

FILED

AUG 19 2015

STATE BAR COURT OF CALIFORNIA

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

HEARING DEPARTMENT – LOS ANGELES

In the Matter of

OSCAR ARTURO RUIZ de CHAVEZ,

Member No. 108605,

A Member of the State Bar.

Case No.: 14-N-05625-PEM

DECISION AND ORDER OF  
INVOLUNTARY INACTIVE ENROLLMENT  
(Bus. & Prof. Code, § 6007, subd. (c)(4).)Introduction

In this disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent **OSCAR ARTURO RUIZ de CHAVEZ** with willfully failing to comply with California Rules of Court, rule 9.20 (rule 9.20) as he was ordered to do by the Supreme Court. Specifically, the State Bar charges that respondent failed to timely file a declaration of compliance in accordance with rule 9.20(c).<sup>1</sup>

Respondent admits that he is culpable of the charged misconduct. For the reasons set forth *post*, the court recommends to the Supreme Court that respondent be disbarred. The court also orders that respondent be involuntarily enrolled as an inactive member of the State Bar of

///

<sup>1</sup> Under rule 9.20(c) respondent was required, within the time prescribed by the Supreme Court, to file with the Clerk of the State Bar Court an affidavit or a declaration (1) showing that respondent has fully performed each of the acts specified in rule 9.20(a) and (2) specifying an address where communications may be directed to respondent in the future.



California pending the final disposition of this proceeding. (Bus. & Prof. Code, § 6007, subd. (c)(4);<sup>2</sup> Rules Proc. of State Bar, rule 5.111(D)(1).)

### **Significant Procedural History**

The State Bar filed the notice of disciplinary charges (NDC) in this proceeding on February 6, 2015. On April 30, 2015, respondent filed a response to the NDC in which he admits that he is culpable of the charged misconduct.

On June 3, 2015, the parties filed a partial stipulation of facts and admission of documents. In addition, a one-day trial was held on June 3, 2015. The State Bar was represented by Deputy Trial Counsel Ann J. Kim, and respondent represented himself. Following closing arguments, the court took the case under submission for decision on June 3, 2015.

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

Respondent was admitted to the practice of law in California on June 3, 1983, and has been a member of the State Bar of California since that time.

#### **Findings of Facts**

On June 6, 2013, the Supreme Court filed an order in *In re Oscar Arturo Ruiz de Chavez on Discipline*, case number S209770 (State Bar Court case number 12-H-15739) in which it placed respondent on one year's stayed suspension and one year's probation on conditions, including a 30-day suspension (*de Chavez II*).

On January 14, 2014, in State Bar Court case number 13-PM-17128, this court filed an order in which it found that respondent willfully violated two of the conditions of the one-year disciplinary probation that the Supreme Court imposed on him just six months earlier in *de Chavez II*. Accordingly, this court recommended, inter alia, that respondent's probation be revoked, that respondent be suspended from the practice of law for one year, and that he be

---

<sup>2</sup> All further statutory references are to the Business and Professions Code.

ordered to comply with rule 9.20. In addition, this court ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California under section 6007, subdivision (d)(3). Respondent was involuntarily enrolled inactive under that order from January 17, 2014, through and including May 17, 2014. Respondent stipulated that he received this court's January 14, 2014 order in State Bar Court case number 13-PM-17128.

In anticipation of being ordered by the Supreme Court to comply with rule 9.20, respondent had his secretary, Livier Lupercio, mail notices regarding his inability to appear as a licensed attorney to his clients and others. Lupercio truthfully testified that she mailed those notices between January 23 and February 7, 2014.

Thereafter, in *de Chavez III*, the Supreme Court adopted the recommendations that this court made in its January 14, 2014 order in State Bar Court case number 13-PM-17128. Specifically, on April 18, 2014, the Supreme Court filed an order in its case number S209770 revoking respondent's probation, suspending him from the practice of law for one year, and ordering him to comply with rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of its order.

