

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>10-N-09721-RAP</b>
	)	
<b>ROBERT JEFF CLASTER</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND</b>
<b>Member No. 70548</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT ORDER</b>
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent Robert Jeff Claster is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20,<sup>1</sup> as ordered by the Review Department of the State Bar Court on August 13, 2010, in State Bar Court case no. 10-C-05324.

In view of respondent’s serious misconduct and the evidence in aggravation, the court recommends that he 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 December 13, 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,

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<sup>1</sup> References to rules are to the California Rules of Court, unless otherwise noted.

subd. (c)<sup>2</sup>; Rules Proc. of State Bar, rules 60(b) and 583.<sup>3</sup>) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) A courtesy copy of the NDC was also served on respondent on that same date at an alternate address in Ione, California.<sup>4</sup>

On December 21, 2010, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address<sup>5</sup> and at the Ione address with a notice scheduling a status conference on February 15, 2011. Respondent did not appear at the status conference.<sup>6</sup> On that same date, an order memorializing the status conference was served on him at Atascadero State Hospital (ASH). This matter was consolidated with State Bar Court case no. 10-C-05324 and abated at this status conference. A telephonic status conference was scheduled for April 20, 2011.

On April 22, 2011, April 8 and May 20, 2013, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address and at ASH with status conference orders or notices scheduling telephonic status conferences on September 14, 2011, May 14 and July 24, 2013, respectively. On September 15, 2011, an order memorializing the

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<sup>2</sup>All references to section are to this source.

<sup>3</sup>References to the Rules of Procedure are to those in effect until December 31, 2010 unless otherwise stated.

<sup>4</sup>At the time, respondent was confined at Mule Creek State Prison for a conviction that led to another disciplinary matter, State Bar Court case no. 10-C-05324.

State Bar Court case no. 10-C-05324, filed August 27, 2010, was abated pursuant to the court's order filed September 28, 2010. State Bar Court case no. 10-N-09721 was abated pursuant to the court's order filed February 15, 2011. The abatements were terminated by order filed on November 5, 2013, after respondent was released from confinement. State Bar Court case no. 10-C-05324 is now severed from this matter and abated pending the Supreme Court's consideration of the disbarment recommendation in the instant proceeding.

<sup>5</sup>This and all subsequent documents served by the State Bar Court on respondent at his official address were returned as undeliverable, except for the status conference order filed on May 20, 2013.

<sup>6</sup>Respondent did not appear at any of the status conferences, even telephonically, or otherwise participate in these proceedings.

previous day's status conference was served on respondent at ASH. On May 20 and July 24, 2013,<sup>7</sup> orders memorializing the other status conferences were properly served on him at his official address and at ASH.<sup>8</sup>

On September 15 and December 9, 2011, March 6 and June 21, 2012, the State Bar Court served respondent by first-class mail, postage prepaid at ASH with status conference orders scheduling telephonic status conferences on December 7, 2011, March 6, June 21 and July 13, 2012. On September 15 and December 9, 2011, March 6 and June 21, 2012, orders memorializing the status conferences were served on him at ASH.

On July 16, 2012, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a status conference order scheduling a telephonic status conference on October 11, 2012. The October 11 status conference was actually conducted on October 17, 2012. On October 24, 2012, an order memorializing the status conference and scheduling a telephonic status conference on April 2, 2013, was served on him at ASH.

On October 15, 2013, the State Bar filed a motion to terminate the abatement as respondent's confinement had ended. The motion was properly served at respondent's official address and also at ASH and two alternate addresses in Los Angeles. On November 5, 2013, the court granted the motion and terminated the abatement. Respondent was ordered to file a response to the NDC within 20 days of the filing of the order and an in-person status conference was scheduled for December 4, 2013. The order was properly served at respondent's official

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<sup>7</sup> The July 24 order contained the notation "State Bar to file motion to terminate abatement."

<sup>8</sup> The orders served at ASH on May 20 and July 24, 2013, were returned as undeliverable. The envelope containing the May 20 order bore a white sticker placed over the ASH address with a handwritten notation "1142 Los A". The rest of this address was covered over by a yellow United States Postal Service sticker indicating that the correspondence was undeliverable. The envelope containing the July 24 order bore the notation "no such name."

address and also at ASH and two alternate addresses in Los Angeles.<sup>9</sup>

On December 6, 2013, the State Bar properly served respondent at his official address with a notice of its upcoming change of address.

On February 7, 2014, the State Bar properly served respondent at his official address and also at an email address with a notice of substitution of its counsel.

