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**STATE BAR COURT
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LOS ANGELES**

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

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|--|---|-------------------------|
| In the Matter of |) | Case No. 17-N-01608-YDR |
| |) | |
| KEVIN RENARD TAYLOR, |) | DECISION |
| |) | |
| A Member of the State Bar, No. 218711. |) | |
| _____ |) | |

I. Introduction

In this contested disciplinary proceeding, the Office of Chief Trial Counsel of the State Bar of California (State Bar) charged Kevin Renard Taylor (Respondent) with willfully violating California Rules of Court, rule 9.20. Specifically, the State Bar charged that by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20, subdivision (c), Respondent failed to timely comply with the provisions of the Supreme Court order in case No. S237743.

Respondent stipulated that he failed to timely file a rule 9.20 declaration of compliance. By clear and convincing evidence, the court finds that Respondent is culpable of the alleged misconduct. In view of Respondent's misconduct and the evidence in aggravation and mitigation, the court recommends that Respondent be suspended for two years, execution of that suspension is stayed, be placed on probation for three years, and be actually suspended for the first one year 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 before his suspension will be

terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

II. Pertinent Procedural History

On May 1, 2017, the State Bar filed and properly served on Respondent, at his official membership records address, a Notice of Disciplinary Charges (NDC). Respondent filed a response to the NDC on May 18, 2017.

Trial took place on August 29, 2017. The State Bar was represented at trial by Deputy Trial Counsel Anita Kabaei and Hugh G. Radigan. Respondent was represented by attorney Edward O. Lear of the Century Law Group. A Stipulation as to Facts was filed on August 29, 2017. The matter was submitted for decision on September 15, 2017, following the filing of the parties' closing briefs.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on Respondent's response to the NDC, the parties' Stipulation as to Facts and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on January 8, 2002, and has been a member of the State Bar of California at all times since that date.

Facts

On December 7, 2016, the California Supreme Court issued an order, suspending Respondent for two years, stayed, with two years' probation, and one year's actual suspension (Supreme Court case No. S237743; State Bar Court case No. 16-O-11815.) Among other things, the Supreme Court ordered Respondent to comply with rule 9.20, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the Order. The Order became effective January 6, 2017, and was duly served on Respondent.

On December 20, 2016, Michael Angelo Kanterakis (Probation Deputy) from the Office of Probation of the State Bar of California, uploaded a courtesy reminder letter with attachments to Respondent's Membership Profile, <http://members.calbar.ca.gov>. The courtesy reminder letter reminded Respondent of the terms of the December 7, 2016 California Supreme Court Order and of Respondent's obligation to comply with the provisions of California Rules of Court, rule 9.20. Respondent was informed that his rule 9.20 declaration must be timely filed with the State Bar Court no later than February 15, 2017.

On December 20, 2016, the Probation Deputy sent Respondent an e-mail advising him of the courtesy reminder letter and its informational attachments that were uploaded to Respondent's Membership Profile. The e-mail was delivered to kevtayloresq@gmail.com, the e-mail address Respondent provided to Membership Records.

At some point before his rule 9.20 compliance due date, Respondent logged onto his Membership Profile. He logged in because he knew he was "coming up on a suspension."

On February 9, 2017, the Probation Deputy mailed Respondent a letter to his Membership Records address wherein Respondent was informed that he was not in compliance with the terms and conditions of his probation imposed by the California Supreme Court. Respondent was specifically reminded that he was required to keep the \$13,500 in disputed funds in a separate interest-bearing account, to initiate fee arbitration with the State Bar of California's Mandatory Fee Arbitration Program, and to schedule a meeting with the assigned Probation Deputy.

On February 27, 2017, the Probation Deputy sent Respondent a letter to his Membership Records address wherein Respondent was informed that he had not timely filed a compliant rule 9.20 declaration with the State Bar Court. Respondent was further informed that if he were to file a rule 9.20 declaration, it would not be considered compliant until it was approved by the

Office of Probation.

On April 21, 2017, Respondent filed a compliant declaration pursuant to rule 9.20 which was approved by the Office of Probation on April 24, 2017.¹

Conclusions of Law

Count 1 - Failure to Obey California Rules of Court, Rule 9.20, Subdivision (c)

A member, ordered by the Supreme Court to comply with rule 9.20, subdivision (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 February 15, 2017. He did not file an affidavit of compliance within the time that he was required to do so. Respondent did not file his rule 9.20 affidavit until April 21, 2017, more than two months after it was due. Respondent contends his failure to file a compliant rule 9.20 affidavit was not willful and was due to his extreme emotional difficulties and his belief that his landlord held his mail dated early January and February until mid-April due to a dispute over his office rent.

