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STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

RENE CHAVEZ NUNEZ,

Member No. 226171,

A Member of the State Bar.

) Case No.: 14-N-04548-YDR

) DECISION

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Introduction

Rene Chavez Nunez ("Respondent") is charged with a single count of disobeying the Supreme Court's order directing him to comply with California Rules of Court, rule 9.20.¹ Respondent has stipulated that he is culpable of violating the rule. The only issue before this court is the appropriate level of discipline for Respondent's misconduct. In light of Respondent's willful failure to comply with the Supreme Court's express order given pursuant to disciplinary proceedings, the court recommends that Respondent be suspended for three years, execution stayed, and that he be placed on probation for three years with an actual suspension of two years and until he establishes his rehabilitation, fitness to practice, learning and ability in the general law.

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges ("NDC") on January 26, 2015. Initially Respondent failed to file a response. The court entered Respondent's default on April 23, 2015. Respondent filed a motion to set aside his default on

¹ Unless otherwise indicated, all references to rules refer to the California Rules of Court.

July 23, 2015. On August 27, 2015, the court denied Respondent's motion without prejudice. Respondent filed an amended motion to set aside the default on September 15, 2015, which the court granted on October 27, 2015. Respondent filed his response to the NDC on October 15, 2015.

The parties filed a Stipulation as to Facts and Conclusions of Law on December 1, 2015, ("Stipulation"). Trial took place on December 8, 2015. The State Bar was represented by Deputy Trial Counsel Alex Hackert. Respondent represented himself. The State Bar filed its closing brief on December 21, 2015, and Respondent filed his closing brief on December 22, 2015. The matter was submitted for decision on December 8, 2015.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the Stipulation previously filed by the parties and the documentary and testimonial evidence admitted at trial.

Respondent was admitted to the practice of law in California on July 24, 2003, and has been a member of the State Bar of California at all times since that date.

Case No. 14-N-04548 (The Rule 9.20 Matter)

Facts

On April 18, 2014, the California Supreme Court filed Order No. S201803 (State Bar Court case No. 13-PM-17157), ordering Respondent to comply with rule 9.20 ("rule 9.20 order") and perform the acts specified in subdivisions (a) and (c) of that rule within thirty and forty days, respectively, after the effective date of the Supreme Court Order. On April 18, 2014, the Clerk of the Supreme Court properly served a copy of the 9.20 order on Respondent. Respondent received that order.

The rule 9.20 order became effective on May 18, 2014, thirty days after it was filed. Thus, Respondent was required to comply with subdivisions (a) and (b) of rule 9.20 no later than June 17, 2014. He had to comply with subdivision (c) of the rule no later than June 27, 2014.

On May 5, 2014, the Office of Probation sent Respondent a letter reminding him of the terms of the Supreme Court order. The letter explicitly stated that Respondent's rule 9.20 compliance declaration had to be filed with the State Bar Court no later than June 27, 2014. Respondent failed to file his compliance declaration with the State Bar Court by the June 27 deadline.

On July 2, 2014, the Office of Probation sent Respondent a letter regarding his failure to file a rule 9.20 compliance declaration by June 27, 2014. This letter stated that the failure to file the compliance declaration would be referred to the Office of Chief Trial Counsel for additional discipline. To date, Respondent has not filed the required compliance declaration.

Respondent testified regarding his failure to comply with rule 9.20. In March 2014, Respondent and his family were displaced from their home due to a fire. They moved around, living in three hotels and an apartment. After the fire, Respondent continued to receive mail at his home address.² He and his wife would retrieve the mail every other day. Although Respondent stipulated that the Office of Probation sent the May 5 and July 2, 2014 letters, Respondent testified he never saw them. It was a chaotic time and Respondent believes that if he had seen the letters, he would have responded.

Respondent also explained that he did not file his rule 9.20 declaration because when he read the rule 9.20 order, he believed he did not have to file a declaration since he had no clients. During the period of Respondent's noncompliance, Respondent was employed by a college and was not actively practicing law. Initially, he was a paralegal instructor, but at the time of trial,

² Respondent's membership records address and home address were the same.

he served as Vice President of Compliance and Student Relations. Respondent does not practice law in his vice president position. He files reports, handles student complaints, and processes transcripts and other requests. Although Respondent thought he did not have to file a 9.20 declaration because he had no clients, he now realizes he was incorrect. Respondent also acknowledged that he performed a quick-read of the 9.20 order that was not thorough.

