PUBLIC MATTER

FILED

APR 19 2019

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 12-O-15334-YDR
	)	
WARREN JOSEPH SMALL,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
State Bar No. 90945.	)	ENROLLMENT
	)	

Introduction[1]

In this contested matter, Warren Joseph Small (Respondent) was charged with two counts of misconduct: 1) seeking to mislead a judge in violation of section 6068, subdivision (d); and 2) committing an act of moral turpitude by signing his client's name to documents filed with a court without notifying the court that Respondent simulated his client's signature, in violation of section 6106. The Office of Chief Trial Counsel of the State Bar of California (OCTC) has the burden of proving these charges by clear and convincing evidence.[2] The court finds that OCTC has established that Respondent is culpable of the misconduct alleged, and based on the nature and extent of Respondent's wrongdoing, as well as the applicable aggravating and mitigating circumstances, the court recommends that Respondent be disbarred.

[1] 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.

[2] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

Significant Procedural History

OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on September 30, 2013. Respondent filed an answer on November 13, 2013. The parties filed a Stipulation as to Undisputed Facts and Admission of Documents on January 14, 2014.

Trial commenced before the Honorable Donald F. Miles on January 14, 2014. During trial, Judge Miles abated this proceeding after learning about a pending underlying trial which he considered to be related to the issues raised in this disciplinary matter. On July 24, 2018, this matter was reassigned to the undersigned judge, who subsequently unabated this matter and set trial dates. Trial resumed and concluded on January 18, 2019.

Closing argument briefs were filed February 1, 2019, and this matter was deemed submitted the same day. Senior Trial Counsel Charles Calix, Esq., and former Deputy Trial Counsel Melissa R. Marshall, Esq., represented OCTC. Respondent was represented by David Clare, Esq.

Findings of Fact and Conclusions of Law

These findings of fact are based on the record, evidence admitted at trial and certain facts set forth by the parties in their factual stipulation.

Respondent was admitted to the practice of law in California on December 14, 1979. Respondent has been a licensed attorney of the State Bar of California at all times since Respondent's date of admission.

Case No. 12-O-15334

Facts

In March 2009, Edward D. Sharp employed Respondent to represent him in a dissolution proceeding in the San Bernardino County Superior Court, entitled *In re the Marriage of LaTanya D. Greenaway-Sharp and Edward D. Sharp*, case No. FAMRS900800 (the dissolution case).

Respondent prepared and filed numerous documents with the court in connection with his representation of Sharp. Respondent stipulated that he signed Sharp's name under penalty of perjury to the following documents, and he filed those documents in the San Bernardino County Superior Court on the following dates.

Document	Date Signed	Date Document Filed
Income and Expense Declaration	March 18, 2009	April 6, 2009
Supporting Declaration of Edward D. Sharp	March 20, 2009	April 6, 2009
Application for an Order to Show Cause (OSC)	April 15, 2009	April 22, 2009
Response to Dissolution of Marriage	April 15, 2009	May 8, 2009
Community and Quasi-Community Property Declaration	April 15, 2009	May 8, 2009
Responsive Declaration to an OSC	May 5, 2009	May 14, 2009
Income and Expense Declaration	September 3, 2009	September 9, 2009
Response to Dissolution of Marriage	September 3, 2009	September 9, 2009
Application for Order	November 13, 2009	November 19, 2009
Supporting Declaration and Income and Expense Declaration	November 13, 2009	November 19, 2009

In addition to the pleadings above, on June 22, 2009, Respondent signed Sharp's name to a Notice to Set Aside Default that Respondent filed on the same date.

Respondent did not comply with California Code of Civil Procedure section 446 by filing an affidavit which advised the court presiding over the dissolution case that Respondent, rather than Sharp, had signed all of the above-referenced documents filed with the court between April 6, 2009 and November 19, 2009.

California Code of Civil Procedure section 446(a) provides, in relevant part:

> In all cases of a verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge . . . and where a pleading is verified, it shall be by the affidavit of a party, unless the parties are absent from the county where the attorney has his or her office, or from some cause unable to verify it, or the facts are within the knowledge of his or her attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he or she shall set forth in the affidavit the reasons why it is not made by one of the parties.

