

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 11-O-14226-PEM
)	
JAMES ALLEN WALL,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 197981,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

Respondent James Allen Wall was charged with six counts of misconduct involving a single-client matter. He failed to appear at the trial of this case 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that all of 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.

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).)

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on December 3, 1998, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On October 26, 2011, the State Bar filed and properly served the notice of disciplinary charges (NDC) on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On December 9, 2011, respondent filed his response to the NDC.

On December 12, 2011, respondent appeared telephonically at a status conference before the court. At this status conference, trial in this matter was calendared for February 16, 2012. On December 14, 2011, the order setting the trial date was served on respondent at his membership records address by first class mail, postage paid. (Rule 5.81(A).) The State Bar appeared for trial, but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed February 16, 2012. The order notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On May 22, 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) respondent has three pending disciplinary matters; (3) respondent has a prior record of discipline;³ and (4) the Client Security Fund has not paid out any claims as a result of respondent's misconduct. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on June 28, 2012.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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 here support the conclusion that respondent is culpable of violating a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

1. Case Number 11-O-14226 (Gibson Matter)

Count One – respondent willfully violated Business and Profession Code section 6106 (moral turpitude) by making a misrepresentation to the Napa County Superior Court regarding the mailing of a preliminary declaration of disclosure (PDD).

Count Two – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to provide opposing counsel, Rebecca Yost (Yost), with the PDD and financial documents; failing to execute a substitution of attorney; failing to appear at two case management conferences; and failing to perform any services for his client after February 7, 2011.

³ 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. Effective August 14, 2007, respondent was publicly reprimanded with conditions in State Bar Court Case No. 06-O-15453 for failing to promptly refund unearned fees and seeking an agreement with his client to withdraw her disciplinary complaint. In mitigation, respondent had no prior record of discipline and he cooperated with the State Bar. No aggravating factors were involved.

Count Three – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund \$5,000 in unearned fees to his client.

Count Four – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release a file) by failing to promptly return his client’s file, upon her request at the termination of his employment.

Count Five - respondent willfully violated Business and Profession Code section 6103 (failure to obey a court order) by failing to obey court orders requiring that he turn over financial documents, return his client’s file by May 6, 2011, and pay ordered sanctions to Yost in the amount of \$2,490.

Count Six – respondent willfully violated Business and Profession Code section 6068, subdivision (o)(3) (failure to report judicial sanctions) by failing to report judicial sanctions in excess of \$1,000 to the State Bar.

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 this proceeding and of the trial date prior to entry of the default;
- (3) the default was properly entered under rule 5.81; 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 appear for the trial of 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 James Allen Wall be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Maudine Gibson in the amount of \$5,000 plus 10 percent interest per year from March 18, 2011; and
- (2) Rebecca Yost in the amount of \$2,490 plus 10 percent interest per year from May 13, 2011.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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 James Allen Wall, State Bar Number 197981, 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: September _____, 2012

PAT McELROY
Judge of the State Bar Court