

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-N-16549-DFM
)	
ASHKAN ALEX MOTAMEDI,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 228384,)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
<u>A Member of the State Bar.</u>)	

INTRODUCTION

Respondent **Ashkan Alex Motamedi** (Respondent) is charged here with failure to comply with California Rules of Court, rule 9.20,¹ in willful violation of a Supreme Court order. (Bus. & Prof. Code, §6103.)² In view of Respondent’s misconduct and the aggravating circumstances surrounding that misconduct, the court recommends, *inter alia*, that he 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 November 6, 2012. On December 10, 2012, an initial status conference was held in the matter, at which time the case was scheduled to commence trial on February 26, 2013. Because Respondent had not yet filed a response to the NDC at the time of the initial status conference, despite the running of the normal time to do so, Respondent was ordered in the trial-

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

² Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

setting order to file a response to the NDC by December 14, 2012. On December 14, 2012, Respondent filed his response to the NDC. In this response, the only factual allegation contained in the NDC that Respondent admitted was the date of his admission to the bar. His denials included being ordered by the California Supreme Court to comply with rule 9.20.

In the trial-setting order, Respondent was also ordered to comply with pretrial exhibit marking and disclosure requirements and to file a pretrial conference statement by February 12, 2013, a week before the scheduled pretrial conference. Respondent failed to comply with those requirements, including failing to file a pretrial conference statement until the actual commencement of the pretrial conference on February 19, 2013.

Trial was commenced and completed on February 26, 2013. The State Bar was represented at trial by Deputy Trial Counsel R. Kevin Bucher. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 2, 2003, and has been a member of the State Bar at all relevant times.

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On May 18, 2012, the California Supreme Court filed Order No. S199217 (9.20 Order) as a result of a decision and recommended discipline by this court. The 9.20 Order included a requirement that Respondent comply with rule 9.20 of the California Rules of Court by performing the acts specified in subdivisions (a) and (c) of the rule within 30 and 40 days, respectively, after the effective date of the 9.20 Order. The 9.20 Order became effective on June

17, 2012, thirty days after the order was filed. As a result, Respondent was required to comply with subdivision (c) of rule 9.20 no later than July 27, 2012.

On June 12, 2012, the Office of Probation of the State Bar of California sent Respondent a reminder letter regarding Respondent's obligations under the order. In the letter, the Office of Probation reminded Respondent that, pursuant to the 9.20 Order, Respondent was obligated to comply with the provisions of rule 9.20 and that his 9.20 compliance affidavit was due no later than July 27, 2012. To assist Respondent in filing that compliance declaration, the Office of Probation provided him with this letter a blank 9.20 compliance declaration form, which he merely needed to complete, sign, and file. The letter also included a copy of the text of rule 9.20, a copy of the 9.20 Order, a copy of the discipline portions of this court's decision recommending discipline to the Supreme Court (including this court's recommendation that the Supreme Court require Respondent to comply with rule 9.20), and a chart showing the deadlines for Respondent's compliance with his various obligations under the order. This June 12, 2012 letter from the Office of Probation was sent to Respondent's then official membership records address and was received by him.

As previously noted, Respondent was obligated to file his 9.20 compliance declaration on or before July 27, 2012. He made no attempt to do so.

On September 12, 2012, a Probation Deputy from the Office of Probation of the State Bar of California wrote a letter to Respondent, advising him that he had not filed the required 9.20 compliance declaration by the July 27, 2012 deadline and informing him that, if he did not file the declaration, he faced being referred to the Office of the Chief Trial Counsel for further discipline.

On September 17, 2012, Respondent called the Office of Probation and discussed his 9.20 obligation with the Probation Deputy. During that conversation, he was again told of his

obligation to comply with the 9.20 obligation, and he was encouraged to file his compliance statement even though it would be late. "It's better late than never." In that telephone conversation, Respondent acknowledged that he had previously received the Office of Probation's June 12, 2012 letter and its attachments.

More than two weeks later, on October 5, 2012, Respondent filed with the State Bar Court a purported 9.20 compliance declaration, using the form that he had previously been provided. This compliance statement, however, was defective because Respondent had failed to indicate whether or not he had complied with his obligation to return all client papers and property.

On October 10, 2012, the Office of Probation wrote a letter to Respondent, informing him that his compliance declaration was defective and had been rejected. The Office of Probation included with this letter a new blank compliance declaration form for Respondent to use in filing a new compliance statement, together with instructions on what he needed to do to file a correct one.

