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SCAD-20-0000____

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

v.

EARLE A. PARTINGTON, [HI bar #1568], Respondent.

ORIGINAL PROCEEDING
(ODC # 19-0297)

**PETITION FOR RECIPROCAL ACTION PURSUANT TO RSCH RULE 2.15;
DECLARATION OF BRADLEY R. TAMM;
EXHIBITS 1 THROUGH 8; and,
CERTIFICATE OF SERVICE**

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PETITION FOR RECIPROCAL ACTION PURSUANT TO RSCH RULE 2.15

The Office of Disciplinary Counsel ("ODC"), hereby petitions this Court to initiate Reciprocal Action proceedings against Respondent EARLE A. PARTINGTON ("Partington") who has been the subject of disciplinary action as defined by RSCH Rule 2.15(a) in the State of California.

This Petition is brought pursuant to RSCH Rule 2.15 and is supported by the following Memorandum, Declaration of BRADLEY R. TAMM, and Exhibits 1 through 8, filed concurrently herewith.

MEMORANDUM

I. PARTINGTON, ADMITTED IN HAWAI'I, HAS BEEN SUBJECT TO FOREIGN DISCIPLINE

On May 11, 2020, Partington, in compliance with his duty under RSCH Rule 17(d)(1)(A) self-reported that he had been disbarred by the Supreme Court of the State of California, by delivery of an order from that court dated April 29, 2020.

Exhibit 1.

A review of the California records¹ reveals that on April 24, 2019 the State Bar Court of California entered its Decision and Order of Involuntary Inactive Enrollment, recommending that Partington "be disbarred from the practice of law." Exhibit 2. That recommendation was appealed to the California Bar Court's Review Department, that affirmed the lower court's findings on January 17, 2020. Exhibit 3. The decision of the Review Department was transmitted to the California Supreme Court, and the order of disbarment was entered on April 29, 2020. Exhibit 4 (certified copy). That order refers to, but does not specify an "effective date." *Id.* However, California Rules of Court, Rule 9.18(a) (Effective date of disciplinary orders and decisions) provides that supreme court orders "become final 30 days after filing." Exhibit 5.

Therefore, Partington's disbarment from the practice of law in the State of California is final; and proceedings in Hawai'i seeking reciprocal discipline pursuant to RSCH Rule 2.15 are ripe.

II. PARTINGTON'S CONDUCT IN CALIFORNIA WARRANTS SUBSTANTIALLY EQUIVALENT DISCIPLINE IN HAWAII

Under RSCH Rule 2.15, when an attorney has been disciplined in another jurisdiction, ODC shall obtain and file with this

¹ The State Bar of California provides internet access to the docket of its proceedings (search case #18-N-12334): <http://www.statebarcourt.ca.gov/Public-Records-Information>

Court a certified copy of the order imposing discipline. RSCH Rule 2.15(a)(2) and (b). This Court shall then notify the attorney of the order and that the attorney has 30 days to make any claim against imposing an equivalent discipline in Hawai'i. RSCH Rule 2.15(b).

Under this Rule, equivalent discipline should be imposed unless the attorney, the ODC, or the face of the other order itself makes clear that equivalent discipline is unwarranted. RSCH Rule 2.15 enumerates only a few, limited reasons why equivalent discipline may not be warranted. *See Id.* at (c). Apart from those limited grounds, discipline in another jurisdiction "shall establish conclusively the factual basis for the same or substantially equivalent discipline" in Hawai'i. *Id.* at (d).

Here, Partington has been disbarred in California and a certified copy of the order of disbarment is included in this filing. Exhibit 4. The order of disbarment provides the additional conditions that Partington pay the costs of the California disciplinary process and that he comply with customary provisions of that jurisdiction's rules pertaining to disbarments.² *Id.*

² The order references California Rules of Court, Rule 9.20. Exhibit 6. That rule appears similar in many respects to RSCH Rule 2.16.

The underlying misconduct leading to disbarment arises from Partington's intentional violation of the California Supreme Court's 2017 reciprocal suspension³ order which required that he comply with that court's Rule 9.20 notice certification. Exhibit 3 at 2. The State Bar Court noted that Partington "claimed essentially that he purposely failed to file his rule 9.20 compliance declaration in order to trigger disciplinary proceedings and a trial, during which could argue his due process claims against the underlying disciplinary matter in the United States Department of the Navy, Office of the Judge Advocate General (JAG) case." Exhibit 2 at 4. As detailed in the State Bar Court order, Partington had exhaustively challenged the JAG case through the federal courts and was twice denied certiorari by the U.S. Supreme Court. Exhibit 2 at 5 (footnote 6). Thus, the California Bar Court and Review department found that his failure to comply with the California Supreme Court's order "to continue his repeated efforts to litigate his due process claims" against the JAG proceedings were willful. Exhibit 2 at 8-9; Exhibit 3 at 1. Apparently,

³ Partington received a 1-year suspension from the practice of law before the U.S. Navy-Marine Corps Court of Criminal Appeals, leading to the California reciprocal proceeding. He also received reciprocal suspensions in the District of Columbia, Oregon and Hawai'i. SCAD-11-0000162. Partington remains in suspension status in Oregon (Exhibit 7) and the District of Columbia (Exhibit 8).

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 "

Exhibit 3 at 3.

