

FILED NOVEMBER 22, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 14-N-06382
)	
MARTIN BARNETT REINER,)	OPINION AND ORDER
)	
A Member of the State Bar, No. 144024.)	
_____)	

THE COURT.*

In 2014, Martin Barnett Reiner was suspended from the practice of law for willfully disobeying court orders (*Reiner I*). In connection with *Reiner I*, the Supreme Court ordered him to comply with rule 9.20 of the California Rules of Court (rule 9.20) and timely file a compliance affidavit attesting that he had notified clients, co-counsel, and opposing counsel in pending matters of his suspension. Reiner not only failed to comply with rule 9.20, he refused to do so. In this disciplinary proceeding (*Reiner II*), a hearing judge recommended that he be disbarred.

Reiner appeals. He contends that *Reiner I* is invalid and unlawful, and that, therefore, so is this “derivative” matter. We find no merit to his position, and in any event, disobedience is not the proper mechanism for challenging a final, binding, and enforceable court order.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the disbarment recommendation. Rule 9.20 is designed to carry out a vital public protection

*Before Purcell, P. J., Honn, J., and Stovitz, J. (Hon. Ronald W. Stovitz, Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court).

function, and its violation calls for serious sanctions. In addition, *Reiner I* involved willful disobedience of court orders, as does *Reiner II*. This repetition of misconduct, along with Reiner's refusal to acknowledge wrongdoing, evidences an indifference toward rectification and an inability or unwillingness to conform to ethical responsibilities required of members of the Bar. Disbarment is therefore necessary to protect the public, the courts, and the legal profession.

I. SIGNIFICANT PROCEDURAL HISTORY

On February 19, 2015, the State Bar's Office of the Chief Trial Counsel (OCTC) filed a Notice of Disciplinary Charges (NDC) alleging that Reiner failed to file a compliance affidavit as required by rule 9.20(c) and the Supreme Court's September 10, 2014 order. On March 11, 2015, Reiner filed a response. After a one-day trial, the hearing judge issued her decision on August 14, 2015. She found Reiner culpable as charged and recommended disbarment.

II. FACTS

Reiner was admitted to practice law in California on December 11, 1989. On March 19, 2014, we issued our opinion in *Reiner I*, finding him culpable of disobeying three court orders issued by workers' compensation administrative law judges. We recommended that Reiner be suspended for two years, execution stayed, and that he be placed on probation for two years on conditions including six months' actual suspension and payment of certain sanctions, attorney fees, and costs.

On September 10, 2014, the Supreme Court issued an order imposing the recommended discipline. The order also required Reiner to comply with rule 9.20 and warned that "[f]ailure to

do so may result in disbarment or suspension.”¹ Pursuant to California Rules of Court, rule 9.18(a), the Supreme Court order in *Reiner I* became effective on October 10, 2014.

Reiner was served with a copy of the order at his official membership address, and he testified that he received it. On September 24, 2014, the State Bar’s Office of Probation (Probation) sent Reiner a letter reminding him that November 19, 2014 was the deadline to submit his rule 9.20 compliance affidavit. Reiner did not respond or timely submit the affidavit.

On November 21, 2014, Probation notified Reiner by letter and email that his affidavit was overdue and that he should file it immediately. Three days later, Reiner replied to the email. He stated that he intended to submit a response by November 26, 2014, at the latest. However, Reiner did not do so. Instead, on December 1, 2014, he emailed Probation and asserted that the State Bar Court disciplinary proceedings and the Supreme Court’s suspension order were invalid and unconstitutional. On December 17, 2014, Probation sent Reiner yet another overdue reminder.

To date, Reiner has not submitted his rule 9.20 compliance affidavit.

III. CULPABILITY

The hearing judge found Reiner culpable of violating rule 9.20(c).² We agree and affirm. His failure to comply with rule 9.20 was clearly willful—in fact, purposeful. He freely admits that despite notice and reminders he chose not to file the required compliance affidavit.

¹ Supreme Court Case No. S218700; State Bar Court Case Nos. 09-O-10207, 10-O-08540. We take judicial notice of the Supreme Court’s docket in S218700: http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=2077416&doc_no=S218700, and note that Reiner sought review of the disciplinary recommendation on May 19, 2014, which the Supreme Court denied on September 10, 2014—the same day it issued the suspension order. (Rules Proc. of State Bar, rule 5.156(B) [Review Department may take judicial notice of Supreme Court decisions and orders arising out of any State Bar Court proceeding involving party who is subject of proceeding under review]; Evid. Code, § 452, subd. (d).)