It is well settled that strict compliance with an attorney's obligations under rule 9.20 is required. (See *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.)

Respondent's failure to timely file a compliant rule 9.20, subdivision (c), affidavit constituted a willful violation of rule 9.20. Thus, Respondent had willfully failed to strictly comply with rule 9.20, as ordered by the Supreme Court. (*Durbin v. State Bar* (1979) 23 Cal.3d

¹ On May 3, 2017, the Review Department of the State Bar Court filed an order suspending Respondent from the practice of law, effective May 30, 2017, for his failure to pass the Multistate Professional Responsibility Examination (MPRE) pursuant to the California Supreme Court Order S225910 (State Bar Court case No. 14-O-00960), Respondent's first prior record of discipline filed on June 19, 2015.

461, 467 [All that is necessary for a willful violation of rule 9.20 is a general purpose or willingness to commit the act or make the omission.]

IV. Aggravating and Mitigating Circumstances

A. Aggravation²

The State Bar bears the burden of establishing aggravating circumstances by clear and convincing evidence. (Std. 1.5.)

Here, the State Bar has established a single aggravating factor – Respondent's three prior records of discipline.

Prior Record of Discipline (Std. 1.5(a).)

Respondent has a record of three prior disciplinary actions.

First Disciplinary Action

On June 19, 2015, the Supreme Court filed an order in case No. S225910 (State Bar Court case No. 14-O-00960), suspending Respondent from the practice of law for one year, stayed, with one year's probation, including a 30-day actual suspension. Respondent stipulated that he violated rules 3-110(A) [failure to perform services] and 4-100(B)(3) [failure to provide an accounting] of the Rules of Professional Conduct and Business and Professions Code, section 6103 [failure to obey a court order], in one client matter.

Second Disciplinary Action

On July 15, 2016, the Supreme Court filed an order in case No. S234412 (State Bar Court case No. 15-O-11722), suspending Respondent from the practice of law for one year, stayed, with two years' probation, including a 60-day actual suspension. Respondent stipulated to violating rules 3-110(A), 3-700(A)(2) [improper withdrawal from employment], 4-100(A)

² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

[failure to deposit client funds], and 4-100(B)(4) [failure to promptly pay client funds] of the Rules of Professional Conduct and Business and Professions Code, section 6068, subdivision (m) [failure to communicate], in one client matter. In aggravation, he had a prior record of discipline, caused harm to a client, and engaged in multiple acts of misconduct. In mitigation, he suffered extreme emotional difficulties involving family problems. Because his misconduct in his first prior occurred at about the same time as in this second prior, the court considered the "totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct in this period been brought as one case." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) Thus, it was necessary to assess the two matters together to determine the proper level of discipline.

Third Disciplinary Action

In the underlying matter, on December 7, 2016, the Supreme Court filed an order in case No. S237743 (State Bar Court case No. 16-O-11815), suspending Respondent from the practice of law for two years, stayed, with two years' probation, including a one-year actual suspension. Respondent stipulated to violating Business and Professions Code, section 6068, subdivision (k). Respondent violated his probation conditions: (1) by failing to initiate fee arbitration with the State Bar of California's Mandatory Fee Arbitration Program within 30 days of the effective date of the matter, to keep \$13,500 disputed funds in a separate interest-bearing trust account, and to comply with the arbitration award, as required under Supreme Court order No. S225910, his first prior record of discipline; (2) by failing to timely attend State Bar Ethics School; and (3) by failing to timely submit a final written report to the Office of Probation.

B. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 311; std. 1.6.)

Extreme Emotional/Physical/Mental Disabilities (Std. 1.6(d).)

Extreme emotional difficulties or physical disabilities are a mitigating factor where expert testimony establishes that the emotional difficulties were directly responsible for the attorney's misconduct; and the attorney has demonstrated through clear and convincing evidence that he no longer suffers from such difficulties; and the recurrence of further misconduct is unlikely. (Std. 1.6(d); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 700-702.)

