

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 12-N-13028-RAH
)	
JENNIFER FAY BLACKBURN,)	AMENDED DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 214781,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent **JENNIFER FAY BLACKBURN** with wilfully violating California Rules of Court, rule 9.20. Specifically, the State Bar charges that by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), respondent failed to timely comply with the provisions of Supreme Court Order No. S189736, requiring compliance with rule 9.20.

The court finds respondent culpable of wilfully violating rule 9.20 and recommends to the Supreme Court that respondent be disbarred.

Significant Procedural History

The State Bar filed the notice of disciplinary charges (NDC) in this proceeding on May 21, 2012. Respondent filed a response to the NDC on July 10, 2012.

¹ Unless otherwise indicated, all references to rule(s) refer to the California Rules of Court.

On October 26, 2012, the parties filed a Stipulation as to Facts and Admission of Documents. Trial was held that same date. The State Bar was represented by Deputy Trial Counsel Meredith A. McKittrick. Respondent appeared in propria persona with co-counsel Stephen J. Strauss. This matter was submitted for decision on October 26, 2012.

Findings of Fact and Conclusions of Law

Background

Respondent was admitted to the practice of law in California on November 5, 2001, and has been a member of the State Bar of California at all times since that date.

Respondent grew up in a traditional, religious family in northern California, near the Oregon border. Her mother and father have operated a drive-in hamburger stand for many years. Respondent worked at the hamburger stand since she was 13 years old. She is Native American (Yurok tribe), and has a long history of mental illness in her family. At least three of her close relatives have committed suicide, all as a result of depression and related illnesses.

After receiving her Bachelor's degree at Yale University, respondent returned to California and attended law school at the University of California, Davis. She volunteered for AmeriCorps. As a law clerk, she worked for California Indian Services, drafting statutes for the Indian Nation. After she passed the Bar examination, she was employed as a bankruptcy attorney, and worked for the Madera County District Attorney's Office.

Respondent moved to Hawaii with her husband, and works as a substitute teacher in the lowest socioeconomic community in the State. She and her husband chose this community because it had the highest need for their help. When respondent is not a substitute teacher, she volunteers in helping her husband, who is a health teacher. She is not a member of the State Bar of Hawaii.

///

///

///

Case No. 12-N-13028 – Rule 9.20 Matter

Facts

On December 28, 2011, the California Supreme Court filed Order No. S189736. This Order included a requirement that respondent comply with California Rules of Court, rule 9.20, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Order.

The Clerk of the California Supreme Court properly served upon respondent a copy of the Order on December 28, 2011. Respondent received the Order, which became effective on January 27, 2012, 30 days after the Order was filed.

Respondent was required to comply with subdivision (a) of California Rules of Court, rule 9.20, no later than February 26, 2012, and was required to comply with subdivision (c) of rule 9.20 no later than March 7, 2012.

As of December 28, 2011, the date the Supreme Court order was filed, respondent did not have any clients; did not have any property or papers to which clients were entitled; had earned all fees paid to her; and did not represent any clients in pending matters.

On January 18, 2012, the State Bar's Office of Probation sent respondent a reminder letter regarding respondent's probation terms and conditions. In the letter, the Office of Probation reminded respondent that pursuant to the Order, the Court had ordered respondent to comply with the provisions of California Rules of Court, rule 9.20. The Office of Probation reminded respondent in the January 18, 2012 letter that her rule 9.20 affidavit must be timely filed with the State Bar Court no later than March 7, 2012. Respondent received the Office of Probation's January 18, 2012 letter.

Respondent did not file with the State Bar Court by March 7, 2012, the compliance affidavit required by rule 9.20(c) as ordered by the Supreme Court. Respondent filed a Rule 9.20 Compliance Declaration with the State Bar Court on July 10, 2012, which was approved by the Office of Probation.

Conclusions

Count One – Respondent wilfully violated California Rules of Court, rule 9.20, by not filing an affidavit of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of Supreme Court Order No. S189736 requiring compliance with California Rules of Court, rule 9.20.

Aggravation²

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent has a record of three prior impositions of discipline. On February 21, 2008, the Supreme Court filed an Order in Supreme Court No. S159075 (State Bar Court Case No. 06-O-14507 (07-O-10129)) suspending respondent from the practice of law for one year, staying execution of that suspension, and placing respondent on probation for two years subject to conditions of probation, including restitution. In this matter, respondent stipulated that she intentionally, recklessly, and repeatedly failed to perform legal services with competence (two matters), failed to keep a client reasonably informed of significant developments in a matter in which she had agreed to provide legal services (two matters), failed to respond promptly to reasonable client status inquiries (two matters), failed to promptly refund any part of a fee paid in advance that had not been earned, and failed to cooperate with and participate in a State Bar investigation. In aggravation, respondent's misconduct caused significant harm to clients. In

² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

mitigation, respondent displayed remorse; she displayed spontaneous cooperation and candor to the State Bar during the disciplinary proceedings; and, at the time of the misconduct, respondent suffered extreme difficulties in her personal life and extreme emotional difficulties, as she was in the process of relocating her family during the time that clients were attempting to contact her.

