

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 12-N-16486-PEM
	)	
JOHN WESLEY VILLINES,	)	
	)	DECISION, DIRECTIVE TO CASE
Member No. 193672,	)	ADMINISTRATORS, AND ORDER OF
	)	INVOLUNTARY INACTIVE ENROLLMENT
A Member of the State Bar.	)	(Bus. & Prof. Code, § 6007, subd. (c)(4).)

**Introduction**

In this disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent **JOHN WESLEY VILLINES** with willfully failing to comply with California Rules of Court, rule 9.20 (rule 9.20) as he was ordered to do by the Supreme Court in its May 21, 2012 order in case number S199350 (State Bar Court case numbers 09-O-16075 (09-O-17300; 10-O-02477; 10-O-05455; and 11-O-10756) (*Villines I*). Specifically, the State Bar charges that respondent failed to comply with rule 9.20(c) because respondent did not file, within the time prescribed in the Supreme Court’s April 20, 2012 order, a declaration showing that he had fully performed all of the acts specified in rule 9.20(a).

For the reasons set forth *post*, the court finds respondent culpable of the charged misconduct and concludes that the appropriate level of discipline is disbarment. Because the court will recommend that respondent be disbarred, it will also order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final

disposition of this proceeding. (Bus. & Prof. Code, § 6007, subd. (c)(4);<sup>1</sup> Rules Proc. of State Bar, rule 5.111(D)(1).)

### **Significant Procedural History**

The State Bar filed the notice of disciplinary charges (NDC) in this proceeding on October 24, 2012. On November 13, 2012, respondent filed a response to the NDC.

Trial was held on February 20, 2013. The State Bar was represented by Senior Trial Counsel Suzan J. Anderson, and respondent represented himself. The court initially took the case under submission for decision at the conclusion of the trial on February 20, 2012. However, as noted in more detail *post*, at a status conference on March 1, 2013, the court vacated the submission when it granted respondent's motion to reopen the record to admit into evidence additional documents regarding respondent's attempts to comply with the Supreme Court's May 21, 2012 order in *Villines I* directing him to comply with rule 9.20. (See Rules Proc. of State Bar, rule 5.336.) On March 1, 2013, the court again took the matter under submission for decision at the conclusion of the status conference.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on January 5, 1998, and has been a member of the State Bar of California since that time.

#### **Findings of Facts**

In its May 21, 2012 order in *Villines I*, the Supreme Court placed respondent on two years' stayed suspension and four years' probation on conditions, including a nine-month suspension that will continue until respondent pays more than \$46,000 (plus interest thereon) in

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<sup>1</sup> Unless otherwise noted, all further statutory references are to the Business and Professions Code.

restitution for unearned legal fees in five separate client matters.<sup>2</sup> Moreover, if respondent's suspension in *Villines I* continues for two or more years as a result of respondent not paying restitution, respondent will remain suspended until he also establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.<sup>3</sup>

In its May 21, 2012 order in *Villines I*, the Supreme Court also ordered respondent 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 its order.

In *Villines I*, the Supreme Court imposed the discipline as well as the requirement that respondent comply with rule 9.20 on respondent in accordance with a stipulation that respondent entered into with the State Bar and that was approved by the State Bar Court in an order filed on November 11, 2011, in State Bar Court case numbers 09-O-16075 (09-O-17300; 10-O-02477; 10-O-05455; and 11-O-10756).

The Supreme Court's May 21, 2012 order in *Villines I*, which was duly served on respondent (Cal. Rules of Court, rule 8.532(a)), became effective on June 20, 2012 (Cal. Rules of Court, rule 9.18(b)) and has continuously remained in effect since that time.

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<sup>2</sup> Of the more than \$46,000 in unearned fees, \$10,500 was also an illegal advanced fee for home-mortgage-loan-modification services that respondent charged and collected in violation of Civil Code section 2944.7, subdivision (a). (*In the Matter of Taylor* (Review Dept., Nov. 9, 2012, mod. Jan. 9, 2013, 10-O-05171) 5 Cal. State Bar Ct. Rptr. \_\_\_, \_\_\_ [typed opn. at p.16].)

<sup>3</sup> The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

Under the Supreme Court's May 21, 2012 order, respondent was required to perform all of the acts specified in rule 9.20(a)<sup>4</sup> no later than July 20, 2012 (i.e., 30 days after the June 20, 2012 effective date of the Supreme Court's May 21, 2012 order). Under the order, respondent was also required to file, in the State Bar Court, a declaration showing that he had fully performed all of the acts specified in rule 9.20(a) no later than June 20, 2012 (rule 9.20 compliance declaration). Under the order, respondent was required to file a rule 9.20 compliance declaration in the State Bar Court no later than July 30, 2012 (i.e., 40 days after the June 20, 2012 effective date of the Supreme Court's May 21, 2012 order).

