

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-N-18178-PEM
)	
JAN MORTON HEGER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 87441,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Jan Morton Heger (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 September 24, 1979, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 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 was returned by the U.S. Postal Service stamped “UNCLAIMED.”

Thereafter, Deputy Trial Counsel Rosalba L. Gutierrez attempted to contact respondent by calling him at his membership records telephone number; sending an email to respondent at the email address listed on his membership records; and sending a letter enclosing the NDC to respondent by regular first-class mail to his membership records address and to five different possible addresses for respondent which were discovered on an internet search report for respondent.³

Respondent failed to file a response to the NDC. On January 20, 2012, the State Bar properly filed and 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

³ The letter and NDC sent to the Tempe, Arizona address was addressed to “Apt 4E.” However, the internet report for respondent listed the apartment number as 4. The court finds this error to be de minimus, however, and that the letter enclosing the NDC was sufficiently addressed to have been able to be properly delivered by the U.S Postal Service.

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 February 7, 2012. 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 August 23 and August 24, 2012, the State Bar properly served and filed, respectively, 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 two disciplinary investigations pending against respondent;⁴ (3) respondent has a record of two prior impositions of 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 September 19, 2012.

Respondent has been disciplined on two prior occasions.⁵ On June 12, 1991, the court privately reprimanded respondent with conditions. In this matter, respondent stipulated that he

⁴ The court takes judicial notice that the State Bar has transmitted evidence of respondent's conviction in another matter to the State Bar Court, and respondent was placed on interim suspension in connection with this conviction matter effective September 4, 2011.

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

entered into a contingency fee arrangement without his client signing a written fee agreement and failed to perform legal services for which he was hired.

Pursuant to a Supreme Court order filed on August 25, 1993, respondent was suspended for six months, the execution of that suspension was stayed, and he was placed on probation for one year subject to certain conditions. Respondent stipulated in this matter that he failed to properly supervise an employee.

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).)

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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 an order requiring compliance with California Rules of Court, rule 9.20.

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 certified mail, return receipt requested; and the State Bar attempted to contact respondent by

telephone, email, and first-class mail to his membership records address and five other possible addresses for respondent;

(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 Jan Morton Heger 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 Jan Morton Heger, State Bar number 87441, 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: November _____, 2012

PAT McELROY
Judge of the State Bar Court