PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **CHRISTOPHER J. VAN SON,** **Member No. 133440,** A Member of the State Bar.	**Case Nos.: 15-N-14241-DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent **Christopher J. Van Son** (Respondent) is charged here with a single count of willfully violating California Rules of Court, rule 9.20(c)[1] [failure to file timely compliance affidavit]. Prior to the trial of this matter, Respondent stipulated to culpability of failing to comply in a timely manner with this rule. In view of Respondent's misconduct and the aggravating factors, the court recommends, inter alia, that Respondent be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on March 18, 2016. On April 26, 2016, Respondent filed his response to the NDC, denying all allegations and any culpability.

On April 18, 2016, an initial status conference was held at which time the case was scheduled to commence trial on July 7, 2016, with a one-day trial estimate.

[1] Unless otherwise noted, all future references to rule(s) will be to the California Rules of Court.

On July 5, 2016, the parties filed a joint stipulation in which Respondent stipulated to culpability and admitted most of the operative facts in the case.

Trial was commenced and completed on July 7, 2016. The State Bar was represented at trial by Senior Trial Counsel Charles Calix. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Jurisdiction

Respondent was admitted to the practice of law in the State of California on May 6, 1988, and has been a member of the State Bar of California at all times since that date.

Case No. 15-N-14241

On February 2, 2015, the Hearing Department issued an Order Granting Motion to Revoke Probation and for Involuntary Inactive Enrollment in *In the Matter of Christopher John Van Son*, case No. 14-PM-03059, recommending a three-year stayed suspension and a three-year probation, including the probation condition that Respondent be actually suspended for a minimum of two years and until he provides proof to this court of his rehabilitation, fitness to practice, and present learning and ability in the general law. The court also recommended that Respondent be ordered to comply with rule 9.20 of the California Rules of Court 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 Supreme Court order in that matter. The court's decision explicitly warned Respondent that failure to do so may result in disbarment. (Ex. 5, p. 10.)

On April 27, 2015, the Supreme Court issued its order regarding the Order Granting Motion to Revoke Probation and for Involuntary Inactive Enrollment in case No. 14-PM-03059.

As had been recommended by this court, the Supreme Court ordered Respondent, inter alia, to be actually suspended for a minimum of two years and required him to comply with rule 9.20 of the California Rules of Court 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 Supreme Court's order. That order was promptly served by mail by the Supreme Court, and it was received by Respondent.

On May 28, 2015, the Office of Probation mailed a letter to Respondent, explaining the obligations and deadlines created by the Supreme Court's order, including the fact that Respondent was obligated to file a rule 9.20 compliance declaration with the State Bar Court no later than July 6, 2015. Respondent received this letter but did not file any such compliance declaration on or before the July 6, 2015 deadline.

On July 13, 2015, the Office of Probation mailed a letter to Respondent, informing him that he had failed to file his rule 9.20 compliance declaration by July 6, 2015.

On August 5, 2015, more than a month after the compliance statement had been due, Respondent filed a rule 9.20 compliance declaration form with an attached declaration that stated that he has "not yet repaid all fees as agreed upon."

On August 10, 2015, the Office of Probation mailed a letter to Respondent, informing him that his purported rule 9.20 compliance declaration had been rejected because it "does not adequately explain [his] situation in regards to the return of unearned fees." (Exhibit No. 9.)

On September 15, 2015, the State Bar sent to Respondent's official membership address a Notice of Intent to File Notice of Disciplinary Charges. Respondent received the letter.

On September 28, 2015, the State Bar sent another letter to Respondent, informing him that he needed to take the actions necessary to comply with Rule 9.20.

On September 30, 2015, Respondent sent a letter to the State Bar, requesting the names, addresses, telephone numbers and amounts owed to his former clients and stating that he needed this information because "in August of 2011, my office was raided by the Attorney General of California and the State Bar of California. All of my files, computers and office equipment were seized pursuant to court order. As such, I do not have any information as to the identity, addresses and amounts owed to my former clients." (Ex. 12, p. 1.)

On October 7, 2015, the State Bar responded to Respondent's request with a letter listing the names, addresses, and telephone numbers of Respondent's former clients in the two prior disciplinary proceedings against him. The State Bar also provided Respondent with copies of a stipulation and decision in those cases, documents stating the amounts owed to each of these clients.

On October 21, 2015, Respondent filed a rule 9.20 compliance declaration form with an attached declaration stating that he had obtained from the State Bar a list of clients in the disciplinary proceedings to whom he owes restitution, but that he has not paid restitution because he has been unemployed and has no assets.

On October 23, 2015, the Office of Probation mailed a letter to Respondent's official membership address, informing him that his rule 9.20 compliance declaration, filed on October 21, 2015, had been rejected because it did not provide Respondent's current address, as specifically required by rule 9.20, and "did not specifically state that you have earned all fees (other than those ordered in disciplinary matters as restitution) and, as such, no unearned fees need to be returned." (Ex. 17, p. 1.)