The Supreme Court's April 18, 2014 order became effective on May 18, 2014, (Cal. Rules of Court, rule 9.18(b)) and has remained in effect continuously since that time. Moreover, that order was properly served on respondent (Cal. Rules of Court, rule 8.532(a)), and respondent stipulated that he received it.

Under the Supreme Court's April 18, 2014 order, respondent was required (1) to perform all of the acts specified in rule 9.20(a)<sup>3</sup> no later than June 17, 2014 (i.e., 30 days after the May

---

<sup>3</sup> Under rule 9.20(a), respondent was required (1) to give written notice of his one-year suspension and his consequent disqualification to act as an attorney to all his clients and cocounsel and, in the absence of cocounsel, to give written notice to the clients to seek legal

18, 2014 effective date of the Supreme Court's order) and (2) to file, in the State Bar Court, a declaration showing that he had fully performed all of the acts specified in rule 9.20(a) no later than June 27, 2012 (i.e., 40 days after the May 18, 2014 effective date of the Supreme Court's order).

On April 25, 2014, the State Bar's Office of Probation (OP) sent respondent a letter reminding him of the terms of the Supreme Court's April 18, 2014 order and specifically calling respondent's attention to the requirement that he file a rule 9.20 affidavit or declaration of compliance "with the State Bar Court no later than **June 27, 2014.**" (Original bolding.)

In its April 25, 2014 letter to respondent, OP included copies of rule 9.20 and Rules of Procedure of the State Bar, rules 5.330 through 5.333 and a form Rule 9.20 Compliance Declaration, which has been approved by the State Bar Court Executive Committee. Those rules and the form Compliance Declaration clearly state that the failure to comply with rule 9.20 may result in additional discipline. (E.g., rule 9.20(d); Rules Proc. of State Bar, rule 5.330.) Respondent stipulated that he received OP's April 25, 2014 letter.

In May 2014, respondent took his mother to brunch. At brunch, respondent's mother complained of having difficulty eating. With respondent's encouragement, respondent's mother promptly saw a doctor and was given a diagnosis of incurable pancreatic cancer. She died six weeks later on June 27, 2014, which was the deadline for respondent to file his compliance

---

representation elsewhere calling attention to any urgency in seeking the substitution of another attorney; (2) to deliver to his clients all client papers and other property or to give written notice to his clients and any cocounsel of a suitable time and place where the papers and other property may be obtained calling attention to any urgency in obtaining the papers and other property; (3) to refund all unearned fees; and (4) in any pending litigation, to give written notice of his suspension and consequent disqualification to act as an attorney to opposing counsel or, in the absence of opposing counsel, to the adverse parties and to file a copy of each notice with the court, agency, or tribunal before which the litigation is pending. (Rule 9.20(a).) Furthermore, respondent was required to include, in each notice, an address where communications may be directed to him and to send all such notices by registered or certified mail, return receipt requested. (Rule 9.20(b).)

declaration. Respondent failed to file his compliance declaration by the June 27, 2014 deadline because of his mother's illness and death. Moreover, respondent did not promptly file a compliance declaration after his mother died because he was distracted by the many family issues that he had to contend with as the oldest son.

After respondent failed to file a compliance declaration by June 27, 2014, OP sent respondent a second letter on July 10, 2014. In that letter, OP again stated that respondent's compliance declaration was due June 27, 2014. Respondent confirmed his receipt of OP's July 10, 2014 letter in a voicemail message that he left with OP on July 14, 2014.

Respondent testified that he executed and sent a compliance declaration to the bar on July 26, 2014. (Ex. 17.) Respondent, however, did not proffer any evidence to corroborate his testimony, and he admits that he did not send such a declaration by certified mail. Notably, the State Bar Court does not have a record of receiving such a declaration in July or August 2014. Nor does OP.

On October 29, 2014, OP sent a third letter to respondent. In its third letter, OP again notified respondent that he had not complied with rule 9.20. Even though respondent received OP's October 29, 2014 letter, he did not file a rule 9.20 compliance declaration with the State Bar Court until almost six months later on April 16, 2015.<sup>4</sup> (Ex. 17.) As OP aptly noted in a letter it sent to respondent on April 17, 2015, respondent's April 16, 2015 declaration does not comply with rule 9.20(c) because it fails to establish that respondent performed all of the acts set forth in rule 9.20(a). Respondent's declaration did not even state whether he sent all of the notices required in rule 9.20(a) by registered or certified mail, return receipt requested. OP included, with its April 17, 2015 letter to respondent, another copy of the State Bar Court approved form Rule 9.20 Compliance Declaration.

