

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 11-C-14946; 12-N-10159 (Cons.)
)	
ROBERT EATON DOWD,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 93284,)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
<u>A Member of the State Bar.</u>)	

INTRODUCTION

This is a consolidated trial of two disciplinary proceedings arising from misconduct by respondent Robert Eaton Dowd (Respondent) in two separate matters. The first of the proceedings arises out of Respondent’s criminal conviction for a misdemeanor violation of Penal Code section 148, subdivision (a)(1)[resisting arrest]. The second proceeding results from Respondent’s violation of the California Supreme Court’s order that he comply with rule 9.20 of the California Rules of Court in conjunction with his disciplinary suspension in 2011. In view of Respondent’s misconduct and the attendant aggravating factors, the court recommends, *inter alia*, that he be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

On April 5, 2012, the Review Department of this court issued an order referring case no. 11-C-14946 to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding Respondent’s misdemeanor violation of Penal Code section 148, subdivision (a)(1)

involved moral turpitude or other misconduct warranting discipline. The matter was thereafter assigned to the undersigned.

On April 17, 2012, the Notice of Disciplinary Charges (NDC) in case no. 12-N-10159 was filed in this court by the State Bar of California. In that NDC, the State Bar alleges that Respondent willfully violated the Supreme Court's order of October 19, 2011, which suspended Respondent for 90 days from the practice of law and required him to comply with rule 9.20, subdivisions (a) and (c), of the California Rules of Court. That disciplinary order resulted from a finding that Respondent had willfully violated section 6068, subdivision (d), of the Business and Professions Code by having his secretary sign his name to various declarations under penalty of perjury and other pleadings.

On May 14, 2012, an initial status conference was held in the matter at which time the two cases were consolidated and given a trial date of August 14, 2012.

On June 11, 2012, Respondent filed a combined response to the NDC and the criminal conviction referral, "denying both generally and specifically each charge of misconduct in each case."

Trial was commenced and completed as scheduled. The State Bar was represented at trial by Deputy Trial Counsel Katherine Kinsey. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the stipulation of undisputed facts filed by the parties and on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on October 9, 1980, and has been a member of the State Bar at all relevant times.

Case No. 12-N-10159

On October 19, 2011, the California Supreme Court filed order No. S194601 (“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) of that rule within 30 and 40 days, respectively, after the effective date of the 9.20 Order.

On October 19, 2011, the Clerk of the Supreme Court of California served the 9.20 Order on Respondent and it was received by him.

The 9.20 Order became effective on November 18, 2011. As a result, Respondent was required to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than December 18, 2011. He was required to comply with subdivision (c) of rule 9.20 no later than December 28, 2011.

On November 2, 2011, the State Bar’s Office of Probation sent Respondent a reminder letter regarding Respondent’s probation terms and conditions. In that letter, the Office of Probation reminded Respondent that the Supreme Court had ordered Respondent to comply with rule 9.20. This reminder portion of the letter was in **bold print** and included the following explicit instructions on what Respondent must, and must not, do to comply:

The Court has also ordered you to comply with the provisions of Rule 9.20, California Rules of Court. Your affidavit must be timely filed with the State Bar Court by no later than December 28, 2011. Do NOT submit your original affidavit to the Office of Probation.

Respondent has stipulated that he received this November 2, 2011 letter from the Office of Probation. The letter had as enclosures copies of the 9.20 Order; the text of rule 9.20; copies of Rules 5.330, 5.332, and 5.333 of the State Bar Rules of Procedure [which set out the rules governing the filing of the rule 9.20 compliance declaration]; and a blank copy of a Rule 9.20 compliance declaration for Respondent to use.

Respondent did not file the required compliance affidavit by December 28, 2011.

On January 3, 2012, the Office of Probation mailed a letter to Respondent regarding his failure to file the 9.20 compliance declaration by the December 28, 2011 deadline. In the letter, Respondent was informed that, if he did not file the 9.20 declaration within one week of the January 3, 2012 letter, he would be referred to the Office of the Chief Trial Counsel for further disciplinary action. The letter also stated that, even if Respondent did file the 9.20 declaration within one week, he might still be subject to referral for further discipline. With regard to compliance, this letter again included the admonition that the compliance statement must be filed “with the State Bar Court; do **NOT** submit your original affidavit to the Office of Probation.” [emphasis in original.] At the conclusion of the letter, the Office of Probation representative provided Respondent with his direct dial telephone number and invited Respondent to contact him if Respondent had any questions. Respondent agrees that he received this letter.