On November 2, 2015, Respondent filed a rule 9.20 compliance declaration form in which he checked the box indicating that he had earned all fees paid, but he also attached a separate declaration stating that "the fees do not constitute the restitution as agreed upon in my

disciplinary matters." On November 6, 2015, the Office of Probation rejected this compliance declaration because Respondent's declaration was vague and appeared to be an attempt to modify his report on the compliance form.

On November 18, 2015, Respondent filed a rule 9.20 compliance declaration that was accepted by the Office of Probation.

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 by July 6, 2015, a declaration of compliance with California Rules of Court, rule 9.20, as required by the Supreme Court's order, constituted a willful violation by him of rule 9.20(c) of the California Rules of Court.

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,[2] std. 1.5.) The court finds the following with respect to aggravating circumstances.

Prior Discipline

Respondent has been disciplined on three prior occasions, as set forth below.

Case Nos. 11-O-15166, et al.

On October 17, 2012, in State Bar Court case Nos. 11-O-15166, et al, the Supreme Court filed an order suspending Respondent from the practice of law for two years, staying execution of the suspension, and placing him on probation for three years, including an actual suspension of eighteen months and until Respondent provides satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. In that matter, Respondent stipulated to misconduct in 14 client matters, including failing to perform

[2] All further references to standard(s) or std. are to this source.

legal services with competence, improper withdrawal, charging and accepting advanced loan modification fees, improperly holding himself out as able to practice law in other states, and charging illegal fees. In mitigation, Respondent demonstrated remorse, was candid and cooperated with the State Bar, and had no prior record of discipline. In aggravation, Respondent committed multiple acts of misconduct and caused significant harm to his clients.

As part of the Supreme Court's October 2012 order in that proceeding, Respondent was also ordered to comply with rule 9.20 of the California Rules of Court. As will be discussed more fully below, Respondent failed to comply with that obligation in that proceeding, resulting in disciplinary charges for that failure being filed against him in April 2013.

Case No. 14-PM-03059

As previously discussed, the rule 9.20 obligation at issue in this proceeding arises out of case No. 14-PM-03059, a probation revocation action arising out of Respondent's many failures to comply with the probation obligations ordered by the Supreme Court in case Nos. 11-O-15166, et al., including failing to submit timely quarterly probation reports, failing to timely take six hours of Minimum Continuing Legal Education courses in law office management, and failing to timely take and complete the State Bar's Ethics and Client Trust Accounting schools. As a result of those failures, the Supreme Court revoked Respondent's prior probation and ordered that he be actually suspended for a minimum of two years and until he both makes restitution to 14 former clients (as was previously required as a condition of the revoked probation) and provides proof to this court of his rehabilitation, fitness to practice, and present learning and ability in the general law.

Case Nos. 11-O-16185, et al.

On December 29, 2015, the Supreme Court issued an order suspending Respondent for three years, stayed, and placing him on probation for three years, with conditions including

suspension for a minimum of 18 months and until he makes restitution to six additional individuals and provides proof to this court of his rehabilitation, fitness to practice, and present learning and ability in the general law.[3]

This proceeding was a consolidation of nine separate matters. One of those cases was case No. 13-N-10445, arising out of Respondent's violation of the Supreme Court's October 2012 order in case Nos. 11-O-15166, et al, that Respondent comply with rule 9.20 of the California Rules of Court. Other misconduct in the consolidated cases included charging and accepting illegal advanced loan modification fees, improper solicitation, failures to return unearned legal fees, and misconduct resulting in discipline in another state (including acts of moral turpitude).

In this consolidated disciplinary proceeding, Respondent had sought and then been accepted into the State Bar Court's Alternative Discipline Program (ADP), which allows an attorney to receive mitigation credit for participating successfully in the Lawyer Assistance Program (LAP). (Rules Proc. of State Bar, rule 5.380 et seq.) After being accepted into the ADP, Respondent then failed to comply with the primary requirement of the program by terminating his ongoing participation in LAP. Accordingly, at a status conference on May 18, 2015, the State Bar Court terminated his participation in the ADP and subsequently recommended imposition of the "high" discipline that the court had previously specified, and to which Respondent had contractually agreed, at the time Respondent entered the ADP.

In conjunction with his seeking entry into the ADP, Respondent stipulated in November 2013 both to culpability in case No. 13-N-10445 and to the facts giving rise to that culpability.

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[3] While Respondent had a history of two prior disciplines at the time this discipline was recommended by the State Bar Court, the weight of that prior record was reduced because the misconduct in the consolidated matter had occurred prior to the second discipline.