The Review Department then concluded that Partington's "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." *Id.* The Review Department went on to hold that Partington "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." *Id.*, at 4. It then concluded that "Partington's failure to comply was willful - in fact, purposeful - and his rationale for disobeying the order was clearly improper." *Id.*

As the California rule 9.20 (Exhibit 6) is the functional equivalent of Hawai'i's RSCH Rule 2.16(a)-(b) and (d), the question presented is what would be substantially equivalent discipline in Hawai'i. That is, equivalent discipline where a lawyer willfully, intentionally, and purposefully refused to obey this Supreme Court and comply with RSCH Rule 2.16 so that

he could continue fruitless and legally suspect collateral attacks on a final federal judgment?

This Hawai'i Supreme Court has long maintained "[i]t is our solemn duty to regulate the practice of law in this state and to ensure that the integrity of the profession is maintained by disciplining attorneys who indulge in practices inconsistent with the high ethical standards demanded of all members of the bar." *ODC v. Lau*, 79 Hawai'i 201, 207 (1995), as amended (Sept. 14, 1995). In *Lau*, this court also noted that it has "prohibited lawyers, *inter alia*, from 'knowingly disobey[ing] an obligation under the rules of a tribunal.'" *Id.* (citations omitted). In *Lau*, the respondent knowingly violated the terms of a prior disciplinary order and this court noted that "such violations and acts of misconduct harm the legal system, the profession, and the public by encouraging disrespect for the law and the courts and reinforce a perception of privilege and arrogance." *Id.*

ODC has not found any Hawai'i cases where a suspended attorney has willfully, purposefully and intentionally refused to comply with RSCH Rule 2.16 by refusing to file the affidavit of compliance. At best, in one case, any attorney stipulated to failing to comply with RSCH Rule 2.16, but "did not act with a dishonest or selfish motive." *Lau*, *supra* at 203. In another case, the lawyer who failed to file the affidavit "was suffering

from a severe reactive depression.” *ODC v. Gould*, 119 Hawai‘i 265, 269 (2008). Finally, in one case, a failure to file a 2.16 affidavit was included with other violations leading to a 5-year suspension; but there was no indication as to whether the failure was willful or intentional. *ODC v. Kea*, 2013 WL 3364094 (SCAD-13-0000135, July 2, 2013).

Given the paucity of relevant case law, ODC looks to the ABA Standards for Imposing Lawyer Sanctions (ABA Stds). *ODC v. Au*, 107 Hawai‘i 327, 341 (2005) (“The ABA Standards are a useful reference when determining disciplinary sanctions.”); *Lau*, *supra* at 206. The ABA Standards find that the mental state of the lawyer is a critical factor, and that “[t]he most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result.” ABA Stds, Theoretical Framework at 7 (see also Definitions: “Intent” is the conscious objective or purpose to accomplish the particular result.”)

Here, the California Review Department found that “Partington’s failure to comply was willful-in fact, purposeful.” Exhibit 3 at 4. Clearly, Partington’s conduct was intentional. Next in the analysis, the ABA standards require consideration of the duty violated, the potential or actual injury caused and a balancing the aggravating or mitigating factors. ABA Stds., §3.0.

In Hawai'i, it is misconduct for a lawyer to "knowingly disobey an obligation under the rules of a tribunal." HRPC Rule 3.4(e). Partington violated a rule of the California Supreme Court, that is the functional equivalent of RSCH Rule 2.16. California explained the importance of compliance with its rule:

... Rule 9.20 serves "the critical prophylactic function of ensuring that all concerned parties—including clients, co[-]counsel, 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.) It also keeps the Supreme Court apprised of the whereabouts of attorneys who are subject to its disciplinary authority. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) By failing to file his rule 9.20 compliance affidavit, the court had no way of knowing whether Respondent had fulfilled a crucial discipline obligation.

Exhibit 2 at 12. ODC contends that HRPC Rule 2.16(a)-(b) and (d) serves similar critical purposes in Hawai'i. As the California State Bar Court concluded: "When an attorney evidences an indifference to the disciplinary system that is designed to protect the public, the courts, and the legal profession, disbarment is the appropriate sanction." *Id.*⁴

Furthermore, that Partington purposefully refused to comply with the California court's order so that he could collaterally attack a final order of a federal court of appeals, twice denied

⁴ Citing multiple published cases resulting in disbarment for willful failure to comply with the predecessor to Rule 9.20.

certiorari, presents a serious challenge to the rule of law. ODC posits that the sanctions imposed in California are within the range that would be imposed in Hawai'i, had the misconduct happened here. Significantly, there are no clear grounds under Rule 2.15(c) for imposing a different discipline here.

IV. CONCLUSION

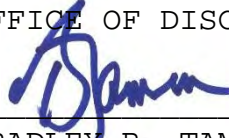
Based upon the California order of disbarment, and for the reasons set forth above, Petitioner ODC requests that this Court:

A. "forthwith issue a notice directed to the Respondent Earle A. Partington containing: (1) a copy of the order from the California Supreme Court; and (2) an order directing that Respondent inform the supreme court, within 30 days from service of the notice, of any claim by Respondent that an equivalent or substantially equivalent order in this state would be unwarranted and the reasons therefor;" (RSCH Rule 2.15(b)) and,

B. Absent clear justification under RSCH Rule 2.15(c) as to why equivalent discipline should *not* be imposed, disbar Respondent Partington from the practice of law in Hawaii, and direct that Respondent's reinstatement in Hawai'i be conditioned upon (1) payment of all costs of this proceeding, (2) compliance with the conditions imposed by the Supreme Court of California, and (3) Respondent's reinstatement in California.

