

**PUBLIC MATTER**  
**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

**FILED**  
**OCT. 08 2015**  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of	)	Case No.: 14-N-06304 - DFM
	)	
<b>BRUCE HOWARD SOBEL,</b>	)	
	)	<b>DECISION</b>
<b>Member No. 182547,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

Respondent **Bruce Howard Sobel** (Respondent) is charged here with a single count of failing to comply timely with the Supreme Court order that he file a declaration of compliance with California Rules of Court, rule 9.20(c), within 40 days of the effective date of the Supreme Court order. The court finds culpability and recommends discipline as set forth below.

**PERTINENT PROCEDURAL HISTORY**

The original Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on February 13, 2015. On February 19, 2015, the State Bar filed an Amended Notice of Disciplinary Charges (ANDC).

On March 23, 2015, the initial status conference was held in the case. At that time, the case was scheduled to commence trial on June 17, 2015, with a trial estimate of one day.

On March 26, 2015, Respondent filed his response to the ANDC, acknowledging that he had filed a late rule 9.20(c) compliance statement.

On June 8, 2015, the scheduled trial date was continued to September 10, 2015, due to health issues of Respondent's counsel.

Trial was commenced and completed on September 10, 2015, and the matter was then submitted for decision. The State Bar's case consisted solely of the stipulation of facts entered into by the parties in this proceeding, including Respondent's admission of culpability, and exhibits that both parties had stipulated could be received in evidence. The State Bar was represented at trial by Deputy Trial Counsel Nina Sarraf-Yazdi. Respondent was represented by Albert Arena of Arena & Schnitzer.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The following findings of fact are based on Respondent's response to the ANDC, the stipulation of undisputed facts previously filed by the parties, and the documentary and testimonial evidence admitted at trial.

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on June 7, 1996, and has been a member of the State Bar at all relevant times.

#### **Case No. 14-N-06304 [Non-compliance with Rule 9.20(c)]**

In April 2014, Respondent and the State Bar entered into a Stipulation re Facts, Conclusions of Law, and Disposition in which he stipulated, inter alia, that he had improperly entered into a partnership with a non-attorney (Herrera) "and began knowingly allowing her to misuse his name in offering legal services to clients for ALC [the partnership]. His misconduct continued through at least November 2013, during which time Respondent routinely allowed clients to hire ALC or ABC without any input and delegated nearly all client contact to non-attorneys, shared legal fees with the non-attorneys, aided the unauthorized practice of law, and collected illegal fees in violation of SB94 [Civil Code § 2944.7], which culminated in intentional or grossly negligent misrepresentations to the State Bar regarding his role at and business relationships with ALC and ABC." The stipulation went on to note significant mitigating

circumstances, including Respondent's lengthy prior practice of law as a criminal defense attorney before his ill-advised experience with the loan modification partnership; his cooperation with the State Bar and acknowledgement of responsibility for the misconduct of that organization; his good character; his history of community service; and the fact that he had terminated his involvement in the mal-performing organization(s). Nonetheless, because of the nature and number of violations, Respondent agreed to be suspended from the practice of law for a minimum of three years and until he makes restitution to all victims and provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

Knowing that he was going to be suspended for a very long period of time, Respondent effectively terminated his law practice prior to the Supreme Court acting on the stipulated discipline. By June 2014, Respondent had succeeded in having all of his assigned criminal defense matters reassigned to other counsel, and he had no remaining clients or matters for which a rule 9.20(a) notification would be required when the Supreme Court order was eventually issued.

After closing down his practice, Respondent also began the process of trying to find gainful employment in some other field, a task that proved to be very difficult. He eventually secured positions as a part-time investigator and as a security guard, frequently working at night for \$10 per hour. Because of his continuing lack of sufficient income, his focus was on trying to generate enough income to survive. Despite those efforts, he soon lost his home and was forced to relocate.

On September 4, 2014, the Supreme Court issued its order (S219532), imposing the above suspension. It also ordered that Respondent comply with the California Rules of Court,

rule 9.20, 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 order.

Although Respondent was no longer practicing law, he was allowed by the attorney, from whom Respondent had previously sublet office space, to continue to use without charge that office to receive mail. The Supreme Court order was mailed to that address, and Respondent, while he did not go to his former office on a regular basis, has stipulated that he received the order.

As previously noted, Respondent had no need to send out any notifications under rule 9.20(a). Nonetheless, he remained obligated to file a rule 9.20(c) compliance declaration, which was due on November 13, 2014.

On September 23, 2014, Eddie Esqueda, Respondent's probation deputy, sent Respondent a reminder letter, addressed to Respondent's former office address (which remained his official membership records address), informing Respondent that he needed to comply with the provisions of rule 9.20 and that his rule 9.20 compliance declaration must be filed with the State Bar Court no later than November 13, 2014. While it is unclear when Respondent first saw or read this letter, he has stipulated that he received it. The September 23, 2014, letter from Esqueda included a copy of the Supreme Court order, a copy of Respondent's signed stipulation, a copy of the rule 9.20 affidavit that needed to be submitted to the State Bar Court, and a copy of rule 9.20.

