

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-N-13427-RAP
)	
CATHERINE MARY McCAULEY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 150090,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Catherine Mary McCauley (respondent) was charged with willfully violating California Rules of Court, rule 9.20. She failed to participate either in person or through counsel, and her 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 further references to rules are to the Rules of Procedure of the State Bar of California.

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 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.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on December 4, 1990, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On June 5, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, to her membership records address. The NDC notified respondent that her failure to participate in this proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned by the U.S. Postal Service as unable to be forwarded.

Thereafter, the State Bar took further steps to notify respondent of this proceeding. The State Bar (1) sent an email to respondent at her official membership records email address³ and to an alternate email address; (2) conducted three different internet searches for an address and telephone number for respondent; (3) sent the NDC, the Corrected Notice of Assignment and Notice of Initial Status Conference, and Status Conference Order to respondent by regular, first-class mail to respondent's membership records address; (4) sent the NDC, the Corrected Notice of Assignment and Notice of Initial Status Conference, and Status Conference Order to respondent by regular, first-class mail to both a P.O. box address and an address on Tanya Road in Castleton, Vermont, which were located through a public record search; (5) sent the NDC, the Corrected Notice of Assignment and Notice of Initial Status Conference, and Status Conference Order to respondent by facsimile transmission to respondent's membership records facsimile

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).)

number; (6) telephoned respondent's membership records facsimile number; (7) attempted to reach respondent by telephone at her membership records telephone number; (8) attempted on four occasions to reach respondent at a possible alternate telephone number for respondent located via three separate internet searches and through directory assistance; (9) sent the NDC, the Corrected Notice of Assignment and Notice of Initial Status Conference, and Status Conference Order to respondent by regular, first-class mail to another address on Tanya Road in Castleton, Vermont, which was located through a public record search; (10) called directory assistance for the area which includes respondent's membership records address and asked for telephone listings for respondent; and (11) as respondent is currently on disciplinary probation, the assigned deputy trial counsel in this matter contacted the assigned probation deputy to ascertain whether respondent's profile contained any other address.

Despite these effort to notify respondent of this proceeding, respondent failed to file a response to the NDC. On July 19, 2012, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, to her membership records address. 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 she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on August 22, 2012. The order entering the default was properly served on respondent by certified mail, return receipt requested, to her membership records address. (Rule 5.80(C).) The order notified respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after

service of the order, and she has remained inactively enrolled since that time. The default order was returned to the State Bar Court as undeliverable as addressed and unable to be forwarded.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On April 19, 2013, the State Bar filed and properly served upon respondent the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that (1) as of April 19, 2013, the State Bar has not had any contact with respondent since her default was entered and the order entering default was served; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has made payments as a result of respondent's conduct in another matter. Respondent did not timely respond to the petition for disbarment or move to set aside or vacate her default. The case was submitted for decision on June 19, 2013.⁴

Respondent has a prior record of discipline.⁵ Pursuant to a Supreme Court order filed on October 25, 2011, respondent was suspended for one year, but execution of that suspension was stayed, subject to conditions, including that respondent be suspended for a minimum of 60 days and until she makes specified restitution and the court grants a motion to terminate her suspension. If, however, respondent remained suspended for 90 days or more, she was also ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivision (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court's order. The court found in this prior disciplinary matter that respondent

⁴ Although the Order Submitting Default Matter for Decision sets forth that the matter was submitted for decision as of May 24, 2013, this is in error. The matter was not submitted for decision until June 19, 2013, the date the Order Submitting Default Matter for Decision was filed.

⁵ The court admits into evidence the certified copy of respondent's prior record of discipline that is attached to the State Bar's April 19, 2013, disbarment petition.

(1) failed to respond promptly to reasonable status inquiries (two counts); (2) recklessly, intentionally and/or repeatedly failed to perform competently (two counts); (3) failed to return an advanced, unearned fee after effectively withdrawing from representation; (4) failed to participate in the investigation of allegations of misconduct (two counts); and (5) withdrew from employment without releasing all client materials as requested. Respondent's default was entered in this prior disciplinary matter for failing to file a response to the NDC.

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-13427 (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 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 October 25, 2011, Supreme Court 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 proceeding prior to the entry of her default, as the State Bar (1) filed and properly served the NDC on respondent;

(2) sent an email to respondent at her official membership records email address and to an alternate email address; (2) conducted three different internet searches for an address and telephone number for respondent; (3) sent the NDC and other documents to respondent by regular, first-class mail to respondent's membership records address; (4) sent the NDC and other documents to respondent by regular, first-class mail to both a P.O. box address and an address on Tanya Road in Castleton, Vermont, which were located through a public record search; (5) sent the NDC and other documents to respondent by facsimile transmission to respondent's membership records facsimile number; (6) telephoned respondent's membership records facsimile number; (7) attempted to reach respondent by telephone at her membership records telephone number; (8) attempted on four occasions to reach respondent at a possible alternate telephone number for respondent located via three separate internet searches and through directory assistance; (9) sent the NDC and other documents to respondent by regular, first-class mail to another address on Tanya Road in Castleton, Vermont, which was located through a public record search; (10) called directory assistance; and (11) contacted the assigned probation deputy to ascertain whether respondent's profile contained any other address;

(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.

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RECOMMENDATION

Disbarment

The court recommends that respondent Catherine Mary McCauley be disbarred from the practice of law in the State of California and that her 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 and that the costs be 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 Catherine Mary McCauley, State Bar Number 150090, 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 17, 2013

RICHARD A. PLATEL
Judge of the State Bar Court