

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 11-N-11801-RAH
	)	
<b>STEPHEN THOMAS BORRELLI,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 143746,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Stephen Thomas Borrelli (respondent) was charged with willfully violating rule 9.20, California Rules of Court (CRC) by willfully disobeying or violating a court order. 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.<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), 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>

---

<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.  
<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).)

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 11, 1989, and has been a member since then.

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

On May 5, 2011, 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 served via certified mail, return receipt requested, was returned by the U.S. Postal Service bearing the stamp “Return to Sender, No Such Person/Company.” Thereafter, the State Bar attempted to reach respondent by telephone at his official membership records telephone number and by sending an email to respondent at two email addresses found in respondent’s file.<sup>3</sup>

On June 3, 2011, a courtesy copy of the NDC was sent to respondent by regular, first-class mail to his membership records address. A courtesy copy was also sent to Glendale and Sherman Oaks, California addresses that were found on lexis. com. As respondent is currently on disciplinary probation, the State Bar contacted the assigned Probation Deputy to ascertain whether respondent’s profile contained any other address. The State Bar also checked Parker’s directory and the Daily Journal Directory of Attorneys for an address for respondent.

---

<sup>3</sup> One of the emails was sent to the email address listed in respondent’s membership records. 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).)

Thereafter, the State Bar again attempted to reach respondent by telephone at his official membership records telephone number. The State Bar also called directory assistance for the area which includes the respondent's official membership records address and asked for all telephone listings for respondent.

Respondent failed to file a response to the NDC. On June 13, 2011, the State Bar filed and properly served 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 his default was entered on June 29, 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 January 20, 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) it has had no contact with respondent since the default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a record of prior 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 February 15, 2012.

Respondent has been disciplined on two prior occasions. Pursuant to a Supreme Court order filed on April 1, 2010, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years, subject to conditions including a 30-day suspension. The misconduct involved one client in which respondent represented the client in two separate matters. Respondent failed to perform, failed to respond to status inquiries, failed to keep a client informed of significant developments, disobeyed or violated a court order, and failed to withdraw from employment when his physical or mental condition rendered it unreasonably difficult for him to effectively carry out his employment. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order filed on December 10, 2010, respondent was suspended for two years and until he provides proof of his rehabilitation, fitness to practice and learning and ability in the general law. Respondent was disciplined for violations of conditions attached to a disciplinary probation. Respondent did not timely file a response to the State Bar's motion to revoke his probation.

### **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, subd. (E)(1)(d).)

**Case Number 11-N-11801 (Rule 9.20 Matter)**

Respondent violated rule 9.20, CRC (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), and thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with rule 9.20, CRC.

**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) 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 regular, first-class mail; a courtesy copy of the NDC was sent to two other addresses; the respondent's Probation Deputy was contacted; the State Bar attempted to reach respondent by telephone at his official membership records telephone number on two occasions; the State Bar emailed respondent at two email addresses (including the email listed in his membership records); the State Bar checked Parker's directory and the Daily Journal Directory of Attorneys; and the State Bar also called directory assistance;

(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**

### **Disbarment**

The court recommends that respondent Stephen Thomas Borrelli 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 Stephen Thomas Borrelli, State Bar number 143746, 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: March \_\_\_\_\_, 2012

\_\_\_\_\_  
RICHARD A. HONN  
Judge of the State Bar Court