PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed October 9, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 12-O-13553
	)	
DEBORAH ANN ELDRIDGE,	)	OPINION AND ORDER
	)	[As Modified on December 8, 2015]
A Member of the State Bar, No. 197963.	)	
	)	

THE COURT.*

The Office of the Chief Trial Counsel of the State Bar (OCTC) appeals a hearing judge's dismissal of this case prior to trial. Deborah Ann Eldridge moved to dismiss the underlying charges that alleged her failure to comply with rule 9.20 of the California Rules of Court,[1] as ordered by the Supreme Court in a prior disciplinary matter. Upon our independent review of the limited record (rule 9.12), we find, inter alia, that the hearing judge improperly dismissed the matter. We therefore reverse the dismissal and remand for further proceedings consistent with this opinion.

I. RELEVANT FACTS

In a prior disciplinary proceeding, on April 27, 2010, the California Supreme Court imposed discipline and ordered that Eldridge be suspended for two years and additionally that she comply with rule 9.20, subdivisions (a) and (c).[2] (*In re Deborah Ann Eldridge on Discipline*

* Before Purcell, P. J., Epstein, J., and Honn, J.

[1] Subsequent references to rules shall refer to this source unless otherwise noted.

[2] In relevant part, subdivision (a) provides that an attorney must: "Notify all clients being represented *in pending matters* and any co-counsel of his or her [suspension] and his or her consequent disqualification to act as an attorney after the effective date of the [suspension], and

(S180385), State Bar Court Case Nos. 06-O-13222 (08-O-12330, 08-O-13969, 08-O-13970).)

On May 26, 2010, Eldridge substituted out of the case in which she represented Bonnie Siminski. The Supreme Court's April 27, 2010 order (SCO) became effective on May 27, 2010. The following day, Eldridge filed the required rule 9.20 declaration, stating under penalty of perjury:

> "I notified all clients and co-counsel, in matters that were pending on the date upon which the order to comply with rule 9.20 was filed by certified or registered mail, return receipt requested, of my consequent disqualification to act as an attorney after the effective date of the order of suspension/disbarment, and in those cases where I had no co-counsel, I urged the clients to seek legal advice elsewhere, calling attention to any urgency in seeking another attorney. [¶] . . . [¶]
>
> "I notified all opposing counsel or adverse parties not represented by counsel in matters that were pending on the date upon which the order to comply with rule 9.20 was filed by certified or registered mail, return receipt requested, of my disqualification to act as an attorney after the effective date of my suspension, . . . and filed a copy of my notice to opposing counsel/adverse parties with the court, agency or tribunal before which the litigation was pending for inclusion in its files."

However, as of that date, Eldridge had not mailed a rule 9.20 notice to Siminski.

On June 10, 2013, OCTC filed a two-count Notice of Disciplinary Charges (NDC) alleging that Eldridge: (1) failed to timely comply with rule 9.20 as ordered; and (2) committed an act of moral turpitude, in violation of Business and Professions Code section 6106, by making a false statement in her compliance declaration. Before trial commenced, Eldridge filed a motion to dismiss, pursuant to rule 5.124 of the Rules of Procedure of the State Bar [grounds for

---

in the absence of co-counsel, also notify the clients to seek legal advice elsewhere. [¶] . . . [¶] Notify opposing counsel *in pending litigation* or, in the absence of counsel, the adverse parties of the [suspension] and consequent disqualification to act as an attorney after the effective date of the [suspension], and file a copy of the notice with the court, agency, or tribunal before which the litigation is pending for inclusion in the respective file or files." (Italics added.)

In relevant part, subdivision (c) provides that, "[w]ithin such time as the order may prescribe after the effective date of the member's [suspension], 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."

dismissal], claiming not only that she had complied with rule 9.20, "but the spirit of the rule was followed in that pertinent parties were made aware of Ms. Eldridge's pending suspension."[3]

On October 21, 2013, the hearing judge granted Eldridge's motion, over OCTC's objection, and dismissed the matter with prejudice. The judge found that Siminski, her former husband (the adverse party in the litigation), and his attorney were all "aware of the impending suspension and substitution of counsel well in advance of the filing or effective date of [the SCO]." As such, the hearing judge concluded that "[t]he prophylactic effect of rule 9.20 was served."

II. DISCUSSION

A. Standard of Review

In evaluating a ruling that disposes of an entire proceeding, we must independently review the record, and may adopt findings, conclusions, and a decision or recommendation different from those of the hearing judge. (Rule 9.12.) The record in this matter is limited because the motion to dismiss preceded trial.