On June 14, 2012, the State Bar's Office of Probation (OP) sent respondent a letter reminding him of the terms and conditions of the disciplinary probation imposed on him in the Supreme Court's May 21, 2012 order in *Villines I*. In that letter, OP also reminded respondent that the Supreme Court had ordered him to comply with rule 9.20 and that his rule 9.20 compliance declaration had to be filed in the State Bar Court no later than July 30, 2012. Respondent received OP's June 14, 2012 letter; however, respondent still failed to file his rule 9.20 compliance declaration before expiration of the July 30, 2012 deadline.

On July 30, 2012, respondent sent, via overnight delivery to the State Bar's Los Angeles office, a State Bar Court approved form Rule 9.20 Compliance Declaration with a supplemental

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<sup>4</sup> Under rule 9.20(a), respondent was required (1) to give written notice of his suspension and his consequent disqualification to act as an attorney to all clients, cocounsel, and opposing counsel or, in the absence of counsel, adverse parties and to file a copy of each notice with the court, agency, or tribunal before which any litigation is pending; (2) to give written notice to all clients, in the absence of cocounsel, to seek legal counsel elsewhere calling attention to any urgency in seeking the substitution of another attorney; (3) to deliver to all clients all papers and other property to which the clients are entitled or to give written notice to the clients and any cocounsel of a suitable time and place where the papers and other property may be obtained calling attention to the urgency of obtaining the papers and other property; and (4) to refund any unearned fees. Respondent was required to give all of the foregoing notices by registered or certified mail, return receipt requested. (Cal. Rules of Court, rule 9.20(b).) In addition, respondent was required to include, in each notice, an address where communications could be directed to respondent. (*Ibid.*)

declaration attached to it. Respondent executed both the court-approved form Rule 9.20 Compliance Declaration and the attached supplemental declarations on July 23, 2012. In the supplemental declaration, respondent states:

Subsequent to my contacting all clients and co-counsel, and all opposing counsel or adverse parties, prior to the Rule 9.20 deadline, it came to my attention that I inadvertently failed to notify in writing two clients and one opposing counsel due to the fact that the cases were in the final stages of settlement and I was not actively working on them any longer. As soon as I realized this inadvertent error, I contacted these clients and the opposing counsel in writing in accordance with the requirements of my stipulation and Rule 9.20.

On July 31, 2012, the State Bar Court received and filed respondent's compliance declaration and respondent's attached supplemental declaration. Respondent's declarations were not accompanied by a proof of service on OP as required under Rules of Procedure of the State Bar, rule 5.332(A). Accordingly, the Clerk of the State Bar Court served the declarations on OP as required under Rules of Procedure of the State Bar, rule 5.332(C).

On August 2, 2012, OP sent respondent a letter stating:

The State Bar Court has served [OP] with a copy of the affidavit regarding Rule 9.20 you had filed on July 31, 2012. It is rejected because your supplemental declaration does not state that the subsequent notice [sic] to two clients and an opposing counsel was timely.

Your declaration was due July 30, 2012. If you determine that you will file a new declaration, a blank court-approved Rule 9.20 Compliance Declaration form has been enclosed as a courtesy. Follow all instructions on the form, including that any original declaration be filed with the State Bar Court.

Respondent received OP's August 2, 2012 letter rejecting the declarations he filed one-day late on July 31, 2012. Nonetheless, respondent failed to rectify his misconduct by promptly filing another a rule 9.20 compliance declaration that complied with rule 9.20(c) by clearly stating whether respondent had given the two clients and the one opposing counsel that respondent referred to his July 31, 2012 supplemental declaration the requisite written notices by

registered or certified mail, return receipt requested, no later than June 20, 2012. On October 24, 2012, the State Bar filed the present rule 9.20 disciplinary proceeding against respondent.

However, even after the State Bar filed the present rule 9.20 proceeding against respondent, respondent still failed to rectify his misconduct by promptly filing a rule 9.20 compliance declaration that complied with rule 9.20(c).

Respondent attempts to explain his failure to rectify his misconduct by asserting that he had a good-faith mistaken belief that he could not re-file his rule 9.20 compliance declaration after OP rejected the declarations that he filed one-day late on July 31, 2012. According to respondent, he based his mistaken belief on, inter alia, a telephone conversation with and a letter from OP personnel. The court rejects respondent's explanation for at least two reasons.