Respondent has suffered from severe depression related to stress as early as December 2016.³ He has been in Lawyer Assistance Program since January 2016 and began treatment for depression in January 2017. His depression caused a loss of focus and paralyzed him with regards to his State Bar disciplinary matters. As a result, he failed to read through his probation requirements when logging into his State Bar membership records. Since then, Respondent has been treated by two medical professionals who both diagnosed him with varying forms of depressive disorder. The first medical professional who treated Respondent assisted Sophie Schonfeld, a licensed marriage family therapist who took over responsibility for Respondent's treatment in June 2017. Ms. Schonfeld has observed improvement in Respondent's condition since she first began to treat him in June 2017; however, he still has anxiety symptoms for which he will need to be treated at least another year. Ms. Schonfeld credibly testified that Respondent has been doing better and has changed her diagnosis of Respondent from major depressive

³ Emotional difficulties was also a mitigating factor in his second prior record of discipline; the misconduct occurred between April 2012 and March 2014.

disorder to an adjustment disorder. Respondent testified that he has been coming out of his depression and his lack of focus and paralyzation has ceased.

There is clear and convincing evidence that his emotional difficulties were directly responsible for his misconduct and that such difficulties have greatly diminished. Therefore, the court finds his mental difficulties to be a significant mitigating factor.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent is entitled to minimal mitigation for cooperation with the State Bar. His stipulation as to facts, though easily provable, established his culpability. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443 [factual stipulation merits some mitigation].)

Good Character (Std. 1.6(f).)

Respondent is entitled to mitigation for good character. Respondent presented credible testimony from six individuals who attested to his good character. The declarants included four attorneys, a real estate developer and Respondent's pastor. The individuals were aware of the disciplinary charges against Respondent and most of the attorneys described Respondent as a "skilled attorney with high moral standards" and as "trustworthy and reliable." Serious consideration is given to the testimony of attorneys because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

V. 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; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.)

The standard 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.)

Standard 1.8(b) provides that disbarment is appropriate in instances where the attorney has had two or more prior records of discipline, including a period of actual suspension, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct.

The State Bar urges Respondent be disbarred for his failure to comply with rule 9.20, in light of his three prior records of discipline under standard 1.8(b).

Respondent contends that an additional one year of actual suspension would be the appropriate level of discipline. He argues that disbarment would be excessively punitive because his misconduct was related to his depression, he has sought treatment, and his misconduct is not indicative of his inability to conform to ethical norms.

The court agrees that disbarment would be unduly harsh in light of the presence of predominating mitigation factors applied under the standard 1.8(b) exception. “[W]here appropriate, the Supreme Court will not hesitate to impose a level of discipline lower than that specified by a standard’s seemingly mandatory language, even when the standard expressly provides for a minimum discipline ‘irrespective of mitigating circumstances.’” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 996.)

Although this is Respondent’s fourth disciplinary matter, the totality of the findings in Respondent’s first and second disciplinary matters were considered to ascertain what the

discipline would have been had the matters been brought as one case. It was concluded that 90 days of actual suspension was proper for his misconduct involving a total of two clients, which occurred contemporaneously between September 2011 and March 2014. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 619.) Consequently, Respondent was actually suspended for 60 days in the second prior record of discipline, since he was actually suspended for 30 days in the first prior.

Therefore, the aggravating effect of his first two prior discipline is somewhat diminished.

The court finds these cases instructive.

In *Shapiro v. State Bar* (1990) 51 Cal.3d 251, the attorney had timely notified clients and others of his suspension, but did not file an affidavit conforming to former rule 955(c) (rule 9.20) until five months after it was due. In the underlying disciplinary matter, the attorney was suspended for three years, stayed, and placed on probation for three years with a one-year actual suspension for his misconduct involving two client matters. In weighing the discipline, the Supreme Court considered his long history of practice and the short period of time his misconduct spanned. Consequently, the Supreme Court imposed a one-year actual suspension along with a two-year stayed suspension and two-year probation for both the former rule 955 violation and his failure to perform services in one client matter.

Like the attorney in *Shapiro*, Respondent's rule 9.20 violation was technical. He fully participated in the disciplinary process; his noncompliance did not involve dishonesty; and Respondent did not avoid compliance with the rule or attempt to take advantage of any individual's lack of knowledge of his suspension for an improper purpose. (See *Dahlman v. State Bar* (1990) 50 Cal.3d 1088; *Bercovich v. State Bar* (1990) 50 Cal.3d 116; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287; *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.)

