

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No.: <b>08-N-13156;</b>
	)	08-O-13324 (Cons.)
<b>DAVID JOSEPH BARAN</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 105376</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
A Member of the State Bar.	)	
_____	)	

**I. INTRODUCTION**

In this consolidated default disciplinary matter respondent **David Joseph Baran** is charged with probation violations and with failing to comply with California Rules of Court, rule 9.20,<sup>1</sup> as ordered by the California Supreme Court on May 7, 2008, in Supreme Court Order No. S161509.

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

---

<sup>1</sup> All references to rule 9.20 are to California Rules of Court, rule 9.20.

## II. PERTINENT PROCEDURAL HISTORY

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”) on January 5, 2009, in case No. 08-O-13324 and an Amended NDC<sup>2</sup> on January 22, 2009 in case No. 08-N-13156 at his official membership records address. Respondent did not file a response to either the NDC in case No. 08-O-13324 or the Amended NDC in case No. 08-N-13156 (collectively, “the NDCs”). (Rules Proc. of State Bar, rule 103.)

On November 10, 2008, a Notice of Assignment and Notice of Initial Status Conference was filed in case No. 08-N-13156, setting an in person status conference for December 15, 2008. A copy of said notice was properly served on respondent by first-class mail, postage fully prepaid, on November 10, 2008, addressed to respondent at his official address. The copy of said notice was not returned to the State Bar Court as undeliverable, or for any other reason. On January 8, 2009, a Notice of Assignment and Notice of Initial Status Conference was filed in case No. 08-O-13324, setting an in person status conference for January 14, 2009. A copy of said notice was properly served on respondent by first-class mail, postage fully prepaid, on January 8, 2009, addressed to respondent at his official address. The copy of said notice was not returned to the State Bar Court as undeliverable, or for any other reason. Respondent did not appear at the initial status conference in case No. 08-N-13156, nor did respondent appear at the initial status conference in case No. 08-O-13324.

On February 3, 2009, on its own motion, the court issued a Notice of Intent to Consolidate (“Notice”) case Nos. 08-O-13324 and 08-N-13156, in which it specified that the parties had ten days from the service of the Notice to file an objection; if no objection was filed,

---

<sup>2</sup> On October 31, 2008, the original NDC in case No. 08-N-13156 was filed and properly served on respondent at his official membership records address. Respondent did not file a response to the October 31, 2008 NDC.

the court ordered that the matters be consolidated. The Notice was properly served on respondent by first-class mail, postage fully prepaid, on February 3, 2009 and was also properly served on the State Bar. As no objection was filed by either party, the matter was consolidated pursuant to the court's order in its Notice of Intent to Consolidate.

On March 5, 2009, the State Bar attempted to reach respondent by telephone at the telephone number listed on respondent's official membership records list, and left a message at that number. On that same date, the State Bar did a computer search on [www.whitepages.com](http://www.whitepages.com), which listed the same address and telephone number as listed on respondent's official membership records. The State Bar also did a Lexis-Nexis search that produced a phone number different from that listed in respondent's official membership records. The State Bar left a message for respondent at the telephone number produced as a result of the Lexis-Nexis search.

On March 9, 2009, the State Bar, filed a motion for the entry of respondent's default. A copy of said motion was properly served on respondent on March 9, 2009, by certified mail, return receipt requested, addressed to respondent at his official address.

Respondent failed to file a written response within 10 days after service of the motion for entry of his default. Respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].) Consequently, on March 27, 2009, respondent's default was entered in the consolidated matters. Respondent was enrolled as an inactive member on March 30, 2009.

On April 13, 2009, the State Bar filed a brief on culpability and discipline in the consolidated matters.

Respondent did not participate in the disciplinary proceedings. The consolidated matters were submitted for decision on April 15, 2009.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

All factual allegations of the NDCs 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).)

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on December 3, 1982, and has been a member of the State Bar of California at all times since that date.

