PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed January 17, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	No. 18-N-12334
	)	
EARLE ARTHUR PARTINGTON,	)	OPINION AND ORDER
	)	
State Bar No. 45731.	)	
	)	

THE COURT:[*]

This is Earle Arthur Partington's third discipline case. His disciplinary history began in 2010, when the United States Navy's Office of the Judge Advocate General (JAG) disciplined him. Partington unsuccessfully appealed. Based on the JAG order, the California Supreme Court ordered discipline in a reciprocal discipline matter and, later, in a probation violation matter. Partington was required to comply with California Rules of Court, rule 9.20,[1] as part of the second discipline order. In the present case, a hearing judge found that Partington failed to comply and recommended that he be disbarred. Partington seeks review.

Upon independently reviewing the record under rule 9.12, we affirm the hearing judge's culpability finding and disbarment recommendation. Partington admits he did not comply with rule 9.20 solely because he wished to appear before the State Bar Court to prove his innocence in the JAG proceeding, which he asserts was a sham. His disobedience of a Supreme Court order demonstrates a lack of insight into his misconduct and an unwillingness to conform to the ethical responsibilities required of attorneys. Disbarment is the appropriate discipline.

[*] Before Purcell, P. J., Honn, J., and McGill, J.

[1] All further reference to rules are to this source unless otherwise noted.

I. PROCEDURAL BACKGROUND

The Office of Chief Trial Counsel of the State Bar (OCTC) filed a Notice of Disciplinary Charges (NDC) on June 1, 2018, charging Partington with a violation of rule 9.20. On January 18, 2019, the parties filed a pretrial Stipulation as to Facts and Admission of Documents (Stipulation). The hearing judge held trial on January 25, 2019, and issued her decision on April 24, 2019**.**

II. FACTUAL BACKGROUND

Partington was admitted to practice law in California on January 15, 1970. He served for several years as a civil defense attorney before the United States Navy General Court-Martial Court in Hawaii. In 2010, a JAG discipline order was issued against him for filing an appellate brief that contained false and misleading statements. He was indefinitely suspended from practicing law in any proceeding before the Department of the Navy. He was also suspended for one year from appearing before the United States Court of Appeals for the Armed Forces.

In 2017, the California Supreme Court disciplined Partington in a reciprocal matter based on the JAG order (*Partington I*). He violated his probation terms in *Partington I*, and the Supreme Court issued a second discipline order (*Partington II*), that became effective January 12, 2018. It was properly served on Partington and required him to comply with subdivision (a) of rule 9.20[2] by February 11, 2018 and subdivision (c) of rule 9.20[3] no later than February 21.

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[2] Rule 9.20(a)(1) and (4) require an attorney to: (1) notify clients being represented in pending matters, along with any cocounsel, of a suspension and consequent disqualification to act as an attorney after the suspension's effective date; (2) notify clients to seek other legal advice if there is no cocounsel; (3) notify opposing counsel in pending litigation; (4) if no opposing counsel, notify adverse parties of the suspension and consequent disqualification to act as an attorney after the suspension's effective date; and (5) file a copy of the notice with the court, agency, or tribunal before which the litigation is pending.

[3] Rule 9.20(c) requires an attorney to file an affidavit with the Clerk of the State Bar Court showing compliance with the provisions of the order entered under this rule within the time prescribed in the order after the effective date of the suspension.

On January 9, 2018, the State Bar Office of Probation (Probation) sent Partington a letter reminding him that his rule 9.20 compliance declaration was due on February 21. On the same day, the letter was uploaded to his State Bar profile. Probation also emailed him that the reminder letter had been added to his member profile. On February 23, Probation mailed a letter to Partington pointing out that his compliance declaration had not been filed by the February 21, 2018 deadline. Partington's pretrial Stipulation indicates that he did not comply with rule 9.20 by the due dates and had not yet filed a rule 9.20 compliance declaration.

Partington testified that he violated the rule 9.20 order so that he could appear before the State Bar Court and challenge the JAG findings and order. He testified: "The only reason I didn't comply, your Honor, is I can only hope to litigate, and find a Court that will review what the Navy did to me, and agree, because it's so egregious on the record, that I am, in fact, innocent . . . ." He further testified: "The only way I can litigate this [JAG proceeding] is by not complying [with rule 9.20], and coming before this Court and saying something is seriously wrong here . . . ."

III. PARTINGTON IS CULPABLE OF VIOLATING RULE 9.20

The NDC alleged that Partington "failed to file a declaration of compliance with California Rules of Court, rule 9.20 in conformity with the requirements of rule 9.20(c) with the clerk of the State Bar Court by February 21, 2018, as required by Supreme Court order in [*Partington II*] . . . ." The hearing judge found him culpable. We agree.

An attorney is required to strictly comply with rule 9.20 obligations. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187 [discussing former rule 955].) The Supreme Court ordered Partington to comply. He made no effort to do so, as established by his Stipulation and trial testimony.[4]

[4] Partington's testimony that he did not have any clients in California during the relevant time does not relieve him of his duty to timely comply with rule 9.20. (*In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 201, fn. 4 [attorney with no clients must file affidavit as required by former rule 955].)

