

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos. <b>14-O-04074; 14-N-02368 (Cons.)</b>
	)	
<b>LEON ARAKELIAN,</b>	)	
	)	<b>DECISION INCLUDING DISBARMENT</b>
<b>Member No. 243180,</b>	)	<b>RECOMMENDATION AND</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<u>A Member of the State Bar.</u>	)	<b>ENROLLMENT ORDER</b>

**I. Introduction**

In this disciplinary matter, Leon Arakelian (“Respondent”) is charged by the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) with willfully violating California Rules of Court, rule 9.20 (case number 14-O-04074) and Business and Professions Code section 6068 subdivision (k). Specifically, the State Bar charged that by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), Respondent failed to timely comply with the provisions of the Supreme Court order in case number S214210 (State Bar Court Nos. 11-O-17733, etc.<sup>1</sup>), filed January 7, 2014. The State Bar also asserts that Respondent failed to comply with the probationary conditions attached to his discipline in State Bar Court case number 11-O-17733, etc. including failing to contact the Office of Probation within 30 days after the effective date of discipline to schedule a meeting with his assigned probation deputy, failing to appear for the meeting with his assigned probation

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<sup>1</sup> Supreme Court Order S214210 also included State Bar Court Nos. 11-O-19264, 12-O-10771, 12-O-10976 and 12-O-11717.

deputy scheduled for May 6, 2014, and failing to submit to the Office of Probation his first two quarterly reports due on or before April 10, 2014, and July 10, 2014.

After consideration of the evidence, the court finds Respondent culpable, by clear and convincing evidence, of willfully violating his probation conditions and failing to timely, or at any point, comply with the provisions of California Supreme Court Order S214210 by filing a rule 9.20(c) declaration of compliance. In view of Respondent's misconduct and the evidence in aggravation, the court recommends to the Supreme Court that Respondent be disbarred from the practice of law.

## **II. Pertinent Procedural History**

On May 28, 2014, the Office of the Chief Trial Counsel of the State Bar of California filed and properly served on Respondent at his official membership records address, a Notice of Disciplinary Charges in State Bar Case number 14-N-02368 ("First NDC"). When Respondent failed to file a timely response to the First NDC, the State Bar filed a Motion For Entry of Default on August 7, 2014. On August 25, 2014, Respondent filed a response to the First NDC.

Subsequently, on or about August 21, 2014, the State Bar filed and properly served Respondent with a Notice of Disciplinary Charges in State Bar Court case number 14-O-04074 ("Second NDC"). The State Bar moved to consolidate case number 14-N-02368 and case number 14-O-04074 on September 22, 2014. That motion was granted. Pursuant to Respondent's motion to continue the trial date, trial was set in both matters for January 20-21, 2015.

After Respondent failed to appear at trial when his cases were called the morning of January 20, 2015, his default was entered in the consolidated cases under rule 5.81(a) of the Rules of Procedure of the State Bar, and Respondent was enrolled as an inactive member under

Business and Professions Code section 6007, subdivision (e).<sup>2</sup> An order of entry of default was served on Respondent at his official membership address by certified mail, return receipt requested.

Respondent's January 30, 2015, motion to set aside default was granted and Respondent's involuntary inactive enrollment was terminated effective February 17, 2015.

Respondent filed a response to the Second NDC on February 24, 2015, the first day of trial. Trial took place February 24-26, 2015. The matter was submitted for decision on February 26, 2015.<sup>3</sup> The State Bar was represented at trial by Deputy Trial Counsel Charles T. Calix and Ann Kim. Respondent appeared in propria persona.

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

The following findings of fact are based on Respondent's response to each NDC and the documentary and testimonial evidence admitted at trial.

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on June 6, 2006, and has been a member of the State Bar of California at all times since that date.

#### **Prior Discipline**

##### **Supreme Court Case No. S214210 (State Bar Court Case No. 11-O-17733)**

Respondent was disciplined in State Bar Court Case No. 11-O-17733 for seventeen counts of misconduct in five different client matters including willfully violating: 1) rule 3-110(A) of the Rules of Professional Conduct (failure to perform with competence); 2) section 6068, subdivision (m) (failure to respond to client inquiries); 3) rule 3-700(D)(2) (failure to

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<sup>2</sup>All references to section (§) are to the provisions of the Business and Professions Code, unless otherwise indicated.