DATED: May 30, 2020

OFFICE OF DISCIPLINARY COUNSEL



BRADLEY R. TAMM
Chief Disciplinary Counsel

**THE FILING OF THIS PETITION WITH
THE SUPREME COURT OF HAWAI'I IS
HEREBY APPROVED:**



HON. CLIFFORD L. NAKEA (RET).
CHAIRPERSON, DISCIPLINARY BOARD
OF THE HAWAI'I SUPREME COURT

ODC v. Partington, SCAD-20-0000___ (ODC # 19-0297)
PETITION FOR RECIPROCAL ACTION PURSUANT TO RSCH RULE 2.15;

SCAD-20-0000____

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

v.

EARLE A. PARTINGTON, [HI bar #1568], Respondent.

ORIGINAL PROCEEDING
(ODC # 19-0297)

DECLARATION OF BRADLEY R. TAMM

1. Declarant is Chief Disciplinary Counsel for the Office of Disciplinary Counsel, and has personal knowledge of the matters set forth herein.

2. Attached as Exhibit 1 is a true and correct copy of a document hand delivered by Respondent PARTINGTON to Declarant's office.

3. Attached as Exhibit 2 is a true and correct copy of the State Bar Court of California's Decision and Order of Involuntary Inactive Enrollment filed on April 24, 2019, obtained from the California disciplinary authorities.

Declarant has annotated the Exhibit with yellow highlights of certain relevant portions, without altering the substance.

4. Attached as Exhibit 3 is a true and correct copy of the California State Bar Court Review Department's Opinion and Order filed January 17, 2020, obtained from the California

disciplinary authorities. Declarant has annotated the Exhibit with yellow highlights of certain relevant portions, without altering the substance.

5. Attached as Exhibit 4 is a true and correct certified copy of the California Supreme Court's order of disbarment filed on April 29, 2020, obtained from the California disciplinary authorities.

6. Attached as Exhibit 5 is a true and correct copy of the California Rules of Court, Rule 9.18 obtained from <https://www.courts.ca.gov/cms/rules>.


7. Attached as Exhibit 5 is a true and correct copy of the California Rules of Court, Rule 9.20 obtained from <https://www.courts.ca.gov/cms/rules>.

8. Attached as Exhibit 7 is a true and correct copy of a print out from the online Membership Directory of the Oregon State Bar, obtained by Declarant on May 30, 2020 from https://www.osbar.org/members/membersearch_start.asp?e=1

9. Attached as Exhibit 8 is a true and correct copy of a print out from the online Membership Directory of the District of Columbia Bar, obtained by Declarant on May 30, 2020 from <https://join.dcbar.org/eweb/DynamicPage.aspx?Site=dcbar&WebCode=FindMember>

10. Declarant makes these representations under penalty of law.

DATED: May 30, 2020



BRADLEY R. TAMM

APR 29 2020

EXHIBIT 1

(State Bar Court No. 18-N-12334)

Jorge Navarrete Clerk

S260902

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re EARLE ARTHUR PARTINGTON on Discipline

The court orders that Earle Arthur Partington (Respondent), State Bar Number 45731, is disbarred from the practice of law in California and that Respondent's name is stricken from the roll of attorneys.

Respondent must comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.

Costs are 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.

CANTIL-SAKAUYE

Chief Justice

<input type="checkbox"/> DISCIPLINARY BOARD
<input checked="" type="checkbox"/> OFFICE OF DISCIPLINARY COUNSEL
<input checked="" type="checkbox"/> RECEIVED, <input type="checkbox"/> FILED, <input type="checkbox"/> LODGED
DATE: <u>5/11/20</u> , TIME: <u>2:08p.</u> m.
CASE NO.: <u>19-0297</u>
DKT. NO.: _____
CLERK: <u>[Signature]</u>

Hand-Delivered

EXHIBIT 2

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

FILED

APR 24 2019

P.B.

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case No. 18-N-12334-CV
)	
EARLE ARTHUR PARTINGTON,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
State Bar No. 45731.)	ENROLLMENT
_____)	

Introduction¹

In this disciplinary matter, respondent Earle Arthur Partington (Respondent) is charged with one count of willfully violating California Rules of Court, rule 9.20.² The Office of Chief Trial Counsel of the State Bar of California (OCTC) has the burden of proving these charges by clear and convincing evidence.³ Respondent has stipulated that he did not file a rule 9.20 compliance declaration with the State Bar Court by February 21, 2018, or thereafter. Based on the stipulated facts and the evidence admitted at trial, this court finds, by clear and convincing evidence, that Respondent is culpable as charged. In light of the nature of Respondent's culpability, the serious aggravating circumstances, and the lack of any mitigating factors, the court recommends that Respondent be disbarred from the practice of law.

¹ Unless otherwise indicated, all statutory references are to the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to the California Rules of Court.

³ 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.)

Significant Procedural History

OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against Respondent on June 1, 2018. On July 2, 2018, Respondent filed his Answer. On August 20, 2018, Respondent filed a verification for his Answer.

On August 20, 2018, Respondent also filed a motion to continue the hearing date in this matter, as his one witness was not available to testify. On that same date, Respondent also filed a motion seeking an order that the entire record in State Bar Court case No. 12-J-10617 be made part of the record on the merits in this present matter. OCTC filed oppositions to both of Respondent's motions on August 24, 2018.

On September 6, 2018, the court filed an order granting Respondent's motion to continue the trial date. Trial was thereafter set for October 23, 2018.

The court filed an order on September 18, 2018, denying Respondent's request that the entire record in State Bar Court case No. 12-J-10167 be made part of the record in this proceeding.