First, respondent's alleged mistaken belief is unreasonable on its face. (See Rules Proc. of State Bar, rule 5.332(B) ["The Clerk of the State Bar Court must file all [rule 9.20] declarations of compliance, regardless of their form or the date submitted."].) Thus, respondent's mistaken belief, even if honestly held, cannot be a mitigating circumstance. To conclude otherwise would inappropriately reward respondent for his unreasonable belief. (Cf. *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427.)

Second, after carefully weighting and considering respondent's testimony regarding his alleged mistaken belief (see Evid. Code, § 780), the court rejects it for want of credibility. The court's adverse culpability determination is supported by OP's August 2, 2012 letter to respondent. By itself, that August 12, 2012 letter effectively notified respondent of his ability to re-file his compliance declaration. OP even sent respondent, for his use, a blank court-approved form Rule 9.20 Compliance Declaration with its August 12, 2012 letter. In short, respondent's testimony is not only incredible, but also implausible.

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On February 25, 2013, which was five days after the court initially took the matter under submission for decision at the conclusion of trial, respondent faxed and mailed, to the State Bar Court, a letter together with a new rule 9.20 compliance declaration, which respondent executed on February 25, 2013 (respondent's second rule 9.20 compliance declaration). On February 27, 2013, the court held a status conference to address respondent's second rule 9.20 compliance declaration. The State Bar objected to reopening the record to admit respondent's second rule 9.20 compliance declaration into evidence. As the State Bar aptly noted, respondent's second rule 9.20 compliance declaration was itself defective/incomplete because it does not contain an address where communications could be directed to respondent as required under rule 9.20(c). Notwithstanding the State Bar's objection, the court granted respondent leave, until March 1, 2013, to file yet a third rule 9.20 compliance declaration and to file a formal motion to reopen the record.

On March 1, 2013, respondent filed a third rule 9.20 compliance declaration, which respondent executed on February 28, 2013 (respondent's third rule 9.20 compliance declaration), and a motion to reopen the record. At a status conference on March 1, 2013, the court granted respondent's motion to reopen the record and admitted respondent's posttrial documents in which respondent attempted to comply with the Supreme Court's May 21, 2012 order in *Villines I* directing respondent to comply with rule 9.20. (See, e.g., Rules Proc. of State Bar, rule 5.336 ["The record must contain rule 9.20 order and all documents submitted by the member to comply or attempt to comply with or respond to the order, whether or not introduced into evidence."].)

To ensure that the record is complete, the court will direct its case administrators, *post*, to mark and include in the record as exhibits copies of (1) respondent's February 25, 2013 letter to

the State Bar Court and respondent's second rule 9.20 compliance declaration and (2) respondent's third rule 9.20 compliance declaration.

## **Conclusions of Law**

### ***Count One – Failure to Comply with Rule 9.20***

The record clearly establishes that respondent willfully failed to comply with rule 9.20(c) in accordance with the Supreme Court's May 21, 2012 order in *Villines I* by failing to file a rule 9.20 compliance declaration that complied with the requirements set forth in rule 9.20(c) no later than July 30, 2012.

Neither the fact that respondent performed all of the acts specified in rule 9.20(a) by the July 20, 2012 deadline for performing those acts nor the fact that, on March 1, 2013, respondent filed a third rule 9.20 compliance declaration that complied with rule 9.20(c)<sup>5</sup> absolve respondent of his initial failure to file a proper rule 9.20 compliance declaration no later than July 30, 2012, as he was ordered to do by the Supreme Court.

## **Aggravation Findings**

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

Respondent has one prior record of discipline: *Villines I*. In *Villines I*, respondent stipulated to 13 counts of professional misconduct in five separate client matters, which each involved home mortgage loan modification services. Specifically, respondent stipulated that he willfully failed to perform competent legal services in four of the five client matters (Rules Prof. Conduct, rule 3-110(A)); that he willfully failed to refund unearned fees when his employment terminated in each of the five client matters (Rules Prof. Conduct, rule 4-700(D)(2)); that he failed to account for advanced legal fees he collected in three of the client matters (Rules Prof.

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<sup>5</sup> Furthermore, respondent is not entitled to any mitigation for filing a rule 9.20 compliance declaration that complied with rule 9.20(c) on March 1, 2013, because he filed it after he learned that the State Bar had filed the present disciplinary proceeding against him. (*In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 204.)