<sup>3</sup>The parties were to file closing argument briefs within two weeks of the conclusion of trial, or by March 12, 2015. The State Bar's closing argument brief was filed March 11, 2015. Respondent's brief was not filed until March 16, 2015.

refund unearned fees); 4) rule 4-100(B)(3) (failure to render accounts of client funds; 5) section 6106 (moral turpitude); 6) section 6068, subdivision (i) (failure to cooperate in State Bar investigation; 7) section 6068, subdivision (a) (failure to comply with laws – unauthorized practice of law).

On January 7, 2014, the California Supreme Court ordered Respondent suspended from the practice of law for three years, that execution of the suspension be stayed, and that he be placed on probation for three years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed July 25, 2013, and the Order Amending Decision, filed October 17, 2013.

Respondent was also placed on actual suspension 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 pursuant to Standard 1.2(c)(1) of the Standards for Attorney Sanctions for Professional Misconduct. Supreme Court Order S214210 was duly served on Respondent.

Among other probation conditions, Respondent was required to:

1. Contact the Office of Probation and schedule a meeting with an assigned probation deputy to discuss the terms and conditions of probation within 30 days, or by March 8, 2014; and
2. Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation stating under penalty of perjury whether he had complied with the State Bar Act and the Rules of Professional Conduct.

Respondent was also ordered to submit a rule 9.20 (c) declaration of compliance with the clerk of the State Bar Court by March 19, 2014.

## **Rule 9.20 Violation**

Respondent was “well aware”<sup>4</sup> of the issuance of Supreme Court Order no. S214210, which required him to comply with rule 9.20 by filing a declaration of compliance with the State Bar Court by March 19, 2014. On April 8, 2014, Respondent submitted a rule 9.20 affidavit to the Office of Probation (“April 8<sup>th</sup> Submission”). The April 8<sup>th</sup> Submission was rejected due to Respondent’s failure to make the declaration under penalty of perjury. By email and U. S. mail, on or about April 9, 2014, the Office of Probation advised Respondent of the rejection of his rule 9.20 affidavit and provided a blank, court-approved form for him to use to report his compliance.

Respondent’s April 10, 2014, email response to the State Bar did not discuss his rule 9.20 affidavit; instead, he requested a phone interview rather than an in-person meeting with his probation deputy due to his financial challenges and his mother’s deteriorating health.

On April 14, 2014, Respondent forwarded an email to his probation deputy, explaining that his rule 9.20 compliance issues arose due to his financial inability to send the mail by certified means. Respondent also stated that he had submitted a change of address “a while ago”; however, Respondent offered no evidence of a change of membership address submission to the State Bar before April 14, 2014.

Respondent submitted to the Office of Probation another affidavit of compliance on May 5, 2014. The Office of Probation rejected Respondent’s May 5, 2014, rule 9.20 compliance affidavit due to Respondent’s statement that the notices of his suspension were not timely forwarded to his clients and due to his failure to state that the notices were forwarded with a “return receipt requested”. In addition, Respondent did not state that the notices were filed with the respective courts.

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<sup>4</sup> Testimony of Respondent.

Additional communications from the Office of Probation were forwarded to Respondent regarding his failure to file a compliant rule 9.20 affidavit.<sup>5</sup> As of the date of this proceeding, Respondent has not submitted a compliant rule 9.20 affidavit.

### **Quarterly Reports**

Respondent's signed and dated original quarterly reports were due to the Office of Probation on April 10, 2014, and July 10, 2014, respectively. Respondent first submitted both reports by email on July 25, 2014. Respondent advised the Office of Probation that a hard copy of each quarterly report would be submitted with original signatures. As of the date of this proceeding, neither quarterly report has not been submitted to the Office of Probation in hard copy format.

### **Probation Conditions**

Respondent was required to contact the Office of Probation on or before March 8, 2014, to schedule a meeting with his probation deputy in order to discuss the terms and conditions of his discipline. In a letter dated February 10, 2014, the Office of Probation initially advised Respondent of this obligation and his other probationary obligations, including the obligation to submit quarterly reports commencing April 10, 2014, to pay restitution and to attend Ethics School by February 6, 2015. From April 11, 2014, through April 28, 2014, Respondent and his probation deputy exchanged emails regarding the scheduling of his initial meeting with her.