#### **Supreme Court Order No. S161509--General Factual Background**

Respondent's misconduct in these two consolidated matters arises from his failure to comply with a disciplinary order – S161509. The Supreme Court order was filed on May 7, 2008. The California Supreme Court ordered, among other things, that respondent be suspended from the practice of law for three years and that he remain suspended until he has complied with the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct and until he has made specified restitution; that execution of the suspension be stayed; and that he be placed on probation for five years subject to the conditions of probation, including an actual suspension of two years; and that he remains suspended until he has shown satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) and until he makes specified restitution. Additionally, the Supreme Court ordered that respondent comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on January 16, 2008. (Supreme Court case No. S161509; State Bar Court case No. 03-O-01034 et al.) The Supreme Court further ordered respondent to comply with rule 9.20 (a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. The order became effective June 6, 2008, and was properly served on respondent.

**Case No. 08-O-13324**

On January 16, 2008, the State Bar Court Hearing Department issued its Decision and Order Filing and Sealing Certain Documents (“Decision”) involving six client matters in case Nos. 03-O-01034, 03-O-04338, 03-O-05084, 04-O-10266, 04-O-10267, 04-O-14342, and 05-J-00697. On that same date, the Decision was properly served on respondent, by first class mail through the United States Postal Service (“USPS”), at the address he provided to the State Bar.<sup>3</sup> The Decision was not returned as undeliverable by the USPS. Respondent received the Decision.

On or about March 5, 2005, respondent, through counsel, entered into a Stipulation Re Facts, Conclusions of Law and Disposition. Respondent was accepted into the Alternative Disposition Program (“ADP”). A Confidential Statement of the Alternative Dispositions and Orders was prepared. Subsequently, on May 7, 2008, respondent was terminated from the ADP. In its January 16, 2008 Decision, the Hearing Department recommended the higher end discipline incorporated into the Confidential Statement. The Decision and the documents incorporated therein were served on respondent.

As set forth, *ante*, on May 7, 2008, the California Supreme Court filed Order No. S161509 [State Bar Court case No. 03-O-01034 et al.] (the Supreme Court Order), ordering, among other things, that respondent be suspended from the practice of law for three years and until he has complied with the requirements of standard 1.4 ( c )(ii) of the Standards for Attorney Sanctions for Professional Misconduct and until he has made specified restitution, that execution of the suspension be stayed, and that he be placed on probation for five years on condition that he be actually suspended for two years and until he has shown proof satisfactory to the State Bar Court of respondent’s rehabilitation, fitness to practice and learning and ability in the general law

---

<sup>3</sup> The proof of service attached to the Decision shows that the address respondent “provided to the State Bar” is his official membership records address.

pursuant to standard 1.4 ( c)(ii). The Supreme Court further ordered respondent to comply with the conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on January 16, 2008. The Supreme Court Order and suspension became effective on June 6, 2008.

Pursuant to the Supreme Court Order, respondent was required to comply with the conditions of probation, which included the following:

1. 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 the 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;

2. Respondent must submit written quarterly reports to the Office of Probation on or before each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state in each of these reports whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in State Bar Court and, if so, the case number and current status of the proceeding. If the first report would cover less than thirty days, that report must be submitted on the quarter date, and cover the extended period; in addition to all quarterly reports, a final report, containing the same information is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

3. Respondent must provide to the Office of Probation a copy of the court order referred to in the parties' Stipulation Re Facts and Conclusions of Law, case No. 03-O-04338, regarding sanctions respondent was ordered to pay the United States Trustee's Office;

4. Respondent must comply with the court order referred to in the parties' Stipulation Re Facts and Conclusions of Law, case No. 03-O-04338, regarding sanctions respondent was ordered to pay the United States Trustee's Office and provide satisfactory proof of such compliance to the Office of Probation. Respondent must provide to the Office of Probation a copy of all disgorgement orders of the U.S. Bankruptcy Court in case No. LA MI 04-00011, requiring respondent to disgorge fees to his former clients, and must comply with all such orders and provide satisfactory proof of such compliance to the Office of Probation;

5. Respondent must obtain an examination of his mental and physical condition with respect to his mental health issues pursuant to rule 184 of the Rules of Procedure from a qualified practitioner approved by the Office of Probation and must comply with any treatment plan recommended following such examination. The examination must be conducted no later than 30 days after the effective date of the Supreme Court's order. Help/treatment should commence immediately after said examination, in any event, no later than 30 days after said examination. With each quarterly report, respondent must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that he is complying with this condition of probation. Treatment must continue for the period of probation or until a motion to modify this condition is granted.

