

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of |) | Case No. 10-O-09889; 10-N-09285 |
| |) | |
| GREGORY JOHN TOKARCZYK, |) | DECISION AND ORDER OF |
| |) | INVOLUNTARY INACTIVE |
| Member No. 150924, |) | ENROLLMENT |
| |) | |
| A Member of the State Bar. |) | |
| _____ |) | |

INTRODUCTION

Respondent Gregory John Tokarczyk was charged with failing to comply with (1) his prior disciplinary probation and (2) California Rule of Court, rule 9.20(c). 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 to 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 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 4, 1990. The State Bar filed the NDC on January 26, 2011, and properly served it on respondent at his membership records address.³ The NDC notified respondent 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 NDC.

Prior to filing the NDC, the State Bar sent a letter to respondent at his membership record address. The letter was returned by the post office bearing a stamp indicating that it was being returned to the sender and was unable to be forwarded. Thereafter, the State Bar conducted a search of several sources in an effort to find an alternative address for respondent. The search was unsuccessful. As respondent was on probation as the result of a prior discipline case, the State Bar also contacted the Probation Department to determine whether it had an alternative address for respondent. No alternative address was on file with the Probation Department. The State Bar has not had any contact with respondent since the inception of this matter.

An initial status conference was scheduled and held in this case. Respondent did not appear. On the day of the status conference, the court's case administrator reached respondent by telephone at respondent's membership records telephone number, and when the case administrator informed respondent that it was the State Bar Court calling, respondent terminated the call. On the same day, the State Bar also called respondent at his membership records telephone number and left a message stating that it would be filing a motion for entry of his default and explaining the consequences of the default.

³ The NDC was originally filed and served on November 24, 2010. The State Bar refilled and re-served it on January 26, 2011.

On February 23, 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 and his default was entered on March 11, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. It was returned by the post office with a stamp indicating that the mail item was unclaimed, was returned to the sender, and was unable to be forwarded. 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). He has remained inactively enrolled 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 September 13, 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) respondent has one additional matter pending in investigation; (3) respondent has been disciplined on three prior occasions; and (4) the Client Security Fund has not paid out any claims as a result of respondent's present misconduct, but it has paid three other claims totaling \$11,800. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default.

Respondent's prior discipline occurred in 2009 and 2010. In October 2009 he was suspended from the practice of law for two years, execution of which was stayed, and he was placed on probation for two years on conditions, including six months actual suspension. The

misconduct involved five client matters and 26 disciplinary violations. In July 2010, respondent was suspended from the practice of law for one year, execution of which was stayed, and he was placed on probation for one year on conditions, including six months actual suspension. The misconduct involved one client matter and five disciplinary violations. In August 2010, respondent's prior probation was revoked and he was suspended from the practice of law for one year. The misconduct involved failing to comply with six separate probation conditions. The present discipline case will therefore be respondent's fourth.

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. Based on the above, 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.

1. Case No. 10-O-09889

Respondent violated Business and Profession Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with four conditions of probation imposed by the Supreme Court in the July 2010 discipline.

2. Case No. 10-N-09285

Respondent violated California Rule of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) by failing to file proof of compliance with the rule as ordered by the Supreme Court in the July 2010 discipline.

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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default as the NDC was served on respondent at his membership records address and the State Bar attempted to contact him at the alternative street and email addresses and telephone number;

(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 adequate 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 Gregory John Tokarczyk 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 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 Business and Professions Code section 6007, subdivision (c)(4), the court orders that Gregory John Tokarczyk , State Bar number 150924, 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

PAT McELROY
Judge of the State Bar Court