

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **09-N-10819-DFM**
)
PHYLLIS JOANN BRYAN) **DECISION AND ORDER OF**
) **INACTIVE ENROLLMENT**
)
Member No. 145472)
)
A Member of the State Bar.)

INTRODUCTION

Respondent Phyllis Joann Bryan was charged with a single count of misconduct of willfully failing to comply with rule 9.20 of the California Rules of Court¹ as ordered by the California Supreme Court. Respondent failed to file a response to the notice of disciplinary charges (NDC) and her default was entered. The State Bar was represented by Deputy Trial Counsel Larry DeSha. The court finds by clear and convincing evidence that respondent is culpable of the charged violation. In view of respondent’s misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

PROCEDURAL HISTORY

The NDC in this case was filed on April 3, 2009, and was served on respondent. Respondent appeared at a telephonic status conference on May 4, 2009. She requested and was granted an extension of time to file a response to the NDC. She did not file a response or otherwise participate in the case thereafter and her default was entered on September 10, 2009.

¹ All further references to “rules” are to these rules unless otherwise noted.

The matter was taken under submission for decision on September 30, 2009, after the State Bar waived a hearing and submitted a brief on the issues of culpability and discipline.²

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Culpability

Pursuant to rule 200(d)(1)(A) of the Rules of Procedure of the State Bar, upon entry of default the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Briefly, those facts show that respondent was admitted to the practice of law in the State of California on December 11, 1989, and has been a member since then.

By order filed on December 4, 2008, the California Supreme Court suspended respondent from the practice of law for one year, stayed execution of that suspension and placed her on probation for two years on conditions, including 90 days actual suspension. (Supreme Court case no. S167225; State Bar Court case nos. 05-O-04144; 06-O-15160.) The Supreme Court order included a requirement that respondent comply with rule 9.20 and perform the acts specified in subdivisions (a) and (c) of the rule within 30 and 40 days, respectively, after the effective date of the order. Respondent was served with, and received, a copy of this order.

The Supreme Court order became effective on January 3, 2009, and at all times thereafter remained in full force and effect. Respondent was therefore required to comply with subdivision (a) of rule 9.20 no later than February 2, 2009, and with subdivision (c) of the rule no later than February 12, 2009. Rule 9.20(c) mandates that the attorney “file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered under this rule.” Respondent did not file the affidavit required by rule 9.20(c).

² The State Bar’s request for judicial notice made in this brief is granted and exhibit one attached to the brief is admitted into evidence.

The term “willful” in the context of rule 9.20 does not require bad faith or actual knowledge of the provision which is violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342.) Based on the foregoing, the court concludes that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court on December 4, 2008.

Mitigating and Aggravating Circumstances

No mitigating circumstances have been shown. In aggravation, respondent has been disciplined on one prior occasion, which is the discipline underlying the December 4, 2008, Supreme Court order in this case. In one matter in this prior case, respondent stipulated that she represented four adults and two minors in a personal injury case and failed to perform services competently by failing to take steps to enforce a settlement agreement and failed to render appropriate accounts to her clients regarding the settlement. In a second matter, respondent stipulated that she represented a single client and that she, among other things, failed to appear at two case management conferences which resulted in the dismissal of the client’s case. In mitigation in this prior case, respondent had no record of prior discipline. In aggravation in this prior case, respondent’s clients were harmed and she committed multiple acts of misconduct.

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; std 1.3, Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.) 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.”

Respondent’s willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 44 Cal.3d at p. 342.) A violation of the rule undermines the critical prophylactic function of ensuring that all concerned parties learn about an attorney’s suspension from the practice of law. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.) Moreover, failing to participate in this case shows that respondent comprehends neither the seriousness of the charges against her nor her duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.)

Respondent’s current misconduct, her prior discipline and her failure to participate in this case demonstrate her inability or unwillingness to comply with her professional obligations. As a consequence, her disbarment is necessary to protect the public, the courts and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

RECOMMENDATION

It is recommended that respondent Phyllis Joann Bryan be disbarred from the practice of law in the State of California and that her name be stricken from the rolls of attorneys. 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.³

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

ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Phyllis Joann Bryan, State Bar number 145472, be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order. (Rule 220(c), Rules Proc. of State Bar.)

Dated: November _____, 2009

DONALD F. MILES
Judge of the State Bar Court

³ An attorney's failure to comply with rule 9.20 may be punished as a crime or a contempt. (Cal. Rules of Court, rule 9.20(d).) In addition, respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify. (*Powers v. State Bar*, *supra*, 44 Cal.3d at p. 341.)