

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-N-10911-RAH
)	
RICHARD WONG,)	DECISION & ORDER OF
)	INACTIVE ENROLLMENT
Member No. 192970,)	
)	
<u>A Member of the State Bar.</u>)	

1. INTRODUCTION

In this disciplinary proceeding, which proceeded by default, Supervising Trial Counsel Geri Von Freymann (hereafter “STC Von Freymann”) appeared for the Office of the Chief Trial Counsel of the State Bar of California (hereafter “State Bar”). Respondent RICHARD WONG¹ did not appear in person or by counsel.

Despite a number of typographical errors,² the notice of disciplinary charges (hereafter “NDC”) in this proceeding gives respondent fair, adequate, and reasonable notice (Bus. & Prof.

¹ Respondent was admitted to the practice of law in this state on December 9, 1997, and has been a member of the State Bar of California since that time.

² For example, in paragraph number 5, the NDC incorrectly alleges that respondent was ordered to comply with “subdivision (a) and/or (b) of rule 9.20 no later than on or about November 28, 2007 and was ordered to comply with subdivision (c) of Rule 9.20 no later than on or about December 8, 2007.” First, respondent was not ordered to comply with “subdivision (a) and/or (b) of rule 9.20. He was ordered to comply with subdivisions (a) and (c) of rule 9.20. Second, respondent was not ordered to comply with rule 9.20(a) “no later than on or about November 28, 2007.” Instead, as noted below, he was required to comply with rule 9.20(a) *no later than November 18, 2007*. Third, respondent was not ordered to comply with rule 9.20(c)

Code, § 6085)³ that he is charged with willfully failing to comply with California Rules of Court, rule 9.20 (hereafter “rule 9.20”) as ordered by the Supreme Court because he failed to file a rule 9.20(c) compliance affidavit.⁴ As set forth *below*, the court finds, by clear and convincing evidence, that respondent willfully failed to comply with rule 9.20(c) as charged. Furthermore, the court concludes that the appropriate level of discipline to recommend in this proceeding is disbarment.

2. KEY PROCEDURAL HISTORY

On May 8, 2008, the State Bar filed the NDC in this proceeding and, in accordance with section 6002.1, subdivision (c), properly served a copy of it on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar (hereafter “official address”). In addition, the State Bar mailed courtesy copies of the

“on or about December 8, 2007.” Instead, as note below, he was required to comply with rule 9.20(c) no later than *November 28, 2007*.

Moreover, at page 3, lines 4 and 5, the NDC incorrectly alleges that “Respondent failed to timely comply with the provisions of Supreme Court ‘Order No.’ S132866” Supreme Court *case number* S132866 did not involve respondent and has nothing to do with the present proceeding. As noted below, respondent was ordered to comply with rule 9.20 in Supreme Court case number S154921.

At least three of the foregoing errors are carried forward and repeated in the State Bar's March 18, 2009, request for waiver of default hearing and brief on culpability and discipline. Finally, there are additional errors in the State Bar's March 18, 2009, request for waiver of default hearing and brief on culpability and discipline (e.g., incorrectly stating that the Supreme Court's September 19, 2007, order became effective on February 17, 2007).

³ Unless otherwise noted, all further statutory references are to the Business and Professions Code.

⁴ Rule 9.20(c) provides “Within such time as the [Supreme Court] 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 complied with those provisions of the order entered under this rule [i.e., that he or she 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.”

NDC to respondent at two alternative addresses it had for him, one of which is on Flower Street in Los Angeles and the other of which is on Elm Street in Alhambra.⁵

Neither of these two courtesy copies of the NDC, which were mailed to the alternative addresses for respondent on Flower Street and Elm Street, was returned to the State Bar by the United States Postal Service (hereafter “Postal Service”). However, the service copy of the NDC, which was mailed to respondent’s official address, was returned undelivered to the State by the Postal Service stamped “Attempted Not Known.” Nevertheless, service on respondent was effective when the State Bar mailed a copy of the NDC to him at his official address.