On January 12, 2012, because Respondent had also not timely filed his first quarterly report, the Office of Probation sent Respondent another letter, notifying him that his report was overdue and reminding him of his probation obligations. Enclosed with this letter were copies of the prior letter of November 2, 2011, including its enclosures regarding compliance with Rule 9.20.

On or about January 20, 2012, the Office of Probation received from Respondent a purported 9.20 compliance declaration. It had been signed by Respondent on January 15, 2012. Despite the express language of rule 9.20 and the repeated prior directions from the Office of Probation, Respondent did not file this statement with the State Bar Court. Instead, the envelope in which the declaration was sent was hand-addressed to: “State Bar of California Probation Dept.” Worse, the compliance declaration itself was incomplete on its face. There are only five numbered inquiries on the form. The form declaration includes the explicit instruction that the responding attorney is to “Answer each question by checking one box per question.” Respondent responded properly to the first four inquiries, numbered 1-4, by checking a single

response for each, but he left completely blank the box for inquiry number 5. This inquiry required Respondent to provide the address to which communications to him were to be sent.¹ On January 24, 2012, a representative of the Office of Probation left a voice mail message for Respondent regarding the deficiencies of his attempted compliance declaration.

More than two months later, on April 4, 2012, Respondent filed another purported 9.20 compliance declaration, this time filing it with the State Bar Court. The declaration was dated March 20, 2012. In his declaration, Respondent once again did not include any information regarding his current address as required by item 5 of the declaration form and rule 9.20, subd. (c).

On April 6, 2012, the Office of Probation mailed a letter to Respondent at his address of record informing him that the April 4, 2012 compliance declaration had not been filed because he had not included an address for future communications. Another blank compliance declaration was enclosed with the letter for Respondent's use. Respondent received the April 6, 2012 letter.

On April 16, 2012, Respondent filed with the State Bar Court another purported rule 9.20 compliance declaration. This declaration was dated April 9, 2012. Although Respondent had previously followed the directions contained in the form by checking only one box per question, in this compliance declaration he checked all of the boxes for the first two questions. By checking all of these boxes, Respondent was simultaneously representing that he had notified all clients and co-counsel of his suspension and had taken the required steps to return all client papers, while he was simultaneously stating that he had no clients to be notified and no papers to be returned.

¹ Subdivision (c) of rule 9.20 is explicit in stating that the compliance declaration "must also specify an address where communications may be directed to the disbarred, suspended, or resigned member." The compliance form submitted by Respondent had three blank lines set out next to the box for inquiry number 5, where the address information was to be provided. Respondent left them blank.

On April 20, 2012, the Office of Probation mailed a letter to Respondent at his address of record, informing him that his April 16, 2012 compliance declaration was rejected because Respondent had checked conflicting boxes for both items 1 and 2. With this letter, the Office of Probation again enclosed a blank declaration form as a courtesy. Respondent received the April 20, 2012 letter.

On April 17, 2012, as previously noticed, the NDC in case no. 12-N-10159 was filed in this court by the State Bar of California.

On May 3, 2012, Respondent filed another rule 9.20 declaration of compliance with the State Bar Court, which was then approved by the Office of Probation. The declaration was dated April 30, 2012.

Count 1 - Violation of California Rules of Court, Rule 9.20, subd. (c)

Respondent was required by the Supreme Court's order to file his rule 9.20 compliance affidavit no later than December 28, 2011. Respondent did not file any affidavit of compliance within the time that he was required to do so. It was not until after the charges had been filed in this matter that Respondent filed a compliance statement that complied with rule 9.20.

His conduct constituted a willful violation of rule 9.20 and the Supreme Court's order.

Case No. 11-C-14946

Facts

In 2010, Respondent owned a dog named Taft, who had some visible health issues. On June 30, 2010, Animal Control Officer (ACO) Jason Smith (hereinafter Smith or ACO Smith) went to the home where Taft was located, observed the dog's impaired condition, and concluded that the dog needed to be taken promptly to a veterinarian for evaluation and possible follow-up. Although ACO Smith and Respondent knew each other personally as a result of some prior complaints and citations related to Respondent's animals, Smith was not aware that Respondent had recently moved into this new residence and that Taft was Respondent's dog. Because

Respondent was not home when Smith was there on June 30, Smith merely posted on the residence a notice requiring that the dog be taken to a veterinarian.

