

# PUBLIC MATTER

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STATE BAR COURT CLERK'S OFFICE  
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## STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case Nos.: 12-O-11147-PEM (13-O-11350)
	)	
ANTHONY HARRIS,	)	
	)	AMENDED DECISION AND ORDER OF
Member No. 220714,	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
A Member of the State Bar.	)	

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### Introduction<sup>1</sup>

In this disciplinary proceeding, respondent Anthony Harris is charged with four counts of misconduct in two client matters. The charged misconduct includes: (1) failing to keep a client reasonably informed of significant developments; (2) failing to respond to client inquiries; (3) failing to obey a court order; and (4) committing an act of moral turpitude. The court finds, by clear and convincing evidence, that respondent is culpable of three of the four charges. In light of the serious nature of respondent's misconduct, as well as the aggravating circumstances, the court recommends that respondent be disbarred from the practice of law.

### Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on September 30, 2013, and on October 15, 2013, respondent filed his response. On January 15, 2014, the parties filed a stipulation as to facts.

<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

A two-day trial was held on January 28 and 29, 2014. The State Bar was represented by Deputy Trial Counsel Catherine Taylor and Senior Trial Attorney Sherrie McLetchie. Respondent represented himself. On January 29, 2014, following closing arguments, the court took this matter under submission.

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

Respondent was admitted to the practice of law in California on October 21, 2002, and has been a member of the State Bar of California at all times since that date.

#### **Case No. 12-O-11147 – The Hill Matter**

##### **Facts**

On May 2, 2011, Warren Hill hired respondent to represent him in a dissolution matter and paid respondent \$2,000 as an advanced fee. On June 9, 2011, respondent submitted a Petition for Dissolution with Children on behalf of Hill in Contra Costa County Superior Court, case No. MSD11-02878 (dissolution matter), along with a fee waiver application.

On June 9, 2011, the court mailed to respondent a denial of the application for a fee waiver in the dissolution matter. Respondent received the denial of the fee waiver shortly after June 9, 2011, but did not notify Hill of the denial or the requirement that Hill pay filing fees or the case would be dismissed.

On July 11, 2011, the dissolution matter was dismissed for non-payment of the filing fee. At no time did respondent notify Hill of the dismissal. In fact, on September 16, 2011, Hill took time off of work and appeared for mediation whereupon he learned for the first time that his case had been dismissed. Beginning in September 2011 through January 2012, Hill repeatedly called respondent inquiring about the status of his case. Respondent received the messages, but did not respond to any of Hill's messages.

In April and May 2103, respondent refunded the \$2,000 advanced fee to Hill.

Respondent admitted at trial that he failed in his representation of Hill and he regrets his failure to inform Hill of the dismissal. He testified that he did not inform Hill of the dismissal because he was embarrassed.

### **Conclusions**

#### ***Counts 1 and 2 - (§ 6068, subd. (m) [Failure to Communicate])***

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

Respondent willfully violated section 6068, subdivision (m), in counts 1 and 2: (1) by not informing Hill that the fee waiver had been denied; (2) by not informing Hill that if the filing fee remained unpaid, the case would be dismissed for non-payment of the fee; (3) by not informing Hill that the dissolution matter had been dismissed for non-payment of the filing fee; and (4) by failing to respond to Hill's repeated requests for an update on the status of the dissolution matter.

#### **Case No. 13-O-11350 - California Rules of Court, Rule 9.20 Compliance Matter**

### **Facts**

On May 12, 2011, William E. Smith hired respondent to modify Smith's child custody and support obligations in Contra Costa County Superior Court, case No. MSD09-02819 (family law matter), and paid respondent \$1,500 in advanced attorney fees. On May 13, 2011, respondent filed a "Notice of Limited Scope Representation by Attorney A. Harris" in the family law matter. On August 30, 2011, respondent substituted into the family law matter as Smith's attorney of record. There was no documentary evidence that indicated respondent had ever substituted out of the family law matter.

On January 5, 2012, the California Supreme Court issued and served an order in *In re Anthony Harris*, case number S197346, suspending respondent from the practice of law for two years, stayed, placing him on probation for three years, subject to conditions, including a six-months' actual suspension, and ordering him to comply with California Rules of Court, rule 9.20 (9.20 Order).<sup>2</sup> Respondent received the 9.20 Order shortly after January 5, 2012.

The 9.20 Order was effective on February 4, 2012, 30 days after the 9.20 Order was filed. Thus, respondent was ordered to comply with rule 9.20(a) no later than March 5, 2012, and rule 9.20(c) no later than March 15, 2012. Respondent remained suspended from the practice of law pursuant to the 9.20 Order until August 5, 2012.

