

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of |) | Case Nos.: 10-O-09632-PEM (10-O-09651; |
| |) | 11-O-13828) |
| |) | |
| DOUGLAS JACK HAYCOCK, |) | |
| |) | DECISION AND ORDER OF INVOLUNTARY |
| Member No. 95071, |) | INACTIVE ENROLLMENT |
| |) | |
| |) | |
| <u>A Member of the State Bar.</u> |) | |

Respondent Douglas Jack Haycock (respondent) was charged with multiple violations of the Business and Professions Code and the Rules of Professional Conduct in connection with three separate client matters. 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.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 to recommend the attorney’s disbarment.²

¹ Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar.

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

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 December 16, 1980, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 21, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at respondent's 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 United States Postal Service returned the NDC to the State Bar marked "Refused."

On November 29, 2011, Deputy Trial Counsel Christine Souhrada (DTC Souhrada) telephoned respondent at his membership-records telephone number; his private-membership-records telephone number; and three other telephone numbers located through an Internet search. DTC Souhrada left a message for respondent at his private-membership-records telephone number notifying him that disciplinary charges had been filed against him, that he did not timely file a response to the NDC, and that she would be seeking his default forthwith. Later that same day, respondent telephoned DTC Souhrada and told her that he had not been to his office to pick up his mail lately and that he was in therapy. Respondent also provided DTC Souhrada with an alternative address for him in Rocklin, California. DTC Souhrada told respondent that disciplinary charges were pending against him, that his response to the NDC was overdue, and that she needed his response by December 5, 2011 (i.e., within six days).

On November 30, 2011, the State Bar sent a copy of the NDC to respondent at his alternative address in Rocklin by overnight mail. That copy of the NDC was actually delivered to respondent's alternative address the next day (i.e., December 1, 2011).

Respondent thereafter failed to file a response to the NDC. On December 8, 2011, the State Bar filed a motion for entry of respondent's default and properly served that motion on respondent at his membership-records address by certified mail, return receipt requested, and by regular mail at respondent's alternative address. 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 respondent with actual notice. (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.

Respondent did not file a response to the motion, and his default was entered on December 28, 2011. The order entering his default was properly 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),³ effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent 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 July 11, 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) the State Bar has not had contact with respondent since the default was entered; (2) respondent has one non-public disciplinary matter pending against him; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting

³ All further statutory references are to the Business and Professions Code.

from respondent's misconduct. 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 August 8, 2012.

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 of the rule and statutory violations as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 10-O-09632 (DellaPenna Matter)

Count One(A) -- respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing, upon repeated requests from his clients, to account for \$25,000 in advanced fees paid by the clients.

Case Number 10-O-09651 (C & L Stairs Matter)

Count Two(A) -- respondent willfully violated section 6103 (violation of court order) by failing to appear at nine separate hearings as ordered by a superior court and by failing to pay five court ordered sanctions totaling \$2,850.⁴

Count Two(B) -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to obtain his client's signature on a settlement agreement.

Case Number 11-O-13828 (Watkins Matter)

Count Three(A) -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by ceasing all work on behalf his client while the client's lawsuit was ongoing.

⁴ The court does not recommend that respondent be ordered to make restitution for the unpaid sanctions because the State Bar failed to establish to whom the sanctions were to be paid.

Count Three(B) -- respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by not giving his client notice that he was terminating his employment with the client.

Count Three(C) -- respondent willfully violated section 6068, subdivision (m) (failure to communicate) by failing to advise his client of a demurrer, his failure to respond to the demurrer, and a settlement conference.

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 that 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 prior to the entry of his default as respondent telephoned DTC Souhrada, and DTC Souhrada informed respondent that disciplinary charges were pending against him, that his response to the NDC was overdue, and that she needed his response within six days;

(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.

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RECOMMENDATION

Disbarment

The court recommends that respondent Douglas Jack Haycock be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends 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 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 Douglas Jack Haycock, State Bar Number 95071, 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. (Rule 5.111(D).)

Dated: October ____, 2012.

PAT McELROY
Judge of the State Bar Court