

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 14-H-03275-PEM
)	
SCOTT MONTGOMERY CURREY,)	
)	DECISION AND ORDER OF
Member No. 242320,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent Scott Montgomery Currey (respondent) was charged with failing to comply with conditions attached to a prior private reproof. 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(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 June 1, 2006, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 1, 2014, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, to his membership records address. A courtesy copy of the NDC was served on respondent by first-class mail 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 return card was returned to the State Bar signed by a "John S. Currey." The NDC served by first-class mail was not returned by the U.S. Postal Service.

Because respondent is currently on disciplinary probation, the State Bar contacted his assigned probation deputy for any other alternate address and was advised of none.

On July 24, 2014, the State Bar also attempted to contact respondent at his personal telephone number provided in the case file, as he does not have an official membership records telephone number. The number was not in service.

On July 24, 2014, the State Bar emailed to respondent a copy of the NDC and informed him of the State Bar's intent to file a motion for entry of default. Respondent did not respond to the email.

To date, respondent has not contacted the State Bar.

Respondent failed to file a response to the NDC. On July 29, 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 State Bar 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. The return receipt to the motion was signed by a "John S. Currey." Respondent did not file a response to the motion, and his default was entered on August 15, 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. He has remained inactively enrolled since that time.

Respondent 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 November 20, 2014, the State Bar filed and properly served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) there has been no contact with respondent since his default was entered; (2) there are no other matters pending against respondent; (3) respondent has two prior records of discipline; and (4) the Client Security Fund has not made any payments as a result of 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 17, 2014.

Respondent has been disciplined on two prior occasions.³ Pursuant to an order of the State Bar Court filed on February 21, 2012, respondent was privately reprovved with conditions for failing to perform services competently, failing to communicate with client, and failing to return unearned fees in a single client matter. Respondent entered into a stipulation in this prior disciplinary matter.

Pursuant to a Supreme Court order filed on March 24, 2014, respondent was suspended for two years, the execution of which was stayed, and placed on probation for two years subject to conditions including that he be suspended from the practice of law for 30 days. Respondent failed to comply with the conditions attached to his private reprovval. Respondent and the State Bar entered into a stipulation in this 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 14-H-03275 (Reprovval Matter)

Respondent willfully violated rule 1-110 of the Rules of Professional Conduct (failure to comply with conditions of reprovval), by failing to comply with specified conditions of his private reprovval effective on March 13, 2012.

³ The court admits into evidence the certified copies of respondent's prior records of discipline that were attached to the State Bar's November 20, 2014 petition for disbarment after default.

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 notify respondent of the proceedings prior to the entry of his default, as the NDC was served on respondent at his membership records address and the State Bar attempted to reach respondent by telephone and by email;
- (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 Scott Montgomery Currey 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 Scott Montgomery Currey, State Bar number 242320, 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: March _____, 2015

PAT McELROY
Judge of the State Bar Court