Respondent testified that he notified Smith of his suspension and enclosed a substitution of attorney form by letter on March 2, 2012. However, Smith testified he never received that letter. Because of his suspension effective February 4, 2012, respondent did not appear in court on behalf of Smith on March 15, 2012. Smith further testified that he was humiliated because he had expected respondent to be in court with him. He felt the judge disrespected him because his attorney had not appeared in court.

Respondent admitted that at no time did he notify Esperanza Cordova, the adverse party in the family law matter, of his suspension. Neither did respondent notify the Contra Costa County Superior Court of his suspension or file with the court the required notice in the family law matter. Respondent remained counsel of record in the family law matter.

On September 17, 2012, respondent signed under penalty of perjury a declaration asserting his compliance with rule 9.20 (9.20 compliance declaration) and filed it with the State Bar Court. Respondent's 9.20 compliance declaration stated in pertinent part: "As of the date

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<sup>2</sup> Rule 9.20 refers to California Rules of Court, rule 9.20.

upon which the order to comply with rule 9.20 was filed, I had no clients." However, the court records listed respondent as attorney of record in Smith's family law matter.

Respondent also declared in the rule 9.20 compliance declaration the following:

- "I delivered to all clients any papers or other property to which the clients were entitled, or notified clients and co-counsel, if any, of a suitable time and place where the papers or other property could be obtained, and called attention to any urgency for obtaining the papers or other property."
- "As of the date upon which the order to comply with rule 9.20 was filed, I did not represent any clients in pending matters."

### **Conclusions**

#### ***Count 3 - (§ 6103 [Failure to Obey a Court Order])***

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

At trial, respondent offered no reason as to why he did not notify the superior court or Cordova, other than he was homeless at the time and his very existence was at stake. The court empathizes with his situation but cannot excuse his non-compliance with the 9.20 Order.

Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. "Willfulness" in the context of rule 9.20 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with the 9.20 Order, in willful violation of section 6103, by failing to

notify the adverse party in pending litigation of his suspension and by failing to file a notice of his disqualification as an attorney with the Contra Costa County Superior Court in Smith's family law matter.

***Count 4 - (§ 6106 [Moral Turpitude])***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

The State Bar alleges that respondent violated section 6106 by making false and misleading statements under penalty of perjury in the 9.20 compliance declaration which respondent knew or was grossly negligent in not knowing were false. The State Bar argues that: (1) respondent knew that he remained as the attorney of record in Smith's family law matter when he declared that he had no clients and did not represent any clients in pending matters; and (2) respondent knew that he had not delivered all client papers or other property to Smith at the time he stated that he had.

On the other hand, respondent contends that when he signed the 9.20 compliance declaration under penalty of perjury, he truly thought that he no longer represented Smith as he had not appeared in the case since January 2011 and he had written Smith on March 2, 2011, a letter telling him that he could no longer represent him along with a substitution of attorney. Respondent credibly testified that when he signed the September 17, 2012 declaration, he reasonably believed that as of September 17, 2012, he was sure he had no clients. Moreover, there was no clear and convincing evidence developed at trial that respondent had not returned to Smith all his documents in the family law matter.

Although the 9.20 Order required respondent to notify all opposing counsel and the court, he did not do so. But, he never checked the box in the 9.20 compliance declaration that he had

notified all opposing counsel and the court. Thus, he did not declare that he had notified the opposing party or the court.

In *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, where the attorney did not intend to deliberately defy a court order and did not have any dishonest or wrongful intent, and where his improper conduct was based on beliefs and understandings which, although not only mistaken but also objectively unreasonable, were honestly held, the court found that he did not commit acts involving moral turpitude. (See *Sternlieb v. State Bar* (1990) 52 Cal.3d 317.)

Similarly, respondent did not intentionally file a false affidavit that he had no clients or any pending matter. While he failed to comply with rule 9.20 in violation of section 6103 and the 9.20 compliance declaration was not accurate, he honestly believed, albeit mistakenly, that he had no clients and that he no longer represented Smith. Reasonable doubts in proving a charge of professional misconduct must be resolved in the accused attorney's favor. (*Ballard v. State Bar* (1983) 35 Cal.3d 274, 291.)

Therefore, there is no clear and convincing evidence to support the finding that respondent acted dishonestly or that he committed an act of moral turpitude in willful violation of section 6106.