By email dated April 28, 2014, the probation deputy scheduled a meeting with Respondent for 10:00 a.m. on May 6, 2014. Respondent did not appear for the May 6, 2014 meeting with his probation deputy.

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<sup>5</sup> By email and/or U. S. Mail, the Office of Probation communicated with Respondent regarding his failure to file a compliant rule 9.20 affidavit on May 6, 2014, July 17, 2014, July 22, 2014 and December 30, 2014.

On July 14, 2014, Respondent called his probation deputy and requested a meeting with her.<sup>6</sup> On July 17, 2014, Respondent's probation deputy forwarded a letter to Respondent at his member records address, setting out her numerous communications with Respondent regarding his probation conditions. In addition, she advised Respondent that at his request, his initial meeting had been reset as a telephonic conference to be held July 22, 2014, at 10:00 a.m.

Respondent's required meeting with his probation deputy took place July 22, 2014, when he called Ms. Farfan at 10:19 a.m. and discussed with her the conditions of his probation.

### **Case No. 14-N-02368 --- The Rule 9.20 Violation**

#### ***Count 1: Failure to Obey Rule 9.20 [California Rules of Court, Rule 9.20(c)]***

A member, ordered by the Supreme Court to comply with rule 9.20(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 affidavit no later than March 19, 2014. Respondent did not file an affidavit of compliance within the time that he was required to do so. As a matter of fact, Respondent did not even attempt to file his rule 9.20 affidavit until April 8, 2014, almost three weeks after it was due. That April 8<sup>th</sup> rule 9.20 affidavit and each of Respondent's subsequent untimely filed rule 9.20 submissions, was deficient. In fact, even at the time of trial, Respondent had not yet filed a compliant affidavit of compliance.

Respondent contends his failure to file a compliant rule 9.20 affidavit was not willful and was due to his financial difficulties. However, Respondent never filed a motion to be relieved of costs associated with compliance.

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<sup>6</sup> Respondent contends he called the Office of Probation 100 times but failed to actually speak with his probation deputy. Respondent submitted no proof of these alleged efforts to contact his probation deputy who disputed Respondent's testimony.

Respondent further contends that there was no need for him to send a rule 9.20 notice since he was not the attorney of record on any open case and did not have any clients as of the date his rule 9.20 affidavit was due. However, the court notes that Respondent's May 5, 2014 compliance declaration that he filed with the State Bar Court did not indicate that he had no clients. Respondent's rationale for not submitting a compliant declaration reveals that he willfully violated the requirement that he file the rule 9.20 affidavit due to *his* belief that a rule 9.20 affidavit was not necessary.<sup>7</sup>

Respondent's failure to file a compliant rule 9.20 (c) affidavit constituted a willful violation of rule 9.20 and Supreme Court order S214210.

**Case No. 14-O-04074**

***Count 1: Failure to Comply With Probation Conditions (Bus. & Prof. Code, § 6068, Subd. (k))***

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

As discussed above, Respondent failed to comply with his probation conditions as ordered by the Supreme Court in S214210, in willful violation of section 6068, subdivision (k): (1) by failing to contact the Office of Probation within 30 days after the effective date of discipline to schedule a meeting with Ms. Farfan, his assigned probation deputy; (2) failing to meet with his probation deputy on May 6, 2014, as scheduled and, (3) failing to timely submit his April 10, 2014 and July 10, 2014 quarterly reports.

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<sup>7</sup> A willful failure to comply with a rule 9.20 obligation relates to one's intent that an act be done or omitted. *See Durbin v. State Bar* (1979), 23 Cal. 3d 461, 467.



#### **IV. Aggravating and Mitigating Circumstances**

##### **A. Aggravation**

There are several aggravating factors here: prior discipline, multiple acts of misconduct and uncharged violations.

##### **Prior Discipline (Std. 1.5(a)).**

Respondent has two prior records of discipline; this prior discipline is an aggravating circumstance.

