



PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

FILED

OCT 29 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case No.: 14-J-00470-DFM
)	
DOUGLAS CARROL RHOADS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 165389,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Douglas Carrol Rhoads (Respondent) was ordered disciplined by the Supreme Court of Arizona upon facts that established his culpability for acts of professional misconduct in that jurisdiction. As a result, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against Respondent on March 2, 2015. (Bus. & Prof. Code, § 6049.1;¹ Rules Proc. of State Bar, rules 5.350-5.354.)

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon Respondent in California; (2) whether, as a matter of law, Respondent's culpability in the Arizona proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in California at the time of Respondent's misconduct in Arizona; and (3) whether the Arizona proceeding lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

¹ Unless otherwise indicated, all statutory references are to the Business and Professions Code.

Respondent bears the burden of establishing that the conduct for which he was disciplined by Arizona would not warrant the imposition of discipline in California and/or that the Arizona proceedings lacked fundamental constitutional protection. Unless Respondent establishes one or both of these, the record of discipline in the Arizona proceeding is conclusive evidence of Respondent's culpability of misconduct in California. (Section 6049.1, subdivisions (a) & (b).)

Respondent failed to participate in the California State Bar Court proceeding, either in person or through counsel, and his default was entered. The State Bar filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.² Rule 5.85 provides the procedure to follow when an attorney fails to participate in a State Bar Court 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 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.³

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

Jurisdiction

Respondent was admitted to practice law in this state on June 29, 1993, and has been a member since then.

² Unless otherwise indicated, all references to rules are to this source.

³ 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).) Unless otherwise indicated, all references to rules are to this source.

Procedural Requirements Have Been Satisfied

On February 27, 2015, the State Bar properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. Shortly thereafter, on March 2, 2015, the NDC was filed in the State Bar Court. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Although the United States Postal Service returned the NDC to the State Bar on March 18, 2015, marked "return to sender, unable to forward," this service was effective pursuant to statute.

In addition to the above service, Respondent had actual notice of this proceeding. On March 26, 2015, the assigned DTC telephoned Respondent at his official membership telephone number to discuss the instant disciplinary proceedings, including Respondent's need to respond to the NDC. Respondent answered the phone; but, after the DTC identified himself and explained the purpose of the phone call, Respondent disconnected the call. Respondent immediately called back, reached a voicemail message, and recognized the voice on the message as that of the same individual with whom he had just spoken. The voicemail message identified the phone number that had been reached as Respondent's phone number. The DTC left a message for Respondent regarding the instant disciplinary proceedings, the filing of the NDC, Respondent's outstanding response to the NDC, the consequences of not timely filing a response, and the date and time of the April 6, 2015 initial status conference.

The assigned DTC also took other steps to notify Respondent of this proceeding. On March 26, 2015, the DTC sent a courtesy copy of the NDC by email to Respondent at his official membership records email address and to another private email address maintained by the State Bar, again reminding Respondent that his response to the NDC was outstanding, the consequences of not timely filing a response to the NDC, and the date and time of the April 6, 2015 initial status conference. The DTC attached a copy of the Notice of Assignment and Notice

of Initial Status Conference to the emails. The DTC received a delivery-error email indicating that the email address on the email, which had been sent to Respondent at his official membership records email address, was "invalid." However, the email sent to Respondent at his private email address was not returned as undeliverable or for any other reason.

On April 2, 2015, the assigned DTC also sent a courtesy copy of the NDC and a copy of the Notice of Assignment and Notice of Initial Status Conference by First Class mail to Respondent at his official membership records address.

Despite all of the efforts by the DTC, Respondent did not appear at the April 6, 2015 initial status conference and he failed to file a response to the NDC.

On April 16, 2015, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by the assigned DTC in seeking to provide actual 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.

On April 22, 2015, the State Bar filed and properly served a Notice of Correction to the Motion for Entry of Default, wherein Respondent was advised that the April 16th motion for entry of default incorrectly stated that he was required to file and serve a response to the NDC on or before March 27, 2015, and that the correct date by which he was required to file and serve his response to the NDC was April 1, 2015.

Respondent did not file a response to the motion, and his default was entered on May 13, 2015. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time. The orders entering the default and enrolling Respondent inactive were properly served on Respondent at his membership records address by

certified mail, return receipt requested. Additionally, a courtesy copy of the order entering the default and enrolling Respondent inactive was sent by regular first class mail to his membership records address.