Thereafter, Respondent's oral motion made at a status conference on October 1, 2018, to continue the trial was granted, and trial was set for January 25, 2019.

On January 18, 2019, the parties filed a Stipulation as to Facts and Admission of Documents.

On January 25, 2019, a one-day trial was held. At the conclusion of trial, the court submitted this case for decision.

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in California on January 15, 1970, and has been a member of the State Bar of California at all times since that date.

Facts

On December 13, 2017, the Supreme Court of California issued an Order (9.20 Order) in Supreme Court case No. S239559 (State Bar Court No. 17-PM-04226), which required that, among other things, Respondent comply with California Rules of Court, rule 9.20, by performing the acts specified in subdivision (a) of the rule within 30 days of the effective date of the 9.20 Order and by filing a declaration with the Clerk of the State Bar Court as required under subdivision (c) of the rule within 40 days of the effective date of the rule 9.20 Order. The 9.20 Order warned Respondent that his failure to do so could result in his suspension or disbarment. The rule 9.20 Order became effective on January 12, 2018, 30 days after it was filed.

Pursuant to the 9.20 Order, Respondent was to comply with subdivision (a) of rule 9.20 by no later than February 11, 2018, and Respondent was to comply with subdivision (c) of rule 9.20 by no later than February 21, 2018.

On January 9, 2018, the State Bar's Office of Probation wrote a letter to Respondent reminding him that a rule 9.20 compliance declaration had to be filed with State Bar Court by February 21, 2018. Along with the letter were, among other things, a copy of California Rules of Court, Rule 9.20, a copy of the State Bar rule of procedure regarding the filing and service of a rule 9.20 compliance declaration, and a blank rule 9.20 compliance declaration form. The letter was uploaded to Respondent's State Bar profile page on that same day. On January 9, 2018, Respondent also received an email from the Office of Probation informing him that the reminder letter had been uploaded to his State Bar member profile.

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Respondent did not comply with subdivision (a) of rule 9.20 by February 11, 2018.⁴

Respondent did not file a rule 9.20 compliance declaration with the State Bar Court by February 21, 2018, or thereafter.

On February 23, 2018, the Office of Probation mailed a letter to Respondent reminding him that a rule 9.20 compliance declaration had not been filed and had been due by February 21, 2018.

As of January 18, 2019, Respondent had not filed any rule 9.20 compliance declaration or affidavit.

At trial, Respondent claimed essentially that he purposely failed to file his rule 9.20 compliance declaration in order to trigger disciplinary proceedings and a trial, during which he could argue his due process claims against the underlying disciplinary matter in the United States Department of the Navy, Office of the Judge Advocate General (JAG) case.⁵ Respondent

⁴ However, Respondent testified that he was inactive and did not have any clients. If such was the case at the time of the issuance of the Supreme Court order imposing the rule 9.20 requirement, there would have been no clients or others to notify or to return papers and property to, and Respondent should not have had any unearned fees to refund.

⁵ Respondent's first State Bar disciplinary matter was a reciprocal discipline proceeding based on Respondent's discipline in May 2010 by the United States Department of the Navy's Office of the Judge Advocate General for filing an appellate brief that contained misleading and false statements. Respondent was suspended indefinitely "from practicing law in any proceedings conducted under the supervision and cognizance of the Department of the Navy." (*In the Matter of Partington* (Dec. 7, 2016, 12-J-10617) [nonpub. opn.].) Based on the JAG discipline order, Respondent was also suspended from appearing before the United States Court of Appeals for the Armed Forces for one year. Based on the findings in the JAG proceeding, Respondent was also suspended from practicing for 30 days by the Supreme Court of Hawaii. Furthermore, based on the Hawaii discipline, the District of Columbia Court of Appeals suspended him for 30 days and, as a condition of reinstatement, Respondent is subject to a showing of fitness (for example, he has to demonstrate compliance with conditions for reinstatement in Hawaii) and the Supreme Court of Oregon suspended him for 60 days.

testified at the trial in this present matter, “if I had not violated probation, I would not have had any court left to go to.”⁶

Conclusions

Count One - (Rule 9.20 [Duties of Disbarred, Resigned, or Suspended Attorneys])

OCTC charged Respondent with willfully violating rule 9.20 by failing to file a rule 9.20 compliance declaration in conformity with subpart (c) of that rule by February 21, 2018, as required by Supreme Court order No. S239559.

⁶ In an effort to obtain relief from the Navy JAG’s decision, on November 16, 2010, Respondent filed a complaint for damages, declaratory judgment, and injunctive relief in the United States District Court for the District of Columbia (*Partington v. Houck, et al*, case No. 1:10-cv-01962-FJS). The District Court entered judgment against Respondent on January 10, 2012.

Respondent thereafter filed an appeal of the District Court’s judgment on February 6, 2012, in the United States Court of Appeals for the District of Columbia Circuit, case No. 12-5038. The Court of Appeals entered judgment on July 23, 2013, affirming the District Court’s opinion.

Respondent filed a petition for writ of mandamus on September 30, 2013, in the United States Supreme Court, case No. 13-414. The United States Supreme Court denied Respondent’s petition on December 2, 2013.

Respondent filed a motion on March 10, 2014, in the United States District Court for the District of Columbia, to declare the Court of Appeals’ judgment void for lack of subject matter jurisdiction. The District Court on March 14, 2014, issued an order denying Respondent’s motion.