Partington argues that he was justified in violating the rule 9.20 order to obtain judicial review because the JAG proceeding was "a sham," he is "innocent," and he has been "denied his right to judicial review by this court as well as federal courts." We reject this justification and his contention that no court has addressed his due process claims as to the JAG proceeding.

From 2010 to 2015, Partington unsuccessfully appealed the JAG findings in the United States District Court for the District of Columbia, the Court of Appeals for the District of Columbia Circuit, and the United States Supreme Court. He may not disregard the California Supreme Court's rule 9.20 order because he disagrees with, and seeks to collaterally attack, the JAG order, which is final. (See *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"]; *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 358 [under Bus. & Prof. Code, § 6049.1, State Bar Court accepts reciprocal court findings of misconduct as conclusive].) Rule 9.20 performs the "critical prophylactic function" of notifying clients, counsel, adverse parties, and the courts about an attorney's discipline. (*Lydon v. State Bar*, *supra*, 45 Cal.3d at p. 1187.) Partington's failure to comply was willful—in fact, purposeful—and his rationale for disobeying the order was clearly improper.

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[5] requires OCTC to establish aggravating circumstances by clear and convincing evidence.[6] Standard 1.6 requires Partington to meet the same burden to prove mitigation.

[5] All references to standards are to this source.

[6] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

A. Aggravation

1. Two Prior Records of Discipline (Std. 1.5(a))

Partington I: In July 2015, OCTC charged Partington with professional misconduct in a foreign jurisdiction based on the underlying JAG proceeding. We found that his misconduct constituted moral turpitude, he failed to prove that the JAG proceedings lacked constitutional protection, and reciprocal discipline in California was warranted. In aggravation, Partington lacked insight. In mitigation, he was credited for 37 years of discipline-free practice. On April 12, 2017, the Supreme Court denied Partington's petition for review and imposed discipline including a one-year stayed suspension and two years' probation with conditions, including that he serve a 30-day suspension.[7]

Partington II: In June 2017, Partington failed to comply with certain probation conditions ordered in *Partington I*. He did not timely schedule an initial meeting with Probation and failed to submit his first quarterly report due July 10, 2017. In aggravation, he had a prior discipline record, demonstrated indifference, and lacked candor. No evidence in mitigation was found. On December 13, 2017, the Supreme Court ordered Partington's probation revoked and imposed discipline, including that he (1) serve a minimum one-year suspension continuing until he attended and passed State Bar Ethics School, (2) prove rehabilitation, fitness to practice, and present learning and ability in the general law, if suspended for two or more years (std. 1.2(c)(1)), and (3) comply with rule 9.20.[8]

We assign substantial weight to Partington's discipline history. (Std. 1.5(a) [prior discipline record may be aggravating].) He has continued to engage in professional misconduct despite receiving progressive discipline in two prior cases. (See *In the Matter of Sklar* (Review

[7] Supreme Court No. S239559 (State Bar Court No. 12-J-10617).

[8] Supreme Court No. S239559 (State Bar Court No. 17-PM-04226).

Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [prior discipline aggravating because it is indicative of recidivist attorney's inability to conform his conduct to ethical norms].)

2. Indifference (Lack of Insight) (Std. 1.5(k))

Partington has demonstrated indifference and a lack of insight into his misconduct. (Std. 1.5(k) [aggravation for indifference toward rectification or atonement for consequences of misconduct].) He does not acknowledge that his justification for failing to comply with rule 9.20 is inappropriate. Moreover, he has not stated his intention to comply with the rule. Instead, he argues that since he "is clearly innocent [of the JAG proceedings], how can he lack insight and feel remorse[?]" Partington's prior unsuccessful challenges to the JAG order should have enlightened him that this argument that he is "innocent" of the JAG charges has no legal basis since the JAG case has been fully litigated. (*In re Morse* (1995) 11 Cal.4th 184, 197–198 [repeated assertion of rejected arguments crossed line between zealous advocacy and recalcitrance].) The law does not require false penitence, but it does require that an attorney accept responsibility for acts and come to grips with culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Partington has not done this. We assign substantial weight to his indifference and lack of insight.

B. Mitigation

1. Cooperation with State Bar (Std. 1.6(e))

We assign moderate weight in mitigation for Partington's pretrial Stipulation. (Std. 1.6(e) [spontaneous candor and cooperation with State Bar is mitigating].) Though he did not admit to culpability, he stipulated to facts and admission of documents that, along with his trial testimony, established culpability. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation for admission of culpability and facts].)

2. No Mitigation for Extreme Emotional Difficulties or Physical and Mental Disabilities (Std. 1.6(d))

Partington has requested mitigation for extreme emotional difficulties, arguing that he suffered from depression at the time of his misconduct. Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties or physical or mental disabilities if (1) the attorney suffered from them at the time of the misconduct, (2) they are established by expert testimony as being directly responsible for the misconduct, and (3) they no longer pose a risk that the attorney will commit future misconduct. The hearing judge assigned no mitigation credit because Partington did not prove a nexus between his misconduct and his depression, and he failed to establish his fitness to practice law. We agree.