Respondent testified credibly during the trial of this matter that he was preoccupied during the latter part of 2014 with being able to find sufficient work and income to be able to survive. His exhausted state, both physically and mentally, during that time period was credibly corroborated by other evidence during the course of this proceeding. As a result, at the time that Respondent's rule 9.20(c) compliance statement needed to be filed, the issue had admittedly

completely escaped Respondent's attention. As a result, he failed to file the compliance statement by its due date.

On December 11, 2014, Probation Deputy Esqueda sent Respondent a letter, informing Respondent that he had not filed the required rule 9.20(c) compliance affidavit. The letter reminded Respondent that his affidavit had been due on November 13, 2014. On the same day, December 11, 2014, Probation Officer Esqueda sent Respondent an email to Respondent's email address with the Rule 9.20 non-compliance letter attached to the email.

When Respondent received these communications, he promptly acted to comply with the rule 9.20(c) requirement, albeit belatedly. He completed the required affidavit on December 18, 2014, indicating that, at the time of the Supreme Court's order, he had no clients, client funds, client files, or pending matters requiring notices to be sent pursuant to rule 9.20(a). He then forwarded this affidavit, which met the requirements of rule 9.20(c), to this court, where it was filed on December 22, 2014, 39 days late.

**Count 1 - Rule 9.20(c) [Failure to File Timely Compliance Affidavit]**

Respondent has stipulated, and this court finds, that Respondent's failure to file a declaration of compliance with California Rules of Court, rule 9.20, by November 13, 2014, as required by the Supreme Court's order, constituted a willful violation by him of California Rules of Court, rule 9.20.

**Aggravating Circumstances**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>1</sup> std. 1.5.) The court finds the following with respect to aggravating circumstances.

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<sup>1</sup> All further references to standard(s) or std. are to this source.

### **Prior Discipline**

As previously noted, Respondent has been disciplined on one prior occasion. As set forth in greater detail above, on September 4, 2014, the Supreme Court issued an order suspending Respondent from the practice of law for a minimum of three years and until he makes restitution to all victims and provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. This is an aggravating factor. (Std. 1.5(a).)

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating factors.

#### **No Harm**

Respondent is entitled to mitigation credit because his misconduct caused no actual harm to the client or person who is the object of the misconduct. (Std. 1.6(c); *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 203; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 532.)

#### **Cooperation**

Respondent entered into a full stipulation of facts in this matter, including admitting culpability for failing to comply timely with his rule 9.20(c) obligation. For this cooperation, he is also entitled to mitigation credit. (Std. 1.6(e); *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443.)

#### **Late Compliance**

As previously discussed, Respondent belatedly complied with his rule 9.20 obligation. This is a significant mitigating factor. (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 469; *In the Matter of Friedman, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 532-533.)

### **Character Evidence/Community Service**

Respondent presented evidence from four character witnesses. In addition, the parties stipulated in April 2014 in the prior matter to his good character. Such good character is a mitigating circumstance. (Std. 1.6(f).

### **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. 1.3; *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* (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.”

A member’s willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction, particularly when the willful failure was as to the basic notice requirements of the rule. (*In the Matter of Friedman, supra*, 2 Cal. State Bar Ct. Rptr. at p. 532; *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) However, both this court and the Supreme Court have routinely imposed lesser discipline where there has been timely compliance with subdivision (a) and the violation arises only 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, supra*, 23 Cal.3d 461; *In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman, supra*, 2 Cal. State Bar Ct. Rptr. 527.) In *Durbin*, the member had belatedly complied with then rule 955(a), now renumbered 9.20(a), and had not complied at all with the obligation to file a compliance statement. The Supreme Court rejected the State Bar’s recommendation of a one-year actual suspension, stating that it would be “too severe.” Instead, it ordered an actual suspension of six months or until the member filed the required compliance statement, whichever was longer. (25 Cal.3d at p. 469.) In *Shapiro*, where the member was found culpable of both a rule 955 violation and misconduct in an unrelated client matter, the Supreme Court imposed a one-year actual suspension. There, the member had been five months late in filing his compliance statement. In fashioning that overall discipline decision, the court noted with apparent approval the 6-month actual suspension it had ordered in *Durbin*. (*Ibid.*) In *Rose*, in a case where the member had two prior disciplines and a history of probation violations, the Review Department concluded that discipline including nine months of



actual suspension was appropriate, which discipline was to run concurrently with the respondent's discipline in another matter. In *Friedman*, the case most closely resembling the facts here, the Review Department concluded that actual discipline of 30 days was sufficient where the member had been two weeks late in filing his compliance statement. The court, however, expressly required the period of actual suspension to begin at the time that the member's existing and lengthy suspension in a prior matter ended, rather than have it run concurrently with that suspension.