---

<sup>4</sup> "The Clerk of the State Bar Court must file all [rule 9.20] declarations of compliance, regardless of their form or the date submitted." (Rules Proc. of State Bar, rule 5.332(B).)

On April 29, 2015, respondent resent notices regarding his inability to appear as a licensed attorney to his clients and others by certified mail, return receipt requested. (Ex. 1004.) Finally, on May 16, 2015, respondent completed and executed an approved form Rule 9.20 Compliance Declaration, which respondent filed with the State Bar Court on May 20, 2015. OP has not challenged respondent's May 20, 2015 compliance declaration.

Again, respondent admits that he did not timely file a compliance declaration that comported with the requirements set forth in rule 9.20(c). Nonetheless, respondent argues that he complied with the "spirit" of rule 9.20 by sending notices regarding his inability to appear as a licensed attorney to his clients and others in January and February 2014 and then again in April 2015 and by purportedly sending a compliance declaration to the bar on about July 26, 2014. According to respondent, the only thing he did wrong was failing to timely file **proof** that he was in compliance with 9.20. The court cannot agree.

First, the notices respondent sent out in January and February 2014 were not sent by registered or certified mail, return receipt requested as required by rule 9.20(b). Second, the notices respondent sent out in January and February 2014 as well as the notices respondent resent in April 2015 were deficient in that they did not give notice of respondent's one-year suspension under the Supreme Court's April 18, 2014 order as required. All of the notices referenced only respondent's inability to appear as a licensed attorney because of his involuntary inactive enrollment by the State Bar.<sup>5</sup> Third, even though respondent stated "I informed my then clients to pick up their files" in the defective rule 9.20 compliance declaration that he filed with the State Bar Court on April 16, 2015, none of the notices respondent sent out notified

---

<sup>5</sup> As noted *ante*, in accordance with this court's January 14, 2014 order in State Bar Court case number 13-PM-17128, respondent was involuntary enrolled inactive under section 6007, subdivision (d)(3) from January 17, 2014, through and including until May 17, 2014.

respondent's former clients or cocounsel of a suitable time and place where the clients' papers and other property could be obtained as required. (Rule 9.20(a)(2)&(b).) Nor did any of the notices recite whether respondent had called attention to any urgency in obtaining the client papers and other property or in obtaining new counsel. Moreover, respondent failed to establish that he sent a compliance declaration to the State Bar Court on about July 26, 2014. And, even if he had established that he sent it, he did not make sure it was properly filed with the State Bar Court. Further, the declaration that respondent purportedly sent in July 2014, and that he filed with the State Bar Court on April 16, 2015, (ex. 17) does not comport with rule 9.20(c) because it does not establish that respondent performed all of the acts set forth in rule 9.20(a).

### **Conclusions of Law**

#### ***Count One – Failure to Comply with Rule 9.20***

The record clearly establishes that respondent willfully failed to comply with rule 9.20(c) in accordance with the Supreme Court's April 18, 2014 order by failing to file, in the State Bar Court no later than June 27, 2014, a rule 9.20 compliance declaration that complied with the requirements set forth in rule 9.20(c).

#### **Aggravating Circumstances**

##### **Prior Records of Discipline (Rules Proc. of State Bar, tit. IV, Stds. For Att'y. Sanctions for Prof. Misconduct, std. 1.5(a).)<sup>6</sup>**

Respondent has four prior records of discipline.