After moving back into his home in April 2015, Respondent received documents from the State Bar, leading him to learn that disciplinary charges had been brought against him. It was at that time that Respondent realized he mistakenly believed he was not required to file a 9.20 compliance declaration.

Conclusions of Law

Count One – Failure to Obey Rule 9.20

The State Bar charged Respondent with willfully violating rule 9.20. Subsection (c) of the rule sets forth Respondent's obligation pursuant to the Supreme Court's April 18, 2014 order:

Within such time as the order may prescribe after the effective date of the member's disbarment, suspension, or resignation, the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered under this rule. The affidavit must also specify an address where communications may be directed to the disbarred, suspended, or resigned member.

Respondent stipulated to willfully violating the rule by failing to file with the State Bar Court, a declaration of compliance in conformity with the requirements of rule 9.20(c) by June 27, 2014, as required by California Supreme Court Order in State Bar Case No. 13-PM-17157. The court finds Respondent culpable of willfully violating rule 9.20.

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with regard to aggravating circumstances.

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

Respondent has two prior discipline records, which is a significant aggravating factor.

Nunez I (Case No. 11-O-15095)

In his first disciplinary proceeding, Respondent stipulated that he failed to perform legal services with competence and failed to refund \$790 in unearned fees. Respondent stipulated that he represented a client in a bankruptcy matter where he failed to file proper pleadings and caused the dismissal of his client's bankruptcy petition. Respondent also failed to file a motion to reopen and a subsequent bankruptcy petition on his client's behalf. The Supreme Court ordered Respondent suspended for one year, stayed, with three years' probation. He was also ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's order.³

Nunez II (Case No. 13-PM-17157)

In his second disciplinary proceeding, Respondent's probation was revoked and he was placed on involuntary inactive status after failing to comply with two conditions of probation in case No. 11-O-15095. He failed to provide proof to the Office of Probation that he attended Ethics School and passed the test given at the end of the session, and he failed to pay full restitution to his client. Respondent was suspended for one year and until he made restitution. The order took effect on May 18, 2014.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating factors.

³ The effective date of the Supreme Court order was August 15, 2012. The court takes judicial notice that Respondent was suspended on September 23, 2013, for failing to provide proof that he took and passed the MPRE as ordered in State Bar case No. 11-O-15095, and he remains suspended for the failure to do so.

Candor/Cooperation to Victims/State Bar (Std. 1. 6(e).)

The court assigns significant mitigation credit for Respondent's cooperation because he stipulated to relevant facts, and stipulated to his culpability for failing to comply with the requirements of rule 9.20. (Std. 1.6(e); *see In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation afforded those who admit culpability as well as facts].)

2014 House Fire

The court affords mitigating credit for Respondent's displacement from his home due to a house fire. Respondent testified that a fire damaged his home in March 2014, and he and his family were out of the home for over a year. Because of the constant moving around and chaos created by the fire, he did not see the reminder and noncompliance letters sent by the Office of Probation. Respondent did not ignore the Office of Probation's letters; he testified he would have responded to the letters had he seen them. His testimony is supported by his actions after receiving a document from the State Bar after he moved back into his home – he immediately made contact with the State Bar and then filed a motion for relief from default. Additionally, Respondent's testimony about the fire is supported by a letter from his insurance company attached to his July 23, 2015 motion to set aside default.⁴ Thus, the court finds Respondent's testimony credible, and affords moderate mitigation for the house fire contributing to his misconduct. (See std. 1.2(i) ["Mitigating circumstances are factors surrounding a member's misconduct that demonstrate the primary purpose of discipline warrant a more lenient sanction that was is otherwise specified in a given Standard"].)

⁴ Rule 5.336 of the Rules of Procedure of the State Bar provides, "The State Bar Court record includes all court orders and documents on file with the Clerk of the State Bar Court in the proceeding. The record must contain the rule 9.20 order and all documents submitted by the member to comply or attempt to comply with or respond to the order, whether or not introduced in evidence."

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; Std. 1.1.) 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). Standard 1.8(b) is the most applicable, and it provides, inter alia, that when a member has two or more prior records of discipline, disbarment is appropriate if actual suspension was ordered in any of the prior matters, or if the prior disciplines coupled with the current misconduct demonstrate the member's unwillingness or inability to conform to ethical responsibilities.⁵ A departure from the presumptive recommendation of disbarment is permitted if the most compelling mitigating circumstances clearly predominate or if the misconduct underlying the prior discipline occurred during the same period as the current misconduct. Such is not the case here. Respondent's former and current misconduct did not overlap. Moreover, Respondent's mitigation for cooperation and experiencing a house fire does not clearly predominate over his prior record of discipline.

