

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 13-N-17388-RAP
)	
MICHAEL B. STONE,)	DECISION
)	
Member No. 160177,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this original disciplinary proceeding, the Office of the Chief Trial Counsel of the State of Bar of California (State Bar) charged Michael B. Stone (respondent) with noncompliance with California Rules of Court, rule 9.20.

The court finds respondent culpable of this charge and after considering the facts and the law, recommends, among other things, that respondent be placed on actual suspension for two years and until he complies with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).

Sherell N. McFarlane represented the State Bar. Lawrence Adamsky represented respondent.

¹ Unless otherwise indicated, all references to rules refer to the California Rules of Court. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated

Significant Procedural History

The State Bar filed the notice of disciplinary charges (NDC) against respondent on February 21, 2014. The State Bar filed an amended notice of disciplinary charges (amended NDC) on March 20, 2014 to which a response was filed on April 11, 2014.

The matter was submitted for decision on July 18, 2014, at the conclusion of trial.

Findings of Fact

Respondent was admitted to the practice of law in California on December 1, 1992, and has been a member of the State Bar of California since that date.

Case Number 13-N-17388 - The Rule 9.20 Matter

Facts

On August 22, 2013, the Supreme Court filed order no. S211464 (State Bar Court case no. 12-H-16290; 13-H-10477 (Cons.)), imposing discipline including two years' stayed suspension and two years' probation on conditions including actual suspension for 90 days and until he made specified restitution to the County of Orange and Carney Tews Garcia. He was also ordered to comply with rule 9.20 and with other conditions of probation recommended by the State Bar Court Hearing Department in its Order Approving Stipulation filed on April 16, 2013 (stipulation).

In the stipulation, respondent admitted he did not comply with the terms of two prior reprovals he received in 2011, stipulating that he: (1) was late or failed to submit quarterly reports to the Office of Probation (OP); and (2) did not provide proof to the OP that: (a) he attended Client Trust Accounting School and Ethics School and passed the test given at the end of each class; (b) paid restitution or complied with fee arbitration conditions; and (c) passed the Multistate Professional Responsibility Examination (MPRE). Respondent received mitigation

credit for entering into a pretrial stipulation and for suffering from severe financial difficulties at the time of his misconduct.

Pursuant to the Supreme Court's order, respondent filed his rule 9.20 compliance declaration (declaration) on October 30, 2013, with the State Bar Court. He prepared this declaration rather than using the available pre-printed form. However, the OP rejected it the next day because “because it failed to state respondent's unequivocal compliance with rule 9.20” including whether he had refunded all unearned fees or reimbursed the Client Security Fund (CSF) for any payments made to his former clients as required by the Supreme Court's order. A blank compliance declaration was included with the rejection letter to respondent. Respondent received the letter.

On November 7, 2013, respondent filed a second declaration with the State Bar Court. It, too, was rejected on November 18, 2013 because “as you admit in your attachment to Form 9.20, you failed to refund unearned fees.” A blank compliance declaration was included with the rejection letter sent to respondent. Respondent received the letter.

On February 20, 2014, respondent filed another declaration with the State Bar Court which was rejected on February 26, 2014, because it did not “demonstrate your compliance with Rule 9.20. It is noted that you amended the language of the court approved form in the first box in item 3 to state that as of February 20, 2014 you had refunded all unearned fees. This conflicts with the statement above the numbered choices of “[w]ithin 30 days of the effective date of the order...”, which is the time period that was ordered for you to refund unearned fees.”

On March 29, 2014, CSF reimbursed respondent's former client, Carney Tews Garcia.

On February 13, 2014, respondent mailed a cashier's check in the amount of \$1,367.75 to the County of Orange and mailed a cashier's check in the amount of \$395.97 to Garcia.

As of February 20, 2014, respondent owed CSF a total of \$3,421.66 in principal, interest and processing costs in connection with the reimbursement made to Garcia.

On August 2, 2013, CSF reimbursed respondent's former client, Bruce Thomas.

As of February 28, 2014, respondent owed CSF a total of \$2,786.04 in principal, interest and processing costs in connection with the reimbursement made to Thomas.

On November 27, 2013, CSF reimbursed respondent's former client, Maria Altieri.

As of February 20, 2014, respondent owed the CSF a total of \$2,229.12 in principal, interest and processing costs in connection with the reimbursement made to Altieri.

As of February 20, 2014, respondent delivered, or caused to be delivered, two checks totaling \$8,450.73 to the State Bar. Respondent's payment fully satisfied his outstanding obligation to CSF for principal, interest and costs and left a \$13.90 refund due to respondent. Respondent does not owe any money to CSF in connection with the three reimbursements made in matters relating to him and there are no pending applications filed against him with CSF.

