

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 11-N-10004
)	
LARRY SCOTT SPEARS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 195993,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

Respondent Larry Scott Spears was charged with failing to comply with 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, grants the petition and 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

Respondent was admitted to the practice of law in California on June 10, 1998, and has been a member of the State Bar at all relevant times.

Procedural Requirements Have Been Satisfied

On January 31, 2011, the State Bar properly served the NDC on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The certified mail receipt was signed on February 3, 2011, showing delivery on that date.

The State Bar also telephoned respondent twice at the number listed in respondent's membership records and left messages informing him of this proceeding. The telephone number called had a recorded message from "L. Scott Spears." In addition, the State Bar sent an email to respondent at the email address listed in his membership records informing him of this case.³ Respondent did not respond to these attempted communications.

Respondent failed to file a response to the NDC. On March 30, 2011, the State Bar filed a motion for entry of his 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. Respondent did not file a response to the motion and his default was entered on April 21, 2011. He was also placed on involuntary inactive status and has remained inactive since that time.

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

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 November 29, 2011, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) no other disciplinary investigations or charges are pending against respondent; (3) respondent has 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.

Respondent has been disciplined on three prior occasions. In April 2008 he was privately reprimanded for failing to perform competently in one client matter. In October 2010, he was suspended for a minimum of 90 days and ordered to comply with California Rules of Court, rule 9.20, for failing to comply with several conditions attached to his private reprimand. In April 2011, he was suspended for a minimum of one year for multiple acts of misconduct in two client matters, including failing to perform competently, dishonesty, failing to communicate with clients, improper withdrawal from employment and failure to cooperate with the State Bar. Respondent did not participate in the October 2010 or April 2011 cases and his default was entered in both.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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 admitted acts show that respondent is culpable as charged of violating 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 October 2010 discipline case.

RECOMMENDATION

Disbarment

Having found that all of the requirements of Rule 5.85(E) are satisfied, the court recommends that respondent Larry Scott Spears 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 section 6007, subdivision (c)(4), the court orders that Larry Scott Spears, State Bar Number 195993, 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: January 9, 2012

RICHARD A. PLATEL
Judge of the State Bar Court