On the morning of the following day, July 1, 2010, Smith went back to the residence to determine whether there had been compliance with his notice to comply. Respondent was home when ACO Smith, in uniform, arrived. Smith explained that he had posted the notice requiring the dog to be taken to a veterinarian and asked for verification that there had been compliance. When the verification was not provided, Smith then told Respondent that he was going to issue Respondent a citation for failure to provide the dog with proper veterinary care and for violations of vaccination and licensing regulations. At that point, ACO Smith asked Respondent to provide him with identification, so that Smith could include that identifying information in the citation he was starting to write. In response to that request, Respondent became angry and verbally abusive, including telling Smith that he “was not going to show him shit,” calling Smith a “Mother fucker”, and ordering the officer to get off Respondent’s property. During the course of these comments, Respondent also told Smith that he was an attorney and knew his rights. Although ACO Smith first tried to de-escalate the situation by calming Respondent down, Respondent continued to refuse to provide any identification. Smith then warned Respondent that his refusal to provide any ID would result in Smith calling in a member of the sheriff’s office, which would result in an arrest for a violation of Penal Code section 148 for resisting the ACO’s investigation. Respondent nonetheless refused to provide any ID.

Smith then contacted the sheriff’s office, and Deputy Sheriff Jaime Alarcon was dispatched to Respondent’s residence. He arrived in just a few minutes. He was clothed in a sheriff’s uniform and arrived in a marked squad car. Respondent was aware that Alarcon was a uniformed law enforcement officer.

Respondent’s residence was a trailer. Outside of the trailer, near the door leading into it, Respondent had set up a table where he liked to prepare his morning meal. On the table were a

juicer, a knife, and various fruits/vegetables. When Deputy Alarcon arrived, Respondent was standing near that table. On exiting his vehicle, Deputy Alarcon walked over to meet with ACO Smith in order to get a briefing on what was going on. As Smith was in the process of identifying Respondent to Alarcon as the person who had refused to provide an ID, they saw that Respondent had now picked up a knife from the table and was holding it in his hand. Respondent was approximately 15 feet away from where the two officers were talking. Deputy Alarcon then told Respondent in a normal voice to drop the knife. Respondent heard the request but did not comply with it. Instead, he responded by starting to move directly toward the two officers with the knife at waist level and pointed at the officers. Deputy Alarcon immediately adopted a more forceful approach and tone, and ordered Respondent to "Drop the knife." Rather than comply with what was now a clear order, Respondent responded by saying that "It's just a kitchen knife" while he continued moving directly toward the officer, knife still in hand and aimed at the officers. ACO Smith, increasingly concerned for his safety, started to move quickly backwards --behind Deputy Alarcon and closer to the possible safety of his vehicle. Respondent was now within 10 feet of Alarcon and still advancing. Deputy Alarcon, now quite concerned for his personal safety, started stepping backwards, quickly took his pistol from its holster, and loudly issued another, more emphatic directive: "Drop the fucking knife!" Respondent still did not immediately drop the knife. Instead, when he continued to move toward Deputy Alarcon, the officer raised his pistol and aimed it directly at Respondent. At that point, Respondent finally dropped the knife, raised his hands, and complained, "You're actually pulling a gun on me?" Respondent was then arrested by Alarcon.

Respondent was subsequently charged with violating Penal Code sections 148(a)(1) and section 417(a)(1). Penal Code section 148(a)(1) prohibits willfully and unlawfully resisting, delaying, or obstructing a peace officer who was then and there attempting to or discharging the duty of his/her office or employment. Penal Code section 417(a)(1) prohibits a person, except in

self-defense, from willfully and unlawfully drawing or exhibiting a deadly weapon in a rude, angry, or threatening manner in the presence of another person.

On July 11, 2011, a jury convicted Respondent of violating Penal Code section 148(a)(1). At the same time, the jury acquitted Respondent on the charge of violating Penal Code section 417(a)(1).

Conclusions

Respondent's conviction of a violation of Penal Code section 148(a)(1) is conclusive evidence of the elements of that crime. (*In re Larkin* (1989) 48 Cal.3d 236, 244.) The legal elements of a violation of section 148, subdivision (a) are as follows: (1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties. The offense is a general intent crime, proscribing only the particular act (resist, delay, obstruct) without reference to an intent to do a further act or achieve a future consequence. (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329; *People v. Simons* (1996) 42 Cal.App.4th 1100, 1108-1109, *People v. Roberts* (1982) 131 Cal.App.3d Supp. 1, 8-9.)

The parties have stipulated that the facts and circumstances surrounding Respondent's conviction do not involve moral turpitude, and this court agrees with that conclusion. (See *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 60; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214-217; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 590-591.)