At trial, Partington proffered a letter from his psychologist, Dr. Reneau Kennedy, to prove that he suffered from depression during the time of his misconduct. According to the letter, Dr. Kennedy met Partington in 1997 and worked for him as an expert from 1998 to the fall of 2016. In December 2016, she began treating him as a patient with individual psychotherapy sessions two to three times per month. Dr. Kennedy diagnosed Partington as having a major depressive episode and sleep apnea.

The letter did not, however, establish that the depression was directly responsible for his failure to comply with rule 9.20. It was summary in nature and did not state a prognosis or conclude that Partington no longer poses a risk of future misconduct. Further, Partington testified he deliberately did not file a rule 9.20 declaration, which belies his contention that depression led him to disregard the Supreme Court's order and demonstrates he is not rehabilitated. Neither the expert's letter nor Partington's testimony clearly and convincingly establishes this mitigation standard. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [no mitigation credit where attorney failed to establish causal nexus between emotional difficulties and misconduct].)

3. No Additional Mitigation

Partington argues that the "conclusive evidence . . . of his innocence [in the JAG proceeding] should be treated as evidence in mitigation." The only evidence in support of this argument, however, is Partington's conclusion that he was innocent. Given the final JAG findings to the contrary, his argument is not persuasive. We assign no mitigation credit.

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 standards for attorneys. (Std. 1.1.) Rule 9.20 and the disciplinary standards guide our analysis. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92 [standards entitled to great weight]; *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11 [standards to be followed wherever possible].)

A rule 9.20 violation is cause for either disbarment or suspension.[9] Generally, a rule 9.20 violation is deemed a serious ethical breach for which disbarment is appropriate. (See *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) But 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.) Discipline less than disbarment has been imposed in instances where the attorney demonstrated unsuccessful attempts to file the rule 9.20 declaration, and there was significant mitigation or little aggravation.[10] These factors are not present in this case. To the contrary, Partington deliberately failed to comply with rule 9.20, and has demonstrated indifference. (*Dahlman v. State Bar* (1990) 50 Cal.3d 1088, 1096 [disbarment ordered where attorney ignored

[9] Rule 9.20(d) provides that a "suspended licensee'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."

[10] See *Shapiro v. State Bar* (1990) 51 Cal.3d 251; *Durbin v. State Bar* (1979) 23 Cal.3d 461; *In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.

efforts of State Bar and Supreme Court to obtain compliance with rule 9.20 and "evidenced an indifference to the disciplinary system"].)

Beyond our rule 9.20 analysis, we look to the standards. (*In re Silverton*, *supra*, 36 Cal.4th at p. 92 [standards entitled to great weight].) Standard 1.8(b) is applicable here. It provides, in relevant part, that disbarment is appropriate for an attorney with two or more prior records of discipline[11] if an actual suspension was ordered in any of the previous disciplinary matters or if the prior discipline coupled with the current record demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. This case meets both criteria: Partington's prior records of discipline resulted in actual suspensions (30 days in *Partington I* and at least one year in *Partington II*), and his prior and current misconduct establish his unwillingness or inability to conform to ethical norms.

Further, Partington's case does not fall within an exception to standard 1.8(b), which permits us to deviate from recommending disbarment where "the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct." Partington's past misconduct occurred before his current misconduct—he refused to comply with rule 9.20 after discipline was imposed in *Partington I* and *II*. Also, his overall aggravation (prior record and indifference) predominates over his mitigation (cooperation for entering into a stipulation). In light of these circumstances, we find no reason to depart from applying standard 1.8(b). (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].)

Partington knew about the rule 9.20 court order and elected not to comply with it even though it was a final, binding, and enforceable order of the California Supreme Court. "Disobedience of a court order . . . demonstrates a lapse of character and a disrespect for the legal

[11] *Partington II*, a probation revocation matter, qualifies as a prior discipline record. (*In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427, 434–435.)

system that directly relate to an attorney's fitness to practice law . . . . [Citation.]" (*In re Kelley* (1990) 52 Cal.3d 487, 495.) Partington has demonstrated through his disciplinary history and by his current misconduct that he is unwilling to fulfill the ethical responsibilities required of an attorney. (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 80 [disbarment where two prior disciplines and attorney was unable to conform conduct to ethical norms]; see *Barnum v. State Bar* (1990) 52 Cal.3d 104, 112–113 [disbarment where further probation unlikely to prevent future misconduct].) Accordingly, disbarment is necessary under rule 9.20 and standard 1.8(b) to protect the public, the courts, and the legal profession.

VI. RECOMMENDATION

We recommend that Earle Arthur Partington be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Partington 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.

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.

VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order by the hearing judge that Earle Arthur Partington, be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective April 23, 2018, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.