On September 13, 2012, Respondent first provided notice to that court that the following documents were actually signed by Respondent instead of Sharp: an Income and Expense Declaration dated March 18, 2009; a Supporting Declaration of Edward D. Sharp dated March 20, 2009; a Response to Dissolution of Marriage dated April 15, 2009; the Community and Quasi-Community Property Declaration dated April 15, 2009; and the Notice to Set Aside Default dated June 22, 2009. Later, on August 21, 2013, Respondent first provided notice to the court that the following documents were signed by Respondent rather than Sharp: a Responsive Declaration to Order to Show Cause filed May 14, 2009, an Application for Order and Supporting Declaration filed November 19, 2009, the Income and Expense Declaration filed November 19, 2009, the Income and Expense Declaration filed September 9, 2009, the Response to Dissolution of Marriage filed September 9, 2009, and the Notice to Set Aside Default filed June 22, 2009.[3]

Conclusions

Count One – (§ 6068(d) [Seeking to Mislead a Judge])

In Count One, OCTC alleged that Respondent sought to mislead a judge or judicial officer by an artifice or false statement of fact or law, by signing his client's name to eleven documents and filing them with the San Bernardino County Superior Court, in willful violation of section 6068, subdivision (d). Section 6068, subdivision (d), provides that an attorney has a

[3] Both notices were made during statements made to the superior court.

duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

In 2014, Respondent stipulated that he signed Sharp's name, under penalty of perjury to the 10 documents, and made an additional simulation of Sharp's signature on an 11th document. During the January 14, 2014 hearing before Judge Miles, Respondent testified, "I don't recall what took place in 2009," that he was "never cognizant of [California Code of Civil Procedure section] 446 and he wouldn't have done anything to mislead the court." Respondent also testified that he lied to the superior court about Sharp being "unavailable" to sign his name in Respondent's office.

However, during the January 18, 2019 disciplinary hearing, Respondent's testimony changed. Respondent testified that he signed Sharp's name under penalty of perjury because Sharp did not have time to receive the pleadings by mail and was unable to go to his office to sign the pleadings. As to one of the documents, Respondent stated that when he signed Sharp's name, Sharp was sitting next to him "with their hands touching" as he held the pen and signed the document. According to Respondent, when he simulated Sharp's signature, he was perpetrating a "joke" on Sharp's wife, given the long and acrimonious nature of their divorce proceedings. Respondent failed to provide any corroborating evidence in support of this new scenario. Respondent also stated that he became aware of California Code of Civil Procedure section 446 sometime after 1980.

Given the extensive contradictory and revisionist nature of Respondent's testimony surrounding his simulation of Sharp's name on documents made under penalty of perjury, this court does not find credible any of Respondent's testimony on this issue. Moreover, due to Respondent's stipulation, he cannot controvert a stipulated fact. (Rules Proc. of State Bar, rule 5.54(B) ["Evidence to prove or disprove a stipulated fact is inadmissible"].)

Respondent violated section 6068, subdivision (d) by concealing that Sharp had not attested to the information contained in 10 documents signed by Respondent. However, as set forth below, the same facts underlie the section 6068, subdivision (d), and section 6106 violations. Thus, Count One is dismissed as duplicative. (See *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787 [dismissing section 6068, subd. (d) charge on finding of violation of section 6106].)

Count Two – (§ 6106 [Moral Turpitude])

In Count Two, OCTC incorporated the allegations in Count One as the basis for alleging a section 6106 violation. No additional facts are alleged in Count Two. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption, constitutes cause for suspension or disbarment.

Respondent committed acts involving moral turpitude or dishonesty by knowingly representing to the superior court judge that 10 documents were signed by Sharp under penalty of perjury, and an additional document was also signed by Sharp, when it was Respondent who simulated Sharp's signature. It is well established that acts of moral turpitude include an attorney's false or misleading statements to a court or tribunal. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855). No intent to deceive is necessary; "a finding of gross negligence in creating a false impression is sufficient for violation of section 6106." (*In The Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786)(citing *In the Matter of Moriarity* (Review Dept. 1994) 4 Cal. State Bar Ct. Rptr. 9, 15; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91).

Moreover, acts of moral turpitude include concealment as well as affirmative misrepresentations. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) Indeed, "no distinction can . . . be drawn among concealment, half-truth, and false statement of fact. [Citations omitted]."