Disbarment is not mandatory, however, even where compelling mitigating circumstances do not clearly predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [disbarment not mandatory in every case of two or more prior disciplines, even where no compelling mitigating circumstances clearly predominate].) Additionally, although the standards are afforded "great weight" (*In re Silverton* (2005) 36 Cal.4th 81, 92), they are intended to be flexible in nature so that the court may "temper the letter of the law with considerations peculiar to the offense and

⁵ The court is also mindful that rule 9.20 sets out that disbarment or suspension is the discipline for violating the rule. (Rule 9.20(d).)

the offender. [Citations.]” Thus, in addition to the standards, decisional law is considered to determine the appropriate level of discipline.

The finding that Respondent willfully violated a court order requiring his compliance with rule 9.20 is sufficient grounds for disbarment when the evidence in mitigation is not compelling. (*Dahlman v. State Bar* (1990) 50 Cal.3d 1088; *Bercovich v. State Bar* (1990) 50 Cal.3d 116; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287; *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.) However, unlike the former cases where attorneys have been disbarred for noncompliance with rule 9.20, Respondent fully participated in the disciplinary process; his noncompliance did not involve dishonesty; no client, opposing counsel, adverse party or court submitted a complaint about Respondent’s noncompliance; and Respondent did not avoid compliance with the rule or attempt to take advantage of any individual’s lack of knowledge of his suspension for an improper purpose. Additionally, Respondent has admitted culpability for the rule violation. Thus, disbarment is not required under these circumstances. (*Durbin v. State Bar* (1979) 23 Cal.3d 461; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.)

Although disbarment is not recommended, Respondent’s willful violation of rule 9.20 is, “by definition, deserving of strong disciplinary measures” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084), and the principle of progressive discipline embodied in the standards recommend a lengthy period of suspension. Further, although Respondent attached a “proposed” rule 9.20 compliance declaration to his response to the NDC, he has yet to comply with the rule. Respondent testified that he thought these disciplinary proceedings had to be concluded before he could file his compliance declaration. It is troubling that Respondent has failed to take any steps to clarify his duties to comply with rule 9.20 as a suspended attorney. As such, after considering all relevant factors and the range of discipline suggested by the rule and the standard,

the court recommends that Respondent be suspended for three years, execution stayed, and that he be placed on probation for three years with an actual suspension of two years and until he establishes his rehabilitation, fitness to practice and learning and ability in the general law. (Std. 1.2(c)(i).)

Recommendations

It is recommended that Rene Chavez Nunez, State Bar Number 226171, 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 probation⁶ for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first two years of probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. 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.
3. 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.
4. 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.
5. 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

⁶ 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.)

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.

6. 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.
7. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because Respondent was ordered to take and pass the exam pursuant to Supreme Court Order No. S201803.

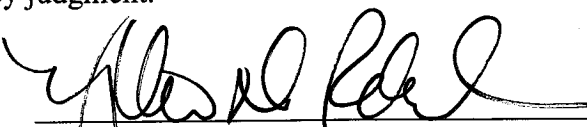
California Rules of Court, Rule 9.20

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: February 26, 2016


YVETTE D. ROLAND
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 Los Angeles, on March 1, 2016, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

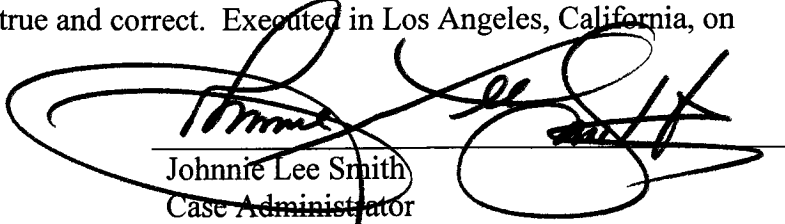
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RENE C. NUNEZ
RENE C NUNEZ
225 ROSEMONT BLVD
SAN GABRIEL, CA 91775

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

ALEX HACKERT, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 1, 2016.



Johnnie Lee Smith
Case Administrator
State Bar Court