

PUBLIC MATTER

FILED

DEC 21 2015

STATE BAR COURT OF CALIFORNIA

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No.: 13-N-14219-PEM
	)	
<b>PAUL ERNEST VALLONE,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 168395,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction**<sup>1</sup>

In this contested disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent **Paul Ernest Vallone** with willfully failing to comply with California Rules of Court, rule 9.20 (rule 9.20), as he was ordered to do so by the Supreme Court.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. In view of respondent's misconduct and the evidence in aggravation (including his two prior records of discipline), the court recommends that respondent be disbarred from the practice of law.

**Significant Procedural History**

This matter has a two-year procedural history.

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<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.



*First Submission*

On September 10, 2013, the State Bar filed and served a notice of disciplinary charges (NDC) on respondent at his official membership address at 900 Roanoke Dr., Apt. 64, Martinez, California 94553 (Roanoke Dr. address). It was returned as undeliverable. Because respondent failed to file a response, the State Bar filed a motion for entry of default on November 22, 2013. The court entered respondent's default on December 11, 2013.

On August 1, 2014, the State Bar filed a petition for disbarment and the matter was submitted for decision on August 28, 2014.

*Second Submission*

However, on November 10, 2014, the court vacated the submission and granted the State Bar leave to file an amended petition for disbarment.<sup>2</sup> On February 13, 2015, the State Bar filed a revised petition for disbarment, correcting an error in respondent's history of prior discipline in the original petition. On March 13, 2015, the matter was again submitted for decision.

*Third Submission*

On April 28, 2015, respondent filed a motion to vacate default and submitted a proposed response to the NDC. The State Bar filed an opposition on May 12, 2015. And on June 4, 2015, the court issued an order denying the State Bar's revised petition or disbarment, setting aside respondent's default, and filing respondent's response to the NDC.

On August 11, 2015, the court ordered sanctions against respondent for failure to file a pretrial statement. He was precluded from presenting any evidence at trial, other than his own testimony.

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<sup>2</sup> The petition for disbarment recited that respondent had no prior record of discipline when in fact he had two prior records of discipline. (Rules Proc. of State Bar, rule 5.85.)

On October 1, 2015, a one-day trial was heard. The parties also filed a stipulation as to facts and admission of documents. The State Bar was represented by Supervising Senior Trial Counsel Susan Chan. Respondent represented himself. At the end of trial, the court ordered the parties to file closing briefs by October 13, 2015, after which the court would then deem the case under submission for decision.

The State Bar filed its closing brief on the due date. But respondent submitted his closing brief on October 21, 2015. On October 23, the State Bar filed a motion to strike respondent's closing brief due to its untimeliness and improper service. The court agrees. Accordingly, the State Bar's motion to strike is hereby **GRANTED**; respondent's late submission of his closing brief is **DENIED** and is stricken. It is so ordered.

This matter is finally submitted on October 13, 2015.

**Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 14, 1993, and has been a member of the State Bar of California at all times since that date.

**Facts**

On April 17, 2013, in California Supreme Court case No. S194823 (State Bar Court case No. 12-PM-12944), the Supreme Court ordered that respondent's probation is revoked and that he is actually suspended for two years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct. Among other things, the Supreme Court ordered respondent to comply with rule 9.20, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the Order.

On May 6, 2013, the State Bar Office of Probation sent a courtesy reminder to respondent's official membership records address (the Roanoke Dr. address). The Roanoke Dr.

address had been in effect since March 4, 2011. However, the letter was returned by the U.S. Postal Service as undeliverable on May 31, 2013.

On May 17, 2013, the rule 9.20 Order became effective. Thus, respondent had to comply with subdivisions (a) and/or (b) of rule 9.20 no later than June 16, 2013, and subdivision (c) no later than June 26, 2013. On June 4, 2013, Probation Deputy Michael Kanterakis called the phone number listed in respondent's official membership records; a message indicated the number was not accepting calls at that time and to try again later.

On July 1, 2013, the Office of Probation sent yet another reminder letter to respondent at the Roanoke Dr. address. That letter was not returned as undeliverable by the U.S. Postal Service.

Respondent did not file a rule 9.20 declaration of compliance with the Clerk of the State Bar Court by the due date, June 26, 2013.

On June 12, 2014, respondent and former Deputy Trial Counsel Tammy Albertsen exchanged emails about the case. In his declaration accompanying his motion to vacate default filed on April 28, 2015, respondent claimed this email exchange was the first time he was aware of the proceedings. Yet, even after receiving actual notice on June 12, 2014, he waited more than 10 months before filing his motion to vacate his default in April 2015. And, he did not update his mailing address in his official membership records from the Roanoke Dr. address to 1014 Pleasant Valley Drive, Pleasant Hill, CA 94523 until September 30, 2014.

On April 20, 2015, respondent again updated his official membership records address to 109 Travers Dr., Martinez, California 94553.

On July 10, 2015, Probation Deputy Teresa Laubscher advised the Office of the Chief Trial Counsel that the Office of Probation has not had any contact with respondent, nor has

respondent demonstrated compliance under rule 9.20, since it referred the matter to the Office of the Chief Trial Counsel in early August 2013.

On September 28, 2015, respondent finally filed a rule 9.20 affidavit with the State Bar Court.

