, in Supreme Court case no. S179783 (State Bar Court case no. 08-O-13804).

In view of respondent's serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Significant Procedural History

The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent on September 29, 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 §6002.1,

¹ References to rules are to the California Rules of Court, unless otherwise noted.

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.) Another copy of the NDC was properly served on respondent on November 1, 2010, by certified mail, return receipt requested, at his official address.³ In a December 9, 2010, telephone conversation with the Office of the Chief Trial Counsel (State Bar), respondent confirmed that he had received both copies of the NDC.

On October 14, 2010, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on November 1, 2010. Respondent did not appear at the status conference. On November 4, 2010, an order memorializing the status conference was properly served on him at his official address.

On January 19, 2011, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on February 4, 2011. Respondent did not appear at the status conference. On February 9, 2011, an order memorializing the status conference was properly served on him at his official address.

Respondent did not file a response to the NDC. On February 17, 2011, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. (Rules Proc. of State Bar, rule 200(a), (b).⁴) The motion advised respondent that the State Bar would seek minimum discipline of disbarment if he was found culpable. (Rules of Procedure, rule 200(a)(3).)

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on March 4,

²All references to section are to this source.

³ The NDC was served again because the United States Postal Service's tracking website showed no record of the first service.

⁴ References to the Rules of Procedure are to the rules in effect until January 1, 2011, unless otherwise stated.

2011, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order.

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 on March 24, 2011, after the State Bar filed a closing brief.

III. Findings of Fact and Conclusions of Law

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

Jurisdiction

Respondent was admitted to the practice of law in California on October 27, 2005, and has since been a member of the State Bar of California.

Violation of California Rules of Court, Rule 9.20

On April 1, 2010, in California Supreme Court case no. S179783 (State Bar Court case nos. 08-O-13804), the Supreme Court suspended respondent for two years, stayed the execution of that period of suspension, subject to three years' probation on certain conditions, including actual suspension for a minimum of one year and until he makes specified restitution and complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct. Among other things, the Supreme Court ordered respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, after the

effective date of the Supreme Court order. The order, which was duly served on respondent on or about April 1, 2010, became effective May 1, 2010. (Cal. Rules of Court, rules 8.532(a) and 9.18(b).) Respondent received the Supreme Court order.

California Rules of Court, rule 9.20(c) mandates that respondent “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 was to have filed the rule 9.20 affidavit by June 10, 2010, but to date, he has not done so and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 9.20 or of his 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.)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in S179783.⁵

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁶ stds. 1.2(e) and (b).)

⁵ Specifically, rule 9.20(d) provides that a suspended attorney’s willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.

Furthermore, respondent’s failure to comply with rule 9.20 constitutes a violation of Business and Professions Code section 6103, which requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

⁶ Future references to standard(s) or std. are to this source.

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

As previously noted, in the underlying matter, the California Supreme Court ordered that respondent be suspended for two years, stayed the execution of the suspension, subject to three years' probation on certain conditions, including actual suspension for a minimum of one year and until he makes specified restitution and complies with standard 1.4(c)(ii). (Supreme Court case no. S179783.) Respondent's stipulated misconduct included violations of sections 6106 and 6068, subdivisions (i) and (m) as well as rule 3-110(A) of the Rules of Professional Conduct in one client matter. Aggravating factors were dishonesty and harm. Candor and cooperation were the mitigating circumstances.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with rule 9.20(c), even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

Respondent's lack of cooperation with the State Bar before the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

Respondent's willful noncompliance 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.) 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 he has been given opportunities to do so.

Therefore, 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 his willful disobedience of the Supreme Court order.

VI. Recommendations

A. Discipline

Accordingly, the court recommends that respondent **Yefim Mandel Shlionsky** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

B. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁷

C. Costs

It is further 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.

⁷ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under Business and Professions Code section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: July _____, 2011

RICHARD A. HONN
Judge of the State Bar Court