Conduct, rule 4-100(B)(3)); and that he charged and collected an illegal advanced fee in a home-mortgage-loan-modification matter (§ 6106.3; Civ. Code, § 2944.7, subd. (a)).

In *Villines I*, the aggravating circumstances were multiple acts of misconduct and significant client harm based on respondent failing to refund more than \$46,000 in unearned or illegal fees. The mitigating circumstances in that case were respondent's cooperation in stipulating with the State Bar to his misconduct and discipline and respondent's remorse as evidenced by his paying \$4,000 restitution to one client after the disciplinary proceedings in *Villines I* were instituted.

#### **Indifference Towards Rectification (Std. 1.2(b)(v).)**

Standing alone, respondent's failure to promptly rectify his misconduct by belatedly filing a rule 9.20 compliance declaration that complied with rule 9.20(c) after he received OP's August 2, 2012 letter rejecting the defective supplemental declaration that he filed late on July 31, 2012, clearly establishes respondent's indifference towards rectification, which is an aggravating circumstance under standard 1.2(b)(v). (Cf. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702.) Furthermore, respondent's misconduct is further aggravated by the fact that respondent again failed to promptly rectify his misconduct by belatedly filing a rule 9.20 compliance declaration that complied with rule 9.20(c) after he was aware that the present disciplinary proceeding had been filed against him.

#### **Mitigation Findings**

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

Respondent presented good character testimony from 18 individuals with various occupations and who respondent describes as "salt of the earth people." Each of these witnesses credibly testified as to respondent's good character. However, while they all understood that respondent failed to timely file a required document, only a few were aware of the nature and

extent of the serious misconduct to which respondent stipulated in *Villines I*. Thus, probative value of these witnesses' testimony is very limited. Accordingly, the court gives only limited mitigating weight to these witnesses' testimony that respondent is of good character.

Respondent also presented credible evidence of his significant community involvement. Respondent works with the homeless in his community. Respondent is on the board of the Modesto Gospel Union Mission, volunteering four to five hours each week. Respondent also works with the Rescue Mission in feeding the homeless. Respondent's charitable activities are evidence of his good character. (See *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 675.) In sum, the court assigns limited mitigation credit to respondent's good character evidence.

### **Discussion**

In determining the appropriate level of discipline, the court ordinarily looks to the standards first (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and to caselaw 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 directly 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 willful 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, caselaw makes clear that, in the absence of compelling mitigating circumstances, disbarment is ordinarily the 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.)

In the present matter, the State Bar requests that the court recommend respondent's disbarment. The lack of any substantial mitigation and the two serious aggravating circumstances present here support the State Bar's position.

In light of the extensive misconduct to which respondent stipulated in *Villines I*, this court is concerned with respondent's failure to comply with professional standards. It is particularly troublesome that respondent did not comply with rule 9.20(c) in the first instance because he stipulated to the requirement that he comply with rule 9.20 and because OP reminded him of his duty to comply with rule 9.20. Indeed, respondent's failure, refusal, or inability to comply with rule 9.20(c) until March 1, 2013, belies understanding.

In short, the record provides no compelling reason for the court to depart from recommending respondent's disbarment, which case law establishes is ordinarily the appropriate level of discipline for violating a provision of rule 9.20. Accordingly, the court will recommend that respondent be disbarred.

### **Recommendations**

#### **Discipline**

The court recommends that respondent **JOHN WESLEY VILLINES**, State Bar member number 193672, be disbarred from the practice of law in California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

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

The court further recommends that respondent **JOHN WESLEY VILLINES** be ordered to again 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 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Costs**

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

### **Directive to Case Administrators**

For the reason set forth *ante*, the court directs its case administrators (1) to mark and include in the record as respondent's exhibit D: copies of the rule 9.20 compliance declaration that respondent executed on February 28, 2013, and filed with the State Bar Court on March 1, 2013, and the certificates of service attached to it, and (2) to mark and include in the record as respondent's exhibit E: copies of respondent's February 25, 2013 letter and the rule 9.20 compliance declaration and the certificate of service attached to it, which respondent faxed to the State Bar Court on February 25, 2013. (See Rules Proc. of State Bar, rule 5.336.)

### **Order of Involuntary Inactive Enrollment**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **JOHN WESLEY VILLINES** be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision, directive, and order by mail (Rules Proc. of State Bar, rule 5.111(D)).

Dated: May \_\_\_, 2013.

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**PAT McELROY**  
Judge of the State Bar Court