##### ***de Chavez I***

Respondent's first prior record of discipline is the private reproof (with multiple conditions attached to it for one year) that the State Bar Court imposed on respondent in accordance with a stipulation that respondent entered into with the State Bar and which this court approved in an order filed on February 16, 2012, in State Bar Court case number 10-O-11314,

---

<sup>6</sup> All references to standards (or stds.) are to this source.

etc. (*de Chavez I*). In that stipulation, respondent stipulated to failing to cooperate with a State Bar disciplinary investigation involving a litigation matter (§ 6068, subd. (i)) and to failing to competently perform legal services (Rules Prof. Conduct, rule 3-110(A)) in a separate client matter involving the settlement of an insurance claim. No aggravating circumstances were involved in *de Chavez I*. In mitigation, respondent had no prior record of discipline in over 28 years of practice and was candid and cooperative with the State Bar.

### ***de Chavez II***

Respondent's second prior record of discipline is the Supreme Court's June 6, 2013 order in case number S209770 in which the Supreme Court placed respondent on one year's stayed suspension and one year's probation on conditions, including a 30-day suspension (*de Chavez II*). The Supreme Court imposed that discipline, including each of the conditions of respondent's probation, on respondent in accordance with a stipulation that respondent entered into with the State Bar and which this court approved in an order filed on February 20, 2013, in State Bar Court case number 12-H-15739.

The stipulation in *de Chavez II* establishes that respondent willfully violated the conditions attached to the private reproof imposed on him in *de Chavez I* (Rules Prof. Conduct, rule 1-110). Respondent violated those conditions by not timely contacting OP to schedule and meet with his assigned probation deputy within 30 days after the effective date of his private reproof and by not timely submitting two quarterly reproof reports to OP. In aggravation, respondent had a prior record of discipline and committed multiple acts of misconduct. In mitigation, respondent was given credit for cooperating with the State Bar by entering into a full stipulation with the State Bar prior to the trial in *De Chavez II*.

///

///



### ***de Chavez III***

Respondent's third prior record of discipline is the Supreme Court's April 18, 2014 order in case number S209770 in which the Supreme Court revoked the one-year probation it imposed on respondent in *de Chavez II* and then suspended respondent from the practice of law for one year (*de Chavez III*). The Supreme Court imposed this foregoing discipline because respondent willfully violated the conditions of the one-year probation imposed on him in *de Chavez II* by (1) failing to timely participate in a scheduled telephone "meeting" with his assigned probation deputy and (2) failing to submit his quarterly probation report that was due on October 10, 2013. In aggravation respondent had two prior records of discipline, committed multiple acts of misconduct, and showed indifference toward rectification of and atonement for the consequences of his misconduct.

### ***de Chavez IV***

Respondent's fourth prior record of discipline is the Supreme Court's January 22, 2015 order in case number S222441 (State Bar Court case number 13-O-14478, etc.) in which the Supreme Court placed respondent on three years' stayed suspension and four years' probation on conditions, including a two-year suspension that will continue until respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.2(c)(1) (*de Chavez IV*). The Supreme Court imposed that discipline because respondent failed to provide a written response to a State Bar investigation letter requesting information and because respondent again willfully violated the conditions attached to the private reproof imposed on him in *de Chavez I*. Respondent violated the reproof conditions by failing to submit his final quarterly report due on March 8, 2013; failing to attend and successfully complete the State Bar's Ethics School; failing to attend and successfully complete the State Bar's Client Trust

Accounting School; and failing to take and pass the Multistate Professional Responsibility Examination (MPRE).

**Indifference Towards Rectification (Std. 1.5(k))**

Even though the State Bar filed and served the NDC in this proceeding on respondent on February 6, 2015, respondent did not file a rule 9.20 declaration until April 16, 2015. The fact that respondent failed to promptly file his rule 9.20 compliance declaration once the State Bar filed and served the NDC in this proceeding on him establishes respondent's indifference toward rectification of his misconduct, which is a significant aggravating circumstance. (Std. 1.5(k); cf. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702.)