6. Upon request of the Office of Probation, respondent must provide to the Office of Probation medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor this probation condition;

On July 8, 2008, the Office of Probation sent to respondent a letter with enclosures, identifying each requirement of the May 7, 2008, Supreme Court order and the January 16, 2008, Decision and Order. The letter listed, among other things, the reporting dates for: (1) the examination; (2) medical waivers; (3) commencement of health/treatment; (4) MD evaluation report; (5) copies of sanctions/disgorgement orders; and (6) compliance with treatment.

The July 8, 2008 letter specifically warned respondent that failure to timely submit reports or any other proof of compliance would result in a non-compliance referral to the State Bar for action. Included among the attachments to the July 8, 2008 letter was a copy of the Supreme Court order, a copy of the portion of the Decision setting forth the conditions of respondent's probation, and quarterly reporting instructions. The letter was mailed on July 8, 2008, via the United State Postal Service, first class postage prepaid, in a sealed envelope addressed to respondent at his official State Bar membership address. The July 8, 2008 letter was not returned as undeliverable. Respondent received the letter.

Respondent failed to comply with the conditions of probation as follows:

- Respondent did not contact/meet with the Office of Probation;
- Respondent did not provide a medical waiver;
- Respondent did not obtain an examination of his physical/mental condition from a qualified practitioner by July 6, 2008;
- Respondent did not commence help/treatment immediately after a physical/mental examination, but no later than 30 days after said examination or by August 5, 2008;
- Respondent did not report compliance with treatment conditions in an October 10, 2008 quarterly report;

- Respondent did not submit the medical report in an October 10, 2008 quarterly report;
- Respondent did not provide copies of the sanction/disgorgement orders to the Office of Probation or proof of compliance with those orders; and
- Respondent did not file an October 10, 2008 quarterly report with the Office of Probation.

**Count 1: Failure to Comply With Probation Conditions [Section 6068(k)]**

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

The court concludes by clear and convincing evidence that by not contacting or meeting with the Office of Probation; by not providing a medical waiver to the Office of Probation; by not obtaining an examination of his physical/ mental condition from a qualified practitioner by July 6, 2008; by not commencing help/treatment immediately after obtaining a physical/mental examination, but no later than 30 days after said examination or by August 5, 2008; by not reporting compliance with treatment conditions in an October 10, 2008 quarterly report; by not submitting the medical report in an October 10, 2008 quarterly report; by not providing copies of the sanction/disgorgement orders to the Office of Probation or proof of compliance with those orders; and by not filing an October 10, 2008 quarterly report with the Office of Probation, respondent failed to comply with conditions attached to his probation under Supreme Court Order No. S161509 in wilful violation of section 6068, subdivision (k).

**Case No. 08-N-13156**

On May 7, 2008, the California Supreme Court filed Order No. S161509 [State Bar Court case No. 03-O-01034 et al.] (the Supreme Court Order). The Supreme Court Order included a requirement that respondent comply with Rule 9.20, California Rules of Court, by performing

the acts specified in subdivisions (a) and (c) within 30 days and 40 days, respectively, after the effective date of the Supreme Court Order.

On or about May 7, 2008, the Clerk of the Supreme Court of the State of California properly served upon respondent a copy of the Supreme Court Order. Respondent received the Supreme Court Order.

The Supreme Court Order became effective on June 6, 2008, thirty days after the Supreme Court Order was filed. Thus respondent was obligated to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than July 6, 2008, and was ordered to comply with subdivision (c) of rule 9.20 no later than July 16, 2008.

Respondent has failed to timely file with the clerk of the State Bar Court a declaration of compliance with subdivisions (a) and (b) of rule 9.20 (a) and (b) of the California Rules of Court, as required by Rule 9.20, subdivision (c).