Respondent did not file a response to the NDC. On February 11, 2014, 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). ) Courtesy copies were also served on an alternate address in Los Angeles and two email addresses.<sup>10</sup> 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 February 28, 2014, by certified mail, return receipt requested at his official address. A courtesy copy was also mailed to an alternate address in Los Angeles. 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.)

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<sup>9</sup> All of the court's copies of the order terminating abatement served on respondent were returned as undeliverable. The one returned by ASH bore the notation "no such name."

<sup>10</sup> These two email addresses and the two alternate addresses in Los Angeles resulted from the State Bar's investigative efforts to locate respondent.

The case was submitted for decision on March 26, 2014, 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 December 22, 1976, and has since been a member of the State Bar of California.

#### **Violation of California Rules of Court, Rule 9.20**

On August 13, 2010, the Review Department filed an interim suspension order in State Bar Court case no. 10-C-05324 (interim suspension order) ordering respondent to comply with rule 9.20(a) and (c) within 30 and 40 days, respectively, of the effective date of the interim suspension order. The interim suspension order was effective on September 6, 2010. Accordingly, respondent was to comply with rule 9.20(a) no later than October 6, 2010, and with rule 9.20(c) no later than October 18, 2010.<sup>11</sup> A copy of the interim suspension order was properly served on respondent at his official address on August 13, 2010.

As of March 3, 2014, when the State Bar filed its brief regarding culpability and discipline, respondent had not filed with the State Bar Court the affidavit required by rule 9.20(c). He still has not done so.<sup>12</sup> He has offered no explanation for his noncompliance with rule 9.20(c).

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<sup>11</sup> October 16, 2010 was a Saturday, therefore compliance was not required until October 18, 2010. (Rule 63, Rules Proc. of State Bar; Code Civ. Proc. §12a and b.)

<sup>12</sup> The court judicially notices its records pursuant to Evidence Code section 452(d).

There is clear and convincing evidence that respondent willfully violated the interim suspension order directing his compliance with rule 9.20(c). This constitutes a violation of rule 9.20(d), which makes the willful noncompliance with the provisions of rule 9.20 a cause for disbarment, suspension or revocation of probation, in relevant part. 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.)

As a result of respondent’s willful failure to comply with the Review Department’s interim suspension order, he violated section 6103 which provides, in relevant part, that the willful violation or disobedience of a court order which requires an attorney to do or forbear an act connected with or in the course of his or her profession, which the attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

#### **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,<sup>13</sup> stds. 1.5 and 1.6.)

##### **A. Mitigation**

No mitigation was submitted into evidence. (Std. 1.6.)

##### **B. Aggravation**

There are several aggravating factors. (Std. 1.5.)

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<sup>13</sup> Future references to standard(s) or std. are to the standards that became effective on January 1, 2014.

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.5(a).)

In Supreme Court case no. S040399, (State Bar Court case nos. 91-C-08585; 92-C-15507; 93-C-12080 (Cons.)), the California Supreme Court ordered, among other things, that respondent be suspended for three years, stayed the execution of the suspension, subject to five years' probation on certain conditions, including actual suspension for a minimum of one year and until he complied with standard 1.4(c)(ii).<sup>14</sup> Respondent's stipulated misconduct included three convictions between 1987 and 1993 for violating Penal Code sections 653m(a) (annoying telephone calls) and 646.9 (stalking) regarding two different victims.<sup>15</sup> Multiple acts was the aggravating factor. Mitigating circumstances included remorse, candor and cooperation and good faith.

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 and after the matter was returned to active status after the abatement was terminated. (Std. 1.5(g).)

Respondent's lack of cooperation with the State Bar before the entry of his default is also a serious aggravating factor. (Std. 1.5(h).)

## **V. 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; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.1.)

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<sup>14</sup> This standard is now standard 1.2(c)(1).

<sup>15</sup> State Bar Court case no. 10-C-05324 resulted from a felony conviction of Penal Code section 646.9(a) with regard to one of the victims in one of the prior convictions.

Standard 1.7 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 must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standard 2.8(a) applies in this matter. It suggests disbarment or actual suspension for disobedience or violation of a court order related to an attorney's practice of law, the attorney's oath, or the duties required of an attorney under section 6068, subdivisions (a)-(h).

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; std. 1.1.) 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; std. 1.1.)

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.



Having considered the misconduct herein as well as the aggravating and mitigating circumstances and the relevant law, the court recommends that respondent be disbarred as 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 Review Department's rule 9.20 order.

## **VI. Recommendations**

### **A. Discipline**

Accordingly, the court recommends that respondent Robert Jeff Claster, State Bar No. 70548, 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.<sup>16</sup>

### **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.

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<sup>16</sup> 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**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the current Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: May 5, 2014

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RICHARD A. PLATEL  
Judge of the State Bar Court