

FILED

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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 14-N-05751-YDR
)	
WILFORD THOMAS LEE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 166168,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

Respondent Wilford Thomas Lee (Respondent) is charged in this matter with a single count of willfully violating California Rules of Court, rule 9.20, by failing to file with the clerk of the State Bar Court a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c) as ordered by the Supreme Court in order number S218352. The court finds culpability and recommends discipline as set forth in this decision.

Significant Procedural History

This proceeding was initiated by the State Bar of California, Office of the Chief Trial Counsel (State Bar) filing a Notice of Disciplinary Charges (NDC) against Respondent on January 16, 2015. Respondent filed his answer to the NDC on April 7, 2015.

On May 4, 2015, the parties filed a Stipulation as to Facts and Admission of Documents and a Joint Pretrial Statement.

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¹ Unless otherwise indicated, all references to rule(s) refer to the California Rules of Court.

Trial was held on May 21, 2015. Respondent did not appear at the trial but was represented at trial by Edward O. Lear of Century Law Group LLP. At the time of trial, Respondent's counsel moved for a continuance of the trial, but the request was denied by the court. Respondent did not present any witnesses at trial, and Respondent was not permitted to testify telephonically at trial. At trial, State Bar Exhibits 1-12, as well as State Bar Exhibits 13 and 14, were admitted into evidence. Respondent's Exhibit 1001 was also admitted into evidence at trial. Both parties submitted the matter on the stipulation and exhibits which were admitted into evidence.

Both parties filed their closing or post-trial brief on June 17, 2015, and this matter was submitted for decision on that date.

Findings of Fact and Conclusions of Law

The following findings of fact are based on Respondent's answer to the NDC, the Stipulation as to Facts and Admission of Documents previously filed by the parties, and the documentary evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 1, 1993, and has been a member of the State Bar of California at all times since that date.

Case No. 14-N-05751 – Rule 9.20 Matter

Facts

On July 9, 2014, the California Supreme Court filed an order in Supreme Court matter number S218352 (State Bar Court Nos. 12-O-17542 (12-O-17580; 13-O-10240)) suspending Respondent from the practice of law in this state for two years, staying execution of that suspension, and placing Respondent on probation for three years subject to certain conditions, including that he be suspended from the practice of law for a minimum of the first six months of

probation and until he makes and furnishes proof of specified restitution. The order also required Respondent to comply with California Rules of Court, rule 9.20, and 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. The order was effective August 8, 2014.

State Bar Probation Deputy Terese Laubscher (Ms. Laubscher) sent Respondent a letter dated August 1, 2014, addressed to Respondent's membership records address which, in pertinent part, reminded Respondent that he was ordered to comply with the provisions of California Rules of Court, rule 9.20. The letter stated, "The Court has also ordered you to comply with the provisions of Rule 9.20, California Rules of Court. Your affidavit must be timely filed with the State Bar Court by no later than **September 17, 2014.**" (Emphasis in original.)² Enclosed with the letter were, among other things, a copy of the Supreme Court order imposing discipline and requiring compliance with California Rules of Court, rule 9.20; a portion of the stipulation entered into by Respondent and the State Bar, including the portion requiring Respondent to comply with California Rules of Court, rule 9.20; a copy of California Rules of Court, rule 9.20; State Bar Rules of Procedure pertaining to rule 9.20 matters; and a rule 9.20 compliance declaration.

However, Respondent failed to file his rule 9.20 compliance affidavit by September 17, 2014. Thereafter, Ms. Laubscher sent a letter dated September 30, 2014, addressed to Respondent at his membership records address, advising Respondent that according to the records of the Office of Probation, he had not filed a compliant rule 9.20 affidavit and reminding him that his declaration was due by September 17, 2014. The letter stated, in pertinent part, "If you do not timely file a compliant [rule] 9.20 affidavit with the State Bar Court, you may be referred to the Office of the Chief Trial Counsel which could result in the imposition of

² See State Bar Exhibit 9.

additional discipline and attendant costs.”³ Nevertheless, Respondent did not comply with California Rules of Court, rule 9.20. Respondent failed to take any steps to submit a compliance declaration, and there is no evidence that he performed any other requirements set forth in rule 9.20.

Conclusions

Count One – Rule 9.20 Matter

A member, ordered by the Supreme Court to comply with rule 9.20, subdivision (c), must file with the Clerk of the State Bar Court, within 40 days after the effective date of the Supreme Court’s order, an affidavit showing that he or she has fully complied with the provisions of the rule. Respondent was required to have filed his rule 9.20(c) affidavit no later than September 17, 2014. Respondent stipulated, and the court finds, that he did not comply with California Rules of Court, rule 9.20, in that he failed to take any steps to submit a compliance declaration, and there is no evidence that he performed any other requirements set forth in rule 9.20. The court therefore finds that Respondent willfully failed to comply with California Rules of Court, rule 9.20.⁴

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³ See State Bar Exhibit 10.