(*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174.) It is not necessary that the respondent actually succeed in perpetrating a fraud on the court. (See, e.g., *Bach v. State Bar*, *supra*, 43 Cal.3d 848, 852-853, 855.)

Here, OCTC established by clear and convincing evidence that from at least April 2009 through September 13, 2012, Respondent filed 10 documents that Sharp purportedly signed under penalty of perjury (and one document that was signed, but not under penalty of perjury), but it was Respondent who actually simulated Sharp's signature. Respondent's dishonesty misled the court, allowing the superior court judge in the dissolution case to adjudicate matters based on statements made under penalty of perjury that did not contain Sharp's actual signature. Accordingly, Respondent is culpable of moral turpitude, in willful violation of section 6106.

Aggravation[4]

OCTC must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds five aggravating circumstances.

Prior Record (Std. 1.5(a).)

Respondent has three prior discipline records.

Small I

On September 30, 1993, the Supreme Court suspended Respondent from the practice of law for 90 days, execution stayed, and placed him on probation for two years subject to conditions. Respondent stipulated to misconduct that occurred in 1986 that involved a single client. Respondent was culpable of willfully violating former rule 8-101(A). He failed to properly supervise his staff, which allowed his client trust account (CTA) to fall below the $5,870.17 that Respondent was required to maintain in trust on his client's behalf

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

Small II

On March 10, 2003, Respondent received a public reproval with conditions for an 18-month period. Respondent's misconduct occurred in 1997 in a single client matter. He stipulated that the Riverside Superior Court had entered judgment in his client's marriage dissolution and ordered Respondent to prepare a proposed Qualified Domestic Relations Order (QDRO) dividing the parties' interests in the client's ex-husband's pension plan. Respondent failed to prepare the proposed QDRO. He stipulated that he failed to perform with competence, in violation of rule 3-110(A); and that he failed to obey a court order, in violation of section 6103. The two aggravating factors were Respondent's prior record and his client's inability to collect her portion of her ex-husband's pension plan until the QDRO was prepared and finalized. Respondent protected his client's interest in the pension plan by filing a motion that ensured no distribution of the pension funds could occur without a QDRO, which was a mitigating factor.

Small III

On November 25, 2008, the Supreme Court suspended Respondent from the practice of law for two years and until he satisfied former standard 1.4(c)(2), execution stayed, and placed him on probation for two years subject to conditions. Respondent committed misconduct in 2004 and 2005 in two client matters. In the first client matter, Respondent stipulated that he violated rule 3-110(A) by failing to appear at a hearing and to request a continuance in a child support case. In the second matter, Respondent stipulated that he was culpable of violating rule 3-700(D)(2) by failing to promptly refund $3,312.40 in unearned fees to his client. Respondent's prior record was an aggravating factor, and the mitigating circumstances consisted of good character, community service, and entering into a stipulation as to facts and culpability.

Although the misconduct in *Small I* and *Small II* were remote in time to the current misconduct, (*In the Matter of* Shinn (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96 [private

reproval 20 years prior to current misconduct was remote in time]), they were not remote in time to one another. Moreover, the misconduct in *Small II* and *Small III* only occurred seven years apart. Respondent's entire prior record of discipline is a significant aggravating factor because it demonstrates he has been unable to conform his conduct to the ethical responsibilities of an attorney.

Multiple Acts (Std. 1.5(b).)

Respondent committed multiple acts of misconduct when he simulated Sharp's signature on 11 documents filed in the San Bernardino Superior Court. (See, e.g., *In the Matter of Kueker* (Review Dept.1991) 1 Cal. State Bar Ct. Rptr. 583, 594 [multiple acts in aggravation for one count of moral turpitude where attorney made 11 misrepresentations over two years].) The court assigns moderate weight to this aggravating factor.

Significant Harm to the Administration of Justice (Std. 1.5(j).)

Respondent's misconduct significantly harmed the administration of justice. By simulating Sharp's signature under penalty of perjury on documents filed in superior court, Respondent made the dissolution proceedings vulnerable to attack based on Sharp's fake signature. Respondent's misconduct is of serious concern because it had the potential to disrupt the finality of Sharp's marriage dissolution. (See, e.g, *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 92-93 [attorney's service as an unqualified arbitrator harmed the administration of justice because a suspended attorney is unqualified to sit as a judicial arbitrator and any decisions the attorney renders could be open to attack as void].) The harm to the administration of justice is a significant aggravating factor.