On March 25, 2014, the State Bar Court filed an order denying without prejudice respondent's motion for an extension of time to comply with rule 9.20 in S211464 (State Bar Court case nos. 12-H-I6290 and 13-H-10477 (Cons.)). The court denied respondent's motion to for an extension in time to file his rule 9.20 compliance declaration.

On July 14, 2014, respondent filed a fourth compliance declaration with the State Bar Court. As of the time of hearing in this matter, the court is unaware of the status of this declaration.

Respondent averred that when he filed his first declaration on October 30, 2013, he believed that CSF had paid Garcia and the County of Orange since they had won at fee arbitration and he had not paid. Respondent's contention is without merit. He was never informed by CSF prior to October 30, 2013 that it had paid funds to Garcia or the County of

Orange on his behalf. He never contacted CSF prior to October 30, 2013 to determine whether it had paid the funds on his behalf.

Respondent filed his second declaration on November 7, 2013, on the preprinted form provided by the OP. Respondent's testimony that when he filed his second declaration he reasonably believed that he did not owe any money regarding his clients is similarly without merit.

All of respondent's contentions that he reasonably believed that CSF had paid his former clients and all of his contentions concerning his mistakes in understanding his compliance duties under rule 9.20 are without merit and refuted by the evidence in the record.

It is clear that, prior to October 31, 2013, respondent had the ability to file a motion with the State Bar Court to extend the time to reimburse his clients but he did not do so. Instead, respondent filed three rule 9.20 compliance declarations that he knew or should have known would be rejected for noncompliance with rule 9.20. He was aware when he filed the three rule 9.20 declarations that unequivocal compliance with rule 9.20 was required and that the OP had no authority to accept anything other than unequivocal compliance with rule 9.20.

Respondent is unemployed and has been for a period of time. He owes something in the order of five figures in back child support payments and \$3,000 to \$4,000 in State Bar payments. Respondent, his wife and mother-in-law have lived together in Nevada since 2010 due to the lower costs of housing. They live on about a \$625 per week government payout.

Respondent has not practiced law since February 2012. He has unsuccessfully searched for employment outside the legal field.

Respondent is the primary caregiver to his wife and mother-in-law, both of whom suffer from serious illnesses that require his constant care and attention.

Respondent was not able to pay restitution regarding his former clients until July 2014 due to his financial condition. He did so with funds belonging to his mother-in-law, who received an award in a Social Security settlement. Without her funds, respondent would have been unable to make the payment. Respondent's child support debt and other State Bar costs are still outstanding.

Respondent is remorseful for his failure to comply with rule 9.20 but could not comply due to his financial condition.

Respondent's contention that a State Bar representative in his prior discipline matter, case nos. 12-H-16290 and 13-H-10477 (Cons.), agreed that respondent would not receive any additional discipline in those cases for his failure to pay restitution is not supported in the record and is without merit.

Conclusions

Count One - (California Rules of Court, rule 9.20) [Failure to Obey Rule 9.20]

Rule 9.20 provides that an attorney must comply with requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order.

There is clear and convincing evidence that respondent failed to timely file a declaration by October 31, 2013, that complied with the requirements of rule 9.20 in willful violation of rule 9.20(c).

Aggravation²

The State Bar has established, by clear and convincing evidence, the following factors in aggravation. (Std. 1.5.)

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

Respondent has three prior records of discipline.

First Record of Discipline

On April 8, 2011, the State Bar Court filed an order approving stipulation and imposing a private reproof with conditions for one year, including restitution to: (1) Carney Tews Garcia in the amount of \$2,751.50 with interest accruing from January 12, 2011; and (2) County of Orange, in the amount of \$900 with interest accruing from December 19, 2008, in State Bar Court case nos. 09-O-11950; 09-O-15829; and 10-O-10835. Both restitution payments were to be paid at the rate of \$ 150 monthly with final payments due prior to the expiration of the reproof period.³

Respondent stipulated misconduct in three client matters, including violations of Rules of Professional Conduct, rules 3-110(A), 3-700(A)(2) and (D)(2) and 4-100(B)(4); and sections 6103 and 6068, subdivision (m). In aggravation, respondent committed multiple acts of wrongdoing. In mitigation, respondent had no prior record of discipline.

² All references to standards (stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

³ On November 9, 2011, the State Bar Court filed an order to modify the reproof conditions regarding restitution, granting respondent's request to pay in full restitution owed in this matter by December 31, 2011.

Second Record of Discipline

On November 8, 2011, the State Bar Court filed an order approving stipulation and imposing a public reproof with conditions for two years, including mandatory fee arbitration with former clients Maria Altieri and Bruce Thomas.