B. Pretrial Summary Judgment Motion Not Permitted

Eldridge brought her motion pursuant to rule 5.124 of the Rules of Procedure of the State Bar, which provides specific and limited grounds for dismissal. She did not argue that the NDC failed either to state a legally disciplinable offense or to give sufficient notice of the charges. (See Rules Proc. of State Bar, rule 5.124 (C), (E).) Instead, Eldridge sought a dismissal on the merits, arguing that she had not violated rule 9.20 or committed acts involving moral turpitude. She relied on her and Siminski's declarations and other supporting documents. However, the State Bar Rules of Procedure, including rule 5.124, do not provide for such a pretrial summary

[3] In her declaration, Eldridge attested that she had substituted out of all of her cases in April 2010, except the Siminski matter. In that case, she attests that she had informed Siminski, the opposing party, and his attorney in January 2010 of her impending suspension.

judgment motion. (*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 376 [no pretrial summary judgment procedure available in State Bar disciplinary proceedings; appropriate time to present evidence in defense is at hearing on merits]; see also *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 125-126.)[4]

Moreover, all parties have the right to present evidence at trial to support their respective positions (Rules Proc. of State Bar, rule 5.104(B)). Due to the dismissal, OCTC was denied that opportunity to prove that Eldridge misrepresented her compliance with rule 9.20, thereby committing an act of moral turpitude.[5] As the judge based her dismissal, in part, on pretrial factual findings, we conclude that she erred in dismissing the matter.

C. SCO Filing Date Is Operative Date

We also find the judge erred in that she dismissed the proceeding on grounds that the rule 9.20 violation alleged in the NDC does not constitute a disciplinable offense. To begin, the judge observed that Eldridge did not represent Siminski in litigation at the time the SCO went into effect "as she had properly substituted out of the litigation" a day earlier. This conclusion overlooks that the *filing* date, not the *effective* date, of the SCO establishes the timeframe for determining whether client or litigation matters are considered "pending" and whether notification is required under rule 9.20. As the Supreme Court instructed in *Athearn v. State Bar* (1982) 32 Cal.3d 38, 45, "the operative date for identification of 'clients being represented in pending matters' and others to be notified under [rule 9.20] is the filing date of [the Supreme Court] order for compliance therewith and not any later 'effective date.' These provisions

[4] The other subsections of rule 5.124 are clearly inapplicable to the relief sought by Eldridge.

[5] In her rule 9.20 declaration, Eldridge stated under penalty of perjury that she mailed notice to all clients and co-counsel "in matters that were pending on the date upon which the order to comply with rule 9.20 was *filed* . . . ." (Italics added.) Similarly, she stated that she mailed notice to opposing counsel (or unrepresented adverse parties) "in matters that were pending on the date upon which the order to comply with rule 9.20 was *filed* . . . ." (Italics added.)

clearly contemplate *advance* notice to *existing* clients of the attorney's prospective inability to represent their interests."[6]

The Supreme Court added: "The rule's purpose in providing for adequate protection of clients would be totally defeated if . . . only those clients still remaining on the effective date of suspension need receive notice *at that late date* that their attorney can act no further in their behalf." (*Ibid.*, original italics.) Further, the hearing judge's finding that the "prophylactic effect of rule 9.20 was served" is not a defense to a rule 9.20 violation. To the contrary, the Supreme Court has found 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 ["[n]othing on the face of [rule 9.20] or in our prior practice distinguishes between 'substantial' and 'insubstantial' violations" of the rule].)[7] Accordingly, the NDC properly alleges rule 9.20 and moral turpitude violations, both of which must be considered on the merits at trial.

III. ORDER

For the reasons set forth above, we reverse the hearing judge's dismissal order and remand this matter to the Hearing Department for further proceedings consistent with this opinion, including a trial on issues of culpability, and, if found, a recommendation as to the appropriate level of discipline.

---

[6] The former rule 955 is replaced with the reference to the current rule 9.20 for purposes of clarity.

[7] The hearing judge properly analyzed the issue of Eldridge's compliance with rule 9.20 in an earlier matter, State Bar Court case no. 12-V-12477. There, Eldridge sought to show that she was prepared to return to the practice of law after her two-year suspension arising from another discipline in Supreme Court case no. S180385, State Bar Court case no. 06-O-13222. Citing *Athearn v. State Bar, supra*, 32 Cal.3d 38, the hearing judge referred to Eldridge's failure to strictly comply with rule 9.20 as one of the reasons she should not be reinstated.