(§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; see also *Powers v. State Bar* (1988) 44 Cal.3d 337, 341 [attorney disbarred when his failure to keep his official address current prevented him from learning that he had been ordered to comply with former rule 955].) Moreover, the court finds that respondent was given adequate notice of this proceeding because the State Bar took additional measures to locate respondent in an attempt to ensure that respondent has actual notice of this proceeding.⁶ (*Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234).

Respondent was required to file a response to the NDC no later than June 2, 2008.⁷ (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time].) Respondent, however, failed to do so. Therefore, on October 21, 2008, the State Bar filed a motion for the entry of respondent's default and properly served a copy of it on respondent

⁵ Neither of these two courtesy copies of the NDC was returned to the State Bar by the United States Postal Service.

⁶ It is unclear whether those additional measures (which are set forth in the declaration of STC Von Freymann that is attached to the State Bar's October 21, 2008, motion for entry of default) were successful.

⁷ In its October 21, 2008, motion for entry of default, the State Bar incorrectly alleges that respondent’s answer was due no later than June 3, 2008.

at his official address by certified mail, return receipt requested. In addition, the State Bar mailed courtesy copies of that motion to respondent at the alternative addresses for him on Flower Street and on Elm Street. Respondent never filed a response to the motion for entry of default. Nor did respondent ever file a response to the NDC.

Because all of the statutory and rule prerequisites were met, this court filed an order on March 10, 2009, in which it entered respondent's default and, as mandated by section 6007, subdivision (e)(1), ordered that respondent be involuntary enrolled as an inactive member of the State Bar of California. One of this court's case administrators properly served a copy of the court's March 10, 2009, order on respondent at his official address by certified mail, return receipt requested. In addition, the court's case administrator also mailed courtesy copies of the court's order to respondent at the Flower Street and the Elm Street alternative addresses.

On March 18, 2009, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. Later that same day, the court took the case under submission for decision without a hearing.

3. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on (1) the allegations contained in the NDC, which are deemed admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A)); (2) exhibits 1 and 2 to the State Bar's March 18, 2009, request for waiver of hearing and brief on culpability and discipline (which exhibits are copies of respondent's prior record of discipline); and (3) the facts in this court's official file in this matter.

A. Findings of Facts

On September 19, 2007, the Supreme Court filed an order in *In re Richard Wong on Discipline*, case number S154921 (State Bar Court case number 05-O-01429, et al.) (hereafter "Supreme Court's September 2007 order") in which it placed respondent on two years' stayed

suspension and one year's actual suspension, which will continue until respondent makes and the State Bar Court grants a motion to terminate his actual suspension under Rules of Procedure of the State Bar, rule 205. In its September 2007 order, the Supreme Court also ordered respondent to perform the acts specified in rule 9.20(a) and to then file, in the State Bar Court, the proof of compliance affidavit provided for in rule 9.20(c) within 30 and 40 days, respectively, after the effective date of the order.

The deemed allegations in the NDC establish that, on September 19, 2007, the Clerk of the California Supreme Court served a copy of the Supreme Court's September 2007 order on respondent at his official address and that respondent received that copy of the Supreme Court's September 2007 order. The Supreme Court's September 2007 order became effective on October 19, 2007, (Cal. Rules of Court, rule 9.18(a)) and has remained in effect since that time. Forty days after October 19, 2007, was November 28, 2007. Accordingly, respondent was required to file, in the State Bar Court, a rule 9.20(c) proof of compliance affidavit no later than November 28, 2007.⁸

Respondent never filed a rule 9.20(c) compliance affidavit with the State Bar Court.

