

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 09-O-16883
)	
JOHNNY LEE WELCH,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 181372,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

INTRODUCTION

Respondent Johnny Lee Welch was charged with two counts of misconduct in a single client matter. Despite his actual knowledge of this case, he failed to participate either in person or through counsel and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under the Rules of Procedure of the State Bar, rule 5.85.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore recommends that respondent be disbarred from the practice of law.

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment, vacate the default, and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

FINDINGS AND CONCLUSIONS

A. Procedural Requirements Have Been Satisfied

Respondent was admitted to practice law in this state on December 22, 1995. The State Bar filed the NDC on February 18, 2011, and properly served it on respondent at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

The NDC was served by certified mail, return receipt requested. The State Bar received a signed receipt showing that the NDC was received on February 23, 2011. The State Bar also took additional efforts to ensure that respondent received the NDC and was aware of this discipline case. On March 21, 2011, a status conference was held. Respondent appeared by telephone at the conference. The court provided respondent until March 25, 2011, to file his response to the NDC. However, respondent stated that it was his intention to proceed by default in this matter. Respondent did not file a response to the NDC.

On April 4, 2011, the State Bar filed a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent again that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Respondent did not file a response to the motion. His default was entered on April 15, 2011, and he was placed on involuntary inactive status and has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.85(B)(1) [attorney has 180 days to file motion to set aside default].) On October 20, 2011, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reports in the petition that: (1) it has had no contact with respondent since the default was entered; (2) there

are four other disciplinary investigations pending against respondent; (3) respondent does not have a record of prior discipline; and (4) the Client Security Fund has not paid out any claims as a result of respondent's misconduct. Respondent has not responded to the petition or moved to set aside or vacate the default.

The NDC, motion for entry of default, order entering default and petition for disbarment were served on respondent at his membership records address by certified mail, return receipt requested. The NDC, motion for entry of default, and order entering default all contained notices informing respondent that if he failed to participate, the court would recommend his disbarment. Accordingly, the court finds that the procedural requirements have been satisfied.

B. The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) In this case, the facts show that respondent is culpable of two ethical violations in a single client matter.

Count One – respondent violated rule 4-100(A) of the Rules of Professional Conduct (trust account violation) by failing to maintain \$64,268.30 in his client trust account on behalf of his client and her husband in a marital dissolution matter.

Count Two – respondent violated Business and Profession Code section 6106 (moral turpitude) by misappropriating the \$64,268.30 belonging to his client and her husband.

C. Legal Conclusion

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of the proceedings prior to the entry of his default;
- (3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

The court recommends that respondent Johnny Lee Welch be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

RESTITUTION

The court further recommends that respondent be required to make restitution to Pamela and Erick Knapp in the amount of \$64,268.30, plus 10 percent interest per year from December 6, 2006 (or reimburse the Client Security Fund to the extent of any payment from the Fund to these victims, in accordance with Business and Professions Code section 6140.5).

RULE 9.20

The court also recommends that respondent 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.

COSTS

The court further recommends that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with section 6007, subdivision (c)(4), the court orders that Johnny Lee Welch, State Bar number 181372, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order.

(Rules Proc. of State Bar, rule 5.111(D).)

Dated: November ____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court