The parties also signed and filed a stipulation including language that the conduct surrounding Respondent's conviction involved other misconduct warranting discipline. However, at the commencement of trial, Respondent asked to be relieved of that stipulation, stating that he had not noticed the language in the stipulation at the time it was presented to him,

that there had never been any discussion between the parties of including any such concession, and that he had never intended to stipulate to culpability for his conduct related to his conviction. When counsel for the State Bar was asked by this court whether the existence or non-existence of the concession of culpability would make any difference in the evidence that the State Bar intended to present at trial, counsel responded that it would not. This court then indicated that it would rule on the request for relief from the stipulation after hearing whatever evidence was offered at trial on the issue.

Respondent's request for relief from the stipulation is granted. The issue of whether Respondent's actions constituted misconduct warranting discipline is ultimately a legal conclusion that must be made by this court. No prejudice inured to the State Bar from Respondent being relieved from the stipulation and Respondent's conduct, throughout the pendency of this proceeding, has been consistent with his stated belief that his actions do not warrant discipline. In the end, the purposes of this proceeding are better served by basing this court's decision on Respondent's true state of mind about the appropriateness of his prior actions, rather than on a signed stipulation suggesting a far different attitude on his part.

With regard to the issue of whether Respondent's conduct, described above, constitutes misconduct warranting discipline, this court concludes that it does.

As previously noted, Respondent's conviction conclusively establishes that he willfully resisted, delayed, or obstructed a peace officer, when the officer was engaged in the performance of his or her duties, and the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties. Such misconduct is antithetical to the conduct expected of an attorney and indicates a lack of fitness to practice law.

In addition, Respondent's conduct, in approaching the law enforcement officials with a knife and continuing his threatening actions until Deputy Alarcon felt sufficiently threatened that he drew his duty weapon, was also misconduct warranting discipline. Respondent's actions,

after Respondent ignored Alarcon's first directive to drop the knife, could reasonably and foreseeably be expected to cause the officers to become concerned for their safety. More significantly, the conduct reasonably and foreseeably caused Deputy Alarcon to draw his duty weapon and to use it in a threatening manner to respond to the apparent threat of harm. Such conduct by Respondent created an unnecessary, unreasonable and avoidable risk of harm to all of the individuals present and warrants discipline. (*In the Matter of Stewart, supra*, 3 Cal. State Bar Ct. Rptr. at p. 60; *In the Matter of Respondent O, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 590-591; *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543, 549-550.)

Respondent, at trial, sought to justify his conduct by suggesting that there was no reason for the officers to be concerned about his actions. He repeatedly sought to refer to his knife as a "butter knife" (although it was undisputed that the knife had a serrated blade and was regularly used by Respondent to cut fruits and vegetables); he emphasized that he had an apple in his other hand as he was approaching the officers; and he scoffed at the idea that he would "take a knife to a gun fight." Respondent's argument is without merit. Once Respondent continued to approach the officers with a knife after being admonished not to do so, the officers were completely justified both in being concerned about their personal safety and in taking appropriate responsive actions in self-defense. Indeed, Deputy Alarcon testified that he was actually subsequently chastised by his supervisor for allowing Respondent to get as close as he did with the knife.

Respondent's acquittal of the criminal charge of violating Penal Code section 417(a)(1) does not insulate Respondent from being disciplined for the conduct giving rise to that charge. (*Wong v. State Bar* (1975) 15 Cal.3d 528, 531.). Further, existing case law makes clear that it was not necessary for the State Bar to demonstrate that the object that Respondent was using to threaten others was a deadly weapon or even capable of causing actual injury. (See, e.g., *In the Matter of Frascinella, supra*, 1 Cal. State Bar Ct. Rptr. at p. 550 [exhibition of replica of firearm in manner threatening to others is reprehensible conduct; conduct rises to being act of moral

turpitude when pre-meditated].) The Review Department's assessment in *Frascinella*, made during the course of finding culpability in that case, is equally applicable here: "By his acts, respondent could have provoked heart attacks in the victims or armed response to the perceived threat, thus demonstrating a flagrant disregard toward human life." (*Ibid.*)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)² The court makes the following findings with regard to possible aggravating factors.