B. Conclusions of Law

The record establishes, by clear and convincing evidence, that respondent willfully failed to comply with rule 9.20(c) as ordered because he never filed, with the Clerk of the State Bar Court, a rule 9.20(c) compliance affidavit (i.e., an affidavit stating that he performed the acts specified in rule 9.20(a) and setting forth an address for future communications). (Cal. Rules of Court, rule 9.20(d).) Respondent was required to file a rule 9.20(c) compliance affidavit even if he had no law practice, clients, or pending cases on September 19, 2007, which is the date on

⁸ As noted in footnote 2 above, paragraph 5 of the NDC, incorrectly refers to this deadline as being December 8, 2008. As noted, the deadline was November 28, 2007.

which the Supreme Court filed its order directing respondent to comply with rule 9.20. (Cf. *Powers v. State Bar*, *supra*, 44 Cal.3d at p. 341 [applying former rule 955 (now rule 9.20)].)

4. LEVEL OF DISCIPLINE

A. Factors in Mitigation

There are no factors in mitigation.

B. Factors in Aggravation

1. Prior Records of Discipline

Respondent has two prior records of discipline. (Std. 1.2(b)(i).) Respondent's first prior record of discipline is the Supreme Court's February 17, 2005, order in *In re Richard Wong on Discipline*, case number S129717 (State Bar Court case number 04-O-10153) (hereafter "Supreme Court's February 2005 order") in which it placed respondent on two years' stayed suspension, two years' probation, and sixty days' actual suspension. That discipline was imposed on respondent because, in a single client matter, respondent failed to maintain client funds in a trust account, failed to promptly pay out settlement funds, misappropriated client funds, and failed to adequately communicate.

Respondent's second prior record of discipline is the Supreme Court's September 2007 order. As noted *above*, in its September 2007 order, the Supreme Court placed respondent on two years' stayed suspension and one year's actual suspension. The Supreme Court imposed that discipline on respondent because respondent failed to cooperate in a State Bar disciplinary investigation involving respondent and because respondent failed to comply with the conditions of the two-year disciplinary probation that the Supreme Court imposed on him in its February 2005 order.

2. Failure to File a Response to the NDC

Respondent's failure to file a response to the NDC in the present proceeding, which allowed his default to be entered, is an aggravating circumstance. (See *Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.) First, it indicates that respondent fails to appreciate the seriousness of the charges against him. (*Ibid.*) Second, it indicates "that he does not comprehend the duty as an officer of the court to participate in disciplinary proceedings. [Citation.]" (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109, citing *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508; but see *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1080 [failure to participate after entry of default is not an aggravating circumstance].)

C. Discussion

In determining the appropriate level of discipline, the court looks first to the Standards for Attorney Sanctions for Professional Misconduct for guidance.⁹ (*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.) However, as the review department noted more than 13 years ago, the standards do not directly address the appropriate level of discipline for violating rule 9.20. (Cf. *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295 [applying former California Rules of Court, rule 955 -- now rule 9.20].) Instead, rule 9.20(d) does. In that regard, rule 9.20(d) provides, in relevant part, that an attorney's willful failure to comply with rule 9.20 constitutes cause for disbarment or suspension and for revocation of any pending probation.

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. (Cf. *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131 [applying former rule 955(d)]; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296, and cases there cited [applying former rule

⁹ The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

955(d)].) What is more, at least in the present case, disbarment under rule 9.20(d) is consistent with standard 1.7(b), which provides:

If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Of course, notwithstanding its unequivocal language to the contrary, disbarment is not mandated under standard 1.7(b) even in the absence of compelling mitigating circumstances. (*Conroy v. State Bar, supra*, 53 Cal.3d at pp. 506-507; *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.)

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 a rule 9.20(c) compliance affidavit, neither this court nor the Supreme Court can determine whether this critical function has been performed. In addition, compliance with rule 9.20(c) keeps this court and the Supreme Court apprised of the location of attorneys who are subject to their disciplinary authority. (Cf. *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187 [construing former rule 955(c)].)

Respondent's unexplained failure to file a rule 9.20(c) compliance affidavit strongly suggests a conscious disregard for both 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. Moreover, 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).

5. DISCIPLINE RECOMMENDATION

The court recommends that respondent RICHARD WONG 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.

6. RULE 9.20 AND COSTS

The court further recommends that Richard Wong again 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.

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

7. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that RICHARD WONG 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 by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: April 30, 2009.

RICHARD A. HONN
Judge of the State Bar Court