

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>11-N-16663-PEM</b>
	)	
<b>HARRY TOM MILLER,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 104709,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Harry Tom Miller (respondent) was charged with disobeying and violating an order of the court requiring respondent to comply with California Rules of Court, rule 9.20, and violating 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 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), 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>

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<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 3, 1982, and has been a member since then.

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

On October 18 and 20, 2011, the State Bar properly served and filed, respectively, the NDC on respondent by certified mail, return receipt requested, and by regular mail, 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 State Bar did not receive a return receipt.

Thereafter, the State Bar contacted the State Bar probation deputy assigned to respondent's prior disciplinary matter to determine whether respondent's profile contained any other address or telephone number. The probation deputy gave Deputy Trial Counsel Maria J. Oropeza (DTC Oropeza) an alternate address and a cell phone number for respondent. DTC Oropeza then attempted to reach respondent by telephone at his membership records telephone number. The State Bar also conducted an internet search to obtain an alternate address for respondent. DTC Oropeza also checked respondent's State Bar records for a private email to be used for State Bar purposes, but there was none.<sup>3</sup>

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<sup>3</sup> 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 December 6, 2011, the State Bar filed and properly served a motion for entry of respondent's default.<sup>4</sup> 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 22, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The return receipt for the order was signed by someone other than respondent. 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 June 26, 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 prior record of discipline; and (4) the Client Security Fund has not made any 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 8, 2012.

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<sup>4</sup> The motion was served on respondent by certified mail, return receipt requested, to both respondent's membership records address and to the alternate address obtained from the probation deputy assigned to respondent's prior disciplinary matter.

Respondent has been disciplined on two prior occasions.<sup>5</sup> Pursuant to a Supreme Court order filed on November 30, 2007, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for three years subject to conditions including a 30-day actual suspension. In this matter, respondent stipulated that he failed to counsel or maintain such action, proceedings or defenses only as appear to him legal or just and aided and abetted in the unauthorized practice of law.

Pursuant to a Supreme Court order filed on May 4, 2011, respondent's probation was revoked and respondent was suspended from the practice of law for one year. Respondent did not participate in this proceeding. The court found respondent culpable of willfully violating the conditions of his probation regarding contact with the Office of Probation, quarterly reports and supervisor reports.

### **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-16663 (Rule 9.20 Matter)**

Respondent violated Business and Professions Code section 6103 (violation of court order) and California Rules of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys-compliance affidavit) by failing to submit a timely rule 9.20(c) compliance declaration as ordered by the Supreme Court in its May 4, 2011 order.

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<sup>5</sup> The court takes judicial notice of the pertinent State Bar Courts records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

## **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 mail; the State Bar contacted respondent's assigned probation deputy; attempted to reach respondent by telephone; conducted an internet search for an alternate address for respondent; and served the motion for entry of default on an respondent's alternate address;

(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.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Harry Tom Miller 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 Harry Tom Miller, State Bar number 104709, 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 \_\_\_\_\_, 2012

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PAT McELROY  
Judge of the State Bar Court