Respondent stipulated to misconduct in two client matters including violations of Rules of Professional Conduct, rules 3-700(A)(2) and 4-100(A), (B)(3) and (B)(4). In aggravation, respondent had a prior record of discipline. In mitigation, respondent displayed candor and cooperation in the State Bar investigation and entered into a stipulation to all facts and legal conclusions.

Third Record of Discipline

As previously noted, on August 22, 2013, the Supreme Court issued its order suspending respondent from the practice of law for two years, stayed, and placing respondent on probation for two years on conditions including actual suspension for 90 days and until he made restitution to Garcia and the County of Orange. He was also ordered to comply with rule 9.20

Respondent stipulated to misconduct regarding noncompliance with the prior two reproof orders in violation of Rules of Professional Conduct, rule 1-110. In aggravation, respondent has two prior disciplinary records; his misconduct significantly harmed his clients; and he committed multiple acts of misconduct. In mitigation, respondent entered into a full stipulation prior to trial and prior to the filing of formal proceedings; and he was suffering from extreme financial hardship that was not foreseeable and was beyond his control.

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

The State Bar alleges that respondent's misconduct caused harm to his former clients. The court does not agree. The State Bar failed to produce any evidence of significant harm to a client.

Mitigation

The record shows that respondent has proved by clear and convincing evidence the following factors in mitigation. (Std. 1.6.)

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

Respondent was remorseful about his noncompliance with rule 9.20 and his inability to timely pay his former clients due to financial difficulties

Other - Severe Financial Difficulties

At the time of his misconduct, respondent was suffering severe, compelling financial difficulties that were not reasonably foreseeable and that were beyond his control. Respondent is unemployed and the primary caregiver for his wife and mother-in-law, whom both suffer from debilitating illnesses.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987 43 Cal.3d. 1016; 1025.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615; 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) W Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.1 provides that the primary purposes of discipline include the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation can

also be an objective in determining the appropriate sanction in a particular case, so long as it is consistent with the primary purposes of discipline.

Standards 1.7(b) and (c) provide, in relevant part, that, the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances, and if the net effect demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline then it is appropriate to impose or recommend a greater or lesser sanction.

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 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.)

Disbarment is generally considered to be the appropriate sanction for willful violations of rule 9.20. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) The imposition of disbarment in rule 9.20 matters, however, is not absolute. Rule 9.20(d) sets forth the range of discipline for noncompliance with the provisions of the rule by an attorney whose license is suspended as disbarment or suspension and for revocation of any pending probation. Courts have weighed the

facts and circumstances of each case individually. The California Supreme Court has found in some instances that, due to extenuating circumstances, an attorney's breach of rule 9.20 may warrant discipline significantly less than disbarment. (See *Shapiro v. State Bar* (1990) 51 Cal.3d 251; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; and *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Ct. Rptr. 527.)

The State Bar urges that respondent be disbarred from the practice of law. Respondent asserts that suspension is the appropriate disposition. After considering the facts and the law, the court recommends, among other things, that respondent be suspended for two years as sufficient to protect the public in this instance.

Respondent attempted repeatedly, although unsuccessfully, to file a correct and honest rule 9.20 declaration. He did not shirk his ethical responsibility in this regard. He just did not do it correctly. Respondent could have timely filed a motion to extend the time to file the rule 9.20 declaration in order to avoid this predicament, unfortunately, he did not do so until after the instant case was filed. Ultimately, this case arises from the prior disciplinary case for noncompliance with reproof conditions. He was unable to comply due to financial difficulties which then led to the incorrect rule 9.20 declarations. Respondent has now made the restitution in question and filed a rule 9.20 declaration. Under these circumstances, and, after weighing the evidence, including the factors in aggravation and mitigation, and considering the standards and the law, the court finds that the appropriate discipline should include, among other things, an actual suspension of two years and until respondent provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

Recommendations

1. It is recommended that respondent **MICHAEL B. STONE.**, State Bar Number 160177, be suspended from the practice of law in California for three years, that

execution of that period of suspension be stayed, and that respondent be placed on probation⁴ for a period of three years subject to the following conditions:

2. Respondent is suspended from the practice of law for a minimum of the first two years of probation, and respondent will remain suspended until the following requirement is satisfied:
 - i. Respondent must provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
4. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
5. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
6. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

⁴ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

8. It is not recommended that respondent attend Ethics School, as he was ordered to do so in connection with S211464 (State Bar Court case nos. 12-H-16290 and 13-H-10477 (Cons.)).
9. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multi-State Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) as he already did so in connection with S211464 (State Bar Court case nos. 12-H-16290 and 13-H-10477 (Cons.)).

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. Failure to do so may result in disbarment or suspension.

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.

Dated: October 2, 2014

RICHARD A. PLATEL
Judge of the State Bar Court