In each of those cases, the reviewing court has emphasized the respondent's good faith, the presence of mitigating circumstances, and the absence of substantial aggravating circumstances. Respondent falls within the aegis of the above cases. As noted by the Supreme Court in the *Durbin* case, the goal of what is now the rule 9.20 is to "insure protection of concerned parties." (*Durbin v. State Bar, supra*, 23 Cal.3d at 447.) Here, Respondent took steps well before the Supreme Court's decision was issued to protect all potentially concerned parties from being adversely affected by his upcoming suspension, thereby satisfying the goal of rule 9.20. Although he was late in reporting to this court that the purposes of rule 9.20 had been met, that delay was not great and it resulted in no harm.

While the State Bar asks that Respondent be disbarred for his tardy compliance affidavit, such a draconian outcome is not justified by the standards, the facts, the cases, or any need to protect the public, the profession, or the courts. That is especially true given Respondent's compliance with the rule 9.20(c) obligation prior to these charges being filed and his continuing acknowledgement and expressed remorse regarding having been late in that compliance.

All of the above decisions have made clear that some period of actual suspension should be ordered for a member's late compliance with the rule 9.20 affidavit obligation. In assessing what the duration of the actual suspension should be here, this court notes that the duration of

Respondent's tardiness here is slightly more than that of the respondent in *Friedman* (where a 30-day actual suspension was ordered) and significantly less than that of the respondents in *Durbin* and *Shapiro* (where six-month actual suspensions for the late compliance were viewed by the Supreme Court as appropriate). This court also notes that the mitigating circumstances here are comparable to or greater than those involved in those cases and that the aggravating circumstances here are less than those involved in any of the above cases, especially the *Rose* matter, where the court gave considerable weight to the fact that the respondent there had a record of two prior disciplines and was also being disciplined for probation violations. Measuring the circumstances of this case against the disciplines imposed in the prior cases, this court concludes that an actual suspension of 90 days should be assessed.

The manner in which that 90-day period of suspension is imposed is made complicated by the fact that Respondent is already subject to the Supreme Court's prior disciplinary order, imposing a minimum three-year actual suspension. The Review Department in *Friedman* specifically disapproved having the period of actual suspension in 9.20 cases be ordered to run concurrently with an existing period of actual suspension if it is clear that the new discipline will have no actual effect on the respondent. Hence, the period of actual suspension must be tied or otherwise coordinated in some way with the prior disciplinary order.

In *Friedman*, the Review Department recommended that the 30-day period of actual suspension be ordered to begin at the time that the previously-ordered period of actual suspension ended. Unfortunately, it is this court's understanding that such an order may now be disfavored, because the actual start date of the imposed suspension would be difficult to determine in advance or from the new order alone. As a result, to comply with the directive of the *Friedman* decision, while simultaneously fashioning a start date of the recommended actual suspension that can immediately be calculated and identified, this court recommends that the

new period of actual suspension only be added to the minimum period of suspension previously ordered by the Supreme Court in its order No. S219532 and that the Supreme Court's order in this matter refer to and expressly modify its prior order to extend the minimum period of actual suspension imposed by it. In that way, the effective date of the new minimum period of suspension will be immediately clear, so that the State Bar and others can eventually monitor Respondent's compliance with it. Further, because the new period of suspension will be formally added to the prior discipline, the requirements and procedures governing the timing of Respondent's need and ability to present proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law will also be clear.

Finally, because Respondent is already subject to a three-year period of probation, a three-year stayed suspension, and obligations to take and pass the State Bar Ethics School and the MPRE, it is not recommended that those obligations be repeated in the new disciplinary order. Similarly, because Respondent has been suspended at all times since he previously complied with rule 9.20(a), this court does not recommend that he again be required to comply with the provisions of that rule.

### **RECOMMENDED DISCIPLINE**

#### **Actual Suspension**

To effect the above recommendation, it is recommended that the Supreme Court issue an order, reading, in pertinent part, as follows:

Paragraph 1 of Supreme Court Order No. S219532, filed on September 4, 2014, is hereby amended to read, "Bruce Howard Sobel is suspended from the practice of law in California for a minimum of three years and 90 days and he will remain suspended until the following conditions are satisfied:"

All other provisions of that order remain unchanged.

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**Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

Dated: October 8, 2015.

  
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**DONALD F. MILES**  
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 October 8, 2015, I deposited a true copy of the following document(s):

### DECISION

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

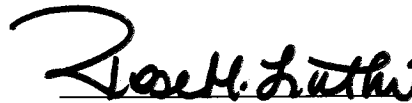
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ALBERT WILLIAM ARENA  
ARENA & SCHNITZER, APLC  
110 W "C" ST STE 1709  
SAN DIEGO, CA 92101

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

NINA SARRAF-YAZDI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 8, 2015.



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Rose M. Luthi  
Case Administrator  
State Bar Court