**FILED APRIL 23, 2013**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT – LOS ANGELES**

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| In the Matter of<br><br>**ROBERT FRANCIS GRAHAM,**<br><br>**Member No. 76589,**<br><br>A Member of the State Bar. | )<br>)<br>)<br>)<br>)<br>)<br>) | Case No.: **11-N-19133-PEM**<br><br>**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT** |

Respondent Robert Francis Graham (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]

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[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 21, 1977, and has been a member since then.

**Procedural Requirements Have Been Satisfied**

On January 9, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address.[3] 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 unclaimed by the United States Postal Service with a label indicating to notify the sender of a new address for respondent in La Mesa, California (La Mesa address).

Thereafter, the State Bar (1) attempted to reach respondent by telephone at his State Bar membership records telephone number; (2) sent an email to respondent at his membership records email address with the NDC attached;[4] (3) sent the NDC to respondent at the La Mesa address by certified mail, return receipt requested, and by first-class mail, postage prepaid; and (4) attempted to reach respondent by telephone at two different telephone numbers which appeared as current telephone numbers used by or associated with respondent in a person locator report produced from a website search engine.

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[3] Prior to this date, the State Bar had sent an email to respondent at his membership records email address with a copy of a letter that was to be mailed soon and sent a letter to respondent via first-class mail, postage prepaid, to respondent at his official membership records address.

[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 March 2 and 5, 2012, the State Bar properly served[5] and filed, respectively, 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 March 21, 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 October 5 and 10, 2012, the State Bar properly served and filed, respectively, the petition for disbarment.[6] As required by rule 5.85(A), the State Bar reported in the petition that: (1) the deputy trial counsel assigned to this matter has not had any contact with respondent since the matter was reassigned to him on January 11, 2012;[7] (2) a disciplinary investigation is pending against respondent; (3) respondent has a record of three prior impositions of discipline; and (4) the Client Security Fund has paid on one claim and there is another outstanding claim resulting from respondent's prior misconduct.

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[5] The motion was served on respondent by certified mail, return receipt requested, at respondent's membership records address, the La Mesa address, and at another address which appeared as recently used by or associated with respondent in the person locator report.

[6] The petition was served by certified mail, return receipt requested, and by regular mail to both respondent's membership records address and the La Mesa address.

[7] Accordingly, the deputy trial counsel has not had any contact with respondent since respondent's default was entered on March 21, 2012.

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 January 25, 2013.

Respondent has three prior records of discipline.[8] Pursuant to a Supreme Court order filed on November 14, 2008, respondent was suspended for 30 days, the execution of which was stayed, and he was placed on probation for one year. Respondent stipulated in this matter that he failed to perform legal services with competence; failed to keep a client reasonably informed of significant developments; failed to respond promptly to client status inquiries; failed to render appropriate accounts to a client; failed to promptly release, to a client, at the client's request, all client papers and property upon termination of employment; and failed to cooperate in a disciplinary investigation.

Pursuant to a Supreme Court order filed on July 22, 2010, respondent was suspended for one year, the execution of which was stayed, subject to conditions including that respondent be suspended for a minimum of 60 days and that he remain suspended until the court grants a motion to terminate his suspension. Respondent failed to participate in this proceeding, and his default was entered. Respondent was found culpable of failing to comply with probation conditions as ordered by the Supreme Court.

Pursuant to a Supreme Court order filed on September 9, 2011, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years, subject to conditions, including that he be suspended for a minimum of the first year of probation and will remain suspended until he provides proof of his rehabilitation, fitness to practice and learning and ability in the general law. Respondent stipulated in this matter that he failed to perform legal services with competence; failed to cooperate in a disciplinary

[8] 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.

investigation (three matters); deposited or commingled funds belonging to respondent in a client trust account; failed to provide an accounting to a client; and failed to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

**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-19133 (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 the Supreme Court's September 9, 2011 order requiring compliance with California Rules of Court, rule 9.20.

**Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is 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;[9] the State Bar attempted to contact respondent by

[9] Prior to this, the State Bar had sent an email and a letter to respondent.

telephone, email, and sent the NDC to respondent at the La Mesa address by certified and first-class mail;

(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 recommends disbarment.

## RECOMMENDATION

**Disbarment**

The court recommends that respondent Robert Francis Graham 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.

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**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Robert Francis Graham, State Bar number 76589, 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: May _____, 2013

PAT McELROY
Judge of the State Bar Court