

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-N-03272-YDR
)	
MARK DOUGLAS ESTES,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 110518,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Mark Douglas Estes (Respondent) was charged with willfully violating California Rules of Court, rule 9.20, by failing to file a declaration of compliance with that rule in conformity with the requirements of rule 9.20(c), as required by an order of the Supreme Court. He failed to participate either in person or through counsel, and his default was entered. Thereafter, 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),

¹ Unless otherwise indicated, all references to rule(s) are to this source.

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

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 12, 1983, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 30, 2014, the State Bar filed and properly served the Notice of Disciplinary Charges (NDC)³ on Respondent by certified mail, return receipt requested, to his membership records address.⁴ The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was not returned; however, the State Bar did not receive the return card.

On July 3, 2014, the State Bar modified and supplemented the NDC by filing and properly serving on respondent by certified mail, return receipt requested, a copy of the Supreme Court order which requires Respondent to comply with California Rules of Court, rule 9.20.

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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).)

³ The State Bar, however, failed to attach a copy of the rule 9.20 order to the NDC as required by rule 5.334.

⁴ This matter was originally assigned to the Honorable Richard A. Platel. Effective November 6, 2014, however, this matter was reassigned to the undersigned judge.

Thereafter, a courtesy copy of the NDC was sent to Respondent by regular first-class mail to his membership records address. The United States Postal Service did not return the NDC.

As respondent is currently on disciplinary probation, the assigned deputy trial counsel (DTC) in this matter contacted the assigned probation deputy to determine whether Respondent's profile contained any other address. However, the probation deputy had no alternative contact information.

The DTC also attempted to reach Respondent by telephone; sent a copy of the NDC to Respondent by email;⁵ and performed an internet search for additional contact information for Respondent.

Respondent failed to file a response to the NDC. On August 4, 2014, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, at his membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar DTC 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 August 21, 2014. The order entering the default was properly served on Respondent at his membership records address by certified mail, return receipt requested. The order notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007,

⁵ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default vacated or set aside. (Rule 5.83(B); rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On December 4, 2014, the State Bar filed and properly served the 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 since the date the order entering his default was served;⁶ (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has a record of prior 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 6, 2015.

Respondent has a prior record of discipline. Pursuant to a Supreme Court order filed on February 24, 2014, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years on conditions including that he be suspended for a minimum of the first year of probation and until he makes specified restitution. Respondent was also ordered to comply with California Rules of Court, rule 9.20. In this prior disciplinary proceeding, in which Respondent participated, Respondent was found culpable of (1) entering into a business transaction with a client in which the terms were not fair and reasonable to the client, the client was not advised in writing that he may seek the advice of an independent attorney and given a reasonable opportunity to seek that advice, and the client did not consent in writing to the terms of the transaction; (2) committed acts involving moral turpitude, dishonesty or corruption (misrepresentation); (3) committed an act of moral turpitude by issuing two checks

⁶ This is the same date the order entering Respondent's default was filed.

to his client when he knew or was grossly negligent in not knowing that there were insufficient funds in the account to cover the checks; and (4) failed to cooperate in a State Bar investigation.

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 and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 14-N-03272 (Rule 9.20 Matter)

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 5, 2014, a declaration of compliance with California Rules of Court, rule 9.20, in conformity with the requirements of rule 9.20(c), as required by the Supreme Court in order number S215202.

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, as (a) the State Bar filed and properly served the NDC and the supplement to the NDC on Respondent at his membership records address by certified mail, return receipt requested; (b) a courtesy copy of the NDC was sent to Respondent by regular first-class mail to his membership records address; (c) the DTC contacted the assigned probation deputy to determine whether Respondent's profile contained any other address; and (d) the DTC attempted to reach Respondent

- by telephone; sent a copy of the NDC to Respondent by email; and performed an internet search for additional contact information for Respondent;
- (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 Mark Douglas Estes 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.

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ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Mark Douglas Estes, State Bar number 110518, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order. (Rule 5.111(D).)

Dated: April _____, 2015

YVETTE D. ROLAND
Judge of the State Bar Court