Thereafter, on March 24, 2014, Respondent filed an appeal of the District Court’s order in the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals granted summary affirmance of the District Court’s order on October 3, 2014.

The Court of Appeals on December 8, 2014, denied Respondent’s request for rehearing. Respondent filed a petition for writ of certiorari with the United States Supreme Court, case No. 14-1022, on February 18, 2015. Finally, on April 20, 2015, the United States Supreme Court denied Respondent’s petition.

Despite this lengthy history of litigation, Respondent contends that his due process claims were never addressed by any court. In its Opinion affirming the hearing judge’s decision with respect to culpability, the State Bar Court Review Department held that Respondent failed to establish that due process was violated in the JAG proceedings. Nonetheless, Respondent testified in the instant trial that he purposely violated his probation condition (though the rule 9.20 requirement was not a probation condition, it was clear to this court that Respondent was referring in his testimony to the rule 9.20 requirement) so that he could find a court that would hear his due process claim so that he could get back to the United States Supreme Court on that issue. He continues to dispute culpability as charged by the Navy and insists that there must be some remedy to allow him to prove his innocence to the underlying charges.

Rule 9.20(c) provides, in pertinent part, 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 entered under this rule.”

On December 13, 2017, Respondent was ordered to comply with rule 9.20(c) within 40 days after the effective date of discipline (to wit, by February 21, 2018). Respondent received the Supreme Court order but did not file his rule 9.20 compliance affidavit, even as of the day of trial in this case. Respondent orally stipulated during his testimony at trial in this matter that by failing to file a rule 9.20 affidavit he failed to comply with Supreme Court Order No. S229559 (State Bar Court No. 17-PM-04226), in willful violation of California Rules of Court, rule 9.20.

The court finds that clear and convincing evidence exists establishing that Respondent is culpable of willfully violating rule 9.20.

Aggravation⁷

OCTC must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following two aggravating circumstances.

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

Respondent has two prior records of discipline. On April 12, 2017, the Supreme Court filed an Order in case No. S239559 (State Bar Court No. 12-J-10617) suspending Respondent from practicing law in California for one year; staying execution of that suspension; and placing Respondent on probation for two years subject to certain conditions, including that Respondent be suspended from practicing law for the first 30 days of his probation.

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⁷ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Respondent's first prior disciplinary matter was a reciprocal discipline proceeding based on Respondent's discipline by the United States Department of the Navy's Office of the Judge Advocate General (JAG) for filing an appellate brief that contained misleading and false statements.⁸ As set forth, *supra*, in footnote 5, this discipline also led to Respondent being disciplined by the United States Court of Appeals for the Armed Forces, the Supreme Court of Hawaii, the District of Columbia Court of Appeals, and the Supreme Court of Oregon.

In its opinion, the Review Department of the State Bar Court affirmed the finding of the hearing department judge that the misconduct established in the JAG proceeding warranted reciprocal discipline in California,⁹ and that Respondent had failed to establish that due process was violated in the JAG proceedings. In aggravation, the review department found Respondent lacked insight into his misconduct. Respondent was given moderate credit in mitigation for his 37 years of practice without prior discipline.

On December 13, 2017, the Supreme Court filed an order in case No. S239559 (State Bar Court No. 17-PM-04226) revoking Respondent's earlier probation and suspending Respondent for a minimum of one year and until he provides satisfactory proof to the Office of Probation of attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session.¹⁰ Respondent was also ordered to comply with California Rules of Court, rule 9.20.

The hearing department found that Respondent failed to contact his probation deputy and

⁸ Respondent was found to have violated rule 3.1 (Meritorious Claims and Contentions) and 3.3 (Candor and Obligations Toward the Tribunal) of JAG Instruction 5803.1C and was suspended "from practicing law in any proceedings conducted under the supervision and cognizance of the Department of the Navy." (*In the Matter of Partington* (Dec. 7, 2016, 12-J-10617) [nonpub. opn.])

⁹ The review department found that Respondent willfully violated section 6068, subdivision (d), and his conduct constituted moral turpitude.

¹⁰ Respondent was also required to provide proof to the court of his rehabilitation, fitness to practice, and present learning and ability in the general law if he remains suspended for two years or more as a result of not satisfying the Ethics School condition.

schedule his required meeting with the probation deputy; failed to meet with his probation deputy; and failed to submit his quarterly report which was due July 10, 2017. The court therefore found that Respondent did not comply with his probation conditions as ordered by the Supreme Court. In aggravation, Respondent had a prior record of discipline; demonstrated indifference toward rectification of or atonement for the consequences of his misconduct; and failed to participate in the disciplinary proceeding. No evidence in mitigation was found.

Indifference Toward Rectification/Atonement (Std. 1.5(k).)

Respondent continues to demonstrate little insight or understanding of his own misconduct underlying the JAG proceeding or the significance of his failure to comply with rule 9.20. Even after repeated reminders by the Office of Probation, Respondent had still not filed a rule 9.20 affidavit even by the time of trial. Such inaction demonstrates indifference to rectification or atonement for the consequences of his misconduct.

Furthermore, at trial in this matter, Respondent claimed essentially that he purposely failed to file his rule 9.20 compliance declaration in order to trigger disciplinary proceedings and a trial, during which he could argue his due process claims against the underlying disciplinary matter in the United States Department of the Navy, Office of the Judge Advocate General (JAG) case. These claims have already been considered and rejected by this court. In its Opinion on review, the review department of this court agreed with the hearing judge's finding that Respondent's "assertion that the [United States Navy-Marine Corps Court of Criminal Appeals] referred him for discipline to cover up the Navy prosecutors' 'blunders' in the criminal case below lacks credibility." (*In the Matter of Partington* (Dec. 7, 2016, 12-J-10617) [nonpub. opn.])