Reiner contends his non-compliance is justified because he believes the Supreme Court’s order in *Reiner I* is invalid and unlawful. He claims that he was “fully exonerated” of the underlying charges in *Reiner I*, and that, accordingly, this “derivative” matter must be dismissed.

We reject his attempt to collaterally attack the Supreme Court’s prior imposition of discipline—it is long since final and binding (*In re Rose* (2000) 22 Cal.4th 430, 441-442), and we are without authority to set aside an order of the Supreme Court. (Cal. Rules of Court, rule 9.10; *In re Applicant B* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 731, 733.)

Moreover, “[r]egardless of [Reiner’s] belief that the order was issued in error, he was obligated to obey [it] unless he took steps to have it modified or vacated.” (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9, fn. omitted; see also *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403-404[.]) If Reiner wanted to seek review of *Reiner I*, the appropriate avenue of relief was with the United States Supreme Court. (*McKay v. Nesbett* (9th Cir. 1969) 412 F.2d 846, 846 [“orders of a state court relating to the admission, discipline, and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States on certiorari to the state court”].) The record does not indicate whether Reiner sought such review, but his time to do so has since expired, and *Reiner I* is now final and unchallengeable. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 952 [“no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid”].)

² Rule 9.20(c) provides: “Within 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 . . . has fully complied with the provisions of the order entered under this rule [including notifying all clients, co-counsel, and opposing counsel of the suspension; delivering to all clients in pending matters any papers or other property to which the clients are entitled; and refunding any part of fees paid that have not been earned]. The affidavit must also specify an address where communications may be directed to the . . . suspended . . . member.”

Moreover, Reiner's reliance on federal authority (*Standing Committee on Discipline of U.S. Dist. Court for Cent. Dist. of California v. Yagman* (9th Cir. 1995) 55 F.3d 1430 and *Canatella v. Stovitz* (N.D. Cal. 2005) 365 F.Supp.2d 1064) is unavailing. He contests the constitutionality of the underlying workers' compensation orders at issue in *Reiner I*, and claims this exonerates him of disciplinary culpability. We rejected this argument in *Reiner I* as an unreasonable interpretation not made in good faith, and we reject his attempt to relitigate it now. The workers' compensation orders were the subject of *Reiner I*, not *Reiner II* and, therefore, are not within our purview. The sole issue before us is whether Reiner willfully violated rule 9.20(c), and we find that he did.³

IV. AGGRAVATION AND MITIGATION

As we discuss below, disbarment is the generally appropriate sanction for a willful rule 9.20 violation. As a prelude to that discussion, we examine aggravating and mitigating factors. Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct (Standards) requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Reiner to meet the same burden to prove mitigation. The hearing judge found no factors in mitigation and two in aggravation: (1) Reiner's prior discipline; and (2) his indifference and lack of remorse. We agree. However, since the hearing judge did not assign specific weight, we do so here.

A. **Prior Misconduct (Std. 1.5(a))**

Reiner's misconduct is aggravated by his prior disciplinary matter in *Reiner I*. That misconduct was recent (2014) and involved willful disobedience of court orders. It was

³ See *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187 (in rule 9.20 case [formerly rule 955], Supreme Court declined to reopen and reexamine its own underlying discipline decision: "[O]ur main concern at this late date in the proceedings is to select the appropriate discipline. . . . [P]etitioner was given fair warning of his obligation to comply with [rule 9.20], and our . . . suspension order is now long since final").

aggravated by a finding of multiple acts of wrongdoing, indifference, and bad faith surrounding the misconduct. He received mitigation for a lack of prior discipline.

Reiner's current wrongdoing also involves willful disobedience of requirements set forth by court order. Given the similarity of the misconduct, we find the prior record of discipline to be a serious aggravating factor. It did not rehabilitate Reiner and prevent the misconduct we now review. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444 [similarity between prior and current misconduct shows lack of rehabilitation and renders previous discipline more serious aggravation].)