On October 19, 2012, the assigned Probation Deputy talked again with Respondent about his 9.20 obligation. During that conversation, she asked whether Respondent had yet filed an amended 9.20 compliance declaration. He responded that he had not yet done so, but would be doing so.

As previously noted, the NDC in this matter was filed on November 6, 2012. Respondent did not file an amended compliance statement by that date. Nor did he file one by the time of the initial status conference in this proceeding or by the time that he subsequently filed his response to the NDC in December 2012. It was not until the day of the scheduled pretrial conference in this matter on February 19, 2013, one week before the trial in this matter, that Respondent finally filed his amended 9.20 compliance statement.

At trial, Respondent objected to the admission of virtually all of the documents offered into evidence by the State Bar, including the Supreme Court's May 18, 2012 order and the Office of Probation's June 12, 2012 letter (which he had previously acknowledged receiving). Many of these objections were frivolous and all but one of the documents were subsequently received in evidence. In addition, Respondent declined the opportunity to take the stand to offer any evidence on his own behalf.

Count 1 - Violation of California Rules of Court, Rule 9.20(c)

A member, ordered by the Supreme Court to comply with rule 9.20(c), must file with the Clerk of the State Bar Court within 40 days after the effective date of the Supreme Court's order an affidavit showing that he or she has fully complied with the provisions of the rule.

Respondent was required to have filed his rule 9.20 affidavit no later than July 27, 2012.

Respondent did not file any affidavit of compliance within the time that he was required to do so.

He has offered no evidence as to why he failed to do so.

Even after being repeatedly told by the Office of Probation of his ongoing need to file a compliance statement, his response was far less than diligent. His effort at compliance on October 5, 2012, was defective on its face. Then, after again being notified by the Office of Probation of his continuing need to file a full compliance statement (and being aided by that Office to do so), Respondent did not make any follow-up effort to file a compliance declaration until after the instant proceedings had been initiated and until the case was one week away from trial.

This conduct by Respondent constituted a willful violation by him of rule 9.20 and the Supreme Court's order.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)³ The court makes the following findings with regard to possible aggravating factors.

Prior Discipline

Respondent has been formally disciplined on one prior occasion and a second recommended discipline has been issued by this court but is still awaiting action by the Supreme Court.⁴

As previously noted, on May 18, 2012, the Supreme Court issued an order (S199217), suspending Respondent for eighteen months, stayed, and placing him on probation for three years, subject to various conditions of probation, including the requirement that he be actually suspended for the first 90 days of probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).) Respondent's culpability in the matter was for violations of rules 3-110(A), 3-700(A)(2), and 4-100(B)(3) of the Rules of Professional Conduct, and Business and Professions Code sections 6103 and 6068, subdivision (i).

With regard to the second disciplinary matter, a decision was filed by this court on December 6, 2012, in case No. 10-O-07616. In that decision, Respondent was found culpable of willfully violating rules 3-110(A) and 3-700(A)(2) of the Rules of Professional Conduct, and

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

⁴ Rule 5.106(A) makes clear that this recommended discipline, albeit not final, may still be treated as a prior record of discipline.

Business and Professions Code section 6068, subdivision (m). This court recommended that Respondent be suspended for two years, stayed, and placed on probation for three years.

Respondent's first prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) The fact that Respondent was still in the disciplinary process in connection with the second disciplinary matter during the time that he continued to fail to file his compliance statement is an additional aggravating factor, but will not be treated by the court as a second discipline for purposes of invoking standard 1.7(b).

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) No mitigating factors were shown by the evidence presented to this court.

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. 1.3; *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 Silvertown* (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.)

The standard here for assessing discipline for a violation of rule 9.20 is set out 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 to be the appropriate sanction. (See, e.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) When Respondent’s complete failure to comply with rule 9.20 is viewed in conjunction with his prior disciplinary record and his conduct in the instant proceeding, this court concludes that the sanction of disbarment is both appropriate and necessary.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Ashkan Alex Motamedi**, Member No. 228384, 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.

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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Ashkan Alex Motamedi**, Member No. 228384, be involuntarily enrolled as an 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).)⁵

Dated: March _____, 2013.

DONALD F. MILES
Judge of the State Bar Court

⁵ 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.)