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 STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 14-N-02868-YDR
)	
RICHARD KIERNAN GRIFFITH,)	
)	DECISION AND ORDER OF
Member No. 41807,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent Richard Kiernan Griffith ("Respondent") was charged with willfully violating California Rules of Court, rule 9.20, by failing to file a declaration of compliance as required by that rule and as required by an order of the Supreme Court. He failed to consistently 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 rule(s) 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 California on February 23, 1968, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 17, 2014, the State Bar properly filed and served the NDC on Respondent by certified mail, return receipt requested, to his membership records address. The State Bar received the return card that was signed by L. Hi. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On July 18, 2014, the State Bar sent Respondent a copy of the NDC to his membership record address by regular first class mail. It was not returned as undeliverable.

Respondent also had actual notice of this proceeding. On July 18, 2014, the deputy trial counsel (DTC) left a message at Respondent's official membership records telephone number, informing him that his response to the NDC had been due on July 17, 2014. On July 18, 2014, Respondent returned the DTC's call. During their telephone conversation, the DTC provided Respondent with the case number and informed Respondent about the facts alleged and the matter pending against him. Respondent indicated he would file the rule 9.20 affidavit the following week.

After the conversation concluded, the DTC again called Respondent at his membership records number and left a voicemail message. He clarified that the rule 9.20 affidavit would not automatically terminate the disciplinary matter; Respondent still needed to file a response to the NDC; and the State Bar intended to pursue a motion for default.

On July 25, 2014, the DTC again contacted Respondent at his membership records number and left a voicemail message. He informed Respondent that he had not received a response and that an Initial Status Conference was scheduled for July 30, 2014. Respondent returned the DTC's call on July 28, 2014. During the telephone conversation, Respondent confirmed he received the NDC.

Thereafter, Respondent telephonically appeared at the July 30, 2014 Initial Status Conference, where he was ordered to file a response to the NDC by August 8, 2014.

Respondent failed to file a response to the NDC. On October 12, 2014, the State Bar properly filed and 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 DTC 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 September 3, 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 December 16, 2014, 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) there has been no contact with Respondent since his default was entered; (2) there are no other investigative matters pending

against Respondent; (3) Respondent has two records of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct.

On January 13, 2015, Respondent filed a Response to Petition for Disbarment after Default for Failure to File Timely Response. He indicated that due to poor health, he intended to close his law practice, and he wanted to be placed on inactive enrollment. The court denied Respondent's response without prejudice because the default had not been set aside. (See Rule 5.82(3).) The court gave Respondent until February 20, 2015, to file a late motion to set aside his default pursuant to rule 5.83(D)(3).

Respondent filed the late motion to set aside his default on February 17, 2015. On March 2, 2015, the court denied the motion because Respondent failed to file a verified proposed response to the NDC as required by rule 5.83(E). The motion was denied without prejudice. The court gave Respondent until March 16, 2015, to file an amended verified proposed response to the NDC and to provide clear and convincing evidence establishing his failure to file a timely motion to set aside default was due to compelling circumstances beyond his control, as required by rule 5.83(D)(3). Respondent failed to comply with the court's March 2, 2015 order.³

Respondent has not properly responded to the petition for disbarment or timely moved to set aside or vacate the default. The case was submitted for decision on July 15, 2015.

Prior Record of Discipline

Respondent has two prior records of discipline.⁴ Pursuant to an order of the Supreme Court filed on July 10, 2012, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for one year subject to conditions including that he be suspended from the practice of law for 30 days. Respondent stipulated that he committed

³ The court held a telephonic status conference on June 29, 2015. The court contacted Respondent at his membership records telephone number, but it had been disconnected.

⁴ The court admits into evidence the certified copy of Respondent's record of prior discipline that was attached to the State Bar's December 16, 2014 petition for disbarment after default.

misconduct in another jurisdiction that would warrant discipline in California. He made a misrepresentation to Hawaii's Office of Disciplinary Counsel; repeatedly wrote checks on his trust account that held insufficient funds, failed to promptly refund unearned fees, and failed to cooperate in a disciplinary investigation.

In his second prior, pursuant to an order of the Supreme Court filed on February 6, 2014, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years subject to conditions including that he be suspended from the practice of law for 90 days. Respondent stipulated that he failed to comply with the conditions attached to his disciplinary probation in his prior disciplinary 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(F)(1)(d).)

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Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by not filing, with the clerk of the State Bar Court, by April 17, 2014, a declaration of compliance as required by California Rules of Court, rule 9.20 and in conformity with the requirements of rule 9.20(c), as required by Supreme Court order number S214792.

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 actual notice and opportunity, Respondent failed to fully participate in this disciplinary proceeding. Before granting this petition for disbarment, the court considered what, if any, relief was appropriate under the new default rules and has determined that no relief was appropriate; that the petition for disbarment should be granted; and that Respondent's disbarment should be recommended as the appropriate discipline in this matter. As set forth in the Rules of Procedure of the State Bar, the court recommends Respondent's disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent **Richard Kiernan Griffith**, State Bar number 41807, 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 **Richard Kiernan Griffith**, State Bar number 41807, 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 1, 2015



YVETTE D. ROLAND
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 2, 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:

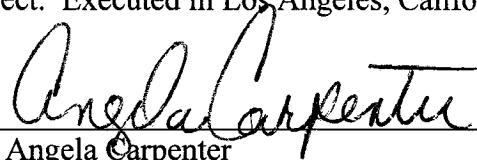
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD KIERNAN GRIFFITH
733 BISHOP ST STE 2320
HONOLULU, HI 96813

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

Drew D. Massey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 2, 2015.



Angela Carpenter
Case Administrator
State Bar Court