⁴ The State Bar’s post-trial brief sets forth that Respondent executed a rule 9.20 verification form on May 11, 2105, which was approved by the Office of Probation on May 15, 2015, shortly before the trial in this matter. However, no evidence was introduced on this issue at the time of trial.

Aggravation⁵

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

Respondent has two prior records of discipline. On July 9, 2014, the Supreme Court filed an order in matter S218352 (State Bar Court Nos. 12-O-17542 (12-O-17580; 13-O-10240)), suspending Respondent from the practice of law for two years, staying execution of that suspension, and placing Respondent on probation for three years subject to conditions, including that he be suspended from the practice of law for a minimum of the first six months of probation and until he makes and furnishes proof of specified restitution. Respondent stipulated in that matter to: (1) holding himself out as entitled to practice law and actually practicing law in a jurisdiction where practicing is in violation of the regulations of the profession in that jurisdiction in three client matters; (2) entering into an agreement for, charging, or collecting an illegal fee in three client matters; (3) knowingly making a misrepresentation to the State Bar, an act involving moral turpitude and dishonesty (three separate violations); and (4) knowingly making material misrepresentations of facts to his client and a Citizen Advocate for the Consumer Protection Division of the Illinois Office of the Attorney General in one matter, acts involving moral turpitude and dishonesty. In aggravation, Respondent engaged in multiple acts of misconduct, and his misconduct harmed clients. In mitigation, at the time Respondent's misconduct began, he had been in practice for more than 18 years without any prior discipline. Respondent also received mitigating credit for entering into a full stipulation as to facts, culpability, and disposition prior to trial.

⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. As this matter was submitted for decision prior to the July 1, 2015 effective date of amendments to the standards, the court finds that the operative standards in this matter are those that were in effect from January 1, 2014 to June 30, 2015.

On May 7, 2015, the Supreme Court filed an order in matter S224869 (State Bar Court Nos. 13-O-14744; 13-O-10795 (Cons.)), suspending Respondent from the practice of law for one year, staying execution of that suspension, and placing Respondent on probation for one year with conditions.⁶ Respondent stipulated in that matter to (1) practicing law in a state other than California in violation of the regulations of the profession in that state in two matters; (2) entering into an agreement for, charging, and collecting an illegal fee in two matters; and (3) committing an act involving moral turpitude, dishonesty, or corruption by writing a check from his client trust account when he knew or was grossly negligent in not knowing there were insufficient funds in the account to cover the check. In aggravation, Respondent had a prior record of discipline, engaged in multiple acts of wrongdoing, and failed to refund illegal fees. In mitigation, Respondent entered into a pre-trial stipulation in the matter. The misconduct in this second prior disciplinary matter, however, occurred slightly before and during the same time period as the misconduct in Respondent's first disciplinary matter. Therefore, in recommending discipline, the totality of the findings in the two disciplinary proceedings were considered to determine what the discipline would have been had all the charged misconduct been brought as one matter. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.)

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent demonstrated indifference toward rectification or atonement for the consequences of his misconduct by failing to file a rule 9.20 compliance affidavit even after the

⁶ The court notes that the prior record of discipline submitted by the State Bar regarding Respondent's second disciplinary matter is incomplete in that it does not include a certified copy of the disciplinary order issued in that matter. Accordingly, this court takes judicial notice, pursuant to Evidence Code section 452, subdivision (d), of Supreme Court order S224869, which was issued in relation to Respondent's second prior disciplinary matter, admits it into evidence, and directs the clerk to include a copy of Supreme Court order S224869 in the record of this case.

reminder letters from the Office of Probation and the filing of the NDC in this matter. (Cf. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702.)

Mitigation

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent is entitled to limited weight in mitigation for entering into a pretrial stipulation as to facts and admission of documents. (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [admitting wrongdoing to State Bar investigator and stipulation to facts and culpability is mitigating].) However, the stipulated facts in this matter were not difficult to prove and therefore only limited weight in mitigation is given for such stipulation.