**Failing to Comply with Supreme Court's MPRE Order**

In the Supreme Court's June 6, 2013 order in *de Chavez I*, the Supreme Court also ordered respondent to take and pass the MPRE within one year of that order's effective date. The record establishes that respondent was suspended from the practice of law effective December 15, 2014, because he failed to take and pass the MPRE within the time prescribed by the Supreme Court in its June 6, 2013 order. (Ex. 8.) Even though respondent's suspension for failing to take and pass the MPRE is not a prior record of discipline under standard 1.5(a), the suspension is relevant to the issue of discipline in this proceeding because it occurred as the results of respondent's failure to comply with yet another Supreme Court disciplinary order.

**Mitigating Circumstances**

**Good Character (Std. 1.6(f))**

Respondent presented good character testimony from two individuals. The court, however, is unable to give respondent any meaningful mitigation for the testimony of only two witnesses. (See, e.g., *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr.

///

363, 387 [positive character testimony from three attorneys and three clients do not constitute the broad range of references from the legal and general communities required by standards].)

### **Cooperation with the State Bar**

Respondent is entitled to limited mitigation for cooperating with the State Bar by entering into a partial stipulation of facts and admission of documents with the State Bar.

### **Personal Difficulties**

Respondent is also entitled to a small amount of mitigation because, at the time he was required to have complied with rule 9.20, he was distracted by his mother's sudden illness and death.

### **Discussion**

In determining the appropriate level of discipline, the court ordinarily looks to the standards first (*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) and to caselaw second (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580). However, the standards do not directly address the appropriate level of discipline in rule 9.20 proceedings. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.) Instead, rule 9.20(d) does.

Under rule 9.20(d), an attorney's willful failure to comply with the provisions of rule 9.20 "is a cause for disbarment or suspension and for revocation of any pending probation." Even though rule 9.20(d) provides for the sanctions of suspension and revocation of probation, caselaw makes clear that, in the absence of compelling mitigating circumstances, a rule 9.20 violation warrants disbarment. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296, and cases there cited.)

///

This court is concerned with respondent's continued and repeated failures to comply with State Bar Court and Supreme Court disciplinary orders. It is particularly troublesome that respondent did not comply with rule 9.20(c) immediately upon receiving OP's October 29, 2014 letter. Indeed, respondent's failure, refusal, or inability to comply with rule 9.20(c) until May 20, 2015, belies understanding.

In the present matter, the State Bar requests that the court recommend respondent's disbarment. The lack of any significant mitigation, and respondent's repeated failures to comply with State Bar Court and Supreme Court disciplinary orders provide strong support for the State Bar's position.

In short, the record provides no compelling reason for the court to depart from recommending respondent's disbarment, which case law establishes is the appropriate level of discipline for violating a provision of rule 9.20. Accordingly, the court will recommend that respondent be disbarred.

### **Recommendations**

#### **Discipline**

The court recommends that respondent **OSCAR ARTURO RUIZ de CHAVEZ**, State Bar member number 108605, be disbarred from the practice of law in California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

#### **California Rules of Court, Rule 9.20**

The court further recommends that respondent **OSCAR ARTURO RUIZ de CHAVEZ** be ordered to again comply with 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 in this proceeding.

///

## **Costs**

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **Order of Involuntary Inactive Enrollment**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **OSCAR ARTURO RUIZ de CHAVEZ** be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision, directive, and order by mail (Rules Proc. of State Bar, rule 5.111(D)).

Dated: August 19, 2015.

  
\_\_\_\_\_  
**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 August 19, 2015, I deposited a true copy of the following document(s):

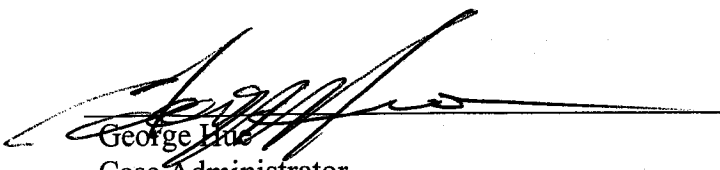
DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT (Bus. & Prof. Code, § 6007, subd. (c)(4).)

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:
- OSCAR ARTURO RUIZ DECHAVEZ  
319 "F" ST STE 201  
CHULA VISTA, CA 91910
- ☐ 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:

Ann J. Kim, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 19, 2015.

  
George Huc  
Case Administrator  
State Bar Court