### **Aggravation<sup>3</sup>**

#### **Prior Record of Discipline (Std. 1.5(a).)**

Respondent has one prior record of discipline. On January 5, 2012, the California Supreme Court filed an order that suspended respondent from the practice of law for two years, stayed, placed him on probation for three years, and actually suspended him for six months for

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<sup>3</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

his misconduct in seven client matters and trust account violations (22 counts of misconduct). He had stipulated to: engaging in unauthorized practice of law; failing to perform services competently; failing to communicate; failing to promptly refund an unearned fee; failing to obey court order; and commingling. Aggravating factors included multiple acts of misconduct and significant harm to clients. Mitigating factors were: candor and cooperation; remorse; extreme personal difficulties; and no prior record of discipline. (Supreme Court case No. S197346; State Bar Court case Nos. 09-O-13118 et al.)

**Multiple Acts of Wrongdoing (Std. 1.5(b))**

Respondent's failure to communicate with client and failure to obey court order involved multiple acts of misconduct and are considered an aggravating factor.

**Intentional Misconduct, Bad Faith, Dishonesty, Concealment, Overreaching or Other Uncharged Violations of the Business and Professions Code or the Rules of Professional Conduct (Std. 1.5(d))**

Hill had to resort to a ruse to get respondent to meet with him. He had his girlfriend called and pretended that she had a case for respondent. When respondent went to meet with her to discuss the new case, Hill showed up. Thus, respondent's concealment from his client is an aggravating factor.

**Harm to the Client, the Public, or the Administration of Justice (Std. 1.5(f))**

Respondent's failure to communicate with Hill significantly harmed his client. Hill took a day off work to attend a mediation that did not happen because unbeknownst to him the case had been dismissed. Respondent's failure to promptly return the unearned fees of \$2,000 to Hill delayed him from hiring a new attorney. The client also had to work overtime to raise the money to hire a new attorney.



## **Mitigation**

### **Extreme Emotional/Physical Difficulties (Std. 1.6(d).)**

Respondent was homeless during much of the time the misconduct occurred. Respondent also claimed that he was suffering from depression. However, there is no clear evidence that his homelessness or emotional difficulties have ceased to be a problem or that they no longer pose a risk that he will commit misconduct. Therefore, his emotional and personal difficulties are given minimal weight in mitigation.

### **Remorse/Recognition of Wrongdoing (Std. 1.6(g).)**

Respondent's remorse and recognition of wrongdoing is accorded some weight.

## **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. 1.1; *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 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertan* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(a) provides that, when a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

However, standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

In this case, the standards provide a broad range of sanctions ranging from reproof to disbarment. Standards 2.5(c) and 2.8(a) apply in this matter.

Standard 2.5(c) provides that reproof is appropriate for failing to perform legal services or properly communicate in a single client matter.

Standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the attorney's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a) – (h).

The State Bar argues that respondent be disbarred from the practice of law, citing *Hill v. State Bar* (1935) 2 Cal.2d 622; *Emslie v. State Bar* (1974) 11 Cal.3d 210; and *Giddens v. State Bar* (1981) 28 Cal.3d 730 in support of its contention.

However, none of the cited cases are on point or address respondent's rule 9.20 violation. Recommended discipline must be consistent with the discipline imposed in similar proceedings.

(See *Snyder v. State Bar* (1990) 49 Cal.3d 1302; *In the Matter of Twitty* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 664; and *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287.)

Respondent urges that he be referred to participate in the State Bar Court's Alternative Discipline Program<sup>4</sup> as his discipline. That, too, is inapplicable in light of his serious misconduct of violating the Supreme Court order.

In *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, the court found the attorney's aggravated rule 9.20 (former rule 955) violation was far more serious than her minor trust account violation and thus warranted disbarment.

Similarly, in this matter, respondent's willful violation of the 9.20 Order is more serious than his failure to communicate with his client, for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such violation undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Absent strong mitigating circumstances, a rule 9.20 violation warrants disbarment. (*In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. 287, 296.)

Therefore, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his willful disobedience of the Supreme Court order.

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<sup>4</sup> Alternative Discipline Program is for attorneys with substance abuse and/or mental health issues.

**Recommendations**

It is recommended that respondent Anthony Harris, State Bar Number 220714, be disbarred from the practice of law in California and his 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 rule 9.20 of the California Rules of Court, 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**

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

Dated: June 5, 2014

  
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PAT McELROY  
Judge of the State Bar Court

## 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 San Francisco, On June 5, 2014, I deposited a true copy of the following document(s):

AMENDED DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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 San Francisco, California, addressed as follows:

ANTHONY HARRIS  
1230 MARKET ST # 244  
SAN FRANCISCO, CA 94102

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

Catherine E. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 5, 2014.



Laurretta Cramer  
Case Administrator  
State Bar Court