

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-O-11508-LMA
)	
DANIEL DUCHANIN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 189983,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Daniel Duchanin (respondent) was charged with failing to comply with all conditions attached to a disciplinary probation. 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 5.85.¹

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 October 29, 1997, 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 was returned by the U.S. Postal Service indicating a new address for respondent in Norman, Oklahoma.

Respondent had actual notice of this disciplinary proceeding as respondent and the assigned deputy trial counsel (DTC) spoke by telephone on two occasions and exchanged emails. The DTC advised respondent of the proceedings, and respondent indicated that he would like to resign and did not intend to practice law in the future. Respondent also later acknowledged that he had received a copy of the NDC and a resignation packet. The DTC advised respondent that, notwithstanding his plans to resign, he needed to file an answer to the NDC or the DTC would file a motion for default as ordered by the court. The DTC also later told respondent that the court had ordered her to file a motion for default by the next day; thus, it was imperative that respondent file an answer immediately if he intended to participate in the proceedings.

Respondent, however, failed to file a response to the NDC. On July 6 and 7, 2011, the State Bar properly served 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 July 27, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.³ 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 February 13, 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) On August 8, 2011, the State Bar received a facsimile purporting to be from respondent which included an answer to the NDC and a proof of service by facsimile transmission. On August 22, 2011, Supervising Trial Counsel Paul T. O'Brien sent a letter to respondent explaining that, according to the court's docket, no answer to the NDC had been filed with the court, and that respondent's default was entered by the court on July 27, 2011. Enclosed with the letter was a copy of the court's order entering respondent's default and involuntary inactive enrollment; (2) there are no other disciplinary investigations or matters pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has made payments in connection with respondent's prior discipline. 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 March 13, 2012.

³ The receipt was returned to the State Bar Court indicating it was received by "Daniel Duchanin."

Respondent has a prior record of discipline.⁴ Pursuant to a Supreme Court order filed on March 11, 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 90-day suspension which will continue until he makes specified restitution. The misconduct involved five client matters. Respondent failed to perform/supervise, failed to inform his client of a significant development, improperly withdrew from employment, failed to obey a court order, failed to refund unearned fees, failed to release a file, failed to render accounts of client funds, and failed to deposit client funds in a trust account. Respondent participated in this prior disciplinary matter.

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-O-11508 (Probation Matter)

Count One – respondent violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with charged conditions attached to the disciplinary probation ordered by the Supreme Court in its Order filed on March 11, 2010.

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⁴ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admit them into evidence and direct 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) respondent had actual notice of the proceedings prior to the entry of his default, as respondent and the DTC spoke by telephone on two occasions and exchanged emails;
- (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 actual 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 Daniel Duchanin 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.

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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 Daniel Duchanin, State Bar number 189983, 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: June _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court