Nevertheless, Respondent failed to comply with rule 9.20 in order to continue his repeated efforts to litigate his due process claims. Respondent continues to deny personal

responsibility for the underlying misconduct found in the JAG proceeding and continually shifts blame to others. During the trial in this matter, he stated, “I am about to be disbarred for something I didn’t do.” Respondent’s continued lack of insight and understanding regarding his misconduct as found in the JAG proceeding and his rationale for failing to comply with rule 9.20 further demonstrates his lack of insight and indifference toward rectification or atonement and therefore warrants significant consideration in aggravation.

Mitigation

It is Respondent’s burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds Respondent has not established any mitigating factors.

No Mitigation for Extreme Emotional/Physical/Mental Disabilities (Std. 1.6(d).)

Respondent is not entitled to any mitigation for extreme emotional difficulties based on physical/mental disabilities. Respondent provided a letter from Dr. R. K., a clinical and forensic psychologist.¹¹ Respondent had hired Dr. K. as an expert in some of his cases when he was practicing law in the Navy. Respondent subsequently hired Dr. K. for his own therapy on December 19, 2016. According to her letter, Dr. K. has seen Respondent two to three times per month for a one-hour session. She has diagnosed him with a mental health issue and other medical conditions. She also advised that Respondent has another medical problem which he treats with medication. Dr. K.’s report does not establish a nexus between Respondent’s misconduct and his physical/mental disabilities and does not opine regarding the status of his present mental health and whether he is fit to practice law given his symptoms and diagnosis. Accordingly, the court does not afford any mitigation for Respondent’s physical/mental disabilities. (*In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380, 386

¹¹ To preserve confidentiality, the court will refer to the psychologist by her initials.

[No mitigation for mental health disorder as it was not established disorder was directly responsible for misconduct; attorney continued to struggle with substance abuse problem; and no evidence established that difficulties were resolved or attorney no longer at risk of committing wrongdoing].)

Discussion

The State Bar argues that the appropriate level of discipline for Respondent's misconduct is disbarment. Respondent maintains that his misconduct warrants a six-month period of actual suspension. **The court finds that Respondent's misconduct warrants disbarment, as he has shown that he is unwilling to comply with, and has totally disregarded, the requirements of his discipline and his professional obligations.**

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.) The discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].)

Due to Respondent's prior record of discipline, the court looks to standard 1.8(b) for guidance. Standard 1.8(b) states, in pertinent part, that 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, disbarment is appropriate when an attorney has two prior records of discipline and: (1) has been previously ordered to serve a period of actual suspension; or (2) the prior disciplinary matters coupled with the current record demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities.

Although the standards are not always rigidly applied (*In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 534 [standards are not to be followed in a talismanic manner]), Respondent has failed to provide any reason to deviate from them. (See *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Furthermore, a rule 9.20 violation is deemed a serious ethical breach for which disbarment is generally considered the appropriate discipline. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)¹² However, 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 rule 9.20 violation cases where the attorney has demonstrated good faith, significant mitigation, or little or no aggravation was discussed. (See *Shapiro v. State Bar* (1990) 51 Cal.3d 251; *Durbin v. State Bar* (1979) 23 Cal.3d 461; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman, supra*, 2 Cal. State Bar Ct. Rptr. 527.) Such is not the case in this matter. Respondent has not demonstrated good faith; there are no mitigating circumstances; and there are significant aggravating circumstances.

In this case, disbarment is required. Respondent's aggravating circumstances consisting of two prior discipline records and lack of insight/indifference are entitled to great weight. Each of Respondent's prior disciplinary matters involved a period of actual suspension, and Respondent's prior disciplinary matters (reciprocal discipline in this state for misconduct found in JAG proceeding for submitting an appellate brief containing misleading and false statements to the United States Navy-Marine Corps Court of Criminal Appeals and violating probation terms arising from his discipline in the reciprocal discipline case), when combined with the

¹² Rule 9.20(d) provides: "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."

record in this matter (which demonstrates that Respondent willfully violated rule 9.20), demonstrate that Respondent is unwilling or unable to conform to his ethical responsibilities. Furthermore, not only is there no compelling mitigation in this matter – there is no mitigation at all.

Moreover, even though Respondent received numerous reminders, and took this case to trial, as of trial he had not yet filed a rule 9.20 compliance affidavit. 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.) It also keeps the Supreme Court apprised of the whereabouts of attorneys who are subject to its disciplinary authority. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) By failing to file his rule 9.20 compliance affidavit, the court had no way of knowing whether Respondent had fulfilled a crucial discipline obligation.

Furthermore, Respondent’s failure to comply with rule 9.20 was not a matter of Respondent lacking notice or knowledge of the Supreme Court order. Rather, he acted willfully when, after receiving the order as well as numerous reminders, he elected not to comply with it. Respondent has no justifiable basis for disobeying a final, binding, and enforceable order of the Supreme Court. When an attorney evidences an indifference to the disciplinary system that is designed to protect the public, the courts, and the legal profession, disbarment is the appropriate sanction.¹³

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¹³ The following cases all resulted in disbarment for willful violation of former rule 955 (the predecessor to rule 9.20): *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 p. 133 [“mere suspension” was inadequate to protect public]; and *Powers v. State Bar* (1988) 44 Cal.3d 337, 341 [attorney demonstrated complete indifference to professional obligations].

