

FILED

JUN -3 2014

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-10728-DFM
)	
WARREN ARTHUR HARMS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 76689,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Warren Arthur Harms (Respondent) was charged with one count of committing an act of moral turpitude, dishonesty and corruption. 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 21, 1977, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 22, 2013, the State Bar properly served the NDC on Respondent by certified mail, return receipt requested, to his membership records address.³ The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt for the NDC was returned to the State Bar with Respondent's signature and was dated May 29, 2013.⁴

Respondent had actual notice of this proceeding. In response to attempts made to contact Respondent regarding his pending default,⁵ Respondent emailed the State Bar on July 1, 2013. Respondent and Deputy Trial Counsel William Todd (DTC Todd) also spoke regarding this matter by telephone on July 1, 2013. On July 9, 2013, DTC Todd reminded Respondent that he must file a response to the NDC to avoid the entry of his default.

Despite his knowledge of the pending action and the efforts of DTC Todd, Respondent failed to file a response to the NDC. As a result, on July 9, 2013, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to

³ The NDC was filed on May 23, 2013.

⁴ The Declaration of Deputy Trial Counsel William Todd (DTC Todd), attached to the State Bar's petition for disbarment, states, "The return receipt was returned to the State Bar with Respondent's signature and dated May 29, 2013."

⁵ These attempts included a letter, with a copy of the filed NDC and a notice of a status conference attached, warning of Deputy Trial Counsel William Todd's intent to file a motion for entry of default.

his membership records address. The motion complied with all the requirements for a default,⁶ 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) and reflecting that Respondent had actual notice of this proceeding. The motion also notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.⁷ Despite this warning, Respondent did not file a response to the motion, and his default was entered on July 26, 2013. The order entering the default was properly 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. 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 February 14, 2014, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent had not contacted the State Bar since July 26, 2013, the date his 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 not made any payments resulting from Respondent's

⁶ The court notes that the date of service of the NDC set forth in the motion is incorrect. The motion indicates that the NDC was served on May 23, 2013. It was actually served on May 22, 2013. Such error, however, is de minimis.

⁷ As set forth in the declaration of DTC Todd filed with the State Bar's petition for disbarment, the return receipt for the motion was signed by "W A Harms" on an unknown date prior to July 17, 2013.

conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default.

Respondent has a prior record of discipline.⁸ On March 13, 2006, the court filed an order imposing a private reproof on Respondent as a result of discipline imposed on Respondent by the United States Bankruptcy Court, Central District of California. Respondent stipulated in the State Bar matter that he had violated Business and Professions Code section 6068, subdivision (d) by signing his client's name under penalty of perjury on two declarations and filing the declarations with the bankruptcy court.

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 as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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Count One - Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by reporting to the State Bar that he was in full compliance with his MCLE requirements when he knew, or was grossly negligent in not knowing, that he was not in compliance with his MCLE requirements.

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:

⁸ 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.

(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, and Respondent had actual notice of this proceeding, as the State Bar (a) filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address; (b) attempts were made to contact Respondent regarding his pending default, including by letter warning of DTC Todd's intent to file a motion for entry of default; (c) Respondent emailed the State Bar on July 1, 2013; (d) Respondent and DTC Todd spoke by telephone regarding this matter on July 1, 2013; and (e) DTC Todd reminded Respondent on July 9, 2013, that he must file a response to the NDC to avoid the entry of his default;

(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 **Warren Arthur Harms**, State Bar number 76689, 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 **Warren Arthur Harms**, State Bar number 76689, 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: June 3, 2014


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 3, 2014, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**WARREN ARTHUR HARMS
561 STONE HARBOR CIR
LA HABRA, CA 90631**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

WILLIAM TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 3, 2014.



Tammy Cleaver
Case Administrator
State Bar Court

AMENDED CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 4, 2014, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**WARREN ARTHUR HARMS
561 STONE HARBOR CIR
LA HABRA, CA 90631**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

WILLIAM TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 4, 2014.



Tammy Cleaver
Case Administrator
State Bar Court