

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 11-N-19481-RAP
	)	
<b>STEPHEN CHARLES</b>	)	<b>DECISION AND ORDER OF</b>
<b>HOLLINGSWORTH,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<b>Member No. 200609,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Stephen Charles Hollingsworth (respondent) was charged with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with rule 9.20. 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.<sup>1</sup>

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),

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<sup>1</sup> 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.<sup>2</sup>

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 April 1, 1999, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On February 13, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, 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 returned to the State Bar by the United States Postal Service bearing the stamp "Return to Sender Attempted, Not Known".<sup>3</sup>

Thereafter, the State Bar: (1) attempted to reach respondent by telephone;<sup>4</sup> (2) called directory assistance for the area which includes respondent's official membership address and asked for all telephone listings for respondent; (3) sent an email to respondent regarding the pending matters before the State Bar; (4) sent a copy of the NDC to respondent by first-class mail to his membership records address and to an alternate address found on a website; and (5) checked the Daily Journal Directory of Attorneys.

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<sup>2</sup> 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).)

<sup>3</sup> Declaration of Mia R. Ellis attached to the motion for the entry of respondent's default.

<sup>4</sup> However, respondent does not have a telephone number listed with the State Bar as part of his official membership records.

Respondent, however, failed to file a response to the NDC. On April 3, 2012, the State Bar filed and properly served upon respondent 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. Respondent did not file a response to the motion, and respondent's default was entered on April 19, 2012. 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 November 27, 2012, the State Bar filed and properly served the petition for disbarment on respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since his default was entered; (2) there are other disciplinary matters pending against respondent; (3) respondent has two prior records of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's misconduct in this matter. 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 January 8, 2013.

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Respondent has been disciplined on two prior occasions.<sup>5</sup> Pursuant to a Supreme Court order filed on June 16, 2009, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years subject to certain conditions, including that he be suspended for the first year of probation. Respondent stipulated in this prior disciplinary matter that he: (1) failed to perform legal service with competence; (2) failed to keep a client reasonably informed of significant developments; (3) failed to maintain client funds in trust; (4) committed acts involving moral turpitude by misappropriating at least \$2,643.54 and repeatedly utilizing his client trust account as a personal and/or business account; (5) failed to promptly pay client funds as requested by a client; (6) improperly used his client trust account as a personal account and commingled his own funds in a client trust account; and (7) failed to timely refund unearned fees.<sup>6</sup>

Pursuant to a Supreme Court order filed on September 28, 2011, respondent was suspended for four years, the execution of which was stayed, and he was placed on probation for five years subject to certain conditions, including that he be suspended for a minimum of the first three years of probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. Respondent stipulated in this prior disciplinary matter that: (1) by violating Penal Code section 243(e) and based upon the facts and circumstances of the conviction, he engaged in other conduct warranting discipline; (2) failed to perform legal services with competence (three matters); and (3) failed to promptly refund an unearned fee (two matters).

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<sup>5</sup> The court admits into evidence the certified copy of respondent's prior record of discipline that is attached as exhibits 1 and 2 to the State Bar's November 27, 2012 petition for disbarment after default.

<sup>6</sup> In this prior matter, respondent was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP) as of May 12, 2008. However, on July 21, 2008, the court issued an order terminating respondent from participation in the ADP.

## **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).)

### **Case Number 11-N-19481 (Rule 9.20 Matter)**

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys), by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is 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 by both certified and first-class mail. The State Bar also attempted to contact or locate respondent by contacting directory assistance, sending an email to respondent, sending a copy of the NDC to respondent at an alternate address, and checking the Daily Journal Directory of Attorneys.
- (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 recommends disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Stephen Charles Hollingsworth 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 Stephen Charles Hollingsworth, State Bar number 200609, 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: March 12, 2013

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RICHARD A. PLATEL  
Judge of the State Bar Court