Respondent's first record of discipline in Supreme Court Order S213210, is discussed in detail above.

In Respondent's second disciplinary matter, the California Supreme Court, on June 26, 2014, ordered Respondent suspended from the practice of law for one year, stayed and placed on probation for one year. (See Supreme Court Case No. S217796 (State Bar Court Case No. 12-O-15272). In this matter, Respondent stipulated to the one year stayed suspension for his failure to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct and for willfully violating Business and Professions Code section 6068, subdivision (m) by failing to respond to client inquiries.

##### **Multiple Acts of Misconduct (Std. 1.5(b))**

In violating several probation conditions and failing to file a compliant rule 9.20 affidavit, Respondent has committed multiple acts of misconduct which is also an aggravating factor. (Std.1.5(b)).

##### **Uncharged Violations (Std. 1.5(d))**

Respondent testified that he has yet to submit original, signed and dated quarterly reports for October 10, 2014 and January 10, 2015. Respondent also testified that he has not complied

with other conditions of his probation. Specifically, Respondent has not paid restitution, nor attended or provided proof of completion of Ethics School, which he was required to complete by February 6, 2015. Such acts of misconduct are aggravating factors and although not charged, these additional Business and Professions Code section 6068, subdivision (k) violations demonstrate Respondent's lack of desire or inability to comply with his probation conditions and therefore with his professional obligations.

## **B. Mitigation**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 311; std. 1.6.)

The only evidence offered by Respondent in mitigation was his testimony and the testimony of witnesses Messrs. Constantienscu and Nishanian, stating that Respondent has faced severe financial hardship since commencement of his actual suspension from the practice of law. While the court found the testimony regarding Respondent's financial difficulties to be credible, the court cannot afford Respondent mitigation credit for financial hardship.<sup>8</sup> (See Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.6.)

## **V. 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. 1.3.) Public protection and attorney

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<sup>8</sup> The court notes that even if financial hardship was a mitigating factor, Respondent would not have met his burden of proof as he offered no financial documents, e.g. bank records, etc., in support of his alleged financial hardship. Further, Respondent has offered no explanation of how his financial hardship resulted in his failure to file a compliant rule 9.20 affidavit or to fully comply with his conditions of probation.

rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)

The standard for assessing discipline for a violation of rule 9.20 is set out 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 to be the appropriate sanction. (See e.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

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 is Respondent’s third disciplinary matter and neither of the two Standard 1.8(b) exceptions applies to Respondent.

As to the charged probation violations, the extent of the discipline to recommend in this matter is dependent, in part, on the nature of the probation violation and its relationship to Respondent’s prior misconduct. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Here, Respondent did not timely comply with several of his probation conditions and repeatedly rationalized and discounted the importance of his compliance with the reporting probationary conditions. Seemingly, Respondent fails to appreciate that “a probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Wiener* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, Respondent did not seem to understand that “an attorney probationer’s filing of quarterly probation reports is

an important step towards the attorney's rehabilitation." (*In the Matter of Wiener, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)

Respondent failed to comply with his probationary conditions ordered by the California Supreme Court. Significant discipline is warranted for Respondent's probation violations as Respondent seems unwilling or incapable of complying with probation conditions designed to achieve the goals of attorney discipline.

All in all, Respondent's failure to comply with rule 9.20, viewed in conjunction with his prior disciplinary records, his failure to comply with certain probationary conditions, his lack of mitigating circumstances and the nature of the aggravating circumstances in this matter, leads this court to conclude that the sanction of disbarment is both appropriate and necessary.

## **VI. Recommendations**

The court recommends that Respondent **Leon Arakelian** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

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

It is also recommended that the Supreme Court order Respondent to comply with California Rules of Court, rule 9.20, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of its order imposing discipline in this matter.<sup>9</sup>

### **Costs**

It is further recommended that the Supreme Court order that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be

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<sup>9</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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), it is ordered that **Leon Arakelian**, Member No. 243180, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)<sup>10</sup> Respondent's inactive enrollment will terminate upon (1) the effective date of the Supreme Court's order imposing discipline; (2) as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or (3) as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: May 21, 2015

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YVETTE D. ROLAND  
Judge of the State Bar Court

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<sup>10</sup> An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)