

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 13-O-14122-DFM
	)	
<b>WILLIAM MITCHELL ANDREWS,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 141977,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent **William Mitchell Andrews** (Respondent) was charged with five counts of misconduct stemming from a single client matter. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

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.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> 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 11, 1989, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On January 24, 2014, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, to 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 as undeliverable.

In addition, Respondent had actual notice of this proceeding. On February 7, 2014, the State Bar Deputy Trial Counsel Kim Kasreliovich (Kasreliovich) received a voicemail message from Respondent in which he provided a return telephone number and requested a return call.

On February 10, 2014, Kasreliovich returned Respondent's telephone call and spoke with him. During this conversation, Kasreliovich told Respondent that he needed to file a response to the NDC. That same day, Kasreliovich emailed Respondent a courtesy copy of the NDC at an email address he provided in their telephone conversation.

Between February 18 and 21, 2014, Respondent and Kasreliovich exchanged several emails in which Respondent requested an extension of time to file a response to the NDC. Kasreliovich told Respondent that she would not file a motion for default prior to the initial status conference. Kasreliovich scanned a copy of the Notice of Initial Status Conference and provided it electronically to Respondent.

The initial status conference was held on March 3, 2014. Respondent did not appear. That same day, Kasreliovich received a voicemail from Respondent stating that he was stuck in traffic and would be late to the status conference. In this voicemail, Respondent also advised that he intended to file his response when he appeared in court.

On March 4, 2014, Kasreliovich left a voicemail for Respondent inquiring about his missed appearance and failure to file a response. The State Bar has not had any contact with Respondent since March 3, 2014.

Respondent failed to file a response to the NDC. On March 13, 2014, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial 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 April 2, 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, 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 November 6, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments 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 December 5, 2014.

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

#### **Case Number 13-O-14122 – The Morfin Matter**

Count One – The court does not find Respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as the facts alleged fail to show that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.<sup>3</sup>

Count Two – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out funds in Respondent's possession which the client was entitled to receive.

Count Three – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit funds received for the benefit of a client into a trust account.

Count Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate) by failing to respond to his client's reasonable status inquiries.

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<sup>3</sup> The State Bar merely alleged that Respondent performed no legal services of value. This allegation is vague and arbitrary and does not establish, by clear and convincing evidence, that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Count Five – Respondent willfully violated section 6068, subdivision (j) (failure to update membership address) by vacating his office and failing to update his State Bar official membership records address within 30 days thereafter.

### **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 the proceedings prior to the entry of his default, as he was properly served with a copy of the NDC and communicated with the State Bar, requesting additional time to file a response;
- (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 **William Mitchell Andrews**, State Bar number 141977, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

## **Restitution**

The court also recommends that Respondent be ordered to make restitution to Rafael Morfin in the amount of \$395 plus 10 percent interest per year from October 1, 2011. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

## **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 **William Mitchell Andrews**, State Bar number 141977, 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

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DONALD F. MILES  
Judge of the State Bar Court