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 August 25, 2015, the State Bar properly filed and 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) it has had no contact with Respondent since the default was served;⁴ (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 September 28, 2015.

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).) Section 6049.1(a) provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction shall be conclusive evidence that, subject to limited exceptions, the member is culpable of professional conduct in this state.

The court finds, as a matter of law, that Respondent's culpability in the Arizona proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this state at the time of Respondent's misconduct in the Arizona proceeding, as follows.

⁴ This is the same date that Respondent's default was entered.

Case No. 14-J-00470 – The November 6, 2013 Arizona Disciplinary Order

On November 6, 2013, the Supreme Court of Arizona filed a judgment and order suspending Respondent from the practice of law in Arizona for six months and one day. The court imposed that discipline on Respondent in accordance with an Agreement for Discipline by Consent that Respondent and the State Bar of Arizona filed in the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona on November 5, 2013. In that agreement, Respondent stipulated that his conduct in three counts violated rule 42 of the Rules of the Supreme Court of Arizona (Arizona Supreme Court Rules) and Ethical Rules 1.1, 3.1, 3.2, 3.3(d), 3.4(c), 3.4(e) 3.5(d), 4.4(a), 8.2(a) and 8.4 (d); and Rules 41(c) and (g) of the Arizona Rules of the Supreme Court.

Business and Professions Code, Section 6068, subdivision (b) [Failure to Maintain Respect Due to the Courts of Justice and Judicial Officers]

Respondent failed to maintain respect due to the courts of justice and judicial officers in willful violation of Business and Professions Code section 6068, subdivision (b), when: (1) he became “disruptive, disrespectful, and confrontational” at a March 5, 2012 hearing and “behaved unprofessionally,” by interrupting opposing counsel, who was speaking, and by engaging in threatening and “aggressive” behavior toward opposing counsel, which resulted in the bench officer ordering Respondent to be seated and desist, and (2) he showed further disrespect to judicial officers by, thereafter, filing an affidavit in which he accused the bench officer, who had presided at the March 5th hearing, as well as “all other commissioners and judges” of bias, prejudice, and undisclosed financial interests.⁵

///

///

⁵ The Arizona Agreement for Discipline by Consent described Respondent’s accusations as a “rant, which was unsupported by any rational explanation.”

Business and Professions Code, Section 6068, subdivision (c) [Failure to Counsel/Maintain Only Legal or Just Actions or Defenses]

In September 2012, J.P. Morgan Chase Bank (JP Morgan) won a forcible entry and detainer (FED) action against Respondent, relating to his Sedona home, and obtained an eviction order against him. On December 10, 2012, shortly before move-out day, Respondent filed for bankruptcy protection, although he knew that his bankruptcy filing was legally prohibited under a one-year moratorium against bankruptcy filings, which had been imposed against him by court order. By filing for bankruptcy when he was legally prohibited from so doing, Respondent abused the bankruptcy process and violated his duty to maintain only just or legal causes in willful violation of Business and Professions Code section 6068, subdivision (c).

Business and Professions Code, Section 6068, subdivision (d) [Failure to Employ Means Consistent with Truth]

In a memorandum which Respondent filed in support of stay, pending appeal on behalf of a client, he knowingly and falsely claimed that the FED action against his client was commenced while a TRO was in effect. By knowingly making a false claims in a pleading, which he filed with the court, Respondent willfully failed to employ means consistent with the truth in willful violation of Business and Professions Code section 6068, subdivision (d).

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) reasonable diligence was used to notify Respondent of the proceedings prior to 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 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 **Douglas Carrol Rhoads**, State Bar number 165389, 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 **Douglas Carrol Rhoads**, State Bar number 165389, 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: October 29, 2015


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 October 29, 2015, 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:

DOUGLAS C. RHOADS
RHOADS & ASSOCIATES
2302 E DELGADO ST
PHOENIX, AZ 85022

DOUGLAS CARROL RHOADS
10439 E. SALTBRUSH DR.
SCOTTSDALE, AZ 85255

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

ANAND KUMAR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 29, 2015.



Rose M. Luthi
Case Administrator
State Bar Court