Based on that stipulation, the State Bar Court in August 2015 described as follows Respondent's failure to comply with the Supreme Court order in October 2012 that he comply with rule 9.20:

> In the rule 9.20 matter, respondent willfully violated rule 9.20(c) because his rule 9.20(c) compliance declaration filed in the State Bar Court on December 14, 2012, did not address whether he had or had not refunded all unearned advanced fees. Respondent stated in his December 14, 2012, declaration only that he owed refunds of unearned fees to 14 named former clients and that he was unable to pay those refunds because the superior court that assumed jurisdiction over his law practice had also frozen his bank accounts. Respondent did not specify whether those 14 were the only unearned fees he had not refunded. When this defect was called to respondent's attention, respondent claimed that "he could not identify all of the clients to whom he owed fees because his client files had been seized pursuant to orders of the Superior Court."
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> Respondent's impossibility-of-performance defense fails because respondent did not prove that he asked the superior court for permission to review the seized files to determine whether he owed any other clients refunds and that the superior court denied his request for permission. Thus, respondent is not being disciplined for failing to comply with a Rule of Court with which he lacked the ability to comply. Instead, he is being disciplined for not complying with rule 9.20(c) without first making a reasonable attempt to comply. (Cf. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868, fn. 4.)

(Ex. 25, pp. 10-11.)

This prior record of discipline is a significant aggravating factor. (Std. 1.5(a).)

Mitigating Factors

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

Respondent presented good character declarations from three individuals, all attorneys, regarding Respondent's fine qualities as an attorney and his good character.

This court affords Respondent only limited weight in mitigation for this evidence. First, these three witnesses do not constitute "a wide range of references in the legal and general communities." (Std. 1.6(f); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [testimony of four character witnesses afforded diminished weight in mitigation].) Further, none of the three declarants was "aware of the full extent of [his] misconduct," as required by standard 1.6(f). (See also *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305.) To the contrary, the only declarant who indicated any possible awareness of the nature of the current charges against Respondent opined that he recalled Respondent "timely filing this declaration only to have it rejected." This declarant then went on to add, "I know from my interactions with Mr. Van Son that he has done everything he can to comply with his probation and with State Bar rules." Regretfully, as discussed above, this understanding by that declarant was far from being accurate.

Emotional Difficulties

Extreme emotional difficulties may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct. (Std. 1.6(d); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) Respondent presented evidence that he was depressed and traumatized in 2015 because of his financial problems and disciplinary issues.

The evidence offered by Respondent regarding the emotional difficulties he had in the past did not provide clear and convincing evidence that his problems are a mitigating factor here. There was no expert testimony or other convincing evidence showing the required nexus between Respondent's claimed emotional problems and his misconduct here. Nor was there sufficient evidence for this court to conclude that any emotional problems suffered by Respondent in the past have now been satisfactorily resolved. (Std. 1.6(d).)

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* (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.)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

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.) That said, 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. Respondent does not fall within the aegis of the above cases. Respondent made

no effort before July 6, 2015, to comply with the Supreme Court's mandate that he comply with rule 9.20(c). Indeed, he made no effort to comply with that obligation until more than a month after the deadline for doing so had passed, and then he did so only after being contacted by the Office of Probation regarding his failure to comply. Respondent's explanation for his failure, that he was not getting his mail on a regular basis, is not a good faith justification for his misconduct, especially given his familiarity with the rule 9.20 obligation, his prior experience with the disciplinary process, and the fact that he was already on probation.

In addition, Standard 1.8(a) 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 fourth discipline. Neither of the above two exceptions to the presumptive discipline of disbarment set forth in standard 1.8(a) is applicable here. Instead, Respondent's history of prior discipline includes discipline resulting from his prior failure to comply with rule 9.20 and from his multiple past failures to comply with the disciplinary and rehabilitation efforts of this court, notwithstanding the fact that he has been on probation and in the disciplinary process at all times since 2012. Where a repeatedly errant attorney has demonstrated a repeated and ongoing inability or unwillingness to comply with the rehabilitation efforts of the disciplinary process, the protection of the public and the profession requires that the stringent disciplinary measure of disbarment be effected. (*In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 599-601.) Sadly, such is the case here.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Christopher J. Van Son,** Member No. 133440, be disbarred from the practice of law in the State of 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 be ordered 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 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Christopher J. Van Son,** Member No. 133440, be involuntarily enrolled as an

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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).)[4]

Dated: August 31, 2016.

DONALD F. MILES
Judge of the State Bar Court

[4] 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.)

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, 2016, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER

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:

CHRISTOPHER J VAN SON
LAW OFFICES OF CHRISTOPHER J. VAN SON
PO BOX 1127
OAK VIEW, CA 93022

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

CHARLES CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 31, 2016.

Rose M. Luthi
Case Administrator
State Bar Court