

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 10-O-05506 (10-O-07293)-PEM
)	
THOMAS JAMES WALLACE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 220396,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Thomas James Wallace (respondent) was charged with two counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ 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 rule 5.85 of the Rules of Procedure of the State Bar.²

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),

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

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 to recommend the attorney's disbarment.³

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

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on July 18, 2002, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 29, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular mail, at his membership records address. No return receipt was received by the deputy trial counsel assigned to this matter. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual notice of this proceeding. On September 27, 2011, State Bar Deputy Trial Counsel Christine Souhrada (DTC Souhrada) called respondent's membership records telephone number twice and left voicemail messages stating, among other things, that disciplinary charges had been filed against respondent on August 29; that his response was due on September 23; that no response had been received; and, in the second message, that on September 26, the State Bar had filed for respondent's default.⁴ DTC Souhrada asked that respondent call her and provided her telephone number. The next day, DTC Souhrada received a

³ 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 and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

⁴ In the first message, DTC Souhrada stated that the State Bar was moving for respondent's default.

voicemail message from respondent in which he stated, in part, that he had received DTC Souhrada's message.

Respondent, however, failed to file a response to the NDC. On September 26, 2011, the State Bar filed and properly served on respondent's membership records address, 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 that if he did not timely move to set aside his default, the court would recommend his disbarment.⁵ Respondent did not file a response to the motion, and his default was entered on October 20, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On April 18, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since the default was entered; (2) there are two disciplinary investigations pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on May 22, 2012.

⁵ On September 28, 2011, the State Bar filed and served on respondent by regular mail a supplemental declaration of DTC Souhrada in support of the motion for entry of respondent's default. This declaration establishes that respondent had actual notice of this disciplinary proceeding.

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.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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Count One – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (preserving identity of funds and property of a client) by failing to withdraw his personal funds from the trust account at the earliest possible time, using the trust account for personal purposes, and making payments from the account for respondent's personal expenses unrelated to client matters.

Count Two – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to the State Bar's letters and failing to otherwise cooperate or participate in State Bar investigations.

Disbarment is Mandated under the Rules of Procedure

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 this proceeding, as he left a voicemail message for DTC Souhrada in which he acknowledged receipt of a message from Souhrada regarding this disciplinary matter;
- (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

Disbarment

The court recommends that respondent Thomas James Wallace be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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 Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Thomas James Wallace, State Bar number 220396, be involuntarily enrolled as

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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: August _____, 2012

PAT McELROY
Judge of the State Bar Court