#### **Failure to Obey Supreme Court Order to Comply with Rule 9.20**

The court finds that respondent is culpable of wilfully failing to comply with his obligation under subdivision (c) of rule 9.20.

Rule 9.20(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered under this rule.”

The term “wilful” in the context of rule 9.20, formerly rule 955, does not require bad faith or any evidence of intent. Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. “Wilfulness” in the context of rule 9.20 does not require actual knowledge of the provision that is violated. It is not necessarily even dependent on showing the respondent’s knowledge of the Supreme Court’s order requiring compliance. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342; *Hamilton v. State Bar* (1979)

23 Cal.3d 868, 873-874.) 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*, *supra*, 44 Cal.3d 337, 341.)

Respondent did not file an affidavit in compliance with rule 9.20 with the Clerk of the State Bar Court by July 16, 2008, as required by the Supreme Court Order. The fact that respondent eventually complied with his obligations under rule 9.20 does not avoid culpability for being late in that compliance. (*In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.)

Thus, the court concludes that the State Bar has established by clear and convincing evidence that by failing to file the compliance affidavit within the time specified in the May 7, 2008 Supreme Court Order, respondent wilfully failed to comply with rule 9.20, subdivision (c).

#### **IV. LEVEL OF DISCIPLINE**

##### **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).)<sup>4</sup> There are several aggravating factors present here.

##### **Prior Record of Discipline**

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

1. In 2002, respondent stipulated to a one-year, stayed suspension, two-year probation and 60-day actual suspension. His misconduct included one client matter in which he failed to pay client funds promptly, failed to maintain client funds in a trust account, failed to render accounts of client funds, committed an act of moral turpitude, i.e., misappropriation, and

---

<sup>4</sup> All further references to standard(s) are to this source.

failed to cooperate in the State Bar investigation. (S105534; State Bar Court case No. 00-O-10891.)

2. In 2008, respondent was ordered suspended for three years, stayed and placed on probation for five years, and actually suspended for two years for failing to perform services competently, failing to promptly return client funds, constructively withdrawing from employment, charging or collecting an illegal fee, and violating a court order. (S161509; State Bar Court case Nos. 03-O-01034, 03-O-04338, 03-O-05084, 04-O-10266, 04-O-10267, 04-O-14342, and 05-J-00697.)

### **Multiple Acts of Misconduct**

Respondent has been found culpable of multiple counts of misconduct in the present proceeding including violating several probation conditions and violating rule 9.20 of the California Rules of Court. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

### **Lack of Participation in Disciplinary Proceeding**

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) No mitigation was shown.

## **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.)

Respondent's misconduct involved failing to comply with conditions attached to his probation and failing to comply with rule 9.20. The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7, and 2.6.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has two prior records of discipline and no mitigation.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code, among which provisions are section 6068, subdivision (k), will result in suspension or disbarment, depending on the gravity of the offense or the harm to the client.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) The court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment. The court agrees with the State Bar's recommendation.

In these two consolidated matters, respondent violated rule 9.20 and failed to comply with several conditions of his probation, in violation of section 6068, subdivision (k). Among his probation violations, respondent failed to submit a quarterly report.

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.) Thus, respondent’s failure to timely file a quarterly report and comply with several other probation conditions warrants significant discipline.

Moreover, respondent’s wilful failure to comply with rule 9.20 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 to comply with rule 9.20 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.

Additionally, failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him, nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding leaves the court without information about the underlying cause of respondent’s misconduct or of any mitigating circumstances surrounding his misconduct.

Accordingly, lesser discipline than disbarment is not warranted. In view of the serious and unexplained nature of respondent’s misconduct, the lack of participation in these proceedings, the lack of any mitigating factors, the existence of a prior disciplinary record, and respondent’s failure to comply with orders of the California Supreme Court, the court

recommends disbarment as the only adequate means of protecting the public and the integrity of the legal profession.

## V. RECOMMENDED DISCIPLINE

### Disbarment

The court recommends that respondent **David Joseph Baran** 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.

### Rule 9.20

The court 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.<sup>5</sup>

### Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

## VI. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the

---

<sup>5</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: July 10, 2009

---

DONALD F. MILES  
Judge of the State Bar Court