

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)
) Case Nos.: 10-O-09637-PEM;
) 10-N-09233-PEM
MICHAEL CURTIS HALL,) (Consolidated.)
)
)
Member No. 230319,) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
A Member of the State Bar.) **ENROLLMENT¹**

I. Introduction

In this consolidated disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges that respondent **MICHAEL CURTIS HALL** willfully violated his duty, under Business and Professions Code section 6068, subdivision (k),² to comply with the conditions attached to a one-year disciplinary probation previously imposed on him by the Supreme Court. In addition, the State Bar charges that respondent willfully failed to comply with California Rules of Court, rule 9.20 as ordered by

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¹ The Rules of Procedure of the State Bar of California were amended effective January 1, 2011. Nonetheless, the court orders the application of the former Rules of Procedure of the State Bar based on a determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 3.)

² Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

the Supreme Court. Specifically, the State Bar charges that respondent failed to file a rule 9.20(c) compliance affidavit with the State Bar Court.³

The court finds respondent culpable of charged misconduct. And, for the reasons set forth *post*, the court concludes that the appropriate level of discipline is disbarment. Accordingly, the court will recommend that respondent be disbarred. Moreover, in light of its disbarment recommendation, the court must order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding. (§ 6007, subd. (c)(4).)

The State Bar was represented by Deputy Trial Counsel Treva R. Stewart. Respondent did not appear in person or by counsel even though he had actual knowledge of this proceeding.

II. Pertinent Procedural History

On November 16, 2010, the State Bar filed the notice of disciplinary charges (NDC) in this proceeding and, in accordance with section 6002.1, subdivision (c), properly served a copy of the NDC on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar of California (official address). Service of the NDC on respondent was deemed complete when mailed regardless of whether he received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

On December 3, 2010, the State Bar received, from the United States Postal Service (Postal Service), a return receipt (a green card) which establishes that the service copy of the NDC was actually delivered to respondent's official address and signed for by "J. Hall."

³ Rule 9.20(c) provides "Within such time as the order may prescribe after the effective date of the member's disbarment, suspension, or resignation, the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully [performed the acts specified in rule 9.20(a)]. The affidavit must also specify an address where communications may be directed to the disbarred, suspended, or resigned member."

Respondent was required to file a response to the NDC no later than December 8, 2010. Respondent, however, failed to do so. Thus, on December 15, 2010, the State Bar filed with the court and served on respondent a motion for entry of respondent's default.

On December 22, 2010, the State Bar received, from the Postal Service, a return receipt which establishes that the service copy of the State Bar's motion for entry of default was actually delivered to respondent's official address where it was "signed for" by someone with the last name Hall (the individual's signature of his or her first name is illegible).

Because all of the statutory and rule prerequisites were met and because respondent was given adequate notice of this proceeding (U.S. Const., 14th Amend.; *Jones v. Flowers, supra*, 547 U.S. at pp. 224-227, 234), the court, on January 4, 2011, filed and served an order entering respondent's default and, as mandated by section 6007, subdivision (e)(1), ordering that respondent be involuntary enrolled as an inactive member of the State Bar of California effective January 7, 2011.

On January 18, 2011, the court received, from the Postal Service, a return receipt which establishes that the service copy of the court's January 4, 2011 order entering respondent's default was actually delivered to and signed for by respondent at his official address on January 7, 2011.

On January 21, 2011, the State Bar filed a request for waiver of default hearing and a brief on culpability and discipline. And, on January 24, 2011, the court took the case under submission for decision without a hearing.

III. Findings of Fact and Conclusions of Law

Under section 6088 and former rules 200(d)(1)(A) and 201(c) of the Rules of Procedure of the State Bar, upon the entry of respondent's default, the factual allegations (but not the charges or conclusions) set forth in the NDC were deemed admitted and no further proof was

required to establish the truth of those facts. Accordingly, the court adopts the facts alleged (but not the charges or the conclusions) in the NDC as its factual findings. Briefly, those factual findings establish the following disciplinary violations by clear and convincing evidence.

