Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

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Presiding Judge Richard A. Honn
The State Bar Court of California
845 South Figueroa Street
Los Angeles, California 90017-2515

Dear Presiding Judge Honn,

Thank you for your letter dated January 31, 2023, explaining the background and rationale for the State Bar Court's longstanding policy of refraining from recommending the imposition of obligations set forth in rule 9.20 of the Rules of Court (rule 9.20) in disciplinary matters in which respondents face an actual suspension of fewer than 90 days (referred to as the "90-day rule"). As you indicate, the exact origin of the 90-day rule remains unclear, and until now, this court has never had the opportunity to weigh in on the propriety or soundness of the policy.

As you are aware, a principal purpose of rule 9.20(a)(1) is to provide "*advance* notice to *existing* clients of the attorney's prospective inability to represent their interests." (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45, italics in original (*Athearn*).) For this reason, the court recently changed the standard language used in its disciplinary orders. The new language clarifies that a respondent facing an actual suspension must discharge the rule 9.20 notification obligations *before* the order's effective date, which is when the suspension commences. Only then are clients in a position to take timely protective actions that may be necessary, such as obtaining significant documents from the attorney or seeking alternate counsel, if needed. This is, of course, also consistent with the attorney's ethical obligations under rule 1.4 of the Rules of Professional Conduct to "keep the client reasonably informed about significant developments related to

representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed."

Rule 9.20(a) also includes provisions regarding notifications to opposing counsel, unrepresented adverse parties, and the courts before which a respondent has pending matters. These obligations are also intended to protect the client as well as the administration of justice. A failure to notify an opposing counsel or adverse party of the suspension might result in a fundamental breakdown of communication between the parties, prevent the client or their new counsel from being timely served with critically important papers, and could ultimately prejudice the interests of the client. Courts should be also aware of any suspension so they are better positioned to consider whether certain protective actions are necessary to avoid undue prejudice to the party, and perhaps even more practically, to know to whom it must send important notices and rulings. Additionally, disclosures to the court or opposing counsel may be necessary to prevent and protect respondents themselves from engaging, even inadvertently, in additional unethical behavior, such as violations of rules 3.3 (Candor Toward the Tribunal), 4.1 (Truthfulness in Statements to Others), and 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) of the Rules of Professional Conduct.

With these considerations in mind, the court has concluded none of the public protection purposes underlying rule 9.20 lessen in importance simply because an attorney is suspended for a period of fewer than 90 days. Thus, the court directs the State Bar Court to discontinue the application of the 90-day rule no later than September 1, 2023.

After that date, in all instances in which an attorney receives an actual suspension, the attorney will be ordered to comply with the obligations set forth under rule 9.20 unless the facts and circumstances establish good cause not to do so. In your letter, you detailed some examples of such exceptions, referring to cases in which respondents were recently ordered to comply with rule 9.20 "in either related or unrelated disciplinary or administrative matters," or when it was established the respondent resided outside of the jurisdiction for a lengthy period and was not practicing law. (See Presiding Judge Honn, letter to Jorge Navarrete, Jan. 31, 2023, pp. 2-3, fn. 2 & 3.) The court acknowledges and has not closed the door to considering cases in which application of the obligations listed in rule 9.20(a)(1)-(4) may not be warranted, but the court anticipates these exceptions will be rare.

In the course of our discussions, concern was expressed that there may also be instances in which it may be extremely difficult or impracticable for a respondent representing several hundreds of clients in active matters to discharge their notification obligations within the standard 30-day period between the filing date of the disciplinary order and its effective date. Recognizing again that such cases are likely to be rare, the court does not foreclose the possibility the State Bar Court may recommend that the court issue a disciplinary order that expressly states that it becomes effective after a period of

more than 30 days (see Rules of Court, rule 9.18(a)) so long as the deadlines for compliance with rule 9.20(a) and (c) are adjusted accordingly.

As a final note, the court would like to express its deep gratitude and appreciation to you and the State Bar Court staff for your guidance and collaboration as we have undertaken to resolve this issue.

Sincerely yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court