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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

PUBLIC MATTER

In the Matter of)	Case No.: 12-N-14547-DFM
)	
MARC RUSSELL LEVINE,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 113671,)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
<u>A Member of the State Bar.</u>)	

INTRODUCTION

Respondent **Marc Russell Levine** (Respondent) is charged here with failure to comply with California Rules of Court, rule 9.20,¹ in willful violation of a Supreme Court order. (Bus. & Prof. Code, §6103.)² In view of Respondent’s misconduct and the aggravating circumstances surrounding that misconduct, the court recommends, *inter alia*, that he be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on July 23, 2012. On September 5, 2012, an initial status conference was held in the matter, at which time the case was scheduled to commence trial on November 14, 2012. On September 18, 2012, Respondent filed a response to the NDC.

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

² Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

Trial was commenced and completed, as scheduled, on November 14, 2012. The State Bar was represented at trial by Deputy Trial Counsel Sean Beckley. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 13, 1984, and since that time has been a member of the State Bar of California.

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On September 20, 2011, the California Supreme Court filed Order No. S194792 ("9.20 Order") as a result of a stipulation executed by Respondent and the State Bar on May 11, 2011, and approved with modifications by this court on May 19, 2011. The 9.20 Order, as well as the underlying stipulation, 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 September 20, 2011, the Clerk of the Supreme Court of the State of California properly served upon Respondent a copy of the 9.20 Order at Respondent's then official membership records address. The 9.20 Order became effective on October 20, 2011, thirty days after the 9.20 Order was filed.

Thereafter, Respondent was required to comply with subdivision (a) of rule 9.20 no later than November 19, 2011, and was required to comply with subdivision (c) of rule 9.20 no later than November 29, 2011.

On October 21, 2011, the Office of Probation of the State Bar of California 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 9.20 Order, the Court had ordered Respondent to comply with the provisions of rule 9.20. In the October 21, 2011 letter, the Office of Probation also reminded Respondent that his 9.20 affidavit must be timely filed with the State Bar Court no later than November 29, 2011. The October 21, 2011 probation letter was sent to Respondent's then official membership records address. It was returned as undeliverable on November 14, 2011.

On November 14, 2011, a Probation Deputy from the Office of Probation of the State Bar of California attempted to call Respondent at Respondent's then membership records phone number. The phone call was answered by a woman that stated she did not know Respondent. The Probation Deputy then attempted to email Respondent at the then email address provided to the State Bar by Respondent. The email could not be delivered.

Respondent did not file with the State Bar Court the rule 9.20(c) compliance affidavit by the November 29, 2011 deadline, as ordered in the 9.20 Order.

On December 5, 2011, Respondent emailed the Office of the Chief Trial Counsel from a new email address but stated that his official membership records address remained the same. In his email, he inquired whether the Supreme Court had yet filed its disciplinary order. On December 6, 2011, the Office of the Chief Trial Counsel replied by email, telling Respondent to contact his Probation Deputy. The email provided both the name and the telephone number of the Probation Deputy. Respondent never made contact with the Deputy. Nor did he take any further steps to comply with his rule 9.20 obligations.

On June 12, 2012, a Probation Deputy from the Office of Probation of the State Bar of California mailed and emailed a letter to Respondent, informing him that he was not in compliance with rule 9.20 and reminding him that the 9.20 affidavit had been due on November

29, 2011. The letter was mailed to Respondent's then official membership records address. The email was also sent to the then email address provided to the State Bar by Respondent.

To date, despite Respondent's knowledge of and participation in this disciplinary action, he has failed to file an affidavit of compliance with rule 9.20. At trial, he voluntarily took the stand and freely acknowledged that he had failed to comply with the requirements of rule 9.20 and understood that he would be disciplined as a result of that inaction.

Count 1 - Violation of California Rules of Court, Rule 9.20(c) and Section 6103
[Failure to Comply with Court Order]

Section 6103 provides, in pertinent part: "A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, ..." constitutes cause for disbarment or suspension.

A member, ordered by the Supreme Court to comply with rule 9.20(c), must file with the Clerk of the State Bar Court within 40 days after the effective date of the Supreme Court's order an affidavit showing that he or she has fully complied with the provisions of the rule.

Respondent was required to have filed his rule 9.20 affidavit no later than November 29, 2011.

Respondent did not file any affidavit of compliance within the time that he was required to do so.

In fact, even at the time of trial, he had not yet filed any affidavit of compliance. This failure by Respondent constituted willful violations by him of rule 9.20, the Supreme Court's order, and section 6103.

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).)³ The court makes the following findings with regard to possible aggravating factors.

Prior Discipline

Respondent has been formally disciplined on two prior occasions.

On June 25, 2010, the Supreme Court issued an order (S182467), suspending Respondent for one year, stayed, and placing him on probation for one year. Respondent's culpability in the matter was for violations of sections 6103; 6068, subdivision (i); and 6068, subdivision (o)(3).

As previously noted, on September 20, 2011, the Supreme Court issued the 9.20 Order, suspending Respondent for two years, stayed, and placing him on probation for three years, with the conditions of probation including actual suspension of a minimum of two years and until Respondent presented proof of his satisfaction of the requirements of standard 1.4(c)(ii).

Respondent's culpability in the matter was for violations of sections 6106; 6068, subdivision (a); 6068, subdivision (i) [six counts]; 6068, subdivision (k); and 6068, subdivision (m) [four counts]; and Rules of Professional Conduct, rules 3-110(A) [two counts]; 3-300; 3-700(D)(1); and 3-700(D)(2).

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

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.

Remorse/Emotional Difficulties/Recovery from Substance Abuse

At trial, Respondent testified candidly regarding the difficulties he has overcome as he has been recovering from his prior substance abuse and emotional problems. He freely

³ All further references to standard(s) or std. are to this source.

acknowledged that he now recognizes that his failure to respond to the obligations created by the 9.20 Order resulted from inappropriate responses by him during the past recovery period. He expressed remorse over his past conduct and omissions, stated that he understood that he would be disciplined severely for his prior transgressions, pointed with pride to his now extended period of complete sobriety, and expressed credibly his ongoing commitment to continuing to successfully overcome the problems that have plagued him in the past.

While the court cannot afford Respondent mitigation credit for the prior emotional and substance abuse problems, due to the absence of supporting expert testimony (see Std. 1.2(e)(iv); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702, this court does give Respondent mitigation credit for his candor and his remorse.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the 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.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar*

(1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) 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 standard here for assessing discipline for a violation of rule 9.20 is set out in the rule itself. 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.”

Also applicable is standard 1.7(b), which provides, “If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.” No such compelling circumstances can be found here.

Respondent’s willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered to be the appropriate sanction. (See. e.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) When Respondent’s complete failure to comply with rule 9.20 is viewed in conjunction with his two prior and still recent disciplines, this court concludes that the sanction of disbarment must be imposed.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Marc Russell Levine**, Member No. 113671, 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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Marc Russell Levine**, Member No. 113671, 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: November 21, 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. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 29, 2012, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER

in a sealed envelope for collection and mailing on that date as follows:

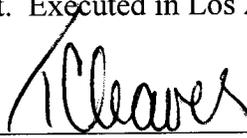
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MARC RUSSELL LEVINE
LAW OFC OF MARC R LEVINE
78507 IRON BARK DR
PALM DESERT, CA 92211**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

SEAN BECKLEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 29, 2012.



Tammy Cleaver
Case Administrator
State Bar Court