Therefore, having considered the nature and extent of the misconduct, the significant aggravating circumstances, and the lack of mitigating circumstances, as well as the case law, the court finds that Respondent's disbarment is necessary to protect the public, the courts, and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

Recommendations

Discipline - Disbarment

It is recommended that Earle Arthur Partington, State Bar Number 45731, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of 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 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.¹⁴ Failure to do so may result in disbarment or suspension.

Costs

It is further 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. Unless the time for


¹⁴ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar, supra*, 44 Cal.3d at p. 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, 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).)

payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: April 23, 2019



CYNTHIA VALENZUELA
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 Court Specialist 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 April 24, 2019, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

EARLE ARTHUR PARTINGTON
1001 BISHOP ST STE 1330
HONOLULU, HI 96813

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

KRISTINA A. B. RAMOS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 24, 2019.



Paul Barona
Court Specialist
State Bar Court

EXHIBIT 3

PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

FILED

JAN 17 2020

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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

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 9.20² by February 11, 2018 and subdivision (c) of rule 9.20³ no later than February 21.

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 Misconduct⁵ 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 Silvertown, 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 discipline¹¹ 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.

CERTIFICATE OF SERVICE

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

I am a Court Specialist 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 January 17, 2020, I deposited a true copy of the following document(s):

OPINION AND ORDER FILED JANUARY 17, 2020

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

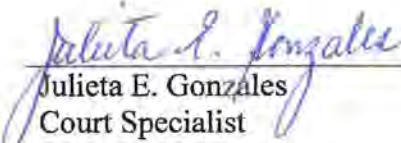
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EARLE ARTHUR PARTINGTON
1001 BISHOP ST STE 1330
HONOLULU, HI 96813

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

Alex J. Hackert, Office of Chief Trial Counsel, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 17, 2020.



Julieta E. Gonzales
Court Specialist
State Bar Court

EXHIBIT 4

SUPREME COURT
FILED

APR 29 2020

(State Bar Court No. 18-N-12334)

Jorge Navarrete Clerk

S260902

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re EARLE ARTHUR PARTINGTON on Discipline

The court orders that Earle Arthur Partington (Respondent), State Bar Number 45731, is disbarred from the practice of law in California and that Respondent's name is stricken from the roll of attorneys.

Respondent must comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.

Costs are 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.

CANTIL-SAKAUYE

Chief Justice

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

29 day of April 2020
Month

By: Deputy



EXHIBIT 5

2020 California Rules of Court

Rule 9.18. Effective date of disciplinary orders and decisions

(a) Effective date of Supreme Court orders

Unless otherwise ordered, all orders of the Supreme Court imposing discipline or opinions deciding causes involving the State Bar become final 30 days after filing. The Supreme Court may grant a rehearing at any time before the decision or order becomes final. Petitions for rehearing must be served and filed within 15 days after the date the decision or order was filed. Unless otherwise ordered, when petitions for review under rules 9.13(c) and 9.14(a)(3) are acted upon summarily, the orders of the Supreme Court are final forthwith and do not have law-of-the-case effect in subsequent proceedings in the Supreme Court.

(Subd (a) amended effective January 1, 2019; adopted effective March 15, 1991; previously adopted by the Supreme Court effective December 1, 1990; previously amended effective January 1, 2007.)

(b) Effect of State Bar Court orders when no review sought

Unless otherwise ordered, if no petition for review is filed within the time allowed by rule 9.13(a), (b), and (d), or rule 9.14(a)(1) and (2), as to a recommendation of the State Bar Court for the disbarment, suspension, or reinstatement of a licensee, the vacation of a stay, or modification of the duration or conditions of a probation, the recommendation of the State Bar Court will be filed as an order of the Supreme Court following the expiration of the time for filing a timely petition. The Clerk of the Supreme Court will mail notice of this effect to the licensee and his or her attorney of record, if any, at their respective addresses under Business and Professions Code section 6002.1 and to the State Bar.

(Subd (b) amended effective January 1, 2019; adopted effective March 15, 1991; previously adopted by the Supreme Court effective December 1, 1990; previously amended effective January 1, 2007.)

(c) Effect of State Bar Court orders in moral character proceedings when no review sought

Unless otherwise ordered, if no petition for review is filed within the time allowed by rule 9.15(a), as to a recommendation of the State Bar Court in moral character proceedings, the recommendation of the State Bar Court will be filed as an order of the Supreme Court following the expiration of the time for filing a timely petition. The Clerk of the Supreme Court will mail notice of this effect to the applicant's last address provided to the State Bar or to the applicant's attorney of record, if any, and to the State Bar.

(Subd (c) amended effective January 1, 2007.)

Rule 9.18 amended effective January 1, 2019; adopted as rule 953 effective March 15, 1991; previously amended effective February 1, 1996; previously amended and renumbered effective January 1, 2007.



EXHIBIT 6

2020 California Rules of Court

Rule 9.20. Duties of disbarred, resigned, or suspended attorneys

(a) Disbarment, suspension, and resignation orders

The Supreme Court may include in an order disbarring or suspending a licensee of the State Bar, or accepting his or her resignation, a direction that the licensee must, within such time limits as the Supreme Court may prescribe:

- (1) Notify all clients being represented in pending matters and any co-counsel of his or her disbarment, suspension, or resignation and his or her consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys;
- (2) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;
- (3) Refund any part of fees paid that have not been earned; and
- (4) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the disbarment, suspension, or resignation and consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, 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.