Indifference and Lack of Insight (Std. 1.5(k).)

Respondent has demonstrated a lack of insight into his wrongdoing and indifference toward rectification of or atonement for the consequences of his misconduct. Even at trial,

Respondent failed to appreciate that he violated Code of Civil Procedure section 446 by failing to file an affidavit setting forth the reasons that Respondent executed the pleadings under penalty of perjury instead of Sharp.

This court finds Respondent's lack of insight particularly troubling when Respondent, for a number of years, served as a pro tem judge in family court and should have appreciated the need for a judge to be provided documents containing accurate and truthful averments made by each party. Such a lack of insight into his misconduct raises this court's concern that the misconduct will recur. The court assigns significant weight to Respondent's indifference and lack of insight.

Lack of Candor (Std. 1.5(l).)

Respondent offered contradictory testimony and untruths about the circumstances surrounding his signing of Sharp's name on 11 documents. Initially, Respondent did not recall why he simulated Sharp's name to the documents, and he stated that he was unaware of Code of Civil Procedure section 446. Later, he testified that he signed Sharp's name to the documents filed in superior court because Sharp was unavailable to sign them himself, he signed one document as a "joke," and he stated that he was actually aware of Code of Civil Procedure section 446 since 1980. Respondent's lack of candor during this disciplinary proceeding is a significant aggravating factor.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std.1.6.) The court finds two mitigating factors.

Cooperation (Std. 1.6(e).)

Respondent is entitled to substantial mitigation for cooperating with OCTC by entering into an extensive stipulation as to facts which greatly assisted OCTC with establishing

Respondent's culpability. (Std. 1.6(e)). (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded to those who admit to culpability as well as facts].)

Good Character (Std. 1.6 (f).)

Respondent presented character testimony from one witness: Dr. Patricia Haire, a nun and clinical psychologist. During the January 2014 hearing, Dr. Haire testified that she has known Respondent most of his life and she believes he possesses the "highest moral character of dedication, honesty, trustworthiness, justice, responsibility and [he has worked] for the good of others throughout his personal and professional life." However, Dr. Haire did not seem to be aware of the full extent of Respondent's stipulated misconduct.

Respondent is entitled to no mitigation credit for good character because a single witness does not represent a wide range of references from the legal and general communities who are aware of the full extent of Respondent's misconduct, as required by standard 1.6(f). (See *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Rptr. 297, 305; see also *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys familiar with charges against attorney was entitled only to limited mitigation because they did not constitute a broad range of references].)

Community Service/Pro Bono Activities

An attorney may be afforded mitigating credit for his service to the community and pro bono endeavors. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 665-666.) Respondent testified that he: 1) works as a mediator in the Riverside County Superior Court, Family Law Division and serves a similar role in San Bernardino County Superior Court; 2) serves on the mediation panel at the Court of Appeals, 4th District, Division Two; 3) worked at Legal Aid in Riverside until 2012; 4) rang the bell for the Salvation Army in 2014; and 5) served as a Big Brother to a

teenager whose father was imprisoned. With the exception of his work with the Salvation Army and Big Brother organization, Respondent has already received mitigating credit for the aforementioned community service and pro bono activities. Moreover, Respondent failed to provide any evidence to support his community involvement. (See *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, [little weight given to pro bono activities where Respondent testified but evidence lacking regarding level of involvement].) As such, the court assigns nominal weight to Respondent's community service and pro bono endeavors.

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, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090.) The court then looks to decisional law. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades 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.) Moreover, the California 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. (*Silverton, supra,* 36 Cal. 4th at pp. 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190). 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.)

OCTC contends that the appropriate level of discipline for Respondent's misconduct is disbarment. Respondent argues that disbarment would be manifestly unjust because if this was his first discipline, his misconduct would not warrant a period of actual suspension. But, because he has prior discipline records, Respondent maintains that no more than a 90-day actual suspension is appropriate under the circumstances. Based on the standards, aggravating and mitigating circumstances, and case law, the court finds that disbarment is the appropriate sanction.

Standard 1.7 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. Here, standard 2.11 applies. Standard 2.11 provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption intentional or grossly negligent misrepresentation or concealment of a material fact."