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on April 13, 2004, and has been a member of the State Bar of California since that time.

B. Case No. 10-O-09637-PEM – Failure to Comply with Probation Conditions

1. Findings of Fact

On July 22, 2010, the Supreme Court filed an order in case number S183378 (State Bar Court case number 07-O-14974, etc.), styled *In re Michael Curtis Hall on Discipline (Hall I)* in which it placed respondent on two years' stayed suspension and one year's probation on conditions, including that he be suspended from the practice of law for a minimum of the first six months of his probation and until he satisfied certain requirements. Notably, the Supreme Court imposed that discipline, including each of the probation conditions, on respondent in accordance with a stipulation as to facts, conclusions of law, and disposition that respondent and the State Bar entered into and that the State Bar Court approved in an order filed on March 23, 2010, in case number 07-O-14974, etc. (the parties' March 2010 stipulation).

One of respondent's probation conditions required that he contact the Office of Probation within the first 30 of his probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation. Another one of the respondent's probation conditions required that he submit, to the Office of Probation, written quarterly reports on each January 10, April 10, July 10, and October 10 of his probation. On August 13, 2010, the Office of Probation mailed a letter to respondent reminding him of the terms and conditions of his probation. Shortly thereafter, respondent actually received that letter.

Notice of the Supreme Court's July 22, 2010 order was properly served on respondent at his official address in accordance with California Rules of Court, rule 9.18(b). At all times pertinent hereto, respondent had actual notice of the Supreme Court's July 22, 2010 order and the conditions of his probation imposed on him under that order.

The Supreme Court's July 22, 2010 order became effective on August 21, 2010 (Cal. Rules of Court, rule 9.18(b)) and has continuously remained in effect since that time.

Respondent's one-year probation also began on August 21, 2010. Respondent, however, failed to contact the Office of Probation within the first 30 days of his probation and to schedule a meeting with his probation monitor. Thereafter, on October 5, 2010, the Office of Probation mailed respondent a letter notifying him of his failure to comply with that probation condition, and respondent actually received that letter shortly after it was mailed. In its October 5, 2010 letter to respondent, the office of Probation also reminded respondent that his first quarterly report was due no later than October 10, 2010. However, as of November 15, 2010, respondent had still not submitted that report or contacted the Office of Probation and scheduled an appointment with his probation deputy.

2. Conclusions of Law

Count One – Failure to Comply with Probation Conditions (§ 6068, subd. (k))

In count one, the State Bar charges that respondent willfully violated section 6068, subdivision (k), which provides that it is the duty of an attorney “[t]o comply with all conditions attached to any disciplinary probation” The record clearly establishes that respondent willfully violated section 6068, subdivision (k) when he (1) failed to contact the Office of Probation and schedule a meeting with his assigned probation deputy within the first 30 days of his probation and (2) failed to submit his first quarterly report that was due on October 10, 2010.

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C. Case No. 10-N-09233 – Failure to Comply with Rule 9.20(c)

1. Findings of Fact

In its July 22, 2010 order in *Hall I*, the Supreme Court also ordered respondent 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 order. As noted *ante*, the Supreme Court's July 22, 2010 order became effective on August 21, 2010 (Cal. Rules of Court, rule 9.18(b)) and has remained in effect since that time. Respondent's deadlines for complying with subdivisions (a) and (c) of rule 9.20 expired on September 20, 2010, and September 30, 2010, respectively. However, as of November 15, 2010, respondent had still not filed the required rule 9.20(c) compliance affidavit (i.e., an affidavit stating that he had performed the acts specified in rule 9.20(a) and setting forth an address for future communications).

2. Conclusions of Law

Count Two – Violation of Court Order (§ 6103)

Section 6103 provides that the willful violation or disobedience of a court order which requires an attorney to do or forbear an act connected with or in the course of his or her profession, which the attorney ought in good faith to do or forbear constitutes cause for suspension or disbarment. The record clearly establishes that respondent willfully violated section 6103 when he failed to file a rule 9.20(c) compliance affidavit with the Clerk of the State Bar Court in accordance with the Supreme Court's July 22, 2010 order in *Hall I*.

