

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT-LOS ANGELES

In the Matter of)	Case Nos.: 13-N-12976-LMA
)	13-O-10631 (Cons.)
CURTIS GEORGE MUCK,)	
)	
Member No. 190328,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
<u>A Member of the State Bar.</u>)	ENROLLMENT

Respondent Curtis George Muck was charged with (1) not complying with California Rules of Court, rule 9.20(c); (2) aiding the unauthorized practice of law; (3) not performing legal services with competence; (4) not refunding unearned fees; (5) not responding promptly to client inquiries; (6) not rendering accounts of client funds; and (7) not cooperating in a State Bar investigation. He did not file a response to the notice of disciplinary charges (NDC), 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 NDC and the attorney fails to have

¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

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

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 1, 1997, and has been a member of the State Bar of California since.

Procedural Requirements Have Been Satisfied

On October 4, 2013, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested to his membership records address (official address). The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) A courtesy copy was also sent to respondent's official address and an alternate address by first-class mail. The correspondence sent to the alternate address was returned as undeliverable. The NDC sent by certified mail, return receipt requested, was returned "unclaimed."

On November 26 and 25, 2013, respectively, the State Bar filed and properly served an amended version of the NDC on respondent by certified mail, return receipt requested to his official address. This NDC also notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. The NDC was returned marked "addressee unknown."

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).)

Respondent did not file a response to the NDC by December 20, 2013. However, on November 12 and 21, 2013, and on January 13, 2014, the State Bar made efforts to locate and contact respondent, including (1) calling his official telephone number and an alternate telephone number, both of which were disconnected; (2) calling a third possible telephone number for respondent. The person who answered the call said that it was a wrong number; and (3) calling Directory Assistance for the area that included respondent's official address. There were no listings for respondent.³

On January 21 and 16, 2014, respectively, the State Bar filed and properly served on respondent a motion for entry of his default by certified mail, return receipt requested to respondent's official address. The motion complied with the requirements for a default, including a supporting declaration of reasonable diligence regarding 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 February 3, 2014. 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. The order was returned unclaimed.

Respondent 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 22 and 18, 2014,

³ Email was sent to respondent indicating that he had not responded to the NDC and that a motion to enter his default would be filed. There was no response to this email. The court will not consider this as part of the reasonable efforts to notify respondent about these proceedings because there appears to be no indication about whether the email address belonged to respondent.

respectively, the State Bar filed and properly served a petition for disbarment on respondent by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had contact with respondent since the default was entered; (2) there are three disciplinary investigations pending against respondent; (3) respondent has one prior record of discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from respondent's conduct as set forth in the NDC. 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 15, 2014.

Respondent has one prior record of discipline.

Pursuant to a Supreme Court order filed on February 14, 2013, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years, on condition that he be suspended for six months. Respondent was found culpable of violating rules 1-300(A) (three counts) and 1-320(A) (one count) of the State Bar Rules of Professional Conduct and Business and Professions Code section 6068, subdivision (i) (one count).⁴

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 support the conclusion that respondent is culpable of the rule and statutory violations as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

⁴ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

1. Case Number 13-N-12976 (Rule 9.20 Matter)

Count One – respondent violated California Rule of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) by failing to file proof of compliance with the rule as ordered by the Supreme Court in S199033.

2. Case Number 13-O-10631 (Abadia Matter)

Count Two – respondent willfully violated rule 1-300(A) of the State Bar Rules of Professional Conduct (aiding the unauthorized practice of law) by knowingly allowing David Tabibi, owner of Advanced Paralegal Services, and his staff, who are neither lawyers nor licensed to practice law in California, to provide legal advice and services to respondent’s clients between May 18, 2011 through June 2012.

Count Three – respondent willfully violated rule 3-110(A) of the State Bar Rules of Professional Conduct (not performing with competence) by not filing a Chapter 7 bankruptcy petition for Patricio Abadia for six months after being retained on May 18, 2011; by not curing deficiencies in the bankruptcy documents; by allowing the bankruptcy petition to be dismissed; and by not taking further action to vacate the dismissal after a first motion to vacate was denied.

Count Four alleges respondent’s willful violation of rule 3-700(D)(2) of the State Bar Rules of Professional Conduct by failing to refund \$1,200 in unearned fees to a client, averring that respondent “performed no services of value on the client’s behalf and therefore earned none of the advanced fees paid.” The NDC’s statements that respondent’s services were of no value and, therefore, the fees were unearned, are assertions of opinion, not factual allegations that can be deemed admitted. Moreover, lack of value is irrelevant in determining whether an advanced fee was unearned for purposes of this rule. Accordingly, since no violation was shown, this count is DISMISSED with prejudice.

Count Five – respondent willfully violated section 6068, subdivision (m) (not informing client of significant developments) by not informing Abadia that his bankruptcy petition was dismissed on January 10, 2012 or that the motion to vacate its dismissal was denied on April 12, 2012.

Count Six – respondent willfully violated rule 4-100(B)(3) of the State Bar Rules of Professional Conduct (not rendering accounts of client funds) by not rendering an accounting as requested by Abadia on March 25, 2013 regarding the advanced fees respondent received between May 18, 2011 and May 18, 2012 to file a Chapter 7 bankruptcy petition for Abadia.

Count Seven – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to a State Bar investigator’s two letters that respondent received and that requested his response to allegations of misconduct being investigated in the Abadia mater.

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 locate and notify respondent of the proceedings prior to the entry of his default, including: (a) calling his official telephone number and an alternate telephone number, both of which were disconnected; (b) calling a third possible telephone number for respondent. The person who answered the call said that it was a wrong number; and (c) calling Directory Assistance for the area that included respondent’s official address. There were no listings for respondent;

(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 Curtis George Muck 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 Curtis George Muck, State Bar number 190328, 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: January _____, 2015

LUCY M. ARMENDARIZ
Judge of the State Bar Court