(Subd (a) amended effective January 1, 2019; previously amended effective December 1, 1990, and January 1, 2007.)

(b) Notices to clients, co-counsel, opposing counsel, and adverse parties

All notices required by an order of the Supreme Court or the State Bar Court under this rule must be given by registered or certified mail, return receipt requested, and must contain an address where communications may be directed to the disbarred, suspended, or resigned licensee.

(Subd (b) amended effective January 1, 2019; previously amended effective December 1, 1990, and January 1, 2007.)

(c) Filing proof of compliance

Within such time as the order may prescribe after the effective date of the licensee's disbarment, suspension, or resignation, the licensee 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 entered under this rule. The affidavit must also specify an address where communications may be directed to the disbarred, suspended, or resigned licensee.

(Subd (c) amended effective January 1, 2019; previously amended effective December 1, 1990, and January 1, 2007.)

(d) Sanctions for failure to comply

A disbarred or resigned licensee's willful failure to comply with the provisions of this rule is a ground for denying his or her application for reinstatement or readmission. 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. Additionally, such failure may be

punished as a contempt or a crime.

(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007; previously relettered and amended effective December 1, 1990.)

Rule 9.20 amended effective January 1, 2019; previously amended and renumbered effective January 1, 2007; adopted as rule 955 effective April 4, 1973; previously amended effective December 1, 1990.

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EXHIBIT 7

OSB Membership Directory

[New Search](#)

Mr. Earle A Partington

Bar Number 691361

Status Suspended - Disciplinary

Admit Date 9/12/1969

Mailing Address Mr. Earle A Partington
226 Regency Ct
Santa Rosa CA 95401

County Out-Of-State

Phone 808 927-5571

Fax 707 545-1866

Email info@partington-foley.com

Website

Disciplinary History ▲

Date	Sanctions	Details	Source
12/16/2013	Suspension - Disciplinary	60-day suspension	Supreme Court Order

Sanction Definitions

- Reprimand:** A form of disciplinary action that declares a lawyer's conduct to be improper, but does not restrict or limit the lawyer's ability to practice law, usually because the misconduct is not particularly aggravated or serious.
- Suspension:** A form of disciplinary action that prohibits a lawyer from practicing law for a period of time. The length of suspension may range from 30 days to five years, depending on the nature of the lawyer's misconduct.
- Probation:** In some cases, a lawyer whose conduct warrants a disciplinary suspension may nevertheless continue to practice law, provided the lawyer complies with terms of probation for a period of time.
- Disbarment:** The permanent removal of a lawyer from the practice of law in Oregon, due to the extreme nature of the lawyer's misconduct.

Resigned - A lawyer who resigned Form B from the Oregon State Bar on or after 1/1/1996,
Disciplinary: while a disciplinary investigation or proceeding was pending, forfeited his or her
right to ever practice law in Oregon. A lawyer who resigned Form B prior to
1/1/1996 may apply for reinstatement.


This summary does not include admonitions.

This summary only includes final dispositions. Pending inquiries, grievances, and
investigations are not shown. Contact the Public Records Coordinator for
additional information at the [Public Records Center](#).

EXHIBIT 8

https://join.dcbbar.org/eweb/DynamicPage.aspx?Site=dcbbar&WebCode=FindMemberResults

Westlaw Lexis JEFS Ho'ohiki C13-EPIQ iCloud HIS HSBA RSCH HPR1 Bloomberg



MEMBERSHIP **RESOURCES** **CLE** **COMMUNITIES** *Pro BONO* *Firm MG*

Membership

Find A Member Search Results

Records matching your search criteria: 1

To learn if there is any disciplinary proceedings for the following attorneys, please visit the [disciplinary system](#).

See the [Membership Classes](#) page for a complete description of license types and status definitions.

- Earle A Partington**
1001 Bishop Street Suite 1330
Honolulu HI 96813
UNITED STATES
Email: ✖
Phone: 8085269500
Fax: (707)545-1866

Membership Status: DISCIPLINARY SUSPENSION

Date of Admission: 06/02/1970

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

v.

EARLE A. PARTINGTON, [HI bar #1568], Respondent.

ORIGINAL PROCEEDING
(ODC # 19-0297)

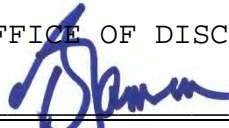
CERTIFICATE OF SERVICE

1. PETITION FOR RECIPROCAL ACTION PURSUANT TO RSCH RULE 2.15;
2. DECLARATION OF BRADLEY R. TAMM
3. EXHIBITS 1 THROUGH 8

I hereby certify that accurate copies of this document and attached exhibits were duly served on those individuals or entities identified on the below service list, by either (1) JEFS/JIMS electronic filing, (2) by personal service, or by (3) U.S. First Class mail, postage prepaid, as indicated.

DATED: May 30, 2020

OFFICE OF DISCIPLINARY COUNSEL



BRADLEY R. TAMM
Chief Disciplinary Counsel

SERVICE LIST:

By JEFS/JIMS electronic filing:

Earle A. Partington (secretary@partington-foley.com)

Bradley R. Tamm (bradley.r.tamm@dbhawaii.org)

Philip Lowenthal (p.lowenthal@dbhawaii.org)

By personal service:

n/a

By U.S. First Class mail, postage prepaid:

Earle A. Partington
Law Off. of Earle A. Partington
1003 Bishop St Pauahi Ste. 2150
Honolulu, HI 96813