On March 24, 2011, the Supreme Court filed an Order in Supreme Court No. S189736 (State Bar Court No. 10-O-04415) suspending respondent from the practice of law for one year, staying execution of that suspension, and placing respondent on probation for two years subject to conditions, including that she be suspended from the practice of law for the first 30 days of probation. In this matter, respondent stipulated that beginning in 2008, she failed to comply with certain conditions of her probation imposed in her prior disciplinary matter. In aggravation, respondent had a prior record of discipline. In mitigation, respondent suffered extreme emotional difficulties at the time of her misconduct. Specifically, respondent suffered from depression, for which she was seeking treatment, and issues related to her move to another state and unemployment.

On December 28, 2011, the Supreme Court filed an Order in Supreme Court No. S189736 (State Bar Court No. 11-PM-15237) revoking respondent's probation; suspending respondent from the practice of law for one year; staying execution of that suspension; and placing respondent on probation for two years subject to conditions, including that she be suspended from the practice of law for the first 90 days of probation. In this matter, respondent stipulated that she willfully violated Business and Professions Code section 6068, subdivision (k) by failing to comply with certain conditions of her probation imposed pursuant to the Supreme Court's March 24, 2011, Order in Supreme Court No. S189736 (State Bar Court No. 10-O-04415). The probation conditions respondent violated in this matter are conditions that she was also found to have violated in her second disciplinary matter. In aggravation, respondent

had two prior records of discipline and violated multiple conditions of her probation. In mitigation it was noted, “Respondent contends that the mental and physical stress related to substantial personal and family obligations, including the financial strain of having been laid off in May 2009, led to her failure to timely comply with her probation conditions. Respondent now understands the importance of timely complying with her conditions and asserts that she will do so in the future.”

Mitigation

Lack of Harm (Std. 1.2(e)(iii).)

No clients were harmed by respondent’s misconduct.

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

Respondent’s family has a long history of mental illness, including depression. This has resulted in tragic circumstances, including at least three suicides. In addition, her maternal grandmother is seriously afflicted with depression.

While the record reflects that respondent actively helps others with problems and is diligent in doing so, she did not have the same focus when dealing with her own affairs. Respondent has established by clear and convincing evidence that she suffers from major depression, recurrent and generalized anxiety disorder. Further, she has established that the avoidance behavior caused by her condition resulted in her inability to comply with rather simple probation conditions, resulting in many of her problems with the State Bar.

She has sought and received treatment for her condition and she appears to have recently become stabilized with medication. She described her condition as “a sadness that doesn’t go away.” She was unable to attend to even simple matters in a timely fashion. She would often stay in bed for extended periods of time. She would put off unpleasant things and then hide these matters from those around her and those closest to her. She began receiving treatment for

her condition in 2001, but discontinued medication in 2008 or 2009 due to side effects. She went to counseling on one occasion in 2006, but could not continue because of financial reasons.

After she moved to Hawaii, she was prescribed a different medication but again stopped it due to side effects. She was later placed on another medication in 2010 and increased her dosage of this medication in about May or June 2012, after her symptoms became more severe around that time. Her condition has now stabilized. She now tries to make concrete steps to deal with her problems, including keeping a journal to get past negative thoughts. She has committed herself to a program of treatment and self-help in which she addresses her problems directly, instead of avoiding them. She also now has a strong support system of family to help her in dealing with her issues. At the time of trial in this matter, she had been in counseling with a therapist and had made arrangements for a medication reevaluation by a psychiatrist.

Standard 1.2(e)(iv) provides, in pertinent part, that extreme emotional difficulties by the member at the time of the misconduct will be considered a mitigating circumstance if expert testimony establishes that the emotional difficulties were directly responsible for the misconduct and clear and convincing evidence establishes that the member no longer suffers from such difficulties.

Given the above, the court finds that respondent is entitled to only limited mitigation for this condition. While the court commends respondent for the steps she has taken to stabilize her condition and address her emotional problems, and her commitment to doing so, the evidence does not reveal long term emotional stability such that the court could find that respondent no longer suffers from the emotional difficulties which led to the avoidance behavior that resulted in the misconduct involved in the present case, as well as in her second and third prior disciplinary matters. As such, the court gives respondent's emotional difficulties only limited weight in mitigation.

///

///

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent is entitled to some mitigation for fully stipulating to the misconduct in this matter, which greatly reduced the time necessary for trial.

Good Character (Std. 1.2(e)(vi).)

Respondent presented several witnesses who had extensive knowledge of respondent and her past, her current medical condition and her significant contributions to her church and her community. While these witnesses noted that she faced State Bar charges, they did not display knowledge of the details of those charges. Rather, in most cases, they simply stated that respondent had “failed to keep in contact” with clients. Uniformly, however, they were effusive in their praise of respondent and her commitment to her community and to those less fortunate. The court finds that respondent is entitled to some mitigation credit for her community service.

