

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-10660-RAP
)	
CARL WILLIAM NYMAN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 57915,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Carl William Nyman (respondent) was charged with failing to comply with probation conditions imposed pursuant to a Supreme Court order. 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 December 18, 1973, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 23, 2012, the State Bar filed and properly served the NDC in this matter 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 to the State Bar marked “unclaimed.”³

Respondent had actual notice of this proceeding. On April 5, 2012, the deputy trial counsel spoke to respondent and informed him of the status of the case, that a motion for entry of default was being prepared, and the effects of a default, including disbarment. The deputy trial counsel advised respondent that he could immediately file a response or an opposition to the motion. Respondent stated that he did not intend to come back in order to comply with probation, but later stated that he would attempt to file a response by April 9, 2012.

Nevertheless, respondent failed to file a response to the NDC. On February 14, 2013, the State Bar filed and properly served a motion for entry of default on respondent by first-class mail and by certified mail, return receipt requested, at his 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

³ Declaration of William Todd attached to the State Bar’s February 14, 2013, motion for the entry of respondent’s default.

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 March 8, 2013. The order entering the default was filed and properly served on respondent at his membership records address by certified mail, return receipt requested. The order served on respondent was returned to the State Bar Court by the United States Postal Service as “UNCLAIMED” and “UNABLE TO FORWARD.” 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 September 10, 2013, the State Bar filed and properly served the petition for disbarment on respondent by certified mail, return receipt requested, at respondent’s membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since his default was entered on March 8, 2013; (2) there are no other disciplinary investigations pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has made a payment to a former client of respondent. 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 October 23, 2013.⁴

⁴ The court previously entered respondent’s default on April 24, 2012, and submitted the default matter for decision on November 29, 2012. On February 12, 2013, the court vacated the order entering respondent’s default nunc pro tunc to April 24, 2012, on the ground that the State Bar’s motion for entry of default against respondent did not contain the language in prominent type required by rule 5.80(A)(3). The court also vacated the order submitting the default matter for decision.

Respondent has one prior record of discipline.⁵ Pursuant to a Supreme Court order filed on October 19, 2011, respondent was suspended from the practice of law for one year, the execution of which was stayed, and he was placed on probation for two years subject to conditions, including that he be suspended for the first 30 days of probation. Respondent stipulated in this matter to his (1) failure to perform legal services with competence in two matters; (2) failure to keep client informed of significant developments and failure to promptly respond to reasonable client status inquiries in one matter; (3) failure to render appropriate accounts in one matter; (4) failure to promptly refund unearned fees in one matter; and (5) disobedience/violation of a court order in one 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(E)(1)(d).)

Case Number 12-O-10660 (Probation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with specified probation conditions imposed by the Supreme Court in its October 19, 2011, Order.⁶

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⁵ The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (d), that Respondent has one prior record of discipline, admits the relevant records into evidence, and directs the Clerk to include copies in the record of this case.

⁶ However, the court will not find culpability based on respondent's alleged failure to report changes to his address and telephone within 10 days of any change as there is no factual allegation deemed admitted that respondent failed to timely notify State Membership Records and the Office of Probation of such changes.

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) respondent had actual notice of this proceeding, as he spoke with the assigned deputy trial counsel on April 5, 2012, and was informed of the status of the case, as well as the opportunity to respond or oppose the motion;

(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 Carl William Nyman 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.

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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 Carl William Nyman, State Bar number 57915, 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).)

Date: December 17, 2013

RICHARD A. PLATEL
Judge of the State Bar Court