In *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, the attorney filed the former rule 955 affidavit two weeks late but before disciplinary action was commenced. The attorney had notified his clients and complied with the requirements of former rule 955, subdivision (a). In aggravation, the attorney had two prior disciplines. In mitigation, the attorney participated in the disciplinary matter, cooperated with the State Bar, recognized his mistakes, and was working on rectifying his misconduct. The attorney was actually suspended for 30 days.

In *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, the attorney was found culpable of failing to comply with former rule 955 and violating the terms of his disciplinary probation. The attorney had attempted to file his former rule 955 affidavit two weeks late. The attorney argued that he did not timely file his former rule 955 affidavit due to his beliefs that: (1) he was not required to file a former rule 955 affidavit because he had no clients and had no one to notify, and (2) he had already filed a former rule 955 affidavit in his first discipline and he had nothing to report. In aggravation, the attorney had two prior disciplines. In mitigation, the attorney had demonstrated recognition of wrongdoing, there was a lack of harm, and the attorney had engaged in pro bono activities. The attorney received, inter alia, an actual suspension of nine months.

The attorneys in *Friedman* and *Rose* were late by two weeks. Respondent missed the deadline by about two months. But like those attorneys, Respondent participated in the disciplinary matter and worked on rectifying his misconduct.

All in all, Respondent's failure to comply with rule 9.20, viewed in conjunction with his prior disciplinary records and his mitigating circumstances, leads this court to conclude that the sanction of actual suspension, rather than disbarment, is both appropriate and necessary. Therefore, in light of the standards and case law and after balancing all relevant factors,

including the underlying misconduct, the aggravating factors, the compelling mitigating circumstances that included extreme emotional difficulties, cooperation with the State Bar, and good character, the court has determined that a departure from the standards is justified and that imposing a one-year actual suspension and until he provides proof of rehabilitation would be appropriate to protect the public and to preserve public confidence in the profession.

The court does not recommend that Respondent again take and pass the State Bar's Ethics School because he successfully completed the requirement in August 2016. Also, the court does not recommend that Respondent again take and pass the Multistate Professional Responsibility Exam because he was previously ordered to do so in Supreme Court case No. S225910.

VI. Recommendations

The court recommends that Respondent **Kevin Renard Taylor**, State Bar Number 218711, is suspended from the practice of law in California for two years, that execution of the suspension be stayed, and that Respondent be placed on probation⁴ for three years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first one year of probation, and Respondent will remain suspended until the following requirement is satisfied:

Respondent must provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code

⁴ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

section 6002.1, subdivision (a), including Respondent 's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

4. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent 's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent 's probation conditions.

Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because he was previously ordered to do so in Supreme Court case No. S225910.

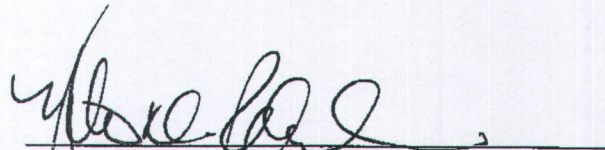
California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is 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.

Dated: November 27, 2017



YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 27, 2017, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

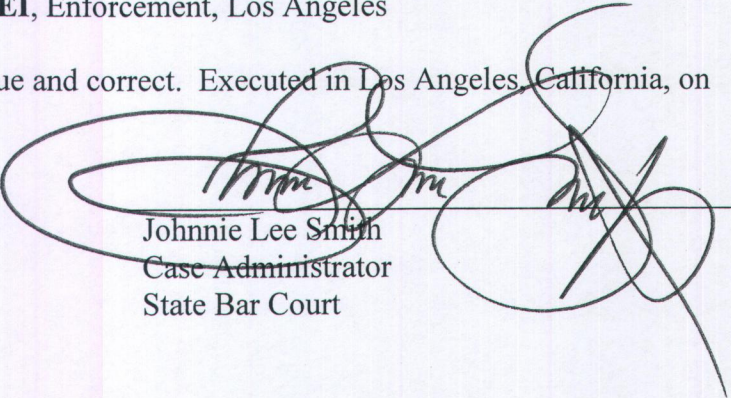
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ANITA KABAEI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 27, 2017.



Johnnie Lee Smith
Case Administrator
State Bar Court