

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 13-O-15838-DFM
)	
ANDREW MacLAREN STEWART,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 204170,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent **Andrew MacLaren Stewart** (Respondent) was charged with failing to comply with three of the conditions attached to his disciplinary probation. 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 90 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(F)(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 6, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 2, 2014, the State Bar filed and properly served the Notice of Disciplinary Charges (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.) On June 6, 2014, the State Bar received the return receipt for the NDC. The receipt is signed by E. Ruiz.

Thereafter, on July 23, 2014, the assigned State Bar deputy trial counsel (DTC) sent Respondent, at Respondent's membership records email address, an email stating that the State Bar would seek Respondent's default if he did not file a response to the NDC by July 28, 2014. The DTC attached a copy of the NDC to that email. On July 23, 2014, the DTC also telephoned Respondent and left a voicemail message asking Respondent to return her phone call. Later that same day, Respondent returned the DTC's phone call and left a voicemail message stating that he was no longer practicing law, that he had been out of the country, and that he had an attorney representing him.

The next day, July 24, 2014, the DTC again telephoned Respondent and left a second voicemail message for him. In that second voicemail message, the DTC stated that she would seek Respondent's default if he did not file a response to the NDC. Later that same day, Respondent again telephoned the DTC and left her a voicemail message stating that he was in

Cardiff, Wales, and the attorney, who was allegedly representing Respondent in four matters, had left him hanging.³

On July 25, 2014, the DTC again telephoned Respondent and left a third voicemail message for him. In that third voicemail message, the DTC stated that she would seek his default if he did not file a response to the NDC by July 28, 2014. That same day, the DTC sent Respondent a second email in which she again advised Respondent that she would seek his default if he did not file a response to the NDC by July 28, 2014. A copy of the NDC was also attached to that second email. On July 26, 2014, Respondent again telephoned the DTC and left a voicemail message claiming that his attorney had abandoned him and that he would be reporting attorney to the State Bar.

On July 28, 2014, the DTC again telephoned Respondent and left a fourth voicemail message for him. In that fourth voicemail message, the DTC stated that she was filing a motion to enter Respondent's default because he had not filed a response to the NDC.

On July 28, 2014, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to his membership-records address. The motion complied with the requirements for a default, including a supporting declaration by the DTC noting her email and voicemail correspondence with Respondent on July 23, 24, and 25, 2014. (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. The State Bar received the return receipt for the motion for entry of default. The receipt was signed by E. Ruiz on July 30, 2014.

Respondent did not file a response to the motion for entry of default or the NDC, and his default was entered on August 19, 2014. The order entering the default was properly served on Respondent at his membership records address by certified mail, return receipt requested. The

³ The DTC spoke with the attorney, who denied representing Respondent but admitted he was helping Respondent as a friend.

court also ordered Respondent's involuntary enrollment as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e),⁴ effective three days after service of the order. He has remained inactively enrolled since that time. On September 22, 2014, the State Bar Court received the return receipt for the default order. The receipt was signed by P. Shin.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On December 12, 2014, the State Bar filed and properly served a 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 after his default was entered on August 19, 2014; (2) there is no other disciplinary investigation pending against Respondent; (3) Respondent has one 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 January 8, 2015.

Respondent has one prior record of discipline.⁵ Pursuant to a Supreme Court order filed on December 12, 2011, Respondent was suspended 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 sixty days of probation. Respondent participated in that prior matter and stipulated to culpability on the following five counts of misconduct in a single client matter: three counts of improperly acquiring interests that were adverse to those of the client; one count

⁴ Unless otherwise indicated, all references to sections are to the Business and Professions Code.

⁵ The court admits into evidence the certified copy of Respondent's prior record of discipline attached to the December 12, 2014, petition for disbarment.

of failing to maintain client funds in a trust account; and one count of failing to account properly for \$1.9 million in settlement proceeds that Respondent received for the benefit of the client.

In Respondent's prior matter, the parties stipulated that Respondent's misconduct was aggravated because it involved multiple acts of misconduct. In addition, the parties stipulated that Respondent's misconduct was mitigated because Respondent had no prior record of discipline; there was no harm to the client; Respondent displayed remorse; Respondent suffered from bi-polar disorder, Respondent experienced severe stress from marital and financial problems; and Respondent had undertaken corrective actions to prevent further misconduct.

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(2).) 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 13-O-15838 (Failure to Comply With Conditions of Probation)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with all the conditions attached to the disciplinary probation imposed on him in the Supreme Court's December 12, 2011, order. Specifically, Respondent failed to comply with the conditions requiring that Respondent (1) submit quarterly probation reports; (2) submit, for each quarter in which he possesses client funds, a report from a certified public accountant on Respondent's handling of and accounting for the client funds; and (3) contact the State Bar's Probation Office within the first 30 days of his probation.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) the State Bar exercised reasonable diligence to notify Respondent of this proceeding and that Respondent had actual knowledge of it;
- (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.

RECOMMENDATIONS

Disbarment

The court recommends that Respondent **Andrew MacLaren Stewart**, State Bar number 204170, 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 **Andrew MacLaren Stewart**, State Bar number 204170, 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 by mail. (Rule 5.111(D).)

Dated: March ___, 2015.

DONALD F. MILES
Judge of the State Bar Court