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)

Respondent has shown sincere remorse for her failure to comply with her obligations and the resulting legal proceedings that followed from her misconduct. She has committed herself to correcting her behaviors to avoid the recurrence of these events. She is entitled to mitigation credit for this remorse and recognition of her wrongdoing.

Discussion

Standard 1.3 provides that the primary purposes of disciplinary proceedings “are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

In determining the appropriate level of discipline, the court ordinarily looks to the standards first (*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) and to case law second (*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). However, the standards do not address the appropriate level of discipline in rule 9.20 proceedings. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.) Instead, rule 9.20(d) does.

Under rule 9.20(d), an attorney's wilful failure to comply with the provisions of rule 9.20 "is a cause for disbarment or suspension and for revocation of any pending probation." Even though rule 9.20(d) provides for the sanctions of suspension and revocation of probation, case law makes clear that, in the absence of compelling mitigating circumstances, disbarment is the ordinary and appropriate level of discipline for violating a provision of rule 9.20. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296, and cases there cited.)

Furthermore, standard 1.7(b) provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

This is respondent's fourth disciplinary matter. Respondent's record of three prior impositions of discipline is a significant aggravating circumstance. Of particular concern to the court is the fact that since 2008, respondent has failed to comply with her professional obligations and responsibilities by failing to comply with probation conditions and her rule 9.20 requirement as ordered by the Supreme Court. Respondent's failure to comply with her professional obligations and court orders not only underlies this present proceeding, but her second and third disciplinary matters as well.

Furthermore, the court notes that as early as 2008, the year her first discipline became effective, respondent was given credit in mitigation for emotional difficulties, and she was also given mitigating credit for emotional difficulties or mental stress in her second and third disciplinary matters. In her second disciplinary matter, it was specifically noted that respondent suffered from depression for which she was seeking treatment, and in her third disciplinary matter, respondent stipulated that “respondent now understands the importance of timely complying with her conditions and asserts that she will do so in the future.” (Exhibit 14, page 00006.) Yet respondent still failed to comply with the rule 9.20 requirement as ordered by the Supreme Court in that third disciplinary proceeding.

The court does not find that compelling mitigating circumstances clearly predominate in this matter. Although no clients were harmed by respondent’s misconduct, and respondent has shown remorse and recognized her wrongdoing, only some mitigating credit is being given for respondent’s candor and cooperation with the State Bar in entering into a stipulation in this matter and her community service. Of particular concern to the court is the fact that although the misconduct in this present disciplinary proceeding, as well as the misconduct in respondent’s second and third disciplinary proceedings, resulted from her emotional difficulties, respondent has failed to prove by clear and convincing evidence that she no longer suffers from such emotional difficulties.

In determining the appropriate discipline to recommend in this matter, the court found *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, instructive. In *Pierce*, the attorney initially abandoned a personal injury client. She defaulted in the proceeding and received a six-month stayed suspension on conditions of compliance with probation conditions. Thereafter, Pierce violated her probation conditions and defaulted in her second disciplinary proceeding. Pierce received, in part, a six-month actual suspension and was ordered to comply

with California Rules of Court, rule 955.³ She then filed her rule 955 declaration 21 days late, stating that she had not had clients for over three years. This led to another disciplinary proceeding. Pierce did not appear at the hearing in that matter.⁴ In aggravation, it was noted that Pierce had two prior records of discipline and failed to cooperate in the rule 955 proceeding. The Review Department recommended that Pierce be disbarred, noting, “Disbarment is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court.” (*Id.* at p. 388.) In Pierce’s first disciplinary proceeding, it was noted that she had been ignoring official-looking mail for some time, and the Review Department noted that she had apparently continued that practice for the next four years. As the Review Department stated, “Attorneys who engage in [the] extended practice of inattention to official actions . . . should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them. . . . Moreover, respondent’s failure to comply with successive orders of the Supreme Court has repeatedly burdened the resources of this court and the State Bar disciplinary system, also a matter of great concern to us.” (*Ibid.*)

Accordingly, based on respondent’s misconduct in this matter, the nature and extent of respondent’s prior record of discipline, the lack of compelling mitigating circumstances in this matter, and the fact that respondent has failed to establish that she no longer suffers from her emotional difficulties, the court finds that the appropriate discipline in this matter is disbarment. While the court commends respondent for the steps she has taken to stabilize her condition and address her emotional problems, and her commitment to dealing with her mental health issues, the court finds that the issue of whether respondent has overcome her avoidance behavior and is presently fit to practice law is best addressed in a reinstatement proceeding.

³ Rule 9.20 was previously numbered rule 955.

⁴ Respondent also defaulted in a second probation violation proceeding for which the hearing judge recommended that respondent be actually suspended for one year.

///

///

Recommendations

Disbarment

It is recommended that respondent Jennifer Fay Blackburn, State Bar Number 214781, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of 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 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.⁵

Costs

It is 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.

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 January 25, 2013, and will terminate upon the effective date of the Supreme Court's

///

///

⁵ Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court files the order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

///

///

order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: January _____, 2013

RICHARD A. HONN
Judge of the State Bar Court