Prior Discipline

Respondent has been disciplined on two prior occasions. This prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

On July 1, 1998, the Supreme Court ordered that Respondent be suspended for one year and until he made restitution to a specified individual, stayed execution of that suspension, and placed him on probation for two years. That discipline resulted from a stipulation by Respondent and the State Bar that Respondent had repeatedly violated his obligation under rule 3-110(A) to perform legal services with competence due to his failure to adequately supervise an employee of his office, who was perpetrating various criminal acts directed at Respondent's clients. The stipulation included as mitigating factors Respondent's good faith, his candor and cooperation, and his voluntary and extensive efforts to make restitution to his injured clients.

As previously noted, on October 19, 2011, the Supreme Court ordered that Respondent be suspended for two years, stayed execution of that suspension, and placed him on probation for two years subject to various conditions, including 90 days of actual suspension. That discipline resulted from a decision by this court that Respondent had sought to mislead a judge, in willful

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

violation of Business and Professions Code section 6068, subdivision (d), by having his secretary simulate his signatures on various statements purportedly signed under penalty of perjury and on other pleadings filed with the court.

Multiple Acts of Misconduct

The fact that Respondent is culpable here of multiple acts of misconduct is an aggravating factor. (Std. 1.2(b)(ii).)

Lack of Insight and Remorse

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct related to the criminal conviction. (Std. 1.2(b)(v).) He remains defiant and has no insight regarding his unethical behavior.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court makes the following findings with regard to possible mitigating factors.

Cooperation

Respondent did not admit culpability in the matter but entered into an extensive stipulation of facts, thereby assisting the State Bar in the prosecution of the case. For such conduct Respondent is entitled to some mitigation. (Std. 1.2(e)(v); see also *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 ; but see *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [credit for stipulating to facts “very limited” where culpability is denied].)

Partial Compliance

Respondent eventually filed his compliance affidavit under rule 9.20, subd. (c). Such partial compliance with the rule is potentially a mitigating factor. (*In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 205; *In the Matter of Friedman* (Review

Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 532-533.) That mitigation credit here, however, is greatly reduced by the fact that Respondent did not file his compliance affidavit until after he had been repeatedly contacted by the Office of Probation and after the instant disciplinary action had been filed.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than 20 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The State Bar contends that disbarment of Respondent is called for by both the case law and the standards and that such is necessary to protect both the public and the profession. This court agrees.

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanctions for Respondent's misconduct are found both in rule 9.20 itself and in standard 1.7(b).

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 and for revocation of any pending probation." Existing case law makes clear that a willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)³

Also relevant in this proceeding is standard 1.7(b), which provides that when an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate.

A common thread running through Respondent's misconduct over the last several years has been his repeated acts of defiance of demands made on him by existing authorities. When ordered by the Supreme Court to file a compliance declaration by a particular deadline, he does not do so. When directed by a Rule of Court and the Office of Probation to send his compliance statement to the State Bar Court and not the Office of Probation, he sends it to the Office of Probation. When directed by the same rule and the form to provide his current address on the form, he fails to do so. When told again by the Office of Probation of his need to provide that

³ That said, both this court and the Supreme Court have, on occasion, imposed lesser discipline in situations where there has been timely compliance with subdivision (a) and the violation merely arises from a late submission of the compliance affidavit mandated by subdivision (c). (See, e.g. *Shapiro v. State Bar* (1990) 51 Cal.3d 251; *Durbin v. State Bar* (1979) 23 Cal.3d 461; *In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman, supra*, 2 Cal. State Bar Ct. Rptr. 527.) In those cases, however, the courts have emphasized the respondents' good faith, the presence of significant mitigating circumstances, and the absence of substantially aggravating circumstances.

address, he still does not do so. Then, when he finally sends in a form to the correct recipient and with his address information, he refuses to follow the instructions of the form and checks competing boxes, making the compliance form meaningless. It is not until the State Bar has been required to initiate disciplinary procedures against him that he finally is forced to submit to filling the very simple form out correctly.

That same defiance was reflected in his conduct ultimately giving rise to his criminal conviction. It was not until the sheriff had been called, and a gun was pointed at his head, that he finally physically complied. But even now, his mind remains defiant.

The legal professional cannot endure, and must not tolerate, members who will not comply with the law, professional standards, or orders of a court unless and until a gun, or the legal equivalent thereof, is pointed at their head. Respondent's repeated misconduct, coupled with his continued defiance and refusal to acknowledge his past wrongdoings, makes clear that the protection of the public and the profession requires his disbarment.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Robert Eaton Dowd**, Member No. 93284, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

Rule 9.20

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.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Robert Eaton Dowd**, Member No. 93284, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)⁴

Dated: September _____, 2012.

DONALD F. MILES
Judge of the State Bar Court

⁴ An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)