**Conclusions**

***Count One – (Rule 9.20 [Duties of Disbarred, Resigned, or Suspended Attorneys])***

Rule 9.20, subdivision (c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered under this rule.”

All that is necessary for a willful violation of rule 9.20 is a general purpose or willingness to commit the act or make the omission. (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.) Rule 9.20 requires the timely filing of a compliance affidavit.

At trial, respondent claimed that one of the reasons he did not strictly comply with rule 9.20 is that he did not believe it was necessary as he did not have any clients. Also, respondent stated at the time he was homeless and was dealing with the fallout from a divorce.

It is well settled that respondent is required to comply with California Rules of Court, rule 9.20, even if he had no clients or counsel to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) Therefore, the court finds his contention without merit.

Respondent filed the declaration on September 28, 2015, thus failing to file the rule 9.20 affidavit by the due date, June 26, 2013.

Accordingly, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20(c), as ordered by the Supreme Court.<sup>3</sup>

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<sup>3</sup> Specifically, rule 9.20, subsection (d) provides that a suspended attorney’s willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

## **Aggravation<sup>4</sup>**

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

Respondent has two prior records of discipline.

In his first prior record of discipline, respondent was suspended for two years, stayed, and placed on probation for three years to include 30 days' actual suspension. (Supreme Court order No. S194823, filed September 20, 2011; State Bar Court case Nos. 09-O-16809; 10-C-07588; 10-C-10971; 11-C-10122.) Respondent stipulated to five counts of misconduct in four matters. Three matters involved convictions for driving under the influence of alcohol. In the fourth matter, respondent falsified a proposed court order in his legal separation case, forged a judge's signature, sent the proposed order to his ex-wife, and made false statements to the court. Respondent's actions constituted moral turpitude in willful violation of section 6106.

In his second prior record of discipline, respondent's probation was revoked in the underlying matter, the previous stay of suspension lifted, and he was suspended for two years and until proof of rehabilitation and compliance with rule 9.20. (Supreme Court order No. S194823, filed April 17, 2013; State Bar Court case No. 12-PM-12944.) Respondent failed to comply with the disciplinary order by not timely scheduling a meeting with his assigned probation deputy, not providing proof of having attended Alcoholics Anonymous meetings, and not arranging to have drug and alcohol tests to show he was abstaining from drugs and alcohol. Respondent also failed to comply with other terms of his probation, including providing the Office of Probation with a medical waiver and failing to file quarterly reports due January 10, and April 10, 2012.

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<sup>4</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.

## **Mitigation**

No other mitigation was established by clear and convincing evidence. (Std. 1.6.)

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

The court believes that respondent was homeless and suffering from the fallout of a divorce. However, respondent presented no reliable evidence that these difficulties are in the past; therefore, they could not be considered as mitigation.

## **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 Silverton* (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 1.8(b) provides that, unless the most compelling mitigating circumstances clearly predominate or the prior misconduct occurred in the same time period as the current misconduct, if an attorney has two or more prior records of discipline, disbarment is appropriate if: (1) an actual suspension was ordered in one of the prior matters; (2) the prior and current matters together demonstrate a pattern of misconduct; or (3) the prior disciplinary matters

coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

The State Bar urges disbarment. Respondent argues otherwise, claiming no client harm.

Respondent's willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) In a similar case, *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, an attorney was disbarred for failing to comply with rule 9.20 (former rule 955). Here, respondent's filing of his rule 9.20 affidavit was late by more than two years.

Respondent has no compelling mitigating factors and was actually suspended in his prior disciplinary matter (Std. 1.8(b)).

Moreover, the instant proceeding is respondent's third disciplinary matter. Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys, although he has been given multiple opportunities to do so. His behavior clearly demonstrates an indifference to the Supreme Court's disciplinary order. His carelessness and claimed confusion concerning the requirements of rule 9.20 did not obviate his culpability of willful failure to comply with rule 9.20.

Given the case law, the standards, the seriousness of respondent's misconduct, and the aggravating factors, including his two prior records of discipline, 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. Accordingly, the court so recommends.



**Recommendations**

It is recommended that respondent **Paul Ernest Vallone**, State Bar Number 168395, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

**California Rules of Court, Rule 9.20**

It is further recommended that respondent be ordered to comply with the requirements of 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.

**Order of Involuntary Inactive Enrollment**

Respondent Paul Ernest Vallone, State Bar Number 168395, 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 the service of this decision and order. (Rule 5.111(D).)

Dated: December 21, 2015

  
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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 December 21, 2015, I deposited a true copy of the following document(s):

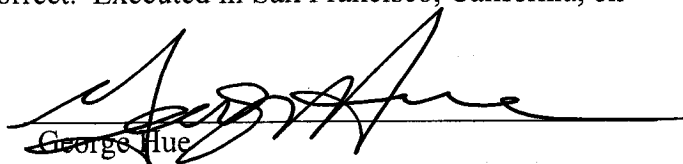
### DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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 San Francisco, California, addressed as follows:
- PAUL E. VALLONE  
109 TRAVERS DR  
MARTINEZ, CA 94553
- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- by overnight mail at , California, addressed as follows:
- by fax transmission, at fax number . No error was reported by the fax machine that I used.
- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Susan Chan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 21, 2015.

  
George Hue  
Case Administrator  
State Bar Court