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

Respondent contends that his emotional difficulties due to stress are a mitigating factor. Standard 1.6(d) provides that extreme emotional difficulties are a mitigating circumstance if (1) the member suffered from the difficulties at the time of the misconduct; (2) the emotional difficulties are established by expert testimony as being directly responsible for the misconduct; (3) the difficulties were not the result of illegal conduct by the member; and (4) the member has established by clear and convincing evidence that the difficulties no longer pose a risk that the member will engage in misconduct. However, the evidence offered by Respondent in support of his emotional difficulties, the letter dated May 19, 2015, from Parke E. Smith, MS, NCC, LPC, of Lowcountry Counseling Services, does not support a finding that such emotional difficulties is a mitigating circumstance, as there is no clear and convincing evidence that Respondent suffered from emotional difficulties at the time of the misconduct. While Mr. Smith's letter noted that Respondent's score on the Life Change Index, an instrument to measure the stress level in a person's life, put Respondent "at an exceptionally high risk for becoming ill and possibly

experiencing a depressive mood disorder” and, according to a patient self-report depression assessment, it is expected that Respondent would “be experiencing little to no current functional impairment,” Mr. Smith also noted that “[t]hese screenings are intended solely to help identify the symptoms and likelihood of a mood disorder. It is intended to educate and not designed to provide a clinical diagnosis. An accurate diagnosis for depression or any mood disorder can only be made by [sic] a physician or a qualified mental health professional after a complete evaluation”⁷ As such, there is no clear and convincing evidence that Respondent was suffering from extreme emotional difficulties at the time of the misconduct. Thus, emotional difficulties are not considered a mitigating circumstance in this matter.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (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 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar*

⁷ See Respondent’s Exhibit 1001.

(1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) 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.)

The standard for assessing discipline for a violation of rule 9.20 is set out, in the first instance, in the rule itself. Rule 9.20(d) states, in pertinent part: “A suspended member’s willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation.” 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.) Nevertheless, both this court and the Supreme Court have, on occasion, imposed lesser discipline in situations where there has been timely compliance with subdivision (a) and the violation merely arises from a late submission of the compliance affidavit mandated by subdivision (c). (See, e.g. *Shapiro v. State Bar* (1990) 51 Cal.3d 251; *Durbin v. State Bar* (1979) 23 Cal.3d 461; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.) In those cases, however, the courts emphasized the respondent’s good faith, the presence of significant mitigating circumstances, and the absence of substantial aggravating circumstances. Such is not the case here.

In addition, Standard 1.8(b) provides that disbarment is appropriate in instances where the respondent has had two or more prior records of discipline, including a period of actual suspension, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. This will be Respondent’s third discipline. Neither of the above two exceptions

applies to Respondent; however, the court notes that the aggravating effect of Respondent's second prior disciplinary matter is discounted as the misconduct in that matter occurred slightly before and during the same time period as the misconduct in Respondent's first disciplinary matter. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.)

Respondent was ordered by the Supreme Court to 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. Specifically, Respondent was required to file his affidavit of compliance with rule 9.20 by September 17, 2014. Nevertheless, although he was reminded on two separate occasions by the Office of Probation that he was ordered to comply with California Rules of Court, rule 9.20, and was served with the NDC in this matter based on his failure to comply with the rule 9.20 order, Respondent failed to take any steps to submit a compliance declaration, and there is no evidence that he performed any other requirements set forth in rule 9.20. Accordingly, the court finds that, based on his (1) failure to file a timely affidavit of compliance with California Rules of Court, rule 9.20; (2) his prior record of discipline; (3) his indifference to rectification or atonement for the consequences of his misconduct; (4) and the limited mitigating circumstance in this matter, a recommendation of disbarment is both necessary and appropriate to protect the public, the profession, and the courts. (*In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 599-601.)

Recommendations

It is recommended that Respondent Wilford Thomas Lee, State Bar Number 166168, be disbarred from the practice of law in California and Respondent's name be stricken from the roll of attorneys.

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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 in this proceeding.

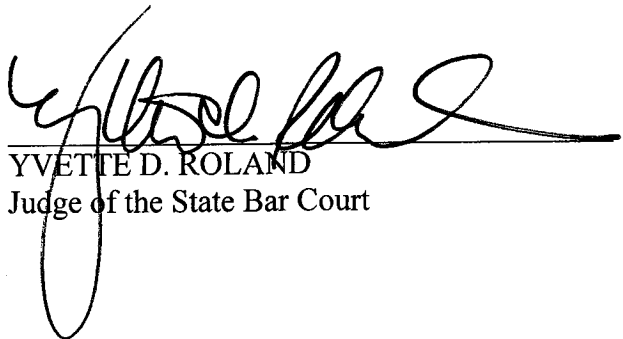
Costs

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.

Order of Involuntary Inactive Enrollment

Respondent 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 this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: August 26, 2015


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 August 31, 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 Los Angeles, California, addressed as follows:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

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

RONALD K. BUCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 31, 2015.



Angela Carpenter
Case Administrator
State Bar Court