

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-N-16553-RAP
)	
RIC A. MILITELLO,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 193675,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Ric A. Militello (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.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 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).)

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 19, 1997, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 11, 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 was returned by the U.S. Postal Service (USPS) stamped ““Undeliverable As Addressed.””³

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 the email address listed on his membership records.⁴ The State Bar also sent the NDC to respondent by first-class mail to his membership records address and to two additional addresses found via an internet search. DTC Ellis also called directory assistance for the area which includes respondent’s membership records address and asked for all telephone listings for respondent; however, there was no such listing.

³ See declaration of Deputy Trial Counsel Mia Ellis (DTC Ellis) attached to the motion for entry of respondent’s default, page 5, lines 16-17.

⁴ 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 failed to file a response to the NDC. On November 21 and 22, 2011, the State Bar properly served and filed, respectively, a motion for entry of respondent's default.⁵ 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 December 8, 2011. The order entering the 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), 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 July 16, 2012, the State Bar filed and properly served 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 is one disciplinary investigation which is currently abated; (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 August 13, 2012.

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⁵ The motion's certified mail return receipt was returned to the State Bar bearing a signature of someone other than respondent.

Respondent has been disciplined on one prior occasion.⁶ Pursuant to a Supreme Court order filed on February 18, 2011, respondent was suspended for one year, but the execution of the suspension was stayed subject to certain conditions, including that respondent be suspended for a minimum of six months and that he remain suspended until the court grants a motion to terminate his suspension. Respondent was found culpable in this matter of commingling, committing acts of moral turpitude, dishonesty, or corruption by making electronic payments from his client trust account with insufficient funds on deposit, and failing to update his official address. Respondent failed to participate in this matter, and his default was entered.

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-16553 (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), and thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

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⁶ The Supreme Court order in this prior matter is attached as Exhibit 1 to the NDC. A certified copy of the State Bar Court's October 4, 2010 Amended Decision is attached to the petition for disbarment. However, also attached to the petition for disbarment is the State Bar Court's August 25, 2010 Decision. The August 25, 2010 Decision, however, was vacated and was superseded by the October 4, 2010 Amended Decision.

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; the NDC was also sent by first-class mail to respondent's membership address and to two additional addresses; there were attempts to reach respondent by telephone and email; and directory assistance was contacted;

(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 Ric A. Militello 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 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 Ric A. Militello, State Bar number 193675, 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 1, 2012

RICHARD A. PLATEL
Judge of the State Bar Court