

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 10-N-04779-PEM
)	
JAY TWIGG,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 88201,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default disciplinary matter, respondent **Jay Twigg** is charged with failure to comply with California Rules of Court, rule 9.20,¹ and violating Business and Professions Code section 6103.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent’s serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

On June 8, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. Respondent did not file a response.

¹ References to rules are to the California Rules of Court, unless otherwise noted.

By order of the court, on August 30, 2010, respondent's default was entered and respondent was enrolled as an inactive member on September 2, 2010.

Respondent did not participate in the disciplinary proceedings. The matter was submitted on September 20, 2010, following the filing of the State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on November 29, 1979, and has since been a member of the State Bar of California.

Violation of California Rules of Court, Rule 9.20

On January 8, 2010, in California Supreme Court case No. S177712 (State Bar Court case Nos. 05-O-01523; 07-O-10740; 08-O-12919 (Cons.)), the Supreme Court suspended respondent from the practice of law in California two years, stayed the execution of that period of suspension and placed him on probation for four years, subject to certain conditions, including that he be suspended from the practice of law for the first year of probation. Among other things, the Supreme Court ordered respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. The order, which was duly served on respondent, became effective February 7, 2010, thirty days after it was filed. (Cal. Rules of Court, rules 8.532(a) and 9.18(b).)

California Rules of Court, rule 9.20(c) mandates that respondent "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 was to have filed the rule 9.20 affidavit by March 19, 2010, but to date, he has not done so and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. “Willfulness” in the context of rule 9.20 does not require actual knowledge of the provision which is violated. 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.)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in S177712.²

Furthermore, respondent’s failure to comply with rule 9.20 constitutes a violation of Business and Professions Code section 6103, which requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

² Specifically, rule 9.20(d) provides that a suspended attorney’s willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.

³ Future references to standard(s) or std. are to this source.

Respondent's prior record of discipline includes two previous impositions of discipline. (Std. 1.2(b)(i).)

On June 3, 1998, respondent was privately reprovved with conditions. Respondent stipulated to willfully violating rule 3-110(A) of the Rules of Professional Conduct and willfully violating Business and Professions Code section 6068, subdivision (m). In mitigation, respondent had no prior record of discipline and displayed candor and cooperation to the victims of his misconduct and to the State Bar during the disciplinary investigation. No aggravating circumstances were involved. (State Bar Court case No. 97-O-17674.)

In the underlying matter, the California Supreme Court issued an order on January 8, 2010, effective February 7, 2010, suspending respondent from the practice of law for two years, stayed, and placed respondent on probation for four years subject to conditions, including, among others, that he be suspended from the practice of law for the first year of his probation. Discipline was imposed for his misconduct in three client matters. Respondent had stipulated to willfully violating rules 3-310(C)(1), 3-700(D)(1), 3-700(D)(2), 3-110(A), and 4-100(B)(3) of the Rules of Professional Conduct, as well as violating section 6068, subdivision (m), section 6103, and section 6106 of the Business and Professions Code. In mitigation, respondent displayed candor and cooperation with the victims of his misconduct and to the State Bar during the disciplinary investigation. In aggravation, respondent had a prior record of discipline and committed multiple acts of misconduct. (Supreme Court case No. 177712; State Bar Court case Nos. 05-O-01523; 07-O-10740; 08-O-12919 (Cons.).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with rule 9.20(c), even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

Respondent's failure to cooperate with the State Bar before the entry of his default, including his failure to file an answer to the NDC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

Respondent's willful failure to comply with rule 9.20(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given opportunities to do so.

Therefore, respondent's 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. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his willful disobedience of the Supreme Court order.

VI. Recommendations

A. Discipline

Accordingly, the court recommends that respondent **Jay Twigg** 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.

B. 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, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁴

C. Costs

It is further recommended 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.

VII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under Business and Professions Code section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: January _____, 2011

PAT McELROY
Judge of the State Bar Court

⁴ 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.)