

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-N-11127-RAH
)	
JAMES WADE STEPHENS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 194788,)	ENROLLMENT
)	
A Member of the State Bar.)	

Respondent James Wade Stephens (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 April 27, 1998, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 25, 2012, 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 sent to his official address was returned by the U.S. Postal Service as undeliverable.

Respondent had actual notice of this disciplinary proceeding. He participated in an Early Neutral Evaluation Conference (ENEC) on May 25, 2012. He received a copy of the NDC before its filing. He also engaged in settlement negotiations with the State Bar after the filing of the NDC and spoke with Deputy Trial Counsel Nancy Brown on two occasions in May and June 2012.

Thereafter, on June 22, 2012, respondent called Deputy Trial Counsel Katherine Kinsey in response to her email. Again, the State Bar advised respondent to file his response. A week later, respondent again called the State Bar if he could mail his response to the State Bar Court. Deputy Trial Counsel Kinsey told him to contact the court and to promptly file and serve his response. She also advised him that failure to file a response to the NDC would lead to a motion for entry of default.

Respondent, however, failed to file a response to the NDC. On July 6, 2012, the State Bar filed and properly served upon respondent 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 31, 2012. The order entering the default was 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 April 5, 2013, the State Bar filed and properly served the petition for disbarment on respondent at his membership records address by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since his 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 payments resulting from respondent's misconduct. 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 May 1, 2013.

Respondent has been disciplined on one prior occasion.³ Pursuant to a Supreme Court order filed on September 20, 2011, respondent was suspended for one year, the execution of which was stayed, and he was actually suspended from the practice of law for 90 days and until the State Bar Court grants a motion to terminate his suspension pursuant to former rule 205 of the Rules of Procedure of the State Bar. Respondent was disciplined for misconduct based on his three criminal convictions (possession of drug paraphernalia, unlawfully fighting in public and trespass). The court found that the facts and circumstances surrounding his misconduct did not involve moral turpitude but did involve other misconduct warranting discipline.

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 12-N-11127 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file proof of compliance as required by rule 9.20(c), as ordered by the Supreme Court in its September 20, 2011 order in case No. S194819.

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;

³ The court admits into evidence the certified copy of respondent's prior record of discipline that is attached as exhibit 1 to the State Bar's April 5, 2013 petition for disbarment after default.

(2) respondent had actual notice of the proceedings prior to the entry of his default, as respondent and the State Bar spoke by telephone on several occasions. Respondent engaged in settlement negotiations with Deputy Trial Counsel Brown after the filing of the NDC. Also, Deputy Trial Counsel Kinsey informed respondent about the State Bar's intention to file a motion for entry of default for his failure to file a response to the NDC;

(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 recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent James Wade Stephens 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 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 Wade Stephens, State Bar number 194788, 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: August _____, 2013

RICHARD A. HONN
Judge of the State Bar Court