FILED JULY 23, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **JOHN ANDREW MORRISON** **Member No. 202706** A Member of the State Bar.	)))))))	Case No.: **12-N-12983** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Respondent John Andrew Morrison 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 defauult 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 November 19, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 21, 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.)

Thereafter, the State Bar attempted to notify Respondent of these proceedings by (1) sending the NDC and other relevant documents to Respondent by regular, first-class mail to his membership records address; (2) sending emails, which attached the NDC and other relevant documents, to an email address for Respondent maintained by membership records;[3] (3) leaving voicemails for Respondent at his membership records telephone number; and (4) having telephone conversations with Respondent on June 18 and 25 and July 10 and 12, 2012, during some of which he acknowledged receipt of the NDC and his intention to respond to it.

Respondent failed to file a response to the NDC. On July 16, 2012, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to his membership records. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial

[3] 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).)

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 August 2, 2012. The order entering the default was properly served on Respondent at both 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 2, 2013, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to both his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) as of April 2, 2013, Respondent has not contacted the State Bar since August 2, 2012, the date the order entering his default was filed and served; (2) there is one investigation pending against Respondent; (3) Respondent has one record of prior discipline; and (4) the Client Security Fund has made one payment 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 May 2, 2013.

Respondent has a prior record of discipline.[4] Pursuant to a Supreme Court order filed on November 2, 2011, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years on conditions including that he be suspended for the first 90 days of probation. Respondent participated in this prior disciplinary matter. The

[4] 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.

court found that Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct[5] (not providing the required accounting of fees a client paid to him); RPC 3-700(D)(2) (not returning unearned fees); RPC 3-110(A) (not performing competently); Business and Professions Code, section 6068, subdivisions (i) and (m) (respectively, not cooperating in the State Bar's investigation of misconduct and not communicating with clients).

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-13531 (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), thereby failing to timely comply with the provisions of the Supreme Court's December 2, 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 State Bar (1) sending the NDC and other relevant documents to

[5] Future references to RPC are to this source.

Respondent by regular, first-class mail to his membership records address; (2) sending emails, which attached the NDC and other relevant documents, to an email address for Respondent maintained by membership records; (3) leaving voicemails for Respondent at his membership records telephone number; and (4) having telephone conversations with Respondent on June 18 and 25 and July 10 and 12, 2012, during some of which he acknowledged receipt of the NDC and his intention to respond to it;

(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 John Andrew Morrison 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 John Andrew Morrison, State Bar number 202706, 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

DONALD F. MILES
Judge of the State Bar Court