Standard 1.8(b) is also applicable to this case because Respondent has three prior discipline records. Standard 1.8(b) provides that if a lawyer has two or more prior records of discipline, disbarment is appropriate if: (1) an actual suspension was ordered in any of the prior matters; (2) the prior and current matters demonstrate a pattern of misconduct; or (3) the prior and current matters demonstrate an unwillingness or inability to conform to ethical responsibilities. Respondent's case meets one of these criteria. Since becoming a licensed attorney in 1979, Respondent has committed misconduct in 1986, 1997, 2004, 2005, and 2009. This intermittent misconduct that occurred in three different decades after Respondent became an attorney demonstrates his unwillingness or inability to conform to his ethical responsibilities.

Section 1.8(b) provides for a departure from the presumptive discipline of disbarment, where "the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct." The exceptions do not apply to this case. The prior and current misconduct did not occur during the same time period, and the mitigating circumstances consisting of cooperation and community service are neither compelling nor predominant compared to the significant weight of the aggravating circumstances. The court notes that Respondent previously cooperated with OCTC by entering into stipulations in each of his prior records of discipline, as he did here, and received mitigating credit in *Small III* for community service. Yet, Respondent reoffended. Thus, the existence of the same mitigating factors in this case as in Respondent's priors is inadequate to reassure this court that his misconduct will cease.

The court is mindful that disbarment is not mandatory in every case of two or more prior disciplines, even where compelling mitigating circumstances do not clearly predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [disbarment is not mandatory in every case of two or more prior disciplines, even where no compelling mitigating circumstances clearly predominate].) But, Respondent has provided no reason for this court to depart from the standards. (See *Blair v. State Bar* (1989) 49 Cal.3d 762, 776 [if the court deviates from the presumptive discipline, the court must explain the reasons for doing so].)

Disbarment is warranted in this case. By simulating Sharp's signature under penalty of perjury on 10 documents and filing those documents with the San Bernardino Superior Court, Respondent undermined the court's ability to rely on the accuracy of the statements in those documents, and it "also diminishes the public's confidence in the integrity of the legal profession." (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157.) Respondent has breached his ethical responsibilities on three prior occasions. Each of the prior

"disciplinary orders provided him with the opportunity to reform his conduct to the ethical strictures of the [legal] profession," (*Arden v. State Bar* (1987) 43 Cal.3d 713, 727), yet he failed to do so. It is particularly troubling that Respondent's current misconduct occurred while he was on probation in *Small III*. Moreover, Respondent's lack of candor during these proceedings and lack of insight into his wrongdoing do not give the court confidence that Respondent will not commit misconduct in the future.

Disbarment is both necessary and appropriate when the current violations considered with prior misconduct, evidences the attorney's unwillingness or inability to conform to ethical responsibilities. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104 [attorney with three prior discipline records disbarred after attorney appeared unwilling or unable to learn from past professional mistakes]; *Arden v. State* Bar, *supra*, 43 Cal.3d at p. 728 (disbarment imposed on attorney with three priors, which indicated an unwillingness to conform conduct to ethical strictures]; *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 80 [disbarment recommended where attorney had two priors and was unable to conform conduct to ethical norms].) Here, the risk of recurrence of professional misconduct is high and therefore, the court concludes that Respondent is not a good candidate for suspension and further probation. Thus, disbarment is the appropriate level of discipline to protect the public and the courts and to maintain the integrity of the legal profession.

RECOMMENDATIONS

Discipline - Disbarment

It is recommended that Warren Joseph Small, State Bar Number 90945, be disbarred from the practice of law in California and that 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 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 imposing discipline in this matter.[5]

Costs

It is further 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a lawyer who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code, section 6007(c)(4), it is ordered that Warren Joseph Small, State Bar No. 90945, be involuntarily enrolled as an inactive lawyer of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules of Proc. of State Bar, rule 5.111(D)(1).[6] Respondent's inactive enrollment will

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[5] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

[6] An inactive lawyer 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,

terminate upon (1) the effective date of the Supreme Court's order imposing discipline; (2) as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar, or (3) as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: April 19, 2019

YVETTE D. ROLAND
Judge of the State Bar Court

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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 Court Specialist 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 April 19, 2019, I deposited a true copy of the following document(s):

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 Los Angeles, California, addressed as follows:

DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

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

CHARLES T. CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 19, 2019.

Mazie Yip
Court Specialist
State Bar Court