Respondent was required to file a rule 9.20(c) compliance affidavit even if he had no law practice, clients, or pending cases on July 22, 2010, which is the date on which the Supreme Court filed its order directing respondent to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341 [applying former rule 955 of the California Rules of Court (now rule 9.20)].)

IV. Aggravation and Mitigation

A. Aggravation

1. Prior Record of Discipline

Respondent has one prior record of discipline, which is the Supreme Court's July 22, 2010 order in *Hall I*. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁴ The Supreme Court imposed the discipline in *Hall I* because respondent stipulated to willfully (1) violating the State Bar Rules of Professional Conduct, rule 4-100(A) by failing to deposit a \$29,651.27 settlement check into his client trust account; (2) misappropriating \$769.47 in client funds; (3) violating State Bar Rules of Professional Conduct, rule 3-110(A) by failing to perform legal services competently; (4) violating section 6103 by failing to obey two superior court orders; (5) violating section 6068, subdivision (m) by failing to adequately communicate with a client; (6) violating State Bar Rules of Professional Conduct, rule 3-700(D)(1) by failing to return a client file in accordance with the clients requests; and (7) violating State Bar Rules of Professional Conduct, rule 3-700(A)(1) by withdrawing from employment as a client's attorney of record without permission from the superior court.

2. Multiple Acts

Respondent engaged in multiple acts of misconduct in this matter. (Std. 1.2(b)(ii).)

3. Indifference

Respondent failed to rectify his misconduct by promptly scheduling a meeting with his probation deputy; submitting his first quarterly probation report; and filing his rule 9.20(c) compliance affidavit once he learned that the present proceeding had been filed against him. Respondent's failure to rectify his misconduct establishes, by clear and convincing evidence, his indifference toward rectification, which is an aggravating circumstance. (Std. 1.2(b)(v); *In the*

⁴ All further references to standards are to this source.

Matter of Meyer (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702; see also *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.)

B. Mitigation

Because respondent did not appear in this proceeding, he did not establish any mitigating circumstances. Nor is any mitigating circumstance otherwise apparent from the record.

V. Discussion

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, if two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. The most severe of the applicable sanctions in the present proceeding is not found in the standards, but in California Rules of Court, rule 9.20(d). (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.) Rule 9.20(d) provides, in relevant part, that “A suspended member’s willful failure to comply with the provisions of this rule is cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.”

Moreover, at least in the absence of *compelling* mitigating circumstances, case law makes clear that the most consistently imposed sanction under rule 9.20(d) is disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296, and cases there cited.) Among other things, a suspended attorney's *timely* compliance with rule 9.20(a) performs the critical function of ensuring that all concerned parties, including

clients, cocounsel, opposing counsel, courts, agencies, and other tribunals, promptly learn of the attorney's actual suspension and consequent disqualification to act as an attorney. When an attorney fails to file his or her rule 9.20(c) compliance affidavit, the State Bar Court cannot readily determine whether this critical notification function has been promptly performed. In addition, timely compliance with rule 9.20(c) is necessary to ensure that the State Bar Court and the Supreme Court are apprised of the location of attorneys who are subject to their disciplinary authority. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.)

Respondent's unexplained failure to file his rule 9.20(c) affidavit of compliance strongly suggests a conscious disregard for this court's and the Supreme Court's efforts to fulfill their respective responsibilities to oversee the practice of law in the State of California. Finally, there are no mitigating circumstances, much less compelling mitigating circumstances, that would warrant a departure from the ordinary sanction of disbarment under rule 9.20(d).

VI. Recommendations

A. Discipline

The court recommends that respondent **MICHAEL CURTIS HALL**, State Bar Number 230319, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

B. California Rules of Court, Rule 9.20

The court further recommends that **MICHAEL CURTIS HALL** be ordered to again 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 proceeding.

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C. 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 those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **MICHAEL CURTIS HALL** be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 5.111(D)(1)).

Dated: April ____, 2011.

PAT McELROY
Judge of the State Bar Court