B. Indifference (Std. 1.5(k))

The hearing judge found that Reiner demonstrated indifference by ignoring reminders from Probation of his obligation to comply with rule 9.20. As noted, we agree, but find additional, more significant aggravation based on his lack of insight and remorse. Reiner has shown no repentance, and has yet to file his compliance affidavit or indicate any intention of doing so. Instead, he makes disparaging remarks about everyone involved in his disciplinary cases. In his brief, he accuses the judges of this court of committing "intellectual dishonesty" in conducting their duties and engaging "in a professional lynching, as a favor for the Chairperson of the WCAB." Reiner also specifically accuses the hearing judge of "making faces" at him while he was testifying, which, he believes, is further evidence of a "lynching."

We agree with OCTC that Reiner's behavior demonstrates an unwillingness to consider the appropriateness of his own behavior and to acknowledge his wrongdoing. Instead, he casts blame on others. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 ["The law does not require false penitence" but "it does require that the respondent accept responsibility . . . and come to grips with his culpability"].) Moreover, the tone and content of Reiner's remarks reflect an overall defiance and lack of respect for the discipline process and

court orders, which underscores the need to remove him from the profession. “Put simply, [Reiner] [has gone] beyond tenacity to truculence.” (*In re Morse* (1995) 11 Cal.4th 184, 209.)

V. DISBARMENT IS THE APPROPRIATE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Rule 9.20 serves “the critical prophylactic function of ensuring that all concerned parties—including clients, cocounsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending—learn about an attorney’s discipline.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1096; *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467-468.) It also keeps this court and the Supreme Court apprised of the whereabouts of attorneys who are subject to our disciplinary authority. (*Lydon v. State Bar, supra*, 45 Cal. 3d at p. 1187.)

Reiner’s misconduct in both *Reiner I* and *Reiner II* involves disobedience of court orders. The Supreme Court has harshly criticized attorneys who willfully violate court orders, deeming it difficult to imagine conduct more unbecoming an attorney. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) “Disobedience of a court order, whether as a legal representative or as a party, demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney’s fitness to practice law and serve as an officer of the court.” (*In re Kelley* (1990) 52 Cal.3d 487, 495-496 citing *Maltaman v. State Bar, supra*, 43 Cal.3d at p. 951.) When an attorney disobeys a court order based on an unreasonable interpretation not made in good faith, public discipline is necessary to send a clear message to the bar, the courts, and the public that serious consequences will ensue.

In assessing the appropriate level of discipline for Reiner’s violation of rule 9.20, the rule itself calls for strong disciplinary measures—disbarment or suspension. (Cal. Rules of Court,

rule 9.20(d).⁴ Case law also supports significant discipline. Decisions by the Supreme Court reflect the view that disbarment is generally the appropriate sanction for a willful rule 9.20 violation. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Powers v. State Bar* (1988) 44 Cal.3d 337, 342; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188.)

Standard 1.1 states that one of the primary reasons for adoption of the standards was “to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” We see no reason to depart from what appears to be the most consistently imposed sanction in recent cases under rule 9.20, especially in this case where Reiner has no mitigating factors but two in aggravation.⁵ This is not a matter of Reiner lacking notice or knowledge of the court order. Rather, he acted willfully when, after receiving the order as well as several reminders, he elected not to comply with it. We find that Reiner has no justifiable basis for disobeying a final, binding, and enforceable order of the Supreme Court. Where an attorney evidences an indifference to the disciplinary system that is designed to protect the public, the courts, and the legal profession, we have not hesitated to recommend disbarment, and we do so here.

VI. RECOMMENDATION

We recommend that Martin Barnett Reiner be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

⁴ As further evidence that a rule 9.20 violation is a serious offense, rule 9.20(d) provides that it may be punished as a contempt or a crime. (Cal. Rules of Court, rule 9.20(d).)

⁵ The following cases all resulted in disbarment for willful violation of former rule 955: *Dahlman v. State Bar* (1990) 50 Cal.3d 1088, 1096 (attorney “evidenced an indifference to the disciplinary system that is designed to protect the public, the courts, and the legal profession”); *Bercovich v. State Bar, supra*, 50 Cal.3d at pp. 122, 133 (attorney’s “continuing disregard of his . . . obligations under Rule 955 . . . demonstrates an inexcusable indifference to his responsibilities as a member of the Bar” and “mere suspension” inadequate to protect public); and *Powers v. State Bar, supra*, 44 Cal.3d at p. 341 (attorney demonstrated complete indifference to professional obligations).

VII. RULE 9.20

We further recommend that Reiner 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.

VIII. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment

IX. ORDER OF INACTIVE ENROLLMENT

The order that Martin Barnett Reiner be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective August 17, 2015, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.